

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, August 3, 2020
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Dave Newlove, (Alt), Paul McDonough (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 7:01 PM by Chair Koppenheffer.

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

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the public.

2. APPROVAL OF MINUTES

A. July 20, 2020

Mr. Nash MOVED to approve the July 20, 2020 Minutes as presented in the August 3, 2020 agenda packet.

Seconded by Mr. Patterson.

Mr. McDonough was given voting privileges for this Motion.

Roll Call Vote

Mr. McDonough, Mr. Patterson, Mr. Nash, Chair Koppenheffer, all voting Yea.

None voted Nay.

**The Vote on the Motion was approved (4-0-1). Vice Chair Mercer abstained.*

3. PUBLIC HEARING-Continued from July 6, 2020.

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

- B. COTE SWENSON & SAMANTHA MEDINA, 397 DARTMOUTH COLLEGE HIGHWAY (Tax Map 111, Lot 9), zoned RL-2:** Applicants request a Variance from Sections 313.2 and 702.5.D of the City of Lebanon Zoning Ordinance to allow the expansion of a non-conforming “produce stand” use. In the alternative, applicants request a Special Exception pursuant to Section 313.2 to expand an existing produce stand. **#ZB2020-22-SE**

The last time the case was before the Board, the applicants ask for a continuance to complete the applications. Nothing has been received. This is a Zoning violation enforcement case that has resulted in these applications. The applicants have filed a request for an extension for this evening as well. There is concern because there is a violation.

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

Chair Koppenheffer MOVED to continue these hearings until September 8, contingent upon the applicants filing whatever documents they want to file by August 24, which is the cut-off date for filing applications for the September 8, 2020 Board Meeting. If documents are not filed by August 24, then this will be considered a withdrawal of their applications without prejudice.

Seconded by Mr. Patterson.

It was discussed that all the continuances and waiting until the September meeting would allow another month to pass and give the applicants an additional season, which doesn't seem fair. If documents are not received by 8/24, this matter would be turned over to the City Attorney for enforcement. Staff was told a packet was turned in last Friday, but it has not been received by his office.

There likely would not be a change if the Board waits another two weeks. Attorney fees have already been incurred by the City and the applicants are costing tax-payers money. Staff will look into the City being reimbursed for the attorney expenses. The applicants are in default on the mortgage and may never be able to comply with the requirements. Enforcement may not bring any results.

Neither the applicants nor abutters spoke at this hearing. Tonight's discussion is a procedural question. Either the applicants will submit documents, or they will not and then this will be a final matter.

Roll Call Vote

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

None voted Nay.

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

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

When this came before the Board last month, there was not any dispute that not all of the conditions of the previously granted variance have been met. The recommendation at that time was to give the applicant an opportunity to file a new application. An application for a variance was received on Friday along with a withdrawal of the administrative appeal. Therefore, there is no action required on the appeal this evening.

4. PUBLIC HEARINGS-NEW

- A. NOVO NORDISK US BIO PRODUCTION, INC., 5 & 9 TECHNOLOGY DRIVE (Tax Map 130, Lot 1 and Tax Map 145, Lot 3), zoned IND-L & IND-H:** Applicant proposes to construct an accessory compressed natural gas (CNG) facility with associated site improvements. In connection with the proposed construction, applicant requests a Special Exception pursuant to Article IV, Section 401.5 (“Wetlands Conservation District”) of the Zoning Ordinance to allow permanent wetland impacts of +/-5,540 sq. ft., and temporary wetland impacts of +/-790 sq. ft. **#ZB2020-24-SE**

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

Justin Alexander appeared on behalf of the application, as well as Kaleb Moore-Facilities Engineer and Stuart Sawyer-Project Manager. They gave a presentation to the Board regarding the international company and its Biopharmaceutical production. They are a large manufacturer of diabetes care products. The West Lebanon production site produces hemophilia and growth hormone therapies. There are about 200 employees in the Upper Valley. Their plan is to have a zero environmental impact by 2030. They are working to use renewable resources and they intend to procure renewable natural gas that is pipeline quality. They would obtain the natural gas from a landfill in Bethlehem, NH where the gas is high quality. To do this they would need to build a decompression skid that ties into both of their buildings. This would require replacing a retaining wall, adding a concrete slab, adding the decompression skid and laying the pipeline. The property site plan and the design of the campus was reviewed with the Board.

There is an existing retaining pond for roof runoff that is not used to any degree where they would like to construct the decompression skid. They would redirect the storm runoff from the roof of one building and direct it toward the other retaining pond which has adequate capacity. They have made accommodation for the roof water from both of their buildings. They would also increase the water retention and slow down the peak out flows from the pond.

