

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, May 3, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Alan Patterson Sr., Dan Nash, Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: Vice Chair Jennifer Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES

Mr. Newlove was appointed a voting member for this Motion.

A. April 5, 2021

Mr. Patterson MOVED to approve the April 5, 2021 Minutes as presented in the May 3, 2021 agenda packet with amendments.

Seconded by Mr. Nash.

Amendment: Page 11, Line 32; Remove ‘154’ and Add ‘184.’

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

Mr. Patterson Abstained.

****The Vote on the Motion was approved (4-0-1).***

3. PUBLIC HEARING ITEMS

- A. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming “seasonal” restaurant use to year-round and include an ice cream trailer. **ZB2021-05-SE – Continued from April 5, 2021**

The applicants have requested a continuance until Monday, June 7, 2021. No one appeared on behalf of the application. However, there is an issue that needs to be addressed. Based on the testimony of

the applicant at the last hearing, it is thought that the ice cream trailer is going to be stored on the lot, but not used as part of the restaurant facility. If that is the case, then the applicant would have to apply for a variance to store the trailer at the location of the restaurant. Had this been understood initially, a variance would have been recommended to be included. Originally it was thought that the ice cream cart would be used at the premises and off site at times. If that were the case it could have been addressed as an expansion of a non-conforming use. The Board discussed if the applicant could add that to the current application and have it re-noticed.

If the applicant was to use the trailer on the premises at certain times, the question is how much it can be used without a variance. If it is to be stored, the question is how long it can be stored. Additional testimony is necessary. The question remains if the storage of an ice cream truck, intended to be used off site, can be considered a natural expansion of a non-conforming use. If it is primarily used offsite, then it likely is not a natural expansion of a non-conforming use.

***Mr. Nash MOVED to continue this hearing until June 7, 2021.
Seconded by Mr. Newlove.***

Mr. McDonough was given voting privileges for this hearing.

Roll Call Vote

***Mr. McDonough, Mr. Katz, Mr. Nash, Mr. Patterson, and Chair Koppenheffer all voting Yea.
None voted Nay.***

****The Vote on the Motion was unanimously approved (5-0).***

**B. Diane Doe, 5 Richardson Place (Tax Map 8, Lot 9), zoned R-3: Applicant requests a Variance from Article II, Section 201.7 of the Zoning Ordinance to allow additional parking spaces within the minimum required 20 ft. front yard. ZB2021-04-VAR -
Continued from February 1, 2021**

Mr. Newlove was given voting privileges for this hearing.

The applicant was requested to provide a boundary line survey and a drawing showing how the parking was envisioned. Those materials were not received and without those documents it is not possible to move forward. There are two choices, continue to June or open the public hearing and go forward. The applicant is attending the meeting and was asked why the documents have not been provided.

Diane Doe responded that what she submitted was photographs of property stakes showing there is 24 feet between the stake and her driveway. The stake closest to the road had not been seen before. She worked with the abutters to locate the missing stake.

An expert opinion of a licensed surveyor is what is expected. The photographs are not what the Board intended. The photographs appear to be right, but the survey would show the distances. Staff believes it is important to clarify that the survey include the dimensions of the present and future parking, as they exist and where the third spot would be located, including the measurements. The Board discussed what boundary lines they need, and they determined a professional survey would include a boundary line survey of all the lines. Additionally, the applicant is asked to provide the current parking conditions on the ground and the proposed parking.

***Mr. Nash MOVED to continue this hearing until the June 7, 2021 meeting.
Seconded by Mr. Patterson.***

The members discussed that the timeline may be too constrained. The applicant is agreeable with an extended timeline.

***Mr. Patterson MOVED to amend the Motion to the October 4, 2021 meeting.
Seconded my Mr. Nash.***

Staff is concerned that a building permit was submitted back in the Fall and the ADU has already been constructed. In some sense, this variance is after the fact. There is concern for extending this so far in the future. Ms. Doe said she did submit a building permit and did have an inspection and she was told to go ahead with the construction. The property has been classified as a 3 bedroom for many years. She merely improved that area with insulation. It is the same as it was before she applied for the building permit. Additional parking is not allowed until a variance is granted, and there is no additional parking until then.

Roll Call Vote

***Mr. Patterson, Mr. Katz, Mr. Newlove, Mr. Patterson, and Chair Koppenheffer all voting Yea.
None voted Nay.***

****The Vote on the Motion was unanimously approved (5-0).***

- C. Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67) and 82 Mascoma Street (Tax Map 106, Lot 67, Plot 701), zoned R-3:** 82 Mascoma Street currently conforms with the 10,000 sq. ft. minimum required lot size. The applicant proposes a boundary line adjustment between the subject properties that will reduce the size of 82 Mascoma Street to +/-8,414 sq. ft. To allow the proposed boundary line adjustment, the applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot area to less than the minimum required) and from Article III, Section 309.3 of the Zoning Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District). **ZB2021-09-VAR**

Mr. McDonough was given voting privileges for this hearing.

