

**AGENDA  
PLANNING BOARD  
FEBRUARY 19, 2019**

**AGENDA ITEM #2  
APPROVAL OF MINUTES**

**JANUARY 22, 2019**

DRAFT

CITY OF LEBANON  
ZONING BOARD OF ADJUSTMENT  
January 22, 2019  
City Hall – Council Chambers  
7:00 p.m.

**MEMBERS PRESENT:** Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr.

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Tim Corwin - Zoning Administrator

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1  
2 **1. CALL TO ORDER**

3  
4 The meeting was called to order at 7:00 p.m. by Chair William Koppenheffer.

5  
6 **2. APPROVAL OF MINUTES:** December 17, 2018

7  
8 The spelling on two names was corrected.

9 *Dan Nash Moved to approve the minutes of the Lebanon Zoning Board of Adjustments meeting of*  
10 *December 17, 2018 as corrected. Seconded by Jennifer Mercer.*

11 *\*The MOTION passed 3-0.*

12 Alan Patterson arrived after the motion.

13  
14 **3. ELECTION OF OFFICERS:** Chair and Vice Chair

15  
16 *Alan Patterson MOVED to re-elect William Koppenheffer as Chair of the Zoning Board of*  
17 *Adjustment. Seconded by Dan Nash.*

18 *\*The MOTION passed 4-0.*

19  
20 *Alan Patterson MOVED to re-elect Jennifer Mercer as Vice Chair of the Zoning Board of Adjustment.*  
21 *Seconded by Dan Nash.*

22 *\*The MOTION passed 4-0.*

23  
24 **4. PUBLIC HEARING – (Continued from December 17, 2018)**

25  
26 **A. ROUTE 120 REALTY, INC., 0 NH ROUTE 120 (Tax Map 10, Lot 9), zoned IND-L:**  
27 **Request for a Variance from Article III, §303.2 of the Zoning Ordinance to allow a +/-**  
28 **26-unit multi-family dwelling which is not a permitted use in the IND-L District.**  
29 **#ZB2018-20-VAR**

30  
31 Marc Milowsky, Route 120 Realty, Inc appeared with Nate Stearns, his attorney, and Andrew  
32 Garthwaite, his architect, requesting the variance.

33  
34 **Chair Koppenheffer asked for questions or comments from the Board.**

35  
36 Chair Koppenheffer asked Mr. Milowsky how long he has owned the property. He replied since around  
37 1975. Chair Koppenheffer asked if they determined it should be designated as a parking lot when they  
38 opened the restaurant and the owner replied yes.

39  
40 Nate Stearns responded, that there is a parking lot where they would like to build a building. They will  
41 also add more parking under the building. The limitation isn't that it is a parking lot. The topography

1 and the wetlands limit the site where a new building can be constructed and that is the hardship. There  
2 are limited building options for the site. An office building was considered in previous years and they  
3 were unable to get an easement from abutting owners to put the building elsewhere.

4  
5 Chair Koppenheffer said the owner is in the same position as other developers who don't have the lot  
6 size requirements to develop housing in this light industrial district. This sounds like a use variance.

7  
8 Mr. Nash asked the size of acreage that is in Lebanon and was told the site is about 3 acres. The  
9 members discussed the size requirements to develop housing in Lebanon and determined that the lot  
10 size doesn't meet the requirements for housing. Mr. Patterson discussed the difficulties of setting  
11 precedent and what implications that has in future decisions. He discussed the easement, saying he  
12 wanted to know there is a documented, definitive refusal from abutting owners to grant an easement.

13  
14 **Chair Koppenheffer asked for public comment, asking if anyone else from the public wished to**  
15 **be heard on this matter. Hearing no further comment, Chair Koppenheffer closed the Public**  
16 **hearing.**

17 *Vice Chair Mercer Moved passage of the following:*

18  
19 *On September 17, 2018, December 17, 2018, and January 22, 2019 at duly-noticed meetings of the*  
20 *Lebanon Zoning Board of Adjustment, there appeared Andrew Garthwaite of Haynes & Garthwaite*  
21 *Architects, Nate Stearns, Attorney and Marc Milowsky on behalf of Route 120 Realty, Inc. regarding 0*  
22 *NH Route 120 (Tax Map 10, Lot 9), zoned IND-L, requesting a Variance from Article III, §303.2 of*  
23 *the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling which is not a permitted use in the*  
24 *IND-L District. #ZB2018-20-VAR*

25  
26 **I. FINDINGS OF FACT**

27  
28 *Based on testimony given, application materials presented, and supporting documents submitted, the*  
29 *Lebanon Zoning Board of Adjustment makes the following findings of fact:*

