



**LEBANON ZONING BOARD OF ADJUSTMENT
AUGUST 1, 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. July 5, 2022
 3. **Public Hearing Items**
 - A. **Chiplin Enterprises, Inc., 18 South Street (Tax Map 107, Lot 18), zoned R-2:** Applicant proposes to subdivide the property into two (2) lots. To allow the proposed subdivision, the applicant requests Variances from the following: (i) Section 202 of the Zoning Ordinance (prohibiting the reduction of lot area to less than the minimum required), (ii) Section 309.3 (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-2 District and an additional 3,000 sq. ft. for every additional dwelling unit after two); and (iii) Section 309.3 to allow an existing building to be located +/- 12 ft. from the proposed side lot line where a minimum of 15 ft is required. **ZB2022-16-VAR - Continued from June 6, 2022 - Request by applicant to postpone until September 6, 2022**
 - B. **REVISED NOTICE - Steven Davis, 12 Excelsior Street (Tax Map 93, Lot 89, Plot 400), zoned R-3:** Applicant proposes to construct a home on the vacant lot. A Variance per Section 310.3 of the Zoning Ordinance is requested to allow the home to be located +/- 8 ft. from the side lot line where a minimum of 15 ft. is required. **ZB2022-15-VAR - Continued from July 5, 2022**
 - C. **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 - Continued from July 5, 2022**
 4. **Staff Comments**
 5. **Adjournment**

Lebanon Zoning Board of Adjustment Agenda
August 1, 2022

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
August 1, 2022
Zoning Board of Adjustment**

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

July 5, 2022

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, July 5, 2022
7:00 PM**

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

MEMBERS ABSENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

*Mr. Newlove MOVED to appoint Jeremy Katz acting chair.
Seconded by Ms. Barkley.*

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

Mr. McDonough and Ms. Barkley were given voting privileges for this meeting.

Mr. Katz called the meeting to order at 7:03 PM.

2. APPROVAL OF MINUTES

A. June 6, 2022

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

Seconded by Mr. Newlove.

Amendments: Spelling and grammar corrections.

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

Mr. Newlove abstained because he was not present for the meeting.

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**

Steven Davis appeared on behalf of the application. He presented several diagrams showing the project.

Mr. Nash asked for the site plan that the Board requested to be provided at the previous meeting. He believes they need an 11-foot variance, leaving a 4-foot setback, which appears different from the way it

1 is shown on the materials previously submitted. This requires a different approach and new materials to
2 make these corrections.

3
4 **Mr. Katz opened the Public Hearing.**

5
6 ***Mr. Nash MOVED to continue this hearing until the August 1, 2022, meeting.***
7 ***Seconded by Mr. McDonough.***

8
9 This hearing will have to be re-noticed.

10
11 ****The Vote on the Motion was approved (5-0).***
12

13 **B. Irving Oil Marketing, Inc. (applicant), Rancho Lebanon, LLC (property owner), 206**
14 **South Main Street (Tax Map 115, Lot 1), zoned GC:** Applicant requests Variances from
15 the following sections of the Zoning Ordinance in connection with the proposed construction
16 of a retail motor vehicle service station and convenience store: (i) Section 305.3 to allow a
17 retail service station canopy to be located +/-9 ft. from the side property line where 20 ft. is
18 the minimum required, (ii) Section 608.8 to permit an existing non-conforming freestanding
19 sign to remain on the property, and in the alternative Section 608.4.A.4.a to allow a
20 freestanding sign to exceed the maximum permitted height and size, and (iii) Section
21 608.4.A.4 to allow two (2) freestanding signs on the property where only one (1) is permitted
22 and to allow one of the freestanding signs to be located +/-80 ft. from the freestanding sign on
23 the adjoining property where a minimum separation of 150 ft. is required. **ZB2022-14-VAR -**
24 **Continued from June 6, 2022**
25

26 Maria Dolder-attorney on the project, Nicole Duquette-GPI engineer on the project, and Jennifer Eaigle-
27 Irving Oil, appeared on behalf of the application. Irving will have a 40-year lease, which is a 20 year
28 lease with options for extensions up to 20 additional years.

