

FINAL

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

**MEMBERS PRESENT:** Chair William Koppenheffer, Vice Chair Jennifer Mercer  
Dan Nash, Travis Griffin, Alan Patterson Sr.,

**MEMBER ABSENT:** None

**STAFF PRESENT:** Zoning Administrator Tim Corwin

**I. CALL TO ORDER**

The meeting was called to order at 7:05 p.m. by Chair Koppenheffer.

**II. APPROVAL OF MINUTES: May 21, 2018**

The approval of minutes was postponed until the end of the meeting to allow Mr. Patterson to add comments.

**III. PUBLIC HEARINGS- Continued from June 18, 2018**

**A. WILLIAM & LORI GRIZZAFFI, 351 Meriden Road (Tax Map 167, Lot 16), zoned RL-1: request for a Variance from Article III, Section 312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard. #ZB2018-12-VAR**

William Grizzaffi and Michael Mason appeared on behalf of the application. They are seeking a variance to allow a towing business and a vehicular impound yard. They spoke about the DES testing and they are waiting for finalized test results through the State of New Hampshire. Mr. Mason said that the enforcement action is no longer pending, as they have removed the enforcement concerns. Mr. Corwin said that not all the enforcement issues have been resolved, but that Mr. Grizzaffi has indicated that he would not be conducting business within the wetland buffer and that he is willing to correct the open issues that are impacting the wetland buffer. Mr. Corwin said that the variance request is dependent upon the proposed use of the garage. He believes that the request to continue is based upon the ongoing DES testing but if the garage is not being proposed to be used for any business activity, there is no conflict to hearing the matter tonight. Mr. Nash noted that although the DES issue is a concern, compliance is mandatory, and the variance request does not relate to any DES action. Mr. Mason said that all business has been placed on hold and will not resume until the DES matter is settled. Mr. Griffin asked for clarification regarding the wetland buffer and future plans for the garage. The garage predates

the wetland buffer designation and is currently being used to store Mr. Grizzaffi's tow trucks. Mr. Corwin said that staff prefers that the application not be continued.

Mr. Mason discussed the proposed use and referenced the maps that were included with the application. This lot would be used for overflow of the main lot in West Lebanon. Vice Chair Mercer asked for clarification on visitors to the site. She also asked about oil pads, which Mr. Grizzaffi indicated were used for stored cars and that fluids were all contained. Mr. Griffin asked about the types of oil absorbent pads that were included in the application. Mr. Grizzaffi said that they use laminated EPS sorbents.

Chair Koppenheffer asked for clarification on the hardship that prompted the application. Mr. Mason said that Mr. Grizzaffi has been operating from that location for some time and that the location is central for servicing several towns. They were unaware that the site was not zoned for the way it was being used. Chair Koppenheffer feels that there was a lack of due diligence when the site was purchased. Mr. Mason noted that a business was being run out of the garage when the property was purchased. Mr. Corwin believes that the garage was built in the 1990's and if there was a business there, it was also an illegal use and is therefore not grandfathered in. Mr. Mason said that Mr. Laundry's name and the year 1986 are in the floor of the garage. Mr. Nash said that Mr. Laundry built the garage and he likely used it as a home business for his single truck. Mr. Corwin said that a home-based contractor permit is an option, but the requirements are stringent. Mr. Grizzaffi has been operating there since 2003.

Alan Patterson joined the meeting at 7:33pm

**Chair Koppenheffer opened the public hearing.**

Mr. Matt Maughan, an abutter, appeared before the Board. He moved to Lebanon two years ago and to the abutting property one year ago. He has received several anonymous letters. He asked what took the city so long to address the issue, since the garage has been there since 1986. He expressed concern regarding the wetlands area and whether the garage impacts the wetland and ground water. His primary source of water is a well and he is concerned about issues with his drinking water. He also expressed concern over the City's ability to enforce issues. He has not been in contact with DES but has read the issues that were contained in the anonymous letter. He asked what mechanism is in place for him, as an abutter, to receive information regarding the DES testing. Mr. Nash told Mr. Maughan that he may be able to notify DES that he is an interested party and that Mr. Maughan should follow up with Mr. Corwin. Chair Koppenheffer said that the City does not have the personnel to police all of the properties in the city and he said that most of the enforcement actions come from complaints from neighboring land owners. Mr. Corwin clarified that their office received two complaints and they contacted the owner. The owner chose to apply for a variance for the zoning issue. Staff also received a lengthy anonymous letter that alleged violations regarding the wetland buffer. Mr. Corwin acknowledges that the two issues are related but they are being dealt with separately.

