



**LEBANON ZONING BOARD OF ADJUSTMENT
DECEMBER 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. November 22, 2022
 - 3. Public Hearing Items**
 - A. **Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD:** Applicant requests a Special Exception per Sections 704 and 801.3 of the Zoning Ordinance to increase the building from two (2) stories to three (3). **ZB2022-25-SE - Postponed from November 22, 2022**
 - B. **Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111, Lot 9), zoned RL-2:** The property has two principal uses: a produce stand and a contractor's yard. Applicants request a Special Exception pursuant to Section 313.2 and Section 702 of the Zoning Ordinance to allow a portion of the contractor's yard to be used as storage for the produce stand. **ZB2022-30-SE**
 - C. **Marissa Mendez & Karl Kristiansen, 1 Dartmouth Avenue (Tax Map 49, Lot 17), zoned R-1:** Applicant proposes to construct a new one-family dwelling to be located no closer to Hanover Street than the existing non-conforming one-family dwelling and +/-10 ft. from the lot line shared with 7 Dartmouth Avenue (Tax Map 49, Lot 16). Applicant requests a Special Exception per Section 703.1 of the Zoning Ordinance to expand a non-conforming structure and a Variance from Section 308.2 to construct the proposed home within the minimum required 15 ft. side yard. **ZB2022-31-VAR**
 - D. **Immersion Montessori School (applicant), Centurion Properties, Inc. (property owner), 434 North Main Street (Tax Map 2, Lot 15), zoned R-3:** Applicant requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance for a proposed a group day care facility use. **ZB2022-32-SE**
 - 4. Staff Comments**
 - 5. Adjournment**

The order of agenda items is subject to change.

Lebanon Zoning Board of Adjustment Agenda
December 5, 2022

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
December 5, 2022**

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

November 22, 2022

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
TUESDAY, November 22, 2022
7:00 PM**

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

MEMBERS ABSENT: Dave Newlove, Catherine Embre (Alt)

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator
Nathan Reichart – Planning Director

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:02 PM.

2. APPROVAL OF MINUTES

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

A. October 3, 2022

Mr. Nash MOVED to approve the October 3, 2022, Minutes as presented in the November 22, 2022, packet, with minor corrections.

Seconded by Mr. Katz.

Amendments: Page 9, Line 9; Remove “s” from ordinances. Page 9, Line 27; correct spelling to “oversight.” Page 10, Line 3; Remove “Section 215.”

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

3. PUBLIC HEARING ITEMS

- A. Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD:** Applicant requests a Special Exception per Sections 704 and 801.3 of the Zoning Ordinance to increase the building from two (2) stories to three (3). **ZB2022-25-SE**

Mr. Katz MOVED that ZB2022-25-SE, Mason Storage, LLC be continued to the December 5, 2022, meeting at 7:00 PM.

Seconded by Mr. McDonough.

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

Mr. Nash abstained.

- B. Mary Hitchcock Memorial Hospital, 1 Medical Center Drive (Tax Map 10, Lot 8), zoned MC:** Applicant requests Variances from Section 608.4.A.3.b of the Zoning Ordinance to

1 allow a wall sign in excess of 100 sq. ft. in area, and from Section 608.4.A.4 to allow more
2 than one (1) freestanding sign on the lot. **ZB2022-26-VAR**

3
4 David Steiger appeared on behalf of the application. They are reworking the signs at the Medical Center
5 to improve wayfinding. The intention is to reduce the number of signs, change the wording on some of
6 the signs, and make the signs more consistent in size. They want to put a new sign on the side of the new
7 inpatient units that would be slightly larger than what is permitted for that building.

8
9 The Chair said it was noted that the Medical Center may not be under the ordinance of signage by the
10 City, in the documents presented. It was determined that the Zoning Board does have jurisdiction.

11
12 Mr. Steiger reviewed the documents that were submitted. It is a complex facility with multiple buildings
13 and locations, to which people need to be directed. He reviewed the future locations of signs that was
14 recommended by their consultants, where signs would be relocated, where signs would be removed, and
15 the types of signs they would like to use in the future compared to existing signs. They want to add a sign
16 at this time for the new patient pavilion building. The rest of the plan would take place over the next few
17 years. This represents the loop road signage the consultant determined is needed to direct traffic.

18
19 Where the face of the sign is changed, only a sign permit is required. If the size or location changes, or a
20 new sign is added, it requires approval of the Zoning Board. The applicant needs to make it clear which
21 signs need relief. The Board reviewed the materials to determine if the information was complete enough
22 to make a determination. Charlie Welch, MHMH, commented. He believes the wayfinding information
23 is necessary and the goal is to make the signs easier to see to help people determine where they should go.

24
25 The applicant asked how a sign is measured. Staff explained that guidelines have changed with the last
26 revision of the ordinance. The letters are individual, and there is no backing to the sign. It is believed
27 that the proposal meets the size restrictions based on how the letters would be installed.

28
29 **Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.**

30
31 *Mr. Katz MOVED on November 22, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of*
32 *Adjustment, there appeared David Steiger and Charlie Welch on behalf of Mary Hitchcock Memorial*
33 *Hospital, regarding 1 Medical Center Drive (Tax Map 10, Lot 8), zoned MC. Applicant requests*
34 *Variances from Section 608.4.A.3.b of the Zoning Ordinance to allow a wall sign in excess of 100 sq.*
35 *ft. in area, and from Section 608.4.A.4 to allow more than one (1) freestanding sign on the lot.*
36 **ZB2022-26-VAR**

37
38 **I. FINDINGS OF FACT**

39
40 Based on testimony given, application materials presented, and supporting documents submitted, the
41 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 42
43 1. The subject property is a +/-289-acre parcel owned by the applicant. The property is currently
44 developed as the Dartmouth Hitchcock Medical Center (DHMC), consisting of multiple
45 buildings, which provide in-patient and out-patient clinical services and medical research along
46 with associated improvements.
47
48 2. At this time, the applicant proposes to install a +/-106 sq. ft. wall sign on the new patient pavilion
49 under construction at the north end of the main hospital building. The applicant also proposes to
50 replace and update the existing freestanding signs located on the property in addition to installing

new freestanding signs. Included with the Variance application materials are sign renderings, diagrams, and maps depicting the proposed signage.

3. Per Section 608.4.A.3.b of the Zoning Ordinance, the maximum permitted size for a wall sign is 100 sq. ft., and per Section 608.4.A.4, only one (1) freestanding sign is allowed per lot. Therefore, the applicant requires a Variance from Section 608.4.A.3.b and Section 608.4.A.4 in order to install the wall sign and in order to install those freestanding signs depicted in the application materials that are new, changing location, or changing size.

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).

5. Nobody 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):

Specifically, the property is a uniquely large private medical center campus. Most signage is not visible from public right of way or abutting properties and there is a substantial interest in the safe and efficient management of traffic, for healthcare purposes, guiding in and out of the facility.

- 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 **22nd day of November, 2022**, hereby **GRANTS** the requested Variances, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a sign permit.

2. The Project will be completed substantially in conformity with the design and specifications included with the application.

Seconded by Mr. Nash.

The Board discussed the need for the applicant to provide information regarding the hardship. The Chair said the hardship was not presented by the applicant and it is wrong to approve just because the sign is proposed to be larger. A little over a year ago, the Board approved an increased sign to direct people for safety and health reasons. In this case, it is an internal facing sign, and it is identified as necessary for patient direction on a private campus. The property is a distinguishable property.

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

Chair Koppenheffer voted nay.

C. Lisa Johnson (applicant), Jolin Salazar-Kish (property owner), 185 North Main Street (Tax Map 44, Lot 4), zoned R-3: Applicant requests a Special Exception pursuant to Section 702.5 of the Zoning Ordinance to expand the non-conforming furniture retail store use by offering retail sales of products to decorate and repair furniture and home décor and offering workshops to learn to decorate and repair furniture and home décor. **ZB2022-27-SE - Application has been withdrawn**

D. Shawn Griffin, 2 Freeman Avenue (Tax Map 90, Lot 13), zoned R-3: Applicant requests a Special Exception pursuant to Section 610.H of the Zoning Ordinance to allow a proposed detached structure with an accessory dwelling unit (ADU) to be two (2) ft. taller than the existing principal residence. **ZB2022-28-SE**

Shawn Griffin appeared on behalf of the application. He is building a second garage and would like to build an ADU for his son to live at his property. The height of the garage would be 9 feet and the pitch of the roof impacts the height of the building. Due to snow, it is recommended that the pitch be used as designed. The Board did not have further questions.

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

Mr. Nash MOVED on November 22, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Shawn Griffin regarding 2 Freeman Avenue (Tax Map 90, Lot 13), zoned R-3. Applicant requests a Special Exception pursuant to Section 610.H of the Zoning Ordinance to allow a proposed detached structure with an accessory dwelling unit (ADU) to be two (2) ft. taller than the existing principal residence. ZB2022-28-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. 2 Freeman Avenue, a +/-0.38 acre lot improved with a one-family dwelling, was recently merged with the adjacent vacant lot of 0.11 acres, for a total lot size of +/-0.49 acres.
2. On the 0.11-acre portion of the lot recently merged into 2 Freeman Avenue, the applicant proposes to construct a detached garage with an accessory dwelling unit on the second floor. The proposed building will be +/-2 ft. taller in height than the existing one-family dwelling which has a height of +/-21.6 ft.

3. In order to allow the ADU to be located in a detached structure that is taller than the principal dwelling, the applicant requires a Special Exception pursuant to Section 601.H of the Zoning Ordinance.
4. An accessory dwelling unit (ADU) is a permitted use in the R-3 District, subject to the criteria set forth in Section 610 of the Zoning Ordinance. Section 610.H provides that: “A detached ADU, if permitted under paragraph B above, shall maintain a proportional mass, size, and height to ensure it is not taller than the principal building on the lot. An ADU may be permitted to be taller than the principal building by special exception.”
5. Here, the applicant proposes to locate the ADU in a detached building having a height that exceeds the height of the principal dwelling and, therefore, requires a Special Exception pursuant to Section 610.H.
6. In order to grant a Special Exception to allow the proposed ADU to be located in the front yard, the Board must determine that the proposal meets the Special Exception criteria set forth in Section 801.3.
7. The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department.
8. 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 Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §310.2 of the Zoning Ordinance. (§801.3.A)
2. There are no special conditions/requirements applicable to the proposed use. (§801.3.B)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance violations on the property.*
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

1 **III. DECISION**

2
3 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **22nd day of November**
4 **2022**, hereby **GRANTS** the requested Special Exception as set forth above and per testimony, plans, and
5 materials submitted, and per the following conditions:

- 6
7 1. The applicant shall obtain a building permit and a certificate of occupancy and shall pay impact
8 fees pursuant to §213 of the Zoning Ordinance.
9
10 2. As part of the building permit application, the applicant shall demonstrate compliance with all
11 applicable criteria set forth in Section 610 of the Zoning Ordinance and, prior to the issuance of a
12 building permit, shall record the notice required by Section 610.C.
13

14 *Seconded by Mr. Katz.*

15
16 **The Vote on the Motion was (5-0).*
17

- 18 **E. Chorro, LLC, 77 Bank Street (Tax Map 92, Lot 79), zoned RO:** Applicant requests a
19 Special Exception per Sections 311.2 and 601 of the Zoning Ordinance to convert the existing
20 building to an 8-unit multi-family dwelling. **ZB2022-29-SE**
21

22 Jim Wasser from Studio Nexus, Architects and Tim Sidore, from Chorro, LLC, appeared on behalf of
23 the application. Mr. Katz recused himself from a previous case regarding this property, but he has not
24 had any financial relationship with the property for more than a year. No one objected to Mr. Katz
25 sitting on this hearing.
26

27 Mr. Wasser said the building is about 5500 square feet on three floors. It was originally a single-family
28 house with an attached barn. Most recently it is office use and a one-bedroom apartment. They would
29 like to convert the barn and the second floor of the main house into 7 studio apartments, keep the one-
30 bedroom apartment on the 3rd floor, and keep one office on the main floor. They do not intend to change
31 the exterior other than adding a porch and doing maintenance to the exterior. The site is heavily
32 landscape now and they intend to add additional landscaping.
33

34 They are cleaning up the parking lot and would provide sufficient parking for the tenants. It was
35 clarified that parking is available on an adjoining location, but it would not be necessary. They are
36 providing 18 spaces for 8 units and one office. There may be a problem with how the spaces are laid
37 out, but there is proper density. The Board discussed receptable and trash placement. The receptacle
38 would be located on the 77 Bank Street property near the parking lot.
39

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

41
42 **The Chair reopened the Public Hearing.**
43

44 The applicant was asked why they could not get one dumpster for 75 Bank Street and one for 77 Bank
45 Street. The intent is to cut down on the unsightliness of another dumpster. It would be screened. There
46 are 45 studios using the current dumpster. It gets emptied once or twice a week and it is adequate for
47 disposal. It would be the Planning Board that would need to address if the dumpster situation is
48 problematic.
49

50 ***Mr. Nash MOVED on November 22, 2022, at a duly-noticed meeting of the Lebanon Zoning Board of***
51 ***Adjustment, there appeared Tim Sidore and Jim Wasser on behalf of Chorro, LLC, regarding 77 Bank***

Street (Tax Map 92, Lot 79), zoned R-O. Applicant requests a Special Exception per Sections 311.2 and 601 of the Zoning Ordinance to convert the existing building to an 8-unit multi-family dwelling. ZB2022-29-SE

I. FINDINGS OF FACT

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

1. The property is improved with a mixed-use building containing office space and one dwelling unit. The applicant proposes to convert the building to an eight (8) unit multi-family dwelling.
2. A conversion of a building to a multi-family dwelling is allowed by Special Exception in the R-O District provided that the conversion complies with the requirements set forth in §601 (“Special Design Standards”).
3. Section 601.4 requires compliance with the applicable density requirements. Per §311.3, in order to accommodate the proposed 8 dwelling units, the lot would need to be at least 28,000 sq. ft. in size, whereas the lot is only 21,200 sq. ft. in size.
4. To provide the minimum required lot area for 8 dwelling units, the applicant has submitted an application to the Planning Board for a boundary line adjustment with 75 Bank Street (PB2022-55-BLA).
5. “Multi-family conversion per Section 601” is a use permitted by Special Exception in the R-O District per §311.2 of the Zoning Ordinance, provided that the conversion complies with the requirements set forth in §601 (“SPECIAL DESIGN STANDARDS”).
6. To grant the requested Special Exception, the Board must also determine that the proposal meets the general Special Exception criteria, set forth in §801.3.
7. No one from the public spoke for or against the proposal.