Mr. Corwin advised that these 2 properties are not separate lots but are one lot. There cannot be a boundary line adjustment when it is only one lot. There is no evidence that this has ever been considered two lots. In that case, the relief that is needed is to create a non-conforming lot. It is not a boundary line; it is a subdivision. It is thought that the request needs to be re-noticed, that it is a different case.

Chris Rollins, the surveyor, said that the deed states there are two tracts. In the 1950s there were two homes, and two separate lots were defined. There is no evidence, except common use, that would change this from two lots to one lot.

Staff thought that the surveyor reluctantly agreed in phone conversations, that this is one lot. If the Board accepts it is one lot, then theoretically the Board could grant the variance. If the Board believes the content of the notice is not substantiative, then it needs to be postponed. If the Board believes a legal opinion is required, then it also needs to be postponed. Chris Rollins and the applicant are willing to move forward with it as one lot for this hearing. The Board members believe the cleanest way to move forward is to get a legal opinion.

Chair Koppenheffer Moved to continue this hearing to June 7, 2021. And to direct Mr. Corwin to seek legal opinion as to whether the Board has the power to decide whether there are two lots that they are dealing with or just one lot.

Seconded by Mr. Katz.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Patterson, and Chair Koppenheffer all voting Yea.

Mr. Nash voted Nay.

****The Vote on the Motion was approved (4-1).***

D. Providence Presbyterian Church, 99 Maple Street (Tax Map 59, Lot 14), zoned R-3: Applicant requests a variance from Section 608.4.B.2 of the Zoning Ordinance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum sign area permitted for a single use. **ZB2021-10-VAR**

Mr. Newlove was appointed voting privileges for this hearing.

Mr. Isaac Trudeau appeared on behalf of the application. They would like to put up a free-standing sign in front of their place of worship. When the previous owner relocated, they took the free-standing sign with them. It may or may not have been a permitted. There are two other places of worship on the street with bigger signs, therefore he believes they are not asking for anything out of the ordinary. A smaller sign that meets the zoning requirements would be too small to read. The City Council determined, in the ordinance, that the size limit is 4 square feet. It is true there are bigger signs, but those signs may have preceded the sign ordinances. Unless there is a hardship, the zoning ordinances apply.

Chair Koppenheffer opened the Public Hearing. Hearing no one from the public, the Public Hearing was closed.

Mr. Nash MOVED on May 3, 2021, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Isaac Trudeau on behalf of Providence Presbyterian Church, regarding 99 Maple Street (Tax Map 59, Lot 14), zoned R-3. Applicant requests a variance from Section 608.4.B.2 of the Zoning Ordinance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum sign area permitted for a single use. ZB2021-06-VAR

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The property is improved with a +/-10,722 sq. ft. building constructed in 1900 per the City Assessor's records, which is currently (and which has been historically) occupied by a church. "House of worship" is a permitted use in the R-3 District.
2. The applicant requests a variance from Section 608.4.B.2 of the Zoning Ordinance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum sign area permitted for a single use. The application materials include a rendering of the proposed sign and a plot plan showing the proposed location of the sign on the property.

3. Section 608.4.B of the Zoning Ordinance sets forth the sign regulations for non-residential uses in the residential districts as follows:

Non-Residential Uses in Residential and Mixed-Use Districts. For legally existing non-residential uses and for **home businesses** in the **residential** and **mixed-use districts**, one **sign** is permitted per lot which may be either a **freestanding sign**, **projecting sign** or **wall sign**. If location in a **mixed-use district**, the **sign** may have **external illumination** in accordance with Section 608.4.A.6.c (“External illumination”).

1. Freestanding Signs. **Freestanding signs** shall;
 - a. Comply with the landscaping requirements set forth in Section 608.4.A.4.c.i (“Landscaping”).
 - b. Have a height of no greater than eight (8) feet.
2. Sign Area. **Sign area** is limited to four (4) square feet if a single non-residential use is located on the **lot**. For each additional non-residential use on the lot, an additional two (2) square feet of **sign area** may be added to the single **sign** permitted on the **lot**. The total **sign area** for each **lot** shall not exceed sixteen (16) square feet.
4. Because there is only a single use on the property (the church), the size of the freestanding sign is limited to 4 sq. ft. Because an 11 sq. ft. sign is proposed, a Variance is required from the maximum sign area limitations of Section 608.4.B.2 of the Zoning Ordinance
5. To obtain a Variance from Section 608.4.B.2, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 12, 2021.
6. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Variance criteria set forth in Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):

- i. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of May 2021**, hereby **GRANTS** the requested Variance from Section 608.4.B.2 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit for the proposed sign.

