

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, September 21, 2020
7:00 PM**

MEMBERS PRESENT: Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Jeremy Katz, Paul McDonough (Alt), Dave Newlove, (Alt)

MEMBERS ABSENT: Chair William Koppenheffer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1 **1. CALL TO ORDER**

2
3 The meeting was called to order at 7:00 PM by Vice Chair Mercer.

4
5 A Roll Call of Board Members who participated remotely are listed above.

6
7 There are currently five regular members and two alternate members on the Board. Voting privileges will
8 be given to one or more alternates for Hearings and Motions to complete the five voting members when a
9 regular member is absent or recused.

10
11 **A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements**

12
13 Mr. Corwin delivered the Right to Know procedures to the Members and the public.

14
15 **Mr. McDonough was given voting privileges for the Minutes in the absence of Chair Koppenheffer.**

16
17 **2. APPROVAL OF MINUTES**

18
19 **A. September 8, 2020**

20
21 *Mr. Patterson MOVED to approve the September 8, 2020 Minutes as presented in the September 21,*
22 *2020 agenda packet, with amendments.*

23 *Seconded by Mr. Nash.*

24
25 Amendments: Page 3, Line 11; Add ‘year-round’ before vegetation. Page 3, Line 29; Remove
26 ‘amendable’ and Add ‘amenable’. Page 5, Line 47; Remove ‘Burke’ and Add ‘Hollis’. Page 8, Line 6;
27 Remove ‘seize’ and Add ‘cease’.

28
29 **Roll Call Vote**

30 *Mr. Patterson, Mr. McDonough, Mr. Nash, Mr. Katz, and all voting Yea.*

31 *None voted Nay.*

32 *Vice Chair Mercer abstained.*

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

34
35 **3. PUBLIC HEARING – Continued from September 8, 2020.**

36
37 **A. **AMENDED NOTICE** William M. & Lori Grizzaffi, 351 Meriden Road (Tax Map**
38 **167, Lot 16), zoned RL-1: Request for a Variance from Article III, Section 312.2 of the**

39

1 Zoning Ordinance to allow a towing business and vehicular impound yard, and from Section
2 205 to allow two (2) principal structures on the property where only one principal structure is
3 permitted. #ZB2020-22-VAR
4

5 **Mr. McDonough was appointed voting privileges for this hearing in the absence of Chair**
6 **Koppenheffer.**
7

8 This hearing was re-noticed due to the second variance added to the application. At the September 8,
9 2020 hearing it was first raised that a second variance was needed to allow more than one principal
10 structure. At the last hearing the boundary between the properties, the location of the plantings and
11 the stockade fence were discussed. Mr. Grizzaffi has engaged the services of Pathways Consulting to
12 update the site plan to show the boundary and the planting and stockade fence improvements. To
13 allow time to complete this work, they are asking for a continuance until the October 5, 2020 meeting
14 to allow time to get all the materials prepared.
15

16 The Board determined it was important to accomplish as much testimony as possible this evening.
17 The Boundary issue can be documented later. Staff stated that the decision was already going to be
18 decided on October 5, 2020. The hearing is at the point of making the public comment available.
19

20 Mr. Burke addressed the hardship related to the property. When the property was purchased,
21 Attorney Burke performed a residential property title search. Those typically do not include an
22 examination of the zoning. It is only a marketability search, meaning the owner has title and can sell
23 the property. There was no inquiry regarding the zoning. The property was purchased and financed
24 by a residential mortgage loan. Regarding the hardship standard, until it was brought to the attention
25 of the owner by the Zoning Department, the owner was not aware that the property was not zoned
26 adequately to be used in the manner that he intended when he purchased the property.
27

28 After the last hearing there were two filings related to this application that were included in the packet
29 for this meeting. Attorney Burke was asked if he had any response to the letter from Mr. Carter and
30 the letter from Mr. Maughan. Attorney Burke responded that Mr. Maughan has previously submitted
31 a long letter and he has not reviewed the recent letter. He has reviewed the letter from Mr. Carter,
32 who operates a competing business. He believes Mr. Carter’s objections are of a competing nature
33 and because his property is not near this property, he believes it is not significant.
34

35 Mr. Grizzaffi joined the meeting and was asked what was in his mind that that attracted him to this
36 property. He responded that he bought it from the previous owners because of the garage and the
37 ability to put his vehicles on the property and in the garage.
38

39 Mr. Grizzaffi was asked what other uses could be made of the building on the property. He said it is a
40 concrete slab with a metal building around it. It could be used for storage or parking vehicles. He
41 was asked, if he would have purchased the property if it did not have that large building. He
42 responded he would not have purchased it because he was looking for a property for his business
43 needs.
44

45 Everyone was reminded that this is a new hearing, not a rehearing. The Board is waiting for
46 testimony on this new hearing.
47

1 **Vice Chair Mercer opened the public hearing.**

2 Matt Maughan, abutter to the property, appeared. He said he appreciates that this is a new hearing.
3 In that regard, he asked the Board to think of this: If there was nothing else that existed at this site,
4 would a variance be granted to allow the operation of this business. He reminded everyone that
5 Attorney Burke said this was a residential loan, it was not a business or commercial loan. And that
6 fits with this property zoned RL1.
7

