



**LEBANON ZONING BOARD OF ADJUSTMENT
JUNE 5, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

1. Call to Order

2. Approval of Minutes

A. April 3, 2023

3. Public Hearing Items

A. **Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class 1:** Applicant proposes to demolish an existing garage and construct in its place a 24 x 30 detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-09-VAR**

B. **Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE**

C. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD**

4. Staff Comments

5. Adjournment

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to [LebanonNH.gov/Live](https://lebanonnh.gov/Live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

If you have any questions or would like to view the files for the application identified above, please contact the Planning & Development Department by sending an e-mail to planning@lebanonnh.gov, or by calling 603-448-1457, or by visiting the Planning and Development Office located in City Hall during regular work hours, Monday through Thursday, 7AM to 5PM. The application materials will also be posted to the City's website at [LebanonNH.gov/Agendas](https://lebanonnh.gov/Agendas).

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, April 3, 2023
7:00 PM**

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

MEMBERS ABSENT: Catherine Hembree (Alt)

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

A. March 6, 2023

Ms. Barkley was given voting privileges for this motion.

Mr. Nash MOVED to approve the March 6, 2023, Minutes as presented in the April 3, 2023, packet with amendments.

Seconded by Mr. Katz.

Amendments: Page 4, Line 21: Remove ‘maintained’ and Add ‘maintenance’.

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

3. PUBLIC HEARING ITEMS

A. KS & LP, 3 Union Street (Tax Map 92, Lot 185), zoned R-2 Class 1: Applicant proposes to construct an attached carport to an existing dimensionally non-conforming structure. Applicant requests a 12’ right-side yard setback variance and a 2.4% maximum building coverage variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed carport +/- 3 ft from the right-side lot line where the minimum required setback is 15’ and the maximum building coverage is 25% as required by Section §309.3 of the Zoning Ordinance. **ZB2023-07-VAR**

Peter Scoppettone, Katherine Scoppettone and Sam Scoppettone appeared on behalf of the application. On November 13 they purchased the property with the intention of completely renovating everything as it was in disrepair and planning to sell it again. In the past Peter has repaired several properties in this area. The access onto the property was a section of asphalt that was only 20 feet deep from the sidewalk, where only two vehicles could park. This created a lot of on-street parking and parking has been an issue on the street. They believe creating off-street parking would be an improvement. They would like to add a car port attached to the house on the back of the property. In order to fit a two-space carport, a 19-foot-wide total carport would be necessary to provide steps to the home. The neighbor who would be impacted is in support of this work. With the addition of the carport, the footprint coverage would increase by around

2%. The car port would not impact the site lines of the neighbors. This is in an area where the lots were created before zoning and the lots are small. There is a shed that they will leave up.

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

Mr. Nash MOVED on April 3rd 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Peter Scoppettone, Katherine Scoppettone and Sam Scoppettone regarding 3 Union Street (Tax Map 92, Lot 185), zoned R-2. The Applicant requests a 12' right side yard dimensional variance and a 2.7% maximum building coverage variance from section §309.3 to construct an attached carport to an existing dimensionally non-conforming structure +/-3 ft. from the right-side property line.

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 one-family dwelling constructed in 1860 per the City Assessor's records. At 6,098 sq. ft., the lot is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-2 District.
2. The applicants propose to construct an attached 19' by 18' carport to an existing dimensionally non-conforming structure. The carport is proposed to be located 3 ft. from the right-side lot line shared with the abutting property at 5 Union (Tax Map 92, Lot 186) whereas a minimum unobstructed side yard of 15' is required.
3. In the R-2 District, Class 1 lots must maintain a minimum side yard unobstructed by buildings and structures of 15' pursuant to Section §309.3 of the Zoning Ordinance. Therefore, a 12' dimensional variance is required to permit construction of the proposed carport, which will encroach approximately 12' into the minimum required 15' side yard.
4. In the R-2 District, Class 1 lots must maintain a maximum building coverage of 25% pursuant to section §309.3 of the Zoning Ordinance. Therefore, a 2.7% maximum building coverage variance is required to permit construction of the proposed carport, which will exceed the 25% maximum by 2.7%.
5. To obtain the requested Variance from section §309.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b).
6. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on March 7th 2023.
7. A letter of support was received from the abutting property owner to the South.
8. No other input was received 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 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):
6. 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)
7. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of April, 2023**, hereby **GRANTS** the requested Variances from section §309.3 of the Zoning Ordinance to allow the construction of a carport at 3 Union Street (Tax Map 92, Lot 185) to be located +/- 3 ft. from the side property line, and exceeding the maximum building coverage by 2.7% as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Katz.

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

- B. Stevens Blanchard & Amanda Spencer, 43 Elm Street West (Tax Map 86, Lot 39, Plot 100), zoned R-2 Class 1:** Applicant proposes to replace and connect the front two porches, thereby adding 30 sq ft to an existing dimensionally non-conforming structure. The Applicant requests a Special Exception for the expansion of a nonconforming building pursuant to section §703.1A of the Zoning Ordinance to reconstruct and expand an existing porch +/- 19 ft from the front lot line where the minimum required front yard setback is 20' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-08-SE**

Amanda Spencer and Stevens Blanchard appeared on behalf of the application. This is a very old house, built around the 1900s's. It has two porches. The one porch that was in disrepair has mostly been taken down. They would like to rebuild it in the same footprint and add a connection between the two existing porches on their home. The porch is less than 20 feet from the property line. There are no neighbors who would be impacted by the addition. The Board did not have any questions.

1 **Chair Koppenheffer opened the Public Hearing and hearing no comments, the Public Hearing was**
2 **closed.**

3
4 The application is reasonable, and no one would be negatively impacted.