29
30 In the update that was provided additional information was supplied from Irving files. In 2013 there was
31 an application for the sign permit that was approved. There were no conditions on the approval and no
32 end dates. They believe they have a valid permit to use the existing sign. They blanked out the sign and
33 are now ready to reface it, which they believe this is permitted. It will be a static sign that will be
34 internally lit.

35
36 The high rise sign was approved in the 1980s. The service station was removed in 2010. The
37 application to reface the sign was made in 2013 and is said to cost approximately \$15,000. The
38 applicants do not believe they would have spent that money if they did not intend to use the sign.
39

40 In terms of the second sign, the legal rational is that gas prices have to be posted in several ways in order
41 to comply with the statutes. Prices have to be visible from both sides, and given the location, it is
42 difficult to visually see the price of gas. They believe the prices should be visible without coming onto
43 the property. With the raised median it is difficult to get into the location, which will make it even more
44 difficult for consumers to see the prices. The new materials provided for this meeting relocates the
45 proposed sign. It is now more than 150 feet from the Target sign. The variance criteria were reviewed.
46 The hardship is the uniqueness of the property, where it was diminished by the DOT taking. This
47 impacts how the property can be accessed. The sign would comply with the height and size
48 requirements. From a competitive standpoint, not being able to advertise prices would be
49 disadvantageous.
50

1 Mr. Nash asked why the extra signage is needed for the Irving gas and convenience store. They replied
2 that it is for the Irving identity.

3
4 **Mr. Katz opened the discussion to the public and no one commented. The Public Hearing was**
5 **closed.**

6
7 Mr. McDonough thinks the competitive mandate is compelling. Mr. Newlove thought the presentation
8 was well done. Ms. Barkley understands there are legal requirements for pricing. Mr. Nash sees the
9 argument for the prices, but not the argument for additional signage. Mr. Katz thinks it is clear they
10 have maintained the use of the high rise sign. He does not believe there is anything about the site that
11 distinguishes it from other properties in the area. Prior to 2017 they could receive second signs by
12 special exception. At this time, signs are not to be proliferated.

13
14 *Mr. McDonough MOVED, on June 6, 2022, and July 5, 2022, at duly noticed meetings of the Lebanon*
15 *Zoning Board of Adjustment, there appeared Irving Oil, in particular Maria Dolder, Nicole Duquette,*
16 *and Jennifer Eaigle, on behalf of Irving Oil Marketing, Inc. (applicant) and Cobalt Properties NH*
17 *Corp (property owner) regarding 206 South Main Street (Tax Map 115, Lot 1), zoned GC. Applicant*
18 *requests Variances from the following sections of the Zoning Ordinance in connection with the*
19 *proposed construction of a retail motor vehicle service station and convenience store: (i) Section 305.3*
20 *to allow a retail service station canopy to be located +/-9 ft. from the side property line where 20 ft. is*
21 *the minimum required, (ii) Section 608.8 to permit an existing non-conforming freestanding sign to*
22 *remain on the property, and in the alternative Section 608.4.A.4.a to allow a freestanding sign to*
23 *exceed the maximum permitted height and size, and (iii) Section 608.4.A.4 to allow two (2)*
24 *freestanding signs on the property where only one (1) is permitted and to allow one of the freestanding*
25 *signs to be located +/-80 ft. from the freestanding sign on the adjoining property where a minimum*
26 *separation of 150 ft. is required. ZB2022-14-VAR. ZB2022-14-VAR*

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 applicant proposes to redevelop 206 South Main Street and the front portion of 200 South
34 Main Street with an Irving convenience store and a vehicle refueling facility (i.e., as described by
35 the applicant, a “retail service station canopy”). The convenience store will be located at 200
36 South Main Street, whereas the “retail service station canopy” will be located at 206 South Main
37 Street.
- 38
39 2. A large structure – which formerly supported a freestanding a sign – is located at the subject
40 property. Applicant proposes to use the structure for a freestanding sign to advertise the retail
41 service station. The structure exceeds the maximum permitted freestanding sign height of 25 ft.,
42 and the proposed sign is greater than 130 sq. ft. in size, thereby exceeding the maximum
43 permitted freestanding sign area of 64 sq. ft. To allow use of the existing freestanding sign
44 structure, the applicant requests a Variance from Section 608.8 to permit an existing non-
45 conforming freestanding sign to remain on the property. However, to allow the structure to be
46 utilized as a freestanding sign, a Variance from Section 608.4.A.4.a (rather than Section 608.8) is
47 required to allow the proposed freestanding sign to exceed the maximum permitted height and
48 size (*hereinafter referred to as **Variance Request “A”***).
- 49

