

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
CITY HALL, COUNCIL CHAMBERS
MONDAY, August 5, 2019
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Jonathan Peress, Alan Patterson Sr., Paul McDonough (Alt), Dave Newlove (Alt)

MEMBERS ABSENT: Dan Nash, Jeremy Katz (Alt)

STAFF PRESENT: Tim Corwin - Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:03 PM by Chair Koppenheffer.

Mr. Newlove (Alt) was appointed a voting member in Mr. Patterson's temporary absence.

2. APPROVAL OF MINUTES: July 1, 2019

Mr. Peress MOVED to approve the July1, 2019 Minutes as presented in the August 5, 2019 agenda packet as amended.

Seconded by Mr. Newlove.

Amendments: Page 4 Line 8, Remove the word 'unanimously'. Page 11 Line 7 Remove 'Katz' and Add 'Peress'.

**The MOTION passed unanimously (4-0).*

Mr. Patterson arrived at 7:04. Mr. Peress left at 7:05. Mr. Newlove and Mr. McDonough were appointed voting privileges for this meeting.

3. PUBLIC HEARINGS: NEW

- A. BRIANA FLAMIG & LAWRENCE HUDSON, 4 LOOMIS ROAD (Tax Map 188, Lot 6), zoned RL-1 & RL-3:** Applicant requests a Special Exception pursuant to Article III, Section 312.2 & Article VI, Section 610 to allow an accessory dwelling unit within a proposed one-family dwelling. #ZB2019-17-SE

Mr. Hudson and Ms. Flamig appeared on behalf of the application. They would like to build a mother-in-law suite for a family member. It will be connected to the existing septic system. The apartment will be approximately 725 square feet. There will be an entrance through the side of the garage and a small kitchen that is not a complete kitchen.

Chair Koppenheffer opened the Public Hearing and hearing no further comments from the public, closed the public hearing.

Mr. Corwin clarified that in the future a full kitchen could be installed in the unit.

Vice Chair Mercer MOVED August 5, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Briana Flamig & Lawrence Hudson regarding 4 Loomis Road (Tax Map 188, Lot 6), zoned RL-1, requesting a Special Exception pursuant to Article III, Section 312.2 &

**Article VI, Section 610 to allow an accessory dwelling unit within a proposed one-family dwelling.
#ZB2019-17-SE**

I. FINDINGS OF FACT

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

1. The subject property is a +/-6.10 acre vacant parcel located primarily in the Rural Lands One (RL-1) District (a small portion of the property – which is not impacted by the proposed use – is located in the Rural Lands Three (RL-3) District). The applicant has been issued a building permit (#2019-00126) to construct a one-family dwelling on the property. The approved location of the home is depicted on the plot plan included in the attached application materials. The property and the proposed home conform to the minimum dimensional requirements of the RL-1 District, which are set forth in §312.3 of the Zoning Ordinance.
2. As depicted on the floor plans submitted with the attached application materials, the applicant proposes to construct an “ADU/In-Law Suite” above the attached two-car garage.
3. An Accessory Dwelling Unit (ADU) is allowed by Special Exception within the RL-1 District pursuant to §312.2 of the Zoning Ordinance, and is defined in Appendix A as: “A separate complete housekeeping unit that is either contained within or is attached to a single-family dwelling, or within a detached accessory building on the same lot, for which the title is inseparable from the primary dwelling.”
4. In order to grant the Special Exception, the Board must find that the proposal meets the requirements for ADUs set forth in §610 of the Zoning Ordinance, as well as the general Special Exception criteria set forth in §801.3.
5. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

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

1. The Special Exception is specifically authorized by §312.2 & §610 of the Zoning Ordinance. (§801.3.A)
2. The special conditions/requirements of §610 **are met** (§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 **5th day of August 2019**, hereby **GRANTS** the applicants' request, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicants shall obtain a building permit.
2. Prior to the issuance of a building permit, the applicants shall obtain a permit from the State of NH Dept. of Environmental Services Subsurface Systems Bureau, in accordance with NH RSA 485-A:38.
3. The ADU shall be connected to the same utilities (except telephone and television) as the existing dwelling and shall have an interconnected fire alarm system.
4. The applicants shall sign a form furnished by the Planning & Development Department acknowledging that the property owner must occupy either the primary residence or the ADU as their permanent residence. The signed form shall be recorded at the Grafton County Registry of Deeds, and proof thereof shall be provided to the Zoning Administrator, prior to the issuance of any building permit or certificate of occupancy.
5. The ADU and the use thereof shall continue to meet the requirements of Section 610 of the Zoning Ordinance. In the event that the applicants or their successors no longer desire to comply with the restrictions set forth in the recorded acknowledgment, they shall apply for whatever approval or relief is determined necessary by the Zoning Administrator, prior to using the home in any manner that is inconsistent with the recorded acknowledgment form.

