

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, April 20, 2020
7:00 PM**

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

MEMBERS ABSENT: None

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.

- 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: NONE

3. PUBLIC HEARING - Continued from April 6, 2020

The order of the hearings was adjusted for this meeting.

- A. **JOSHUA RUDNER**, 15 SHAW STREET (Tax Map 92, Lot 153), zoned R-2: Applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance to reconstruct and expand an existing front porch that is non-conforming to the 20 ft. minimum front yard setback. **#ZB2020-09-SE**

The hearing for this application began on 4/6/20 and remained open in order to address additional comments from the public. No additional input from the public has been received. Staff suggested closing the public hearing and entering into deliberation. The Members had no objections to closing the public hearing.

Hearing no additional questions or objections, the Chair closed the public hearing.

The Members had no additional comments or concerns for the applicant.

Ms. Mercer MOVED on April 6, 2020 and April 20, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Philip Webster of High Meadow Builders regarding 15 Shaw Street (Tax Map 92, Lot 153), zoned R-2. Applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance to reconstruct and expand an existing front porch that is non-conforming to the 20 ft. minimum front yard setback. #ZB2020-09-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 constructed in 1860. The home is non-conforming to the minimum front yard of 20 ft. required for Class 1 lots in the R-2 District.
2. The applicant proposes to reconstruct the existing non-conforming 22 ft. x 6 ft. front porch and to expand it to a width of 33 ft. along the front façade of the home. The expanded porch will not be located any closer to the front lot line than the existing porch.
3. Class 1 lots in the R-2 District must maintain a minimum front yard of 20 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.
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 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.
5. The applicant has submitted testimony addressing the §801.3 and §703.1.A criteria in an application received by the Planning Department on March 9, 2019.
6. 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 §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)

II. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **20th day of April, 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 15 Shaw Street (Tax Map 92, Lot 153), 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. Patterson, Vice Chair Mercer, Mr. Nash, Mr. Peress, and Chair Koppenheffer all voting Yea.

None voted Nay.

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

B. EM & EE BOISVERT SR, CO-TTEES, 237 HANOVER STREET EXT (Tax Map 64, Lot 2), zoned R-3 SR, CO-TTEES, 237 HANOVER STREET EXT (Tax Map 64, Lot 2), zoned R-35: Applicant requests a Special Exception pursuant to Article VII, Section 702.1 to permit a change from one non-conforming use (Vehicular Repair) to another non-conforming use (Storage and Recycling Facility). **#ZB2020-07-SE**

- Mr. Patterson recused himself.
- Mr. McDonough was given voting privileges for this hearing because Mr. Patterson recused himself from this hearing.
- Mr. Katz (Alt) was given voting privileges for this hearing because Jonathan Peress was absent from the meeting for the first hearing of this application.

This hearing has been continued from the 4/6/20 meeting. Mr. Boisvert Jr. was present regarding the application and the potential renter, Joshua Dickey from Nordic Waste was present.

Mr. Dickey, an owner and manager of Nordic Waste, described his current operations and his plans for the future if they move into this location. He is hoping to reach benchmarks of 300 trash customers and 100 food waste customers. Currently they work Monday a full day, Tuesday a full day, Wednesday a half day and short food routes on Thursday and Saturday for about 2 hours. The Monday through Friday, 6:30 am to 4:00 pm as previously stated, is anticipated for growth and not what they are currently doing.

In order to switch from one nonconforming use to another nonconforming use, the new use needs to be similar to the size of the operations. An approval would need to be similar to the activity level that was previously done in that location. Currently Nordic Waste has two full time employees, one part time office staff and two part time recycling staff. That's a total of 5 employees and only 2 are full time. Mr. Dickey believes this property could not support more than 4-5 trucks, registered to the business. If all 5 trucks are on the road, one would be redundant for replacing a broken truck. He does not anticipate there would ever be more than 10 employees. All the curb side containers would be stored inside. The stockade would be for some vehicles and equipment. Right now, all the trucks would be stored inside the building. The stockade fence would primarily be for support equipment, such as a frontend loader, a forklift and snow equipment. The stockade fence would keep all the equipment secure and away from access, which would keep it safe in the neighborhood. The stockade would be used to store new rear load dumpsters, once they buy them, before they go out to sites and to store some of their overflow things. They would also like to store scrap metal in a closed container in the stockade.

