



**LEBANON ZONING BOARD OF ADJUSTMENT
FEBRUARY 6, 2023 - 7:00 PM
COMMUNITY ROOM - KILTON LIBRARY - 80 MAIN
STREET, WEST LEBANON - OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

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1. **Call to Order**
 2. **Approval of Minutes**
 - A. January 3, 2023
 - B. January 7, 2023 - Site Walk
 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 January 3, 2023**
 - B. **Jacqueline Frisina, 31 Granite Street (Tax Map 91, Lot 159), zoned R-3:** Applicant proposes to increase the height of the existing detached garage which is non-conforming to the minimum required front and side yard setbacks. To permit the expansion of a non-conforming structure, the applicant requests a Special Exception pursuant to Section 703.1 of the Zoning Ordinance. **ZB2023-05-VAR**
 - C. **Children's Center of the Upper Valley, 178 Mechanic Street (Tax Map 105, Lot 12), zoned R-2:** Applicant requests a Special Exception per Sections 309.2 and 604 of the Zoning Ordinance to expand the existing group day care facility by adding a second classroom to train individuals in the early childhood field. **ZB2023-06-SE**
 4. **Staff Comments**
 5. **Adjournment**

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](https://lebanonnh.gov/live) where you will find instructions on how to enter the meeting. Members of the 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](https://lebanonnh.gov/agendas).

DRAFT

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

MEMBERS PRESENT: Chair William Koppenheffer, Dan Nash, Jeremy Katz, Dave Newlove, Paul McDonough

MEMBERS ABSENT: Catherine Hembree (Alt), Jennifer Barkley (Alt)

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:02 PM.

2. APPROVAL OF MINUTES

A. December 5, 2022

Mr. Katz MOVED to approve the December 5, 2022, Minutes as presented in the January 3, 2023, packet with amendments.

Seconded by Mr. Newlove.

Amendments: Page 1, Members Present; correct name spelling. Page 1, Line 16; Remove Katz and Add Newlove.

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

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**

Samantha Medina and Cote Swenson appeared on behalf of the application. A site visit was scheduled, and it had to be postponed due to a storm.

Mr. Nash MOVED to reschedule the site visit to January 7, 2023, at 10:00 am. and continue this hearing until Monday, February 6 at 7:00 PM.

Seconded by Mr. Katz.

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

The Public is welcome to attend the site visit.

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

6
7 **Mr. Nash recused himself from this hearing.**

8
9 Shawn Mason appeared on behalf of the application. The applicant was informed that he has the option
10 of going forward at another meeting when there is a full Board. The applicant is willing to move forward
11 tonight. He would like to add another floor to the building adding another 12 feet of height. There are
12 other buildings in the area that have 3 stories. He believes it would not change the nature of the
13 neighborhood and would not increase the traffic. They would continue to use the building as a warehouse
14 for storage, its current use. He believes it would improve the character of the neighborhood by providing
15 a modern storage facility.

16
17 The Board asked clarifying questions about the existing footprint and if the applicant is adding a floor to
18 increase the square footage or just increasing the height of the building. The applicant responded that
19 additional square footage would be added. They discussed the improvements that were previously
20 permitted by special exception. As yet, those improvements have not begun. Since the initial approval,
21 the ordinances have changed. Mr. Mason did not state a specific hardship or distinction about the
22 property that is necessary for granting the variance. The members discussed the square footage of the
23 building and the previously granted special exception and what the intended square footage would be of
24 the finished building with its expansion.

25
26 The applicant believes he was approved for an additional 30,000 square feet. He believed the footprint
27 was allowed to increase by 15,000 square feet with two stories. The Board reviewed the original special
28 exception that was approved. It was for 15,000 square feet, not 30,000 square feet. The building in the
29 front that exists is 13,000 square feet. The approval was to add 15,000 square feet at the back of the
30 building.

31
32 Mr. Nash spoke to the hardship regarding the new zoning rules. He stated that nonconforming uses need
33 the ability to expand. Under the new ordinances this property requires a variance to increase and requires
34 a hardship on the property to be approved by the Zoning Board.

35
36 The applicant has a site plan approval to build a 2-story building that was approved by the Planning
37 Board. It was not clear at the Zoning Board Hearing that 2 stories were contemplated at the previous
38 approval. It was not intended by the 2019 special exception to increase the square footage by 30,000
39 square feet. However, Staff believe an error was made during the Site Plan approval.

40
41 The applicants are now asking to increase and to add a 3rd floor to that addition. There is a one-story
42 building that is existing currently. The building that exists is a 13,000 square foot. With the new
43 expansion of 2 stories, it would become a 43,000 square foot building. And if a third floor is added, it
44 would become a 58,000 square foot building.

