



**LEBANON ZONING BOARD OF ADJUSTMENT
MAY 2, 2022 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
1. **Call to Order**
 2. **Approval of Minutes**
 - A. **April 4, 2022**
 3. **Public Hearing Items**
 - A. **Hanover Improvement Society (applicant) and Town of Hanover (property owner), 394 N. Main Street (Tax Map 5, Lot 2), zoned RL-3 and R-3:** Applicants propose a 6,345 sq. ft. expansion of the James W. Campion III Rink. Applicants request Variances from the following Sections of the Zoning Ordinance: (a) Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed; (b) Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required in the RL-3 District; (c) Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot; and (d) Sections 310.2 and 702.5 to expand an existing non-conforming non-public indoor recreational facility located on the R-3 portion of the lot. Applicants also request a Special Exception pursuant to Section 314.2 to expand an existing indoor recreational facility on the RL-3 portion of the lot. **ZB2022-08-SEVAR** - Continued from April 4, 2022
 - B. **Upper Valley Mountain Bike Association (applicant), Dartmouth College Trustees (property owner), 0 Mascoma Street (Tax Map 74, Lot 8, Plot 200), zoned RL-3:** Applicant proposes to construct a +/-800 sq. ft. picnic pavilion, to be located within the 100 ft. high-value wetland buffer established by Section 401.2.B of the Zoning Ordinance. Applicant requests (i) a Special Exception pursuant to Section 314.2 to allow an outdoor recreational facility, (ii) a Special Exception pursuant to Section 401.5 to construct the pavilion within the wetland buffer, and (iii) a Variance from Section 314.3 to allow the pavilion to be located 10 ft. from the side lot line where a minimum of 50 ft. is required. **ZB2022-09-SEVAR**
 - C. **Joseph & Terry Dube Jr., 57 Cottage Circle (Tax Map 87, Lot 122), zoned R-3:** Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a garage to be located +/-10 ft. from the side property line where a minimum of 15 ft. is required. **ZB2022-10-VAR**

- D. **Francis & Teresa Austin, 91 Trues Brook Road (Tax Map 186, Lot 31, Plot 100), zoned RL-1:** Applicants propose to build a +/-408 sq. ft. addition onto the existing detached garage and request a Variance per Section 312.3 of the Zoning Ordinance to allow the expanded garage to be located +/-20 ft. from the side property line where 25 ft. is the minimum required. **ZB2022-11-VAR**

- E. **Jeff Wilcox & Jennifer Fischer, 30 Hough Street (Tax Map 91, Lot 46), zoned R-3:** Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a detached garage to be located +/-5 ft. from the side lot line where a minimum of 15 ft. is required. **ZB2022-12-VAR**

4. Rehearing Request

- A. **Cicotte Properties, LLC, 175 Heater Road (Tax Map 64, Lot 30), zoned IND-L:** Motion by Jeremy Katz, Zoning Board member, for a rehearing of a Variance granted by the Zoning Board on March 21, 2022, allowing the expansion of the non-conforming vehicular sales use. **ZB2021-24A-SEVAR**

5. Staff Comments

6. Adjournment

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to [LebanonNH.gov/Live](https://lebanonnh.gov/Live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

If you have any questions or would like to view the files for the application identified above, please contact the Planning & Development Department by sending an e-mail to planning@lebanonnh.gov, or by calling 603-448-1457, or by visiting the Planning and Development Office located in City Hall during regular work hours, Monday through Thursday, 7AM to 5PM. The application materials will also be posted to the City's website at [LebanonNH.gov/Agendas](https://lebanonnh.gov/Agendas).

**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #2A
Approval of Minutes**

April 4, 2022

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, April 4, 2022
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Dave Newlove, Jeremy Katz, Dan Nash, Jennifer Barkley (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: Vice Chair Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:01 PM.

2. APPROVAL OF MINUTES

A. March 21, 2022

Mr. Nash MOVED to approve the March 21, 2022, Minutes as presented in the April 4, 2022, packet with amendments.

Seconded by Mr. Katz.

Mr. McDonough was given voting privileges for the Minutes.

Amendments: Page 1, Line 37; Remove ‘assigned and recorded’ and Add ‘approved.’ Page 2, Lines 3: Remove ‘that became necessary due to a zoning change’. Page 2, Line 4; Remove ‘sited’ and Add ‘cited.’ Page 2, Line ; Add ‘non’ before the word conforming. Page 5, Line 6; Remove ‘(4-1)’ and Add ‘(3-1)’.

Mr. McDonough, Mr. Nash, Mr. Newlove and Mr. Katz all voting yea.

Chair Koppenheffer abstained because he was absent.

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

3. PUBLIC HEARING ITEMS

- A. Aram Donigian, 9 Farman Avenue (Tax Map 87, Lot 28), zoned R-3:** Applicant requests a Special Exception per Section 310.2 of the Zoning Ordinance to convert the existing one-family dwelling to a two-family dwelling. **ZB2022-07-SE**

Ms. Barkley was appointed voting privileges.

Mr. Donigian appeared on behalf of the application. The house is already setup with a second unit and there is little to be done to make it work for 2 housing units. He would like to rent it as a two-family dwelling. There is a shared doorway that they would lock. He provided the Board with a drawing showing all of the necessary parking spaces. They own two properties on Farnum, but they do not live in either dwelling in Lebanon. The Board discussed the number of parking spaces.

Chair Koppenheffer opened the Public Hearing and hearing no one, closed the Public Hearing.

1 **Mr. Nash MOVED on April 4, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of**
2 **Adjustment, there appeared Aram Donigian regarding 9 Farman Avenue (Tax Map 87, Lot 28), zoned**
3 **R-3: Applicant requests a Special Exception per Section 310.2 of the Zoning Ordinance to convert the**
4 **existing one-family dwelling to a two-family dwelling. ZB2022-07-SE**

5
6 **I. FINDINGS OF FACT**

7
8 Based on testimony given, application materials presented, and supporting documents submitted, the
9 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 10
11 1. The property is a +/-0.34 acre lot located on Farman Avenue in West Lebanon, and is improved
12 with a 2,160 sq. ft. (finished) one-family dwelling constructed in 1910 (according to the City's
13 assessing records).
14
15 2. The applicant proposes to convert the existing one-family dwelling into a two-family dwelling.
16 According to the application materials, the building already has two (2) dwelling units and two
17 separate entrances. Therefore, no interior renovations are proposed. There are also no site changes
18 proposed.
19
20 3. "Two-family dwelling by conversion of existing one-family dwelling" is a use permitted by
21 Special Exception in the R-3 District per Section 310.2 of the Zoning Ordinance.
22
23 4. In order to grant a Special Exception for the proposed conversion, the Board must determine that
24 the proposal meets the general Special Exception criteria, set forth in Section 801.3 of the Zoning
25 Ordinance.
26
27 5. No one spoke for or against the application.

28
29 **II. CONCLUSIONS OF LAW**

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

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

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 4th day of April, 2021, hereby **GRANTS** the requested Special Exception per Section 310.2 of the Zoning Ordinance to allow the conversion of one-family dwelling at 9 Farman Avenue (Tax Map 87, Lot 28) to a two-family dwelling, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a certificate of occupancy.

Seconded by Mr. Katz.

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

- B. **Hanover Improvement Society (applicant) and Town of Hanover (property owner), 394 N. Main Street (Tax Map 5, Lot 2), zoned RL-3 and R-3:** Applicants propose a 6,345 sq. ft. expansion of the James W. Campion III Rink. Applicants request Variances from the following Sections of the Zoning Ordinance: (a) Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed; (b) Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required in the RL-3 District; (c) Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot; and (d) Sections 310.2 and 702.5 to expand an existing non-conforming non-public indoor recreational facility located on the R-3 portion of the lot. Applicants also request a Special Exception pursuant to Section 314.2 to expand an existing indoor recreational facility on the RL-3 portion of the lot. **ZB2022-08-SEVAR**

Mr. McDonough was appointed voting privileges for this hearing.

Nate Stearns (Attorney), Will Mudge, and Jeff Goodrich appeared on behalf of the application. The original rink was approved and built in 1987. In 2016 a request to add a whole second rink was approved, but that never happened due to a lack of funding. They are not making the same request. This project would occur on land owned by the Town of Hanover. Will Mudge said the existing rink needs expansion to create more locker rooms and shower areas because now there are teams for both women and men. These would be the primary addition that would occur in the setback. The area towards the front of the building and the parking area would be the new entry, a lobby, restrooms and meeting areas. The rink and fields lie within two zoning districts. The Bold dash line on the graphic indicates the zoning district lines. Attorney Stearns referenced the approval of the special exceptions and variances that were approved in 2016, but never acted upon. The project is a much smaller project.

The applicants discussed the lot coverage area that is currently occurring and how it would increase with the expansion. There is also a variance request related to the use. They discussed the expansion of the existing use and in which zoning districts the non-conforming uses are permitted. The rink functions largely as a public facility, even though it is owned by the Hanover Improvement Society. They are going to improve the building foundations, add a new HVAC system and generally improve the facility. They also intend to ask for expanded operating hours. There are 6 different blocks of time throughout the year with varying hours of use. They would like to expand the hours of operation to what was approved in

1 2016. Mr. Stearns reviewed the variance criteria on the application. He believes he is only asking to
2 improve the facilities for the same uses. He believes the uniqueness of this property is that the property
3 has a split zoning district, and it is strictly used for public recreation, even though it is owned by the
4 Hanover Improvement Society.

5
6 The applicants have also applied for a special exception and Attorney Stearns reviewed the criteria for
7 granting a special exception.

8
9 The Hanover Society met with the neighbors prior to tonight's meeting. Attorney Stearns does not
10 believe even in peak hours there would be increased traffic. The expansion would affect more time across
11 the year but would not make each day run longer. They hope to have the project completed in one to two
12 years. They intend to improve the efficiency of the building and improve the ice making capabilities.
13 They are working with engineers and consultants but have not determined how that would be
14 accomplished. They believe they would not be increasing any noise pollution because new compressors
15 are quieter and would not be closer to the neighbors.

16
17 The primary idea for the multipurpose room is for a birthday party while skating, or training, and team
18 meetings with coaches. They are in the early planning stages, but the intent is to be sports oriented.

19
20 The Board asked for clarification about the lot coverage. The 1987 approval did not challenge the amount
21 of coverage issues. The approval was granted, and the rink and building were constructed as it was
22 approved. Originally it may not have been realized that the property was in two zones. In 2016, they
23 realized what the situation is today and sought to reconcile it and where the zoning district boundary was.

24
25 The Chair discussed the conditions and findings of fact that were approved in 2016. Tonight's decision
26 supersedes the 1987 decision. The 2016 decision was not codified, but it is believed the same conditions
27 would still apply. It is an indoor recreational facility. The applicants are amenable to all the applicable
28 conditions that were applied to the 2016 approval, except for the outside color of the rink and the need for
29 the expansion of hours at this time. Also, the findings of fact are still acceptable.

30
31 John Hochreiter, a member Hanover Improvement Society spoke on behalf of the Society. He said they
32 changed the lighting to led lights that are down facing. They did not change the outside color of the
33 building.

34
35 **Chair Koppenheffer opened the Public Hearing.**

36
37 Stephen Giardwood, attorney representative for neighbor David Donley appeared. He referenced a
38 memorandum of understanding between Mr. Donley and the association that requested the new rink in
39 2016. Many of the points of the memorandum are part of the 2016 conditions of approval. He referenced
40 all of the conditions of the memorandum and requested that they be part of any new approval. The
41 position is that his client would like the same conditions to be part of any new approval. The attorney
42 asked for clarification if the request was to accept the conditions on the existing property and the
43 proposed new project.

44
45 Attorney Giardwood was asked for clarification about how the new proposed changes would impact his
46 client and what would be the impact of the new project compared to the larger project that was not
47 completed. The attorney cited hours of expansion, increased use, varying expansion of types of uses and
48 lighting. The memorandum is binding between the two parties that signed it, but it is not between Mr.
49 Donley and the Hanover Society. He would like the Board to consider the same points of the
50 memorandum and apply them to any new approval.

1 David Donley, a neighbor of the rink spoke. Kids are playing some type of ball against the side of the
2 building. The ball rolls down into the gully and he believes some type of barrier or fence is appropriate.
3 There is a safety issue because the gully is full of debris. Also, a fence would keep headlights from
4 vehicles coming and going and in the parking lot from impacting his property. He said the LED lighting
5 still reflects into his windows because the lights are so high. He noted that the trees that are between his
6 property and the rink and fields are dying. They will not be a buffer in the near future.

7
8 There are a number of conditions of the 2016 approval that no longer apply because a second arena is not
9 being constructed.

10
11 There are two more letters of support from residents of Lebanon, Dan McGee and Bruce Burgeron, that
12 were received after the packet was prepared.

13
14 Staff said given the complexity of the application, it would be appropriate to ask the applicants and
15 anyone from the public to submit lists of the conditions of approval, before the Public Hearing is closed.

16
17 The Board was polled about their general opinion about this project and the best process to generate a list
18 of proposed conditions.

19
20 The attorneys representing the applicants and the neighbor intend to work together to put forth conditions
21 for a Motion for approval for next month's meeting. The application deadlines are ideally needed within
22 the next two weeks.

23
24 ***Mr. Nash MOVED to continue this hearing to Monday May 2, 2022 at 7:00 PM.***

25 ***Seconded by Mr. Newlove.***

26
27 ****The Vote on the Motion was approved (5-0).***

28
29 **4. STAFF COMMENTS**

30
31 **None.**

32
33 **5. ADJOURNMENT**

34
35 ***Mr. Nash MOVED to adjourn the meeting at 8:31 PM.***

36 ***Seconded by Mr. Katz.***

37
38 ****The Vote on the Motion was approved (5-0).***

39
40 Respectfully submitted,
41 Linda Billings
42 Recording Secretary

**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #3A
Public Hearing Items**

**Hanover Improvement Society
(applicant) and
Town of Hanover
(property owner),
394 N. Main Street
(Tax Map 5, Lot 2), zoned RL-3
and R-3
ZB2022-08-SEVAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 2, 2022 Meeting

Staff Memorandum – ZB2022-08-SEVAR – *con't from 4/2/22*

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:

Variances and Special Exception
(see hearing notice)

Location: 394 N. Main St (T/L 5-2)

Applicant/Property Owner:

Hanover Improvement Society /
Town of Hanover

Zoning District:

Residential Three (R-3) &
Rural Lands Three (RL-3)

Property Size: +/-13.95 acres

Overlay Districts:

Wetlands Conservation District

Previous ZBA Approvals (since 1995):

- Variance granted in 2015 for to illuminate sign (ZB2015-02-VAR)
- Variances and Special Exception granted in 2016 for expansion of ice rink (ZB2016-03R-SEVAR)

Other Approvals Required

(including but may not be limited to):

- Site Plan Review
- Building Permit

Attachments:

- Proposed Findings of Fact and Conclusions of Law, as edited by the applicant's legal counsel
- 3/31/22 letter from L. McNamara

HEARING NOTICE

Hanover Improvement Society (applicant) and Town of Hanover (property owner), 394 N. Main Street (Tax Map 5, Lot 2), zoned RL-3 and R-3: Applicants propose a 6,345 sq. ft. expansion of the James W. Campion III Rink. Applicants request Variances from the following Sections of the Zoning Ordinance: (a) Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed; (b) Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required in the RL-3 District; (c) Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot; and (d) Sections 310.2 and 702.5 to expand an existing non-conforming non-public indoor recreational facility located on the R-3 portion of the lot. Applicants also request a Special Exception pursuant to Section 314.2 to expand an existing indoor recreational facility on the RL-3 portion of the lot. ZB2022-08-SEVAR

STAFF COMMENTS

Per the Board's request made at the April 2nd hearing, the applicant has submitted the attached proposed Findings of Fact and Conditions of Approval for the Board's consideration ("Proposed Motion"). The Proposed Motion, which was sent to staff on April 20, 2022, via e-mail from the applicant's legal counsel, Nathan H. Stearns, Esq., is the draft motion prepared by staff for the April 2nd hearing with edits made by the applicant's legal counsel shown in blue and red. Note that the Proposed Motion does not include Conclusions of Law which remain unchanged from staff's draft motion and were therefore removed for brevity. At the May 2nd meeting, staff will provide hard copies of the complete draft motion including a blackline of the proposed Findings of Fact and Conditions of Approval as edited by the applicant's legal counsel and the proposed Conclusions of Law.

