

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, July 6, 2020
7:00 PM**

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

MEMBERS ABSENT:

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.

A Roll Call of Board Members who participated remotely is listed above. There are currently four regular members and three alternate members on the Board. Voting privileges will be given to one or more alternates for Hearings and Motions to complete the five voting members.

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 15, 2020

Mr. Nash MOVED to approve the June 15, 2020 Minutes as presented in the July 6, 2020 agenda packet.

Seconded by Mr. McDonough.

Amendments: Page 1 Line 23 Add ‘Alternates’ before Mr. Newlove. Remove ‘presided’ and Add ‘participated.’ Page 4 Line 9 Add ‘Alternates’ before Mr. Newlove. Remove ‘sat’ and Add ‘participated.’ Page 7 Line 12-13 Add ‘Alternates’ before Mr. Katz. Remove ‘presided’ and Add ‘participated.’

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

Roll Call Vote

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

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

3. PUBLIC HEARING-Continued from June 15, 2020.

A. 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 voting members for this hearing.

Vice Chair Mercer temporarily took over the meeting when the Chair dropped off due to technical difficulties.

The Board has received additional information from the applicant. Mr. Schuster and Mr. Nash appeared on behalf of the application. They provided a memorandum that addressed the operations of the building and a letter regarding the engineering risk for putting the building so close to the brook. The brook would be impacted by the construction equipment and process. It would infringe on the construction of wetland buffers that are being developed under this construction model. There is not a flood study for this brook, but during flooding the potential scour could impact the corner of the building foundation. The drawing presented shows a gravel wetland area that would be their storm water treatment facility behind the building. They restated, there would be limited traffic because it is not open to the public, rather for use by the dealership.

The flooding and the high-water mark that occurs each Spring could impact the building and the building could impact the brooks floodway if it is constructed close to the brook. The building would be elevated above the 100-year flood line, at least 6 inches to protect it from the Spring high waters. The intent is to keep the building far enough away from the brooks floodway to prevent scouring and to keep the building far enough away from the floodway to prevent the building's impact on the depth of the floodway. The new drawing shows berms of the gravel wetlands that are about two feet deep. Wetland plants would grow in this area and it would eventually become a wetland because the building is so close to the water table. This would allow the water to move through that area when it is high water and to protect the building. The wetland designs would be required for the site plan review and approval. The City requires a wetland to treat the runoff from the parking lots and the roof of the building. It would not include any water from the facility or operations within the building.

The applicants clarified the need for the wetlands and the special condition for this property. It was asked if this property is substandard for the size of the building and the type of use that is planned in this application. In terms of the special condition, it is a substandard industrial lot. It is smaller than most industrial sites and the wetland that is at the back of the property is an environmental constraint and a difficulty for this property. Further, with this use there would be very limited traffic. A car wash is a conditional use, but the nature of the property requires a variance.

If a building of this size, 60 by 120 foot is built, it requires a 20-foot setback. The Zoning Board is required to determine if there is a hardship for this property that requires a variance. However, a smaller building would not require a variance. The applicants said a smaller building would not meet the needs of the purpose of the building. The flood plain is only a concern in one corner of the building and half-way up one of the walls. However, the floodway is wider than the natural brook and there is potential for scouring during high waters.

There were no additional questions from the public at this time.

The proposal is to stay out of the wetlands therefore there are no water bodies that would be impacted, and the application does not require Conservation Commission review. It is not a requirement unless the Board requests that input. The development has to meet the requirements of the flood plain ordinance and it has to be at or above flood elevation.

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

The Board deliberated the application, making the following comments. Perhaps it is a substandard property or a property that has special conditions. It may not mean that it is a good idea for this size of the building. Returning a nonconforming use to a conforming use seems like a good idea. Approving this motion would protect the building and the area from flooding. Protecting the wetlands is a good idea and modifying the setback is not a substantial change. There is very limited traffic in this area and that would continue to be the case. The size of the building is appropriate for the intended use. It would be nice to have conservation commission input even if it is not required. One condition of approval would be that the storm water berms are constructed as presented in the drawings. Some Board Members felt the building could be smaller or modified and still fulfill the purpose. That would not require a variance. And if that is possible, it is necessary to change the building instead of granting a variance. The Board decided to not include the requirement for the Conservation Commission review.

