

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
Monday, October 3, 2022
7:00 PM**

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

MEMBERS ABSENT: Mr. Newlove

STAFF PRESENT: Tim Corwin – Interim Planning & Development Director

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:03 PM.

2. APPROVAL OF MINUTES

Ms. Hembree and Mr. McDonough were given voting privileges for this motion.

A. September 6, 2022

Mr. Nash MOVED to approve the September 6, 2022, Minutes as presented in the October 3, 2022, packet with the correction of the spelling of a name.

Seconded by Mr. McDonough.

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

3. PUBLIC HEARING ITEMS

- A. Hayden Anderson (applicant), Kyle Stumetz (property owner), 34 S. Main Street (Tax Map 86, Lot 15), zoned R-2:** Applicant requests (i) a Variance from Section 309.2 of the Zoning Ordinance to allow a freestanding deck to be located +/- 3 ft. the side lot line shared with 36 South Main Street where 15 ft. is the minimum required and (ii) a Special Exception per Section 703.1 to expand a non-conforming structure to allow deck to be located +/- 5 ft. from the side lot line shared with 36 South Main Street and 8 ft. from the side lot line shared with 32 South Main Street, where 15 ft. is the minimum required. **ZB2022-21-SEVAR**

Hayden Anderson appeared for the application as the agent on behalf of Kyle Stumetz, the current property owner. He previously owned the property that is now owned by Mr. Stumetz. Apparently two structures on the property were built in 2000 and never permitted. Neither Mr. Anderson nor Mr. Stumetz were aware that these structures were never permitted until the time of the closing of the sale to Mr. Stumetz. To make things legal, they are looking for the variance and the special exception.

The special exception is for the deck that is attached on the back of the house. It is a wooden platform that measures 7 ft by 22 ft and is 6 inches tall. The house itself is 5 ft from the southern property line. And 8 ft from the northern property line. The deck does not extend further into the property line than

the house. Mr. Anderson reviewed the statements made in the application. The deck has been taxed over the last 22 years.

The variance is for the free-standing deck at the rear of the property. The deck was built in 2000. It is only 3 ft from the property line. He emphasized that neither Mr. Anderson nor Mr. Stumetz built these structures, they are merely hoping to make sure the property is legal for the future. He reviewed the statements made in the variance application. This deck has also been taxed for 22 years.

It is unknown if the garage structure was permitted. During the closing of the sale of the property, Mr. Anderson agreed to assist in the application for the variance and the special exception. The structures do not conflict with the sewer easement. The applicants are ready to move forward on the building permits if the Board approves the variance and the special exception.

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

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

The Board agreed with the special exception and discussed the hardship criteria related to the variance.

Mr. Katz is agreement about the special exception but felt the hardship criteria has not been presented to allow a variance.

Chair Koppenheffer said the structure has been there 22 years and has nothing to do with the applicants.

Mr. Nash MOVED on October 3, 2022 , at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Hayden Anderson and Kyle Stumetz regarding 34 S. Main Street (Tax Map 86, Lot 15), zoned R-2. Applicant requests (i) a Variance from Section 309.2 of the Zoning Ordinance to allow a freestanding deck to be located +/- 3 ft. the side lot line shared with 36 South Main Street where 15 ft. is the minimum required and (ii) a Special Exception per Section 703.1 to expand a non-conforming structure to allow deck to be located +/-5 ft. from the side lot line shared with 36 South Main Street and 8 ft. from the side lot line shared with 32 South Main Street, where 15 ft. is the minimum required. ZB2022-21-SEVAR

I. FINDINGS OF FACT

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

1. Per the City's assessing records, the property is improved with a one-family dwelling constructed in 1900. The home sits at or nearly at the property line shared with the adjacent property to the north (32 South Main Street) and, therefore, is non-conforming to the minimum required 15 ft. side yard. A deck has been constructed to the rear of the home without a building permit. The deck spans the rear with of the home and, therefore, is also nonconforming to the side lot line. Before applying for an after-the-fact building permit for the deck, the applicant must apply for and obtain a Special Exception per Section 703.1 to allow an expansion of a non-conforming structure.
2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-2 District must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 309.3 of the Zoning Ordinance. Section 703.1 of the Zoning Ordinance allows the

expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment.