Also attached is a letter dated March 31, 2022 from Linde McNamara to Nathan H. Stearns, Esq. expressing support for the project. Attorney Stearns provided the letter to staff via e-mail on April 20, 2022 and asked that it be included with the applicant's application materials.

Attachments

cc (via e-mail):

Nate Stearns, Esq.

Don Derrick, Hanover Improvement Society

Julia Griffin, Town Manager, Town of Hanover

File

DRAFT MOTION

Case ZB2022-08-SEVAR

Originally prepared by staff in advance of the April 4, 2022 ZBA meeting; proposed edits by Nathan H. Stearns, Esq., legal counsel for the applicant, submitted in advance of the May 2, 2022 ZBA meeting.

On April 4, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Nate Stearns, Esq., [Will Mudge](#), and [Jeff Goodrich](#) on behalf of Hanover Improvement Society (applicant) and Town of Hanover (property owner), regarding 394 N. Main Street (Tax Map 5, Lot 2), zoned RL-3 and R-3: Applicant proposes a 6,345 sq. ft. expansion of the James W. Campion III Rink. Applicant requests Variances from the following Sections of the Zoning Ordinance: (a) Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed; (b) Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required in the RL-3 District; (c) Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot; and (d) Sections 310.2 and 702.5 to expand an existing non-conforming, non-public indoor recreational facility located on the R-3 portion of the lot. Applicants also request a Special Exception pursuant to Section 314.2 to expand an existing indoor recreational facility on the RL-3 portion of the lot. ZB2022-08-SEVAR

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. 394 North Main Street (the "Property") is a +/-13.95-acre parcel improved with a number of outdoor recreational fields and the James W. Campion III Rink, a +/- 22,500 sq. ft. recreational ice rink ("Ice Rink"). The Property is split-zoned RL-3 to the north and R-3 to the south. Approximately one-third of the Ice Rink is located in RL-3 District with the remainder of the building located in the R-3 District.
2. The Ice Rink was originally approved in 1987 and was reapproved ~~in~~ by the Zoning Board in 2016, in connection with a proposed 56,570 sq. ft. expansion of the Ice Rink that never materialized (ZB2016-03R-SEVAR). On January 22, 2019, the Zoning Board granted a two-year extension of the 2016 Special Exception and Variances as they related to the proposed expansion of the Ice Rink. The extension has now expired. However, [certain portions of](#) the 2016 Notice of Decision ~~was~~~~were~~ intended to supersede and replace the 1987 Zoning Board approval for the existing rink regardless of whether the proposed expansion was actually constructed.
3. [Applicant has also requested modification of two of the conditions in the 2016 ZBA decision: \(a\) that the Applicant be allowed to leave the exterior of the existing rink as is \(a combination of white and brown finishes\), as opposed to resurfacing the exterior to all earth toned finishes \(Condition A. 9 in the 2016 Notice of Decision\); and \(b\) that the Applicant be allowed to operate the facility outside of the period from mid-September to mid-April during the following hours:](#)

[Mid-October through mid-April, 6:00 am. to midnight](#)

[Mid-April through mid-May, 7:00 am to 10:00 pm](#)
[Mid-May through late-June, only open to support field use](#)
[Late-June through early-August, 6 week period of 7:00 am to 10:00 pm](#)
[Early-August through Labor Day, only open to support field use](#)
[Labor Day through mid-October, 6:00 am. to 10:00 pm](#)

- 2.4. The Town of Hanover owns the Property, whereas the Ice Rink itself is owned and operated by the Hanover Improvement Society. Because the Ice Rink is not owned by a government entity, it is considered an "indoor recreational facility" use under the Zoning Ordinance and not a "public recreation facility" use. "Indoor recreational facility" is a use allowed by Special Exception in the RL-3 District, but is not an allowed use in the R-3 District. Therefore, the portion of the Ice Rink that is located in the R-3 District is considered legal non-conforming.
- 3.5. As detailed in the application materials, the applicant proposes to renovate the Ice Rink and to construct additions totaling 6,345 sq. ft. in size. The additions include a 3,665 sq. ft. expansion and renovation of the lobby on the north (front) side of the building, and a 2,680 sq. ft. expansion on the east side of the building to accommodate new restrooms and locker room spaces. The 3,665 sq. ft. addition is located in the RL-3 portion of the lot, whereas the 2,680 sq. ft. addition is located partially within the RL-3 District and partially within the R-3 District.
- 4.6. The project requires four (4) Variances and a Special Exception, as follows:
 - a. Variance from Section 314.3 to allow +/-2.7% building coverage on the RL-3 portion of the lot where 1% is the maximum allowed.
 - b. Variance from Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line where 50 ft. is the minimum required yard in the RL-3 District.
 - c. Variance from Section 310.3 to allow +/-38.9% building coverage on the R-3 portion of the lot where 25% is the maximum allowed for a Class 1 lot.
 - d. Variance from Sections 310.2 and 702.5 to expand an existing non-conforming non-public indoor recreational facility located on the R-3 portion of the lot.
 - e. Special Exception pursuant to Section 314.2 and Section 704 to expand an existing indoor recreational facility on the RL-3 portion of the lot.
- ~~5. The applicant proposes to convert the existing one family dwelling into a two family dwelling. According to the application materials, the building already has two (2) dwelling units and two separate entrances. Therefore, no interior renovations are proposed. There are also no site changes proposed.~~
- ~~6. "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.~~
7. To obtain the requested Variances, 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).
8. In order to grant a Special Exception for the proposed conversion, the Board must determine that the proposal meets the general Special Exception criteria, set forth in Section 801.3 of the Zoning Ordinance.

9. The applicant has submitted testimony addressing the Section 801.2 Variance criteria and Section 801.3 Special Exception criteria in an application received by the Planning and Development Department on March 17, 2022.

10. _____

11. _____

II. CONCLUSIONS OF LAW

[...]

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 4th day of April, 2021, hereby **GRANTS / DENIES** the requested Special Exception per Section 310.2 of the Zoning Ordinance to allow the conversion of one-family dwelling at 9 Farman Avenue (Tax Map 87, Lot 28) to a two-family dwelling, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a certificate of occupancy.

2. The following conditions shall apply:

a. This Approval supersedes and replaces the Notices of Decision referenced herein dated February 24, 1987 and March 15, 2017 in their entirety as they relate to the ice rink facility (the 1987 Notice of Decision remains in effect insofar as it relates to the outdoor playing fields).

b. The Ice Rink shall be used only for the following: (i) ice-related sports including games and practices; (ii) ice-related recreational activities such as "open ice" hours for public use; (iii) indoor general recreation; and (iv) the rest rooms and locker room may be used as accessory uses for the Town of Hanover recreational fields.

c. An outside police detail shall be present at all events which are reasonably anticipated to draw 200 or more spectators shall require a police detail.

d. The rest rooms and locker rooms may be made available from the outside when the Town of Hanover recreational fields are being used.

e. Alcohol shall be prohibited from the site and shall not be sold nor permitted to be consumed.

f. During the winter months the rink shall be made available to the public for reasonable and regular periods of recreational skating.

g. Signs shall be posted restricting parking to permitted uses of the rink and playing fields only. Parking for uses associated with Dartmouth College recreational fields

Commented [NHS1]: Deleted months limitation from 2016 condition language and replaced turf sports with general recreation.

Commented [NHS2]: Changed from HS hockey games plus events of 200 or more to just events of 200 or more. There should be no need to have a police detail for typically low-turnout games (e.g., JV games).

Commented [NHS3]: Changed "shall" to "may", to recognize that HIS does not have the staff to open the rink every time the fields are used for minor activities like youth soccer or lacrosse practices when the rink is otherwise closed.

Commented [NHS4]: Added "and playing fields" to 2016 language, which I believe was the intent in 2016.

or any other off-site use is prohibited. Such signage shall be reviewed and approved by the Planning Department. Such signs shall be installed within six (6) weeks after the appeal period for this Notice of Decision has expired.

h. The hours of operation shall be as follows:

Mid-October through mid-April, 6:00 am. to midnight
Mid-April through mid-May, 7:00 am to 10:00 pm
Mid-May through late-June, only open to support field use
Late-June through early-August, 6 week period of 7:00 am to 10:00 pm
Early-August through Labor Day, only open to support field use
Labor Day through mid-October, 6:00 am. to 10:00 pm

i. Any doors on the south and west sides of the rink shall be for emergency egress and maintenance only, and other than access doors for maintenance will be marked as "emergency exit only". Pedestrian flow in and out of the rink will be directed through the main lobby entrance.

j. To the extent modifications are required to the parking lot, such modifications shall not increase stormwater runoff (including snowmelt) onto properties to the west.

k. The Applicant shall obtain Site Plan Approval from the Planning Board and shall comply with all conditions that may be imposed by the Planning Board as part of any site plan approval. If site plan approval is denied, this Notice of Decision shall be rendered null and void.

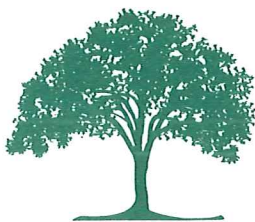
l. Unless otherwise required by the Planning Board, and except to the extent necessary to accommodate safety considerations, exterior lighting shall be on a timer switch and turned off when the rink is not open for operations.

m. Truck deliveries and dumpster pickups shall only occur between the hours of 7AM and 7PM.

n. All trash receptacles on the property shall be appropriately covered to prevent windblown trash from leaving the property.

o. The project will not incorporate into its design features that will encourage significant congregations of people outside of the arena, such as multiple benches or seating areas, tables or a pavilion, unless such features are required by the Planning Board as part of site plan approval.

p. Signs shall be posted on the western parking lot boundary that prohibit dumping.



3-31-22

RECEIVED
APR 5 2022

Nathan H. Stearns
Sheehey Furlong & Behn P.C.
PO Box 909
Norwich, VT 05055

RE: Opinion regarding potential diminution in value of surrounding properties relative to current plan to expand facilities and function at the Campion Rink.

Dear Mr. Stearns:

Having visited the Campion Rink a week ago and reviewing the plan for expansion of the facilities at the rink as well as discussed the traffic increase due to expanded hours of function at the rink my conclusion follows:

Properties (houses) boarding the rink can barely see the rink in the winter time due to the density of pine trees between any houses and the rink obstructing the view.

Neighborhood homes across the field to the north can barely be seen in the winter time due to the distance of several hundred yards.

Traffic seems to be minimal relative to the number of cars in the parking lot even if one considers skaters being dropped off by parents and not parking, the traffic seems to be minimal at best.

Peak traffic events are so few, according to my information, as to be a non-issue. These events numbering fewer than three or four times a year with a duration of less than six hours for each event would seem to have low impact on any neighbor except the one bordering the drive way to the rink.

Extended hours would appear to also have a minimal impact as traffic again as the flow in and out of the facility parking lot would be limited to fewer than thirty or forty cars per hour at times of the year when deciduous trees are fully leafed, both deadening sound and view affecting any neighbors.

My conclusion is that upgrading the physical plant and expanding function time of the Campion Rink will not diminish the values of surrounding properties.

Sincerely,

A handwritten signature in cursive script, reading "Linda McNamara". The signature is written in dark ink and is positioned above the printed name.

Linda McNamara

**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #3B
Public Hearing Items**

**Upper Valley Mountain Bike
Association (applicant),
Dartmouth College Trustees
(property owner),
0 Mascoma Street
(Tax Map 74, Lot 8, Plot 200),
zoned RL-3
ZB2022-09-SEVAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 2, 2022 Meeting

Staff Memorandum – ZB2022-09-SEVAR

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type: SE to allow a building for an existing outdoor recreational facility; SE to allow a structure within the wetland buffer; Variance to allow a structure within the minimum required side yard

Location: 0 Mascoma Street (Tax Map 74, Lot 8, Plot 200)

Applicant/Property Owner:

Upper Valley Mountain Bike Association (UVMBA) /
Dartmouth College Trustees

Zoning District: RL-3

Property Size:

+/-17.1 acres per City Assessor's records (conforming to the minimum required 10 acre lot size required for lots in the RL-3 District per §314.3)

Existing Improvements and Use:

Parking area for trail network and a 36 sq. ft. shed constructed in 2019

Proposed Improvements:

A +/-800 sq. ft. picnic pavilion

Overlay District:

Wetlands Conservation District

Previous ZBA Action (since 1995): none

Other Approvals Required:

- Minor Site Plan Review
- Building Permit

Attachments:

- 4/14/22 Con Comm Mtg Mins (excerpt)
- Application (9 pages total)

HEARING NOTICE

Upper Valley Mountain Bike Association (applicant), Dartmouth College Trustees (property owner), 0 Mascoma Street (Tax Map 74, Lot 8, Plot 200), zoned RL-3: Applicant proposes to construct a +/-800 sq. ft. picnic pavilion, to be located within the 100 ft. high-value wetland buffer established by Section 401.2.B of the Zoning Ordinance. Applicant requests (i) a Special Exception pursuant to Section 314.2 to allow an outdoor recreational facility, (ii) a Special Exception pursuant to Section 401.5 to construct the pavilion within the wetland buffer, and (iii) a Variance from Section 314.3 to allow the pavilion to be located 10 ft. from the side lot line where a minimum of 50 ft. is required. ZB2022-09-SEVAR

BACKGROUND & PROPOSAL

The subject property is a +/-17.1-acre undeveloped parcel located in the Rural Lands Three (RL-3) zoning district and currently utilized for biking trails. The biking trail network constitutes an "outdoor recreational facility" which is a use allowed by Special Exception in the RL-3 District. A substantial portion of the property is located within the Wetlands Conservation District which consists of the wetlands themselves as well as a 100 ft. buffer (established by §401.2.B of the Zoning Ordinance). The buffer extends from those wetlands that the City has identified as being of high or very high value. See Figure 1 below (the wetlands are shown as green dots and the wetland buffer is shown in pink).

The applicant proposes to construct a +/-800 sq. ft. picnic pavilion as an accessory building to the existing outdoor recreational facility (the biking trail network). The pavilion is proposed to be located in approximately the location marked by the yellow star in Figures 1 and 3. It is staff's understanding that the applicant's desired location would place the pavilion 10 ft. from the side lot line and partially within the wetland buffer (see attached plan dated April 5, 2022) (the "Preferred Option"). The Preferred Option requires a Special Exception to allow a structure to be constructed in the wetland buffer and a Variance from the minimum required 50 ft. side setback. If the applicant's Variance request is denied, it is staff's understanding that the applicant requests a Special Exception to place the pavilion entirely within the wetland buffer, in compliance with the 50 ft. setback as shown on the attached plan dated March 19, 2022 ("Alternative Option"). Both the Preferred Option and Alternative Option require a Special Exception to allow an accessory building to the existing outdoor recreational facility.

ZB2022-09-SEVAR
0 Mascoma St (74-8-200)
May 2, 2022 ZBA Mtg
Agenda Item 3.B
Page 2 of 6

ZB2022-09-SEVAR

0 Mascoma St (74-8-200)

May 2, 2022 ZBA Mtg

Agenda Item 3.B

Page 2 of 6

Figure 1. Wetland Conservation District Map (green dots = wetlands, pink = 100 ft. buffer).

