



**LEBANON ZONING BOARD OF ADJUSTMENT
JULY 5, 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. June 6, 2022
 3. **Public Hearing Items**
 - A. **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 - Continued from June 6, 2022**
 - B. **Irving Oil Marketing, Inc. (applicant), Rancho Lebanon, LLC (property owner), 206 South Main Street (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 one of the freestanding signs to be located +/-80 ft. from the freestanding sign on the adjoining property where a minimum separation of 150 ft. is required. **ZB2022-14-VAR - Continued from June 6, 2022**
 - C. **Max Seidman & Angela Zhang, 53 Winter Street (Tax Map 77, Lot 83), zoned R-3:** Applicants request a Special Exception per Section 201.9 of the Zoning Ordinance to erect a solar array to be located +/-9 ft. from the rear property line where a minimum of 30 ft. is required. **ZB2022-18-SE**
 - D. **New England Sports Park and Carter Community Building Association, 1 Taylor Street (Tax Map 92, Lot 25), zoned LD:** The subject property is located in the Floodplain District. Applicants request a Variance pursuant to City Code Chapter 74-18 to allow a proposed +/- 160 sq. ft. storage building to be placed below the base flood elevation,

whereas City Code Chapter 74-21.B requires that the lowest floor of a structure located in the Floodplain District be elevated to the level of the base flood elevation. **ZB2022-19-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
July 5, 2022**

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

June 6, 2022

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, June 6, 2022
7:00 PM**

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

MEMBERS ABSENT: Dave Newlove

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. May 2, 2022

Mr. Nash MOVED to approve the May 2, 2022, Minutes as presented in the June 6, 2022, packet with amendments.

Seconded by Mr. Katz.

Mr. McDonough was given voting privileges for this motion.

Amendments: Page 5, Line; Remove ‘The property is zoned RL-3 that has water, sewer, and electric services, and road access.’ Page 8, Line 18-20; Remove ‘non-’.

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

Vice Chair Mercer abstained because she was not present for the meeting.

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

Mr. Nash recused himself from this hearing.

Ms. Barkley and Mr. McDonough were appointed voting privileges for this hearing.

John Criswell appeared on behalf of the application. At the meeting last month, the Board asked about the onsite parking as it pertains to the structure. The setback is maintained, with the supporting structure

1 having an overhang that intrudes into the setback, but that is allowed. He provided a picture that shows
2 16 parking spaces. The ratio of parking is .33 spaces per seat, with a maximum need of 8 parking spaces
3 needed. He believes he has addressed the parking needs. The goal is to eliminate parking from the
4 wetland buffer.

5
6 The Board asked about the entrances to this recreational area. It is not within the buffer, but it is close to
7 the setback. They are hoping to keep the structure closer to the north as it is middle ground between the
8 use recreational use area, the parking area and the trail head. There is no other place for it to be located
9 that is outside of the wetland area and outside of the setback.

10
11 **Chair Koppenheffer asked if there are any additional questions from the public**

12
13 Harrison Bourne spoke in support of the gazebo. He does not believe there is any negative impact on the
14 area, and it would facilitate public use.

15
16 **Hearing no additional comments, Chair Koppenheffer closed the Public Hearing.**

17
18 *Mr. Katz MOVED on May 2, 2022 and June 6, 2022, at duly-noticed meetings of the Lebanon Zoning*
19 *Board of Adjustment, there appeared Jon Criswell on behalf of the Upper Valley Mountain Bike*
20 *Association (applicant) and Dartmouth College Trustees (property owner), regarding 0 Mascoma*
21 *Street (Tax Map 74, Lot 8, Plot 200), zoned RL-3. Applicant proposes to construct a +/-800 sq. ft. picnic*
22 *pavilion, to be located within the 100 ft. high-value wetland buffer established by Section 401.2.B of*
23 *the Zoning Ordinance. Applicant requests (i) a Special Exception pursuant to Section 314.2 to allow an*
24 *outdoor recreational facility, (ii) a Special Exception pursuant to Section 401.5 to construct the*
25 *pavilion within the wetland buffer, and (iii) a Variance from Section 314.3 to allow the pavilion to be*
26 *located 10 ft. from the side lot line where a minimum of 50 ft. is required. ZB2022-09-SEVAR*

27
28 **I. FINDINGS OF FACT**

29
30 Based on testimony given, application materials presented, and supporting documents submitted, the
31 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 32
- 33 1. The subject property is a +/-17.1-acre undeveloped parcel located in the Rural Lands Three (RL-
34 3) zoning district and currently utilized for biking trails. The biking trail network constitutes an
35 “outdoor recreational facility” which is a use allowed by Special Exception in the RL-3 District.
36 A substantial portion of the property is located within the Wetlands Conservation District which
37 consists of the wetlands themselves as well as a 100 ft. buffer (established by Section 401.2.B of
38 the Zoning Ordinance). The buffer extends from those wetlands that the City has identified as
39 being of high or very high value.
40
 - 41 2. The applicant proposes to construct a +/-800 sq. ft. picnic pavilion as an accessory building to the
42 existing outdoor biking trail network recreational facility. The applicant’s desired location would
43 place the pavilion 10 ft. from the side lot line and partially within the wetland buffer, as shown on
44 the plan dated April 5, 2022, submitted with the application materials (the “Preferred Option”).
45 The Preferred Option requires a Special Exception to allow a structure to be constructed in the
46 wetland buffer as well as a Variance from the minimum required 50 ft. side setback.
47
 - 48 3. In the alternative, the applicant requests a Special Exception to place the pavilion entirely within
49 the wetland buffer, in compliance with the 50 ft. setback as shown on the plan dated March 19,
50 2022, submitted with the application materials (the “Alternative Option”). The Alternative Option
51 requires a Special Exception to allow the pavilion to be constructed in the wetland buffer.

- 1
2 4. Under Section 314.2 of the Zoning Ordinance, “outdoor recreational facility” is a use allowed in
3 the RL-3 District by Special Exception. “Outdoor recreational facility” is defined in Appendix A
4 of the Zoning Ordinance as follows:

5
6 Outdoor recreational activities, including such facilities as outdoor tennis courts,
7 swimming pool, golf courses, play fields, and similar uses. No buildings shall be allowed
8 except for the necessary related uses such as restrooms and maintenance facilities, other
9 than those accessory to a dwelling.

- 10
11 5. The proposed pavilion is a “necessary related use” to the existing biking trail network outdoor
12 recreational facility.
13
14 6. In order to grant the requested Special Exception per Section 314.2 (required for both the
15 Preferred Option and the Alternative Option), the Board must determine that the proposal meets
16 the Special Exception criteria set forth in Section 801.3.
17
18 7. Both the Preferred Option and Alternative Option require a Special Exception to allow an
19 accessory building to the existing outdoor recreational facility.
20
21 8. In the RL-3 District, a minimum side yard (i.e. a space unobstructed by buildings and structures)
22 of 50 ft. must be maintained per Section 314.3 of the Zoning Ordinance. Therefore, a Variance is
23 required to allow the Preferred Option which places the pavilion 10 ft. from the side lot line.
24
25 9. To obtain the requested Variance from Section 314.3, the applicant must demonstrate compliance
26 with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and
27 NH RSA 674:33, I(b).
28
29 10. Section 401.5 of the Zoning Ordinance permits the Zoning Board of Adjustment to allow the
30 construction of a structure within the 100 ft. wetland buffer by Special Exception. In order to
31 grant the requested Special Exception to allow construction of the pavilion within the wetland
32 buffer (required for both the Preferred Option and the Alternative Option), the Board must
33 determine that the proposal meets the applicable criteria in Section 401.5 of the Zoning
34 Ordinance.
35
36 11. As required by Section 401.7.D of the Zoning Ordinance, a copy of the application was
37 forwarded to the Conservation Commission and was discussed at their April 14, 2022 meeting.
38 Following discussion with the applicant, the Conservation Commission approved the following
39 motion (as set forth in the draft April 14, 2022 meeting minutes):

40
41 [The Conservation Commission recommends] that the proposed pavilion be located
42 farther from the buffer, as far east and south as possible, to minimize or eliminate impacts
43 to the wetland buffer. Also, the Commission requests that the Zoning Board and
44 Administrator examine the creep of the parking area into the wetland buffer area, and
45 request that the parking area be delineated by wildlife friendly fencing or boulders
46 outside of the wetland buffer, in order to eliminate impacts to the wetland buffer. Further,
47 the Commission requests that the Zoning Board examine waste and sanitation items, and
48 that a dry well maintenance program be discussed.
49

- 50 12. Daniel Justynski, Director of Real Estate for Dartmouth College, spoke in favor of the
51 application.

13. Devora Gronauer, a representative of the Jewish Cemetery Committee expressed concern with respect to trash removal and parking. Susan Painter and Sarah Riley also expressed concern with respect to the adequacy and location of parking. Jewish community member Roberta Berner expressed concern with respect to the application.
14. In response to comments from the public made at the May 2, 2022 hearing and in response to questions from the Board, the applicant revised the Preferred Option with the submission of a plan dated May 23, 2022, depicting parking spaces to the north and south of the pavilion with the parking spaces to the north separated from the wetland buffer by large boulders.
15. On June 6, 2022 Harrison Bourne spoke in support of the application.

II. CONCLUSIONS OF LAW

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

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

1. The Special Exception is specifically authorized by §314.2 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)
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)

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

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

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):
 - i. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
 - ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

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

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §401.5 of the Zoning Ordinance:

1. The use for which the exception is sought **cannot** feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District. (§401.5.A)
2. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot **cannot** reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section. (§401.5.B)
3. The design and construction of the proposed use **is** consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures **will** be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)
4. The criteria set forth in §401.5.D relates to pipelines, powerlines, and other transmission of lines and, therefore, is not applicable.
5. The proposed use **will not** create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)
6. The project **is** capable of complying with all State and Federal wetlands and wetlands permitting requirements. (§401.5.F)

7. The project is capable of conforming to all existing best management practices, as referenced in Appendix A of the Zoning Ordinance, and will be implemented in a way which conforms to those practices (§401.5.G)\

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **6th day of June, 2022**, hereby:

- A. GRANTS the requested Special Exception per to Section 314.2 to allow the pavilion in the RL-3 District;
- B. GRANTS the requested 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; and
- C. GRANTS the requested Special Exception per Section 401.5 to construct the pavilion within the wetland buffer;

and, therefore, approves the applicant's PREFERRED OPTION as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant's Preferred Option is approved as depicted on and pursuant to the site plan submitted for the June 6, 2022 hearing, dated May 23, 2022, and depicting 16 parking spaces.
2. The applicant shall obtain site plan review and a building permit. The Board requests that the body reviewing the site plan give due consideration to the comments of the Conservation Commission as set forth in the Commission's motion.
3. The project shall be completed substantially in conformance with the proposal.

Second by Vice Chair Mercer.

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

Hearing 3F has been withdrawn. There will be no hearing on that matter this evening.

Mr. Nash returned to the meeting.

- 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**

Song Lin and his wife Min Du, owners, appeared on behalf of the appeal. Mr. Corwin said the building and fire inspector inspected the building and they observed there is at least one living quarter in the basement that has been added. A violation exists, because there is an approved variance for two living area, not three. With any administrative decision, an appeal is allowed. And if there is an error, that is within the jurisdiction of the Zoning Board.

The Board asked if the appellant understands the administrative decision. The applicant asked for clarification about the issue. The owner agrees there are three apartments in the building. The tenant has been asked to move out. He believes the remodeling was approved and allowed, but he is willing to make it into only two dwellings. The owner collects rent from three apartments and all the people living in the apartments are unrelated. The issue of who created the three apartments is irrelevant to the Board. There is concern that three apartments exist.

1 Mr. Katz discussed the early March letter. Jurisdiction of the Board is allowed only if an appeal is filed
2 within 30 days of when the administrative decision was made. Regardless of this discussion, there is not
3 subject matter jurisdiction.

4
5 The Board discussed the correspondence surrounding the administrative decision. The date constraints
6 were provided to the appellant. Based on the dates and the date of the appeal, it is the Boards decision to
7 determine if the appeal is appropriate

8
9 ***Mr. Katz moved to dismiss this appeal due to subject matter jurisdiction.***
10 ***Second by Ms. Mercer.***

11
12 ***The motion was withdrawn.***

13
14 ***Mr. Katz moved to dismiss this appeal on the basis that it was not timely filed.***
15 ***Second by Chair Koppenheffer.***

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

- 18 **C. Irving Oil Marketing, Inc. (applicant), Rancho Lebanon, LLC & Irving Oil Properties**
19 **NH Corp (property owners), 200 & 206 South Main Street (Tax Map 114, Lot 5 & Tax**
20 **Map 115, Lot 1), zoned GC:** Applicant requests Variances from the following sections of the
21 Zoning Ordinance in connection with the proposed construction of a retail motor vehicle
22 service station and convenience store: (i) Section 305.3 to allow a retail service station
23 canopy to be located +/-9 ft. from the side property line where 20 ft. is the minimum required,
24 (ii) Section 608.8 to permit an existing non-conforming freestanding sign to remain on the
25 property, and in the alternative Section 608.4.A.4.a to allow a freestanding sign to exceed the
26 maximum permitted height and size, and (iii) Section 608.4.A.4 to allow two (2) freestanding
27 signs on the property where only one (1) is permitted and to allow the freestanding signs to be
28 located +/-80 ft. apart where a minimum of 150 ft. separation is required. **ZB2022-14-VAR**
29

30 There is a presentation available regarding this application at Lebanon.live which allows the public and
31 the Board to see the presentation.

32
33 Maria Dolder, attorney on the project, Nicole Duquette with GPI and Jennifer Eaigle appeared on behalf
34 of the application. The site plan and the sign plan are in the Board's packet.
35

36 Ms. Duquette explained the site plan. The site is a former Irving site that has not been in use due to the
37 DOT taking land. They are proposing leasing the laundromat portion of the plaza site to give them
38 additional land. They intend to raise the existing building and the laundromat and replace it with a new
39 fueling area and a convenience store. It would have 10 fueling stations. It is located in the commercial
40 district. One variance is being asked for a canopy over the fueling area to cover an internal lot line
41 between the owned property and the leased area. The other variances pertain to the signage.
42

43 There is sufficient area to allow landscaping, but there is not the required length between their sign and
44 the Target sign. Irving is required to have two signs posting the prices of fuel.
45

46 Irving was paid adequately and agreed to take that sum paid by the DOT to take the land. The
47 characteristics of the land changed due to the taking. DOT took the front of the property, which made
48 the property smaller. Also, the new raised median on the street limits access going into that site. Irving
49 is required to allow adequate storage space due to the flood limitations and allow for drainage. It
50 requires additional area from the plaza to make it a viable property. The applicants would do a traffic
51 study to determine how the median impacts access to the property. They believe they are adding a lot of

1 improvements to the area; and asking for a minimal of variance to redevelop this site under the best
2 scenario.

3
4 The applicants believe there is a preexisting sign that is grandfathered, and they do not need a variance
5 to use that sign. The sign ordinance was discussed. The structure has not communicated a sign since the
6 Irving station left the property. The use of the sign has seized to be used for 180 days or more, then the
7 sign must not be used as a sign. The applicants said yes, it has been unoccupied, but they did not have
8 the intent to abandon the use of that property. There has been no requirement to remove it. The existing
9 sign is about 65 feet tall. The criteria for the variance were discussed and elaborated.

10
11 The second freestanding sign is required by the law to show the prices of fuel. The second sign cannot
12 be put on the leased property, per the lease. That means the sign has to be about 80 feet instead of
13 within 150 feet of the existing Target sign. They believe the existing sign should be allowed because
14 they never abandoned it. The actual structure would not be within the setback, it is just the overhang on
15 an internal property line. They have a 20-year lease, but according to the lease, a sign on the leased
16 property is not allowed. The Board asked if the second sign could fit anywhere within their own
17 property. The applicants could not find a place to place it.

18
19 The applicants stated that they have made many attempts to negotiate to lease the extra property and
20 have come to the City several times over the years. They believe they showed intent to redevelop the
21 property and use the sign.

22
23 Mr. Corwin discussed the concept of abandonment in regard to a nonconforming use. The Board can
24 approve the use, and the concept of intent is significant for the approval. The discussed putting the
25 prices on the existing sign. Irving has to be able to change the prices on the signs.

26
27 **The Board took a recess at 8:53 until 9:06. The Board determined they would like additional**
28 **information and requested scheduling a special meeting for this hearing to be the only hearing.**

29
30 The Board would like some additional information. What is driving the requirement of pricing changes?
31 Is there any documentation that indicates working with the City over the years? What is the information
32 about compensatory storage that they are referencing? Can they provide evidence of continuing
33 discussion about using the property? Also, relative to the old sign and the new sign, if in fact there is a
34 conclusion that the sign was abandoned, would they still need a variance?

35
36 ***Mr. Katz MOVED to continue this hearing until June 16, 2022 at 7:00 PM.***

37 ***Seconded by Mr. Nash***

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

- 39
40 **D. Steven Davis, 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400), zoned R-3:** Applicant
41 proposes to construct a home on the vacant lot. A Variance per Section 310.3 of the Zoning
42 Ordinance is requested to allow the home to be located +/-11 ft. from the side lot line where a
43 minimum of 15 ft. is required. **ZB2022-15-VAR**

44
45 Christine Connors, part owner of Vermod that would be building on the lot and Steven Davis, owner of
46 the lot, appeared on behalf of the application. When they designed the house, it looked odd putting it on
47 an angle and they would like to make it more buildable to straighten the building, which would require
48 moving it into the side lot line. The applicants showed the proposed lot plan and the Board asked for the
49 proposed building plan and footprint. The Chair asked for a copy of the floor plan and a representation
50 of how the house would look on the lot without the variance, and how it would look with a variance.

1 *Vice Chair Mercer MOVED to the hearing until the July 5, 2022 meeting.*
2 *Second by Mr. Katz.*

3
4 *Ms. Barkley was appointed to vote on this motion.*

5
6 **The Vote on the Motion was unanimously approved (5-0).*
7

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

17 Victoria Carver, Gayle Bercahr, Ethen Gilmore, and Nicklas Burke appeared on behalf of the
18 application. Chiplin Enterprises owns the property. There are several buildings on the property. On the
19 property is one older multi-family apartment building. Ms. Carver would like the option to sell the older
20 building or the newer buildings as separate properties. The subdivision does not meet the criteria, but it
21 does follow the natural contours of the land and is a logical split. To accommodate the existing
22 driveway, they need a variance to the setback.
23

24 The criteria were discussed. There is no change to how the property is currently being used. Separating
25 the properties, to allow them to be sold separately requires the variances due to lot sizes.
26

27 **Ms. Barkley was appointed a voting member for this hearing.**
28

29 Mr. Katz asked about the parking for each of the buildings. This is a non-conforming use in many ways
30 in the District. Mr. Nash asked if the variance for the small building, does it allow more room for the
31 other lot to allow more dwellings on the larger area, which is against the spirit of the law. He believes
32 that the property can be split differently and questions the parking.
33

34 The boundary for the small lot is influenced by the topography of the sites. It goes down steeply and
35 drops off. Mr. Nash also asked about the property line and how it allows for a vegetative buffer.
36

37 Ms. Mercer asked why the driveway cannot be moved 3 feet and then a variance would not be required.
38 He asked why not a more natural boundary line and grant an easement to the next property.
39

40 The applicants were asked what the hardship is that is preventing selling one of the four buildings on
41 that existing lot. These are very distinct properties and differ from one another. From the application,
42 the three lower buildings were built around 1982 and one is far older. One building had a fire and was
43 rebuilt around 2000. Hardship law indicates that a person cannot create their own hardship and cannot
44 ask for a variance based on what they created. The nature of the hardship has to be a physical
45 characteristic of the property. If the ground where the older building is built extended further and the
46 topography was such that they could create a larger lot, they would not need a variance. It is the
47 topography that limits them.
48

49 Attorney Burke was asked to confirm that there is not enough land to subdivide the property to be
50 conforming based on the number of units in each area. If in theory the lots have been consistent over
51 time, the property was built out to maximize the number of units possible on the land.

