

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, July 20, 2020
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Alan Patterson Sr., Dan Nash, Paul McDonough (Alt), Jeremy Katz (Alt),

MEMBERS ABSENT: Vice Chair Jennifer Mercer, Dave Newlove (Alt)

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Chair Koppenheffer.

A Roll Call of Board Members who participated remotely is listed above. There are currently four regular members and three alternate members on the Board. Voting privileges will be given to one or more alternates for Hearings and Motions to complete the five voting members. Mr. Katz and Mr. McDonough were given voting privileges for all hearings at this meeting.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the public.

2. APPROVAL OF MINUTES

A. July 6, 2020

Mr. Nash MOVED to approve the July 6, 2020 Minutes as presented in the July 20, 2020 agenda packet, with amendments.

Seconded by Mr. Patterson.

Amendments: Page 5, Line 28; Add ‘it is the Board’s recommendation that’ before ‘the City’. Page 6, Line 20; Remove ‘gas station’ and Add ‘auto parts store’. Page 8, Line 9; Add ‘Staff has spent considerable time and resources asking them to comply. Neither of the applicants have complied.’ Page 8, Line 29; Remove ‘unanimously’ before ‘approved’. Page 9, Line 7; Remove ‘unanimously’ before ‘approved’. Page 9, Line 48; Remove ‘And it is not clear that the evidence that was provided is true or that the use fits within the zoning of this property.’ And Add ‘Even if all the information that was presented was true, not all of the requirements of the special exception have been met.’

Roll Call Vote

Chair Koppenheffer, Mr. Nash, Mr. Patterson, Mr. McDonough, Mr. Katz all voting Yea.

None voted Nay.

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

3. PUBLIC HEARING-Continued from July 6, 2020.

- A. JOHANNA CICOTTE, 30 LITTLE HEATER ROAD (Tax Map 78, Lot 61), zoned IND-L:** Applicant proposes to remove the existing buildings and to construct a new building for a proposed car wash use. Applicant requests a Variance from Article III, Section 303.3 of the Zoning Ordinance to allow the new building to be located 20 ft. from the front lot line where a minimum of 40 ft. is required. **#ZB2020-13-VAR**

Mr. Nash recused himself from this hearing.

The public hearing was previously closed.

***Mr. McDonough Moved to approve the application.
Seconded by Mr. Patterson.***

Attorney Schuster said he is comfortable moving forward with the Board hearing the application tonight even though there are only 4 Board Members. Mr. Corwin informed the applicant of the repercussions of having less than 5 Board members. Any motion requires 3 votes of approval to pass. A tie vote is equivalent of a denial.

The Board deliberated the application. Some members believe the size of the building is appropriate and that there is no evidence that a smaller building would meet the same purposes. It was also discussed that the size of the building is more desirable for the operations, not that it was essential. The building has an opportunity to be modified and designed smaller. Therefore, there may not be a hardship.

There is appreciation of the applicant's attempt to protect and preserve the wetlands. As witnessed by a Board Member, the road has little to no traffic, therefore the passing of vehicles would not be a burden. There is support to move to a conforming use from a nonconforming use. However, the property is capable to be used for other purposes. Although the protection of the wetlands is meritorious, the size and purpose of the building may not be appropriate for this piece of property. It is thought that this is a potential conditional use and it is the Planning Board's purview to approve a conditional use, not the Zoning Board. If it was approved by the Planning Board, the Zoning Board would only be allowing a change to the setback.

Based on the comments of the Board Members, the Chair suggested that in fairness to the applicant, the hearing could be continued to the next meeting where there would be a full Board of 5 members.

Mr. McDonough withdrew his Motion to approve the application and Mr. Patterson agreed.

***Mr. McDonough MOVED to continue this hearing until the next meeting, August 3, 2020.
Seconded by Mr. Patterson.***

Roll Call Vote

Mr. Patterson, Mr. McDonough, Mr. Katz, Mr. Koppenheffer all voting Yea.

None voted Nay.

Mr. Nash was recused.

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

Mr. Nash returned to the meeting.