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 and §601 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements of §601 **are** met (§801.3.B):
 - a. Remodeling for conversions shall not alter the appearance of the exterior of the structure in a manner that is not compatible with the architectural character of the existing building; of abutting properties; or of the neighborhood. (§601.1)
 - b. Adequate off-street parking shall be provided on the lot, unless off-premise parking is approved pursuant to §607.4. Such parking shall not occupy the front yard and shall be screened from abutting properties. (§601.2)

- c. Impermeable coverage plus unpaved parking and driveway areas shall not exceed 65 percent of the lot area. (§601.3)
 - d. The conversion or new construction of multi-family complies with the zoning district requirement for "Additional Area Per Dwelling Unit After Two." (§601.4)
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)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **22nd day of November 2022**, hereby **GRANTS** the requested Special Exception as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain site plan approval per the Lebanon Site Plan Review Regulations, a building permit, and a certificate of occupancy, and shall pay impact fees pursuant to §213 of the Zoning Ordinance.
2. Prior to application for a building permit, the boundary line plat between the subject property and 75 Bank Street (PB2022-55-BLA), shall be approved by the Planning Board and recorded in the Grafton County Registry of Deeds, as shown on page 2 of 8 on the plan submitted.
3. The Project will be completed substantially in conformity to the plans provided to the Zoning Board of Adjustment.

Seconded by Mr. Katz.

Mr. Katz, asked that # 3 in the Decision be added, as written above. The Chair asked that the site plan be identified, as written above, in # 2 in the Decision.

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

4. **OTHER BUSINESS**

A. Zoning Amendments - Review of proposed amendments to the Zoning Ordinance and Zoning Map

The purview of the Zoning Board of the Adjustment is to determine whether the proposed amendments are stated in a manner that the Board can apply the amendments in future decisions. There will be a number of upcoming public hearings regarding the amendments with the City Council. The language regarding the electric vehicle discussion and requirements were highly technical and would require a high level of competence and understanding. It will be difficult to interpret. There were no suggested revisions.

5. STAFF COMMENTS

The schedule will return to normal next month. There will be a thank you pizza dinner for Board Members at the next meeting. Nate Reichert, the new Planning Director was introduced.

6. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 8:24 PM.

Seconded by Ms. Barkley.

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

Respectfully submitted,
Linda Billings
Recording Secretary

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

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

**Cote Swenson &
Samantha Medina,
397 Dartmouth
College Highway
(Tax Map 111, Lot 9),
zoned RL-2
ZB2022-30-SE**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

December 5, 2022 Meeting

Staff Memorandum – ZB2022-30-SE

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Special Exception to expand produce stand use into existing contractor's yard use

Location: 397 Dartmouth College Highway (Tax Map 111, Lot 9)

Applicant/Property Owner:

Cote Swenson & Samantha Medina

Zoning District: Rural Lands 2 (RL-2)

Property Size: +/-4.68 acs (203,861 sf)

Existing Land Use: two principal uses: 1) produce stand; 2) contractor's yard per 2009 SE approval

Existing Improvements: one (1) principal building for each of the two (2) principal uses (*size of principal buildings unknown*); and misc structures

Overlay Districts: none

Attachments:

- Application materials

HEARING NOTICE

Cote Swenson & Samantha Medina, 397 Dartmouth College Highway (Tax Map 111, Lot 9), zoned RL-2: The property has two principal uses: a produce stand and a contractor's yard. Applicants request a Special Exception pursuant to Section 313.2 and Section 702 of the Zoning Ordinance to allow a portion of the contractor's yard to be used as storage for the produce stand. ZB2022-30-SE

BACKGROUND & PROPOSAL

The property has two principal uses: 1) a produce stand and 2) a contractor's yard approved by Special Exception in 2009 (#ZB2020-22-SE). The applicants request a Special Exception pursuant to Section 313.2 and Section 702 of the Zoning Ordinance to allow a portion of the contractor's yard to be used as storage for the produce stand.

ORDINANCE REQUIREMENTS

"Produce stand" is a use allowed by Special Exception in the RL-2 District and is defined in Appendix A of the Zoning Ordinance as, "[s]ale of flowers, garden supplies, or agricultural produce designed to serve highway customers."

Section 704 provides that, "[a]ny use which existed prior to the adoption of this Ordinance or amendment thereto which is allowed as a special exception [...] shall not be deemed a non-conforming use, but shall, without further action be deemed a conforming use." Section 704 also provides that, "[e]xpansions of such uses shall be governed by Section 801.3 ("Special Exceptions") [...] rather than Section 702.5."

Consequently, in order to expand the produce stand operation into the contractor's yard area, a Special Exception is required. In order to grant a Special Exception, the Board must determine that the proposal meets the Special Exception criteria set forth in Section 801.3 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance. *Note: The Special Exception is authorized by §610.H of the Zoning Ordinance.*
- B. That all special conditions required of the special exception have been met. *Note: There are none.*

STAFF MEMORANDUM

ZB2022-30-SE
397 Dartmouth College Hwy (111-9)
December 5, 2022 ZBA Meeting
Agenda Item 3.B
Page 2 of 2

- 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

Attachment

cc: Cote Swenson & Samantha Medina (via e-mail)
File

CITY OF LEDENHAM APPLICATION FOR

P.1

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: Cote Swenson / Samantha Medina TEL.#: 603-454-5063

MAILING ADDRESS: 41 Brighton Lane Croydon NH 03773

E-MAIL ADDRESS: PrimitivePickings397DCH@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: _____ TEL.#: _____

MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 111 LOT#: 9 PLOT #: — ZONE: RL2

STREET ADDRESS OF PROJECT: 397 Dartmouth College Hwy

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

SCOPE OF PROJECT:

2 principal uses: Farmstand / Retail and Contractors Yard

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: _____ 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: [Signature] DATE: Nov 10 2022

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
11-10-22	111 9	ZB2022-30-SE			

ARTICLE VII NON-CONFORMITIES

SECTION 700 GENERAL.

Any **building** or structure, or any use of any **building, structure**, or land, which was in existence at the time of the adoption of this Ordinance, or any amendment thereto and which does not conform to the current provisions of this Ordinance, shall be considered legal non-conforming and may be continued indefinitely without complying with the provisions of this Ordinance, if such use, **building**, or structure, at the time it came into existence, was in compliance with all applicable laws, Ordinances, and regulations then in effect, subject to the provisions of this Article. Any uncertainty over the application of this Article to particular property shall be resolved by administrative decision made by the Zoning Administrator. Such an administrative decision may be appealed to the Zoning Board of Adjustment under 801.1.

SECTION 701 NON-CONFORMING LOTS.

A new use or structure, or addition to an existing structure, if otherwise allowed by this Ordinance, may be established on a **lot** which has **frontage** meeting the requirements of RSA 674:41 and which was a legal **lot of record** as of the date of adoption or amendment of this Ordinance even though such **lot** fails to meet the minimum **lot area, frontage** or **lot width** requirements of this Ordinance; provided, however, that such **lots** shall be subject to all other requirements of this Ordinance; and provided, further, that if the owner of the **lot** also owns contiguous land which, if merged with the **lot** in question would cause the legal **lot of record** to be either conforming or less non-conforming with respect to **lot area, frontage** and **lot width** requirements, then such use, **structure** or addition shall not be permitted unless the **lots** are voluntarily merged under RSA 674:39-a.

SECTION 702 NON-CONFORMING USES.

702.1 Change of Use.

A conforming use shall not be changed to a **non-conforming use**. A **non-conforming use** may, as a **special exception**, be changed to another **non-conforming use** provided that the Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing **non-conforming use**.

702.2 Resumption of Use.

Any **non-conforming use** shall not be re-established if such use has been discontinued for a period of two (2) years; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator's decision concerning such discontinuance, may permit the re-establishment of the same use if it finds: (a) that no action incorporating an intent to abandon the **non-conforming use** has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a **building**; and (b) that the failure to continue or re-establish the use during the two-year

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

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

I (we) hereby request a Special Exception as provided for in Article(s) VII,
Section(s) 701 + 702, 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.)*

We would like permission to be able to keep the contractors yard as it is with all the same circumstances that were granted in the 2009 special expectation zoning meeting with the addition of having the approval of using some of the storage space to be able to house seasonal storage for the farmstand.

more details on following pages. 4A + 4B

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:

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

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

_____.

Last year I submitted an application to rid the use of the contractor's yard and to turn the 2 principal properties into a single use property. Therefore using it all as the Farmstand/Retail store. Before we were able to go in front of the board we had come to figure out that it would go against our terms in the mortgage deed and promissory note. It would have been decreasing the resale value of the property as we would be ridding it of an entire principal use making it so that not 2 but 1 businesses could be run at this location.

With that said we would like to start by saying that we truly didn't believe that using this space (contractors yard) partially for seasonal storage for the farmstand/retail store was against any ordinance or regulations. We thought for sure that there was a true misunderstanding for many reasons. Through all of these situations and talking with the locals we have gained a lot more knowledge of the past from people who either worked for, shopped here frequently, lived next to or were friends with Charlie Larue when he and AW Well Drilling obtained their businesses here at the 2 principal use property.

To start, when we bought this property from Don Koury the contractor's yard was being obtained about 50% as seasonal storage for the farmstand/retail store. It was told to us that Charlie had also used some of the space for his farmstand/retail store. (Never to sell, just as storage) Attached in this application on page 10 is a statement made from someone who used to work here for a period of time when Mr LaRue had his farmstand/retail store here at 397 Dartmouth College Hwy. On the following page 11 is a written statement from Phyliss Avery who not only was a long time friend of Mr LaRue and Don Koury and worked for both of them for an extended period of time. Not to mention the countless number of customers that tell us stories and experiences on a regular basis.

This property is Grandfathered in and the definition of that term is “**a grandfather clause, also known as grandfather policy, grandfathering, or grandfathered in, is a provision in which an old rule continues to apply to some existing situations while a new rule will apply to all future cases.**” Wouldn't that make what we are doing within the space allowable? If not, we would just like things to be further explained because this is where we, the neighbors and seems like even the town at times has difficulty getting across what is and is not allowed within the space.

It is especially difficult for me, the new property owner because based on examples and what was existing when I had purchased this lot is far different from the way things are being portrayed now. Even though for all the years Mr. LaRue was here after zoning was put into place in the City of Lebanon he was able to continue using this space to store his tractor and seasonal things, along with Don Koury. Meaning that for over 50 years this property was supposedly being used incorrectly. With not one complaint or correction.

Regardless, we would like to continue to use the contractor's yard this way just with the correct permissions and special expectations if that's what it takes. The definition in the City of Lebanon's town Ordinances on page 177 of the handbook for a Contractor's yard reads “a property and/ or building used by a general contractor, excavating contractor, landscaping contractor, building

contractor or similar uses where vehicles, equipment, and/or materials are stored, or where a contractor performs maintenance, and/or assembly work. For the purposes of this definition, this does not include wholesale or retail sales or temporary job construction sites.” See page 12 of this application.

We want to use it as nothing more or less than what it's defined for “storage.” I DO NOT nor do I plan to or will ever have customers in the yard and/ or buying and selling anything over there. I strictly use the leftover space and shelves not obtained by Cotes business to have good dry storage for my seasonal displays and things. Right in the definition it states that it is to be used for similar uses where vehicles, equipment, and/ or materials are stored, or where a contractor performs maintenance, and/or assembly work.

As of now Cote's business which is Swensons Property Maintenance uses about 60% of the yard and garage space for his storage while our seasonal storage obtains the other 40%.

We would like to keep ALL the terms from the 2009 special expectations the same just with the addition of having the permissions of using it as storage for the farmstand as well.

In the almost 5 years we have had this property we have done nothing but good. Cleaning up so much of what was here before us; trash and junk that was left behind. As of this point we have rented 11 dumpsters to clean up this property along with 4 truck and trailer loads of metal that I hired someone to pull out of here. We have no cruel or unfair intentions in any of what we want here. Attached on pages 13 to 16 are pictures of this property from before I bought it compared to now. Just to show you all just how far we have brought this place since it has been in our hands.