Motion seconded by Mr. Patterson.

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

B. NICOLE ANN DEMONE, 3 LAPLANTE ROAD (Tax Map 109, Lot 68), zoned R-3: The property is improved with a one-family dwelling which is located within the minimum 25 ft. side yard required for Class 3 lots. The applicant proposes improvements to the home that include increasing the height of the non-conforming part of the building. Applicant requests a Special Exception pursuant to Article VII, Section 703.1 to allow an expansion of an existing non-conforming structure. **#ZB2019-18-SE**

Aaron, Gilbert spoke on behalf of the application. Ms. Demone is proposing to replace the flooring system and a new truss system because the dwelling is not structurally safe. There is a currently existing second story. They are proposing to raise the roof, thereby adding height to the walls, and enclosing a deck to become a 3-season porch.

Chair Koppenheffer opened the Public Hearing and hearing no further comments from the public, closed the public hearing.

The members clarified that all the renovations are within the application, including increasing the height and the enclosure of the deck.

Chair Koppenheffer MOVED on August 5, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Aaron Gilbert on behalf of Nicole Ann Demone regarding 3 Laplante Road (Tax Map 109, Lot 68), zoned R-3. The property is improved with a one-family dwelling which is located within the minimum 25 ft. side yard required for Class 3 lots. The applicant proposes improvements to the home that include increasing the height of the non-conforming part of the building. Applicant requests a Special Exception pursuant to Article VII, Section 703.1 to allow an expansion of an existing non-conforming structure. #ZB2019-18-SE

I. FINDINGS OF FACT

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

1. The subject property is improved with a one-family dwelling which is located within the minimum 25 ft. side yard required for Class 3 lots in the R-3 District. According to the City’s on-line GIS, the home sits approximately 10 ft. from the side lot line shared with 250 Dartmouth College Highway (if the fence is placed along the lot line, the distance may be closer to 18 ft. from the side lot line).
2. The applicant proposes to make improvements to the home (as described in the attached application materials) which include increasing the height of the non-conforming part of the building. Applicant requests a Special Exception pursuant to Article VII, Section 703.1 to allow an expansion of an existing non-conforming structure.
3. §703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment.
4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in §703.1.A. Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an expansion of a non-conforming structure, the Board must also determine that the proposal meets the general Special Exception criteria, set forth in §801.3.
5. The applicants submitted testimony addressing the §703.1.A and §801.3 criteria in an application received by the Planning Department in advance of the meeting.
6. No one from the public spoke in favor or against this 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 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 of §703.1.A **are met** (§801.3.B):
 - The reasonable use of abutting properties **will not** be 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 **5th day of August 2019** hereby **GRANTS** the applicant's request, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Motion seconded by Vice Chair Mercer.

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

- C. **WALTER & BARBARA PUTNAM, 216 MERIDEN ROAD (Tax Map 137, Lot 3), zoned R-3:** Applicant proposes to construct a detached two-car garage approximately 672 sq. ft. in size. The proposed garage will be located +/- 6 ft from the side lot line shared with 220 Meriden Road where a minimum of 25 ft. is required and will result in building coverage of approximately 19.5% where a maximum of 15% is allowed for Class 3 lots. To allow the proposed garage, the applicant requests a Variance from Article III, Section 310.3 of the Zoning Ordinance. **#ZB2019-19-VAR**

Walter and Barbara Putnam appeared on behalf of the application. He would like to build the garage because he keeps all his equipment and possessions under a roof. The new footprint will require some

additional fill to allow them to increase the size of the garage. The applicants said they are installing a new septic system that is currently being approved by the State. The location they want to build is the only location on the property where the garage can be built. The septic system and the fill for the garage will be done by the neighbor who abuts the property where the garage will be built.

The members asked questions to clarify if the new garage would impact wetlands as there is a drainage culvert on the property.

Chair Koppenheffer opened the Public Hearing.