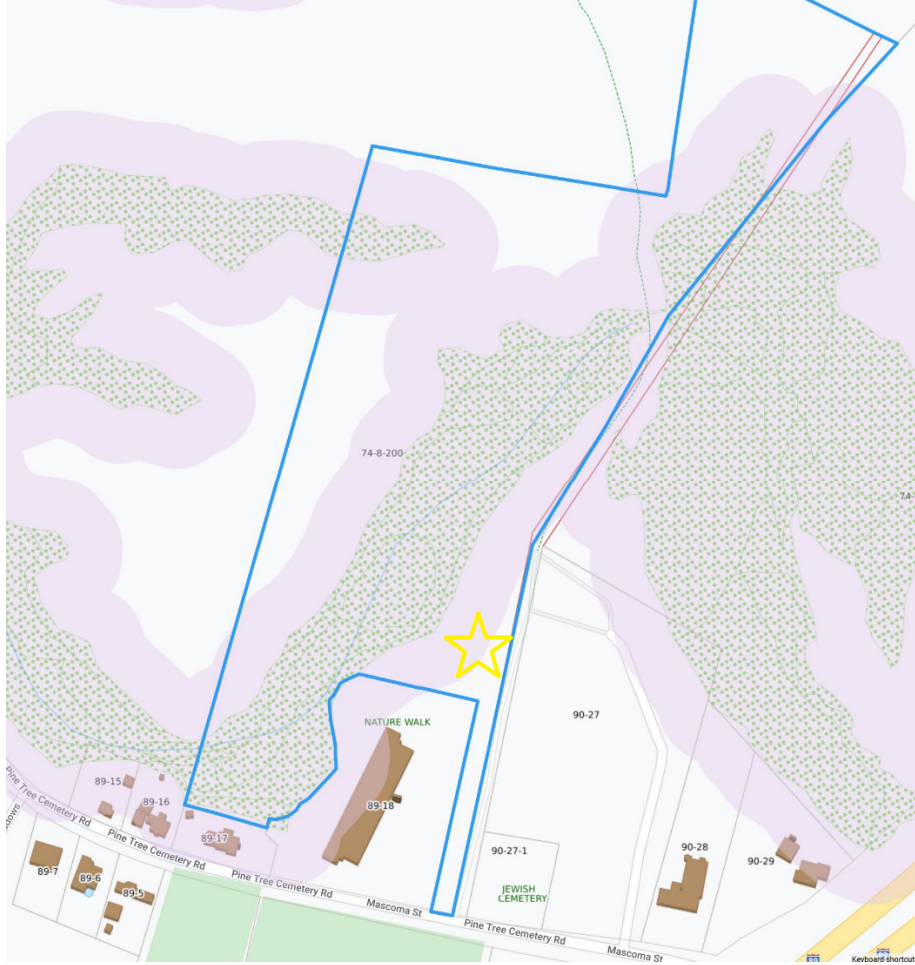
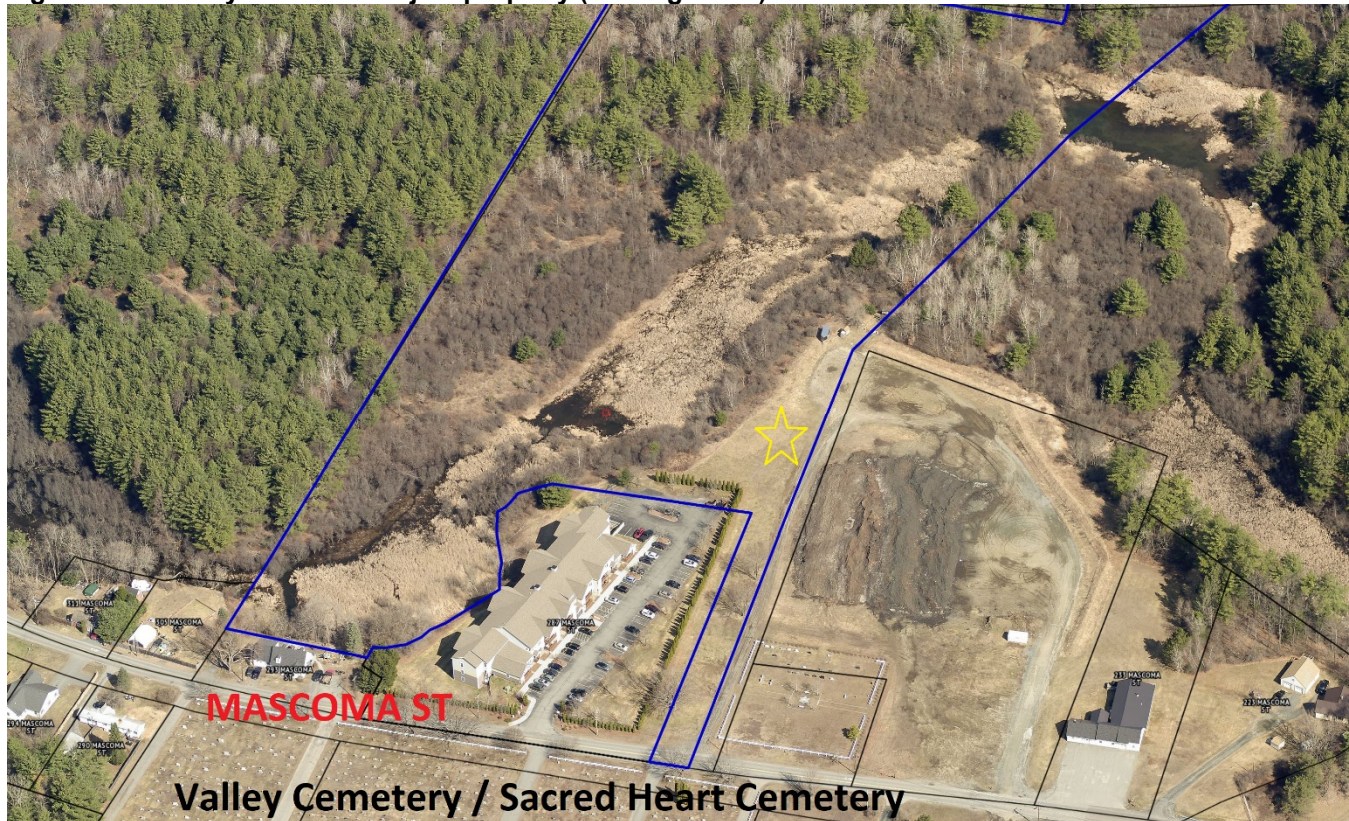


Figure 2. Bird's Eye View of subject property (looking west).



©2021 Eagleview (image taken 4/4/2021)

Figure 3. Bird's Eye View of subject property (looking north).



©2021 Eagleview (image taken 4/4/2021)

ORDINANCE REQUIREMENTS

A. Special Exception pursuant to Section 314.2 to allow an accessory building for the existing outdoor recreational facility (*required for both the Preferred Option and the Alternative Option*)

Under Section 314.2 of the Zoning Ordinance, “outdoor recreational facility” is a use allowed in the RL-3 District by Special Exception. “Outdoor recreational facility” is defined in Appendix A of the Zoning Ordinance as follows:

Outdoor recreational activities, including such facilities as outdoor tennis courts, swimming pool, golf courses, play fields, and similar uses. No buildings shall be allowed except for the necessary related uses such as restrooms and maintenance facilities, other than those accessory to a dwelling.

If the Board determines that the pavilion is a “necessary related use” to the existing biking trail network outdoor recreational facility, then in order to grant the requested Special Exception, the Board must determine that the proposal meets the Special Exception criteria set forth in Section 801.3 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: *The Special Exception is authorized by §314.2 of the Zoning Ordinance.*
- B. All special conditions required of the special exception have been met.
Note: *There are no special conditions required for an outdoor recreational facility.*

- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
- D. The character of the area shall not be adversely affected.
- E. No hazard or nuisance will be created.
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- G. Granting the special exception will not result in undue municipal expense.
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- I. The general welfare of the City will be protected.

The applicant has submitted the attached "Support Statement for a Special Exception" addressing the Section 801.3 criteria.

B. Variance from Section 314.3 to allow the pavilion to be located 10 ft. from the side lot line (required for the Preferred Option only)

In the RL-3 District, a minimum side yard (i.e. a space unobstructed by buildings and structures) of 50 ft. must be maintained per Section 314.3 of the Zoning Ordinance. Therefore, a Variance is required to allow the Preferred Option which places the pavilion 10 ft. from the side lot line.

To obtain the requested Variance from Section 314.3, 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 five criteria are set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

- 1. Will the variance be contrary to the public interest?** According to the Board of Adjustment in NH, 2012 Edition, for a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?
- 2. Will the spirit of the ordinance be observed?** According to the Board of Adjustment in NH, 2012 Edition, in deciding whether or not a variance will violate the spirit and intent of the ordinance, the Board must determine the legal purpose the ordinance serves and the reason it was enacted. The effect of the variance should be evaluated in light of the goals of the Ordinance, which might begin or end with a review of the master plan upon which the ordinance is based.
- 3. Is substantial justice done?** According to the Board of Adjustment in NH, 2012 Edition, Board members must determine each case individually. They suggest that perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.

4. **Are values of surrounding properties diminished?** According to the Board of Adjustment in NH, 2012 Edition, if there is conflicting evidence (dueling experts) then it is the Board's job to sift through such testimony and other evidence to make a finding as to whether there will be a decrease in property values. Board members may also draw upon their own knowledge of the area in reaching a decision on this standard. It is the applicant's burden to convince the Board that it is more likely than not that the project will not decrease values.
5. **Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship?**
 - a. **Special Conditions:** According to the Board of Adjustment in NH, 2012 Edition, Zoning imposes some hardship on all property owners by setting lot dimensions, allowable uses and other restrictions. Typically the restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. Even within the same community, different results may be reached with just slightly different fact patterns.
 - b. **Fair and Substantial Relationship:** Part of this standard includes whether or not a fair and substantial relationship exists between the general public purpose of the ordinance provisions and the specific application of that provision to the property. Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Once the purpose of the provision has been established, the property owner needs to establish that, because of the special conditions of the property, application of the ordinance provision to their property would not advance the purposes of the ordinance provision in any "fair and substantial" way.
 - c. **Reasonable Use: Is the proposed use a reasonable one?** All applicants believe their proposed use is a reasonable one. The applicant must establish that, in light of the special conditions of the property, as identified above, the proposed use is a reasonable one.

The applicant has submitted the attached "Support Statement for a Variance" addressing the Section 801.2 criteria.

C. Special Exception pursuant to Section 401.5 to construct the pavilion within the wetland buffer (required for both the Preferred Option and the Alternative Option)

Section 401.5 of the Zoning Ordinance permits the Zoning Board of Adjustment to allow the construction of a structure within the 100 ft. wetland buffer by Special Exception. In order to grant the requested Special Exception to allow construction of the pavilion within the wetland buffer, the Board must make each of the following findings per Section 401.5 of the Zoning Ordinance, as applicable:

- A. The use for which the exception is sought cannot feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District.
- B. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot cannot reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section.

- C. The design and construction of the proposed use is consistent with the purpose and intent of Section 401.1 (A), (B) and (C) of this Ordinance, and adequate conservation measures shall be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands. Such measures may include but are not limited to wetland restoration or enhancement, wetland preservation, or the construction and maintenance of new wetland areas adjacent to the proposed use to replace those portions of the natural wetland affected by the proposed use.
- D. The proposed construction design of pipelines, powerlines and other transmission lines shall include provisions for restoration of the site as closely as possible to its original grade and conditions.
Note: This criteria is not applicable to the applicant's proposal.
- E. The proposed use shall not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason.
- F. All required Federal and State wetlands permits have been applied for.
Note: This criteria is not applicable to the applicant's proposal; the wetland buffer is established by the City of Lebanon Zoning Ordinance and does not require any approvals from any other governmental authority.
- G. The project is capable of conforming to all existing best management practices, as referenced in Appendix A, and will be implemented in a way which conforms to those practices, and which complies with any other conditions imposed by the Zoning Board of Adjustment.

The applicant has submitted the attached "Support Statement – Wetlands Special Exception" addressing the Section 401.5 criteria.

STAFF COMMENTS

As required by Section 401.7.D of the Zoning Ordinance, a copy of the application was forwarded to the Conservation Commission and was discussed at their April 14, 2022 meeting. A copy of the relevant portion of the draft April 14th meeting minutes is attached. Following discussion with the applicant, the Conservation Commission approved the following motion (as set forth in the attached minutes):

[The Conservation Commission recommends] that the proposed pavilion be located farther from the buffer, as far east and south as possible, to minimize or eliminate impacts to the wetland buffer. Also, the Commission requests that the Zoning Board and Administrator examine the creep of the parking area into the wetland buffer area, and request that the parking area be delineated by wildlife friendly fencing or boulders outside of the wetland buffer, in order to eliminate impacts to the wetland buffer. Further, the Commission requests that the Zoning Board examine waste and sanitation items, and that a dry well maintenance program be discussed.

Attachment

cc: Jon Criswell, UVMBA (via e-mail)
Dan Justynski, Dartmouth College (via e-mail)

1 impacts on site. Restoration is a form of mitigation, so if the functions and values of the wetlands
2 can be improved through this project, that would be a large help.

3
4 In response to a question from Ms. Almy, Mr. Vincent explained that the roundabout option
5 would contain two lanes that will accommodate large trucks.

6
7 Mr. James stated that idling cars sitting at the signaled intersection will impact air quality. It
8 could also allow more pollutants to flow into the water.

9
10 Mr. Heistad agreed that there may be studies to show the difference between cars continuing
11 around a roundabout, versus starting and stopping continuously at a light.

12
13 Mr. Goodwin explained that a roundabout may create a more attractive and efficient design for
14 bicycles and pedestrians. This may take some cars off the road in the end. Mr. Vincent agreed
15 that the multiuse path for this project is trying to be tied closely to other nearby paths to allow for
16 more multiuse users.

17
18 Mr. Oidtmann stated that he believes the roundabout will lead to less carbon dioxide poisoning
19 of the environment. He asked about landscaping of the area.

20
21 Mr. Vincent explained that single-land roundabouts do not have signalization for pedestrians.
22 This type of roundabout was examined but discarded as it would not help the issue. The
23 crosswalk on the east leg of the intersection is proposed approximately 25-30' back from the
24 intersection. This allows for pedestrian crossing behind the first car in line, to allow for that car
25 to focus on the roundabout. For a two-lane roundabout, NH DOT's policy is for a pedestrian
26 hybrid beacon on both the entry and exit side. This allows for pedestrian-dedicated movement in
27 the roundabout. These would be mounted on an overhead mast arm. The Pedestrian and Bicycle
28 Advisory Committee asked about making all four crosswalks in the area the same, but this would
29 increase the amount of wetland impacts.

30
31 Mr. Oidtmann asked about the possibility of a foot tunnel as part of the project. Mr. Vincent
32 stated that separate bike/ped crossings are ideal, but the expense needs to be examined. This also
33 leads to more infrastructure to be maintained. At this time, at grade crossings are proposed.

34
35 Mr. James asked if the Wetland Scientist could come up with ideas to maintain the function of
36 the wetland. Mr. Vincent stated that this will be part of the permit process. Mr. James
37 encouraged a design that protects the functions of the wetland.

