



**LEBANON ZONING BOARD OF ADJUSTMENT
JANUARY 3, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
1. **Call to Order**
 2. **Approval of Minutes**
 - A. December 5, 2022
 3. **Public Hearing Items**
 - A. **Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111, Lot 9), zoned RL-2:** The property has two principal uses: a produce stand and a contractor's yard. Applicants request a Special Exception pursuant to Section 313.2 and Section 702 of the Zoning Ordinance to allow a portion of the contractor's yard to be used as storage for the produce stand. **ZB2022-30-SE - Continued from December 5, 2022**
 - B. **Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD:** Applicant proposes to construct a 3-story addition onto the existing building which is occupied by a non-conforming warehouse use. To allow the expansion of the non-conforming warehouse use, applicant requests a Variance from Sections 307.2 and 702.5 of the Zoning Ordinance. **ZB2023-01-VAR**
 - C. **National Institute of Modern Martial Arts (applicant), Etna Road Associates (property owner), 112 Etna Road (Tax Map 26, Lot 18), zoned IND-L:** Applicant requests a Special Exception per Sections 310.2 and 604 of the Zoning Ordinance for a proposed a group day care facility. **ZB2023-02-SE**
 - D. **Michael Jared Toon (applicant), David and Kerin Fellows (property owners), 354 Mascoma Street (Tax Map 89, Lot 10), zoned R-1:** Applicant requests a Special Exception per Section 702.1 of the Zoning Ordinance to change the use of the property from a non-conforming vehicular repair use to a non-conforming mountain bike shop. **ZB2023-03-SE**
 4. **Staff Comments**
 5. **Adjournment**
 6. **Election of Officers**
 - A. Chair and Vice Chair

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the

Lebanon Zoning Board of Adjustment Agenda
January 3, 2023

public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

If you have any questions or would like to view the files for the application identified above, please contact the Planning & Development Department by sending an e-mail to planning@lebanonnh.gov, or by calling 603-448-1457, or by visiting the Planning and Development Office located in City Hall during regular work hours, Monday through Thursday, 7AM to 5PM. The application materials will also be posted to the City's website at LebanonNH.gov/Agendas.

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, December 5, 2022
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Dan Nash, Jeremy Katz, Dave Newlove, Paul McDonough (Alt), Catherine Embre (Alt), Jennifer Barkley (Alt)

MEMBERS ABSENT: None

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

Mr. McDonough was given voting privileges for this hearing.

A. November 22, 2022

Mr. Nash MOVED to approve the November 22, 2022, Minutes as presented in the December 5, 2022, packet.

Seconded by Mr. Katz.

**The Vote on the Motion was (4-0-1).*

Mr. Katz abstained because he was not present at the meeting.

3. PUBLIC HEARING ITEMS

A. Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD: Applicant requests a Special Exception per Sections 704 and 801.3 of the Zoning Ordinance to increase the building from two (2) stories to three (3). **ZB2022-25-SE – Postponed from November 22, 2022 This application was withdrawn**

B. Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111, Lot 9), zoned RL-2: The property has two principal uses: a produce stand and a contractor's yard. Applicants request a Special Exception pursuant to Section 313.2 and Section 702 of the Zoning Ordinance to allow a portion of the contractor's yard to be used as storage for the produce stand. **ZB2022-30-SE**

Samantha Medina and Cote Swenson appeared on behalf of the application. Right now, about 50-60 percent of the property is used for the contractor's equipment. She would like to use the extra space for storage for the produce stand, that is needed for seasonal storage. The storage space has been used for this purpose in the past, by previous owners.

1 Mr. Katz asked for clarification of the types of items and what quantity of materials would continue to
2 be used in the storage area. They have decorative items used within the store and some left over
3 products. One of the issues is that there are building applications that have been submitted. The
4 applicants state that the fence issue has been resolved and they are not aware of any additional violations
5 at this time. The only violation is that the contractor's yard is being used by the produce business
6 without approval. This is a good chance to clarify what the applicant needs to do to conform.
7

8 **Chair Koppenheffer opened the Public Hearing.**
9

10 Linda Wadleigh who lives across the street from the contractor's yard appeared. She said the privacy
11 fence does not encompass the entire contractor's lot, only a portion of the lot. They are using another
12 entrance on the side that is not fenced. There is a chain link fence around the property, but it does not
13 conceal the lot, there is no privacy. She feels the property is not being used for the contractor, rather
14 used mostly for other purposes. There are vehicles stored there overnight.
15

16 Chris Childs who lives across from the yard appeared. He discussed the things that are not done. There
17 is overnight parking on the lot and maintenance is done on the lot. A privacy fence has not been
18 installed, there is just a temporary screen on part of the chain link fence. No landscaping has been done.
19 He has been addressing his concerns for over 5 years and it is costing the City additional expense. He
20 believes they are not following the rules and requirements that the City said were necessary.
21

22 The neighbors are offended by the contractor's lot. They are concerned with outside storage, not interior
23 storage. They want the businesses to follow the standards that all Lebanon businesses must do. There is
24 no water or sanitation on the property.
25

26 At this hearing, the Board is not able to address all the concerns from the Public or to determine if there
27 are any violations.
28

29 Mary Lou Childs presented pictures to the Board that were taken this morning. The items in the lot are
30 purely farm stand. She discussed several concerns that go back to 2007 regarding using this property for
31 a contractor's yard and a produce stand. She referenced several emails and complaints that have been
32 filed with the City. Currently, the Christmas lights are on 24 hours and the light pollution is spreading
33 into their bedrooms. There is a wood stove that she believes is not permitted. Staff stated that if there is
34 credible evidence that there are violations on the property, then a special exception cannot be granted.
35

36 Ms. Medina was asked about the portable toilet that is behind the large green house. It is not within the
37 contractor's lot. Ms. Childs asked if these decisions are based on one lot or two lots, one business or
38 two businesses. Staff suggest that a site visit be done to check for violations based on the 2009 approval
39 of the contractor's yard.
40

41 In the conditions for a special exception, there can be no existing violations on the entire property, the
42 approval for the produce stand and the contractor's yard. They can only review for the conditions that
43 were imposed on the property by the Zoning Board. Some apply to all the property; some apply to only
44 part of the property.
45

46 ***Mr. Katz MOVED that this hearing be continued, a site view for the ZBA to be performed at 10 AM***
47 ***on December 17th, 2022, and the remainder of this matter to be completed at the January 3, 2023,***
48 ***regularly scheduled Zoning Board meeting.***
49

50 ***Seconded by Mr. Nash.***
51

1 The Public is entitled to attend this site visit.

2
3 **The Vote on the Motion was (5-0).*

- 4
5 **C. Marissa Mendez & Karl Kristiansen, 1 Dartmouth Avenue (Tax Map 49, Lot 17), zoned**
6 **R-1:** Applicant proposes to construct a new one-family dwelling to be located no closer to
7 Hanover Street than the existing non-conforming one-family dwelling and +/-10 ft. from the
8 lot line shared with 7 Dartmouth Avenue (Tax Map 49, Lot 16). Applicant requests a Special
9 Exception per Section 703.1 of the Zoning Ordinance to expand a non-conforming structure
10 and a Variance from Section 308.2 to construct the proposed home within the minimum
11 required 15 ft. side yard. **ZB2022-31-VAR**

12
13 Marissa Mendez and Karl Kristiansen appeared on behalf of the application. They hope to build a single
14 -family dwelling, replacing a building that is in disrepair. Due to setbacks, it is the only place on the lot
15 they can build a house with an attached garage. They would be encroaching a portion of the lot, which
16 is currently next to an empty lot. The proposed structure would be more conforming than the existing
17 structure. They are proposing that the new structure would still be infringing on the lot line. Part of the
18 reason they are seeking this variance is that they are working with a prebuilt house, and they are not able
19 to modify the structure at will. The existing house is right on the road and a new house would not be a
20 problem. This would be the applicant's primary residence.

