

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
Lebanon Middle School - 3 Moulton Avenue, Lebanon
Tuesday, February 19, 2019
7:00pm**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash

MEMBERS ABSENT: Alan Patterson Sr.

STAFF PRESENT: Tim Corwin - Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:04 PM by Chair William Koppenheffer.

2. APPROVAL OF MINUTES: January 22, 2019

Amendments: Page 4 Line 8 Add 'use' before variance. Page 5 Line 22 Remove 'at the unique' and Add '3-acre lot.'

Dan Nash Moved to approve the minutes of the Lebanon Zoning Board of Adjustments meeting of January 22, 2019 as amended. Seconded by Jennifer Mercer.

**The MOTION passed 3-0.*

3. PUBLIC HEARINGS – Continued from January 22, 2019

A. ROUTE 120 REALTY, INC., 0 NH ROUTE 120 (TAX MAP 10, LOT 9), ZONED IND-L:

Request for a Variance from Article III, §303.2 of the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling which is not a permitted use in the IND-L District. #ZB2018-20-VAR

Chair Koppenheffer said this is listed as a continuation of the public hearing. They are actually at the deliberation and decision point of the hearing. There was no further input from the public.

Dan Nash Moved passage of the following:

On September 17, 2018, December 17, 2018, and January 22, 2019, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Andrew Garthwaite of Haynes & Garthwaite Architects, Nate Stearns, Esq., and Marc Milowsky on behalf of Route 120 Realty, Inc. regarding 0 NH Route 120 (Tax Map 10, Lot 9), zoned IND-L, requesting a Variance from Article III, §303.2 of the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling which is not a permitted use in the IND-L District. #ZB2018-20-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 subject property is located in both the City of Lebanon and Town of Hanover and is improved with a restaurant (Jesse's). The restaurant building is primarily located on the Hanover portion of the lot while the parking for the restaurant is located primarily on the Lebanon portion of the lot.

2. The property has frontage on NH Route 120 but does not have direct access. Instead, a driveway to the north leads to an access road in Hanover, and a driveway to the south crosses into the adjacent vacant lot owned by the Hitchcock Clinic.
3. The applicant proposes to construct a multi-family dwelling building on the Lebanon portion of the property, containing 26 units together with associated parking and other related site improvements. A preliminary sketch of the proposed site layout is included with the application materials. Multi-family dwellings are not a permitted use in the IND-L District and, therefore, a Variance is required.
4. The site will also continue to be used as a parking lot for Jesse's Restaurant. However, as depicted on the applicant's preliminary sketch plan, the Jesse's parking lot will be reconfigured.
5. Multi-family dwellings are not permitted in the IND-L District per §303.2 of the Zoning Ordinance, unless part of an Industrial Planned Unit Development (PUD) per §501 or a Planned Business Park per §508. Given its size, the property cannot be developed as either a PUD (a minimum of 10 acres is required) or a Planned Business Park (a minimum of 20 acres is required).
6. Consequently, in order to allow a multi-family dwelling on the property, the applicant must obtain a Variance from the IND-L District table of uses set forth in §303.2 of the Zoning Ordinance.
7. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b).
8. The applicant submitted testimony addressing the §801.2 Variance criteria in an application received by the Planning Department on September 4, 2018. The applicant submitted additional materials to the Planning Department on October 9, 2018 describing prior attempts to redevelop the property.
9. No one from the public spoke for or against the project.

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 §801.2 of the Zoning Ordinance:

1. The variance **will** be contrary to the public interest. (§801.2.A.1) to allow multi-family dwellings, a Planned Unit Development (PUD) of 10 acres is required. This lot is only 3 acres in size.
2. The spirit of the ordinance **is not** observed. (§801.2.A.2)
3. Substantial justice **is not** done. (§801.2.A.3)
4. The values of surrounding properties **are not** diminished. (§801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would not** result in an unnecessary hardship.