45
46 Mr. Koppenheffer reviewed the 2019 special exception approval that was included in the packet. The
47 introductory paragraph states that the applicant would construct a 15,000 square foot expansion on the
48 back of the existing building. The Zoning Board did not approve increasing the footprint by an additional
49 15,000 square feet with a second story, adding a total of 30,000 feet. Staff said that when the Site Plan
50 was approved by the Planning Board it was missed that the approved plan was double what was approved
51 by the Zoning Board. This misunderstanding is appealable. But as it sits, the applicant will be allowed to

1 move forward when proper permits are approved. That will increase the footprint by 15,000 which
2 increases the square footage by 30,000 square feet. Staff clarified that there is no connection between
3 what was previously approved and the current request at this hearing. However, there is some necessity
4 for understanding and applying the variance criteria.

5
6 **Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.**

7
8 The Board agreed this is complicated. The analysis of the previous hearing does not require a remedy.

9
10 **The Public Hearing was reopened.**

11
12 Staff reiterated that the applicant will be allowed to build the 2-story building, at a benefit to the
13 applicant. Staff made an error. Much effort and financial commitment has gone into the design and
14 approval of the building. Staff do not want to harshly punish the applicant. The members need to review
15 the criteria for this specific variance. It has nothing to do with the previous approval. Nathan Reichert,
16 Director of Planning and Development spoke to the necessity of showing a hardship.

17
18 The applicant restated that they are merely increasing the height and are not expanding the footprint. Mr.
19 Nash said the change from requiring a special exception to meeting variance criteria is a challenge for this
20 property and its hardship.

21
22 **Hearing no additional comments. The Public Hearing was closed.**

23
24 The Board does not see that the applicants presented any evidence of a hardship on the property.
25 Ordinances cannot be a hardship; a hardship is about an identifiable characteristic of the property. A very
26 large expansion is not what is intended by the Ordinances, and this would be a large expansion. The
27 applicant would be allowed to return to the Board with additional information. The applicant cannot
28 postpone this hearing due to the size of the Board but can come back with a complete new hearing.

29
30 ***Mr. Katz MOVED on January 3, 2023, at a duly-noticed meeting of the Lebanon Zoning Board of***
31 ***Adjustment, there appeared Shawn Mason on behalf of Mason Storage, LLC, regarding 38 Spencer***
32 ***Street (Tax Map 78, Lot 39), zoned LD. Applicant proposes to construct a 3-story addition onto the***
33 ***existing building which is occupied by a non-conforming warehouse use. To allow the expansion of the***
34 ***non-conforming warehouse use, applicant requests a Variance from Sections 307.2 and 702.5 of the***
35 ***Zoning Ordinance. ZB2023-01-VAR***

36
37 **I. FINDINGS OF FACT**

38
39 Based on testimony given, application materials presented, and supporting documents submitted, the
40 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 41
- 42 1. The subject property is improved with a +/-13,000 sq. ft. warehouse which is a non-conforming
43 use in the Lebanon Downtown (LD) District. Between the building, parking areas, and loading
44 areas, nearly all of the site is improved and devoted to the non-conforming warehouse use.
 - 45
 - 46 2. The property was formerly occupied by a light manufacturing use (Barker Steel), which was a
47 non-conforming use in the Central Business (CB) District, which was the zoning of the property
48 up until 2020. A Special Exception was granted in 2002 pursuant to Section 702.1 of the Zoning
49 Ordinance ("Change of Use") to allow the use of the property to change from a non-conforming
50 light manufacturing use to a non-conforming warehouse use (specifically, a moving and storage
51 business).

3. On May 6, 2019, the Zoning Board approved a Special Exception pursuant to Section 702.5 of the Zoning Ordinance 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%.
4. On October 21, 2021, the Planning Board granted Site Plan approval for the proposed addition (PB2021-13-SPR).
5. The applicant now proposes to construct a three-story addition with a footprint of 15,000 sq. ft. and 45,000 square feet of useable warehouse space.
6. A three-story addition is substantively different than the addition approved in 2019 and, therefore, requires a new Zoning Board approval.
7. Following the Zoning Board's approval of the 38 Spencer Street addition, Section 702.5.B 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."
8. The footprint of the proposed three-story addition 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).
9. Accordingly, 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.
10. The Board finds that only a Variance from Section 307.2 is required.
11. 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.
12. Dan Nash, consultant applicant, also appeared as a witness on the behalf of the applicant.
13. Nobody else 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 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 not** 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 not** 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):

Applicant's consultant proposed the change to the Zoning Ordinance relative to the expansion of nonconforming uses as being the hardship imposed on the property. However, that change is not applicable and universally applied across the entire district.