The applicants looked at 3 designs, trying to incorporate all three of their campuses with a loop road. Other design options included larger impacts on the wetlands. A Loop road was abandoned because of the impact on the wetlands.

It is possible that in the future the Lebanon landfill may be a potential source of gas for the company if it becomes pipeline quality and has adequate production. This would be the fourth decompression setup in the Lebanon area. It is not a new technology for the City. Natural gas appears to be safer than the propane they are currently using.

There were no questions from the Public.

The applicant has already been before the Planning Board and no one from the Public was at that Hearing.

The Board discussed voting on the Hearing this evening. It was determined that they would follow the normal procedures, even if it meant another month of delay with the Planning Board meeting schedule.

**Mr. Nash MOVED to continue this hearing until the next meeting, August 17, 2020.
Seconded by Mr. Patterson.**

Roll Call Vote

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

Mr. Newlove voted Nay.

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

- B. CONVENIENT MD LLC (applicant) and CT BROWN & FAMILY LLC, 1 INTERCHANGE DRIVE (Tax Map 114, Lot 9), zoned GC:** Applicant requests a Variance from Section 608.4.A.1 of the Zoning Ordinance to install building signage totaling +/-480 sq. ft. The total proposed sign area for the property exceeds the maximum sign area allowed under Section 608.4.A.1. **#ZB2020-23-VAR**

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

Morgan Hollis, attorney for the applicants, appeared on behalf of the application. There currently are signs on the building that already exceed the maximum sign area for the permitted signage, therefore a variance is required. The applicants are asking for three signs of 160 square feet each, constructed on a second story tower on the building, which would be built to display the signs. The existing signs on the building were grandfathered, and already exceed the allowable signage. Mr. Hollis described the urgent care services that would be handled at the facility. Convenient Care has determined that the size and visibility of the signage has been beneficial for patients finding their facilities. He referenced other City's where Convenient MD has been granted relief for the purpose of having increased signage. Mr. Hollis addressed the points of law required for a variance and stated the increased signage would be a benefit to the public as well as the applicant. He expressed his opinion about the uniqueness of the property. The entrances to the building from four side streets makes a hardship for the property. Due to the nature of this business, it is most important that the signage directs people to the location as quickly as possible.

Three signs on 160 square feet are being requested now, which exceeds the amount of signage that was previously requested. They are asking for nearly 5 times the allowable signage. It seems that a tower would likely require smaller signage because it is above all the other signs. There are several entrances, so missing the first entrance would be readily available at the next entrance. The last time the client was before the Board, the Board was willing to consider adding more signage, but this seems an excess. Three signs are reasonable because of this type of business. Directional signage could be added for the entrances. Relief is necessary. The logo is easily readable, and the large size may not be required.

The other variances in other cities that have been requested by this applicant were referenced. It is a commercial medical business, and it was discussed if there is a special condition that allows the Board to give preference for this type of business. Mr. Hollis stated that a variance can be issued with conditions, such as it is only allowed for an urgent care business and urgent care must be provided. In keeping with the spirit of the ordinance, increased signage would be helpful the public and in the best interest of the public. The ordinance, over time, has been preferable to decrease the size of signage and the aggregate allowable signage has decreased over time.

The views of the building from both the South and the North on the interstate have the same view of the sign. The sign on the front façade does not help people. The sign on the North side of the building would be the most helpful. The attorney expressed that their experiences shows that the signage they are requesting is what works the best for the business.

No one from the public made any comment.

**Mr. Nash MOVED to continue this hearing until the next meeting, August 17, 2020.
Seconded by Mr. Patterson.**

Roll Call Vote

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

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

5. DELIBERATION-Continued from July 20, 2020

- A. JOHANNA CICOTTE, 30 LITTLE HEATER ROAD (Tax Map 78, Lot 61), zoned IND-L:** Applicant proposes to remove the existing buildings and to construct a new building for a proposed car wash use. Applicant requests a Variance from Article III, Section 303.3 of the Zoning Ordinance to allow the new building to be located 20 ft. from the front lot line where a minimum of 40 ft. is required. **#ZB2020-13-VAR**

Mr. McDonough was appointed as a voting member for this hearing.

Mr. Nash recused himself.

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

The Public Hearing was closed at the last hearing.

At the July 20, 2020 meeting there were not at least 3 votes in favor of the Motion, due to the size of the Board. The hearing was moved to August 3, 2020.