A variance cannot be determined without a parking plan. But if the Board is not inclined to grant a variance, then a parking plan is not required. The topography should be further reviewed.

Chair Koppenheffer opened the Public Hearing.

The Board was told that Harrison Bourne, a neighbor, has indicated that he has no intentions to prohibit the proposed lot division.

Mr. Katz MOVED to continue this hearing until August 1, 2022.

Second by Vice Chair Mercer.

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

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**

This application was withdrawn.

4. STAFF COMMENTS

None.

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 9:53 PM.

Seconded by Mr. Katz.

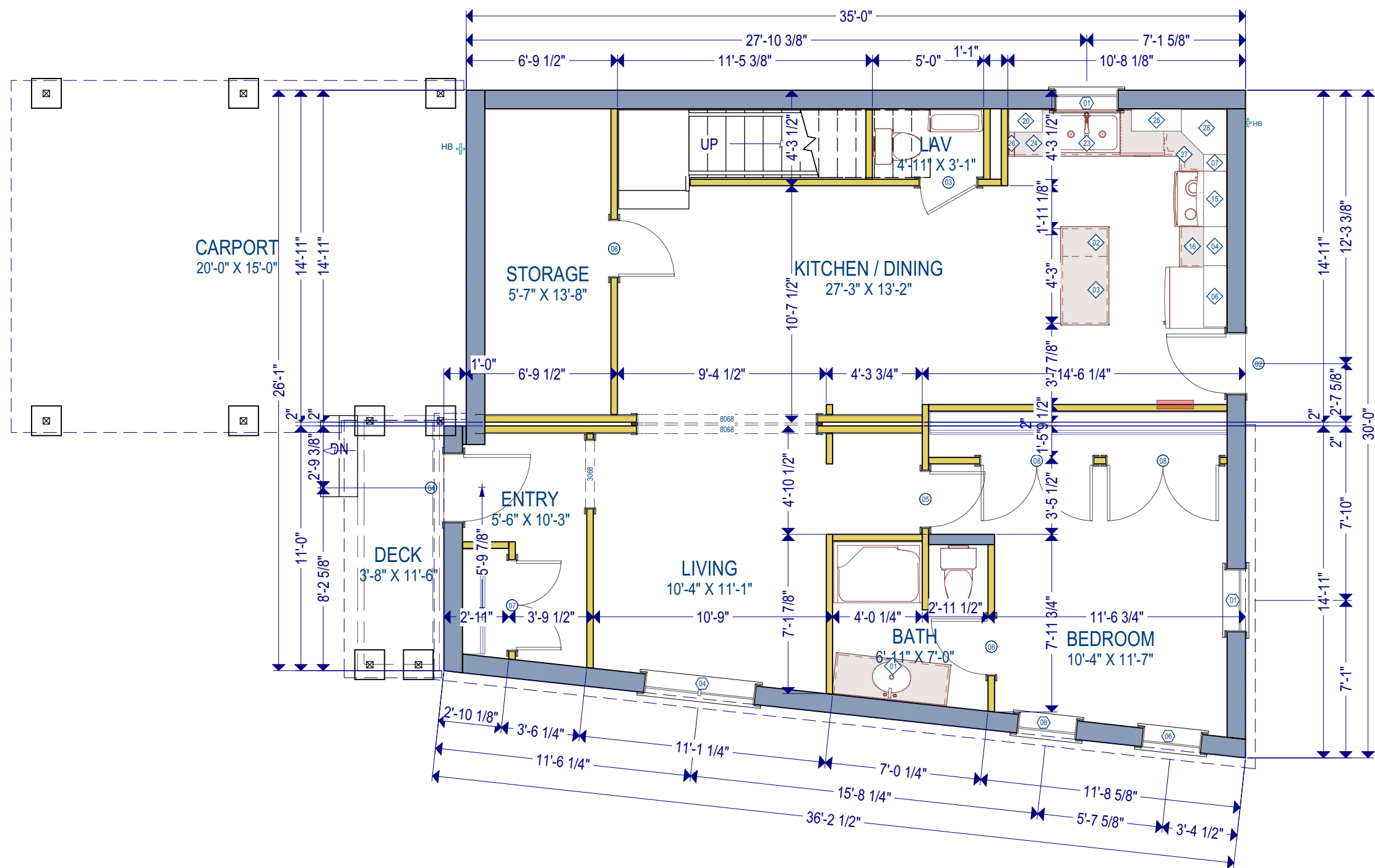
****The Vote on the Motion was approved (5-0).***

Respectfully submitted,
Linda Billings
Recording Secretary

**Agenda
Zoning Board of Adjustment
July 5, 2022**

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

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

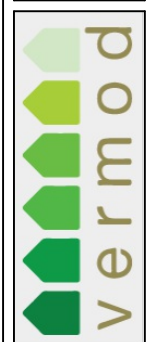


2022 VERMOD,
LLC
ALL RIGHTS
RESERVED

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
**FIRST FLOOR
PLAN**

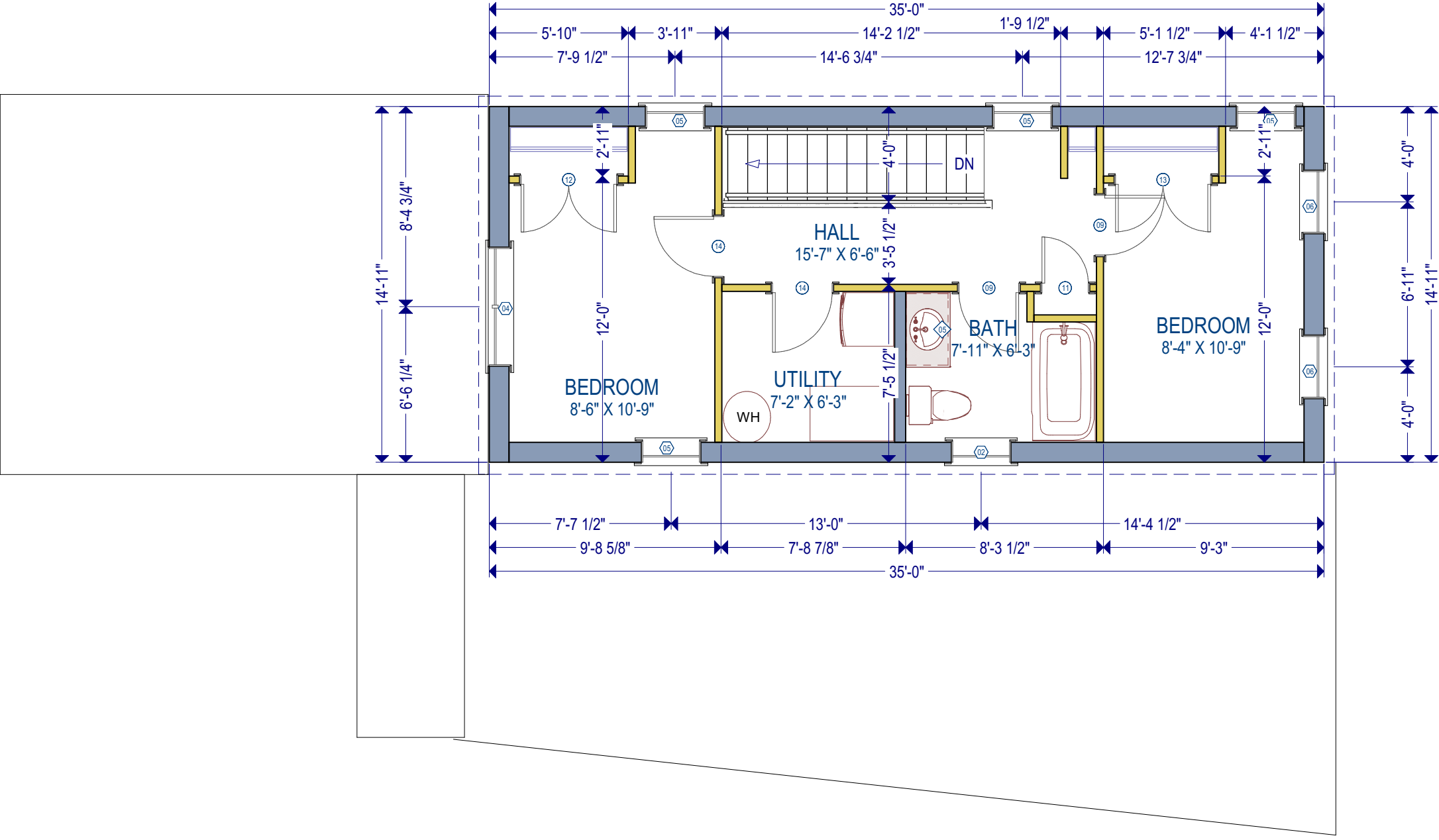
PROJECT DESCRIPTION:
RHIM PROJECT



DATE:
4/21/2022

SCALE:
3/16"=1'-0"

SHEET:
A1.1



2022 VERMOD,
LLC
ALL RIGHTS
RESERVED

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
**SECOND
FLOOR PLAN**

PROJECT DESCRIPTION:
RHIM PROJECT



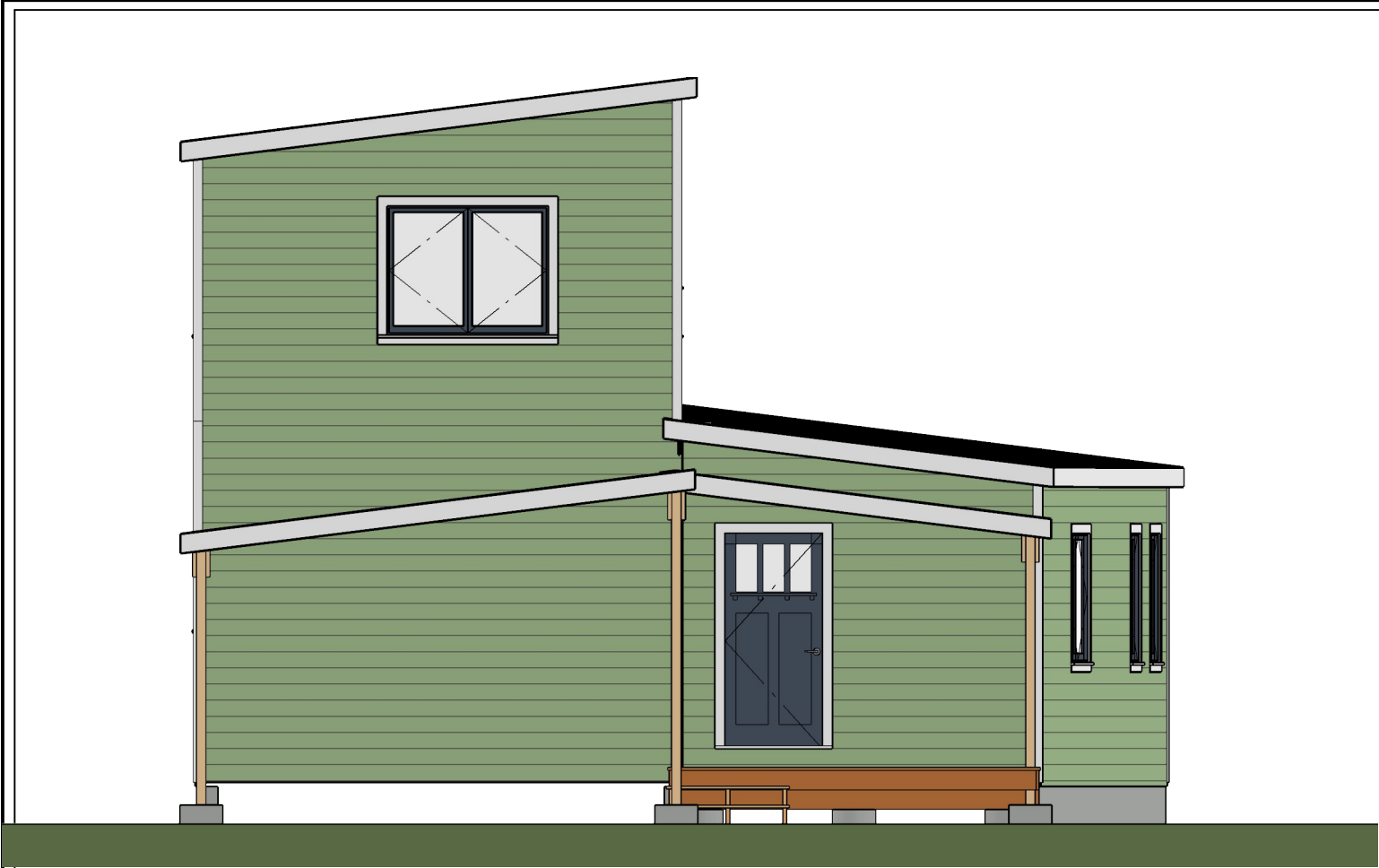
DATE:

4/21/2022

SCALE:

SHEET:

A1 . 2



FRONT ELEVATION
SCALE: 3/16"=1'-0"



REAR ELEVATION
SCALE: 1/8"=1'-0"



RIGHT ELEVATION
SCALE: 1/8"=1'-0"



LEFT ELEVATION
SCALE: 1/8"=1'-0"

2022 VERMOD,
LLC
ALL RIGHTS
RESERVED

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
ELEVATIONS

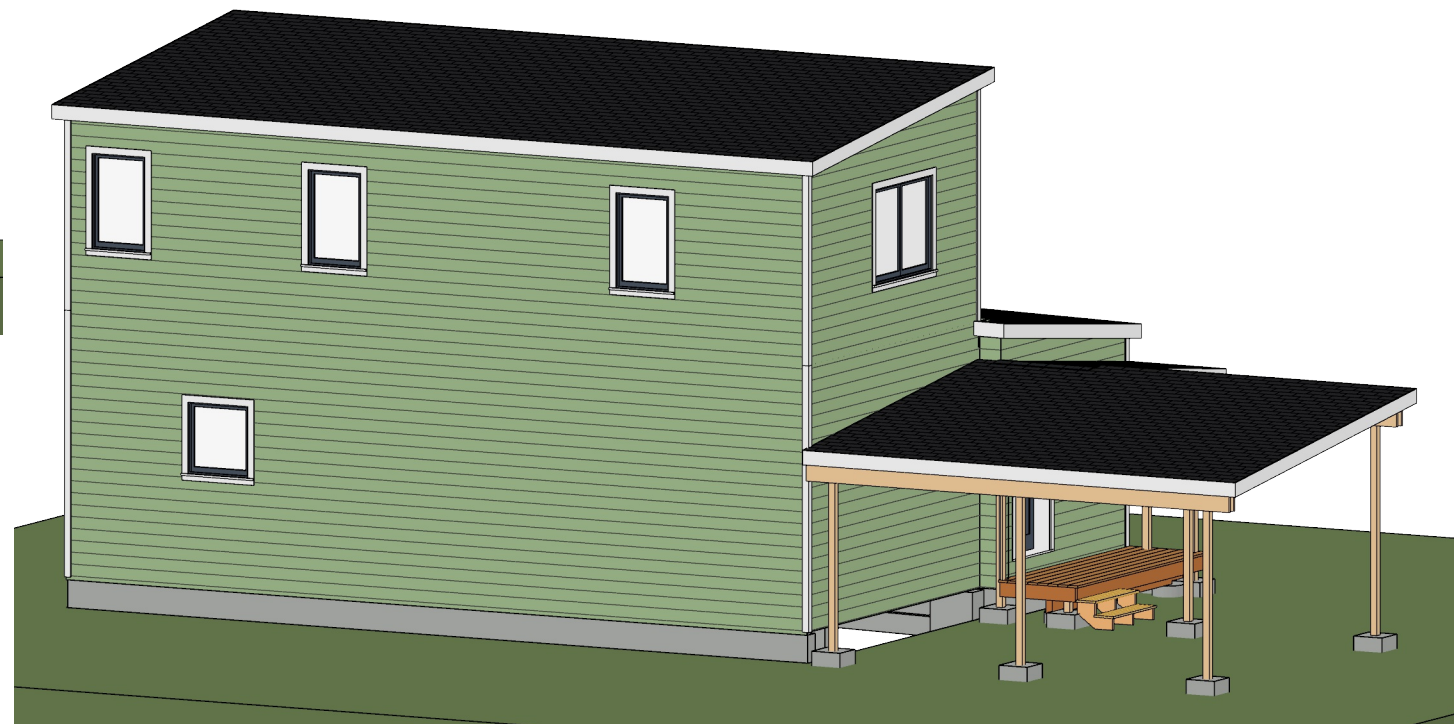
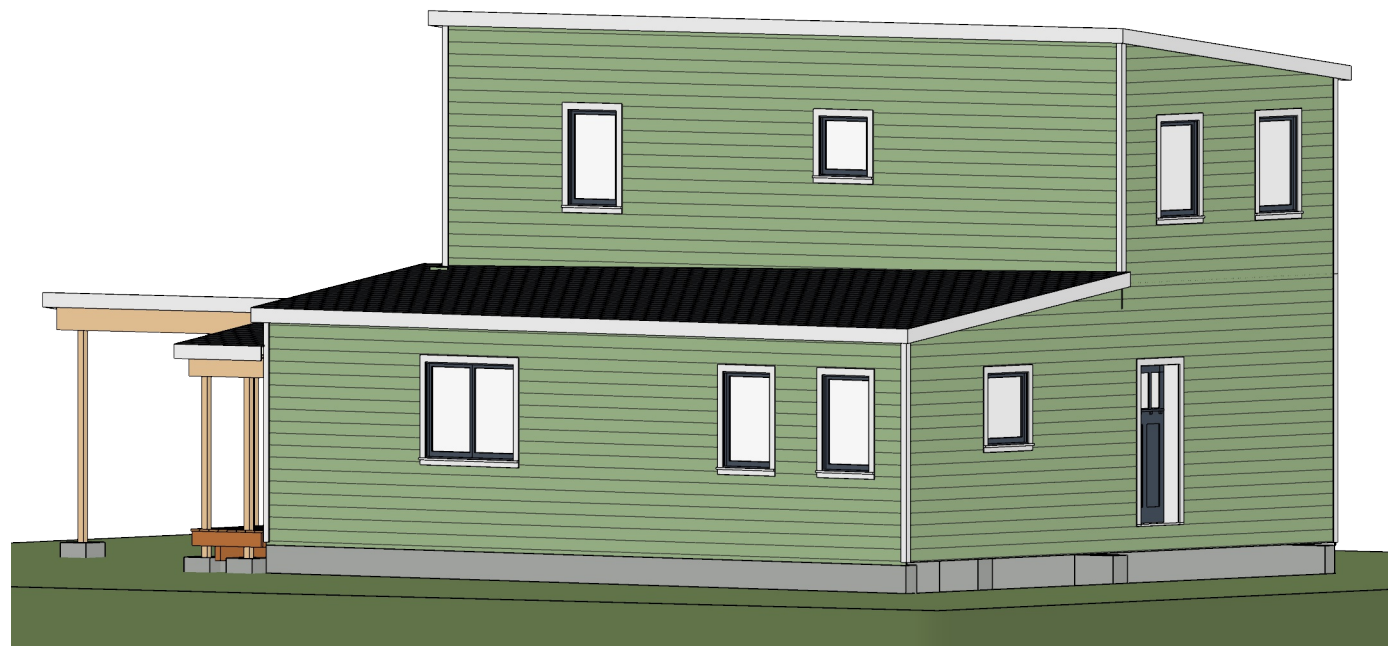
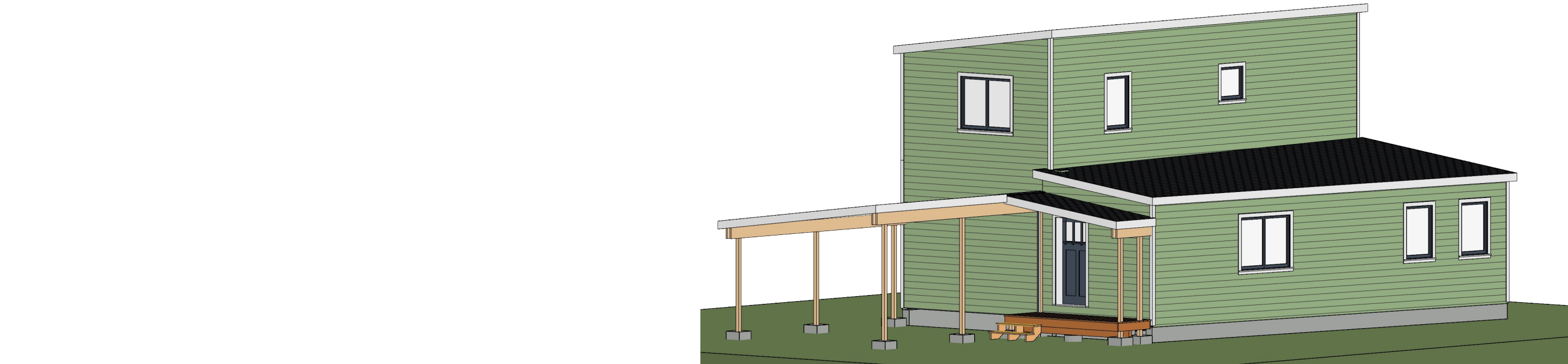
PROJECT DESCRIPTION:
RHIM PROJECT



