

FINAL

**CITY OF LEBANON  
ZONING BOARD OF ADJUSTMENT  
April 16, 2018  
City Hall—Council Chambers  
7:00 p.m.**

**MEMBERS PRESENT:** Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Travis Griffin, Jason Crowley (alternate),

**MEMBER ABSENT:** None

**STAFF PRESENT:** Zoning Administrator Tim Corwin

**I. CALL TO ORDER**

The meeting was called to order at 7:00 p.m. by Chair Koppenheffer.

**II. APPROVAL OF MINUTES: March 19, 2018**

Amendments to minutes:

Change the date of the header from 20 to 19

Page 2, line 8: Add “to” after “responded”

Page 11, line 31: Crop screenshot to correct the “withint” to “within”

Pages 6, 7, 8: Correct number formatting issue

Jason Crowley, alternate, was appointed by Chair Koppenheffer in place of Mr. Patterson.

***Nash moved to approve the minutes of the Lebanon Zoning Board of Adjustment meeting of March 19, 2018 as amended. Seconded by Jason Crowley.***

***\*The motion passed unanimously 5-0.***

**III. PUBLIC HEARING**

**A. HEATHER BAKER-MORRIS, 131 SCHOOL STREET (Tax Map 107, Lot 212), zoned R-3:** Request for Special Exceptions pursuant to Article III, Section 310.2 of the Zoning Ordinance to permit a group day care facility; and for a Variance from Article II, Section 201.7 to allow parking within the minimum required front yard, which extends 20 ft. from the front lot line. #ZB2018-05-SEVAR

Heather Baker-Morris appearing as the applicant. Mrs. Baker-Morris has already been approved by the state to care for additional children. She stated that she is partnering with an associate to operate with increased enrollment. She is asking for an exception to provide care for up to 11 children. She is also asking for a parking variance. Due to three of the eleven children belonging to the operators, the requirement is that there be one parking spot for eight children.

**Chair Koppenheffer opened the public hearing.**

No comments from the public.

**Chair Koppenheffer closed the public hearing.**

**DELIBERATION/DECISION**

Mr. Nash said that the request is reasonable. Vice Chair Mercer asked if there had been any discussions regarding the fence.

**Chair Koppenheffer reopened the public hearing** to allow Mrs. Baker-Morris to answer questions regarding the fencing. Mrs. Baker-Morris confirmed that the gate is meant to keep the children from the parking area; the drawing submitted to the Board showed an incorrect placement of the gate. Actual photos of the property were reviewed and the gated play area is off to the side of the house. The Board discussed whether any of the play area would be in the front yard. It was agreed that the front facing portion is an access area only.

**Chair Koppenheffer closed the public hearing.**

*Dan Nash motioned that on April 16, 2018, at duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Heather M. Baker-Morris regarding 131 School Street (Tax Map 107, Lot 212), zoned R-3. Request for a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to permit a group day care facility; and for a Variance from Article II, Section 201.7 to allow parking within the minimum required front yard, which extends 40 ft. from the front lot line. #ZB2018-05-SEVAR*

***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 one family dwelling. The applicant proposes to operate a group day care facility within her home for up to eleven (11) children, including her own children and the child of her employee.*
- 2. A "group day care facility" is allowed by Special Exception within the R-3 District pursuant to §310.2 of the Zoning Ordinance, and is defined in Appendix A as:*

**GROUP DAY CARE FACILITY:** A group day care facility is either a child day care facility or an adult day care facility.

- CHILD DAY CARE FACILITY:** A day care center, a day nursery, a private nursery school or kindergarten, a child development center, a play group, a head start center, progressive school or any other facility which cares for seven (7) or more children under the age of 16 for a part but not all of a 24 hour day.