5
6 *Mr. Nash MOVED on April 3rd 2023, at a duly-noticed meeting of the Lebanon Zoning Board of*
7 *Adjustment, there appeared Amanda Spencer and Stevens Blanchard regarding 43 Elm Street West*
8 *(Tax Map 86, Lot 39, Plot 100) zoned R-2: Applicant requests a Special Exception per Section 703.1 of*
9 *the Zoning Ordinance to replace and connect the front two porches that are pre-existing legal non-*
10 *conforming to the minimum required 20 ft. front setback. ZB2023-08-SE.*

11
12 **I. FINDINGS OF FACT**

13
14 Based on testimony given, application materials presented, and supporting documents submitted, the
15 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 16
17 1. The subject property is improved with a one-family dwelling constructed in 1900. The house
18 contains two front porches in need of repair. As shown on the plot plan provided by the applicant,
19 the porches are 19' from the front lot line along Elm Street West and, therefore, is non-
20 conforming to the minimum required front yard of 20 ft.
- 21
22 2. As shown on the plot plan provided by the applicant, the applicant proposes to re-construct the
23 two porches and connect them with a 30 sq. ft. addition that interconnects the porches. The
24 addition will be located at least partially within the 20 ft. front setback, but no closer to the front
25 lot line than the existing garage.
- 26
27 3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-2 District must
28 maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft.
29 See Section 309.3 of the Zoning Ordinance. Section 703.1 of the Zoning Ordinance allows the
30 expansion of "any increase in the footprint and/or volume of the non-conforming part of the
31 building or structure," by Special Exception from the Zoning Board of Adjustment.
- 32
33 4. In order to grant a Special Exception for the proposed expansion, the Board must determine that
34 the proposal meets the criteria set forth in Section 703.1.A of the Zoning Ordinance. Per Section
35 703.1.A.3, the Board must also determine that the proposal meets the general Special Exception
36 criteria set forth in Section 801.3.
- 37
38 5. The applicant has submitted testimony addressing the Section 703.1.A and Section 801.3 criteria
39 in an application received by the Planning and Development Department on March 13th 2023.
- 40
41 6. There are no known existing zoning violations on the property.
- 42
43 7. No one from the public spoke for or against the proposal.

44
45 **II. CONCLUSIONS OF LAW**

46
47 As a result of the above findings of fact and based on testimony given, application materials presented,
48 and supporting documents submitted, the Board concludes the following with respect to the Special
49 Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §703.1.A of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements §703.1.A **are** met (§801.3.B):
 - The reasonable use of abutting properties **is not** adversely affected by the proposed expansion. (§703.1.A.1)
 - The proposed expansion will not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance. (§703.1.A.2)
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C)
4. The character of the area **will not** be adversely affected. (§801.3.D)
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)
9. The general welfare of the City **will** be protected. (§801.3.I)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of April, 2023, hereby **GRANTS** the requested Special Exception per Section 703.1 of the Zoning Ordinance to allow the expansion of a non-conforming building at 43 Elm Street West (Tax Map 86, Lot 39, Plot 100) as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit, and shall comply with all applicable local, state, and federal regulations in the construction of the proposed addition.

Seconded by Mr. Newlove.

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

Chair Koppenheffer abstained because he was not present at the meeting.

4. STAFF COMMENTS

Mr. Reichert was officially named Staff member of the Zoning Board. Going forward there may be some updates or changes to motions to help make the packet clear and help members prepare for the upcoming meeting. Members will have time to get answers to any questions they may have. He hopes to support the Board in any way that is needed. The goal is to make sure that decisions are made correctly and will be sustained during any appeal.

1
2 **5. ADJOURNMENT**
3

4 *Mr. Newlove MOVED to adjourn the meeting at 7:28 PM.*
5 *Seconded by Mr. Nash.*
6

7 **The Vote on the Motion was approved (5-0).*
8

9 Respectfully submitted,
10 Linda Billings
11 Recording Secretary



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

Staff Memorandum – ZB2023-09-VAR

June 5th 2023 Regular Meeting

JOSHUA J TUOHY & MEGGIN L DOSSETT

7 Riverdale Parkway (Tax Map 93, Lot 17)

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:
Variance from §309.3

Location:
7 Riverdale Parkway
Tax Map 93, Lot 17

Applicant/Property Owner:
Joshua J Tuohy & Meggin I Dossett

Zoning District:
Residential Two – Class 1 (R-2)

Property Size:
+/- 0.35 acres (+/- 15,246 sq. ft.)
(per the City Assessor's records;
property is conforming to the min.
required 10,000 sq. ft. lot size in the
R-2 Class 1 District per §309.3)

Overlay Districts:
DES - Shoreland Protection

Previous ZBA Action (since 1995):
None

Other Approvals Required:
Building Permit
DES – Shoreland Protection

Attachments:
Application
GIS and street view photos

HEARING NOTICE

KS & PS Properties, LP, 3 Union Street (Tax Map 92, Lot 185), Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class 1: Applicant proposes to demolish an existing garage and construct in its place a 24' x 30' detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. ZB2023-09-VAR

BACKGROUND

The property is improved with a one-family dwelling constructed in 1925. Per the City Assessor's records and is non-conforming to the R-3 Class 1 District minimum lot dimensions require 10,000 sq. ft. with 75' of frontage. The lot is 15,246 sq. ft. and is 80' wide and is therefore a conforming lot of record. It appears the existing home and garage are non-conforming by dimension to the required minimum 15' side-yard.

PROPOSAL

The applicant proposes to demolish the current garage and construct in its place a detached 24' x 30' garage with a finished room above the garage from the right-side lot line shared with 5 Riverdale (Tax Map 93, Lot 18). The right-side yard variance is required to allow the construction of the garage within the minimum required 15 ft. side yard.

ZONING ORDINANCE VARIANCE REQUIREMENTS

To obtain the requested Variance from Section §309.3, the applicant must demonstrate compliance with each of the five Variance Criteria as set forth in Section §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are state 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 the Board must determine that 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 surrounding property 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.

APPLICATION AND SUPPORT STATEMENT

The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on May 2nd 2023 (see attached).

STAFF COMMENTS

The application is a simple request to provide additional protected off-street parking and living space for the property. The neighborhood in which this house resides is an established, tightly packed streetscape with minimal on-street parking.

Staff has several comments about the application:

1. The applicant provides little to no written testimony or evidence concerning the legally required criteria. Stating "True" does not provide the Board with the necessary evidence from which to draw a conclusion. Additional dialogue with the applicant is necessary to establish evidentiary justification that the application meets all the requirements for the granting of a variance.
2. Secondly, the use of the finished space above the garage should be explored. Should the applicant intend to use the finished space as an ADU now or in the future should be clarified. If there is intent to use the finished space as an ADU additional permits may be required pursuant to Section 610: *"By special exception, the Zoning Board of Adjustment may allow an ADU to be located in a detached structure on a lot that is non-conforming to the minimum lot size and/or to be allowed in an existing accessory structure that is legally non-conforming to the applicable minimum yard requirements."* Further there are proportional restrictions that must be met by the ADU in order to qualify for a permit. Establishing that the unit will be used in a specific manner is critical to the permitting process.
3. A floor plan of the finished space above the garage is not included in the application. A request for a floor plan will help the Board understand the intent of the Applicant relative to the ADU and also the need for conditioned space, plumbing and electrical conditions. If the unit includes separate kitchen, bathroom and living spaces it must be permitted as an ADU.