Seconded by Mr. Patterson.

Two issues were identified. First, this property is essentially right across from the fields. Every season there are many other signs around that area. Also, the property is unique. There is a very tight turn coming toward West Lebanon. If entrance into the church parking lot is missed, it is difficult to turn around. The application materials are a little light.

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Patterson, and Mr. Nash all voting Yea.

Chair Koppenheffer voted Nay.

****The Vote on the Motion was approved (4-1).***

- E. Michael McCarthy, 29 Summer Street (Tax Map 76, Lot 166), zoned R-3:** Applicant requests a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling. **ZB2021-11-SE**

Mr. McDonough was appointed voting privileges for this hearing.

Michael McCarthy appeared on behalf of the application with Susan Simon, his technical advisor. The architect was not present as was intended. Mr. McCarthy said he has an enclosed porch behind his two garages. It was living space when he purchased the property, and he would like to make it into a unit, a living space again.

The Board commented that four parking spaces would be needed. Two are in the garage, one is on the street side of the property, and another parking space is required, meeting the minimum setback or in front of the building if it is a non-conforming building. The applicants need to show where the parking spaces can be accommodated. The Chair pointed out additional problems with the parking, and the space between the house and telephone pole. They discussed the curb cuts. The second parking space cannot be closer to the street than the front of the building. It is likely that both cars would have to park further back on the property. The Board would like clarification about the parking.

Chair Koppenheffer opened the Public Hearing.

Mr. McCarthy asked for clarification about the number of required parking spaces. He needs one additional space. Mr. Nash believes another curb cut could be made on Colburn Street. The parking spaces in the garage cannot be blocked by the cars in the driveway in front of the garage spaces. Further, the driveway is within the setback and cannot be used for parking.

Hearing no one from the Public, the Public Hearing was closed.

Mr. Nash MOVED on May 3, 2021, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Michael M. McCarthy and Susan Simon regarding 29 Summer Street (Tax Map 76, Lot 166), zoned R-3: Applicant requests a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling. ZB2021-11-SE

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is a +/-0.21 acre lot located at the corner of Colburn Street and Summer Street. The property is improved with a 1,946 sq. ft. (finished) one-family dwelling constructed in 1920 (according to the City's assessing records) and has two driveway cuts: one from Summer Street providing access to a two-car garage, and another from Colburn Street providing a one-car parking space.
2. The applicant proposes to convert the existing one-family dwelling into a two-family dwelling. The applicant does not propose any site changes.
3. "Two-family dwelling by conversion of existing one-family dwelling" is a use permitted by Special Exception in the R-3 District per Section 310.2 of the Zoning Ordinance.
4. In order to grant a Special Exception for the proposed conversion, the Board must determine that the proposal meets the general Special Exception criteria, set forth in Section 801.3 of the Zoning Ordinance. The applicant submitted testimony addressing the Section 801.3 criteria in an application received by the Planning & Development Department on April 15, 2021.
5. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
2. There are no special conditions/requirements applicable to the proposed use. (§801.3.B)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)

6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of May 2021, hereby **GRANTS** the requested Special Exception per Section 310.2 of the Zoning Ordinance to convert the existing one-family dwelling at 29 Summer Street (Tax Map 76, Lot 166) to a two-family dwelling, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a certificate of occupancy.
2. Prior to submitting a building permit application, the applicant shall submit a plot plan to the Zoning Administrator demonstrating compliance with the minimum parking requirements of Section 607 of the Zoning Ordinance and the applicable parking setback requirements of Section 201.7. The applicant shall demonstrate compliance with the parking plan prior to a certificate of occupancy.

Seconded by Mr. Patterson.

The Board discussed the need to ensure the parking requirements were met.

Mr. Nash MOVED to amend his motion by adding the last sentence to Section III. 2, “The applicant shall demonstrate compliance with the parking plan prior to a certificate of occupancy.”

Seconded by Mr. Patterson.

Roll Call Vote on the Amendment

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea. None voted Nay.

****The Vote on the Motion was approved (5-0).***

Roll Call Vote on the Motion

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea. None voted Nay.

****The Vote on the Motion was approved (5-0).***

The original agenda was changed to accommodate the following hearing.

