

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
CITY HALL, COUNCIL CHAMBERS
MONDAY, April 1, 2019
7:00 PM**

MEMBERS PRESENT: Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Jonathan Peress, Paul McDonough (Alt), Jeremy Katz (Alt)

MEMBERS ABSENT: Chair William Koppenheffer

STAFF PRESENT: Tim Corwin - Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:00 PM by Vice Chair Mercer.

Ms. Mercer welcomed the new members, Jonathan Peress (Regular), Jeremy Katz (Alternate) and Paul McDonough (Alternate).

Ms. Mercer presided over the meeting in the absence of Chair Koppenheffer and she appointed Mr. Nash as Vice Chair for the evening.

2. APPROVAL OF MINUTES: March 18, 2019

Amendments: Change the order of the minutes to reflect the order of the meeting as it was conducted. Make typographical and grammar corrections. Page 2 Line 3, Remove '75' and Add '33.7'. Page 2, Line 20 Remove 'not', Remove 'as is' and Add 'in the PURD plan'. Page 4 Line 17 Remove 'each' and Add 'two'. Page 5 Line 44, Remove 'variances' and Add 'special exceptions'. Page 4 Line 31 Remove 'highway' and Add 'State Route 10'.

Mr. Nash MOVED to approve the Minutes as presented in the April 1, 2019 agenda packet with amendments to the March 18, 2019 Minutes.

Seconded by Mr. Patterson.

**The MOTION passed unanimously (2-0-2). Mr. Peress and Mr. Patterson abstained.*

3. PUBLIC HEARINGS – Continued from March 18, 2019

Ms. Mercer appointed Mr. McDonough to sit on this hearing.

- A. 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

Mr. Patterson offered to step off the hearing as he has done work for the applicant in the distant past. Ms. Salazar-Kish agreed to have him participate in the hearing.

Ms. Salazar-Kish came before the Board regarding the above application. She summarized the original application regarding the conversion of the house. The original parking on the site was in the setback but there is room to make 4 parking spaces on the lot without being in the setback. She provided a drawing to show the new location of the parking spaces to meet today's rules and still provide adequate parking spaces. She showed a fence could be placed so head lights would not shine into the neighbors. They discussed that the current parking in the setback will be made into grass. The new spots will be outside of the setback and each tenant will be assigned 2 parking spots.

Ms. Mercer asked for questions or comments from the Board.

Mr. Nash asked that the language on the drawing reflect that the setback is not new, it is remaining as it has been. There was also a request to see how two units would fit into the existing structure. She provided a sketch showing how the two units will sit upon one another, showing there is enough room for each unit. There were no changes to the foot print of the building and there is no overhang.

Mr. Peress asked about the abutter who felt the nature of the neighborhood will be changed. The applicant responded that she did not believe it would be changed because the exterior of the building is not changing. The change is how the space will be used within the building. There was a suggestion that if the tenants will be students it would make the neighborhood less desirable. The applicant responded that the dwelling is already improved compared to how the building was when it was a single family unit.

Ms. Mercer reopened the Public Hearing.

Mr. Dave Donley, the property abutter, came before the Board to protest the conversion to a two family dwelling. He would like to state in the record that the original hearing for this special exception was not recorded due to technical difficulties. He has issues that the parking area would not be adequate for the number of tenants. He feels that there have been many changes to his neighborhood that he does not feel respects the nature of single family dwellings and the nature of the neighborhood.

Mr. Donley pointed out that the zoning changed from RL3 to R3 in that area. Mr. Corwin explained that several years back, during a different application, they realized that the area was incorrectly depicted on the GIS map. The Zoning Board approved an amendment to the zoning map to rezone the properties to R3. This does not have a bearing on this hearing.

Ms. Mercer reminded everyone that this is a special exception. It does not have to meet as stringent criteria as a variance. They discussed how the new parking spots will not be a violation, a fence that can be maintained on both sides can be built, the setback area can be grassed, and shrubbery can be planted that will be keep vehicles from parking too close to the abutter's property. They discussed that the conversion to a two family house is permitted by special exception if things are remedied such as the parking and it is approved.

Ms. Mercer asked for additional comments from the public.

