

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT  
CITY HALL, COUNCIL CHAMBERS  
MONDAY, May 6, 2019  
7:00 PM**

**MEMBERS PRESENT:** Vice Chair Jennifer Mercer, Dan Nash, Jonathan Peress, Paul McDonough (Alt), Jeremy Katz (Alt), Dave Newlove (Alt)

**MEMBERS ABSENT:** Chair William Koppenheffer, Councilor Alan Patterson Sr.

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

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**1. CALL TO ORDER**

The meeting was called to order at 7:02 PM by Vice Chair Mercer.

Mr. Nash was appointed Vice Chair for this meeting as Ms. Mercer was acting Chair.

**2. APPROVAL OF MINUTES:** April 1, 2019

*Mr. Nash MOVED to approve the April 1, 2019 Minutes as presented in the May 8, 2019 agenda packet.*

*Seconded by Mr. Peress.*

*\*The MOTION passed unanimously (5-0).*

**3. PUBLIC HEARINGS**

**A. THEISS WINKLER, 7 CHESTNUT STREET (Tax Map 107, Lot 91), zoned R-2:**

Applicant proposes to construct a deck onto the side of the existing home, which is +/- 2 ft. from the side lot line shared with 23 & 27 Spring Street. The proposed deck will be located +/- 4 ft. from the side lot line, where a minimum of 15 ft. is required. To permit the expansion of a non-conforming structure, the applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. #ZB2019-08-VAR

Mr. Newlove and Mr. McDonough participated on this hearing.

Mr. Johnathan Oman, caretaker of the property, came before the Board regarding the application. He showed a drawing where the deck would be added between the house and the garage. It will be approximately 2 feet off the ground and have a set of steps to provide access from the dining room. It will be constructed of wood and man-made materials, like Trex.

**Ms. Mercer opened the Public Hearing.**

Jane Stevens, a neighbor, appeared to protest the special exception. There is currently 2 feet between the existing garage and Ms. Stevens' property. The proposed deck will be in direct line of her patio and the sight line to her house. The proposed deck is a very big deck and will completely fill a very small area. It will extend beyond the garage. The house is in disarray.

Mr. Corwin said the correct measurement of the deck on the application is 16' by 20'. The Board asked Ms. Stevens if the deck would be an improvement over the unkept grass that is currently there.

Henry Truman appeared against the application. He said he did not mind the addition of the deck but

would like to see it smaller, to not extend beyond the garage. The larger deck will be too close to his property. Mr. Truman clarified that keeping the deck to the current building line is acceptable and less objectionable.

Mr. Oman returned to answer questions from the Board. The house is a family estate that has been handed down for generations. The owner comes occasionally. Maintenance has been done on the inside over the last several years. He agreed that the house is not in good condition on the outside, but they intend to fix the outside after the deck is added.

**Hearing no further comments from the public, Ms. Mercer closed the public hearing.**

The Board discussed that this special exception is reasonable and meets the requirements. Looking at the criteria, nothing has been brought forward that speaks against the criteria for granting a special exception.

*Mr. Nash MOVED on May 6, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared John Oman, agent for Theiss Winkler, regarding 7 Chestnut Street (Tax Map 107, Lot 91), zoned R-2. Applicant proposes to construct a deck onto the side of the existing home, which is +/- 2 ft. from the side lot line shared with 23 & 27 Spring Street. The proposed deck will be located +/- 4 ft. from the side lot line, where a minimum of 15 ft. is required. To permit the expansion of a non-conforming structure, the applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. #ZB2019-08-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 constructed in 1926. As shown in the materials provided by the applicant, the existing home (at its closest) is located approximately 2 ft. from the side lot line shared with 23 & 27 Spring Street. As such, the existing home is non-conforming to the minimum side yard of 15 ft. required for Class 1 lots in the R-2 District. See §309.3 of the Zoning Ordinance.
2. The applicant proposes to construct a 20 ft. x 16 ft. deck onto the south side of the existing non-conforming home. The proposed deck will fill in a currently unimproved space in between the main house and the attached garage. The deck will face the detached non-conforming garage located at 27 Spring Street.
3. The proposed deck will be located approximately +/-4 ft. from the lot line, which is approximately a foot and a half further back than the existing setback. Accordingly, the addition will be slightly more conforming to the minimum required 15 ft. side yard than the existing home.
4. §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. At its closest, the existing home is located approximately 2 ft. from the side lot shared with 23 & 27 Spring Street, and the proposed addition (i.e. the proposed deck) will be located approximately 4 ft. from the side lot line. This proposed expansion of the existing non-conforming home is allowed by Special Exception per §703.1.