8 Mr. Maughan reviewed the basic objectives of the zoning ordinances. He asked, should a towing
9 business, a commercial business, be allowed to operate on this property. Previous businesses were
10 not a towing yard. It seems the business has expanded, and another commercial property is needed.
11 A previous improper use of a property does not mean that suddenly another improper use would be
12 allowed. There has been no evidence, no demonstration of fact, that properties have not been
13 diminished by the operation of the towing business. He suggested several other uses that the building
14 could be used for that fit in this zone. All 5 of the requirements must be met in order to grant a
15 variance. He feels there are holes in the arguments made by the applicants. Some of the truth has
16 been stretched regarding what has happened with the property. It is not clear that any of the
17 restrictions would be adhered to and would be followed in the future. Recently over 20 cars were
18 parked on the property for over 10 days. A fence was not built as required by the conditions of
19 approval. In the past the applicant demonstrated that there has been very little intent to adhere to any
20 restrictions that were placed on him. He believes there is contempt to adhere to the Boards
21 requirements.
22

23 They discussed the significance of exnihilo that was mentioned by Mr. Peress at the 2019 hearing.
24 As yet they have been unable to find it in the Board's rules.
25

26 Mr. Maughan was asked about his previous testimony, that the previous property he owned sold for
27 less than he thought it would sell for, due to the Mr. Grizzaffi's property. At this time, he responded,
28 it is more significant that the applicant has not provided any testimony that property values have not
29 been diminished. Mr. Maughan confirmed he is objecting to his view of the property and reiterated
30 that the vegetation will not conceal the stockade during the winter.
31

32 Mr. Maughan said several of his earlier concerns have been figure out. Hazardous waste, such as oil,
33 have been addressed. What has not been addressed is the noise. The trucks are large and when they
34 back up the beeping noise is loud. Many cars go in and out throughout the day and the night. The
35 hours of operation have not been followed. The truck drivers honk the horns for no apparent reason.
36 If the property was used to just service trucks, it would greatly reduce the nuisance. Using the
37 building for routine maintenance would greatly reduce the traffic coming and going. Mr. Maughan
38 pointed out that there are several acres of woods between the applicant and other abutters. Some of
39 the other property owners are not living there full time. Primarily, the problem is a difficulty for this
40 abutter. Vehicles have been dropped off after hours. At least 4 tow trucks have been on the property
41 at one time and there has been an excess of 20 cars over 10 days. The operations have been
42 conducted outside of the prescribed operating hours. Although it has reduced somewhat recently, it
43 has been as much as a couple times a week.
44

45 Darren Carter spoke regarding the application. One of the letters that was put forth by Attorney
46 Burke said Mr. Grizzaffi did not know that the property could not be operated as a tow yard. He
47 referenced letters from the City stating a tow yard cannot be operated on the property. Mr. Carter

1 said he provided the previous complaint because he had been harassed by Mr. Grizzaffi for over 20
 2 years. He has supporting letters from all of his abutters that approved his tow yard and it cannot be
 3 seen from the road. Mr. Carter does roadside service and it is different from Mr. Grizzaffi’s service.
 4 Mr. Grizzaffi was granted 20 spaces on Main Street in Lebanon and there is almost never a car there.
 5 The Meriden property is supposed to be for overflow from the Lebanon lot, yet the towed vehicles are
 6 not going to the Lebanon lot.

7
 8 Mark Horne, the previous owner, spoke in support of the application. He sold the property to Mr.
 9 Grizzaffi because he is of the understanding that this was a permitted property. Previous to his
 10 ownership, the owner operated a trucking business with more than one truck there. Mr. Horne used it
 11 as a commercial property. He believes the abutter knew there was a commercial business there before
 12 he purchased the property. Mr. Horne was asked how the property was taxed when he owned it. He
 13 replied that he believes there were two tax bills, one for the house and one for the garage property, but
 14 he is not positive.

15
 16 Vice Chair Mercer said she was on the Board when they granted relief for the property on Main Street
 17 in West Lebanon because it would relieve the use of the Meriden Property. She personally has seen
 18 more than 4 trucks parked at Meriden. Mr. Grizzaffi said the only vehicles that go to Meriden are the
 19 abandoned vehicles. There are 4 trucks there because 2 are only used in the winter and his truck and
 20 a spare truck are parked there.

21
 22 They discussed that employees are supposed to park on the East side of the building, so they are not
 23 seen. They should not be in any other location. However, Mr. Maughan said he has photographic
 24 evidence of multiple instances that employees are not parking as prescribed.

