



**LEBANON ZONING BOARD OF ADJUSTMENT
JANUARY 4, 2021 - 7:00 PM
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE**

1. Call to Order

- A. Review of meeting procedures and NH RSA 91-A "Right-to-Know" requirements.

2. Election of Officers

3. Approval of Minutes

- A. December 21, 2020

4. Public Hearing Items

- A. Robert G. Oakes & John T. Oakes, 92 Riverside Drive (Tax Map 111, Lot 16), zoned RL-1: Applicants obtained a Variance from Article III, Section 312.2 of the Zoning Ordinance to construct commercial self-storage units, which is not a permitted use in the RL-1 District (#ZB2020-08-VAR). Applicants now request an amendment to the Variance approval in order to allow larger buildings and changes to the proposed site layout. ZB2020-36-VAR - Continued from the December 21, 2020 meeting

5. Staff Comments

6. Adjournment

The order of agenda items is subject to change.

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Microsoft Teams. Members of the public are encouraged to attend 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 Microsoft Teams software or by phone. Please visit [LebanonNH.gov/Live](https://lebanonnh.gov/Live) for full details.

Note: City Hall is temporarily closed to the public in order to help prevent of the spread of Novel Coronavirus COVID-19. City operations will continue during this time, but in-person transactions will be limited to those of a critical nature. 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. 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
January 4, 2021**

**Agenda Item #3A
Approval of Minutes**

December 21, 2020

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, December 21, 2020
7:00 PM**

MEMBERS PRESENT: Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: Chair William Koppenheffer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Vice Chair Mercer.

Mr. McDonough and Mr. Newlove were appointed voting members for this meeting.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.
A Roll Call of Board Members who participated remotely is listed above.

2. APPROVAL OF MINUTES

A. November 16, 2020

Mr. Nash MOVED to approve the November 16, 2020 Minutes as presented in the December 21, 2020 agenda packet.

Seconded by Mr. McDonough.

Roll Call Vote

Mr. Nash, Mr. McDonough, and Vice Chair Mercer all voting Yea.

None voted Nay.

Mr. Katz, Mr. Patterson, and Mr. Newlove abstaining because they were not present at the meeting.

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

B. December 7, 2020

Mr. Patterson MOVED to approve the December 7, 2020 Minutes as presented in the December 21, 2020 agenda packet.

Seconded by Mr. Newlove.

Roll Call Vote

Mr. Katz, Mr. Newlove, Mr. McDonough, Mr. Patterson, and Vice Chair Mercer all voting Yea.

None voted Nay.

Mr. Nash abstained because he was not present at the meeting.

**The Vote on the Motion was unanimously approved (5-0-1).*

1 **3. PUBLIC HEARING ITEMS**

2
3 **A. Robert G. Oakes & John T. Oakes, 92 Riverside Drive (Tax Map 111, Lot 16), zoned**
4 **RL-1:** Applicants obtained a Variance from Article III, Section 312.2 of the Zoning
5 Ordinance to construct commercial self-storage units, which is not a permitted use in the RL-
6 1 District (ZB2020-08-VAR). Applicants now request an amendment to the Variance
7 approval in order to allow larger buildings and changes to the proposed site layout, and to
8 allow building coverage of +/-23.33% where a maximum of 15% is allowed for Class 3 lots
9 in the RL-1 District. **ZB2020-36-VAR - Postponed until 1/4/2021**

10
11 **B. Electrify America LLC (applicant), Korpela Family Trust (property owner), 285 Plainfield**
12 **Road (Tax Map 128, Lot 10), zoned GC:** Applicant requests a Variance from Article VI,
13 Section 607 of the Zoning Ordinance to allow a reduction of the minimum required parking
14 spaces needed to serve the existing shopping plaza in order to allow the transition of ten (10)
15 existing parking spaces into four (4) electric vehicle charging stations. **ZB2020-37-VAR - This**
16 **Application has been Withdrawn**

17
18 **Mr. Patterson recused himself from the next hearing.**

19
20 **C. Alan & Barbara Patterson, 70 Farr Road (Tax Map 125, Lot 22), zoned RL-2 & RL-3:**
21 Applicants request (a) a Special Exception pursuant to Article III, Section 313.2 and Article VI,
22 Section 600A of the Zoning Ordinance to operate a home-based contractor's yard, and (b) an
23 Equitable Waiver, pursuant to RSA 674:33-a, of dimensional requirements imposed by Section
24 313.3 of the Zoning Ordinance. **ZB2020-38-SE**

25
26 The Patterson's appeared on behalf of the request. They have an extremely long driveway. He has a very
27 small grounds maintenance business and he would like to use the sand stored in his shed for his
28 customers. He maintains the grounds for 3 other nearby houses. Although he does not charge for his
29 service to his neighbors, he believes he should have a contractor's lot. Nothing would change on the
30 property from what is currently taking place. All the back-up alarms have been deactivated on his
31 equipment. He would merely like to store enough sand in his shed to use on his neighbors' properties as
32 well as his own.

33
34 Inadvertently, during the process of requesting a special exception for the sand shed, it was discovered
35 that his garage is within the setback. It was inspected several times when it was being constructed and he
36 passed all inspections during the building permit process. It was a mistake that happened for all who
37 participated and everyone from the City as well as the owner were unaware. There also is no other place
38 that the garage would have been placed and he would have applied for permission to put the garage in that
39 location had he known it was not positioned correctly. Due to the nature of the land he believes he would
40 have been given relief.

41
42 Mr. Patterson read a paragraph to the Board describing how the error occurred and responded to the
43 questions related to the equitable waiver. It is clear the owner did everything that was requested by the
44 City and that a minor error occurred that no one person or entity can be blamed for doing.

45
46 Mr. Corwin showed the Board maps of the property that did not get included in the meeting packet. He
47 also stated that the Board can waive some aspects of the criteria to the equitable waiver. Staff supports
48 this request. It was an honest mistake that was made in the field. Mr. Patterson said that the garage is not

1 visible from the road. The inspector and the zoning department approved this location. The shed has
2 been for the owner's private use, and he would like to share the sand with his neighbors. The sand shed is
3 already concealed by natural vegetation and the topography of the land. It is not going to change
4 locations. It is partially visible to the neighbors during the winter. The Board can waive the criteria that
5 it must be screened from the view of abutting properties. His neighbors support this application, as he is
6 helping with the road maintenance on that hill.

7
8 The Board discussed the nature of the flagpole lot and where the garage and shed are located. Due to
9 the lot, the prescribed location for his driveway was not possible. It would have been in front of his
10 neighbor's front steps and it would have been on a rock ledge. He has an easement and right of way
11 for his driveway and it is located in a more appropriate place.

12
13 They discussed that due to the flagpole lot, the shed is technically on the side of the lot. They
14 discussed the front yard and the side yards relative to the lot line and relative to the setback. Mr.
15 Corwin explained this is a provision that the Board can waive. Pertaining to the equitable waiver, Mr.
16 Patterson has been the owner the entire time the garage and home have been constructed.

17
18 **Vice Chair Mercer opened the Public Hearing. Hearing no one, the Public Hearing was closed.**

19
20 There is ample justification for approving this request. It is one of the clearest reasons for granting an
21 equitable waiver. There are not any issues related to storage or equipment and all the requirements
22 have been met. Additional screening is not necessary.

23
24 Mr. Corwin discussed the required waivers. He showed an additional picture depicting what the
25 ordinance calls the front yard. It has no relationship to the front yard setback. It is the front yard as it
26 relates to the home.

