



**LEBANON ZONING BOARD OF ADJUSTMENT
JUNE 6, 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. May 2, 2022
 3. **Public Hearing Items**
 - A. **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 - Continued from May 2, 2022**
 - B. **Song Lin & Min Du, 101 Maple Street (Tax Map 59, Lot 78), zoned R-3:** An appeal of an administrative decision that the property is used as a three (3) unit multi-family dwelling in violation of Section 310.3 of the Zoning Ordinance (the R-3 District Table of Uses). **ZB2022-13-AAD**
 - C. **Irving Oil Marketing, Inc. (applicant), Rancho Lebanon, LLC & Irving Oil Properties NH Corp (property owners), 200 & 206 South Main Street (Tax Map 114, Lot 5 & Tax Map 115, Lot 1), zoned GC:** Applicant requests Variances from the following sections of the Zoning Ordinance in connection with the proposed construction of a retail motor vehicle service station and convenience store: (i) Section 305.3 to allow a retail service station canopy to be located +/-9 ft. from the side property line where 20 ft. is the minimum required, (ii) Section 608.8 to permit an existing non-conforming freestanding sign to remain on the property, and in the alternative Section 608.4.A.4.a to allow a freestanding sign to exceed the maximum permitted height and size, and (iii) Section 608.4.A.4 to allow two (2) freestanding signs on the property where only one (1) is permitted and to allow the freestanding signs to be located +/-80 ft. apart where a minimum of 150 ft. separation is required. **ZB2022-14-VAR**

- D. **Steven Davis, 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400), zoned R-3:** Applicant proposes to construct a home on the vacant lot. A Variance per Section 310.3 of the Zoning Ordinance is requested to allow the home to be located +/-11 ft. from the side lot line where a minimum of 15 ft. is required. **ZB2022-15-VAR**
- E. **Chiplin Enterprises, Inc., 18 South Street (Tax Map 107, Lot 18), zoned R-2:** Applicant proposes to subdivide the property into two (2) lots. To allow the proposed subdivision, the applicant requests Variances from the following: (i) Section 202 of the Zoning Ordinance (prohibiting the reduction of lot area to less than the minimum required), (ii) Section 309.3 (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-2 District and an additional 3,000 sq. ft. for every additional dwelling unit after two); and (iii) Section 309.3 to allow an existing building to be located +/- 12 ft. from the proposed side lot line where a minimum of 15 ft is required. **ZB2022-16-VAR**
- F. **Immersion Montessori School (applicant), Centurion Properties, Inc. (property owner), 434 North Main Street (Tax Map 2, Lot 15), zoned R-3:** The property is improved with an office building, which is a non-conforming use in the R-3 District. Applicant requests Special Exceptions per Section 310.2 and Section 604 of the Zoning Ordinance to convert a portion of the building to a group day care facility, and per Section 702.1 to convert a portion of the building to an educational facility, which is not a permitted use in the R-3 District. **ZB2022-17-VAR**

4. Staff Comments

5. 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
June 6, 2022**

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

May 2, 2022

DRAFT

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

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

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

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. April 4, 2022

Mr. Nash MOVED to approve the April 4, 2022, Minutes as presented in the May 2, 2022, packet with amendments.

Seconded by Mr. Katz.

Mr. McDonough was given voting privileges for the Meeting.

Amendments: Page 4, Line 37 and 45; correct the spelling to Girdwood.

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

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

The applicants and the abutters met to come to agreeable terms prior to this meeting. The Public Hearing was kept open and additional materials were submitted. The applicant accepts the proposed conditions for approval.

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

14

15 **I. FINDINGS OF FACT**

16
 17 Based on testimony given, application materials presented, and supporting documents submitted, the
 18 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 19
 20 1. 394 North Main Street (the “Property”) is a +/-13.95-acre parcel improved with a number of
 21 outdoor recreational fields and the James W. Champion III Rink, a +/- 22,500 sq. ft. recreational
 22 ice rink (“Ice Rink”). The Property is split-zoned RL-3 to the north and R-3 to the south.
 23 Approximately one-third of the Ice Rink is located in RL-3 District with the remainder of the
 24 building located in the R-3 District.
 25
- 26 2. The Ice Rink was originally approved in 1987 and was reapproved by the Zoning Board in 2016,
 27 in connection with a proposed 56,570 sq. ft. expansion of the Ice Rink that never materialized
 28 (ZB2016-03R-SEVAR). On January 22, 2019, the Zoning Board granted a two-year extension of
 29 the 2016 Special Exception and Variances as they related to the proposed expansion of the Ice
 30 Rink. The extension has now expired. However, certain portions of the 2016 Notice of Decision
 31 were intended to supersede and replace the 1987 Zoning Board approval for the existing rink
 32 regardless of whether the proposed expansion was actually constructed.
 33
- 34 3. Applicant has also requested modification of two of the conditions in the 2016 ZBA decision: (a)
 35 that the Applicant be allowed to leave the exterior of the existing rink as is (a combination of
 36 white and brown finishes), as opposed to resurfacing the exterior to all earth toned finishes
 37 (Condition A. 9 in the 2016 Notice of Decision); and (b) that the Applicant be allowed to operate
 38 the facility outside of the period from mid-September to mid-April during the following hours:
 39
 40 Mid-October through mid-April, 6:00 am. to midnight
 41 Mid-April through mid-May, 7:00 am to 10:00 pm
 42 Mid-May through late-June, only open to support field use
 43 Late-June through early-August, 6-week period of 7:00 am to 10:00 pm
 44 Early-August through Labor Day, only open to support field use
 45 Labor Day through mid-October, 6:00 am. to 10:00 pm
 46
- 47 4. The Town of Hanover owns the Property, whereas the Ice Rink itself is owned and operated by
 48 the Hanover Improvement Society. Because the Ice Rink is not owned by a government entity, it
 49 is considered an “indoor recreational facility” use under the Zoning Ordinance and not a “public
 50 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.

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.
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.
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. Dan Donnelly, abutter, and his attorney Steve Girdwood expressed concerns with the project and offered suggestions to mitigate those concerns.
11. Four letters of support were received by the Planning Office and were made a part of this record.

II. CONCLUSIONS OF LAW

A. Variance from Section 314.2 (building coverage in the RL-3)

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):

This property is in RL-3 that has water, sewer and electric services and roads and road access.

- 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)

B. Variance from Section 314.2 (setback)

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 requested from Section 314.3 to allow the proposed addition to be located +/-45 ft. from the side lot line:

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

The property is zoned RL-3 that has water, sewer, and electric services, and road access.

- 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)

C. Variance from Section 314.2 (building coverage in the R-3)

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

The property is zoned RL-3 that has water, sewer, and electric services, and road access.

- 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)

D. Variance from Section 310.2 and 702.5 (to expand non-conforming use)

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

The property is zoned RL-3 that has water, sewer, and electric services, and road access.

- 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)

E. Special Exception per Section 314.2

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception requested pursuant to Section 314.2 and Section 704 to expand an existing indoor recreational facility on the RL-3 portion of the lot:

1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
2. There are no special conditions/requirements applicable to the proposed use. (§801.3.B)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)

6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 2nd day of May, 2022, hereby **GRANTS** the requested Variances and Special Exception as noted in Finding of Fact number 6 and attaches the following conditions:

1. The applicant shall obtain a building permit and a certificate of occupancy.
2. The following conditions shall apply:
 - a. Whether or not the proposed expansion to the Ice Rink is constructed, 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.
 - d. Alcohol shall be prohibited from the site and shall not be sold nor permitted to be consumed.
 - e. During the winter months the rink shall be made available to the public for reasonable and regular periods of recreational skating.
 - f. 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
 - g. 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.

- h. To the extent modifications are required to the parking lot, such modifications shall not increase stormwater runoff (including snowmelt) onto properties to the west.
- i. 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.
- j. Truck deliveries and dumpster pickups shall only occur between the hours of 7AM and 7PM.
- k. All trash receptacles on the property shall be appropriately covered to prevent windblown trash from leaving the property.
- l. 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.
- m. Signs shall be posted on the western parking lot boundary that prohibit dumping.

Seconded by Mr. Katz.

The Board discussed Condition 2f, stated below, which referenced parking restrictions, and was originally read into the motion. The Board removed the condition 2f which read: Signs shall be posted restricting parking to permitted uses of the rink and Town of Hanover playing fields only. Parking for uses associated with Dartmouth College recreational fields or any other off-site use is prohibited. Such signage shall be reviewed and approved by the Planning and Development Department. Such signs shall be installed within six (6) weeks after the appeal period for this Notice of Decision has expired.

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

The order of the agenda was changed, moving the Upper Valley Mountain Bike Association hearing to the end of the meeting.

- B. 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**

Joe Dube Jr. appeared on behalf of the application. They want to erect the garage and during the clearing of the land they found the property line was different than they knew it to be, and one corner of the property is slightly askew. They reduced the size of the garage they wanted to erect. By getting a variance the garage would line up better with the driveway and would be less of a risk to the existing home.

The Board asked about the hardship. The back of the property is very steep and there is a ledge that would be a safety concern. His neighbors support the placement of the garage in the setback.

1 **Chair Koppenheffer opened the Public Hearing. Hearing no one from the Public, the Public**
2 **Hearing was closed.**

3
4 The members discussed that the skewed property line is a distinction of this property and was likely
5 not apparent due to the underbrush. Also, the applicants tried to mitigate the situation by reducing the
6 size of the garage.

7
8 ***Mr. Nash MOVED, on May 2, 2022, at a duly noticed meeting of the Lebanon Zoning Board of***
9 ***Adjustment, there appeared Joseph Dube Jr. regarding 57 Cottage Circle (Tax Map 87, Lot 122), zoned***
10 ***R-3. Applicants request a Variance per Section 310.3 of the Zoning Ordinance to construct a garage to***
11 ***be located +/-10 ft. from the side property line where a minimum of 15 ft. is required. ZB2022-10-VAR***
12

13 **I. FINDINGS OF FACT**

14
15 Based on testimony given, application materials presented, and supporting documents submitted, the
16 Lebanon Zoning Board of Adjustment makes the following findings of fact:
17

- 18 1. The property is improved with a one-family dwelling constructed in 1992 per the City Assessor's
19 records. At 0.53 acres, it is non-conforming to the 10,000 sq. ft. minimum lot size required for
20 Class 1 lots in the R-3 District.
21
- 22 2. The applicants propose to remove the existing shed located at the end of the driveway and to
23 construct a new 22 ft. wide by 22 ft. deep detached garage to the rear of the current shed location.
24 The garage is proposed to be located 10 ft. from the side lot line shared with the abutting property
25 at 60 Cottage Circle (Tax Map 87, Lot 123) whereas a minimum unobstructed side yard of 15 ft.
26 is required.
27
- 28 3. In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a
29 minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section
30 310.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the
31 proposed garage, which will encroach approximately five (5) ft. into the minimum required 15 ft.
32 side yard.
33
- 34 4. To obtain the requested Variance from Section 310.3, the applicants must demonstrate
35 compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA
36 674:33, I(b). The applicants have submitted testimony addressing the Section 801.2 Variance
37 criteria in an application received by the Planning and Development Department on April 4,
38 2022.
39
- 40 5. The abutter adjacent to the property on the South expressed their consent for the variance request.
41

42 **II. CONCLUSIONS OF LAW**

43
44 As a result of the above findings of fact and based on testimony given, application materials presented,
45 and supporting documents submitted, the Board concludes the following with respect to the Variance
46 criteria set forth in Section 801.2 of the Zoning Ordinance:
47

- 48 1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
49
- 50 2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
51

3. Substantial justice is done. (Section 801.2.A.3)
4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):
 - The South property line is askew of the house and the house is too close to allow a complying garage.
 - iii. 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)
 - iv. The proposed use is a reasonable one. (Section 801.2.A.5.a.ii)
 - The owners reduced the garage size to 22' X 22' where 24' X 24' is typical for a two car garage.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **2nd day of May, 2022**, hereby **GRANTS** the requested Variance from Section 310.3 of the Zoning Ordinance to allow the construction of a garage at 57 Cottage Circle (Tax Map 87, Lot 122) to be located +/-10 ft. from the side property line, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Katz.

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

- C. **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**

Francis Austin appeared remotely on behalf of the application. He would like to expand his two-car garage to store antique cars inside.

The Board discussed the hardship that the septic is on the other side of the garage and therefore he cannot locate the expansion on that side.

Chair Koppenheffer opened the Public Hearing. Hearing no one from the Public, the Public Hearing was closed.

Mr. Nash MOVED, on May 2, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Francis Austin regarding 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

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. 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.
2. 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.
3. 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.
4. To obtain the requested Variance from Section 312.3, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 12, 2022.
5. No one from the Public spoke for or against the project.

II. CONCLUSIONS OF LAW

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

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

The property septic system is located on the opposite side of the garage.

- 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 **2nd day of May, 2022**, hereby **GRANTS** the requested Variance from Section 312.3 of the Zoning Ordinance to allow an expansion of a garage at 91 Trues Brook Road (Tax Map 186, Lot 31, Plot 100) to be located +/-20 ft. from the side property line, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Katz.

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

D. 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**

Jeff Wilcox and Peter Scoppettone, designer and project manager, appeared on behalf of the application. The existing house has a one car garage and the way the house is built it cannot be expanded. They would like to build a two-car garage at the back of the property.

The Board asked for clarification about the hardship. Immediately behind the house there is a narrow extension that is a walkway to the road and a stone abutment about 6 feet high that slopes down to the yard. The property abuts a right of way for a future road, but it is full of boulders and is heavily sloped in a way that a road would likely never be built. His neighbors are supportive. If the garage was moved closer to the house, there would be limited room to maneuver vehicles. The garage could be moved closer to the house, but the impact on the right of way is negligible. There does not seem to be reasonable alternatives given the difficulty of the terrain.

Chair Koppenheffer opened the Public Hearing. Hearing no one from the Public, the Public Hearing was closed.

Mr. Nash MOVE, on May 2, 2022, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Jeff Wilcox & Jennifer Fischer regarding 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

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. 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.
2. 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.
3. Per the definition of "street" in Appendix A of the Zoning Ordinance, the unimproved section of Fairview Avenue is not a "street". Consequently, per Section 201.3 of the Zoning Ordinance, the property has 40 ft. front setbacks 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.
4. The applicants propose to construct a +/-616 sq. ft. detached garage to the rear of the home near the intersection of the property's two side lot lines.
5. 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.
6. 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.
7. To obtain the requested Variance from Section 310.3, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on April 4, 2022.
8. The applicant contacted neighbors and testified they had no objections: they were not present to testify.

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):

1 The parcel is steeply sloped and the boulder terrain limit alternate placement.

2
3 i. There **is not** a fair and substantial relationship between the general public purposes of the
4 ordinance provision and the specific application of that provision to the property.
5 (Section 801.2.A.5.a.i)
6

7 ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)
8

9 **III. DECISION**

10
11 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **2nd day of May, 2022**,
12 hereby **GRANTS** the requested Variance from Section 310.3 of the Zoning Ordinance to allow the
13 construction of a garage at 30 Hough Street (Tax Map 91, Lot 46) to be located +/-5 ft. from the side
14 property line, as set forth above and per testimony, plans, and materials submitted, and per the following
15 conditions:
16

17 1. The applicant shall obtain a building permit.
18

19 ***Seconded by Mr. Katz.***

20 ****The Vote on the Motion was approved (4-0).***
21

22 **E. Upper Valley Mountain Bike Association (applicant), Dartmouth College Trustees**
23 **(property owner), 0 Mascoma Street (Tax Map 74, Lot 8, Plot 200), zoned RL-3:**
24 Applicant proposes to construct a +/-800 sq. ft. picnic pavilion, to be located within the 100
25 ft. high-value wetland buffer established by Section 401.2.B of the Zoning Ordinance.
26 Applicant requests (i) a Special Exception pursuant to Section 314.2 to allow an outdoor
27 recreational facility, (ii) a Special Exception pursuant to Section 401.5 to construct the
28 pavilion within the wetland buffer, and (iii) a Variance from Section 314.3 to allow the
29 pavilion to be located 10 ft. from the side lot line where a minimum of 50 ft. is required.
30 **ZB2022-09- SEVAR**
31

32 **Mr. Nash recused himself from this hearing.**
33

34 Jon Criswell appeared on behalf of the application. The Board informed the applicant that three votes
35 are required to grant a variance and the applicant can choose to postpone the hearing until next month
36 when more members are present. The applicant chose to continue.
37

38 They have received a grant for the construction of the pavilion based on a drawing. After further design
39 work they realized that a special exception would be required to construct the building. They are trying
40 to determine if it is preferable to encroach on the wetland buffer or encroach on the setback. There are
41 three potential locations, but each has some conflicts. Several organizations use this area and a picnic
42 pavilion in this area would benefit many users during hot or inclement weather. There is a small
43 changing shed and an outhouse in the same location. It is the Conservation Commissions thought to
44 avoid the wetlands buffer.
45

46 **Chair Koppenheffer opened the Public Hearing.**
47

48 Daniel Justynski, Director of Real Estate for Dartmouth College, said they are supportive. This
49 entryway to the trails is a good place for people to have a protected area. Based on the response from
50 the Conservation Commission the College feels it is better to avoid the wetlands. The option to get
51 closer to the property line is their preference as it is their property line.

