

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, March 4, 2024
7:00 PM**

MEMBERS PRESENT: Vice Chair Jeremy Katz, Dave Newlove, Paul McDonough, Michael Morris (alternate)

MEMBERS ABSENT: Chair William Koppenheffer, Jennifer Barkley

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

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

Nathan Reichert provided the reading of the 91A public announcement.

2. APPROVAL OF MINUTES

A. February 5, 2024

Mr. Morris is appointed a full voting member for this meeting.

Mr. Newlove MOVED to approve the February 5, 2024 Minutes as presented in the March 4, 2024 packet.

Seconded by Mr. Morris.

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

Mr. Katz announced that for any application this evening, three votes are required to get relief. There are only 4 members present, and if anyone would like, they can have their application considered when there are 5 members present.

The Pinewood Village Condo Association and George Blike & Rebecca Johnson application is postponed until the April hearing because inadequate notice to abutters was made.

3. PUBLIC HEARING ITEMS

- A. Patch Orchards, Inc., 39 Patch Road (Tax Map 138, Lot 14), zoned RL-2:** Applicant appeals the Zoning Official's calculation of qualified gross living area in both the primary dwelling and accessory dwelling unit. **ZB2024-02-AAD - Continued from February 5, 2024 meeting. To be dismissed due to City Council Zoning amendment approval.**

The relief that the applicant is requesting is no longer needed due to a change by the City Council to the amendment of the Zoning Ordinance.

Mr. Katz MOVED to dismiss without prejudice this appeal on the basis that the change in the zoning ordinance from City Council has rendered it moot.

Seconded by Mr. Morris.

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

- B. Lisa M. Green Trust, 31 Guyer Street (Tax Map 91, Lot 100), zoned R-3:** Applicant requests a Special Exception to allow the addition of an accessory dwelling unit to the existing single-family dwelling, to be located +/- 4.5 feet from the right-side lot line where 15 feet is required.
ZB2024-03-SE

Lisa Green appeared on behalf of the application. She owns a property in Lebanon on a very narrow and deep lot. She would like to add an addition to the back of the garage. Because the lot is narrow, she would need a special exception. The addition would be about 350 square feet. It would be for one of her aging relatives. She clarified that the house is on City sewer and water. The garage is currently 4 feet from the boundary and the addition would be 5 feet from the boundary. The neighbors submitted a document supporting the application.

Vice Chair Katz opened the Public Hearing and hearing no one from the Public, closed the Public Hearing.

Mr. Newlove MOVED on March 4th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Lisa Green regarding 31 Guyer St (Tax Map 91, Lot 100) Zone R3 Class1. The Applicant requests a Special Exception per Section 703.1 and Section §801.3 of the Zoning Ordinance to attach an Accessory Dwelling Unit to an existing detached garage is 4-feet, +/- 5-feet, from the right-side property line where a 15-foot setback is required.

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 one-family dwelling constructed in 1917. The lot contains a primary residence and a dimensionally non-conforming detached garage.
2. As described in the application by the applicant, the applicant proposes to attach an ADU to the rear to the legal non-conforming garage. The addition will be located partially within the 15 ft. right side-yard setback, it will be no closer to the right-side yard lot line than then existing garage and will be approximately 5-feet. from the property line.
3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15-feet. Pursuant to section §310.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure” by Special Exception from the Zoning Board of Adjustment.
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 Section §703.1.A of the Zoning Ordinance. Per Section §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section §801.3.

5. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3 criteria in an application received by the Planning and Development Department on January 18th 2024.
6. There are no known existing zoning violations on the property.
7. Kristi Medill and Alexander Medlicott submitted written testimony in support of 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 §703.1 and §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the Zoning Ordinance. (801.3.A.1)
2. The following criteria of Section §703.1 **have been** met: (801.3.A.2)
 - a. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
 - b. The proposed expansion shall 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 nonconforming in the absence of a variance.
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.A.3)

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.A.4)
5. **No** hazard or nuisance will be created. (§801.3.A.5)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.A.6)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.A.7)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.A.8)
9. The general welfare of the City **will** be protected. (§801.3.A.9)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 4th day of March, 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the Zoning Ordinance to permit the construction of an Accessory Dwelling Unit attached to an existing detached

garage **5-feet** from the right-side property line where a 15-foot setback is required at 31 Guyer St (Tax Map 91, Lot 100), 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 shall comply with all applicable local, state, and federal regulations in the construction of the proposed addition.
2. Prior to the issuance of a Building Permit, the Applicant shall provide an updated site plan sketch reflecting the finalized approved setbacks for the existing non-conforming garage and the proposed setback for the Accessory Dwelling Unit.
3. Prior to the issuance of a Building Permit, the Applicant shall obtain applicable City of Lebanon Sewer Use Permit and Water Service Permits from the Lebanon Department of Public Works.

Seconded by Mr. Morris.

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

- C. James & Andrea Broughton, 9 Estabrook Circle (Tax Map 58, Lot 37), zoned R-3:** Applicant requests a Special Exception to allow an addition to the existing single-family dwelling, to be located +/- 4.5 feet from the right-side lot line where 15 feet is required. **ZB2024-04-SE**

James and Andrea Broughton appeared on behalf of the application. They have a tiny house with no basement or attic. There is a small carport that is in disrepair. They would like to take the carport down and add two bedrooms and a bathroom for their family. Once the carport is removed the building would be farther from the neighbor's lot.

Vice Chair Katz opened the Public Hearing.

Nessen Miller spoke in support of the application.