21
22 **Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.**

23
24 One of the challenges is the uniqueness of this property. It has several unique factors that constitute a
25 hardship. It fronts on three streets. It is narrow and irregular and has a City street through the property.

26
27 **Mr. McDonough was given voting privileges for this hearing.**

28
29 *Mr. Nash MOVED on December 5, 2022, at a duly noticed meeting of the Lebanon Zoning Board of*
30 *adjustment, there appeared Marissa Mendez & Karl Kristiansen, regarding 1 Dartmouth Avenue (Tax*
31 *Map 49, Lot 17), zoned R-1. Applicant proposes to construct a new one-family dwelling to be located*
32 *no closer to Hanover Street than the existing non-conforming one-family dwelling and +/-10 ft. from*
33 *the lot line shared with 7 Dartmouth Avenue (Tax Map 49, Lot 16). Applicant requests a Special*
34 *Exception per Section 703.1 of the Zoning Ordinance to expand a non-conforming structure and a*
35 *Variance from Section 308.2 to construct the proposed home within the minimum required 15 ft. side*
36 *yard. ZB2022-31-SEVAR*

37
38 **I. FINDINGS OF FACT**

39
40 Based on testimony given, application materials presented, and supporting documents submitted, the
41 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 42
43 1. The subject property is improved with a one-family dwelling that is unoccupied and in a state of
44 disrepair. As shown on the existing conditions plan provided by the applicant, the home is located
45 within the minimum required 20 ft. front yard and is therefore non-conforming to the minimum
46 front yard required for Class 1 lots in the R-1 District.
- 47
48 2. As shown in the plot plan provided by the applicant (titled "Variance Plan"), the applicants
49 propose to remove the existing structures and construct a new home located 10 ft. 9 in. from the
50 front lot line along Hanover Street Extension, and 10 ft. from the side lot line shared with 7
51 Dartmouth Avenue (Tax Map 49, Lot 16).

3. In order to construct the home in the proposed location, the applicants require a Special Exception per Section 703.1 of the Zoning Ordinance to expand the front yard non-conformity and a Variance from Section 308.2 to construct the proposed home within the minimum required 15 ft. side yard.
4. Class 1 lots (lots that are served by municipal sewer and water) in the R-1 District must maintain a minimum front yard (i.e., a space unobstructed by buildings and structures) of 20 ft. See §308.3 of the Zoning Ordinance. The existing home is located 10 ft. 9 inches from the front lot line along Hanover Street Extension and, therefore, is non-conforming to the 20 ft. minimum required front yard.
5. §703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment. In addition, §703.2 of the Zoning Ordinance provides that, “[a]ny non-conforming building or non-conforming structure which is partially or wholly destroyed by reason of any cause whatsoever, including [...] fire [...], may be resumed or restored and operated in its former non-conformity if same is done within two (2) years[.]”
6. The new home is proposed to have a footprint within the minimum front yard that will be greater than the footprint of that portion of the original building that was located within the minimum required front yard. Per §703.1 and §703.2, the applicants are entitled to construct a new home that is equally non-conforming to the Zoning Ordinance and may also apply for a Special Exception to expand the footprint and/or volume of any portion of the building that was non-conforming.
7. In order to grant a Special Exception for the proposed expansion of the front yard non-conformity, the Board must make the findings required per §703.1.A.
8. Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an expansion of a non-conforming structure, the Board must also determine that the proposal meets the general Special Exception criteria, set forth in §801.3.
9. The applicant has submitted testimony addressing the §801.3 criteria in an application received by the Planning and Development Department on November 10, 2022.
10. To obtain the requested Variance allowing the home to be located 10 ft. from the side lot line shared with that abutting property at 7 Dartmouth Avenue (Tax Map 49, Lot 16), 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).
11. The applicant has submitted testimony addressing the Variance criteria in an application received by the Planning and Development Department on November 10, 2022
12. No one from the Public spoke for or against the application.

II. CONCLUSIONS OF LAW

A. Special Exception

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 §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §703.1.A of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements §703.1.A **are** met (§801.3.B):
 - The reasonable use of abutting properties **is not** adversely affected by the proposed expansion. (§703.1.A.1)
 - The proposed expansion will not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance. (§703.1.A.2)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

B. Variance

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 property fronts on three streets, the lot is narrow and irregular, and has a City street crosses the property.

- 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 **5th day of December 2022**, hereby **GRANTS** the requested Variance and 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.

Seconded by Mr. Newlove.

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

- D. **Immersion Montessori School (applicant), Centurion Properties, Inc. (property owner), 434 North Main Street (Tax Map 2, Lot 15), zoned R-3:** Applicant requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance for a proposed a group day care facility use. **ZB2022-32-S**

Ms. Barkley was appointed voting privileges for this hearing.

Juan Garceran appeared on behalf of the application and provided a presentation for the Board that highlighted the Immersion Montessori School. They would like to use this property as a group day care facility. The calculated capacity would be 84 students and 16 staff members. They would be using the facility during the average workday schedule, with some possible weekend use for training. They reviewed the licensing requirements for the outdoor space they would use. There is a site plan for 27 parking spaces. The traffic impact is proposed at 200 trips a day. That would be a 2.9% increase to the already existing traffic.

They would prevent parents from using the neighbor church property for turn arounds. They intend to continue with their existing center, and this is convenient to be shared. This location would be for younger students. The Board discussed the outside play area. The site plan shows new paving, and that has already completed. Gary Neil, Centurion Properties, appeared to answer any questions regarding the property.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

Mr. Nash MOVED on December 5, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Juan Garceran on behalf of Immersion Montessori School (applicant) and Gary Neil, Centurion Properties, Inc. (property owner), regarding 434 North Main Street (Tax Map 2, Lot

15), zoned R-3. Applicant requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance for a proposed a group day care facility use. ZB2022-32-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 property is a +/-0.74 acre lot located on the east side of NH Route 10, directly south of the City of Lebanon/Town of Hanover municipal boundary. The property is improved with a paved parking lot and a two-story, 6,808 sq. ft. legal non-conforming office building constructed in 1960 (office is not a permitted use in the R-3 zoning district).
2. The applicant requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance to convert the use of the building to a group day care facility use. A “group day care facility” is allowed by Special Exception within the R-3 District.
3. In order to grant a Special Exception for a group day care facility, the applicant must demonstrate compliance with the criteria set forth in Section 604 of the Zoning Ordinance and with the general Special Exception criteria set forth in Section 801.3.
4. No one from 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 Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
2. The following conditions/requirements of §604 **are** met: (§801.3.B)
 - a. There shall be a fenced outside play area which shall be free from hazards such as hidden corners; unprotected pools, wells, and steps; poisonous plants such as poison ivy, foxglove, and rhubarb; farm or lawn machinery or implements. (§604.1.A)
 - b. (The play area) shall contain at least 50 square feet of usable play space per child using it, and the average width shall not be less than eight feet. Play areas shall not be permitted in front yards. (§604.1.B)
 - c. By special exception, the Board of Adjustment may waive the requirement for a fence or the requirement that the play area not be in the front yard. (§604.1.C)
 - d. A suitable loading and unloading area shall be provided for those children for whom the facility provides transportation. This area shall be in addition to required parking areas. (§604.2.A)
 - e. Group day care facilities shall comply with all applicable state and federal regulations. (§604.2.B)

- f. One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site. (§604.2.C)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th day of December 2022, hereby **GRANTS** the requested Special Exception per Section 310.2 and 604 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.
2. The outdoor play area shall be located no closer to the front lot line than the front of the building.