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

No it shall not.

E. That no hazard or nuisance will be created:

None will be created.

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

Absolutely not.

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

It will not.

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

Absolutely

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

Always

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.



Codes

Department

Building and Zoning

51 North Park Street Telephone: 603-448-1524
 Lebanon, NH 03766 Facsimile: 603-442-6141
 www.lebcity.com

ZONING PERMIT

On approval by the Board of Adjustment of an administrative appeal, variance or special exception, the Zoning Administrator shall issue a zoning permit as of the date of approval of the Board of Adjustment.

Zoning Permit Issued to: LEBANON FARM MARKET LLC (Don Koury)

Request for: A special exception from the terms of Article VII, Sections 702.1 and 702.5, to permit change of non-conforming use and the expansion of the non-conforming use at 397 Dartmouth College Highway in the RL-2 zone. #ZB2009-01.

THIS ZONING PERMIT IS GRANTED PURSUANT TO THE ATTACHED ZONING BOARD OF ADJUSTMENT NOTICE OF DECISION AND APPROVED PLAN.

Signed: _____

Carmela Hennessy, Codes Enforcement Director/
 Zoning Administrator

Date of Zoning Board Approval/Issuance of Zoning Permit: **Jan. 20, 2009**

Zoning Ordinance:

901.6 Extension of Permit.

A zoning permit shall become void if construction is not begun thereunder within 12 months from the date of issuance of the permit. Permits may be extended once for no more than an additional 12 months by the Zoning Administrator on receipt of a written request for extension at least 14 days prior to the expiration of the original permit.

901.7 Non-Transferable.

No permit issued hereunder shall be transferable to a subsequent owner.

901.8 Date of Issuance of Zoning Permit.

On approval by the Board of Adjustment of an administrative appeal, variance or special exception, the Zoning Administrator shall issue a zoning permit as of the date of approval of the Board of Adjustment. Zoning permits shall be conditioned upon receipt of Site Plan Review approval from the Planning Board, when such approval is required. When Site Plan Review is required, the date of the zoning permit for the purposes of SECTION 901.6 shall be the date of receipt of Site Plan Review approval.



Codes

Department

Building and Zoning

51 North Park Street
Lebanon, NH 03766

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

NOTICE OF DECISION ZONING BOARD OF ADJUSTMENT

On January 5, 2009, at a duly notice meeting of the Lebanon Zoning Board of Adjustment, there appeared Don Koury and Tom Jellison seeking a *SPECIAL EXCEPTION* from the terms of Article VII, Sections 702.1 and 702.5, to permit change of non-conforming use and the expansion of the non-conforming use at 397 Dartmouth College Highway in the RL-2 zone. #ZB2009-01.

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

1. The property contains 2 principal uses and 2 principal buildings, and has operated as a mixed use since the approval of the 2nd use which was allowed by special exception.
2. The existing non-conforming use was a well drilling business, A&W Well which operated until April 30, 2007.
3. The A&W Well company used the property as staging point, storing well casing outside and parking and maintaining a drilling rig inside a 3 sided building.
4. The applicant would like to use a portion of the parcel as a contractor's yard.
5. The applicant would increase the outside storage area beyond the existing pipe rack, but shield it from the road with a fence, as shown on a supplemental site plan.
6. The applicant stated he plans to store 2 small enclosed "pickup" towable trailers and a box trailer, as shown on a supplemental site plan.
7. Tom Jellison testified that he would perform no work other than loading and unloading material.
8. The applicant intends to enclosed the open side of the metal shed and possibly do some plantings as well as paint the building.
9. Trucks would not be park there over night, nor any maintenance performed.
10. Neighbor across Route 4 testified they had concerns of noise from the purposed operation in early morning and late evening.
11. Unidentified neighbor expressed concern over effect on surrounding property values.

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

- A. That the special exception is specifically authorized by a provision of this ordinance. The proposed contractors yard is significantly different from the existing non-conforming use, and that the new use is more trip intense than the previous use. However the modification of use is more appropriate than the existing.
- B. That all special conditions required of the special exception have been met.
- C. That there are no existing cited violations of this ordinance on the property.
- D. That the character of the area shall not be adversely affected. The non-conforming use predates most of the residential structures in the area.
- E. That no hazard or nuisance will be created. The conditions attached to approval have been created to ensure this end.
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted. The proposed use will generate less than 20 trips per day in traffic, and will not access municipal water or sewer.
- G. That granting the special exception will not result in undue municipal expense.
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance.
The imposed conditions will enhance the curb appeal of the existing structure, minimizing the industrial appearance that currently exists.
- I. That the general welfare of the City will be protected.

A special exception shall expire if: (1) the use is not in place within one year of the date of issuance of a zoning permit; 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.

Now therefore, be it resolved the Lebanon Zoning Board of Adjustment hereby GRANTS the request of Lebanon Farm Market for the special exceptions as referenced above, and attaches the following conditions:

- 1. The building will remain a non-heated, unoccupied storage building.
- 2. The entire developed portion of the property will comply with the city's commercial landscaping ordinance, as subdividing the property has not occurred other than for bounds of contractor's yard.

3. If the owner intends to isolate the access to either side of property as suggested on supplemental site plan that proper permits be obtained for driveway modifications.
4. At no time will storage of box trailer, or shipping containers be permitted.
5. No vehicle maintenance will occur on site.
6. All vehicles and towable trailers to maintain current registration, and road worthiness.
7. All outside storage to conform to the boundaries set forth in supplemental site plan submitted to this board, and said storage to be screened by a 6'-0" high privacy fence.
8. No storage of a construction/demolition dumpsters will be allowed onsite.
9. Port-a-let will not be permitted as this is to be a non-occupied facility.
10. Any changes to proposed operation or effected area will require permission of this board.
11. Operating hours to be limited to between 6:30AM and 8:30PM."

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

The Zoning Board voted to approve this application on January 20, 2009

←  Haley  #2

When I worked there, the garage next door was some storage, and it held a big tractor, which we would sometimes use over at the farm stand. Charlie actually lived on the property in a camper out back! There were 2-3 greenhouses, flowers, pumpkins, produce. We also baked pies there at the farm stand in an oven, had a couple coolers in the barn, and big freezer behind the barn. He had an ancient dog that roamed around all dog too. There is nothing going on at your business that is crazily different than his farm stand, so I'm not sure what the neighbor's problem is.



OCT 27 AT 10:56 AM

Oh man you have no idea what it means to me to hear this. I know it but I need proof and wording of individuals is proof. My lawyer told me to get as many people as I could with a summary of the place as I can

I appreciate this more than I could ever express

↔
flip

←  Haley  #1

Hi there! Saw your recent post. I worked at LaRue's when I was in highschool, for a couple years leading up to its closing, and I knew Charlie well. I don't know if I have pics or any newspaper clippings but I'm happy to try to answer or provide what I can if you have questions.



We are always working hard here at Primitive Pickings and with the high demand this year it is not always easy to keep right up on everything. I will view and reply to this message as soon as I get a chance. Thank you for your patience & understanding

OCT 27 AT 8:36 AM

I appreciate you so big. I just need to know really what he did here at the property...like an overall summary and to know that the garage space next door was being used for

I was a friend of Charlie's for a long time and worked for him for very many years while he had his business at this location. Sammi is carrying on the same way Charlie had. He always used the garage area to store his tractor, equipment, signs and so much more. He never had to fight for it either. Never were there any issues with him using it either. I then worked with Don Koury here and for all the time he rented to Sellison he was also using the extra space for covered storage to the farmstand.

*Phyllis Avery

CLASSIFICATION (CLASSES) OF LOTS: Whether a *lot* is classified as "1", "2", or "3" depends on the provisions for water supply and sewage disposal, as follows:

CLASSIFICATION	DESCRIPTION
CLASS 1	Municipal water and municipal sewerage
CLASS 2	Municipal sewerage
CLASS 3	Water and sewerage service that is neither Class 1 or Class 2

COMMUNITY CENTER: A *building* used for recreational, social, educational and cultural activities, open to the public or a designated part of the public, owned and operated by a public or non-profit group or agency.

CONDITIONAL USE: A use requiring a permit from the Planning Board in accordance with the requirements explicitly set forth herein.

CONGREGATE LIVING FACILITY: An senior housing complex which provides separate *dwelling units* for senior persons but which also may provide certain shared living facilities, such as kitchens; shower and bathing facilities, socialization and recreation areas and/or group dining.

CONTRACTOR'S YARD: A property and / or *building* used by a general contractor, excavation contractor, landscaping contractor, building contractor, or similar uses where vehicles, equipment and/or materials are stored, or where a contractor performs maintenance, shop, and/or assembly work. For the purposes of this definition, this does not include wholesale or retail sales or temporary job construction site.

CONTRACTOR'S YARD, HOME-BASED: A contractor's yard operated by a resident at the property at which they reside.

COOP: A *building* where chickens are kept.

CRAFTSMAN'S SHOP: A facility occupied as a workplace by person(s) engaged in handicraft or artisan activities such as jewelry making, artists, weaving, wood carving, pottery, sculpture and the like, including the sales of crafts or other artisan products made on the premises.

CURTILAGE: The land within 15 feet immediately surrounding a house or *dwelling*, including any closely associated buildings and structures, but excluding any associated "open fields beyond".

DISTRICT ENERGY SYSTEM: A system for collecting, generating, storing and distributing useful thermal energy derived primarily from renewable energy sources that are used, in the first instance, to help heat or cool buildings or provide hot water on-site and on adjoining properties, in neighborhoods, or commercial and industrial districts and that may also generate electrical power as part of combined heat and power systems.

BEFORE I OWNED THIS PROPERTY



○ - All the squared ovals are cars, campers, and junk trailers laying around.

□ - All the squares and rectangles are all the trash, metal and junk that we have cleaned + rid of were.

⬡ - Areas that were way over grown and loaded with junk wood that was riddled with carpenter ants.

BEFORE I OWNED THE PROPERTY



BEFORE I OWNED THE PROPERTY



NOW

Enfield, New Hampshire

Google

Street View - May 2022

Google

Image capture: May 2022 © 2022 Google

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

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

**Marissa Mendez &
Karl Kristiansen,
1 Dartmouth Avenue
(Tax Map 49, Lot 17),
zoned R-1
ZB2022-31-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

December 5, 2022 Meeting

Staff Memorandum – ZB2022-31-SE

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type: Variance from §308.2 to allow new structure within required setback and Special Exception per §703.1 to permit the expansion of a reconstructed non-conforming structure

Location: 1 Dartmouth Ave (49-17)

Applicant/Property Owner:
Marissa Mendez & Karl Kristiansen

Zoning District: Residential One (R-1) District

Property Size:
+/-0.26 acres (+/-11,119 sq. ft.)
(conforming to the minimum required 10,000 sq. ft. lot size required for Class 1 lots in the R-1 District per §308.3)

Existing Improvements and Use:
+/-1,680 sq. ft. (gross) one-story one-family dwelling constructed in 1910, per the City's assessing records (a conforming use in the R-1 District)

Proposed Improvements and Use:
Remove one-family dwelling and detached garage and construct new home with an attached garage

Overlay District: none

Previous ZBA Action (since 1995):
none

Other Approvals Required:
• Building Permit

Attachments:
Application (8 pages total)

HEARING NOTICE

Marissa Mendez & Karl Kristiansen, 1 Dartmouth Avenue (Tax Map 49, Lot 17), zoned R-1: Applicant proposes to construct a new one-family dwelling to be located no closer to Hanover Street than the existing non-conforming one-family dwelling and +/- 10 ft. from the lot line shared with 7 Dartmouth Avenue (Tax Map 49, Lot 16). Applicant requests a Special Exception per Section 703.1 of the Zoning Ordinance to expand a non-conforming structure and a Variance from Section 308.2 to construct the proposed home within the minimum required 15 ft. side yard. ZB2022-31-SEVAR

BACKGROUND

The subject property is improved with a one-family dwelling that is unoccupied and in a state of disrepair. As shown on the attached existing conditions plan provided by the applicant, the home is located within the minimum required 20 ft. front yard and is therefore non-conforming to the minimum front yard required for Class 1 lots in the R-1 District.

PROPOSAL

As shown on the attached plot plan (titled "Variance Plan"), the applicant proposes to construct a remove the existing structures and construct a new home located 10 ft. 9 in. from the front lot line along Hanover Street Extension, and 10 ft. from the side lot line shared with 7 Dartmouth Avenue (Tax Map 49, Lot 16). In order to construct the home in the proposed location, the applicant requires a Special Exception per Section 703.1 of the Zoning Ordinance to expand the front yard non-conformity and a Variance from Section 308.2 to construct the proposed home within the minimum required 15 ft. side yard.

ZONING ORDINANCE REQUIREMENTS

A. SPECIAL EXCEPTION

Class 1 lots (lots that are served by municipal sewer and water) in the R-1 District must maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See §308.3 of the Zoning Ordinance. The existing home is located 10 ft. 9 inches from the front lot line along Hanover Street Extension and, therefore, is non-conforming to the 20 ft. minimum required front yard.

§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. In addition, **§703.2** of the Zoning Ordinance provides that, “[a]ny non-conforming building or non-conforming structure which is partially or wholly destroyed by reason of any cause whatsoever, including [...] fire [...], may be resumed or restored and operated in its former non-conformity if same is done within two (2) years[.]”