27
28 ***Mr. Nash MOVED on December 21, 2020, at a duly-noticed meeting of the Lebanon Zoning Board***
29 ***of Adjustment, there appeared Alan & Barbara Patterson regarding 70 Farr Road (Tax Map 125,***
30 ***Lot 22), zoned RL-2 & RL-3. Applicants request (a) a Special Exception pursuant to Article III,***
31 ***Section 313.2 and Article VI, Section 600A of the Zoning Ordinance to operate a home-based***
32 ***contractor's yard, and (b) an Equitable Waiver, pursuant to Section 801.4.B of the Zoning Ordinance***
33 ***and RSA 674:33-a, of dimensional requirements imposed by Section 313.3 of the Zoning Ordinance.***
34 **ZB2020-38-SEEW**

35
36 **I. FINDINGS OF FACT**

37
38 Based on testimony given, application materials presented, and supporting documents submitted, the
39 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 40
41 1. The property is a +/-4.7 acre lot located on Farr Road and bounded by the Northern Rail Trail to
42 the south. It is improved with a one-family dwelling that serves as the applicants' principal
43 residence, and accessory structures including a detached garage. The applicants propose to use a
44 portion of the property for a home-based contractor's yard per Section 600A of the Zoning
45 Ordinance, as described in their attached application materials.
- 46
47 2. Per Section 600A of the Zoning Ordinance, a "home based contractor's yard" is permitted in the
48 RL-2 District with Special Exception approval from the Zoning Board of Adjustment.
- 49

3. In order to approve the Special Exception request, the Board must determine that the applicant meets all requirements of Section 600A.2.B and Section 801.3.
4. The applicants have submitted testimony addressing the Section 600A and Section 801.3 criteria in the attached application received by the Planning & Development Department.
5. The applicants also request an equitable waiver with respect to the existing detached garage (the garage is not proposed to be used in connection with the home-based contractor's yard use and will continue to be used for the applicants' personal use). The applicant obtained a building permit for the garage in 2015 and staked out the garage prior to construction for inspection by the City's Building Inspector. In siting and approving the foundation, the applicant and the Building Inspector mistakenly believed that the garage was proposed to be located in compliance with the required setbacks. However, the Zoning Administrator recently discovered that the garage is in fact sited within the minimum required 40 ft. front yard setback. Consequently, the applicant is requesting an Equitable Waiver pursuant to Section 801.4.B of the Zoning Ordinance and RSA 674:33-a to address the apparent violation of the garage location with respect to the front yard setback.
6. The apparent violation was only noticed by staff in reviewing the applicant's application for a home-based contractor's yard.
7. Pursuant to Section 801.4.B of the Zoning Ordinance, the powers and duties of the Zoning Board include the ability to authorize Equitable Waivers of dimensional requirements if the applicant satisfies the burden of proof upon all criteria set forth in RSA 674:33-a.
8. The applicants have submitted testimony addressing each of the criteria set forth in RSA 674:33-a, I.
9. No one spoke for or against the proposal.

II. CONCLUSIONS OF LAW

- A. Home based contractor's yard. 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 §313.2 and §600A of the Zoning Ordinance. (§801.3.A)
 2. The following special conditions/requirements of §600A **are** met (§801.3.B):
 - a. The subject property **is** one (1) acre or greater in size. (§600A.2.B.1)
The parcel is approximately 4.7 acres.
 - b. The operator of the home-based contractor's yard **will** be a resident of the subject property. (§600A.2.B.2)

- 1 c. No more than two (2) persons **will** work on the subject property at one time, other than the
2 operator and members of the operator's family who also reside on the property.
3 (§600A.2.B.3)
4
- 5 d. The operator's business **will not** have window displays. (§600A.2.B.4)
6
- 7 e. One (1) off-street parking space **will** be provided plus one (1) off-street parking space per
8 each non-resident employee who parks at the property. (§600A.2.B.5)
9
- 10 f. The operation and presence of the contractor's yard **will not** detract from the total residential
11 character of the neighborhood. (§600A.2.B.6)
12
- 13 g. The contractor's yard **will not** generate non-residential levels of noise, vibration, glare,
14 smoke, dust, fumes, odors, or heat. (§600A.2.B.6.a)
15
- 16 h. The contractor's yard **will not** use on-street parking. (§600A.2.B.6.b)
17
- 18 i. The contractor's yard **will not** generate non-residential truck deliveries more than twice per
19 week. (§600A.2.B.6.c)
20
- 21 j. No more than three (3) motor vehicles used in connection with the contractor's yard **will** be
22 parked on the property at any one time, other than the personal motor vehicles of employees.
23 (§600A.2.B.7)
24
- 25 k. Motor vehicles used in connection with the contractor's yard **will** be 26,000 lbs. GVWR or
26 less. (§600A.2.B.7)
27
- 28 l. The outdoor storage of business equipment, the overnight outdoor parking of motor vehicles
29 used in connection with the contractor's yard, and outdoor work areas (collectively "Outdoor
30 Storage and Work Areas") **will** be located to the sides and/or rear of the home.
31 (§600A.2.B.8.a)
32
- 33 The shed is mostly in the side yard. A small portion of the shed is over the front yard line.
34 The Board considers the requirement effectively met. The equipment, pickup truck and
35 trailer are combined personal and business vehicles. The front yard is over 400 feet from Farr
36 Road and inhibits public view. The Board hereby grants a waiver of the vehicle parking as
37 shown in the site sketches.
38
- 39 m. Outdoor Storage and Work Areas **will not** encroach into any minimum required side or rear
40 yard. (§600A.2.B.8.b)
41
- 42 n. Outdoor Storage and Work Areas **will** occupy no more than 10% of the total acreage of the
43 property nor exceed one (1) acre whichever is less, exclusive of areas covered by buildings.
44 (§600A.2.B.8.c)
45
- 46 o. Outdoor Storage and Work Areas **will** be screened from view from abutting residential
47 properties and public streets. (§600A.2.B.8.d)
48

49 The shed is existing and effectively screened. The shed is over 400 from Farr Road and 100
50 feet below it to provide effective screening.
51

3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C)
 4. The character of the area **will not** be adversely affected. (§801.3.D)
 5. **No** hazard or nuisance will be created. (§801.3.E)
 6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
 7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
 8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
 9. The general welfare of the City **will** be protected. (§801.3.I)
- B. Equitable waiver. 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 Equitable Waiver criteria set forth in §801.4.B of the Zoning Ordinance and NH RSA 674:33-a, I:
1. That the violation **was not** noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
 2. That the violation **was not** an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
 3. That the physical or dimensional violation **does not** constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
 4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it **would** be inequitable to require the violation to be corrected.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **21st day of December, 2020**, hereby **GRANTS** the requested Special Exception and Equitable Waiver, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

Seconded by Mr. Newlove.

The Board discussed that the Conclusions of Law needed an additional explanation regarding the screening requirement that was waived. Mr. Nash added the language and read it into the Motion, as it currently reads. It was seconded by Mr. Newlove.

Roll Call Vote

Mr. Katz, Mr. Newlove, Mr. McDonough, Mr. Nash, and Vice Chair Mercer all voting Yea.

None voted Nay.

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

Mr. Patterson rejoined the meeting.

4. STAFF COMMENTS

Mr. Corwin discussed the City is trying to move all the Board and Committee meetings to start at 6:30 PM. He wanted to confirm that this would not work for this Board. This is not related to the aspect of virtual meetings. Mr. Newlove's work schedule would not permit him to meet before 7 PM. Mr. Corwin thanked the Board for their time over the last year and wished them Happy Holidays.

5. ADJOURNMENT

Mr. Patterson MOVED to adjourn the meeting at 8:03 PM.

Seconded by Mr. Katz.

Roll Call Vote

Mr. McDonough, Mr. Katz, Mr. Nash, Mr. Patterson, Mr. Newlove and Vice Chair Mercer all voting Yea.

None voted Nay.

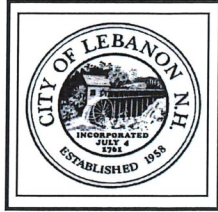
**The Motion passed unanimously (6-0).*

Respectfully submitted,
Linda Billings
Recording Secretary

**Agenda
Zoning Board of Adjustment
January 4, 2021**

**Agenda Item #4A
Approval of Minutes**

**Robert G. Oakes &
John T. Oakes,
92 Riverside Drive
(Tax Map 111, Lot 16),
zoned RL1
ZB2020-36-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

January 4, 2021 Meeting

Staff Memorandum – ZB2020-36-VAR – *postponed from 12/21/20*

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:

Amendment to Variance approval allowing property to be used for commercial self-storage units

Location: 92 Riverside Drive (Tax Map 111, Lot 16)

Applicants/Property Owner:

Robert Oakes & John Oakes

Zoning District: RL-1 District

Property Size:

+/-3.76 acres (*per City Assessor's records*)

Existing Improvements and Use:

+/-1,938 sq. ft. one-family dwelling (*per the City Assessor's records*); a conforming use in the RL-1 District

Proposed Improvements and Use:

A self-storage warehouse facility; one-family dwelling to be removed

Overlay Districts: none

Previous ZBA Action (since 1995):

#ZB2020-08-VAR, Variance approval to permit a commercial self-storage facility

Other Approvals Required:

(including but may not be limited to):

- Site Plan Approval
- Building Permit

Attachments:

- Application (19 pages total)

HEARING NOTICE

Robert G. Oakes & John T. Oakes, 92 Riverside Drive (Tax Map 111, Lot 16), zoned RL-1: Applicants obtained a Variance from Article III, Section 312.2 of the Zoning Ordinance to construct commercial self-storage units, which is not a permitted use in the RL-1 District (ZB2020-08-VAR). Applicants now request an amendment to the Variance approval in order to allow larger buildings and changes to the proposed site layout, and to allow building coverage of +/-23.33% where a maximum of 15% is allowed for Class 3 lots in the RL-1 District. ZB2020-36-VAR

BACKGROUND & PROPOSAL

The subject lot is a triangular-shaped property located to the east of the I-89 interchange at Exit 17, and is bound by Fellows Hill Road to the north, Dartmouth College Highway to the southeast, and Riverside Drive to the west (see Figure 1). It is currently improved with a one-family dwelling which is accessed from the Fellows Hill Road side of the property (see Figure 2).