3. Finally, the applicant proposes to install a second freestanding sign on the property and, therefore, requests a Variance from Section 608.4.A.4 to allow two (2) freestanding signs on the property where only one (1) is permitted (*hereinafter referred to as **Variance Request “B”***).
4. To obtain the requested Variances, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on May 17, 2022 (see attached).
5. The applicant had requested a Variance from Section 305.3 to permit construction of the retail service station canopy within the minimum required 20 ft. side yard. However, prior to the July 5th hearing, the applicant submitted a revised plan relocating the canopy in compliance with the minimum required side setback. Consequently, the applicant withdrew this Variance request as it is no longer required. Also, as part of Variance Request “B”, the applicant had requested a Variance from Section 608.4.A.4 to allow the new freestanding sign to be located +/-80 ft. apart from the freestanding sign located on 200 S. Main Street, where a minimum 150 ft. separation is required. However, prior to the July 5th hearing, the applicant submitted a revised plan relocating the sign in compliance with the 150 ft. separation requirement. Consequently, the applicant also withdrew the Variance request from the 150 ft. separation requirement as it too is no longer required.
6. No one from the Public spoke for or against the application in this matter.

II. CONCLUSIONS OF LAW

Variance Request “A”

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):

It is located on a part of 12A that restricts traffic because of the median strip restrictions, allowing traffic heading in a northbound direction to turn directly into the gas station.

The preexisting status of the sign addressed by the City as far back as 2013 permits to the Board to find that it would be appropriate to allow that sign to continue to be utilized.

- 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)

- 1
2 ii. The proposed use is a reasonable one. (Section 801.2.A.5.a.ii)
3

4 **Variance Request “B”**
5

6 As a result of the above findings of fact and based on testimony given, application materials presented,
7 and supporting documents submitted, the Board concludes the following with respect to the Variance
8 criteria set forth in Section 801.2 of the Zoning Ordinance:
9

- 10 1. The variance will not be contrary to the public interest. (Section 801.2.A.1)
11
12 2. The spirit of the ordinance is observed. (Section 801.2.A.2)
13
14 3. Substantial justice is done. (Section 801.2.A.3)
15
16 4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
17
18 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
19 Owing to **[the following]** special conditions of the property that distinguish it from other
20 properties in the area (Section 801.2.A.5.a):
21

22 The competitive nature of the sale of gasoline requires customers to have easy access to prices
23 being offered by the applicant.
24

- 25 i. There is not a fair and substantial relationship between the general public purposes of the
26 ordinance provision and the specific application of that provision to the property. That is to
27 say it is appropriate for this to be granted. (Section 801.2.A.5.a.i)
28
29 ii. The proposed use is a reasonable one. (Section 801.2.A.5.a.ii)
30

31 **III. DECISION**
32

33 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **5th day of July 2022**,
34 hereby **GRANTS** Variance Request A and **GRANTS** Variance Request B, as set forth above and per
35 testimony, plans, and materials submitted, and per the following conditions:
36

- 37 1. The applicant shall obtain a sign permit as may be required by Section 608 of the Zoning
38 Ordinance.
39

40 ***Seconded by Mr. Newlove.***
41

42 Ms. Barkley believes by not granting this, Irving would have to invest in tearing down the first sign to
43 permit a different sign. Mr. Nash is in opposition as previously stated. Mr. Katz believes the hardship is
44 legally erroneous on three levels. There are medians along Route 12A and it is not unique to this
45 property. Nearly all properties have preexisting signs and if this was approved others would want a
46 second sign. Lastly, although gas is competitive, the choice to use the land in this way does not
47 differentiate it from other properties. Therefore, it does not require variance relief. Yes, developing this
48 property with a service station is a good idea, but legal conditions have not been met.
49

50 ****The Vote on the Motion was (2-3).***

51 Mr. Newlove and Mr. McDonough voting yea.

Ms. Barkley, Mr. Nash, and Mr. Katz voting nay.