Mark Horne appeared in support of the application. He sold the property to the Grizzaffis and he bought it from Pat Laundry. He also worked with Mr. Laundry and stated there have been multiple trucks there through the years. He used the property for many years, also as a trucking company. He testified that he operated 10-12 trucks out of the property at any given time. Mr.

Horne said that he felt that the anonymous letter was material, since it caused the city to become involved. Mr. Corwin asked that the anonymous letter not be included in the issue of use.

Darren Carter appeared to speak against the application. He presented a previous application that he wrote and the Grizzaffi application, showing that much of the Grizzaffi application was copied verbatim from his own. He also referenced Zoning Board minutes from November 4, 2013 that proved Mr. Grizzaffi was told that a tow yard was not permitted at the Meriden Road property. Mr. Carter said that he filed the complaint because he was tired of years of harassment and unprofessional behavior. Mr. Griffin noted that Mr. Carter's business was granted a variance. Mr. Carter admitted that was true and testified that as soon as he became aware that he needed to resolve an issue with the city, he was completely transparent and did everything that was asked of him.

### **Chair Koppenheffer closed the public hearing**

Chair Koppenheffer asked for questions or comments from the Board.

There were no further comments or questions from the Board.

### **Deliberation/Decision**

Mr. Nash talked about the progression from Mr. Laundry's home-based business to the commercial enterprise that Mr. Grizzaffi has. Mr. Griffin noted that a similar variance was granted for a similar business and suggested that the applicant may want to consider reducing the number of cars or ceasing mechanic work to potentially qualify for a home-based business permit. Vice Chair Mercer asked for clarification on the zoning of other properties in the area. Mr. Corwin talked about uses in the area but there is no timeline for the property in question that would confirm the progression of non-conforming use. Chair Koppenheffer said that the hardship requirement had not been met.

*Dan Nash moved that on May 21, 2018, June 18, 2018, and July 16, 2018, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared William Grizzaffi and Michael Mason regarding 351 Meriden Road (Tax Map 167, Lot 16), zoned RL-1. The applicants request a Variance from Article III, Section 312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard. #ZB2018-12-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 zoned Rural Lands One (RL-1) and is improved with a one-family dwelling used as the applicants' home. According to the application materials, the applicants have also used the property for a towing business and as a vehicular impound yard since their purchase of the property in 2003.*
- 2. A portion of the property of the property is located in the Wetlands Conservation District.*

3. A towing business and vehicular impound yard is not a permitted use in the RL-1 District either "by right" or by Special Exception. Therefore, in order to continue the applicants' commercial use of the property, a Variance is required.

4. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the §801.2 Variance criteria in an application dated May 7, 2018.

5. There appeared Matt Maughan, an abutter, who spoke of concerns regarding the property but spoke neither for nor against the application. Mark Horne spoke in favor of the application.

6. Darren Carter spoke regarding his filing of the complaint and opposed the non-compliant features at the operation.

## 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 be contrary to the public interest. (§801.2.A.1)

The Zoning Ordinance typically separates commercial areas from residential. A potential concern of water quality degradation from commercial activities was raised.

2. The spirit of the ordinance is not observed. (§801.2.A.2)

Residential areas are established to be free of commercial intrusion.

3. Substantial justice is not done. (§801.2.A.3)

The applicant was informed in 2013 of non-compliance and chose not to respond.

4. The values of surrounding properties are not diminished. (§801.2.A.4)

No evidence indicating a change was presented

5. Literal enforcement of the provisions of the ordinance would not 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):

The property is clearly residential in a residential zone; the issue was made clear to the applicant in 2013.