Seconded by Mr. Newlove.

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

4. STAFF COMMENTS

Staff thanked the Board for their Public Service. He hopes they will continue to serve in their roles.

5. ADJOURNMENT

Mr. Katz MOVED to adjourn the meeting at 8:30 PM.

Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings
Recording Secretary



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

January 3, 2023 Meeting

Staff Memorandum – ZB2023-01-VAR

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Variance from Sections 307.2 and 702.5 to expand a non-conforming use

Location: 38 Spencer St (78-39)

Applicant/Property Owner:

Mason Storage, LLC

Zoning District: Lebanon

Downtown (LD) District

Property Size:

+/-1.2 acres (+/-52,272 sq. ft.)

Existing Use & Improvements:

+/-13,000 sq. ft. warehouse constructed in 1984, per the City Assessor's records (a non-conforming use in the CBD per §306.2)

Proposed Use:

Construct a 3-story +/-45,000 sq. ft. building expansion; non-conforming warehouse use to continue

Overlay Districts: Flood Plain

Further Approvals Required:

- Site Plan Review
- Building Permit

Attachments:

- 5/6/19 Notice of Decision (ZB2019-10-SE)
- Approved Site Plan (PB2021-13-SPR)
- Application Materials (3 pages)

HEARING NOTICE

Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD: Applicant proposes to construct a 3-story addition onto the existing building which is occupied by a non-conforming warehouse use. To allow the expansion of the non-conforming warehouse use, applicant requests a Variance from Sections 307.2 and 702.5 of the Zoning Ordinance. ZB2023-01-VAR

BACKGROUND

The subject property (outlined in blue in Figure 1 below) is improved with a +/-13,000 sq. ft. warehouse which is a non-conforming use in the Lebanon Downtown (LD) District. Between the building, parking areas, and loading areas, nearly all of the site is improved and devoted to the non-conforming warehouse use.

The property was formerly occupied by a light manufacturing use (Barker Steel), which was a non-conforming use in the Central Business (CB) District, which was the zoning of the property up until 2020. A Special Exception was granted in 2002 pursuant to Section 702.1 of the Zoning Ordinance ("Change of Use") to allow the use of the property to change from a non-conforming light manufacturing use to a non-conforming warehouse use (specifically, a moving and storage business).

On May 6, 2019, the Zoning Board approved a Special Exception to construct a +/-15,000 sq. ft. addition onto the rear of the existing building to accommodate an expansion of the non-conforming warehouse use (ZB2019-10-SE). The addition would have expanded the footprint of the existing building by approximately 115%. A copy of the Zoning Board's Notice of Decision is attached for reference.

Following approval of the 38 Spencer Street addition, Section 702.5 of the Zoning Ordinance was amended in January, 2020, to provide that:

[T]he Board of Adjustment may allow a legal non-conforming use to expand into an addition to an existing building occupied by the non-conforming use provided that the footprint of the addition is no greater than ten percent (10%) of the size of the footprint of the existing building measured as of January 22, 2020.

On October 21, 2021, the Planning Board granted Site Plan approval for the proposed addition (PB2021-13-SPR). A copy of the approved site plan is attached for reference. The addition approved by the Planning Board contained two (2) stories, which doubles the floor area approved by the Zoning Board.

Figure 1. Location Map.

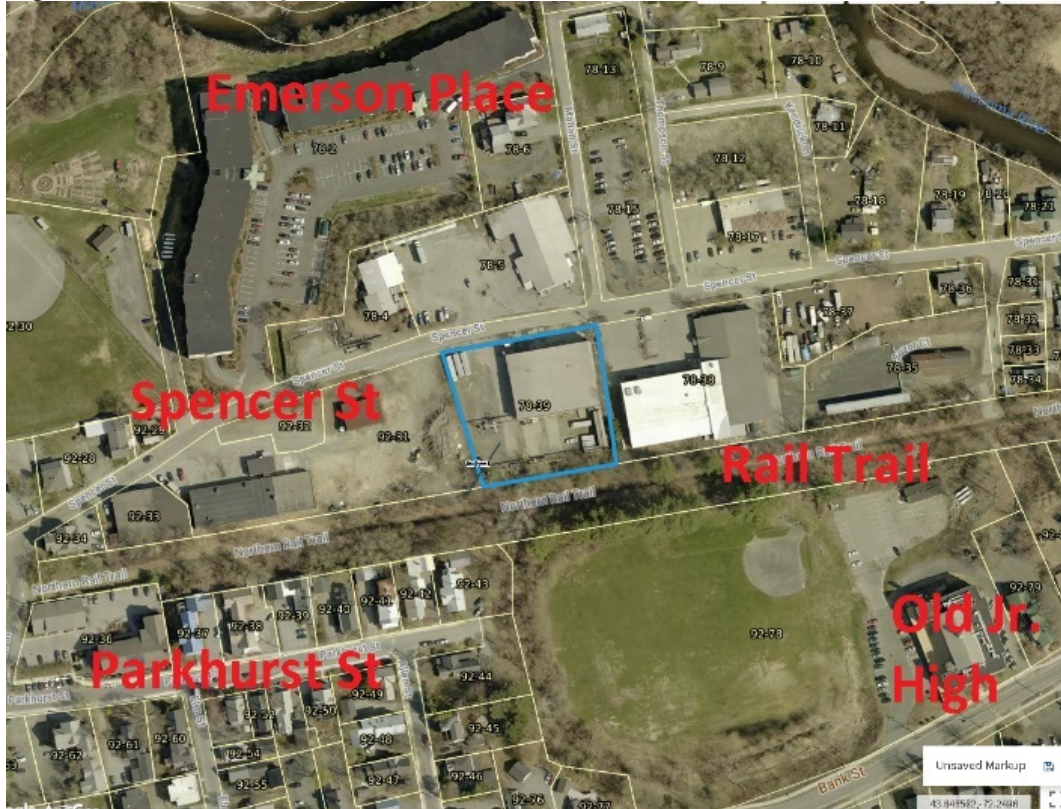


Image ©2018 Eagleview (image taken 5/1/2018)

In June, 2022, the applicant contacted staff to ask what approvals would be required to construct a 3-story storage facility. In an e-mail to the applicant, the Zoning Administrator determined that the "2019 approval was for a Special Exception to allow a 15,000 sq. ft. addition. To allow an addition triple the size approved, a new Zoning Board approval would be required. However, subsequent to the granting of the 2019 Special Exception, the Zoning Ordinance was amended to limit expansions of non-conforming structures to no more than 10% of the existing footprint. Therefore, the proposed three-story expansion is no longer eligible for a Special Exception and instead would require a Variance from the Zoning Board."

Pursuant to the Zoning Administrator's determination, the applicant has submitted an application for a Variance to construct a 3-story addition onto the existing building which is occupied by a non-conforming warehouse use. To allow the expansion of the non-conforming warehouse use, applicant requests a Variance from Sections 307.2 and 702.5 of the Zoning Ordinance.