DATE:
4/21/2022

SCALE:
AS SHOWN

SHEET:
A3.1

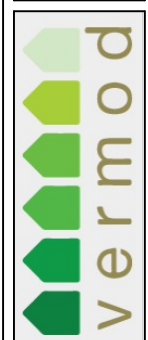


2022 VERMOD,
LLC
ALL RIGHTS
RESERVED

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:

PROJECT DESCRIPTION:
RHIM PROJECT

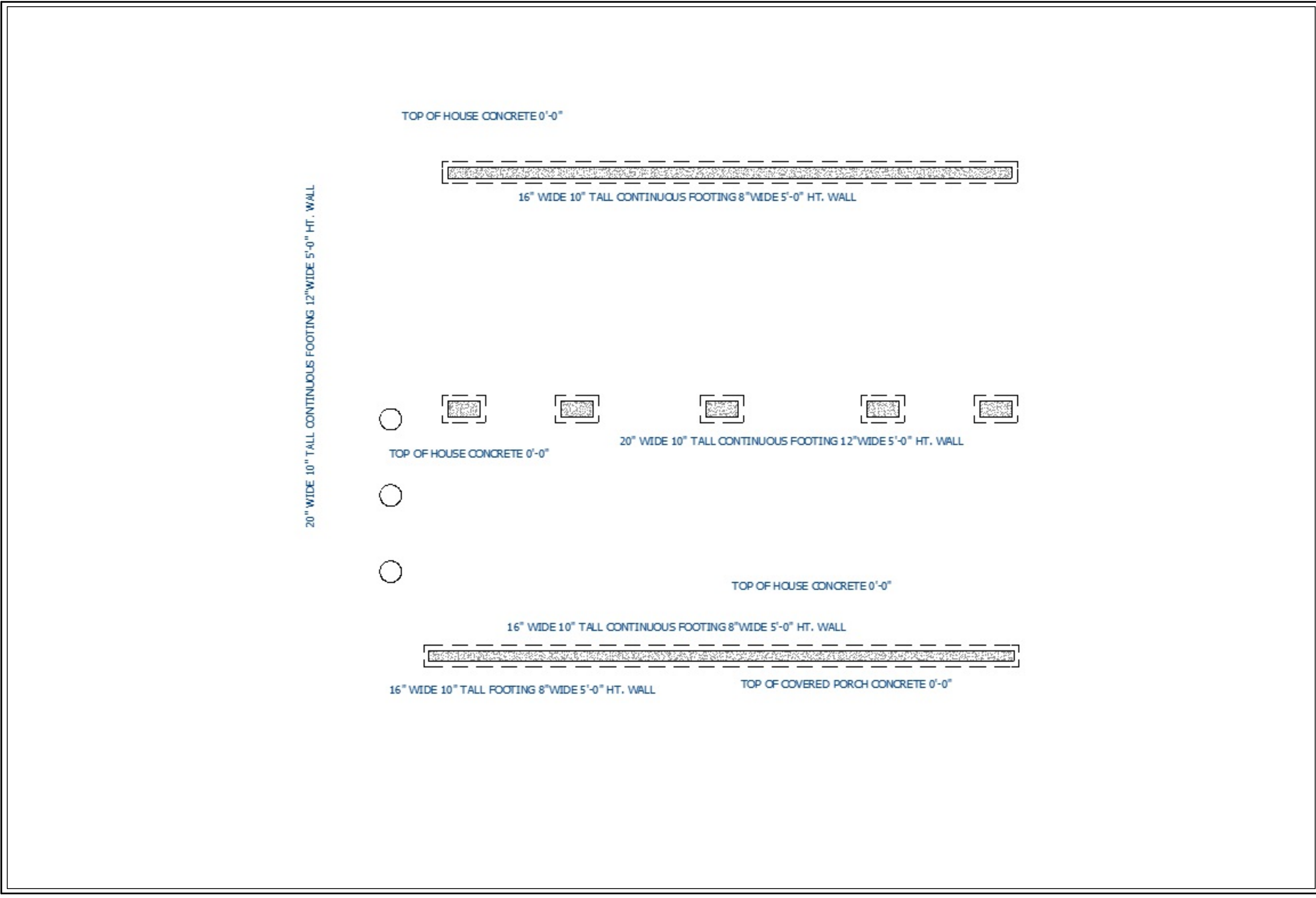


DATE:

4/21/2022

SCALE:

SHEET:



2022 VERMOD,
LLC
ALL RIGHTS
RESERVED

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
SUGGESTED
FOUNDATION

PROJECT DESCRIPTION:
RHIM PROJECT



DATE:
6/21/2022

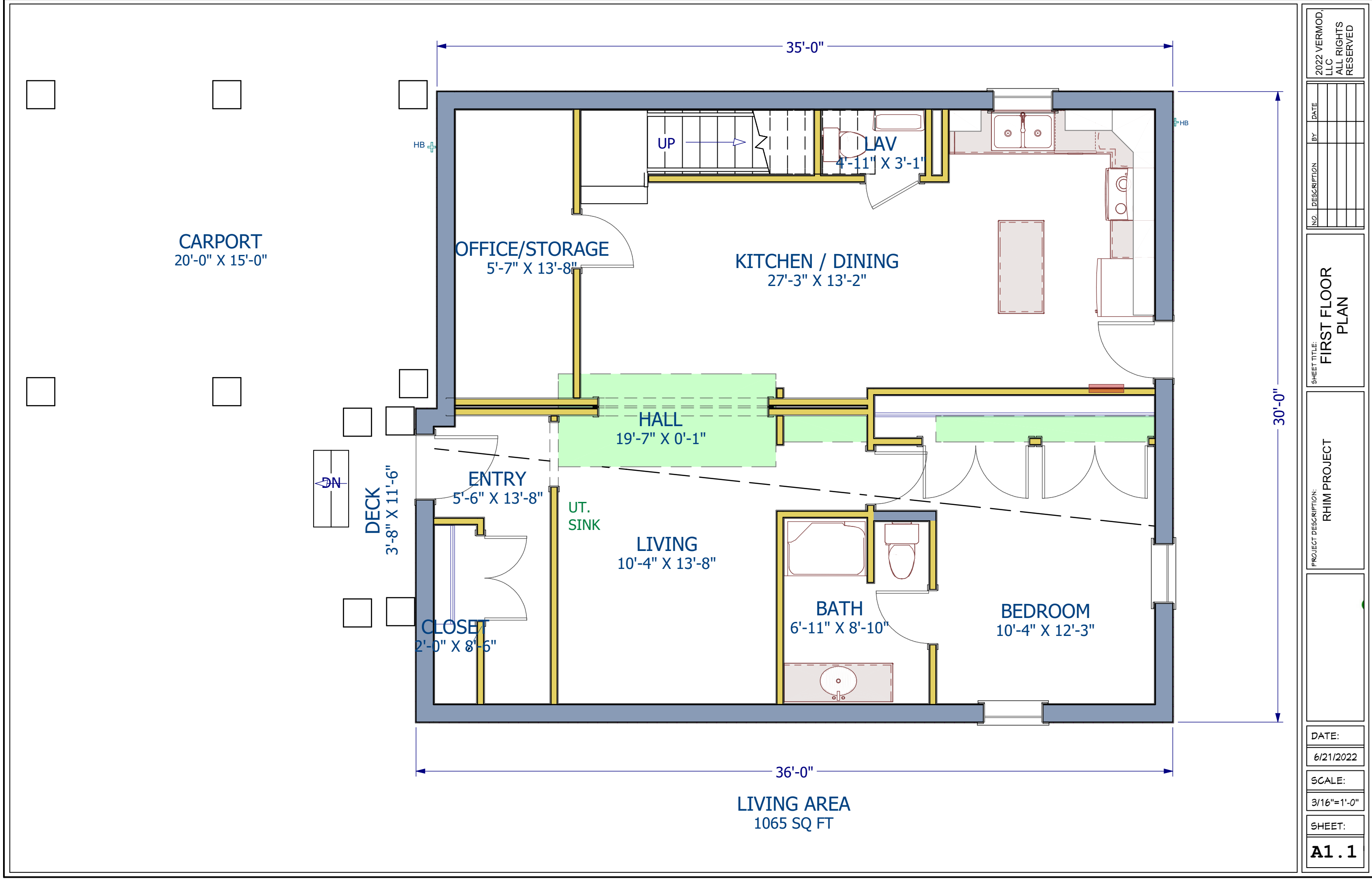
SCALE:
1/4"=1'-0"

SHEET:

A0.1

A0.1

A0.1



2022 VERMOD, LLC
ALL RIGHTS RESERVED

NO.	DESCRIPTION	BY	DATE

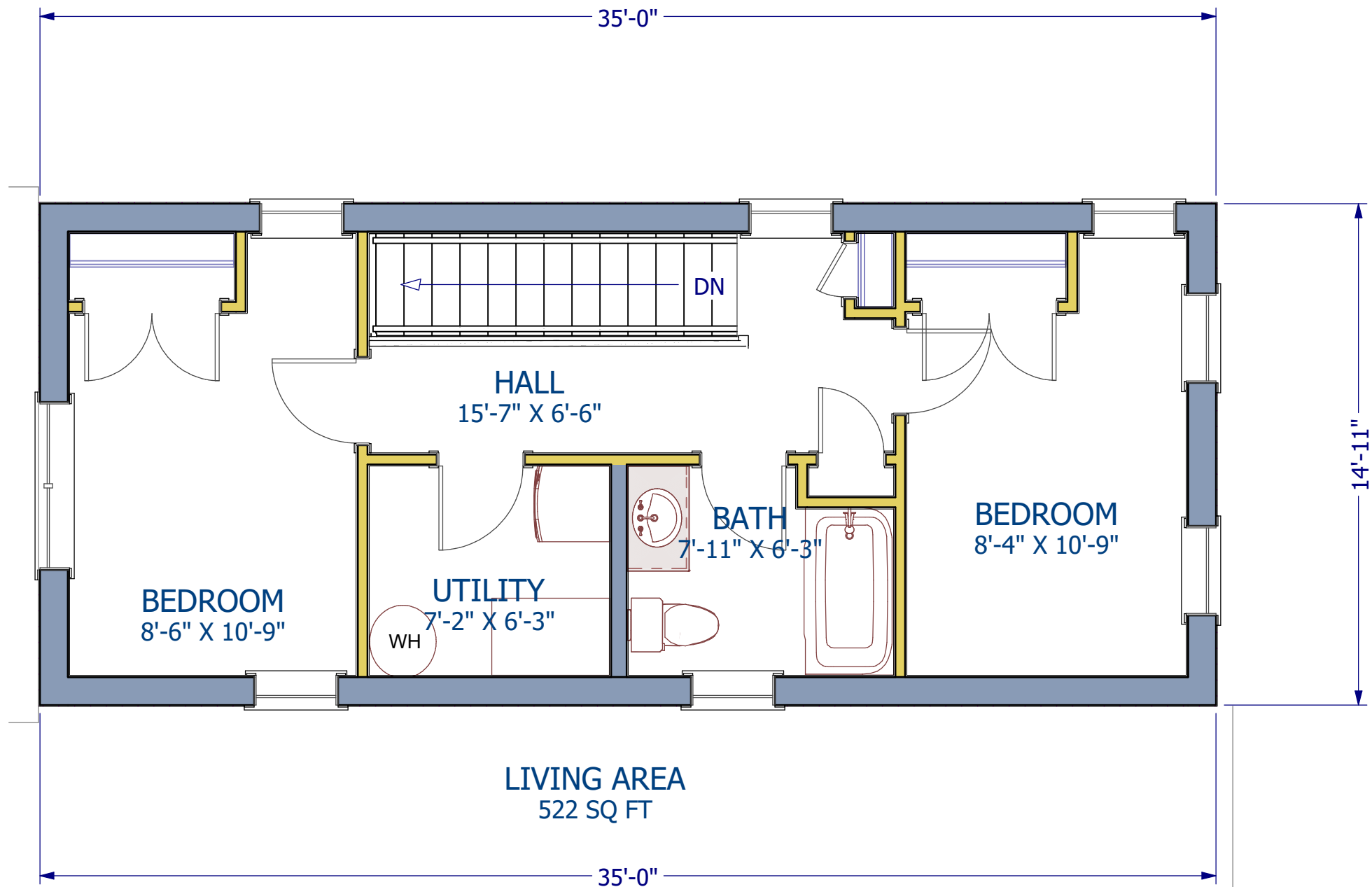
SHEET TITLE:
FIRST FLOOR
PLAN

PROJECT DESCRIPTION:
RHIM PROJECT

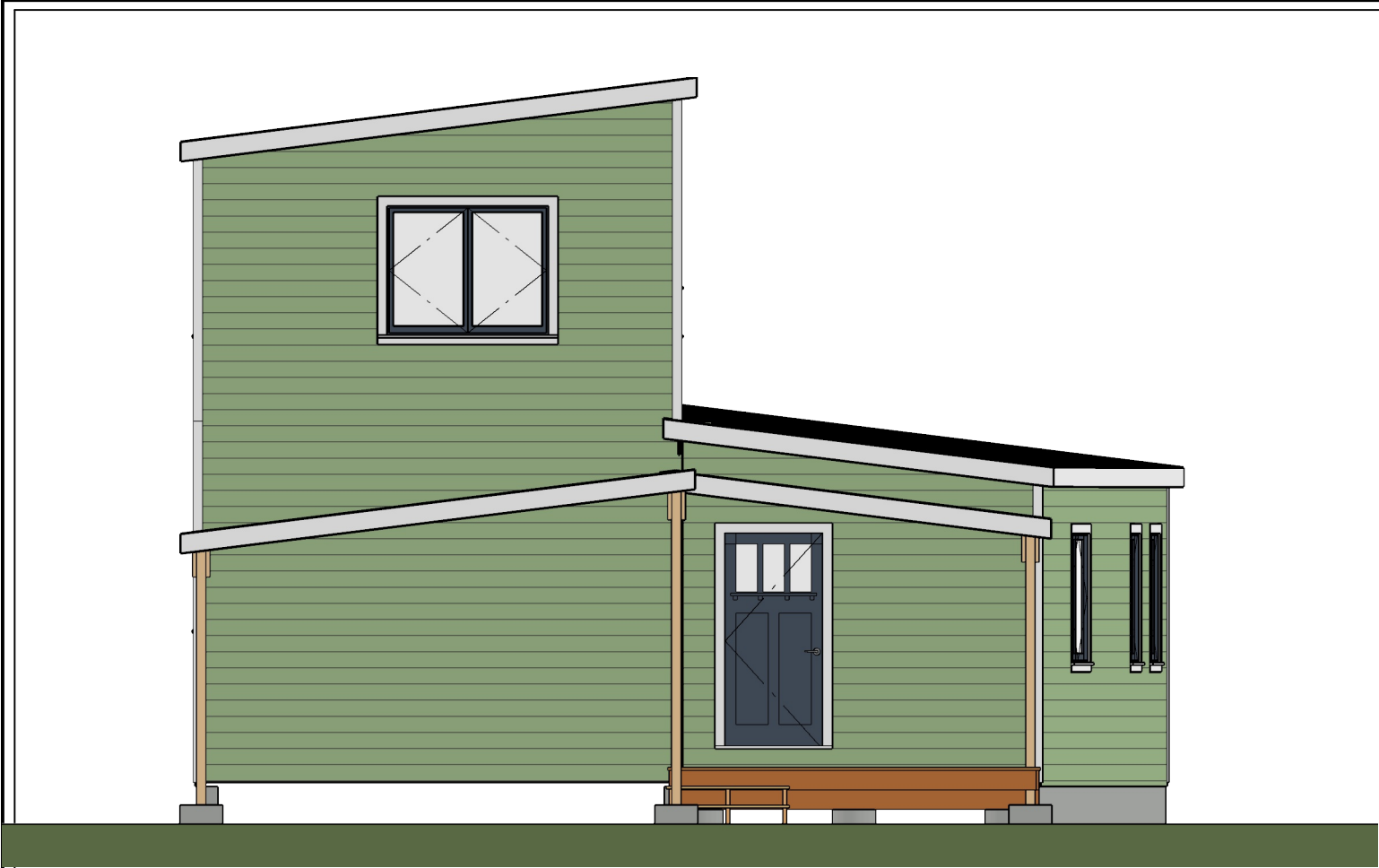
DATE:
6/21/2022

SCALE:
3/16"=1'-0"

SHEET:
A1.1



2022 VERMOD, LLC ALL RIGHTS RESERVED				
NO.	DESCRIPTION	BY	DATE	
SHEET TITLE: SECOND FLOOR PLAN				
PROJECT DESCRIPTION: RHIM PROJECT				
DATE: 6/21/2022				
SCALE:				
SHEET: A1 . 2				



FRONT
ELEVATION
SCALE: 3/16"=1'-0"



REAR ELEVATION
SCALE: 1/8"=1'-0"



RIGHT
ELEVATION
SCALE: 1/8"=1'-0"



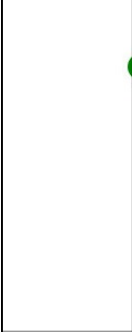
LEFT
ELEVATION
SCALE: 1/8"=1'-0"

2022 VERMOD,
LLC
ALL RIGHTS
RESERVED

NO.	DESCRIPTION	BY	DATE

SHEET TITLE:
ELEVATIONS

PROJECT DESCRIPTION:
RHIM PROJECT



DATE:

6/21/2022

SCALE:

AS SHOWN

SHEET:

A3.1

**Agenda
Zoning Board of Adjustment
July 5, 2022**

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

**Irving Oil Marketing, Inc.
(applicant),
Rancho Lebanon, LLC
(property owner),
206 South Main Street (Tax
Map 115, Lot 1),
Zoned GC
ZB2022-14-VAR**

**Additional Information in Support of Variance Application as Requested by ZBA
Irving Oil Marketing, Inc.
200 & 206 S. Main Street**

I am writing to provide you with additional information that was requested by the ZBA at its meeting on June 6th. We will also plan to present this information at the upcoming meeting on July 5th, but I wanted to make sure that I sent along a summary for the record.

