

FINAL

**CITY OF LEBANON
ZONING BOARD OF ADJUSTMENT
June 18, 2018
City Hall—Council Chambers
7:00 p.m.**

MEMBERS PRESENT: Chair William Koppenheffer, Dan Nash, Alan Patterson Sr., Travis Griffin

MEMBER ABSENT: Vice Chair Jennifer Mercer

STAFF PRESENT: Zoning Administrator Tim Corwin

I. CALL TO ORDER

The meeting was called to order at 7:03 p.m. by Chair Koppenheffer.

II. APPROVAL OF MINUTES: May 21, 2018

Amendments to minutes:

Page 4, line 13: hyphenate “nonconformity”

Page 4, line 40: add “said” after “Mr. Nash”

Page 12, line 22: add “s” to “Grazzaffi”

Various: Change instances of “Dowd” to “Dow”

Alan Patterson moved to approve the minutes of the Lebanon Zoning Board of Adjustment meeting of May 21, 2018 as amended. Seconded by Dan Nash.

**The motion passed unanimously 3-0. Chair Koppenheffer abstained.*

III. PUBLIC HEARINGS- Continued from May 21, 2018

A. SALT HILL PUB (applicant) & COLONIAL PLAZA REALTY TRUST (property owner), 5 AIRPORT ROAD (Tax Map 114, Lot 8), zoned GC: Request for a Variance from Article VI, Section 607 of the Lebanon Zoning Ordinance to reduce the number of on-site parking spaces required for a proposed expansion of an existing restaurant use. #ZB2018-10-VAR

Dan Nash moved to continue this application to July 16, 2018 at 7:00 p.m. at Council Chambers, City Hall. Seconded by Alan Patterson. Vote was in favor (4-0)

B. VISIONS FOR CREATIVE HOUSING SOLUTIONS (applicant) and F & A LLC (property owner), 12 GREEN STREET (Tax Map 92, Lot 131), zoned R-2: Request for a Special Exception pursuant to Article III, Section 309.2 of the Zoning Ordinance to permit a group residence. #ZB2018-11-SE

Sylvia Dow, Executive Director of Visions for Creative Housing Solutions, as 501(c)3, is seeking a special exception for a group residence at 12 Green Street, which is currently a multi-family residence. The current structures would remain as they are now, two separate buildings.

The continuation of the hearing was limited to one outstanding issue related to a property tax exemption. Mrs. Dow submitted a list of the potential economic benefits to the city which included the value of volunteer hours that residents contribute to the community, the hiring of staff positions, and the hiring of local contractors for the renovation of the property at 12 Green Street. Additionally, there will be no residents enrolled in the Lebanon School District, currently estimated at a cost of \$17,000 per student, whereas the current residents do have school age children. Mrs. Dow presented excerpts from the City's Master Plan that support the request.

Mr. Patterson asked about the source of the information and statistics that were presented. Mrs. Dow said that there were derived from multiple sources, including the current information available from the Enfield program. Chair Koppenheffer asked for clarification on the value cited for volunteer hours. Mr. Griffin noted that the children displaced from the current residence could likely remain in the Lebanon School District.

Chair Koppenheffer opened the public hearing.

Mike Peterson, a tenant of a neighboring property on Green Street, commented that industrial development is a community issue. He said that a project with wide community support and with proven success in a nearby community should be considered on more than just its financial impact on tax revenue.

Rosemary Affeldt, a resident of 153 Clube Road in Enfield, NH and a neighbor to the Visions Enfield property, shared her history with the family. She spoke about the progress that has been made by residents of the program and restated the support that Enfield has given to the Visions program.

Sarah Welsch of Ward 3, a former councilwoman, appeared before the Board in support of the project. Mrs. Welsch berated and belittled the Board in her support of the application.

Lisa Green encouraged the Board to consider the financial benefit of the proposed project, including the additional employment opportunities and affordable housing that the project will provide.

Doreen Schweizer lives next door to 12 Green Street. She said that she would likely see an increase in her taxes if the project moves forward, which she indicated that she would happily pay. Chair Koppenheffer asked if Mrs. Schweizer believed that her property value would go up, and she said that she did, due to the improvements that Visions would be making. The current state of the property, according to Mrs. Schweizer, is poor.

Lianne Moccia, resident of 128 Stoney Brook Road, spoke about the issue before the Board regarding undue municipal expense. She has experience working in a similar facility and is the aunt of a woman with Down Syndrome that is living in a similar facility. She agrees that the

value of the house and the surrounding properties will likely increase due to the improvements. She feels that the value to the City must be measured in more than dollars.