Devora Gronauer, a representative of the Jewish Cemetery Committee spoke. They are concerned about the number of people that could be there at any time and if there would be conflicts during burials at the cemetery. Also, how would waste at the location be managed? Ms. Gronauer already has to pick up trash at that area and there has been some vandalism. It is thought that a structure could be an invitation for a hangout at night for people partying.

The Conservation Commission has asked about how parking would be addressed and the use of the porta potty.

Mr. Criswell said that carry in and carry out is recommended on the bike trails and they do not anticipate waste. He said they are happy to accommodate when there are funerals, in any way that they can.

The property is also adjacent to Lebanon Conservation area. The large parking area is open to anyone.

Roberta Berner spoke online. She is also a member of the Jewish Cemetery Committee. She asked for clarification on the three options for the location of the pavilion.

Susan Painter spoke. She previously sent materials that were forwarded to the Board and the applicant. The imagery in the application does not show the existing structures that are onsite. There is also a trailer that is parked there. She commented that the City does use this area as a snow dump and that could be the source of some of the trash. She feels the use of this pavilion would be impacted by parking. The trail is not in good shape, and she uses this trail regularly. It is common for people to park in the wetland buffer when they use this trail head. She wants to make sure that the parking can accommodate this pavilion and entryway to the trails. It is frequently hard to determine where the access point is supposed to accommodate traffic as it changes.

Sarah Riley from the Conservation Commission made herself available for questions. Her recollection was the Commission's recommendation was to move the pavilion out of the buffer and then it would not require approval by the Commission. Regarding existing violations of the ordinance, she believes there should not be parking in the wetland buffer and the Commission made some recommendations. The existing structures are small, but they questioned if toilets can be in the wetland buffer. She believes that more people would use the structure and may have more need for garbage disposal. She believes all these issues need to be addressed before a new structure is built.

Mr. Griswell said they are aware of the issues of parking in that area. They are hoping to improve the parking area during this project, although it is not part of this application. It is expensive and they have been in discussions with the City regarding parking.

The Board believes the issues that the Public have brought up are under the purview of the Planning Board and site plan review. The Zoning Board does have some overlap. It is hard to say if the pavilion would exacerbate the parking issues.

Members discussed the wetland boundaries and the existing practices in that area. The Chair proposed that some issues, such as parking, need to be addressed

Mr. McDonough proposed to continue this hearing until the next meeting in June.

Seconded by Mr. Katz.

****The Vote on the Motion was approved (3-0).***

Mr. Nash recused himself from the next hearing.

Staff clarified that the Zoning Board can revisit its own decision, but the request must be filed within 30 days of the original decision.

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**

Mr. Katz said there are a couple of procedural things that need to be discussed. In discussions with Staff, the Board has the capability to correct its own errors. It is the City's attorney opinion that there are not statutory opportunities to remedy the error from Cicotte decision. Given the timetable of the Board meetings that are frequently more than 30 days, there is not an opportunity for the Board to correct its own errors. While Mr. Katz is not opposed to the relief being granted, it is the manner in which it was made that is a problem. The Chair reminded the Board members that when a Board member asks for a legal opinion, he believes that the Board should defer to getting the attorney's opinion.

Mr. Katz withdrew his request for a rehearing.

Mr. Nash rejoined the meeting.

5. STAFF COMMENTS

None.

6. ADJOURNMENT

***Mr. Nash MOVED to adjourn the meeting at 9:28 PM.
Seconded by Mr. Katz.***

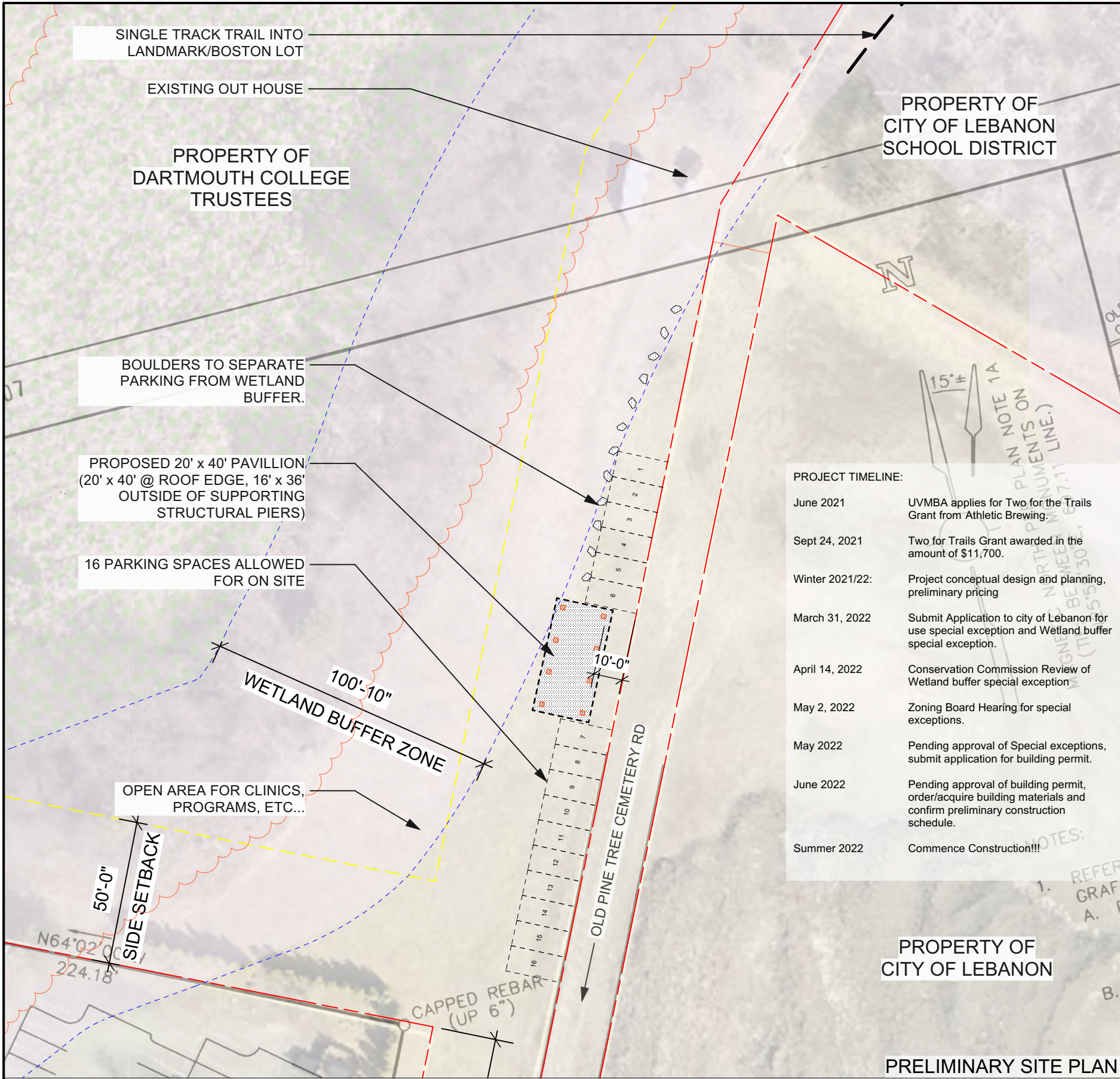
****The Vote on the Motion was approved (4-0).***

Respectfully submitted,
Linda Billings
Recording Secretary

**Agenda
Zoning Board of Adjustment
June 6, 2022**

**Agenda Item #3A
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**



**Agenda
Zoning Board of Adjustment
June 6, 2022**

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

**Song Lin & Min Du,
101 Maple Street
(Tax Map 59, Lot 78),
zoned R-3
ZB2022-13-AAD**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

June 6, 2022 Meeting

Staff Memorandum – ZB2022-13-AAD

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Appeal of Administrative Decision

Location:

101 Maple Street (Tax Map 59, Lot 78)

Applicant/Property Owner:

Song Lin & Min Du

Zoning District:

Residential Three (R-3)

Property Size:

+/-0.77 acres (per City Assessor's records)

Overlay Districts:

None

Previous ZBA Action (since 1995):

- Variance granted on 9/4/12 to convert a former schoolhouse to a two-family dwelling (ZB2012VAR-14)

Attachments:

- ZBA Notice of Decision dated 9/4/12 (ZB2012VAR-14)
- City Assessor's property record card for 101 Maple Street
- Letter dated 3/9/22 from the Zoning Administrator
- Lebanon Fire Department Violation Notice dated 3/16/22
- Application (4 pages)

HEARING NOTICE

Song Lin & Min Du, 101 Maple Street (Tax Map 59, Lot 78), zoned R-3: An appeal of an administrative decision that the property is used as a three (3) unit multi-family dwelling in violation of Section 310.3 of the Zoning Ordinance (the R-3 District Table of Uses). ZB2022-13-AAD

BACKGROUND

The property is improved with a former schoolhouse which was converted to a two-family dwelling pursuant to a Variance obtained in 2012 (see attached Notice of Decision for case #ZB2012VAR-14). Earlier this year, it came to the attention of the Planning and Development Department that a third unit has been added to the building without zoning approval and without a building permit. Staff subsequently confirmed that the property has in fact been assessed as a three-family dwelling since 2015 (a copy of the assessor's card for the property is attached).

In adding a third unit, the building has been converted from a two-family dwelling to a three-unit multi-family dwelling which is not a permitted use in the R-3 District. See Section 310.3 of the Zoning Ordinance. Consequently, the Zoning Administrator sent a letter to the property owners informing them that the conversion of the building to a multi-family dwelling constitutes a violation of the Zoning Ordinance and requesting that the property be brought into compliance (see attached letter dated March 9, 2022).

The Fire Department conducted a site inspection on March 11, 2022, and confirmed that in addition to the two permitted units on the main level of the building, a third (and possibly a fourth) unit was added in the basement. A copy of the Fire Department's violation notice is attached. The Building Inspector also attended the March 11th site inspection and likewise confirmed that at least one (1) dwelling unit has been added to the basement (resulting in at least three dwelling units in the building).

SUMMARY OF APPEAL

For the reasons set forth in the attached application materials received by the Planning and Development Department on May 2, 2022, the applicants disagree with staff's determination that the property is used as a three (3) unit multi-family dwelling in violation of Section 310.3 of the Zoning Ordinance. The applicants seek a determination from the Zoning Board affirming their position.

STAFF MEMORANDUM

ZB2022-13-AAD
101 Maple St (59-78)
June 6, 2022 ZBA Meeting
Agenda Item 3.B
Page 2 of 3

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



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

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



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

ZONING ORDINANCE

The Zoning Board of Adjustment is authorized to hear and decide the applicants' Administrative Appeal per §801.1 of the Zoning Ordinance, which provides as follows:

801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6.

cc: Song Lin & Min Du (via e-mail)
Calvin Hunnewell, Building Inspector (via e-mail)
Jeffrey Libbey, Assistant Fire Chief
File

**NOTICE OF DECISION
ZONING BOARD OF ADJUSTMENT**

On September 4, 2012, at duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Song Lin requesting a variance from the terms of Article III, Section 310.2 to allow the conversion of a former private school building into a two-family dwelling. The property is located at 101 Maple St., West Lebanon, NH, in the R-3 zone. (Tax Map 59, Lot 14) #ZB2012VAR-14

Based on testimony given, plans presented and inspection of the site, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The prior use of this lot was a church and school. The church was constructed in 1900 and the school in 1947. A church is allowed by special exception, and a school is considered an accessory use to the church. Both buildings are on the same legal lot of record.
2. The lot is 1.44 acres (62,726 sq. ft.). Minimum lot size in this R-3 district is 10,000 sq. ft.
3. This residential-three zoning district allows by special exception the conversion of an existing *dwelling* into a two-family dwelling.
4. The building to be converted into a two-family dwelling is a former private school, and not an existing dwelling, therefore, a variance is needed.
5. The school building does comply with the required front and side yard setbacks, but appears to be located approx. 18 feet from the rear property line where 20 feet is now required. There are no proposed expansions, therefore, a rear yard setback encroachment, should one exist, is a non-issue.
6. The applicant has testified that the church building is currently vacant and unused, and would remain that way until such time as an appropriate re-use of the building is proposed.
7. The applicant further testified that when an appropriate re-use of the church building is proposed, they would seek subdivision approval from the Lebanon Planning Board, so as not to create a non-conforming

situation with more than one principal structure/use on this lot (Section 205 of the Zoning Ordinance).

8. The recently adopted Lebanon Master Plan encourages redevelopment; the development of new affordable housing units; diversification in neighborhoods through housing development policies that permit various kinds of housing for various income levels in the same neighborhood, and encourages housing in areas served by existing city services and utilities (*Master Plan, Chapter 7, Housing*).
9. The creation of two new dwelling units, by the redevelopment of this former school building, will further the policies in the Master Plan in regards to housing and redevelopment within the City's existing urban services boundary (i.e. city utilities; proximity to public schools; public services and public transit.)
11. The Maple Street neighborhood currently consists of single family, two-family and some multi-family dwellings.
12. Stanley Liang of 100 Maple Street, West Lebanon spoke against this application.

As a result of the above findings of fact, documentation, testimony and inspections, the Board concludes:

1. The variance **will not** be contrary to the public interest;
It is in the public interest to offer a diversity of housing within the existing city core by redevelopment of unused buildings.
2. The spirit of the ordinance **is** observed;
The re-use of this building will be residential, in a residential zoning district.
3. Substantial justice **is** done;
4. The values of surrounding properties **are not** diminished; and,
The use will remain residential in a residential zone, there should be no diminishing of values to surrounding residential properties.
5. Literal enforcement of the provisions of the ordinance **would** result in an 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:

The lot is larger than required for the zone, and was developed for a very specific use by a religious organization prior to modern zoning regulations.

- (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,

The Ordinance does allow for two-family dwellings by special exception in this district, however, the building proposed for conversion happens to be a former school and not a dwelling. The end result is still the same. In fact, the owner could turn the dwelling into a single family home and then get a special exception to turn it into a two family residence.

- (II) The proposed use is a reasonable one.

A two-family dwelling is a reasonable use for this residential district. It will not change the character of the neighborhood.

Now therefore, be it resolved the Lebanon Zoning Board of Adjustment hereby **GRANTS** the request of Song Lin and Min Du for a variance as referenced above and attaches the following conditions:

1. The former church building shall remain vacant and unused until such time as the owner proposes an appropriate reuse of the building. At that time the owner is required to obtain subdivision approval from the Planning Board, prior to reuse of the former church building, as not to create a violation of Section 205 that prohibits two principal structures on a lot in this residential zoning district.
2. The conversion of this former school building into two dwelling units is subject to the City's Impact Fee Ordinance.

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.

NOTE: (RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, 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, a board of appeals, or the local legislative body, 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 in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3 II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

The Zoning Board voted to GRANT this application on September 4, 2012.



