

FINAL

**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 Hembree (Alt), Jennifer Barkley (Alt)

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Tim Corwin – Senior Planner and Zoning Administrator

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**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. Newlove 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 **ZB2022-25-SE – Postponed from November 22, 2022 This application was withdrawn**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.

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

**Chair Koppenheffer opened the Public Hearing.**

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

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

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

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

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

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

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

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

***Seconded by Mr. Nash.***

The Public is entitled to attend this site visit.

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

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

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

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

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

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

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

## **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 one-family dwelling that is unoccupied and in a state of disrepair. As shown on the existing conditions plan provided by the applicant, the home is located within the minimum required 20 ft. front yard and is therefore non-conforming to the minimum front yard required for Class 1 lots in the R-1 District.
2. As shown in the plot plan provided by the applicant (titled "Variance Plan"), the applicants propose to remove the existing structures and construct a new home located 10 ft. 9 in. from the front lot line along Hanover Street Extension, and 10 ft. from the side lot line shared with 7 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 **5<sup>th</sup> 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 5<sup>th</sup> 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