25
 26 ***Mr. Katz MOVED to continue this hearing until October 5, 2020.***
 27 ***Seconded by Mr. Nash.***

28
 29 **Roll Call Vote**

30 ***Mr. Patterson, Mr. McDonough, Mr. Nash, Mr. Katz and Vice Chair Mercer all voting Yea.***
 31 ***None voted Nay.***

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

33
 34 **B. Ann-Eleanor White, 57 Mascoma Street (Tax Map 91, Lot 108), zoned R-3:** Applicant
 35 requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance to
 36 reconstruct and expand an existing detached garage that is non-conforming to the 15 ft. minimum
 37 side yard required from the lot line shared with 7 Cameron Avenue (Tax Map 91, Lot 107).
 38 **#ZB2020-26-SE**

39
 40 **Mr. Newlove was appointed voted privileges for this hearing in the absence of Chair Koppenheffer.**

41
 42 Ann-Eleanor White, the property owner, spoke to the application. Additional information has been
 43 submitted to Mr. Corwin related to the survey of the property. Park industries has not surveyed the
 44 property. There is only one rear pin marking the property. The abutting neighbors, who appeared at the
 45 first hearing date have discussed the property line and their concerns with the applicant. They agree on
 46 the approximate property line. Ms. White has been unable to get a survey of the property at this time.
 47 The Maple tree on the White property would be trimmed to the roof line on the garage and the root

1 systems would not be in harm’s way. The new garage would not be any closer to the agreed property line
2 than the existing garage.

3
4 Casey Aldrich and her husband, abutters, appeared and confirmed what Ms. White said. They are
5 comfortable with moving forward on this garage renovation.
6

7 **Vice Chair Mercer closed the Public Hearing.**

8
9 *Mr. Nash MOVED on September 8, 2020 and September 21, 2020, at duly-noticed meetings of the*
10 *Lebanon Zoning Board of Adjustment, there appeared Ann-Eleanor White regarding 57 Mascoma*
11 *Street (Tax Map 91, Lot 108), zoned R-3. Applicant requests a Special Exception pursuant to Article*
12 *VII, Section 703.1 of the Zoning Ordinance to reconstruct and expand an existing detached garage*
13 *that is non-conforming to the 15 ft. minimum side yard required from the lot line shared with 7*
14 *Cameron Avenue (Tax Map 91, Lot 107). #ZB2020-26-SE*
15

16 **I. FINDINGS OF FACT**

17
18 Based on testimony given, application materials presented, and supporting documents submitted, the
19 Lebanon Zoning Board of Adjustment makes the following findings of fact:
20

- 21 1. The subject property is improved with a one-family dwelling constructed in 1924 and a detached
22 garage constructed in 1950 according to the City Assessor’s records. According to the applicant,
23 the garage is located 4 ft. from the side lot line shared with 7 Cameron Avenue. Consequently, the
24 existing garage is non-conforming to the minimum side yard of 15 ft. required for Class 1 lots in
25 the R-3 District.
26
- 27 2. The applicant proposes to remove the existing detached garage measuring 12 ft. 5 in. x 18 ft. 4 in.
28 and build a new garage measuring 18 ft. x 26 ft. The new garage will maintain the non-
29 conforming 4 ft. setback from the side lot line shared with 7 Cameron Avenue. However, the
30 width of the proposed garage along the side lot line will increase from the existing 18 ft. 4 in. to
31 26 ft. and therefore, will result in an expansion of the garage’s non-conforming footprint.
32
- 33 3. Class 1 lots in the R-3 District must maintain a minimum side yard of 15 ft., per §310.3 of the
34 Zoning Ordinance. §703.1 of the Zoning Ordinance allows the expansion of “any increase in the
35 footprint and/or volume of the non-conforming part of the building or structure,” by Special
36 Exception from the Zoning Board of Adjustment.
37
- 38 4. §703.2 of the Zoning Ordinance provides that, “[a]ny non-conforming building or non-
39 conforming structure which is partially or wholly destroyed by reason of any cause whatsoever,
40 including [...] fire [...], may be resumed or restored and operated in its former non-conformity if
41 same is done within two (2) years[.]”
42
- 43 5. Taken together, §703.1 and §703.2 permit the expansion not just of existing non-conforming
44 structures, but also the expansion of non-conforming structures that are reconstructed within two
45 years following the demolition or destruction of the original structure. As applied here, the
46 applicant is entitled to construct a new garage that is equally non-conforming to the Zoning
47 Ordinance, and may also apply for a Special Exception to expand the non-conforming footprint of
48 the garage (provided the expanded footprint is no closer to the side lot line than the footprint of
49 the existing garage to be removed).
50

- 6. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in §703.1.A of the Zoning Ordinance. Per §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in §801.3.
- 7. The applicant has submitted testimony addressing the §801.3 and §703.1.A criteria in an application received by the Planning & Development Department.
- 8. At the September 8, 2020 hearing, Casey and Bryan Aldrich, abutters at 7 Cameron Avenue, questioned whether the location of the side lot line is accurately depicted on the application materials, and expressed concern that existing vegetation proposed to be removed may actually be located on their property and not on the subject property.
- 9. At the September 21, 2020 the Finding of Fact 8 was resolved.