Ms. Mercer called Ms. Salazar-Kish back. Mr. Peress asked how they would control that there are not additional cars parked there. Typically there is one car per family, sometimes two cars. There will be a lease condition that only two cars are permitted per unit. They discussed a green barrier. The applicant said a green barrier would be acceptable but it will require that they have enough room to clear the snow from the parking lot. They discussed extending a fence the length of the parking area and if some trees or bushes can be planted to make it uncondusive to park and still allow them room to remove and store snow.

The public hearing was closed.

Mr. Patterson said we are talking about potential issues and there are no complaints to back up and show these are real issues. Further, the enforcement is not up to the Zoning Board.

Ms. Mercer said it is valid that parking within the setback is an issue. The special exception can be conditioned with the applicant's parking plan, extending the fence the length of the parking area, adding greenery such as shrubbery or trees and adding a lawn on the ground in the setback area.

There is also the rear setback where snow can be pushed.

Mr. Nash MOVED On March 18, 2019 and April 1, 2019, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Jolin Kish regarding 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

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 applicant proposes to convert the existing one-family dwelling to a two-family dwelling, which is a use permitted by Special Exception in the R-3 District.
2. A “two-family dwelling by conversion of existing one-family dwelling” is allowed by Special Exception within the R-3 District. In order to grant a Special Exception, the applicants must demonstrate that the proposal meets the general Special Exception criteria set forth in §801.3.
3. The applicant submitted testimony addressing the §801.3 criteria in an application received by the Planning Department on February 4, 2019. A revised plot plan was submitted to the Planning Department on March 25, 2019, and floor plans were submitted at the hearing on April 1, 2019.
4. David Donley, an abutter at 386 North Main Street, submitted a letter from his attorney, Thomas R. Hanna, Esq., dated March 18, 2019, in opposition to the request, and also spoke in opposition to the request. Mr. Donley expressed many concerns, including the impact on the enjoyment of his property.
5. The applicant submitted a site plan indicating setbacks and parking dated 20 March, 2019.

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 §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 **1st day of April, 2019**, hereby **GRANTS** the requested relief, subject to testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.
2. The site plan shall be amended to indicate new and existing setbacks.
3. The fence shall extend to the limits of the parking spaces.
4. Grass will be planted to cover the 15 foot setback area.
5. Evergreen plantings shall be planted in at least 2 places within 10 feet from the property line, one on each of the NE and NW corners of the parking area.

Seconded by Mr. Patterson.

DISCUSSION

The Board discussed amending the Motion to clarify the planting of grass, the evergreen plantings and the length of the fence.

Mr. Peress MOVED to accept the amendment as stated. Seconded by Mr. McDonough.

**The MOTION on the amendment passed unanimously (5-0).*

**The MOTION passed unanimously (5-0).*

4. PUBLIC HEARINGS - New

- A. **THIRD REHEARING: 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. #ZB2018-12R3-VAR

Mr. Katz was appointed to sit on this hearing.

Mr. Grizzaffi and his attorney, Mr. Nick Burke, came before the Board regarding the above application. This is the third rehearing because previously there was not a full Board for a sufficient number of votes.

Mr. Burke submitted a support statement and asked if the new members of the Board would like him to proceed to provide the history of the property. They discussed the structures that were in the setback and the addition that did not conform to the zoning ordinance. The applicant is willing to remove any of the structures if necessary, upon request. There has been no approval to keep the

addition there and no requirement to take it down. It is not pertinent to this application. Ms. Mercer reminded everyone that if this variance is approved, it does not approve the building and the applicant will still have to go before the Planning Board.

Mr. Burke continued that there were a number of issues from abutters and the Board that he addressed. In the original plan the applicants proposed a stockade fence around the impound yard. The fence would extend all along the adjoining common boundary down to Meriden Road. They presented an alternative plan with the intention of addressing the complaints. The stockade fence would not go along the entire edge of the common boundary. They would change the fence line to create a blind spot from Meriden Road that would help conceal the towing vehicles. Their proposal is to minimize the impact on the abutting property owners. They proposed the hours of operation be 7 AM to 7 PM. No more than 10 impounded vehicles would be stored in the impound lot at any time. No more than 3 commercial towing vehicles would be parked overnight and no more than 3 employees would be working on the property at one time.