Hearing no one else from the Public, the Public Hearing was closed.

Board members are supportive of the application.

Mr. McDonough MOVED on March 4th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared James and Andrea Broughton, husband and wife, regarding 9 Estabrook Cir (Tax Map 58, Lot 37) Zone R3 Class1. The Applicant requests a Special Exception per Section §703.1 and Section §801.3 of the Zoning Ordinance to allow an addition to the existing single-family dwelling, to be located +/- 4.5 feet from the right-side lot line where a right-yard setback of 15 feet is required.

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 one-family dwelling constructed in 1950. The lot contains a primary residence and a dimensionally non-conforming attached carport and breezeway.

2. As described in the application by the applicant, the applicant proposes to demolish the existing legal non-conforming carport and breezeway and attach a two-bedroom 1-bath addition in its place. The addition will be located partially within the 15-foot right side-yard setback, it will be no closer to the right-side yard lot line than the existing zero lot line carport and will be +/- 4.5 feet from the right property line.
3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15-feet. Pursuant to section §310.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance allows the expansion of “*any increase in the footprint and/or volume of the non-conforming part of the building or structure*” by Special Exception from the Zoning Board of Adjustment.
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 Section §703.1.A of the Zoning Ordinance. Per Section §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section §801.3.
5. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3 criteria in an application received by the Planning and Development Department on February 5th 2024.
6. There are no known existing zoning violations on the property.
7. Nessen Miller spoke, and his wife was present, in support of the application. No one else from the community spoke in favor 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 §703.1 and §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the Zoning Ordinance. (801.3.A.1)
2. The following criteria of Section §703.1 **have been** met: (801.3.A.2)
 - a. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
 - b. The proposed expansion shall 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 nonconforming in the absence of a variance.
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.A.3)

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.A.4)
5. **No** hazard or nuisance will be created. (§801.3.A.5)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.A.6)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.A.7)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.A.8)
9. The general welfare of the City **will** be protected. (§801.3.A.9)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 4th day of March, 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the Zoning Ordinance to permit the construction of an addition to the existing single-family dwelling, to be located +/- 4.5 feet from the right-side lot line where a right-yard setback of 15 feet 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, and shall comply with all applicable local, state, and federal regulations in the construction of the proposed addition.
2. Prior to the issuance of a Building Permit, the Applicant shall obtain applicable City of Lebanon Sewer Use Permit and Water Service Permits from the Lebanon Department of Public Works.

Seconded by Mr. Morris.

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

- D. Pinewood Village Condo Association and George Blike & Rebecca Johnson, 6 Oak Ridge Road #9 (Tax map 4, lot 23, Plot 906), zoned R-3:** Applicant requests a Variance to allow an addition to the existing condominium unit, to be located +/- 11 feet from the from lot line where 20 feet is required. **ZB2024-05-VAR**

This Hearing was postponed until the April meeting because adequate notice was not given to abutters.

4. **STUDY ITEMS**

- A. Cicotte Properties, LLC** – Proposal to amend Section 303.2 of the Zoning Ordinance to add “vehicular sales” as a Conditional Use in the Light Industrial (IND-L) District.

The Zoning Board is not to opine on the proposed amendment, or if this is a good idea or good policy or desirable. There was a request by the City Council that asked for comment if the proposed amendment is inconsistent with other sections of the ordinance, if it does not conflict with other sections of the ordinance, and if the meaning and effect is understood. Although this is not a public hearing, members of the Public were present and were asked if they would like to make comment.

Barry Schuster Ward 3, representing Cicotte Properties, spoke. He said an opinion from the City Attorney is included in the packet and stated they are in support of the City Attorney's opinion. He asked that the Board proceed according to that opinion. No one else from the Public spoke.

Mr. Katz said he agrees with the opinion of the City Attorney, that a clearly defined use is already in the ordinance, and to not have to interpret that meaning in the future, is a good idea. The proponent, Cicotte Properties, and the City Attorney agree on the same terms and definition.

There were two amendment proposals. Mr. Nash's earlier proposal refers to adding auto sales and service which is not a defined use and category. Also, at the time his memo was written, on January 2, it covered changes to two districts. The first RO1 District was approved and added by City Council on February 7. The second proposal, by Cicotte Properties, asks to have approval for this use in both Districts, the RO1 and the Industrial Light District. City Council asked that the second proposed amendment be sent to various Boards and the Zoning Board is asked to comment prior to City Council review.

Mr. Newlove said Cicotte Properties have come before the Board numerous times. He asked if a car wash is part of this definition. The existing use code is related to a specific and narrowly defined term. A car wash would not be included. The Board asked for clarification, does vehicular sales include vehicular service. Mr. Reichert clarified the two different terms. Although not part of this discussion, it is thought that vehicular repair could be interpreted as an accessory use.

Mr. Katz stated the use is very limited. This is a term and use that would apply to anybody in that district. They are being asked if the term vehicular sales is clear. The Board is being asked to say if they understand the term vehicular sales. In the ordinance, vehicular repair is different from vehicular sales.

Mr. Katz MOVED the proposed amendment is not inconsistent with other applicable sections of the ordinance, the proposed amendment does not conflict with other sections of the ordinance and the meaning and effect of the amendment is understood provided the term recommended by the City Council and endorsed by the proponent is utilized.

Seconded by Mr. Newlove.

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

5. STAFF COMMENTS

None

6. ADJOURNMENT

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

Seconded by Mr. McDonough.

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

Respectfully submitted,
Linda Billings, Recording Secretary