Chair Koppenheffer suggested that two motions be drafted, one approving and one denying the Motion.

Chair Koppenheffer MOVED to continue this hearing until July 20, 2020 to give the Board time to draft two Motions.

Secinded by Mr. Katz.

Roll Call Vote

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

Mr. Patterson voted Nay.

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

B. 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 voting privileges for this meeting.

The Youngmans appeared on behalf of the application. No additional comments have been received by Staff and no one from the Public spoke at this meeting.

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

It is thought that the application was meritorious. The shed has already been constructed. Staff believe the required setbacks were conveyed at the end of April and believes it was a genuine mistake on the part of the applicant. The shed could have been moved 7 feet and would not have required a variance. The possibility of an equitable waiver was discussed instead of applying for a retro variance because the building was not placed properly. In part this is due to miscommunication and inappropriate information from the City. It was agreed the applicants do not want to move the building, and moving it would be difficult for them, but a variance cannot be granted based on aesthetics. This is an unfortunate situation. There was no building inspection because the shed is on stone instead of concrete.

Staff said an equitable waver does not apply in this situation. The variance is the appropriate avenue.

Mr. Patterson MOVED that Mr. Corwin will negotiate the avenues with the City Attorney to determine how to keep the building where it is already built.

Seconded by Ms. Mercer.

Roll Call Vote

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

None voted Nay.

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

Vice Chair Mercer MOVED to continue this hearing until July 20, 2020.

Seconded by Mr. Nash.

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).**

The Board took a five-minute break at 8:23.

4. PUBLIC HEARINGS – NEW

The Public Hearings were taken out of order because hearings F and G would be done expeditiously.

- A. GINNY R. HARRINGTON & GOLDINAY MCINTYRE, 8 PAYNE ROAD (Tax Map 84, Lot 37), zoned RL-1:** Applicant requests a Variance from Article III, Section 312.3 of the Zoning Ordinance to construct a +/-200 sq. ft. shed to be located +/-6 ft. from the side lot line shared with 10 Payne Road (Tax Map 84, Lot 36), where a minimum side yard of 25 ft. is required. **#ZB2020-16-VAR**

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

The applicants appeared on behalf of the request. Ms. McIntyre said they presently have a small 8'x10' shed and she would like to replace it with a larger 200 square foot shed. They can build two small sheds, each up to 130 square feet or 260 square feet and that would not require a variance. The applicants believe it would be better to have one shed that is 200 square feet instead. Her abutters told her they support the idea. The shed is for storage and would not have any utilities. Due to the mounded septic system, it appears there is not any way to move the shed closer to Payne Road.

Chair Koppenheffer opened the Public Hearing.

Paul and Lou Anne Lundgren, abutters of the applicants, appeared in support of the application.

Mr. Patterson MOVED to continue this hearing until the next meeting, July 20, 2020.

Seconded by Mr. Nash.

Roll Call Vote

Mr. Newlove, 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. WILLIAM & LORI GRIZZAFFI, 351 MERIDEN ROAD (Tax Map 167, Lot 16), zoned RL-1:** Applicant appeals an administrative decision of the Zoning Administrator that the Variance granted on April 1, 2019, #ZB2019-12R3-VAR, allowing a towing business and impound yard is void. #ZB2020-17-AAD

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

Mr. Nick Burke appeared on behalf of the application. Chair Koppenheffer provided clarification with respect to the application that was recently received. A reply to a memo from Staff to the Board members was incorrectly communicated back to the entire Board instead of just Mr. Corwin. That was a human error.

Chair Koppenheffer read the email that was sent regarding the violations of conditions and the content of the email was discussed with Mr. Burke. However, the content that was in the email does not pertain to this hearing. Staff is not taking the position that conditions 6 and 7 are not being met. The number of cars that are parked within the impound lot are not part of the issue at this hearing. Mr. Burke agreed that the number of cars is not going to be an issue this evening.