Mr. Peress asked if the proposed operations exceeds the historic business operations. It reflects how they have operated and they do not intend to expand the operation at the residence. Mr. Nash asked if there is a reason why the fence is on the setback line instead of the property line. The applicant responded it was a draft drawing and the fence would be built to comply with setback regulations. They confirmed that the impound lot will be enclosed 360 degrees because law enforcement requirements state that vehicles will be stored within a fully enclosed area.

Mr. Katz asked how the applicant will be harmed if he is unable to keep vehicles in an impound lot at the residence. There have been commercial vehicles parked here for many years, through many owners. In 2003 the storage of towed vehicles began. In 2013 the applicant constructed the West Lebanon impound lot, but there is not adequate capacity at West Lebanon location.

Mr. Nash reflected that previously one vehicle would be stored outside. The applicant confirmed that they could accept that two vehicles would be stored in the building and one would be outside.

They discussed that about 20 vehicles can be stored at West Lebanon and if approved, up to 10 vehicles at the residence. After that, they would be at capacity and no more towed vehicles could be accommodated. Ms. Mercer, asked if Mr. Grizzaffi foresaw any need to bring a vehicle to the residence after 7 PM. A vehicle could be on the truck, but he would not be unloaded into the impound lot outside of the 7 AM -7 PM hours. Ms. Mercer confirmed with the applicant that he could plan his capacity so he could take everything to West Lebanon between 7 PM and 7 AM. She confirmed that the building has capacity for the two towing vehicles inside the building. She asked for clarification about the owners retrieving vehicles. Mr. Grizzaffi said the vehicles at the residence are usually abandoned. It is not likely that vehicle owners will be coming to the residence to pick up vehicles.

Ms. Mercer opened the Public Hearing.

Mr. Maughan, the adjacent property owner spoke against the approval of this application. He submitted a document to Mr. Corwin for the public record. He asked about the Conservation Commission and how the wetland buffer is protected if this application is approved. Mr. Corwin responded that the shed has been removed. The wetland buffer covers about half of the area that will be the impound lot. It is already impervious and may require a special exception to allow this use in this area. That will have to go to the Conservation Commission for their review first.

Mr. Maughan spoke to the criteria for approving a variance and the requirements of the Board of Adjustments. He said this does change the essential character of the neighborhood. If this were thought of as a new application, this would not be approved according to the zoning requirements.

He feels that in that context, it would change the neighborhood. He asked why the applicant cannot pursue another place to expand, a place that is zoned appropriately. He believes the impound lot will impact the water quality in the area. He continued to review the criteria for a variance and shared his perspective that this application is contrary to the spirit of the approval of a variance.

If this moves forward, Mr. Maughan asked to ensure that adequate obscuration, which means dense planting of hard woods and evergreens will be planted to form a very visual buffer. He would prefer an adequate noise barrier as well. The neighbor prefers the original fence line that runs the length of the property to the road because it would provide a better noise barrier. He also prefers that the hours be reduced to 8 AM to 4 PM that the applicant stated he could observe. Mr. Maughan concluded that it is his perspective that the values of the properties have been diminished by the business and the applicant has not provided any evidence that the value of properties have not been affected by the business.

Mr. Katz asked Mr. Maughan what his personal grievance is that makes him unwilling to support this variance. He responded that it is mostly the noise and the extended hours. The neighbors would be more supportive of the 8 AM to 4 PM hours. He believes he is only asking that the owner use the property for a purpose that is allowed by the zoning ordinances.

Darren Carter, who operates another impound lot spoke against this variance. He made the complaint against the impound lot. He says his yard is compared to Mr. Grizzaffi's and he feels they are not comparable. Mr. Carter does store cars, he does not work on vehicles, he does not store gas or oil, and he uses absorbent pads under the vehicles and industrial garbage bags. His lot is completely hidden. His hours are 8 AM to 4 PM. Only Mr. Carter comes and goes from his property. He is offended that his lot is compared to that of Mr. Grizzaffi. He says the applicant does not use absorbent pads and he could contaminate the ground. The yard in West Lebanon does not have the majority of vehicles. The majority of the cars are at his residence. Mr. Carter feels there has been substantial incorrect information told to the Board.

Mr. Horne spoke in support of the applicant. He sold the property to Mr. Grizzaffi. He operated a business from the property for many years, stored vehicles, and operated as a business. He never had complaints from his neighbors. He feels the complaints are getting out of hand. He feels the neighbor does not have a complaint as this was the status before the neighbor bought his property.