Mr. Katz MOVED, on June 6, 2022, and July 5, 2022, at duly noticed meetings of the Lebanon Zoning Board of Adjustment, there appeared Maria Dolder, Esq., Nicole Duquette and Jennifer Daigle on behalf of Irving Oil Marketing, Inc. (applicant) and Cobalt Properties NH Corp (property owner) regarding 200 & 206 South Main Street (Tax Map 114, Lot 5 & Tax Map 115, Lot 1), zoned GC. Applicant requests Variances from the following sections of the Zoning Ordinance in connection with the proposed construction of a retail motor service station and convenience store (i) 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 (ii) Section 608.4.A.4 to allow two (2) freestanding signs on the property where only one (1) is permitted.ZB2022-14-VAR

I. FINDINGS OF FACT

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

1. The applicant proposes to redevelop 206 South Main Street and the front portion of 200 South Main Street with an Irving convenience store and a vehicle refueling facility (i.e., as described by the applicant, a “retail service station canopy”). The convenience store will be located at 200 South Main Street, whereas the “retail service station canopy” will be located at 206 South Main Street. Although both 200 South Main Street and 206 South Main Street were identified in the hearing notice, it is only the latter property (206 South Main Street) that is in fact the subject of this application.
2. Applicant proposes to use the large structure presently on the property for a freestanding sign to advertise the retail service station. The structure exceeds the maximum permitted freestanding sign height of 25 ft., and the proposed sign is greater than 130 sq. ft. in size, thereby exceeding the maximum permitted freestanding sign area of 64 sq. ft. To allow use of the existing freestanding sign structure, the applicant requests a Variance from Section 608.8 to permit an existing non-conforming freestanding sign to remain on the property. This Board has also investigated whether, pursuant to Section 608.4.A.4. an additional variance is required to allow the structure to be utilized as a freestanding sign in order to allow the freestanding sign to exceed the maximum permitted height and size (*this is referred to as **Variance Request “A”***).
3. The applicant proposes to install a second freestanding sign on the property and, therefore, requests a Variance from Section 608.4.A.4 to allow two (2) freestanding signs on the property where only one (1) is permitted (*hereinafter referred to as **Variance Request “B”***).
4. To obtain the requested Variances, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning Board on May 17, 2022, which has been supplemented with additional written information in advance of the July 5, 2022, hearing.
5. Regarding the existing structure, the Board makes the following finding of fact:
 - i. The existing structure was a sign that was installed sometime around 1988 and at the time it was installed it conformed with all applicable rules and regulations.

- 1 ii. In 2010, the gas station on the premises was closed pursuant to a taking for which the
2 Landowner received compensation from [the state of New Hampshire].
3
- 4 iii. In May of 2013, approximately 3 years after the gas station was closed, the Applicant applied
5 for and was issued a building permit to replace the “Irving” copy on the sign with a white blank
6 vinyl material. The Applicant’s support statement specified “Refacing Existing HWY sign” on
7 it.
8
- 9 iv. Carmela Hennessy, the City Zoning Administrator, approved the permit, noting in the in-house
10 review form “no change in size or location (non-conforming sign) – just want to blank out now
11 – will pull permit when ready to re-face.
12
- 13 v. Applicant spent thousands of dollars to perform the work described in the permit. The work
14 was performed with the expectation that the sign would be refaced in the future.
15
- 16 vi. The 2009 and 2013 Ordinances, which were in effect at the time of the gas station shut down
17 and the sign refacing, imposed obligations regarding non-conforming signs losing their
18 protected status in Section 608.10(B), and of note section 3, which states: “A legal non-
19 conforming sign shall lose its non-conforming status if: (3) the sign is abandoned based on
20 circumstances indicative of an intention to abandon the use and vested rights.
21
- 22 vii. The Ordinance was changed in 2018, and the relevant section now is 608.8(C)(3) which states:
23 “Removal of a legal non-conforming sign by a property owner is required when: The use of the
24 sign or the lot on which it is located, has ceased, become vacant, or been unoccupied for a
25 period of 180 consecutive days or more.
26
- 27 viii. Applicant has not engaged in any act after 2018 that is in any way different than its behavior
28 prior to 2018.
29
- 30 6. Relative to the variance request to add a second sign, Applicant provided testimony in favor of its
31 request, notably in its initial support statement, presented to the Board at the June 6, 2022,
32 hearing. Pages 8-12 of this statement focus on the applicant’s contention that an unnecessary
33 hardship exists at the property. Applicant contends that an unnecessary hardship exists for the
34 following reasons:
35
- 36 i. A NH DOT taking between 2008 and 2010 that decreased the size of the property by 1,649
37 square feet and required site closure.
38
- 39 ii. The existence of a free-standing sign that has existed on the site since 1988.
40
- 41 iii. The existence of a median later installed on Route 12A that precludes traffic making left hand
42 turns into the site.
43
- 44 7. The Board additionally notes that, prior to 2017, the Ordinance provided for the addition of
45 additional signage by special exception – most recently in 2013 by section 608.9. The 2017
46 ordinance has deleted this ability.
47