- i. There **is** 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 not** 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 **3rd day of January, 2023**, hereby **DENIES** the requested Variance from Section 307.2, as set forth above and per testimony, plans, and materials submitted

Seconded by Chair Koppenheffer.

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

Mr. McDonough voted nay.

Mr. Nash returned to the meeting.

- 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 group day care facility. **ZB2023-02-SE**

There is a Zoning Ordinance pending before City Council that if approved would render this decision moot. Applicant has agreed to postpone this hearing.

Mr. Newlove MOVED to continue until February 6, 2023.

Seconded by Mr. Katz.

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

Mr. Nash returned to the meeting.

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

Michael Toon appeared on behalf of the application. He would like to purchase this property and rent it to a party who would like to turn it into a bike shop. He lives close to this property and is himself a mountain biker. He has just started speaking with people who would like to turn it into a bike shop. His offer to the seller is contingent on the approval of the Special Exception. It would be a year-round business. Currently it is an auto repair business. They have a small workshop, and primarily work on starters and alternators that are brought in to be serviced. They service large construction vehicles but there are no lifts in the building.

The applicant described why the new business would be more compatible with the neighborhood. He feels that the large vehicles are obstructive. He feels that bikers are already in the neighborhood due to the trails. It would be a quieter business. There would be less heavy usage of the roads and less of an environmental impact. It would be more of an asset to the neighborhood and enhances all the activities on the trails. The entirety of the building would be used for one business.

Chair Koppenheffer opened the Public Hearing.

Chris Broderich spoke in support of this application. He believes the traffic would be quieter than what currently exists, and that it would be less of an issue.

There is a retail service counter, racks of parts and storage. There are machines to make repairs. This is very similar to what a bike shop would need.

Hearing no one else, the Chair closed the Public Hearing.

Mr. McDonough MOVED on January 3, 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Michael Toon regarding 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

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 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 (ZB2007-08).
2. 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). Retail stores are not permitted in the R-1 District.

3. 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.”

4. In order to grant a Special Exception to change one non-conforming use to a different non-conforming use, the applicant must demonstrate that the proposal meets the general Special Exception criteria, set forth in Section 801.3. The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning & Development Department on December 13, 2022

5. Chris Broderich, an abutter, spoke in favor of the application and no one appeared to speak in opposition of it.

6. 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 condition/requirement of §702.1 is met: (§801.3.B)

a. The proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use considering the amount of traffic that will be coming to that shop.

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 3rd day of January, 2023, hereby GRANTS the requested Special Exception as set forth above and per testimony, plans, and

materials submitted, and per the following conditions:

1. The applicant will obtain a building permit and a Certificate of Occupancy.
2. The applicant shall include a site plan with the building permit application demonstrating that the minimum number of parking spaces required per Section 607 of the Zoning Ordinance will be accommodated on site.

Seconded by Mr. Katz.

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

4. STAFF COMMENTS

The Minutes from the last meeting were mistakenly omitted from the packet for tonight's meeting. Staff reviewed that the new policy is that if there is a meeting and the meeting materials only consist of an agenda and the minutes from the previous meeting, a packet will not be produced for the meeting.

5. ELECTION OF OFFICERS

Mr. Nash nominated William Koppenheffer for the position of the Chair.
He was unanimously approved. (4-0)

Mr. Newlove nominated Mr. Katz for the position of the Vice Chair.
He was unanimously approved. (4-0)

5. ADJOURNMENT

Mr. Newlove MOVED to adjourn the meeting at 8:27 PM.
Seconded by Mr. Katz.

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

Respectfully submitted,
Linda Billings
Recording Secretary

**LEBANON ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING – SITE WALK
SATURDAY JANUARY 7th 2023
397 DARTMOUTH COLLEGE HIGHWAY, LEBANON
10:00 AM**

MEMBERS PRESENT: Chair William Koppenhaver, Jeremy Katz, Dan Nash, Paul McDonough.,
David Newlove, Catheryn Hembree (Alt)

MEMBERS ABSENT: Jennifer Barkley

STAFF PRESENT: Nathan Reichert (Director)

1. CALL TO ORDER

The meeting was called to order at 10:01 AM by Chair William Koppenhaver.

Mr. Reichert shared the State directive and participation details for an in-person site walk meeting. Copies of the previous approvals were distributed to the members of the Zoning Board as well as the members of the public who attended. Mr. Reichert instructed the Board to consider if there are any Zoning Violations present upon the property pursuant to the previous approvals.