ATTACHEMENTS

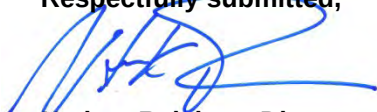
Figure 1. Street View of Subject Property.

Figure 2. GIS View of Subject Property

Attachment 1. Application and Materials

Attachment 2. Decision Template

Respectfully submitted,

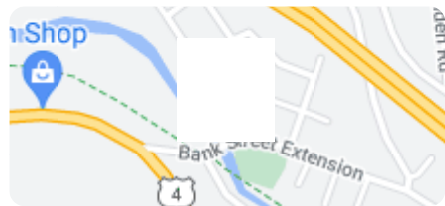


Nathan Reichert, Director
Planning and Development Department
Zoning Administrator

Google Maps 7 Riverdale Pkwy



Image capture: Jul 2013 © 2023 Google





Property Information	
Property ID	93-17
Location	7 RIVERDALE PKWY
Owner	TUOHY, JOSHUA J



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

**Property Information**

Property ID 93-17
Location 7 RIVERDALE PKWY
Owner TUOHY, JOSHUA J

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

**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: Josh Touhy Meggin Dossett TEL.#: 603 398 8900
 MAILING ADDRESS: 7 Riverdale Parkway Lebanon NH 03766
 E-MAIL ADDRESS: meggin.Dossett@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Jeff Curtis TEL.#: 802 356 5645
 MAILING ADDRESS: 63 Crafts Ave West Lebanon NH 03784
 E-MAIL ADDRESS: JC-Builder1983@yahoo.com

PROJECT LOCATION:

TAX MAP #: 93 LOT#: 17 PLOT #: — ZONE: R3
 STREET ADDRESS OF PROJECT: ~~8 West~~ 7 Riverdale Parkway
 IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☐ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

tear down 20x20 garage
 Build 24x30 garage with Room above

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:

 PROPERTY OWNER DATE: 4.23.23

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: 4.23.23

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
5/2/23	93/17	ZB2023-09-			

VAR

(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) _____
Section(s) _____ 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;

True

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

True

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

True

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

True

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

(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.

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.

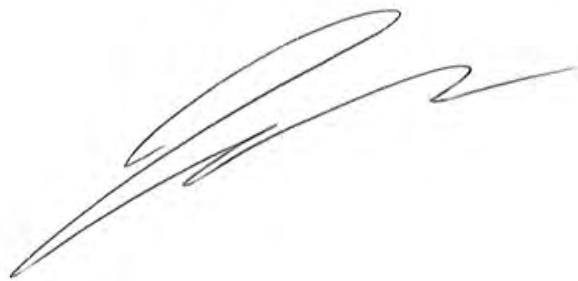
****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

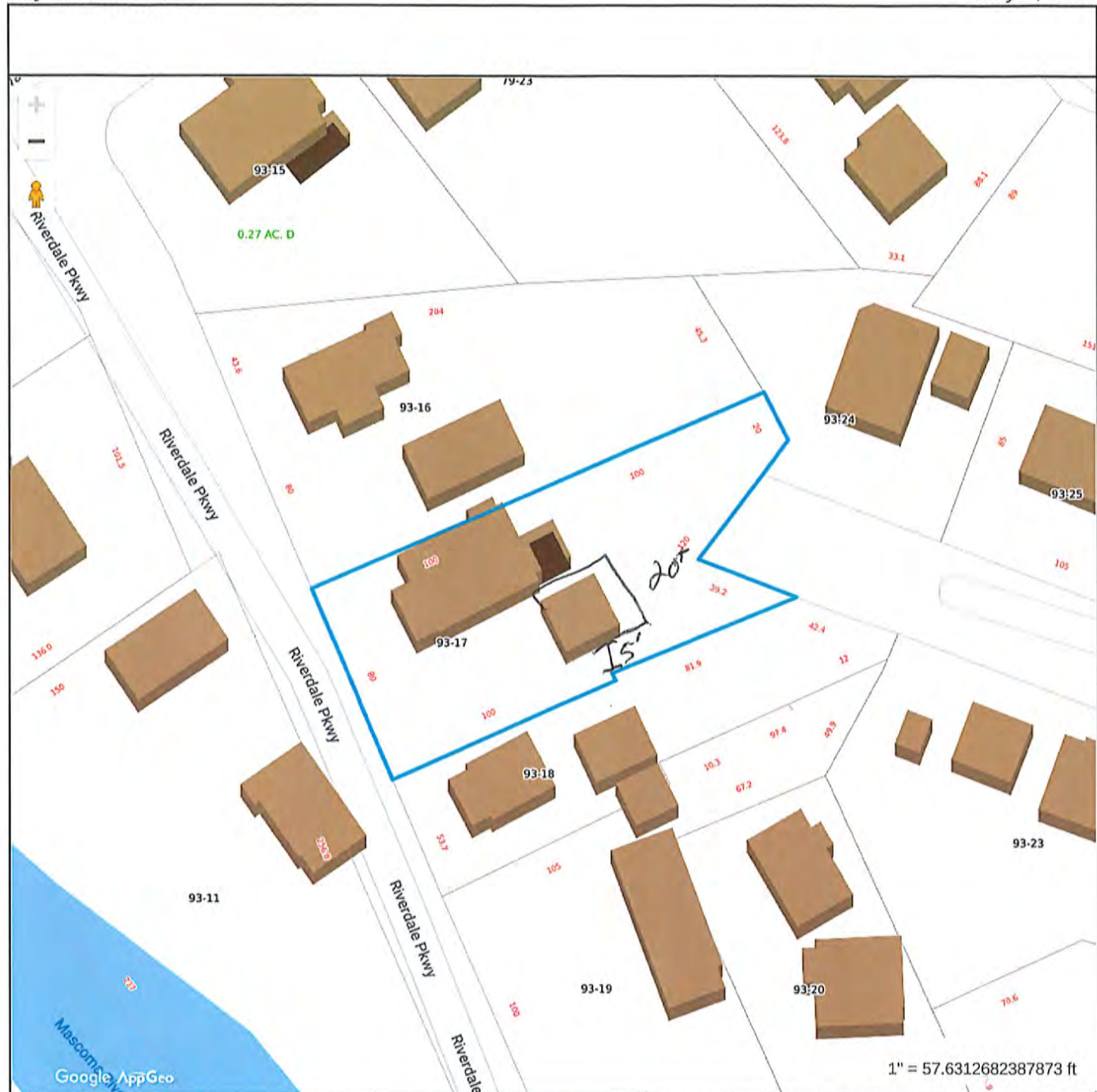
Statement of Intent:

"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 *Bocchia 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)."

