

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, June 15, 2020
7:00 PM**

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

MEMBERS ABSENT: Dave Newlove (Alt)

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:02 PM by Chair Koppenheffer.

A Roll Call of Board Members who participated remotely is listed above.

Mr. Koppenheffer announced that Mr. Peress has formally resigned from the Zoning Board of Adjustment.

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

A. June 1, 2020

Mr. Nash MOVED to approve the June 1, 2020 Minutes as presented in the June 15, 2020 agenda packet as amended.

Seconded by Vice Chair Mercer.

Amendments: Page 6, Line 1; Remove ‘Standby’ and Add ‘Dansby’. Page 7, Line 16; Remove ‘Zanby’ and Add ‘Dansby’.

Mr. Katz was appointed a voting member for the Minutes.

Roll Call Vote

Vice Chair Mercer, Mr. Nash, Mr. Patterson, Mr. Katz Chair Koppenheffer all voting Yea.

None voted Nay.

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

3. PUBLIC HEARING-Continued from June 1, 2020.

Mr. Katz was appointed a voting member for this hearing.

- A. NICHOLAS & REBECCA KATTAMIS, 45 SCHOOL STREET (Tax Map 107, Lot 113), zoned R-2:** The location of the existing home extends across the side lot line shared with 39 School Street and is, therefore, non-conforming to the minimum side yard requirements in the R-2 District. Applicants propose to construct a 3-story addition to be

located +/-12 ft. from the side lot line. To permit the expansion of a non-conforming structure, the applicants request a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. #ZB2020-12-SE

No additional testimony was received by the Zoning Administrator regarding this application.

Mr. Nick Kattamis appeared on behalf of the application. No one from the public had any additional questions or comments.

Hearing no additional comments from the public, Chair Koppenheffer closed the Public Hearing.

The Board did not have any additional questions of the applicant.

Vice Chair Mercer MOVED On June 1, 2020 and June 15, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared NICHOLAS KATTAMIS on behalf of himself and REBECCA KATTAMIS, regarding 45 SCHOOL STREET (Tax Map 107, Lot 113), zoned R-2. The location of the existing home extends across the side lot line shared with 39 School Street and is, therefore, non-conforming to the minimum side yard requirements in the R-2 District. Applicants propose to construct a 3-story addition to be located +/-12 ft. from the side lot line. To permit the expansion of a non-conforming structure, the applicants request a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. #ZB2020-12-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, which has an unusual triangular shape, is improved with a two-family dwelling constructed in 1910. Each dwelling unit is approximately 1,150 sq. ft. in size. The existing home extends approximately 8 ft. across the side lot line shared with 39 School Street. As such, the home is non-conforming to the minimum side yard of 15 ft. required for Class 1 lots in the R-2 District.
2. The applicants propose to construct a 20 ft. x 25 ft. three-story, +/- 1,500 sq. ft. addition to the south side of the existing two-family home. The addition will expand the finished area of the home from +/-2,386 sq. ft. to +/-3,886 sq. ft. The proposed addition will expand the size of the existing 2nd floor dwelling unit from approximately 1,150 sq. ft. to approximately 2,650 sq. ft.
3. At its closest, the addition will be located 12 ft. from the side lot line shared with 39 School Street where a minimum side yard of 15 ft. is required. Since the home is already non-conforming to the minimum side yard requirement and the proposed addition will be located no closer to the side lot line than the existing structure, the applicant is eligible to apply for a Special Exception per Section 703.1 of the Zoning Ordinance to expand a non-conforming structure.
4. Class 1 lots in the R-2 District must maintain a minimum side yard of 15 ft. per §309.3 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.

5. 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.
6. The applicant has submitted testimony addressing the §801.3 and §703.1.A criteria in an application received by the Planning & Development Department on May 15, 2020.
7. Jeffrey Cox, owner of the abutting property at 39 School Street, spoke in support of the applicant's Special Exception request.

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 **15th day of June, 2020**, hereby **GRANTS** the requested Special Exception per Section 703.1 of the Zoning Ordinance to allow the expansion of a non-conforming structure at 45 School St (Tax Map 107, Lot 113), 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.

Seconded by Mr. Nash.

Roll Call Vote

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

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

- B. JOHANNA CICOTTE, 30 LITTLE HEATER ROAD (Tax Map 78, Lot 61), zoned IND-L:** Applicant proposes to remove the existing buildings and to construct a new building for a proposed car wash use. Applicant requests a Variance from Article III, Section 303.3 of the Zoning Ordinance to allow the new building to be located 20 ft. from the front lot line where a minimum of 40 ft. is required. **#ZB2020-13-VAR**

Mr. Nash recused himself from this hearing.