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/requirements §703.1.A **are** met (§801.3.B):
 - The reasonable use of abutting properties **is not** adversely affected by the proposed expansion. (§703.1.A.1)
 - The proposed expansion **will not** render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance. (§703.1.A.2)
- 3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
- 4. The character of the area **will not** be adversely affected. (§801.3.D)
- 5. **No** hazard or nuisance will be created. (§801.3.E)
- 6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
- 7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
- 8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
- 9. The general welfare of the City **will** be protected. (§801.3.I)

1
2 **III. DECISION**

3
4 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **21st day of September, 2020**, hereby **GRANTS** the requested Special Exception per Section 703.1 of the Zoning Ordinance to
5 allow the expansion of a non-conforming structure at **57 Mascoma Street (Tax Map 91, Lot 108)**, as set
6 forth above and per testimony, plans, and materials submitted, and per the following conditions:
7

- 8
9 1. The applicant shall obtain a building permit for the proposed garage.

10
11 *Seconded by Mr. Patterson.*

12
13 *The Motion was amended and accepted* by Mr. Nash and Mr. Patterson by adding Finding of Fact #9,
14 stating “At the September 21, 2020 the Finding of Fact 8 was resolved.”

15
16 **Roll Call Vote**

17 *Mr. Newlove, Mr. Katz, Mr. Nash, Mr. Patterson, and Vice Chair Mercer all voting Yea.*

18 *None voted Nay.*

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

- 20
21 **C. Visions for Creative Housing Solutions, 12 Green Street (Tax Map 92, Lot 131), zoned R-2:**
22 Request for a Special Exception pursuant to Article III, Section 309.2 of the Zoning Ordinance to
23 permit a group residence. #ZB2020-28-SE
24

25 **Mr. Newlove was appointed voting privileges for this hearing in the absence of Chair**
26 **Koppenheffer.**

27
28 All the testimony was heard at the September 8, 2020 hearing. No additional comments have been
29 received from the Public.

30
31 **Vice Chair Mercer closed the Public Hearing.**

32
33 *Mr. Nash MOVED on September 8, 2020 and September 21, 2020*, at duly-noticed meetings of the
34 Lebanon Zoning Board of Adjustment, there appeared Sylvia Dow on behalf of **VISIONS FOR**
35 **CREATIVE HOUSING SOLUTIONS**, regarding **12 GREEN STREET (Tax Map 92, Lot 131)**,
36 zoned R-2. Applicant requests a Special Exception pursuant to Article III, Section 309.2 of the Zoning
37 Ordinance to permit a group residence. #ZB2020-28-SE

38
39 **I. FINDINGS OF FACT**

40
41 Based on testimony given, application materials presented, and supporting documents submitted, the
42 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 43
44 1. The subject property is located on Green Street in the R-2 District and is improved with two
45 residential buildings, one containing 4 dwelling units, and the other containing 2 dwelling units
46 (for a total of 6). The property has multiple non-conformities, all of which are considered legal
47 non-conforming (“grandfathered”). These include having two principal structures on the same lot
48 (§205 of the Zoning Ordinance), excess density over what is permitted (§309.3), and structures
49 within the minimum required yards (§309.3 of the Zoning Ordinance).
50

- 1 2. On May 21, 2018, the applicant obtained a Special Exception pursuant to Section 309.2 of the
- 2 Zoning Ordinance to allow a “group residence” use at the property (#ZB2018-11-SE) (a copy of
- 3 the Notice of Decision is included with the applicant’s materials, attached). In July, the applicant
- 4 submitted a building permit application to the Planning & Development Department for the
- 5 renovation of 12 Green Street into a group residence. However, the Special Exception approval
- 6 on expired May 21, 2020 pursuant to Section 801.3 which requires the use to be in place within
- 7 two (2) years of the Zoning Board’s approval.
- 8
- 9 3. The applicant proposes to discontinue the existing multi-family residential use and to convert the
- 10 buildings for use as a group residence for up to 11 developmentally challenged adults. The 7
- 11 existing on-site parking spaces exceeds the minimum number of parking spaces required by
- 12 Section 607 of the Zoning Ordinance for a group residence (0.33 parking spaces per resident).
- 13
- 14 4. A group residence is allowed by Special Exception within the R-2 District. “Group residence” is
- 15 defined in Appendix A of the Zoning Ordinance as: “A shared home for seniors, an orphanage,
- 16 children's home or similar type of group living accommodations. All such facilities shall be
- 17 licensed by the State of New Hampshire and shall serve a maximum of 12 residents.”
- 18
- 19 5. In order to grant a Special Exception for the proposed group residence, the Board must determine
- 20 that the proposal meets the general Special Exception criteria, set forth in Section 801.3 of the
- 21 Zoning Ordinance. The applicant submitted testimony addressing the Section 801.3 criteria in an
- 22 application received by the Planning & Development Department on August 24, 2020.
- 23
- 24 6. Lebanon residents Elizabeth Larson, Lisa Green, and Cheryl and Dennis Jones all spoke in favor
- 25 of the application.