- F. Christopher & Erin Audino, 18 Peabody Street (Tax Map 90, Lot 49), zoned R-1:** Applicant proposes to construct a 10 ft. by 16 ft. covered porch onto the side of the existing non-conforming home, which is located +/- 0 ft. from the front lot line. The

proposed porch will be located entirely within the minimum required 20 ft. front yard required for Class 1 lots. To permit the expansion of the non-conforming home, the applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. **ZB2021-14-SE**

Chris Audino appeared on behalf of the application. This is a basic improvement to their home. There is an existing entry with a deck. The existing deck would be removed, and a new covered deck would be built.

Mr. McDonough was appointed voting privileges for this hearing.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

Mr. Nash MOVED on May 3, 2021, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Christopher Audino regarding 18 Peabody Street (Tax Map 90, Lot 49), zoned R-1: Applicant proposes to construct a 10 ft. by 16 ft. covered porch onto the side of the existing non-conforming home, which is located +/- 0 ft. from the front lot line. The proposed porch will be located entirely within the minimum required 20 ft. front yard required for Class 1 lots. To permit the expansion of the non-conforming home, the applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. ZB2021-14-SE

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is improved with a one-family dwelling constructed in 1957. As shown on the plot plan provided by the applicant, the home is located at the front lot line. Consequently, the home is non-conforming to the minimum front yard of 20 ft. required for Class 1 lots in the R-1 District.
2. As shown on the plot plan submitted with the application, the applicant proposes to construct a 10 ft. by 16 ft. covered porch to the south-facing side of the home. The addition is proposed to be located +/-2 ft. back from the street-facing side of the home, which means that the porch is proposed to be constructed +/-2 ft. from the front lot line and will be located entirely within the minimum required 20 ft. front yard.
3. Class 1 lots (lots that are served by municipal sewer and water) in the R-1 District must maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See §308.3 of the Zoning Ordinance. §703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment.
4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in §703.1.A of the Zoning Ordinance. Per §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in §801.3.
5. The applicant has submitted testimony addressing the §801.3 and §703.1.A criteria in an application received by the Planning and Development Department on April 15, 2021.

6. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §703.1.A of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements §703.1.A **are** met (§801.3.B):
 - The reasonable use of abutting properties **is not** adversely affected by the proposed expansion. (§703.1.A.1)
 - The proposed expansion will not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance. (§703.1.A.2)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of May 2021, hereby **GRANTS** the requested Special Exception per Section 703.1 of the Zoning Ordinance to allow the expansion of a non-conforming building at 18 Peabody Street (Tax Map 90, Lot 49), as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit, and shall comply with all applicable local, state, and federal regulations in the construction of the proposed addition.

Seconded by Mr. Patterson.

Roll Call Vote on the Motion

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea. None voted Nay.

****The Vote on the Motion was approved (5-0).***

G. Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property. ZB2021-12-AAD

Mr. Newlove was given voting privileges for the two companion hearings.

Attorney Philip Hastings, attorney for the applicant, appeared on behalf of the application. There are two applications, one is an appeal pertaining to a building permit and the other is a request to resume a discontinued use. Ultimately, they are looking to the Board to give them an extension to continue or resume a non-conforming activity.

The Board discussed how best to proceed, as the first hearing is an appeal. If the first agenda item is resolved, it would potentially make the second hearing moot. The attorney agreed, as he believes the building permit is complete. However, the Planning Department is unable to state that an application is complete without a Zoning Board approval.

Attorney Hastings said the background facts have been laid out thoroughly. This property has historically had two residences. Since 2012 the applicant has not taken any action that would indicate abandonment of that use. The applicant has taken care to try to improve the housing units. In 2018 it was determined that the buildings could not be repaired adequately and by 2019 they were demolished with the intent of replacing them with in kind. Due to Covid and other related issues, it has been difficult to rebuild the buildings. The Zoning Administrator has concluded that the use was discontinued in December 2018. The two-year period under the zoning ordinance, for reestablishing the non-conforming use had expired. To continue an application for an extension was required.

For a variety of reasons, the applicant disputes that interpretation. Despite that, the applicant is applying for an extension to give them time to rebuild on the property. There was not an intention to abandon the use. The plans anticipate making the property less non-conforming than it originally was. They would meet all setback requirements and all State permitting requirements. They are asking to be granted a two-year extension, giving the applicant the opportunity to rebuild the property.