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. Jane Stevens and Henry Truman, abutters to the property and project, spoke in objection to the special exception.

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

## **III. DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6<sup>th</sup> day of May, 2019**, hereby **GRANTS** the requested relief, subject to testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

*Seconded by Mr. Katz.*

*\*The MOTION passed unanimously (5-0).*

- B. OLD NAVY STORES (applicant), WEST ASSOCIATES, LLC (property owner), 248 PLAINFIELD ROAD (Tax Map 114, Lot 1), zoned GC:** Request for a Variance from Article VI, Section 608.4 of the Zoning Ordinance to allow a total of 530.7 sq. ft. of sign area for the building where only 375.1 sq. ft. is allowed. #ZB2019-09-VAR

Mr. Katz and Mr. McDonough participated on this hearing.

Jennifer Wolfe, representative from Walton Signage, appeared on behalf of the applicant. The prior zoning regulations that were in affect at the time the other stores in the strip were built, allowed larger signage than the current regulations permit. She requested a variance to follow the prior regulations which would allow the applicant's signage to be proportional with the other existing store fronts. The current regulations limit the total signage for the entire building. That would only allow a smaller sign for the Old Navy store. The request is in line with the other signs in the shopping center.

The Board asked why Old Navy is asking for letters that are bigger than other neighboring stores. Ms. Wolfe said the letters are the style Old Navy uses at their stores.

Mr. Peress said that under the old code they would have been entitled to 150 square feet of signage and they are asking for 171 square feet on the front and the side. The old code was max 150 feet regardless of the size of the retail space. Currently signage is calculated based on the length of store frontage. Old Navy would like two signs, one from the front and one from the side. Ms. Wolfe said they would reduce the size of the sign on the side of the building if they were limited to 150 square feet, the allotted signage under the old regulations.

**Ms. Mercer opened to the public hearing. There were no comments from the public and the public hearing was closed.**

The Board discussed the old ordinance under which the other three tenants' signage was approved. The size of the Old Navy signage would have been limited to 150 square feet. Increasing the signage allowance to the 150 square feet is reasonable but going beyond that size is not reasonable. Old Navy would like the signs to be uniform with the other tenants.

*Mr. Nash MOVED on May 6, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jennifer Wolfe, representative of Walton Signage on behalf of the applicant, Old Navy Stores, and the property owner, West Associates, LLC, regarding 248 Plainfield Road (Tax Map 114, Lot 1), zoned GC. Request for a Variance from Article VI, Section 608.4 of the Zoning Ordinance to allow a total of 530.7 sq. ft. of sign area for the building where only 375.1 sq. ft. is allowed. #ZB2019-03-VAR*

## **I. FINDINGS OF FACT**

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

1. The subject property is improved with two multi-tenant commercial buildings, which together comprise the Upper Valley Shopping Center. The smaller of the two buildings has an address of 248 Plainfield Road (the “Building”) and was recently renovated into four (4) tenant spaces (it was formerly occupied by two tenants: Shaw’s supermarket and a Verizon retail store). The Building is currently occupied by HomeGoods, PetSmart, and 110 Grill. The fourth tenant space is currently undergoing a fit up and will be occupied by Old Navy, a clothing retailer.
2. The City’s sign regulations are found in Section 608 of the Zoning Ordinance. Comprehensive amendments to Section 608 were adopted by the City Council in August 2018 (the “Current Regulations”). Sign permits for the existing 3 tenants were approved under the sign regulations in effect prior to August 2018 (the “Former Regulations”).
3. Under the Former Regulations, Old Navy would have been entitled to the maximum allowable sign area per commercial tenant of 150 sq. ft. based on the length of its frontage along the entrance to the Building and along the rear of the Building facing I-89. However, under the Current Regulations, sign area is assigned to a building regardless of how many tenants occupy the building.
4. Under the Current Regulations, the existing three tenants’ signage uses nearly all of the sign area for the Building and leaves only 15 sq. ft. for Old Navy. This is because the Former Regulations allowed additional sign area for buildings with multiple frontages. According to the Zoning Administrator, if the Current Regulations permitted additional sign area for buildings with multiple frontages as the Former Regulations did, the applicant would be entitled to install sufficient signage. However, this “bonus” for multiple frontages was not carried over to the Current Regulations.
5. The applicant proposes to install a 93.35 sq. ft. “OLD NAVY” wall sign above the front entrance to the building, and a 77.8 sq. ft. “OLD NAVY” wall sign on the rear of the building facing I-89, for a total proposed sign area of +/-171 sq. ft. The proposed sign area for Old Navy will exceed the maximum sign area allowed for the Building and, therefore, requires a Variance from Section 608.4.A.1.a (“Sign Area”) of the Zoning Ordinance.
6. Based on measurements provided by the applicant, the total permitted sign area for the Building is 375.1 sq. ft., which is the greater of the following two calculations (per Section 608.4.A.1.a of the Zoning Ordinance):
  - linear width of the principal facade of 341 ft. multiplied by 0.8 = 272 sq. ft.; or
  - total area of principal facade of 7,502 sq. ft. multiplied by .05 = 375.1 sq. ft.
7. According to the Zoning Administrator, the existing sign area on the Building totals 360.3 sq. ft., leaving only 14.8 sq. ft. of available sign area for Old Navy (which will be the fourth and final tenant of the building)
8. With Old Navy’s proposed sign area of +/-171 sq. ft., the Building’s total sign area is proposed to be +/-531.3 sq. ft., which is 156.2 sq. ft. greater than the 375.1 sq. ft. allowed under the Current Regulation. Therefore, the applicant requires a Variance from Section 608.4.A.1.a in order to allow the proposed Old Navy signage.
9. To obtain the requested Variance, 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 criteria in an application received by the Planning Department on April 16, 2019.