30  
31 *1. The subject property is located in both the City of Lebanon and Town of Hanover and is*  
32 *improved with a restaurant (Jesse's). The restaurant building is primarily located on the Hanover*  
33 *portion of the lot while the parking for the restaurant is located primarily on the Lebanon portion of*  
34 *the lot.*

35  
36 *2. The property has frontage on NH Route 120 but does not have direct access. Instead, a*  
37 *driveway to the north leads to an access road in Hanover, and a driveway to the south crosses into the*  
38 *adjacent vacant lot owned by the Hitchcock Clinic.*

39  
40 *3. The applicant proposes to construct a multi-family dwelling building on the Lebanon portion*  
41 *of the property, containing 26 units together with associated parking and other related site*  
42 *improvements. A preliminary sketch of the proposed site layout is included with the application*  
43 *materials. Multi-family dwellings are not a permitted use in the IND-L District and, therefore, a*  
44 *Variance is required.*

45  
46 *4. The site will also continue to be used as a parking lot for Jesse's Restaurant. However, as*  
47 *depicted on the applicant's preliminary sketch plan, the Jesse's parking lot will be reconfigured.*

48  
49 *5. Multi-family dwellings are not permitted in the IND-L District per §303.2 of the Zoning*  
50 *Ordinance, unless part of an Industrial Planned Unit Development (PUD) per §501 or a Planned*

1 *Business Park per §508. Given its size, the property cannot be developed as either a PUD (a minimum*  
 2 *of 10 acres is required) or a Planned Business Park (a minimum of 20 acres is required).*

3  
 4 6. *Consequently, in order to allow a multi-family dwelling on the property, the applicant must*  
 5 *obtain a Variance from the IND-L District table of uses set forth in §303.2 of the Zoning Ordinance.*

6  
 7 7. *To obtain the requested Variance, the applicant must demonstrate compliance with each of the*  
 8 *five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b).*

9  
 10 8. *The applicant submitted testimony addressing the §801.2 Variance criteria in an application*  
 11 *received by the Planning Department on September 4, 2018. The applicant submitted additional*  
 12 *materials to the Planning Department on October 9, 2018 describing prior attempts to redevelop the*  
 13 *property.*

14  
 15 9. *No one from the Public spoke regarding the application.*

## 16 II. CONCLUSIONS OF LAW

17  
 18  
 19 *As a result of the above findings of fact and based on testimony given, application materials presented,*  
 20 *and supporting documents submitted, the Board concludes the following with respect to the Variance*  
 21 *criteria set forth in §801.2 of the Zoning Ordinance:*

22  
 23 1. *The variance will not be contrary to the public interest. (§801.2.A.1)*

24  
 25 2. *The spirit of the ordinance is observed. (§801.2.A.2)*

26  
 27 3. *Substantial justice is done. (§801.2.A.3)*

28  
 29 4. *The values of surrounding properties are not diminished. (§801.2.A.4)*

30  
 31 5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary*  
 32 *hardship. Owing to [the following] special conditions of the property that distinguish it from other*  
 33 *properties in the area (§801.2.A.5.a):*

34 *The parcel is 2.96 acres. The dimensions and topography of the property provide for limited*  
 35 *development options. For example, a previous attempt was made to construct an office building and a*  
 36 *planned business development with multi-level housing requires 20 acres and a PUD requires 10 acres*  
 37 *where housing is optional in the industrial light zone.*

38  
 39 6. *There is not a fair and substantial relationship between the general public purposes of the*  
 40 *ordinance provision and the specific application of that provision to the property. (§801.2.A.5.a.i)*

41  
 42 7. *The proposed use is a reasonable one. (§801.2.A.5.a.ii)*

## 43 III. DECISION

44  
 45  
 46 *Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 22<sup>nd</sup> day of January,*  
 47 *2019, hereby GRANTS the request of Route 120 Realty, Inc. for a Variance from Article III, §303.2 of*  
 48 *the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling at 0 NH Route 120 (Tax Map 10,*  
 49 *Lot 9), zoned IND-L, as set forth above and per testimony, plans, and materials submitted, and per the*  
 50 *following conditions:*

1       **1.     The applicant shall obtain site plan review and a building permit.**

2  
3       **Motion seconded by: Dan Nash**

4  
5       **DISCUSSION**

6  
7       Chair Koppenheffer said it is against the zoning ordinance principles to declare that the size of a parcel is  
8       a hardship. He sees this as a variance rather than a hardship. The size of the parcel is extremely below  
9       the required size. Mr. Nash speculated they can overcome the topography without an easement. Vice  
10      Chair Mercer has concern because the owner attempted to build an office building on this parcel, which is  
11      within the use of this zoning. She said there is evidence that they weren't able to do so. Mr. Patterson  
12      said he understands they may not be able to get an easement from the abutting property owners, but that  
13      doesn't justify going against the zoning requirements that were put in place.