Mr. Katz and Mr. McDonough were appointed to sit on this hearing.

No additional testimony was received by the Zoning Administrator regarding this application. Additional materials have been submitted by the applicant.

Barry Schuster appeared on behalf of the application. In answer to questions from the last meeting, this service is for the dealership and its customers only. There would be four bays for washing and detailing vehicles, a storage area for vehicles, supplies, bathrooms and facilities for employees. There would be parking for employees and customers. The applicants believe placing the building further away from the wetlands is more desirable and the only traffic would come from the adjacent property. The current house that is there is a non-conforming use and a car wash is another conditional nonconforming use in that zone.

The setback has to be approved by the Zoning Board before this application is brought to the Planning Board. The conditional use and the size of the building would be evaluated by the Planning Board.

The distance from the proposed building to the stream was discussed. There has not been any testimony regarding the required distance between the building and the wetlands. The benefit of moving the building forward has been presented as an opinion. Mr. Schuster replied, according to the plan, the building would be at the most 30 feet away from the stream. Construction equipment would be closer to 25 feet from the wetlands. Mr. Nash spoke on behalf of the applicant. The building was planned at least 10 feet away from the wetland and an additional 10 feet around the building are needed for construction. Therefore, they are asking for the variance in order to protect the wetlands. There is not any evidence that this is a hardship.

Mr. Corwin highlighted the proposed building on the design that was submitted by the applicant. The Board reviewed the site plan. They discussed the implications of moving the building back closer to the stream and how that could affect the construction of the building and the access to the parking lot from the building. The applicant stated that according to the engineered plan, making a jog between the building and the parking would make the building less effective. The Board thought the building could be moved back and still access the parking.

The Board discussed the impact of the high-water flow in the Spring and the affect the water would have on the building. Every year this area floods to some point and mitigating this for the building is a good idea. Mr. Schuster stated that the stream has flooded into the parking lot of the dealership and high water has been a problem in the past. This little brook does not have a flood line on the map. The reason to move the building would be to prevent any potential hazards from the stream in the future.

The Board had no additional questions or comments.
No one from the public had any additional questions or comments.

Hearing no additional comments from the public, Chair Koppenheffer closed the Public Hearing.

The Board would like the site plan to clearly show the details that show a hardship, the distance between the front lot line and the back of the proposed building, and the wetland buffer measurements. They also asked the applicants to show a schematic of the inside of the building and how the vehicles move from the North side to the exits of the building. Historically, the Board has been cautious of the wetlands and supported moving away from the wetlands.

Chair Koppenheffer re-opened the Public Hearing.

*Vice Chair Mercer MOVED to continue this hearing until the next meeting, July 6 and request additional information.
Seconded by Mr. Katz.*

The applicants were asked to provide the dimensions of the lot with respect to the brook and the flood plain area and the wetlands as well as the floor plan and traffic flow plan within the building to show why it cannot be shifted 20 feet back from the property with respect to the parking lot.

Chair Koppenheffer asked if the request for additional information is clear to the applicant and the response was yes.

Roll Call Vote

*Vice Chair Mercer, Mr. Katz, and Chair Koppenheffer all voting Yea.
Mr. Patterson and Mr. McDonough voted Nay.
The Vote on the Motion was approved (3-2).

C. LEBANON HOUSING AUTHORITY (applicant) and BAYNE STEVENSON (property owner), 258 HEATER ROAD (Tax Map 64, Lot 7), zoned RO-1: Applicant requests a Special Exception pursuant to Article III, Section 311A.2 of the Zoning Ordinance to construct a multi-family dwelling containing 44 dwelling units. **#ZB2020-14-SE**

Mr. Katz was appointed voting privileges for this hearing.

No additional testimony was received by the Zoning Administrator regarding this application. Additional materials have been submitted by the applicant.

Megan Carrier, Jeff Merritt, Jerry Wuebbolt and Ditha Alonso appeared on behalf of the application.

Jeff Merritt spoke to the Board regarding the changes based on comments from the last meeting that have been submitted this week. Mr. Merritt reviewed the allowed use in this Zone, restating why it is a special exception. He spoke of the screening of the parking lot required in the special exception and how they intend to comply with that requirement. It is reflected on the site plan showing the existing vegetation and the enhanced screening along the access drive for the clinic that borders the applicant's property. They also addressed the existing bus stop. Last time they proposed upgrading the bus stop and adding a walkway to the building. The Board was concerned that the orientation of the bus stop would inhibit traffic flow. The applicants consulted with Advance Transit and the alternatives to resolve the safety issues brought up by the Board. They are proposing a bus turn out to get the bus out of the traffic lane to load and unload bus patrons. The revised design is supported by Advance Transit.