2. SITE WALK

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**

The Board convened at the property and inspected the exterior grounds, greenhouses, farm stand and outbuildings. The Board reviewed the conditions that were included in the previous approvals. The Board discussed concerns about the property including the landscaping plan, the fencing requirements, and general zoning compliance.

Upon observation of items being pushed and thrown over the edge of the drop off surrounding the flat areas of the property, a discussion about possible fill in the wetlands occurred and the possibility of non-legal waste being included in the fill area. The filling appeared to be within the wetland buffers on either side of the property.

Board Members discussed the possibility of a staff report being generated by experts concerning possible non-zoning violations upon the property.

5 members of the public attended the meeting.

Neither Cote Swenson nor Samantha Medina attended the meeting.

Mary Lou Childs and Chris Childs, abutters from across the street, spoke about concerns they had with the property, the completion of the most recent permits and the non-compliant nature of the property.

3. ADJOURNMENT:

A MOTION by Mr. Nash to adjourn the meeting.

Seconded by Mr. Katz.

**The Motion was approved unanimously.*

The meeting was adjourned at approximately 10:49 AM.

Respectfully submitted,
Nathan Reichert - Director



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

February 6, 2023 Meeting

Staff Memorandum – ZB2023-05-SE

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type: Special Exception per §703.1 to permit the expansion of a reconstructed non-conforming structure

Location: 31 Granite Street (Tax Map 91, Lot 159)

Applicant/Property Owner:
Jacqueline Frisina

Zoning District: Residential Three (R-3) District

Property Size:
+/-0.12 acres (+/-5,227 sq. ft.) (non-conforming to the minimum required 10,000 sq. ft. lot size required for Class 1 lots in the R-3 District per §310.3)

Overlay District: none

Previous ZBA Action (since 1995):
none

Other Approvals Required:

- Building Permit
- Additional City approval(s) will be required if construction is within the City's right-of-way

Attachments:
Application (6 pages total)

HEARING NOTICE

Jacqueline Frisina, 31 Granite Street (Tax Map 91, Lot 159), zoned R-3: Applicant proposes to increase the height of the existing detached garage which is non-conforming to the minimum required front and side yard setbacks. To permit the expansion of a non-conforming structure, the applicant requests a Special Exception pursuant to Section 703.1 of the Zoning Ordinance. ZB2023-05-VAR

BACKGROUND

The subject property is a non-conforming lot improved with a one-family dwelling and a detached garage, both of which are non-conforming to the minimum required lot line setbacks. As shown on the plan included with the application materials, the garage appears to be partially located within the Light Street right-of-way, and is therefore non-conforming to the minimum required front setback. Based on the City's GIS, it appears that the garage is also located within the minimum required 15 ft. setback from the side lot line shared with 10 Light Street (Tax Map 91, Lot 158) (although whether the existing garage is non-conforming to the side setback is less clear from the plan provided by the applicant).

PROPOSAL

Applicant proposes to replace the detached garage within the existing footprint. Per the application materials, the new garage will be 2 ft. taller than the existing garage. In order to construct a new garage having a height greater than the existing garage, the applicant requires a Special Exception per Section 703.1 of the Zoning Ordinance.

ZONING ORDINANCE REQUIREMENTS

Class 1 lots (lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See §310.3 of the Zoning Ordinance. Per the applicant's plan, the existing garage crosses the front lot line and encroaches into Light Street and, therefore, is non-conforming to the 20 ft. minimum required front yard.

§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[.]”

Taken together, **§703.1** and **§703.2** permit the expansion not just of existing non-conforming structures, but also the expansion of non-conforming structures that are reconstructed within two years following the demolition or destruction of the original structure.

Here, the applicant is entitled to replace the existing non-conforming garage with a new non-conforming garage utilizing the same footprint (at least with respect to that portion of the garage that is located on the applicant’s property); but a Special Exception is required to allow the new garage to have a greater volume (i.e. a taller height) than the existing garage.

Figure 1. Bird’s Eye View of subject property (looking south).



©2021 Eagleview (image taken 5/1/2018)

703.1 Expansion.

In order to grant a Special Exception for the proposed expansion of the non-conformity, the Board must make each of the following findings per §703.1.A:

1. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
2. The proposed expansion shall 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.

Note: §703.1.A.2 allows an expansion that is equally non-conforming or less non-conforming, but prohibits an expansion that would be more non-conforming. Here, the proposed garage will be located no closer to the front and side lot lines than

the existing garage and, therefore, will not “render the lot size proportionately less adequate”.

By contrast, if the new garage was proposed to be located closer to the front or side lot lines than the existing garage, the applicant would be unable to demonstrate compliance with §703.1.A.2 and, instead, would require a Variance from §308.3 to permit the new garage to encroach further into the minimum required front or side yard than the existing garage.