Right now, all their customers are residential pick up, a mix between curb side pickup, curb side recycling and food waste. They serve Lebanon, West Lebanon, Etna, Canaan, and Hanover. There are 3 customers within a quarter mile of the new location. There is no public drop off. The processing operations would be done inside and there would not be noise outside the facility. There would not be any seepage, everything would be stored inside, with the exception of a 10-yard container for scrap metal that would be stored outside. Nordic Waste has not interacted with the local school about the impact of this business in the area.

Mr. Dickey addressed abutters concerns about odor and food waste and how long waste would be onsite. Typically, a truck leaves about 7 am and the buckets are taken directly to the Lebanon solid waste facility to be dumped. The waste is not stored on site. The empty containers come back to the facility and are washed. Trash goes directly to the landfill. Recycling is bagged, collected on Tuesdays and Wednesdays. Usually it is sorted on Wednesdays or Thursdays, but due to the virus, at this time it is held for 5 days before it is sorted. Trash goes directly to the land fill and is not stored onsite. They use tote bags that can hold close to 900 or 1000 pounds of paper and tin cans. The forklift is used to load it into a truck to take to the solid waste.

Mr. Koppenheffer referred to a letter that was written by Mr. Boisvert and if Mr. Dickey participated in drafting the letter. Mr. Dickey believes the representations in the letter are accurate and he would be able to live with any conditions that were imposed based on the information in the letter. There is one exception regarding the Saturday hours. He believes they need to be able to operate between 8-1 on Saturday to accommodate the needs of their customers and get to the solid waste facility.

Chair Koppenheffer Re-Opened the Public Hearing.

Mr. Alan Patterson responded as a member of the public. He believes that approval of this application would require several conditions. If conditions are added, there may not be a means to enforce the conditions and may not have a way for abutters to resolve any issues regarding the conditions that are not being met.

Bethany Truell and Chad Gibbs appeared to speak against the application. Ms. Truell said she was confused because Nordic Waste has been at the Muffler House working and the For-Rent sign has been taken down. Mr. Boisvert stated that the Muffler House has not been in use since November, but there have been trucks in and out of the buildings since then. She said there are some inconsistencies about what has been reported in the past and what is being reported now. She asked about the boundary lines of the property, where the parking would be, and if there is enough room to accommodate all the parking

needs. She asked if there is a complaint, who would be enforcing the rules and where do the abutters report a failure to follow the conditions if this is approved. She expressed concern about the cleaning process for the waste containers, where the water would be disposed and what are the disinfecting procedures. She asked about the maintenance and painting of the building. She is appreciative of the work the business does but is concerned that this business would not fit into the residential neighborhood and the surrounding school grounds. She is concerned about the large trucks moving around at 6:30 am, and if the business's truck traffic would conflict with the timing of the foot traffic of students and the bus routes for the school students.

Mr. Koppenheffer spoke to several of the concerns brought forth by Ms. Truell. Based on the applicants' April 13th letter he will answer several questions. The dumpsters that may be on site in the future, are dumpsters that are only on site until they are delivered to the customers. The tenant is responsible for following the rules and the Zoning administrator is responsible for enforcing the conditions, but that requires the public reporting the behavior that is not consistent with the conditions. The applicant requested hours from 8-4, but the Board thought they may need longer hours and suggested the 6:30 am opening. Where the water goes from cleaning is the work of the Planning Board; as does the Landscaping of the property. The School District was notified of the hearing and there may be someone from the school present tonight. The only thing that would be stored overnight is the scrap metal and recycling, no food waste.

The Members did not have questions for Ms. Truell and Mr. Gibbs.

Mr. Corwin asked for the names of any other Members of the public who are interested in speaking to this application.