Attorney Carrier commented on the affordability and the need for housing at the price point that this housing would be. Recent research showed 98.3 of all available units are occupied in the area. She outlined the rents of studios and apartments in the area. Although the precise numbers to determine the rent are not available, Ditha Alonso commented on how the rent could be calculated. They work with many programs for affordable housing, including the low-income tax credit program and the HUD programs that are intended to encourage low and affordable rents. There are several programs that could support this project through HUD that restrict the rent and keep the units affordable. There are layers of subsidies available for this project. There are less than 1% empty vacant rental units in Lebanon.

The Chair asked if anyone from the Public had any additional comments or questions.

Hearing no additional comments, the Public Hearing was closed.

The Board clarified that it is not a requirement that the rent be affordable in order to have a special exception. They addressed the trip generation study done by Mr. Merritt where he concluded that the number of trips would be relatively benign. Although there are 44 units, the traffic at peak times would not be significant compared to other purposes such as a financial institution. They are confident there would be no adverse effect on traffic in the area.

Mr. Katz MOVED On June 1, 2020 and June 15, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Ditha Alonso of the Lebanon Housing Authority, Megan Carrier, Esq., Jeffrey Merritt, P.E., and Jerry Wuebbolt on behalf of LEBANON HOUSING AUTHORITY (applicant) and BAYNE STEVENSON (property owner), regarding 258 HEATER ROAD (Tax Map 64, Lot 7), zoned RO-1. Applicant requests a Special Exception pursuant to Article III, Section 311A.2 of the Zoning Ordinance to construct a multi-family dwelling containing 44 dwelling units. #ZB2020-14-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 property is a +/-3.37-acre vacant parcel of land at the corner of Old Etna Road and Heater Road, located adjacent to the DHMC Heater Road offices and across the street from the Lebanon High School. The access driveway to the DHMC Heater Road facility abuts the subject property to the north.

2. As shown on the survey submitted as part of the application materials, the wetlands were recently delineated on the property and were found to be significantly less extensive than indicated on the City's on-line GIS mapping program.
3. The applicant proposes to construct a multi-family dwelling building containing 44 units together with associated parking and other related site improvements. A preliminary sketch of the proposed site layout was included with the application materials.
4. "Multi-family dwelling (5 dwelling units or more) per Section 601" is a use permitted by Special Exception in the R-O-1 District per §311A.2 of the Zoning Ordinance, provided that the development complies with the requirements set forth in §601 ("Special Design Standards") of the Zoning Ordinance. Appendix A of the Zoning Ordinance defines "multi-family dwelling" as "[a] dwelling designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided."
5. In order to grant a Special Exception for the proposed multi-family dwelling, the Board must determine that the proposal meets the criteria set forth in §601 ("Special Design Standards") of the Zoning Ordinance, and the general Special Exception criteria set forth in §801.3.
6. The applicant submitted testimony addressing the §801.3 and §601 criteria in an application received by the Planning & Development Department on May 18, 2020.
7. Alice Dansby, a Lebanon resident, questioned whether the proposed housing units would meet the needs of low-income individuals and the general needs of the community.
8. On or about June 8th, 2020 the Applicant submitted a trip generation analysis completed by Jeffrey Merritt, a professional engineer duly licensed by the State of New Hampshire based upon Land Use Code 221, Mid-Rise Multifamily Housing that estimated that the apartment complex developed as proposed would generate an estimated 274 net new trips per day, with less than 15% of them being during peak hours. The conclusion of the expert report submitted was that the introduction of the new complex would not significantly impact traffic operations at nearby intersections.
9. On the knowledge and belief of at least one member of the Board, financial institutions with drive through facilities typically perform between 250 and 500 transactions per day, whether through their drive through windows, ATMs, or in-person service.
10. At the June 15th, 2020 hearing an updated presentation was provided by Jeffrey Merritt describing additional screening of the parking area from roads and abutting properties, including the proposed addition of screening along the access road that serves the Dartmouth Hitchcock Heater Road facility. Additionally, in response to a Board Member's concern expressed at the June 1st public hearing, Mr. Merritt's presentation additionally proposed the construction of a new bus shelter and bus turnout.

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 §311.A of the Zoning Ordinance. (§801.3.A)
2. The following applicable special conditions/requirements of §601 of the Zoning Ordinance **are** met (§801.3.B):

601.2 **Parking & Access.** Adequate off-street parking shall be provided on the lot. *The development will include 69 parking spaces, three (3) more than the minimum required pursuant to Section 607.1 of the Zoning Ordinance. Such parking:*

- A. Shall not occupy the front yard; and
- B. Shall be screened from abutting properties.

