

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, August 17, 2020
7:00 PM**

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

MEMBERS ABSENT: Vice Chair Jennifer Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

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

A Roll Call of Board Members who participated remotely are listed above.

There are currently five regular members and two 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 when a regular member is absent or recused.

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

Chair Koppenheffer informed the Board that the City Council has appointed Mr. Katz as a full Member of the Board.

A. August 3, 2020

Mr. Patterson MOVED to approve the August 3, 2020 Minutes as presented in the August 17, 2020 agenda packet, with amendments.

Seconded by Mr. Nash.

Mr. Newlove was given voting privileges for this Motion in the absence of Vice Chair Mercer.

Amendments: Page 1, Line 26; Remove ‘unanimously’. Page 2, Line 28; Add ‘Staff will look into the City being reimbursed for the attorney expenses’. Page 4, Line 5; Remove ‘unanimously’. Page 7, Line 33; Add ‘A discussion by the Board then resumed’.

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Patterson, Mr. Nash, Chair Koppenheffer, all voting Yea.

None voted Nay.

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

3. PUBLIC HEARING-Continued from August 3, 2020.

- 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 given voting privileges for this Hearing in the absence of Vice Chair Mercer.

Staff has not received any comments from the Public and no one from the Public spoke at the meeting.

There was no additional discussion from the Board.

The Public Hearing was closed.

*Mr. Nash MOVED On August 3, 2020 and August 17, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Justin Alexander, Kaleb Moore, and Stuart Sawyer on behalf of **NOVO NORDISK US BIO PRODUCTION, INC** regarding **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***

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 properties are owned and used by Novo Nordisk Bio Production, Inc. 5 Technology Drive is a +/-3.79 acre property improved with a +/-29,304 sq. ft. industrial building, and 9 Technology Drive is a +/-10.32 acre property improved with a +/-130,347 sq. ft. industrial building.
2. The applicant proposes to construct a compressed natural gas (CNG) facility to serve the on-site energy needs of the Novo Nordisk buildings. Associated proposed site improvements include equipment installation, piping, fencing, spaces for storage tank parking and truck deliveries, a retaining wall, lighting and tree plantings. The facility is proposed to be located across what is currently a boundary line between 5 and 9 Technology Drive. However, as part of this proposal, the applicant has agreed to merge the properties.
3. As shown on the attached plans prepared by Pathways Consulting, LLC, the proposed CNG facility will be partially constructed over existing wetlands. The wetlands have not been identified by the City of Lebanon as High or Very High Value.

4. In order to construct the proposed CNG facility and associated site improvements, the applicant proposes permanent wetland impacts of +/-5,540 sq. ft., and temporary wetland impacts of +/-790 sq. ft.
5. Construction within wetlands that have not identified by the City of Lebanon as of High or Very High Value, is permitted by Special Exception pursuant to §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 its June 11, 2020 meeting. A copy of the relevant portion of the draft meeting minutes was attached to the staff memo to the Zoning Board for the subject application.
7. No one from the public participated in the public hearing.

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 §401.5 of the Zoning Ordinance:

1. The use for which the exception is sought **cannot** feasibly, 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 **17th day of August, 2020**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a certificate of occupancy, shall comply with all applicable local, state, and federal regulations in the construction and use of the property, and shall obtain all required permits related to the proposed construction including but not limited to wetland impact permits from the Army Corps of Engineers and the New Hampshire Department of Environmental Services.

Seconded by Mr. Newlove.

Roll Call Vote

Mr. Newlove, Mr. Patterson, Mr. Nash, Mr. Katz and Chair Koppenheffer all voting Yea.

None voted Nay.

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

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**

Chair Koppenheffer brought attention to a letter dated August 10, 2020 from the applicant where the request for variance was amended to a total of approximately 360 square feet of signage.

Mr. Newlove was given voting privileges for this Hearing.