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 not a reasonable one. (§801.2.A.5.a.ii)

## III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 18<sup>th</sup> day of June 2018, hereby DENIES the requested relief, subject to testimony, plans, and materials submitted.

Seconded by Travis Griffin.

\*\* Vote to pass the motion- 3-0-2. Mr. Nash, Mr. Griffin, Chair Koppenheffer, in favor; 0 opposed; Vice Chair Mercer, Mr. Patterson, abstained. Motion passed.

## IV. PUBLIC HEARINGS – New:

**A. EUGENE & CATHERINE THURSTON, 32 SLAYTON HILL ROAD (Tax Map 105, Lot 100), zoned R-3: Request for a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to convert a one-family dwelling into a two-family dwelling. #ZB2018-16-SE**

Eugene and Catherine Thurston appeared as the applicants. They purchased the property six weeks ago and it was a multi-family home when it was purchased, but they have since found out that it was not permitted. Mrs. Thurston noted that R-3 does allow for conversion from single to multi-family. Mr. Patterson asked about the capacity of the sewer. Mr. Thurston said that they were told there were two tanks that could support multiple kitchens and bedrooms. Vice Chair Mercer asked about parking and Mr. Thurston confirmed there is ample parking. Mr. Griffin asked about egress for the bedrooms. Mr. Thurston confirmed that they had the fire department inspect the property and the egress windows were large enough. Mr. Patterson asked about the timeline and when the applicants found out that an exception would be required. The applicants stated that the need for an exception was discovered after the home inspection and after the applicants had already put down a deposit.

**Chair Koppenheffer opened the public hearing.**

Amelia Sreen appeared to speak against the application. She is a neighbor of the property and met the property owners during the purchasing process. She was surprised to receive the notice proposing the conversion to a multi-family. She said that she believes that a multi-family would compromise the character of the neighborhood. She noted that due to the configuration and the separation of the front and back yard for each unit, the possibility for extra noise in the front yard would be a concern. Mr. Koppenheffer noted that the zoning for the area allows multi-family homes. Mrs. Sreen said that the special exception is done on a case-by-case basis and in this case, she thinks that an accessory dwelling would be a better use.

**Chair Koppenheffer closed the public hearing.**

Chair Koppenheffer asked for questions or comments from the Board. There were no further comments or questions from the Board.

**DELIBERATION/DECISION**

Mr. Patterson noted that at the time of the purchase, the house was not in compliance. He said that he also understands the concern about it becoming a rental property. Chair Koppenheffer noted that the application was done almost immediately after it was purchased. Mr. Nash asked that the certificate to operate for the septic meet or exceed the proposed use and that it be added as a condition that staff verify the certificate.

*Jennifer Mercer moved that on July 16, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Eugene & Catherine Thurston regarding 32 Slayton Hill Road (Tax Map 105, Lot 100), zoned R-3. The applicant requests a Special Exception pursuant to Article III, §310.2 of the Zoning Ordinance to convert a one-family dwelling into a two-family dwelling. #ZB2018-16-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 characteristics of the subject property and the improvements thereon are described in the 'Application Information' section of the Staff Memorandum as follows:

Location: 32 Slayton Hill Road (Tax Map 105, Lot 100)

Zoning District: Residential Three (R-3)

Property Size:

+/-0.80 acres (+/-34,848 sq. ft.)

Existing Improvements and Use:

+/-3,140 sq. ft. (finished) single-story one-family dwelling constructed in 1965, per the City Assessor's records; a conforming use per §310.2

Proposed Improvements and Use:

interior renovations to convert one-family dwelling to two-family dwelling

Overlay Districts: none

Previous ZBA Action (since 1995): none

2. The applicant proposes to convert the existing one-family dwelling located on the subject property to a two-family dwelling, which is a use permitted by Special Exception in the R-3 District.

3. As described in the application materials, the renovations will be interior only and the footprint will remain as is; no exterior renovations are proposed.

4. A "two-family dwelling by conversion of existing one-family dwelling" is allowed by Special Exception within the R-3 District. In order to grant a Special Exception, the applicants must demonstrate that the proposal meets the general Special Exception criteria, set forth in §801.3.