Taken together, **§703.1** and **§703.2** permit the expansion not just of existing non-conforming structures, but also the expansion of non-conforming structures that are reconstructed within two years following the demolition or destruction of the original structure.

The new home is proposed to have a footprint within the minimum front yard that will be *greater than* the footprint of that portion of the original building that was located within the minimum required front yard. Per **§703.1** and **§703.2**, the applicant is entitled to construct a new home that is equally non-conforming to the Zoning Ordinance, and may also apply for a Special Exception to *expand* the footprint and/or volume of any portion of the building that was non-conforming.

703.1 Expansion.

In order to grant a Special Exception for the proposed expansion of the front yard non-conformity, the Board must make each of the following findings per §703.1.A:

1. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
2. The proposed expansion shall 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.

Note: §703.1.A.2 allows an expansion that is equally non-conforming or less non-conforming, but prohibits an expansion that would be more non-conforming. Here, the proposed home will be located no closer to the front lot line than the existing home and, therefore, will not “render the lot size proportionately less adequate”.

By contrast, if the new home was proposed to be located closer to the front lot line than the existing home, the applicant would be unable to demonstrate compliance with §703.1.A.2 and, instead, would require a Variance from §308.3 to permit the new home to encroach further into the minimum required front yard than the existing home.

3. These special exception standards shall apply in addition to the standards in Section 801.3 of the Zoning Ordinance.

801.3 Special Exceptions.

Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an expansion of a non-conforming structure, the Board must also determine that the proposal meets 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.
Note: The Special Exception is authorized by §703.1.A of the Zoning Ordinance.

- B. All special conditions required of the special exception have been met.
Note: The special conditions for an expansion of a non-conforming buildings are those set forth above in §703.1.A of the Zoning Ordinance.
- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is unaware of any Zoning Ordinance violations on the property.
- D. The character of the area shall not be adversely affected.
- E. No hazard or nuisance will be created.
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- G. Granting the special exception will not result in undue municipal expense.
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- I. The general welfare of the City will be protected.

The applicant has submitted testimony addressing the §801.3 criteria in an application received by the Planning and Development Department on November 10, 2022 (see attached).

B. VARIANCE

To obtain the requested Variance allowing the home to be located 10 ft. from the side lot line shared with that abutting property at 7 Dartmouth Avenue (Tax Map 49, Lot 16), the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

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

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

The applicant has submitted testimony addressing the Variance criteria in an application received by the Planning and Development Department on November 10, 2022 (see attached).

Attachment

cc: Marissa Mendez & Karl Kristiansen, property owners (via e-mail)
File

STAFF MEMORANDUM

ZB2022-22-SEVAR
1 Dartmouth Ave (49-17)
December 5, 2022 ZBA Mtg
Agenda Item 3.B
Page 5 of 5

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



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

**CITY OF LEBANON
APPLICATION FOR**

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

PROPERTY OWNER (APPLICANT):

NAME: Marissa Mendez & Karl Kristiansen TEL #: 954-214-3743

MAILING ADDRESS: PO Box 622, Lebanon, NH 03766

E-MAIL ADDRESS: mamendez1@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: _____ TEL #: _____

MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: 49 LOT #: 17 PLOT #: _____ ZONE: R1

STREET ADDRESS OF PROJECT: 1 Dartmouth Ave

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

SCOPE OF PROJECT:

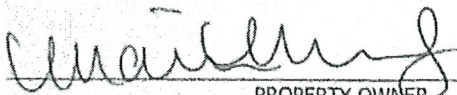
Plan to remove current non-conforming structure on lot and build a new single family home with garage

TYPE OF OCCUPANCY:

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

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

SIGNATURE BLOCK:

 DATE: 11/9/22
PROPERTY OWNER

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

 DATE: 11/09/22
PROPERTY OWNER

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
<u>11-10-22</u>	<u>49/17</u>	<u>232022-</u>			

31-VAR

(12/07/02)

SUPPORT STATEMENT FOR A VARIANCE

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

CITY OF LEBANON, NEW HAMPSHIRE

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

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

I (we) hereby request a variance from the terms of Article(s) _____
Section(s) 308.3 of the Lebanon Zoning Ordinance.

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

801.2 Variances.

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

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

*Please see attached Word Document for answers to these conditions.

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

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

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

_____ and;

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

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

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

_____; and

Mendez-Kristiansen; 1 Dartmouth Avenue

- 1) The variance we are seeking is to extend the building envelope towards an empty lot to the west by 5 feet and towards Hanover St to the east by 7 feet for a garage. While we understand the need for setbacks, we do not believe this variance to impact the safety, health, or welfare of the public as there is still significant distance between our structure and the roads and other structures.
- 2) Our variance still maintains significant distance between structures and the property lines, thus observing the spirit of the ordinance.
- 3) Building our structures as proposed should cause no loss to the general public, thus preserving justice.
- 4) The property currently holds 2 nonconforming dilapidated structures. Our proposal removes these safety hazards and is more conforming to our neighbor to the north and instead asks for a variance to the east and west. To the west, the nonconforming structure will be towards an empty lot. To the east, the existing structure is currently nonconforming towards Hanover St. While our proposal is also nonconforming, we have ensured that it would be no closer to the road than the existing structure. Replacing these dilapidated structures with livable dwellings will increase the value of all surrounding properties as well as remove a safety hazard which sits in proximity to the public schools.
- 5)
 - a. The shape of our property is such that there is only one portion of the plot within which we could build a reasonable single-family home. Denial of this variance would not allow us to build this structure anywhere on the property. While we acknowledge the importance of setbacks from roads and neighbors, our property line is far from the existing road to the east. Even if this variance is granted, our structure (a garage) would maintain significant distance from Hanover St to the east. As such, this variance can be granted while still giving the full effect of the ordinance. To the northwest we would be imposing on an empty lot. Even should our neighbors choose to build, our variance would impact only a small rectangle (approx. 5ft deep x 10ft long) of the southeastern corner of their lot. Again, we feel that this variance maintains the full effect of the ordinance and is a reasonable proposed use of the land. In order to minimize the financial hardship associated with building this single family home, we are partnering with a prefabricated modular home company. The footprint that we are seeking is the smallest home that meets our needs that we can build. Any modification, such as reducing the linear length of the structure, would cause significant increase in both waste and cost, creating further unnecessary hardship.

- b. Compared to other properties in the area, the shape of our property is limiting in regards to where we can build a reasonable home. Due to the setbacks, the entire western portion of our property is essentially unusable for a main dwelling. Furthermore, our property has 3 road facing property lines, which limit our building envelope. In attempt to eliminate these special conditions, we attempted to purchase a portion of our neighbor's land but these efforts yielded no response despite multiple attempts. Lastly, there is a significant portion of our land that is occupied by Dartmouth Avenue. This variance allows us to have our home as far as possible from this road.

Project Description:

Our project is to demolish the existing, nonconforming structures located at 1 Dartmouth Avenue and build a single family home with attached 2 car garage. The special exception we are seeking is on the east side of the property, facing Hanover St. Based on our understanding of the tax maps, the land on the far side of Hanover St. is undeveloped land owned by the city of Lebanon. As demonstrated in the plot plan, the portion of our plan needing special exception is the garage only. Due to the unique shape of our property and that there are 3 road facing property lines, there is no other portion of the property upon which we could build our proposed home and garage. The home itself will be a 2 story home. Due to excessive costs of building, we have partnered with a manufactured modular home company. As suggested by the recent City of Lebanon Master Plan, this was done because manufactured homes decrease both costs and waste. However, any deviation from these pre-existing floor plans (such as reducing linear length) increases costs, waste, and in some instances is not even possible by the builder. We feel that the proposed footprint (and the floorplan associated with it) is the smallest footprint which will meet our needs, and also help meet the housing needs of Lebanon for future generations.

While we acknowledge the importance of setbacks, we feel that this special exemption is reasonable because the existing structure is currently 10.9 feet from the property line. Our proposed structure will also be 10.9 feet from the property line. As such, our structure will be no closer to the road than that which is already present. You will notice that our proposed garage extends further north than the existing structure. However, both the property line and Hanover St itself slope away from our proposed structure. As such, the least conforming portion of our proposal is the southeast portion of the garage. At such, we are no less conforming than the existing structure.

- A) Per 703.1, expansion of non-conforming parts of buildings or structures may be allowed by special exception. We are seeking an exception because we are increasing the footprint of a nonconforming part of an existing structure
- B) There are 2 findings required under this ordinance (703.1) in addition to those of 801.3
 - a. 1) Reasonable use of abutting properties are not adversely affected.
 - The special exception is towards Hanover St Extension. The least conforming portion of our proposed garage is 10.9 feet from the property line, which is where the current structure rests. Thus our proposed garage will not affect the road any more than the current structure. The far side of Hanover St. is undeveloped land owned by Lebanon.
 - b. 2) The current non-conforming structure cannot be made more non-conforming in the absence of a variance.
 - As demonstrated by the plot plan, our new home will be no closer to the front lot line along Hanover Street Extension than the current structure.
- C) There are currently multiple violations on our property. One to the east towards Hanover St Extension as described. A second to the south towards Dartmouth Ave. And a third to our neighbor to the north. Our proposal is to remove the violation to the south and reduce the violation to the north from multiple feet to less than a foot. The only remaining violation on the existing property will be to the east, which would be remedied by this special exception.

- D) The character of the area will be dramatically improved. As mentioned in C, there are currently multiple violations. Not only do these violations exist, the structures are in poor repair, and the lot is overgrown. We do not think it is unreasonable to say that the property, as it exists currently, negatively impacts the character of the area. This special exception will help turn this property into a usable residential property, for which it is zoned. While we do not have knowledge of exact dimensions or features of our neighboring homes, our proposal is to build a 2 story single family home with an attached garage. Based upon frequent walks on Hanover St, Dartmouth Ave, and Mt Support Road, this is in-line with the existing character and homes in the area.
- E) One could argue that hazard is being created because there is not sufficient distance between our garage and Hanover St Extension. However, our proposal places the garage no closer to the property line than the current structure at 10.9 Ft. We are thankful that there is significant distance between the property line and the road itself so the distance to the road is significantly greater than this distance. As such, we feel that this special exception does not create any hazard due to proximity to the road. Even if it did, it would be no more hazardous than the existing structure.
- F) As discussed in E above, the capacity and use of Hanover St. will be no more adversely affected by our proposal. We do not have any knowledge of planned changes in community services or facilities in this area that our proposal would impact.
- G) The granting of this special exception should cause no municipal expense. On the contrary, this project will generate revenue both from the permitting process, and a dramatic increase in tax revenue based on a higher assessed value for the property.
- H) This special exception maintains the spirit and intent of the ordinance because we still maintain a substance distance between the road and our proposed structure. As mentioned above, there is significant distance between our property line and the start of Hanover Street Extension, which further preserves the spirit and intent of the ordinance.
- I) We believe that our proposal will not only preserve, but increase the general welfare of the city. In the 2012 Master Plan, the city correctly identified the need for sustainable, affordable housing that is compatible with our goals of smart growth and resource protection. It is no secret that Lebanon lacks affordable housing. Our plan is to build a single family home close to the bus line, within walking distance to the public schools and the town center, and close to a major employer at Dartmouth-Hitchcock. This special exception allows the city to dramatically improve the aesthetic of a property in close proximity to the high school and return the property to the livable dwelling it once was. Our hope is to build an affordable family home in which not only our family can grow, and also future generations and families as well.

PRELIMINARY

TAX MAP 49 LOT 16
SARAH M. & JAMES TRAINOR
42 WOLF RD, APT 913
LEBANON, NH 03766
G.C.R.D. BOOK 4458 PAGE 981

TAX MAP 49 LOT 18
BETHANY M. TRUELL AND
CHAD E. GIBBS
260 HANOVER STREET EXT.
LEBANON, NH 03766
G.C.R.D. BOOK 4025 PAGE 895

TAX MAP 49 LOT 17
AREA: 0.26 AC.
OR: 11,119 S.F.

TAX MAP 63 LOT 2
DAVID LEVIN REVOCABLE TRUST
DAVID LEVIN (TRUSTEE)
MARY ANNE LEVIN REVOCABLE TRUST
MARY ANNE LEVIN (TRUSTEE)
248 HANOVER STREET
LEBANON, NH 03766
G.C.R.D. BOOK 2309 PAGE 487

TAX MAP 49 LOT 1
CRANDELL S. CREIGHTON JR.
8 DARTMOUTH AVENUE
LEBANON, NH 03766
G.C.R.D. BOOK 4192 PAGE 192

NOTES:

- THE PURPOSE OF THIS PLAN IS TO DEPICT THE EXISTING CONDITIONS OF THE SUBJECT PROPERTY.
- OWNER OF RECORD
TAX MAP 49 LOT 17
MARISSA A. MENDEZ & KARL O. KRISTIANSEN
PO BOX 622
LEBANON, NH 03766
G.C.R.D. BOOK 4753 PAGE 995
- BASIS OF BEARING IS PLAN REFERENCE 1.
- TRAVERSE PERFORMED WITH LEICA TOTAL STATION ERROR OF CLOSURE GREATER THAN 1:10,000.
- TAX MAP 49 LOT 17 INDICATES CITY OF LEBANON, NH TAX ASSESSORS MAP & LOT NUMBERS.
- BOUNDARY AND IMPROVEMENT INFORMATION IS A RESULT OF AN ACTUAL FIELD SURVEY PERFORMED BY THIS OFFICE IN OCTOBER 2022.
- DARTMOUTH AVENUE RIGHT OF WAY IS 42' PER PLAN REF. 2
- HANOVER STREET EXT. RIGHT OF WAY IS 49.5' PER FIELD LOCATED REMNANT STONEWALLS. NO ROAD DEDICATION FOUND.

