

FINAL

**CITY OF LEBANON  
ZONING BOARD OF ADJUSTMENT  
March 19, 2018  
City Hall—Council Chambers  
7:00 p.m.**

**MEMBERS PRESENT:** Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Travis Griffin, Jason Crowley (alternate),

**MEMBER ABSENT:** None

**STAFF PRESENT:** Zoning Administrator Tim Corwin

**I. CALL TO ORDER**

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

Meeting was attended by the new City Manager, Shaun Mullholland

**II. APPROVAL OF MINUTES:** February 20, 2018

Changes: Minutes Header from “Planning” to “Zoning”; Page 2, line 3, change “that” to “they”; Page 3, line 43, add a “s” to “say”; Page 4, line 14, change “well” to “will”; Page 5, line 17, change “20” to “19”; Page 5, line 29, change “313.32” to “313.2”; Page 6, line 15, change ”R-2” to “RL-2”; Page 7, line 33, Page 8, line 4, and Page 10, line 23, add the section symbol “§” to (801.2.A.3).

***Dan Nash moved to approve the minutes of the Lebanon Zoning Board of Adjustment meeting of February 20, 2018 as amended. Seconded by Alan Patterson.  
\*The motion passed unanimously 5-0.***

There was a concern that the meeting minutes for February said that the hearing would be continued on March 20<sup>th</sup>, 2018 and the hearing was in fact continued to March 19<sup>th</sup>, 2018. Should any member of the public show up for a meeting tomorrow, there may be an issue with community members feeling that they missed the opportunity to participate. The Board agrees to move forward tonight with the understanding that the public may come back with concerns later. Vice Chair Mercer suggested that a notice be put on the door March 20<sup>th</sup> and March 21<sup>st</sup>, in the event that any member of the public arrives with the expectation of there being a hearing.

**III. PUBLIC HEARING (CONTINUED)**

**A. Quail I, L.P., 69 Lily Lane (8-2-200), zoned R-3—Request for Special Exceptions pursuant to Article III, Section 310.2 of the Zoning Ordinance for the construction of a**

40-unit senior housing complex, and Article VI, Section 603 to permit a greater dwelling unit density than is permissible in the R-3 District. #ZB2017-34-SE

John Giebink and Charlie Brush appeared on behalf of the applicant. At the last meeting there were questions regarding the slope and soil. The engineer has issued his opinion letter that the work can be done without hazard to the hillside.

Mr. Giebink responded to an issue raised at the last meeting regarding resident's concerns about obstructions of views. He said that current residents will be able to move to another location if they desire. Mr. Patterson asked for clarification on the units that would be made available to current residents. Mr. Giebink clarified that the expenses for moving to a comparable unit would be covered by Quail Hollow.

Vice Chair Mercer drove around the property and asked what will happen to the community garden. Mr. Giebink confirmed that they will move and replace the community gardens. Vice Chair Mercer asked if any attempts have been made to speak with people individually. Mr. Giebink said that they have not approached people individually but that they would do so if the project moves beyond the Zoning Board. Vice Chair Mercer brought up the issue of density and traffic and asked why the service road will not be used for traffic. Mr. Giebink said that the road is a service road used specifically for fire equipment.

Mr. Patterson drove through the community also and found it difficult to turn around. He said that he has concerns over traffic and safely evacuating the community. Mr. Giebink responded that he is happy to bring this issue before the Planning Board. Vice Chair Mercer asked Mr. Nash asked whether it would be appropriate to bring this to the attention of the Planning Board and Mr. Nash said that it would.

Chair Koppenheffer opened the public hearing.

Cora Koop asked the Board to pay special heed to the safety and welfare of the existing members of the Quail Hollow community. She is very concerned about the issue of adequate egress and being able to safely evacuate in case of an emergency.

David Nelson is appearing on behalf of himself and Mr. Robert Camarra. Mr. Nelson said that the population density creates a serious traffic issue, especially for emergency vehicles and pedestrians with varying levels of mobility. He responded to Mr. Giebink's comment regarding moving existing residents to new units and stated that there was previously an administrative fee of \$1,000 charged to residents to move to new units.