City Of Lebanon, NH

Summary

Parcel ID 59-78
 Account # 103025
 Property ID 5635
 2020 Tax Rate
 Location Address 101 MAPLE ST
 WEST LEBANON
 Acres/Lots 0
 Zoning R3 : Residential 3
 Neighborhood RES GOOD
 Property Usage THREE FAMILY (105)



Owners

[LIN, SONG & DU, MIN](#)
 3 CENTRE ST
 DOVER MA 02030

Valuation

	2021	2020	2019
Assessed Land Value	\$91,700	\$91,700	\$91,700
+ Assessed Improvement Value	\$157,200	\$157,200	\$117,400
+ Assessed Misc Value	\$1,200	\$1,200	\$1,200
= Total Assessed Value	\$250,100	\$250,100	\$210,300

Land

Land Use	Number of Units	Unit Type	Land Type	Frontage	Depth	AgUse Value
3 FAMILY (105)	33,644.00	SQUARE FEET	SITE	0	0	\$0

Buildings

Building ID 5934
 Style MULTI-CONV / 12
 Gross Sq Ft 4,650
 Finished Sq Ft 4,625
 Stories
 Condition Average
 Interior Walls
 Exterior Walls CLAPBOARD
 Year Built 1947
 Garage
 Porch
 Effective Year Built 1947
 Foundation
 Roof Type
 Roof Coverage STEAMING SEAM
 Flooring Type LAMINATE with 0% LINOLEUM
 Heating Type
 Full Bathrooms 3
 Half Bathrooms 0
 3/4 Bathrooms 0
 Grade C-
 Grade Description
 Number of Fire Pl 0

Unit Description	Rooms	Bedrooms
	6	3
	4	3
	3	1

Code	Description	Sketch Area	Finished Area	Perimeter
FFL	1ST FLOOR	1,941	1,941	304
BMT	BASEMENT	1,941	0	304
LLV	LOWR LEVEL	456	0	130
OPF	OPEN PORCH	24	0	20

Code	Description	Sketch Area	Finished Area	Perimeter
STG	STORAGE	96	0	44
WDK	WOOD DECK	192	0	80
TOTAL		4,650	1,941	882

Yard Items

Description	Year Built	Out Building Type	Size	Quantity	Units	Grade
SHED/FR	2000	SHED/FR (02)	0 x 0	1	192 SF	

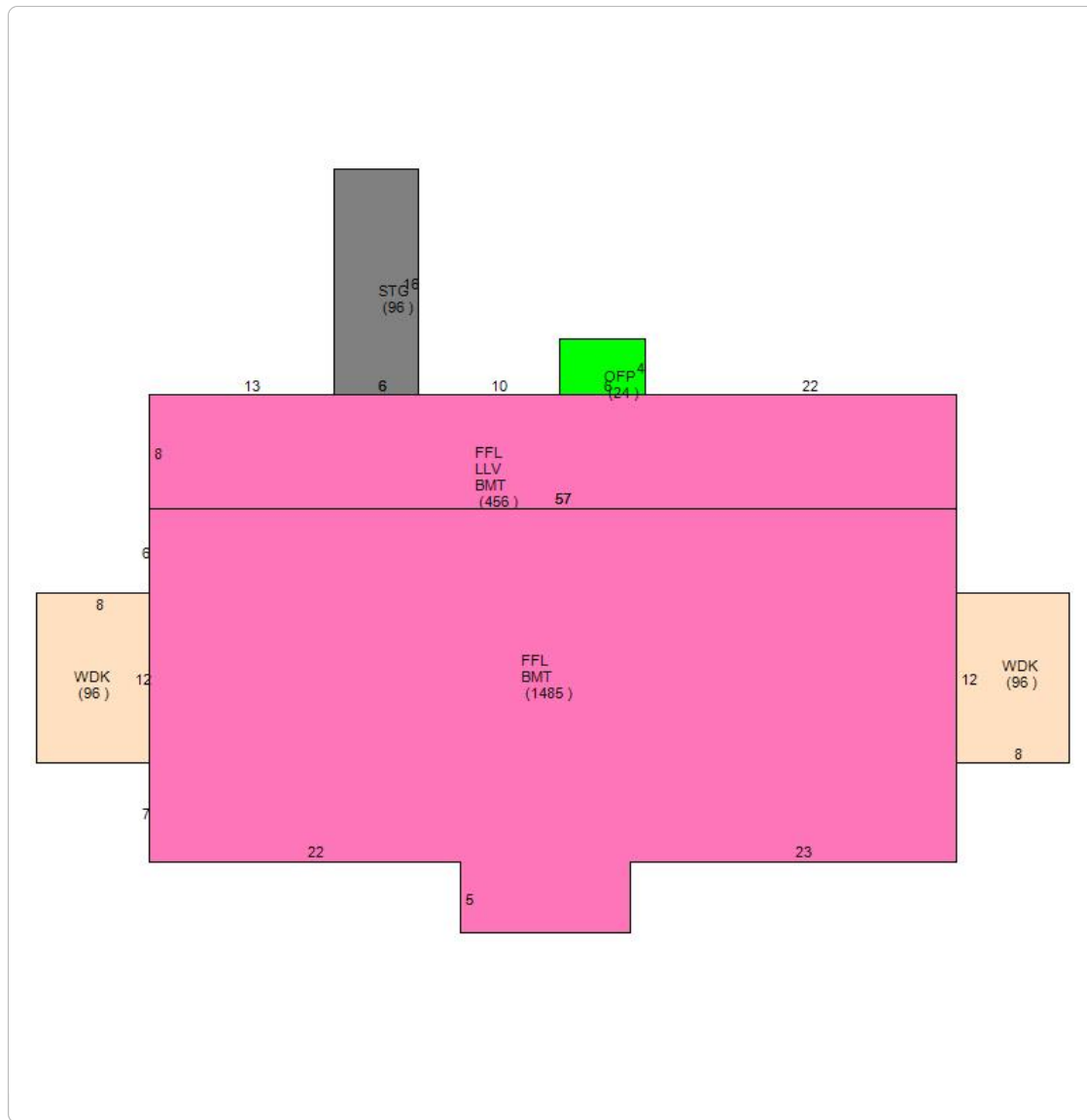
Sales

Sale Date	Sale Price	Instrument	Instrument Number	Deed Book	Deed Page	Vacant or Improved	Grantor	Grantee
8/8/2012	\$130,000	WARRANTY		3907	0269	Improved	LIN, SONG & DU, MIN	

Photos



Sketches



Map



No data available for the following modules: Commercial Buildings.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

March 9, 2022

Via First Class Mail and E-Mail (songlinusa@gmail.com)
Song Lin & Min Du
3 Centre St
Dover, MA 02030

Re: 101 Maple Street (Tax Map 59-78)

Dear property owners:

It has come to the City's attention that the building at the above-referenced property has been converted to a multi-family dwelling without obtaining a Zoning Permit. The legal use of the property is as a two-family dwelling pursuant to a Variance approved by the Lebanon Zoning Board of Adjustment in 2012 (ZB2012VAR-14). A copy of the Board's Notice of Decision is attached for reference. Based on a review of the City's assessing records, it appears a third dwelling unit was added to the building in or about 2014. The addition of a third dwelling unit converted the use of the building from a two-family dwelling to a multi-family dwelling.

You may not be aware, but multi-family dwellings are not allowed in the R-3 District, which is the zoning district in which your property is situated. See the City of Lebanon Zoning Ordinance ("ZO") Section 310.2 (R-3 District Table of Uses) (a copy of which is attached for reference). **The conversion of the building at the subject property to a multi-family dwelling, therefore, constitutes a violation of ZO Section 310.2 and ZO Section 901.1** (requiring a Zoning Permit for alterations to buildings and changes of use).

Please contact me within ten (10) days of your receipt of this letter to discuss your plans to bring the property into compliance with the Zoning Ordinance. I can be reached by phone at (603) 448-1524 or by e-mail at tim.corwin@lebanonnh.gov.

Thank you for your prompt attention to this matter.

Sincerely,

Tim Corwin, AICP
Senior Planner

Enclosures

cc (via e-mail): David Brooks, Director of Planning and Development
File



Lebanon Fire Department

12 South Park Street

Lebanon, NH 03766

603-448-8810

LebanonNH.gov/Fire



Lebanon Violation Notice - w/Notes

Wednesday March 16, 2022

Song Lin

3 Centre St

Danvers, MA 02030

Property Inspected: 101 MAPLE ST West Lebanon

An inspection of your facility on Friday March 11, 2022 was completed to determine compliance with the New Hampshire State Fire Code adopted pursuant to NH RSA 153:5 and applicable state and local laws. The referenced codes used in this report are available for your review at the Lebanon Fire Department, 12 South Park St., Lebanon, NH 03766.

As a result of this inspection, the below listed code violations were discovered. Please note that there may be additional violations at the property that were not discovered during this inspection.

ORDER TO COMPLY: Since these conditions are contrary to law, you must submit a corrective action plan and correct the violations within 30 days of receipt of this notice. An inspection to determine compliance with this Notice will be conducted on:

Monday March 21, 2022 at 09:00:00

If you wish to reschedule to a more convenient time, please contact the Lebanon Fire Department as soon as possible.

Please note that the correction of certain violations may require permits and approvals from the City of Lebanon Building Department prior to any construction activities occurring.

Violation Code	Code	Count
15NFPA101:30.3.5.1 Extinguishment Requirements	2015 NFPA 101	1
All buildings shall be protected throughout by an approved, supervised automatic sprinkler system installed in accordance with 30.3.5.2.		
March 11, 2022- During inspection of rear apartment it was found that there is no sprinkler system. While also inspecting the apartment building at 101 Maple Street we were advised by other tenants that this is a four unit apartment building.		
15NFPA101:30.3.4.6.2 Carbon Monoxide Alarms	2015 NFPA 101	1
Where required by 30.3.4.6.1, carbon monoxide alarms or carbon monoxide detectors shall be installed in the following locations:		
(1) Outside of each separate dwelling unit sleeping area in the immediate vicinity of the sleeping rooms		
(2) On every occupiable level of a dwelling unit		
March 11, 2022 while inspecting rear apartment closest to entrance to basement unit found that there is no Carbon Monoxide detector in apartment or outside sleeping area.		
15NFPA1:11.1.8 Covers	2015 NFPA 1	1
Covers. All panelboard and switchboards, pull boxes, junction boxes, switches, receptacles, and conduit bodies shall be provided with covers compatible with the box or conduit body construction and suitable for the conditions of use.		



Lebanon Fire Department

12 South Park Street

Lebanon, NH 03766

603-448-8810

LebanonNH.gov/Fire



Lebanon Violation Notice - w/Notes

March 11, 2022 There was an electrical box in kitchen that had exposed electrical box, which would require a electrical cover.

Inspection Notes:

On March 11, 2022 Lebanon Fire Assistant Fire Chief/Inspector Jeffrey S. Libbey, City of Lebanon Building Inspector Calvin Hunnewell and City of Lebanon Electrical Inspector Winston Spencer met at 101 Maple Street, West Lebanon, New Hampshire 03784 at 0900 AM. We met at the property for the purpose of performing a fire code compliance inspection at 101 Maple Street. Mr. Lin had advised the codes department that the tenant of the rear basement apartment closest to the basement entrance would be able to provide access into each apartment. The tenant of the rear basement apartment was not able to provide access to all apartment but just his rear apartment. Upon entering the rear basement apartment it was noted that there was an electrical junction box that had exposed electrical wiring. Upon entering tenants bedroom noted there was a smoke detector above door to bedroom, however there was no Carbon Monoxide detector. Upon continuing the inspection it was noted that there were a total of four apartments and in the rear basement apartment there was no sprinkler present. After the three inspector inspected the rear basement apartment closest to entrance to basement a discussion was had to re-email landlord to advise him we did not have access to all apartment units.

The reason for this inspection was due to a phone call that was received on February 24, 2022 by Irving employees who were performing a appliance assessment for a change in contract for propane. The Irving representative reported that they had the smell of exhaust in the basement and the Irving employee metered the basement and found 25 PPM of Carbon Monoxide in basement area. The Irving representative noted that the boiler had been red tagged by JERMS on October 2021. Lebanon Station 2 was dispatched to 101 Maple Street with Lt. Zach Bryan and Zach Cleveland who upon arrival metered the basement area and found low levels of LEL and 20-25 PPM of Carbon Monoxide and they shut down the boiler. Lt. Byran attempted to contact the landlord Song Lin and left a voice mail. Door Knockers were left on all tenant door to contact Lebanon Fire Station 1.

Assistant Chief Libbey also attempted to contact Mr. Song Lin and also left a voice mail and Leanne Cushman of the Codes Department email Mr. Song Lin to advise him of the boiler issue and to contact Assistant Chief Libbey.

At 1600 hrs on February 24, 2022 Mr. Song Lin contacted Assistant Chief Libbey via phone and Assistant Chief Libbey advised Mr. Lin of the boiler issue with Carbon Monoxide present in the structure. Mr. Lin was asked about the red tagged boiler and he explained that he did not believe JERMS who had red tagged the boiler that there was Carbon Monoxide present. Mr. Lin advised to Assistant Chief Libbey that he had turned the boiler back on after it had been red tagged. Mr. Lin was advised to not turn the boiler back on until the boiler was repaired or replaced.

Assistant Chief Libbey received a phone call at 1930 on February 24, 2022 and Mr. Lin asked Assistant Chief Libbey if he could turn the boiler back on for 3 hours and shut it back down again. Assistant Chief Libbey advised Mr. Lin that he could not turn it back until it was repaired or replaced.

Assistant Chief Libbey received an email and a phone call on Saturday, February 26, 2022 at approximately 1500 hrs that an inspection was needed at 101 Maple Street for a newly installed boiler. Assistant Chief went to 101 Maple street on February 26, 2022 at 1530 to inspect boiler and ME Pearse was able to turn on boiler so tenants of building



Lebanon Fire Department

12 South Park Street

Lebanon, NH 03766

603-448-8810

LebanonNH.gov/Fire



Lebanon Violation Notice - w/Notes

could have heat.

Assistant Chief Libbey also returned to 101 Maple Street on February 28, 2022 to meet ME Pearse who installed boiler to take pictures of boiler.

If you feel aggrieved by this interpretation of the State Fire Code or City of Lebanon Fire Prevention Ordinance, you have the ability to appeal or request a waiver. Please contact the Bureau of Fire and Life Safety to determine which process will need to be used.

Inspector

Libbey, Jeffrey

X

Occupant/Owner

Song Lin

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: Song Lin & min Du TEL.#: 603 359 2998

MAILING ADDRESS: 3 centre st, Dover MA 02030

E-MAIL ADDRESS: SONGLINUSA@GMAIL.COM

CO-APPLICANT, AGENT, OR LESSEE:

NAME: _____ TEL.#: _____

MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 59 LOT#: 78 PLOT #: _____ ZONE: R-3

STREET ADDRESS OF PROJECT: 101 Maple st

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

SCOPE OF PROJECT:

The owner did not create a 3rd unit. The house is what it was 9 years ago when it was converted to a 2-unit dwelling.

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: 4/24/2022

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 #
5-2-22	59/78	ZB2022-			

13-AAA

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR
AN APPEAL OF AN ADMINISTRATIVE DECISION**

A cover application, abutters list, filing fee and ten copies of the site plan (if applicable) must accompany this support statement.

City of Lebanon Zoning Ordinance:

APPEALS:

801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6.

802.4 Decisions of the Board.

In exercising its powers the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

- A. Majority Vote: The concurring vote of 3 members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant or any matter on which it is required to pass.

I am appealing the decision of: Tim Corwin, Sr. Planner,
(Name/Title of Official)
made on this date: March 9, 2020.

(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: The owner created a 3rd unit in the existing
2-unit building, in R3 zone.

In Relation to Article(s): _____, Section(s): _____ of the City of Lebanon Zoning Ordinance.

Specification of Building Project

Two-family Dwelling Remodeling at 101 Maple St, West Lebanon NH

General description:

A two-family dwelling will be made on the first floor.

The project should be completed within four weeks.

The completed dwellings should have all elements and functions as a regular apartment.

The completed dwelling should be in move-in condition.

The completed dwelling must comply with International Residential Codes 2006 and Lebanon city building codes.

Framing:

An apartment should have a kitchen, a living room, bathroom(s), and bedrooms.

A kitchen should have electric range, cabinet, countertop and sink.

A bathroom should have toilet and vanity and tub with shower head or shower stall.

A bedroom should have at least one egress window and at least one 6 foot long closet.

Living rooms, bedrooms, dens and hall way should be carpet; kitchen, bathroom and hall way should be vinyl sheet flooring.

Framing two windows (30"x60") and one door 36"x 80"), block half a window.

Build a deck 5'X8' with stairs.

Separation walls of the two apartments should provide more fire resistance and noise attenuation than regular interior walls.

Locks and nobs should be installed.

Plumbing

Two existing bathroom should be altered and a bathtub with shower head should be installed.

A small bathroom with shower should be installed in the master bedroom of one apartment.

A small bathroom with shower should be installed in the basement

Water supply and drainage should be installed in the kitchen.