ZONING ORDINANCE REQUIREMENTS

"Warehouse" is not a permitted use in the Lebanon Downtown District and, therefore, the existing warehouse use of the subject property is non-conforming. Non-conforming uses are regulated by Article VII of the Zoning Ordinance. Expansions of non-conforming uses may be allowed by Special Exception pursuant to Section 702.5 (Expansion of Use) which provides as follows:

- A. The Zoning Board of Adjustment may, by **special exception**, permit a legal **non-conforming use** pursuant to Section 700 to be expanded, provided that the following tests are met in lieu of Section 801.3:
 - 1. The proposed expansion must reflect the nature and purpose of the existing **non-conforming use**, and must be closely related to the manner in which the property was used at the time the restriction was enacted.
 - 2. The proposed expansion must be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature, or kind.
 - 3. The proposed expansion shall not have a substantially different effect on the neighborhood in which the property is located.
- B. As part of a proposed expansion under subsection A, the Board of Adjustment may allow a legal **non-conforming use** to expand into an addition to an existing **building** occupied by the **non-conforming use** provided that the footprint of the addition is no greater than ten percent (10%) of the size of the footprint of the existing **building** measured as of January 22, 2020.

Here, the footprint of the proposed expansion will exceed 10% of the size of the footprint of the existing building. Consequently, the proposal does not meet the Section 702.5.B criteria and, therefore, cannot qualify for a Special Exception under Section 702.5. Rather, to allow an expansion of the non-conforming warehouse, a Variance is required from the Lebanon Downtown District Table of Uses (Section 307.2).

To obtain the requested Variance from Section 307.2, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on December 7, 2022 (see attached).

Attachments

cc: Mason Storage, LLC, applicant/property owner (via e-mail)
File



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF DECISION LEBANON ZONING BOARD OF ADJUSTMENT

*The Lebanon Zoning Board of Adjustment, at a regular meeting held on **May 6, 2019**, approved the following motion made by Paul McDonough, seconded by Dave Newlove, by a vote of **4-0**:*

“On **May 6, 2019**, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Patrick Shawn Mason and Brad Atwood, Esq. on behalf of **Mason Storage, LLC**, regarding **38 Spencer Street (Tax Map 78, Lot 39)**, zoned **CBD**. Applicant proposes to construct a 15,000 sq. ft. addition onto an existing building containing a non-conforming warehouse use. To allow the addition, applicant requests a Special Exception pursuant to **Section 702.5** of the Zoning Ordinance to expand a non-conforming use. **#ZB2019-10-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 property is improved with a +/-13,000 sq. ft. warehouse which is a non-conforming use in the Central Business District. Between the building, parking areas, and loading areas, nearly all of the site is improved and devoted to the non-conforming warehouse use.
2. The property was formerly occupied by a light manufacturing use (Barker Steel). A Special Exception was granted in 2002 pursuant to Section 702.1 of the Zoning Ordinance (“Change of Use”) to allow the use of the property to change from a non-conforming light manufacturing use to a non-conforming warehouse use (specifically, a moving and storage business). Pursuant to the requirements of Section 702.1, the Board found that the nonconforming warehouse use is “more appropriate [to the district] than the existing use of a steel manufacturing plant.” See 4/15/02 Notice of Decision for #ZB2002-06.
3. The existing warehouse is conforming to the dimensional requirements of the CBD which only requires a ten (10) ft. rear yard. See Section 306.3 of the Zoning Ordinance. In the CBD, there is no minimum front and side yard requirements, and no maximum building coverage requirement.
4. The property abuts the Northern Rail Trail to the south, Geokon to the east, what is currently an industrial warehouse to the north, and the City’s property at 20 Spencer Street to the west. Currently, the closest residential uses currently are located on Parkhurst Street, which are separated from the subject property by the +/-90 ft. wide rail trail.
5. The applicant proposes to construct a +/-15,000 sq. ft. addition onto the rear of the existing building to accommodate an expansion of the existing non-conforming warehouse use. The addition will expand the existing building by approximately 115%. The proposed expansion is depicted on a plan sheet titled “Site Plan for Lot 78-39” prepared by Advanced Geomatics & Design, dated February 18, 2019, DWG: 19003\19003-PL, a copy of which was submitted as part of the Special Exception application package.
6. “Warehouse” is not a permitted use in the Central Business District and, therefore, the existing warehouse use of the subject property is non-conforming. Non-conforming uses are regulated by Article VII of the Zoning Ordinance. Expansions of non-conforming uses are allowed by Special Exception pursuant to Section §702.5.
7. To expand a non-conforming use, the applicant must demonstrate compliance with the standards set forth in Article VII of the Zoning Ordinance, §702.5 (Expansion of Use).

NOTICE OF DECISION

38 Spencer Street (78-39)

#ZB2019-10-SE

May 6, 2019

Page 2 of 3

8. The applicant has submitted testimony addressing the §702.5.A Special Exception criteria in an application received by the Planning Department on April 22, 2019.
9. No one from 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 Special Exception criteria set forth in §702.5 of the Zoning Ordinance:

- A. The proposed alteration or expansion **does** reflect the nature and purpose of the existing non-conforming use and **is** closely related to the manner in which the property was used at the time the restriction was enacted. (§702.5.A.1)
- B. The proposed alteration or expansion **is** merely a different manner of utilizing the same use and **does not** constitute a use which is different in character, nature, or kind. (§702.5.A.2) The space the applicant intends to enclose is presently used for outside storage.
- C. The proposed alteration or expansion **will not** have a substantially different effect on the neighborhood in which the property is located. (§702.5.A.3)
- D. The proposed expansion **will not** render the property proportionally less adequate, in terms of the dimensional requirement to which the property does not conform. (§702.5.A.4)

