

FINAL

**CITY OF LEBANON
ZONING BOARD OF ADJUSTMENT
September 17, 2018
City Hall—Council Chambers
7:00 p.m.**

MEMBERS PRESENT: Vice Chair Jennifer Mercer, Dan Nash, Travis Griffin, Alan Patterson Sr. (joined 7:30pm)

MEMBER ABSENT: Chair William Koppenheffer

STAFF PRESENT: Zoning Administrator Tim Corwin

I. CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Vice Chair Mercer. Vice Chair Mercer clarified that with three members present, the applicants would need all three members to vote in the affirmative in order to gain an approval.

II. APPROVAL OF MINUTES: August 20, 2018

Dan Nash moved to approve the minutes of the Lebanon Zoning Board of Adjustment meeting of August 20, 2018.

Seconded by Travis Griffin.

**The motion passed unanimously 3-0.*

III. PUBLIC HEARINGS (Continued)

- A. **AMENDED NOTICE** SUSAN ACKERMAN and ERIK & ELSA ROTH, 287 POVERTY LANE (Tax Map 188, Lot 31) & 284 POVERTY LANE (Tax Map 105, Lot 100), zoned RL-1. The subject properties are separated by Poverty Lane. Applicants propose to adjust the boundaries of the subject properties in order to merge a 1.0 acre portion of 284 Poverty Lane with 287 Poverty Lane. The proposed boundary line adjustment requires a Variance from Appendix A of the Zoning Ordinance which defines “lot” as a parcel of land “undivided by a street”. #ZB2018-17-VAR**

Susan Ackerman and Erik Roth appeared in support of the application. At the hearing in July the Zoning Board expressed a desire to seek counsel from the City Attorney. The City Attorney suggested merging the two lots which is the basis for the variance being sought.

Vice Chair Mercer asked for questions or comments from the Board.

There were no further comments or questions from the Board.

Vice Chair Mercer opened the public hearing.

Hearing no comments from the public, Vice Chair Mercer closed the public hearing.

DELIBERATION/DECISION

Mr. Griffin asked Mr. Corwin if there are any concerns over establishing precedent in the future. Mr. Corwin said that the City Attorney was comfortable with the recommendation.

Travis Griffin MOVED that on July 16, 2018 and September 17, 2018, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Susan Ackerman on behalf of herself and Erik & Elsa Roth regarding 287 Poverty Lane (Tax Map 188, Lot 31) & 284 Poverty Lane (Tax Map 105, Lot 100), zoned RL-1. The subject properties are separated by Poverty Lane. Applicants propose to adjust the boundaries of the subject properties in order to merge a 1.0 acre portion of 284 Poverty Lane with 287 Poverty Lane. The proposed boundary line adjustment requires a Variance from Appendix A of the Zoning Ordinance which defines “lot” as a parcel of land “undivided by a street”. #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 properties are located directly across Poverty Lane from one another. 284 Poverty Lane 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. The use of the barn has historically been associated with 287 Poverty Lane and is currently 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 applicants propose to adjust the boundaries of the subject properties in order to merge a 1.0 acre portion of 284 Poverty Lane with 287 Poverty Lane. The 1.0 acre parcel – which contains the historic barn - is identified as Parcel B-2 on the plot plan submitted as part of the application materials. As proposed, 284 Poverty Lane will decrease in size from +/-5.0 acres to +4.0 acres and 287 Poverty Lane will increase in size from +/-6.9 acres to +/-7.9 acres.*
- 3. Per the definition of “lot” in Appendix A of the Zoning Ordinance, a lot may not be divided by a street. Therefore, a Variance is required to merge a portion of 284 Poverty Lane with 287 Poverty Lane, located across the street.*
- 4. “Lot” is defined in Appendix A of the Zoning Ordinance as a “single unit or parcel of land in the same ownership throughout, with ascertainable boundaries and undivided by a street.” Because a lot cannot be divided by a street, the one-acre area containing the historic barn cannot be merged with 287 Poverty Lane since the one-acre area and 287 Poverty Lane are divided by a street. Therefore, in order to permit the proposed boundary line adjustment and merger, a Variance from the definition of “Lot” is required.*
- 5. 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).*

6. *The applicant has submitted testimony addressing the §801.2 Variance criteria in an application received July 2, 2018 and revised application materials submitted on August 30, 2018.*
7. *No members of the public spoke for or against the application.*

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the 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 one-acre parcel has historically been associated with the barn across the road and the property is subdivided by a road which predates the establishment of the ordinance.*
 - 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. (§801.2.A.5.a.i)*
 - ii. *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 17th day of September, 2018, hereby **GRANTS** the request of Susan Ackerman and Erik & Elsa Roth for a Variance for 287 Poverty Lane (Tax Map 188, Lot 31) & 284 Poverty Ln (Tax Map, 105, Lot 100) from Appendix A of the Zoning Ordinance to adjust the boundaries of the subject properties in order to merge a 1.0 acre portion of 284 Poverty Lane with 287 Poverty Lane, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:*

1. *The applicant shall obtain Boundary Line Adjustment approval from the Planning Board for the proposed subdivision.*

Seconded by Dan Nash.