26
27 **II. CONCLUSIONS OF LAW**

28
29 As a result of the above findings of fact and based on testimony given, application materials presented,
30 and supporting documents submitted, the Board concludes the following with respect to the Special
31 Exception criteria set forth in §801.3 of the Zoning Ordinance:

- 32
- 33 1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
- 34
- 35 2. There **are no** special conditions/requirements applicable to the proposed use. (§801.3.B)
- 36
- 37 3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the
- 38 Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance*
- 39 *violations on the property.*
- 40
- 41 4. The character of the area **will not** be adversely affected. (§801.3.D)
- 42
- 43 5. **No** hazard or nuisance will be created. (§801.3.E)
- 44
- 45 6. The capacity of existing or planned community facilities and services (including streets and
- 46 highways) **will not** be adversely impacted. (§801.3.F)
- 47
- 48 7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
- 49
- 50 8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and
- 51 intent of the ordinance. (§801.3.H)

1
2 9. The general welfare of the City **will** be protected. (§801.3.I)

3
4 **III. DECISION**

5
6 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **21st day of September, 2020**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

7
8
9
10 1. A building permit and certificate of occupancy shall be obtained.

11
12 *Seconded by Mr. Patterson.*

13
14 **Roll Call Vote**

15 *Mr. Katz, Mr. Patterson, Mr. Nash, Mr. Newlove and Vice Chair Mercer all voting Yea.*

16 *None voted Nay.*

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

18
19 **D. **AMENDED NOTICE** David Wong (property owner), Janet Wong (applicant), 23 Eldridge Street (Tax Map 77, Lot 190), zoned R-3:** Request for (a) a Variance from Article III, Section 309.2 of the Zoning Ordinance to convert an existing two-family dwelling to a 4-unit multi-family dwelling which is not a permitted use in the R-3 District, (b) a Variance from Section 310.3 to allow density to exceed the maximum permitted in the R-3 District, and (c) a Variance from the Section 607 to allow only four (4) off-street parking spaces for the proposed multi-family dwelling whereas a minimum of six (6) off-street parking spaces is required, or, in the alternative, a Variance from Section 201.7 to allow parking spaces within the front yard and a Variance from the Appendix A definition of “off-street parking space” which requires parking spaces to be independently accessible. **#ZB2020-29-VAR**

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29
30 **Mr. Katz recused himself from this hearing.**

31
32 **Mr. McDonough was appointed voting privileges for this hearing in the absence of Chair Koppenheffer.**

33
34
35 **Mr. Newlove were appointed voting privileges for this hearing to replace Mr. Katz.**

36
37 Frank J. Barrett Jr., architect, appeared on behalf of the application. The applicant asked him to review the application within the last few days. He is requesting a continuance, moving the hearing to October 5th or later, to allow adequate time to prepare for the hearing.

38
39
40 Staff informed Mr. Barrett that he would have until Noon Tuesday September 29 to get the materials in for the October 5, 2020 packet. Mr. Barrett’s position is understandable, but this is a code enforcement matter. Mr. Barrett said that his office has been retained, and he believes this shows a willingness on the applicant to resolve the matter. With a little more time for preparation he believes the resolution can remain outside of the courts.

41
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46
47 The Board discussed that this has been going on for a substantial amount of time. The applicant has had ample time to prepare and address this matter. It is only until this last minute that the applicant has shown an effort to resolve the matter. It is a disappointment to delay this hearing, but it could serve the City as well as the applicant to allow the additional time.

1
2 Ken Weeks, neighbor, spoke in opposition to the application. He is concerned with the amount of
3 time this have been given and how much time the applicant has been given to resolve the issues.
4

5 **Mr. Nash MOVED to continue this hearing until the October 19, 2020 meeting.**
6 **Seconded by Mr. Newlove.**
7

8 Staff said, there are serious code and life safety issues, therefore the longer this is delayed, the longer
9 it will take for the life safety issues to be resolved. These matters are lingering well beyond the time
10 they should be but moving this to a court of law may not be beneficial.
11

12 **Roll Call Vote**

13 **Mr. Nash, Mr. Newlove, Mr. McDonough, and Vice Chair Mercer all voting Yea.**
14 **Mr. Patterson voted Nay.**
15 ***The Vote on the Motion was approved (4-1).**
16

17 **Mr. Katz returned to the meeting.**
18

19 **4. PUBLIC HEARINGS – New**
20

- 21 **A. Alice & Adam Dansby, 32 West Street (Tax Map 91, Lot 74), zoned R-3:** Applicants
22 intend to remove the existing home and to build a new home closer to Child Street. Request
23 for a Variance pursuant to Article III, Section 310.3 of the Zoning Ordinance to build a
24 dwelling 10 ft. from the side property line shared with 10 Child Street (Tax Map 91, Lot 79)
25 where a minimum yard of 15 ft. is required. **ZB2020-30-VAR**
26

27 **Mr. Newlove was given voting privileges for this hearing in the absence of Chair Koppenheffer.**
28

29 No one appeared on behalf of the application.
30

31 **Mr. Patterson MOVED to continue this hearing until October 5, 2020.**
32 **Seconded by Mr. Newlove.**
33

34 **Roll Call Vote**

35 **Mr. Katz, Mr. Nash, Mr. Newlove, Mr. Patterson, and Vice Chair Mercer all voting Yea.**
36 **None voted Nay.**
37 ***The Vote on the Motion was unanimously approved (5-0).**
38

39 **A five-minute break was taken by the Board until 8:55 PM.**
40

41 **Roll Call was taken upon return of the members.**

42 **Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Jeremy Katz, Paul McDonough**
43 **(Alt), Dave Newlove, (Alt)**
44

- 45 **B. Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111,**
46 **Lot 9), zoned RL-2:** A Special Exception was granted in 2009 pursuant to Article VII,
47 Sections 702.1 and 702.5 of the Zoning Ordinance to operate a contractor’s yard (#ZB2009-
48 01). Applicants request an amendment to the Special Exception approval to eliminate or
49 modify the conditions of approval. **#ZB2020-21-SE**
50

1 The applicants appeared on behalf of the application. They asked for clarification of which special
2 exception they are operating under.