Tear down Existing 20x22 Garage,
Build new 24x30 Garage with family
room above. Garage will extend 8' further
towards Rear of Property and 4' Closer
to Primary residence. Building will be a
Single Story Building with Attic truss and
one dormer on Roof Side facing Primary
Residence. Picture of desired New garage Attached.

Jeff Curtis





1" = 57.6312682387873 ft

Property Information

Property ID 93-17
 Location 7 RIVERDALE PKWY
 Owner TUOHY, JOSHUA J



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
 Data updated 11/18/2018

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.

6:30



* See attached list

CERTIFIED NOTIFICATION LIST

THE CITY OF LEBANON IS REQUIRED UNDER NH RSA 672:3 TO NOTIFY THE FOLLOWING PERSONS OF PUBLIC HEARINGS BEFORE THE PLANNING BOARD: ALL ABUTTERS; THE APPLICANT; PROPERTY OWNER; HOLDER OF CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTION(S); AND EVERY ENGINEER, ARCHITECT, LAND SURVEYOR, OR SOIL SCIENTIST WHOSE PROFESSIONAL SEAL APPEARS ON ANY PLAT SUBMITTED TO THE BOARD.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
PROPERTY OWNER:	APPLICANT:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:

ID	Site Address	Owner Name	Owner Address	Owner City	State	Zip
93-11	6 RIVERDALE PKWY	MACGREGOR, OLIVE C TTEE	6 RIVERDALE PKWY	LEBANON	NH	03766
93-16	15 RIVERDALE PKWY	CANTLIN, BENJAMIN P	15 RIVERDALE PKWY	LEBANON	NH	03766
93-18	5 RIVERDALE PKWY	ZEILINGER, DANA E	5 RIVERDALE PKWY	LEBANON	NH	03766
93-24	1 BENTON ST	MADISON, DAVID J & SUZANNE	1 BENTON ST	LEBANON	NH	03766
93-17	7 RIVERDALE PKWY	TUOHY, JOSHUA J	7 RIVERDALE PKWY	LEBANON	NH	03766

FEE SCHEDULE
ZONING BOARD OF ADJUSTMENT
(Revised 7/25/2022, postage increase)

SPECIAL EXCEPTION:

		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.57 per certified notice x _____ notices	
TOTAL DUE		\$

VARIANCE:

		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.75 per certified notice x 6 notices	\$28.50
TOTAL DUE		\$ 278.50

APPEAL OF AN ADMINISTRATIVE DECISION:

		TOTALS
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.57 per certified notice x _____ notices	
TOTAL DUE		\$

***REHEARING:**

		TOTALS
*ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.57 per certified notice x _____ notices	
TOTAL DUE		\$

* Fees are only required if the motion for rehearing is granted by the board.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT VARIANCE

Decision Template - ZB2023-09-VAR June 5th 2023 Regular Meeting JOSHUA J TUOHY & MEGGIN L DOSSETT 7 Riverdale Parkway (Tax Map 93, Lot 17)

DRAFT MOTION for:

Agenda Item 3.A

Case ZB2023-09-VAR

Request for Dimensional Variance from Section §309.3

Motion made by: _____

On June 5th 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared _____ regarding 7 Riverdale Parkway (Tax Map 93, Lot 17), zoned R-3. The Applicant requests a 10' right side yard dimensional variance from section §309.3 to construct a detached garage with a finished room above +/-5 ft. from the right-side property line.

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 one-family dwelling constructed in 1860 per the City Assessor's records. At 15,246 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.
2. The applicants propose to construct a 24' x 30' detached garage with a finished room above. The garage is proposed to be located 5 ft. from the right-side lot line shared with the abutting property at 5 Riverdale Parkway (Tax Map 93, Lot 18) whereas a minimum unobstructed side yard of 15' is required.
3. In the R-3 District, Class 1 lots must maintain a minimum side yard unobstructed by buildings and structures of 15' pursuant to Section §309.3 of the Zoning Ordinance. Therefore, a 10' dimensional variance is required to permit construction of the proposed garage, which will encroach approximately 10' into the minimum required 15' side yard.
4. To obtain the requested Variance from section §309.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b).
5. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on May 2nd 2023.

6. _____

7. _____

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 / will** be contrary to the public interest. (Section 801.2.A.1)

2. The spirit of the ordinance **is / is not** observed. (Section 801.2.A.2)

3. Substantial justice **is / is not** done. (Section 801.2.A.3)

4. The values of surrounding properties **are not / are** diminished. (Section 801.2.A.4)

5. Literal enforcement of the provisions of the ordinance **would / would not** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):

6. There **is not / is** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)

7. The proposed use **is / is not** 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 **5th day of June, 2023**, hereby **GRANTS / DENIES** the requested Variances from section §309.3 of the Zoning Ordinance to allow the construction of a construct a 24' x 30' detached garage with a finished room above locate +/- 5' from the right-side yard abutting the property at 5 Riverdale Parkway (Tax Map 93, Lot 18) where a minimum unobstructed side yard of 15' is required as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

2. _____

3. _____

Motion seconded by: _____

Vote: _____



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

Special Exception

Staff Memorandum – ZB2023-12-SE

June 5th 2023 Regular Meeting

Catherine Patch

5 Mack Ave (Tax Map 73, Lot 43), Zone R3 Class1

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Special Exception Uses required by Section §310.

Location:

5 Mack Ave
(Tax Map 73, Lot 43)

Applicant/Property Owner:

Catherine A. Patch

Zoning District:

Residential Three – Class 1 (R-3)

Property Size:

+/-0.23 acres (+/- 10,018.8 sq. ft.)
(per the City Assessor's records;
property is conforming to the min.
required 10,000 sq. ft. lot size in the
R-3 Class 1 District per §309.3)

Overlay Districts:

None

Previous ZBA Action (since 1995):

None

Other Approvals Required:

Building Permit

Attachments:

Application
GIS and street view photos
Complaint Documents

HEARING NOTICE

Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3

Class1: A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE**

BACKGROUND

The property is improved with a one-family dwelling constructed in 1920. Per the City Assessor's records and is conforming to the R-3 Class 1 District minimum lot dimensions require 10,000 sq. ft. with 75' of frontage. The lot is 10,018 sq. ft. and is 100' wide and is therefore a conforming lot of record.