5. There are no special conditions/requirements in the Zoning Ordinance that apply specifically to the "two-family dwelling by conversion of existing one-family dwelling" use category.

6. The Applicant has submitted a support statement addressing the Special Exception criteria of §801.3 in an application received by the Planning Department on June 26, 2018.

7. Amelia Sreen expressed concerns that conversion to a two-family dwelling might adversely impact the character of the neighborhood, based on prior experience with two families living in the residence.

## 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. There are no special conditions/requirements applicable to the proposed use. (§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 16<sup>th</sup> day of July, 2018, hereby GRANTS the request of Eugene & Catherine Thurston for a Special Exception per Article III, §310.2 of the Zoning Ordinance to allow the conversion of the one-family dwelling at 32 Slayton Hill Road (Tax Map 105, Lot 100), zoned R-3, into a two-family dwelling, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. *The applicant shall obtain a building permit.*
2. *Staff will confirm that the Certificate to Operate for the septic meets or exceeds the requirements for the property.*

Seconded by Travis Griffin.

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

- B. SUSAN ACKERMAN (applicant) and ERIK & ELSA ROTH (property owners), 284 POVERTY LANE (Tax Map 188, Lot 7), zoned RL-1: Request for Variances from (a) Article II, Section 202 and Article III, Section 313.3 of the Zoning Ordinance to permit the subdivision of a 1.0 acre parcel of land where a minimum lot size of three (3) acres is required; and (b) Section 313.2 to allow an accessory use (a residential “barn”) on a lot without a principal use. #ZB201-17-VAR**

Susan Ackerman and Erik Roth appeared for the application. Mrs. Ackerman discussed the history of the property and the subdivisions that have happened in the past. She discussed the issues that have been created by the 99-year lease agreement. The large barn burned, and she felt that it was too close to the primary residence to rebuild it on the previous location. Mrs. Ackerman would like to purchase one acre from Mr. Roth to rebuild the larger barn that burned. The small barn that is shown on the site map is used as a garage. Chair Koppenheffer asked about potential alternative placements for the barn replacement. Mrs. Ackerman said that placement discussions are further complicated by septic and wetland considerations. Vice Chair Mercer asked Mr. Roth to talk about the application. Mr. Roth said that use of the barn has always belonged to the property owners of 287 Poverty Lane. Mr. Corwin clarified that there are two variances before the board. Mr. Patterson asked Mrs. Ackerman to clarify the hardship portion of the application. There is also an issue with the garage that is positioned across the street belonging to one property but located on another property with a 99-year lease. The board discussed the history of the lot and use of the barn.

**Chair Koppenheffer opened the public hearing**

**Chair Koppenheffer closed the public hearing**

Chair Koppenheffer asked for questions or comments from the Board. There were no further comments or questions from the Board.

**DELIBERATION/DECISION**

*On July 16, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Susan Ackerman on behalf of herself and Erik & Elsa Roth regarding 284 Poverty Lane (Tax Map 188, Lot 7), zoned RL-1. The applicants request Variances from (a) Article II, §202 and Article III, §313.3 of the Zoning Ordinance to permit the subdivision of a 1.0 acre parcel of land where a minimum lot size of three (3) acres is required; and (b) §313.2 to allow an accessory use (a residential “barn”) on a lot without a principal use. #ZB2018-17-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 subject property is a 5-acre lot improved with a one-family dwelling and attached garage located on the northwestern portion of the lot. An historic barn is located at the eastern end of the property directly across the street from the home at 287 Poverty Lane (owned by the applicant, Susan Ackerman). The historic barn is used as the garage for 287 Poverty Lane. As such, the barn constitutes a non-conforming accessory use to an off-site principal use.*
- 2. The applicant proposes to subdivide (and purchase) a 1.0 acre portion of the subject property containing the historic barn. Because 3.0 acres is the minimum required for Class 3 lots in the RL-1 District, the proposed one-acre subdivision requires a Variance.*
- 3. The proposal to construct a second structure on the proposed lot also requires a Variance in order to allow a (second) accessory use on the proposed lot which will not have a principal structure.*
- 4. In order to create an undersized lot, the applicant requires a Variance from §202 of the Zoning Ordinance and from the minimum dimensional requirements of the RL-1 District, set forth in §313.3 of the Zoning Ordinance.*
- 5. The use of the proposed second structure on the proposed lot will be to serve the residential use at 287 Poverty Lane. As such, the proposed second structure does not qualify as a permitted accessory building or accessory use, the definitions of which require the accessory building/use to be located on the same lot as the principal use it serves (see Appendix A of the Zoning Ordinance):*

**ACCESSORY BUILDING:** A building subordinate and customarily incidental to the main building on the same lot. The term "accessory building", when used in connection with agriculture shall include all buildings customarily used for farm purposes.