48 **II. CONCLUSIONS OF LAW**

49 **Variance Request “A”**

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 Variance Request A.

1. Section 608.8(C)(3) requires the removal of a legal nonconforming sign when “the use of the sign or the lot on which it is located, has ceased, become vacant, or been unoccupied for a period of 180 consecutive days or more.” This Board believes that the proper reading of this section is for actions taken by landowners related to periods after the enactment of the restriction, in 2018.
2. In this specific case, the Applicant’s property became vacant and unoccupied more than a decade ago. Years after it became vacant, the Applicant received an affirmative written confirmation of the sign’s legal nonconforming status from the City Zoning Administrator and invested a substantial sum to re-face sign with the explicit representation that it would be re-faced again in the future.
3. At the time of the implementation of the 2018 Ordinance, the use of the lot had already been unoccupied for a period greatly exceeding 180 days. This is distinguishable from other sites that may have uses discontinued or lots vacated after 2018. All lots, including this one being considered, are subject to Section 608.8(C) to the extent actions taken after August 15, 2018, trigger the requirements of removal.
4. As a result, the Variance relief to re-face the existing and lawfully nonconforming sign is not required, and the Applicant may file a building permit to re-face the existing highway sign.

Variance Request “B”

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 not** observed. (Section 801.2.A.2)

The ordinance seeks to avoid visual clutter or distraction and promote an aesthetically pleasant experience in order to meet the community’s expressed desire for quality development. The evolution of the City’s regulatory scheme on signage has been to reduce clutter by restricting signage to one freestanding sign per property and is evidenced by the 2017 Ordinance having deleted section 608.9 which previously allowed additional signage by special exception.

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 not** 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. Applicant has not met its burden of showing that there special conditions on this property that present an unnecessary hardship, and the Board finds that there are no such special conditions. Applicant has presented that it already has one sign, which happens to already exceed presently

allowable height and coverage dimensions, as an unnecessary hardship. However, the presence of one freestanding sign is not distinguishable from other properties in the neighborhood, which carry the burden of the similar restriction. The fact that some properties have lawfully conforming, and others have lawfully nonconforming signs is a distinction without a difference, as the Ordinance fairly provides each property with one freestanding sign. Furthermore, the fact that other landowners may have taken advantage of more generous sign provisions by developing under previous ordinances does not create a unique and differentiated hardship for this property.

- ii. Applicant additionally presented information regarding the loss of land from a compensated taking more than a decade earlier. While this change in the dimensions of the property was relevant to a different variance request for a canopy setback (which was withdrawn by Applicant prior to the July 5th, hearing) there is no attribute of a compensated taking more than a decade earlier that indicates an unnecessary hardship in the enforcement of the sign ordinance related to the limitation of one freestanding sign. Furthermore, with regards to the median on Route 12A, there are multiple other properties within the immediate neighborhood that are bound by the same restriction as the applicant.

- 6. There is 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)
- 7. The proposed use is a reasonable one. (Section 801.2.A.5.a.ii)

The Ordinance strikes a fair balance between promoting commercial speech and reducing clutter.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th day of July 2022, hereby: **Determines that no variance determination is required for Variance Request A, for the legal reasons set forth above;** and **DENIES** Variance Request B.

Seconded by Mr. Nash.

**The Vote on the Motion was (3-2).*

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

Mr. Newlove and Mr. McDonough voting nay.

- 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**

Ms. Zhang and Mr. Seiman appeared on behalf of the application. They are working with a solar company and would like to install a solar array. Due to tree coverage the proposed area is the best location for the array. A solar array is permitted within a setback. Due to the location of the septic system and the leach field there are no other locations that get enough sunlight. It would be a static array.

