

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
KILTON LIBRARY OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, 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

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, 2023, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 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 request a Special Exception pursuant to Section 703.1 of the Zoning Ordinance. **ZB2023-05-VAR**

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

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

Ms. Barkley was appointed a voting member for this hearing.

Chair Koppenheffer opened the Public Hearing. Hearing no one from the Public, 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 Justin Hodorek regarding 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

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 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).
2. 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.
3. 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.
4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in §703.1.A of the Zoning Ordinance. Per §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in §801.3.
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 §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