**ACCESSORY USE:** A use subordinate and customarily incidental to the principal use of the premises.

- 6. Therefore, in order to allow the proposed lot to have a (second) structure where the proposed lot will not have a principal structure [i.e. in order to allow the proposed lot to have a (second) structure serving an off-site use], the applicant requires a Variance from §313.2 of the Zoning Ordinance*

7. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b).

8. The applicant has submitted testimony addressing the §801.2 Variance criteria in an application received July 2, 2018.

9. No member of the public spoke for or against the application.

## II. CONCLUSIONS OF LAW

### A. Variance to Allow Subdivision

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):
  - i. The garage property is subject to a 99 year lease, running to 2084, benefitting the home across the street.
  - ii. 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)
  - iii. The proposed use is a reasonable one. (§801.2.A.5.a.ii)

### B. Variance to Allow Accessory Structure

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):
  - i. The barn cannot be located on the previous location due to an exposure hazard (fire), to the north due to septic, or to the northeast due to wetlands and buffers.
  - ii. 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)
  - iii. 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 16<sup>th</sup> day of July, 2018, hereby GRANTS the request of Susan Ackerman (applicant) and Erik & Elsa Roth (property owners) for a Variance for 284 Poverty Ln (Tax Map, 188, Lot 7) from Article II, §202 and Article III, §313.3 of the Zoning Ordinance to permit the subdivision of a 1.0 acre parcel of land where a minimum lot size of three (3) acres is required; and hereby GRANTS the request of Susan Ackerman (applicant) and Erik & Elsa Roth (property owners) for a Variance for 284 Poverty Lane (Tax Map, 188, Lot 7) from Article III, §313.2 to allow an accessory use (a residential “barn”) on a lot without a principal use, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain Subdivision approval from the Planning Board for the proposed subdivision.
2. The applicant shall obtain a building permit for the proposed accessory structure. Compliance with Condition #1 shall precede the filing of the building permit.
3. The structure shall remain non-residential.

Vice Chair Mercer seconded.

**\*\* THERE WAS NO VOTE; discussion continued.**

Mr. Patterson said that he does not think that the fire issue is relevant and should not be in the motion. He said that a fire suppression system would be a possible option. Vice Chair Mercer supports the subdivision to remedy the 99-year lease but that the hardship for building the barn is a separate issue. Mr. Corwin clarified that if the lot were on its own, the barn would need to meet the zoning requirements. The need for a variance would still exist if it is serving an off-site use. Mr. Griffin asked about the state statute. Mr. Corwin said that according to the city statute, lots separated by a street or road cannot be combined parcels. Mr. Nash said that the separation of the property by a road is a hardship because it prevents that property owner from using the property the way they wish. The board discussed possible future uses for the property. There was extensive discussion regarding hardship and the conditions for a possible motion.

Vice Chair Mercer moved that the Zoning Board seek a legal opinion on whether or not the Board can condition an approval that the property remain under single ownership or be subject to a condition that the one-acre parcel remain non-residential and/or an accessory to the property. *Seconded by Alan Patterson. Motion approved, 5-0.*

Alan Patterson moved to continue this hearing to the next Zoning Board meeting on August 20<sup>th</sup>, 2018. Vice Chair Mercer seconded.