Morgan Hollis, of Gottesman and Hollis, appeared as representative for the applicants. After hearing the discussion of the Board at the last meeting, the applicants would like to reduce the size of the signage request and amend the application. One sign would be 160 square feet (sf) on the north side of the building visible heading south on 12A, one sign would be 125 sf on the front of the building on 12A frontage, and the sign on the South side of the building viewed by traffic heading North bound on 12 A would be 75 sf. Several documents were submitted with the letter to amend the application. Mr. Hollis presented information and photographs about the distances that the signage would be visible by drivers from each direction. He explained the reasoning for the size of lettering that was needed to be seen, based on information from further consultation with the sign designer. The number of letters in the business name is the cause for the request for additional square footage. The applicants agreed that the most important signage was the sign on 12A coming from the highway, heading south and the sign seen heading north on 12A.

The Board discussed the location of the property relative to the highway and the number of letters in the applicant's name. Both choosing the location and the business name are of the choosing of the applicants and are not hardships. No matter what, to put up any signage, a variance would be required. The applicants said they are asking for relief in terms of what they think is a reasonable request. Mr. Hollis re-ascertained that this variance should only be approved if there is a condition of the variance that requires the location to be used for urgent care services and if the services are no longer provided in this location, then the variance would go away. He said the hardship is the uniqueness of the building site and the entrances to the property is surrounded by 4 public ways.

One concern is that if additional signage is allowed in this case, other landlords would give all the allowed signage to existing lease holders and require new lessees to come before the Board for a variance. A landlord giving away all the signage on a building is not a hardship created by the land. The applicants originally requested additional signage, in addition to the current signage on the building, is just shy of 4 times the signage that is allowed for the entire building. It was discussed that a sign of 100 square feet on the front of the building would be more in line with other businesses. It is felt that people would become familiar with the location of the business and a 75 square foot sign visible for the northbound traffic and the 125 square foot sign visible from the southbound travelers would be enough. But a large sign on the front of the building is not thought to be that helpful. Further, signage could be added to the stand alone sign in the front of the property. The reduced signage would still be double the square footage that is allowed on the entire building. Mr. Kevin Correia, from Convenient MD said the signs the applicants are requesting are internally illuminated. Staff said that illumination standards are part of the codes that will have to be satisfied and will be required for the building permit. It is hard to determine if those standards will be met or if there will be significant light infiltration into the area.

Chair Koppenheffer asked for comments from the public. Staff said no one from the public has come forward since the last hearing and no one from the Public is attending the meeting tonight.

Attorney Hollis declined to add any further comments other than his request is based on the opinion of experts.

Because the application was amended it was discussed if a postponement is necessary. No one from the public came before the Board for either hearing, and the signage request has been reduced with the amendment, therefore it is felt that the public hearing could be closed.

The Public Hearing Was Closed.

If this building was completely vacant and had no signs, a total of 141 square feet of signage would be permitted for the entire building. The applicants' amended request is about 2.5 times the amount of signage allowed for the entire building. There is also concern about the amount of illumination of such large signs.

Mr. Nash MOVED on August 3, 2020 and August 17, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Morgan Hollis, Esq. on behalf of CONVENIENT MD LLC (applicant) and CT BROWN & FAMILY LLC regarding 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

I. FINDINGS OF FACT

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

1. The subject property is improved with a single-story commercial building partly occupied by Citizens Bank and AT&T. The remainder of the building is currently vacant and was most recently occupied by D'Angelo's and Radio Shack. The building is bounded on all 4 sides by public streets (Route 12 A, Interchange Dr, Airport Rd, and Dwinell Dr).