- 3. In order to grant a Special Exception, the applicants must demonstrate compliance with the criteria set forth in §604 of the Zoning Ordinance, and the general Special Exception criteria set forth in §801.3.*

4. The applicant intends to utilize the existing driveway/paved area for day care parking. Because this area is located within the minimum required front yard, the applicant requires a Variance from §201.7 which requires parking areas in residential districts to be set back no less than the minimum yard requirement.
5. §201.7 of the Zoning Ordinance provides that: "Parking areas in the residential districts [...] shall be setback no less than the lesser of the minimum yard requirement or the building line, but in no case less than five (5) feet." §310.3 of the Zoning Ordinance requires a 40 ft. minimum front yard for lots in the R-3 District having frontage on a state highway. Based on the City's GIS information, the existing driveway/paved area is located entirely within the minimum 40 ft. front yard required along School Street, which is a state highway.
6. Insofar as the existing paved area is used as parking for the one-family dwelling, the property is legal-nonconforming with respect to §201.7. However, parking spaces for an additional non-residential use of the property need to meet the setback requirements of §201.7. Therefore, the applicant requests a Variance to permit the existing paved area located within the minimum required 40 ft. front yard, to be utilized as a parking area for the group day care facility (in addition to its use as a parking area for the one-family dwelling).
7. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria as set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b).
8. The applicant has submitted testimony addressing the §604 Group Day Care Facilities requirements, the §801.3 Special Exception criteria, and the §801.2 Variance criteria in an application dated March 27, 2018.
9. No members of the public spoke for or against the application.

## **II. CONCLUSIONS OF LAW**

### **A. Special Exception for Group Day Care Facility**

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, subject to the criteria set forth in §604 ("Group Day Care Facilities"). (§801.3.A)
2. The following special conditions of §604 are met (§801.3.B):
  - a. There will be a fenced outside play area free from hazards such as hidden corners; unprotected pools, wells, and steps; poisonous plants such as poison ivy, foxglove, and rhubarb; farm or lawn machinery or implements. (§604.1.A)
  - b. The fenced outside play area will contain at least 50 square feet of usable play space per child using it, and the average width will not be less than eight feet. The fenced outside play area will not be located in the front yard. (§604.1.B)
  - c. A suitable loading and unloading area will not be provided for those children for whom the facility provides transportation. This area will not be in addition to required parking areas. (§604.2.A)

\*Facility will not be providing transportation

- d. *One (1) parking space for each employee and one (1) parking space for every eight (8) clients will be provided on site. (§604.2.C)*
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)*

**B. Variance for Parking in the Front Yard**

*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):*
  - a. *Parking for multiple vehicles has been existing at this property for a substantial amount of time.*
  - b. *Topography is steep and driveway changes would be cost-prohibitive.*
    - i. *There is 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**

**A. Special Exception per §310.2 (group day care facility)**

*Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 16<sup>th</sup> day of April 2018, hereby GRANTS the request of Heather M. Baker-Morris regarding 131 School Street (Tax Map 107, Lot 212) for a Special Exception pursuant to Article III, §310.2 of the Zoning Ordinance to permit a group day care facility, subject to testimony, plans, and materials submitted, and per the following conditions:*

1. *The group day care facility shall comply with all applicable state and federal regulations as required per §604.2.B of the Zoning Ordinance.*

**B. *Variance from §201.7 (parking in minimum required front yard)***

*Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 16<sup>th</sup> day of April 2018, hereby GRANTS the request of Heather M. Baker-Morris regarding 131 School Street (Tax Map 107, Lot 212) for a Variance from Article II, §201.7 of the Zoning Ordinance to allow parking in the minimum required front yard, subject to testimony, plans, and materials submitted, and per the following conditions:*

*Seconded by Jennifer Mercer*

*\* Vote to approve: 5-0. Motion approved.*

Mr. Patterson joined the meeting at 7:14pm as a voting member, replacing Mr. Crowley.