The existence of an unpermitted apartment and the operation of an unpermitted boarding house were alleged in multiple complaints received by the Zoning Office.

PROPOSAL

The applicant proposes to: "Single Family to a duplex with no construction required".

ZONING ORDINANCE REQUIREMENTS

SPECIAL EXCEPTION

Class 1 lots (lots that are served by municipal sewer and water) in the R-3 District require a Special Exception for Residential Two-family dwelling by conversion of existing one-family dwelling as required in section §310 pursuant to §801.3 Special Exception. A Special Exception requires that the Zoning Board make the following findings in order to necessitate an approval:

A.3 Special Exceptions.

A. 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:

1. The Special Exception is specifically authorized by a provision of this Ordinance.
 - a. *Note: The Special Exception is authorized by §310.0 of the Zoning Ordinance.*
2. All special conditions required of the special exception have been met.
 - a. *Note: There are no additional special exception requirements required by §310.0 of the Zoning Ordinance.*
3. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
 - a. *Note: Staff is aware of potential Zoning Ordinance violations on the property. See Staff Comments*
4. The character of the area shall not be adversely affected.
5. No hazard or nuisance will be created.
6. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
7. Granting the special exception will not result in undue municipal expense.
8. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
9. The general welfare of the City will be protected.

APPLICATION AND SUPPORT STATEMENT

The applicant has submitted testimony and evidence seeking to address required findings in Section §801.3 Special Exceptions criteria in an application received by the Planning & Development Department on May 18th 2023 (see attached).

STAFF COMMENTS

The application is to posthumously convert the use of the property from a One-Family Dwelling to a Two-family dwelling. The case arrives after the Planning and Development Department received multiple complaints from individuals who are presumed to be both tenants and neighbors. The Zoning Office reached out to the Landlord about possible violations after receiving multiple complaints about two concerns: the operation of a two-family dwelling and the possible operation of a lodging house.

Floor Plan and Operations Plan

The Board may seek further details on the proposed operation of the entire facility by requiring that the Applicant submit a floor plan and operations plan for the entire facility.

Two-Family Dwelling

The application for this Special Exception addresses the need to posthumously permit a Two-family use that has been in place since at least 2020. The Special Exception Findings must all be met for the Application to be approved. One required finding must be addressed by the Applicant that:

“3. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.”

The complaints testify that there have been up to five unrelated tenants in the main apartment of the property. Given that the operation of a Lodging House is not a permissible use in the R-3 zone the use must be neutered or a use variance granted. The Applicant has not addressed this matter with this application. Additionally given that multiple complaints have been received by the Zoning Office concerning the operation of this facility the Board may find it difficult to conclude that:

"4. The character of the area shall not be adversely affected."

And further that "5. No hazard or nuisance will be created."

Given that the Applicant has potentially created a hazard by changing the use with out the benefit of permits and is likely not in compliance with Building and Fire Code Safety requirements the Board must be assured by the Application that all manner of hazard must be rectified. Finally, the Board may wish to deeply consider the final findings and determine if this application meets the standards:

"8. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance."

9. The general welfare of the City will be protected."

Operation of a Lodging House

(Zoning Ordinance definition: "*LODGING HOUSE: Any dwelling in which living accommodations without individual kitchen facilities are rented to five (5) or more non transient guests. A boarding or rooming house shall be deemed a lodging house*"). A two-family dwelling is permissible under §310.0 which generates this application for a Special Exception. A Lodging House is not a permissible use within the R-3 zoning district. The Applicant has not addressed Staff's concern about the possible operation of a Lodging House with any proposed plan of operation or a use variance application that would permit such an activity. In the absence of a resolution of this concern the Board may fall short of finding that this permit application addresses all Zoning Violations present on the property.

Fire Code Requirements

As a special condition of any approval, a condition that the applicant meets all aspects of the Building and Fire Code is strongly recommended to ensure life safety requirements for the building are met. The operation of a Lodging House or similar configuration is a commercial operation and likely triggers substantial fire code upgrades to the property. Staff recommends that any approval be conditioned with a requirement that the Applicant apply for and receive approval for all applicable Building and Fire Code permits for the facility. The Fire Code may require fire safety improvements to be made including the installation of common alarms, fire separation measures and sprinklers for any use similar to a Lodging House Use. The Zoning Board does not have jurisdiction of the specifics of how the Fire Code is met, that authority rests with the Fire Department. However, a condition that all life safety measures must be met for this building prior to the issuance of a Certificate of Occupancy is clearly a prudent condition as the Applicant has operated the facility for some time with out the benefit of applicable permits and in a manner that has potentially put residents at risk.

ATTACHEMENTS

Figure 1. Street View of Subject Property. Figure 2. GIS View of Subject. Property Attachment 1: Application Attachment. 2: Complaints