3. In order to grant a Special Exception for the proposed deck, the Board must determine that the proposal meets the criteria set forth in Section 703.1.A of the Zoning Ordinance. Per Section 703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section 801.3.
4. A 7 ½ by 23 ft. freestanding platform has also been constructed to the rear of the home and is located 3 ft. from the side lot line shared with 36 South Main Street. Before applying for an after-the-fact zoning permit for the freestanding platform, the applicant must first apply for and obtain a Variance from the 15 ft. minimum side yard requirement set forth in Section 309.2.
5. In the R-2 District, Class 1 lots (i.e. lots that are served by municipal sewer and water) must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft. See Section 309.3 of the Zoning Ordinance. Therefore, a Variance is required to permit the freestanding platform to encroach approximately twelve (12) ft. into the minimum required 15 ft. side yard.
6. To obtain the requested Variance from Section 309.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b). The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department on September 1, 2022.
7. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

A. **Special Exception for Attached Deck**

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception requested pursuant to Section 310.2:

1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements §703.1.A **are** met (§801.3.B):
 - The reasonable use of abutting properties **is not** adversely affected by the proposed expansion. (§703.1.A.1)
 - The proposed expansion **will not** render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance. (§703.1.A.2)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)

5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

B. Variance for Freestanding Platform

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

The features were built well before the current owner and applicant owned the property.

- i. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of October, 2022, hereby **GRANTS** the requested Special Exception and Variance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a certificate of compliance within six months.

Seconded by Mr. Katz.

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

Mr. Katz voted nay.

- B. Execusuite, LLC, 75 Bank Street (Tax Map 92, Lot 78), zoned RO:** Applicant requests a Special Exception per Sections 311.2 and 601 of the Zoning Ordinance to convert a portion of the building to a theater and concert hall. **ZB2022-22-SE**

James Wasser, the agent and architect for the project, and Tim Sidore of Execusuite, appeared on behalf of the application. This property is the former Lebanon Junior High School. It currently has 43 apartments and commercial space. They have entered into a non-binding agreement with Lebanon Opera House to bring black box theater to Lebanon. The theatre would be using the gymnasium that is in the basement of the building. Mr. Wasser said they anticipate there would be around 90 – 130 seats and auxiliary spaces for offices and rooms for the theater operations. There are 85 parking spaces available on the lot. The housing requires about 45 spaces, leaving 40 spaces for the theatre venue. Those 40 spaces would be required for 123 seats. They can also access a neighboring property that is owned by Execusuite for public parking as well as the lot across the rail trail. He believes this venue would be less intrusive than the activities that previously took place when it operated as a school. The applicants were undecided about agreeing to a limited number of seats.

The mixed-use calculation would allow additional parking for more seats. The hours of operation would not conflict with the tenants. The majority of performances would be over by 10 PM. Currently the commercial uses of the property do not conflict with the tenants. The activities would be interior use only. Tenants and abutting properties would have some concerns. There would be increased pedestrian and vehicle traffic. They have not planned for food and beverages, but it is possible in the future. Attendees would have access to the rest of the building. It was noted that parking has been an issue during the current operation of the gym. The Black Box Theatre is a term for a style of production. It is smaller than the Lebanon Opera House. It is for smaller productions, such as plays and musical productions.

Chair Koppenheffer opened the Public Hearing.

Sarah Chamberlin, a nearby resident to the building, appeared. The gymnasium has been a daytime event. When there were evening events in the past, traffic was congested. There are lingering conversations among attendees that happen during the coming and going that would be difficult to manage.

Bob and Lucy McLellan, 50 Bank Street, are kitty corner to the building. They appreciate the idea of a black box theater, but there are concerns. Some concerns could be dealt with signage, but during events when it was a junior high, the street was filled with cars and pedestrian traffic. Although all the parking is required to be onsite, it is believed the street's convenience would be used by attendees. There is concern if alcohol is going to be served onsite. Safety and maintenance on the property is a concern because for some time, there have been mobile units on the back of the property, and if this moves forward, the back lot should be cleaned up. If this is a musical venue, it would be quite loud. However, in the past, the McLellans did not have concerns about noise from inside the building. It was the vehicles and loud conversations of the attendees before and after the events that were disruptive. The tenants of the building have not been informed of the future theatre.