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

1 *Mr. Nash MOVED on July 5, 2022, at a duly noticed meeting of the Lebanon Zoning Board of*
 2 *Adjustment, there appeared Max Seidman & Angela Zhang regarding 53 Winter Street (Tax Map 77,*
 3 *Lot 83), zoned R-3: Applicants request a Special Exception per Section 201.9 of the Zoning Ordinance*
 4 *to erect a solar array to be located +/-9 ft. from the rear property line where a minimum of 30 ft. is*
 5 *required. ZB2022-18-SE*

7 **I. FINDINGS OF FACT**

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

- 12 1. The subject property is a +/-1.46 acre lot located at the western end of Winter Street and abuts I-
 13 89 to the north. The applicants propose to install an accessory solar energy system to serve the
 14 existing one-family dwelling use of the property.
- 16 2. As depicted on the plot plan included with the attached application materials, the system is
 17 proposed to be located +/-9 ft. from the rear property line, whereas a minimum rear yard of 30 ft.
 18 is required in the R-3 District.
- 20 3. Section 201.9 of the Zoning Ordinance prohibits accessory renewable energy systems within
 21 minimum required yards. However, this restriction may be relaxed by Special Exception if the
 22 applicant demonstrates compliance with the Section 801.3 Special Exception criteria and if the
 23 Board finds that such relaxation is required for the reasonable use of the proposed system.
- 25 4. No one from the public spoke for or against the application.

27 **II. CONCLUSIONS OF LAW**

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

- 33 1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
- 35 2. The following condition/requirement of Section 201.9 of the Zoning Ordinance is met:
 36 (§801.3.B)
 - 38 a. Allowing the proposed accessory solar energy system within the minimum required rear yard
 39 is required for the reasonable use of the proposed system. Shading concerns and the septic
 40 system prevent other placements.
- 42 3. There are no existing violations of the Zoning Ordinance on the property that the granting of the
 43 Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance*
 44 *violations on the property.*
- 46 4. The character of the area will not be adversely affected. (§801.3.D)
- 48 5. No hazard or nuisance will be created. (§801.3.E)
- 50 6. The capacity of existing or planned community facilities and services (including streets and
 51 highways) will not be adversely impacted. (§801.3.F)

7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)

8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)

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

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th day of July 2022, hereby **GRANTS** the requested Special Exception per Section 201.9 of the Zoning Ordinance to allow a proposed solar array energy system at 53 Winter Street (Tax Map 77, Lot 83) to be located +/-9 ft. from the rear property line, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Newlove.

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

Mr. Nash and Mr. Katz recused themselves from the next hearing.

Mr. Katz moved to appoint Mr. Newlove acting chair for the next hearing.

Seconded by Mr. Nash.

Approved 5-0.

Mr. Newlove informed the applicants that there is a risk going before a Board with only 3 members. To pass, any motion needs at least 3 votes of approval. There is an option to delay this hearing. This is a unique circumstance, in that the Board does not usually here a request for a Flood plain variance.

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**

Dan McGee appeared on behalf of the application. They are asking to move a temporary structure and place it in the field, where it would be within the flood plain. Dan Nash appeared on behalf of the application. The size of the container is the size of a standard shipping container, approximately 8 feet by 20 feet. It is a container that is designed to be watertight, but it is not certified as such. They believe it is watertight. They would like it to be placed one foot above the flood plain. It would require 2 steps or a ramp. To install it higher, they would need an additional 50 feet of ramp for a building that is not a public use. The structure is for storing sports equipment and no one would be at risk in the building. There are specific flood plain criteria. The hardship is the excessive ramp that in itself could become a hazard during a flood.

Mr. Corwin clarified the grade. The building is proposed to be at an elevation of 1 foot above the base flood elevation. The flood could be about 2 feet above the proposed level of the floor. They discussed

1 the required elevation above the highest level of a flood. Any structure within the flood plain requires a
2 permit.

3
4 ***Ms. Barkley MOVED to continue this hearing until August 1, 2022.***
5 ***Seconded by Mr. McDonough***

6
7 ****The Vote on the Motion was approved (3-0).***

8
9 **Mr. Katz and Mr. Nash returned to the meeting.**

10
11 **4. STAFF COMMENTS**

12
13 It is anticipated that the August meeting will be held in the Lebanon Library.