- B. ADAM & SHEENA YOUNGMAN, 8 ORA AVE (Tax Map 90, Lot 4), zoned R-3:**
Applicant requests a Variance from Article III, Section 310.3 of the Zoning Ordinance to

construct a 12 'X 20' shed to be located +/-8 ft. from the side lot line, where a minimum side yard of 15 ft. is required. **#ZB2020-15-VAR**

At the end of the Public Hearing at the last meeting, Mr. Corwin was asked to clarify with the City Attorney if there were any alternatives in deciding this case. The City Attorney confirmed that the only options before the Board are a variance or an equitable waiver. He did not discuss the case in great detail with the Attorney. It did not appear to the Attorney that there are grounds for an equitable waiver unless there was negligence on the part of the City. That would require a court of law to determine that the City was at fault for the placement of the shed. There was a miscommunication between the City and the applicants and if the circumstances were explained in complete detail there may be room for discussion about the City's role in allowing the shed to be placed at the location where it stands. Unfortunately, the shed was placed before there was an application for the Variance. If the variance had been requested prior to placement, as required, the variance would not have been approved. The need to move the shed would have been avoided. There would have to be a second application for an equitable waiver before it could be reviewed by the Board. If that avenue was pursued, the exact facts and the alleged role of the City would be sorted out.

Mr. Nash MOVED on June 15, 2020, July 6, 2020, and July 20, 2020, at a duly noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared ADAM YOUNGMAN & SHEENA YOUNGMAN regarding 8 ORA AVENUE (Tax Map 90, Lot 4), zoned R-3. Applicants request a Variance from Article III, Section 310.3 of the Zoning Ordinance to construct a 12 'X 20' shed to be located +/-8 ft. from the side lot line, where a minimum side yard of 15 ft. is required. #ZB2020-15-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 one-family dwelling constructed in 1935 per the City Assessor's records and is conforming to the R-3 District minimum lot size requirement. It appears the home itself is non-conforming to the minimum required front yard of 20 ft., and to the minimum required 15 ft. side yard. The shed was constructed and placed upon the property without the necessary variance.
2. The applicant proposes to keep the detached 12 ft. by 20 ft. shed located +/-8 ft. from the side lot line shared with 12 Ora Avenue (Tax Map 90, Lot 5). Because the shed was constructed within the minimum required 15 ft. side yard, a Variance is required.
3. A minimum side yard of 15 feet is required for Class 1 lots in the R-3 District per Section 309.3 of the Zoning Ordinance. Therefore, a Variance is required to allow the shed to remain.
4. To obtain the requested Variance, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on June 3, 2020.
5. No one from the public participated in the hearing.

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 Section 801.2 of the Zoning Ordinance:

1. The variance **will** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is not** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 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 (Section 801.2.A.5.a):

It appears the shed could have been located the required distance from the side lot line.

- 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. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **20th day of July, 2020**, hereby **DENIES** the requested Variance from Section 310.3 of the Zoning Ordinance to allow a detached 12 ft. by 20 ft. shed at 8 Ora Avenue (Tax Map 90, Lot 4) to be located +/-8 ft. from the side lot line, as set forth above and per testimony, plans, and materials submitted.

The Findings of Fact were clarified, corrected, and then approved by Mr. Nash and Mr. Patterson. The meaning of hardship that is required to qualify for a variance was discussed. The nature and uniqueness of the property is not a hardship which would prohibit the applicants from building the shed.

The Motion was Seconded by Mr. Patterson.

Roll Call Vote

*Mr. Nash, Mr. Patterson, Mr. McDonough, Mr. Katz, and Chair Koppenheffer all voting Yea.
None voted Nay.*

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

C. GINNY R. HARRINGTON & GOLDINAY MCINTYRE, 8 PAYNE ROAD (Tax Map 84, Lot 37), zoned RL-1: Applicant requests a Variance from Article III, Section 312.3 of the Zoning Ordinance to construct a +/-200 sq. ft. shed to be located +/-6 ft. from the side lot line shared with 10 Payne Road (Tax Map 84, Lot 36), where a minimum side yard of 25 ft. is required. **#ZB2020-16-VAR**

The Public Hearing remained open since the last meeting. Staff has not received any comments. There were no additional questions or comments from the Board to the applicants.

Chair Koppenheffer closed the Public Hearing.

The Board moved to deliberation and decision.