- i. There **is** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (§801.2.A.5.a.i) Buying a 3-acre lot and then 40 years after-the-fact claiming that it is a hardship not to be able to build a 26-unit housing development because 10 acre and 20 acre lots in the neighborhood that properly can build such developments are allowed to do so, does not constitute a hardship.
- ii. The proposed use **is not** a reasonable one. (§801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **19th day of February 2019**, hereby **DENIES** the request of **Route 120 Realty, Inc.** for a **Variance from Article III, §303.2** of the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling at **0 NH Route 120 (Tax Map 10, Lot 9)**, zoned IND-L.

*Motion seconded by Chair William Koppenheffer.
The MOTION failed 2-1.

Chair Koppenheffer explained, any motion requires 3 votes to pass. It is anticipated that there will be a full Board with two alternates by the April meeting.

B. SECOND HEARING: WILLIAM & LORI GRIZZAFFI, 351 MERIDEN ROAD (TAX MAP 167, LOT 16), ZONED RL-1:

Request for a Variance from Article III, Section 312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard. #ZB2018-12R2-VAR

Chair Koppenheffer explained the only task left is deliberation and decision.

Dan Nash Moved passage of the following:

On December 17, 2018 and January 22, 2019 at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared William Grizzaffi and Nicholas Burke, Esq. on behalf of property owners William & Lori Grizzaffi regarding 351 Meriden Road (Tax Map 167, Lot 16), zoned RL-1. The applicants request a Variance from Article III, Section 312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard. #ZB2018-12R2-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 zoned Rural Lands One (RL-1) and is improved with a one-family dwelling used as the applicants' home. According to the application materials, the applicants have also used the property for a towing business and as a vehicular impound yard since their purchase of the property in 2003.
2. A portion of the property is located in the Wetlands Conservation District.

3. A towing business and vehicular impound yard are not a permitted use in the RL-1 District either “by right” or by Special Exception. Therefore, in order to continue the applicants’ commercial use of the property, a Variance is required.
4. To obtain the requested Variance, the applicants must demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the §801.2 Variance criteria in a document titled “Support Statement for Rehearing by Right,” received by the Planning Department on November 28, 2018.
5. This application was originally heard by the Zoning Board on May 21, 2018 and July 16, 2018 and was denied by a vote of 3-0-1. A rehearing was held on October 15, 2018 which resulted in a denial by a vote of 2-1. The Zoning Board of Adjustment By-Laws adopted on 4/3/2017 provide that “[i]n all cases where the applicant is heard by less than a full 5-member Board, the failure of any motion to receive at least 3 votes will automatically constitute grounds for a rehearing.” Consequently, the applicant is entitled to a second rehearing without having to first file a motion for rehearing.
6. A complete application for a second rehearing was originally received on November 14, 2018, within the 30-day appeal period. The applicants submitted a revised support statement on November 28, 2018.
7. As noted in “Support Statement for Rehearing by Right,” the applicants request that all submissions previously submitted for the original hearing and first rehearing be incorporated as part of the second rehearing application.
8. Matthew Maughan, owner and resident of 341 Meriden Road which abuts the subject property to the north, expressed concern about the ongoing impact the commercial use of 351 Meriden Road has on the quiet enjoyment of his property, and testified that the business is operated throughout the day and night, is noisy, and is a general nuisance. Mr. Maughan also expressed concern about the City’s ability, as a practical matter, to monitor and enforce the operation of the business were the Variance to be granted. Darren Carter of 15 Rudsboro Road also expressed opposition to the Variance request.
9. Mark Horne, a prior owner of the subject property, spoke in favor of 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 §801.2 of the Zoning Ordinance:

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

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

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **19th day of February 2019**, hereby **DENIES** the requested relief, subject to testimony, plans, and materials submitted.

Seconded by Ms. Mercer.

DISCUSSION

Ms. Mercer asked about the new rules of procedure. Because the two continued motions that were just heard failed to garner 3 votes, they discussed if these ongoing hearings are entitled to another hearing. Attorney Nicholas Burke read a statute that indicated the old rules are still applicable. The Board agreed. Under the Board rules of procedure, the applicant is entitled to a rehearing. They can improve their application, and effectively submit a new application.