Susan Almy, Ward 1, State Representative, spoke in favor of the application. She was at a State housing meeting recently and she does not believe that the Board is allowed to ask the non-profit to prove that the project will offset the lost tax revenue. Chair Koppenheffer clarified that the issue before the Board is that there will be no undue municipal expense created. Mr. Griffin clarified that it is the responsibility of the Zoning Board to scrutinize applications and that the application was missing information that would meet the statute. Mr. Griffin also reminded the public that the Zoning Board is comprised of volunteer community members that are tasked with reviewing applications through a quasi-judicial proceeding to ensure that applications meet the burden of proof that is outlined in the statutes and ordinances of the City. Representative Almy said that the term 'undue municipal expense' should be better defined.

Jo-Anne Unruh, resident of Hartford, VT and President of the Board of the Special Needs Support Center, appeared in support of the application and shared her experience with families that are dealing with employment and skill development related to their aging children.

Gisela Jones, resident of 46 Elm Street and an owner of two apartment buildings, appeared in support of the application. She asked the Board to consider the overall value to the community.

Chair Koppenheffer closed the public hearing

Chair Koppenheffer asked for questions or comments from the Board.

Mr. Patterson expressed his appreciation for Mr. Griffin's statements. Mr. Nash reiterated that this is a facts-based Board and that the applicant has proven to his satisfaction that there is no undue municipal expense. Mr. Griffin expressed his thanks to the citizens for coming out to voice their comments.

There were no further comments or questions from the Board.

DELIBERATION/DECISION

Dan Nash moved that on May 21, 2018 and June 18, 2018, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Sylvia Dow, Executive Director of Visions for Creative Housing Solutions, and Sloane Mayor of UK Architects, on behalf of Visions for Creative Housing Solutions (applicant) and F & A LLC (property owner) regarding 12 Green Street (Tax Map 92, Lot 131), zoned R-2. The applicant requests a Special Exception pursuant to Article III, Section 309.2 of the Zoning Ordinance to permit a group residence. #ZB2018-11-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 located on Green Street in the R-2 District and is improved with two residential buildings, one containing 4 dwelling units, and the other containing 2 dwelling units (for a total of 6). The property has multiple non-conformities, all of which are considered legal non-conforming (“grandfathered”). These include having two principal structures on the same lot (§205 of the Zoning Ordinance), excess density over what is permitted (§309.3), and structures within the minimum required yards (§309.3 of the Zoning Ordinance).*
2. *The applicant proposes to discontinue the existing multi-family residential use and to convert the buildings for use as a group residence for developmentally challenged adults. The proposal is described in further detail in the attached letter dated May 7, 2018 from Christopher Kennedy of UK Architects, PC. The 11 existing on-site parking spaces exceeds the minimum number of parking spaces required by §607 of the Zoning Ordinance for a group residence (0.33 parking spaces per resident).*
3. *A group residence is allowed by Special Exception within the R-2 District. “Group residence” is defined in Appendix A of the Zoning Ordinance as: “A shared home for seniors, an orphanage, children's home or similar type of group living accommodations. All such facilities shall be licensed by the State of New Hampshire and shall serve a maximum of 12 residents.”*
4. *In order to grant a Special Exception for the proposed group residence, the Board must determine that the proposal meets the general Special Exception criteria, set forth in §801.3.*
5. *The Applicant has submitted a support statement addressing the Special Exception criteria of §801.3 in an application packet dated May 9, 2018. Staff has also provided sketches of the proposed construction, excerpted from the applicant’s building permit application materials*
6. *Doreen Schweitzer of Green Street stated that she lived next door to the property and is very much in favor of the application. Mary Ann Mastro of Green Street and Mike Peterson of Green Street also spoke at the hearing and were generally supportive of the proposal.*
7. *Applicant submitted a summary of volunteer hours and offsetting expenses that is similar to a program in Enfield.*
8. *Nine members of the public spoke strongly in favor 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 §801.3 of the Zoning Ordinance:

1. *The Special Exception is specifically authorized by §309.2 of the Zoning Ordinance. (§801.3.A)*
2. *The following special conditions of §309.2 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. The applicant submitted supporting documents. (§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 18th day of June 2018, hereby GRANTS the requested relief, subject to testimony, plans, and materials submitted.

Seconded by Travis Griffin.