3
4 Vice Chair Mercer said they were given a special exception with several conditions of approval that
5 the applicants were supposed to meet. The applicants are requesting to amend the approval and
6 remove some of the conditions.

7
8 Staff said in explanation, there are two uses on the property. On the west end of the property there is
9 a nonconforming produce/farm retail stand. This application pertains to the nonconforming
10 contractor’s yard that is operated on the east end of the property that was originally approved in 2009
11 with a number of conditions that needed to be adhered to. In 2017, a prospective purchaser of the
12 property received an amendment to that 2009 special exception with the approval to remove some of
13 the conditions that were imposed in 2009. That purchase never took place. About a year later there
14 was another perspective buyer and the applicants appeared before the Board and sought to amend or
15 remove some conditions of the special exception of the 2009 approval. That special exception was
16 granted, and it was intended to replace the 2009 special exception. It had a number of conditions
17 modified from the 2009 approval and additional conditions added. One of the conditions of the 2018
18 application was to provide a landscaping plan within one year, by October 2019. This failed to
19 happen; therefore, the special exception was deemed void. Since then Staff has been trying to get the
20 applicants to come back before the Board to request a special exception because the 2018 was
21 automatically void because the conditions were not met. Therefore the 2009 special exception
22 became the governing document and the applicant is required to meet the conditions of the 2009
23 special exception. There have been several complaints that the conditions are not being met. At this
24 time, an application has been submitted, but it is not clear what the applicants are requesting. Staff
25 has tried to intuit what the applicants are requesting.

26
27 Staff restated, at this time, it is the 2009 special exception that was approved and needs to be
28 amended at this time in order to allow the applicants to continue to use the property as they would
29 like to continue to do. This pertains to how the contractor’s yard is being used and how the Board
30 would believe it should be used. The special exception of 2018 is void. They are operating under the
31 2009 special exception and it needs to be amended. The applicants said they understood what Staff
32 just discussed.

33
34 The applicants were asked to review the 2009 special exception and ask what they are hoping to
35 amend or change in that special exception. They would like what was granted in the 2018. Staff
36 helped the Board clarify each of the changes to the conditions.

- 37 Remove the condition that the building will remain unheated.
- 38 Remove the landscaping condition.
- 39 Remove the condition that prohibits box storage and allow a box storage.
- 40 Remove the condition to work on vehicles and allow them to work on their own vehicles.
- 41 Remove the condition that prohibits a port-a-let and to allow a port-a-let.

42
43 There are Findings of Fact, 6,7 & 9 that also need to be addressed, representing the applicants use.

- 44 Remove the Finding of Fact 6 regarding the storage.
- 45 Remove the Finding of Fact 7 regarding performance of work.

46
47 The applicants said personal property has been stored for his landscaping business and they have used
48 the garage to fix personal vehicles, a wood working structure and splitting wood for the farm stand.

- 49 Remove Finding of Fact 9 regarding storage of trucks.

50 The applicants said some of their trucks have been stored/parked on the property overnight.

51

1 The applicants said they have removed truckloads of garbage and trash. They intend to continue to
2 do so in the future. Unfortunately, they have not been able to achieve all their expectations. They
3 still intend to add a nicer fence and improve the landscaping.
4

5 **Mr. McDonough was appointed voting privileges for this hearing in the absence of Chair**
6 **Koppenheffer.**
7

8 The Board clarified that the contractor’s lot is not used for the farm stand. There is concern regarding
9 the delay and the lack of response. The City has had to hire an attorney to get the applicants to
10 respond to their failure to comply. Given there is substantial expense, it was discussed if it is
11 allowable to recoup the attorney fees from the Applicants. It is not clear at this time if the fees can be
12 repaid outside of seeking enforcement through the court.
13

14 Ms. Medina responded that since the last meeting in 2018, the applicants handed in what they thought
15 was a landscaping plan with aerial photos and plans. It was not what the City expected. The
16 applicants believe it was a matter of miscommunication. They are trying to turn the property in a
17 good direction.
18

19 Mr. Swenson believes they purchased a commercial property with the possibility of two special
20 exceptions. They were getting a commercial business, a farm stand and a retail store on one side. He
21 feels it has never been made clear what they can and cannot do in that retail space. Landscaping has
22 been added on the farm stand side. On the contractor’s lot it has been cleaned up and he believes he
23 has only been using it as such. Fencing has been added. He is maintaining the land with mowing and
24 trimming but has not added additional landscaping. Signs have been posted.
25