Sally Page expressed concerns over the lack of egress. She noted that a previous condition stated that there be two forms of egress and asked what had become of that condition.

Mary Mills expressed concerns over a possible evacuation. She believes that the only way to confirm that it is possible to evacuate successfully is to test it. She asked the Zoning Board to consider that they had initially set a limit on density. Mrs. Mills suggested that there be an evacuation drill to assess an emergency response plan.

Mr. Giebink asked to clarify the issue of moving residents. He said that they initially offered existing residents the opportunity to move to the new building, which approximately 20 residents took advantage of. Once the building was full, there was an additional charge to move. Mr. Giebink noted that Quail Hollow residents create less traffic than if it were a single family residential neighborhood.

Hearing no further public comment, Chair Koppenheffer closed the public hearing.

## **DELIBERATION/DECISION**

Mr. Griffin asked whether Mr. Nash was satisfied that the questions that were brought up at the last meeting had been satisfied. Mr. Nash said that the letter submitted by the engineer for the project did satisfy his concerns. Mr. Patterson voiced concerns about the fire department and the issues that would impact an emergency evacuation. After his visit to the site, he does not feel that there is sufficient space for staging emergency personnel. After hearing the testimony from the residents, Mr. Patterson does not feel he can support the application. Mr. Griffin asked whether Mr. Patterson's concerns could be addressed through a condition that the issue be reviewed by the Planning Board. Mr. Patterson said that he is not sure that a condition would be sufficient to address the issues. Vice Chair Mercer voiced concern about having an acceptable evacuation plan that is also acceptable to the residents. Mr. Nash said that the Fire Chief was consulted and that he has submitted his opinion. Mr. Nash also commented that there are other committees that will be consulted before the project is fully approved and suggested a draft condition. Mr. Patterson expressed concern over the enforcement of conditions and whether a condition would adequately address the issue of egress. Safety is a concern of the residents and Mr. Patterson believes it is the duty of the Board to address community concerns. Chair Koppenheffer noted that the Fire Chief has stated that there will be minimal impact and that the Planning Board would hear the resident's concerns. Chair Koppenheffer said that in the absence of an opinion from fire and police that additional steps need to be taken, he does not see a concrete reason to deny the application. Mr. Griffin said that he recognizes the concerns of the residents but he agrees that the Planning Board is the appropriate forum for safety issues to be addressed.

*Dan Nash moved that, on January 17, 2018, February 20, 2018, and March 19, 2018, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared John Giebink, Charles Brush, and Tom Getz on behalf of Quail I, L.P., regarding 69 Lily Lane (Tax Map 8, Lot 2-200), zoned R-3. The applicant requests Special Exceptions pursuant to Article III, §310.2 of the Zoning Ordinance for the construction of a 40-unit senior housing complex with congregate living facilities, and Article VI, §603 to permit a greater dwelling unit density than is permissible in the R-3 District. #ZB2017-34-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 Class 1 lot per §310.3 of the Zoning Ordinance and is improved with a building containing 114 congregate care living units.*

