Lancaster Zoning Board
Location: Lancaster Town Hall
July 26, 2023

Call To Order: Chair Linda Ogle opened the meeting at 1832H and led the Pledge of Allegiance.

Roll Call:
Regular Members Present: Chair Linda Ogle, Vice Chair Tricia Frenette, Steve Young, Nate Kenison
Absent: Les Hilton
Alternate Members Present: Donald Freddette, Melissa Potter
Absent: Chris McVetty
Others Attending: Land Use Coordinator Robin L Irving, Applicant Agent Sharon Kopp

Chair Ogle recommended moving Don Freddette to a voting member for the meeting. Steve Young moved to assign Don Freddette as a regular voting member for the meeting. Tricia Frenette seconded the motion. All Board members voted to assign Don Freddette as a regular voting member for the meeting, no objections. *Motion passed.*

Minutes:
Linda Ogle stated that on page 8 under LUP #8 regarding the Yellow Deli, it was not she who commented about ADA access; the comment and inquiry was from Melissa Potter, so the source name should be changed. Steve Young moved to approve the June 28, 2023, meeting minutes as amended. Tricia Frenette seconded the motion. All members voted to approve the June 28, 2023, meeting minutes as amended, no objections. *Motion passed.*

Appointments: None

Public Hearings:

Chair Ogle OPENED the PUBLIC HEARING for ZBA Case #547:

Case# 547—**LRH-2 LLC** for a Variance (Area) concerning Article 5 "Districts," Section 5 "Central Business District Regulations," Subsection Lot Dimensions: Density "6 units per 10,000 sf." Owner(s)/Applicant(s) wish to construct an additional commercial basement unit wherein 2 additional residential units (1 per second and third floor) and existing ground-floor commercial unit were approved on 3/30/2022 per ZBA #535. Land Zoned Central Business District South. [Tax Map P07 Lot 036 (0.095 acres; 4,138 sf; 55 Main Street].

Chair Ogle read the Applicant's Variance Application:

A variance is requested from *Article 5, Section 5.00*, of the zoning ordinance to permit: *"construction of commercial space in the basement from one tenant to allow for two tenants."*

1. Granting the variance would not be contrary to the **public interest** because:
   Applicant's Response: "*The variance does not alter the essential character of the neighborhood nor is it contrary to the zoning interests. Parking will be provided through the Canal Street parking lot, which provides ample space throughout the day.*"

2. If the variance were granted, the **spirit** of the ordinance would be observed because:
   Applicant's Response: "*Granting the ordinance [variance] does not affect the safety, health, or general well-being of the public.*"

3. Granting the variance would do substantial **justice** because:
   Applicant's Response: "*It would be consistent with the area current retail/commercial use.*"

4. If the variance were granted, the **values** of the surrounding properties would not be diminished because:
   Applicant's Response: "*It would only increase the value of the surrounding properties due to the vibrancy created.*"

5. Unnecessary Hardship
   A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary **hardship** because:
      i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

   Applicant's Response: "*It maximizes floor space of the building and allows for two more commercial spaces for offices or new businesses for our community.*"

      ii. The proposed use is a reasonable one because:
      Applicant's response: "*It maximizes the space of the building and creates opportunities for new office/retail space for business to come to town.*"

   B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
   Applicant's Response: "*The size and shape of the building lends itself to the floor space for commercial/retail. Losing this space creates a financial hardship due to the cost of construction and not allowing it to be utilized.*"

Applicant Sharon Kopp said that LRH originally wanted to rent the basement as one whole commercial space, but splitting the square footage while already having two bathrooms, made sense to request the option for two commercial units in the basement. The space is not advertised for lease so there are no prospective tenants. Construction is currently ongoing to fix the water damage from flooding. The space is entirely below grade. The space is radon-compliant. The entrance to the basement space is off Middle Street. There is access by ramp to the entryway. There is a full flight of stairs to the basement space and there will be doors to the separate businesses at the bottom of the stairwell. The elevator shaft has been constructed but there is no elevator at this time. The spaces would not be utilized as residential space and are strictly dedicated to commercial use. Because the building is sprinkled, code does not require a second egress. Tenant parking will be in the municipal parking lot(s) and not the on-street parking; this parking restriction will be included in the lease agreement. The property owner continues to seek procurement of nearby properties to create dedicated parking.