***Vote to approve: 4-0. Motioned approved.*

- C. WILLIAM & LORI GRIZZAFFI, 351 Meriden Road (Tax Map 167, Lot 16), zoned RL-1: request for a Variance from Article III, Section 312.2 of the Zoning Ordinance to allow a towing business and vehicular impound yard. #ZB2018-12-VAR**

Mr. Patterson disclosed that he knows the applicants. The Board did not find a conflict.

Dan Nash moved to continue this application to July 16, 2018 at 7:00 p.m. at Council Chambers, City Hall. Seconded by Travis Griffin. Vote was in favor (4-0)

Mr. Corwin said that there is an underlying code enforcement issue and staff requests that the Board make a decision at the next meeting.

IV. PUBLIC HEARINGS

- A. SMK PROJECTS LP, 5 UNION STREET (Tax Map 92, Lot 186), zoned R-2:** Applicant proposes to remove an existing non-conforming shed located +/- 6 ft. from the side lot line where a minimum of 15 ft. is required, and to replace the shed with a larger carport, also proposed to be located 6 ft. from the side lot line. To permit the reconstruction and expansion of a non-conforming structure, applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. #ZB2018-13-SE

Peter and Katherine Scoppettone, residents of 7 Union street, appeared as the applicants. They purchased 5 Union Street and would like to remove the non-conforming shed and replace it with a carport that would be located the same distance from the side lot line.

Chair Koppenheffer asked for questions or comments from the Board.

Mr. Nash asked for clarification on the dimensions of the driveway. Mr. Scoppettone confirmed that the carport will be facing the street and it will be 16' feet wide, using the existing driveway for access.

There were no further comments or questions from the Board.

Chair Koppenheffer opened the public hearing.

Bruce Schwaegler lives at 8 Union Street and indicated that the applicants are good neighbors and they have improved the aesthetics of the property. He spoke in support of the application.

Chair Koppenheffer closed the public hearing

DELIBERATION/DECISION

Travis Griffin moved that on June 18, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Peter and Katherine Scoppettone on behalf of SMK Projects LP regarding 5 Union Street (Tax Map 92, Lot 186), zoned R-2. The applicant proposes to remove an existing non-conforming shed located +/- 6 ft. from the side lot line where a minimum of 15 ft. is required, and to replace the shed with a larger carport, also proposed to be located 6 ft. from the side lot line. To permit the reconstruction and expansion of a non-conforming structure, the applicant requests a Special Exception pursuant to Article VII, §703.1 of the Zoning Ordinance. #ZB2018-13-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 improved with a one-family dwelling and a detached 12 ft. x 20 ft. shed. As shown on the plot plan provided by the applicant and the accompanying application narrative, the shed is located 6 ft. from the side lot line shared with 7 Union Street (Tax Map 92, Lot 187). As such, the existing shed is non-conforming to the minimum 15 ft. side yard required for Class 1 lots in the R-2 District.*
- 2. The applicant proposes to replace the existing non-conforming 12 ft. x 20 ft. detached shed and replace it with a 16 ft. x 23 ft. detached accessory carport. The carport will have a larger footprint than the existing shed, but will be located no closer to the side lot line than the shed to be replaced (i.e. the carport will maintain the same 6 ft. setback as the existing shed).*
- 3. Class 1 lots (lots that are served by municipal water and sewer) in the R-2 District must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See §309.3 of the Zoning Ordinance. Structures that are legal non-conforming to the minimum yard requirements may be replaced in kind in accordance with the requirements of §703.2 of the Zoning Ordinance (“[a]ny non-conforming building or non-conforming structure which is partially or wholly destroyed by reason of any cause whatsoever, including [...] fire [...], may be resumed or restored and operated in its former non-conformity if same is done within two (2) years[.]”)*

4. Here, the carport is proposed to have a footprint within the minimum side yard that will be greater than the footprint of that portion of the existing shed located within the minimum required side yard. Such an expansion is permitted by Special Exception. Specifically, §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.
5. Taken together, §703.1 and §703.2 allow the expansion not just of existing non-conforming structures, but also the expansion of non-conforming structures that are reconstructed within two years following the demolition or destruction of the original structure. As applied here, the applicant is entitled to construct a new structure that is equally non-conforming to the Zoning Ordinance as the structure to be replaced, and may also apply for a Special Exception to expand the footprint and/or volume of any portion of the existing structure that is non-conforming.
6. In order to grant a Special Exception for the proposed expansion, the Board must make each of the following findings per §703.1.A:
 - The reasonable use of abutting properties shall not be adversely affected by the proposed expansion; and
 - 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.
7. Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an expansion of a non-conforming structure, the Board must also determine that the proposal meets the general Special Exception criteria, set forth in §801.3.
8. The Applicant has submitted a support statement addressing the Special Exception criteria of §703.1.A.3 and §801.3 in an application received by the Planning Department on June 4, 2018.
9. There appeared from the public Bruce Schwaegler 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 §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 18th day of June, 2018, hereby GRANTS the request of SMK Projects LP for a Special Exception per Article VII, §703.1 of the Zoning Ordinance to permit the reconstruction and expansion of a non-conforming structure at 5 Union Street (Tax Map 92, Lot 186), zoned R-2, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