III. DECISION

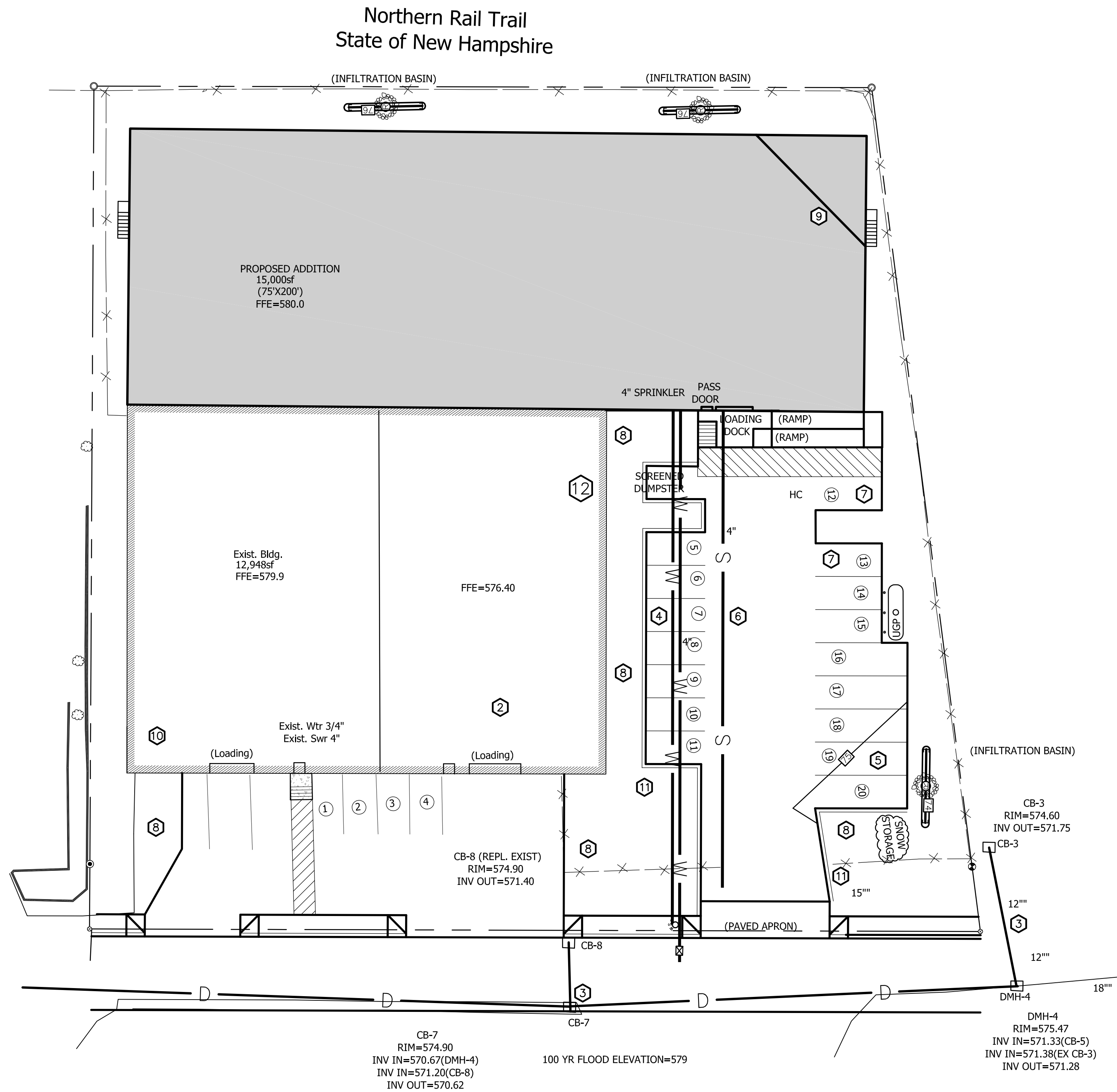
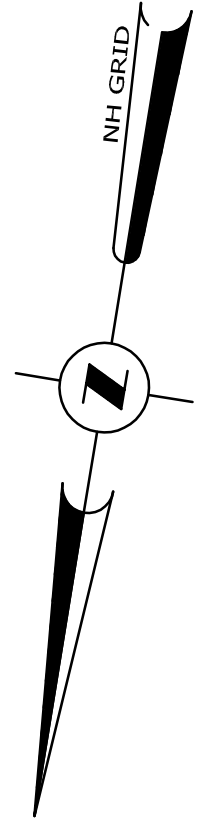
Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6th day of May 2019**, hereby **GRANTS** the requested relief, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain 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 addition."

Notice of Decision prepared by: Crystal Adams, Administrative Assistant, April 23, 2019

NOTE: (NH RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

S:\PLN\Development_Review\Zoning_Board_Applications\2019 ZBA_Applications\ZB2019-10-SE_38 Spencer St_Mason Storage LLC_78-39\Notice of Decision Template.docx



SITE PLAN



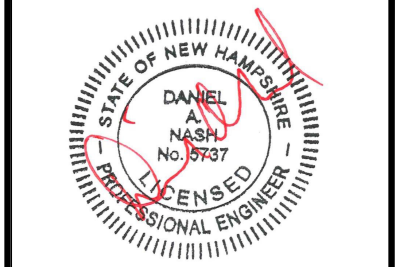
NOTES:

- FLOOD PLAIN COVERS ENTIRE SITE. BASE FLOOD ELEVATION=579. ADDITION TO BE AT ELEVATION 580.00 FOR FLOOD PROTECTION.
- LOWER PORTION OF EXISTING BUILDING TO BE FLOODPROOFED OR ELEVATED FOR FLOOD PROTECTION.
- PROPOSED DRAINAGE TO BE INSTALLED AS PART OF SPENCER STREET IMPROVEMENT PROJECT BY CITY OF LEBANON.
- VEHICLE PARKING SPACES 9X16 TYPICAL
- (5) TRUCK & TRAILER PARKING SPACES (9X25)
- 30' AISLE
- VEHICLE PARKING SPACES 9X18 TYPICAL.
- LANDSCAPE AREA. PAVEMENT TO BE REMOVED.
- PROPOSED 15" CULVERT. L=43'. INV-IN=576.50, INV OUT=576.10
- LOADING DOCK TO BE CLOSED/REMOVED.
- CURBING SHALL BE SLOPED GRANITE.
- DUMPSTER SHALL BE SCREENED WITH 6' WOODEN STOCKADE OR PRIVACY CHAIN LINK FENCING.
- WATER SERVICE. 12X4TS&GV, 4"DI, 3/4" COPPER DOMESTICE SERVICE WITH CURB STOP.

#	REVISIONS	DATE
4	UPDATE	09/27/21
3	UPDATE	08/23/21
2	UPDATE	07/26/21
1	UPDATE	05/04/2021

SITE PLAN
FOR
MASON STORAGE, LLC
IN
LEBANON, NH

ADVANCED GEOMATICS & DESIGN
105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766
PHONE: (603) 448 6295
E-MAIL: advancedgeomatics@comcast.net



SURVEYED:	VLG
DESIGNED:	DAN
DRAWN:	DAN
CHECKED:	DAN
DATE:	04/01/21

MASON STORAGE
SITE PLAN
C-1
© 2021 ADVANCED GEOMATICS & DESIGN DWG: C-1

APPLICATION FOR

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	xx	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: MASON STORAGE, LLC TEL.#: 603-252-5400

MAILING ADDRESS: 38 SPENCER STREET, LEBANON, NH 03766

E-MAIL ADDRESS: SHAWNMAISON.22@GMAIL.COM

CO-APPLICANT, AGENT, OR LESSEE:

NAME: TEL.#:

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 78 LOT#: 39 PLOT #: ZONE: LD

STREET ADDRESS OF PROJECT: 38 SPENCER STREET

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☒ YES ☐ NO

SCOPE OF PROJECT:

Increase building from two stories to three.

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**
USE: Storage

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on 12-7, 2022, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: P. J. K. DATE: 12-7-22

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: DATE:

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
12-7-22	78/39	2B2023-			

01-VAR

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement*

CITY OF LEBANON, NEW HAMPSHIRE Variance Standards: RSA 674:33 **Effective Jan. 1, 2010**

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 $\frac{1}{2}$ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) VII, Section(s) 702.5 of the Lebanon Zoning Ordinance.

In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

801.2 Variances.

A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:

1. That the variance, if authorized, will not be contrary to the public interest;

The variance would not be contrary to the public interest because it would not violate the basic zoning objectives and it would not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. The neighborhood has other large buildings such as Geokon and the industrial buildings across the street. The enlarged building would permit storage and not create any additional traffic or require municipal services.

2. That the variance will observe the spirit of the Ordinance;

As with the public interest, the variance will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. The additional height, 12 feet, which does not exceed the height limit for the zone, will not block any other properties and is at the rear of the existing building.

3. That by the granting of the variance, substantial justice will be done;

Substantial justice will be done because when we bought the property it had been previously approved as a non-conforming use and we had always expected to use the property for the moving and storage business. The change in the zoning has limited the use and it would be a loss to our business and it would result in no loss to the neighborhood or the City to allow the additional height.