**The MOTION failed 2-1.*

4. PUBLIC HEARINGS - New:

A. BASIC HOLDINGS, LLC, 5 & 11 OAK RIDGE ROAD (TAX MAP 4, LOTS 5 & 6), ZONED R-3:

Request for a Variance from Section 501.1.H.2 of the Zoning Ordinance to allow an existing building at 11 Oak Ridge Road, currently located +/- 33 ft. from the side lot line shared with 15 Oak Ridge Road, to be included as part of a proposed Planned Unit Residential Development (PURD) to be located on 5 & 11 Oak Ridge Road. Section 501.1.H.2 requires all buildings in the PURD to be set back a minimum of 50 feet from the side lot line of the PURD property. #ZB2019-03-VAR

Chair Koppenheffer asked for questions or comments from the Board.

Rod Finley from Pathway Consulting and Jeffrey Shapiro, property owner, appeared on behalf of the application.

Chair Koppenheffer began the discussion with a few comments to the Board. He said that from his perspective the application is not complete. In paragraph 5A1 and in 5A2 there is conflicting information relative to the previous conditions 1 through 4. Further, the first 4 conditions have to be met in relation to all the neighbors. To fairly consider this application, it has to be considered for the entire property for the PURD and address all the conditions. There is no information addressing the nature of the existing neighborhood. The impact statement requires more detail. To determine if there is an impact, there has to be specific documentation about what else will be constructed. What is the size of the houses? What kind of houses will be built? What are the houses going to cost? Chair Koppenheffer proposed continuing the hearing to March 4. This will give the applicant time to address the information that is lacking regarding the entire 5 plus acres.

Chair Koppenheffer MOVED to continue to March 4. Motion seconded by Ms. Mercer.

DISCUSSION

Rod Finley said they have done all this work. They are asking for a variance to this one structure to determine if they can move forward with the PURD. The Planning Board has jurisdiction to determine about subdivision and the Zoning Board addresses many of the same things. The Zoning Board needs the information before they can give this a fair hearing.

**The MOTION passed 3-0.*

B. JOLIN SALAZAR-KISH, 384 NORTH MAIN STREET (TAX MAP 8, LOT 18), ZONED R-3:

Applicant requests a Special Exception pursuant to Article III, §310.2 of the Zoning Ordinance to convert a one-family dwelling into a two-family dwelling. #ZB2019-04-SE

Ms. Jolin Salazar appeared on behalf of the application.

Mr. Corwin said in preparing the staff application for this hearing, he was under the impression that the photos he had represented the status of the property. Today it was brought to his attention that a building permit was issued this last summer that allowed a substantial expansion of the home vertically including the addition of a kitchen, two bathrooms, and a bedroom.

The building is nonconforming concerning the setback. He stated that the process should have been a request for a special exception to expand a nonconforming structure. The house is currently under construction pursuant to the building permit. Staff recommends that the hearing is not voted on tonight to allow the applicant an opportunity to apply for the special exception and bring everything into compliance. The hearing can be continued.

The Board said they would rather not hold the hearing tonight because they cannot decide without the special exception. They would rather do it all in one hearing.

The applicant agreed to provide the new application before noon the following day in order to have the hearing at the next Board meeting.

Dan Nash MOVED to continue the hearing until March 4. Motion seconded by Ms. Mercer.

**The MOTION passed 3-0.*

5. OTHER BUSINESS:

A. DISCUSSION OF LETTER FROM JEREMY KATZ, DATED JANUARY 22, 2019, REGARDING ADOPTION OF ZONING BOARD BY-LAW AMENDMENT

Mr. Corwin spoke to the Board. He said Mr. Katz has made an application to be on the Zoning Board. If he is appointed, he believes it would be more beneficial to have a discussion with Mr. Katz when he can speak to his points in the letter. There is no urgency regarding the letter tonight.

6. STAFF COMMENTS:

The members and Staff are hoping they will soon have a full Board.

Mike Kiess from Vital Communities introduced himself. He attended this evening because he was interested in seeing a Zoning Board meeting and was interested in the multi housing application.

7. ADJOURNMENT:

Dan Nash MOVED to adjourn. Seconded by Jennifer Mercer.

**The MOTION passed 3-0.*

The meeting was adjourned at 7:45 PM.

Respectfully Submitted,
Linda Billings
Recording Secretary