Electricity and lighting

Apt A

Apt B

Two-family Project Plan
101 Maple Street, West
Lebanon, NH 03784

- Switch
- 3-way switch
- Duplex receptacle
- GFCI receptacle
- 220v receptacle
- Smoke and CO detector
- Light fixture
- Light/fan combo

**Agenda
Zoning Board of Adjustment
June 6, 2022**

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

**Irving Oil Marketing, Inc.
(applicant),
Rancho Lebanon, LLC &
Irving Oil Properties NH Corp
(property owners),
200 & 206 South Main Street
(Tax Map 114, Lot 5 &
Tax Map 115, Lot 1),
zoned GC
ZB2022-14-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

June 6, 2022 Meeting

Staff Memorandum – ZB2021-18-VAR

APPLICATION INFORMATION

Agenda Item:

3.C

Application Type:

Variance to allow proposed structure within side setback; Variance to allow a freestanding sign to exceed permitted size and height; and Variance to allow a second freestanding sign and within 150 ft. of other freestanding sign

Location:

206 South Main Street (Tax Map 115, Lot 1)

Applicant/Property Owner:

Irving Oil Marketing, Inc. /
Cobalt Properties NH Corp

Zoning District:

GC

Other Approvals Required:

Site Plan Approval
Building Permit

Attachments:

- Application (21 pages total)

HEARING NOTICE

Irving Oil Marketing, Inc. (applicant), Rancho Lebanon, LLC & Cobalt Properties NH Corp (property owners), 200 & 206 South Main Street (Tax Map 114, Lot 5 & Tax Map 115, Lot 1), zoned GC: Applicant requests Variances from the following sections of the Zoning Ordinance in connection with the proposed construction of a retail motor vehicle service station and convenience store: (i) Section 305.3 to allow a retail service station canopy to be located +/-9 ft. from the side property line where 20 ft. is the minimum required, (ii) Section 608.8 to permit an existing non-conforming freestanding sign to remain on the property, and in the alternative Section 608.4.A.4.a to allow a freestanding sign to exceed the maximum permitted height and size, and (iii) Section 608.4.A.4 to allow two (2) freestanding signs on the property where only one (1) is permitted and to allow the freestanding signs to be located +/-80 ft. apart where a minimum of 150 ft. separation is required. ZB2022-14-VAR

BACKGROUND

The applicant proposes to redevelop 206 South Main Street and the front portion of 200 South Main Street with an Irving convenience store and a vehicle refueling facility (i.e. as described by the applicant, a “retail service station canopy”). The convenience store will be located at 200 South Main Street in the location approximately marked by the yellow star in Figure 1 below (note that 200 South Main Street is also improved with a multi-tenant shopping plaza and a detached restaurant building). Whereas the “retail service station canopy” will be located at 206 South Main Street (206 South Main Street is marked by a red star in Figure 1).

Although both 200 South Main Street and 206 South Main Street were identified in the hearing notice, it is only the latter property (206 South Main Street) that is the subject of this application.

PROPOSAL

The applicant requests a Variance from Section 305.3 to allow the retail service station canopy to be located +/-9 ft. from the side property line shared with 200 South Main Street, where 20 ft. is the minimum required.

A large structure – which formerly supported a freestanding a sign – is located at the subject property (circled in blue in Figure 1). Applicant proposes to use the structure for a freestanding sign to advertise the retail service station. The structure exceeds the maximum permitted freestanding sign height of 25 ft., and the proposed sign is greater than

130 sq. ft. in size, thereby exceeding the maximum permitted freestanding sign area of 64 sq. ft. To allow use of the existing freestanding sign structure, the applicant requests a Variance from Section 608.8 to permit an existing non-conforming freestanding sign to remain on the property. However, to allow the structure to be utilized as a freestanding sign, it is staff's view that a Variance from Section 608.4.A.4.a (rather than Section 608.8) is required to allow the proposed freestanding sign to exceed the maximum permitted height and size (in other words, there is no existing freestanding sign – only a structure that formerly supported a freestanding sign; consequently, Section 608.8 is inapplicable).

Finally, the applicant proposes to install a second freestanding sign on the property and, therefore, requests a Variance from Section 608.4.A.4 to (a) allow two (2) freestanding signs on the property where only one (1) is permitted and (b) allow the freestanding signs to be located +/-80 ft. apart where a minimum of 150 ft. separation is required.

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



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

ZONING ORDINANCE REQUIREMENTS

In the GC District, structures must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See Section 305.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the retail service station canopy which will encroach approximately nine (9) ft. into the minimum required 20 ft. side yard.

With respect to the Variance requests related to the proposed freestanding signs, the relevant portions of Section 608 of the Zoning Ordinance are set forth below for quick reference:

608.4 Non-Residential Uses.

- A. Non-Residential Uses in Commercial and Industrial Districts. Signage for non-residential uses in the **commercial** and **industrial districts** shall be subject to the following requirements:

[...]

4. Freestanding Signs. A **lot** in the **commercial** and **industrial districts** may display one **freestanding sign** subject to the following regulations:

- a. Sign Area and Height Regulations.

- i. **Freestanding signs** must comply with the dimensions set forth in the following table:

	Zoning District					
<u>Maximum</u>	<u>GC & GC-1</u>	<u>CB</u>	<u>LD</u>	<u>IND-L</u>	<u>IND-RA</u>	<u>IND-H</u>
height	25 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.
sign area	64 sq. ft.	32 sq. ft.	24 sq. ft.	64 sq. ft.	64 sq. ft.	64 sq. ft.

[...]

- b. Design Standards.

- i. [...]

- ii. Spacing. **Freestanding signs** must be spaced at least 150 feet apart on **public streets** with posted travel speeds under 40 miles per hour, and at least 300 feet apart on **public streets** with posted travel speeds of 40 miles per hour and over.

[...]

608.8 Non-Conforming Signs.

Except as set forth in Section 608.8.C, any **sign** located within the City as of August 15, 2018 which does not conform with this Ordinance, is a "legal non-conforming sign" if the **sign** was in compliance with applicable laws at the time it was installed. Notwithstanding, legal non-conforming **signs** are subject to the requirements of Section 608.2.D ("Clear Vision & Movement") and Section 608.2.E ("Maintenance"); and the illumination aspects of the existing sign shall not

be considered lawfully nonconforming, and any new or replacement sign structures must comply with the current illumination requirements of Section 608.4.A.6 of this Section.

- A. Loss of Legal Non-Conforming Status. A legal non-conforming **sign** shall lose its legal non-conforming status if it is altered, reconstructed, replaced, or expanded. A mere change in copy is not an alteration or replacement for purposes of this Section.
- B. Maintenance. Maintenance of legal non-conforming **signs** as required by Section 608.2.E includes repainting, cleaning, and replacing or repairing worn or damaged parts of a **sign** in order to return it to its original state. Such maintenance shall not result in a loss of non-conforming status under Section 608.8.A.
- C. Removal. Removal of a legal non-conforming **sign** by the property owner and/or **sign** owner is required when:
 - 1. The **sign** has lost legal non-conforming status per Section 608.8.A; or
 - 2. The **sign**, or a substantial part of the **sign**, is blown down, destroyed, or for any reason or by any means taken down. As used in this subsection, "substantial" means 50 percent or more of the entire street graphic structure; or
 - 3. The use of the **sign** or the **lot** on which it is located, has ceased, become vacant, or been unoccupied for a period of 180 consecutive days or more.

To obtain the requested Variances, 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 May 17, 2022 (see attached).

cc: Cobalt Properties NH Corp (via e-mail)
Irving Oil Marketing, Inc. (via e-mail)
Maria Dolder, Esq. (via e-mail)

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: Irving Oil Properties NH Corp <i>Cobalt Properties NH Corp</i> / Rancho Lebanon, LLC TEL.#: 506-202-7378/ 858-450-6886	
MAILING ADDRESS: 10 King Square South, Saint John, New Brunswick E2L 0G3 Canada/ 476 Broadway, Chula Vista, CA 91910	
E-MAIL ADDRESS:	
CO-APPLICANT, AGENT, OR LESSEE:	
NAME: Irving Oil Marketing, Inc. TEL.#: 506-343-1996	
MAILING ADDRESS: 190 Commerce Way, Portsmouth, NH 03801	
E-MAIL ADDRESS: Jennifer.Daigle@irvingoil.com	
PROJECT LOCATION: (Tax Maps 115-1 and 114-5 <i>114-5 + 115-1</i>)	
TAX MAP #: 115/114 <i>114/115</i> LOT#: 115 <i>5/1</i> PLOT #:	ZONE: GC
STREET ADDRESS OF PROJECT: 200 & 206 South Main Street	
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO	
FLOOD PLAIN ☒ YES NO	
SCOPE OF PROJECT:	
To establish a retail motor vehicle service station and convenience store on the properties located at 200 & 206 South Main Street.	
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: retail motor vehicle service station and convenience store	
SIGNATURE BLOCK:	
<i>Maria Dolder, Esquire</i> PROPERTY OWNER DATE: May 17, 2022 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. <i>J Daigle</i> PROPERTY OWNER DATE: 5/17/2022	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
5-17-22	115/1 & 114/5	ZB2022-14-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 ½ in. x 11in.) must accompany this support statement.

305

I (we) hereby request a variance from the terms of Article(s) Please see attached narrative.

Section(s) 305.3 of the Lebanon Zoning Ordinance.

608.8 608.4

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;
Please see attached narrative.

2. That the variance will observe the spirit of the Ordinance.
Please see attached narrative.

3. That by the granting of the variance, substantial justice will be done;
Please see attached narrative.

4. That the variance, if authorized, will not diminish the values of surrounding properties
Please see attached narrative. _____ 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
Please see attached narrative.

_____; and

(ii) The proposed use is a reasonable one.

Please see attached narrative.

(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.

Please see attached narrative.

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)."

Narrative in Support of Variance Application
Irving Oil Marketing, Inc.
200 & 206 S. Main Street

The Proposal And Background

The property is located within the GC- General Commercial Zoning District, where the proposed use, a retail motor vehicle service station and convenience store, is permitted by right. In fact, the property located at 206 S. Main Street previously housed a retail motor vehicle service station. In or around 2008, the NH DOT took approximately 1,649 square feet of land along the front yard of the property at 206 S. Main Street in order to widen Route 12A. In performing the roadwork in or about 2010, the NH DOT not only took a portion of the Applicant's property, but it also constructed a raised median in front of the site which hindered access to and from the property. As a result, the Applicant needed to close the site and removed the canopy, tanks and pipes. Since that time, the Applicant has been actively pursuing a reasonable plan to re-develop the site in its smaller configuration and taking the raised median strip into account.

Throughout the years, the Applicant has been in contact with the previous owners of the abutting lot to obtain the right to utilize a portion of its property as part of the re-development in order to provide for a proper layout and to minimize the zoning relief that would be needed.

Approximately two and a half years ago, the then-owner (DIV South Main Street, LLC) agreed to lease a 27,897 sq ft portion of the abutting lot to the Applicant, and the parties then spent those two and a half years negotiating the terms. On or about December 29, 2021, the parties entered into a formal lease agreement, which has since been assigned to the current owner, Rancho Lebanon, LLC. As a result, the Applicant is now able to re-develop the site in a reasonable fashion.

Although the Applicant removed the canopy, tanks, pipes and building from the property, the freestanding sign that was constructed in 1988 has always remained on the site. The Applicant has continued to maintain the sign so that it remains structurally sound and has always expressed its intent to use the existing sign in any re-development of the site. In fact, in prior discussions

with the City of Lebanon about the redevelopment of the property in 2017, the Applicant clearly stated its express intention of continuing to use the sign and even had it located on the draft site plan. It is important to note that the Applicant never intended to discontinue or abandon the use of the sign, nor the site itself. The closure of the site in the first instance was a direct result of the DOT taking and widening of the roadway. For these reasons, it is our position that the freestanding sign is grandfathered and can be continued to be used. Without waiving our position that the freestanding sign is grandfathered and expressly reserving the right to argue this in further proceedings, we have requested a variance to continue using the existing sign in case this Board believes one is necessary.

As part of the operation of a service station, the Applicant is required by law to advertise its gas prices to its consumers. Accordingly, the Applicant needs to construct a second freestanding sign on the property in order to comply with this requirement and to provide the consumers with the amount being charged for gas at the station. Given that the City does not permit non-static illuminated signs, the Applicant does not have any other means of advertising the gas prices and needs to construct a second freestanding sign that can be changed manually. Under the terms of the lease, the Applicant is not permitted to construct any signs on the property located at 200 S. Main Street, therefore, the sign shall be located within 150 feet of the existing Target sign. Even with the requested relief, the sign will comply with the height and dimensional requirements of the Ordinance.

Finally, since the Applicant owns 206 S. Main Street and is leasing 200 S. Main Street, there is a lot line that bisects the project, which causes the imposition of an internal side yard setback within the project. The Applicant is able to meet this setback for the actual structures on the property, however, the overhang of the canopy extends 11 feet into the 20 foot setback and therefore, a variance is required. It is important to note that even though the property consists of two separate lots, the project itself is being proposed as one development.

The area around the property is commercial in nature and this development will be consistent with the established uses.

Relief Requested

A Variance to Section 305.3, Table of Area, Dimension and Coverage to permit the construction of a retail service station canopy with a side yard setback of 9 feet, where a 20 foot side setback is required.

A Variance to Section 608.8, Non-Conforming Signs to permit an existing non-conforming freestanding sign to remain on the property.

Two Variances to Section 608.4(A)(4), Freestanding Signs to (1) permit a second freestanding sign on the property where one freestanding sign is permitted and (2) to allow the freestanding sign to be located approximately 80 feet from an existing freestanding sign (the Target sign), where it is required to be located 150 feet away.

The arguments that favor granting the requested variance are largely identical, but where noted, additional arguments are advanced. This narrative is being submitted with the application in order to provide the reasoning and support for the variance request.

Facts Supporting The Variance Request

1. That the variance, if authorized, will not be contrary to the public interest: To be contrary to the public interest, the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. To ascertain whether granting the variance would violate basic zoning objectives you must examine whether it would alter the essential characteristics of the neighborhood or would threaten the public health, safety or welfare of the public. The Applicant's requested variances do neither. As stated above, the use itself is not only permitted by right within the GC Zoning District, but it was previously established on a portion of the property. The general area surrounding the property is all commercial in nature, along a busy street. In fact, there is another service station located across the street from this site that has similar features to those that are being requested in the variances by the Applicant.

In terms of the existing freestanding sign, it is important to highlight the fact that it was established on the property in 1988 and has remained in its current position since that time. The Applicant has never taken any steps or actions to abandon the sign or to remove it from the property. Given that it already exists, combined with the fact that the Sunoco station across the street has a similar sign on its property, it is clear that allowing the sign to remain on the property will not alter the essential characteristics of the neighborhood nor would it threaten the public health, safety or welfare of the public. In fact, if either of those were true, then the City of Lebanon would have taken action requiring the Applicant to remove the sign from the property. Such action has never occurred.

In terms of the second freestanding sign on the property, as stated above, the Applicant is required by law to advertise its gas prices to its consumers. Accordingly, the Applicant needs to construct a second freestanding sign on the property in order to comply with this requirement and to provide the consumers with the amount being charged for gas at the station. Given that the City does not permit non-static illuminated signs, the Applicant does not have any other means of advertising the gas prices and needs to construct a second freestanding sign that can be changed manually. Similarly, under the terms of the lease, the Applicant is not permitted to construct any signs on the property located at 200 S. Main Street. As a result, the sign shall be located within 150 feet of the existing Target sign. Even with the requested relief, the sign will not only comply with the height and dimensional requirements of the Ordinance, but the Applicant has made a concerted effort to reduce the size of the additional freestanding sign. Once again, this sign will be similar in nature to the sign that exists on the Sunoco site.

Finally, since the project itself is being proposed as one development, the overhang of the canopy into the internal lot line that bisects the project will not be apparent to the public nor have any impact on the operation of the site. In fact, the canopy has been placed on the property in the most ideal location to provide for pedestrian access to the store and while allowing proper and safe circulation on the site.

Accordingly, the granting of the relief requested herein shall have no impact on public safety, health or general welfare of the public and will not be contrary to public interest. Instead, granting the variance will allow the property to be utilized in a reasonable manner, consistent with the intent of the Zoning Ordinance.

2. That the variance will observe the spirit of the Ordinance: Once again, the use itself is permitted by right under the Zoning Ordinance and was previously established on a portion of the property. The general area surrounding the property is commercial in nature, located along a busy corridor and consistent with this use.

In fact, the Zoning Ordinance itself does permit existing non-conforming freestanding signs to remain on the property so long as the sign was in compliance with applicable laws at the time it was installed and so long as the sign has not been abandoned. In this case, it is clear that the sign was in compliance when it was established on the property in 1988 and it has remained in its current position since that time. Even though the Applicant removed the canopy, tanks, pipes and building from the property, it has never taken any steps or actions to abandon the sign or to remove it from the property, nor has the City of Lebanon ever taken any action requiring the Applicant to remove the sign from the property. Given that the sign has existed without issue on the property since 1988 and the fact that the Sunoco station across the street has a similar sign on its property, it is clear that allowing the sign to remain on the property would not violate the spirit or intent of the Zoning Ordinance.

Similarly, the additional freestanding sign on the property will not create a conflict with the spirit and intent of the Ordinance given its location and purpose. As previously stated, the sign is necessary in order to advertise the Applicant's gas prices and will be similar in nature to the additional freestanding sign that exists on the Sunoco site. Given the location of the existing Target sign, the Applicant is not able to locate this sign on the property outside of the 150 foot requirement. The sign will comply with the height and dimensional requirements of the Ordinance and the Applicant has made a concerted

effort to reduce the size of the additional freestanding sign; therefore, its location shall not cause any conflict.