38 39 **3. PERMIT REVIEW –**

40 **A. Review and Comment on Zoning Board Special Exception application.**
41 **Applicant proposes to construct a new 800 SF open-air pavilion & associated site**
42 **work. Applicant requests a Special Exception pursuant to Article IV, Section 401.5**
43 **("Wetlands Conservation District") of the Zoning Ordinance. CC2022-02**

44 *The Con Com took up this item at this time.*
45

1 Chair Riley explained that the Con Com's role in this is to provide comments to the Zoning
2 Board, per the City ordinance. The 100' buffer to high value wetlands is being discussed. An
3 impact to the wetland or its buffer will trigger comment of the Con Com. The applicant has two
4 applications for special exceptions. The Con Com only needs to look at Section 4015 of the
5 ordinance as it relates to these applications.
6

7 It was noted that the proposal is to place a pavilion on a parcel of land owned by Dartmouth
8 College. The group reviewed the potential placements for the pavilion on the site. This is a
9 permitted use, but a special exception is needed due to its location to the wetland/buffer. The
10 Con Com can comment on where the structure might best sit, from a natural resources
11 standpoint.
12

13 Dan Justynski, Dartmouth College Trustees, stated that he is fully in support of the project
14 through the Upper Valley Mountain Bike Association. There is a longstanding relationship
15 between the two groups for the trail maintenance.
16

17 Jon Criswell, Upper Valley Mountain Bike Association, stated that regardless of placement of
18 the pavilion, the plan is for a dry well to be placed on the lower drip edge of the structure.
19

20 Ms. Almy noted that a dry well will require maintenance. Mr. Criswell stated that a maintenance
21 plan has not yet been put in place, but the dry well is designed to be oversized. There is not much
22 in the way of debris near the structure. This portion is sloped away from the wetland and toward
23 the parking lot.
24

25 Ms. Hirai expressed concern with one of the proposed locations closest to the bank.
26

27 Mr. Criswell noted that both location options will require special exceptions for the use. If the
28 variance is granted, a wetlands special exception will not be needed. There are a number of
29 options being reviewed. Chair Riley stated that the Con Com is reviewing which option will
30 create the least amount of impact to the wetland and its buffer.
31

32 Mr. James asked that the soils map he created be reviewed. The site proposed for the pavilion is
33 located in an area with sandy, well-draining soils. This is not typical of a wetland. There are
34 similar soils in all of the proposed locations on site. The runoff from the roof will likely not be a
35 problem, due to the nature of the soil.
36

37 Mr. Goodwin explained that the 100' wetland buffer regulation was adopted to indicate that
38 wetlands and their buffers have value. Chair Riley explained that this is a chance to submit
39 comments to the Zoning Board, based on Section 4015.
40

41 Ms. Hirai noted that placing the structure closer to the buffer will create more of an impact from
42 walkers/bikers. Mr. Criswell explained that the prime parking spots are along the left hand of the
43 parking area, which is also located in the buffer.
44

45 Chair Riley expressed concern that parking is being allowed within the buffer and that a structure
46 has also been built within the structure previously, without going through the special exception

1 process. Mr. Vincent stated that he believes the existing shed structure was possibly under
2 minimum square footage of impact required to file for a special exception. He stated that the
3 believes Section 401.4H – Permitted Uses, allows for a structure of 130 s.f. or less. This was an
4 Eagle Scout project that includes a changing area and bathroom.

5
6 Mr. Goodwin stated that this would all fall within the Zoning Officer's purview. Chair Riley
7 stated that, as the Zoning Board is reviewing the special exception form, these existing violations
8 could be noted.

9
10 Mr. Lacey suggested that a fence be erected along the buffer so that there is not further
11 infringement on the area. Mr. Heistad agreed that kids will likely run down the bank eventually
12 and a fence would help to protect it.

13
14 Chair Riley stated that the Con Com might recommend that the pavilion be located as far from
15 the buffer as possible, along the eastern property boundary. This might require the applicant to
16 seek a variance, but that is an item for the Zoning Board. She noted that fences are not wildlife
17 friendly.

18
19 Mr. James stated that people parking at the edge of the bank could cause erosion eventually. It
20 might be useful to install a natural barrier in this area. The pavilion could be proposed to be
21 placed as far southeast as possible on site to minimize impact to the buffer zone.

22
23 Chair Riley stated that she would like for the Zoning Board to look at the parking area
24 configuration, potentially move it out of the buffer, and consider delineating it. She would also
25 like the Zoning Board to consider the design of the pavilion, such as a permeable surface, and its
26 location.

27
28 Mr. Oidtmann stated that he would like the Zoning Board to also discuss the existing porta potty
29 that is on site. He asked if this land is in current use and if the pavilion would change that.

30
31 Chair Riley noted that the area is in need of some invasive management.

32
33 ***Mr. James MOVED to recommend that the proposed pavilion be located farther from the***
34 ***buffer, as far east and south as possible, to minimize or eliminate impacts to the wetland***
35 ***buffer. Also, the Commission requests that the Zoning Board and Administrator examine the***
36 ***creep of the parking area into the wetland buffer area, and request that the parking area be***
37 ***delineated by wildlife friendly fencing or boulders outside of the wetland buffer, in order to***
38 ***eliminate impacts to the wetland buffer. Further, the Commission requests that the Zoning***
39 ***Board examine waste and sanitation items, and that a dry well maintenance program be***
40 ***discussed.***

41 ***Seconded by Mr. Oidtmann.***

42
43 **** The Vote on the MOTION was approved (7-0-0).***

44
45 ***Ms. Almy exited the meeting.***

CITY OF LEBANON APPLICATION FOR

SPECIAL EXCEPTION	☒	☒	SITE PLAN REVIEW (Minor)
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: Daniel Justynski, Dartmouth College Trustees TEL.#: 603.646.2654

MAILING ADDRESS: PO Box 5188, Hanover, NH 03755

E-MAIL ADDRESS: Daniel.J.Justynski@datmouth.edu

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Jon Criswell, UVMBA TEL.#: 603.277.0116

MAILING ADDRESS: 14 Rayton Rd Hanover, NH 03755

E-MAIL ADDRESS: jon@smithandvansant.com

PROJECT LOCATION:

TAX MAP #: 78 LOT#: 8 PLOT #: 200 ZONE: RL-3

STREET ADDRESS OF PROJECT: Masoma Street

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☒ YES ☐ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

A new 800 SF open-air pavilion & associated site work.

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
 PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL

IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC**

USE: Recreational use

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER: _____ DATE: _____

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY

OWNER: _____ DATE: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION**

One cover application, one abutters list, a filing fee and ten copies of the site plan must accompany this support statement.

I (we) hereby request a Special Exception as provided for in Article(s) _____, Section(s) 314.2, 401.5, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION *(Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)*

This project is for a 20' x 40' open air pavilion serving users of the nature Walk Trailhead which access the Landmark/Boston Lot recreation trails. It will provide shelter from sun and rain and be available for gatherings for groups that use the trailhead as a base for activity (Little Bellas, Hanover Parks & Rec, UVMBA trailwork days, Group rides, etc.)

In order to grant a Special Exception, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

(You can respond in the space provided, or attach a separate statement. Please be prepared to address the conditions with the Board during your public hearing. You must show that you have met all the conditions.)

SECTION 801.3 Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon matters which the Board is required to pass under this ordinance. In passing upon any application for a special exception, the Board shall make each of the following findings:

A. That the special exception is specifically authorized by a provision of this ordinance:

314.2: Outdoor recreation facility allowed by Special Exception

Table 401.5: Special Exception required for structures in wetland 100' buffer zone.

_____.

B. That all special conditions required of the special exception have been met:

314.2: N/A

401.5 See Wetlands Special Exception Support Statement

_____.

C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:

N/A

_____.

- D. That the character of the area shall not be adversely affected:
This project will create a gathering place and positively contribute to the character of the area as a hub for outdoor recreation activities.
_____.
- E. That no hazard or nuisance will be created:
No hazards or nuisance created.

_____.
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:
N/A

_____.
- G. That granting the special exception will not result in undue municipal expense:
N/A

_____.
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:
Yes.

_____.
- I. That the general welfare of the City will be protected:
Yes.

_____.

Please Note:

Pursuant to Section 802.4B, "Special Conditions", the Board may attach whatever conditions it deems necessary in order to assure compliance with the purposes of this ordinance.

A special exception shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a special exception or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement*

CITY OF LEBANON, NEW HAMPSHIRE_

Variance Standards: RSA 674:33 Effective Jan. 1, 2010

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 1/2 in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s)_____ Section(s) 314.3 of the Lebanon Zoning Ordinance.

In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

801.2 Variances.

- A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:
1. That the variance, if authorized, will not be contrary to the public interest;
There is perhaps greater public interest and benefit in putting more distance between the wetland and the proposed structure than in conforming to the property line setback.
 2. That the variance will observe the spirit of the Ordinance.
The variance, if granted, will still observe the spirit of the ordinance by giving priority to the wetland while still conforming to some minimum setback, as yet to be determined by the zoning
 3. That by the granting of the variance, substantial justice will be done;
By granting this variance justice will be done in terms of protecting the wetland, to a greater degree, than if meeting the property line setback.
 4. That the variance, if authorized, will not diminish the values of surrounding properties
By creating a gathering place to be used by users of the Boston Lot trail system the values of surrounding properties will not be diminished.
 5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

_____; and

(ii) The proposed use is a reasonable one.

The proposed use (Outdoor recreation structure) is a reasonable and is allowed in the RL-3 zone by special exception.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

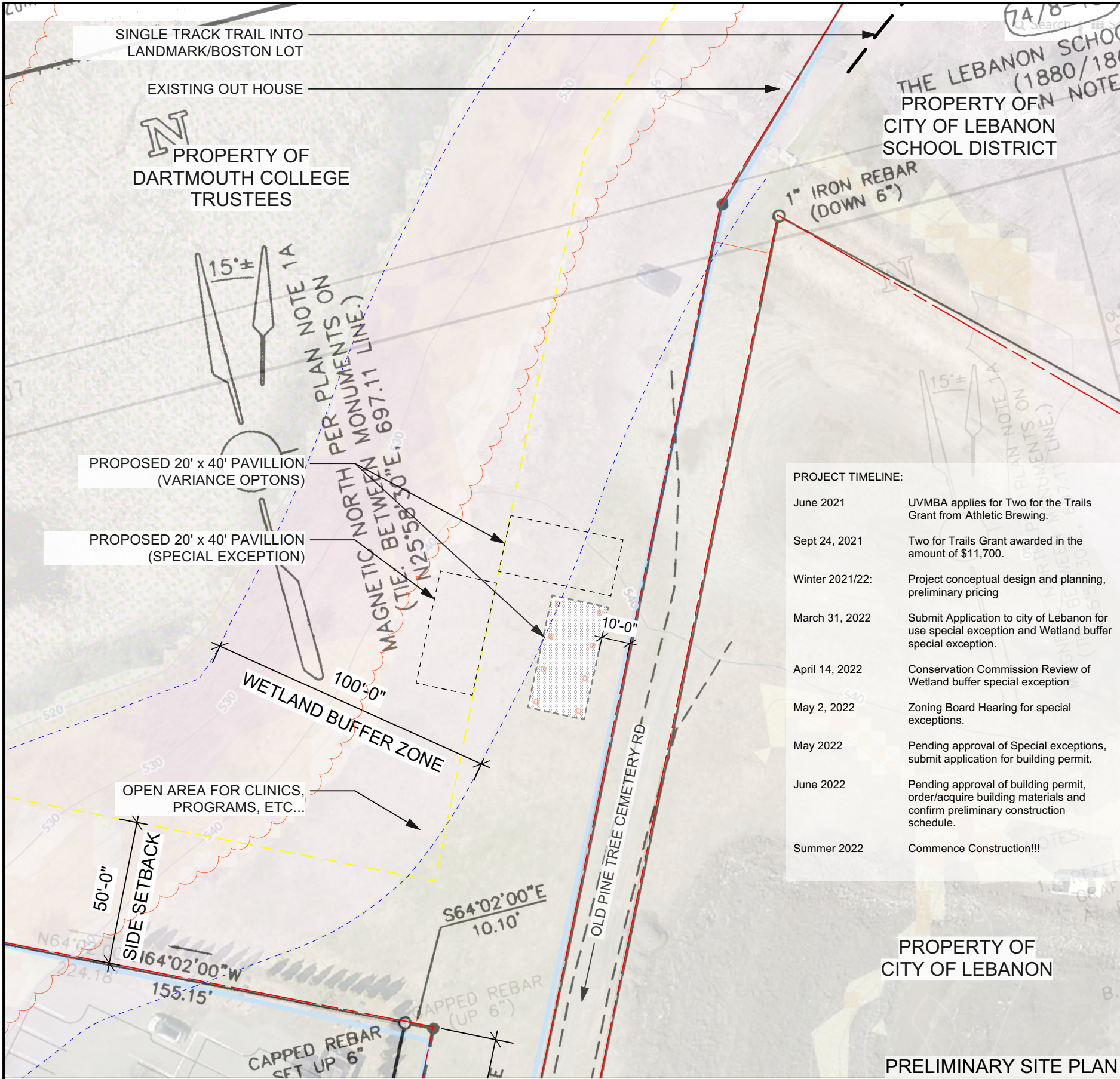
The rather unusual configuration of conditions on this site and with this proposed structure It could be argued that a greater hardship is put on the watershed if the proposed structure is sited to conform to the property line setback.

A variance shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a variance; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a variance must be completed.

****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent:

"The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."



NATURE WALK TRAILHEAD - PROPOSED PAVILION 04.05.22

SITE PLAN UNDERLAY FROM CTY OF LEBANON GIS: <https://lebanonnh.mapgeo.io/>
PROPERTY LINE BASEMAP INFO FROM ANNEXATION PLAN FOR DARTMOUTH COLLEGE TRUSTEES, 287 MASCOMASTREET EXTENSION, LEBANON, NH DATED FEBRUARY 6, 2006

0 20 40 60 80 100 FT

PRELIMINARY- NOT FOR CONSTRUCTION



PROJECT TIMELINE:

June 2021	UVMBA applies for Two for the Trails Grant from Athletic Brewing.
Sept 24, 2021	Two for Trails Grant awarded in the amount of \$11,700.
Winter 2021/22:	Project conceptual design and planning, preliminary pricing
March 31, 2022	Submit Application to city of Lebanon for use special exception and Wetland buffer special exception.
April 14, 2022	Conservation Commission Review of Wetland buffer special exception
May 2, 2022	Zoning Board Hearing for special exceptions.
May 2022	Pending approval of Special exceptions, submit application for building permit.
June 2022	Pending approval of building permit, order/acquire building materials and confirm preliminary construction schedule.
Summer 2022	Commence Construction!!!



CONCEPT RENDERING - LOOKING W



CONCEPT RENDERING - LOOKING NE



CONCEPT RENDERING - BIRDSEYE

CITY OF LEBANON, NEW HAMPSHIRE SUPPORT STATEMENT WETLANDS SPECIAL EXCEPTION

I hereby request a Wetlands Special Exception pursuant to Article IV, Section 401.5 of the Zoning Ordinance for the property identified in the attached Zoning Board of Adjustment Application.

The project is not located within the High and Very High Value Wetlands according to *Natural Lebanon: Results of the Phase II Natural Resource Inventory of the City of Lebanon, NH (June 2010)* and further depicted in the Lebanon Wetland Overlay District Map.

401.5 Special Exceptions.

Except for projects proposed within the High and Very High Value wetlands portion of the Wetland Conservation District, projects that qualify for a Permit by Notification, Minimum Impact Expedited Permit or any other type of Minimum Impact Permit from the State of NH Dept. of Environmental Services Wetlands Bureau shall be exempt from the requirement to obtain a special exception. However, a notification form informing of said projects shall be supplied to the Zoning Administrator.