10. No one spoke against the application.

## **II. CONCLUSIONS OF LAW**

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

1. The variance **will not** be contrary to the public interest. (§801.2.A.1)
2. The spirit of the ordinance **is** observed. (§801.2.A.2)
3. Substantial justice **is** done. (§801.2.A.3)
4. The values of surrounding properties **are not** diminished. (§801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to [**the following**] special conditions of the property that distinguish it from other properties in the area (§801.2.A.5.a):

*The Building was uniquely impacted by the adoption of the Current Regulations. According to the Zoning Administrator, the Building was the only new (or completely rehabilitated) multi-tenant commercial building in the City of Lebanon to have its tenants apply for sign permits both before and after the adoption of the Current Regulations. In other words, the initial “tenanting” of the Building (which was completely rehabilitated and is, effectively, new construction) occurred both before and after the adoption of the Current Regulations. According to the Zoning Administrator, this cannot be said for any other multi-tenant commercial building or property in the City of Lebanon.*

- 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 **6<sup>th</sup> day of May 2019**, hereby **GRANTS** the requested relief, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The proposed signs shall be reduced in size so that the total sign area between the two proposed wall signs is not greater than 150 sq. ft.
2. A building permit application shall be submitted demonstrating compliance with all applicable requirements of Section 608 of the Zoning Ordinance and condition of approval #1 above, and a

building permit shall be issued prior to installation of any signage.

*Seconded by Mr. Newlove.*

*\*The MOTION passed unanimously (5-0).*

**C. MASON STORAGE, LLC, 38 SPENCER STREET (Tax Map 78, Lot 39), zoned CBD:**

Applicant proposes to construct a 15,000 sq. ft. addition onto an existing building containing a non-conforming warehouse use. To allow the addition, applicant requests a Special Exception pursuant to Section 702.5 of the Zoning Ordinance to expand a non-conforming use. #ZB2019-10-SE

Mr. Peress and Mr. Nash recused themselves from the hearing. Mr. Katz, Mr. Newlove and Mr. McDonough participated on this hearing

The applicant Patrick Shawn Mason and his attorney, Brad Atwood, spoke on behalf of the application. The facilities are rental space that is currently storage for medical records and some varied storage, such as furniture. The existing storage is non-conforming, and this is a request for an expansion of the existing use. The use will continue to have medical records and other storage. The outdoor storage modules will be eliminated. The existing steel bare bones structure that is there would be finished with an exterior skin to close it in.

Mr. Atwood said the use will not change, it will be substantially the same use. They will satisfy the criteria in 702.5A. The property has been long used for this non-conforming purpose and the applicant wants to add an addition to the existing warehouse, making it a larger building. The proposed expansion is a 15,000 square foot building. The building will be at the back of the lot and the loading dock will be off the road, whereas currently trucks sometimes block the road due to where the current loading dock is located. They reported that some neighbors thought enclosing the steel structure will be an asset. This property has been used for this purpose for over 16 years. The applicant purchased the building in 2019. The building is filled to 90% capacity. The new structure will be attached. The whole building will be refinished on the outside, reskinning the whole exterior.

**Ms. Mercer opened to the public hearing. There were no comments from the public and the public hearing was closed.**

Some Members said the expansion meets the conditions and should be allowed. The size of the expansion relative to the existing space was discussed. Under the State Supreme Court rulings, the expansion of square footage has not been addressed. It could be argued that expansion is not consistent with the use because the size is so substantial.