The applicants obtained a Variance from the Zoning Board on March 2, 2020 (#ZB2020-08-VAR) to remove the existing one-family dwelling and to construct commercial self-storage units. The Variance approval included a condition that "[t]he site plan will be substantially similar to what was presented to the Board" (see condition of approval #5 of the Notice of Action, a copy of which is included with the attached application materials).

The applicants now request an amendment to the Variance approval in order to allow larger buildings (+/-9,600 sq. ft. was approved as part of ZB2020-08-VAR; a total of +/-26,176 sq. ft. is now proposed) and changes to the proposed site layout. In the view of the Zoning Administrator, the revised layout is substantially different than the layout approved by the Zoning Board, and therefore does not comply with condition approval #5 of the Board's March 2, 2020 Notice of Decision.

There is no procedure under state statute or the Zoning Ordinance to "amend" a Variance approval. Consequently, the applicant must reapply for the Variance and demonstrate compliance with the Variance criteria.

Moreover, the applicant now proposes building coverage in an amount that exceeds the maximum permitted and, therefore, requires a Variance from the RL-1 District maximum building coverage limitation.

STAFF MEMORANDUM

ZB2020-36-VAR

92 Riverside Drive (111-16)

January 4, 2021 ZBA Meeting

Agenda Item 3.A

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Figure 1. Location Map.



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



ZONING ORDINANCE REQUIREMENTS

- A. Warehouse use: A self-storage facility is considered a “warehouse” pursuant to the definition of “warehouse” set forth in Appendix A of the Zoning Ordinance. A warehouse is not a permitted use in the RL-1 District (see Section 312.2 of the Zoning Ordinance). Consequently, in order allow a self-storage facility on the property, the applicant must obtain a Variance from the RL-1 District table of uses set forth in Section 312.2.
- B. Building coverage: The subject property is not served by municipal sewer and, therefore, is considered a Class 3 lot (see Appendix A, definition of “Classification (Classes) of Lots”). In the RL-1 District, maximum building coverage of 15% is allowed for Class 3 lots, whereas the applicant proposes total building coverage¹ of the existing lot of +/-23.33%. Consequently, a Variance is required from Section 312.3.

To obtain the requested Variances, the applicants 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?**

¹ “Building coverage” is defined in Appendix A of the Zoning Ordinance as, “That percentage of the lot area covered by buildings. In determining the percentage of building coverage of a lot, porches or carports open at the sides but roofed, and all principal and accessory buildings shall be included.”

STAFF MEMORANDUM

ZB2020-36-VAR
92 Riverside Drive (111-16)
January 4, 2021 ZBA Meeting
Agenda Item 3.A
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- a. **Special Conditions:** According to the Board of Adjustment in NH, 2012 Edition, Zoning imposes some hardship on all property owners by setting lot dimensions, allowable uses and other restrictions. Typically the restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. Even within the same community, different results may be reached with just slightly different fact patterns.
- b. **Fair and Substantial Relationship:** Part of this standard includes whether or not a fair and substantial relationship exists between the general public purpose of the ordinance provisions and the specific application of that provision to the property. Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Once the purpose of the provision has been established, the property owner needs to establish that, because of the special conditions of the property, application of the ordinance provision to their property would not advance the purposes of the ordinance provision in any "fair and substantial" way.
- c. **Reasonable Use: Is the proposed use a reasonable one?** All applicants believe their proposed use is a reasonable one. The applicant must establish that, in light of the special conditions of the property, as identified above, the proposed use is a reasonable one.

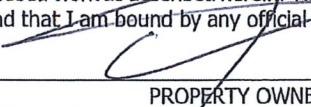
The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on November 16, 2020 (see attached).

Attachment

cc: Robert Oakes & John Oakes
John R. Hughes, III, Esq.
File

**CITY OF LEBANON
APPLICATION FOR**

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

PROPERTY OWNER (APPLICANT):	
NAME: Robert Oaks <i>Oakes + John Oaks</i>	TEL.#: (603) 727-8405
MAILING ADDRESS: 209 Dartmouth College Hwy, Lebanon, NH 03766 (RGO) 146 Bog Road, Enfield, NH 03748 (JTO)	
E-MAIL ADDRESS: bobbyoakes14@hotmail.com	
CO-APPLICANT, AGENT, OR LESSEE:	
NAME: John R. Hughes, III, Esq.	TEL.#: (603) 448-3900
MAILING ADDRESS: 30 Bank Street, Suite 3, Lebanon, NH 03766	
E-MAIL ADDRESS: rh@hsh-law.com	
PROJECT LOCATION:	
TAX MAP #: 111	LOT#: 16 PLOT #: ZONE: RL-1
STREET ADDRESS OF PROJECT: 92 Riverside Drive, Lebanon, NH 03766	
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO	
FLOOD PLAIN ☐ YES ☒ NO	
SCOPE OF PROJECT:	
Property owners seek a variance to construct commercial self-storage units in the RL-1 district on lot adjacent to	
General Commercial District by Exit 17 on I-89	
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: 11.18.2020 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: 11.18.2020 PROPERTY OWNER	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
11-16-2020	111/16	252020- 36-UAR	\$229.55	11/24/2020	17981

(12/07/07)

SUPPORT STATEMENT FOR A VARIANCE

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

CITY OF LEBANON, NEW HAMPSHIRE

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

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) III
Section(s) 312 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;

See Attached

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

See Attached

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

See Attached

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

See Attached _____ 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

See Attached

...; and

(ii) The proposed use is a reasonable one.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

See Attached

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

***This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.**

Statement of Intent:

"The Intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."

HUGHES ATWOOD & MULLALY PLLC

John R. Hughes, Jr.
John R. Hughes III*
Bradford T. Atwood
Richard E. Mullaly
Diane Crowley**
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**Admitted in NH & MA
***Admitted in VT & NY

Practice of Law in New Hampshire and Vermont

November 18, 2020

City of Lebanon
Zoning Board of Adjustment
51 North Park Street
Lebanon, NH 03766

In hand delivery

**Re: ROBERT G. OAKES and JOHN T. OAKES (property owners and applicants),
92 RIVERSIDE DRIVE (Tax Map 111, Lot 16), zoned RL-1.
Application to Amend the Variance and Zoning Permit granted by the ZBA
in #ZB2020-08-VAR**

Dear Chair Koppenheffer and Members of the Lebanon Zoning Board of Adjustment:

I represent the property owners and Applicants, Robert G. Oakes and John T. Oakes. By Notice of Decision dated March 2, 2020, the Zoning Board granted the Applicant a Variance from Article III, Section 312.2 of the Zoning Ordinance to construct commercial self-storage units on this property. Please see attached. The Zoning Administrator issued the Applicants a Zoning Permit in accordance with that Variance.

As part of their variance application, the Applicants submitted, and the Zoning Board approved, a site plan depicting a layout of the proposed self-storage units on the parcel. Please see attached "*Concept Plan for Lot 111-16 in Lebanon, New Hampshire*" dated February 17, 2020 prepared by Advanced Geomatics & Design of Lebanon, New Hampshire. One of the conditions of the Zoning Board's approval was that "*the site plan [to be submitted to the Planning Board] will be substantially similar to what was presented to the Board.*"

The initial site plan presented to the Zoning Board was a concept plan for four (4) buildings with a total of 9,600 s.f. Since then, however, the Applicants and their engineer have had discussions with mini-storage manufacturers. They have suggested a different layout for the self-storage units, as depicted on the new attached site plan. Please see attached "*Concept Plan for Lot 111-16 in Lebanon, New Hampshire*" dated September 4, 2020, prepared by Advanced Geomatics & Design of Lebanon, New Hampshire. This concept plan is for five (5) buildings (including a 576 s.f. garage for maintenance) with a total of 26,176 s.f. The difference in the

conceptual layouts between the two site plans is significant enough that the Applicants feel it necessary to amend their original variance application before seeking Planning Board approval. The Applicants respectfully request that the Zoning Board allow the September 4, 2020 site plan, or one similar, to be incorporated into the updated variance decision so that the Applicants can proceed to the Planning Board for site plan review.