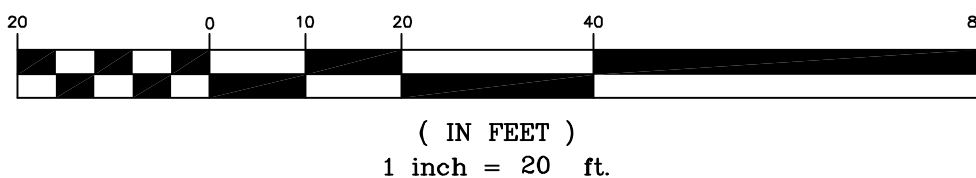
SURVEYORS CERTIFICATION:

PER RSA 676:18(III), I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

MARK CONDODEMETRAKY
LLS LICENSE #1002

DATE

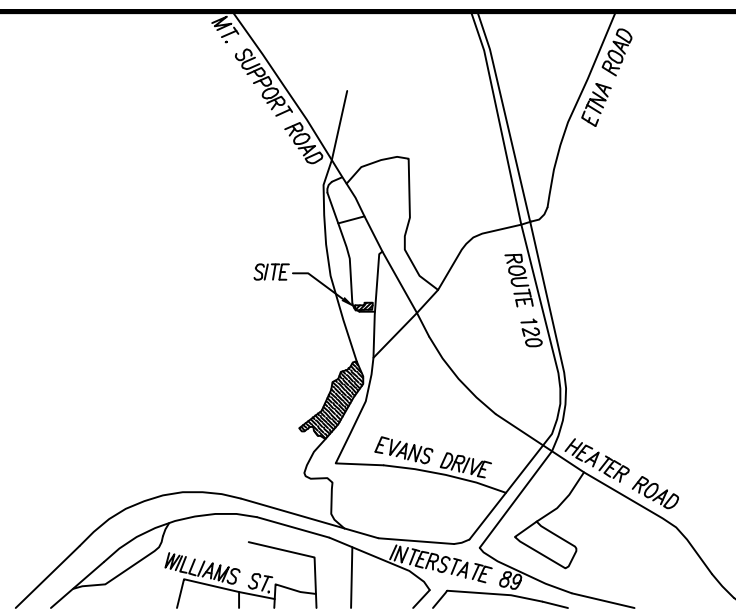
GRAPHIC SCALE



HANOVER STREET EXT.

DARTMOUTH AVENUE

TAX MAP 64 LOT 1
CITY OF LEBANON
51 NORTH PARK STREET
LEBANON, NH 03766
G.C.R.D. BOOK 2341 PAGE 369



LOCATION MAP
SCALE: 1" = 2,000'

PLAN REFERENCES:

- "LOT LINE ADJUSTMENT PLAT, CITY OF LEBANON, AND, PAUL TEPLITZ & LAURA OSTAPENKO, AND BETHANY TRUELL & CHAD GIBBS, 260 & 268 HANOVER STREET EXT., LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE", PREPARED BY ROCKWOOD LAND SERVICES, LLC, DATED JANUARY 27, 2020, RECORDED IN THE GRAFTON COUNTY REGISTRY OF DEEDS AS PLAN NO. 15939.
- "BUENA VISTA LEBANON, NH", PREPARED BY S.H. STEVENS, DATED MAY 1903, HELD IN THE RECORDS OF ROCKWOOD LAND SERVICES.

LEGEND

○ IRON PIPE FOUND	— — — — — PROPERTY LINE
● REBAR FOUND	— — — — — ABUTTER LINE
□ CATCH BASIN	- - - - - SETBACK LINE
⊕ HYDRANT	- - - - - EDGE OF PAVEMENT
Y GUYWIRE	- - - - - PAVEMENT CURB
⊙ SEWER MANHOLE	— OHW — OVERHEAD WIRES
— SIGN	— □ — FENCE
⊕ UTILITY POLE	⊕ — — — — — REMNANT STONEWALL

EXISTING CONDITIONS PLAN
**MARISSA A. MENDEZ &
KARL O. KRISTIANSEN**

(TAX MAP 49 LOT 17)

1 DARTMOUTH AVENUE
CITY OF LEBANON
GRAFTON COUNTY, NH

NOVEMBER 8, 2022

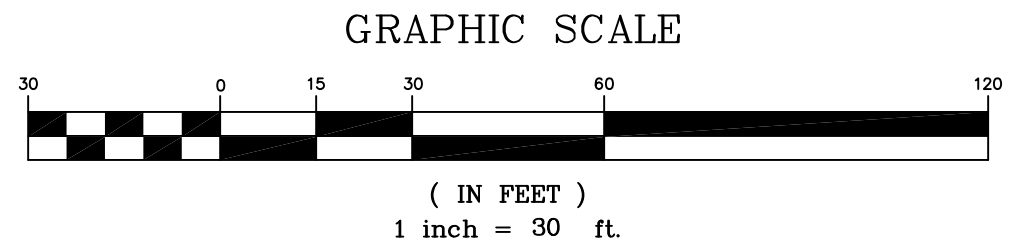
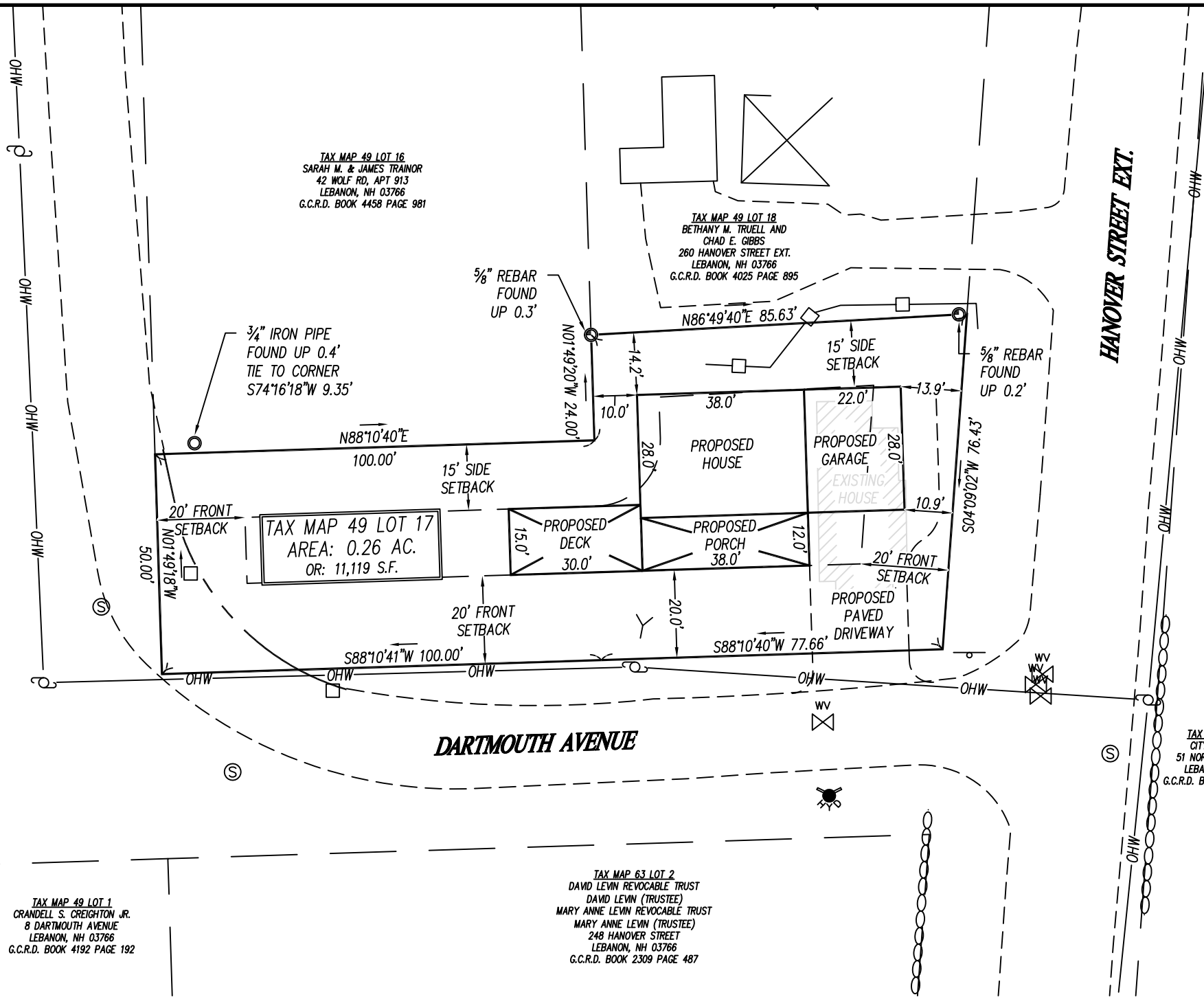
GCE

G. C. ENGINEERING INC.

635 MAIN STREET, SUITE 301, LACONIA, NH 03246
TEL. 603-524-8023 * FAX. 603-524-6559

REVISIONS

No.	BY:	DATE	DESCRIPTION
DRAWN BY:			FIELD WORK:
CHECKED BY:			DESIGNED BY:



- NOTES:
1. THE PURPOSE OF THIS PLAN IS TO DEPICT THE PROPOSED CONDITIONS OF THE SUBJECT PROPERTY
 2. OWNER OF RECORD
TAX MAP 49 LOT 17
MARISSA A. MENDEZ & KARL O. KRISTIANSEN
PO BOX 622
LEBANON, NH 03766
G.C.R.D. BOOK 4753 PAGE 995
 3. BASIS OF BEARING IS PLAN REFERENCE 1.
 4. THE SUBJECT PROPERTY IS LOCATED IN THE RESIDENTIAL ONE (R-1) ZONING DISTRICT AND IS SUBJECT TO THE FOLLOWING REQUIRMENTS:

FRONT SETBACK: 20'
SIDE SETBACK: 15'
REAR SETBACK: 20'

VARIANCE PLAN
**MARISSA A. MENDEZ &
KARL O. KRISTIANSEN**
(TAX MAP 49 LOT 17)
1 DARTMOUTH AVENUE
CITY OF LEBANON
GRAFTON COUNTY, NH
NOVEMBER 8, 2022

LEGEND	
● IRON PIPE FOUND	— — — — — PROPERTY LINE
⊙ REBAR FOUND	— — — — — ABUTTER LINE
□ CATCH BASIN	- - - - - SETBACK LINE
⊙ HYDRANT	- - - - - EDGE OF PAVEMENT
Y GUYWIRE	- - - - - PAVEMENT CURB
⊙ SEWER MANHOLE	— OHW — OVERHEAD WIRES
⊙ SIGN	— □ — FENCE
⊙ UTILITY POLE	⊘ REMNANT STONEWALL

- PLAN REFERENCES:
1. "LOT LINE ADJUSTMENT PLAT, CITY OF LEBANON, AND, PAUL TEPLITZ & LAURA OSTAPENKO, AND BETHANY TRUELL & CHAD GIBBS, 260 & 268 HANOVER STREET EXT., LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE", PREPARED BY ROCKWOOD LAND SERVICES, LLC, DATED JANUARY 27, 2020, RECORDED IN THE GRAFTON COUNTY REGISTRY OF DEEDS AS PLAN NO. 15939.
 2. "BUENA VISTA LEBANON, NH", PREPARED BY S.H. STEVENS, DATED MAY 1903, HELD IN THE RECORDS OF ROCKWOOD LAND SERVICES.



GCE	G. C. ENGINEERING INC.			
	635 MAIN STREET, SUITE 301, LACONIA, NH 03246			
	TEL. 603-524-8023 * FAX. 603-524-6559			
REVISIONS	No.	BY:	DATE	DESCRIPTION
DRAWN BY:		FIELD WORK:		
CHECKED BY:		DESIGNED BY:		

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

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

**Immersion Montessori School
(applicant),
Centurion Properties, Inc.
(property owner),
434 North Main Street
(Tax Map 2, Lot 15),
zoned R-3
ZB2022-32-SE**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

December 5, 2022 Meeting

Staff Memorandum – ZB2022-32-SE

APPLICATION INFORMATION

Agenda Item: 3.D

Application Type:

Special Exception per 310.2 & 604 to allow a group day care facility

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

Applicant:

Immersion Montessori School, LLC

Property Owner:

Centurion Properties, Inc.

Zoning District: R-3

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

Existing Improvements and Use:

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

Proposed Use: group day care facility

Overlay Districts:

none

Previous ZBA Action (since 1995):

none

Other Approvals Required

(including but may not be limited to):

- Minor Site Plan Review
(tentative)
- Building Permit

Attachments:

- Application (9 pages total)

HEARING NOTICE

Immersion Montessori School (applicant), Centurion Properties, Inc. (property owner), 434 North Main Street (Tax Map 2, Lot 15), zoned R-3: Applicant requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance for a proposed a group day care facility use. ZB2022-32-SE

BACKGROUND & PROPOSAL

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

The applicant requests a Special Exception per Section 310.2 and Section 604 of the Zoning Ordinance to convert the use of the building to a group day care facility use.