Please provide:

- *A written statement addressing the conditions below. (Please be prepared to discuss them with the Board during your public hearing. You must show that you have met all the special conditions required of this Wetland Special Exception.)* **See Responses highlighted below.**
- *A wetland delineation plan certified by a Wetland Scientist.* **N/A**
- *One copy of the State of NH Wetland Permit Application.* **N/A**

Upon application to the Zoning Board of Adjustment, excepting the Wetland Conservation District identified as Very High or High Value wetland, a special exception may be requested to permit the erection of a structure; the construction of streets, roads, and other access ways; for pipelines, powerlines, and other transmission lines; and the construction of fences, footbridges, catwalks and docks within the Wetlands Conservation District, provided that all of the following conditions are found to exist, in lieu of the findings required by Section 801.3:

- A. The use for which the exception is sought cannot feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District; and

When taking property line setbacks and wetland buffer setbacks into consideration there is no area in which to build the proposed project while conforming to both all setbacks.

- B. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot cannot

reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section; and

As proposed this project requires (2) special exceptions . One for use as an outdoor recreation facility as allowed for under 314.2 . A second for Wetland Buffer Special Exception as allowed for under 401.5.

- C. The design and construction of the proposed use is consistent with the purpose and intent of Section 401.1 (A), (B) and (C) of this Ordinance (see 401.1 below), and adequate conservation measures shall be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands. Such measures may include but are not limited to wetland restoration or enhancement, wetland preservation, or the construction and maintenance of new wetland areas adjacent to the proposed use to replace those portions of the natural wetland affected by the proposed use; and

Measures to protect adjacent wetland from stormwater runoff include an oversized drywell (based on NH Residential Dry Well Guide) located along the roof drip edge.

- D. The proposed construction design of pipelines, powerlines and other transmission lines shall include provisions for restoration of the site as closely as possible to its original grade and conditions; and

N/A

- E. The proposed use shall not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason; and

This project shall not create a hazard in the terms described above.

- F. All required Federal and State wetlands permits have been applied for. Note: A zoning permit shall not be issued until all such permits have been granted.

N/A

- G. The project is capable of conforming to all existing best management practices, as referenced in Appendix A, and will be implemented in a way which conforms to those practices, and which complies with any other conditions imposed by the Zoning Board of Adjustment.

Project is capable of conforming to best management practices as referenced in Appendix A.

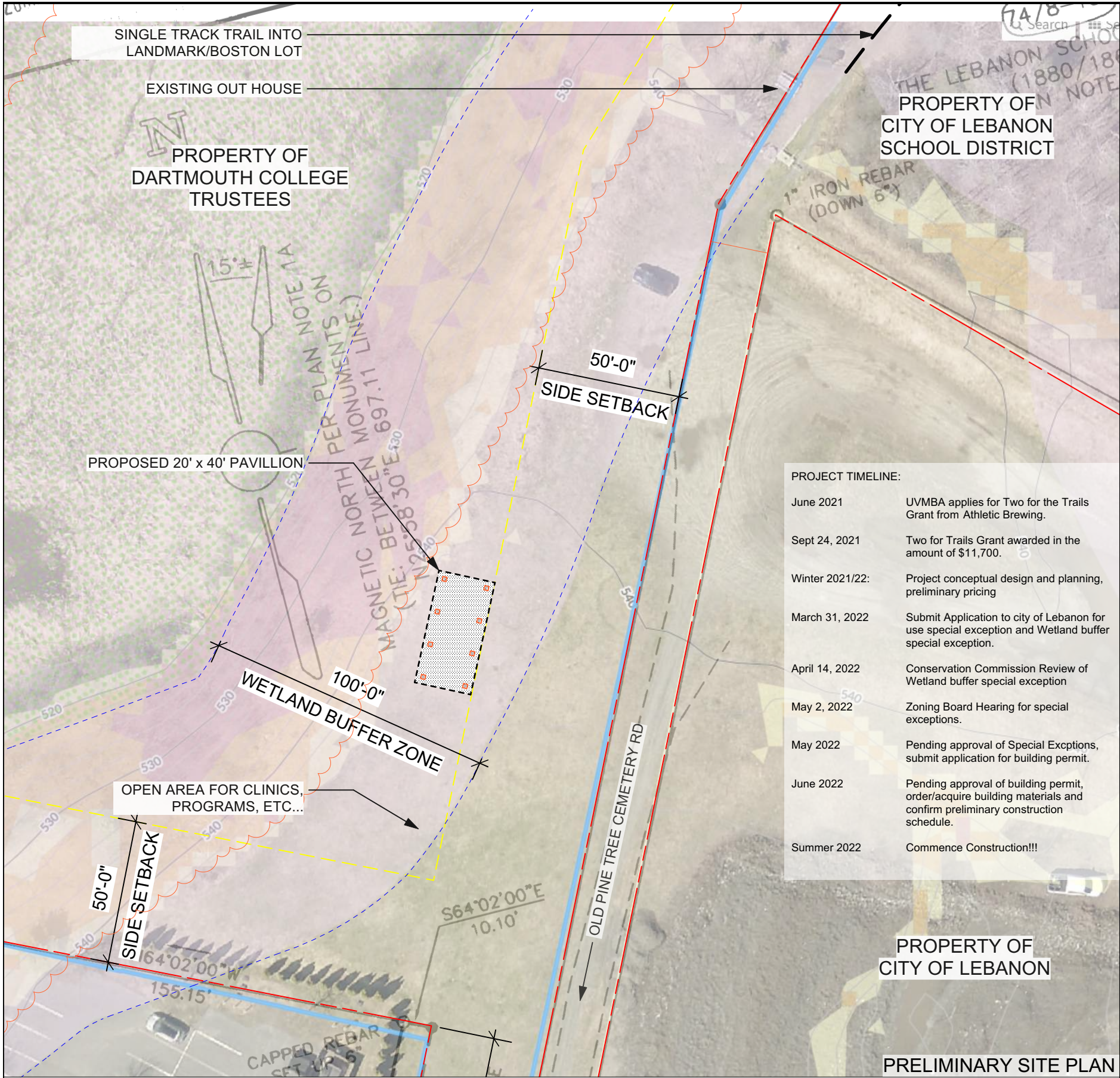
401.1 Purposes.

The purposes of the Wetlands Conservation District are to:

- A. *Preserve wetlands, which provide flood protection, recharge groundwater supply, augment*

stream flow during dry periods, provide wildlife habitat, and enhance water quality; and which are important for such other reasons as those cited in RSA 482-A:1.

- B. Prevent the development of structures and land uses on wetlands, which would contribute to the pollution of surface or ground water, disrupt wetland ecosystems, and damage property due to flooding.*
- C. Prevent unnecessary or excessive expenses to the City of Lebanon for essential services and utilities because of the incompatible use of wetlands.*



NATURE WALK TRAILHEAD - PROPOSED PAVILION

03.19.22

SITE PLAN UNDERLAY FROM CTY OF LEBANON GIS: <https://lebanonnh.mapgeo.io/>
PROPERTY LINE BASEMAP INFO FROM ANNEXATION PLAN FOR DARTMOUTH COLLEGE TRUSTEES. 287 MASCOMASTREET EXTENSION, LEBANON, NH DATED FEBRUARY 6, 2006

0 20 40 60 80 100 FT

PRELIMINARY- NOT FOR CONSTRUCTION



**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #3C
Public Hearing Items**

**Joseph & Terry Dube Jr.,
57 Cottage Circle
(Tax Map 87, Lot 122),
zoned R-3
ZB2022-10-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 2, 2022 Meeting

Staff Memorandum – ZB2022-10-VAR

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type: Variance from §310.3 to allow detached garage to be constructed within the minimum required side yard

Location: 57 Cottage Circle (Tax Map 87, Lot 122)

Applicant/Property Owner:
Joseph & Terry Dube Jr.

Zoning District: R-3

Property Size:
+/-0.53 acres (+/-23,087 sq. ft.) (per the City Assessor's records; property is conforming to the min. 10,000 sq. ft. lot size required per §310.3 for Class 1 lots in the R-3 District)

Existing Improvements: +/-2,128 sq. ft. (finished) two-story one-family dwelling constructed in 1992, per the City Assessor's records (a conforming use per §310.3)

Proposed Improvements:
construction of detached garage (and removal of existing shed)

Overlay Districts: None

Previous ZBA Action (since 1995):
None

Other Approvals Required:
Building Permit

Attachments:
• Application (5 pages total)

HEARING NOTICE

Joseph & Terry Dube Jr., 57 Cottage Circle (Tax Map 87, Lot 122), zoned R-3: Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a garage to be located +/-10 ft. from the side property line where a minimum of 15 ft. is required. ZB2022-10-VAR

BACKGROUND & PROPOSAL

The property is improved with a one-family dwelling constructed in 1992 per the City Assessor's records. At 0.53 acres, it is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.

The applicants propose to remove the existing shed located at the end of the driveway and to construct a new 22 ft. wide by 22 ft. deep detached garage to the rear of the current shed location. The garage is proposed to be located 10 ft. from the side lot line shared with the abutting property at 60 Cottage Circle (Tax Map 87, Lot 123) whereas a minimum unobstructed side yard of 15 ft. is required.

ZONING ORDINANCE REQUIREMENTS

In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed garage, which will encroach approximately five (5) ft. into the minimum required 15 ft. side yard.

To obtain the requested Variance from Section 310.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 4, 2022 (see attached).

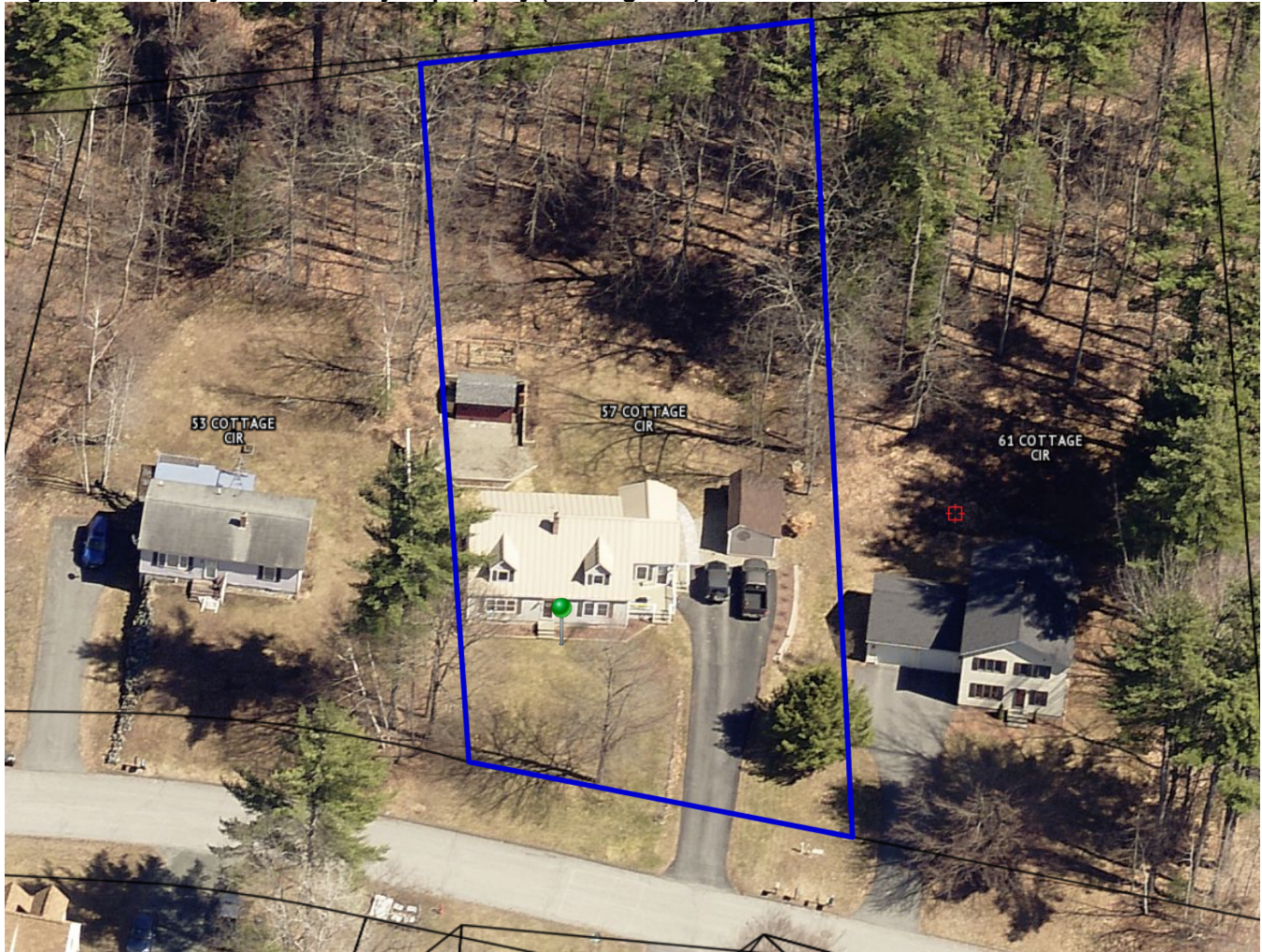
Attachments

cc: Joseph & Terry Dube Jr. (via e-mail)
File

STAFF MEMORANDUM

ZB2022-10-VAR
57 Cottage Cir (87-122)
May 2, 2022 ZBA Meeting
Agenda Item 3.C
Page 2 of 2

Figure 1. Bird's Eye View of subject property (looking east).



©2021 Eagleview (image taken 4/3/2021)

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☒	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	CONDITIONAL USE PERMIT

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: Joseph Dube Jr.

TEL.#: 603-790-8102

MAILING ADDRESS: 57 Cottage Circle West Lebanon NH 03784

E-MAIL ADDRESS: jdjr3@comcast.net

CO-APPLICANT, AGENT, OR LESSEE:

NAME:

TEL.#:

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 87

LOT#: 122

PLOT #:

ZONE: R3

STREET ADDRESS OF PROJECT: 57 Cottage Circle

IS THIS PROPERTY LOCATED IN THE:

WETLANDS

☐ YES

☒ NO

HISTORIC DISTRICT

☐ YES

☒ NO

FLOOD PLAIN

☐ YES

☒ NO

SCOPE OF PROJECT:

Request a right yard setback variance to 10' for construction of a 22'x22' garage.

TYPE OF OCCUPANCY:

EXISTING

☐ VACANT

☒ ONE FAMILY

☐ TWO FAMILY

☐ MULTI-FAMILY

☐ COMMERCIAL

☐ INDUSTRIAL

PROPOSED

☐ VACANT

☒ ONE FAMILY

☐ TWO FAMILY

☐ MULTI-FAMILY

☐ COMMERCIAL

☐ INDUSTRIAL

IF USE IS COMMERCIAL OR INDUSTRIAL, PLEASE NOTE SPECIFIC

USE:

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on May 2, 2022, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER: [Signature]

DATE: 4-4-22

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY

OWNER: _____

DATE: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4-4-22	87/122	2B-2022-	275.68	4-4-22	747844

10-VAR

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement*

CITY OF LEBANON, NEW HAMPSHIRE

Variance Standards: RSA 674:33 Effective Jan. 1, 2010

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) _____
Section(s) _____ of the Lebanon Zoning Ordinance.

In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

801.2 Variances.

A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:

1. That the variance, if authorized, will not be contrary to the public interest;

Granting this variance will create a safer environment for drivers and foot traffic on the driveway as it will give a straight view from the garage to the street. Without the variance the garage will be set behind the rear corner of the house, creating a blind spot for drivers trying to enter and exit the garage as well as pedestrians using the walkway. Granting this request will not have any adverse effect on abutters interests.