**\*\*Vote to continue the hearing, 5-0. Hearing Continued.**

**C. SECOND REHEARING: BGP PROPERTIES LLC, 90-92 MECHANIC STREET (Tax Map 106, Lot 51), zoned R-2: Request**

Jeremy Katz appeared on behalf of BGP Properties LLC. Chair Koppenheffer asked if there was anything new to add to the application. Mr. Katz presented a map of the homes on Mechanic Street that show the neighborhood has many non-conforming lots and most of them are 4,000-5,000 square feet. His property is 16,000 square feet. He said that he felt that the hardship criteria have been met; the lot size and dimension is clearly unique, the deviation has no fair and substantial relationship to the spirit of the ordinance, and the proposed use is a reasonable one.

Vice Chair Mercer clarified that this a second rehearing. Mr. Griffin asked about the purchase history of the property. Mr. Patterson asked about the history of the surrounding lots. Mr. Katz said that the houses on Mechanic street were likely mill housing and many were built in the late 1800's. The questions of lot size may have been impacted by the State's right of way. Vice Chair Mercer asked for clarification on the driveway.

**Chair Koppenheffer opened the public hearing.**

**Chair Koppenheffer closed the public hearing**

Chair Koppenheffer asked for questions or comments from the Board.  
There were no further comments or questions from the Board.

## **DELIBERATION/DECISION**

Mr. Griffin said that uniqueness has been demonstrated. Vice Chair Mercer asked Mr. Corwin about the non-conformity of the neighborhood. Mr. Corwin confirmed that the neighborhood is heavily non-conforming. Chair Koppenheffer said that he does not think there is a hardship.

*Travis Griffin moved that on July 16, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jeremy Katz on behalf of BGP Properties LLC regarding 90-92 Mechanic Street (Tax Map 106, Lot 51), zoned R-2. The applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance (i) to permit the subdivision of the property into two lots sized approximately 8,000 sq. ft. (Lot 1) and 8,500 sq. ft. (Lot 2) where 10,000 sq. ft. is the minimum required; (ii) to allow an existing home on proposed Lot 1 to be located within the minimum required 20 ft. rear yard; and (iii) to allow an existing home on proposed Lot 2 to be located within the minimum required 40 ft. front yard. #ZB2018-09R2-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 two (2) one-family dwellings. Each home constitutes a principal structure. Therefore, the property is non-conforming to Section 205 of the Zoning Ordinance which provides that "[t]here shall be only one principal structure on a lot in the residential districts[.]" The property is otherwise conforming to the minimum dimensional requirements set forth in Section 309.2 of the Zoning Ordinance.*

2. *The applicant proposes to subdivide the property so that each one-family dwelling will be located on its own lot. Allowing the subdivision will remedy the non-conformity with respect to Section 205 of the Zoning Ordinance. However, other non-conformities will be created:*

a. *Each lot will be undersized. As depicted on the attached site plan, Lot 1 will be approximately 8,000 sq. ft. and Lot 2 will be approximately 8,500 sq. ft. (Lot 2) whereas 10,000 sq. ft. is the minimum lot size in the R-2 District;*

b. *The existing home on proposed Lot 1 will be located within the minimum required 20 ft. rear yard; and*

- c. *The existing home on proposed Lot 2 will be located within the minimum required 40 ft. front yard (a 40 ft. front yard applies since the property has frontage on a state highway).*
3. *In order to create two undersized lots and to allow the existing homes to be within the minimum required yards of the proposed lots (as depicted on the attached site plan), the applicant requires a Variance from the minimum dimensional requirements of the R-2 District, set forth in §309.2 of the Zoning Ordinance.*
4. *To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the §801.2 Variance criteria in an application received July 2, 2018.*
5. *This application was originally heard by the Zoning Board on May 21, 2018 and was denied by a vote of 2-1. A rehearing was held on June 18, 2018 which also resulted in a denial by a vote of 2-2. The basis for denial at the June 18th meeting differed to some degree with the basis for denial at the May 21st meeting. Because the application was denied for reasons different than the reasons it was originally denied, the applicant is entitled to seek a rehearing [see 15 New Hampshire Practice: Land Use Planning and Zoning, Ch. 21, Board of Adjustment Procedure, §21.17 (LexisNexis Matthew Bender)]. Moreover, because the rehearing was heard by less than a full 5 member board, the applicant is automatically entitled to a rehearing pursuant to the Zoning Board of Adjustment By-Laws adopted on 4/3/2017 (“[i]n all cases where the applicant is heard by less than a full 5 member Board, the failure of any motion to receive at least 3 votes will automatically constitute grounds for a rehearing.”)*
6. *No members of the public appeared to speak 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 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):*
  - i. *The existing use non-conformity renders the property unique with two residential properties on one lot.*
  - ii. *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)*
  - iii. *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 18<sup>th</sup> day of June, 2018, hereby GRANTS the requested relief, subject to testimony, plans, and materials submitted, and per the following conditions:

1. Applicant shall obtain sub-division approval within 24 months

Seconded by Dan Nash.

\*\*Vote to approve: 3-2. Vice Chair Mercer, Mr. Griffin, Mr. Nash, in favor. Chair Koppenheffer, Mr. Patterson, opposed.

Mr. Nash recused himself and joined the public audience.

- D. JANE HAGUE, 16 EVERGREEN COURT (Tax Map 74, Lot 3, Plot 169), zoned RL-2: The property is located within the Rock Ridge development, approved as a Planned Unit Residential Development (PURD) pursuant to Article V, Section 501.2 of the Zoning Ordinance. The applicant requests a Variance to allow the construction of a porch to be located approximately 12 ft. from the front lot line where a minimum of 20 ft. is required per the approved PURD plan. #ZB2018-18-VAR**

Jane Hague and Dan Nash appeared on behalf of the application. Mr. Nash discussed the setbacks and the requirements for the subdivision. The applicant would like a front porch to increase the sense of community in the neighborhood. Vice Chair asked about access to the porch. Mrs. Hague confirmed that there is a door on each side of the house and the door on the right side of the house would open onto the proposed porch. The front of the house is on the setback line and Mrs. Hague would like to build on the front so that she can participate more fully in the community. This property was one of the original houses in the subdivision and was vacant after the developers went bankrupt.

**Chair Koppenheffer opened the public hearing.**

Jon and Linda Whitcomb appeared in support of the application. She noted that many of the houses and condos in the neighborhood already have porches. She said that the porches are a meeting place and are heavily used by the community.

**Chair Koppenheffer closed the public hearing**

Chair Koppenheffer asked for questions or comments from the Board. There were no further comments or questions from the Board.

**Deliberation/Decision**

Mr. Patterson agrees that it is odd that the property does not have a porch and there is no harm in granting the variance. Vice Chair Mercer agrees that there is a hardship, since the majority of the neighborhood homes have porches.

Travis Griffin moved that on July 16, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Dan Nash, P.E. of Advanced Geomatics & Design on behalf of Jane Hague regarding 16 Evergreen Court (Tax Map 74, Lot 3-169), zoned RL-2. The property is located within the Rock Ridge development, approved as a Planned Unit Residential Development (PURD) pursuant to Article V, §501.2 of the Zoning Ordinance. The applicant requests a Variance to allow the construction of a porch to be located approximately 12 ft. from the front lot line where a minimum of 20 ft. is required per the approved PURD plan. #ZB2018-18-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 subject property is part of the Rock Ridge development, approved as a Planned Unit Residential Development (PURD) by Conditional Use Permit from the Planning Board. Pursuant to §501 of the Zoning Ordinance, the Planning Board is authorized to approve minimum yard requirements for a PURD that are less restrictive than the underlying zoning district.
2. In the RL-2 District, the minimum yard requirements for Class 1 lots are 40 feet for the front, 20 feet for the side, and 25 feet for the rear (the Rock Ridge lots are served by municipal water and sewer and, therefore, are Class 1 lots). However, for Rock Ridge (originally Sleeper Village), the Planning Board approved reduced minimum yard requirements of 20 feet for the front, 5 feet for the side, and 0 feet for the rear.
3. At its closest point, the existing home is flush with the minimum 20 ft. front yard required for lots in the Rock Ridge development (see plot plan submitted with the application materials).
4. The applicant proposes to construct a porch onto the front of the existing home. The proposed front porch will vary in depth between 6 ft. and 8 ft. At its closest point, the porch will be located approximately 12 ft. from the front lot line. Because it's proposed to extend 8 ft. into the minimum required 20 ft. front yard, a Variance is required in order to permit construction of the porch.
5. A minimum front yard of 20 feet is required for lots in the Rock Ridge development. It is staff's view that a Variance request is an appropriate avenue to seek relief from the Rock Ridge yard requirements. Although the minimum yard requirements for Rock Ridge were approved by Conditional Use Permit from the Planning Board, once those setbacks are established their status is effectively the same as any other Zoning Ordinance requirement that may be applicable to the property. The applicant could, in the alternative, seek an amendment to the Conditional Use Permit in the same way that any applicant for a Variance could, in the alternative, seek an amendment to the Zoning Ordinance. However, if the applicant can demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b), the granting of a Variance is appropriate.
6. The applicant has submitted testimony addressing the §801.2 Variance criteria in an application received July 2, 2018.
7. There appeared Jon and Linda Whitcomb to speak in favor of 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 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):