There is a procedural question that needs to be addressed. Staff sent out a memo because the applicants did not comply with conditions 2, 3, 4 and 9 of the April 1, 2019 Zoning Board decision. The Planning Board approved the site plan application on September 9 and under the Zoning Board approval, the conditions needed to be met by approximately March 9. The applicants by their own admission said the conditions have not been met. Mr. Burke stated in a letter several reasons why the conditions were not met, including the Covid virus. There was no request for an extension of time. The stockade height, fencing, and plantings conditions have not been met. The Chair believes a new variance should be applied for and the appeal is not the best way to move forward. This is partly because some of the conditions of the April 1, 2019 approval are difficult for the City to enforce, including the number of cars in the lot and the number of employees. In the meantime, it is the Board's recommendation that the City not seek any enforcement if a new variance is applied for within a reasonable amount of time.

The property appears to be neat and to partially meet the conditions. There was discussion that the height of the fence and the stockade gate were not enough to meet the requirements. The Board was previously made aware of the extenuating circumstances for the applicants, including a death in the family that may have made it difficult to meet all the conditions. Further, it may have been difficult for the plantings to be completed during the Winter months. However, by this time of the year, plantings could have been complete. The landscaping was significant for the approval of the application because the use is not allowed in this zone. The planting and fencing should be in place at this time. Approval of the original application was time consuming and starting over again to address the concerns of all the neighbors and abutters will be a strain. The use of drones to gather evidence and the invasion of privacy was discussed. It is not clear that Mr. Corwin was in error for filing the repeal of the variance. Further, how can the Board address the City's enforcement of conditions?

Chair Koppenheffer sees a case where the Board wants to give the applicant a variance, but also feels the applicant may be thwarting the efforts of the conditions of the Board. He would like to have the new variance include conditions that the City can enforce. He proposes that the most expeditious way

to proceed is to deny the appeal and include that no enforcement will take place provided a new application for a variance takes place within a reasonable amount of time.

Mr. Nash MOVED to continue this hearing until August 3, 2020.
Seconded by Mr. Katz.

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).**

- C. ONE MECHANIC STREET, LLC, 1 MECHANIC STREET (Tax Map 91, Lot 264), zoned LD:** The applicant requests a Variance from Section 607.3.A of the Zoning Ordinance to eliminate the requirement that a portion of the street level story of the existing building shall be reserved for a non-residential use. **#ZB2020-18-VAR**

Chair Koppenheffer opened the Public Hearing.
Mr. Newlove was appointed voting privileges for this meeting.

Jeremy Katz appeared on behalf of the application. At the time the property was acquired, the property was a gas station. Essentially the zoning permitted a wide array of allowable uses, one being multi-family on all floors. At the time the property was acquired, the intent was to have residential use on several floors and retail space on the main floor. The upcoming road improvements on Mechanic Street are intended to have a round-about road improvement and will take up some of the street level parking area that would be needed for retail and changes in the grade of the parking lot would make it difficult for retail customers because the entrance would be several feet above the parking lot. With the changes in grade and the roadway, the first-floor retail space is no longer viable. There will not be two road cuts and the parking spaces will be limited, therefore the applicant is asking for a variance to allow the residential use for the entire property. The City intends to take the land and that renders the property less viable for what they initially intended. Parking for the residents would be on Foundry Street and a lower level parking area. This property is different from other properties that will experience the construction because this property will lose a large portion of their access and square footage of property. The new roadway will be a permanent occupancy of this property, unlike the other properties. The applicants will be permanently losing property due to this new construction, the others will only be inconvenienced.

Mr. Nash MOVED to continue this hearing until the next meeting, July 20, 2020.
Seconded by Mr. Newlove.

Roll Call Vote

Mr. Newlove, 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).**

- D. PERRY & JILL SEALE, 52 MAPLE STREET (Tax Map 73, Lot 64), zoned R-3:**
Applicants request 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. **#ZB2020-19-SE**

Mr. McDonough was appointed voting privileges for this meeting.

Chair Koppenheffer opened the Public Hearing.

Perry Seale appeared on behalf of the application. The house is on the corner of Dana and Maple Street. Originally the house was used by his family and they no longer need that much space. Four of the seven adjacent properties are two-family dwellings. There would be no external changes to the site.

No one from the Board had any questions at this time.

Mr. Nash MOVED to continue this hearing until July 20, 2020.