2. That the variance will observe the spirit of the Ordinance.

The granting of the variance will observe the spirit of the Ordinance as it will allow for a more aesthetically appealing building from the adjacent lot as it will be square to existing buildings as well as their buildings. As the spirit of the ordinance is to enhance the neighborhood by making the best use of everyone's property interests, granting this variance will benefit us as well as our adjacent neighbors by offering a safer environment for all as well as keeping with the spirit of offering them a view of a garage that looks like it fits in rather than one just shoehorned in an odd lot!

3. That by the granting of the variance, substantial justice will be done.

This variance will allow safer entry and exit from the garage by allowing a direct straight access without having to turn to avoid contact with the existing home. This will be safer for any parked vehicles in the driveway or any children or pedestrians using the driveway. It will eliminate a blind spot of the right rear house from being a safety concern. It will allow our property to be utilized in a manner that allows better use of limited lawn area of our property.

4. That the variance, if authorized, will not diminish the values of surrounding properties;

The variance will not diminish the adjacent properties as it will be a better fit aesthetically by allowing it to be squared to existing structures as well as the adjacent neighbors garage and;

5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; the location of the proposed garage takes into consideration the unique features of our property, being very steep and ledge. We originally proposed a larger garage, 24' x 30', however because of the steep terrain and ledge this was not practical given the yard setback; and

(ii) The proposed use is a reasonable one.

By scaling back to a smaller 22' x 22' structure with the requested setback variance, would allow us to construct a two car garage that creates a safe environment and is a better fit with surrounding buildings. The variance will only affect the right-side yard setback and that is part of a steep and ledge filled section of the adjacent property. The granting of this variance will make a safer situation for all as well as maintain property values for all including abutters by presenting a reasonably sized structure that is aligned properly with surrounding buildings.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. Based on the physical dimensional properties of our lot, along with very steep terrain that is ledge, having to adhere to the existing setback requirements makes this project more challenging. Granting a variance in this situation is good for all!

Thank you for your consideration!

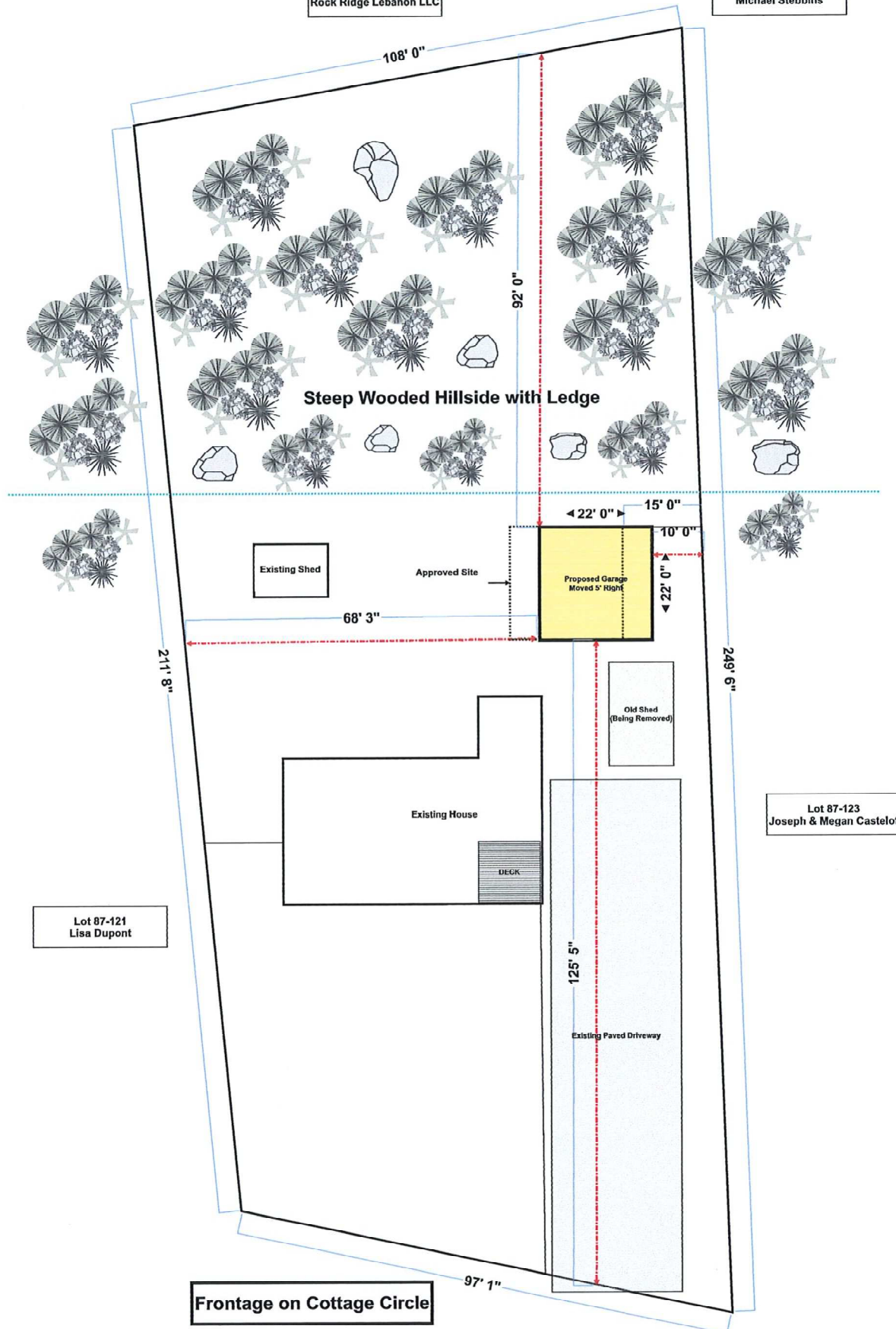
****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent:

"The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."

Lot 74-3-143
Rock Ridge Lebanon LLC

Lot 87-124
Michael Stebbins



Lot 87-121
Lisa Dupont

Lot 87-123
Joseph & Megan Castelot

Frontage on Cottage Circle

Lot 87-127
Christopher Herring

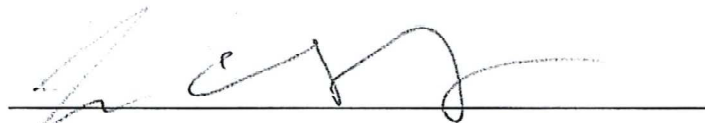
Abutter Request

Joseph and Megan Castelot
61 Cottage Circle
West Lebanon, NH 03784

Terry and I have applied to the City of Lebanon for a variance from the requirements of the zoning regulations as they apply to our shared boundary line on my right side, adjacent to your garage. The current side yard setback requirement is 15' and we are requesting a variance to 10' to the right boundary.

We assure you that our request should not adversely affect your property.

We, the undersigned property owners of Lot 87-123 (61 Cottage Circle) adjacent to the right boundary being considered for a variance at 57 Cottage Circle, grant our consent as abutters for the request for a boundary variance described above.



Date: 4/3/2022

Joseph Castelot



Date: 04/03/2022

Megan Castelot

**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #3D
Public Hearing Items**

**Francis & Teresa Austin,
91 Trues Brook Road
(Tax Map 186, Lot 31, Plot 100),
zoned RL-1
ZB2022-11-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 2, 2022 Meeting

Staff Memorandum – ZB2022-11-VAR

APPLICATION INFORMATION

Agenda Item: 3.D

Application Type: Variance from §310.3 to allow detached garage to be constructed within the minimum required side yard

Location: 91 Trues Brook Road
(Tax Map 186, Lot 31, Plot 100)

Applicant/Property Owner:
Francis & Teresa Austin

Zoning District: RL-1

Property Size:
+/-1.38 acres (*per the City Assessor's records; property is non-conforming to the min. 3-acre lot size required per §312.3 for Class 3 lots in the RL-1 District*)

Existing Improvements: +/-1,500 sq. ft. (finished) one-family dwelling constructed in 2012, per the City Assessor's records (*a conforming use per §312.2*)

Proposed Improvements: addition to existing detached garage

Overlay Districts: Wetlands Conservation District (*not impacted by proposed garage expansion*)

Previous ZBA Action (since 1995): none

Other Approvals Required:
Building Permit

Attachments:
• Application (5 pages total)

HEARING NOTICE

Francis & Teresa Austin, 91 Trues Brook Road (Tax Map 186, Lot 31, Plot 100), zoned RL-1: Applicants propose to build a +/-408 sq. ft. addition onto the existing detached garage and request a Variance per Section 312.3 of the Zoning Ordinance to allow the expanded garage to be located +/-20 ft. from the side property line where 25 ft. is the minimum required. ZB2022-11-VAR

BACKGROUND & PROPOSAL

Per the City Assessor's records, the property is improved with a one-family dwelling constructed in 1992, and an 816 sq. ft. detached 2-bay garage constructed in 1970. At 1.38 acres, it is non-conforming to the 3-acre minimum lot size required for Class 3 lots in the RL-1 District.

The applicants propose to construct a +/-408 sq. ft. addition onto the existing garage to add an additional bay (for a total of 3 bays and a total size of +/-1,224 sq. ft.). The garage is proposed to be located 20 ft. from the side lot line shared with the abutting property at 89 Trues Brook Road (Tax Map 186, Lot 31) whereas a minimum unobstructed side yard of 25 ft. is required.

ZONING ORDINANCE REQUIREMENTS

In the RL-1 District, Class 3 lots (i.e. lots that are served by on-site septic and wells) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 25 ft. See Section 312.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the garage addition, which will encroach approximately five (5) ft. into the minimum required 25 ft. side yard.

To obtain the requested Variance from Section 312.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 12, 2022 (see attached).

Attachments

cc: Francis & Teresa Austin (via e-mail)
File

STAFF MEMORANDUM

ZB2022-11-VAR
91 Trues Brook Rd (186-31-100)
May 2, 2022 ZBA Meeting
Agenda Item 3.D
Page 2 of 2

Figure 1. Bird's Eye View of subject property (looking east).



©2021 Eagleview (image taken 4/3/2021)

Figure 2. Google Street View (July, 2013)



**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☒	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	OTHER ()

PROPERTY OWNER (APPLICANT):			
NAME: <u>Francis (Frank) + Teresa Austin</u> TEL.#: <u>603-667-1132</u>			
MAILING ADDRESS: <u>91 Trues Brook Rd, West Lebanon, NH 03784</u>			
E-MAIL ADDRESS: <u>Frank.Austin.NH@gmail.com</u>			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME:		TEL.#:	
MAILING ADDRESS:			
E-MAIL ADDRESS:			
PROJECT LOCATION:			
TAX MAP #:	LOT#:	PLOT #:	ZONE:
<u>186</u>	<u>31</u>	<u>1</u>	<u>RL-1</u>
STREET ADDRESS OF PROJECT: <u>91 Trues Brook Rd, West Lebanon, NH</u>			
IS THIS PROPERTY LOCATED IN THE:			
WETLANDS ☒ YES ☐ NO		HISTORIC DISTRICT ☐ YES ☐ NO	
<u>Back of property</u>		FLOOD PLAIN ☐ YES ☐ NO	
SCOPE OF PROJECT: <u>Expand existing 2 bay garage 24'W x 11'4" H x 34'D to a 3 bay garage 36'W x 19'4" H x 34'D. The final distance from our side yard to abutter Map/Lot 186-31 will be 20 ft</u>			
TYPE OF OCCUPANCY: <u>instead of required 25 ft.</u>			
EXISTING	☐ VACANT	☒ ONE FAMILY	☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED	☐ VACANT	☒ ONE FAMILY	☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
IF USE IS <u>COMMERCIAL</u> OR <u>INDUSTRIAL</u> , PLEASE NOTE <u>SPECIFIC</u> USE: _____			
SIGNATURE BLOCK:			
		DATE: <u>4/12/2022</u>	
PROPERTY OWNER			
NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.			
_____		DATE: _____	
PROPERTY OWNER			

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4/12/2022	186-31-60	ZB2022-	284.24	4-12-22	18700

11-VAR

(12/07/07)

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement**

CITY OF LEBANON, NEW HAMPSHIRE

Variance Standards: RSA 674:33 Effective Jan. 1, 2010

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 1/2 in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) Zoning Ordinance Section(s) 312.3 of the Lebanon Zoning Ordinance.

In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

801.2 Variances.

A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:

1. That the variance, if authorized, will not be contrary to the public interest;

Correct, the variance would not alter the essential nature of the neighborhood. Permission has been granted from abutter on Lot 186-31.

2. That the variance will observe the spirit of the Ordinance.

Yes, there will still be 20' to the property line where our abutter has no existing buildings. Their site and enjoyment of

3. That by the granting of the variance, substantial justice will be done; there lawn will not

Granting of the variance will allow is to be adequately store our current and future vehicles. diminished

4. That the variance, if authorized, will not diminish the values of surrounding properties

The additional garage bay should not diminish the value of surrounding properties.

5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

We currently need to pay for storage of our antique cars off site; and

(ii) The proposed use is a reasonable one.

Being able to store our cars onsite will be a savings to us and will improve our property.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

We are not able to expand the garage in the opposite direction due to an existing septic system.

A variance shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a variance; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a variance must be completed.

***This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.**

Statement of Intent:

"The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Bocchia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."

Current lot with existing setbacks (Site plan)



Proposed Lot changes
Site Plan



**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #3E
Public Hearing Items**

**Jeff Wilcox & Jennifer Fischer,
30 Hough Street
(Tax Map 91, Lot 46),
zoned R-3
ZB2022-12-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 2, 2022 Meeting

Staff Memorandum – ZB2022-12-VAR

APPLICATION INFORMATION

Agenda Item: 3.E

Application Type: Variance from §310.3 to allow detached garage to be constructed within the minimum required side yard

Location: 30 Hough Street (Tax Map 91, Lot 46)

Applicant/Property Owner:
Jeff Wilcox & Jennifer Fischer

Zoning District: R-3

Property Size:
+/-0.23 acres (+/-10,019 sq. ft.) (per the City Assessor's records; property is conforming to the min. 10,000 sq. ft. lot size required per §310.3 for Class 1 lots in the R-3 District)

Existing Improvements: +/-1,489 sq. ft. (finished) two-story one-family dwelling constructed in 1954, per the City Assessor's records (a conforming use per §310.2)

Proposed Improvements:
+/-616 sq. ft. detached two-car garage

Overlay Districts:
None

Previous ZBA Action (since 1995):
none

Other Approvals Required:
Building Permit

Attachments:
• Application (16 pages total)

HEARING NOTICE

Jeff Wilcox & Jennifer Fischer, 30 Hough Street (Tax Map 91, Lot 46), zoned R-3: Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a detached garage to be located +/-5 ft. from the side lot line where a minimum of 15 ft. is required. ZB2022-12-VAR

BACKGROUND & PROPOSAL

Per the City Assessor's records, the property is improved with a one-family dwelling (with an attached one-car garage) constructed in 1954. At +/-10,019 sq. ft., it is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.

The property is bounded by Hough Street to the north, Young Street to the west, and an unimproved section of Fairview Avenue to the south. Regarding lots on more than one street, Section 201.3 of the Zoning Ordinance provides as follows:

A lot adjoining two streets shall have a minimum front yard on each street and minimum side yards on the remaining sides. A lot adjoining three streets shall have minimum front yards on at least two intersecting streets, a minimum rear yard on the other street and a side yard on the remaining side.