In addition to a change in the size and layout of the self-storage units on the lot as shown on the updated site plan, the Applicants intend to purchase the abutting Lot 111-3-1 from the City of Lebanon (across Fellows Hill Road from the subject property). Please see attached "*Existing Conditions Plan of Land of Robert G. Oakes & John T. Oakes and The City of Lebanon, U.S. Route 4, Riverside Drive and Fellows Hill Road, Lebanon, Grafton County, New Hampshire*" dated May 19, 2020, prepared by Paton Land Surveying of Springfield, Vermont. This lot contains 15,888 s.f. Should that sale be approved, the Applicants have agreed to leave that parcel of land in a natural condition. They will also request that a portion of the dead-end Fellows Hill Road between Lot 111-3-1 and Lot 111-16 be discontinued by the City. This area of road to be discontinued contains 25,855 s.f. Should the City do so, the Applicants intend to remove a portion of the existing pavement. This will leave an even larger natural buffer between the self-storage units and the residences to the north.

Due to the increase in total square footage of the proposed buildings (26,176 s.f.), the Applicants also request a Variance from the terms of Article III, Section 312.3 of the Zoning Ordinance regarding maximum building coverage.

Maximum building coverage in the RL-1 district is 15%. 15% of the existing parcel (Lot 111-16 of 112,119 s.f.), would be 16,817 s.f. of maximum building coverage. 15% of the three combined parcels (i.e., Lot 111-16, Lot 111-3-1 and the area of Fellows Hill Road to be discontinued), would leave the Applicants with only 23,074 s.f. of maximum building coverage. The current proposal (see September 4, 2020 "*Concept Plan for Lot 111-16 in Lebanon, New Hampshire*") depicts 26,176 s.f. of building coverage. This is 17% of the three combined lots.

The Applicants therefore request a Variance from the terms of Article III, Section 312.3 to allow a *de minimus* 5% increase in maximum building coverage (i.e., 20% or 30,766 s.f.) on the three combined parcels with a total area of 153,829 s.f., rather than the 15% permitted by the Zoning Ordinance. This provides minimal relief, yet gives the Applicants the additional square footage needed.

As noted in the Applicants' original application, the subject property abuts the adjacent General Commercial (GC) zoning district. That district allows 30% maximum building coverage. See Section 305.3 of the Zoning Ordinance. The Applicants are only seeking 20% maximum building coverage. For this reason, as well as the *de minimus* size of the requested building coverage increase, the restrictions on further development of the property, and the reasons articulated in the Applicants' original application, the proposed use satisfies the variance criteria and conditions of Section 801.2 of the Zoning Ordinance.

Because there seems to be no process, per se, to amend a Zoning Board condition of approval, the Applicants are re-applying for the Variance granted on March 2, 2020. Essentially,

however, the Applicants effectively seek simply an amendment to the original Variance approval based on a change to the approved plan.

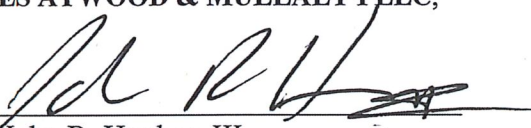
The Applicants therefore submit the following together with this supporting letter:

1. March 2, 2020 ZBA Notice of Decision granting Variance;
2. March 2, 2020 Zoning Permit;
3. New Application for Amendment to Variance;
4. Original variance support statement (see letter to ZBA dated February 18, 2020);
5. *Concept Plan for Lot 111-16 in Lebanon, New Hampshire* dated September 4, 2020, prepared by Advanced Geomatics & Design;
6. *Concept Plan for Lot 111-16 in Lebanon, New Hampshire* dated February 17, 2020 prepared by Advanced Geomatics & Design;
7. *Existing Conditions Plan of Land of Robert G. Oakes & John T. Oakes and The City of Lebanon, U.S. Route 4, Riverside Drive and Fellows Hill Road, Lebanon, Grafton County, New Hampshire* dated May 19, 2020, prepared by Paton Land Surveying
8. Certified Notification List;
9. Fee Schedule;
10. Check in the amount of \$229.00 payable to the City of Lebanon for filing, advertising and notification fees.

Thank you for your attention to this matter.

Respectfully submitted,

HUGHES ATWOOD & MULLALY PLLC,

By: 

John R. Hughes, III

Email: rh@hsh-law.com

RH/sc

Enclosures

Cc: Robert G. Oakes
John T. Oakes
Dan Nash, P.E.

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Practice of Law in New Hampshire and Vermont

February 18, 2020

City of Lebanon
Zoning Board of Adjustment
51 North Park Street
Lebanon, NH 03766

Re: ROBERT G. OAKES and JOHN T. OAKES (property owners and applicant), 92 RIVERSIDE DRIVE (Tax Map 111, Lot 16), zoned RL-1:
Applicant proposes to construct commercial self-storage units on a 3.76 acre parcel located in the RL-1 district within the Exit 17 area of I-89 and adjacent to other commercial uses, and requests a Variance from Article III, Section 312 of the Zoning Ordinance to do so.

Dear Chair Koppenheffer and Members of the Lebanon Zoning Board of Adjustment:

I represent the property owners and Applicant, Robert G. Oakes and John T. Oakes, in this request for a Variance from Article III, Section 312 of the Zoning Ordinance to construct a commercial self-storage facility on their 3.76 acre property at 92 Riverside Drive in Lebanon in the RL-1 zoning district.

I. Background

The Applicant's property sits virtually "in the shadow" of Interstate 89 just off Exit 17. As the Planning & Development Department noted in a June 3, 2019 letter to property owners in this area (regarding "*Community Discussion Concerning Master Plan Goals and Potential Zoning Amendments for the Exit 17 Area*");

"The current zoning in the Exit 17 area is primarily General Commercial (GC), one off the City's most intensive zones, with smaller areas of Rural Lands One (RL-1), Rural Lands Two (RL-2), and Rural Lands Three (RL-3). The existing development in the area includes a mix of commercial, residential, and public assembly uses."

The Exit 17 area is a hodgepodge of zoning districts and uses. The City's 2030 Future Land Use Plan envisions Mixed Use in the Exit 17 area. This is in keeping with the Master Plan.

"The vision expressed by residents is for this area to maintain its current ratio of non-residential to residential development, including maintaining the existing moderate scale of existing non-residential development. The proximity to the City's drinking water intake and environmentally sensitive resources (e.g. Stoney Brook and Mascoma River, existing aquifer), the lack of existing sewer infrastructure, the preservation of the existing residential neighborhood characteristics, and the desire to not promote retail uses at the Exit 17 interchange, were the predominant rationale expressed during Master Plan discussions supporting this recommendation." Master Plan, Chapter 2 (Land Use), Section 2 | D-20.

92 Riverside Drive (the "Property") was historically located in the RL-1 zone when the Ordinance was originally adopted. The RL-1 zoning district permits one single-family dwelling (existing on the lot). As a "Class 3" lot (i.e., without access to municipal water or sewerage), the Property has a minimum RL-1 lot area of 3 acres. As stated in Section 312.1 of the Ordinance, *"the purpose of the RL-1 District is to provide areas of transition between the denser urban neighborhoods of the R Districts and the more sparsely settled and/or more environmentally sensitive RL-2 and RL-3 areas."* As noted, however, this "purpose" seems to be somewhat outdated in the current Exit 17 neighborhood area.

Abutting properties directly across Dartmouth College Highway and Riverside Drive from the Property (Parcels 125-9 and 125-9-100) are in the General Commercial (GC) zone. Parcel 125-9 is the site of the large Carroll Tire warehouse/distribution center. A church is located directly across from the Property at 90 Riverside Drive in the RL-1 zone. A veterinary clinic (Stoney Brook Veterinary Hospital) is located at 88 Riverside Drive in the RL-1 zone (Parcel 110-20). Upper Valley Stove Company (formerly Riverside Grill) is located at 65 Riverside Drive in the RL-1 zone (Parcel 110-12). Another self-storage facility is located nearby, just on the other side of I-89 in the General Commercial zone on the west side of the highway. There are also a handful of residences still located in the Exit 17 area, but to the north, closer to the Mascoma River.