The purpose of setback requirements within a zoning Ordinance are to provide for spacing and proper buffers between adjoining properties. Given the unique circumstances of this development, neither of those purposes apply to this case. The property line in question is an internal lot line that bisects the property. Since the Applicant is utilizing both lots as part of one development, there is no rationale to require a buffer or setback within the project. Even with that said, it is not an actual structure that will impact the side yard setback, but is simply the overhang of the canopy. Accordingly, there is no conflict with the intent of the Ordinance nor any reasonable rationale for requiring a side yard setback from an internal boundary line.

3. That by the granting of the variance, substantial justice will be done: One of the guiding rules in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the Applicant clearly satisfies this requirement. As stated above several times, the use itself is not only permitted by right within the GC Zoning District, but it was previously established on a portion of the property and clearly fits in with the general commercial uses in the area, along the busy Route 12A corridor.

Given that the existing freestanding sign has remained in its current position since 1988, without any attempts nor requests to remove it from the property, there is no public gain to be accomplished by preventing the Applicant from simply putting a new façade on the existing sign. In fact, requiring the Applicant to remove the sign at this point in time, would be a significant loss to the Applicant. Such a loss is further exacerbated by the fact that the Sunoco station across the street has a similar sign on its property. Without any public gain that can be recognized, denial of this variance would be unreasonable.

Similarly, there is no public gain to be realized in preventing the Applicant from having an additional freestanding sign on the property in order to advertise its gas prices. Not

only will the sign comply with the height and dimensional requirements of the Ordinance, but the Applicant has made a concerted effort to reduce the size of the additional freestanding sign to simply provide what is needed in order to accomplish its goal. Once again, the proposed sign shall be similar in nature to the additional freestanding sign that exists on the Sunoco site. Given the location of the existing Target sign, the Applicant is not able to locate this sign on the property outside of the 150 foot requirement. As stated above, without any public gain that can be recognized, denial of this variance would be unreasonable.

Given that the property line in question is an internal lot line that bisects the property and that the Applicant is utilizing both lots as part of one development, there is no gain to the general public to require a buffer or setback within the project. Even with that said, it is not an actual structure that will impact the side yard setback, but is simply the overhang of the canopy. The Applicant has designed the site in order to provide for the most ideal pedestrian access to the retail store, while allowing for proper flow and circulation around the site. Once again, by granting the variance relief, substantial justice will be done since a denial would be a tremendous loss to the Applicant without any justified gain to the public.

Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used reasonably. As stated above, even with the requested relief, the difference between that required under the Zoning Ordinance and that being proposed is so minimal that it shall not create any adverse affect on the adjoining neighborhood. Since the proposed use will not adversely impact on nearby property owners, but alternatively, will allow the property to be used reasonably, in a manner similar to the other properties in the area, granting the relief requested will result in substantial justice.

4. That the variance, if authorized, will not diminish the values of surrounding properties: Once again, the use itself is not only permitted by right within the GC Zoning District, but it was previously established on a portion of the property and is located in a busy

commercial district along the Route 12A corridor. The property itself is in need of re-development and the proposal will be a significant improvement to the area and what exists on the lot today. Even with the variances requested, all of the improvements being proposed will increase the value of the property and the neighboring area. Given that the relief being requested shall not have any adverse impact to the neighborhood, as stated in detail throughout this narrative above, the variance relief would not diminish surrounding property values.

One freestanding sign already exists on the property and therefore, its continued use shall not have any impact on the surrounding property values. Similarly, given the location of the property and the adjoining, similar uses, the addition of a second freestanding sign will not adversely impact property values. Finally, since the setback from the internal property line will not be visible or even recognized, such a variance clearly does not impact property values in the area.

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 purposes of the Ordinance provision and the specific application of that provision to the property. This property is certainly unique in several ways. First of all, the property was impacted in or around 2008, when the NH DOT took approximately 1,649 square feet of land along the front yard of the property at 206 S. Main Street in order to widen Route 12A. In performing the roadwork in or about 2010, the NH DOT not only took a portion of the Applicant’s property, but it also constructed a raised median in front of the site which hindered access to and from the property. As a result, the Applicant needed to close the site and removed the canopy, tanks and pipes. Since that time, the Applicant has been actively pursuing a reasonable plan to re-develop the site in its smaller configuration and taking the raised median strip into account. Throughout the years, the Applicant has been in contact with the previous owners of the abutting lot to obtain the right to utilize a portion of its property as part of the re-development in order to provide for a proper layout and to

minimize the zoning relief that would be needed. Approximately two and a half years ago, the then-owner (DIV South Main Street, LLC) agreed to lease a 27,897 sq ft portion of the abutting lot to the Applicant, and the parties then spent those two and a half years negotiating the terms. On or about December 29, 2021, the parties entered into a formal lease agreement, which has since been assigned to the current owner, Rancho Lebanon, LLC. As a result, the Applicant is now able to re-develop the site in a reasonable fashion.

One of the unique characteristics of this property is the existence of the freestanding sign that was established in 1988. The freestanding sign has remained in its current position since 1988, without any attempts nor requests to remove it from the property. At this point in time, the Applicant is not requesting to change or move the sign, but is simply planning to put a new façade on the existing sign. In fact, requiring the Applicant to remove the sign at this point in time, would be a significant hardship imposed upon the Applicant without any reasonable fair and substantial relationship between the general purposes of the Ordinance provision and the specific application of that provision to this property.

The same can be said of the request to construct an additional freestanding sign on the property. Not only will the sign comply with the height and dimensional requirements of the Ordinance, but the Applicant has made a concerted effort to reduce the size of the additional freestanding sign to simply provide what is needed. Given the location of the existing Target sign, the Applicant is not able to locate this sign on the property outside of the 150 foot requirement. For these reasons and all of the additional reasons stated herein, there is no reasonable fair and substantial relationship between the general purposes of the Ordinance provision and the specific application of that provision to this property.

Once again, given that the property line in question is an internal lot line that bisects the property and that the Applicant is utilizing both lots as part of one development, there is no reasonable rationale to require a setback within the project. This is further demonstrated by the fact that it is not an actual structure that will impact the side yard setback, but is simply the overhang of the canopy. The Applicant has designed the site in order to provide

for the most ideal pedestrian access to the retail store, while allowing for proper flow and circulation around the site.

It is important to once again note that even with the variance relief being requested, the proposed use will not alter the essential characteristics of the neighborhood nor the property. Accordingly, there is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on this property.

(ii) The proposed use is a reasonable one. As stated above, the use of the property is permitted by right under the Zoning Ordinance and in fact, was previously established on a portion of the property. The minimum variance relief being requested in connection with the re-development of the site is not only reasonable, but will be consistent in nature to the general area and neighborhood.

(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 conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. As stated above, this property is certainly unique in several ways. First of all, the property was impacted in or around 2008, when the NH DOT took approximately 1,649 square feet of land along the front yard of the property at 206 S. Main Street in order to widen Route 12A. In performing the roadwork in or about 2010, the NH DOT not only took a portion of the Applicant's property, but it also constructed a raised median in front of the site which hindered access to and from the property. As a result, the Applicant needed to close the site and removed the canopy, tanks and pipes. Since that time, the Applicant has been actively pursuing a reasonable plan to re-develop the site in its smaller configuration and taking the raised median strip into account. Throughout the years, the Applicant has been in contact with the previous owners of the abutting lot to obtain the right to utilize a portion of its property as part of the re-development in order to provide for a proper layout and to minimize the zoning relief that would be needed. Approximately two and a half years ago, the then-owner (DIV South Main Street, LLC) agreed to lease a

27,897 sq ft portion of the abutting lot to the Applicant, and the parties then spent those two and a half years negotiating the terms. On or about December 29, 2021, the parties entered into a formal lease agreement, which has since been assigned to the current owner, Rancho Lebanon, LLC. As a result, the Applicant is now able to re-develop the site in a reasonable fashion. It is further unique in that there is a freestanding sign that was established in 1988, which has remained in its current position since that time, without any attempts nor requests to remove it from the property. At this point in time, the Applicant is not requesting to change or move the sign, but is simply planning to put a new façade on the existing sign. In fact, requiring the Applicant to remove the sign at this point in time, would be a significant hardship imposed upon the Applicant without any reasonable fair and substantial relationship between the general purposes of the Ordinance provision and the specific application of that provision to this property.

The same can be said of the request to construct an additional freestanding sign on the property. Not only will the sign comply with the height and dimensional requirements of the Ordinance, but the Applicant has made a concerted effort to reduce the size of the additional freestanding sign to simply provide what is needed in order to advertise the gas prices. Given the location of the existing Target sign, the Applicant is not able to locate this sign on the property outside of the 150 foot requirement. For these reasons and all of the additional reasons stated herein, there is no reasonable fair and substantial relationship between the general purposes of the Ordinance provision and the specific application of that provision to this property.

Once again, given that the property line in question is an internal lot line that bisects the property and that the Applicant is utilizing both lots as part of one development, there is no reasonable rationale to require a setback within the project. This is further demonstrated by the fact that it is not an actual structure that will impact the side yard setback, but is simply the overhang of the canopy. The Applicant has designed the site in order to provide for the most ideal pedestrian access to the retail store, while allowing for proper flow and circulation around the site.

With all of this said, the relief being requested by the Applicant is the minimum relief required in order to allow the Applicant to reasonably re-develop the property. It is also important to once again note that even with the proposal, the project will not alter the essential characteristics of the neighborhood or the property. Accordingly, the property cannot be reasonably used in strict conformance with the ordinance, and the variance relief is necessary to enable a reasonable use of it.



City of Lebanon
51 N Park Street
Lebanon, NH 03766

RE: Retail Motor Fuel Outlet Redevelopment
200-206 S Main Street
Lebanon, NH

May 9, 2022

To whom it may concern:

As landowner of the property located at **206 S. Main Street** (Map 115 Lot 1) in Lebanon, NH (the "Property"), we hereby advise that Hebert & Dolder PLLC and Greenman-Pedersen, Inc. (GPI) have been hired to represent the Property during the permitting process for the re-development of a retail motor fuel outlet (the "Development"). In addition, we authorize Irving Oil Marketing, Inc. to apply for and be issued any and all permits required for the Development.

We trust this letter is satisfactory for your use in the permitting process for the Development. Should you have any questions or require any additional information, please do not hesitate to contact Maria Dolder, Esquire, of Hebert & Dolder, PLLC at (603) 707-0380, Nicole Duquette, PE of GPI at (603) 374-7906, Jennifer Daigle, P.Eng. of Irving Oil Marketing, Inc. at (506) 343-1996, or Beth Peddle of Irving Oil Properties NH Corp at (506) 202-7378.

Yours very truly,

A handwritten signature in black ink that reads "Beth Peddle".

Beth Peddle
Assistant Treasurer
Irving Oil Properties NH Corp
10 King Square South
Saint John, New Brunswick E2L 0G3 Canada

IRVING OIL

10 King Square South • Saint John, NB E2L 0G3 • irvingoil.com

City of Lebanon
51 N Park Street
Lebanon, NH 03766

RE: Retail Motor Fuel Outlet Redevelopment
200-206 S Main Street
Lebanon, NH

May 11, 2022

To whom it may concern:

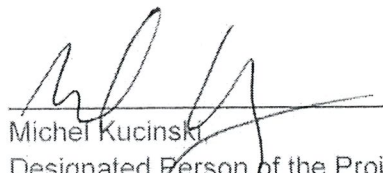
As landowner of the property located at **200 S. Main Street** (Map 114 Lot 5) in Lebanon, NH (the "Property"), we hereby advise that our Tenant, Irving Oil Marketing, Inc., is authorized to apply for and be issued any and all permits required for the re-development of a retail motor fuel outlet (the "Development").

In addition, we authorize Irving Oil Marketing Inc.'s agents Hebert & Dolder PLLC and Greenman Pederson Inc. to represent the Property during permitting.

We trust this letter is satisfactory for your use in the permitting process for the Development. Should you have any questions or require any additional information, please do not hesitate to contact the property manager, Michael N. McNally with Pacific Commercial Management, Inc., at (858) 450-6886.

Yours very truly,

Rancho Lebanon, LLC



Michel Kucinski
Designated Person of the Project Manager of Manager,
Mich2 HF Manager, LLC

476 Broadway,
Chula Vista, CA 91910

DOMESTIC
BUSINESS CORPORATION

STATE OF MAINE

ARTICLES OF AMENDMENT

Cobalt Properties NH Corp.

(Name of Corporation)

File No. 20090468 D Pages 2
Fee Paid \$ 50
DCN 2151983600025 LNME
-----FILED-----
07/17/2015


Deputy Secretary of State

A True Copy When Attested By Signature

Deputy Secretary of State

Pursuant to 13-C MRSA §1006, the undersigned corporation executes and delivers the following Articles of Amendment:

FIRST: The text of the amendment or the information required by 13-C MRSA §121.10.E as set forth in Exhibit A
attached, was adopted on (date) July 13, 2015.

The amendment was duly approved as follows: ("X" one box only.)

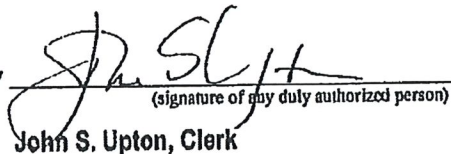
- ☐ by the incorporators – shareholder approval was not required OR
☐ by the board of directors – shareholder approval was not required OR
☒ by the shareholders in the manner required by this Act and by the articles of incorporation.

SECOND: If the amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for
implementing the amendment, if not contained in the amendment itself, are set forth in Exhibit ____ or as follows:

THIRD: The effective date of the articles of amendment (if other than the date of filing of the articles of amendment) is
July 13, 2015.

DATED July 13, 2015

*By


(signature of any duly authorized person)

John S. Upton, Clerk

(type or print name and capacity)

*This document MUST be signed by any duly authorized officer OR the clerk. (13-C MRSA §121.5)

Please remit your payment made payable to the Maine Secretary of State.

SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE,
101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101

FORM NO. MBCA-9 (1 of 1) Rev. 8/1/2004

TEL. (207) 624-7752

**EXHIBIT A
TO
ARTICLES OF AMENDMENT
OF
COBALT PROPERTIES NH CORP.**

1. The corporation's articles of incorporation are hereby amended to change the name of the corporation to:

Irving Oil Properties NH Corp.