1. We have confirmed that the term of the Lease for the property located at 200 South Main Street is 20 years, with 5 four year extensions.
2. We have also confirmed that the City no longer requires compensatory storage on the Property. This doesn't impact the design of the site, but we did review the requirements per the request of the ZBA.
3. Based on the lengthy discussion at the meeting and numerous comments from the ZBA in connection with the location of the 2nd freestanding sign, the Applicant took another look at the design of the site and has been able to re-locate the sign to a location that will be more than 150 feet from the existing Target sign.

As a result, the Applicant is **withdrawing** its request for a variance from Section 608.4(A)(4), Freestanding Signs 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.

4. In re-locating the 2nd freestanding sign, the Applicant needed to shift the location of the canopy in order to allow for the sign and proper driveway circulation. Even though the canopy is slightly further away from the retail store than the Applicant normally prefers, the Applicant is willing to do so in order to address the sign location. The new canopy location still provides for proper circulation and spacing on the site.

As a result of the re-design, the Applicant is **withdrawing** its request for a variance from 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.

5. The ZBA requested further information from the Applicant in connection with the 2nd freestanding sign to advertise its gas prices. NH RSA 339:30-a requires that gas prices be posted in at least two of three possible ways. Two of the ways are both located on the fuel dispenser and the third is by way of a stationary roadside fuel price sign that is clearly visible from the street. The RSA specifically states that the advertising must be complied with and must be posted in a specific manner. One of the problems with the Applicant solely providing pricing on the dispenser is that the statute requires the price signs to be affixed on the dispenser so that "they are clearly visible from both sides of the dispenser from either direction of a motorist's approach." Given the orientation of the dispensers in relation to the street, combined with the building location and other signs located along the roadway, motorists will not be able to clearly view a 4 inch price sign from their approach. In fact, such a sign will not be visible until they are

on the site. The intent of the statute is to provide consumers with the gas prices prior to having to enter the station. In this case, the property is located along a busy street where a safety hazard could be created if motorists are trying to view the price signs on the dispensers prior to entering the property. Such a hazard is further exacerbated by the fact that there is a raised median strip in front of this property. As a result, consumers need to be able to make a decision about entering the site without creating an issue along the busy highway. It is also important to point out that the Applicant would be left in a significant competitive disadvantage if it were not able to advertise its gas prices along the road, similar to its competition across the street.

6. The ZBA also requested further information in connection with the existing non-conforming hi-rise sign still located on the property. In an in depth review of the files relating to the high rise sign, as requested by the ZBA, it was discovered that on or about May 10, 2013, the Applicant submitted a zoning permit to the City of Lebanon to replace the hi-rise sign façade with a white blank vinyl material. At the time of submitting the zoning permit, the site itself had not only been closed for 3 years, more or less, but the permit itself indicates that the property was a vacant commercial lot. In fact, when the City of Lebanon approved the permit on or about May 14, 2013, the City of Lebanon indicated in the approval that there was no change in size or location of the non-conforming sign and that the Applicant just wanted to blank out the face and will pull another permit when they are ready to re-face it. The Applicant was charged a fee for obtaining this permit. The Applicant has been in compliance with the issued permit since that time and there was no expiration listed on the permit that was issued. As a result, the hi-rise sign is not only grandfathered, but was permitted by the City to remain in its current location with a white blank vinyl material. At this time, the Applicant is only seeking to put a new façade on the sign, which is clearly permitted under the Zoning Ordinance and was anticipated in the permit previously issued. It is our position that since the City granted this permit, we do not need any relief from the ZBA to replace the façade.

Without waiving the above and simply to protect the record in the event that the ZBA disagrees that the issuance of the sign permit by the City is determinative of this matter, as further evidence of the grandfathered status of the hi-rise sign, when the site was originally closed as a result of the NH DOT taking in 2010, agents of the Applicant spoke to the then Director of Code Enforcement, Carmela Hennessy, about re-developing the site and keeping the high rise sign. At that time, Ms. Hennessy indicated that the sign could remain in its current location since it is an existing non-conforming sign. The Applicant then went forward with trying to develop a plan to reasonably develop the smaller, remaining site. This involved numerous conversations with the City over the years, as well as with the previous owners of the abutting laundromat property to either lease or purchase additional property for use in the re-development.

In 2016, the City sent a letter to the Applicant to clean up the site, but there was no mention of removing the existing non-conforming hi-rise sign still located on the property as it is today. In reviewing the Zoning Ordinance that was in effect in 2016, the sign would have lost its legal non-conforming status in the event that the sign was “abandoned based on circumstances indicative of an intention to abandon the use and vested rights.” It is clear that the City did not take such a position that the sign was “abandoned” when writing to the Applicant, but instead

specifically requested that the site be cleaned and that the Applicant contact the City to discuss its future plans.

On January 26, 2017, the Applicant, along with development team members and its attorney, met with several members of the City planning and zoning department to discuss possible concepts for re-developing the site. At this meeting, the Applicant, through counsel, expressly indicated that the existing hi-rise sign would be utilized as part of any re-development and in fact, that it was the Applicant's position that the sign was grandfathered. Neither the Applicant nor its agents ever received any further correspondence from the City after this meeting indicating that it disagreed with the Applicant's position that the sign was grandfathered nor did they ever receive any request from the City to remove the sign. It is also important to point out that the City of Lebanon continues to list the hi-rise sign on the property assessment even to this day and has been assessing the Applicant taxes on the sign every year. The Applicant has continued to pay such taxes without any request to remove it or abate the amount.

As a result, the Applicant continues to maintain that the hi-rise sign is grandfathered and no relief is required to continue its use and simply replace the façade.

As indicated in our ZBA application, a variance was also requested, without waiving our arguments above. At the ZBA meeting on June 6th, Board members requested further information in connection with the Applicant's efforts over the years to re-develop the site and its continued intent to move forward. As a result, I have attached an outline that depicts the Applicant's continuous efforts over the years to try to come up with a reasonable re-development plan. Much of its efforts involved attempts to negotiate with previous owners of the abutting lot in order to obtain additional property to provide for a more feasible layout and without the need for so many variances.

Although the Zoning Ordinance has a section relating to non-conforming signs, it also contains an additional section dealing with non-conforming structures. It is important to note that a sign is defined as a structure in the City's Zoning Ordinance. In fact, one of the ZBA members mentioned at the meeting on June 6th that what exists on the property currently is simply a structure. Under Section 703.2, the ZBA has the ability to permit the re-establishment and use of **any** non-conforming structure as long as the owner has not taken any action incorporating an intent to abandon it and that failure to resume its use was due to economic, regulatory or other forces beyond the control of the owner. Even though the question was raised at the ZBA meeting about the compensation that the Applicant received for the taking by the NH DOT, it must be made clear that the Applicant had no choice in whether or not the DOT was going to take its land. This was an eminent domain taking and the Applicant had no ability to say no. The fact that it received compensation does not change that. In fact, the Applicant would have preferred to simply continue its operations as they previously existed in 2010.

CITY OF LEBANON
Building Permit
COMMERCIAL
Lebanon, NH 03766
603-448-1524
www.lebcity.com

Permit Number
2013-00128
Date of Issue
5/14/2013

5/15/13
11:30 AM
emailed to Payant
GARY

Owner: COBALT PROP NH CORP IRVING OIL CORPORATION

Applicant: COBALT PROP NH CORP IRVING OIL CORPORATION

Location of Work: 206 S MAIN ST
(No. and Street)

(Unit or Building)

Description of Work: IRVING HIGHWAY SIGN TO BE REFACED WITH WHITE BLOCK VINYL MATERIAL.

ZONING DATA: District: GC

Map/Lot: 115/1

CONTRACTOR: POYANT SIGNS 603 546 2005

REMARKS:

THIS PERMIT IS BEING ISSUED WITH THE FOLLOWING CONDITIONS:

NO CONDITIONS AT THIS TIME

WORK SHALL NOT PROCEED UNTIL THE CITY INSPECTORS HAVE APPROVED THE FOLLOWING STAGES OF CONSTRUCTION:

1. Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not there or the setbacks cannot be verified, the construction will not be approved or allowed to continue. Mistakes in location of boundary lines are the sole responsibility of the property owner. **DO NOT POUR CONCRETE UNTIL THE ABOVE HAS BEEN APPROVED!**
2. Foundation insulation, waterproofing and drainage, prior to back-filling.
3. Structural rough frame, rough electrical and rough plumbing, prior to covering.
4. Prior to concealing any work authorized under this permit.
5. Final Inspection for Certificate of Occupancy, to include plumbing, heating, electrical, and any other code issue or miscellaneous item as applicable to the project including site improvements. **PLEASE SCHEDULE THIS AT LEAST 5 DAYS IN ADVANCE.**

A building or structure shall not be used or occupied in whole or in part until a **CERTIFICATE OF OCCUPANCY** has been issued.

APPROVED PLANS MUST BE KEPT AT THE JOB SITE - THIS CARD MUST BE KEPT POSTED UNTIL FINAL INSPECTIONS HAVE BEEN COMPLETED

Permit Holder: COBALT PROP NH CORP IRVING OIL CORPORATION
(Taking Responsibility for the Work)

Company/Affiliation:

Job Site Phone Number:

Constr Cost: \$14,500 Permit Fee: \$196.35 Check No.: 1964 Cash: \$0.00

The Permit Card Shall be Posted and Visible From the Street During Construction

Code Official

5/14/2013

Date

557

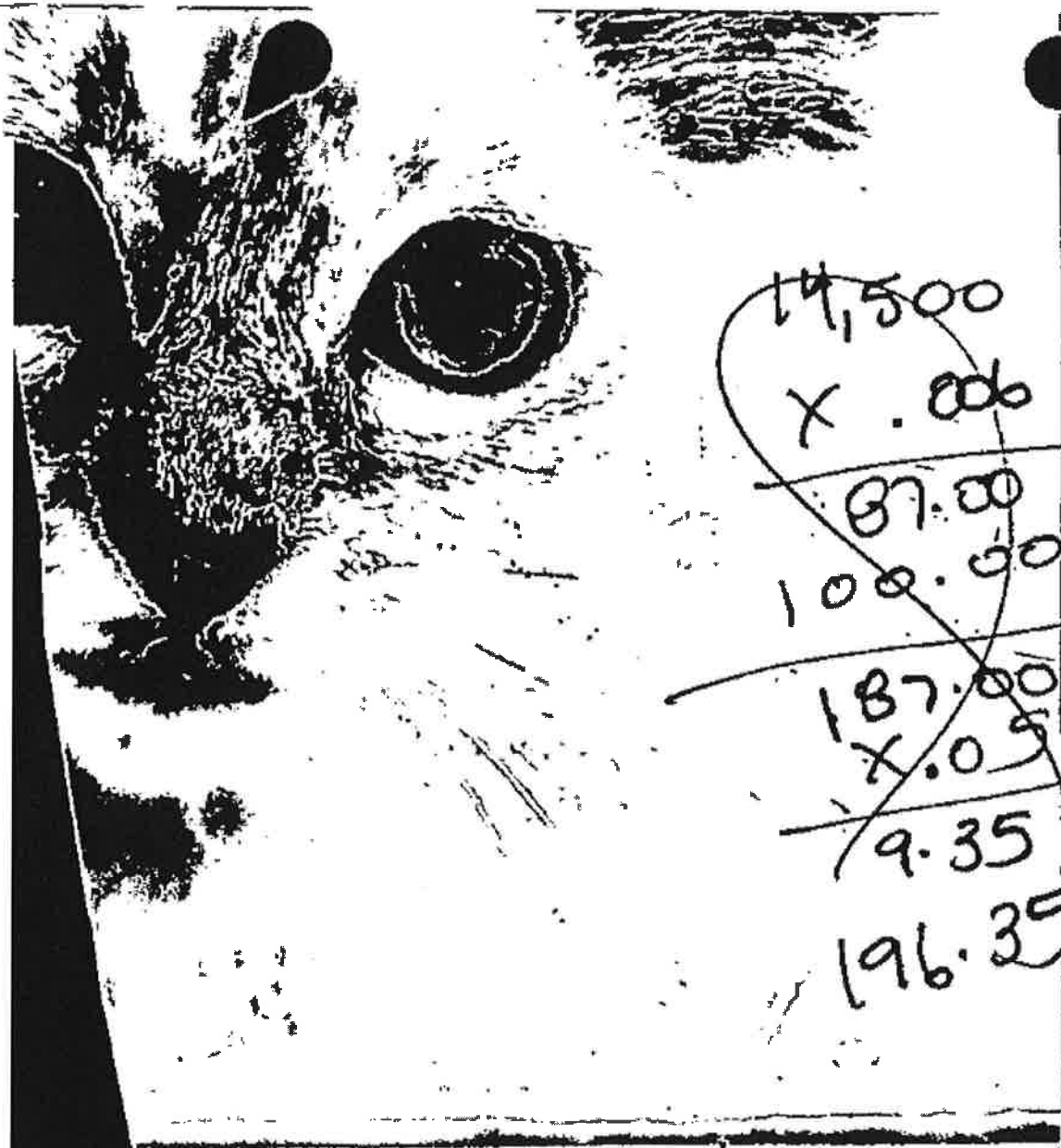
603

Ne

Tom McClain
Indiana

Lisa

सर्व
पेश्वि
पेश्वि



~~14,500~~
~~X .006~~
~~87.00~~
~~100.00~~
~~187.00~~
~~X.05~~
~~9.35~~
196.35

R

NOVEMBER										JANUARY '13														
								1	2	3								1	2	3	4	5		
4	5	6	7	8	9	10					6	7	8	9	10	11	12							
11	12	13	14	15	16	17					13	14	15	16	17	18	19							
18	19	20	21	22	23	24					20	21	22	23	24	25	26							
25	26	27	28	29	30						27	28	29	30	31									

MAP 115	LOT 1	PLOT NA	PERMIT # 2015-00128
PLANS ARE: ATTACHED FLAT FILE HANGING UP			

COMMERCIAL BUILDING PERMIT TRACKING SHEET

ZONING: Carmela	☒ approved	☐ conditioned	☐ denied	file path:
BLDG: Calvin	☐ approved	☐ conditioned	☐ denied	file path:
	☐ approved	☐ conditioned	☐ denied	file path:
BLDG: Win	☐ approved	☐ conditioned	☐ denied	file path:
	☐ approved	☐ conditioned	☐ denied	file path:
PLAN: David	☐ approved	☐ conditioned	☐ denied	file path:
FIRE: Duane/JP	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
ENG: Christina	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
DPW: Billing	☐ Fees paid	☐ Fees not pd		Amount still owed \$
DPW: Don Schagen	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
DPW: Earl Labor	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
O & M: Bob Mc	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
O & M: Carl/Clive	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
add'l info:	☐ approved	☐ conditioned	☐ denied	file path:
ISSUED:	☐ Permit	☐ Interior	☐ Plumbing	PAID:
☐ Status Report	☐ Foundation	☐ Electrical	☐ Other	☐ Permit Fee
☐ Status Report	☐ Framing/steel	☐ Mechanical		☐ Water & Sewer Fee

S:\czb\Building\Forms\Tracking\Commerical Permit

CITY OF LEBANON-
BUILDING/ZONING PERMIT APPLICATION
IN HOUSE REVIEW FORM

PERMIT# 2013-00128	MAP & LOT# 115-1	DATE: 5/14/2013
PROPERTY OWNER: Cobolt Properties NH, Corp		
PROJECT LOCATION: 206 S Main St/WEST Leb		
PROJECT: Cover up current Irving Sign with white vinyl		
☒ Approved☐ Conditioned (See Below)☐ Denied COMMENTS: <i>No change in size or location</i> <i>Car centering sign</i>		
<u>BUILDING REVIEW</u>☐ Conditioned (See Below)☐ Denied COMMENTS: <i>Just want to stop at the</i> <i>now - will pull permit when</i> <i>ready to re-free</i>		
SIGNED: _____ DATED: _____ Calvin Hunnewell, Building Inspector OR , Field Inspector		
<u>ELECTRICAL REVIEW</u>☐ Conditioned (See Below)☐ Denied COMMENTS: _____ _____ _____ _____		
SIGNED: _____ DATED: _____ Winston Spencer, Electrical Inspector		
<u>FIRE REVIEW</u>☐ Conditioned (See Below)☐ Denied COMMENTS: _____ _____ _____ _____		
SIGNED: _____ DATED: _____ Duane Egner or Jon Paul, Fire Inspector		

5/14/13
reper

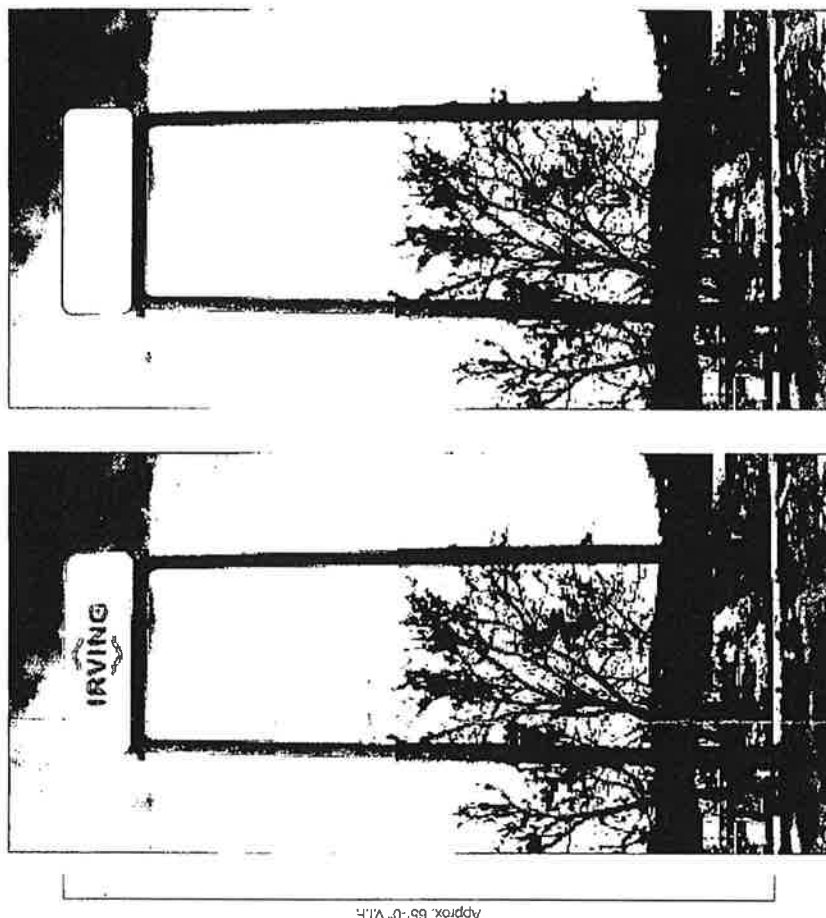
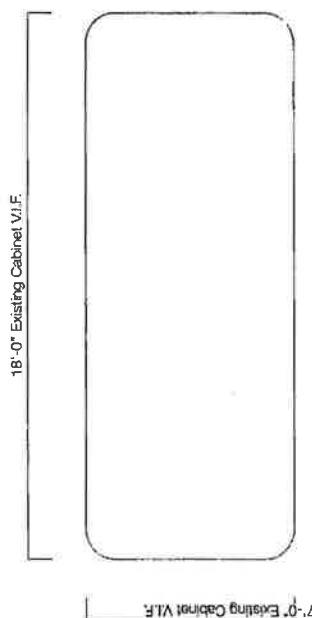


Photo Comp - Proposed
Not to Scale

(B) Photo Comp - Existing
Not to Scale

Approx. 65'-0" V.L.F.