Jim Wasser said they have consulted with an acoustic contractor because they want to control the sound within the building. They are looking at creating new bathrooms for the performers, but at this time, attendees would use the existing commercial bathrooms that are in the hallway near two apartments. Code and safety issues would be addressed by the building permit application.

Mr. Corwin said he received three emails. He read two into the record. One email was written by the McLellans, and they spoke at this hearing. Dianne and Phil Perkins who reside near the school spoke of noise and parking, serving of alcohol and hours of operation. The second email was from Karen Melendy Cervantes, who wrote they did not receive notice. She spoke against the application for this venue in a family neighborhood. She did not receive notice because the mailing address on file with the City is incorrect.

David Donnelly asked why the Opera House is not being used. It is just down the street and is frequently not being used.

Mr. Wasser, an abutter who owns property across from the playing fields commented. There is a lot of activity near the property. Having a performing venue seems consistent with the use of this property which has been historically used for activity with large numbers of people.

Mr. Corwin said a quick calculation indicates the minimum required parking spaces would be 80 parking spaces for all the activities. With all the uses, using the shared parking table, 130 seats could be allowed. The apartments are restricted to one parking space per apartment and many of the residents do not have a vehicle. It is anticipated that there would be daytime and evening performances.

Hearing no one else wishing to comment, the Public Hearing was closed.

Ms. Hembree and Ms. Barkley were given voting privileges for this hearing.

Mr. Nash MOVED on October 3, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Tim Sidore on behalf of Execusuite, LLC, and James Wasser, Architect, regarding 75 Bank Street (Tax Map 92, Lot 78), zoned R-O. Applicant requests a Special Exception per Sections 311.2 and 601 of the Zoning Ordinance to convert a portion of the building to a theater and concert hall. ZB2022-22-SE

I. FINDINGS OF FACT

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

1. The 7.42-acre property, formerly the Lebanon Junior High School, has been the subject of numerous applications in recent months as part of its overall renovation and reuse.
2. On August 5, 2013, the applicant obtained a Special Exception to convert the building into 40 units of multi-family housing. On March 3, 2014, a Special Exception was granted for the conversion of 3,213 sq ft in the former wood shop to office use. On April 21, 2014, the applicant obtained a Special Exception for 2 additional dwelling units and a Variance to allow personal service uses (gym and exercise studio(s)) in the former gymnasium. On May 5, 2014, the applicant obtained a Special Exception for conversion of a portion of the former wood shop to a Private Education Facility for the Spark! Community Center. On July 21, 2014, the applicant obtained a Special Exception for 1 additional dwelling unit, bringing the final total to 43 units.
3. The applicant now proposes to change the gymnasium and private education facility use within the lower basement level of the building to a “theater and/or concert hall”, as described in the attached application materials.
4. “Theater, concert hall, movie theater conversion per Section 601” is a use permitted by Special Exception in the R-O District per §311.2. To obtain approval, the applicant must demonstrate compliance with the special design standards set forth in §601 and the general Special Exception criteria set forth in §801.3.
5. The applicant has submitted testimony addressing the §801.3 and §601 Special Exception criteria in an application received by the Planning Department on September 15, 2022.

6. Sarah Chamberlain, 79 Bank Street, expressed concerns regarding traffic during events, concessions, especially alcohol, and potential noise.
7. Bob and Lucy McClellan expressed favor for the theater venue, but had concerns regarding off-site parking, concessions, especially alcohol, and noise (after events).
8. Dianne Perkins, Shaw Street, expressed concerns regarding parking, noise, and the impact to existing residents in the building.
9. Karen and Raul Cervantes, 54 Bank Street, expressed concerns regarding noise and off-site parking.
10. Jim Wasser, abutter and project architect, explained the already very active nature of the entire site.
11. Dan Donley, not an abutter, but an interested party, questioned why the existing theater could not be used to host the proposed events.

