



**LEBANON ZONING BOARD OF ADJUSTMENT
MARCH 6, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. February 6, 2023
 - 3. Public Hearing Items**
 - A. **KS & PS Properties, LP, 3 Union Street (Tax Map 92, Lot 185), zoned R-2 Class 1:** Applicant proposes to construct an attached carport to an existing dimensionally non-conforming structure. Applicant requests a 12' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed carport +/- 3 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-07-VAR - Application to be postponed to the April 3, 2023 meeting**
 - 4. Deliberation**
 - 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 February 6, 2023**
 - 5. Staff Comments**
 - 6. 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).

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**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
TUESDAY, February 6, 2023
7:00 PM**

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

MEMBERS ABSENT: Paul McDonough

STAFF PRESENT: Nathan Reichert – Planning and Development Director
Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:01 PM.

2. APPROVAL OF MINUTES

A. January 3, 2023

*Mr. Newlove MOVED to approve the January 3, 2022, Minutes as presented in the February 6, 2023, packet with amendments.
Seconded by Mr. Nash.*

Amendments: Page 5, Line 15: Remove ‘applicable’ and Add ‘unique to the property’.

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

B. January 7, 2023

Ms. Hembree was given voting privileges for this Motion.

*Mr. Newlove MOVED to approve the January 7, 2022-Site Walk, Minutes as presented in the February 6, 2023.
Seconded by Mr. Nash.*

**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 January 3, 2023**

Ms. Hembree was given voting privileges for this hearing.

1 No one appeared on behalf of the applicant. There is concern about continuing this hearing due to
2 violations. The Board made some observations during the site-walk. If the Board comes to some
3 consensus regarding violations, then it is best that staff prepare documentation regarding the violations.
4 The Board continued to discuss if there are any violations of the two previous decisions.
5

6 Mr. Nash prepared a report regarding the conditions of the property. It is not a formal report but
7 summarizes some of his observations made during the site visit. One concern is the neighbor to the east
8 and at this time that neighbor does not want to participate in the hearing. The primary observations
9 pertained to the aesthetics. It is felt that it could be considered a junk yard. It is not a violation, but there
10 could be some health and safety concerns that need to be addressed, and some concerns regarding the
11 solid waste that is pushed over the bank. The Porta-let was thought to be a necessary requirement and it is
12 not thought to disallow it.
13

14 It was not clear what type of contractor is using the contractor yard. Landscaping plans included in
15 previous decisions included some plantings that were supposed to impose screening on the site. The
16 plantings observed were inside the fence and they should be placed outside the fence to be a useful
17 screen. The wood stove also is not for the Zoning Board to rule upon, solid fuel heating is likely an issue
18 for the fire department.
19

20 It would be important for the town to determine if the debris is getting into the wetlands. There may be a
21 hazard and a nuisance because it looks like a junk yard, there is no curb appeal, and does not enhance the
22 property. There does not seem to have any restrictions in place regarding all night lighting. There are no
23 shrubs or screening. Chair Koppenheffer believes that the porta-let was not permitted with the contractor
24 lot. If a business is open with customers, it is hard to say that employees should not be allowed to have a
25 porta-let. It is unclear.
26

27 Mr. Katz moved back to the process. All people associated with this hearing are informed that this is a
28 meeting that will address this hearing. There does not seem to be any reason to provide additional
29 continuation of this hearing. It is in the interest of the abutters, the landowners, and the City to come to
30 an understanding of what is permitted on this property. It is important to come to a conclusion. In order
31 to pass a Special Exception, all the conditions must be met. One of the conditions of the Special
32 Exception is that there are no violations.
33

34 The Public was asked for any additional information regarding the site walk. Mary Childs asked about
35 violations that may not be in the realm of the Zoning Board. Can Staff be asked to file notices regarding
36 some of the wetland issues, determination if a junk yard is being operated, and with the fire department
37 regarding the wood stove. Any member of the public has the right to make a phone call regarding any of
38 these issues, but the Zoning Board only has jurisdiction over zoning issues. It has no authority regarding
39 any violations other than those related to zoning. It is the responsibility of the public to inform the
40 agencies as much as it is any Board or individual Board Member. The Board hoped that the departments
41 would be informed based on the reports of Board Members.
42