Mr. McDonough MOVED On June 1, 2020, June 15, 2020, July 6, 2020, July 20, 2020 and August 3, 2020 at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Barry Schuster, Esq. on behalf of JOHANNA CICOTTE, regarding 30 LITTLE HEATER ROAD (Tax Map 78, Lot 61), zoned IND-L. Applicant proposes to remove the existing buildings and to construct a new building for a proposed car wash use. Applicant requests a Variance from Article III, Section 303.3 of the Zoning Ordinance to allow the new building to be located 20 ft. from the front lot line where a minimum of 40 ft. is required. #ZB2020-13-VAR

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 a legal non-conforming lot located in the IND-L District and is improved with a one-family dwelling and detached garage, a legal non-conforming use. The property is under common ownership with the abutting property at 175 Heater Road, currently occupied by a Volvo and Volkswagen car dealership.
2. 175 Heater Road envelopes the subject property along its rear lot line and both side lot lines. Across Little Heater Road, the property abuts a commercial trucking facility at 165 Heater Road and three non-conforming one-family dwellings at 25 Little Heater Road, 2 Pershing Street, and 35 Little Heater Road, respectively. A substantial portion of the property is located within the Flood Plain District.

3. The applicant proposes to construct a 7,200 sq. ft. commercial building to be used as a car wash in connection with the car dealerships at 175 Heater Road. A car wash is a use allowed by Conditional Use Permit from the Planning Board per Section 302.2 of the Zoning Ordinance.
4. The applicant proposes to locate the car wash building 20 ft. from the front lot line whereas a minimum front yard of 40 ft. is required in the IND-L District per Section 303.3 of the Zoning Ordinance. Therefore, a Variance from Section 303.3 is required to allow the proposed building to be located 20 ft. from the front lot line.
5. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on May 15, 2020.
6. In response to a question from Alice Dansby, a Lebanon resident, the applicant confirmed that the building will contain a small accessory office area.
7. Evidence was received by testimony that distancing the building as far as possible from the brook would reduce the possibility of the brook, during periods of high water, from scouring and potentially damaging the foundation.

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 Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)

The requested variance reducing the setback from 40' to 20' from Little Heater Road will not violate the basic objectives of the zoning ordinance as it does not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.

2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)

The request to reduce the setback pursuant to Section 303.3 of the Zoning Ordinance from 40' to 20' does not offend or violate the spirit of the ordinance.

3. Substantial justice **is** done. (Section 801.2.A.3)

Denial of the petition for this variance would not be outweighed by a gain to the public.

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

There was no evidence presented nor any basis for finding that the value of surrounding properties would be diminished.

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 (Section 801.2.A.5.a):

The presence of the brook and its seasonal bank overflow create a hardship to build the proposed structure with the required 40' setback.

- 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. (Section 801.2.A.5.a.i)
In light of the sparsely traveled Little Heater Road and the risk of construction too close to the brook, requiring an additional 20' setback would not advance the purpose of the ordinance.
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)
The use of the property as a car wash in conjunction with the adjacent car dealership, but not for public use, is reasonable.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of August, 2020**, hereby **GRANTS** the requested Variance from Section 303.3 of the Zoning Ordinance to allow a proposed building at 30 Little Heater Road (78-61) to be located 20 ft. from the front lot line, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain Conditional Use Permit and site plan approval from the Planning Board, a building permit, and a certificate of occupancy; shall pay an impact fee pursuant to §213 of the Zoning Ordinance; and shall comply with all applicable local, state, and federal regulations in the construction and use of the proposed building.

Mr. Patterson seconded the MOTION to Grant.

Mr. Corwin read the paragraph that was submitted in opposition to the motion. The Motion to Deny was identical to the Motion to Grant, with the exception of Paragraph 5 of the Conclusions of Law.

5. Literal enforcement of the provisions of the ordinance **would not** result in an unnecessary hardship. Although there is a brook on the west side of the property, and enforcing the 40 ft setback would place the southwest corner of the proposed building in the wetlands adjacent to the brook, the applicant has two alternatives. One, would be to take the preventive measures described in the application and supporting documents and build with a 40 ft setback, or, two, build a smaller building. The applicant wishes to build a car wash, car detailing, and car storage facility. The proposed building is of a size that the applicant believes ideal. Nevertheless, a smaller but nonetheless adequate building could be placed on the site with a 40 ft setback. The hardship claimed is of the applicant's own design.

A discussion by the Board then ensued. The building was designed to be sufficient for the purpose of the building. It is speculation that a smaller building would be suffice. It seems obvious that if a smaller building was adequate, the applicants would build a smaller building. This is a reasonable request for the variance. Previously a similar application for a different property was denied in the last year. The other property was substandard for the proposed use, and it would be consistent to deny this application. It was also said that the previous property application was for convenience. With this application, some thought the building size is important for the purpose of this building. It is believed that the applicants are being mindful of the impact on the wetlands. None of the wetlands are high value wetlands. And it is also thought that the proposed building does not have any new services or purposes that the dealership does not already provide. However, it was noted that some of these services are currently provided outside.