Respectfully submitted,



**Nathan Reichert, Director
Planning and Development Department
Zoning Administrator**

Google Maps

5 Mack Ave



Lebanon, New Hampshire

Google Street View

Jul 2013

See more dates

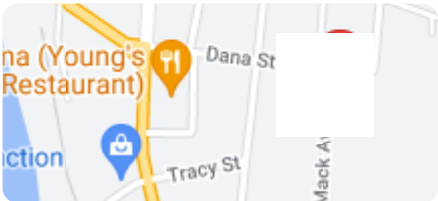
Image capture: Jul 2013 © 2023 Google

←

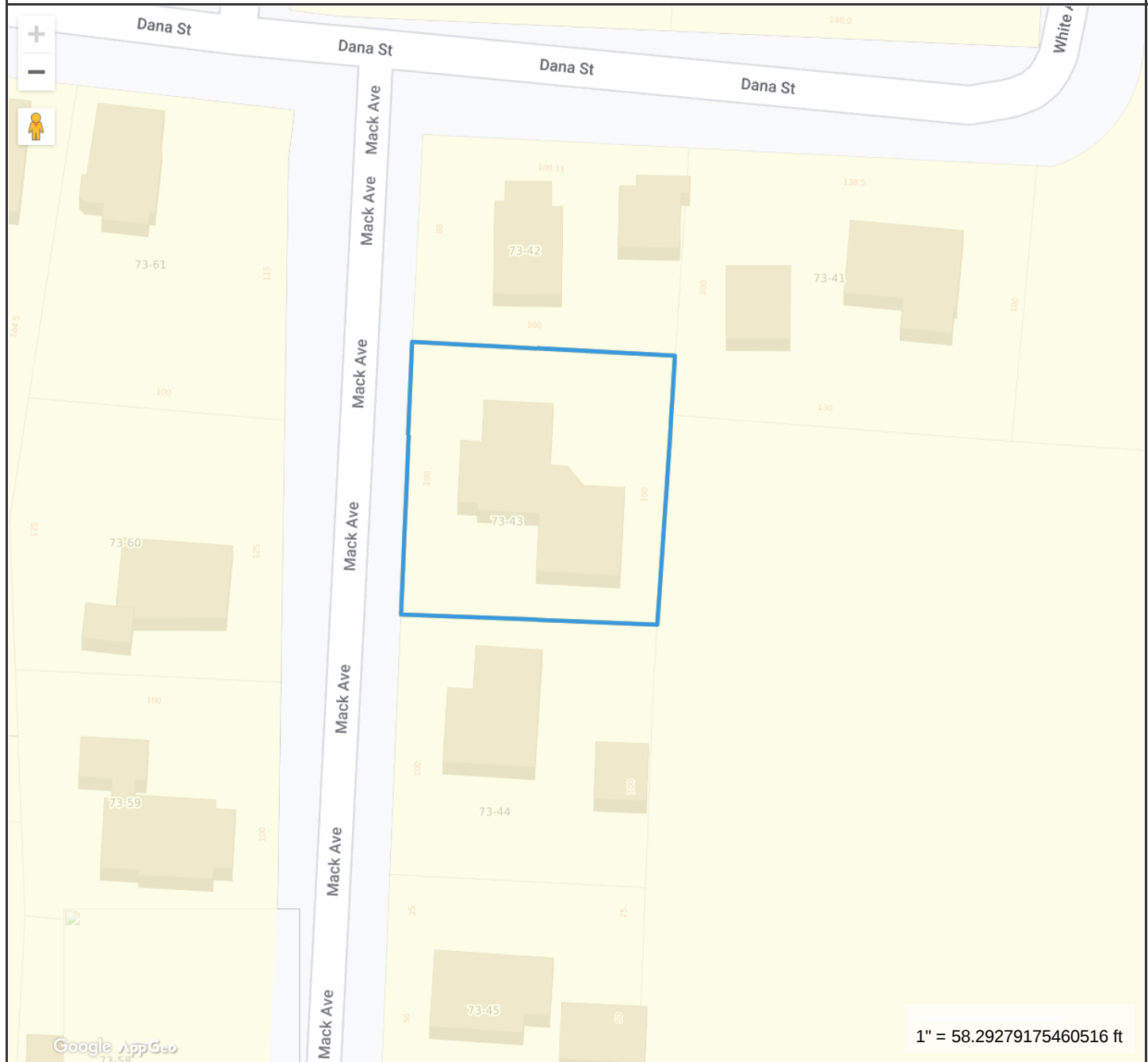
5 Mack Ave

All

Street View & 360°



5 Mack GIS Zoning

**Property Information**

Property ID 73-43
Location 5 MACK AVE
Owner PATCH, CATHERINE A



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
 Data updated 11/18/2018

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.

Map Theme Legends

Zoning District

- RL3 - RURAL LAND 3
- RL2 - RURAL LAND 2
- RL1 - RURAL LAND 1
- R1 - RESIDENTIAL 1
- R2 - RESIDENTIAL 2
- R3 - RESIDENTIAL 3
- RO - RESIDENTIAL OFFICE
- RO1 - RESIDENTIAL OFFICE 1
- GC- GENERAL COMMERCIAL
- GC-1 - GENERAL COMMERCIAL 1
- CB - CENTRAL BUSINESS
- IND-L - INDUSTRIAL LIGHT
- IND-RA - INDUSTRIAL RAIL ACCESS
- IND-H - INDUSTRIAL HEAVY
- MC - MEDICAL CENTER
- PB - PROFESSIONAL BUSINESS
- LD - LEBANON DOWNTOWN

**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: Catherine Patch TEL.#: (802)881-2453
MAILING ADDRESS: 66 NH Route 4a, Enfield, NH 03748
E-MAIL ADDRESS: catherineapatch@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

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

PROJECT LOCATION:

TAX MAP #: 73 LOT#: 43 PLOT #: _____ ZONE: R3
STREET ADDRESS OF PROJECT: 5 Mack Ave, West Lebanon, NH 03784
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Single Family to a duplex with no construction required.

TYPE OF OCCUPANCY:

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

SIGNATURE BLOCK:

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

PROPERTY OWNER: _____ 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 #
<u>5/18/23</u>	<u>73/43</u>	<u>2B2023-12-SE</u>			

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) III,
Section(s) 310.2, 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.)

I propose changing the zoning of my house at 5 Mack Ave, West Lebanon, NH from a single family home to a two family home. Minor changes to divide the current space will be made to the interior in order to improve the comfort and privacy of those living in the house. The additional kitchen and means of egress were added by permit in 2020, a step was missed while working with a contractor to apply for a duplex status and my goal is to correct that now. The outside of the building and property will remain unchanged.

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:

5 Mack Ave, West Lebanon, NH is in the R3 zone, which allows a single family home to be converted into a two family home through a special exception by the Lebanon Zoning Board of Adjustments.

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

5 Mack Ave, West Lebanon, NH is currently a single family home which is allowed to be divided into a two family home if granted by the zoning board of adjustments. The fire department and the city building department have both certified that the house is

currently up to Lebanon City code in order to operate as a two family home. The property is on city water and sewer.

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

Granting 5 Mack Ave, West Lebanon, NH as a two family unit will bring the house into compliance and there are no other violations to be addressed. Each unit will follow the Lebanon City Codes including that of “not more than four (4) persons not related to each other by blood, adoption, marriage, or by civil union, living together as a single housekeeping unit.” The fire inspector who inspected the house on May 17th, 2023 told me to add three smoke detectors and I have addressed that concern.