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

44

45 It is believed there are violations of the existing orders, that were already sited previously by the Zoning
46 Board. Somethings are out of the Board's jurisdiction, but it seems it might be best to start over again
47 regarding landscaping, screening, a porta-let, and any nuisance and hazards. There was a box trailer
48 parked inside that may be out of registration. There is a need for restrictions of lighting and hours of
49 operation.
50

1 The 2009 order states it is not transferable to a new owner. It could be contended that the operation is
2 wholly not allowed. That permit did not travel with the land, rather with the owner. It requires more
3 research to determine if it is allowed. Typically the courts have found in favor of land owners and case
4 law may not determine that the business is not to be continued. There has not been an abandoned use.
5 The plain reading of the 2009 order, it was to be a seasonal location, not a permanent location.
6 However, seasonal is not defined by a time span.

7
8 A decision can be issued using facts on the ground, compliance with ordinance, compliance with the
9 prior rulings, and a statement made of what is allowed. There is a request to store some items from the
10 produce business inside the garage in that contractor yard. If that is the case, a Special Exception may
11 not even be required. However, outside storage and an expansion of any other uses is not allowed and a
12 Special Exception cannot be granted because the violations cannot be overcome with the granting of the
13 Special Exception, it would not remedy the violations.

14
15 The question is, what is allowed in the contractor yard and would storage be allowed in that contractor
16 yard area? It is a lawful non-conforming use. The request is to have storage inside and outside. It may
17 mean that storage outside is not allowed, where inside could be tolerated. It is not believed that outside
18 storage should be expanded, although they would likely have a right to continue operating the farm
19 stand.

20
21 Director Reichert made two suggestions. Option A, conclude there are violations of the previous
22 approval. Until they are cured the applicants are not allowed to obtain any additional permits. Cure the
23 violations and come back to the Board.

24
25 Option B is give a full decision and the violation cures that have to be made to continue to operate.
26 There cannot be any violations that cannot be cured by the Special Exception. And the decision
27 stipulates any and all things that are required and allowed.

28
29 Option C is to deny the whole application. A case was not proven by the applicants. This means there
30 could be a court case to pursue.

31
32 The Board concluded that they would like to see a draft motion proposed by Staff based on the Board's
33 questions, conditions and suggestions. It would be reviewed at the next meeting. It would include some
34 of the zoning violations. Board Members are willing to work with Staff to draft the Motion.

35
36 ***Mr. Nash MOVED to continue this hearing until the March 6 regular Zoning Meeting.***
37 ***Seconded by Ms. Hembree.***

38
39 ****The Vote on the Motion was (5-0).***
40

- 41 **B. Jacqueline Frisina, 31 Granite Street (Tax Map 91, Lot 159), zoned R-3:** Applicant
42 proposes to increase the height of the existing detached garage which is non-conforming to
43 the minimum required front and side yard setbacks. To permit the expansion of a non-
44 conforming structure, the applicant request a Special Exception pursuant to Section 703.1 of
45 the Zoning Ordinance. **ZB2023-05-VAR**
46

47 Justin Hodorek appeared on behalf of the application. When the street was rerouted, it became a one-
48 way alley and not a through street in the mid-60s. This garage had basic construction and is now starting
49 to show signs of sinking in the building. In order to bring the garage up to code for the weight of a snow
50 season on the roof, they would like to improve the construction which would add more height. The
51 foundation is in good shape. Increasing the height would allow them to get their vehicles inside the

1 building and to allow storage of yard maintenance equipment. There has been some new construction
2 started on the garage.