II. CONCLUSIONS OF LAW

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

1. The Special Exception is specifically authorized by §311.2 of the Zoning Ordinance. (§801.3.A)
2. Regarding the following conditions/requirements of Section 601 of the Zoning Ordinance (§801.3.B):
 - a. The applicant **has** demonstrated compliance with the architectural compatibility requirements of Section 601.1.

There will be no exterior changes to the building.
 - b. The applicant **has** demonstrated that adequate off-street parking will be provided on the lot, and that parking will not occupy the front yard except within parking areas existent as of the 2013 amendment to Section 601. (§601.2)

The site parking will support up to 130 theater seats/spaces.
 - c. The applicant **has** demonstrated that impermeable coverage plus unpaved parking and driveway areas shall not exceed 65 percent of the lot area. (§601.3)
 - d. Sections 601.4 through 601.8 are not applicable to the proposed development.
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)

5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of October, 2022, hereby **GRANTS** the requested Special Exception per Section 311.2 and 601 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and all other required permits, including place of assembly.
2. Theater spaces/seats will be limited to 130 seats.
3. Separate restroom facilities will be provided for the theater venue to prevent theater goers from infringing on existing residential units.
4. Theater activities will be limited to a late completion time of 10 pm.

Seconded by Mr. Katz.

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

At 8:31 the Board took a break and returned at 8:35.

Ms. Hembree left the meeting.

- C. **Dartmouth College Trustees, 1-3 Field Road (Tax Map 5, Lot 1), 00 N. Main Street (Tax Map 8, Lot 27), 00 Indian Ridge Drive (Tax Map 8, Lot 28), zoned R-3:** The Applicant proposes to construct stormwater management facilities on the subject properties to serve a proposed expansion of the Champion ice rink located at 394 N. Main Street (Tax Map 5, Lot 2). To do so, the Applicant requests a Variance from Sections 215 and 310.2 of the Zoning Ordinance to allow an accessory use to serve an off-site principal use. **ZB2022-23-VAR**

Nate Stearns, attorney for the applicant, William Mudge, architect, Scott Williams project manager and Don Darek, President of Hanover Improvement Society appeared. The applicant has previously received permission to renovate the Champion Rink. During the design stage, it was later determined that storm water facilities are needed, and they would not fit on the site. They are very close to the boundary lines. They are not allowed to send any water to the west side, a parking lot is on the north, to the west and to the east there is a wet land and a steep bank, and on the South there is a close property

boundary. But there is a point of land that is surrounded by wetlands that is owned by Dartmouth College. Dartmouth College has tentatively agreed to provide an easement for the use of the property for the stormwater.

The applicants are questioned if a storm water facility is an accessory use. They are surprised that the use of the adjacent land might not be permitted. In the zoning ordinance, the definition of an accessory use is not helpful. The adjacent property is only being used for stormwater management. There are no other use categories that apply in this situation, except an offsite accessory use. Storm water facilities are not identified as an accessory use in the zoning ordinance. The applicants discussed other properties where stormwater facilities were on adjacent properties.

The variance criteria in the application were reviewed. The applicants summarized the characteristics of the land that make it a hardship to permit stormwater drainage on site. They would use about 1/3 of an acre for this purpose. It would not be visible from adjacent properties or would it cause any noise or hazard. It is difficult to outright purchase the property because it is complicated and would require a town vote to acquire the land.

The Board discussed if it is reasonable that an abutting property be used for accessory uses provided there are easements. It was discussed if the use for stormwater facilities is an accessory use by definition. If a stormwater facility is not defined as an accessory use on the owner's property, why would it be defined as an accessory use on a neighboring property. In theory anyone can ask for a variance, but what makes this puzzling is that a variance affects the owner's land, not the neighbor's land. It is possible the neighbor's property needs a variance.

Mr. Corwin clarified the examples of stormwater facilities in Lebanon that the applicants presented. The Centerra storm water pond was constructed entirely within the Centerra lot. There is only one example where the stormwater facility is not within the lot in Lebanon, and that might have been an oversight. This is rare and not an ordinary situation.

Mr. Katz stated if this is a use, it is an allowed use within every district. He believes the cleanest way to do this, in this instance, with these facts, does not implicate a use and does not require having relief. There is no place that states it is not allowed.