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

Seconded by Alan Patterson.

***Vote to approve 4-0. Motion approved.*

B. SIXTY SOUTH MAIN STREET, LLC, 60 S. MAIN STREET (Tax Map 86, Lot 7), zoned R-2: Request for a Variance from Article III, §309.2 of the Zoning Ordinance to allow a three-family dwelling, and a Variance from Article III, §309.3 to permit three (3) dwelling units on a lot containing +/-9,148 sq. ft. where the minimum lot size for three (3) dwelling units is 13,000 sq. ft. #ZB2018-15-VAR

Roberts Chambers appeared on behalf of the applicant. Mr. Chambers provided a letter from an abutter in support of the application. He is requesting a variance to allow a three-family dwelling and exceed the permitted occupancy. He noted the improvements that he has made over time, including a sprinkler system and improving river views. He found that having three unrelated individuals renting from him was problematic. He said that he had a family rent the main floor and that their son and his domestic partner are currently living there. Mr. Chambers stated that there are 100 rooms that are being offered for rent in Lebanon right now. He stated that if the variance were denied, he would be forced to rent to three unrelated individuals again. He believes that the granting of the variance would be a benefit to the community by reducing the turnover.

Chair Koppenheffer clarified that the burden of proof for the application is that the applicant must prove undue hardship and the application before the Board appears to financially benefit the applicant. Mr. Chambers asked why room rentals that are violating the City ordinance are not being enforced. Chair Koppenheffer stated that he could not speak to the rooms that the applicant references and that the applicant's violation is the matter before the Board. Mr. Patterson stated that the hardship of having unsavory characters moving in to the property is a landlord matter related to choosing tenants. Mr. Nash said that it is unfortunate that our community has not dealt

with crowd share issues regarding residential occupancy but that the applicant did not meet the burden of proof.

Chair Koppenheffer opened the public hearing.

Mark Horne, the previous owner of the property, appeared before the Board. He has previously complained that Mr. Chambers is running a boarding house. He does not believe that a granting of the variance is in the best interest of the community.

Ray Downs, resident of 62 South Main Street, states that he has had numerous issues with previous tenants. The current tenants do not have enough room for all of the garbage that is the result of multiple tenants.

William Grizzaffi, owner of 56 South Main Street, is concerned about the parking.

Chair Koppenheffer closed the public hearing.

Chair Koppenheffer asked for questions or comments from the Board.

Mr. Griffin noted that there is nothing to differentiate the property from others on the street. There seems to be no hardship that has been demonstrated to the Board to support the application. Mr. Patterson agrees that no hardship has been proven.

There were no further comments or questions from the Board.

DELIBERATION/DECISION

Chair William Koppenheffer moved that on June 18, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Robert Chambers on behalf of Sixty South Main Street, LLC regarding 60 S. Main Street (Tax Map 86, Lot 7), zoned R-2, requesting a Variance from Article III, §309.2 of the Zoning Ordinance to allow a three-family dwelling, and a Variance from Article III, §309.3 to permit three (3) dwelling units on a lot containing +/- 9,148 sq. ft. where the minimum required lot size for three (3) dwelling units is 13,000 sq. ft. #ZB2018-15-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 two-family dwelling, containing 2,184 sq. ft. of finished space according to the City Assessor's records (3,346 sq. ft. gross). The two-family dwelling was constructed in 2006 following a fire which destroyed the prior one-family dwelling.*
- 2. In 2016, the applicant filed a building permit application for interior renovations to the basement of one of the two dwelling units ("Unit B"). According to the staff memo, the building permit was issued on 10/14/16 (#BP2016-00391) on condition, inter alia, that*

“[i]mprovements are permitted as additional living space for the two-family dwelling. Basement may not be used as a separate third dwelling unit.”

