

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, February 7, 2022
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Jeremy Katz, Dan Nash, Jennifer Barkley (Alt), Paul McDonough (Alt)-attended remotely

MEMBERS ABSENT: Vice Chair Mercer, Dave Newlove

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.

Mr. McDonough attended remotely due to travel restrictions and is allowed voting privileges.

2. APPROVAL OF MINUTES

Ms. Barkley was given voting privileges for the Minutes.

A. January 3, 2022

Mr. Nash MOVED to approve the January 3, 2022, Minutes as presented in the February 7, 2022, packet with amendment.

Seconded by Mr. Katz.

Amendments. Page 2, Line 19; Remove ‘to’ and Add ‘by.’

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

3. PUBLIC HEARING ITEMS

- A. Cicotte Properties, LLC, 175 Heater Road (Tax Map 64, Lot 30) zoned IND-L:** The property is improved with a non-conforming vehicular sales use. Applicant requests a Special Exception per Section 702.1 of the Zoning Ordinance, or if appropriate, a variance to permit additional parking on the subject property. ZB2021-24-SE - Continued from January 3, 2022

Mr. Nash recused himself from this hearing.

Ms. Barkley and Mr. McDonough were given voting privileges for this hearing.

Barry Schuster, applicant’s attorney, appeared on behalf of the application. Because there is only a four-member Board this evening, the attorney discussed his option to continue this hearing to a future meeting. Staff explained that there is an underlying violation and therefore the hearing should take place this evening. The Board continued to discuss the several months of hearings that it has taken to resolve the situation on the property. After consulting with his client, Mr. Schuster said they would abide by the Board’s decision regarding hearing the application.

Since the last Zoning Board meeting, the Planning Board approved the boundary line adjustment between 175 Heater Road and 30 Little Heater Road. Because it has not been recorded, there is no line adjustment at this time, therefore it is legally still two lots. The Board is only addressing one lot this evening. A second variance request would be needed for the second parcel. Staff explained that, as requested by the applicant, recording of the plot could be a condition of approval, it is up to the Board. Some Board members said there is no application regarding 30 Heater Road and therefore it needs to be addressed separately. There would be a need to expand the use at 175 Heater Road once the property line is recorded.

Mr. McDonough MOVED to continue this hearing until next month.

Mr. McDonough later withdrew the Motion.

The Board discussed the option to withdraw the application or continue the application. The application measurements may be the same and may be amended if necessary. The Board determined to hear the application at this time and continue, if necessary, when the plot line has been recorded.

Attorney Schuster said they are asking for an expansion of use on 175 Heater Road, for which a variance is requested. They reviewed the map that was originally filed in November in the related packet for the December hearing. He referenced a paved parking area that is the expansion they are asking for relief, to use as a parking lot for the car dealership. The City records indicate when the building was instructed and when the building was expanded and when there was a renovation of the building. The property owner obtained all of the required permits for those changes. The parking area in question was not referenced previously in the City records. Mr. Schuster discussed several sections of the Zoning Ordinance, including Section 301.3 that would become moot as the new area would not extend into the setback, Section 402.2 which relates to the flood plain that would be moot because the paved area is above the flood plain and Section 901.D would be, if granted, an allowable use. Using the measurements on a survey map, they discussed the portion of expansion of the non-conforming use. This entire property was rezoned in the 1990s, after the original construction of the dealership. Mr. Schuster discussed the criteria for the variance. The applicants believe the additional parking area would not impact the neighborhood as it is surrounded by businesses and light industrial, with multiple parking areas; the dealership is in character of the area and is a reasonable use.

Mr. McDonough clarified that the applicants are asking for a variance, and not a special exception. Mr. Katz asked if expanding the use would be contrary to public interest, because it is no longer a permitted use. The applicant said it is a small incremental use increase, around 7.2%, merely expanding a parking area, not building a new building. He believes it does not alter the area and it would be harmful to the owner to deny a modest growth. He clarified the hardship criteria. The applicants believe the property has a hardship because the zoning rules changed and determined the use was nonconforming, therefore it is unique. There may or may not be precedent for this hardship.

On the original application for expansion, many years ago, there is no evidence there was the intention to expand the dealership. A permissible hardship is essential for the approval of a variance and the Board asked for legal precedent that supports the applicant's determination of their hardship. The applicants intend to add around 14,797 square feet of nonpermeable space.

Mr. Katz MOVED to continue this hearing until Monday, March 21, 2022, and the public hearing be kept open for the purpose of the submission of the mylar, additional briefing or other documentation regarding legal precedent for the hardship analysis, and any discussion or other presentation that the public would like to make.

Seconded by Ms. Barkley.

****The Vote on the Motion was unanimously approved (4-0).***

Mr. Nash returned to the meeting.

4. STAFF COMMENTS

The March 7 meeting is changed to March 21 due to the election.

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 8:43 PM.

Seconded by Mr. Katz.

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

Respectfully submitted,
Linda Billings
Recording Secretary