The house sits against the setback which prevents it from having a front porch without a variance in a neighborhood where the majority of properties have front porches.

- ii. 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)
- iii. 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 16<sup>th</sup> day of July, 2018, hereby GRANTS the request of Jane Hague for a Variance to allow the construction of a porch to be located approximately 12 ft. from the front lot line where a minimum of 20 ft. is required per the approved plan for the Rock Ridge development (approved by the Planning Board as Planned Unit Residential Development per Article V, §501.2 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 a building permit.

Seconded by Alan Patterson.

\*\* Vote to approve, 4-0. Motion is approved

Mr. Nash rejoined the meeting at 10:14 pm

### V. OTHER BUSINESS- Continued from June 18, 2018

#### A. ZONING ORDINANCE AMENDMENTS: review and comment to the City Council on proposed amendments to Article VI, Section 608 (“Signs”) of the Zoning Ordinance.

**Alan Patterson moved to extend the Zoning Board meeting past 10:15. Seconded by Dan Nash. \*The motion passed unanimously, 5-0.**

Mr. Corwin discussed the proposed change to the zoning ordinance. Mr. Griffin said that the clarification provided by legal counsel precluded any questions he might have. Mr. Nash said that wording seems clear and will help decision making. The group discussed how the amendment might impact applications to the Zoning Board. Mr. Patterson voiced concern over enforceability. Chair Koppenheffer asked Mr. Corwin if there was any foreseeable issue; Mr.

Corwin stated he did not and he did not think that enforcement would be made more difficult by the amendment.

*Dan Nash moved to recommend the approval of the proposed changes to the zoning ordinance. Seconded by Travis Griffin. \*The motion passed unanimously, 5-0.*

Mr. Patterson suggested that the City Council consider additional staff to review complaints.

## **II. APPROVAL OF MINUTES: May 21, 2018**

Amendments to minutes:

Page 2, line 24: remove the apostrophe in “it’s”

Page 2, line 33: Change “Mrs. Welsch asked the Board to look more closely at the number and consider the benefit to the entire city of Lebanon.” to “Mrs. Welch berated and belittled the Board in her support of the project.”

Page 3, line 1: Change “Down’s” to “Down”

Page 5, line 41: Add “it” after “replace”

Page 8, line 31: Correct “welling” to “dwelling”

Page 9, line 21: Add “s” to “seem”

Page 11, lines 40-41: Strike both lines that were included in error

Page 14, line 14 and page 16, line 28: Correct to “Advanced Geomatics”

Mr. Patterson discussed the incident with the former councilperson, Mrs. Welsch, who spoke in favor of an application at the June meeting. Mr. Patterson asked to go on record to formally denounce the behavior that was displayed by the former councilor.

***Travis Griffin moved to approve the minutes of the Lebanon Zoning Board of Adjustment meeting of June 18, 2018 as amended. Seconded by Dan Nash.***

***\*The motion passed unanimously 4-0. Vice Chair Mercer abstained.***

## **VI. STAFF COMMENTS: None**

## **VI. ADJOURNMENT**

***Dan Nash moved for adjournment. Seconded by Alan Patterson.***

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

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,  
Brandy Sailors-Dow  
Recording Secretary