601.3 **Coverage.** Impermeable coverage plus unpaved parking and driveway areas shall not exceed 65 percent of the lot area. *The proposed development will result in +/- 32.9% of impervious coverage, less than the 65% maximum allowed.*

601.4 **Density.** [New] construction of multi-family shall comply with the zoning district requirement for "Additional Area Per Dwelling Unit After Two." *The proposed 44-dwelling units complies with the R-O-1 District density requirements which allow up to 47 dwelling units on the subject property per Section 311A.3 of the Zoning Ordinance.*

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)

Multifamily housing is specifically authorized in the R-O-1 district and the density of the development is appropriate pursuant to the requirements of the Ordinance.

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)

Applicant testified that the project would not apply for tax exemption status. There are no other factors indicating an undue Municipal expense.
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 **15th day of June, 2020**, hereby **GRANTS** the requested Special Exception per Section 311.A of the Zoning Ordinance to allow the construction of a multi-family dwelling at 258 Heater Road (Tax Map 64, Lot 7), as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain site plan approval from the Planning Board, a building permit, and a certificate of occupancy; shall pay an impact fee pursuant to §213 of the Zoning Ordinance; and shall comply with all applicable local, state, and federal regulations in the construction and use of the proposed building.
2. The applicant shall construct the bus stop and shelter substantially in compliance as shown on the submitted plans, subject to review and approval by the Planning Board.
3. The applicant shall complete the installation of landscaping substantially in compliance with the submitted plans, subject to review and approval by the Planning Board.

Seconded by Mr. Patterson.

Roll Call Vote

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

None voted Nay.

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

4. PUBLIC HEARINGS – NEW

A. ADAM & SHEENA YOUNGMAN, 8 ORA AVE (Tax Map 90, Lot 4), zoned R-3:

Applicant requests a Variance from Article III, Section 310.3 of the Zoning Ordinance to construct a 12 'X 20' shed to be located +/-8 ft. from the side lot line, where a minimum side yard of 15 ft. is required. **#ZB2020-15-VAR**

Mr. McDonough was appointed as a regular member for this hearing.

Adam and Sheena Youngman appeared on behalf of the application. They would like to add a shed on the back corner of their property. It does not meet the 15 feet setback, but the location they chose is the only place that makes sense on the property. In any other location it would be in the middle of the yard or against a hill that would require constructing an expensive retaining wall. The applicants stated that the neighbors support the location of the shed. Moving the shed seven feet closer would use the only flat piece of land in their yard and put the shed in the middle of the yard. They would like to keep it the flat for use by the family.

Looking at a topography map, it is not apparent that there is a steep hill on the property. The shed looking out of place does not satisfy the criteria for a hardship. The shed has already been dropped. It is moveable by movers for an excessive expense. When the approval of the Building Permit was taking more than a few weeks, Leann Cushman from the Planning Board advised the applicants to drop the shed that was scheduled for delivery, instead of postponing the delivery, and wait for the variance. If the shed is moved, they would also have to pay for a new pad for the shed and an extension of the driveway to the new location. The applicants were informed that appearances and expenses are not reasons for a hardship exception. Hardship means that the property cannot be used as it is and that creates a hardship.

Chair Koppenheffer commented that he looked at the lot, and he agreed that the only place that makes sense is where they put it. On this avenue, most of the houses encroach on one another. The slope is much less severe on the west side of the lot and he believes there is a hardship. He suggested that the other Board members look at the property and the surrounding area before the next meeting.

Chair Koppenheffer opened the Public Hearing.

There were no Public comments at this time.

Mr. Nash MOVED to continue this hearing until the next meeting, July 6, 2020.

Seconded by Mr. McDonough.

Roll Call Vote

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

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

5. STAFF COMMENTS

Mr. Corwin presented a revised draft of the Zoning Board meeting schedule. It is anticipated that these meetings will continue online until City Hall is relocated back to the City Hall building. The schedule would include 2 meetings every month. Normally, new applications come in on the third Monday for the first Monday. With a published schedule like this, new hearings would come in for each meeting. It is hard to tell someone there is not enough time to get on the agenda if there is time to do so.

Mr. Katz was appointed voting privileges for this motion.

Mr. Nash MOVED to adopt the revised Zoning Board calendar.

Seconded by Chair Koppenheffer.

Roll Call Vote:

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

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

6. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 8:57 PM.

Seconded by Vice Chair Mercer.

Roll Call Vote:

Mr. Patterson, Mr. Katz, Mr. Nash, Vice Chair Mercer, 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