14  
15      Chair Koppenheffer called for a vote.

16  
17      **\*The Motion failed 1-3.**

18  
19      **Dan Nash Moved passage of the following:**

20  
21      ***On September 17, 2018, December 17, 2018, and January 22, 2019 at duly-noticed meetings of the***  
22      ***Lebanon Zoning Board of Adjustment, there appeared Andrew Garthwaite of Haynes & Garthwaite***  
23      ***Architects, Nate Stearns, Attorney and Marc Milowsky on behalf of Route 120 Realty, Inc. regarding 0***  
24      ***NH Route 120 (Tax Map 10, Lot 9), zoned IND-L, requesting a Variance from Article III, §303.2 of***  
25      ***the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling which is not a permitted use in the***  
26      ***IND-L District. #ZB2018-20-VAR***

27  
28      **I.    FINDINGS OF FACT**

29  
30      ***Based on testimony given, application materials presented, and supporting documents submitted, the***  
31      ***Lebanon Zoning Board of Adjustment makes the following findings of fact:***

32  
33              ***1.    The subject property is located in both the City of Lebanon and Town of Hanover and is***  
34              ***improved with a restaurant (Jesse's). The restaurant building is primarily located on the Hanover***  
35              ***portion of the lot while the parking for the restaurant is located primarily on the Lebanon portion of***  
36              ***the lot.***

37  
38              ***2.    The property has frontage on NH Route 120 but does not have direct access. Instead, a***  
39              ***driveway to the north leads to an access road in Hanover, and a driveway to the south crosses into the***  
40              ***adjacent vacant lot owned by the Hitchcock Clinic.***

41  
42              ***3.    The applicant proposes to construct a multi-family dwelling building on the Lebanon portion***  
43              ***of the property, containing 26 units together with associated parking and other related site***  
44              ***improvements. A preliminary sketch of the proposed site layout is included with the application***  
45              ***materials. Multi-family dwellings are not a permitted use in the IND-L District and, therefore, a***  
46              ***Variance is required.***

47  
48              ***4.    The site will also continue to be used as a parking lot for Jesse's Restaurant. However, as***  
49              ***depicted on the applicant's preliminary sketch plan, the Jesse's parking lot will be reconfigured.***

50  
51              ***5.    Multi-family dwellings are not permitted in the IND-L District per §303.2 of the Zoning***  
52              ***Ordinance, unless part of an Industrial Planned Unit Development (PUD) per §501 or a Planned***  
53              ***Business Park per §508. Given its size, the property cannot be developed as either a PUD (a minimum***

1 of 10 acres is required) or a Planned Business Park (a minimum of 20 acres is required).

2  
3 6. Consequently, in order to allow a multi-family dwelling on the property, the applicant must  
4 obtain a Variance from the IND-L District table of uses set forth in §303.2 of the Zoning Ordinance.

5  
6 7. To obtain the requested Variance, the applicant must demonstrate compliance with each of the  
7 five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b).

8  
9 8. The applicant submitted testimony addressing the §801.2 Variance criteria in an application  
10 received by the Planning Department on September 4, 2018. The applicant submitted additional  
11 materials to the Planning Department on October 9, 2018 describing prior attempts to redevelop the  
12 property.

13  
14 9. No one from the Public spoke regarding the application.

15  
16 **II. CONCLUSIONS OF LAW**

17  
18 As a result of the above findings of fact and based on testimony given, application materials presented,  
19 and supporting documents submitted, the Board concludes the following with respect to the Variance  
20 criteria set forth in §801.2 of the Zoning Ordinance:

21  
22 1. The variance will be contrary to the public interest to allow multi-family dwellings at the  
23 unique where 10 acres is required. (§801.2.A.1)

24  
25 2. The spirit of the ordinance is not observed. (§801.2.A.2)

26  
27 3. Substantial justice is not done. (§801.2.A.3)

28  
29 4. The values of surrounding properties are not diminished. (§801.2.A.4)

30  
31 5. Literal enforcement of the provisions of the ordinance would not result in an unnecessary  
32 hardship.