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

The character of the neighborhood will remain the same. The neighborhood is currently made up of a mix of single family and two family homes. On Dana Street, which is adjacent to Mack Ave, there are more two family homes than one family homes. Including a two family home, which is an abutter diagonal from the front of 5 Mack Ave, West Lebanon, NH. Nearby, on Maple Street, which runs parallel to Mack Ave., there are also more two family and multi family homes than single family homes.

No changes will be made to the outside of the house for this special exception. Since I bought the house in 2019, I have replaced the roof with a standing seam metal roof, most of the windows, replaced septic pipes inside the house and have already hired someone to repaint the outside of the house this summer the same color as it is now. I care about my home, my property value, my neighbors and their property values. By making these overdue upgrades to the building, I have significantly improved the character of my home and in turn, that of our neighborhood. The continuous improvement to my home has had positive effects on my neighbor's property values. The lives of my tenants have also been improved by the changes I have made.

Over the past four years, I have invested so much of my time and finances in this property that I will face financial hardship and be forced to consider other options if I am denied this request. I may need to sell my house or consider a different business model, such as short term rentals, to help recoup my losses. Neither of these options are desirable for me and would have adverse effects on my current tenants and contribute to Lebanon's growing residential housing crisis. Caring for my home has come at a high price, but I have always considered it an investment in my community and a positive way I can demonstrate care for my tenants.

E. That no hazard or nuisance will be created:

Since owning 5 Mack Ave, West Lebanon, NH there haven't been any complaints from neighbors made to me or the city regarding any hazards or nuisances. I maintain a high standard for my tenants and always consider my neighbors when I choose tenants and undertake property improvements. My lease includes respectful quiet hours and guest policies that ensure a peaceful living environment for neighbors. The house was inspected by the state fire marshal and Lebanon building inspector on 5/17/23 and they did not identify any hazards or issues which would preclude its use as a two family dwelling.

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

Converting my single family home at 5 Mack Ave, West Lebanon, NH into a two family home without adding any additional livable space will not impact community facilities and services. It will only serve to divide the current space for a more comfortable living environment for my tenants.

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

Converting my single family home into a two family home will increase property tax revenue from this property and provide much needed housing in Lebanon in our current housing crisis.

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

The Statement of Purpose in the Housing section of Lebanon's Master Plan states: "The City of Lebanon shall actively foster a diverse range of housing opportunities and choices for current and prospective residents, and will strive to promote the development of diverse, sustainable neighborhoods". Converting this house from a single family into a two family directly follows Lebanon's Master Plan. Lebanon wants to expand their partnership with the Lebanon Housing Authority and provide affordable housing for the community. Some of my current tenants and many of my past tenants, such as medical residents or graduate students would have qualified for LHA assistance based on their income brackets. It is in the spirit and intent of the ordinance to bolster the community and improve the lives of Lebanon residents, a community which I have been deeply invested in my entire life.

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

All the changes I am making are to improve the general welfare of the community. Since taking over the property in 2019, the property's appearance and maintenance has significantly improved. I provide a professional groundskeeper and a professional

housekeeper to make sure the home is kept in top condition for the benefit of the tenants and neighbors. This is unusual for landlords to provide, but I am committed and I care about the wellbeing of the property, my tenants, and community. By converting my single family home into a two family home I will create much needed housing and a better environment for my tenants by creating division and privacy. In the past four years of ownership of this property I have strived for positive and respectful relationships with both my tenants and neighbors.

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.