The Property itself is very physically isolated – an "island" surrounded by highways. It is a triangular lot of 3.76 acres bounded by Dartmouth College Highway (Route 4A) to the south, Riverside Drive to the west, and Fellows Hill Road to the north. Fellows Hill Road dead ends at the Property's easternmost corner. There is no possible physical means of ingress or egress to the Property from either Dartmouth College Highway or Riverside Drive due to the physical condition of the lot and of those highways.

The Property has an old and decrepit residence and an equally old shed on site. It is quite frankly an eyesore. It had been rented in the past, but is essentially unrentable (even if the home was demolished and rebuilt), due to the poor location for a residence. There is also a large pile of old tires and other accumulated "junk" on the site. The bulk of the lot is comprised of a very large area of raised fill (well above the natural contours of the land) – presumably left over from construction of Interstate 89. The City assesses the property at a total value (land and buildings) of only \$114,600. Given the physical characteristics and location of the Property, it can no longer be realistically used for residential purposes. (Please see the attached opinion letter from

Melissa Robinson, a licensed New Hampshire real estate agent with Four Seasons Sotheby's International Realty).

Due to these limiting factors, the Applicant proposes a self-storage facility for the 3.76 acre lot. This is, in fact, an ideal location and use of the land, as explained below. Because a self-storage facility is neither permitted nor allowed by special exception in the RL-1 zone (see, Ordinance Section 312.2 – Table of Uses), a Variance is required from the Zoning Board of Adjustment.

II. The Variance Criteria:

RSA 674:33 (Supp. 2019) authorizes the Zoning Board of Adjustment to grant a variance from the terms of the Ordinance, provided that the applicant can satisfy the five criteria imposed under state law. An applicant must show that:

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

"Unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (A) No fair and substantial relationships exist between the general public purposes of the ordinance provision and the specific application of the provision to the property; and,
- (B) The proposed use is a reasonable one.

If the criteria in subparagraphs (A) and (B) above are not established, an "unnecessary hardship" will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and that a variance is therefore necessary to enable a reasonable use of it.

RSA 674:33, I(a) and (b).

The Applicant summarizes in this narrative how its proposed use meets each of the five Variance criteria.

III. The Proposed Use Satisfies the Variance Criteria

1. *The variance will not be contrary to the public interest. RSA 674:33, I(a)(2)(A).*

For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the Ordinance. To determine this, the Board must find whether the proposed variance will alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. See, *Chester Rod and Gun Club, Inc. v. Town of Chester*, 152 N.H. 577 (2005). Here, the proposed variance to build a self-storage facility on this physically isolated lot in the Exit 17 area adjacent to Interstate 89 is clearly not contrary to the public interest. A self-storage facility is a very quiet business which only occasionally sees any traffic at all. It will not require on-site water or wastewater disposal. The direct abutters include a large warehouse in the General Commercial zone, a church, and a few houses—all across the roads which surround the Property. Other neighboring properties include a veterinary clinic and a commercial stove sales and distribution business (both in the RL-1 zone). The Applicant plans to demolish the unsightly existing buildings on the Property and to construct new, entirely fenced-in and secure, self-storage units. The area would be landscaped, further enhancing its appearance and uplifting the essential character of what is a de facto mixed use neighborhood.

2. *The spirit of the ordinance is observed. RSA 674:33, I(a)(2)(B).*

As the New Hampshire Supreme Court held in *Malachy Glen Assoc., Inc. v. Town of Chichester*, 155 N.H. 102 (2007), the requirement that the variance not be contrary to the public interest (see above) is related to the requirement that the variance be consistent with the spirit of the ordinance. In deciding whether 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 Lebanon Zoning Ordinance “is enacted for the purpose of promoting the health, safety and general welfare of the community.” See Section 102. (Compare this with the requirement for finding that the variance not be contrary to the public interest—i.e., that the proposed variance “will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.” They are essentially the same.)

Aside from the permitted residential use of single-family homes, the RL-1 zone also permits commercial/non-residential uses, including agriculture, churches, home businesses, public education facilities, public recreation facilities and renewable energy systems, as well as planned developments. See Ordinance Section 312.2. The RL-1 zone also allows other commercial/non-residential uses by special exception, including veterinary facilities, cemeteries, group day care facilities, home based contractor’s yards, radio or TV towers, recreational camping parks, and indoor and outdoor recreational facilities. The Applicant’s proposed use as a self-storage facility is actually much less intensive than most all of these other commercial/non-residential uses which are otherwise permitted or allowed in the RL-1 zone. The proposed use will also serve the stated purpose of the RL-1 zone to provide an area of transition between the denser urban neighborhoods of the R Districts and the more sparsely settled and/or more environmentally sensitive RL-2 and RL-3 areas.

Furthermore, as the City Planning & Development Department acknowledges, the Exit 17 area is essentially its own distinct neighborhood: “The current zoning in the Exit 17 area is primarily General Commercial (GC), one off the City’s most intensive zones, with smaller areas

of Rural Lands One (RL-1), Rural Lands Two (RL-2), and Rural Lands Three (RL-3). The existing development in the area includes a mix of commercial, residential, and public assembly uses." The proposed self-storage facility fits well in this Mixed Use area (which already includes another self-storage facility on the opposite side of the I-89 overpass, a veterinary clinic, and other commercial businesses).

3. *Substantial justice is done. RSA 674:33, I(a)(2)(C).*

Granting the requested variance will do substantial justice. As noted above, the proposed use is consistent with the Exit 17 area's present mixed use. See *Malachy Glen Assoc., Inc. v. Town of Chichester*, 155 N.H. 102 (2007). The benefit of the variance to the Applicant is not outweighed by harm to the general public or to other individuals. The proposed self-storage units present no harm to the general public or to other individuals. This use is appropriate for the area and does not harm abutters. The public would realize no appreciable gain from denying this variance request, but the Applicant will suffer the loss of the reasonable use of the Property if denied.

4. *The values of surrounding properties are not diminished. RSA 674:33, I(a)(2)(D).*

The values of surrounding properties in the Exit 17 neighborhood will not be diminished. If anything, the demolition of the old and dilapidated buildings on the site, the general clean-up of the site, and the construction (after significant landscaping and site work on the physically isolated 3.76 acre lot) of a new self-storage facility will only increase those property values. With appropriate screening, neighbors will probably not even see the storage units. See opinion letter from Melissa Robinson.

There is no economic incentive for the Applicant to renovate or rebuild the existing single-family residence on the Property. Simply put, no one wants to live on a dead end property next to the Interstate highway and busy Route 4A. Without a variance, the existing building cannot realistically be used, and will presumably sit empty and vacant for the foreseeable future, slowly deteriorating and causing further blight upon the neighborhood. Its continued presence will potentially diminish surrounding property values.

5. *Owing to special conditions of the property that distinguish it from other properties in the area, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship based on the two considerations below. RSA 674:33, I(a)(E).*

a. *No fair and substantial relationships exist between the general public purposes of the ordinance provision and the specific application of the provision to the property. RSA 674:33, I(b)(1)(A).*

b. *The proposed use is a reasonable one. RSA 674:33, I(b)(1)(B).*

6. *If the criteria listed above are not established, an unnecessary hardship will nevertheless be deemed to exist if, and only if, owing to special conditions of the*

property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. RSA 674:33 (1)(b)(2).

As discussed above, there are special conditions of the Property which distinguish it from other properties in the area. According to Melissa Robinson, the Property is, in fact, very different from all other properties in the Exit 17 area.

The Property is 3.76 acres in size and surrounded on all sides by public highways (Dartmouth College Highway, Riverside Drive, and the dead-end Fellows Hill Road. It is essentially an "island." The Property seems to have been a site for disposing of unwanted fill when I-89 was constructed. The fill rises considerably higher than the natural contours of the land. There is no physical access to the Property from either Riverside Drive or Dartmouth College Highway due to the existing physical conditions. The only access is on a dead-end road. The Property is also located very close to the elevated section of I-89 by Exit 17. The Property stands in the shadow of the Interstate highway. The traffic noise from I-89 and Dartmouth College Highway is extreme. There is no municipal water or sewerage available here. Therefore, as a so-called "Class 3" lot, the minimum lot area in the RL-1 zone is 3 acres (See Ordinance Section 312.3).