3. *The applicant is currently operating the basement of Unit B as a third dwelling unit in violation of the building permit conditions of approval.*
4. *The applicant proposes to continue operating the building as a three-family dwelling, which is not a permitted use in the R-2 District.*
5. *Conversions of a building to a multi-family dwelling is permitted in the R-2 District by Special Exception provided that the conversion complies with the requirements set forth in §601 (“Conversions of Older Residences and Other Buildings”). In the R-2 District, a multi-family use requires a minimum lot size of 10,000 sq. ft. plus 3,000 sq. ft. per each dwelling unit over two. Therefore, a three-family dwelling in the R-2 District would only be allowed on a lot of at least 13,000 sq. ft. in size.*
6. *Here, the subject property is less than 10,000 sq. ft. in size. Therefore, the proposed three-family use is ineligible for a Special Exception per §601 and instead requires a Variance from §309.2 (the R-2 District table of permitted uses). For the same reason, a Variance from §309.3 (the R-2 District dimensional requirements) to allow density in excess of the maximum permitted is also required.*
7. *To obtain the requested Variances, 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 June 4, 2018.*
8. *Mark Horne and Ray Downs, both property owners on South Main Street, spoke against the application. William Grizzaffi raised a question that was not germane to the issue and was not clearly for nor against the project.*
9. *The Board received a letter from an abutter, Kevin Bailey, 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 Variance criteria set forth in §801.2 of the Zoning Ordinance:

1. *The variance will be contrary to the public interest. (§801.2.A.1)*
2. *The spirit of the ordinance is not observed. (§801.2.A.2)*
3. *Substantial justice is done. (§801.2.A.3)*
4. *There was no material submitted regarding the increase or decrease in the value of the properties. (§801.2.A.4)*
5. *Literal enforcement of the provisions of the ordinance would not 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 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 not a reasonable one. (§801.2.A.5.a.ii)*

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 18th day of June,

2018, hereby DENIES the requested relief, subject to testimony, plans, and materials submitted.

Seconded by Dan Nash.

**Vote to deny: 4-0. Motion denied.

- C. **REHEARING: BGP PROPERTIES LLC, 90-92 MECHANIC STREET (Tax Map 106, Lot 51), zoned R-2:** Request for a Variance from Article III, §309.3 of the Zoning Ordinance to permit the subdivision of the property into two lots sized approximately 8,000 sq. ft. (Lot 1) and 8,500 sq. ft. (Lot 2) where 10,000 sq. ft. is the minimum required, and to allow an existing home on proposed Lot 1 to be located within the minimum required 20 ft. rear yard, and to allow an existing home on proposed Lot 2 to be located within the minimum required 40 ft. front yard.
#ZB2018-09R-VAR

Jeremy Katz, managing member of BGP Properties, LLC. The property in question, 90 Mechanic Street, is more than twice the size of the next eight adjacent properties, many of which are dimensionally non-conforming. The applicant is seeking to subdivide the property so that each of the two existing homes would have their own lot. The shared driveway would stay the same and is not atypical for homes in the area. The applicant is asking to bring the property into conformity for the area by removing the non-conformity that exists and asking for a variance that would increase the conformity of the two existing structures. The two commercial property owners across the street have submitted letters of support for the application. A full survey has not been done but an informal survey has identified a potential error on the tax assessment.

Chair Koppenheffer asked for clarification on the hardship. The applicant stated that the hardship is an impairment to the highest and best use, which is to comply with the R-2 ordinance of having one structure per lot and to conform to the other properties on the street. Mr. Patterson said that the applicant is testifying that the benefit is to have two lots, which could be a financial benefit. The applicant stated that the proposal is to create a use conformity but will continue the dimensional non-conformity. Mr. Nash expressed concern that having two property owners instead of one could cause an issue later if there are driveway improvements. Mr. Katz stated that it would be speculative to assume that there would be two owners and there is no harm that befalls anyone with a granting of the variance. Mr. Griffin reiterated Mr. Nash's concerns over a shared driveway. Mr. Katz noted other properties on Mechanic Street that already have shared driveways and that a granting of the variance would be in line with other properties. Chair Koppenheffer said that the applicant bought the property with two homes on it and that the burden of proof for a hardship has not been met. Mr. Katz said that there is a benefit to him and a benefit to the community both in creating a use conformity and increasing tax revenue for the City.

Chair Koppenheffer opened the public hearing.

Ken Thai appeared and said that he encountered a similar issue when he bought 86 and 88 Mechanic Street.

Chair Koppenheffer closed the public hearing.