33  
34 6. There is a fair and substantial relationship between the general public purposes of the  
35 ordinance provision and the specific application of that provision to the property. (§801.2.A.5.a.i)

36  
37 7. The proposed use is not a reasonable one. (§801.2.A.5.a.ii)

38  
39 **III. DECISION**

40  
41 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 22<sup>nd</sup> day of January,  
42 2019, hereby **DENIES** the request of Route 120 Realty, Inc. for a Variance from Article III, §303.2 of  
43 the Zoning Ordinance to allow a +/- 26-unit multi-family dwelling at 0 NH Route 120 (Tax Map 10,  
44 Lot 9), zoned IND-L.

45  
46 Motion seconded by: Alan Patterson

47  
48 Chair Koppenheffer proposed an amendment to paragraph 5, Conclusions of Law.

49  
50 *Buying a 3-acre lot and then 40 years after the fact claiming that it is a hardship and not being able to*  
51 *build a 26-unit housing development because 10 acre and 20 acre lots in the neighborhood that*  
52 *properly can build such developments are allowed to do so. Buying a 3-acre lot does not constitute a*  
53 *hardship. In addition, the use of the lot as it is currently being used is the result of a decision made by*

1 *the same owner approximately 40 years ago.*

2  
3 **DISCUSSION**

4  
5 The members asked if the purchase of the property predated the zoning ordinances. It was not  
6 determined.

7  
8 *Dan Nash motioned to continue the deliberation to the next meeting so a draft motion can be prepared.*  
9 *Seconded by Alan Patterson.*

10 *\*MOTION passed 3-1.* **B. DARTMOUTH COLLEGE, TOWN OF HANOVER, and**  
11 **CAMPION SPORTS & REC PROJECT, 394 N. MAIN STREET (Tax Map 5, Lot 2-701), 0**  
12 **GOULD RD (Tax Map 5, Lot 1), 0 N. MAIN STREET (Tax Map 8, Lot 27), and 0 INDIAN**  
13 **RIDGE DRIVE (Tax Map 8, Lot 28), zoned RL-3 and R-3: Request for a two (2) year**  
14 **extension of Variances from §310.2, §310.3, and §314.3 and a Special Exception pursuant to**  
15 **§314.2 of the Zoning Ordinance, approved on December 19, 2016, to allow an expansion of**  
16 **the existing ice rink. #ZB2018-25-EXT**

17  
18 Attorney Nate Stearns and John Souther, President of the Campion Sports and Rec Project, appeared  
19 to request the variance extension. The volunteer organization has been working to raise the money but  
20 has yet to raise enough funds to complete the project.

21  
22 **Chair Koppenheffer asked for questions or comments from the Board.**

23  
24 Mr. Patterson asked if this building is tax exempt. The land is owned by Town of Hanover, the building  
25 is owned by Hanover Improvement Society. The property is not currently taxed, and the plan is to  
26 continue to receive the same tax basis.

27  
28 Ms. Mercer asked what has been done to address the concerns of the neighbors. Which operating hours  
29 are you operating under? The Town of Hanover made some physical changes to the property. Exterior  
30 lights were changed to reduce the glare and they haven't had additional complaints. The rink is  
31 operating under the interim hours that were granted. The rink was allowed to open earlier in the year,  
32 but the time of day operating hours are the 2016 hours that were approved. The new building project  
33 would offer additional ice time to schools, athletic programs, and residents from both towns.

34  
35 Ms. Mercer asked how they intend to achieve the funding within the next two years. Mr. Souther said  
36 he is unable to state what funds have been received in a public setting and is unable to say if the funds  
37 would be raised in full. Chair Koppenheffer asked if there have been any complaints to the City within  
38 the last two years. None were noted.

39  
40 **Chair Koppenheffer asked for public comment.**

41  
42 Mathew Ballou spoke and was not in support of the extension because there was no public disclosure  
43 regarding the funding.

44  
45 **Chair Koppenheffer asked if anyone else from the public wished to be heard on this matter.**  
46 **Hearing no further comment, Chair Koppenheffer closed the Public hearing.**

47  
48 **DELIBERATION**

49  
50 Mr. Nash felt there was good cause to grant an extension. Vice Chair Mercer was disappointed that  
51 disclosure of funding was not forthcoming. As there have been no complaints, there is good cause to  
52 grant the extension. Chair Koppenheffer recalls that both Lebanon and Hanover pay the same rates to  
53 use the facilities.

1  
2 **Dan Nash Moved to grant a two-year extension, from tonight, for the approvals of this project.**  
3 **Seconded by Vice Chair Mercer.**

4  
5 **DISCUSSION**

6 Chair Koppenheffer thought the extension should be for one year.

7  
8 **\*Motion passed 3-1.**

9  
10 **C. SECOND REHEARING: WILLIAM & LORI GRIZZAFFI, 351 MERIDEN ROAD**  
11 **(Tax Map 167, Lot 16), zoned RL-1: Request for a Variance from Article III, Section**  
12 **312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard.**  
13 **#ZB2018-12R2-VAR**

14  
15 Mr. Patterson recused himself.