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



Figure 2. Aerial View of Subject Property (looking east).



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

ORDINANCE REQUIREMENTS

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

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

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

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

SECTION 604 **GROUP DAY CARE FACILITIES.**

604.1 **Play Area.**

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

604.2 **Other Requirements.**

- A. A suitable loading and unloading area shall be provided for those children for whom the facility provides transportation. This area shall be in addition to required parking areas.
- B. Group day care facilities shall comply with all applicable state and federal regulations.
- C. Parking: One (1) parking space for each employee and one (1) parking space for every eight (8) clients shall be provided on site.

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

- C. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §310.2 of the Zoning Ordinance.
- D. All special conditions required of the special exception have been met.
Note: The special conditions for group day care facilities are set forth in §604, as noted above.
- E. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is not aware of any Zoning Ordinance violations on the property.
- F. The character of the area shall not be adversely affected.
- G. No hazard or nuisance will be created.

STAFF MEMORANDUM

ZB2022-32-SE

434 North Main St (2-15)

December 5, 2022 ZBA Meeting

Agenda Item 3.D

Page 4 of 4

- H. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- I. Granting the special exception will not result in undue municipal expense.
- J. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- K. The general welfare of the City will be protected.

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

CITY OF LEBANON APPLICATION FOR

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

☐ OTHER _____

PROPERTY OWNER (APPLICANT):

NAME: CENTURION PROP INC TEL.#: (802) 291 0200

MAILING ADDRESS: 11 PARTRIDGE RD ETNA, NH 03750

E-MAIL ADDRESS: grneil@aol.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Immersion Montessori School LLC TEL.#: 201-321-8764

MAILING ADDRESS: PO BOX 114 Norwich, VT 05055

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

PROJECT LOCATION:

TAX MAP #: 2 LOT#: 15 PLOT #: ZONE: R-3

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

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

FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Group Day Care Facility: Total of 84 students and 16 staff members.

TYPE OF OCCUPANCY:

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

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

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

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

SIGNATURE BLOCK:

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

PROPERTY OWNER: _____ DATE: _____

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

PROPERTY OWNER: _____ DATE: _____

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

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

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

I (we) hereby request a Special Exception as provided for in Article(s) VII ,
Section(s) 702.1 , of the Lebanon Zoning Ordinance.

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

Immersion Montessori School (IMS) aims to use the property located at 434 N Main St as a Group Day Care Facility for up to 84 students with 16 staff members. IMS would offer full-time infant, toddler, and preschool programs. The hours of operation would be M-F 7:30 am - 5:30 pm and occasional weekend use for training and events. We do not propose any structural changes to the space. Our intent is to preserve the uniqueness of the space and enhance it by incorporating the Montessori classroom furniture that is in line with the elegance of the space. Proposed cosmetic changes may include painting and changing the flooring, and would be subject to approval by the landlord. We propose installing a wooden fence that is 4ft in height around the perimeter of the area shown below. This would serve as the outdoor play area for the center. Students would use the outdoor area in small groups under adult supervision.

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

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

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

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

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

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

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

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

There are no existing violations.

_____.

- D. That the character of the area shall not be adversely affected:
The proposed use will not have any adverse impact on the character of the area as all outdoor operations will occur within an enclosed area.
_____.
- E. That no hazard or nuisance will be created:
Outdoor noise will be limited to business hours only.

_____.
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:
Staggered arrivals will limit traffic. Total traffic impact is expected to increase current traffic volume by 2.93%. (See attached proposal.)
_____.
- G. That granting the special exception will not result in undue municipal expense:
No municipal expense is anticipated.

_____.
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:
The proposed use will operate within the guidelines of a Group Day Care as outlined in Section 604.

_____.
- I. That the general welfare of the City will be protected:
The general welfare of the City will not be impacted.

_____.

Please Note:

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

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

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

About Immersion Montessori School

Immersion Montessori School is an educational institution that specializes in early childhood and elementary programs with licenses as a child care center in both New Hampshire and Vermont. IMS is also a recognized independent elementary school by the Vermont Agency of Education. IMS develops and implements research-based curricula with 6 core elements: Montessori Methodology, Language Immersion, Nature, Community, Enrichment, and applicable State Standards. IMS has partnerships with public school districts in New Hampshire and Vermont to develop both summer and afterschool programs. Immersion Montessori School (IMS) aims to use the property located at 434 N Main St as a Group Day Care Facility.

Current Use vs. Proposed Use:

Current use: Office space used by an insurance company.

Proposed use: Group Day Care Facility

- Full-time infant, toddler and preschool programs
- Capacity: 84 students, 16 staff members
- Hours of Operation: M-F 7:30 am - 5:30 pm and occasional weekend use for training and events

Section 604. Requirements for Group Day Care Facilities

Here are the plans to meet the main requirements for Group Day Care Facilities:

Play Area

*“There shall be a fenced outside play area which shall be free from hazards such as hidden corners; unprotected pools, wells, and steps; poisonous plants such as poison ivy, foxglove, and rhubarb; farm or lawn machinery or implements.
B. It shall contain at least 50 square feet of usable play space per child using it, and the average width shall not be less than eight feet. Play areas shall not be permitted in front yards”*

A fenced-in play area will be located on the north side of the building in a grass area that will have been cleared from any hazards and fully fenced-in. (Shown as a red rectangle in the map above.) The fenced-in will be approximately up to 3000 square feet in area. No more than 24 children will be outside at the same time, which allows more than 120 square feet per child.

Parking

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

- There are 27 parking spaces available as shown in the attached parking plan.
- According to the regulation pertaining to a Group Day Care Facility, we would need 16 (one per employee) + 11 (one per 8 clients) = 27 parking spaces.

State and Federal Regulations

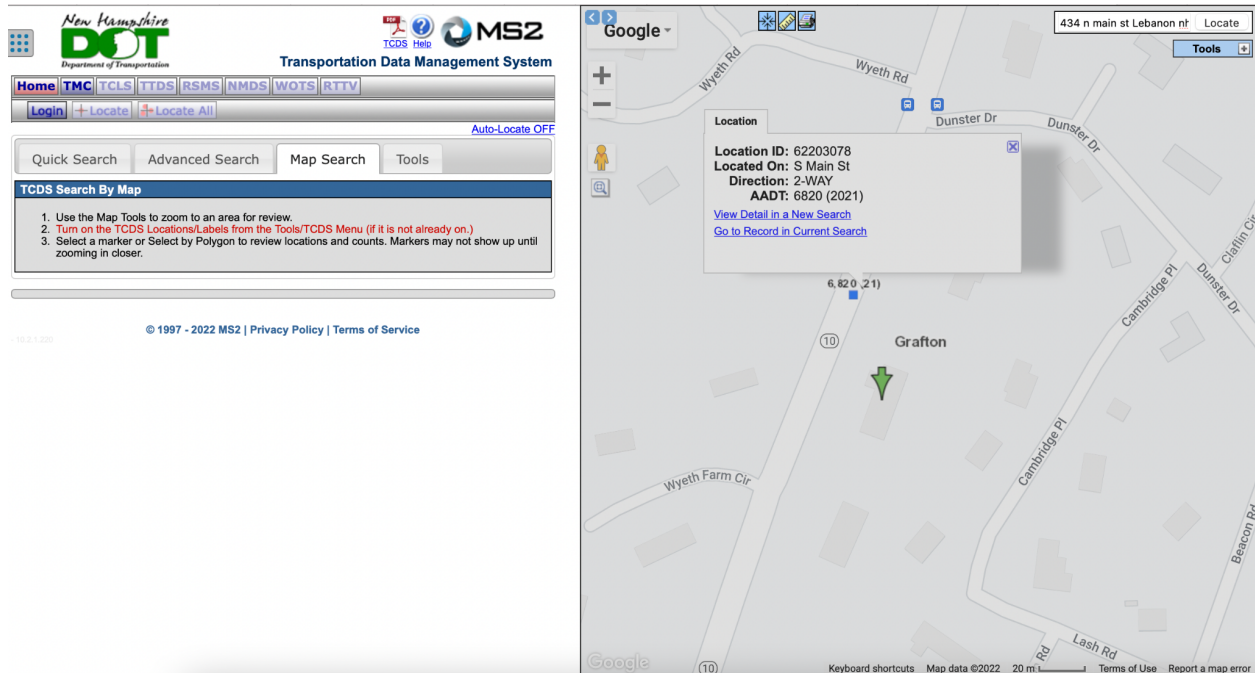
“Group day care facilities shall comply with all applicable state and federal regulations”

Immersion Montessori School is a licensed Center-Based Child Care Center in New Hampshire at three locations in the area. IMS would add this facility to its current license.

Traffic Impact

Total traffic volume expected = **200** cars per day (2 trips per each employee and student)

According to the DOT (Source: http://www.ms2soft.com/tcds/?loc=Nhdot&mod=tcds&local_id=02253053), the 2021 annual average daily traffic for S Main St in the area of the property was 6,820. The additional 200 cars for our proposed use would only be an increase of approximately 2.93% to the current traffic volume for that area.



Proposed Indoor Plan

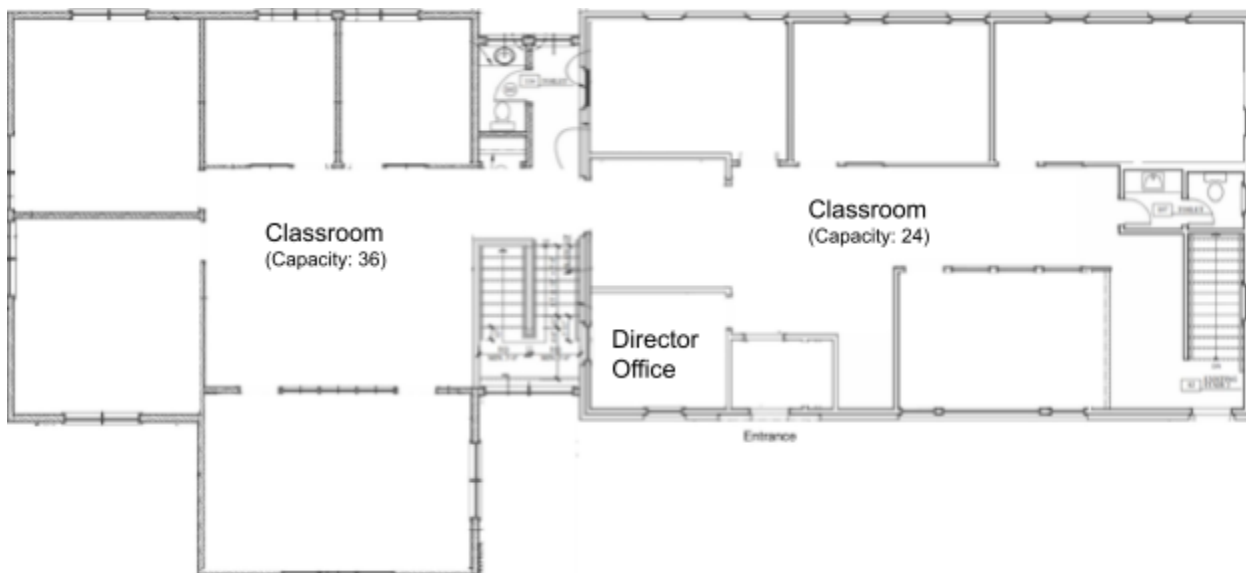
We do not propose any structural changes to the space. Our intent is to preserve the uniqueness of the space and enhance it by incorporating the Montessori classroom furniture that is in line with the elegance of the space. Proposed cosmetic changes may include painting and changing the flooring, and would be subject to approval by the landlord.