Seconded by Mr. Patterson

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).***

E. EXECUSUITE, LLC, 250 BANK STREET EXT (Tax Map 94, Lot 1), zoned R-3:

Applicant proposes to convert a portion of the existing non-conforming commercial building to a residential dwelling unit. The proposed conversion requires a Special Exception pursuant to Section 702.1 of the Zoning Ordinance to permit the change of an existing non-conforming use to another non-conforming use. **#ZB2020-20-SE**

Tim Sidore appeared on behalf of the application. He previously applied for this in 2017. It was approved, but it was not economically viable. At this time, they would like to apply again, however the apartment would be smaller and in a different location of the building.

Mr. Newlove was appointed voting privileges for this meeting.

Chair Koppenheffer opened the Public Hearing.

No one from the Board had any questions at this time.

Mr. Patterson MOVED to continue this hearing until July 20, 2020.

Seconded by Mr. Newlove.

Roll Call Vote

Mr. Newlove, 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).***

F. COTE SWENSON & SAMANTHA MEDINA, 397 DARTMOUTH COLLEGE HIGHWAY (Tax Map 111, Lot 9), zoned RL-2: A Special Exception was granted in 2009 pursuant to Article VII, Sections 702.1 and 702.5 of the Zoning Ordinance to operate a contractor's yard (#ZB2009-01). Applicants request an amendment to the Special Exception approval to eliminate or modify the conditions of approval. **#ZB2020-21-SE**

G. COTE SWENSON & SAMANTHA MEDINA, 397 DARTMOUTH COLLEGE HIGHWAY (Tax Map 111, Lot 9), zoned RL-2: Applicants request a Variance from

Sections 313.2 and 702.5.D of the City of Lebanon Zoning Ordinance to allow the expansion of a non-conforming “produce stand” use. In the alternative, applicants request a Special Exception pursuant to Section 313.2 to expand an existing produce stand. #ZB2020-22-SE

Mr. McDonough was appointed voting privileges for this hearing.

The applicants are requesting additional time to complete and finalize their applications. It appears the applicants are not present at this meeting.

***Mr. NASH MOVED to continue both hearings until the August 3, 2020 meeting.
Seconded by Mercer***

It is possible that the applicants may not be taking this situation seriously and there may be some code infractions occurring at this time. There have been several complaints. Staff was not informed that the applicants would not be attending the meeting tonight. Staff has spent considerable time and resources asking them to comply. Neither of the applicants have complied.

Chair Koppenheffer opened the Public Hearing.

Marilou Childs, an abutter to the property, appeared. She noted there is not a dual driveway and there is no updated landscaping or site plan fencing that was required by the 2018 meeting and had to be completed by 2019. Staff said the applicants are going to request removing some of the 2009 special exception conditions that were approved in 2009. This has come before the Board because some of the requirements have not been met.

Roll Call Vote

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

Mr. Patterson voted Nay.

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

5. MOTION FOR REHEARING

- A. EM & EE BOISVERT SR, CO-TTEES, 237 HANOVER STREET EXT (Tax Map 64, Lot 2), zoned R-3:** Motion to rehear a Special Exception request pursuant to Article VII, Section 702.1 of the Zoning Ordinance to permit a change from one non-conforming use (Vehicular Repair) to another non-conforming use (Storage and Recycling Facility), denied by the Zoning Board on May 4, 2020. #ZB2020-07A-SE

Mr. Patterson recused himself from this hearing.

Mr. Katz was appointed voting privileges for this hearing.

Mr. McDonough was appointed voting privileges for this hearing.

Chair Koppenheffer stated that this is not an opportunity to hear additional information.

***Mr. Katz MOVED to deny this application.
Seconded by Mr. McDonough.***

The grounds for rehearing are either an error of law and facts that were not substantiated or new information that was not available at the time. There are no reasons to grant a rehearing. There were many conditions that would have needed to be met if it had been approved.

Even if all the information that was presented was true, not all of the requirements of the special exception have been met.

Roll Call Vote

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

Vice Chair Mercer voted Nay.

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

5. STAFF COMMENTS: NONE

6. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 10:03 PM.

Seconded by Mr. Nash.

Roll Call Vote

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

None voted Nay.

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

Respectfully Submitted,

Linda Billings

Recording Secretary