Mr. Nash MOVED on July 6, 2020 and July 20, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared GINNY R. HARRINGTON & GOLDINAY MCINTYRE regarding 8 PAYNE ROAD (Tax Map 84, Lot 37), zoned RL-1. Applicants request a Variance from Article III, Section 312.3 of the Zoning Ordinance to construct a +/- 200 sq. ft. shed to be located +/-6 ft. from the side lot line shared with 10 Payne Road (Tax Map 84, Lot 36), where a minimum side yard of 25 ft. is required. #ZB2020-16-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 constructed in 1991 per the City Assessor's records. At 0.5 acres, it is non-conforming to the RL-1 District minimum 3-acre lot size requirement for Class 3 lots.
2. The applicants obtained a Variance in 2013 to construct a garage addition within 4 ft. of the side lot shared with 6 Payne Road (a vacant lot owned by the State of New Hampshire).
3. An 80 sq. ft. shed is currently located +/-10 ft. from the side lot line shared with 8 Payne Road. The existing shed conforms with Section 201.8 of the Zoning Ordinance which allows structures of 130 sq. ft. or less to be located up to five (5) ft. from the side and rear lot lines.
4. The applicants propose to remove the existing shed and, in approximately the same location, to construct a detached 12 ft. by 20 ft. shed, to be located +/-6 ft. from the side lot line shared with 10 Payne Road. Because the shed will be constructed within the minimum required 25 ft. side yard, a Variance is required.
5. In the RL-1 District, Class 3 lots (i.e. lots that are not served by municipal sewer) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 25 ft. per Section 312.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed shed, which will be located approximately 6 feet from the side lot line shared with 10 Payne Road.
6. To obtain the requested Variance, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicants submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on June 8, 2020.
7. Paul and Lou Anne Lundgren, abutters to the property, spoke 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 Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 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 (Section 801.2.A.5.a):

The location of the septic mound.

- 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. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **20th day of July, 2020**, hereby **GRANTS** the requested Variance from Section 312.3 of the Zoning Ordinance to allow a +/-200 sq. ft. shed at 8 Payne Road (Tax Map 84, Lot 37) to be located +/-6 ft. from the side lot line, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicants shall obtain a building permit.
2. The applicants shall obtain a Shoreland Permit or equivalent approval from the New Hampshire Department of Environmental Services prior to issuance of a building permit.

Seconded by Mr. Patterson.

The applicants said they applied for a building permit and was told a shoreline permit would not be required. They will provide a statement from NH Department of Environmental Services stating that a shoreline permit will not be required.

Roll Call Vote

Mr. Nash, Mr. Patterson, Mr. McDonough, Mr. Katz, and Chair Koppenheffer all voting Yea.

None voted Nay.

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

- D. ONE MECHANIC STREET, LLC, 1 MECHANIC STREET (Tax Map 91, Lot 264), zoned LD:** The applicant requests a Variance from Section 607.3.A of the Zoning Ordinance to eliminate the requirement that a portion of the street level story of the existing building shall be reserved for a non-residential use. **#ZB2020-18-VAR**

Mr. Katz recused himself from this hearing.

This hearing was continued from the last meeting. Staff did not receive any additional questions or comments from the public.

Jeremy Katz appeared on behalf of the application. He expanded on his discussion of the application because time was limited at the last meeting. The recommendation to change from retail space to residential use came from his building designer and the Planning Board due to the changes in the road and the building of a roundabout. The City will be taking a portion of his property. The imminence of the roundabout construction will temporarily and permanently affect the front of the building and the front parking lot. There will no longer be a second road cut for the parking lot. The grading of the land will change and there will be a high retaining wall added that limits easy access to the front of the building. From the time he purchased the building his intention has been to have the ground floor be retail. It is financially a better option for him. Discussions with the Planning Board suggested that retail space was no longer an appropriate use of this building and that a variance should be requested.

This property will be permanently altered which substantially limits the usefulness of this building for retail space. The amount of parking, the ability of vehicles to turn around to leave, the road entrance and exit to the parking lot from two cuts to one and the change in the grade of the parking lot will be permanently changed. This will alter the traffic pattern of people entering the building to a retail space. A pedestrian, bicyclist or automobile can no longer easily enter the building.

There will be an encroachment on the parking lot space. Cars would no longer be able to turn around before trying to leave the property and the applicant perceives that backing onto the road would create a dangerous driving situation. A large truck, such as an 18-wheeler truck would have to back out into the roundabout and that would be dangerous in the traffic where 5 streets meet. Due to the reduced size of the parking, there would no longer be enough space for customers' vehicles. By virtue of the roundabout, there will be limited parking, whereas other LD properties have access to substantial free public parking.

They discussed other properties in the general commercial district. One of the intentions of the downtown ordinance is to attempt to provide good pedestrian and bicycle traffic. This building would no longer be conducive for them. The viability of the foot and bicycle traffic pattern will be altered, and the flow of the commercial space is no longer viable.