Under the terms of Article III, Section 312 of the Zoning Ordinance, the permitted uses in the RL-1 zone are restricted to Residential (a "One-family dwelling"), with some limited Commercial/Non-Residential uses as well ("Agriculture," "Church," "Home business," "Public education facility," "Public recreation facility" and "Renewable energy system"). A "Manufactured home park" and "Manufactured home subdivision" are also permitted.

However, no fair and substantial relationships exist between the very restricted uses permitted in the RL-1 zone and the application of those uses to the Property (which is located in mixed use Exit 17 neighborhood ("The current zoning in the Exit 17 area is primarily General Commercial (GC), one off the City's most intensive zones, with smaller areas of Rural Lands One (RL-1), Rural Lands Two (RL-2), and Rural Lands Three (RL-3). The existing development in the area includes a mix of commercial, residential, and public assembly uses.")).

Due to the special conditions of the Property, these RL-1 permitted uses (as well as the uses allowed by special exception) are, for all practical purposes, unavailable options to the Applicant. No one would want to live here, let alone build a school or public recreational facility here. This is really an unwanted no-man's land. Even if the existing old house was torn down, as a "Class 3 lot," it could only be replaced by a single one-family dwelling on the 3.76 acre lot. But then again, no one would want to live in there.

The special conditions of the Property make the proposed use as a self-storage facility a very reasonable one. A self-storage facility needs no water or sewer. It is a very quiet use, visited infrequently by storage unit renters who do not care that it is next to busy and noisy highways. The intensity of the use would be much lower than that of the other Commercial/Non-Residential uses that are permitted or allowed in the RL-1 zone.

In short, the Property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

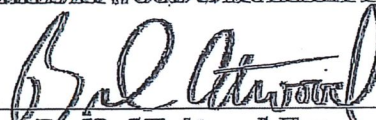
IV. Conclusion

For the reasons set forth above, the Applicant respectfully requests that the Lebanon Zoning Board of Adjustment grant its request for a Variance from the terms of Article III, Section 312 of the Zoning Ordinance in order to construct a self-storage facility on its 3.76 acre parcel located at 92 Riverside Drive in the RL-1 district.

Respectfully submitted,

HUGHES ATWOOD & MULLALLY PLLC,

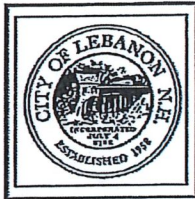
By:



Bradford T. Atwood, Esq.

Email: bta@hsh-law.com

BTB/
Enclosures



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

NOTICE OF DECISION LEBANON ZONING BOARD OF ADJUSTMENT

The Lebanon Zoning Board of Adjustment, at a special meeting held on March 2, 2020, approved the following motion made by Dave Newlove, seconded by Jennifer Mercer, by a vote of 5-0:

"On March 2, 2020, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Brad Atwood, Esq., on behalf of Robert Oakes & John Oakes regarding 92 Riverside Drive (Tax Map 111, Lot 16), zoned RL-1, requesting a Variance from Article III, Section 312.3 of the Zoning Ordinance to construct commercial self-storage units. #ZB2020-08-VAR

I. FINDINGS OF FACT

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

1. The subject lot is a triangular-shaped property located to the east of the I-89 interchange at Exit 17, and is bounded by Fellows Hill Road to the north, Dartmouth College Highway to the southeast, and Riverside Drive to the west. It is currently improved with a one-family dwelling which is accessed from the Fellows Hill Roadside of the property.
2. The applicant proposes to remove the existing one-family dwelling and to construct commercial self-storage units.
3. A self-storage facility is considered a "warehouse" pursuant to the definition of "warehouse" set forth in Appendix A of the Zoning Ordinance. A warehouse is not a permitted use in the RL-1 District per Section 312.2 of the Zoning Ordinance. Consequently, in order to allow a self-storage facility on the property, the applicants must obtain a Variance from the RL-1 District table of uses set forth in Section 312.2.
4. To obtain the requested Variance, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on February 18, 2020.
5. Two neighbors, Charles Almstrom and Tandy Tang, presented concerns regarding the current state of the property, runoff from construction and lighting and night-time access.

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):
Property is triangle and abutted by 2 major roads with no access from those roads and is unsuitable for uses allowed in the RL-1.
 - 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.i)

III. DECISION

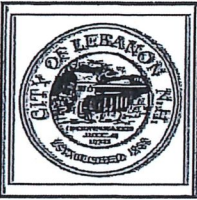
Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 2nd day of March 2020, hereby **GRANTS** the requested Variance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. Limited access, not between the hours of 10 PM and 6 AM.
2. The applicant shall obtain site plan approval from the Planning Board, a building permit, and a certificate of occupancy; shall pay an impact fee pursuant to \$213 of the Zoning Ordinance; and shall comply with all applicable local, state, and federal regulations in the construction and use of the proposed addition.
3. Property will be gated and fenced.
4. The only use of the property will be for self-storage. The existing building will be raised, and the equipment will be removed, and area will be cleaned up.
5. The site plan will be substantially similar to what was presented to the Board.
6. The Applicant shall obtain a site plan approval."

Notice of Decision prepared by: Crystal Adams, Administrative Assistant, April 29, 2020

NOTE: (NHRSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

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CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING PERMIT

On approval by the Zoning 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. See §901.7 of the City of Lebanon Zoning Ordinance. Pursuant to a motion approved by the Board on March 2, 2020 this Zoning Permit is issued for:

ROBERT G. OAKES & JOHN T. OAKES, 92 RIVERSIDE DRIVE (Tax Map 111, Lot 16), zoned RL-1: Applicant proposes a Variance from Article III, Section 312.2 of the Zoning Ordinance to construct commercial self-storage units. #ZB2020-08-VAR

THIS ZONING PERMIT IS GRANTED PURSUANT TO THE ATTACHED ZONING BOARD OF ADJUSTMENT NOTICE OF DECISION, THE REPRESENTATIONS MADE BY OR ON BEHALF OF THE APPLICANT(S) AT THE HEARING, AND THE MATERIALS SUBMITTED BY OR ON BEHALF OF THE APPLICANT(S) FOR CONSIDERATION AT THE HEARING.

Signed: _____

Tim Corwin, Senior Planner

Date of Zoning Board Approval/Issuance of Zoning Permit: March 2, 2020

Zoning Ordinance:

901.6 Time Limit of Permit.

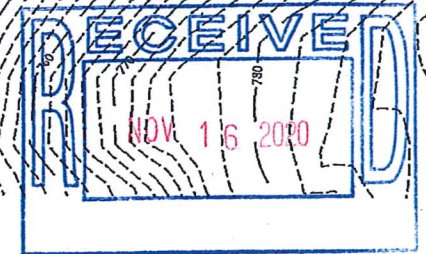
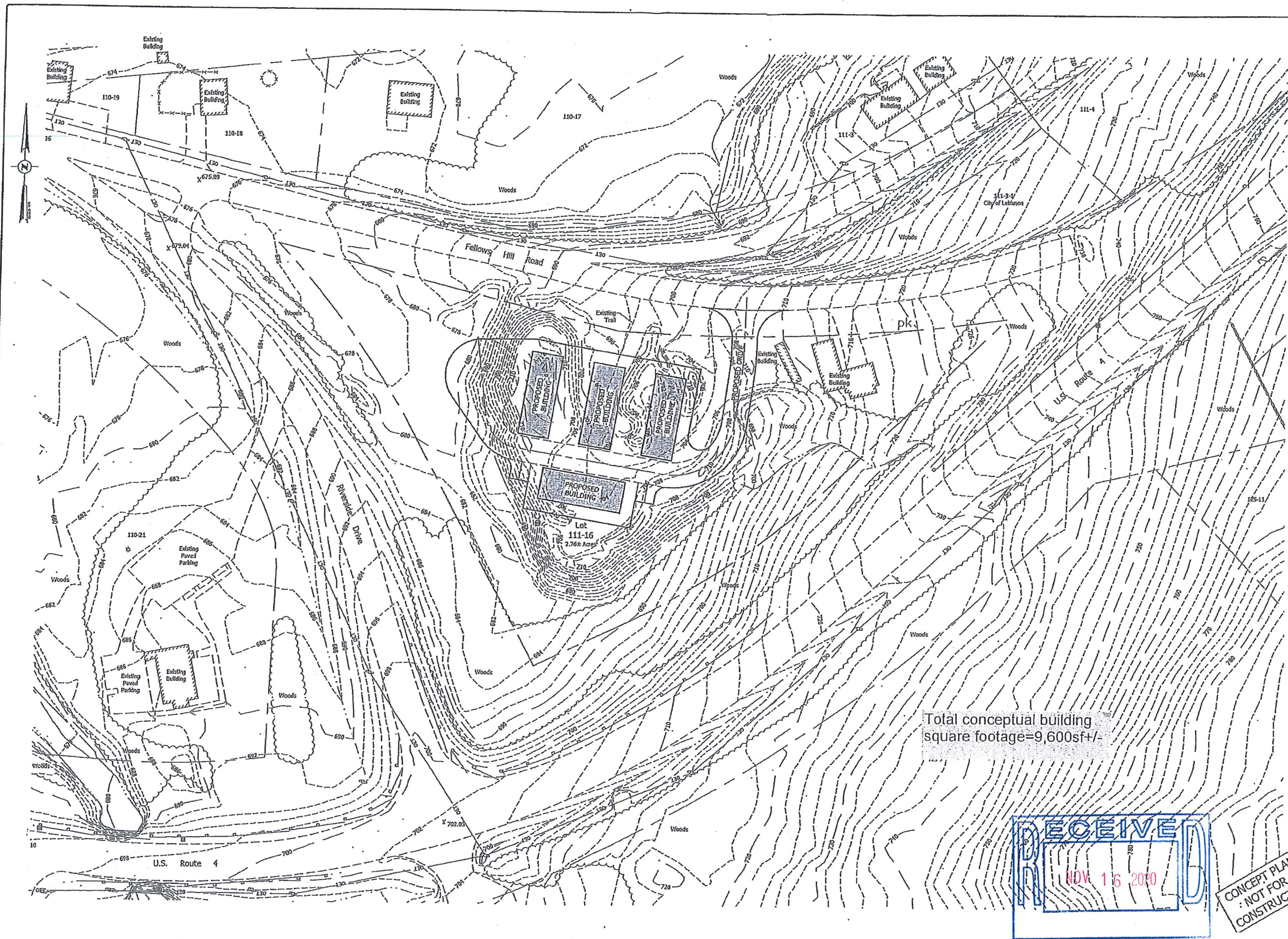
A zoning permit shall become void if construction is not begun thereunder within 2 years from the date of issuance of the permit or grant of a special exception or variance.

901.7 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.

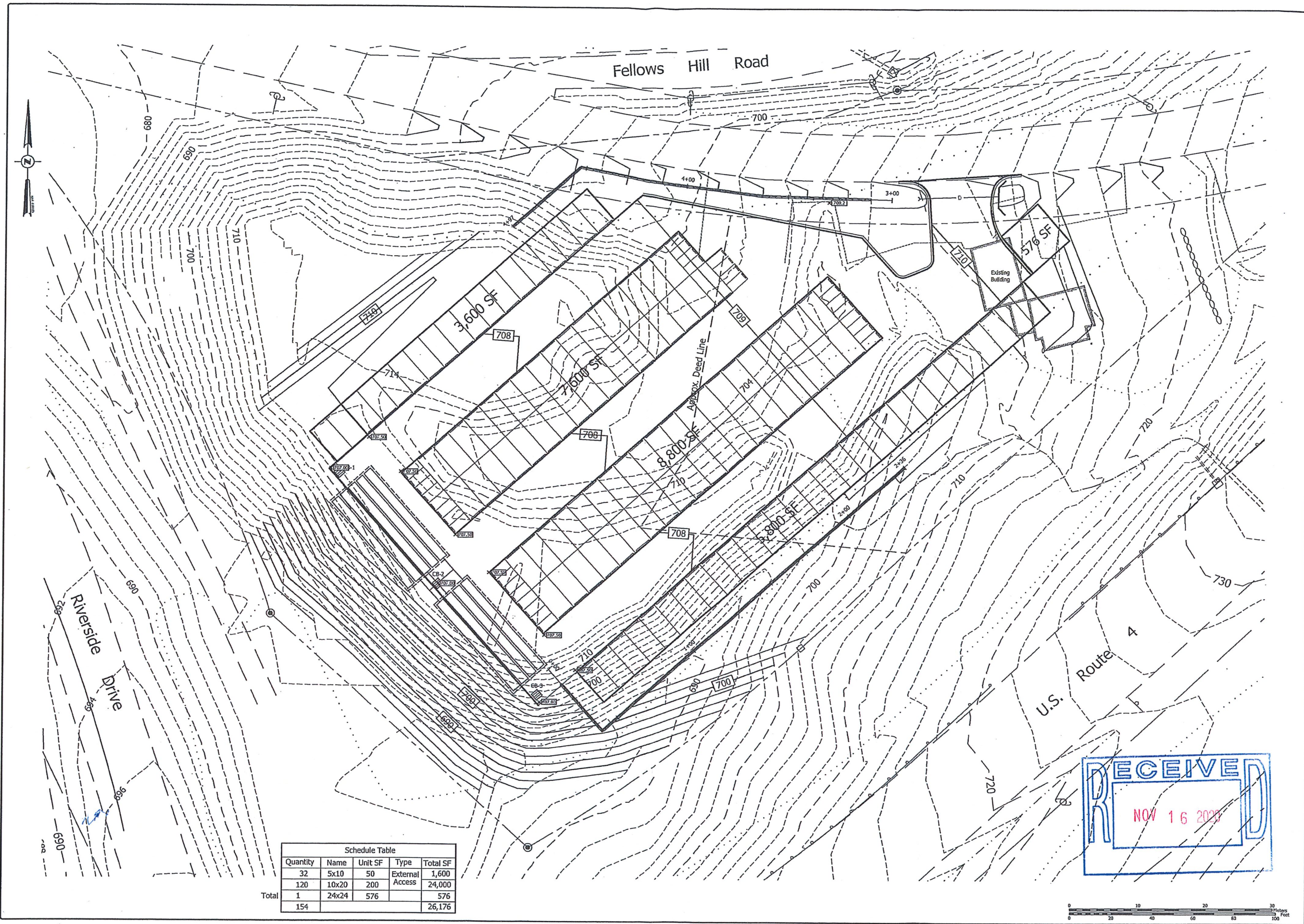
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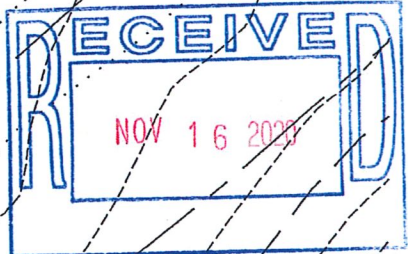


CONCEPT PLAN
NOT FOR
CONSTRUCTION

ADVANCED GEOMATICS & DESIGN 105 BANK STREET • PO BOX 512 LEBANON, NEW HAMPSHIRE 03766 PHONE: (603) 448-6395 E-MAIL: advancedgeomatrics@comcast.net		CONCEPT PLAN FOR LOT 111-16 IN LEBANON, NEW HAMPSHIRE		#	REVISIONS	DATE
SURVEYED: GIS		DESIGNED: DAN		DRAWN: JSH		CHECKED: DAN
DATE: 2/17/20		LOT 111-16		CONCEPT PLAN		C-1
© 2020						



Schedule Table				
Quantity	Name	Unit SF	Type	Total SF
32	5x10	50	External Access	1,600
120	10x20	200		24,000
1	24x24	576		576
Total	154			26,176