2. *In 1997, the existing building received a Special Exception per §310.2 of the Zoning Ordinance in 1997 for the use, and a Special Exception per §603 to allow 125 dwelling units where only 52 are permitted.*
3. *Density in the R-3 District for Class 1 lots is permitted at one dwelling unit per 10,000 sq. ft. of lot area.*
4. *The applicant proposes to construct a second building on the subject property, three stories in height and containing 40 senior housing dwelling units with congregate care living facilities. Of the 40 proposed units, 20 will be two-bedroom and 20 will be one-bedroom.*
5. *The proposed use is permitted by Special Exception in the R-3 District as a “senior housing complex”. It will act as an extension to the existing Quail Hollow Community, which “provides independent living with a wide range of optional support services that will provide optional support services.”*
6. *A senior housing complex with congregate care facilities is permitted by Special Exception in the R-3 District per §310.2 and §603 of the Zoning Ordinance. “Senior housing complex” is defined in Appendix A of the Zoning Ordinance as:  
**SENIOR HOUSING COMPLEX:** A housing complex exclusively occupied by persons who are at least 55 years old. Such a complex may include one or more dwellings of single, two or multi-family type. It may also include congregate living facilities by special exception (see SECTION 603)*
7. *§603 of the Zoning Ordinance provides that “[s]enior housing complexes may include congregate care facilities, subject to granting of a special exception by the Board of Adjustment.”*
8. *A senior housing complex may consist of various housing styles, including multi-family.*
9. *The applicant also requires a Special Exception to permit 40 additional dwelling units on the property. The permitted density for this R-3 zoned parcel is based on one dwelling unit per 10,000 sq. ft. of lot area. The property consists of 11.9 acres (519,671 sq. ft.) which would allow up to 52 dwelling units (519,671 sq. ft. divided by 10,000 sq. ft. per unit). However, §603 provides that, “[t]he Board of Adjustment may grant a special exception to allow a senior housing complex to have a greater density than that specified for the applicable zoning district.”*
10. *The applicant, therefore, requests a Special Exception pursuant to §603 of the Zoning Ordinance to allow a greater density than is specified in the R-3 District; specifically, to allow a total of 154 units where only 52 are permitted. The proposed 40 units would bring the total number of units on the property to 154 (114 existing plus 40 proposed) which is approximately 296% of the maximum density permitted.*
11. *To grant the requested Special Exceptions (senior housing complex with congregate care living facilities and greater density than is specified in the R-3 District), the Board must determine that the proposal meets the general Special Exception criteria, set forth in §801.3 of the Zoning Ordinance.*
12. *The applicant has submitted testimony addressing the §801.3 Special Exception criteria, including a project narrative, site plans, pump station memo, and traffic analysis. Prior to the February 20<sup>th</sup> and March 19<sup>th</sup> meetings, the applicant provided additional information relating to traffic, sewer/water capacity, impacts on emergency management services, and grading and slope stabilization.*
13. *At the hearing, residents of Quail Hollow spoke both for and against the proposed project. Concerns expressed included issue of egress, sidewalks, traffic congestion & flow, mass evacuations, blocked views, density, safety and welfare, and road dimensions.*

14. Fire Department specifically reviewed this project and expressed no specific concerns

## 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 §310.2 and §603 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions of §303.4 are met (§801.3.B): there are none.
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 19<sup>th</sup> day of March, 2018, hereby GRANTS the request of Quail I, L.P. for Special Exceptions per Article III, §310.2 and Article VI, §603 of the Zoning Ordinance for the construction of a 40-unit senior housing complex with congregate living facilities at 69 Lily Lane (Tax Map 8, Lot 2-200) and to permit a greater dwelling unit density than is permissible in the R-3 District, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit, certificate of occupancy, pay an impact fee pursuant to §213 of the Zoning Ordinance, and comply with all other applicable municipal and state regulations.
2. The Zoning Board requests that the Planning Board give due consideration to make the Wilder Road access open and two-way to meet emergency and egress and circulation needs.
3. No further buildings will be constructed on Quail 1, as testified by the applicant.
4. The sidewalk along the west side of Route 10 be constructed from Quail Drive to Richardson Place.

Seconded by Vice Chair Mercer

Vote to approve: 4-1. Alan Patterson opposed.

#### IV. PUBLIC HEARING

**A. ROBERT L. & PAMELA M. SHERMAN REVOCABLE TRUST, 105 SCHOOL STREET (Tax Map 107, Lot 206), zoned R-3:** Applicant proposes to construct a second story over the existing attached garage, which is non-conforming to the minimum required 40 ft. front yard. To permit the proposed second story, applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance to expand a non-conforming structure. #ZB2018-02-SE

Chair Koppenheffer recused himself. Vice Chair Mercer appointed Jason Crowley, alternate.