Daniel Justynski, from Dartmouth College, online, stated the College signed the application and approves of the application and easement.

Chair Koppenheffer opened the Public Hearing.

David Donley, neighbor, appeared saying he only received notice about this application a couple of days ago. He asked for a copy of the approval of the expansion that was granted in April, 2022. He referenced the action that took place in 2016. He discussed the surrounding lots where there are significant wetlands with vernal pools. He is concerned about the wetlands and the vernal pools, the discharge coming off the parking lot and the snow that is pushed close to his property. The runoff from the road seems to gravitate to his property.

Hearing no one else, the Public Hearing was closed.

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

Mr. Katz MOVED upon evaluation of the unique facts and circumstances presented by Dartmouth College and the Town of Hanover in application **ZB2022-23-VAR**, this Board determines variance relief is not required.

Seconded by Mr. McDonough.

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

Mr. Nash voted nay.

- D. Eric and Susan Cole, 162 Mechanic Street (Tax Map 105, Lot 14), zoned R-2:** Applicants request a Variance from Section 309.3 of the Zoning Ordinance to allow an access ramp to be located +/-8 ft. from the front property line along Mechanic Street and +/-6 ft. from the front property line along the property's other frontage, where 20 ft. is the minimum required.
ZB2022-24-VAR

Mr. Nash recused himself from this hearing.

Susan Cole and Eric Cole, and Philip Webster of High Meadow Builders, appeared on behalf of the application. They are asking for an access ramp that would impinge on two boundary lines. The applicant materials were reviewed. Due to the slopes of the land and height differential to the entrances, the placement of the ramp in this area is the best location for safety considerations and continued access for customers. A commercial office requires handicap accessibility and in order to achieve this, the construction of any ramp would be within the boundary lines. Originally there was a non-conforming ramp that came off the deck that was too steep and unsafe.

Mr. Katz asked about the use of the building. There is a small business unit and two residential units. The ramp has already been built, and they are asking for forgiveness. The ramp is located on the gable end, by the entrance to the office, where there is no hazard from snow falling off the roof. Commercial ramp requires inspection for code and a building permit has been filed. It is not clear if the ramp is an ADA requirement for the operation of the business or residential units.

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

Mr. Katz MOVED on October 3, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Eric and Susan Cole, regarding 162 Mechanic Street (Tax Map 105, Lot 14), zoned R-2. Applicants request a Variance from Section 309.3 of the Zoning Ordinance to allow an access ramp to be located +/-8 ft. from the front property line along Mechanic Street and +/-6 ft. from the front property line along the property's other frontage, where 20 ft. is the minimum required.
ZB2022-24-VAR

I. FINDINGS OF FACT

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

1. The subject property is located in the Residential Two (R-2) District and is currently improved with a mixed used building containing a two-family dwelling and an office. Fronting on a major thoroughfare at the corner of a busy intersection, the property is surrounded by a mix of uses and is located directly across the street from the General Commercial (GC) District.

2. To provide handicap accessibility to the office use (currently a realtor's office), the applicants have constructed a handicap accessible ramp. However, the ramp is located within the minimum required 20 ft. front yard along the property's Mechanic Street frontage and its other frontage along what is technically Slayton Hill Road.
3. To allow the ramp as constructed and to make additional adjustments to comply with applicable Building Code requirements, the applicants request a Variance from Section 309.3 to allow the ramp to be located +/-8 ft. from the front property line along Mechanic Street and +/-6 ft. from the front property line along the property's other frontage.
4. To obtain the requested Variance from Section 309.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b).
5. Philip Webster of High Meadow Builders spoke with the applicants.
6. No one from the Public spoke for or against the application.

II. CONCLUSIONS OF LAW

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

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

The positioning of the property on the lot with such proximity to the road makes the landowner unable to construct any ramp to provide ADA access to the commercial entrance without violating the setback.

- i. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of October, 2022**, hereby **GRANTS** the requested Variance from Section 309.3 of the Zoning Ordinance, 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. McDonough

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

Mr. Nash returned to the meeting.

4. STAFF COMMENTS

None

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 9:42 PM.

Seconded by Mr. Katz.

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

Respectfully submitted,
Linda Billings
Recording Secretary