3. These special exception standards shall apply in addition to the standards in Section 801.3 of the Zoning Ordinance.

801.3 Special Exceptions.

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 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §703.1.A of the Zoning Ordinance.
- B. All special conditions required of the special exception have been met.
Note: The special conditions for an expansion of a non-conforming buildings are those set forth above in §703.1.A of the Zoning Ordinance.
- 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 unaware of any Zoning Ordinance violations on the property that the granting of the requested Special Exception would not remedy.
- 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 mistakenly submitted testimony addressing the §801.2 Variance criteria in an application received by the Planning and Development Department on January 18, 2023 (see attached). Staff has asked the applicant to submit a Special Exception Support Statement addressing the Section 801.3 criteria in advance of the hearing.

Attachment

cc: Jacqueline Frisina
Justin Hodorek

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☒	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	OTHER ()

05-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 1/2 in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) V II
Section(s) 703 .1 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;

This improvement will not be contrary to the public interest - rather, we are increasing structural safety

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

Yes, we will be improving the structure very modestly and in a way that does not adversely affect anyone

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

for the owners - a rotting structure will be improved with additional usefulness (ceiling clearance after adding beams)

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

the improvements will repair and improve a rotting structure and;

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

no additional encroachments into the setbacks will be created - raising clearance; and

is required for continued use since the original structure did not conform to code

(ii) The proposed use is a reasonable one.

the proposed use is vehicle parking and general storage - reasonably and consistent with the spirit of the ordinance

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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.