[END OF DOCUMENT]

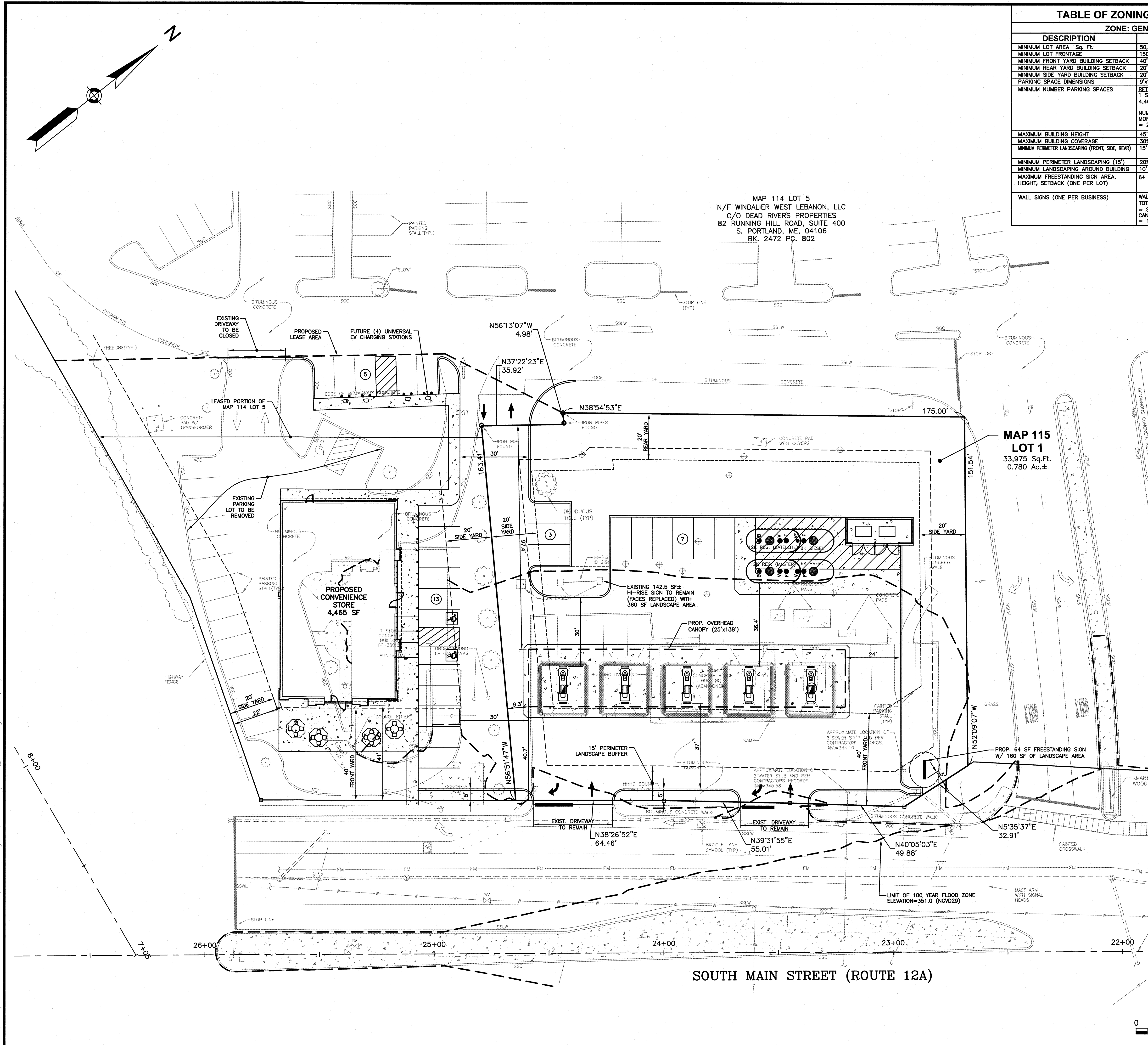
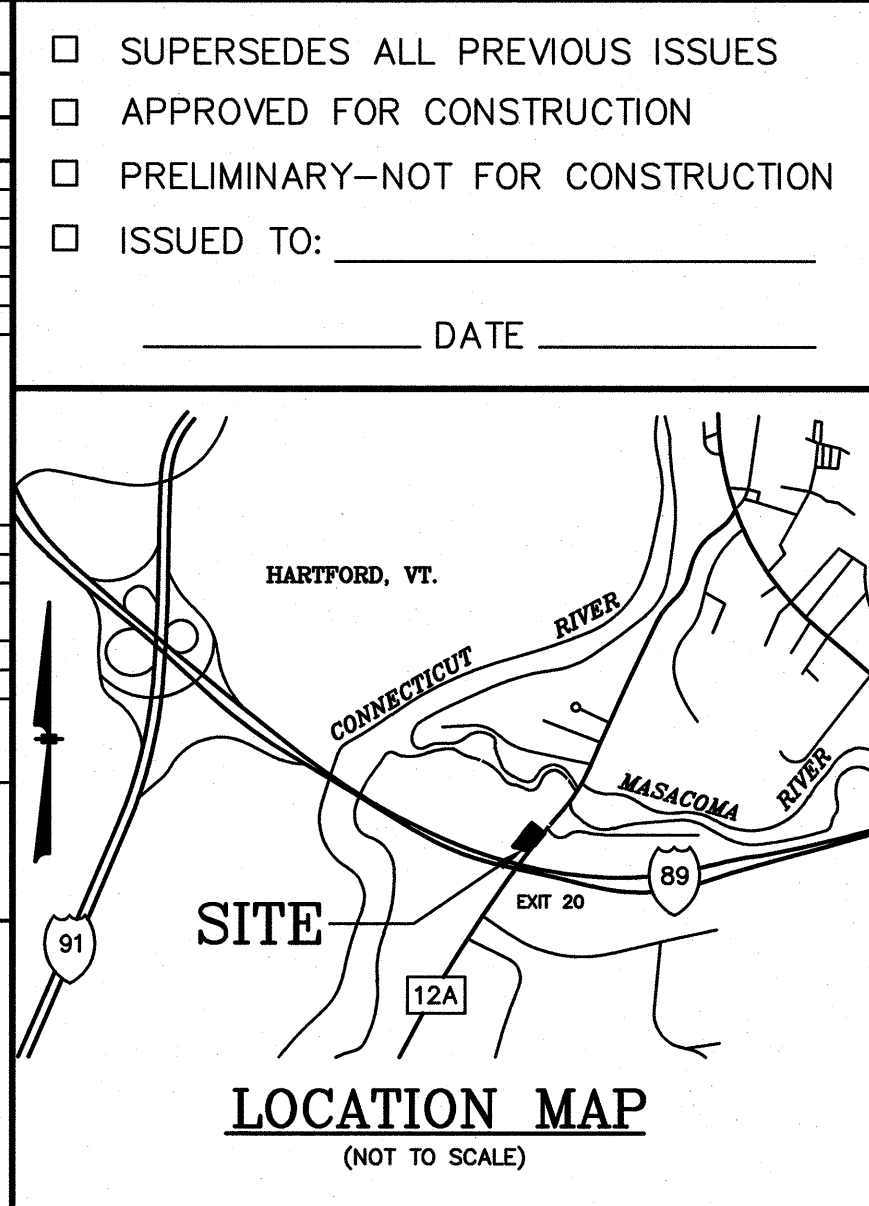


TABLE OF ZONING REGULATIONS - LEBANON, NH		
ZONE: GENERAL COMMERCIAL DISTRICT		
DESCRIPTION	REQUIRED	PROVIDED (MAP 115 LOT 1)
MINIMUM LOT AREA Sq. Ft.	50,000 SF	33,875 SF (EXIST. NON-CONFORMING)
MINIMUM LOT FRONTAGE	150'	202.26'
MINIMUM FRONT YARD BUILDING SETBACK	10'	10'
MINIMUM REAR YARD BUILDING SETBACK	20'	20'
MINIMUM SIDE YARD BUILDING SETBACK	20'	9.3' (VARIANCE REQUIRED)
PARKING SPACE DIMENSIONS	9'x18' (16' ALLOWED WITH 2' OVERHANG)	9'x18' & 9'x16' (W/ OVERHANG)
MINIMUM NUMBER PARKING SPACES	RETAIL C-STORE SPACES PER 200 SF OF GROSS FLOOR AREA 4,485 SF/200 SF = 23 SPACES	28 SPACES (INCLUDING 18 SPACES WITHIN LEASED AREA ON MAP 114 LOT 5)
	NUMBER OF PARKING SPACES CANNOT EXCEED MORE THAN 120% OF THE MINIMUM REQUIREMENTS = 27 SPACES	
MAXIMUM BUILDING HEIGHT	45' (UNLESS ABUTS A RESIDENTIAL DISTRICT)	< 45'
MAXIMUM BUILDING COVERAGE	30%	CAVNER 3,450/33,875 = 10.2%
MINIMUM PERIMETER LANDSCAPING (FRONT, SIDE, REAR)	15' ON PROPERTY LINES	WAIVER REQ'D FOR FRONT, SIDE & REAR PROPERTY LINE
MINIMUM PERIMETER LANDSCAPING (18')	20% OF ENTIRE LOT	5,899 SF/33,875 SF = 20.6%
MINIMUM LANDSCAPING AROUND BUILDING	10'	WAIVER REQ'D ON 3 SIDES OF BUILDING
MAXIMUM FREESTANDING SIGN AREA, HEIGHT, SETBACK (ONE PER SIGN)	64 SF, 25' HT., 0' SETBACK	64 SF, 20' HT. - VARIANCE FROM ZBA REQUIRED FOR TWO FREESTANDING SIGNS
WALL SIGNS (ONE PER BUSINESS)	WALL SIGN: TOTAL SIGN AREA ALLOWED (INCL. FREESTANDING) = STORE FRONT x 0.8=81' x 0.8 = 64.8 SF CANOPY SIGN: = 138' x 0.8 = 110.4 SF	WALL: 40 SF CANOPY: 105 SF

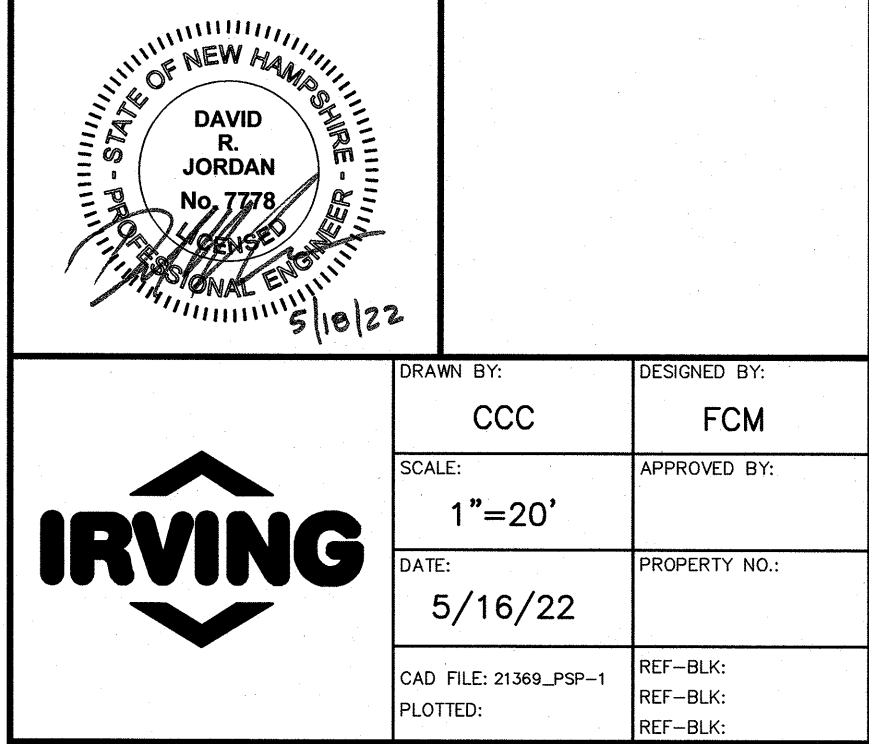
- # NOTES:
- 1) THE PURPOSE OF THIS PLAN IS TO SHOW THE RAZING OF THE EXISTING LAUNDROMAT & CONVENIENCE STORE AND THE PROPOSED CONSTRUCTION OF A RETAIL MOTOR OUTLET WITH A 4,465 SF CONVENIENCE STORE AND 5 FUEL DISPENSERS (10 FUELING LOCATIONS) WITH AN OVERHEAD CANOPY.
 - 2) THE FOLLOWING VARIANCES FROM THE ZONING ORDINANCE ARE REQUESTED FROM THE ZONING BOARD OF ADJUSTMENT TO ALLOW:
 - a) THE CANOPY TO BE 12 FT FROM THE SIDE LOT LINE (SECTION 305.3, TABLE OF AREA, DIM., & COVERAGE)
 - b) AN EXISTING NON-CONFORMING HI-RISE SIGN TO REMAIN (SECTION 608.6)
 - c) A SECOND FREESTANDING SIGN ON MAP LOT 115 LOT 1 AND ALLOW IT TO BE WITHIN 150 FT OF AN EXISTING SIGN (SECTION 608.4(A)(4))
 - 3) THE FOLLOWING WAIVERS ARE REQUIRED FROM THE PLANNING BOARD;
 - a) TO ALLOW A MINIMUM OF 5' OF PERIMETER LANDSCAPING
 - b) TO ALLOW A REDUCTION IN THE LANDSCAPING REQUIREMENT AROUND THE BUILDING

[illegible]

GPI Engineering
Design
Planning
Construction Management

603.893.0720 **GPINET.COM**

Greenman-Pedersen, Inc.
44 Stiles Road, Suite One
Salem, NH 03079



IRVING LLC 190 COMMERCE WAY PORTSMOUTH, NH 03801		
PROJECT:		
ASSESSORS MAP 115 – LOT 1 206 SOUTH MAIN STREET LEBANON, NEW HAMPSHIRE		
SHEET TITLE:		
PRELIMINARY SITE PLAN		
PROJECT:	DRAWING NO:	REVISION:
	-	-
PROJECT SUPERVISOR AND CONTRACTOR TO VERIFY ALL MEASUREMENTS ON WORK OR AT SITE. THIS DRAWING IS THE PROPERTY OF IRVING CO. LTD. AND SHALL BE RETURNED ON COMPLETION OF WORK.		

**Agenda
Zoning Board of Adjustment
June 6, 2022**

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

**Steven Davis,
12 Excelsior Street
(Tax Map 93, Lot 89, Plot 400),
zoned R-3
ZB2022-15-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

June 6, 2022 Meeting

Staff Memorandum – ZB2022-15-VAR

APPLICATION INFORMATION

Agenda Item: 3.D

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

Location: 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400)

Applicant/Property Owner:
Steven Davis

Zoning District: R-3

Property Size:
+/-0.12 acres (+/-5,227 sq. ft.) (per the City Assessor's records; property is non-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: vacant

Proposed Improvements:
construction of one-family dwelling

Overlay Districts: None

Previous ZBA Action (since 1995):
None

Other Approvals Required:
Building Permit, Driveway Permit

Attachments:
• Application (4 pages total)

HEARING NOTICE

Steven Davis, 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400), zoned R-3: Applicant proposes to construct a home on the vacant lot. A Variance per Section 310.3 of the Zoning Ordinance is requested to allow the home to be located +/-11 ft. from the side lot line where a minimum of 15 ft. is required. ZB2022-15-VAR

BACKGROUND & PROPOSAL

The property is a vacant lot located at the end of the improved section of Excelsior Street and abuts the Northern Rail Trail to the south. At +/-0.12 acres (according to the City's Assessor's records), the property is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.

The applicant proposes to construct a one-family dwelling on the property, which is a permitted use in the R-3 District. The home is proposed to be located 11 ft. from the side lot line shared with the rail trail, 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 home, which will encroach approximately four (4) 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 May 18, 2022 (see attached).

Staff has recommended to the applicant that he provide the Board with specifications for the proposed home.

Attachments

cc: Steven Davis, property owner (via e-mail)
Kristin Connors, Vermod Homes (via e-mail)
File

STAFF MEMORANDUM

ZB2022-15-VAR
12 Excelsior St (93-89-400)
June 6, 2022 ZBA Meeting
Agenda Item 3.D
Page 2 of 2

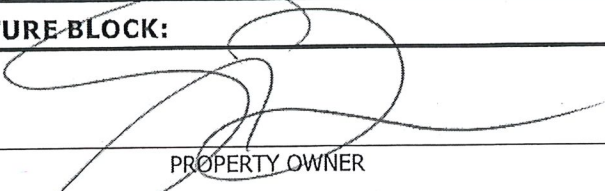
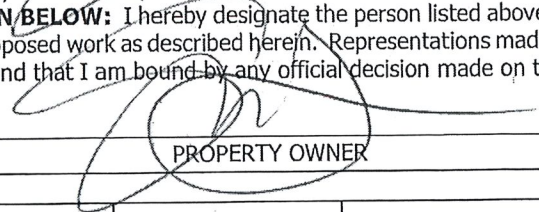
Figure 1. Bird's Eye View of subject property (looking west).



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

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>Steven Davis</u>	TEL.#: <u>802 369 0010</u>		
MAILING ADDRESS: <u>PO Box 415, Hartford, VT 05047</u>			
E-MAIL ADDRESS: <u>Steven@vermudhomes.com</u>			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME: <u>Kristen Connors</u>	TEL.#: <u>802 291. 7107.</u>		
MAILING ADDRESS: <u>Same</u>			
E-MAIL ADDRESS: <u>Kristen@vermudhomes.com</u>			
PROJECT LOCATION:			
TAX MAP #: <u>93</u>	LOT#: <u>89</u>	PLOT #: <u>400</u>	ZONE: <u>R3</u>
STREET ADDRESS OF PROJECT: <u>12 Excelsior St., Lebanon, NH 03766</u>			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO			
FLOOD PLAIN ☐ YES ☒ NO			
SCOPE OF PROJECT:			
<u>Installation of brand new VERMUD High Performance</u>			
<u>Modular home. 11' side</u>			
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: <u>5/17/2022</u>	
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: <u>5/17/2022</u>	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
5-18-22	93/89/4	ZB2022- 15-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) 3
Section(s) 3.10.3 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;

This variant (moving the setback 4 feet on the rear
half side) does not alter or threaten the health, safety or general
welfare of the public.

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

Changing the set back will not alter the
spirit of the Ordinance, no neighbors will be affected.

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

There will be no loss to any one person due to
this set back variance in an attempt to gain a normal footprint

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

Installing a new home will increase neighborhood value 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

lot size and shape makes it nearly impossible
to install a market a normally
appraised & assessed home.

(ii) The proposed use is a reasonable one.

altering the lot to build a "normal" sized home
will be more cost effective on budget.

(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.