3
4 **Ms. Barkley was appointed a voting member for this hearing.**

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

8
9 *Mr. Nash MOVED on February 6, 2023, at a duly-noticed meeting of the Lebanon Zoning Board of*
10 *Adjustment, there appeared Justin Hodorek regarding 31 Granite Street (Tax Map 91, Lot 159), zoned*
11 *R-3. Applicant proposes to increase the height of the existing detached garage which is non-*
12 *conforming to the minimum required front and side yard setbacks. To permit the expansion of a non-*
13 *conforming structure, the applicant requests a Special Exception pursuant to Section 703.1 of the*
14 *Zoning Ordinance. ZB2023-05-VAR*

15
16 **I. FINDINGS OF FACT**

17
18 Based on testimony given, application materials presented, and supporting documents submitted, the
19 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 20
21 1. The subject property is a non-conforming lot improved with a one-family dwelling and a
22 detached garage, both of which are non-conforming to the minimum required lot line setbacks. As
23 shown on the plan included with the application materials, the garage appears to be partially
24 located within the Light Street right-of-way, and is therefore non-conforming to the minimum
25 required front setback. Based on the City's GIS, it appears that the garage is also located within
26 the minimum required 15 ft. setback from the side lot line shared with 10 Light Street (Tax Map
27 91, Lot 158).
- 28
29 2. Applicant proposes to replace the detached garage within the existing footprint. Per the
30 application materials, the new garage will be 2 ft. taller than the existing garage. In order to
31 construct a new garage having a height greater than the existing garage, the applicant requires a
32 Special Exception per Section 703.1 of the Zoning Ordinance.
- 33
34 3. Class 1 lots (lots that are served by municipal sewer and water) in the R-3 District must maintain
35 a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See §310.3
36 of the Zoning Ordinance. Per the applicant's plan, the existing garage crosses the front lot line
37 and encroaches into Light Street and, therefore, is non-conforming to the 20 ft. minimum required
38 front yard.
- 39
40 4. In order to grant a Special Exception for the proposed expansion, the Board must determine that
41 the proposal meets the criteria set forth in §703.1.A of the Zoning Ordinance. Per §703.1.A.3, the
42 Board must also determine that the proposal meets the general Special Exception criteria set forth
43 in §801.3.
- 44
45 5. No one from the public spoke for or against the application,

46
47 **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 §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)
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 6th day of February 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 shall obtain a building permit and a Certificate of Occupancy.

Seconded by Mr. Newlove.

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

- 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**

Ms. Hembree was given voting privileges for this hearing.

Jennifer Hosmer appeared on behalf of the application. They already have a large day care center. They would like to expand the property to train early childhood teachers to help fill the need for day care. They hope to add a mobile classroom building about 10ft by 24ft, setting it on an existing foundation. The building would only be used for adults.

Currently they hope to have 6 to 10 childcare training students, and two trainers. The Day Care has about 20-22 staff when fully staffed. They can have up to 95 children. They have one parking space for every 8 children. There is potential need for 34 parking spaces. The parking plan that was submitted shows 32 spaces. It may well be that a professional drawing up the parking plan could find additional parking spaces. With the numbers currently submitted, there would need to be a limit to the number of people onsite. They could split the days of the adult learners in order to have enough room with the parking spaces they have. Generally the busiest time is between 6:30 and 8:30. The program would not meet during the high traffic, it starts at 8:30 and ends at 3:30.

Staff will require a site plan that delineates the correct number of parking spaces. The testimony regarding offsite times is believed to address the parking issues. However, a drawing to scale of the parking spaces needs to be addressed.

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

Mr. Nash MOVED on February 6, 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jennifer Hosmer on behalf of Children's Center of the Upper Valley, regarding 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

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 +/-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.
2. 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.
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. The proposed classroom is a trailer type building 10 by 34 feet.
5. 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 §309.2 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. The drop-off parking needs may reduce the overall parking requirements. (§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 6th day of February, 2023, hereby **GRANTS** the requested Special Exception per Section 309.2 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 and obtain a certificate of occupancy.
2. The outdoor play area shall be located no closer to the front lot line than the front of the building.
3. The applicant shall prepare a scale drawing indicating compliant parking.

Seconded by Mr. Katz.

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

4. STAFF COMMENTS

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 8:57 PM.

Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings
Recording Secretary



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF DECISION LEBANON ZONING BOARD OF ADJUSTMENT

On December 5th 2022, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared **Samantha Medina and Cote Swenson** on behalf of their application regarding **397 Dartmouth College Highway (Tax Map 111, Lot 9)**, zoned **RL-2**. 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**.