Mr. Brousseau appeared with several questions and thoughts in reference to Mr. Boisvert's letter of April 13, 2020. He stated that essential services for a residential neighborhood include police, fire and medical. He does not believe that a recycling facility was essential for a residential neighborhood. He spoke of the use of Hanover Street by pedestrians and bicyclists. It is the main street from the Medical Center for pedestrians and bicyclists. In the school yard, several families ride bikes, have driving lessons and it is regularly used by groups and families. It is an area that is used as a residential area, not a small business area. This proposed business adds an unsafe activity in an area used by pedestrians and bicyclists. Traffic from cars is different than large trucks. Nordic Waste is a trucking business and that threatens the safety of people in this location. He is concerned that any of the owner's construction businesses may be brought into this operation sometime in the future. Mr. Brousseau is interested in protecting this neighborhood and the atmosphere of their homes. He stated they will not be able to store roll offs for construction materials within the buildings as they are too large. The stockade would likely need to be expanded to accommodate what has been planned by the owners. And he questions how the business would limit customers from coming to pay bills and discuss business.

No Members of the Board had any comments or questions regarding Mr. Brousseau's testimony.

Mr. Dicky said Nordic Waste would be the only business that would be operating from the location. Moving forward the only business he intends to operate is Nordic Waste; that could possibly involve building dumpster pads. Specifically, Mr. Dicky's testimony is that the facility would be maxed out with 6 trucks and only 3 bays can accommodate a truck. Those bays would also be used for service on the vehicles, such as maintenance and cleaning. Mr. Dickey addressed the concerns raised by the public. He said the construction businesses he has owned are not operating. The wastewater for washing the trucks, roll away bins, containers and buckets would be processed like all wastewater. Some of the washing would be done in a commercial kitchen sink within the building.

Mary Ann Levin of 248 Hanover Street, who lives directly next to the building, appeared against the application. The first thing she saw each day used to be the Muffler House, and she could get used to seeing something else. But she does not feel that a trash business is conducive to the neighborhood and the site lines from her house and windows. She feels that the new renters are already in the building doing work and they have made an assumption that they can move forward with moving this business into the neighborhood. She feels this type of business does not belong in the school neighborhood where families are participating in school activities.

The Members did not have any questions of Ms. Levin.

Mr. Boisvert said that Nordic Waste has not moved in but has been allowed to evaluate the building for fitting up the building for his business should this be approved.

Hearing no other comments from the Public, the Public Hearing was closed.

The Zoning Office Staff suggested that the Board limit themselves to deliberation this evening and move forward with a decision at the next meeting. The Members expressed their views about the application.

Mr. Nash offered to draft a motion in favor and the appropriate limitations of the ordinance and the neighbors.

Mr. Katz is against the application at this time and will draft a motion to deny the application.

Mr. McDonough said it is a difficult decision regarding the requirement that it has to be a comparable use of the facility.

Ms. Mercer agrees with the previous Members' comments. She is basically aligned with approving and limiting the new business to a use that is comparable to the previous business.

Mr. Koppenheffer commented that if the conditions are addressed and all the concerns of the abutters are addressed, he believes he could vote in favor.

Mr. Newlove is drawn between both of these decisions. He has concerns about the hours, and the size of the operation.

Mr. Peress, not a voting member, believes there are grounded concerns of the abutters and would seek to establish conditions that uphold the ordinance and keep this a comparable use.

Mr. Nash will draft an opinion that is in favor and Mr. Katz will draft an opinion that would deny the application. They will have the drafts available by Tuesday, 4/28, to get into the packet for the next meeting on 5/4/20.

Staff reminded the Members that conditions of approval need to be observable and reasonably enforceable. If a condition is difficult to enforce, it is not addressing the concerns. Conditions need to be measurable and reasonable to enforce. For example, how can Staff observe and enforce the number of employees. Staff recommends that this application go to the Planning Board for review. He reminded the applicants that the facility cannot be used for this purpose until both the site plan review has been approved as well as this application.

Mr. Nash MOVED to continue this hearing to the next meeting.

Seconded by Vice Chair Mercer.

Roll Call Vote:

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

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

Mr. Patterson returned as a regular member of the Board.

4. **OTHER BUSINESS** None
5. **STAFF COMMENTS** None
6. **ADJOURNMENT**

*Mr. Nash MOVED to adjourn the meeting at 8:45 PM.
Seconded by Mr. Patterson.*

Roll Call Vote:

Mr. Patterson, Mr. Peress, 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