2. Convenient MD – an urgent care & walk-in clinic – proposes to occupy the space formerly leased by D’Angelos while AT&T and Citizens Bank will more or less remain in their current locations. In connection with Convenient MD’s occupancy, the applicant proposes to add a turret to the northwestern corner of the building.
3. The total sign area for the existing tenants – Citizen’s Bank and AT&T – is approximately 193 sq. ft. (67 sq. ft. of building sign area for AT&T and 126 sq. ft. of building sign area for Citizens Bank). Pursuant to Section 608 of the Zoning Ordinance, the building (as proposed to be renovated with the addition of the turret) is permitted to have 141 sq. ft. of sign area. The existing building sign area exceeds what is permitted by +/-52 sq. ft. (193 sq. ft. – 141 sq. ft.). Consequently, there is no building sign area available for a third tenant.
4. The applicant initially proposed to install three (3) 160 sq. ft. wall signs for a total of 480 sq. ft. of sign area advertising Convenient MD. Following the August 3, 2020 hearing, the applicant revised its proposal to request a wall sign of 160 sq. ft. to be located on the northern side of the building, a wall sign of 125 sq. ft. on the western side of the building, and a wall sign of 75 sq. ft. on the southern side of the building. This will result in total sign area for the property of +/-653 sq. ft. (+/-193 sq. ft. of existing sign area for Citizens Bank and AT&T, plus 360 sq. ft. of sign area for Convenient MD).
5. Per Section 608.4.A.1.a of the Zoning Ordinance, the total permitted sign area for the building according to the applicant is +/-141 sq. ft. To allow building sign area of +/-553 sq. ft., a Variance from Section 608.4.A.1.a is required.
6. 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).
7. The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on July 15, 2020.
8. No one from the public participated in the public hearing.

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)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 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 (Section 801.2.A.5.a):

The fact that the property is surrounded on four sides by street frontage. They cannot use the street frontage to justify signage increase in itself.

- 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)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **17th day of August 2020**, hereby **GRANTS** the request of Convenient MD to install the following signs at 1 Interchange Drive (Tax 114, Lot 9):

- a wall sign of 125 sq. ft. on the northern side of the building,
- a wall sign of 100 or 75 sq. ft. on the western side of the building, and
- a wall sign of 75 sq. ft. on the southern side of the building;

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 Mr. Patterson.

The Board felt the size of the signage in the motion is too large. The Board discussed if it is appropriate for the Board to pass a variance with a different amount of signage, different from what was requested by the applicant. Mr. Corwin said it is possible to place conditions on a request for variance and changing the size of the sign and approving could be considered to be a condition of approval. It is not clear if the Board should refashion the request. The Board should keep away from negotiations. The hearing could be reopened, and the applicants ask if they would like to revise their request.

Chair Koppenheffer left the meeting due to technical issues.

Mr. Patterson MOVED to appoint Mr. Nash as temporary chair.

Seconded by Mr. Katz.

Roll Call Vote:

Mr. Newlove, Mr. Patterson, Mr. Katz and Mr. Nash all voted yea.

None voted nay.

Chair Koppenheffer returned to the meeting before discussion convened.

Chair Koppenheffer stated there is not any reason that they cannot state what the applicant requested a certain footage and the Board believes it is an unreasonable amount of signage, given the total is 140 square feet.

Staff indicated that reasonable use is a subcategory to the variance criteria. The Board is to decide whether the use is a reasonable one or not. It's unusual for the Board to suggest a condition that is a reasonable use. The testimony of the required signage and the alternative the Board is suggesting may not allow the applicant to achieve their objective. Further the Board's suggestion far exceeds the allowable signage.

Signage is to inform the public. There are other circumstances where all the signage has been used. There does not appear to be a hardship that would ask for 3 times the maximum signage allowed for the building. There is concern for the applicant, however the applicant should be saying what is acceptable and the Board should not be making the determination.

Chair Koppenheffer asked if a variance should be denied and allow the applicant an opportunity to revise the application.

Chair Koppenheffer suggested continuing this deliberation and decision until September 8 to allow the applicant the opportunity to amend the application. If a new application is not received the Board can deny the application and start again. The applicant will have a week to submit an amendment to the application.

The Public Hearing is Reopened.

Five Board Members thought the size of the signage that would be appropriate is:

- a wall sign of 125 sq. ft. on the northern side of the building,
- a wall sign of 75 sq. ft. on the western side of the building, and
- a wall sign of 75 sq. ft. on the southern side of the building;

Mr. Nash MOVED to table the motion and adjourn the hearing until September 8, 2020 to allow the applicants to modify their application.