Chair Koppenheffer asked for questions or comments from the Board.

Mr. Griffin said that there is a compelling argument for a special exception. Mr. Patterson noted that the applicant was aware of the non-conformity of the property and that the applicant alluded to the non-conformity as being material to the hardship, however it is clear that the lot is distinct.

Chair Koppenheffer is voting against the variance because he does not believe there is a hardship because it does not impede a reasonable use of the property.

Mr. Patterson agrees that a granting of the variance does not change the way the property is going to be used.

There were no further comments or questions from the Board.

DELIBERATION/DECISION

Travis Griffin moved that on June 18, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jeremy Katz on behalf of BGP Properties LLC regarding 90-92 Mechanic Street (Tax Map 106, Lot 51), zoned R-2. The applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance (i) to permit the subdivision of the property into two lots sized approximately 8,000 sq. ft. (Lot 1) and 8,500 sq. ft. (Lot 2) where 10,000 sq. ft. is the minimum required; (ii) to allow an existing home on proposed Lot 1 to be located within the minimum required 20 ft. rear yard; and (iii) to allow an existing home on proposed Lot 2 to be located within the minimum required 40 ft. front yard. #ZB2018-09R-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 two (2) one-family dwellings. Each home constitutes a principal structure. Therefore, the property is non-conforming to Section 205 of the Zoning Ordinance which provides that “[t]here shall be only one principal structure on a lot in the residential districts[.]” The property is otherwise conforming to the minimum dimensional requirements set forth in Section 309.2 of the Zoning Ordinance.*
- 2. The applicant proposes to subdivide the property so that each one-family dwelling will be located on its own lot. Allowing the subdivision will remedy the non-conformity with respect to Section 205 of the Zoning Ordinance. However, other non-conformities will be created:*
 - a. Each lot will be undersized. As depicted on the attached site plan, Lot 1 will be approximately 8,000 sq. ft. and Lot 2 will be approximately 8,500 sq. ft. (Lot 2) whereas 10,000 sq. ft. is the minimum lot size in the R-2 District;*
 - b. The existing home on proposed Lot 1 will be located within the minimum required 20 ft. rear yard; and*
 - c. The existing home on proposed Lot 2 will be located within the minimum required 40 ft. front yard (a 40 ft. front yard applies since the property has frontage on a state highway).*

3. *In order to create two undersized lots and to allow the existing homes to be within the minimum required yards of the proposed lots (as depicted on the attached site plan), the applicant requires a Variance from the minimum dimensional requirements of the R-2 District, set forth in §309.2 of the Zoning Ordinance.*
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 June 4, 2018.*
5. *This Variance request was originally heard by the Zoning Board on May 21, 2018 and was denied by a vote of 2-1. The Zoning Board of Adjustment By-Laws adopted on 4/3/2017 provide that “[i]n all cases where the applicant is heard by less than a full 5 member Board, the failure of any motion to receive at least 3 votes will automatically constitute grounds for a rehearing.” Consequently, the applicant is entitled in this case to apply for a rehearing without having to first file a motion for rehearing.*
6. *There appeared from the public Ken Thai, who spoke neither for nor against.*

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): Two principal structures in a residential zone.*
 - 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 18th day of June, 2018, hereby GRANTS the requested relief, subject to testimony, plans, and materials submitted, and per the following conditions:

1. *Applicant shall obtain subdivision approval within 24 months.*

Alan Patterson seconded the motion.

There was further discussion regarding whether hardship was proven.

***Vote was 2-2, Mr, Griffin and Mr, Nash in favor, Chair Koppenheffer and Mr. Patterson against. Motion denied.*

Mr. Nash recused himself and joined the public, as he helped prepare the next two applications.

- D. K-THAI, INC, 273 HEATER ROAD (Tax Map 50, Lot 1), zoned R-1:** Request for a Variance from Article III, §308.3 of the Zoning Ordinance to permit the construction of a two-family dwelling to be located 14 ft. from the rear lot line where a minimum of 20 ft. is required, and a Variance from Article II, §201.7 to allow parking in the front yard. #ZB2018-07-VAR

Mr. Ken Thai, President of K-Thai, Inc, and Mr. Dan Nash of Advanced Geomatics, appeared on behalf of the applicant. K-Thai, Inc. is requesting permission to build a two-family unit and a garage at 273 Heater Road in Lebanon. The applicant detailed the history of the property. Mr. Nash worked with Mr. Thai and he asked a surveyor to confirm the dimensions, which substantiated the applicant's claim regarding an error on the tax map.