Our current plan is to use each area of the building as labeled in the floorplan below:

Lower Level:



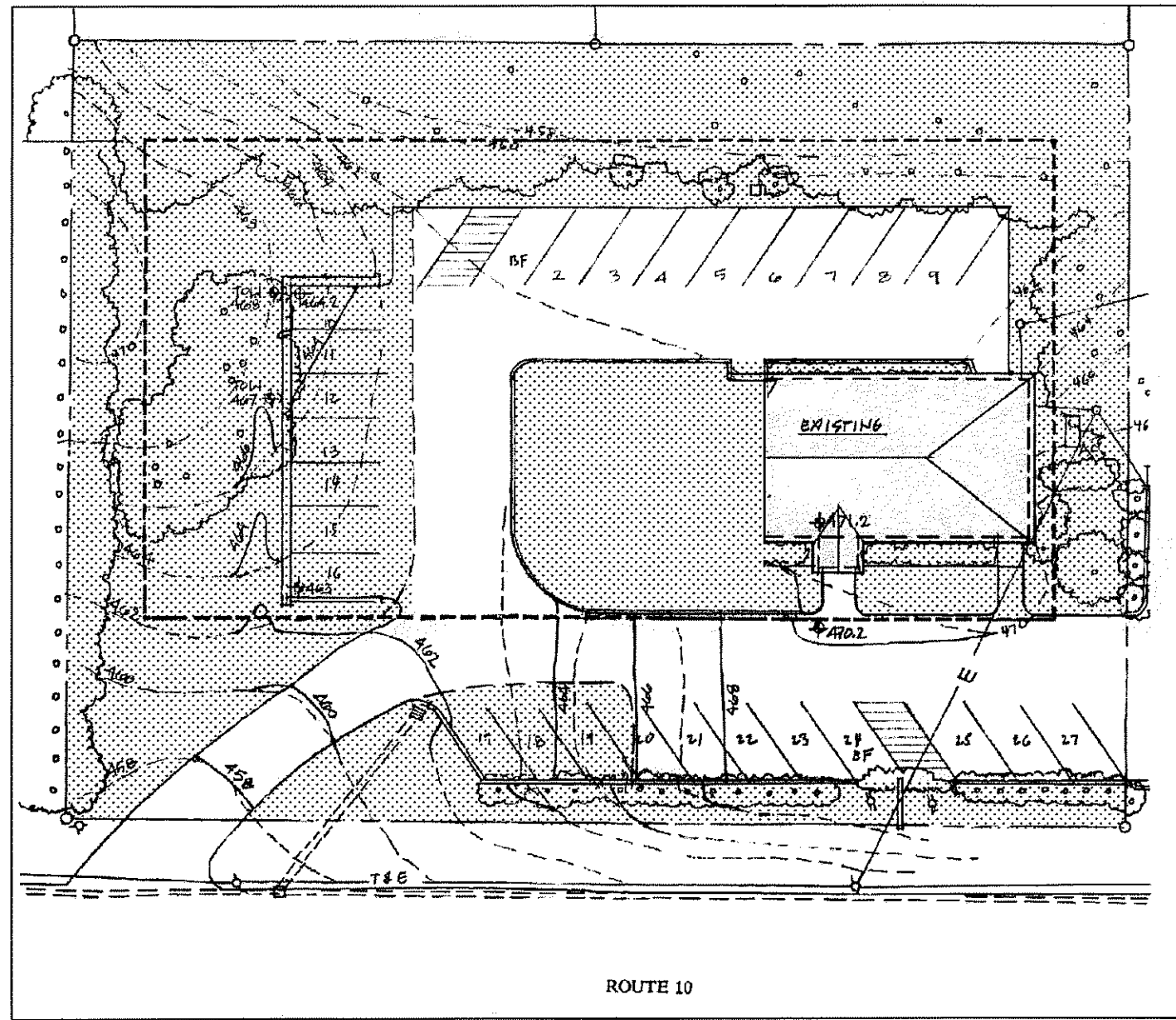
Upper Level:



Proposed Outdoor Plan

We propose installing a wooden fence that is 4ft in height around the perimeter of the area shown below. This would serve as the outdoor play area for the center. Students would use the outdoor area in small groups under adult supervision.

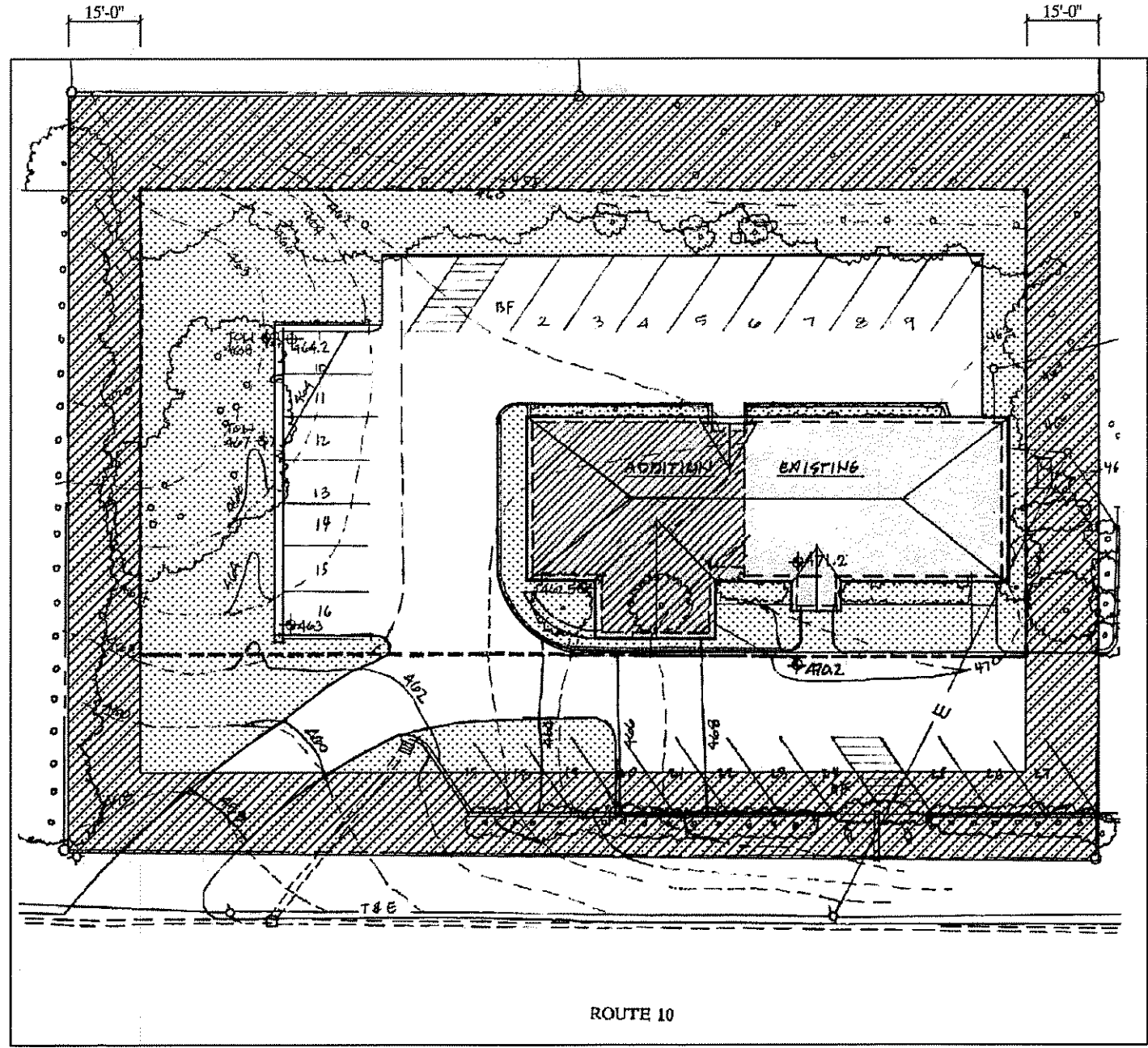




1 EXISTING LANDSCAPING
1"=30'-0"

TREE & SHRUB COVERAGE
8650 SQFT 26% OF LOT
TREE & SHRUB & GRASS COVERAGE
16410 SQFT 49% OF LOT

LOCATION	NORTH SIDE YARD	REAR YARD	SOUTH SIDE YARD	FRONT YARD
TREE COUNT	(1) 24" PINE (1) 18" PINE (4) 12" PINES (5) 8" PINES (1) 4" PINE	(1) 36" ASH (1) 12" ASH (1) 6" ASH (1) 12" BOXALDER (1) 24" CHERRY (1) 6" CHERRY (2) 6" HEMLOCKS (1) 8" MAPLE (1) 4" MAPLE (1) 24" PINE (3) 12" PINES (1) 8" PINE (1) 4" PINE (1) 6" POPLAR (2) 12" SPRUCE (3) 18" SPRUCE (1) 12" WHITE BIRCH	(1) 3" APPLE (3) 4" HARBORVITAE (1) 8" ASH (2) 6" H HEMLOCKS (1) 18" PINE (1) 12" PINE (1) 12" POPLAR (1) 8" POPLAR	(16) EVERGREEN SHRUBS 24" H (10) PLANTERS @ BLDG - SHRUBS
SUBTOTAL	10	23	11	26

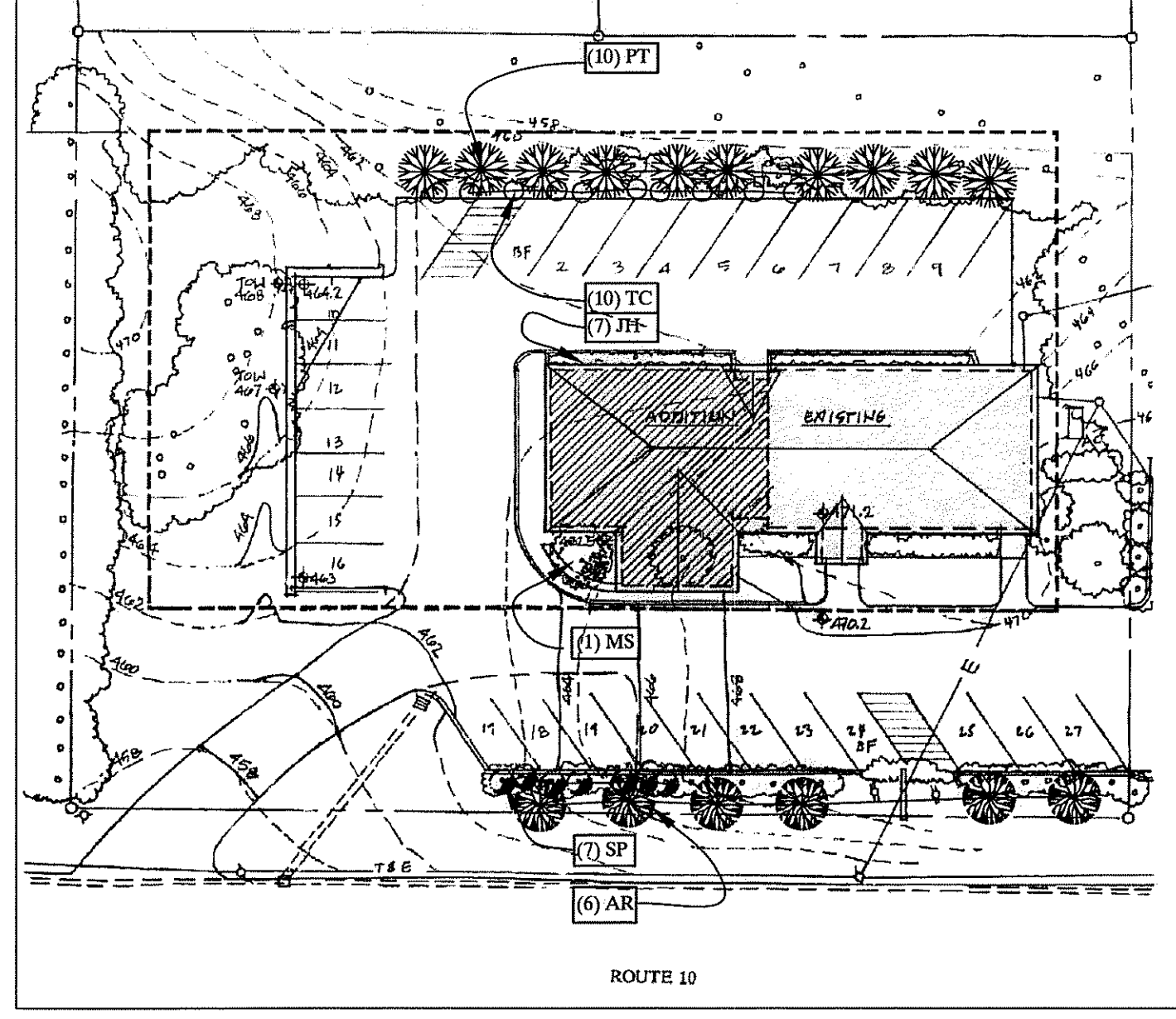


2 PERIMETER LANDSCAPING REQUIREMENT
1"=30'-0"

LOT PERIMETER: 11200 SQFT = 34% OF LOT
20% REQUIRED
5 PLANTS PER EVERY 600 SQFT =
11,200 SQFT ÷ 600 SQFT = 18.6
18.6 x 5 PLANTS = 93 PLANTS REQUIRED