CONCEPT PLAN
FOR
LOT 111-16
IN
LEBANON, NEW HAMPSHIRE

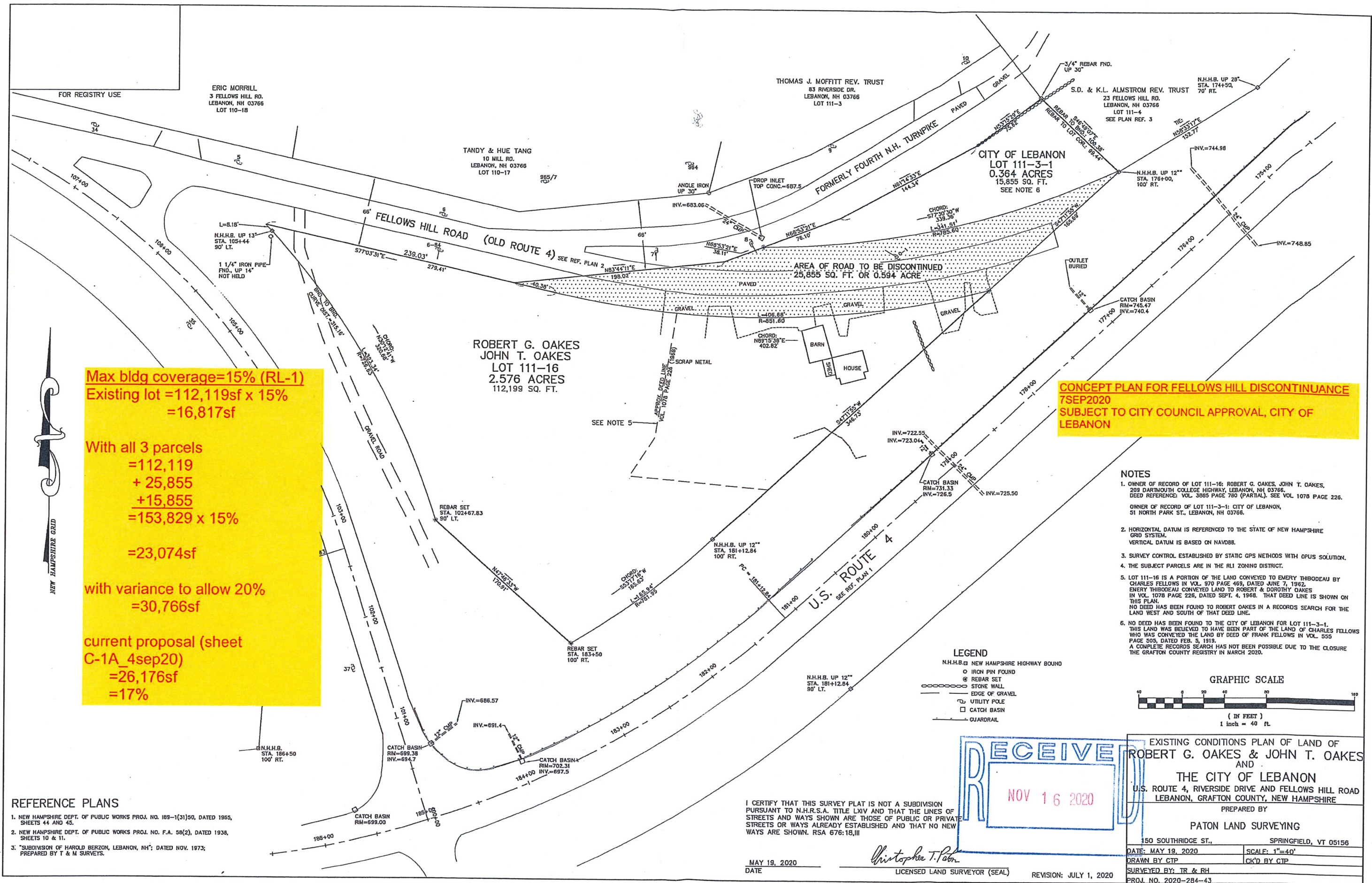
ADVANCED GEOMATICS & DESIGN
105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766
PHONE: (603) 448 6295
E-MAIL: advancedgeomatics@comcast.net

SURVEYED: PATON SURVEYS
DESIGNED: DAN
DRAWN: KWJ
CHECKED: DAN
DATE: 9/4/20

LOT
111-16
CONCEPT
PLAN
C-1A

© 2020
ADVANCED GEOMATICS & DESIGN
DWG: 20001120001-PL6

REVISIONS	DATE



Max bldg coverage=15% (RL-1)
Existing lot =112,119sf x 15%
=16,817sf

With all 3 parcels
=112,119
+ 25,855
+15,855
=153,829 x 15%
=23,074sf

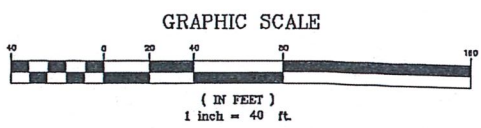
with variance to allow 20%
=30,766sf

current proposal (sheet
C-1A_4sep20)
=26,176sf
=17%

CONCEPT PLAN FOR FELLOWS HILL DISCONTINUANCE
7SEP2020
SUBJECT TO CITY COUNCIL APPROVAL, CITY OF
LEBANON

- NOTES
1. OWNER OF RECORD OF LOT 111-16: ROBERT G. OAKES, JOHN T. OAKES, 208 DARTMOUTH COLLEGE HIGHWAY, LEBANON, NH 03766. DEED REFERENCE: VOL. 3865 PAGE 788 (PARTIAL). SEE VOL 1078 PAGE 226.
 2. HORIZONTAL DATUM IS REFERENCED TO THE STATE OF NEW HAMPSHIRE GRID SYSTEM. VERTICAL DATUM IS BASED ON NAVD83.
 3. SURVEY CONTROL ESTABLISHED BY STATIC GPS METHODS WITH OPUS SOLUTION.
 4. THE SUBJECT PARCELS ARE IN THE RLI ZONING DISTRICT.
 5. LOT 111-16 IS A PORTION OF THE LAND CONVEYED TO EMERY THIBODEAU BY CHARLES FELLOWS IN VOL. 970 PAGE 469, DATED JUNE 7, 1962. EMERY THIBODEAU CONVEYED LAND TO ROBERT & DOROTHY OAKES IN VOL. 1078 PAGE 226, DATED SEPT. 4, 1968. THAT DEED LINE IS SHOWN ON THIS PLAN. NO DEED HAS BEEN FOUND TO ROBERT OAKES IN A RECORDS SEARCH FOR THE LAND WEST AND SOUTH OF THAT DEED LINE.
 6. NO DEED HAS BEEN FOUND TO THE CITY OF LEBANON FOR LOT 111-3-1. THIS LAND WAS BELIEVED TO HAVE BEEN PART OF THE LAND OF CHARLES FELLOWS WHO WAS CONVEYED THE LAND BY DEED OF FRANK FELLOWS IN VOL. 555 PAGE 505, DATED FEB. 5, 1919. A COMPLETE RECORDS SEARCH HAS NOT BEEN POSSIBLE DUE TO THE CLOSURE OF THE GRAFTON COUNTY REGISTRY IN MARCH 2020.

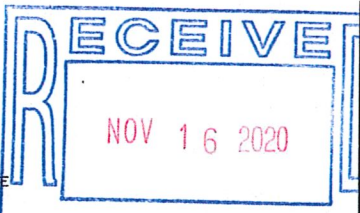
- LEGEND
- N.H.H.B. NEW HAMPSHIRE HIGHWAY BOUND
 - IRON PIN FOUND
 - ⊙ REBAR SET
 - STONE WALL
 - EDGE OF GRAVEL
 - ⊕ UTILITY POLE
 - CATCH BASIN
 - GUARDRAIL



- REFERENCE PLANS
1. NEW HAMPSHIRE DEPT. OF PUBLIC WORKS PROJ. NO. 189-1(31)50, DATED 1965, SHEETS 44 AND 45.
 2. NEW HAMPSHIRE DEPT. OF PUBLIC WORKS PROJ. NO. F.A. 58(2), DATED 1938, SHEETS 10 & 11.
 3. "SUBDIVISION OF HAROLD BERZON, LEBANON, NH"; DATED NOV. 1973; PREPARED BY T & M SURVEYS.

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO N.H.R.S.A. TITLE LXIV 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. RSA 676:18,III

MAY 19, 2020
DATE
CHRISTOPHER T. PATON
LICENSED LAND SURVEYOR (SEAL)
REVISION: JULY 1, 2020



EXISTING CONDITIONS PLAN OF LAND OF
ROBERT G. OAKES & JOHN T. OAKES
AND
THE CITY OF LEBANON
U.S. ROUTE 4, RIVERSIDE DRIVE AND FELLOWS HILL ROAD
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE

PREPARED BY
PATON LAND SURVEYING
150 SOUTHDRIVE ST., SPRINGFIELD, VT 05156

DATE: MAY 19, 2020 SCALE: 1"=40'
DRAWN BY: CTP CK'D BY: CTP
SURVEYED BY: TR & RH
PROJ. NO. 2020-284-43