16  
17 Attorney Burke and Mr. Grizzaffi appeared as spokesmen for the applicant. Attorney Burke said he  
18 has additional information that may not have been provided to the Board regarding the shed and the  
19 addition on the building. He wanted the Board to know that Mr. Grizzaffi had previously removed the  
20 shed and was willing to remove the 20-foot extension on the back of the building that is within the  
21 wetland buffer.

22  
23 They restated they are asking for a variance for the limited use as an overflow of the Lebanon lot and  
24 the continued use of the garage for maintenance of the owner’s vehicles and equipment, like a  
25 contractor’s yard. Mr. Burke addressed previous comments from the public both in support and those  
26 objecting. He presented photos of the abutting properties of the proposed impound lot and a letter from  
27 neighbors.

28  
29 **Chair Koppenheffer asked for questions or comments from the Board.**

30  
31 Dan Nash asked if there is any evidence of a building permit for the construction of the building. There  
32 hasn’t been any notice issued to the owner pertaining to the violation of building without a permit. Mr.  
33 Corwin read into the record an email regarding additional information he intended to provide to the  
34 Board.

35  
36 Mr. Nash and other members of the Board agree that the concerns of the building in the wetland buffer  
37 isn’t pertinent to this decision and would be handled in another manner.

38  
39 Ms. Mercer asked how many vehicles the owner would typically hold on this property for impound  
40 purposes, and if a limit of no more than 10 impound vehicles would be amenable to the owner. The  
41 owner stated that usually 4-5 owner vehicles are on the property. They discussed the fencing and  
42 screening that is higher during the summer. She asked if they could constrain the number of owner  
43 vehicles that are kept there to no more than 5.

44  
45 Chair Koppenheffer said they are essentially applying for a use variance. The applicant has made  
46 comparisons to a similar application from Mr. Carter that was approved. The variance that was granted  
47 for Mr. Carter is not visible from the road and all the neighbors are supportive. In this case, the impound  
48 lot is visible and there are neighbors who aren’t supportive.

49  
50 Attorney Burke stated he understands the Chair’s opinion regarding use variance and that each decision  
51 should be decided case by case. Mr. Burke said that due to the history of the property, there are grounds  
52 for variance. The applicant is willing to construct a fence and a stockade. It could be completely  
53 screened.



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**Chair Koppenheffer asked for public comment.**

Matt Maughan, an abutting neighbor, spoke to deny the variance. He asked if the rule of law or the desire of the individual is more important. He stated that the historical use of the property is not justification. Following the ordinances is more pertinent. He believes granting this variance will be continue the visual and noise problems. He discussed the Conclusions of Law that have to be met to grant a variance and he doesn't believe there has been a strong argument for the variance. Historical privileges aren't the grounds for continued use. He agrees that the building should be used for whatever the zoning permits.

Darren Carter spoke saying he operates another impound lot and feels compelled to defend himself. He said that Mr. Grizzaffi isn't meeting the terms of the MOU with the City of Lebanon and he is breaking the requirements of that contract. He stated there are consistently more cars at the owner's house than there are at the Lebanon main street address.

Matt Ballou, a former worker for Mr. Grizzaffi, spoke in objection to permitting the variance. He believes the facts regarding the way the property is being used isn't being portrayed truthfully.

**Chair Koppenheffer asked if anyone else from the public wished to be heard on this matter. Hearing no further comment, Chair Koppenheffer closed the Public hearing.**

**DELIBERATION**

Chair Koppenheffer clarified what he has stated in the past regarding variances. Use variances are disfavored by the law, not forbidden.

**A 12-minute break was taken.**

*Dan Nash MOVED to continue this agenda item to the next meeting so a draft decision can be crafted that will likely garner the three votes that are required for approval or denial. Seconded by Vice Chair Mercer.*

*\*MOTION passed 3-0.*

**D. RAYMOND DOWNS, regarding 60 S. MAIN STREET (Tax Map 86, Lot 7), owned by Sixty South Main Street, LLC, zoned R-2: An appeal of an administrative decision that the subject property is used as a two-family dwelling, and that the use of the property is in compliance with the Zoning Ordinance, including Article III, §309.2 (R-2 District Table of Uses). #ZB2018-26-AA**

Mr. Corwin said the Board continued this item in order to obtain copies of the leases and verification that the lock had been removed. He met with the property owner recently and confirmed the door has been unlocked and made accessible to the upstairs. The leases haven't been obtained from Mr. Chambers. Mr. Corwin noted the requirement that the persons living in a single-family unit have to be living as a single housekeeping unit and what that means is poorly defined. He suggested a lock mechanism that would require the basement renter to use the main doors as the bulkhead door would be locked from the inside only. If the Board determines this is a separate living space, the Zoning Board has to provide recommendations that would bring it into compliance.