***Vote was 3-0 in favor. MOTION approved.*

IV. **PUBLIC HEARINGS – New:**

- B. **#ZB2018-19-SEVAR ROUTE 120 REALTY, INC., 0 NH ROUTE 120 (TAX MAP 10, LOT 9), ZONED IND-L. Request for a Variance from Article III, §303.2 of the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling which is not a permitted use in the IND-L District. #ZB2018-20-VAR**

Marc Milowsky and Andrew Garthwaite appeared on behalf of the application. Mr. Milowsky is the owner of the property and is seeking to change the property zoning from a Light Industrial zone to a Residential zone. He presented a proposed site plan to build residential condominiums that would be in keeping with the neighborhood aesthetic. Mr. Garthwaite reviewed the wetland areas of the site and preliminary site plan. There are currently 72 parking spaces and they are considering 86 spaces and 34 additional parking spaces that would be underneath the 26-unit multi-family dwelling.

Mr. Garthwaite reviewed the ordinance and the criteria for granting a variance. He noted the difficulties that are present with developing this property. Mr. Garthwaite said that the multi-family dwelling would have a small footprint. He said that multi-family housing is a component of a planned business park. He discussed similar developments.

Vice Chair Mercer asked for questions or comments from the Board.

Mr. Griffin asked about the affordability of the proposed units. Mr. Milowsky said that planning is in the early stages and the selling prices will depend on the quality of the materials used. Mr. Griffin asked about the application's assertion that the property will be energy efficient. Mr. Garthwaite said that the type of windows and insulation will reduce sound, offer good insulation, and that greener building practices are more popular with consumers. Mr. Garthwaite said that Efficiency Vermont has a designation for high performing buildings, but New Hampshire does not have a similar program. Mr. Griffin asked about plans for a potential solar array. Mr. Milowsky said that they would like to include solar arrays but there are no set plans now because they are still in the planning phase.

Mr. Patterson joined the meeting at 7:30pm.

Mr. Nash said that the application references other uses that would be allowed. Mr. Milowsky said that other uses were considered but were not feasible. Mr. Nash said that the variance requires that a hardship be demonstrated and that it is difficult to assess what the hardship is for this application. Mr. Griffin asked for more information regarding the retaining wall and the parking requirements. Mr. Garthwaite said that the office use would require considerably more parking than the multi-family dwelling proposed. Mr. Milowsky said that they had been unable to get permission from adjoining property owners to allow large equipment to build a retaining wall that would be necessary to build an office.

Vice Chair Mercer asked about the overflow parking that happens during dinner service at Jesse's Restaurant. Mr. Corwin clarified that the parking being proposed is two spaces short of what Lebanon would require for the dwelling being proposed. Vice Chair Mercer asked about the wetlands that appear to be impacted by the proposed development. Mr. Corwin said that it was unclear at this time whether they would need to get approval for the wetland impact. Mr. Patterson asked about access for emergency vehicles since parking can be difficult.

There were no further comments or questions from the Board.

Vice Chair Mercer opened the public hearing.

Hearing no comments from the public, Vice Chair Mercer closed the public hearing.

DELIBERATION/DECISION

Mr. Griffin noted that the applicants refer to the Master Plan. He said that affordable housing is on the Master Plan but he is unsure whether these units will be affordable. Mr. Nash noted that the hardship is unclear. Mr. Griffin and Vice Chair Mercer said that since the applicant had previously attempted to develop the lot for a permitted use but was unsuccessful, it could be considered a hardship to not grant a variance allowing the lot to be developed. Mr. Patterson said that he shared similar concerns and the testimony of the applicant regarding the lack of success in developing the lot for a permitted use was acceptable. He also asked if the applicant could provide documentation that the attempt to build the retaining wall was unsuccessful. Mr. Milowsky testified regarding the challenges that he encountered during that project. Mr. Nash noted that not having permission from abutters is not necessarily prohibitive to building a retaining wall. Mr. Patterson expressed concern over the wording of the motion so that any precedent created would be clearly defined. There was general discussion regarding the parking requirements for different types of uses.

A motion was started however continued discussion made it clear that a vote would not be unanimous and more information was needed.

Vice Chair Mercer suggested continuing the hearing until more information could be made available regarding the testimony of the applicants that attempts were made to develop the property under a conforming use. The Board is asking the applicants to provide documentation or support to substantiate the claim that it would be a hardship to develop the property under the statute.

Dan Nash MOVED to continue the hearing until October 15, 2018.

The MOTION was seconded by Mr. Patterson.

Vote was unanimous, 4-0. Hearing is continued.

V. OTHER BUSINESS: None

VI. STAFF COMMENTS: None

VI. ADJOURNMENT

Dan Nash moved for adjournment. Seconded by Travis Griffin.

****The motion passed unanimously, 4-0.***

The meeting was adjourned at 8:10 p.m.

Respectfully submitted,
Brandy Sailors-Dow
Recording Secretary