Philip Webster from High Meadow Builders LLC, Robert Sherman, and Pamela Sherman appeared on behalf of the applicant. Mr. Webster briefly summarized the application for the Board.

Vice Chair Mercer asked if there were any questions from the Board and there were none.

Vice Chair Mercer opened the hearing to public comment. There were no comments from the public. She closed the public hearing.

*Travis Griffin moved that, on March 19, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Robert Sherman, Pamela Sherman, and Philip Webster, on behalf of the Robert L. & Pamela M. Sherman Revocable Trust regarding 105 School Street (Tax Map 107, Lot 206), zoned R-3. The applicant proposes to construct a second story over the existing attached garage, which is non-conforming to the minimum required 40 ft. front yard. To permit the proposed second story, applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance to expand a non-conforming structure. #ZB2018-02-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 property is improved with a one family dwelling and an attached garage on the southerly side of the home. The garage is a non-conforming structure located within the minimum required front yard.*
- 2. The applicant proposes to add a second story to the garage for additional living space. The proposed second story will not encroach any closer to the front of the property than the existing garage. However, because the garage is located within the minimum required front yard, a Special Exception pursuant to §703.1 of the Zoning Ordinance is required in order to expand a non-conforming structure.*
- 3. §310.3 of the Zoning Ordinance requires a 40 ft. minimum front yard for Class 3 lots in the R-3 District having frontage on a state highway. According the applicant, the garage is located 35 feet from the front lot line along School Street, which is a state highway (based on the City's GIS information, the structure sits approximately 26 feet from the front lot*

line). Consequently, the garage is non-conforming to the minimum required 40 ft. front yard.

4. Expansions of non-conforming structures are permitted by Special Exception pursuant to §703.1 of the Zoning Ordinance, which provides as follows:

703.1 Expansion.

*Expansion of non-conforming parts of buildings or structures, may be allowed only by special exception as set forth herein. For purposes of this section, the term “expansion” shall include any increase in the footprint and/or volume of the non-conforming part of the building or structure.*

- A. *The Board shall make each of the following findings:*
  1. *The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.*
  2. *The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently non-conforming cannot be made more non-conforming in the absence of a variance.*
  3. *These special exception standards shall apply in addition to the standards in Section 801.3 of the Zoning Ordinance.*
5. *The Applicant has submitted a support statement addressing the Special Exception criteria of §801.3 in an application packet dated February 28, 2018. Staff has also provided sketches of the proposed construction, excerpted from the applicant’s building permit application materials.*
6. *No members of 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 of §703.1.A are met (§801.3.B):*
  - a. *The reasonable use of abutting properties will not be adversely affected by the proposed expansion. (§703.1.A.1)*
  - b. *The proposed expansion will not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently non-conforming 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 19<sup>th</sup> day of March, 2018, hereby GRANTS the request of the Robert L. & Pamela M. Sherman Revocable Trust for a Special Exception per Article VII, §703.1 of the Zoning Ordinance to construct a second story over the existing non-conforming attached garage at 105 School Street (Tax Map 107, Lot 206), zoned R-3, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:*

1. *The applicant shall obtain a building permit, certificate of occupancy, pay an impact fee pursuant to §213 of the Zoning Ordinance, and comply with all other applicable municipal and state regulations.*

*Seconded by Dan Nash*

*\* Vote to approve: 5-0. Motion approved.*

Chair Koppenheffer rejoined the meeting.

**B. JAMES & JENNIFER BARKLEY, 10 DULAC STREET (Tax Map 105, Lot 38), zoned R-3:** Request for a Variance from Article III, Section 310.3 of the Zoning Ordinance to permit an addition to an existing outbuilding to be located approximately 10 ft. from the side lot line where a minimum of 15 ft. is required.  
#ZB2018-03-VAR

Applicants James and Jennifer Barkley appeared. Applicants were waiting for the street construction to end before proceeding with any type of construction on their property. They are aware of the property's proximity to the water and are prepared to address any concerns.