LUC Irving explained that the current density of the building per the variance approved in March 2022 allows 4 apartments on the 3rd floor, 4 apartments on the 2nd floor, one commercial space on the ground floor, and storage in the basement. The issued land use permits are based on plans consistent with each designated use. She clarified that, through land use permitting, construction was permitted to 1) construct 4 apartments per 2nd and 3rd floors, and 2) upgrade the ground floor and create client treatment rooms, a gym area, and reception area. No Land Use Permit was issued specifically for the basement improvements because storage lockers were ancillary to the apartments and no construction of new rooms or spaces were proposed. After issuance of the ground floor Land Use Permit, the tenant requested use of half of the basement for a non-publicly-accessed break room and office essentially extending the ground floor commercial use to half of the basement. The Lancaster Fire Department, Health Officer, and Land Use/Code Enforcement inspected the premises on June 27th, 2023, to identify any code related issues given that the use was changing from storage to tenancy; the sprinkler system was not completed at the time and tenancy was made contingent upon the system being operational. The basement space subsequently flooded, requiring extensive construction and time to remediate, and the ground-floor tenant decided not to use the basement space. LUC Irving had published in the Notice of Public Hearing that "an additional commercial basement unit" was being sought, but this was not clear whether the density increase was for one or two units. Irving clarified that the request is for the whole basement to be used for commercial purposes with an option to split the space in half as previously proposed.

One of the Board members asked Applicant Kopp what the usable square footage is, or how big will the office spaces be? Kopp responded that the floor space is roughly 4000 square feet but the square footage of the elevator shaft and the machine room must be subtracted, so there is about a total of 3000 square feet or 1500 square feet per office space. Another Board member asked if density is based on square footage of the building or the parcel? LUC Irving responded that density is based on square footage of the lot; in this case, the building is roughly the same size as the lot. Irving further clarified that the property's density is currently at 9 units with 8 residential units and 1 commercial unit; the proposal is for a density of 11 units with 8 residential units and up to 3 commercial units. Kopp emphasized that there is still the possibility that a tenant will want the whole basement space, but granting a variance for up to 2 units opens up options for lessees. LUC Irving mentioned that, although no properties other than the Copper Pig utilize basement space for commercial use, the distinction between other properties and the applicant's property is the installation of a sprinkler system.

Nate Kenison asked more about the parking—presumably residential tenants would not be parking on the street during the day because they would be at work, therefore there would be no conflict from residents, but what prevents business owners from parking in the spots? Kopp responded that business owners use on-street parking all of the time, but in this case the intent is to direct parking to the lots. Kenison stated that there is limited available space in the downtown. Melissa Potter emphasized that *handicap-accessible* space is limited.

Chair Ogle **OPENED TO THE PUBLIC** the PUBLIC HEARING

There were no comments or questions from abutters.

Chair Ogle **CLOSED TO THE PUBLIC** the PUBLIC HEARING

Tricia Frenette moved to **APPROVE** the application for Variance **WITH CONDITIONS** that: 1) there shall be a maximum number of two (2) commercial units in the basement, and 2) provisions

restricting commercial tenant parking to the municipal parking lot(s) during business hours shall be included in the tenant's lease. Don Freddette seconded the motion. All members of the Board voted to **APPROVE** the application for Variance **WITH CONDITIONS** that: 1) there shall be a maximum number of two (2) commercial units in the basement, and 2) provisions restricting commercial tenant parking to the municipal parking lot(s) during business hours shall be included in the tenant's lease, no objections. *Motion passed.*

Tricia Frenette reminded Applicant Kopp that there is a 30-day appeal period to consider, especially if construction is contingent upon this decision. LUC Irving reminded the applicant that a Land Use Permit is required for the work in the basement.

Chair Ogle CLOSED the PUBLIC HEARING for ZBA Case #547.

OTHER BUSINESS:

Land Use Permits: LUC Irving announced the most recently issued land use permits: 1) Kevin Blakley at 12 First Street; installation of a single-wide onto a pad, shed, deck, and access ramp, 2) Wendy Ann Eardley at 260 Portland Street; construct carriage barn-style fabricated kit single family dwelling with walk-out basement on concrete foundation. LUC Irving described the location to be across from Roger's Campground and the driveway is the gravel access just below the scenic overlook, 3) Lancaster Historical Society at 226 Main Street; replacement of the wall sills along south face and section of north face of building. Kingdom Construction is doing the work pursuant to a grant, 4) Sharen Robertson at 55 Buffalo Road; construct deck/platform on blocks, 5) Nicholas Ferrante at 93 Stebbins Hill Road; construction of a wood-framed, poly-covered greenhouse on piers, 6) John & Deborah Garrison at 194 Elm Street; demo existing deck and replace in same footprint with resin/PVC deck on piers with additional bumpout for a grill, 7) Lee Beane o/b/o Thompson Mill Properties LLC at 40 Canal Street; COMMERCIAL demo existing bathrooms and reconstruct, installation of delivery/loading ramp, some exterior brickwork, install hard-wired exhaust fan, smoke & CO detectors, and fire-rated walls. LUC Irving stated that the Fire Department, Health Department, and Land Use Office inspected the premises for code deficiencies prior to an anticipated tenant, Cutekids Cupcakes owned and operated by Jessica Fillion, leased the commercial kitchen for order-and-pick-up. The Town approved temporary use of the kitchen so long as there was a winter shutdown and all fire code deficiencies were resolved by April 1st, 2024, contingent to a spring opening of the bakery. Don Freddette asked why a sprinkler system is not required? LUC Irving responded that the square footage being used triggers the sprinkler requirement. Currently, the use is only for the kitchen; the adjacent warehouse space is being used for storage only. There have been a couple of proposed uses for the warehouse, but the requirement for the sprinkler system makes the improvements cost-prohibitive. 8) Lisa & James Hampton at 8 Rowell Road; interior renovation of the kitchen, 9) Patricia & Joseph Larsen at 94 Elm Street; construct 3-car carport over existing area. The applicant has a shared driveway and parking spots adjacent to the right-of-way. Pat Larsen did notify the Land Use Office that the material will be amended to wood versus metal due to cost, 10) Jacob Cooper at 101 Page Hill Road; construct stick-built ranch-style single family dwelling on full concrete foundation with length-wise open porches on piers. Nate Kenison asked if this home was a modular? LUC Irving responded that it is not and that the property owner is building it himself, 11) Dennis and Constance Patnoe at 96 Summer Street; demo existing garage and construct an addition with and attached garage and carport. Don Freddette asked why the 911 address is assigned off Summer Street? LUC Irving responded that the front doorway and street access used to be off Summer and the layout was changed around 2008, and 12) Lisa Hampton o/b/o Out East Properties LLC at 20 Middle Street; interior renovation of the existing business office.