At the time the property was purchased, it was in the central business zone and having multi-family residences on all levels was allowed. The LD district was created after the building was purchased and the restriction to have non-residential space was an added requirement.

Roundabouts are designed to provide a high degree of traffic control. One of the things that benefitted that building is the continuous curb cut which provided easy access into and out of the parking lot. The parking lot requirements would be 42 feet deep to allow cars to park and get out. That will no longer be available.

The Chair closed the Public hearing.

Mr. Nash MOVED On July 6, 2020 and July 20, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Jeremy Katz on behalf of ONE MECHANIC STREET,

LLC regarding 1 MECHANIC STREET (Tax Map 91, Lot 264), zoned LD. Applicant requests a Variance from Section 307.6.A of the Zoning Ordinance to eliminate the requirement that a portion of the street level story of the existing building shall be reserved for a non-residential use. #ZB2020-18-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 multi-story commercial building constructed in 1900. The applicant proposes to convert the existing building into a multi-family dwelling, which is a permitted use in the Lebanon Downtown (LD) District per Section 307.2 of the Zoning Ordinance.
2. Mechanic Street is considered a “primary street” per Section 307.6.C.1 of the Zoning Ordinance. Section 307.6.A of the Zoning Ordinance requires that buildings in the LD District located on a lot with principal frontage on a primary street reserve a minimum of 1,000 square feet or 1/3 of the gross floor area, whichever is less, of the street level story of the building for a non-residential use or uses.
3. The applicant proposes to utilize the entirety of the redeveloped building exclusively for multi-family residential. Consequently, a Variance is required from Section 307.6.A in order to eliminate the requirement that a portion of the street level story of the building is reserved for non-residential purposes.
4. To obtain the requested Variance from Section 607.3.A, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b).
5. No one 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 Section 801.2 of the Zoning Ordinance:

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

The parcel would not have adequate on street parking at the street level if a commercial use was employed.
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 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 (Section 801.2.A.5.a):

The taking of the property for the roundabout construction will diminish access and the parking area that is currently available.

- 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. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **20th day of July 2020**, hereby **GRANTS** the requested Variance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain site plan approval from the Planning Board, a building permit, and a certificate of occupancy; shall pay an impact fee pursuant to §213 of the Zoning Ordinance; and shall comply with all applicable local, state, and federal regulations in the construction and use of the proposed addition.

Seconded by Mr. Patterson.

Roll Call Vote

Mr. Nash, Mr. Patterson, Mr. McDonough, and Chair Koppenheffer all voting Yea.

None voted Nay.

Mr. Katz was recused.

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

Mr. Katz returned to the meeting.

- E. PERRY & JILL SEALE, 52 MAPLE STREET (Tax Map 73, Lot 64), zoned R-3:**
Applicants request a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling.
#ZB2020-19-SE

Staff has not received any additional questions or comments from the public.

Mr. Seale appeared and said no additional space would be added to the building. They are modifying the space within the building.

The Board had no questions or comments.

Hearing no additional comments, the Chair closed the Public Hearing.

Mr. Nash MOVED on July 6, 2020 and July 20, 2020, at dulynoticed meetings of the Lebanon Zoning Board of Adjustment, there appeared PERRY & JILL SEALE, regarding 52 MAPLE STREET (Tax Map 73, Lot 64), zoned R-3. Applicants request a Special Exception pursuant to

Article III, Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling. #ZB2020-19-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 a +/-0.47 acre lot improved with a 4,582 sq. ft. (finished) one-family dwelling constructed in 1920, according to the City Assessor's records. It is located at the corner of Maple Street and Dana Street in West Lebanon and is accessed via a driveway onto Dana Street. The lot is also improved with two detached garages.
2. The applicant proposes to convert the existing one-family dwelling into a two-family dwelling. The applicant does not propose any site changes in connection with the conversion and will utilize the existing parking areas to accommodate the four (4) off-street parking spaces that are required to be provided pursuant to Section 607 of the Zoning Ordinance.
3. "Two-family dwelling by conversion of existing one-family dwelling" is a use permitted by Special Exception in the R-3 District per Section 310.2 of the Zoning Ordinance. To grant the requested Special Exception, the Board must determine that the proposal meets the general Special Exception criteria, set forth in Section 801.3.
4. The applicant submitted testimony addressing the Section 801.3 criteria in an application received by the Planning & Development Department on June 15, 2020.
5. No one from the public participated in the public hearing.