14
15 **5. ADJOURNMENT**

16
17 ***Mr. Nash MOVED to adjourn the meeting at 9:03 PM.***
18 ***Seconded by Mr. Katz.***

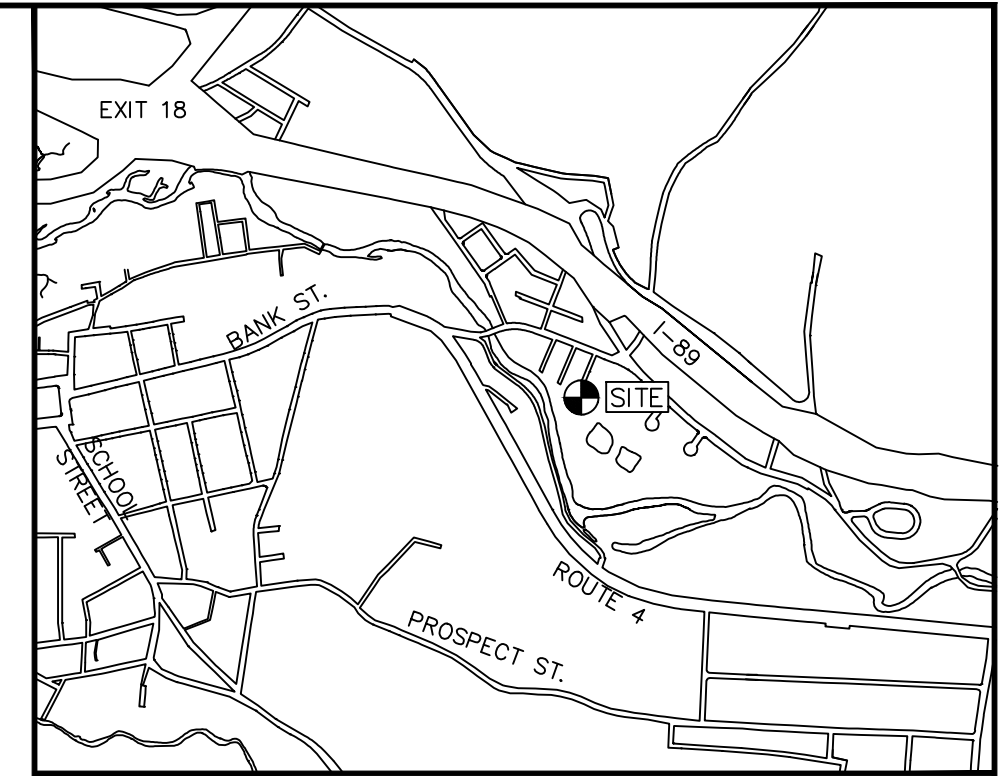
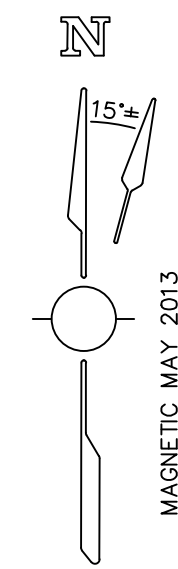
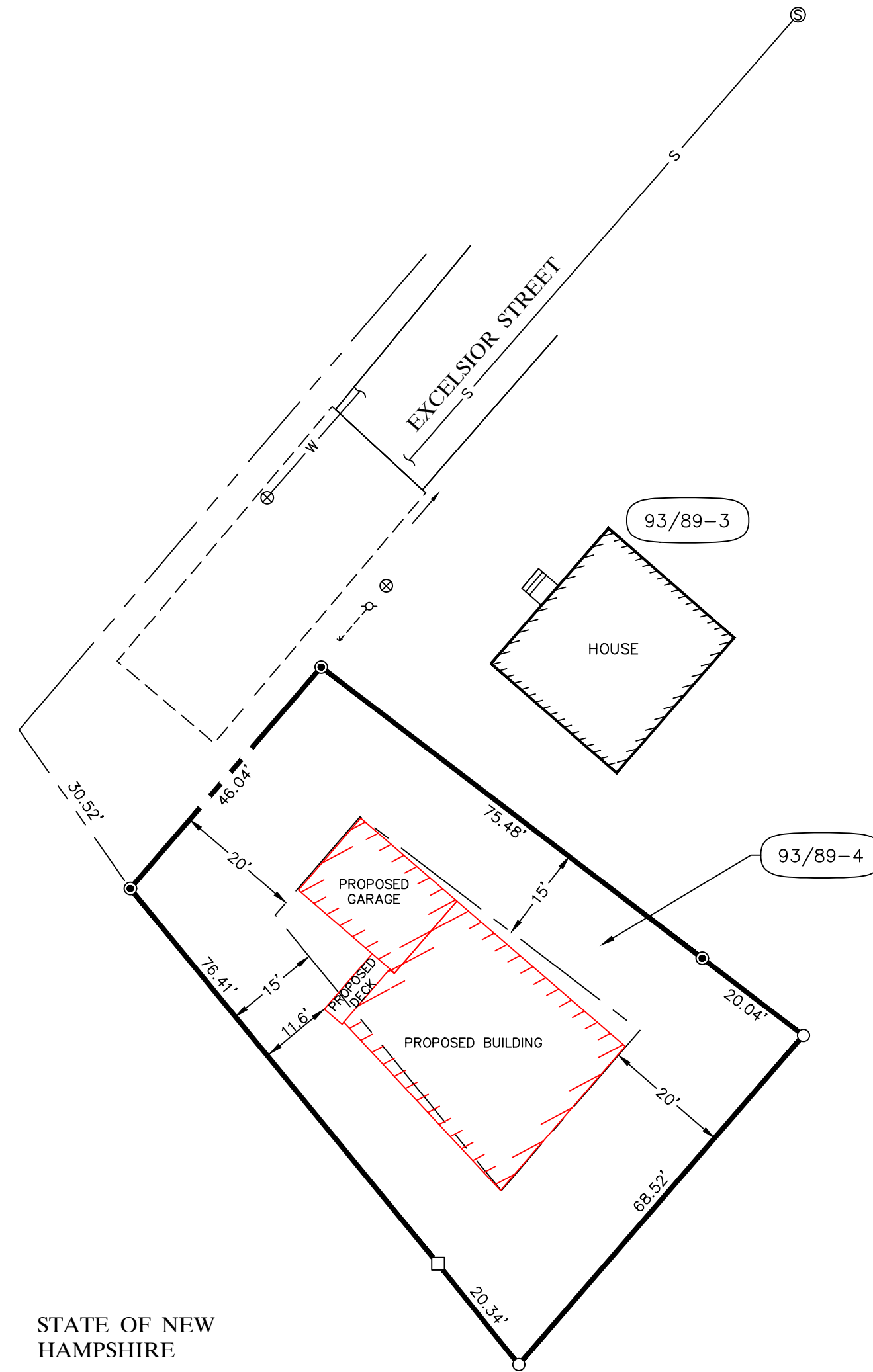
19
20 ****The Vote on the Motion was approved (5-0).***