Chair Koppenheffer asked for questions or comments from the Board. Mr. Crowley asked if the applicants have discussed the project with their neighbors. Mrs. Barkley said that they have and that there were no concerns. Mr. Patterson said that he likes the placement of the project, which would minimize soil disruption. There were no other questions from the Board.

Chair Koppenheffer opened the hearing to public comment. There were no comments from the public. He closed the public hearing.

### **DELIBERATION/DECISION**

Vice Chair Mercer commented that the application is reasonable.

*Jennifer Mercer moved that, on March 19, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jennifer & James Barkley regarding 10 Dulac*



Street (Tax Map 105, Lot 38), zoned R-3. The applicants request a Variance from Article III, Section 310.3 of the Zoning Ordinance to permit an addition to an existing house to be located approximately 10 ft. from the side lot line where a minimum of 15 ft. is required. #ZB2018-03-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 property is improved with a one family dwelling and an attached porch, the location of which conforms with the minimum yard requirements of the R-3 District.
2. The applicant proposes to remove the existing porch on the east side of the home, and to construct a 20 ft. x 28 ft. garage approximately in its place. The proposed garage will be located approximately 10 ft. from the side lot line shared with 12 Dulac Street (Tax Map 105, Lot 39). Because a minimum side yard of 15 ft. is mandated in the R-3 District, the construction of the garage requires a Variance.
3. A minimum side yard of 15 feet is required for Class 1 lots in the R-3 District. Therefore, a Variance is required to permit construction of the proposed garage, which will be located approximately 10 feet from the side lot line shared with 12 Dulac Street.
4. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria set forth in §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the §801.2 Variance criteria in an application dated March 4, 2018.
5. No members of 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 Variance criteria set forth in §801.2 of the Zoning Ordinance:

1. The variance will not be contrary to the public interest. (§801.2.A.1)
2. The spirit of the ordinance is observed. (§801.2.A.2)
3. Substantial justice is done. (§801.2.A.3)
4. The values of surrounding properties are not diminished. (§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 (§801.2.A.5.a):
  - i. 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. (§801.2.A.5.a.i)
  - ii. The proposed use is a reasonable one. (§801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 19<sup>th</sup> day of

March, 2018, 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 prior to construction of the addition.*

*Seconded by Alan Patterson.*

*\* Vote to approve: 5-0. Motion approved.*

**C. SOHO INVESTMENTS LLC, 3 GREEN STREET (Tax Map 92, Lot 216), zoned R-2:** An appeal pursuant to Article VII, Section 703.2 of the Zoning Ordinance to permit the reconstruction of a non-conforming structure which was demolished more than two (2) years ago. #ZB2018-04-AAD

M. Jared Toon appeared on behalf of the applicant. The permit that was previously granted by the Zoning Board, 2016-0009, has expired and the applicant is asking for an extension.

Chair Koppenheffer asked for questions or comments from Board. Vice Chair Mercer asked what amount of time the applicant was requesting for the extension. Mr. Toon was unsure of what would be an appropriate request and the Board agreed that an extension of 24 months, a term equal to that of the original permit, would be acceptable. Mr. Toon indicated that the intent is to sell the property and the plan is build a basic garage. Mr. Corwin confirmed that the extension would be transferrable. Mr. Griffin referenced the letter from the applicant stating that the renovations have taken more time than previously believed and asked the applicant to explain the correlation between the church fire and the delay in rebuilding the property. Mr. Toon said that the fire created uncertainty over both demand for the property and whether construction in the area would have any adverse impact to accessibility. The issue before the Board is whether the applicant can have more time to rebuild the structure. Mr. Griffin asked for clarification regarding use of the structure. Mr. Toon confirmed that it is a single family dwelling and there is no intent to change the use.

Chair Koppenheffer opened the hearing to public comment. There were no comments from the public. He closed the public hearing.