A Sign Elevation - Front View
Scale: 1/4"=1'-0"

Specifications

Qty: 2 (1 for each side)

New Face(s) for Existing Double Face Internally Illuminated Pylon Sign

- Blank white flex face

Colors & Materials

☐ White Flex Face Material

CITY OF LEBANON
PAYMENT VOUCHER

No 13754

NAME:

Payant Signs

ADDRESS:

206 S. Main St / W. Leb

(for Cobalt Prop)

PAYMENT FOR:

Sign Permit Ren-

DEPARTMENT:

9350

AMOUNT DUE: \$

196.35

RECEIVED BY:

SL

DATE RECEIVED:

5-14-13

✓ # 1964

City of Lebanon,
New Hampshire



Building/Zoning Permit
Application Form

Property Owner (Owner of Record): Cobalt Properties NH Corp Tel.#: 506-202-1000
Mailing Address of Owner: 55 Union St, Saint John, NB E2L 5B7 Fax #: 506-202-1111
Email: lmofoffett@cobaltproperties.com
CONTACT PERSON FOR PROJECT: Gary Bolduc Payant Signs Tel.#: 505-884-9405
Mailing Address: 19 Prospect St, West Newbury, MA 02745 Fax #: 781-465-7112
Email: gbolduc@payantsigns.com

1. Project Location:

City Tax Map: <u>115</u>	Lot: <u>1</u>	Plot: <u>NA</u>	Zoning District: <u>GC</u>
Location (Physical Address of Project): <u>Route 12A WEST LEBANON NH</u>			

2. Project Description:

Describe the nature of work proposed, in detail:

Instead of painting over Irving name on Highway Sign.. We will be refacing cabinet with white black vinyl material.

Cost of Project Construction: \$ 14,500

3. Type of Occupancy: (check as appropriate)

Existing	☒ Vacant Lot	☐ One Family	☐ Two Family	☐ Multi Family	☒ Commercial	☐ Industrial
Proposed	☒ Highway Sign	☐ One Family	☐ Two Family	☐ Multi Family	☒ Commercial	☐ Industrial

For Commercial or Industrial:

Specific Type of Use (for example: retail, office, industrial, etc.): Commercial Retail

Name of Commercial/Industrial Tenant (if known): Irving

THE UNDERSIGNED OWNER HEREBY REQUESTS A BUILDING/ZONING PERMIT FOR THE ABOVE USE, TO BE ISSUED ON THE BASIS OF THE REPRESENTATIONS CONTAINED HEREIN, INCLUDING ALL NECESSARY SUPPORT STATEMENTS. PERMIT IS VOID IN THE EVENT OF MISREPRESENTATION AND/OR NOT BEING IN COMPLIANCE WITH THE BUILDING CODE, ZONING ORDINANCE, SITE PLAN REVIEW/SUBDIVISION REGULATIONS (IF APPLICABLE) AND OTHER APPLICABLE STATE AND CITY LAWS AND REGULATIONS. CONSTRUCTION IS NOT AUTHORIZED UNTIL PERMIT IS ISSUED.

Property Owner Signature: [Signature] Date: May 10/13

IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING STATEMENT AND SIGN BELOW. I hereby designate the individual listed as contact person for project 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 my official decision made on the basis of such representation.

Property Owner Signature: [Signature] Date: May 10/13

APPROVED - ZONING ADMINISTRATOR:

DATE: 5/14/13

APPROVED - BUILDING OFFICIAL:

DATE: 5/14/13

Received <u>5-14-13</u>	File# <u>115-11</u>	Permit# <u>2013-00128</u>	Issued <u>5-15-13</u>
Const. Cost \$ <u>14,500</u>	Permit Fee \$ <u>196.35</u>	Voucher# <u>13754</u>	Date Paid <u>5-14-13</u>

(Copy provided to Assessing Dept. on 5-15-13)

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR INSTALLATION OF SIGN(S)

This support statement must be submitted with a completed application for a Building/Zoning Permit. Please refer to Article VI, Section 608 of the Zoning Ordinance for specific requirements.

Property Owner: <u>COBALT Properties NH Corp</u>		
Applicant (if other than property owner): <u>POYANT SIGNS INC</u>		
Location (street address of sign): <u>Route 12A West Lebanon NH</u>		
Tax Map #:	Lot #:	Cost of Sign(s): \$ <u>14,500</u>
Is sign illuminated? <u>N/A</u>	Name & License Number of Electrician: <u>N/A</u>	
Is the sign to be located within a business/industrial plaza or shopping center? <u>NO</u>		

"BUSINESS STOREFRONT" - LINEAR WIDTH OR FRONTAGE, IN FEET - That portion of the side of a structure occupied by a business use which faces the main street or major point of access. If the business use faces two main streets or major points of access, then said business shall be deemed to have two business storefronts. If the business use faces three or more main streets or major points of access, then said business shall designate only two faces which shall be deemed business storefronts.

YOUR BUSINESS STOREFRONT = N/A LINEAR FEET.

*Refacing
Existing
Hwy Sign*

The total sign area for the combination of signs shall not exceed that determined by the following formula:

Linear width, or frontage, of the "BUSINESS STOREFRONT" in feet x .8 feet.

Example: A store with 40 feet of frontage ($40' \times .8 = 32$ sq. ft.) would be allowed a total of 32 sq. ft. of sign area.

Please Note: An individual industrial use or business shall be allowed to have a minimum sign area of 32 sq. ft. The maximum sign area for two permitted signs shall not exceed 150 sq. ft. A single sign shall not exceed 100 sq. ft. Signs that have three or more sides shall not exceed a total of 150 sq. ft.

NUMBER AND TYPE OF SIGNS, IF ANY, ALREADY UTILIZED BY YOUR BUSINESS:		
Total # Affixed _____	Total # Free Standing <u>1</u>	Total # Projecting _____
Total square footage of existing sign area: <u>126 sqft</u>		
NUMBER AND TYPE OF PROPOSED SIGNS TO BE UTILIZED BY YOUR BUSINESS:		
Total # Affixed _____	Total # Free Standing <u>1-Reface</u>	Total # Projecting _____
TOTAL SQUARE FOOTAGE OF PROPOSED SIGN(S)		
Total # Affixed _____	Total # Free Standing <u>126 sq ft</u>	Total # Projecting _____

PLEASE ATTACH A SEPARATE SHEET SHOWING A DIAGRAM OF THE SIGN TO INCLUDE DIMENSIONS AND ALL LETTERING/LOGOS. IF A FREE STANDING SIGN IS REQUESTED, PLEASE PROVIDE A SITE PLAN INDICATING THE LOCATION OF THE SIGN.

FOR OFFICE USE ONLY

DATE RECEIVED _____ FILE # _____ PERMIT # _____ DATE PERMIT ISSUED _____

SALES/USE/OWNERSHIP FORMS LABELS PERMIT ECT/WORKS/Sign Support updated 8-8-2012/epd

June 29, 2022

Project Development timeline for Irving Oil – 206 Main Street, Lebanon, NH

Please note - In the following timeline, MHF and GPI are both design consultants engaged by Irving. (MHF has now merged with GPI and they are considered the same entity in this context). Irving is used to refer to all Irving Oil corporate entities as well as Cobalt Properties NH Corp.

March 2008 – Taking of part of 206 Main Street by NHDOT was finalized with the agreement to operate the site until the road work starts

10/6/2009	Meeting held with DOT re: developing site after taking
2/18/2010	Call with Carmela Hennessy, Director of Code Enforcement. It was indicated that the existing high-rise sign is an existing, non-conforming sign and if it is relocated than it will lose its status and the sign will have to comply with the existing zoning regulations
3/15/2010	IOM contacted Dead River Properties re: access and possible lease agreements
3/15/2010	MHF retained to provide concepts of new development on new decreased lot
4/21/2010	Initial concept provided to Irving by MHF, concept required variance setbacks for building and canopy
4/28/2010	City was called by MHF re: work within the flood plain requirements
6/2/2010	Discussions held with Dead River re: access
7/14/2010	MHF meeting with City Planner
8/4/2010	Irving had email discussions with Dead River Properties regarding obtaining a right of way for access to our existing lot, laundromat not included at this time
9/2/2010	MHF had call with Carmela Hennessy, City allows a 2 ft overhang for canopy, high-rise can remain
9/8/2010	MHF created easement plan for access
9/20/2010	Continual correspondence with Dead River Properties
9/27/2010	MHF provides revised site plan
9/30/2010	MHF had correspondence with Carl Colburn from City re: utility stubs
10/8/2010	MHF had correspondence with DOT re: utility stubs
10/22/2010	MHF had call with Christina Hall from City re: compensatory storage requirements

12/29/2011 concept provided by MHF with launder mat lot included (Concept A)

3/21/2011 New concept prepared by MHF and sent to Irving

4/13/2011 Land acquisition sketch prepared by MHF and sent by email to Irving

4/18/2011 Correspondence between Dead River Properties and Irving regarding the purchase of laundromat lot and/or an access easement to the mall property

6/14/2011 MHF had correspondence with DOT

6/16/11-10/12/11 MHF had conversations with City Engineering Dept. re utility stubs

10/24/2011 Irving received Correspondence from a Broker who had a tenant interested in the property – replied not for sale

8/2011 Irving met with Dead River Properties

8/22/2012 MHF had correspondence with DOT to determine completion date of work on South Main Street

August 2012 Irving commissioned property appraisal on 206 Main street

9/14/2012 Irving received ‘Summary Appraisal Report’ prepared by Capital Appraisal Associates, Inc for Cobalt Properties.

2/27/2013 Irving (Cobalt) Received correspondence from Nicole Cormen, Councilor-at-Large for the City of Lebanon advising of damage to the building on the site.

March 5, 2013 Internal Irving correspondence confirming repairs complete following damage to the glass windows – plywood was installed, and a padlock placed on the door. (City advised of damage)

5/3/2013 Application prepared for refacing the sign

November 2013 Various internal Irving communications around the future of the site

4/15/14 Irving met with Dead River Properties. Found out the Dry Cleaner’s lease ran to 2018 and the property would not be available until then.

7/30/2014 Existing Conditions plan prepared by MHF

9/19/14 Irving was informed by Dead River Properties that they were not interested in selling a parcel of land and they would not have further talks until expiration of dry cleaner’s lease.

January 2015 Internal Irving communications around re-engaging with Dead River

3/18/2015	MHF reached out to City, interim planner in place, there will be another change to planner in the following weeks so should call back then
3/18/2015	MHF provides revised sketch to Irving
4/28/2015	Irving reaches out to MHF to discuss the project (email and phone call)
April 2015	Internal Irving communications around plans to redevelop the property
5/6/2015	Irving requested previously prepared survey information from MHF
May 2015	Irving had 3-D concept renderings prepared for internal use
9/17/2015	Internal Irving correspondence around potential of both properties
10/19/2015	Irving internal communications regarding purchasing/leasing adjacent property
9/20/2016	Assessors Card still shows assessing property for high-rise sign
9/20/2016	Irving received letter from Lebanon Code Administration (Leann Cushman) asking if overgrowth onsite could be removed and asked about future plans for the lot (no mention of high-rise sign)
9/28/2016	Internal Irving communications on moving forward with developing 206 Main Street in 2017
10/3/2016	Irving emails MHF to meet to discuss design options for 206 Main
10/21/2016	Preliminary Site Plan prepared by MHF
10/26/2016	MHF contacted City re: current regulations
12/7/2016	Internal Irving communication on moving the project forward, dependent on gaining access easement from Dead River Properties
1/9/2017	MHF prepared new layout
1/26/2017	Irving met with the City (Tim, Dave, Frank and Maria) to show new concepts and discussed re-use of the sign
2/1/2017	new concepts prepared by MHF
March – June 2017 Irving renewed negotiations with Dead River Properties for a lease or purchase of the Easy Kleen portion of the mall property. Dead River Properties was interested in selling the whole parcel at the time.	
4/7/2017	Irving received correspondence from a Broker with a client interested in purchasing the 206 Main Property

March - June 2017 – Communication between Irving and Dead River Properties regarding the potential sale of the K-mart mall and gauging possible interest from the new owner to work with Irving.

2/5/2018 Irving received email noting interest from new owner of the adjacent property, The Davis Companies, for a purchase or lease

6/13/2018 Irving continuing to try to connect with The Davis Companies for negotiations

September 2018 Irving working on LOI with The Davis Companies (internal communication discussing LOI terms)

December 2018 Internal Irving communication to review (unsigned) LOI

January 2019 Irving looking internally at options for site plan layout

August 2019 to Jan 2020 - Irving continuing to negotiate with The Davis Companies, signed a Letter of Intent on or around early January 2020.

December 2019 Irving was contacted by a party interested in leasing 206 Main street property

01/07/2020 Irving emailed GPI to re-start design work on the project after the LOI with The Davis Companies was signed.

1/11/2020 Irving emails Attorney Maria Dolder to re-engage her services after signing LOI with Davis Companies to lease the Dry Cleaner portion of 200 Main Street

Jan – March 2020 – Updating site plans and begin project planning to start due diligence

3/6/2020 Jennifer Daigle and Maria Dolder discussed setting up a meeting with the City Planner to initiate the permitting discussions.

3/13/2020 Jennifer asks Maria to hold on setting up a meeting due to travel restrictions and uncertainty surrounding the COVID-19 pandemic. Project was put on hold.

3/19/2020 GPI provides updated site plan based on leasing a portion of 200 Main

April–June 2020 Irving kept in contact with The Davis Companies and had internal touchpoints regarding the lease

February to July 2021 – Irving working with David Company to revise the terms of a property deal.

July 2021 Irving signed new Letter of Intent with The Davis Companies and continued lease negotiations and project planning

September 2021 Irving continues to negotiate the lease with The Davis Companies and has internal discussions surrounding lease terms. Preparing to start due diligence activities, lining up geotechnical investigation

9/2/2021	Irving received correspondence from a Broker with a client interest in leasing 206 Main – replied 'not interested'
12/29/2021	Executed Lease for the former Dry Cleaner portion of 200 Main Street
Jan 2022	The Davis Companies completed the sale of the Property and assigned the lease to Rancho Lebanon LLC (current land lord)
January 2022	Irving starting due diligence activities and project permitting

TITLE XXXI

TRADE AND COMMERCE

CHAPTER 339

SALES OF CERTAIN ARTICLES

Petroleum, Naphtha and Illuminating Oils

Section 339:30-a

339:30-a Gasoline and Diesel Fuel Prices. –

I. All persons who shall offer for sale or sell gasoline or diesel fuel at retail shall post the price of all grades and services of such fuel in at least 2 of the following ways:

(a) On a price sign affixed to the fuel dispenser in numerals not less than 4 inches high and 3/4 of an inch in width; such price signs shall be placed on the dispenser so that they are clearly visible from both sides of the dispenser from either direction of a motorist's approach;

(b) On a stationary roadside fuel price sign; the stationary roadside fuel sign must be clearly visible from the street; or

(c) By a digital unit price indicator or an analog unit price indicator on the face of the dispenser; the indicators must display the actual price of the fuel pumped.

II. When a grade, blend, or mixture of gasoline or diesel fuel is sold from a single dispenser for a regular price and a cash discount price, both unit prices shall be posted on the dispenser in accordance with subparagraph I(a) and either subparagraph I(b) or I(c). Roadside signs advertising the cash discount price of gasoline or diesel fuel shall disclose that the advertised price is limited to cash purchases and display the word "cash" next to the cash discount price. The letters in the word "cash" or other words of disclosure shall be of the same height and width as the numerals of the cash discount price.

III. Numerals indicating fractions or portions of whole numbers on any posted price shall be at least 1/2 the size of the whole number on such display, and all posted prices shall reflect the total price of such fuel, including all taxes thereon.

IV. If a computing device is part of the fuel dispensing equipment, it shall compute the total price for single purchases at all the unit prices for which the grade, blend, or mixture of gasoline or diesel fuel being dispensed is offered for sale, except for the unit prices charged by contract for fleet sales and similar price-contract sales. When a grade, blend, or mixture of fuel is offered for sale at more than one unit price through a dispenser with a computing device:

(a) The unit price for a transaction shall be selected by controls on the dispenser to be used by the customer; and

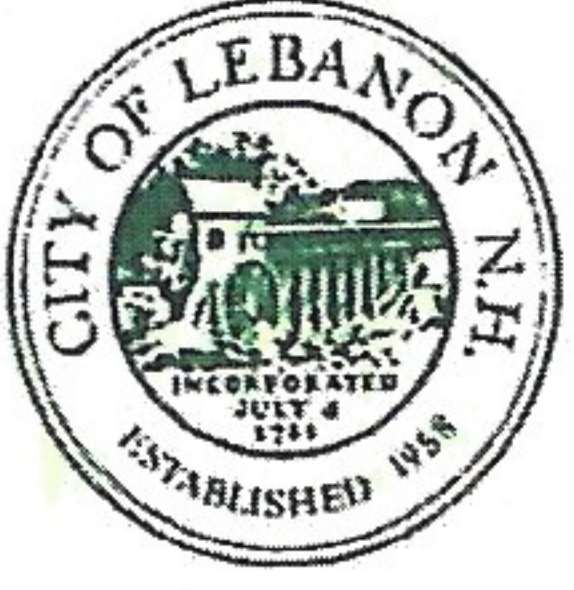
(b)(1) A printed receipt of the transaction shall be made available to the customer, showing unit price, the total number of gallons dispensed, and the total price of the sale issued mechanically by the dispenser; or

(2) A printed receipt shall be made available to the customer, showing the unit price, the total number of gallons dispensed, and the total price of the sale from a person attending the dispenser or the store where the fuel is offered for sale.

V. When a special sale price or promotional discount price is offered on a grade, blend, or mixture of gasoline or diesel fuel, the dispenser shall be set to compute transactions at the special sale price or promotional discount price.

VI. Any person who shall violate the provisions of this section shall be guilty of a violation.

Source. 1974, 24:2, eff. June 1, 1974. 2012, 118:1, eff. Jan. 1, 2013.



Codes

Department

Building and Zoning

51 North Park Street
Lebanon, NH 03766

Telephone: 603-448-1524
Facsimile: 603-448-0684

September 20, 2016

Cobalt Property NH Corporation
c/o Irving Oil Corporate
PO Box 868
Calais ME 04619

**RE: Cobalt Properties NH Corporate, 206 South Main Street/West Lebanon NH,
Tax Map 115, LOT 1**

Dear Property Owner:

Please be advised that this office received an email concerning the condition of the above listed property. Attached a photo taken on September 16, 2016.