21
22 Respectfully submitted,
23 Linda Billings
24 Recording Secretary

**Agenda
August 1, 2022
Zoning Board of Adjustment**

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

**REVISED NOTICE –
Steven Davis,
12 Excelsior Street
(Tax Map 93, Lot 89, Plot 400),
zoned R-3
ZB2022-15-VAR –
Continued from July 5, 2022**



SITE LOCATION PLAN

OPTION 1

LEGEND:

- SET REBAR
 - EXISTING IRON PIPE OR REBAR
 - EXISTING STONE BOUND
 - UTILITY POLE
 - GUY WIRE ANCHOR
 - WATER SERVICE
 - SEWER MANHOLE
 - APPROXIMATE SEWER LINE
 - APPROXIMATE WATER LINE
 - RIGHT-OF-WAY LINE
 - BOUNDARY LINE
 - LOT LINE TO BE ELIMINATED
 - BUILDING SETBACK LINE
 - DEED REFERENCE
 - TAX MAP/LOT NUMBER
- (BOOK/PAGE)
29/3

Date	Revision	By

SITE PLAN FOR
VERMOD HOMES
EXCELSIOR STREET – LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE

0 20 40 60 80 100
JULY 7, 2022 SCALE: 1"= 20' PROJ. NO.12360-01

PATHWAYS CONSULTING, LLC
240 MECHANIC STREET, SUITE 100
LEBANON, NEW HAMPSHIRE 03766
(603) 448-2200