**B. ABUNDANT LIFE CHURCH OF GOD & MASCOMA MEADOWS COOPERATIVE, INC., 10 RUDSBORO ROAD (Tax Map 84, Lot10) & 22 RUDSBORO ROAD (Tax Map 56, Lot 15), zoned RL-1: Request for Special Exception pursuant to Article II, Section 201.9 & Article IV, Section 401.5 of the Zoning Ordinance to permit an accessory solar energy system to be located within the minimum required yard and within the 100 ft. wetland buffer. #ZB2018-06-SE**

Christa Shute, Global Energy Fellow for Climate Justice at Vermont Law School, is appearing on behalf of the applicants. The President of the Mascoma Meadows Cooperative Inc, and Bruce Jerome, Pastor of Abundant Life Church, are in the audience. The first exception is for the wetlands and the second is for the setbacks. Ms. Shute is submitting letters of support from the surrounding property owners. The Conservation Commission voted to recommend to the Zoning Board that they waive the requirement for a Certified Wetland Specialist due to the low impact on the buffer and wetlands. The motion by the Conservation Commission is on page four of the minutes from the meeting held April 12, 2018 and copies were given to the Zoning Board. The applicants had two options regarding installation which were submitted in their application; having now received permission from the Church of Latter Day Saints to take down some trees, option A is preferred. Ms. Shute said that the Abundant Life Church will have four acres after the donation of .49 acres of land for the solar array. The northern boundary is constrained by an 80' easement for Liberty Utilities, the east side is constrained by a property owner that submitted a letter of support, and the south side is constrained by a deed restriction by the Church of Latter Day Saints.

Chair Koppenheffer asked for questions or comments from the Board.

Mr. Griffin noted that the application given to the Board is not signed. Mr. Corwin said they have a signed copy on file.

Mr. Patterson asked how much power would be generated. Ms. Shute said that it will be a 100 kW array for 50 homes. Ms. Shute said they anticipate 100% participation and the allocation should provide approximately half of each homes electricity need.

Mr. Griffin asked about maintenance. Ms. Shute outlined the maintenance and warranty schedules. She also outlined the funding and ownership structure as well as the project timeline.

Mr. Patterson asked about Ms. Shute's experience with similar projects. The clinic has not done solar projects before, however they are working with partners with extensive experience in solar projects.

Ms. Shute said that the Church of Latter Day Saints had indicated to her that there may be a condition by a previous Board regarding two white pine trees. Mr. Corwin said that they would look into this further.

There were no further comments or questions from the Board.

**Chair Koppenheffer opened the public hearing.**

Bruce Jerome, Pastor of the Abundant Life Church, spoke in support of the application and the project.

**Chair Koppenheffer closed the public hearing**

**DELIBERATION/DECISION**

Mr. Nash and Mr. Patterson spoke in support of the application.

*Travis Griffin On March 19, 2018, at duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Ms. Christa Shute and Mr. Bruce Jerome on behalf of Abundant Life Church of God & Mascoma Meadows Cooperative, Inc., regarding 10 Rudsboro Road (Tax Map 84, Lot 10) & 22 Rudsboro Road (Tax Map 56, Lot 15), zoned RL-1. Request for Special Exceptions pursuant to Article II, Section 201.9 & Article IV, Section 401.5 of the Zoning Ordinance to permit an accessory solar energy system to be located within the minimum required yard and within the 100 ft. wetland buffer. #ZB2018-06-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 applicants propose to install an accessory solar energy system to serve the manufactured home park at 22 Rudsboro Road. The system will be located on land currently part of the abutting property at 10 Rudsboro Road. Contingent on Zoning Board approval of the Special Exception requests, the applicants will submit a boundary line adjustment plan to the Planning Board to ensure that the system is located on the 22 Rudsboro Road property.*
- 2. As described in the applicants' support statement, the accessory solar energy system will be located within the 100 ft. wetland buffer and within the minimum required setback. Therefore, Special Exceptions are required pursuant to §§201.9 & 401.5 of the Zoning Ordinance.*

3. *Section 201.9 of the Zoning Ordinance, set forth below, authorizes the Zoning Board to grant Special Exceptions to permit accessory solar energy systems within the minimum required yards:*

201.9 Accessory Renewable Energy Systems.

Accessory renewable energy systems shall not occupy the areas of required front, side and rear yards (a.k.a. front, side and rear setbacks). This restriction may be relaxed by special exception, if the Board of Adjustment finds, in addition to the standards set forth in Section 801.3, that such relaxation is required for the reasonable use of the proposed system.