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 of the Zoning Ordinance. (§801.3.A)
2. There are no special conditions/requirements applicable to the proposed use. (§801.3.B)
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 **20th day of July 2020**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. A building permit and certificate of occupancy shall be obtained.

Seconded by Mr. Patterson

Roll Call Vote

Mr. Nash, Mr. Patterson, Mr. McDonough, Mr. Katz and Chair Koppenheffer all voting Yea.

None voted Nay.

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

F. EXECUSUITE, LLC, 250 BANK STREET EXT (Tax Map 94, Lot 1), zoned R-3:

Applicant proposes to convert a portion of the existing non-conforming commercial building to a residential dwelling unit. The proposed conversion requires a Special Exception pursuant to Section 702.1 of the Zoning Ordinance to permit the change of an existing non-conforming use to another non-conforming use. **#ZB2020-20-SE**

This hearing was continued from the last meeting to allow the public to comment and ask questions. Staff did not receive any questions or comments from anyone.

Tim Sidore appeared on behalf of the application. He had nothing to add to his presentation from the last meeting.

No one from the Board had any questions at this time.

Chair Koppenheffer closed the Public Hearing.

Mr. Nash MOVED on July 6, 2020 and July 20, 2020, at duly-noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Tim Sidore on behalf of EXECUSUITE, LLC, regarding 250 BANK STREET EXT (Tax Map 94, Lot 1), zoned R-3. Applicant proposes to convert a portion of the existing non-conforming commercial building to a residential dwelling unit. The proposed conversion requires a Special Exception pursuant to Section 702.1 of the Zoning Ordinance to permit the change of an existing non-conforming use to another non-conforming use. #ZB2020-20-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 currently developed with a former excelsior mill building along the Mascoma River built in approximately 1924. The property also includes a single-family dwelling with a detached garage near the Bank Street Extension frontage. The former mill

building is comprised of several connected structures, which total approximately 13,000 square feet. The mill building currently houses several industrial and warehouse tenants and an apartment overlooking the river. All of these uses are considered legal non-conforming and are subject to Article VII (“Non-Conformities”) of the Zoning Ordinance.

2. The Zoning Board granted Special Exceptions in 2014 and 2015 for the conversion of approximately 5,000 sq. ft. within the mill building from one non-conforming use (industrial/warehouse) to another non-conforming use (Personal Service (fitness gym)).
3. The applicant is seeking a Special Exception pursuant to Article VII, Section 702.1 to allow a change from one non-conforming use to another non-conforming use. Specifically, the applicant requests approval to convert 1,320 sq. ft. of industrial/warehouse space to an apartment dwelling unit. The applicant obtained a Special Exception for a similar proposal in 2017 (#ZB2017-09-SE). However, the Special Exception was not utilized within two years of approval and, therefore, expired.
4. The Zoning Ordinance does not allow industrial/warehouse uses in the R-3 District, nor does it allow apartment dwelling units (unless the apartment is accessory to a one family dwelling). However, §702.1 provides that “[a] non-conforming use may, as a special exception, be changed to another non-conforming use provided that the Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.”
5. In order to grant a Special Exception to change one non-conforming use to a different non-conforming use, the applicant must demonstrate that the proposal meets the criteria of Section 702.1 and the general Special Exception criteria, set forth in Section 801.3.
6. The applicant submitted testimony addressing the Section 801.3 criteria in an application received by the Planning & Development Department on June 15, 2020.
7. No one from the public participated in the public hearing.

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 §702.1 of the Zoning Ordinance. (§801.3.A)
2. The following condition/requirement of §702.1 **is** met: (§801.3.B)
 - a. The proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.
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 **20th day of July 2020**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. A building permit and certificate of occupancy shall be obtained.

Seconded by Mr. Patterson.

Roll Call Vote

Mr. Nash, Mr. Patterson, Mr. McDonough, Mr. Katz and Chair Koppenheffer all voting Yea.

None voted Nay.

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

4. STAFF COMMENTS: NONE

5. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 8:52 PM.

Seconded by Mr. Nash.

Roll Call Vote

Mr. Nash, Mr. Patterson, Mr. McDonough, Mr. Katz, and Chair Koppenheffer all voting Yea.

None voted Nay.

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

Respectfully Submitted,
Linda Billings
Recording Secretary