Sign Permits: 1) Mark Newman o/b/o Chadwick Baross at 369 Main Street for "Chadwick Baross." LUC Irving said that they were permitted to have a sign on the building facing the highway and another sign along the shared access. 2) Mercedes Belanger o/b/o Mercedes and Company at 369 Main Street for "Mercedes and Company." Both businesses will be seeking to put a business sign on a monument along the roadside.

Planning Board Decisions: None.

Training Topics/Materials: None

Announcements/Correspondence: The Land Use Coordinator and Town Manager will be meeting on August 10th with Steve Whitman and Crystal Kidd from Resilience Planning to review the draft housing provision amendments.

Other:

The Board discussed the requirement for an application to the Zoning Board regarding the placement of the micro-mini off McGary Hill Road near the fire pond. LUC Irving explained that this is the "tiny house" that was permitted through Land Use and has conditions of approval to remove the wheels and undercarriage and secure on a foundation or slab as well as get a septic. Irving said that had the applicant been compliant with the conditions of approval, the structure would be compliant with zoning. In the meantime, Land Use is anticipating the proposed zoning amendments to address this type of structure specifically. Irving said that code enforcement will likely start at the expiration date of the Land Use Permit. Tricia Frenette pointed out that just up the street from that micro-mini is a mobile home that was allowed to be situated on the land during period of construction of the home but was not removed upon completion of the home. LUC Irving was aware of the expiration of the permitted use but has not commenced an enforcement action yet because she has focused her compliance enforcement on the more 'visible' properties along the Town's major corridors. Frenette's point was that these homes are not consistent with zoning nor are they consistent with the Master Plan; there are some nice homes in that area and these non-permitted structures devalue neighboring properties and basically look unattractive.

Tricia Frenette asked when the Boyd foundation is expected to be removed? LUC Irving responded that the Board did not set an expiration period in their statement of findings. Given that there is no time period, the time before enforcement needs to be reasonable, so Irving expects to wait until after the construction season has ended or after the snow flies. She needs to follow up with the prospective buyer to see if there has been any headway with purchase negotiations. Irving reminded everyone that a demo permit application would have to be filed in order to remove the foundation and none has been pursued. Don Freddette recalled that the applicant had said that the land was wet and the foundation often had water; Freddette recommended that a condition for punching a drain hole into the floor be included in any demo permit, especially if it is buried. Irving said that the Board specifically said that the foundation had to be 'removed,' not buried.

LUC Irving said that John Garrison and Kathy Jean Lavoie had developed a fee/rate study for Land Use Permits with the intent to recover costs. Garrison intends to present his analysis to the Board of Selectmen with a recommendation for a significant increase in fee(s). All of the Board members agreed that the current fees are too low, especially from a cost-recovery perspective. LUC Irving

expressed concern for raising fees too much all at once, and feels that a phased approach will not have as significant an impact on compliance efforts.

Steve Young voted to recommend to the Board of Selectmen revocation of Chris McVetty's appointment due to non-attendance. Don Freddette seconded the motion. All Board members voted to recommend to the Board of Selectment revocation of Chris McVetty's appointment due to non-attendance, no objections. Motion passed. LUC Irving agreed to reach out to McVetty to see if he would submit a resignation so that it keeps his options open for future involvement, and if he did not want to resign, then she would draft the recommendation letter to the Board of Selectmen.

Steve Young moved to adjourn the meeting at 1933H. Don Freddette seconded the motion. All Board members agreed to adjourn the meeting at 1933H, no objections. *Motion passed.*

Respectfully submitted,
Robin L. Irving, Land Use Coordinator

Approved: Linda Ogle (RN)

Linda Ogle, Chairman of the Lancaster Zoning Board of Adjustment