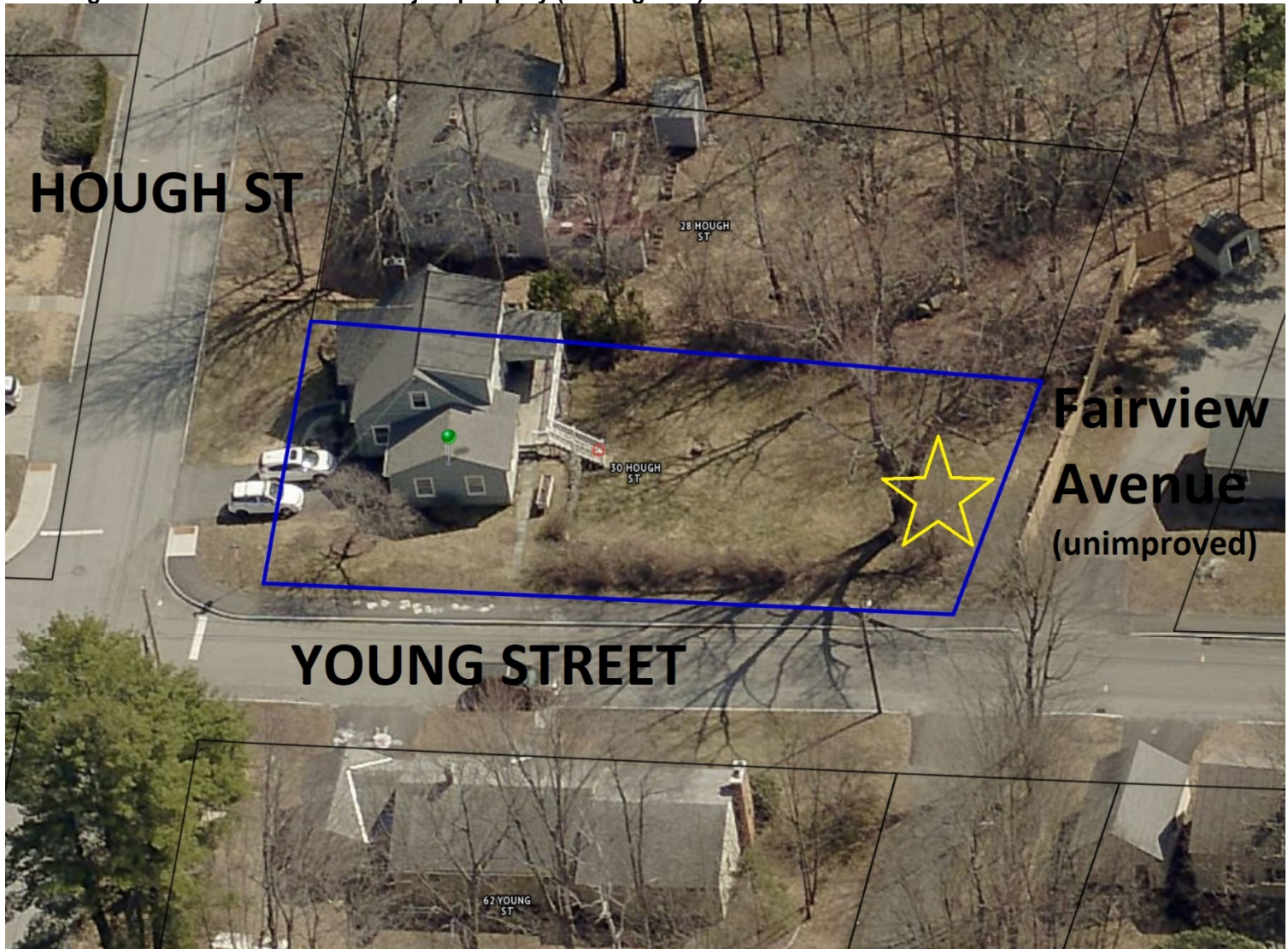
Per the plot plan submitted with the application materials, the applicant's surveyor has assumed that the unimproved section of Fairview Avenue is not a "street" as defined in the Zoning Ordinance; and therefore, per Section 201.3, has identified a 40 ft. front setback along the Hough Street and Young Street sides of the property, and a 15 ft. side setback along the other two sides of the property (i.e. the applicant has identified 15 ft. side setbacks along the lot line shared with 28 Hough Street, and along the lot line shared with the edge of the unimproved Fairview Avenue right-of-way).

The applicants propose to construct a +/-616 sq. ft. detached garage to the rear of the home, in the location approximately depicted by a yellow star in Figure 1 below. The garage, which will be accessed via the existing curb cut on Hough Street, is proposed to be located approximately 5 ft. from the unimproved Fairview Avenue right-of-way whereas a minimum unobstructed side yard of 15 ft. is required.

STAFF MEMORANDUM

ZB2022-12-VAR
30 Hough Street (Tax Map 91, Lot 46)
May 2, 2022 ZBA Meeting
Agenda Item 3.E
Page 2 of 2

Figure 1. Bird's Eye View of subject property (looking east).



©2021 Eagleview (image taken 4/4/2021)

ZONING ORDINANCE REQUIREMENTS

In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed garage, which will encroach approximately ten (10) ft. into the minimum required 15 ft. side yard.

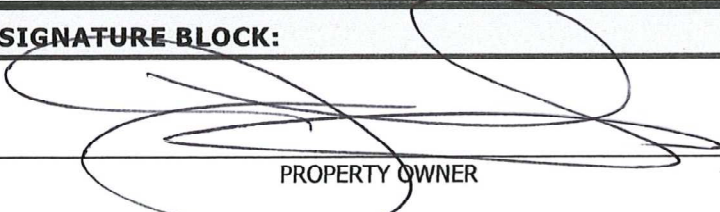
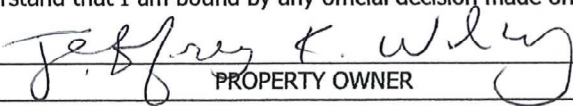
To obtain the requested Variance from Section 310.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 14, 2022 (see attached).

Attachments

cc: Jeff Wilcox & Jennifer Fischer (via e-mail)
File

CITY OF LEBANON APPLICATION FOR

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☒	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☐	OTHER ()

PROPERTY OWNER (APPLICANT):			
NAME: JEFF WILCOX & JENNIFER FISCHER TEL#: 603-276-0636			
MAILING ADDRESS: 30 HOUGH ST, LEBANON, NH			
E-MAIL ADDRESS: JEFF@MEDIADANCE.COM			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME: PETER SCOPPETTONE TEL#: 603-381-4545			
MAILING ADDRESS: 7 UNION ST, LEBANON			
E-MAIL ADDRESS: PSCOPPETTONE@GMAIL.COM			
PROJECT LOCATION:			
TAX MAP #: 91	LOT#: 46	PLOT #:	ZONE: R-3
STREET ADDRESS OF PROJECT: 30 HOUGH ST, LEBANON			
IS THIS PROPERTY LOCATED IN THE:			
WETLANDS ☐ YES ☒ NO		HISTORIC DISTRICT ☐ YES ☒ NO	
FLOOD PLAIN ☐ YES ☒ NO			
SCOPE OF PROJECT:			
WAIVER OF REAR YARD SETBACK FROM 15' TO 5' FOR A NEW GARAGE AGAINST THE UNDERVELOPE SECTION OF FAIRVIEW AVE.			
TYPE OF OCCUPANCY:			
EXISTING	☐ VACANT	☒ ONE FAMILY	☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED	☐ VACANT	☒ ONE FAMILY	☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE :			
SIGNATURE BLOCK:			
 PROPERTY OWNER		DATE: 4/14/22	
NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.			
 PROPERTY OWNER		DATE: 4/14/22	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4/14/2022	91-46	ZB2022-	\$284.24	4/14/2022	10701

12 - VAR

(12/07/07)

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement*

CITY OF LEBANON, NEW HAMPSHIRE

Variance Standards: RSA 674:33 Effective Jan. 1, 2010

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 1/2 in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) III
Section(s) 310 of the Lebanon Zoning Ordinance.

In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

801.2 Variances.

A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:

1. That the variance, if authorized, will not be contrary to the public interest;

THE PROPOSED GARAGE OUTBUILDING WILL NOT ENCRACH INTO THE R.O.W. OF THE UNDEVELOPE SECTION OF FAIRVIEW AVE.

2. That the variance will observe the spirit of the Ordinance.

TO ALLOW FOR ACCESSORY OUTBUILDINGS.

3. That by the granting of the variance, substantial justice will be done;

TO ALLOW OWNERS ADDITIONAL GARAGE STORAGE CAPACITY.

4. That the variance, if authorized, will not diminish the values of surrounding properties

BY SIMPLY ADDING A STANDARD 2-CAR GARAGE and;

5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

?

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

_____; and

(ii) The proposed use is a reasonable one.

TO ENABLE OWNERS TO HAVE A TYPICAL 2-CAR
GARAGE IN THEIR REAR YARD.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

SEE FOLLOWING PAGE

A variance shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a variance; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a variance must be completed.

****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent:

"The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."

801.A.5.b

THE EXISTING ONE CAR GARAGE ABUTS THE FRONT YARD SETBACKS THEREBY MAKING IT IMPOSSIBLE TO MODIFY IT INTO A 2 CAR GARAGE. IN ADDITION THE EXISTING GARAGE IS VERY NARROW MAKING IT DIFFICULT TO OCCUPY WITH A SINGLE CAR. THIS GARAGE HAS NOT BEEN USED FOR CAR STORAGE FOR AS LONG AS THE CURRENT OWNERS HAVE OWNED THE PROPERTY.

THE REQUEST FOR A REDUCTION OF THE REAR YARD SETBACK FROM 15FT TO 5FT AGAINST A R.O.W. OF THE UNDEVELOPED FAIRVIEW AVE WILL ENABLE MORE USE OF THE REAR YARD FOR THE OWNERS.



30 HOUGH ST FRONT

CURB CUT ON
YOUNG ST.





LOOKING EAST FROM YOUNG DOWN R.O.W



NEIGHBOR TO SOUTH 91-54



PROPERTY LINE TOWARD HOUSE



HOUSE LOOKING SOUTH



LOOKING WEST IN ROW TOWARD YOUNG ST.



LOOKING EAST INTO ROW.



LOOKING EAST DOWN INTO R.O.W.

CERTIFIED NOTIFICATION LIST

THE CITY OF LEBANON IS REQUIRED UNDER NH RSA 672:3 TO NOTIFY THE FOLLOWING PERSONS OF PUBLIC HEARINGS BEFORE THE PLANNING BOARD: ALL ABUTTERS; THE APPLICANT; PROPERTY OWNER; HOLDER OF CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTION(S); AND EVERY ENGINEER, ARCHITECT, LAND SURVEYOR, OR SOIL SCIENTIST WHOSE PROFESSIONAL SEAL APPEARS ON ANY PLAT SUBMITTED TO THE BOARD.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

MAP & LOT NUMBER: <u>91-46</u>	MAP & LOT NUMBER: <u>91-46</u>
PROPERTY OWNER: JEFF WILCOX & JILL FISCHER 30 HOUGH ST, LEBANON	APPLICANT: GAME PETER SCOPPETTONE, AGENT
MAP & LOT NUMBER: <u>91-37</u>	MAP & LOT NUMBER: <u>91-45-100</u>
ABUTTER/OTHER: STEEL, DEBORAH & O'TOOLE, PETER 31 HOUGH ST, LEBANON	ABUTTER/OTHER: PITTRICH, SEAN & NICOLE 28 HOUGH ST, LEBANON
MAP & LOT NUMBER: <u>91-48</u>	MAP & LOT NUMBER: <u>91-54</u>
ABUTTER/OTHER: YUAM, ERIC & REBECCA 62 YOUNG ST, LEBANON	ABUTTER/OTHER: COTTER, ROBIN 61 YOUNG ST, LEBANON
MAP & LOT NUMBER: <u>91-25</u>	MAP & LOT NUMBER: <u>91-28</u>
ABUTTER/OTHER: BERDAN, CHRISTOPHER & ROBIN 91 SPENSER ST, #410, LEBANON	ABUTTER/OTHER: AHERN, DAVID 66 YOUNG ST, LEBANON
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER: 	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER: 	ABUTTER/OTHER:

(9/17/04)

FEE SCHEDULE
ZONING BOARD OF ADJUSTMENT
(Revised 8/30/2021, postage increase)

SPECIAL EXCEPTION:		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.28 per certified notice x <u>8</u> notices	34.24
TOTAL DUE		\$ 284.24

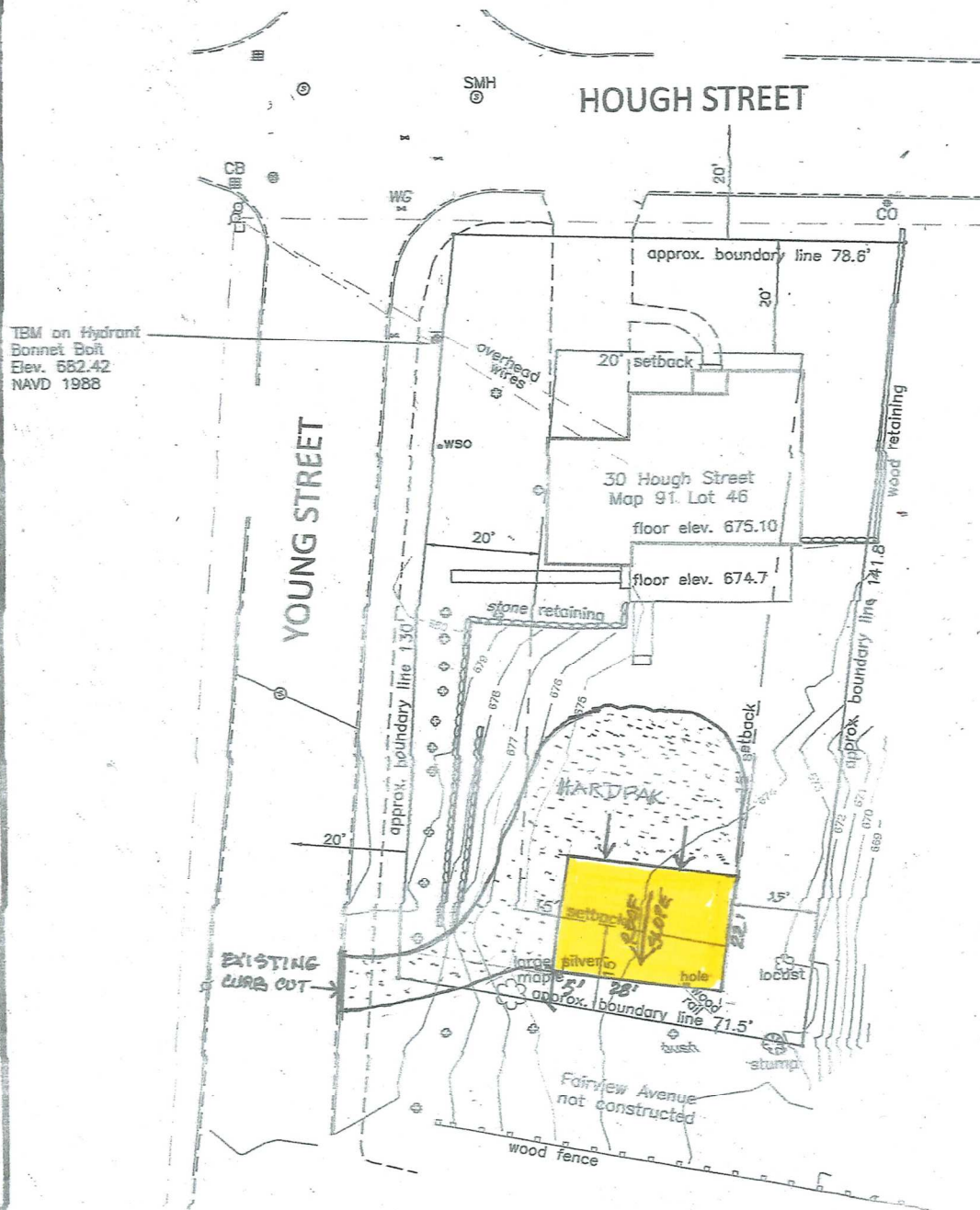
VARIANCE:		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.28 per certified notice x _____ notices	
TOTAL DUE		\$

APPEAL OF AN ADMINISTRATIVE DECISION:		
		TOTALS
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.28 per certified notice x _____ notices	
TOTAL DUE		\$

*REHEARING:		
		TOTALS
*ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.28 per certified notice x _____ notices	
TOTAL DUE		\$

* Fees are only required if the motion for rehearing is granted by the board.