Terry Melendy, the abutting neighbor, spoke on behalf of the application. He is also installing the septic system for the applicant. He described the new septic system. It will be a 9 foot by 12-foot leach field. The project will require some fill on two sides of the garage, in order to have a 2-foot setback from the garage. The applicants intend to have the property surveyed. The additional water on his property and the drainage will be upgraded if the garage is approved. They will upgrade the drainage swale and the culvert. It will require a permit from the State because it is within 250 feet of the brook. Mr. Melendy stated he does not have any issues or objections to approving the application.

Hearing no further comments from the public, Chair Koppenheffer closed the public hearing.

Ms. Mercer MOVED on August 1, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Walter & Barbara Putnam regarding 216 Meriden Road (Tax Map 137, Lot 3), zoned R-3. Applicants propose to construct a detached two-car garage approximately 672 sq. ft. in size. The proposed garage will be located +/- 6 ft from the side lot line shared with 220 Meriden Road where a minimum of 25 ft. is required and will result in building coverage of approximately 19.5% where a maximum of 15% is allowed for Class 3 lots. To allow the proposed garage, the applicants request a Variance from Article III, Section 310.3 of the Zoning Ordinance. #ZB2019-19-VAR

I. FINDINGS OF FACT

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

1. The property is improved with a mobile home and a detached storage shed/“shop”, and is a non-conforming lot of 13,068 sq. ft. (40,000 sq. ft. is the minimum required for a Class 3 lot in the R-3 District, per §310.2 of the Zoning Ordinance). Currently, the lot has building coverage of approximately 1,872 sq. ft., equaling 13.04% building coverage in conformance with the maximum allowed building coverage of 15%.
2. The applicants propose to construct a detached two-car garage approximately 672 sq. ft. in size. The proposed garage will be located +/- 6 ft from the side lot line shared with 220 Meriden Road where a minimum of 25 ft. is required. Construction of the garage will also result in building coverage of approximately 2,544 sq. ft. which, at approximately 19.5% building coverage, exceeds the 15% maximum allowed for Class 3 lots in the R-3 District.
3. Therefore, to allow the proposed garage, the applicants require a Variance from the minimum side yard and maximum building coverage requirements for Class 3 lots in the R-3 District, as set forth in Article III, Section 310.3 of the Zoning Ordinance.

4. To obtain the requested Variance from §310.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in §801.2 of the Zoning Ordinance. The applicants submitted testimony addressing the §801.2 Variance criteria in an application received by the Planning Department in advance of the meeting.
5. Terry Melendy spoke about the septic system, lot line boundary and the drainage issues that will be due to the excess water off the roof.

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)
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):
It is a 13,000 SF lot in R#, Class 3 lot.
 - 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 **5th day of August 2019**, hereby **GRANTS** the requested relief, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. A shoreland permit and building permit shall be obtained before work commences.
2. A survey completed of the lot line boundary between 216 and 220 Meriden Road before work commences.

Motion seconded by Mr. Patterson.

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

4. REQUEST FOR REHEARING: Continued from July 1, 2019

- A. **BASIC HOLDINGS, LLC, 5 & 11 OAK RIDGE ROAD (Tax Map 4, Lots 5 & 6), zoned R-3:** Request for a rehearing for a Variance from Section 501.1.H.2 of the Zoning Ordinance to allow an existing building at 11 Oak Ridge Road to be included as part of a proposed Planned

Unit Residential Development (PURD). The Variance request was denied on June 3, 2019. **#ZB2019-03A-VAR**

The members discussed there are two choices: vote to allow a rehearing or vote to deny a rehearing. The members took a straw poll to determine the best way to move forward.

Mr. Patterson MOVED The Lebanon Zoning Board of Adjustment on the 5th day of August 2019 hereby DENIES the motion made by Nathan H. Stearns, Esq., on behalf of Basic Holding, LLC, to rehear the application for a Variance which was denied by the Zoning Board of Adjustment on June 3, 2019, #ZB2019-03-VAR, to allow an existing building at 11 Oak Ridge Road to be included as part of a proposed Planned Unit Residential Development (PURD) at 5 & 11 Oak Ridge Road (Tax Map 4, Lots 5 & 6), zoned R-03. #ZB2019-03A-VAR

Motion seconded by Mr. Newlove.

**The MOTION Passed 5-0.*

5. OTHER BUSINESS

6. STAFF COMMENTS

7. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 8:00 PM.

Seconded by Vice Chair Mercer.

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

Respectfully Submitted,

Linda Billings
Recording Secretary