Seconded by Mr. Newlove.

This will give the applicant the opportunity to come forward with more reasonable size of signs.

Roll Call Vote

Mr. Newlove, Mr. Katz, Mr. Patterson, Mr. Nash, and Chair Koppenheffer all voting Yea.

None voted Nay.

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

Attorney Hollis commented he has no questions about the procedure. The deadline for submissions for the next meeting is 10 days prior to September 8, 2020.

4. PUBLIC HEARINGS-NEW

- A. William M. & 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. **#ZB2020-22-VAR**

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

Board Members have spent a significant amount of time reading the submission by Attorney Burke and the letter of the abutter of the property. There are issues of fact that would likely require a site walk to see the location from the Grizzaffi property and the property of the abutter.

Mr. Katz MOVED that the Board take a site walk and see the Grizzaffi property from the perspective of the Grizzaffi property and also, if invited, see the Grizzaffi property from the

perspective of the abutter who also seems to be greatly aggrieved about this, so that we would be able to best make our own determinations of what the situations on the ground actually are. Secoded by Mr. Nash.

Chair Koppenheffer said the Board can hold a viewing, which means the Board would meet at the Grizzaffi property on September 8, at 6:00. Then the Board would leave the property and meet remotely from their homes at 7:00 for the regular meeting. This would give both the applicant and the abutters an opportunity to point out their concerns. The Board said it would likely take more time.

Mr. Nash MOVED to amend the Motion adding: The Board will hold a site walk at the Grizzaffi Property on September 8, 2020 at 5:30 PM and continue the public hearing at 7:00 PM.

Secoded by Mr. Patterson.

Roll Call Vote

Mr. Patterson, Mr. McDonough, Mr. Nash, Mr. Katz and Mr. Koppenheffer all voting Yea.

None voted Nay.

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

The Public hearing is continued until 5:30 on September 8 at the applicant's property. The Public is entitled to attend at the site and can ask questions. The hearing will take place at the regular meeting starting at 7:00 where the public will be heard. There will be two agendas, one for the site walk specifically and one for the regular meeting that starts at 7:00 PM.

5. REQUEST FOR REHEARING

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

Mr. McDonough and Mr. Newlove were appointed as voting Members for this hearing. Mr. Nash recused himself and Vice Chair Mercer was absent.

In a motion for a rehearing there are two alternatives, to deny or grant the rehearing. If a rehearing is granted, it means the Board will hear the whole case again. Board Members shared their perspectives about rehearing this case.

Mr. Katz MOVED to deny the request for a rehearing.

Secoded by Mr. Newlove.

Some Members were in favor of a rehearing. The Board made suggestions that were not taken by the applicant. The letter from Mr. Schuster raised issues that should be addressed.

Other Members were not supportive. It is not thought that the Board made any errors. There are some facts that could have been made and were not brought forth at the time of the hearing. The property is thought to be a substandard property. The points represented in the letter to the Board, about comments made during the hearing about the car washing operations, were not thought to be an

accurate description of the comments made during the hearing. The testimony regarding the operation and the stages of the operation, that the applicant says require the size of the building the applicant is requesting, were discussed. The wetlands issues on this property are significant and worthy of consideration. Mr. Patterson stated that he understood the discussion to be different at the previous meeting and suggested reviewing the Minutes before voting.

Roll Call Vote

Mr. Newlove, Mr. Katz and Chair Koppenheffer all voting Yea.

Mr. McDonough and Mr. Patterson voted Nay.

**The Vote on the Motion was approved (3-2).*

Mr. Nash rejoined the meeting.

6. STAFF COMMENTS-NONE

7. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 8:45 PM.

Seconded by Mr. Nash.

Mr. McDonough was given voting privileges for this Motion.

Roll Call Vote

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

None voted Nay.

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

Respectfully Submitted,
Linda Billings
Recording Secretary