Mr. Patterson discussed what constitutes a kitchen. From past hearings, he said the Board isn't getting an accurate reading of what is going on in this building. Vice Chair Mercer said the Board's questions have been answered. This situation is revealing some deficiencies in the Zoning Board ordinances. Removing the improvements in the basement wouldn't likely be upheld. She feels it is clear the unit is

1 being used as a separate unit.

2  
3 Chair Koppenheffer and some of the Board support the special lock that would make the bulk head  
4 doors inaccessible as an entrance because it is only lockable from the inside. The Board agrees there  
5 are many grey things and unfortunately there aren't regulations to prohibit this use. Some of the  
6 activities are an issue for property abutters, but there isn't evidence that more than 3 people are living  
7 in the unit.

8  
9 ***Dan Nash MOVED to support the Zoning Administrator's conclusion that this is a two-family***  
10 ***dwelling. The applicant shall replace the existing locks on the basement door with a lock that can***  
11 ***be operated only from the interior of the dwelling unit.***

12  
13 The motion was amended by Dan Nash adding:  
14 ***, within 30 days and the property owner shall allow the Zoning Administrator to verify the lock***  
15 ***functions as intended, prior to being granted.***

16 ***Second by Vice Chair Mercer.***

17 ***\*MOTION passed 4-0.***

18  
19 **5. PUBLIC HEARINGS - New:**

20  
21 **A. THOMAS & MICHELLE HARKINS, 32 CRAFTS AVENUE, (Tax Map 58, Lot 79),**  
22 **zoned R-3: Applicants propose to construct an addition onto the front of the existing**  
23 **home, which is +/- 3.5 ft. from the side lot line shared with 36 Crafts Avenue, where a**  
24 **minimum of 15 ft. is required. The proposed addition will be located +/- 7.5 ft. from the**  
25 **side lot line. To permit the expansion of a non-conforming structure, the applicants**  
26 **request a Special Exception pursuant to Article VII, Section 703.1 of the Zoning**  
27 **Ordinance. #ZB2019-01-SE**

28  
29 Tom Harkins, owner and Dave Curtis, from Curtis Carpentry, appeared. Mr. Harkins discussed the  
30 additional footage they will be adding to build a new bedroom.

31  
32 **Chair Koppenheffer asked for questions or comments from the Board.**

33  
34 Mr. Patterson asked how the neighbors felt about the addition. He said his neighbor, Kathleen, asked  
35 some questions and is supportive of the addition.

36  
37 **Chair Koppenheffer asked for public comment.**

38  
39 Kathleen O'Malley, neighbor to the applicant, spoke in support of the addition.

40  
41 **Chair Koppenheffer asked if anyone else from the public wished to be heard on this matter.**  
42 **Hearing no further comment, Chair Koppenheffer closed the Public hearing.**

43  
44 **DELIBERATION**

45  
46 They confirmed the number of feet that the new construction will be from the neighbor's property.

47  
48 ***Dan Nash Moved passage of the following:***

49  
50 ***On January 22, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there***  
51 ***appeared Thomas Harkins, owner & Dave Curtis, Contractor, regarding 32 Crafts Avenue (Tax***  
52 ***Map 58, Lot 79), zoned R-3. Applicants propose to construct an addition onto the front of the***  
53 ***existing home, which is +/- 3.5 ft. from the side lot line shared with 36 Crafts Avenue, where a***

1 *minimum of 15 ft. is required. The proposed addition will be located +/- 7.5 ft. from the side lot*  
 2 *line. To permit the expansion of a non-conforming structure, the applicants request a Special*  
 3 *Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. #ZB2019-01-SE*  
 4

5 **I. FINDINGS OF FACT**  
 6

7 *Based on testimony given, application materials presented, and supporting documents submitted,*  
 8 *the Lebanon Zoning Board of Adjustment makes the following findings of fact:*  
 9