Mr. Koppenheffer asked Mr. Thai why there is four parking spaces being proposed. Mr. Thai said that it will be a two-unit property, each consisting of 2 bedrooms and 1-2 baths each, with his stated preference being two bathrooms for each unit. Mr. Patterson asked about wetland concerns. Mr. Nash said that he is unaware of wetlands issues and that there is a high water table, but there are no intentions to disturb any wetlands. He recommended using orange fencing so that the wetland boundary would be visible to the contractors.

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

Chair Koppenheffer asked for questions or comments from the Board.

Mr. Griffin voiced concern over having six cars with a two foot setback. Mr. Thai said that he would not be opposed to eliminating two parking spaces, if it were a benefit to the City.

There were no further comments or questions from the Board.

DELIBERATION/DECISION

On June 18, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Ken Thai on behalf of K Thai, Inc. regarding 273 Heater Road (Tax Map 50, Lot 1), zoned R-1. The applicant requests (i) a Variance from Article III, §308.3 of the Zoning Ordinance to permit the construction of a two-family dwelling to be located 14 ft. from the rear lot line where a minimum of 20 ft. is required; and (ii) a Variance from Article II, §201.7 to allow parking in the front yard. #ZB2018-07-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. At +/-7,405 sq. ft., the subject property is non-conforming to the minimum required 10,000 sq. ft. lot size for Class 1 lots in the R-1 District. The property was formerly*

- improved with a one-family dwelling which was non-conforming to the minimum required front yard, and a detached garage. Both were recently demolished.
2. The applicant proposes to construct a two-family dwelling on the lot, which is a permitted use in the R-1 District. See §308.2 of the Zoning Ordinance. The proposed dwelling will be located +/-14 ft. from the rear lot line. Because a minimum rear yard of 20 ft. is mandated for Class 1 lots in the R-1 District, the construction of the dwelling requires a Variance from §308.2.
 3. The applicant proposes 4 outdoor parking spaces, in addition to the 2 spaces in the proposed garage. 3 of the 4 proposed outdoor parking spaces will be located within the 20 ft. minimum required front yard. Specifically, the applicant requests a two (2) ft. setback from the front lot line for the outdoor parking spaces.
 4. §201.7 of the Zoning Ordinance provides that: "Parking areas in the residential districts [...] shall be setback no less than the lesser of the minimum yard requirement or the building line, but in no case less than five (5) feet." Because the applicants propose to locate the parking spaces within the minimum required front yard of the property, a Variance from §201.7 is required.
 5. To obtain the requested Variances, the applicant must demonstrate compliance with each of the five variance criteria as 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 received by the Planning Department on June 4, 2018 (see attached).
 6. No members of the public spoke for or against the application.

II. CONCLUSIONS OF LAW

A. Variance from Minimum Rear Yard Requirement and to Allow Parking in the Front Yard

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): Wetlands are present at the rear of the property and there are setback constraints.
 - 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 18th day of June, 2018, hereby GRANTS the request of the applicant for (i) a Variance from Article III, §308.3 of

the Zoning Ordinance to permit the construction of a two-family dwelling to be located 14 ft. from the rear lot line where a minimum of 20 ft. is required; and (ii) a Variance from Article II, §201.7 to allow parking within two (2) ft. of the front lot line at 273 Heater Road (Tax Map 50, Lot 1), 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 and state regulations in the construction of the proposed improvements.*
- 2. The applicant shall provide adequate confirmation to Planning Department staff that the proposed improvements will not encroach into any wetland located on the property.*
- 3. Parking spaces 3 & 4 will be eliminated from the site plan.*
- 4. Orange snow fencing will be employed to aid contractors in regard to encroachment on wetlands.*

Seconded by Alan Patterson.

***Vote to approve: 3-0. Motion approved.*

E. WOODROW FITNESS, LLC (applicant) & CPBLOT5, LLC (owner), 0 LAFAYETTE STREET (TAX MAP 10, LOT 11-500), zoned IND-L: Request for a Special Exception pursuant to Article III, §303.2 of the Zoning Ordinance to permit a Group Day Care Facility, and a Special Exception pursuant to Article VI, §604.1.C to permit the required play area to be located in the front yard. #ZB2018-14-SE

Joseph Ash, owner/manager of River Valley Club and managing the affairs of CPBLOT5, LLC, and Mr. Nash of Advanced Geomatics are appearing on behalf of the applicant. Mr. Nash reviewed the application and testified regarding the flow of traffic and the fencing around the property. The only special exception before the Board tonight is to allow the play area in the front yard. Currently the play area is in the front and the cars are in the back because the parking lot is not aesthetically pleasing. Mr. Ash is proposing to use a similar design for the new building. Site drawings are included with the application. Mr. Ash voiced concern over the Staff Comments portion of the packet.

