

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT  
COUNCIL CHAMBERS, CITY HALL OR  
REMOTE VIA VIRTUAL PLATFORM  
LEBANONNH.GOV/LIVE  
MONDAY, June 5, 2023  
7:00 PM**

**MEMBERS PRESENT:** Chair William Koppenheffer, Vice Chair Jeremy Katz, Dan Nash, Paul McDonough, Jennifer Barkley (Alt)

**MEMBERS ABSENT:** Dave Newlove, Catherine Hembree (Alt)

**STAFF PRESENT:** Nathan Reichert – Zoning Administrator  
Tim Corwin – Deputy Planning and Development Director

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**1. CALL TO ORDER**

Chair Koppenheffer called the meeting to order at 7:03 PM.

**Ms. Barkley was given voting privileges for this meeting.**

The hearings and the meeting agenda have been reordered.

**2. PUBLIC HEARING ITEMS**

- A. Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements.  
**ZB2023-12-SE**

A notice to continue was received. Attorney Simpson appeared and has discovered there is additional material that they would like to submit. They would like to postpone the hearing until August.

***Mr. Nash MOVED to continue this hearing until August 7, 2023.***

***Seconded by Mr. Katz.***

Aleasandra van Loggerenberg asked about the process for delaying the meeting. Is there a guarantee that they would be notified regarding the time of the next hearing in August? The first meeting in August is August 7, 2023. There would be no additional notification because notice was given at this meeting. There is no assurance that the hearing would be that date, but if the hearing is continued again, prior to the 7<sup>th</sup>, it would typically be published on the agenda for the meeting that is published. Because this is a last-minute request for continuance there was not a way to give notification. There would be a notice on the City website.

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

**3. APPROVAL OF MINUTES**

- A. April 3, 2023**

**Mr. Nash MOVED to approve the April 3, 2023, Minutes as presented in the June 5, 2023. Seconded by Mr. Katz.**

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

## **2. PUBLIC HEARING ITEMS-CONTINUED**

### **B. Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class**

**1:** Applicant proposes to demolish an existing garage and construct in its place a 24 x 30 detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-09-VAR**

Josh Tuohy appeared on behalf of the application. They would like to tear down the existing garage and rebuild it with a slightly larger footprint. It would not be closer to the property line but would be closer to the existing home. They hope to build a room on top of the garage to be used for storage. Jeff Curtis, the builder appeared. It would not be a full floor for the storage, they would be adding dormers to create head space.

Staff said it was thought this was a variance because a tear down and rebuild is considered the same as a new building. It would be a larger footprint, going further into the back yard and closer to the house. It would also be going higher. Mr. Corwin said if all the criteria for a variance can be met, then the Board could proceed. Otherwise, it would need to be re-noticed if the request is changed to a special exception.

The Chair felt the application was kind of sparse. In order to obtain a variance, there has to be a hardship on the property and parcel of land. The Board asked if the lot was unique compared to others in the neighborhood. The property is similar to other properties in the area, but they are all tightly packed smaller lots with limited off-street parking. There is no other place that the garage can be built on the property.

**Chair Koppenheffer opened the public hearing and hearing no one from the public closed the public hearing.**

The Board believed this is a reasonable request and the hardship has been addressed. The property is narrower towards the back. There is a slight change in the size of the footprint but it does not further violate any boundary lines than the existing garage.

**Mr. Nash MOVED** On June 5<sup>th</sup> 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Joshua Tuohy & Jeff Curtis regarding 7 Riverdale Parkway (Tax Map 93, Lot 17), zoned R-3. The Applicant requests a 10' right side yard dimensional variance from section §309.3 to construct a detached garage with a finished room above +/-5 ft. from the right-side property line.

### **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 is improved with a one-family dwelling constructed in 1860 per the City Assessor's records. At 15,246 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.

2. The applicants propose to construct a 24' x 30' detached garage with a finished room above. The garage is proposed to be located 5 ft. from the right-side lot line shared with the abutting property at 5 Riverdale Parkway (Tax Map 93, Lot 18) whereas a minimum unobstructed side yard of 15' is required.
3. In the R-3 District, Class 1 lots must maintain a minimum side yard unobstructed by buildings and structures of 15' pursuant to Section §309.3 of the Zoning Ordinance. Therefore, a 10' dimensional variance is required to permit construction of the proposed garage, which will encroach approximately 10' into the minimum required 15' side yard.
4. To obtain the requested Variance from section §309.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b).
5. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on May 2<sup>nd</sup> 2023.
6. No one 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** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):
6. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
7. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

## III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **5<sup>th</sup> day of June, 2023**, hereby **GRANTS** the requested Variances from section §309.3 of the Zoning Ordinance to allow the construction of a construct a 24' x 30' detached garage with a finished room above located +/- 5' from the right-side yard abutting the property at 5 Riverdale Parkway (Tax Map 93, Lot 18) where a minimum unobstructed side yard of 15' is required as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

***Seconded by Mr. Katz.***

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

- C. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO- 1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD**

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

Johanna Cicotte and Attorney Barry Schuster appeared on behalf of the application. They were informed that in an appeal, if there are fewer than 5 people sitting, the applicant is required to receive at least 3 votes affirming the appeal. Procedurally, Mr. Katz was requested to be recused by the applicant. Mr. Katz is not willing to recuse himself because he believes none of the conditions that would require a recusal are in effect at this hearing. He does not believe Mr. Schuster's letter stated anything factual in nature. Attorney Schuster stated that if Mr. Katz is willing waive his attorney client privileges, Mr. Schuster would discuss the factual basis for the request.

There are three issues: 1) They believe that the property is not in the flood zone, 2) The deadlines are unreasonable, and 3) they are not sure if the parking area is grandfathered. Because all the information is not presented, the hearing should be postponed.

Mr. Katz felt there is no jurisdiction for an appeal, but the applicants should be given an opportunity to present all their information. This is a dispute of fact.

Attorney Schuster said they are not even clear that this is a violation. In the files it shows that the parking lot is not in the flood plain. He feels the City has not proven there is a violation. However, the Board is only present to hear an appeal of a decision.

***Chair Koppenheffer MOVED to continue this hearing until July 11, 2023.***

***Seconded by Ms. Barkley.***

***\*The Vote on the Motion was (3-1).***

***Mr. Katz voted nay.***

**Mr. Nash rejoined the meeting.**

#### **4. STAFF COMMENTS**

**None**

#### **5. ADJOURNMENT**

***Mr. Nash MOVED to adjourn the meeting at 7:42 PM.***

***Seconded by Mr. Katz.***

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

Respectfully submitted,  
Linda Billings  
Recording Secretary