Attorney Hastings was asked to give his interpretation of 702.2 and to clarify if the applicants agree the use has been discontinued for over two years. He responded that he does not believe they are reestablishing a use, they did not intentionally agree to discontinue the non-conforming use. The demolition occurred in April 2019 and if not for the Covid, they would have rebuilt within the two-year time period. The applicant has to agree that the use has been discontinued to have the entitlement under 702.2. The applicants are willing to proceed under the assumption that the discontinued use does apply to this situation, although it is ambiguous. If theoretically it applied, the failure to reestablish the use, was affected by the inability to plan, get permits, engage contractors, and make improvements due to Covid.

The Board discussed the impact Covid had on the building trades. The demolition permit was issued in December 2018 and the demolition occurred in April 2019. Some members believe the demolition was intended to be the first step in the reconstruction process; there could be an assumption that the demolition was with the intent to continue forward. It is reasonable to ask for more time due to the Covid.

Conversely, it was clearly stated on the demolition permit that there were two years from the date of the permit to complete construction. There were 30 days to appeal. The applicant is saying the two-year period started with the demolition in 2019. But that is not what is stated on the permit.

Regarding Section 702.2, there are two conditions that have to be fulfilled. To ask for a resumption, the applicant has to agree that no actions were taken to continue the use. It is not clear what the applicant had in mind because nothing was filed with the City until recently. The buildings were torn down because they could not be rehabilitated. According to Section 702.2 the razing of the building is an indication of abandoning the non-conforming use.

The way to establish an intent to continue was to request a new building permit. But that was not requested for another two years. Although Covid was a hindrance, there were no efforts to show there was no intent to abandon the use. Covid could be a reason, but Covid only began in March 2020. The applicant had a year and two months to move ahead with the project before Covid. Under this interpretation, it is not believed that the applicant can fulfill the conditions under Section 702.2.

Some Members believe that had a building permit been requested, the non-conforming use would not have been relinquished. Anyone in the construction business can comment on the limitations of their actions based on Covid. There seems to be agreement that had the building been razed and a building permit issued there would not be a question. Just because a building is raised does not mean there was intent to abandon the resumption of the use. There was 9 months still left before Covid took place and it is reasonable that Covid impacted their intent to rebuild. But it is not clear that the intent to build two homes was planned all along.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the public hearing was closed.

Attorney Hastings added that the per se evidence of what the demolition permit was intended, is that the raising of the building is not the sole indicator of an intent to abandon the practice within that two-year period. He has provided evidence that it was not the intention. The Zoning Ordinance does not give authority to give a two-year time limit on a demolition permit. He argued that the date can be ignored and that the period actually starts in April 2018.

It is thought that the City Staff acted reasonably, and the applicant also acted in good faith as well. There are plenty of conditions and ambiguity. It does not seem that any one has not been operating in good faith.

Chair Koppenheffer pointed out that on the City's building permit completed by the applicant it states, "Demo two homes on one lot and no replacement at this time."

Staff asked for clarification if both hearings are being discussed simultaneously. Based on this application, originally numbered on the agenda as 3F is granted, then 3G is mute. If it is denied, then it will be discussed again.

Members discussed the circumstances with differing points of view. There seems to be no dispute that there is a finding that the use was discontinued and that was not appealed. Therefore, it falls

within Section 702.2 and it is appropriate to seek relief under Section 702.2. Raising a building could be determined that it was the intent to abandon the practice. Reasonable testimony has shown that the condition in section B was also met, due to Covid. Therefore, the resumption of the non-conforming use could be supported. This lot supported two independent family structures and it could be continued. It lapsed, for reasons. If they move forward for another two years, then it was recommended that the timeline begin when permits are issued from the NHDES for septic approval and shoreland permit. Other members believe the two-year limit should start effective immediately and there is no reason to give further delay. It was emphasized that it is unpredictable when things will be back to normal and when things are once again available.

Chair Koppenheffer MOVED to continue this hearing for Decision and Deliberation until May 18, 2021 at 7:00 PM.

Seconded by Mr. Nash.

Roll Call Vote on the Motion

Mr. Newlove, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

****The Vote on the Motion was approved (5-0).***

H. Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VIII, Section 801.1 of the Zoning Ordinance regarding a communication made by the Zoning Administrator on April 7, 2021 in regard to a building permit application filed by Lyme Properties on April 6, 2021 for the subject property. **ZB2021-13-AAD**

The Building Permit will be reviewed based on Zoning Requirements.

4. STAFF COMMENTS

In person meetings will likely begin in July. Further discussion will be needed regarding public participation.

5. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 10:09 PM.

Seconded by Mr. Nash.

Mr. McDonough was given voting privileges on this Motion.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

****The Vote on the Motion was unanimously approved (5-0).***

Respectfully submitted,
Linda Billings
Recording Secretary