Could the overgrowth (weeds/brush) be removed from both sides of the property (facing Route 12A and facing the Plaza located behind the site)?

Also, we would be interested in the long-term plan for this site. Please contact our office to provide an update.

Thank you for your cooperation in addressing these matters. If you have any questions, please call 448 1524 x1442.

Sincerely,

A handwritten signature in blue ink that reads "Leann Cushman".

Leann Cushman
City of Lebanon
Codes Administrator


qPublic.net™ City Of Lebanon, NH

Summary

Parcel ID 115-1
 Account # 3058
 2015 Tax Rate
 Location Address 206 S MAIN ST
 Acres 0.782
 Zoning GC : General Commercial
 (Note: Not to be used on legal documents)
 Neighborhood COMMERCIAL EXCELLENT
 Property Usage SERVICE STATION (334)



Owners

% IRVING OIL CORPORATE
 PO BOX 868
 CALAIS ME 04619

COBALT PROP NH CORP
 PO BOX 868
 CALAIS ME 04619

Valuation

	2015
Land Value	\$1,232,400
+ Improvement Value	\$54,600
+ Misc Value	\$2,600
= Total Assessed Value	\$1,289,600

Land

Land Use	Number of Units	Unit Type	Land Type	Frontage	Depth	AgUse Value	Market Land Value
SERV STA (334)	34,057.00	SQUARE FEET	SITE	0	0	\$0	\$1,232,400

Commercial Buildings

Style STORE / 78
 Gross Sq Ft 1,798
 Finished Sq Ft 1,288
 Perimeter 410
 Stories 1
 Interior Walls DRYWALL
 Exterior Walls STEEL
 Quality C (AVERAGE)
 Roof Type FLAT
 Roof Material ASPHALT SH
 Exterior Wall1 STEEL
 Exterior Wall2
 Foundation CONCRETE
 Interior Finish DRYWALL
 Ground Floor Area

Floor Cover CERAM.TILE
 Full Bathrooms 0
 Half Bathrooms 2
 Heating Type FORCED H/A
 Year Built 1960
 Year Remodeled
 Effective Year Built 1960
 Condition

Code	Description	Sketch Area	Finished Area	Perimeter
FFL	1ST FLOOR	1,288	1,288	148
CNP	CANOPY	440	0	228
STG	STORAGE	70	0	34
TOTAL		1,798	1,288	410

Yard Items

Description	Out Building Type	Size	Quantity	Units	Year Built	Assessed Value	Appraised Value
SIGN	SIGN (83)	0x0	1	148	1996	\$2,600	\$2,600

Sales

Sale Date	Sale Price	Instrument	Deed Book	Deed Page	Vacant or Improved	Grantor	Grantee
12/31/2008	\$2,562,733		3574	0122	Improved	COBALT PROPERTIES NH CORP	
1/26/2006	\$1,028,000		3243	0520	Improved	IRVING OIL CORPORATION	
6/26/2001	\$0		2553	0033	Improved	BREED PROPERTIES II LTD	
12/29/1989	\$0		1839	0899	Improved	B-W REALTY	
12/29/1989	\$0		1839	0903	Improved	BREED PROPERTIES II LTD PARTNERSHIP	
12/29/1988	\$650,000		1782	0470	Improved	BREED ENTERPRISES, INC.	

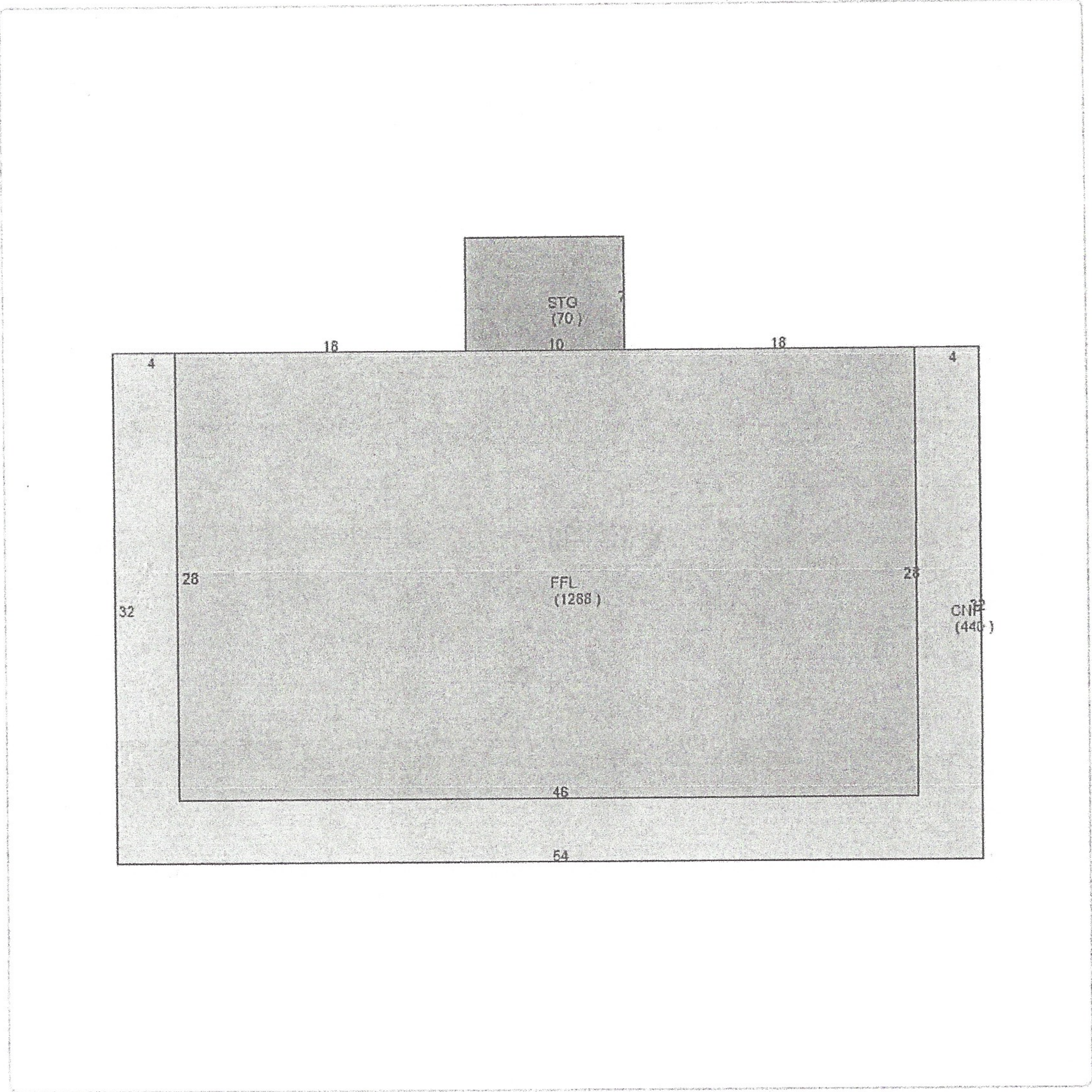
Area Sales

[Recent Sales in Area](#)
[Recent Sales in Neighborhood](#)

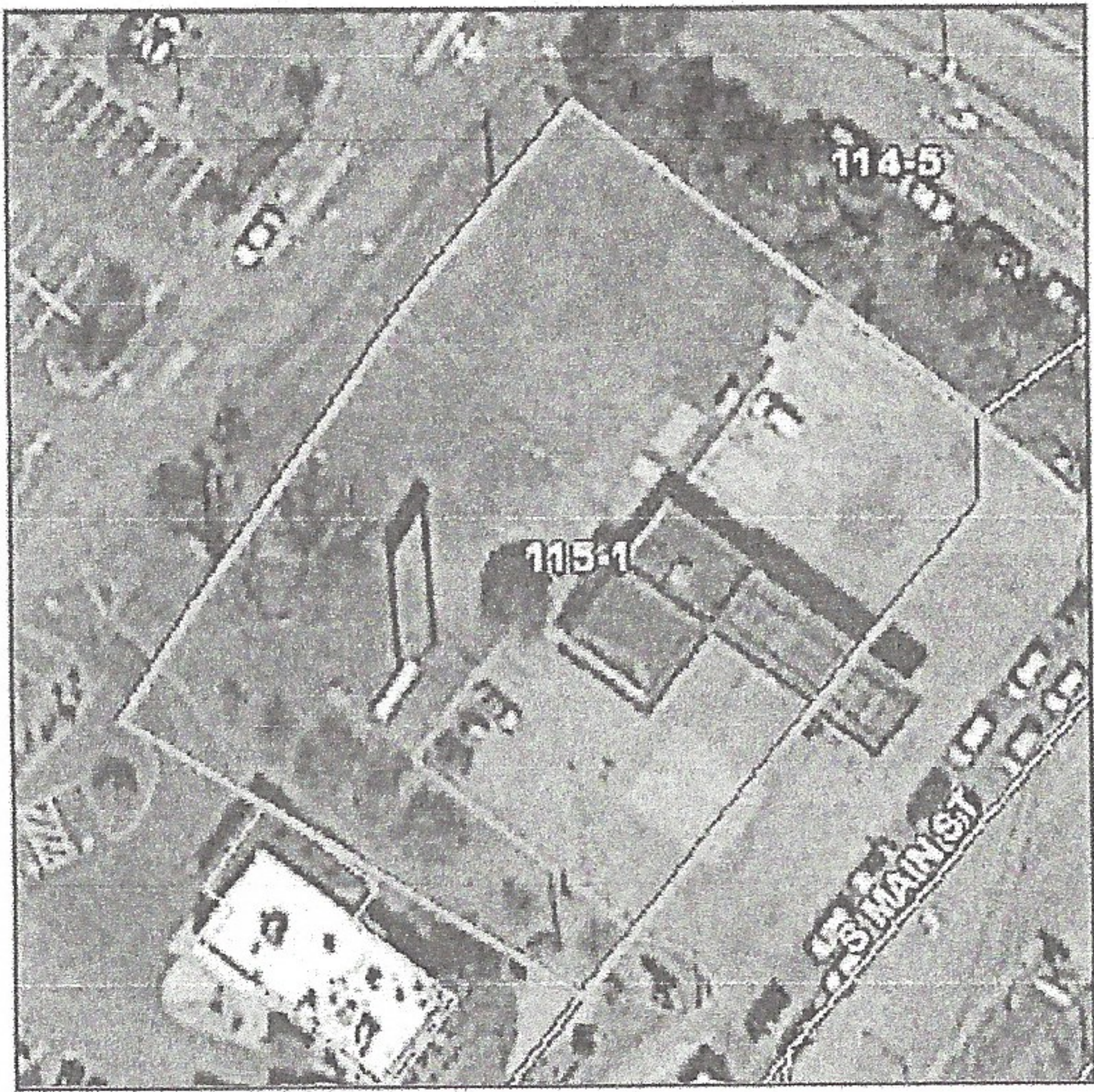
Photos



Sketches



Map



No data available for the following modules: Buildings.

Summary

Parcel ID 115-1
Account # 4086
Property ID 3058
2020 Tax Rate
Location Address 206 S MAIN ST
 WEST LEBANON
Acres/Lots 0
Zoning GC : General Commercial
Neighborhood COMMERCIAL EXCELLENT
Property Usage SERVICE STATION (334)



Owners

COBALT PROP NH CORP
 PO BOX 868
 CALAIS ME 04619

% IRVING OIL CORPORATE
 PO BOX 868
 CALAIS ME 04619

Valuation

	2021	2020	2019
Assessed Land Value	\$1,610,200	\$1,610,200	\$1,232,400
+ Assessed Improvement Value	\$54,300	\$54,300	\$54,600
+ Assessed Misc Value	\$2,500	\$2,500	\$2,600
= Total Assessed Value	\$1,667,000	\$1,667,000	\$1,289,600

Land

Land Use	Number of Units	Unit Type	Land Type	Frontage	Depth	AgUse Value
SERV STA (334)	34,057.00	SQUARE FEET	SITE	0	0	\$0

Commercial Buildings

Style STORE / 78
Gross Sq Ft 1,798
Finished Sq Ft 1,288
Perimeter 410
Stories 1
Interior Walls DRYWALL
Exterior Walls STEEL
Quality C (AVERAGE)
Roof Type FLAT
Roof Material ASPHALT SH
Exterior Wall1 STEEL
Exterior Wall2
Foundation CONCRETE
Interior Finish DRYWALL
Ground Floor Area
Floor Cover CERAM.TILE
Full Bathrooms 0
Half Bathrooms 0
Heating Type FORCED H/A
Year Built 1960
Year Remodeled 0
Effective Year Built 1960
Condition Poor

Code	Description	Sketch Area	Finished Area	Perimeter
FFL	1ST FLOOR	1,288	1,288	148
CNP	CANOPY	440	0	228
STG	STORAGE	70	0	34
TOTAL		1,798	1,288	410

Yard Items

Description	Year Built	Out Building Type	Size	Quantity	Units	Grade
SIGN	1996	SIGN (83)	0 x 0	1	148 SF	

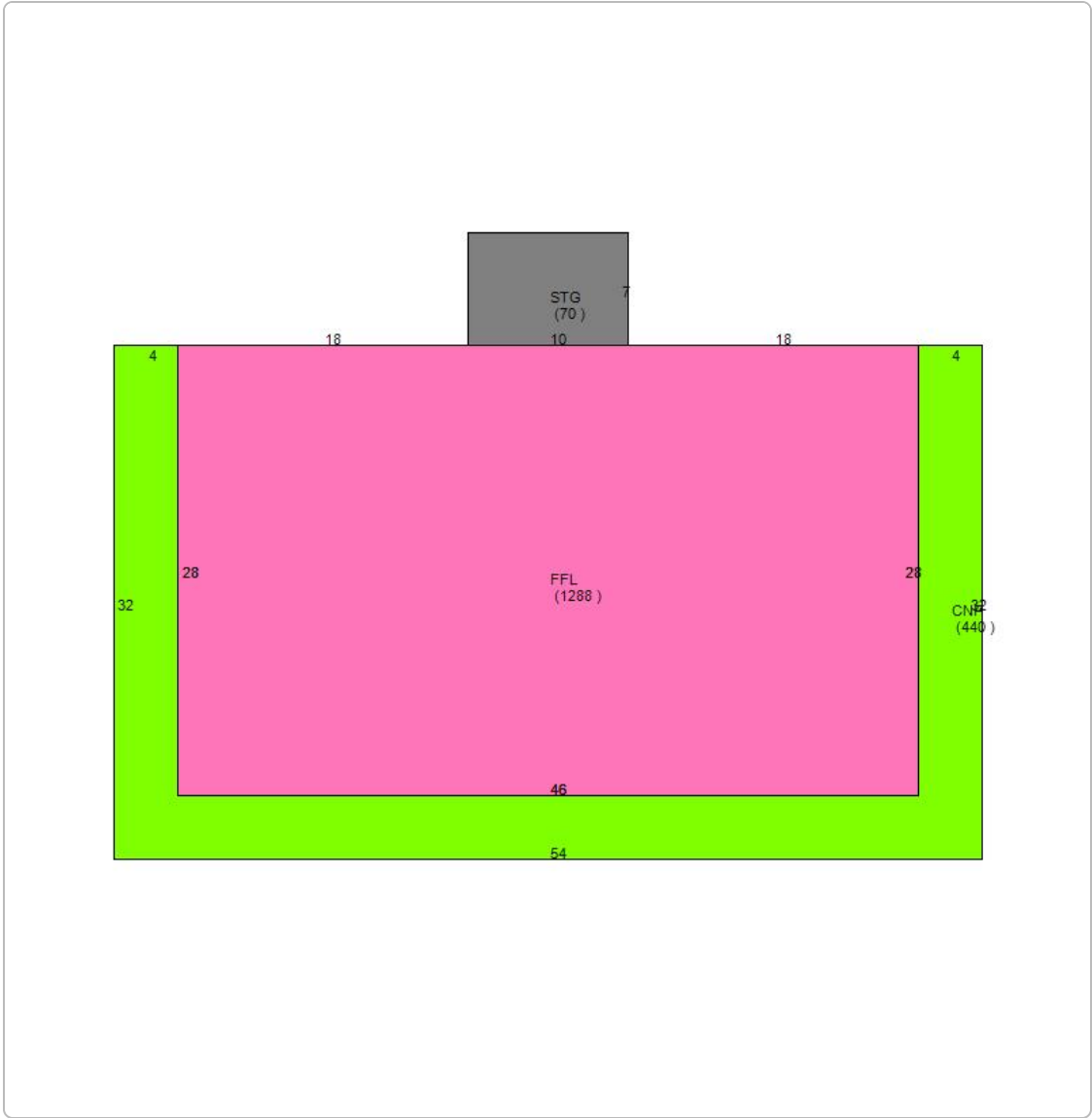
Sales

Sale Date	Sale Price	Instrument	Instrument Number	Deed Book	Deed Page	Vacant or Improved	Grantor	Grantee
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12/29/1989	\$0			1839	0903	Improved	BREED PROPERTIES II LTD PARTNERSHIP	
12/29/1989	\$0			1839	0899	Improved	B-W REALTY	
12/29/1988	\$650,000			1782	0470	Improved	BREED ENTERPRISES, INC.	

Photos



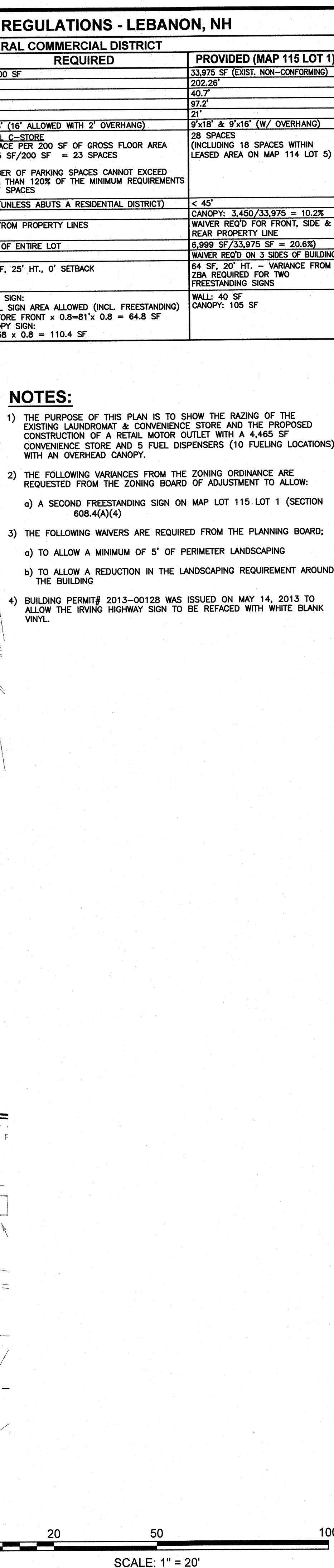
Sketches



Map



No data available for the following modules: Buildings.