- 10 1. *The subject property is improved with a one-family dwelling constructed in 1910. As shown is*  
 11 *the materials provided by the applicant, the existing home is located approximately 3.5 ft. from*  
 12 *the side lot line shared with 36 Crafts Avenue (Tax Map 92, Lot 187). As such, the existing home*  
 13 *is non-conforming to the minimum side yard of 15 ft. required for Class 1 lots in the R-3 District*  
 14 *(based on the City’s maps, it appears the home is also non-conforming to the minimum required*  
 15 *20 ft. rear yard).*
- 16 2. *The location of the home more or less mirrors the location of the detached non-conforming*  
 17 *garage at 36 Crafts Avenue, which also encroaches into the 15 ft. minimum required side yard.*  
 18 *The home at 36 Crafts Avenue home is located at the northern end of its lot, at a substantially*  
 19 *greater distance from the 32 Crafts Avenue home.*
- 20 3. *The applicants propose to construct a 20 ft. x 26 ft. addition onto the front of the existing non-*  
 21 *conforming home. The addition will be approximately located half a foot further back from the*  
 22 *side lot line shared with 36 Crafts Avenue. Accordingly, the addition will be slightly more*  
 23 *conforming to the minimum required 15 ft. side setback than the existing home.*
- 24 4. *Class 1 lots (lots that are served by municipal water and sewer) in the R-3 District must maintain*  
 25 *a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See §310.3*  
 26 *of the Zoning Ordinance. §703.1 of the Zoning Ordinance allows the expansion of “any increase*  
 27 *in the footprint and/or volume of the non-conforming part of the building or structure,” by*  
 28 *Special Exception from the Zoning Board of Adjustment.*
- 29 5. *Here, the existing home is located approximately 3.5 ft. from the side lot shared with 36 Crafts*  
 30 *Avenue, and the proposed addition will be located 7 ½ ft. from the side lot line. This proposed*  
 31 *expansion of the existing non-conforming structure is allowed by Special Exception per §703.1.*  
 32
- 33 6. *In order to grant a Special Exception for the proposed expansion, the Board must determine*  
 34 *that the proposal meets the criteria set forth in §703.1.A.*
- 35 7. *Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an*  
 36 *expansion of a non-conforming structure, the Board must determine that the proposal meets*  
 37 *the general Special Exception criteria, set forth in §801.3.*
- 38 8. *One member of the Public, Kathleen O’Malley, spoke in support of the project.*  
 39

40 **II. CONCLUSIONS OF LAW**  
 41

42 *As a result of the above findings of fact and based on testimony given, application materials presented,*  
 43 *and supporting documents submitted, the Board concludes the following with respect to the Special*  
 44 *Exception criteria set forth in §801.3 of the Zoning Ordinance:*  
 45

- 46 1. *The Special Exception is specifically authorized by §703.1.A of the Zoning Ordinance.*  
 47 *(§801.3.A)*  
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- 2. *The following special conditions/requirements §703.1.A are met (§801.3.B):*
  - *The reasonable use of abutting properties shall not be adversely affected by the proposed expansion. (§703.1.A.1)*
  - *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 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) 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 22<sup>nd</sup> day of January, 2019, hereby **GRANTS** the requested relief, subject to testimony, plans, and materials submitted, and per the following conditions:*

- 1. *The applicant shall obtain a building permit.*

*Motion seconded by: Alan Patterson  
\*MOTION passed 4-0.*

**B. CAMERON DEREMER & JESSICA SALWEN DEREMER, 33 GOULD ROAD (Tax Map 4, Lot 87), zoned R-3: Applicants request a Special Exception pursuant to Article III, §310.2 of the Zoning Ordinance to convert a one-family dwelling into a two-family dwelling. #ZB2019-02-SE**

The Deremer spoke regarding the application. They would like to add an apartment to the basement of their house. It is already a permitted use.

**Chair Koppenheffer asked for questions or comments from the Board.**

Mr. Patterson asked about the kitchen that will be added. They responded that a full kitchen will be built including a stove, sink, dishwasher, and cabinets.

1 Chair Koppenheffer asked for public comments. Hearing no further comments, Chair  
2 Koppenheffer closed the Public hearing.

3  
4 **DELIBERATION**

5  
6 There was no deliberation.

7  
8 *Dan Nash Moved passage of the following:*

9  
10 *On January 22, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there*  
11 *appeared Cameron Deremer & Jessica Salwen Deremer regarding 33 Gould Road (Tax Map 4, Lot*  
12 *87), zoned R-3. Applicants request a Special Exception pursuant to Article III, §310.2 of the Zoning*  
13 *Ordinance to convert a one-family dwelling into a two-family dwelling. #ZB2019-02-SE*

14  
15 **I. FINDINGS OF FACT**

16  
17 *Based on testimony given, application materials presented, and supporting documents submitted, the*  
18 *Lebanon Zoning Board of Adjustment makes the following findings of fact:*