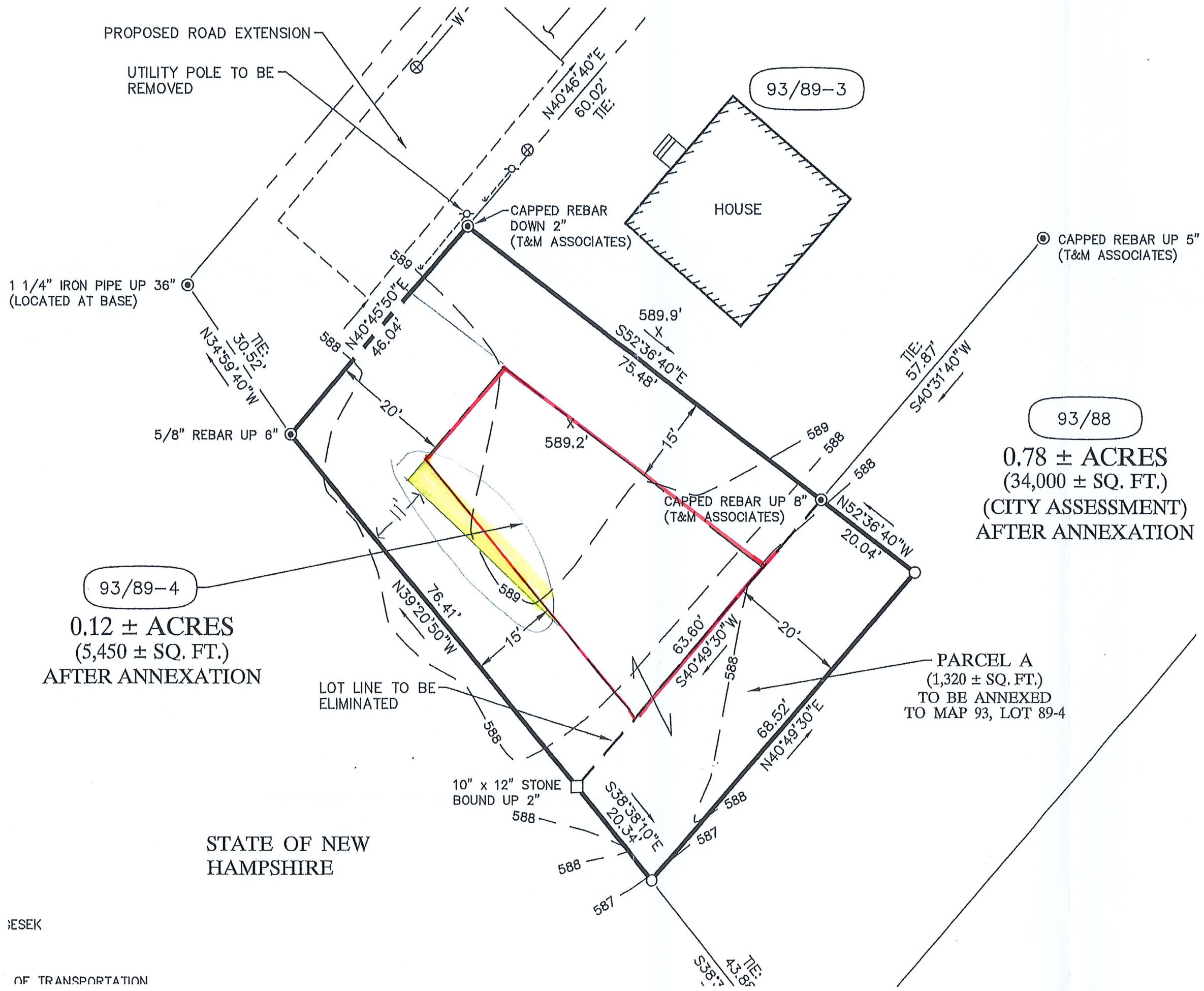
4 foot set back change allows for a normal
sized home to be built & installed - making it
more sellable.

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)."



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From: [Corliss, Chuck A](#)
To: [City of Lebanon-Planning](#)
Subject: [EXTERNAL] Northern Railroad Corridor: Steven Davis, 12 Excelsior Street Tax Map 93, Lot 89, Plot 400. 6-1-22
Date: Wednesday, June 1, 2022 5:42:58 PM
Attachments: [20220601174216.pdf](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good evening.

Per the above noted lot and the upcoming meeting on June 6th.

If the minimum offset is too be reduced from 15 ft to 11 ft on the lot's side adjacent to NHDOT Railroad Corridor property, DOT requests a fence or other physical delineation be installed along NHDOT property line to maintain NHDOT's 49.5 ft wide ROW from the centerline of the rail corridor be added to the zoning approval letter

Please call or email with any questions.

Chuck Corliss P.E.
Railroad Operations Engineer
Bureau of Rail and Transit
New Hampshire Department of Transportation
7 Hazen Drive, PO Box 483
Concord, NH 03302-0483, Office (603) 271-3465, Cell (603) 931-0255
Charles.A.Corliss@dot.nh.gov

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**Agenda
Zoning Board of Adjustment
June 6, 2022**

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

**Chiplin Enterprises, Inc.,
18 South Street
(Tax Map 107, Lot 18),
zoned R-2
ZB2022-16-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

June 6, 2022 Meeting

Staff Memorandum – ZB2022-16-VAR

APPLICATION INFORMATION

Agenda Item: 3.E

Application Type:

Variances to allow subdivision resulting in an undersized lot and a non-conforming building

Location:

18 South Street (Tax Map 107, Lot 18)

Applicant/Property Owner:

Chiplin Enterprises, Inc.

Zoning District:

R-2

Property Size:

+/-2.11 acres (+/-91,990 sq. ft.) (per applicant's proposed subdivision plat)

Overlay Districts:

- Wetlands Conservation District
- Riverbank Protection District

Previous ZBA Action (since 1995):

None

Other Approvals Required:

- Planning board minor subdivision approval

Attachments:

- Application (5 pages total)

HEARING NOTICE

Chiplin Enterprises, Inc., 18 South Street (Tax Map 107, Lot 18), zoned R-2: Applicant proposes to subdivide the property into two (2) lots. To allow the proposed subdivision, the applicant requests Variances from the following: (i) Section 202 of the Zoning Ordinance (prohibiting the reduction of lot area to less than the minimum required), (ii) Section 309.3 (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-2 District and an additional 3,000 sq. ft. for every additional dwelling unit after two); and (iii) Section 309.3 to allow an existing building to be located +/- 12 ft. from the proposed side lot line where a minimum of 15 ft is required. ZB2022-16-VAR

BACKGROUND

The property is a +/-2.11-acre lot improved with four (4) multi-family dwellings containing a total of 29 dwelling units. The building nearest South Street was built in 1890 (according to the City Assessor's records) and contains 11 units. The three buildings located towards the rear of the lot were originally constructed in 1982 (according to the City Assessor's records) and contain six (6) dwelling units each.

The size of the property conforms with the minimum lot size requirement in the R-2 District which requires a minimum of 10,000 sq. ft. of lot area for the first two dwelling units and 3,000 additional sq. ft. of lot area for each additional dwelling unit (29 dwelling units requires a minimum of 91,000 sq. ft of lot area which is slightly less than the size of the existing lot).

PROPOSAL

The applicant proposes to subdivide the property so that the building located at the front of the lot (containing 11 dwelling units) will be located on its own lot. The proposed subdivision (as depicted on the applicant's proposed subdivision plat included with the attached application materials) will result in a front lot containing +/-15,916 sq. ft. whereas a minimum lot area of 37,000 sq. ft. is required for an 11-unit multi-family dwelling.

Also as a result of the proposed subdivision, the 11-unit multi-family dwelling will be located +/- 12 ft. from the proposed side lot line where a minimum of 15 ft is required.

The applicant will need to obtain minor subdivision approval from the Planning Board in order to create the two lots. However, the Planning Board can only approve the subdivision of lots that meet the applicable dimensional requirements in the zoning district in which the property to be subdivided is located. Therefore, prior to applying to the Planning Board to subdivide the property, the applicant first requires Variances to allow the proposed front lot to have an area less than the minimum required 37,000 sq. ft. and to allow the existing building to be located within the minimum required side yard.

ZONING ORDINANCE REQUIREMENTS

In the R-2 District, Class 1 lots (i.e. lots that are served by municipal sewer) require a minimum lot size of 10,000 sq. ft. of lot area for the first two dwelling units and 3,000 additional sq. ft. for each additional dwelling unit. See Section 309.2 of the Zoning Ordinance. Section 202 of the Zoning Ordinance provides that, "[t]he configuration of a lot shall not be altered so that the area, yards, lot width, frontage, coverage or other requirements of this Ordinance are less than the minimums required herein." Because the proposed front lot will have a size of 15,916 sq. ft. where 37,000 sq. ft. is the minimum required, and because the existing lot is conforming to the minimum lot size requirements, a Variance from Section 309.2 and Section 202 is required to allow the proposed subdivision.

Figure 3. Bird's Eye View of Subject Property (looking south).



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

In the R-2 District, Class 1 lots must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 309.3 of the Zoning Ordinance. Therefore, a Variance from Section 309.3 is also required to allow the existing home to encroach approximately three (3) ft. into the minimum required 15 ft. side yard that will extend from the proposed side lot line.

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). 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 testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on May 19, 2022 (see attached).

Attachments

cc: Chiplin Enterprises, Inc. (via e-mail)

**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: Chipin Enterprises, Inc. TEL.#: 603 298 5890
 MAILING ADDRESS: 30 Main St. West Lebanon NH 03784
 E-MAIL ADDRESS: Chipinenterprises@yahoo.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Justin Carver, Agent TEL.#: 603 298 5890
 MAILING ADDRESS: 30 Main St. West Lebanon NH 03784
 E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 107 LOT#: 18 PLOT #: _____ ZONE: R2
 STREET ADDRESS OF PROJECT: 18 South St.
 IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

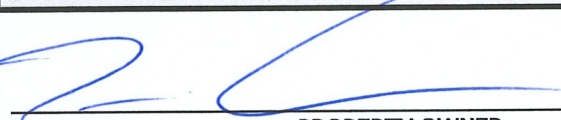
Please see attached To allow a purposed lot to be 15,570'
+ allow setback to be

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:

 DATE: 5/17/22

 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: 5/17/22

 PROPERTY OWNER

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
5/19/2022	107/18	ZB2022- 16-4AR	\$288.52	5/19/2022	

(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 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) _____
Section(s) 309.3 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: Please see attached

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

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

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

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

_____ 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.

(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.

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)."

Chiplin Enterprises, Inc.

30 Main Street, West Lebanon New Hampshire 03784

Phone: 603-298-5890 Email: chiplinenterprises@yahoo.com

May 17, 2022

Variance Application
18 South Street
Lebanon, NH 03766

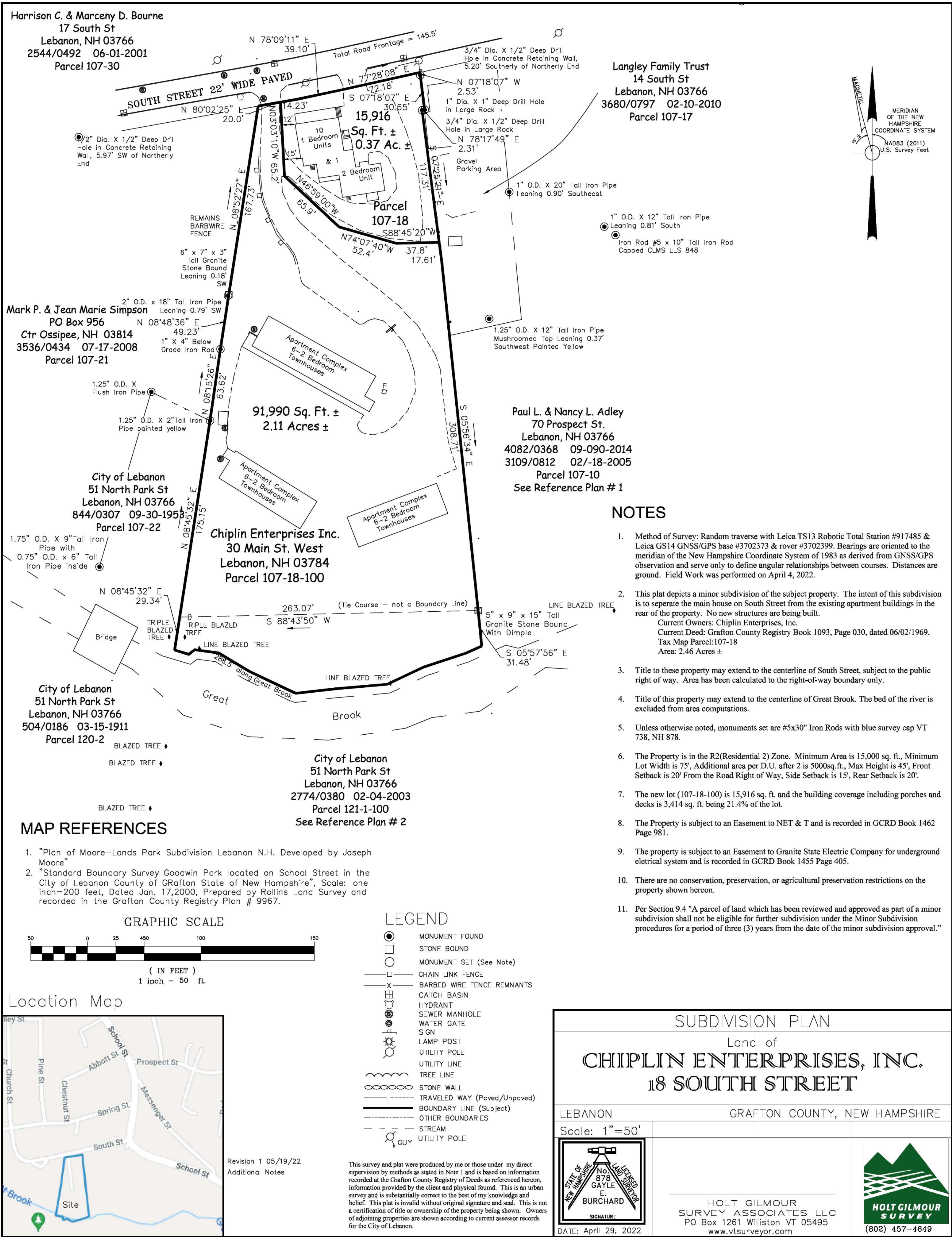
Scope of project: We are asking the city to approve 2 variances under Section 309.3 of the Zoning Ordinances. Our reasoning for this request is that lot 107-18 currently houses 4 apartment buildings, we would like to keep 3 of the buildings together and subdivide the 4th building to be on its own lot so that we can sell it to another landlord.

Variance 1. We are asking that the city will allow for our purposed lot to be 15,540 ft as opposed to the currently required 37,000 ft as it is including a 11-dwelling unit building on the purposed lot.

Variance 2. We are asking that the city will allow for our purposed lot line to be less than 15ft from the side of the purposed lot line. ~~11-3844/-~~ 12ft

Support statement for Variance questions

1. The city approval of both variances will not be contrary to the public interest because it will have no effect on the public or the character of the neighborhood.
2. The spirit of the ordinance will not be violated as it is not changing the nature of the existing buildings nor is it adding any existing buildings that could cause congestion or that would affect the health and safety of the community, we simply would just like to keep both properties as they currently stand except separated.
3. By granting both variances, substantial justice will be done because it will allow us to sell one of our four buildings without having an effect on the neighborhood or the general public.
4. The variances, if approved will not diminish the values of surrounding properties.
5. If denied, it will cause a hardship on us because it will prevent us from being able to sell one of the four buildings on that existing lot.



**Agenda
Zoning Board of Adjustment
June 6, 2022**

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

**Immersion Montessori School
(applicant),
Centurion Properties, Inc.
(property owner),
434 North Main Street
(Tax Map 2, Lot 15),
zoned R-3
ZB2022-17-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

June 6, 2022 Meeting

Staff Memorandum – ZB2022-17-SE

APPLICATION INFORMATION

Agenda Item: 3.F

Application Type:

Special Exception per 310.2 & 604 to allow a group day care facility, and per 702.1 to change one non-conforming use to a different non-conforming use

Location: 434 North Main Street (Tax Map 2, Lot 15)

Applicant:

Immersion Montessori School, LLC

Property Owner:

Centurion Properties, Inc.