4. That the variance, if authorized, will not diminish the values of surrounding properties;

Properties values will not diminish but might even be increased. This is an existing business and the addition to the building will not change the business or its impact in the neighborhood, which is a commercial area. For years, the prior owners have used the area intended for the addition for storage and there had been a large metal scaffolding in the area which we have removed. The addition will be in that area, behind our building and the additional height will have no impact on property values, other than to increase them due to the greater usefulness of the property.

5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (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; and (ii) The proposed use is a reasonable one.

The general purposes of the zoning ordinance are to control uses by having different zones. The property has been used as a moving business for many years and now Mason Moving has only continued that use. The additional 12 feet to the rear of the building will have no effect on the ordinance or its purposes.

The use is reasonable because it will enable an existing business to serve its customers and the ever increasing number of rental units in the area for which storage is often a necessity. The moving and storage use already exists and has been approved for the property.

A variance shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a variance; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a variance must be completed.

****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent: "The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."

CITY OF LEBANON
APPLICATION FOR

SPECIAL EXCEPTION	☒	☐ SITE PLAN REVIEW
VARIANCE	☐	☐ SUBDIVISION
MOTION FOR REHEARING	☐	☐ LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐ CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: Etna Road Associates % Nick Orem TEL.#:

MAILING ADDRESS: 27 Green St. Newbury, MA 01951

E-MAIL ADDRESS: nickorem@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: National Institute of Modern Martial Arts TEL.#: 603 543 7454

MAILING ADDRESS: Michael Sartwell 140 North St. Claremont, NH 03743

E-MAIL ADDRESS: Sartwellensei@yahoo.com

PROJECT LOCATION:

TAX MAP #: 26 LOT#: 18 PLOT #: ZONE: INDL

STREET ADDRESS OF PROJECT: 112 Etna Road Lebanon, NH 03766

IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☐ NO HISTORIC DISTRICT ☐ YES ☒ NOFLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Expansion of an existing Group Day Care Facility into the Lebanon Area

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☒ INDUSTRIALPROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☒ INDUSTRIALIF USE IS COMMERCIAL OR INDUSTRIAL, PLEASE NOTE SPECIFIC

USE: Light

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: Cam Brown, as agent DATE: 12/12/22

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: _____ DATE: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
12-12-22	26/18	ZB2023--			

02-SE

(Last Revised 4/04/18)

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION**

One cover application, one abutters list, a filing fee and ten copies of the site plan must accompany this support statement.

I (we) hereby request a Special Exception as provided for in Article(s) 303,
Section(s) 303.2 / 604, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION *(Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)*

Please See Attached letter

In order to grant a Special Exception, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

(You can respond in the space provided, or attach a separate statement. Please be prepared to address the conditions with the Board during your public hearing. You must show that you have met all the conditions.)

SECTION 801.3 Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon matters which the Board is required to pass under this ordinance. In passing upon any application for a special exception, the Board shall make each of the following findings:

A. That the special exception is specifically authorized by a provision of this ordinance:
Yes, subsection 303.2 allows for a special exemption for a Group DayCare Facility.

B. That all special conditions required of the special exception have been met:
Once the board has approved the Special exemption NIMMA will proceed with the installation of approved fencing.

C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:
None that NIMMA is aware of.

- D. That the character of the area shall not be adversely affected:
The Character of 112 Etna Road shall not be adversely affected by allowing a School-aged program to reside on its property.
- E. That no hazard or nuisance will be created:
There are no foreseeable hazards or nuisances.
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:
Etna Road is equipped to handle a steady flow of traffic. No adverse affect is expected.
- G. That granting the special exception will not result in undue municipal expense:
No undue municipal expenses are expected from this project / special exemption
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:
NIMMA and its Best Before and After School Program is compatible with the spirit and intent of the Ordinance as a Group-Day Care Program
- I. That the general welfare of the City will be protected:
The welfare of the city will be protected by offering this service to the community.

Please Note:

Pursuant to Section 802.4B, "Special Conditions", the Board may attach whatever conditions it deems necessary in order to assure compliance with the purposes of this ordinance.

A special exception shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a special exception or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.

City of Lebanon Zoning Board of Adjustment
City Hall, City Council Chambers, Level 5
51 North Park Street
Lebanon, New Hampshire 03766

Re: Special Exemption Application

**National Institute of Modern Martial Arts, Michael Sartwell
Claremont's (Lebanon's) Best AfterSchool and Summer Program
112 Etna Road, Lower Level
Lebanon, New Hampshire 03766**

Dear Decision Makers,

The National Institute of Modern Martial Arts (NIMMA) requests a Special Exemption for the light industrial property zoned at 112 Etna Road. According to the current zoning ordinance, section 303 subsection 303.2; Special Exemption may be granted for a group Day Care Facility per section 604. Section 604 requires that a Group Day Care Facility will have a fenced-in yard in accordance with NH licensing regulations of 50 square feet of outside space per child, ample parking, and a safe loading and unloading area for student drop-off. The Etna Road property has available space to meet all requirements set forth above, as well as provisions in the lease to utilize the outside space as needed.

NIMMA has secured a lease for 4500 square feet of the lower level of 112 Etna Road. The entrance to this space is in the back of the building and away from the main road. There is a circular driveway around the building with a clear traffic flow that can encompass an increase in traffic from the current amount without impact. Etna Road Associates % Nick Orem (landlord) has set provisions within the lease to include exterior use of the property behind and to the south of the building that may be fenced as long as it complies with the City of Lebanon, licensing and landlord preapprovals. The lease also states that the parking is shared between all tenants but that there are 90 spaces available for usage. NIMMA also has access to the ingress, egress, loading dock and secured telecomm area within the lease agreement.

NIMMA is a fully licensed and insured school-aged child care program. This program has been successfully operating in Claremont, NH at 140 North Street for approximately 8 years and is looking to expand to the Lebanon/Hanover area. Currently, the Claremont program serves 60 children in grades K-5 from 6:30am to 8:30am and 3:00pm to 6:00pm during school days and 6:30am to 6:00pm during school vacations, including summer vacation. It is expected that the expansion would be operating under the same hours. Licensing will determine the amount of students that Etna Road location will be able to serve; however, it is estimated at a maximum capacity of 80.

The opening of NIMMA and its before, after and summer care program will provide the Lebanon area with a much needed service. Upon preliminary market research and speaking with the local elementary schools there is a need to have a program that will assist families in providing

safe, educational, and developmentally appropriate care to their children during working hours. In allowing NIMMA the special exemption provision within the zoning laws the board will grant this service to the community.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Michael Sartwell", with a long horizontal flourish extending to the right.

Michael Sartwell, Owner/Proprietor of NIMMA

Cam Brown

From: Nick Orem <nickorem@gmail.com>
Sent: Tuesday, December 13, 2022 3:09 PM
To: Cam Brown
Subject: Re: City of Lebanon Agent Approval

Dear Cam,
I hereby designate you as my agent.
Best,
Nick

On Tue, Dec 13, 2022 at 2:47 PM Cam Brown <cam.brown@lmsre.com> wrote:

Hi Nick,

Your response to this email will verify that you have appointed and designated me to serve as your Agent to be able to sign on your behalf, certain permit applications with the City, for any work associated with your property at 112 Etna Rd.