19  
20 *1. The characteristics of the subject property and the improvements thereon are described in*  
21 *the ‘Application Information’ section of the Staff Memorandum as follows:*

22  
23 *Location: 33 Gould Road (Tax Map 4, Lot 87)*

24  
25 *Zoning District: Residential Three (R-3)*

26  
27 *Property Size: +/-1.32 acres (+/-57,499 sq. ft.)*

28  
29 *Existing Use: +/-4,579 sq. ft. (gross) single-story one-family dwelling constructed in 1968, per the*  
30 *City Assessor’s records (a conforming use in the R-3 District per §310.2)*

31  
32 *Proposed Use: interior renovations to basement to convert one-family dwelling to two-family*  
33 *dwelling*

34  
35 *Overlay Districts: none*

36  
37 *Previous ZBA Action (since 1995): none*

38  
39 *2. The applicants propose to convert the existing one-family dwelling to a two-family*  
40 *dwelling, which is a use permitted by Special Exception in the R-3 District. As described in*  
41 *the application materials, the renovations will be interior only and the footprint will remain*  
42 *as is; no exterior renovations are proposed.*

43  
44 *3. A “two-family dwelling by conversion of existing one-family dwelling” is allowed by Special*  
45 *Exception within the R-3 District. In order to grant a Special Exception, the applicants must*  
46 *demonstrate that the proposal meets the general Special Exception criteria set forth in*  
47 *§801.3.*

48  
49 *4. The applicants have submitted testimony addressing the §801.3 criteria in an application*  
50 *received by the Planning Department on January 3, 2019.*

51  
52 *5. No one from the public spoke for or against the project.*

1  
2 **II. CONCLUSIONS OF LAW**

3  
4 *As a result of the above findings of fact and based on testimony given, application materials presented,*  
5 *and supporting documents submitted, the Board concludes the following with respect to the Special*  
6 *Exception criteria set forth in §801.3 of the Zoning Ordinance:*

- 7 1. *The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance.*  
8 *(§801.3.A)*
- 9
- 10 2. *There are no special conditions/requirements applicable to the proposed use. (§801.3.B)*
- 11
- 12 3. *There are no existing violations of the Zoning Ordinance on the property that the granting*  
13 *of the Special Exception would not remedy. (§801.3.C) Staff is not aware of any Zoning*  
14 *Ordinance violations on the property.*
- 15
- 16 4. *The character of the area will not be adversely affected. (§801.3.D)*
- 17
- 18 5. *No hazard or nuisance will be created. (§801.3.E)*
- 19
- 20 6. *The capacity of existing or planned community facilities and services (including streets and*  
21 *highways) will not be adversely impacted. (§801.3.F)*
- 22
- 23 7. *The granting of the Special Exception will not result in undue municipal expense. (§801.3.G)*
- 24
- 25 8. *The proposed Special Exception will be developed in a manner compatible with the spirit*  
26 *and intent of the ordinance. (§801.3.H)*
- 27
- 28 9. *The general welfare of the City will be protected. (§801.3.I)*
- 29

30 **III. DECISION**

31  
32 *Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 22<sup>nd</sup> day of January,*  
33 *2019, hereby **GRANTS** the requested relief, subject to testimony, plans, and materials submitted, and*  
34 *per the following conditions:*

- 35
- 36 1. *The applicants shall obtain a building permit.*
- 37

38 *Motion seconded by: Alan Patterson*

39 *\*MOTION passed 4-0.*

40  
41 **6. OTHER BUSINESS:**

- 42
- 43 **A. AMENDMENTS TO ZONING BOARD OF ADJUSTMENT BY-LAWS – SECOND READING**  
44 **The Second Reading will be followed by a vote to adopt the proposed amendments.**
- 45

46 Chair Koppenheffer asked if everyone has read the amendments and if they are in agreement. There  
47 has been a letter from the public discussing the OSI Zoning Board of Adjustment handbook. Mr.  
48 Corwin asked if the Board wanted to consider approving the amendments, with the exception of Section  
49 6 under the heading of Appeals.

50  
51 *Chair Koppenheffer **MOVED** to adopt the amendments effective Tuesday February 5, 2019. Seconded by*  
52 *Vice Chair Mercer.*

1    **\*MOTION passed 4-0.**

2

3    **7. STAFF COMMENTS:**

4

5       The next meeting will be 2/19/2019.

6

7    **ADJOURNMENT:**

8

9    ***Alan Patterson MOVED to adjourn. Second by Chair Koppenheffer.***

10   ***\*MOTION passed 4-0.***

11

12    At 10:07 p.m. the meeting was adjourned.

13

14    Respectfully Submitted,

15    Linda Billings

16    Recording Secretary