*Dan Nash moved that, On March 19, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared M. Jared Toon on behalf of SoHo Investments LLC regarding 3 Green Street (Tax Map 92, Lot 216), zoned R-3. An appeal pursuant to Article VII, Section 703.2 of the Zoning Ordinance to permit the reconstruction of a non-conforming structure which was demolished more than two (2) years ago. #ZB2018-04-AAD*

**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 and, formerly, an attached red barn. The property is non-conforming to the minimum lot size requirements of the R-2 District.*

*The home is and the barn was non-conforming to the minimum required 15 ft. side setback [based on the City's GIS information, each is set back approximately 5 feet from the side lot line shared with the Baptist church property at 11 School Street (Tax Map 92, Lot 217)].*

2. *The applicant proposes to reconstruct the non-conforming barn using the same footprint. Because the non-conforming structure was not reconstructed within two (2) years of the issuance of the building/demolition permit, the proposed construction requires a Special Exception pursuant to §703.2 of the Zoning Ordinance.*
3. *The barn was removed pursuant to a City of Lebanon building permit issued on March 8, 2016 for the demolition and for the installation of a new foundation using the same footprint. On February 22, 2018, the applicant filed a building permit to reconstruct the barn.*
4. *§703.2 of the Zoning Ordinance ("Abandonment, Discontinuance, Destruction"), provides as follows:*
  - Any non-conforming building or non-conforming structure which is partially or wholly destroyed by reason of any cause whatsoever [...] may be resumed or restored and operated in its former non-conformity if same is done within two (2) years; thereafter, any non-conforming building or structure shall not be re-established if such building or structure has been discontinued for a period of two (2) years or more; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator's decision concerning such resumption or restoration, may permit the resumption or restoration of the same building or structure if it finds: (a) that no action incorporating an intent to abandon the non-conforming building or structure has been taken by the owner or occupant, including but not limited to a change in non-conforming use to razing or remodeling the building or structure; and (b) that the failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant.*
5. *Pursuant to §703.2, the Zoning Administrator attached the following condition to the applicant's building/demolition permit:*
  2. *If non-conforming to R-2 min yard requirements, new structure must be constructed within two (2) years of the issuance of the demo permit. See Sec. 703.2 of the Zoning Ordinance.*
6. *The building/demolition permit was issued on March 8, 2016. An application for a building permit to reconstruct the barn was filed on February 22, 2018. Based on conversations with the applicant, it became clear to staff that the barn could not have been reconstructed by March 8<sup>th</sup> (or even approximately by March 8<sup>th</sup>), even with an expedited staff review of the building permit application. Consequently, staff suggested that the applicant appeal to the Zoning Board pursuant to §703.2 of the Zoning Ordinance.*
7. *As noted above, §703.2 allows the Zoning Board to approve the reconstruction of a non-conforming structure even if it was not reconstructed within two (2) years. In order to grant such an appeal, the Zoning Board must find that:*
  - (a) that no action incorporating an intent to abandon the non-conforming building or structure has been taken by the owner or occupant, including but not limited to a change in non-conforming use to razing or remodeling the building or structure; and*

*(b) that the failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant.*

8. *No members of 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 criteria set forth in §703.2 of the Zoning Ordinance:*

*(a) Action incorporating an intent to abandon the non-conforming building or structure was not taken by the owner or occupant, including but not limited to a change in non-conforming use to razing or remodeling the building or structure; and the old building and a new foundation built.*

*(b) The failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant. The First Baptist Church Fire of December 2016 affected the owner's uncertainty about the project.*

## **III. DECISION**

*Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 19<sup>th</sup> day of March, 2018, hereby GRANTS the appeal subject to testimony, plans, and materials submitted, and per the following conditions:*

1. *The applicant shall obtain a building permit prior to construction, and shall complete the work in conformance with all applicable codes and regulations to the satisfaction of the Building Inspector within twenty four (24) months of the date of this decision.*

*Seconded by Alan Patterson*

*\* Vote to approve: 5-0. Motion approved.*

**V. STAFF COMMENTS:** None

## **VI. ADJOURNMENT**

***Alan Patterson moved for adjournment. Seconded by Dan Nash.***

The meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Brandy Sailors-Dow  
Recording Secretary