Hearing no further comments from the public, the Public Hearing was closed.

DISCUSSION

Mr. Patterson said he would like to keep the discussion to the matter of granting a variance. The Board discussed that the self-imposed limitation would mitigate the neighbor's complaints. It appears there is a good faith effort to be reasonable about the hours of operation. Some members said the Board is being asked to approve something that is an exception to the spirit of the zoning ordinance. If an ordinance prohibits an operation in a residential area, granting permission would be unlawful. Although this is not a residential area, it is still opposed to the zoning rules for this property. They continued to discuss the implications of approving the variance.

Mr. Nash said it is hard to ignore that something has been operating there for over 30 years. It continues to grow over the years. There has not been enforcement on the part of the City to stop the business operations. He is supportive with certain conditions. Mr. Patterson was also concerned that this property has transferred on more than one occasion and the City has not stepped in to stop a business operation. Mr. Katz said the absence of records, due to the flood, is a problem. Mr. Peress is supportive, but there are parts of the rules that have not been met. Ms. Mercer said while they do not have a City record, the building was likely built in a manner that was acceptable. Each time the

property has transferred hands it has been assessed and taxes have been paid.

Mr. Nash MOVED on April 1, 2019, at a duly-noticed meeting 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. #ZB2018-12R3-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 is 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 March 15, 2019.
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. A second rehearing was held on December 17, 2018 and January 22, 2019, and was denied on February 19, 2019 by a vote of 2-1.
6. 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 third rehearing without having to first file a motion for rehearing.
7. A complete application for a second rehearing was originally received on March 15, 2019, within the 30-day appeal period.
8. As noted in "Support Statement for Rehearing by Right," the applicant's request that all submissions previously submitted for the original hearing, first rehearing, and second rehearing, be incorporated as part of the third rehearing application.
9. Matthew Maughan, owner and resident of the abutting property at 341 Meriden Road, and Darren Carter of 15 Rudsboro Road, expressed opposition to the Variance request.
10. Letters of support were submitted by the Murrays, Charles Taylor and the Habit for Humanity.
11. Mark Horne, previous landowner, testified in favor of the proposal.

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 not** be contrary to the public interest. (§801.2.A.1)
2. The spirit of the ordinance **is** 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) No evidence was submitted that values have diminished.
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 (§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. (§801.2.A.5.a.i)
 - ii. The proposed use **is** a reasonable one. (§801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of April, 2019**, hereby **GRANTS** the requested relief, subject to testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain site plan approval from the Planning Board. Applicant shall make application to the Planning Board within 90 days of this decision.
2. The site shall be fenced with 8' stockade fencing as indicated on the sketch received by the Board, except that the fence shall be placed on the building setback line (to allow for a landscape strip) or further from the property line if required by the Site Plan Review.
3. The impound yard shall be fenced around its entirety and secured from unauthorized entrance.
4. Plantings/landscaping on the north side of the fence shall be at the obscuration level. It is suggested that plantings be extended to the front/roadway property line.
5. Hours of operation shall be limited to 7 AM to 7 PM.
6. No more than 10 vehicles may be stored in the impound yard at any one time.
7. No more than one of the applicant's commercial towing vehicles may be parked outside at the property at any one time outside of normal operating hours.
8. No more than three employees of applicant may work at the property at any one time.
9. Improvements and conditions shall be met within 180 days of site plan approval.

Seconded by Mr. Katz.

DISCUSSION

The Board clarified that outside of the business hours, only the owner is permitted to return to the residence with a vehicle on the tow truck that he operates. The vehicle cannot be unloaded outside of operating hours.

**The MOTION passed by a vote of 4-1.*

5. OTHER BUSINESS

- A. The letter to the Board from Mr. Katz will be reviewed when Chair Koppenheffer is present.

5. STAFF COMMENTS

- A. The new members were welcomed by Mr. Corwin.
- B. As of this time, no new applications have been received for May, but the deadline has not been reached.
- C. There will be a special meeting on April 24, 2019. Mr. Katz will recuse himself from that hearing as he is an abutter.

6. ADJOURNMENT

Mr. Patterson MOVED to adjourn. Seconded by Mr. Nash.

**The MOTION passed unanimously (5-0).*

The meeting was adjourned at 9:39 PM.

Respectfully Submitted,
Linda Billings
Recording Secretary