Roll Call Vote

Mr. McDonough and Mr. Patterson voting Yea.

**Mr. Katz, Vice Chair Mercer and Chair Koppenheffer voting Nay.
*The Vote on the Motion to GRANT was denied (3-2).**

Chair Koppenheffer MOVED On June 1, 2020, June 15, 2020, July 6, 2020, July 20, 2020 and August 3, 2020 at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Barry Schuster, Esq. on behalf of JOHANNA CICOTTE, regarding 30 LITTLE HEATER ROAD (Tax Map 78, Lot 61), zoned IND-L. Applicant proposes to remove the existing buildings and to construct a new building for a proposed car wash use. Applicant requests a Variance from Article III, Section 303.3 of the Zoning Ordinance to allow the new building to be located 20 ft. from the front lot line where a minimum of 40 ft. is required. #ZB2020-13-VAR

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 a legal non-conforming lot located in the IND-L District and is improved with a one-family dwelling and detached garage, a legal non-conforming use. The property is under common ownership with the abutting property at 175 Heater Road, currently occupied by a Volvo and Volkswagen car dealership.
2. 175 Heater Road envelopes the subject property along its rear lot line and both side lot lines. Across Little Heater Road, the property abuts a commercial trucking facility at 165 Heater Road and three non-conforming one-family dwellings at 25 Little Heater Road, 2 Pershing Street, and 35 Little Heater Road, respectively. A substantial portion of the property is located within the Flood Plain District.
3. The applicant proposes to construct a 7,200 sq. ft. commercial building to be used as a car wash in connection with the car dealerships at 175 Heater Road. A car wash is a use allowed by Conditional Use Permit from the Planning Board per Section 302.2 of the Zoning Ordinance.
4. The applicant proposes to locate the car wash building 20 ft. from the front lot line whereas a minimum front yard of 40 ft. is required in the IND-L District per Section 303.3 of the Zoning Ordinance. Therefore, a Variance from Section 303.3 is required to allow the proposed building to be located 20 ft. from the front lot line.
5. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on May 15, 2020.
6. In response to a question from Alice Dansby, a Lebanon resident, the applicant confirmed that the building will contain a small accessory office area.
7. Evidence was received by testimony that distancing the building as far as possible from the brook would reduce the possibility of the brook, during periods of high water, from scouring and potentially damaging the foundation.

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 Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)

The requested variance reducing the setback from 40' to 20' from Little Heater Road will not violate the basic objectives of the zoning ordinance as it does not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.

2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)

The request to reduce the setback pursuant to Section 303.3 of the Zoning Ordinance from 40' to 20' does not offend or violate the spirit of the ordinance.

3. Substantial justice **is** done. (Section 801.2.A.3)

Denial of the petition for this variance would not be outweighed by a gain to the public.

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

There was no evidence presented nor any basis for finding that the value of surrounding properties would be diminished.

5. Literal enforcement of the provisions of the ordinance **would not** result in an unnecessary hardship. Although there is a brook on the west side of the property and enforcing the 40 ft setback would place the southwest corner of the proposed building in the wetlands adjacent to the brook, the applicant has two alternatives. One, would be to take the preventive measures described in the application and supporting documents and build with a 40 ft setback, or, two, build a smaller building. The applicant wishes to build a car wash, car detailing, and car storage facility. The proposed building is of a size that the applicant believes ideal. Nevertheless, a smaller but nonetheless adequate building could be placed on the site with a 40 ft setback. The hardship claimed is of the applicant's own design.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of August, 2020**, hereby **DENIES** the requested Variance from Section 303.3 of the Zoning Ordinance to allow a proposed building at 30 Little Heater Road (78-61) to be located 20 ft. from the front lot line, as set forth above.

Seconded by Mr. Katz.

Roll Call Vote

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

Mr. McDonough and Mr. Patterson voting Nay.

**The Vote on the Motion to GRANT was denied (3-2).*

Mr. Nash rejoined the meeting.

6. STAFF COMMENTS-None

7. ADJOURNMENT

***Mr. Patterson MOVED to adjourn the meeting at 8:59 PM.
Seconded by Vice Chair MERCER.***

Mr. Katz was given voting privileges for this Motion.

Roll Call Vote

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

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

Respectfully Submitted,
Linda Billings
Recording Secretary