Thanks, Cam

Cam Brown

Managing Broker

Lang McLaughry Commercial Real Estate

93 South Main St., W. Lebanon, NH 03784

Cell: 603-252-8902 / Office: 603-298-8904

Lang • McLaughry • Commercial

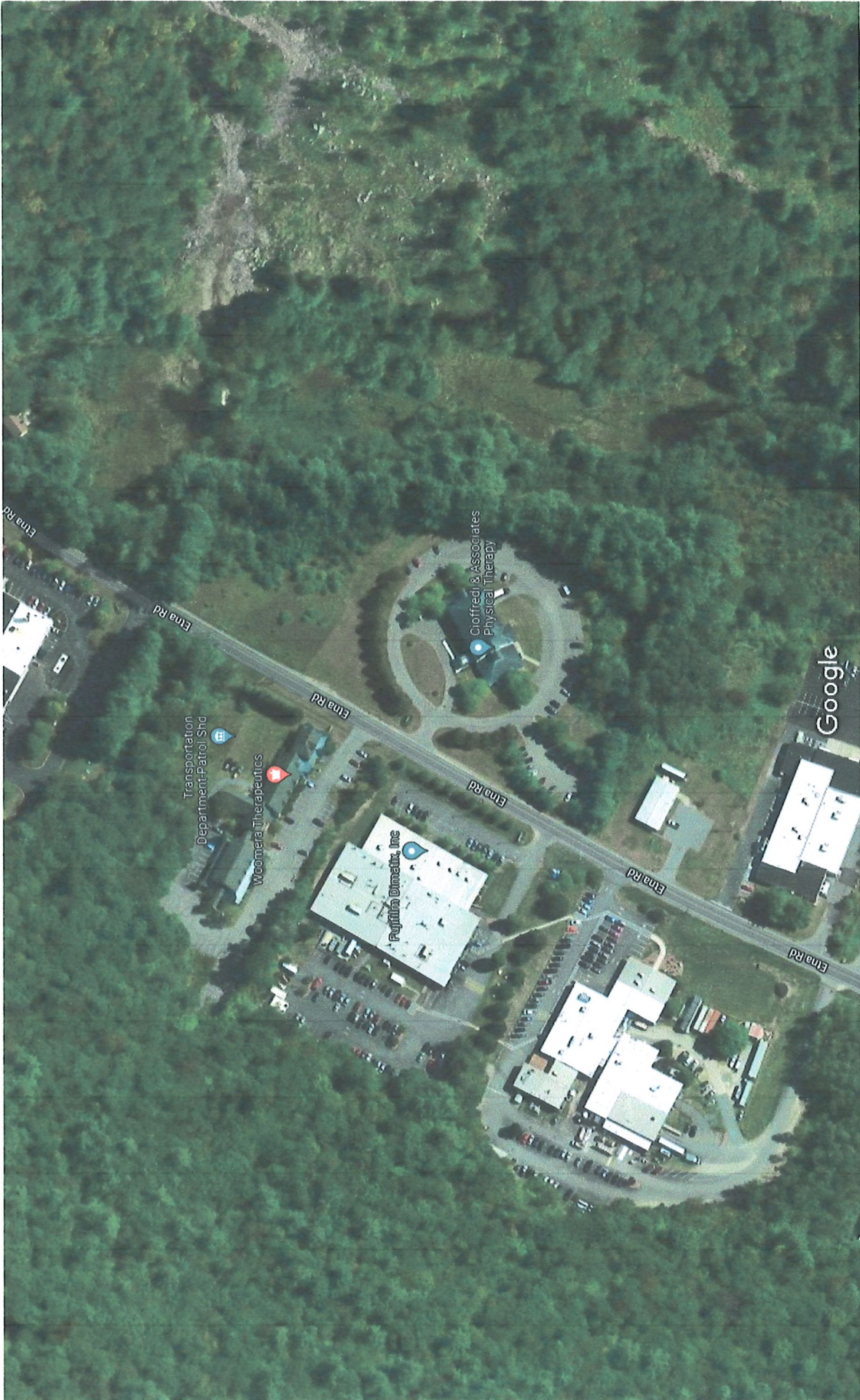
112 ETNA RD.



AREA 1 115' x 25' x 85' x 32' > Approx. footage of
AREA 2 80.5' x 50.6' x 69' x 41' fenced in area available

112 Etna Rd

Google Maps





CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

January 3, 2023 Meeting

Staff Memorandum – ZB2023-03-SE

APPLICATION INFORMATION

Agenda Item: 3.D

Application Type:

Special Exception per Section 703.1 to change one non-conforming use to a different non-conforming use

Location:

354 Mascoma St (Tax Map 89, Lot 10)

Applicant/Property Owner:

Michael Jared Toon (applicant), David and Kerin Fellows (property owners)

Zoning District:

Residential One (R-1) District

Property Size:

+/-0.34 acres (14,810 sq. ft.) (per the City Assessor's records)

Existing Improvements and Use:

a commercial building constructed in 1964 (per the City Assessor's records), most recently used as an auto maintenance/vehicular repair business

Proposed Use:

retail store (mountain bike shop)

Overlay Districts: none

Previous ZBA Action (since 1995):

Special Exception per 702.1 approved on 2/20/07 (ZB2007-08)

Other Approvals Required (including but may not be limited to):

- Building Permit

Attachments:

2/20/07 Notice of Decision (ZB2007-08)
Application (5 pages total)

HEARING NOTICE

Michael Jared Toon (applicant), David and Kerin Fellows (property owners), 354 Mascoma Street (Tax Map 89, Lot 10), zoned R-1: Applicant requests a Special Exception per Section 702.1 of the Zoning Ordinance to change the use of the property from a non-conforming vehicular repair use to a non-conforming mountain bike shop. ZB2023-03-SE

BACKGROUND & PROPOSAL

The subject property is developed with a one-story commercial building constructed in 1964. The building was most recently used for a vehicular repair business which is a non-conforming use in the R-1 District (the vehicular repair use was originally approved by Special Exception per Section 702.1 – see attached Notice of Decision for ZB2007-08).

At this time, the applicant is seeking a Special Exception pursuant to Article VII, Section 702.1 of the Zoning Ordinance to change the non-conforming vehicular repair use of the building to a retail store (mountain bike shop) (see the “project description” in the Support Statement included in the applicants’ materials for additional detail regarding the proposed use). Retail stores are not permitted in the R-1 District.

Figure 1. Location and Zoning Map.

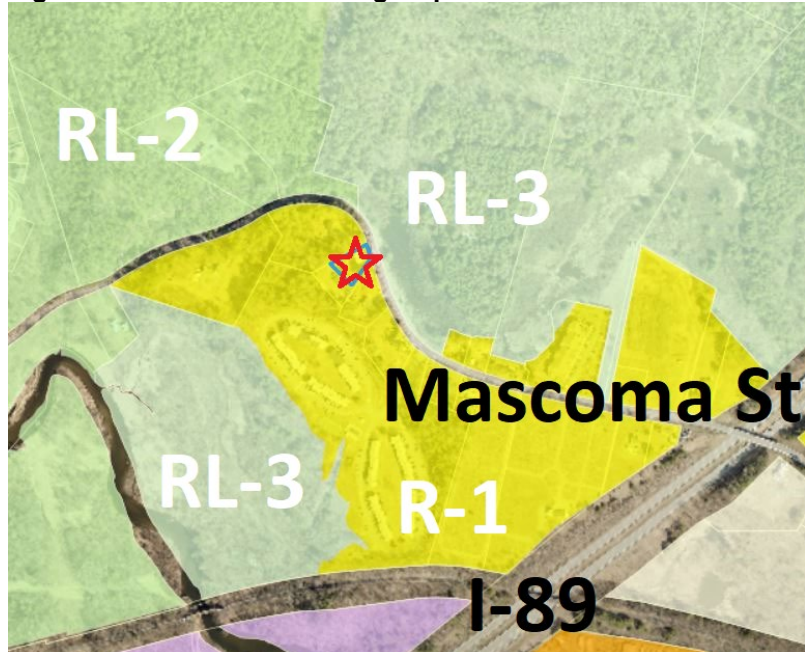


Figure 2. Aerial View of Subject Property (looking west).