EXISTING TREES & SHRUBS IN PERIMETER:
FRONT PERIMETER - 16
SIDE PERIMETER - 21
REAR PERIMETER - 23
60 EXISTING TREES

33 NEW TREES & SHRUBS REQUIRED



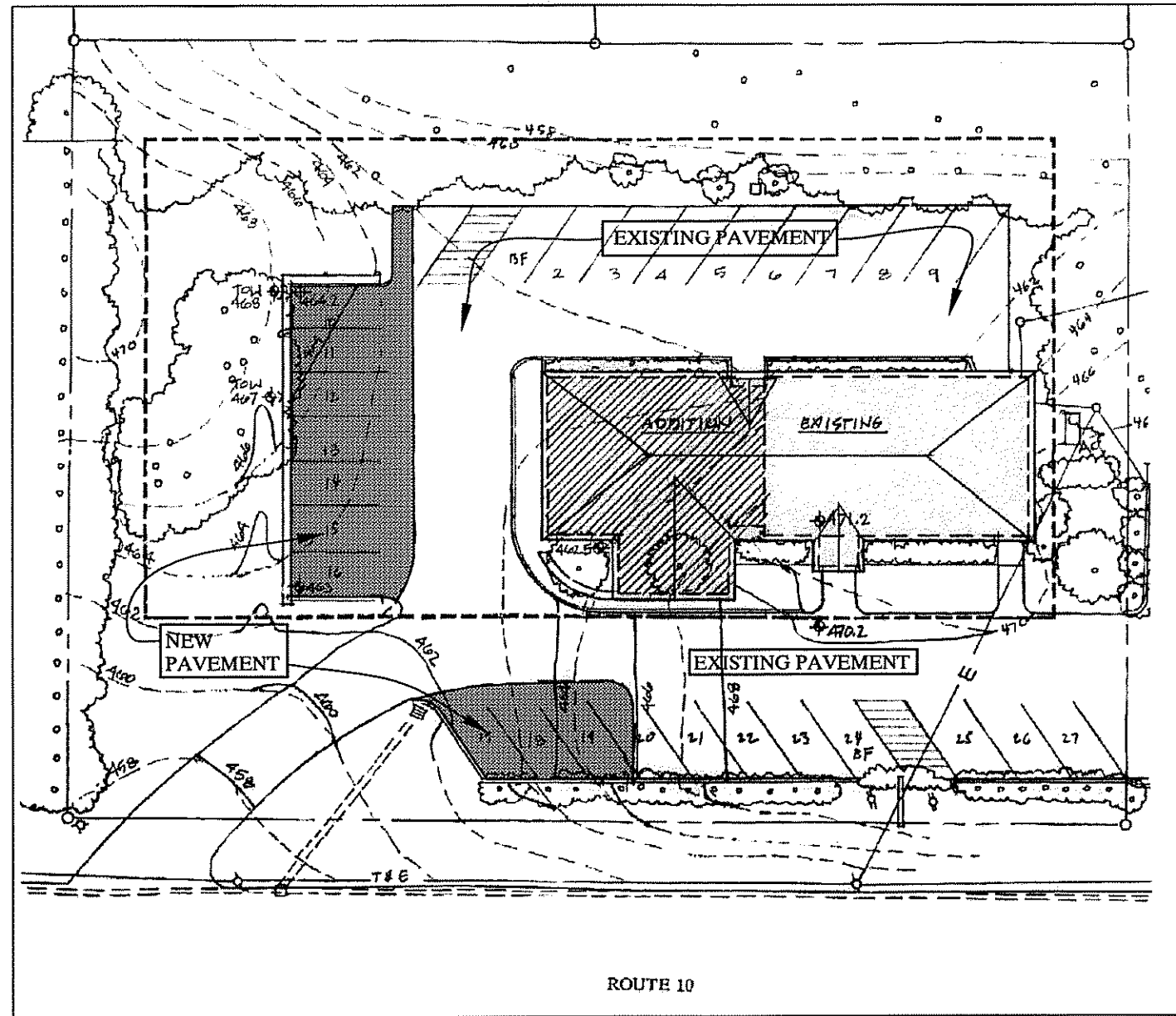
3 PROPOSED NEW LANDSCAPING
1"=30'-0"

33 TREES & SHRUBS REQUIRED TO MEET
PERIMETER LANDSCAPING REQUIREMENT

KEY	NAME	QUANTITY	SIZE/CONT	SPAC.	REMARKS
TREES					
PT	PINUS THUMBER JI BLACK PINE	10	6'-8' HT B&B	10' OC	
MS	MALUS 'SPRING SHOW' SPRING SHOW CRABAPPLE	1	8'-10' HT B&B	AS	NOT AT SITE PERIMETER
AR	ACER RUBRUM RED SUNSET RED MAPLE	6	3" CAL B&B	20' OC	
SHRUBS					
SP	SYRINGA PATULA MISS KIM LILAC	7	2 1/2' HT B&B	AS	MATCH EXISTING SPACING
TC	TAXUS CUSPIDATA GREEN WAVE YEW	10	2 1/2' HT B&B	AS	
JH	JUNIPERUS HORIZONTALIS "P.C. YOUNGSTOWN" COMPACT ANDORA JUNIPER	7	18" - 24" SPD B&B	± 5' OC	NOT AT SITE PERIMETER

SIZE/CONT.
CAL - CALIPER
HT - HEIGHT
B&B - BALLED & BURLAPPED

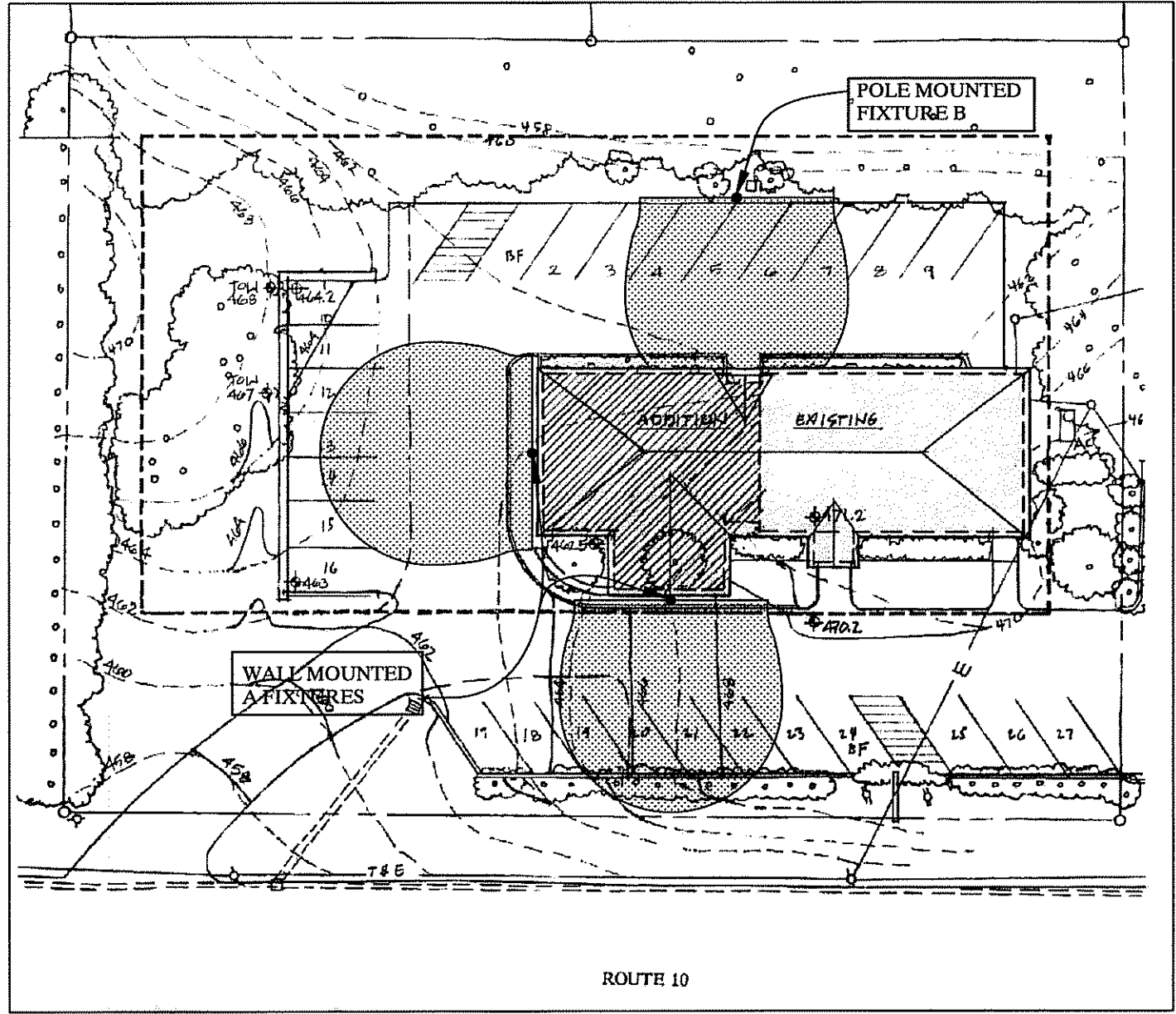
SPAC.
AS - AS SHOWN
OC - ON CENTER



4 PAVEMENT DIAGRAM
1"=30'-0"

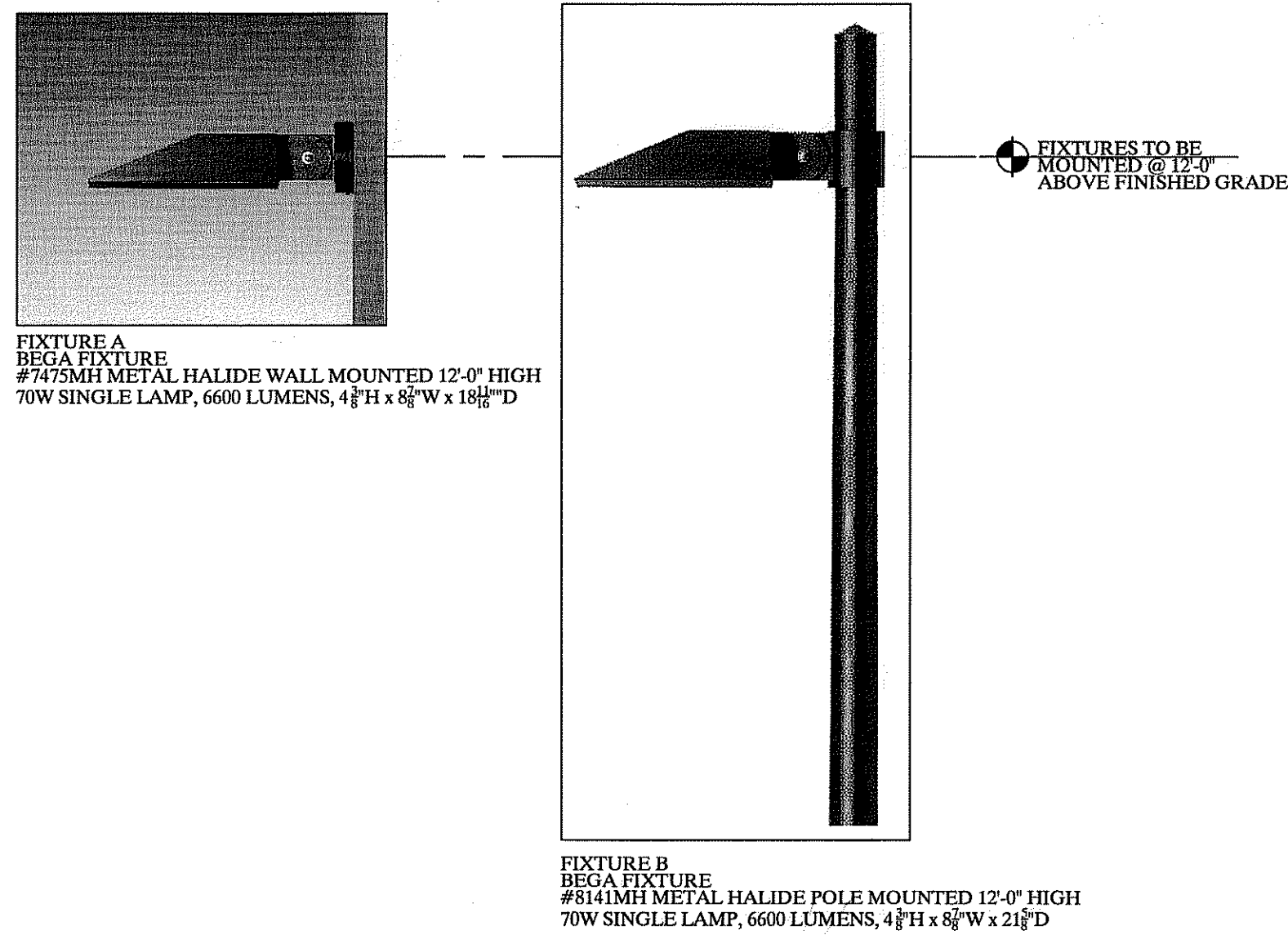
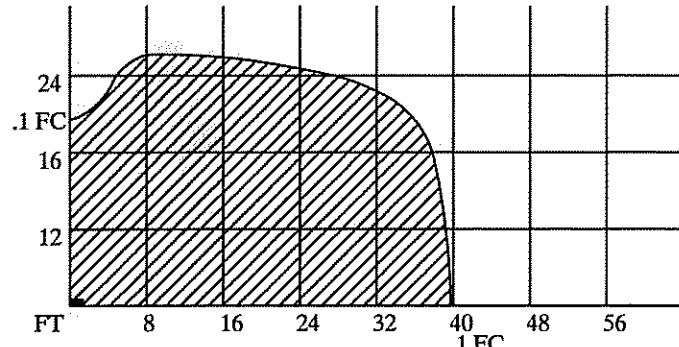
EXISTING - 10365 SQFT = 31.4% OF LOT
EXISTING + PROPOSED - 12720 SQFT = 38.5% OF LOT

NEW PARKING



5 EXTERIOR LIGHTING PLAN
1"=30'-0"

BEGA FIXTURE
FORWARD THROW DISTRIBUTION
.1 FOOT-CANDLE SPREAD SHOWN
LIGHT TO BE OPERATED BY MOTION DETECTOR



ADDITION TO
CENTURION CORPORATION

434 NORTH MAIN STREET
WEST LEBANON NEW HAMPSHIRE
Randall T Mudge & Associates

Architects

85 DCH
Route 10
Lyme New Hampshire

LANDSCAPING AND CALCULATIONS
PAVEMENT DIAGRAM
EXTERIOR LIGHTING PLAN
LIGHTING DATA

0017 AS NOTED
Job No Scale
8 APR 2002
Date Revised

SP-
CL1