Zoning District: R-3

Property Size: +/-0.74 acres (per the City Assessor's records)

Existing Improvements and Use:

+/-6,808 sq. ft. office building constructed in 1960 (per the City Assessor's records)

Proposed Use: see application materials

Overlay Districts:

none

Previous ZBA Action (since 1995):

none

Other Approvals Required (including but may not be limited to):

- Minor Site Plan Review (*tentative*)
- Building Permit

Attachments:

- Application (10 pages total)

HEARING NOTICE

Immersion Montessori School (applicant), Centurion Properties, Inc. (property owner), 434 North Main Street (Tax Map 2, Lot 15), zoned R-3: The property is improved with an office building, which is a non-conforming use in the R-3 District. Applicant requests Special Exceptions per Section 310.2 and Section 604 of the Zoning Ordinance to convert a portion of the building to a group day care facility, and per Section 702.1 to convert a portion of the building to an educational facility, which is not a permitted use in the R-3 District. ZB2022-17-SE

BACKGROUND & PROPOSAL

The subject property is a +/-0.74 acre lot located on the east side of NH Route 10, directly south of the City of Lebanon/Town of Hanover municipal boundary. The property is improved with a paved parking lot and a two-story, 6,808 sq. ft. legal non-conforming office building constructed in 1960 (office is not a permitted use in the R-3 zoning district).

As set forth in the application materials, the applicant proposes the following uses of the building:

- Office spaces for administration, educational research, teacher training and community workshops.
- Child Day Care Facility for IMS PreK, Kindergarten, Elementary Program, and IMS After-School Programs.

The applicant has provided floor plans but has not indicated the area of the building to be occupied by each of these uses, nor has the applicant indicated whether there are existing tenants that will remain.

Furthermore, it is not clear whether these uses are operating as distinct uses or whether they are in fact, a single use. The application materials state that the "capacity" will be 15 staff members and 80 "students / occasional visitors". This seems to suggest that the enumerated uses are accessory components of a single principal use (in which case, the Board needs to determine which zoning use category applies). Whether a single use or multiple uses, it is not clear which use category or categories are applicable.

The application materials state that the site has 28 parking spaces and that the day care use will require 15 parking spaces per the minimum parking requirements set forth in Section 607 of the Zoning Ordinance, but do not otherwise identify the required parking for the other proposed uses identified in the application.

Figure 1. Aerial View of Subject Property (looking south).



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

Figure 1. Aerial View of Subject Property (looking south).



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

ORDINANCE REQUIREMENTS

As noted above, the Board should determine whether the mix of uses proposed by the applicant are in fact a single use and, if so, which zoning use category applies. To the extent that the applicant is proposing to operate an educational facility in addition to operating a day care, a Special Exception per Section 702.1 is required to convert a portion of the non-conforming office use to an educational facility, which is not a permitted use in the R-3 District.

A. Special Exception for Group Day Care Facility

A "group day care facility" is allowed by Special Exception within the R-3 District, and is defined in Appendix A of the Zoning Ordinance as:

GROUP DAY CARE FACILITY: A group day care facility is either a child day care facility or an adult day care facility.

- A. **CHILD DAY CARE FACILITY:** A day care center, a day nursery, a private nursery school or kindergarten, a child development center, a play group, a head start center, progressive school or any other facility which cares for seven (7) or more children under the age of 16 for a part but not all of a 24 hour day.

In order to grant a Special Exception for a group day care facility, the applicant must demonstrate compliance with the following criteria set forth in Section 604 of the Zoning Ordinance:

SECTION 604 **GROUP DAY CARE FACILITIES.****604.1** **Play Area.**

- A. There shall be a fenced outside play area which shall be free from hazards such as hidden corners; unprotected pools, wells, and steps; poisonous plants such as poison ivy, foxglove, and rhubarb; farm or lawn machinery or implements.
- B. It shall contain at least 50 square feet of usable play space per child using it, and the average width shall not be less than eight feet. Play areas shall not be permitted in front yards.
- C. By special exception, the Board of Adjustment may waive the requirement for a fence or the requirement that the play area not be in the front yard.

604.2 **Other Requirements.**

- A. A suitable loading and unloading area shall be provided for those children for whom the facility provides transportation. This area shall be in addition to required parking areas.
- B. Group day care facilities shall comply with all applicable state and federal regulations.

- C. Parking: One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site.

Note that the proposed play area is partially located in the front yard. To allow this, the applicant must apply for a Special Exception per Section 604.1.C. Also, the location of the play area must comply with the 15 ft. side setback (this will also allow the play area to remain outside of the 15 ft. perimeter landscaping buffer required by Section 6.2 of the Site Plan Review Regulations).

The applicant must also demonstrate compliance with the general Special Exception criteria, set forth in Section 801.3 as follows:

- C. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §310.2 of the Zoning Ordinance.
- D. All special conditions required of the special exception have been met.
Note: The special conditions for group day care facilities are set forth in §604, as noted above. As noted above, the proposed play area is partially located in the front yard in violation of Section 604.1.B.
- E. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is not aware of any Zoning Ordinance violations on the property.
- F. The character of the area shall not be adversely affected.
- G. No hazard or nuisance will be created.
- H. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- I. Granting the special exception will not result in undue municipal expense.
- J. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- K. The general welfare of the City will be protected.

B. Special Exception Per Section 702.1

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." Based on the application materials submitted, it appears that the applicant may be converting a portion of the building to an educational facility which is not a permitted use in the R-3 District.

In order to grant a Special Exception to change one non-conforming use (office) to a different non-conforming use (educational facility), the applicant must demonstrate that the proposal meets the general 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 §702.1 of the Zoning Ordinance.
- B. All special conditions required of the special exception have been met.
Note: Per §702.1 of the Zoning Ordinance, the applicant must demonstrate that “the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.”
- L. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is not aware of any Zoning Ordinance violations on the property.
- M. The character of the area shall not be adversely affected.
- N. No hazard or nuisance will be created.
- O. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- P. Granting the special exception will not result in undue municipal expense.
- Q. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- R. The general welfare of the City will be protected.

STAFF COMMENTS

In addition to other recommendations provided above, staff recommends that the Board require a full size, scalable site plan showing the existing improvements, parking spaces, play area (outside of the front yard and minimum required yard areas), and the loading spaces required by Section 604.2.A.

In order to obtain a building permit, the applicant will need to provide data and calculations demonstrating that the total number of on-site parking spaces is sufficient to meet the proposed use(s) of the property. In other words, the applicant will need to demonstrate that the total number of parking spaces on-site is equal to or greater than the number of required parking spaces per Section 607 of the Zoning Ordinance and the Table of Minimum Off-Street Parking Requirements (the minimum number of parking spaces for each use of the property should be calculated separately and then totaled to arrive at the minimum number of required parking spaces for the property). Staff recommends that this information is provided as part of the applicant's Special Exception application.

cc: Immersion Montessori School, LLC (via e-mail)
Centurion Properties, Inc.
File

**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: CENTURION PROP INC

TEL.#: (802) 291 0200

MAILING ADDRESS: 11 PARTRIDGE RD ETNA, NH 03750

E-MAIL ADDRESS: grnell@aol.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Immersion Montessori School LLC

TEL.#: 201-321-8764

MAILING ADDRESS: PO BOX 114 Norwich, VT 05055

E-MAIL ADDRESS: juan.garceran@uvlms.com

PROJECT LOCATION:

TAX MAP #: 2

LOT#: 15

PLOT #:

ZONE: R-3

STREET ADDRESS OF PROJECT: 434 N Main St, West Lebanon, NH 03784

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

FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Combined uses: Office, Group Day Care, and Educational Facility: Total of 80 students and 20 staff members/office personnel.

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: Existing: Office. Proposed: Office / Group Day Care

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 #
5/19/2022	2/15	ZB2022-			

17-SE

**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) vii,
Section(s) 702.1, 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.)*

Immersion Montessori School (IMS) aims to use the property located 434 N Main St as the offices of its Higher Education & Research Division. Along with the individual offices, the conference rooms will be dedicated to community workshops and teacher trainings. In addition to the office use, IMS would like to request a special exemption to add the use of part of the property as a Child Day Care Facility (progressive school caring for 7 or more children under the age of 16) to its current office use. IMS intends to have part of its PreK, Kindergarten and Elementary Programs in this location as part of its laboratory school where teachers are trained through educational research and experimentation. The proposed layout offers a unique educational experience that is based on methodological principles combined by IMS.

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:

While office space is already a permitted use in this property, IMS is requesting permission to operate part of its programs under the definition of progressive school at this location [progressive school falls under the Child Day Care Facility category listed as a Special Exception use for this zone (R-3)].

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

IMS will operate with the standards outlined for a Group Day Care in
Section 604 of the Zoning Ordinance.

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

There are no existing violations.

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

- D. That the character of the area shall not be adversely affected:
The proposed use will not have any adverse impact on the character of the area as all outdoor operations will occur within an enclosed area.
_____.
- E. That no hazard or nuisance will be created:
Outdoor noise will be limited to business hours only.
_____.
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:
Staggered arrivals will limit traffic to a maximum of 15 cars per 20 minutes.
_____.
- G. That granting the special exception will not result in undue municipal expense:
No municipal expense is anticipated.
_____.
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:
The proposed use will operate within the guidelines of a Group Day Care as outlined in Section 604.
_____.
- I. That the general welfare of the City will be protected:
The general welfare of the City will not be impacted.
_____.

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.

Application for Special Exception
434 N Main St, West Lebanon NH 03784
Immersion Montessori School LLC

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About Immersion Montessori School

Immersion Montessori School is an educational institution that specializes in early childhood and elementary programs with licenses as a child care center in both New Hampshire and Vermont. IMS is also a recognized independent elementary school by the Vermont Agency of Education. IMS develops and implements research-based curricula with 6 core elements: Montessori Methodology, Language Immersion, Nature, Community, Enrichment, and applicable State Standards. IMS has partnerships with public school districts in New Hampshire and Vermont to develop both summer and afterschool programs.

Immersion Montessori School (IMS) aims to use the property located 434 N Main St as the offices of its Higher Education & Research Division. Along with the individual offices, the conference rooms will be dedicated to community workshops and teacher training. In addition to the office use, IMS would like to request a special exception to add the use of part of the property as a Child Day Care Facility to its current office use.

IMS intends to have part of its PreK, Kindergarten and Elementary Programs in this location as part of its laboratory school where teachers are trained through educational research and experimentation. The proposed layout offers a unique educational experience that is based on methodological principles combined by IMS.

Current Use vs. Proposed Use:

Prior use: Office space used by an insurance company.

Proposed use:

- Indoor Use:
 - Office spaces for administration, educational research, teacher training and community workshops.
 - Child Day Care Facility for IMS PreK, Kindergarten, Elementary Program, and IMS After-School Programs.



IMS Proposal for Indoor Space Use

- Outdoor Use:
 - Free play for children in individual groups of up to 25 during breaks throughout the day with adult supervision.
- Capacity:
 - 15 staff members.
 - 80 students / occasional visitors.
- Hours of Operations:
 - Monday-Friday: 7 AM to 7 PM.
 - Saturday: 9 AM - 2 PM.

Section 604. Requirements for Group Day Care Facilities

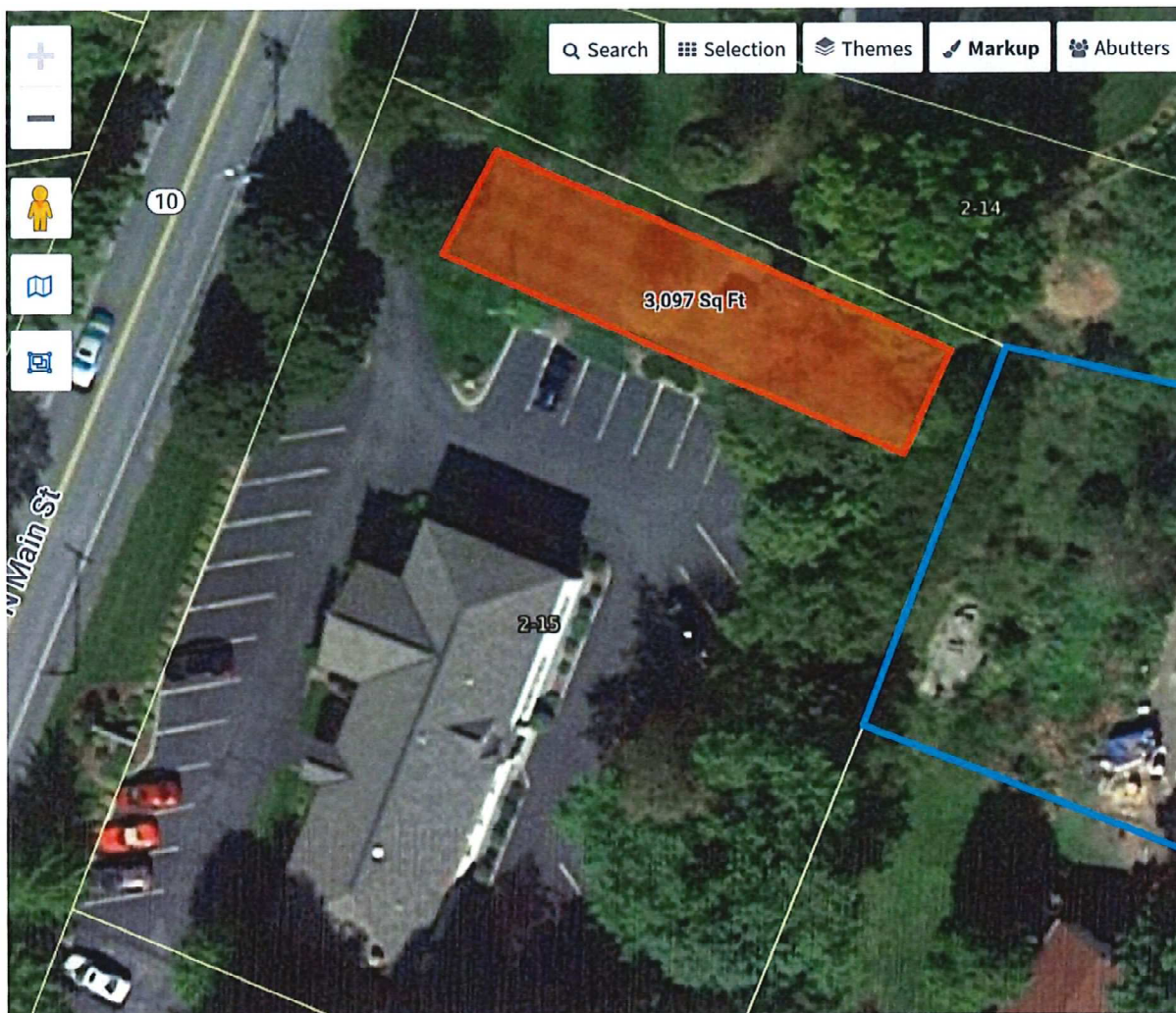
As stated in the current zoning ordinance, a progressive school that "cares for seven or more children under the age of 16 for a part but not all of a 24 hour day" falls under the Child Day Care Facility category. Given the methodologies and the experimental nature of our program, IMS proposal fits within this definition. Therefore, here are the plans to meet the main requirements for Group Day Care Facilities:

Play Area

"There shall be a fenced outside play area which shall be free from hazards such as hidden corners; unprotected pools, wells, and steps; poisonous plants such as poison ivy, foxglove, and rhubarb; farm or lawn machinery or implements.

B. It shall contain at least 50 square feet of usable play space per child using it, and the average width shall not be less than eight feet. Play areas shall not be permitted in front yards"

A fenced-in play area will be located on the north side of the building in a grass area that will have been cleared from any hazards and fully fenced-in. (Shown as red rectangle in map below.) The fenced-in will be up to 3000 square feet in area. No more than 25 children will be outside at the same time, which allows more than 120 square feet per children.



IMS Proposal for Outdoor Space

Parking

"A suitable loading and unloading area shall be provided for those children for whom the facility provides transportation. This area shall be in addition to required parking areas... One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site"

- There are at least 28 parking spaces available as shown in the parking diagram.
- According to the regulation pertaining to group day care, we would need 15 (one per employee) + 10 (one per 8 clients) = 25 parking spaces.
- Our operation would include staggered pick up and drop off, so no more than 15 cars are expected every 20 minutes from 7 AM to 9 AM, and from 3:30 PM to 5:30 PM.
- As three parking spaces won't be needed, those will be reserved for a minibus that would transport after-school students from local schools to IMS after-school program.

State and Federal Regulations

"Group day care facilities shall comply with all applicable state and federal regulations"

All the educational programs offered will fall either under IMS' NH Child Care License or under IMS' pending approval as a Private School by the NH Department of Education. While IMS is already a recognized Private School by the VT Agency of Education, several steps are needed (zoning approval included) in order to obtain the final approval by the NH Department of Education.

Traffic Impact

Total traffic volume expected = 190 cars per day

According to the DOT (Source: http://www.ms2soft.com/tcds/?loc=Nhdot&mod=tcds&local_id=02253053), the 2021 annual average daily traffic for S Main St in the area of the property was 6,820. The additional 190 cars for our proposed use would only be an increase of approximately 2.78% to the current traffic volume for that area.

