

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, July 11, 2023
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Dan Nash, Paul McDonough, Dave Newlove, Catherine Hembree (Alt)

MEMBERS ABSENT: Jennifer Barkley (Alt)

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

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

A. June 5, 2023

Mr. Nash MOVED to approve the June 5, 2023, Minutes as presented in the July 11, 2023 with amendments.

Seconded by Mr. Katz.

Amendments; Page 4, Line 18: Remove ‘If Mr. Katz is willing to relinquish his attorney privileges the applicants agree to continue.’ And Add ‘Attorney Schuster stated that if Mr. Katz is willing waive his attorney client privileges, Mr. Schuster would discuss the factual basis for the request.’ Page 4, Line 25: Remove ‘reason’ and Add ‘jurisdiction’.

****The Vote on the Motion was (4-0-1).***

Mr. Newlove abstained.

3. PUBLIC HEARING ITEMS

- A. 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-**
Continued from June 5, 2023 Meeting

Mr. Nash recused himself from this hearing.

Chair Koppenheffer pointed out that the Zoning Administrator has approved a wetlands permit. Therefore, the issue of the wetland is no longer an issue because a flood plain permit has been issued.

Johanna Cicotte and Barry Schuster, representing Cicotte Holdings, appeared on behalf of the application. At the last hearing, the attorney was going to pursue information about the flood plain permit and grandfathering. The applicants said they believe the parking area may be grandfathered, and they reviewed with the Board the documents, exhibits, and photographs taken over several years of the area

that are part of the packet provided this evening. Attorney Schuster referred to a photograph with red highlighting, that indicates an area that has been used for parking over several owners and years. Cicotte Holdings purchased the property in 2021. The current owners suggest the area has been used for parking throughout time, but Cicotte Holdings chose to pave the area and clean up the area. There are no site plan approvals that indicate anywhere that parking was approved. Given the ambiguity, there is no record that states what is a parking area. Cicotte Holdings did not have any intent of expanding the parking area that was already there.

Mr. Katz requested that the applicant identify the specific section of the ordinance that has been misinterpreted and for the applicant's proposed interpretation for the Board to consider. The applicant confirmed that there is no dispute regarding the meaning of the ordinance, but that they are disputing the City's position that they are in violation of the ordinance. If the City interpreted the ordinance incorrectly, that would be one thing that the Zoning Board could determine in an appeal. The applicants say this is a factual matter.

This is a discretionary enforcement of the City and is not a decision that the Zoning Board can make. Mr. Katz believes this should be dismissed because it is not an issue that the Zoning Board can judicate. Whether or not the applicant is in violation of the zoning ordinance is a matter of adjudication that needs to be determined in a court of law. It should be dismissed due to lack of jurisdiction.

In this case, the asphalt paving was expanded, and there was never a request for approval of the expansion. It is the burden of the applicant to demonstrate that the parking is legally nonconforming and that something about the Zoning Administrator's decision was wrong.

Ms. Hembree MOVED to seek A: a legal opinion from the City Attorney on the question of whether or not we have jurisdiction to hear the appeal and B: to continue this hearing until the scheduled August 7, 2023 meeting of the Zoning Board.

Mr. McDonough seconded.

Ms. Hembree clarified that she would like to meet with the attorney. Certainty has value and time is money. This has been going on for many months and no one's justice is being served and it does not increase certainty. Mr. Katz believes the Board should get out of the way of both parties.

****The Vote on the Motion was (3-2).***

Mr. Katz and Mr. Newlove voted nay.

Mr. Nash rejoined the meeting.

4. STAFF COMMENTS

Mr. Reichert suggested that the Board may want to add to the agenda of the proceedings for the Board of Appeal. In the future, if there is an appeal of a decision of a zoning official, the City Attorney may want to participate in the appeal meeting. It might help move these decisions along quicker. It will involve more discussion.

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 7:52 PM.

Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings, Recording Secretary