26 Staff said that there have not been any applications to permit signs. They have been asked repeatedly
27 to submit a sign permit application. It is not clear if their signs meet the requirements of the sign
28 ordinance.
29

30 It was discussed that this property is in the RL2 district. The current ordinance only allows a special
31 exception for a homebased contractors lot and there is not a home at this location. In 2009 there was
32 a special exception to change to a different nonconforming use. The burden of this application is that
33 what they are requesting a nonconforming use with less restrictions, making it less nonconforming
34 than the previously approved nonconforming use.
35

36 The conditions and finding of facts that are requested to be removed are based on how Staff has
37 observed the property being used. This would allow the applicants to continue to operate as they
38 have been doing in the past. Ms. Medina clarified that she replaced the name on the existing signs.
39 She was informed a permit is required for all new signs, including replacing the name on an existing
40 sign.
41

42 **The Public Hearing was opened to the Public.**
43

44 Linda Wadleigh, neighbor to the property appeared. The fence that was presented at the first hearing
45 was to be a nice fence. Now it is a construction mesh fence hung on an existing chain link fence that
46 makes it look like an ongoing construction site. They met with the applicants to discuss the fence.
47 One option was to put in a raised bed and adding plants that would hide what was going on behind the
48 fence. Due to the winds they are considering a staggered fence. The neighbors have given them free
49 poles that should help with the expense of building a fence. Working on their own vehicles is
50 understandable, but they do not want inoperable vehicles stored there. Selling their own vehicles
51 outside of the fence might be reasonable but leaving the vehicle outside the fence for months on end

1 is an eye sore. The for-sale vehicles are blocking the line of sight for drivers. They also believe there
2 is heat in the building. Just like any business, landscaping is important for ascetics and the view of
3 the neighbors. The Wadleighs are willing to work with the owners, but they have not been able to get
4 things done in a timely way. They are against recreational vehicles being stored on the contractor's
5 lot.

6
7 Marilou Childs, abutter, appeared. She commented that black smoke has been coming out of the
8 building on the contractor's lot in the wintertime. Up to a couple of weeks ago there were snow
9 mobiles. The lawn was finally mowed within the past month, once during the summer. There has not
10 been evidence that any landscaping service has been run out of that building. There have been trailers
11 and food trucks there. She would like evidence of a landscaping business being run out of this
12 contractor's lot. She feels things have been going on too long without compliance.

13
14 The neighbors have been complaining, but there has not been enough response. It appears that the
15 City is not enforcing the requirements of the conditions for the special exception.

16
17 The Board summarized that the applicants are asking what is expected of them and what do they need
18 to prove. It is thought that what is really being asked for is changing one nonconforming use to
19 another nonconforming use. There are standards for that. The applicants should use those standards
20 to guide them in what they need to explain to the Board at the next hearing. The applicants need to
21 seek guidance from some source other than the Board. The criteria would be their guidance. The
22 applicants would need to show that the special exception for the nonconforming use they are
23 requesting at this time but would need to prove it is less nonconforming than the previously approved
24 special exception. Staff said the Board can grant relief according to another section that applies to an
25 application even though it was not in the initial request, provided it is not a different type of request.
26 There is no need to re-notice.

27
28 ***Mr. Katz MOVED to continue this hearing until 10/5/2020. At the 10/5/2020 hearing, additional***
29 ***testimony will be taken to the extent there is some from the applicants and the abutters. This***
30 ***application will be viewed as being made and considered under section 702.1 of the ordinance as a***
31 ***special exception to convert from one lawful nonconforming use to another lawful nonconforming***
32 ***use. A site plan will be provided indicating the landscaping, fences, how the uses are separated***
33 ***and what operations take place inside and outside the fence.***

34
35 ***Seconded by Mr. Nash.***

36
37 **Roll Call Vote**

38 ***Mr. Katz, Mr. Nash, Mr. McDonough, Mr. Patterson, and Vice Chair Mercer all voting Yea.***
39 ***None voted Nay.***

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

41
42 ***Mr. Patterson MOVED to continue this Meeting until the final hearing is heard.***

43 ***Seconded by Mr. Katz.***

44
45 **Roll Call Vote**

46 ***Mr. Patterson, Mr. Katz, Mr. McDonough, and Vice Chair Mercer all voting Yea.***
47 ***Mr. Nash voted Nay.***

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

49

1 Alice Dansby appeared, saying she missed her hearing time at this meeting. The Board informed her
2 that her application would have been continued anyway, so there is not really any delay in the
3 decision. They just did not hear the applicant’s or the abutter’s testimony tonight and the Board will
4 hear testimony at the next hearing.