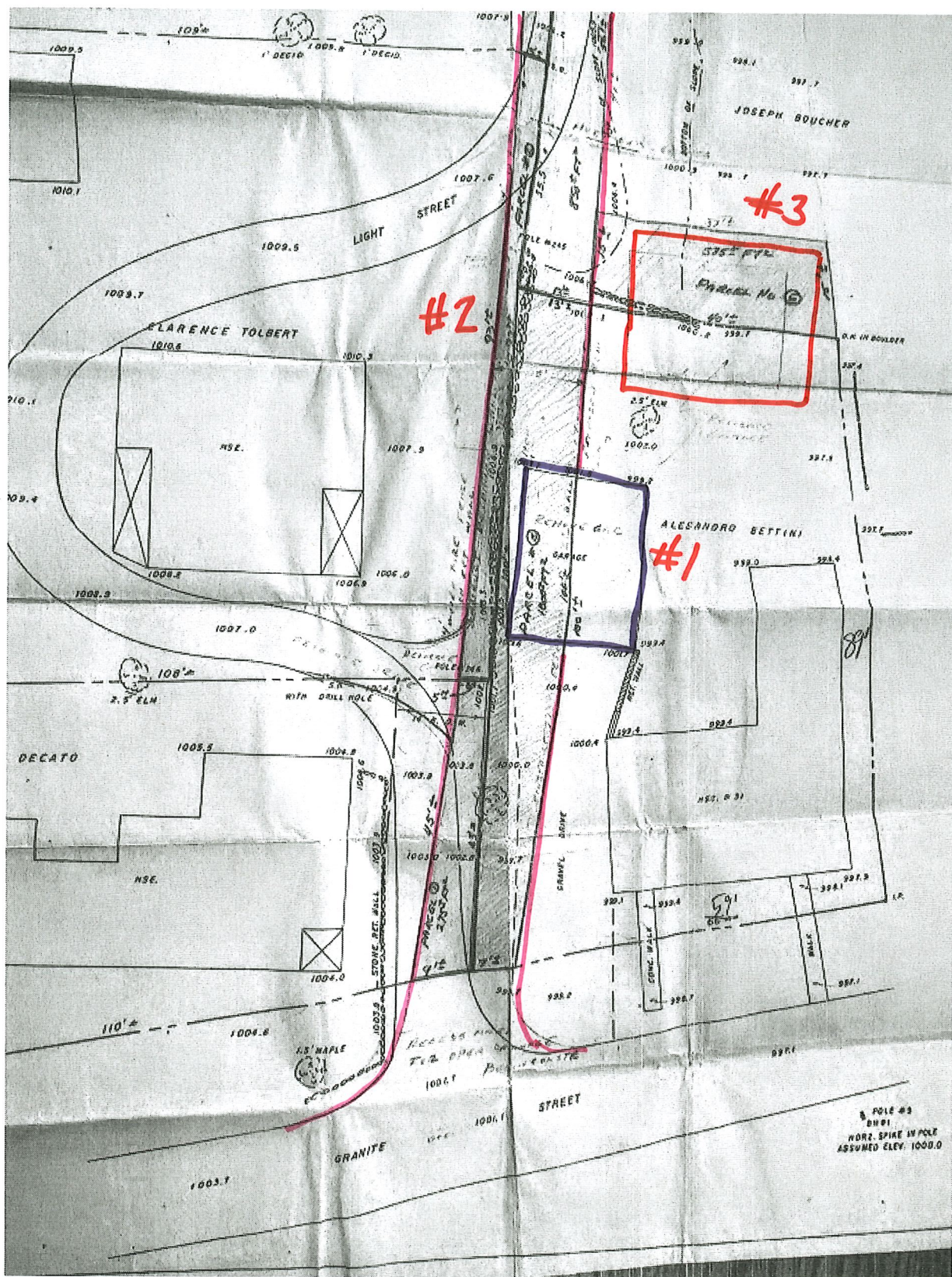
see attached statement

***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)."

The existing garage was built by a contractor presumably contracted by the City of Lebanon. The existing garage on the property was torn down to make room for Project number 82865, Light Street, by the City of Lebanon. Approximately 1000 ft² of land was taken from plot number 91-159 in order to reroute the alley from behind the home located at 15 Light St to its present location. In order to do this, a new garage was built on land acquired from an abutting property (approx 575 ft² was added to the rear of the property). The garage was then built on this newly acquired property. Since 1965 this garage has been nonconforming with an approximate setback on its left side of 1 ft +/-, on its rear side 1 ft +/-, on its front 15 ft +/-, and on its right side 90 ft +/- . The only side that is conforming is the right side facing the existing home. This garage was built using inadequate and structurally unsafe materials and methods - with 2x6 dimensional rafters spanning over 12 feet, no beams designed to carry the weight of any snow load, and a metal roof with exposed fasteners with inadequate pitch, resulting in numerous leaks and culminating in a catastrophic failure of the roof during a heavy snowstorm event on Dec 17th 2022. In order to maintain use of the garage as a parking area for vehicles and general storage, we propose to raise the roof a total of 24 inches in order to create space for proper LVL beams spanning the width of the existing garage without encroaching on the interior volume. We believe that this improvement will be substantially in line with the public interest of having structurally safe and secure dwellings and outbuildings. Since no new encroachments will be created, as the footprint is remaining the same, we believe that there is no violation to the spirit of the ordinance by modestly raising the height of the garage, since the existing structure is structurally unsafe and inadequate and to make it structurally sound, beams with substantial height are required to be added, thereby removing usable interior space. We also believe that this loss of interior space would result in substantial hardship for us, being unable to park our larger modern vehicles in the garage due to the extremely low height in the center once the beams are added. The improvements and repairs will not negatively affect the value of surrounding properties, as the garage was in disrepair and was structurally unsafe, posing a risk to passers-by that are often within feet of the structure. We also believe that this is consistent with other homes in the area - nearly every home if not every home on Light Street is nonconforming as it is a one way single lane alley and not a full street, it does not see 2 way traffic, but because the street was built long after the homes were built, some of them are inches from the property line while others are built literally on the property lines including 2 abutting properties - i.e. opening the front door requires the property owner to stand in the street where vehicle traffic is. Since no additional encroachments into the setbacks will be created by granting this variance, we see no substantial out of character changes being made.



- old garage #1
- // Light St #2
- existing garage #3





CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

February 6, 2023 Meeting

Staff Memorandum – ZB2023-06-SE

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Special Exception per 310.2 & 604 to allow proposed expansion of a group day care facility

Location: 178 Mechanic Street (Tax Map 105, Lot 12)

Applicant/Property Owner:
Children's Center of the Upper Valley

Zoning District: R-2

Property Size: +/-3.73 acres (per the City Assessor's records)

Existing Improvements and Use:
+/-9,815 sq. ft. (gross) building constructed in 1850 (per the City Assessor's records), utilized as a group day care facility

Proposed Use: expansion of existing group day care facility

Overlay Districts:
none

Previous ZBA Action (since 1995):
none

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

- Minor Site Plan Review
- Building Permit

Attachments:

- Application (2 pages total)

HEARING NOTICE

Children's Center of the Upper Valley, 178 Mechanic Street (Tax Map 105, Lot 12), zoned R-2: Applicant requests a Special Exception per Sections 309.2 and 604 of the Zoning Ordinance to expand the existing group day care facility by adding a second classroom to train individuals in the early childhood field. ZB2023-06-SE

BACKGROUND & PROPOSAL

The subject property is a +/-3.73 acre lot located on Mechanic Street, and is improved with a paved parking lot and a two-story, 9,815 sq. ft. (gross) building constructed in 1850, and currently used as a group day care facility.