At the December 5th regularly scheduled Zoning Board meeting a motion was made and passed to conduct a site walk to be performed at 10 AM on December 17th, 2022, and the remainder of this matter to be completed at the January 3, 2023 regularly scheduled Zoning Board meeting. Due to inclement weather the December 17th 2022 site walk meeting was canceled.

At the January 3rd 2023 regularly scheduled Zoning Board meeting, Samantha Medina and Cote Swenson attend, the previously canceled site visit was rescheduled to January 7, 2023, at 10:00 am, and the public hearing continued thereafter until Monday, February 6 at 7:00 PM.

At the February 6th 2023 regularly scheduled Zoning Board meeting, Samantha Medina and Cote Swenson did not attend, the public hearing was concluded and closed.

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 property at 397 Dartmouth College Highway (Tax Map 111, Lot 9) contains two uses, a Contractor's Yard permitted under a Zoning Board approval on January 20th 2009 and a temporary greenhouse and stand permitted under a Zoning Board approval on May 6th 1991.
2. The Applicants testified that they are seeking approval to use both the interior (garage) and exterior (yard) of the contractor yard part of the property to store inventory and material belonging to the produce stand business
3. In all special exception applications, the burden of proof is upon the applicant to demonstrate that each and every one of the requirements of §801.3. are met.
4. Much of the hearings were devoted to the investigation of §801.3.C. Specifically, the applicant bears the burden of proof in demonstrating that there are no existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy.
5. The applicants testified in the December 5th hearing that a violation relating to a fence issue had been resolved and that they were aware of no additional violations.
6. Abutters appeared and testified at the December 5th hearing that they believed multiple violations existed on the property that would not be remedied through the granting of the special exception that has been requested. Abutter Linda Wadleigh testified to the violations related to fencing and landscaping. Abutter Chris Childs testified relative to violations of overnight parking, vehicular maintenance, landscaping and screening. Abutter Marylou Childs presented photographic evidence of violations and also testified regarding nuisance created by excessive commercial light.

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397 Dartmouth College Highway (Tax Map 111, Lot 9)

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7. Upon questioning, the Abutters testified that their grievances center upon the outdoor contractor's yard and the violations relative to the condition on the grounds on that yard. The Abutters confirmed that they are not aggrieved by contents of the produce stand being stored in the interior of the garage.
8. Based upon the December 5th testimony received, a site walk was scheduled so that the Board and Staff would be able to view the conditions on the property. This site walk was performed on January 7, 2023 and was attended by 5 members of the public, including several abutters who had testified in the December 5th hearing. The site walk exclusively focused on the exterior grounds of the property, and no structures were entered. As stated above, the Applicants were invited to the site walk but were not present at the site walk.
9. Limited testimony was allowed at the February 6th meeting to discuss what was seen during the site walk. Applicants did not attend the February 6th meeting and did not submit testimony to refute the abutter's statements or submissions.
10. Four violations were alleged of the May 6th, 1991 Zoning Board Decision relative to the Produce Stand, as follows:
 - a. Violations Pursuant to the May 6th 1991 Zoning Board Decision:
 - i. "This will be a temporary structure." – Multiple permanent and unpermitted greenhouses and structures currently exist on the land.
 - ii. "The greenhouse will 48 feet long [*sic*] with a surrounding fence, both of which are portable." – Multiple permanent greenhouses appear on the lot. There is no fence, temporary or otherwise, surrounding the greenhouses.
 - iii. "This is a seasonal business." – There is evidence that the farm stand business is operational year around.
 - iv. "[T]his is a temporary structure and shall not be attached to earth in any manner." – Multiple unpermitted permanent structures exist on the property.

However, the Board notes that these violations have been rendered moot by virtue of the Board's decision #ZB2020-22SE issued on October 19, 2020, reading in relevant part

"...the Board finds that the produce stand at this location, operating with greenhouses on the site, is a lawful conforming use..." [Paragraph 6] and

"Since we determine that a produce stand with several greenhouses on the site is already a lawfully conforming use..." [Paragraph 7]

Provided that the Produce Stand use is within the confines of the use footprint and intensity that existed as of the October 19, 2020 decision, this Board finds no violations of the May 1991 order as those restrictions were superseded by the more recent decision.