5
6 **C. Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111,
7 Lot 9), zoned RL-2:** Applicants request a Variance from Sections 313.2 and 702.5.D of the
8 City of Lebanon Zoning Ordinance to allow the expansion of a non-conforming “produce
9 stand” use. In the alternative, applicants request a Special Exception pursuant to Section
10 313.2 to expand an existing produce stand. **#ZB2020-22-SE**

11
12 **Mr. Newlove was given voting privileges for this hearing in the absence of Chair Koppenheffer.**

13
14 Staff said the issue before the Board is that there are new green houses added to the farm stand use.
15 Those greenhouses are not permitted by right, rather require a variance to allow the expansion of a
16 nonconforming use into new buildings. An alternative would have been the existing retail space is a
17 produce stand and could have been expanded under a special exception. But there are no materials
18 submitted regarding the special exception criteria.

19
20 Ms. Medina said there were several green houses on the property when the property was purchased.
21 She merely dissembled the green houses and moved them. She asked for clarification of what it
22 means to be grandfathered in under an operating commercial farm stand. Clarification is required to
23 understand what ordinances need to be followed. Staff said approval for the greenhouses is required,
24 either by special exception or variance.

25
26 Staff restated, the issue with the produce stand started with the scope of activities that were being
27 undertaken at the farm stand, for example a pig roast was added. The applicant is only allowed to use
28 it in the same ways it was previously allowed to be used, unless they are now using it in a way that is
29 conforming to what the ordinances allow. The complaints from neighbors have been that the use is
30 different from what it originally was. Enforcement is difficult. The installation of the greenhouses
31 was a clear violation and adding the services of a greenhouse is a new use.

32
33 Ms. Medina said the greenhouses were used for plant storage this year. She buys some plants for
34 resale and the extras are stored in the greenhouse. They are clearing the fields behind the farm stand
35 and she used the greenhouses to start plants to plant. Mr. Swenson asked again, do they need
36 permission to rebuild the greenhouses that were previously permitted in another place on the property.

37
38 Aerial photos of the property up to 2012 do not show any greenhouses. If they were installed after
39 that, it was not with the proper approvals. There appears to be no approval for the previous owner to
40 have the greenhouses. But if they had been approved, taking them down and rebuilding them would
41 still require a building permit and zoning approval.

42
43 About 25% of their sales are grown by the applicant on site and next year there will be more things
44 grown by the applicant, including cut flowers. The other 75% of the sales are things that are bought
45 wholesale for resale. Her extra stock is stored in there. It was discussed that agricultural use is a
46 permitted use and growing plants in the greenhouses is an agricultural use. However, the greenhouses
47 are not used for growing only. If 35% of her sales are from things grown in the greenhouses she
48 would be more in line with an agricultural use.

1
2 One perspective is that the greenhouses are only there to store and sell product that is only used by the
3 farm stand and are either an accessory use or a permitted agricultural use. Ms. Medina said
4 everything that is grown or stored in the greenhouse is intended to be sold at the produce stand. And
5 if the produce stand went away, there would not be any reason to have the greenhouse. She considers
6 her produce stand to be a business to sell flowers, garden supplies and agricultural products to
7 customers who come off the highway. She also grows things for her produce stand.

8
9 A sketch showing the greenhouses plan and narrative of what they are used for would be helpful for a
10 finding of fact.

11
12 **Vice Chair Mercer opened the hearing to the Public.**

13
14 Marilou Childs, abutter, requested clarification between season produce stand and retail store. What
15 would constitute a retail store and what constitutes a commercial use? Historically this has been a
16 seasonal farm stand selling produce. It has moved on to selling mulch, firewood, trees, and antiques.
17 This is boarding on a commercial use. Signs are blown over every day and debris blows across the
18 area. She is looking for a neat premise that does not impinge on her property. There is a woodstove,
19 yet it is supposed to be an unheated seasonal use.

20
21 ***Mr. Nash MOVED to continue this hearing to 10/5/2020. The applicants will include a site plan***
22 ***and narrative of the uses of the greenhouses, a list of retail products that are sold in the farm***
23 ***stand, and a detailed scope of operations and business activities.***
24 ***Secoded by Mr. Newlove.***

25
26 The Board discussed they would like as much information as the applicants are able to give,
27 providing a clear picture of what their intentions are for the property. This should include their
28 intentions of what they are growing for agricultural produce and the percentages of their sales that are
29 grown and what percent is resale.

30
31 **Roll Call Vote**

32 ***Mr. Patterson, Mr. Newlove, Mr. Nash, Mr. Katz, and Vice Chair Mercer all voting Yea.***
33 ***None voted Nay.***
34 ****The Vote on the Motion was unanimously approved (5-0).***

35
36 **5. STAFF COMMENTS**

37
38 Staff reminded the Board of the teams invite that was sent regarding the meeting with the City legal
39 counsel on October 5, 2020 at 5:30 PM.

40
41 **6. ADJOURNMENT**

42
43 ***Mr. Nash MOVED to adjourn the meeting at 10:40 PM.***
44 ***Secoded by Mr. Patterson.***

45
46 **Roll Call Vote**

47 ***Mr. McDonough, Mr. Katz, Mr. Patterson, Mr. Nash, and Vice Chair Mercer all voting Yea.***

- 1 *None voted Nay.*
- 2 **The Vote on the Motion was unanimously approved (5-0).*
- 3
- 4 Respectfully Submitted,
- 5 Linda Billings
- 6 Recording Secretary