REV	DATE	BY	REVISION		

[illegible]

	DRAWN BY:	DESIGNED BY:
	CCC	NID
	SCALE:	APPROVED BY:
	1"=20'	FCM
	DATE:	PROPERTY NO.:
	6/29/22	
	CAD FILE: 21369_PSP-2	REF-BLK:
	PLOTTED:	REF-BLK:
		REF-BLK:

IRVING OIL
190 COMMERCE WAY
PORTSMOUTH, NH 03801

PROJECT: ASSESSORS MAP 115 - LOT 1
206 SOUTH MAIN STREET
LEBANON, NEW HAMPSHIRE

SHEET TITLE:

PRELIMINARY SITE PLAN #2

PROJECT: 71288	DRAWING NO: L4	REVISION: -
--------------------------	--------------------------	-----------------------

COMPANY SUPERVISOR AND CONTRACTOR TO VERIFY ALL MEASUREMENTS ON WORK OR AT SITE. THIS DRAWING IS THE PROPERTY OF IRVING OIL LTD. AND SHALL BE RETURNED ON COMPLETION OF WORK.

[illegible]

**Agenda
Zoning Board of Adjustment
July 5, 2022**

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

**Max Seidman & Angela Zhang,
53 Winter Street
(Tax Map 77, Lot 83),
zoned R-3
ZB2022-18-SE**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

July 5, 2022 Meeting

Staff Memorandum – ZB2022-18-SE

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Special Exception to allow an accessory solar energy system to be located within the minimum required yard

Location:

53 Winter Street (Tax Map 77, Lot 83)

Applicants/Property Owners:

Max Seidman & Angela Zhang

Zoning District:

Residential Three (R-3)

Property Size:

+/-1.46 acres

Existing Improvements and Use:

One-family dwelling constructed in 1925 and a detached garage

Proposed Use:

accessory solar energy system for existing one-family dwelling use

Overlay Districts:

none

Previous ZBA Action (since 1995):

none

Further Approvals Required:

Building Permit

Attachments: application (4 pgs)

HEARING NOTICE

Max Seidman & Angela Zhang, 53 Winter Street (Tax Map 77, Lot 83), zoned R-3: Applicants request a Special Exception per Section 201.9 of the Zoning Ordinance to erect a solar array to be located +/-9 ft. from the rear property line where a minimum of 30 ft. is required. ZB2022-18-SE

SUMMARY OF REQUEST

The property is located at the western end of Winter Street and abuts I-89 to the north. The applicants propose to install an accessory solar energy system to serve the existing one-family dwelling use at the subject property. As depicted on the plot plan included with the attached application materials, the system is proposed to be located +/-9 ft. from the rear property line, whereas a minimum rear yard of 30 ft. is required in the R-3 District.

Figure 1. Location Map



ORDINANCE REQUIREMENTS**A. Special Exception for Reduced Setback**

Section 201.9 of the Zoning Ordinance, set forth below, authorizes the Zoning Board to grant Special Exceptions to permit accessory solar energy systems within the minimum required yards:

201.9 Accessory Renewable Energy Systems.

Accessory renewable energy systems shall not occupy the areas of required front, side and rear yards (a.k.a. front, side and rear setbacks). This restriction may be relaxed by special exception, if the Board of Adjustment finds, in addition to the standards set forth in Section 801.3, that such relaxation is required for the reasonable use of the proposed system.

In order to grant a Special Exception for a reduced setback, the applicants must also demonstrate compliance with the general Special Exception criteria, set forth in §801.3 as follows:

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

cc: Max Seidman & Angela Zhang
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: Max Seidman & Angela Zhang TEL.#: 857-998-7206
 MAILING ADDRESS: 53 Winter St., Lebanon NH 03766
 E-MAIL ADDRESS: max.j.seidman@gmail.com; zh.angela@outlook.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: _____ TEL.#: _____
 MAILING ADDRESS: _____
 E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 77 LOT#: 83 PLOT #: _____ ZONE: R3
 STREET ADDRESS OF PROJECT: 53 Winter St. Lebanon, NH 03766
 IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

construction of a solar array, requesting to be 9.2 ft from rear property line, where 30 ft is required.

TYPE OF OCCUPANCY:

EXISTING ☐ VACANT ☒ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
 PROPOSED ☐ VACANT ☒ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
 IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC** USE: _____

SIGNATURE BLOCK:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on _____, 20____, unless I personally request in writing, that the Board delay its determination of completeness to a later date.
 PROPERTY OWNER: [Signature] DATE: 6/15/22

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

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
<u>6/15/2022</u>	<u>77/83</u>	<u>ZB2022-18-</u>			

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) II, Section(s) 201.9, 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.)*

Construction of a 12.8 kW DC ground-mounted solar array consisting of:
32 Canadian Solar 400-watt all black solar modules and 32 Enphase IQ8+ micro inverters.

Proposed location of ground mount is due to shade analysis performed on site, showing ideal location for array under reasonable use conditions. Proposed location is also taking into account the location of the leach field on the property.

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:

201.9 Accessory Renewable Energy Systems, and such relaxation of the setback is required for the reasonable use of the proposed system.

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

All conditions for proposed array are or will be met upon installation per the AHJ in place.

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 on the property regarding this ordinance. The proposed array will only move forward with the granting of the special exception.

D. That the character of the area shall not be adversely affected:

No impacts to the character of the area or wildlife were found. No modifications to the surrounding trees need to be taken.

E. That no hazard or nuisance will be created:

The proposed array creates no hazard or nuisance to the community or wildlife. No glare will come off the all black solar modules.

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

Proposed array does not encroach on any planned or existing facilities and services, the proposed array will be facing away from I-89.

G. That granting the special exception will not result in undue municipal expense:

Municipality will not be liable for any upkeep or maintenance on the proposed array.

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

The proposed special exception will be handled with professionalism and within the spirit and intent of the ordinance from the AHJ.

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

No impact to the general welfare of the City will be incurred.

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.

near



**Agenda
Zoning Board of Adjustment
July 5, 2022**

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

**New England Sports Park and
Carter Community Building
Association,
1 Taylor Street
(Tax Map 92, Lot 25),
zoned LD
ZB2022-19-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

July 5, 2022 Meeting

Staff Memorandum – ZB2022-19-VAR

APPLICATION INFORMATION

Agenda Item: 3.D

Application Type:

Variance from minimum floodplain elevation requirements

Location:

1 Taylor Street (Tax Map 92, Lot 25)

Applicant/Property Owner:

New England Sports Park and
Carter Community Building
Association

Zoning District: Lebanon
Downtown (LD)

Property Size: +/-9.40 acres (*per
the City Assessor's records*)

Proposed Improvements: +/-160
sq. ft. storage building

Overlay Districts:

- Floodplain District
- Riverbank Protection District

Previous ZBA Action (since 1995):
SE granted on 4/4/05 for creation of
riverwalk, playing field, pavilion, &
storage building

Other Approvals Required:

- Building Permit

Attachments:

- Memo from Erica Brittner, E.I.T.,
Floodplain Administrator
- Application (8 pages total)
- Floodplain Management
Variances (NH OSI fact sheet)
- Chapter 74 of the City Code

HEARING NOTICE

New England Sports Park and Carter Community Building Association, 1 Taylor Street (Tax Map 92, Lot 25), zoned LD: The subject property is located in the Floodplain District. Applicants request a Variance pursuant to City Code Chapter 74-18 to allow a proposed +/-160 sq. ft. storage building to be placed below the base flood elevation, whereas City Code Chapter 74-21.B requires that the lowest floor of a structure located in the Floodplain District be elevated to the level of the base flood elevation. ZB2022-19-VAR

SUMMARY OF REQUEST

The property, which is located entirely with the Floodplain District, is improved with the CCBA recreational facility and outdoor playing fields, including a recently installed outdoor soccer facility operated as the "New England Sports Center". The applicants propose to install a 160 sq. ft. storage container to serve as the office for the New England Sports Center.

The applicants request a Variance from the requirement that structures in the floodplain must be elevated to or above base flood elevation. Per the Federal Emergency Management Agency (FEMA), the base flood elevation is the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year.

As outlined in the applicant's materials, the base food elevation here is 576.93. Rather than place the structure at an elevation of 567.93, the applicant proposes an elevation of 575 (which is one (1) ft. above the existing grade).

ZONING ORDINANCE REQUIREMENTS

The City's "Flood Damage Prevention" ordinance is set forth in Chapter 74 of the City Code and is incorporated into the City's Zoning Ordinance pursuant to Section 402. City Code Chapter 74-21.B requires that the lowest floor of a structure located in the Floodplain District be elevated to the level of the base flood elevation.

In evaluating a request for a Variance in the Floodplain District, Chapter 74 directs the Board to "consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and [the following 11 considerations]." A copy of Chapter 74 is attached to this memo for reference. The 11 considerations set forth in 74-18.D criteria

can be found on page 74:13 and are discussed in the applicant's application materials.

Additionally, to obtain a Variance from any requirement of Chapter 74, the applicant must demonstrate compliance with the Variance criteria set forth in Ch. 74, Section 19.C & D, *in addition to* the Variance criteria set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). These criteria are set forth below.

Floodplain Variance Criteria, Chapter 74 of the City Code, Section 19.C and D

- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances shall only be issued upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 74-18D, or conflict with existing local laws or ordinances.

General Variance Criteria, 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.

STAFF COMMENTS

- The applicant has not provided any written testimony addressing the Variance criteria set forth in Ch. 74, Section 19.C & D or the general Variance criteria set forth in Section 801.2 of the Zoning Ordinance.
- The City's Floodplain Administrator has reviewed the Variance application and has prepared the attached memo dated June 29, 2022, outlining her concerns, comments, and questions for the Board's consideration.
- For additional information on the granting of Variances in the Floodplain District, attached is a two page document titled "Floodplain Management Variances" which is available at the website of the NH Office of Strategic Initiatives (now the NH Office of Planning and Development) here: <https://www.nh.gov/osi/planning/programs/fmp/documents/nfip-13-variances.pdf>.
- Additional information on floodplain variances can also be found in FEMA's Floodplain Management Bulletin titled, "Variances and the National Flood Insurance Program," (FEMA P-993 / July 2014), available on-line at https://www.fema.gov/sites/default/files/2020-08/FEMA_P-993_FPM-Bulletin_Variance.pdf.

STAFF MEMORANDUM

ZB2022-19-VAR
1 Taylor St (92-25)
July 5, 2022 ZBA Meeting
Agenda Item 3.D
Page 4 of 4

- If the Variance is granted, staff recommends that the Board include a condition requiring that all signage associated with the New England Sports Center use shall comply with Section 608 of the Zoning Ordinance, and that the Board's approval include the notice required by Ch. 74-19.E ("Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.")

Attachments

cc: New England Sports Park
Carter Community Building Association
Dan Nash, PE, Advanced Geomatics & Design
File



CITY OF LEBANON
DEPARTMENT OF PUBLIC WORKS
193 Dartmouth College Highway
Lebanon, NH 03766

MEMORANDUM

To: Timothy Corwin, Senior Planner
From: Erica Douglas, E.I.T., Assistant City Engineer
Date: June 29, 2022
Subject: Request for Flood Plain Variance CCBA/New England Sports Park; 1 Taylor Street, Lot 92-25

Dear Tim,

Upon review of the application for variance DPW offers the following comments:

1. Has the scope of the project changed? Is the plan to use this for a storage facility or an office like it was previously applied for?
2. Per Mr. Nash's comment that the *"container is intended to be watertight and should be adequate to prevent flood damage."* The requirement from FEMA in their technical document titled Requirements for the Design and Certification of Dry Floodproofed Non-Residential and Mixed-Use Buildings, January 2021 is *"When a building owner proposes dry floodproofing measures for a non-residential building that is in an NFIP participating community, the owner must provide certification that the structural designs, specifications, and plans for the construction of the dry floodproofing measures were developed and/or reviewed by registered professional engineers or architects (design professionals). The certification must state that the proposed dry floodproofing design and proposed methods of construction are in accordance with accepted standards of practice for achieving the required performance. Design professionals who sign and seal certifications must be licensed to practice in the state where projects are located."* Based on the guidance from FEMA DPW would recommend that this is required. The container might be anchored to the concrete pad but if the container is not adequately Floodproofed the potential for materials being swept away could be high.
3. Mr. Nash states the rate of rise on the Mascoma River *"No velocity, or negligible velocity is anticipated. Floods on the Mascoma are usually on order of 24 hours in duration. The rate of rise can be predicted and is somewhat controlled by the dam on Mascoma Lake."* In the case of a dam breaching upstream, this would not be the case. Two dams upstream of this location are considered high hazard dams and are listed in Poor Condition, the Mascoma Lake Dam and the Goose Pond Dam.
4. Based on the information provided, it is still our recommendation that the original comments be addressed:
 - a. In the Application it calls out no attendant utilities but in the cover letter you call out

electricity. Please update the application.

- b.* Please provide an inspection and maintenance plan, to be recorded at the deed registry.
- c.* Please provide an emergency plan.
- d.* Please provide a floodproofing Certificate.
- e.* Please provide stamped building design plans and specifications detailing that the building is watertight, utilities are elevated above the BFE or made watertight; and the structural components are capable of resisting specific flood-related forces (Lateral Force due to hydrostatic pressure from Freestanding water calculations)

**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 Flood Plain Variance

PROPERTY OWNER (APPLICANT):

NAME: Carter Community Bldg Assoc. TEL.#: 603-448-6477

MAILING ADDRESS: PO Box 386, Lebanon, NH 03766

E-MAIL ADDRESS:

CO-APPLICANT, AGENT, OR LESSEE:

NAME: CCBA/New England Sports Park TEL.#:

MAILING ADDRESS: 1 Taylor Street, Lebanon, NH 03766

E-MAIL ADDRESS: Dan McGee [dan.mcgee@redriver.com]

PROJECT LOCATION:

TAX MAP #: 92 LOT#: 25 PLOT #: ZONE: LD

STREET ADDRESS OF PROJECT: 1 Taylor Street

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

SCOPE OF PROJECT:

Floodplain Variance to Construct 160sf storage building (20x8 container)

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: Recreation Facility

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: Dan McGee

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: Kerry Autman, Executive Director

DATE: 6/16/2022

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
6-16-2022	92/25	ZB2022-A-VAR			



TO: TIM CORWIN, SENIOR PLANNER

FROM: DANIEL A. NASH, PE

RE: REQUEST FOR FLOOD PLAIN VARIANCE
CCBA/NEW ENGLAND SPORTS PARK
1 TAYLOR STREET, LOT 92-25

CC: DAN MCGEE

DATE: 15 JUNE 2022

Tim,

Attached is our application for a Flood Plain Variance. The application is for a storage container for the New England Sports Center at the new playing fields on the CCB property.

The City's Flood Ordinance, Ordinance #74, requires structures to be elevated one foot above the base flood. As seen on the attached sketch, the base flood elevation for the location is 576.93. Adding a foot results in a required elevation of 577.93. Existing grade is 574. That puts the floor at 4' above existing grade. A building elevated to this level will require 50' of ramp for handicap accessibility. The building is only used during good outdoor weather, when it is suitable for the adjacent courts and fields to be used. There will be no habitation of the building. Being a small building used for storage, this elevation requirement places an extraordinary hardship on the applicant. We are requesting a variance to put the building one foot above grade, at elevation 575.

Work to be done includes: excavating approximately one foot of existing soil, roots and deleterious materials, placing a 6" crushed stone base, placing a 2' thick concrete slab, constructing 2 stairs and 12' of ramp, grading and cleaning up around slab, and topsoil and seed match area around slab.

A storage container constructed from a modified shipping container will be placed on the slab and tied down to anchor bolts. This will prevent the container from floating away during a flood event. The container is intended to be watertight and should be adequate to prevent flood damage. The only utility in this field office will be electricity; that utility (breaker box and outlets) will be elevated above the base flood.

We offer the following in support of the variance, per Chapter 74-18.D, of the flood ordinance:

1. *The danger that materials may be swept onto other lands to the injury of others.*

The structure will be anchored to a large concrete block designed to resist the effects of flotation and movement.

2. *The danger to life and property due to flooding or erosion damage.*

The structure will not be occupied. It will be only used during good weather. The only property stored in the structure is recreational equipment, which is generally weather and moisture resistant. There is no potential for erosion damage; the site is in the flood plain and the flood plain is very flat and has little water flow during flood events.

3. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.*

As noted above, such damage is not anticipated.

4. *The importance of the services provided by the proposed facility to the community.*

The CCBA, and in particular the new outdoor facility, provide a great resource to the city's recreational users. However, this facility is a "fair weather" facility and will not be used during flood events.

5. *The necessity of the facility of a waterfront location.*

This facility supports the playing fields, already located in the flood plain. Of necessity, the facility must be sited adjacent to the playing fields.

6. *The availability of alternative location for the proposed use which are not subject to flooding or erosion damage.*

The entire CCBA property is in the flood plain. No alternate locations are available.

7. *The compatibility of the proposed use with existing and anticipated development.*

The structure fits in exceptionally well.

8. *The relationship of the proposed use the Comprehensive Plan and floodplain management program for that area.*

This project has undergone planning review and was found to be suitably compatible for this location.

9. *The safety of access to the property in times of flood for ordinary and emergency vehicles.*

The structure is adjacent to Taylor Street, on flat terrain. Access during times of flood is not anticipated to be necessary.

10. *The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and*

the effect of wave action, if applicable, expected at the site.

The flood height during the Base Flood is expected to be 3' above the structure floor. No velocity, or negligible velocity is anticipated. Floods on the Mascoma are usually on the order of 24 hours in duration. The rate of rise can be predicted and is somewhat controlled by the dam on Mascoma Lake. Sediment transport and wave action are not an issue at this site.

11. *The costs of providing governmental service during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.*

We do not anticipate any costs to governmental services, should an event occur at the proposed facility.

Please let me know if you need additional information to support this request.

Attachments:

- Field Concept plan with entire CCBA holdings
- Location sketch for container
- sketch of proposed concrete anchor block
- calculation worksheet for block to counteract buoyancy effects.

NEW ENGLAND SPORTS PARK			
1 TAYLOR STREET			
LEBANON, NH			
Flood calculations.			
container			
L=	19'-10"	19.83	
W=	8'	8.00	
	AREA=	158.64	
flood delta			
Existing grade=		574.00	
Pad elevation=		575.00	(raise 1' above eg)
flood elevation=		576.95	
	delta=	1.95	
boyant volume=			
		309.35	cf
bouyant force			
water density=		62.4	pounds per cubic foot
	force=	19,303	lbs, (uplift)
pad sizing			
-make pad 1' larger than container			
L=	21		
W=	9		
AREA=	189		
VOLUME CONCRETE NEEDED TO RESIST UPLIFT			
UPLIFT=		19,303	POUNDS
CONCRETE DENSITY=		150	PCF
VOLUME NEEDED=		129	cf
DIVIDE BY 27=		4.8	cy
PAD THICKNESS			
AREA PAD=		189	SF
CONCRETE NEEDED=		0.68	ft
ROUND UP TO 2'		2	FT
VOLUME PROVIDED=			
		14	cy
SAFETY FACTOR=		VOLUME PROVIDED/VOLUME NEEDED=	
	=	14/4.8	
	=	2.9	
2.9>1.1 REQUIRED BY FLOOD PLAIN OFFICIAL			



- LEGEND:
- CONTOUR
 - FEMA MAPPED FLOODWAY
 - FEMA MAPPED FLOOD ZONE AE
 - INTERPOLATED FLOOD ZONE

GENERAL SURVEY NOTES

1. ALL ELEVATIONS ARE IN FEET UNLESS OTHERWISE NOTED.
2. VERTICAL CURVES WERE USED TO INTERPOLATE ELEVATIONS FROM SPOTS.
3. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
4. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
5. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
6. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
7. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
8. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
9. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.
10. THE CITY OF LEBANON HAS PROVIDED THE DATA FOR THIS PROJECT.