11. However, the Zoning Board finds the testimony of the abutters credible, and personally viewed in the site walk, evidence of the following Zoning Violations on the property that would not be remedied through the granting of the requested Special Exception. The following violations are noted:

- i. _____
- ii. _____

NOTICE OF DECISION

397 Dartmouth College Highway (Tax Map 111, Lot 9)

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b. Violations Pursuant to the January 20th 2009 Zoning Board Decision:

- i. "The building will remain a non-heated, unoccupied storage building." – It was observed that a heating stove chimney has been installed in the building. The heating stove appears to have been installed without the benefit of building or zoning permits.
- ii. "The entire developed portion of the property will comply with the city's commercial landscaping ordinance, as subdividing the property has not occurred other than for bounds of contractor's yard." – Landscaping has not been installed pursuant to the approval.
- iii. "At no time will storage of box trailer, or shipping containers be permitted." – Multiple storage devices including a trailer are present on the site.
- iv. "No vehicle maintained will occur on site." – Credible testimony was received from the neighbors that vehicle maintenance is routinely performed on site.
- v. "All outside storage to conform to the boundaries set forth in supplemental site plan submitted to this board, and said storage to be screened by a 6' – 0" privacy fence." – A 6'-0" privacy fence is not provided as required. There is unpermitted and unscreened storage throughout the site both inside of the limits of operation and outside the limits of operation as defined by the approved 2009 site plan. There is storage of items both for the contractor's yard and the farm stand throughout the site and in areas not permitted.
- vi. "Operating hours to be limited to between 6:30 AM and 8:30 PM" – Testimony from the neighbor states that lights remain on all night and the buildings are regularly used past 8:30 PM and / or before 6:30 AM.
- vii. "Trucks would not be park there over night [*sic*], nor any maintenance performed." – There is credible evidence and testimony that vehicles were parked on site overnight.
- viii. _____
- ix. _____

c. Violations Pursuant to the General Zoning Provisions:

- i. Zoning Ordinance Section 608.8.C.3 (for failing to remove a legal nonconforming sign) – Unpermitted signs remain on the property.
- ii. Zoning Ordinance 608.2(B) for installing a freestanding sign on the Property without obtaining a sign permit.
- iii. Zoning Ordinance Section 702.5(A) for expanding the use of the produce stand in several ways without a special exception.
 1. The storage of junk, waste material, piles of dirt, mulching materials and various items is present throughout the site.
 2. Unpermitted signs which state, "Bark Mulch" and "mulch for sale" appear to be an unpermitted expansion of the contractor's yard into a retail operation.
 3. There is evidence of produce stand items being used and stored in the contractor's yard as a part of an active operation to grow and store items in the yard.
- iv. Building Code Section 36-2(A) for installing a wood stove in the produce stand without a Zoning Board approval or a building permit.

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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 authorized by §314.2 of the Zoning Ordinance. (§801.3.A)
2. There are no special conditions/requirements applicable. (§314.2)
3. There **are** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C)

The applicants have not met their burden of proof in demonstrating that there are no existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. To the contrary, the abutters presented large amounts of credible testimony as to the existence of violations and the Board directly viewed this evidence during the site walk.

4. The character of the area **will** be adversely affected. (§801.3.D)
Abutters have presented credible testimony that expansion of the outdoor storage area that is already non-compliant with its obligations will diminish the character of the area.
5. **A** hazard and nuisance **has / not** been and will be created. (§801.3.E)
Abutters have presented credible testimony that the expansion of the outdoor storage area, especially in conjunction with other evidenced violations, will create and/or exacerbate a nuisance and diminish their quality of life.
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 not** 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 not** be protected. (§801.3.I)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6th** day of **March, 2023**, hereby **DENIES** the requested relief, subject to testimony, plans, and materials submitted due to the following reasons set forth above.

NOTE: (NH RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to

NOTICE OF DECISION

397 Dartmouth College Highway (Tax Map 111, Lot 9)

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approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.