©2021 Eagleview (image taken 4/4/2021)

Section 702.1 of the Zoning Ordinance states, in part: "A non-conforming use may, as a Special Exception, be changed to another non-conforming use provided that the Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use."

In order to grant a Special Exception to change one non-conforming use to a different non-conforming use, the applicants must demonstrate that the proposal meets the general Special Exception criteria, set forth in Section 801.3 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance. *Note:*
The Special Exception is authorized by §702.1 of the Zoning Ordinance.

- B. All special conditions required of the special exception have been met. *Note: Per §702.1 of the Zoning Ordinance, the applicant must demonstrate that “the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.”*
- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy. *Note: Staff is not aware of any Zoning Ordinance violations on the property.*
- D. The character of the area shall not be adversely affected.
- E. No hazard or nuisance will be created.
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- G. Granting the special exception will not result in undue municipal expense.
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- I. The general welfare of the City will be protected.

The applicant has submitted testimony addressing the §801.3 criteria in an application received by the Planning & Development Department on December 13, 2022 (see attached).

STAFF COMMENTS

Staff recommends that the Board require the applicant to produce a site plan to demonstrate that the minimum number of parking spaces required per Section 607 of the Zoning Ordinance can be accommodated on site, in addition to whatever number of parking spaces are needed for service vehicles that will be parked on-site overnight. Such a requirement could be made a condition of approval.

Attachment

cc: Michael Jared Toon (applicant)
David and Kerin Fellows (property owners)
File

**NOTICE OF DECISION
LEBANON ZONING BOARD OF ADJUSTMENT**

On 20 February, 2007, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Sandra Henry and Dave Fellows, seeking a special exception from the terms of Article VII, Section 702.1 to allow a non-conforming use to be changed to another non-conforming use. The property is located on Mascoma Street, Lebanon, NH, in the R-1 Zone. (Tax Map 89, Lot 10) # ZB 2007-08

Based on the testimony given, plans presented, and inspection of the site, the Lebanon ZBA makes the following findings of fact:

1. The applicant proposes to use the property as a starter and alternator repair shop which is currently located on Mechanic Street.
2. The property is currently being used for storage and equipment repair for Upper Valley Equipment Rental.
3. Repair work will be done in the "block building" while the barn will be used for storage.
4. The business would generate approximately 10 to 15 cars per day dropping off starters and alternators to be repaired in the shop. The frequency of the traffic will be approximately 1 to 2 cars at a time, 7 at most. It will employ 2 people and will be open weekdays as well as Saturday mornings from 8 to noon.
5. There will be some cosmetic work on the current structures as well as updating for code compliance.
6. Bill Saine, Bill Saine Jr. and Louis Audette spoke in favor of the application. No one spoke against the application. The applicant contacted neighbors and the abutter behind the property was the only respondent who had no opposition to the application.
7. No additional parking will be necessary.

As a result of the above findings of fact, documentation, testimony, and inspections, the Board concludes:

- A. That the special exception is specifically authorized by a provision in section 702.1 of this ordinance.

- B. That the proposed use is equally or more appropriate to the R-1 zone than the existing non-conforming use.
- C. That there are not any violations on the property.
- D. The character of the area shall not be adversely affected.
- E. That no hazard or nuisance will be created.
- F. That the capacity of existing and planned community facilities and services (including streets and highways) will not be adversely affected.
- G. That granting of the special exception will not result in undue municipal expenses.
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance.
- I. That the general welfare of the City will be protected.

Now therefore, be it resolved that the Lebanon Zoning Board of Adjustment hereby **GRANTS** the request of Chick & Sandra Henry for a special exception as referenced above and attaches the following conditions:

- 1. Any change of intensity of use shall be subject to ZBA review.
- 2. That no vehicles or equipment will be stored outside overnight.

A special exception shall expire if: (1) the use is not in place within one year of the date of issuance of a zoning permit; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.

NOTE: Within 30 days after any order or decision of the zoning board of adjustment, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application.

The Zoning Board voted to approve this application on March 5, 2007.

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☒	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: David and Kerin Fellows TEL.#: 603-359-4353

MAILING ADDRESS: 595B Switchback rd, Portland TN 37148

E-MAIL ADDRESS: _____

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Michael Jared Toon TEL.#: 603-217-7998

MAILING ADDRESS: 322 Mascoma Street, Lebanon NH

E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 89 LOT#: 10 PLOT #: _____ ZONE: R1

STREET ADDRESS OF PROJECT: 354 Mascoma Street, Lebanon NH

IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Change the tenant from "Dave's Starter and Auto" to a mountain bike shop.

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
IF USE IS COMMERCIAL OR INDUSTRIAL, PLEASE NOTE SPECIFIC
USE: Bicycle shop

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: David H. Fellows Kerin Fellows DATE: 12-8-2022

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: David H. Fellows Kerin Fellows DATE: 12-8-2022

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #		
<u>12-13-22</u>	<u>89/10</u>	<u>232023</u>		

03-SE

(Last Revised 4/04/18)

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION**

One cover application, one abutters list, a filing fee and ten copies of the site plan must accompany this support statement.

I (we) hereby request a Special Exception as provided for in Article(s) _____, Section(s) 702.1, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION *(Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)*

The updated building will feature a mountain bike shop occupied by 2 employees during working hours. Hours of operation M-F 10-5:30, Sat. 9-2, closed Sunday. A mountain bike shop in this location is a perfect compliment for local users of the beloved Boston Lot trail network.

In order to grant a Special Exception, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

(You can respond in the space provided, or attach a separate statement. Please be prepared to address the conditions with the Board during your public hearing. You must show that you have met all the conditions.)

SECTION 801.3 Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon matters which the Board is required to pass under this ordinance. In passing upon any application for a special exception, the Board shall make each of the following findings:

- A. That the special exception is specifically authorized by a provision of this ordinance:

702.1

- B. That all special conditions required of the special exception have been met:

702.1 equally or more appropriate

- C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:

Not aware of any

- D. That the character of the area shall not be adversely affected:
~~The character of the area will be enhanced by a business that serves the residents who frequent this area already, the users of the Boston Lot trail network.~~
- E. That no hazard or nuisance will be created:
~~None.~~
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:
~~The proposed business will have business hours that will not disrupt Residences, and unlikely to increase traffic.~~
- G. That granting the special exception will not result in undue municipal expense:
~~None~~
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:
~~The proposed use is within the guidelines of 702.1 because it's a more appropriate use that conforms better with the neighborhood.~~
- I. That the general welfare of the City will be protected:
~~The general welfare will be improved with this more conforming, more Compatible business because it is more in line with what Lebanon residence want in their neighborhood.~~

Please Note:

Pursuant to Section 802.4B, "Special Conditions", the Board may attach whatever conditions it deems necessary in order to assure compliance with the purposes of this ordinance.

A special exception shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a special exception or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.

“Boston Lot” Trail Network

Site of current “Dave’s Starter and Auto”.
Proposed future site of cycle shop.

Application agent and buyers
residence.