Mr. Corwin said that historically the Board has allowed substantial expansions. But City zoning regulations are not specific, so that the size of expansion is part of the consideration. They discussed making a statement that it is currently used for storage and this proposal will be inside storage instead of outside storage.

*Mr. McDonough MOVED on May 6, 2019, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Patrick Shawn Mason and Brad Atwood, Esq. on behalf of **Mason Storage, LLC**, regarding **38 Spencer Street (Tax Map 78, Lot 39)**, zoned **CBD**. Applicant proposes to construct a 15,000 sq. ft. addition onto an existing building containing a non-conforming*

warehouse use. To allow the addition, applicant requests a Special Exception pursuant to **Section 702.5** of the Zoning Ordinance to expand a non-conforming use. **#ZB2019-10-SE**

## **1. 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 +/-13,000 sq. ft. warehouse which is a non-conforming use in the Central Business District. Between the building, parking areas, and loading areas, nearly all of the site is improved and devoted to the non-conforming warehouse use.
2. The property was formerly occupied by a light manufacturing use (Barker Steel). A Special Exception was granted in 2002 pursuant to Section 702.1 of the Zoning Ordinance (“Change of Use”) to allow the use of the property to change from a non-conforming light manufacturing use to a non-conforming warehouse use (specifically, a moving and storage business). Pursuant to the requirements of Section 702.1, the Board found that the nonconforming warehouse use is “more appropriate [to the district] than the existing use of a steel manufacturing plant.” See 4/15/02 Notice of Decision for #ZB2002-06.
3. The existing warehouse is conforming to the dimensional requirements of the CBD which only requires a ten (10) ft. rear yard. See Section 306.3 of the Zoning Ordinance. In the CBD, there is no minimum front and side yard requirements, and no maximum building coverage requirement.
4. The property abuts the Northern Rail Trail to the south, Geokon to the east, what is currently an industrial warehouse to the north, and the City’s property at 20 Spencer Street to the west. Currently, the closest residential uses currently are located on Parkhurst Street, which are separated from the subject property by the +/-90 ft. wide rail trail.
5. The applicant proposes to construct a +/-15,000 sq. ft. addition onto the rear of the existing building to accommodate an expansion of the existing non-conforming warehouse use. The addition will expand the existing building by approximately 115%. The proposed expansion is depicted on a plan sheet titled “Site Plan for Lot 78-39” prepared by Advanced Geomatics & Design, dated February 18, 2019, DWG: 19003\19003-PL, a copy of which was submitted as part of the Special Exception application package.
6. “Warehouse” is not a permitted use in the Central Business District and, therefore, the existing warehouse use of the subject property is non-conforming. Non-conforming uses are regulated by Article VII of the Zoning Ordinance. Expansions of non-conforming uses are allowed by Special Exception pursuant to Section §702.5.
7. To expand a non-conforming use, the applicant must demonstrate compliance with the standards set forth in Article VII of the Zoning Ordinance, §702.5 (Expansion of Use).



8. The applicant has submitted testimony addressing the §702.5.A Special Exception criteria in an application received by the Planning Department on April 22, 2019.
9. No one from 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 §702.5 of the Zoning Ordinance:

- A. The proposed alteration or expansion **does** reflect the nature and purpose of the existing non-conforming use and **is** closely related to the manner in which the property was used at the time the restriction was enacted. (§702.5.A.1)
- B. The proposed alteration or expansion **is** merely a different manner of utilizing the same use and **does not** constitute a use which is different in character, nature, or kind. (§702.5.A.2)

The space the applicant intends to enclose is presently used for outside storage.

- C. The proposed alteration or expansion **will not** have a substantially different effect on the neighborhood in which the property is located. (§702.5.A.3)
- D. The proposed expansion **will not** render the property proportionally less adequate, in terms of the dimensional requirement to which the property does not conform. (§702.5.A.4)

## **III. DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6<sup>th</sup> day of May 2019**, hereby **GRANTS** the requested relief, 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. Newlove.*

*\*The MOTION passed unanimously (4-0).*

## **4. OTHER BUSINESS**

A. ZONING BOARD OF ADJUSTMENT BY-LAWS: Discussion of letter from Jeremy Katz dated January 22, 2019.

The discussion was continued until the full Board is present.

**5. STAFF COMMENTS**

**6. ADJOURNMENT**

*Mr. Nash MOVED to adjourn.*

*Seconded by Mr. Peress.*

*\*The MOTION passed unanimously (5-0).*

The meeting was adjourned at 8:20 PM.

Respectfully Submitted,

Linda Billings  
Recording Secretary