Existing Conditions
Jeffery Wilcox & Jennifer Fischer
 30 Hough Street, Lebanon, NH



Notes:

1. The elevations shown are based on the 1988 NGVD established with GPS RTK.
2. The approximate boundary lines shown are based on the 1935 Hough Estate Plan as recorded in GCRD in book 753 on page 51. The current deed for the tract is found in book #123 page 388.
3. The lands are within Lebanon's R3 Zoning District.

GARAGE LAYOUT BY PETER SCOPPETTONE

For Review

03/24/2022 3:01:43 PM

ROCKWOOD LAND SERVICES, LLC

PO Box 347, Hardland, VT 05048 (802) 438-1039 cell: (802) 298-0042 e-mail: rock@vermontland.net

March 24, 2022

Project No. 1679

Scale 1" = 20'

**Agenda
Zoning Board of Adjustment
May 2, 2022**

**Agenda Item #4A
Rehearing Request**

**Cicotte Properties, LLC,
175 Heater Road
(Tax Map 64, Lot 30),
zoned IND-L
ZB2021-24A-SEVAR**

**CITY OF LEBANON, NEW HAMPSHIRE
APPLICATION AND INSTRUCTIONS FOR THE FILING OF A
MOTION FOR REHEARING**

Within 30 days after any order or decision of the zoning board of adjustment, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, **specifying in the motion for rehearing the ground therefor**; and the board of adjustment, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application.

Lebanon Zoning Ordinance Section 802.5 - Rehearings and Appeals - "A rehearing shall be granted only if:

- (1) the petitioner has new, relevant evidence to submit;
- (2) the petitioner raises new, relevant legal issues that were not considered at the original hearing; or
- (3) the Board feels it may have made a prejudicial, technical or legal error in its original decision.

The Board shall either grant or deny a rehearing within thirty (30) days of receiving the request or may suspend the order of decision complained of pending further consideration. Appeals to the NH Superior Court may be taken pursuant to NH RSA 677:4, as amended, within thirty (30) days after the action complained of has been recorded."

I HAVE READ THE ABOVE, AND HEREBY FILE THIS MOTION FOR REHEARING AND HAVE ATTACHED MY WRITTEN STATEMENT (MOTION) CONCERNING THE FOLLOWING:

I am requesting a rehearing concerning the following zoning board decision:

ZB-2021-24-SF (CICOTTE)

The decision was rendered by the Zoning Board on: 3/21/22

Signature of person(s) requesting rehearing:

[Signature], Dated: 4/18/22

_____, Dated: _____

(For office use only)

Date Motion was filed on: _____ Date motion is scheduled to be heard by the
Zoning Board: _____ The Zoning Board granted / denied motion.

April 18, 2022
Request for Rehearing

To the Zoning Board of Adjustment

As a member of the Zoning Board of Adjustment, and the Acting Chair for the meeting held on March 21, 2022 where the relevant decision was rendered, I respectfully request that the Zoning Board of Adjustment vote to rehear case ZB2021-24-SE (Cicotte Properties).

The reason for this request is because the decision rendered by this Board contained a clear error of law and additional errors of fact.

The minutes of the March 21, 2022 hearing (approved unanimously on April 4, 2022) show as follows at page 2, lines 14-21:

Mr. Katz asked about the nature of other properties in the neighborhood, and which are lawful nonconforming uses, and which are lawfully nonconforming to the zoning ordinance. A list of businesses was shown to the room. The applicants were asked what is distinguishing about this piece of property. The applicants responded that it was lawfully conforming at the time that it was built and due to the zoning change rendered it nonconforming. They are merely asking to do what was permitted until the ordinance made it nonconforming. It would not make a difference or have an impact on the neighborhood. Mr. Nash pointed out there is substantial land that is conforming because they are vacant spaces.

Despite repeated opportunities to provide factual testimony of a distinguishing physical attribute of the property, the Applicants in this case insisted that the legal status of the property as lawfully nonconforming (rendered so from a previously conforming use by change of ordinance) was a *per se* distinguishing characteristic that met the hardship standard.

The same minutes at page 4, line 6 furthermore shows that no special condition of the property was identified to meet the hardship standard. Since the above (lawful nonconformity) was proposed by the Applicant, the only reasonable conclusion is that this was the special condition intended or there was no intention at all to identify a special condition.

I believe that this Board's decision to accept the lawful nonconforming status of a property (rendered such by ordinance change) as a *per se* special condition that meets the hardship standard is an error of law. Furthermore, the property was additionally indistinguishable factually from other neighboring properties where a large amount of them were also lawfully nonconforming to the ordinance.

I also believe that if this ruling is allowed to stand, we could be bound in the future to accept as a matter of law that lawful nonconforming uses meet the hardship standard *per se*. This will create unlawful, unfair, and unpredictable results for land use.

Sincerely, Jeremy Katz - ZBA Member



DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, March 21, 2022
7:00 PM**

MEMBERS PRESENT: Dave Newlove, Jeremy Katz, Dan Nash, Jennifer Barkley (Alt), Paul McDonough (Alt)-Remote

MEMBERS ABSENT: Chair William Koppenheffer, Vice Chair Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

Mr. Corwin called the meeting to order at 7:01 PM.

The Chair and Vice Chair were absent, and the Board elected an Interim Chair.

Mr. Newlove proposed Mr. Katz.

Seconded by Mr. Nash.

Mr. Newlove, Mr. Katz, Mr. Nash, Ms. Barkley, and Mr. McDonough all voting yea.

***The Vote was approved (5-0).**

Mr. McDonough and Ms. Barkley were appointed full voting members for the entire meeting. Mr. McDonough was allowed to vote remote due to physician orders to remain at home.

2. APPROVAL OF MINUTES

A. February 7, 2022

Mr. Nash MOVED to approve the February 7, 2022, Minutes as presented in the March 21, 2022, packet with spelling corrections.

Seconded by Ms. Barkley.

McDonough, Ms. Barkley, Mr. Nash, and Mr. Katz all voting yea.

Mr. Newlove abstained because he was absent.

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

3. PUBLIC HEARING ITEMS

- A. Cicotte Properties, LLC, 175 Heater Road (Tax Map 64, Lot 30) zoned IND-L: The property is improved with a non-conforming vehicular sales use. Applicant requests a variance to permit additional parking on the subject property. ZB2021-24-SE - Continued from February 7, 2022**

Mr. Nash recused himself.

Attorney Barry Schuster appeared on behalf of the application and answered three questions from the previous meeting. The new boundary line has been assigned and recorded. The application shows where the extended parking would be; this is simply an expansion of current use. It was asked at the last

1 meeting why additional parking is needed. He noted in his letter that the picture that was shown was
2 taken on a Sunday in Autumn. With 32 employees and customers, there is more need than the picture
3 represents. He spoke of several court hearings regarding variances that became necessary due to a zoning
4 change. The cases cited were from 1948 through the early 2000s. In the cases that he referenced, a
5 variance was granted when it was a natural expansion of an existing business. He stated that in this
6 application the expansion of use is not a substantial change; it is a natural growth in the same business,
7 and it is not a significant expansion. In a more recent case, the court determined that the expansion
8 should be allowed because the variance was required due to a zoning change. Ms. Cicotte said she did
9 not have anything else to add, just that there is a need for parking with her business.

10
11 Mr. Newlove asked if a flood plain permit was ever submitted. Mr. Nash responded that it was submitted
12 in December.

13
14 Mr. Katz asked about the nature of other properties in the neighborhood, and which are lawful
15 conforming uses, and which are lawfully non-conforming to the zoning ordinances. A list of businesses
16 was shown to the room. The applicants were asked what is distinguishing about this piece of property.
17 The applicants responded that it was lawfully conforming at the time it was built and due to the zoning
18 change rendered it nonconforming. Attorney Schuster is not aware of when other businesses became
19 nonconforming. They are merely asking to do what was permitted until the ordinance made it
20 nonconforming. It would not make a difference or have an impact on the neighborhood. Mr. Nash
21 pointed out there is substantial land that is conforming because they are vacant spaces.

22
23 **Mr. Katz closed the Public Hearing.**

24
25 The Board discussed the application. Several members believe there is solid reason to approve the
26 application. Mr. Katz believes he does not feel strongly either way but there is a point of law regarding
27 this that should be reviewed by City Counsel. In order to meet the hardship, the applicant states that the
28 use was a permitted use and is now lawfully nonconforming. The applicant posits therefore the property
29 is different from other properties and meets the hardship challenge. Because it is two weeks from the
30 next meeting, and there are points of law that are being discussed, Mr. Katz believes this could set
31 precedence that would impact future variances. He believes it should get legal review.

32
33 *Mr. Newlove MOVED on December 6, 2021, January 3, 2022, February 7, 2022, and March 21, 2022,*
34 *at duly noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Barry Schuster,*
35 *Esq., and Johanna Cicotte, and Mr. Nash on behalf of Cicotte Properties, LLC, regarding 175 Heater*
36 *Road (Tax Map 64, Lot 30), zoned IND-L. The property is improved with a non-conforming vehicular*
37 *sales use. Applicant requests a variance to permit additional parking on the subject property. ZB2021-*
38 *24-SE*

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40 **I. FINDINGS OF FACT**

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

- 44
45 1. The subject property is improved with a non-conforming vehicular sales use. In early October,
46 City staff discovered that a substantial amount of new impervious surface has been added to the
47 property in violation of the Zoning Ordinance and Site Plan Review Regulations (staff roughly
48 estimates approximately 6,000 sq. ft. of new impervious surface).

2. The Planning and Development Department issued a Notice of Violation on October 18, 2021, citing violations of the Zoning Ordinance (in addition to violations of the Site Plan Review Regulations and Chapter 74 of the City Code) as follows:

“The newly paved surface adjoining the existing parking area of the car dealership on the subject property constitutes an impermissible expansion of a non-conforming use into an area of the lot that was not previously occupied by the non-conforming use at the time the use became non-conforming. As such, the newly paved surface on the property is in violation of Section 702.5.D, and Section 303.2 of the ZO.

The installation of the newly paved surface on the subject property also constitutes violations of the following Sections of the ZO:

- **Section 303.3** – The pavement extends to and across the lot line shared with 30 Heater Road whereas structures are required to be set back a minimum of 20 ft. in the IND-L District (unless the pavement is to be used as a parking area or driveway in which case a minimum setback of 5 ft. applies per Section 201.7 of the ZO).
- **Section 402.2** – The subject property is located in the Floodplain District overlay per Section 402 of the ZO. Section 402.2 of the ZO requires compliance with Chapter 74 (“Flood Damage Prevention”) of the City Code. Section 74-14 of Chapter 74 requires that a floodplain permit shall be obtained “before construction or development begins within any area of special flood hazard[.]” Staff has verified that no Floodplain Permit has been issued for the installation of the paved area and, therefore, is out of compliance with Chapter 74. Consequently, the property is in violation of Section 402.2. of the ZO.
- **Section 901.1.D** – Staff has verified that that no Zoning Permit has been issued for the pavement as is required by Section 901.1.D of the ZO.

In order to remedy the violations of Sections 702.5.D, 303.2, and 303.3 of the ZO, you will need to apply to the ZBA for a Variance to allow the expansion of the non-conforming vehicular sales use and to allow the pavement to encroach into the minimum required side yard. As part of your application to the ZBA, you will need to provide a site plan showing:

- The boundary lines of the property;
- The location of all structures on the lot showing building setbacks to all property lines;
- The location of natural features on the property including but not limited to jurisdictional wetlands; and
- Any other prominent features of the lot that will assist you in explaining why you need relief from the Zoning Ordinance.”

3. On November 4, 2021, the Planning and Development Department received an application to the Zoning Board requesting a Special Exception per Section 702.1 of the Zoning Ordinance to change one non-conforming use to another non-conforming use. A boundary line adjustment plan was provided on November 29, 2021. In the application materials, the applicant also states that, “To the extent a variance is required for any of these requests, Cicotte Properties, LLC will be prepared to address that as well.”

4. Section 702.1 of the Zoning Ordinance states, in part: “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.” In order to grant a Special Exception to change one non-conforming use to a different non-conforming use, the applicants must demonstrate that the proposal meets the general Special Exception criteria set forth in Section 801.3, in addition to the Section 702.1 criteria.
5. The applicant has not completed a Special Exception Support Statement form and has not provided any written testimony with respect to the proposal’s compliance with the Section 801.3 and Section 702.1 criteria.
6. On January 3, 2022, the Zoning Board approved a motion denying the applicant’s Special Exception request.
7. 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 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):
 - 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 21st day of March 2022, hereby **GRANTS** the request, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicants shall comply with all Federal, State and local permits as required by law.

Seconded by Ms. Barkley.

Mr. Katz restated that although he feels this application is innocuous, defining the hardship as it was done in this application could have future implications that are problematic.

Mr. McDonough, Ms. Barkley, Mr. Newlove all voting yea.

Mr. Katz voting nay.

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

Mr. Nash rejoined the meeting.

B. Eugene and Catherine Thurston, 5 Lash Road (Tax Map 4, Lot 58), zoned R-3:

Applicants request a Special Exception per Section 310.2 of the Zoning Ordinance to convert the existing one-family dwelling with an accessory dwelling unit to a two-family dwelling.

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Both applicants appeared. Ms. Thurston said they purchased the property in 2020 and are requesting to convert the house back to a two-family dwelling. It has been taxed as a multiple family home since 1996. They are appearing tonight to make sure the zoning and taxation are aligned. Presently they live in the house, and the property has a separate dwelling unit with its own entryway. The Board can address land use but cannot address taxation. The applicants are merely asking to ensure that the zoning allows them to return this to a multi-family dwelling by special exception.

Mr. Katz opened the Public Hearing and hearing no one, the Public Hearing was closed.

Mr. Nash MOVED on March 21, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Eugene and Catherine Thurston regarding 5 Lash Road (Tax Map 4, Lot 58), zoned R-3: Applicants request a Special Exception per Section 310.2 of the Zoning Ordinance to convert the existing one-family dwelling with an accessory dwelling unit to a two-family dwelling. ZB2022-03-SE

I. FINDINGS OF FACT

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

1. The property is improved with a 1,994 sq. ft. (finished) dwelling constructed in 1968 (according to the City's assessing records). In 1996, the Zoning Board granted a Special Exception permitting the conversion of the dwelling to a two-family dwelling (ZB-4-58-96). The Zoning Board's Notice of Decision included the following findings of fact:
 - a. The new quarters will not be leased, rented, or sold separately from the main structure.
 - b. The home would not be used or sold as a two-family residence.
2. Because of these findings of fact, what the Zoning Board effectively approved was not a two-family dwelling, but rather a one-family dwelling with what is now identified in the Zoning Ordinance as an accessory dwelling unit.
3. The applicant now proposes to convert the existing one-family dwelling with an accessory dwelling unit into a two-family dwelling. The applicant does not propose any site changes in connection with the conversion, nor does the applicant propose any interior changes.