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

DELIBERATION/DECISION

On June 18, 2018, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Joseph Ash, owner/manager of River Valley Club and managing the affairs of CPBLOT5, LLC, and Mr. Nash of Geometrics on behalf of applicant Woodrow Fitness LLC and property owner CBPLot5, LLC regarding 0 Lafayette Street (Tax Map 10, Lot 11-500), zoned IND-L, requesting a Special Exception pursuant to Article III, §303.2 of the Zoning Ordinance to permit a Group Day Care Facility, and a Special Exception pursuant to Article VI, §604.1.C to permit the required play area to be located in the front yard. #ZB2018-14-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, located on Lafayette Street (Tax Map 10, Lot 11-500), is a +/-2.02 acre vacant parcel located in the Light Industrial District (IND-L). It is adjacent to 33 Morgan Drive (Tax Map 10, Lot 11-700), which is a +/-8.12 acre parcel owned by the applicant, Woodrow Fitness, LLC. 33 Morgan Drive is occupied by a health and fitness club (the River Valley Club) and a group day care facility (Fit Kids "1"). Both properties are part of the Office Sector of the Centerra Planned Business Park.
2. The applicants propose to construct a new building on the subject property as another standalone group day care facility (Fit Kids "2"). At the same time, the applicants intend to voluntarily merge the subject property with 33 Morgan Drive. As a result of the proposed voluntary merger, the River Valley Club, Fit Kids "1", and Fit Kids "2" will be located on a single lot.
3. The applicants applied for a Special Exception pursuant to §303.2 (reflected in the hearing notice) to permit a group day care facility, which is a use permitted by Special Exception in the IND-L District. However, upon further review, Planning Department staff determined that a group day care facility is a use permitted by right in a Planned Business Park per §508 of the Zoning Ordinance. Therefore, a Special Exception for the group day care facility is not required.
4. The applicants also applied for a Special Exception pursuant to Article VI, §604.1.C to allow the required play area for the proposed group day care facility to be located in the front yard. The play area is proposed to be fully enclosed with a fence.
5. Article VI, §604.1.A of the Zoning Ordinance requires that group day care facilities provide a fenced outside play area. §604.1.B prohibits the play area from being located in the front yard. Under §601.4.C, a Special Exception can be granted to "waive" the requirement that the play area not be in the front yard.
6. In order to grant a Special Exception to allow the play area for the proposed group day care facility to be located in the front yard, the applicants must demonstrate compliance with the general Special Exception criteria set forth in §801.3 of the Zoning Ordinance.
7. The applicants have submitted testimony addressing the §801.3 criteria in an application received by the Planning Department on June 4, 2018.
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 Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §601.4.C of the Zoning Ordinance. (§801.3.A)
2. The following special conditions of §601.4.C 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 18th day of June, 2018, hereby GRANTS the request of Woodrow Fitness LLC and CBPLot5, LLC for a Special Exception per Article VII, §601.4.C of the Zoning Ordinance to permit the required play area of a proposed group day care facility at 0 Lafayette Street (Tax Map 10, Lot 11-500) to be located within the front yard, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. *The applicants shall obtain Site Plan review from the Planning Board and a building permit and shall comply with all applicable local and state regulations in the construction of the proposed improvements.*
2. *The applicants shall merge the subject lot on Lafayette Street with 33 Morgan Drive prior to the issuance of any building permit and shall take all steps necessary to apply for such a merger including, if necessary, transferring ownership of the properties to a single entity prior to applying for a voluntary lot merger.*

Seconded by Alan Patterson.

*** Vote to approve: 3-0. Motion approved.*

Mr. Nash rejoined the Board.

V. Zoning Ordinance Amendments

Mr. Patterson expressed concern over the lack of community participation in the survey. The City Council is scheduled to act on this during the August City Council meeting. Chair Koppenheffer does not have any large concerns over the proposed amendments. This agenda item will be postponed until the July meeting.

VI. STAFF COMMENTS: None

VI. ADJOURNMENT

Dan Nash moved for adjournment. Seconded by Alan Patterson. Approved 4-0

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,
Brandy Sailors-Dow
Recording Secretary