4. *In order to grant a Special Exception for a reduced setback, the applicants must also demonstrate compliance with the general Special Exception criteria, set forth in §801.3.*
5. *In order to grant the Special Exception to allow the wetland buffer impact, the applicant must demonstrate compliance with the criteria set forth in §401.5 of the Zoning Ordinance.*
6. *As required by §401.7.D of the Zoning Ordinance, a copy of the application was forwarded to the Conservation Commission and was discussed at their September 14, 2017 meeting. A copy of the relevant portion of the draft September meeting minutes was submitted at the hearing as Staff Exhibit "A".*
7. *Bruce Jerome, Pastor of Abundant Life Church, spoke in favor of the application*

## **II. CONCLUSIONS OF LAW**

### **A. Special Exception for Reduced Setback**

*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 §201.9 of the Zoning Ordinance. (§801.3.A)*
2. *The following special condition of §201.9 is met (§801.3.B):*
  - a. *The relaxation of the minimum required setback is required for the reasonable use of the proposed accessory solar energy system.*
3. *There are no existing violations of the Zoning Ordinance on the properties that the granting of the Special Exception would not remedy. (§801.3.C) Staff is not aware of any Zoning Ordinance violations on the properties.*
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)*

**B. Special Exception for Structure in the Wetland Buffer**

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 §401.5 of the Zoning Ordinance:

1. The use for which the exception is sought can after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District. (§401.5.A)
2. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot cannot reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section. (§401.5.B)
3. The design and construction of the proposed use is consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures will be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)
4. The criteria set forth in §401.5.D relates to pipelines, powerlines, and other transmission of lines and, therefore, is not applicable.
5. The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)
6. The project is capable of complying with all State and Federal wetlands and wetlands permitting requirements. (§401.5.F)
7. The project is capable of conforming to all existing best management practices, as referenced in Appendix A of the Zoning Ordinance, and will be implemented in a way which conforms to those practices (§401.5.G)

**III. DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 16<sup>th</sup> day of April, 2018, hereby GRANTS the request for Special Exceptions per Article II, §201.9 & Article IV, §401.5 of the Zoning Ordinance, 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 and a building permit.

Seconded by Alan Patterson

\* Vote to approve: 5-0. Motion approved.

**V. STAFF COMMENTS:** None

Mr. Patterson asked whether there would be an objection to moving the standing meeting from the third Monday to another day of the week. Chair Koppenheffer asked for clarification from Mr. Corwin on how moving the meeting would be beneficial. Mr. Corwin said that supporting

information is often received on Monday mornings. The Board discussed possible deadlines for supplemental material in order to ensure that material is not hastily processed and disseminated. Chair Koppenheffer asked Vice Chair Mercer and Mr. Nash to draft a rule that would potentially address the issue.

Mr. Griffin noted that the Planning Board has stated that life safety issues are not under their purview. The Board discussed how best to address concerns of life safety. It was agreed that the Fire Department is considered to be the expert on issue of life safety but that the Board should ensure that any opinion expressed by them be specific and definitive.

## **VI. ADJOURNMENT**

***Dan Nash moved for adjournment. Seconded by Alan Patterson. Approved 5-0***

The meeting was adjourned at 8:12 p.m.

Respectfully submitted,

Brandy Sailors-Dow  
Recording Secretary