As described in the application materials, the applicant requests a Special Exception per Section 309.2 and Section 604 of the Zoning Ordinance to expand the existing group day care facility by adding a second classroom to train individuals in the early childhood field.

Figure 1. Aerial View of Subject Property (looking north).



©2021 Eagleview (image taken 4/2021)

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



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

ORDINANCE REQUIREMENTS

A “group day care facility” is allowed by Special Exception within the R-2 District, and is defined in Appendix A of the Zoning Ordinance as:

GROUP DAY CARE FACILITY: A group day care facility is either a child day care facility or an adult day care facility.

- A. **CHILD DAY CARE FACILITY:** A day care center, a day nursery, a private nursery school or kindergarten, a child development center, a play group, a head start center, progressive school or any other facility which cares for seven (7) or more children under the age of 16 for a part but not all of a 24 hour day.

In order to grant a Special Exception for the proposed group day care facility, the applicant must demonstrate compliance with the following criteria set forth in Section 604 of the Zoning Ordinance:

SECTION 604 **GROUP DAY CARE FACILITIES.****604.1** **Play Area.**

- 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.
- B. It 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.
- 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.

604.2 **Other Requirements.**

- A. 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.
- B. Group day care facilities shall comply with all applicable state and federal regulations.
- C. Parking: One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site.

The applicant must also demonstrate compliance with the general Special Exception criteria, set forth in Section 801.3 as follows:

- C. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §310.2 of the Zoning Ordinance.
- D. All special conditions required of the special exception have been met.
Note: The special conditions for group day care facilities are set forth in §604, as noted above.
- E. 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.
- F. The character of the area shall not be adversely affected.
- G. No hazard or nuisance will be created.
- H. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- I. Granting the special exception will not result in undue municipal expense.

- J. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- K. The general welfare of the City will be protected.

The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on January 19, 2023 (see attached).

STAFF COMMENTS

Staff has requested that the applicant calculate the minimum number of required parking spaces required per Section 607 of the Zoning Ordinance and to depict those spaces on the site plan.

Absent abutter testimony to the contrary, the proposal does not appear to be inconsistent with any of the applicable criteria set forth in Section 801.3.

If the Special Exception is approved, the proposal will require site plan approval from the Minor Site Plan Committee.

cc: Children's Center of the Upper Valley
File

**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: Children's Center of the Upper Valley TEL.#: 603-448-11615
MAILING ADDRESS: 178 Mechanic St. Lebanon, NH 03766
E-MAIL ADDRESS: j.hosmer@ccuv.org

CO-APPLICANT, AGENT, OR LESSEE:

NAME: _____ TEL.#: _____
MAILING ADDRESS: _____
E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 105 LOT#: 12 PLOT #: _____ ZONE: R2
STREET ADDRESS OF PROJECT: 178 Mechanic St. Lebanon, NH 03766
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

CCUV is seeking a special exception to add a second classroom, detached from the main building

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☐ ONE FAM ILY ☐ TWO FAM ILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAM ILY ☐ TWO FAM ILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**
USE: Child Care Center

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 February 6, 2023, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: Jennifer Hosmer

DATE: 1/19/23

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 #			
<u>1/19/23</u>	<u>105/12</u>	<u>2B2023-</u>			

06-SE

**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) _____, 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.)*

See Attached

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:

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

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

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

D. That 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 or planned community facilities and services (including streets and highways) will not be adversely impacted:

G. That granting the special exception will not result in undue municipal expense:

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:

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.



178 Mechanic Street, Lebanon, NH 03766
Phone (603) 448-1615

Special Exception Support Statement

I (we) hereby request a Special Exception as provided in Article(s) 604, Section(s) 309.2, of the Lebanon Zoning Ordinance.

Project Description:

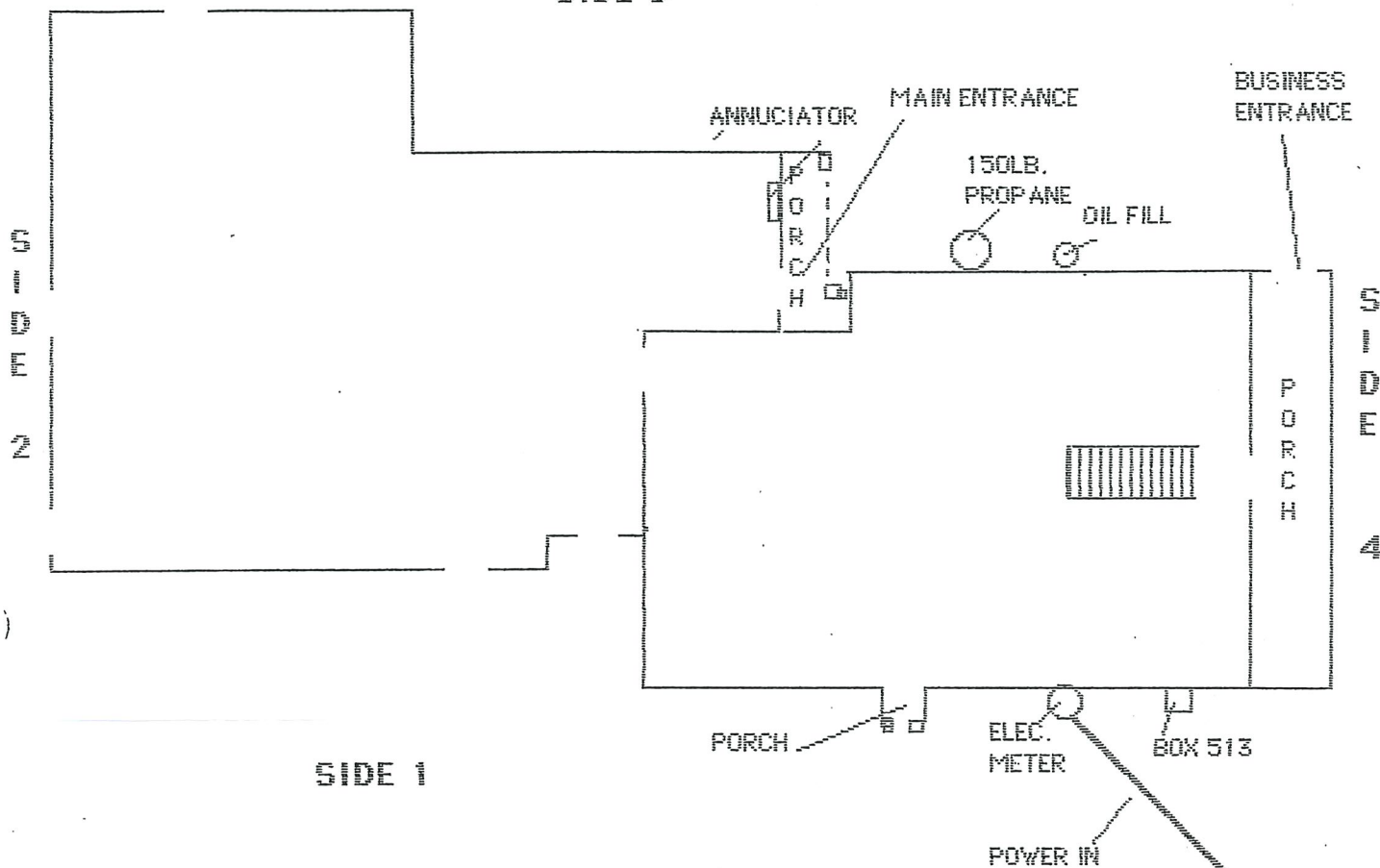
The Children's Center of the Upper Valley is seeking a special exception request to include a detached classroom from the existing main building. The classroom will allow the ability to recruit and train individuals in the early childhood field which will address the need for more teaching staff in the Upper Valley. The classroom space that is currently being utilized to train these individuals is taking up valuable licensed child care spaces.

Section 801.3 Special Exception:

- A. The special exception would include the zoning ordinance 309.2
- B. The special exception would not require any additional special conditions - the center is currently 20 spaces below licensed capacity so parking would not be an issue.
- C. There are no existing violations on the property.
- D. The Children's Center of the Upper Valley will ensure that the classroom will blend in to the existing space using shrubs and other greenery. The classroom will be positioned so only the top half of the building will be visible to one abutter of the property.
- E. The center will ensure that adding a second detached classroom will not create a hazard or nuisance to the City of Lebanon
- F. The training program will operate during low traffic times coming in and out of the center. There are plenty of existing parking spaces to accommodate the additional traffic
- G. No, this exception will not result in undue municipal expenses
- H. The center will ensure that the proposed special exception will be developed in a manner that is aesthetically appealing to the property abutter as well as anyone entering the property.
- I. Yes, the general welfare of the City will be protected.

Detached
Classroom
* New *

SIDE 3



SIDE 1

MECHANIC ST.

(H) +5000 GAL.
(DULACS)

CHILDREN'S CENTER
178 MECHANIC ST.
OVERVIEW
1 OF 4

NOTE: HYDRANTS ON
MECHANIC ST. ARE OFF
OF A 12" MAIN WITH
+5000 GALLONS OF WATER