REVISION NO.		DATE	DESCRIPTION	MADE BY	CHECKED BY	APPROVED BY

FIELD CONCEPT ON EXISTING IMPERVIOUS AREA FOR
CCB/NEW ENGLAND SPORTS PARK

1 TAYLOR STREET, LEBANON, NEW HAMPSHIRE

SCALE: AS SHOWN

DESIGNED BY: J. J. J.

DRAWN BY: J. J. J.

CHECKED BY: J. J. J.

DATE: 08-12-21

PROJ. NO. 13148

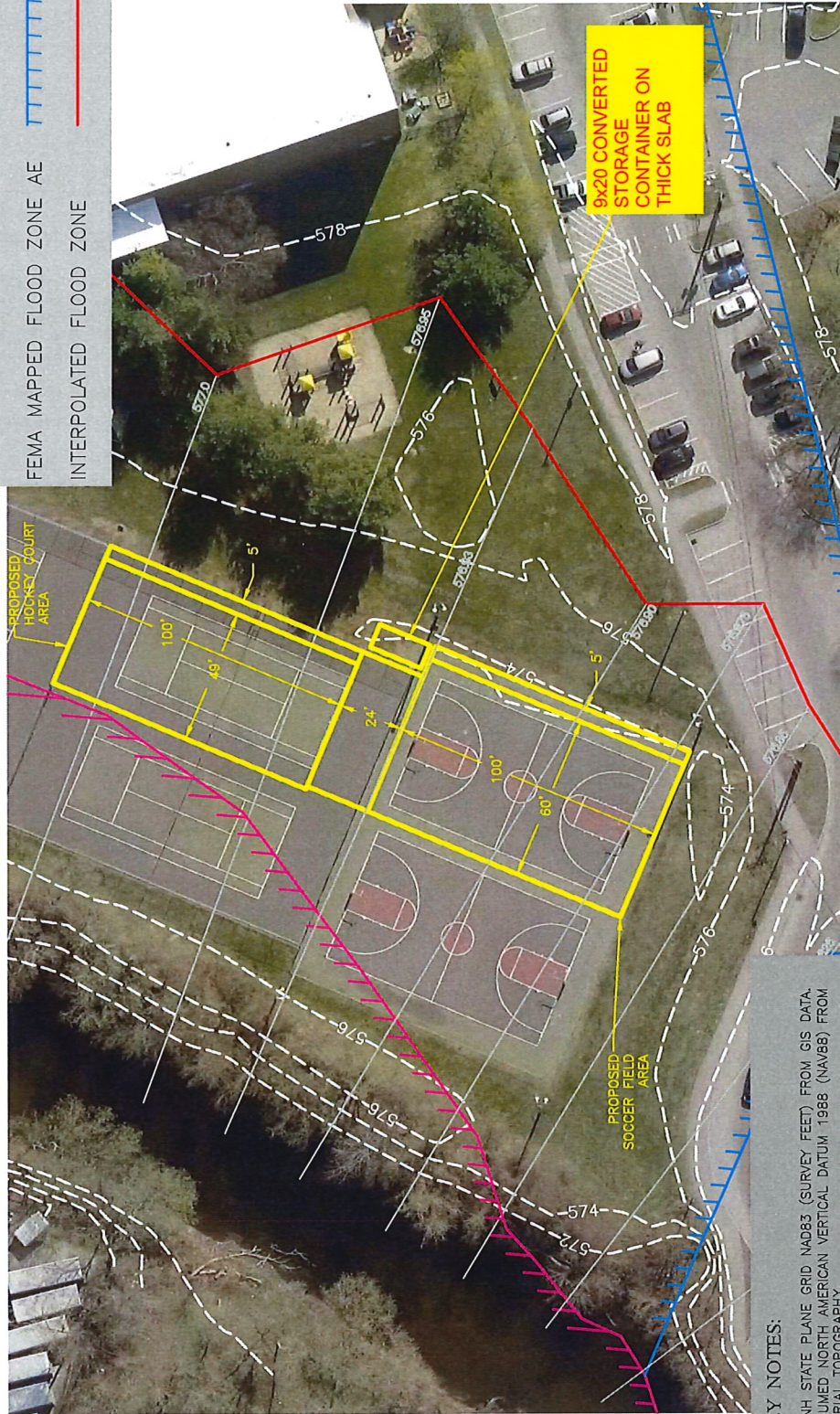
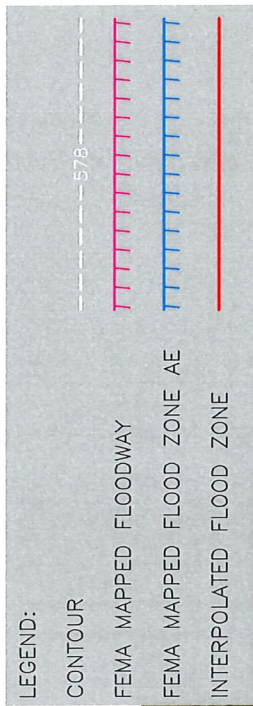
SHEET 1 OF 1

PATHWAYS CONSULTING, LLC

240 MECHANIC STREET, SUITE 100

LEBANON, NH 03602

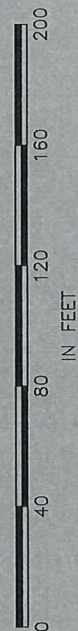
(603) 448-2200



LOCATION SKETCH FOR FIELD OFFICE
 TAKEN FROM PATHWAYS PLAN ENTITLED
 "FIELD CONCEPT FOR CCB/NEW ENGLAND
 SPORTS PARK" DATED 8-12-21AGD/DAN
 12JAN22

GENERAL SURVEY NOTES:

1. HORIZONTAL DATUM: NH STATE PLANE GRID NAD83 (SURVEY FEET) FROM GIS DATA.
2. VERTICAL DATUM: ASSUMED NORTH AMERICAN VERTICAL DATUM 1988 (NAV88) FROM CITY OF LEBANON AERIAL TOPOGRAPHY.
3. CITY OF LEBANON AERIAL TOPOGRAPHY AND 2015 CITY OF LEBANON AERIAL IMAGERY OBTAINED FROM CITY OF LEBANON.
4. FEMA BFE LINES AND SPECIAL FLOOD HAZARD LINE(FLOODWAY AND FLOOD ZONE) GIS DATA OBTAINED FROM FEMA FLOOD MAP SERVICE CENTER



Chapter 74

FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the City Council of the City of Lebanon 3-5-2008 by Ord. No. 2008-2¹; effective 3-5-2008. Amendments noted where applicable.]

GENERAL REFERENCES

General penalty — See § 1-4.

Conversation land regulations — See Ch. 52.

Building construction — See Ch. 36.

Mobile homes — See Ch. 106.

1. Editor's Note: This ordinance repealed former Ch. 74, Flood Damage Prevention, adopted by Ord. No. 38, effective 6-4-1980, as amended.

Floodplain Management Variances

*A variance is a grant of relief from the terms of a floodplain management regulation. This generally involves allowing development that is contrary to good floodplain management practices. Because the result can be an increased risk to life and property, **the granting of floodplain variances should be rare.***

Local Floodplain Development Permit

Responsibility for issuing or denying Floodplain Development Permits lies with the Local Floodplain Administrator (usually the Code Enforcement Officer). If a proposed project does not comply with the municipality's floodplain development standards, the Local Floodplain Administrator should deny the permit and provide a written summary of project deficiencies. The applicant may then revise and resubmit the application or request a hearing from the designated appeals board (usually the Zoning Board of Appeals).

Appeals

If the applicant alleges an error in the decision or determination made by the Local Floodplain Administrator, the appeal is heard and decided by the designated appeals board. If the applicant requests a variance from local floodplain development requirements, the variance request must be supported by a written justification. The request for variance should never be an after-the-fact request for a non-compliant project.

Local Variance Procedure

The appeals board considers a variance request at one or more public meetings at which they seek (1) testimony from the Local Floodplain Administrator about how the proposed activity fails to meet local floodplain development standards and (2) testimony from the applicant as to why it is infeasible or impossible to make the proposed development conform. Complete records should be kept of all deliberations and actions of the board. (Use of a *Floodplain Variance Findings & Decision* form is recommended.)

Although a municipal appeals board has the authority to decide whether or not a variance is granted, the Federal Emergency Management Agency (FEMA) may review the community's findings. If that review indicates a pattern inconsistent with the objectives of sound floodplain management, the community can be subjected to probation or suspension from the National Flood Insurance Program.

Considerations and Conditions

Each municipality's Flood Damage Prevention regulations specify factors that must be considered and conditions that must be met prior to granting a floodplain variance. Both the applicant and the appeals board should refer to these regulations to ensure that each issue is addressed in the applicant's written justification and carefully considered during the board's deliberations. Key issues are discussed below.

Good and Sufficient Cause

Because floodplain management regulations do not anticipate every imaginable situation, the variance process allows a developer to seek permission to vary from the letter of the rules because of a special situation. However, **the variance must pertain to the land itself – not to the structure, its inhabitants, or the property owner.** A variance should not be granted for a problem that can be resolved through other means, even if the alternative is more expensive, more complicated, requires that the parcel be put to a different use, or requires the applicant to build elsewhere.

Exceptional Hardship

Federal regulations state that a community can only issue a variance upon “a determination that failure to grant the variance would result in exceptional hardship to the applicant.” Additional guidance states: “***The applicant has the burden of proving unnecessary hardship.*** Reasons for granting the variance must be substantial; the proof must be compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved. Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one’s neighbors do not qualify as exceptional hardships.”¹

Minimum Variation Necessary

The variance must be the minimum necessary, considering the flood hazard, to afford relief. A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from the local requirements. The approved project should provide as much flood protection as is possible.

Regulatory Floodway

Variances shall not be issued within any regulatory floodway if any increase in flood levels during the base flood discharge would result. Because the community should not be exposed to higher flood risks, federal standards prohibit variances from the requirements concerning floodway encroachments.

When Might a Variance Be Warranted?

Special circumstances may justify granting a variance:

- **Deviation from Higher Standards:** When a municipality’s floodplain management standards exceed the minimum federal requirements, some situations may warrant deviation from those higher standards.
- **Small Lot:** Although variances are strongly discouraged, the technical justification required for a building that fails to meet elevation requirements is lower if it is erected on a lot of one-half acre or less and surrounded by lots with existing structures constructed below the base flood elevation.
- **Wet Floodproofing:** Variances that allow protection from flood damage using wet floodproofing techniques may be issued for structures that are: functionally dependent on close proximity to water (such as boat houses), historic buildings (if the historic character is preserved), accessory structures, and certain agricultural structures. The variance may be contingent on limited use of the structure (for storage, parking, or agricultural purposes). In all cases, the variance must be the minimum necessary.

Impact of Increased Risk on Flood Insurance Rates

A variance is for floodplain management purposes only. It does not alter flood insurance purchase requirements or the mechanism for determining insurance costs. The increased risk for a non-compliant structure will be reflected in higher annual flood insurance premiums, which can be as high as \$25 for \$100 of insurance coverage. This may create severe financial consequences for the property owner who applied for the variance and for any future owners. Although a variance may save money in the short term, over the long run the owner may pay much more in insurance premiums or, if uninsured, in flood losses. If a variance is issued for a building with the lowest floor below the base flood elevation, the municipality must notify the applicant of the potentially high flood insurance premiums and the increased risks to life and property.

Additional Resources

- *Variances and the National Flood Insurance Program*, Floodplain Management Bulletin FEMA P-993, (2014) available at <https://www.fema.gov/media-library/assets/documents/99703> was developed to help local officials review requests for variances and determine if a request meets the minimum requirements of the NFIP.
- *Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas*, Technical Bulletin 7-93, FEMA FIA-TB-7 (1993), available at <https://www.fema.gov/media-library/assets/documents/3503> specifies variance conditions and provides technical guidance for wet floodproofed buildings.

¹ *National Flood Insurance Program (NFIP) Floodplain Management Requirements*, FEMA 480 (2005), page 7-46.

ARTICLE I

Statutory Authorization; Finding of Fact; Purpose**§ 74-1. Statutory authorization.**

The legislature of the State of New Hampshire has in RSA 674:16 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the City Council of the City of Lebanon, New Hampshire, does ordain as follows.

§ 74-2. Finding of fact.

- A. The flood hazard areas of Lebanon are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

§ 74-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health.
- B. To minimize expenditure of public money for costly flood control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 74-4. Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting and prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters.
- D. Controlling filling, grading, dredging and other development which may increase flood damage.
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwater or which may increase flood hazards in other areas.

ARTICLE II Definitions and Word Usage

§ 74-5. Word usage.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

§ 74-6. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for review of the Floodplain Official's interpretation of any provision of this chapter or a request for a variance.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community with a one-percent or greater chance of flooding in any given year. The area is designated as Zone(s) A and AE on the Flood Insurance Rate Map (FIRM).

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — Any area of a building having its floor subgrade on all sides.

BUILDING — See "structure."

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

FEMA — The Federal Emergency Management Agency.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation or normally dry land areas from the overflow of inland or tidal water and/or the unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD ELEVATION STUDY — An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM) — An official map incorporated with this chapter, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Lebanon.

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. See definition of "flooding."

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOODWAY — See "regulatory floodway."

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and shipbuilding/repair facilities but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district, historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR — The floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered the building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter. A "basement" means any area of the building having its floor subgrade (below ground level) on all sides.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION — Includes substantial improvement, and means the date the building permit was issued, provided that actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of the structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

ONE-HUNDRED-YEAR FLOOD — See "base flood."

RECREATIONAL VEHICLE —

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated on the FIRM map.

SPECIAL FLOOD HAZARD — An area having flood, mudslide and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A or AE (see "area of special flood hazard.")

START OF CONSTRUCTION — Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

STRUCTURE — For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should equal the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCES — A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

VIOLATION — Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION — The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

ARTICLE III General Provisions

§ 74-7. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Lebanon.

§ 74-8. Basis for establishing areas of special flood hazard.

Pursuant to RSA 674:56, by resolution of the City Council, all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Grafton, NH" dated February 20, 2008, together with the associated Flood Insurance Rate Maps dated February 20, 2008, are declared to be part of the City of Lebanon Code, Chapter 74 and are hereby incorporated by reference. The Flood Insurance Study is on file at the office of the City Clerk, 51 North Park Street, Lebanon, New Hampshire.

§ 74-9. Compliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations.

§ 74-10. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§ 74-11. Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

§ 74-12. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Lebanon, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder.

§ 74-13. Penalties for offenses.

Violation of any provision of this chapter shall be punishable as provided in Chapter 1, General Provisions.

ARTICLE IV Administration

§ 74-14. Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 74-8. Application for a development permit shall be made on forms furnished by the Floodplain Official and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 74-21B; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

§ 74-15. Designation of the Floodplain Official.

The Floodplain Official is responsible for administering and implementing this chapter by granting or denying development permit applications in accordance with its provisions. The Floodplain Official will normally be the City Engineer.

§ 74-16. Duties and responsibilities of Floodplain Official.

Duties of the Floodplain Official shall include, but not be limited to:

- A. Permit review. The Floodplain Official shall:
 - (1) Review all development permits to determine that the permit requirements of this chapter have been satisfied.
 - (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.
 - (3) Review all development permits to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard. For purposes of this chapter, "adversely affects" means the cumulative effects of proposed development when combined with all other existing and anticipated developments increases the water surface elevation of the base flood more than one foot at any point.

- B. Use of other base flood data. When base flood elevation data has not been provided in accordance with § 74-8, Basis for establishing the areas of special flood hazard, the Floodplain Official shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer § 74-21, Specific Standards, Subsection A, Residential construction, and Subsection B, Nonresidential construction.
- C. In special flood hazard areas, the Floodplain Official shall determine the one-hundred-year-flood elevation in the following order of precedence according to the data available:
 - (1) In Zones AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
- D. Information to be obtained and maintained. The Floodplain Official shall:
 - (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures located in Zones A or AE. The applicant shall furnish the following information to the Building Inspector.
 - (2) For all new or substantially improved floodproofed structures:
 - (a) Verify and record the actual elevation (in relation to mean sea level); and
 - (b) Maintain the floodproofing certifications required in § 74-14C.
 - (3) Maintain for public inspection all records pertaining to the provisions of this chapter.

§ 74-17. Alteration of watercourses.

- A. In riverine situations, prior to the alternation or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Floodplain Official, including notice to all scheduled hearings before the Wetlands Board and any hearings before the Zoning Board of Adjustment for a special exception or conditional use permit under Section 401 of the Lebanon Zoning Ordinance.²
- B. Along watercourses with a designated regulatory floodway, no encroachments, including fill, new construction, substantial improvements and other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meets the floodway requirements of this section.
- C. Along watercourses that have not had a regulatory floodway designated, no new

2. Editor's Note: The Zoning Ordinance is on file in the City offices.

construction, substantial improvements or other development (including fill) shall be permitted within Zones AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

§ 74-18. Variance procedure; Floodplain Appeal Board.

- A. The Floodplain Appeal Board shall be the Lebanon Zoning Board of Adjustment. The Zoning Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Floodplain Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Official in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Floodplain Appeal Board, or any taxpayer, may appeal such decision to the Grafton County Superior Court as provided in RSA 676:5.
- D. In passing upon such applications, the Floodplain Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities,

such as sewer, gas, electrical and water systems and streets and bridges.

- E. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots within existing structures constructed below the base flood level, provided that Subsections (1) through (11) in § 74-18D have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- F. Upon consideration of the factors of § 74-18D and the purposes of this chapter, the Floodplain Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- G. The Floodplain Official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

§ 74-19. Conditions for variances.

- A. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances shall only be issued upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 74-18D, or conflict with existing local laws or ordinances.
- E. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

ARTICLE V
Provisions for Flood Hazard Reduction

§ 74-20. General standards.

In all areas of special flood hazards the following standards are required:

A. Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes that are placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
 - (a) Outside of a manufactured home park or subdivision;
 - (b) In a new manufactured home park or subdivision;
 - (c) In an expansion to an existing manufactured home park or subdivision; or
 - (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of § 74-20A(2) be elevated so that either:
 - (a) The lowest floor of the manufactured home is at or above the base flood elevation; or
 - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (4) Recreational vehicles.
 - (a) All recreational vehicles placed on sites within Zone AE shall either:
 - [1] Be on the site for fewer than 180 consecutive days;
 - [2] Be fully licensed and ready for highway use; or
 - [3] Meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in Paragraph (c)(6) of Section 60.3.

- (b) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices and has no permanently attached additions.

B. Construction materials and methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall have electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities.

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).
- (5) Residential subdivisions shall not be approved unless the applicant can demonstrate that lands sufficient to meet the lot area, frontage and yard requirements of the Zoning Ordinance³ exist on each proposed lot in areas outside the special flood hazard area.

3. Editor's Note: The Zoning Ordinance is on file in the city offices.

§ 74-21. Special standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in § 74-8, Basis for establishing the areas of special flood hazard, or § 74-16B, Use of other base flood data, the following provisions are required.

- A. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation. **[Amended 7-10-2019 by Ord. No. 2019-08]**
- B. Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:
 - (1) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
 - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official set forth in § 74-16D.
- C. Residential and nonresidential construction. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements:
 - (1) The enclosed area is unfinished or flood resistant, used solely for parking of vehicles, building access or storage.
 - (2) The area is not a basement.
 - (3) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwater.

§ 74-22. Floodways.

Located within areas of special flood hazard established in § 74-8 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements

and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- B. If Subsection A is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V, Provisions for Flood Hazard Reduction.
- C. Prohibit the placement of manufactured homes.