

FINAL

**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.

- 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

Mr. Nash recused himself from this hearing.

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

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

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

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

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

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

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

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

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

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

The Public Hearing was reopened.

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

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

Hearing no additional comments. The Public Hearing was closed.

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

Mr. Katz MOVED on January 3, 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Shawn Mason on behalf of Mason Storage, LLC, regarding 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

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 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.
2. 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).

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 unique to the property 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