See Attached

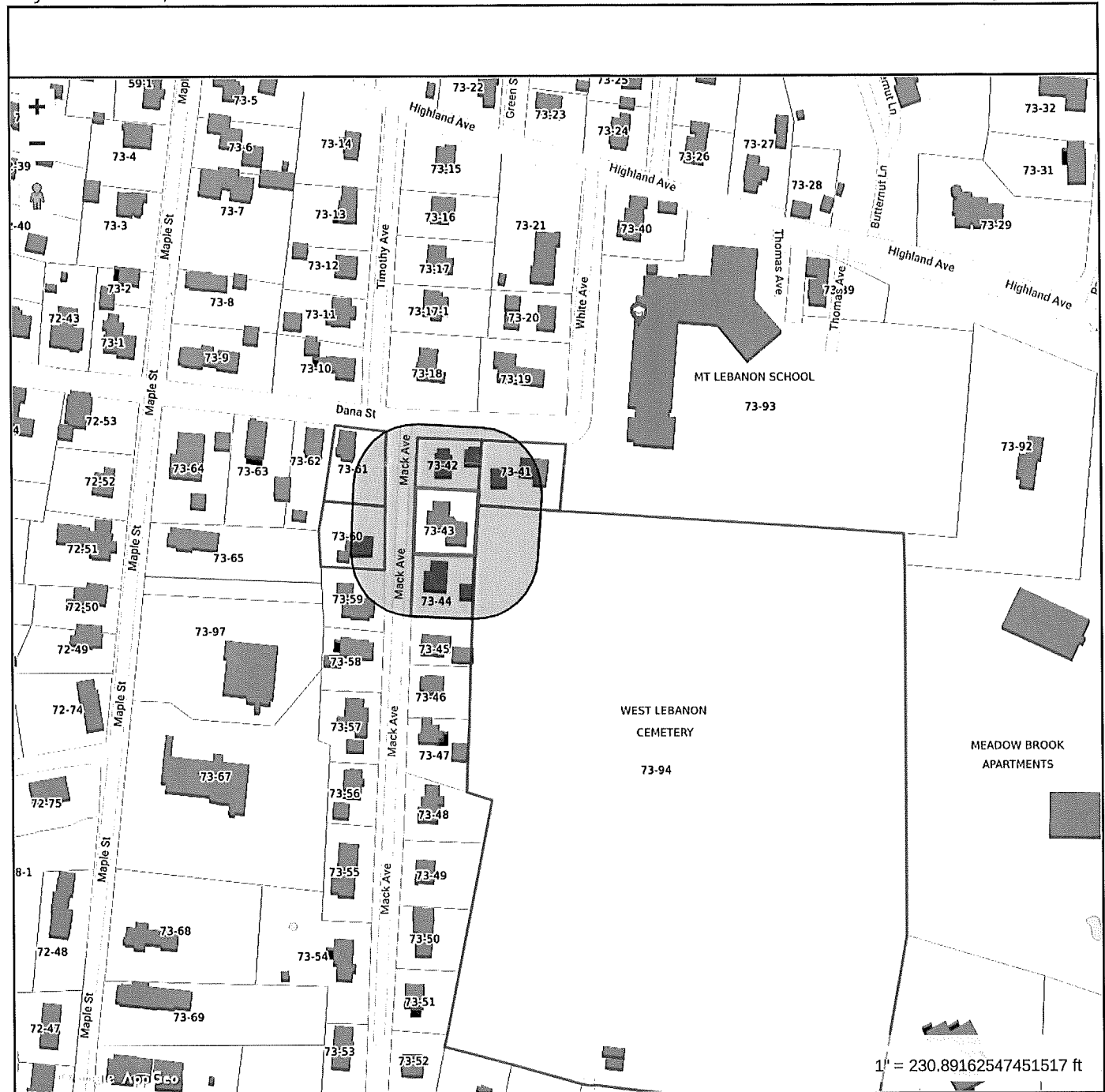
CERTIFIED NOTIFICATION LIST

THE CITY OF LEBANON IS REQUIRED UNDER NH RSA 672:3 TO NOTIFY THE FOLLOWING PERSONS OF PUBLIC HEARINGS BEFORE THE PLANNING BOARD: ALL ABUTTERS; THE APPLICANT; PROPERTY OWNER; HOLDER OF CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTION(S); AND EVERY ENGINEER, ARCHITECT, LAND SURVEYOR, OR SOIL SCIENTIST WHOSE PROFESSIONAL SEAL APPEARS ON ANY PLAT SUBMITTED TO THE BOARD.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
PROPERTY OWNER:	APPLICANT:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:

ID	Site Address	Owner Name	Owner Address	Owner City	Owner St Owner
73-41	38 DANA ST	LEBANON SCHOOL DISTRICT	20 SEMINARY HILL	WEST LEBANON NH	03784
73-42	3 MACK AVE	HASTINGS, JONATHAN & MARGARET	13 MACK AVE	WEST LEBANON NH	03784
73-44	7 MACK AVE	APEL CRAM, CHRISTINE TTEE	7 MACK AVE	LEBANON NH	03766
73-60	6 MACK AVE	DAMREN, JAMES L	6 MACK AVE	WEST LEBANON NH	03784
73-61	30 DANA ST	HENKEN MATTHEW J	2528 HIGHVIEW TER	FORT WORTH TX	76109
73-94	0 PLEASANT ST	CITY OF LEBANON	51 NORTH PARK ST	LEBANON NH	03766
73-43	5 MACK AVE	PATCH, CATHERINE A	5 MACK AVE	WEST LEBANON NH	03784



1" = 230.89162547451517 ft

Property Information

Property ID 73-43
Location 5 MACK AVE
Owner PATCH, CATHERINE A



MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement activities should not be done using this resource.

FEE SCHEDULE
ZONING BOARD OF ADJUSTMENT
(Revised 7/25/2022, postage increase)

SPECIAL EXCEPTION:		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.57 per certified notice x _____ notices	
TOTAL DUE		\$

VARIANCE:		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	4.75 per certified notice x 6 notices	\$28.50
TOTAL DUE		\$ 278.50

APPEAL OF AN ADMINISTRATIVE DECISION:		
		TOTALS
ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.57 per certified notice x _____ notices	
TOTAL DUE		\$

*REHEARING:		
		TOTALS
*ADVERTISING FEE	\$100.00	\$100.00
NOTIFICATION FEE (SEE NOTE)	\$4.57 per certified notice x _____ notices	
TOTAL DUE		\$

* Fees are only required if the motion for rehearing is granted by the board.

SECLICKFIX ID	PRIORITY	
14074296	Normal	
REQUEST TYPE	ADDRESS	
Private Property Issues (Zoning/Code Violations)	5 Mack Ave Lebanon, NH, 03784, USA	
ASSIGNEE	SLA EXPIRES	REPORTED
Zoning Administrator	February 17, 2023 17:00 about 1 month late	February 14, 2023 18:07

LOCATION



SUMMARY & DESCRIPTION

Private Property Issues (Zoning/Code Violations)

Catherine A. Patch is currently leasing out all 6 bedrooms/living quarters of this single family home. The home is not zoned to be a lodging house and she is currently only zoned as R3, which is a single family house. When I called the City of Lebanon about this due to issues with Catherine and trying to sort out my tenancy, I discovered that she has reported the house being occupied by a single family. We are all six individuals with six different leases and none of us are related. I am currently living in the master suite, which was advertised as an apartment, and there is no separate entrance or separation at all from the main house besides one door which is not secure. The wiring in the area, particularly in the downstairs kitchen is also not up to code and the area has no heating source despite being a livable area. When I brought these concerns to Catherine, she threatened me with her lawyer and a lawsuit. I am concerned that she is renting this property illegally. She does not live at the residence and the only mail she receives here are notifications from the City of Lebanon about taxes. Catherine lives in Enfield as confirmed in several text messages. A week and a half ago when an inspector from the city came to inspect the property for tax purposes, she sent me and my housemates text messages telling us to not speak to anyone, let them inside, or answer questions besides saying "she was not home". When she instructed us to lie, I began to be suspicious about her rental operations as she owns several other properties in the Upper Valley, in Lebanon and Enfield in particular.

MEDIA



1:51

Messages

rooms.com

LTE

97%

rooms.com

Start your search...

Login

Catherine's room

West Lebanon, NH 03784

Private room with shared bathroom

Rent

\$950 per month

Bills

Included

Security deposit

\$950

Property type

House

Room furnishing

Furnished

Preferred gender

Females & males (no couples)

Available on

Now

Stay length

1 - 3 months

Parking available

Internet included

Contact Catherine

ASSIGNEE
Zoning Administrator

PRIORITY
Normal

ADDRESS
5 Mack Ave Lebanon, NH, 03784, USA

SLA EXPIRES
February 17, 2023 13:10
25 days late

REPORTED
February 14, 2023 13:10

LOCATION



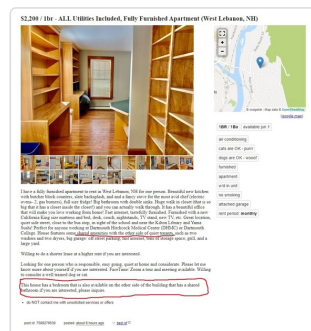
SUMMARY & DESCRIPTION

Private Property Issues (Zoning/Code Violations)

general noise, high volume of cars

Reported by: Lebanon, NH Neighbor 02/14/2023 - 01:10PM

MEDIA



SECLICKFIX ID
14075939

PRIORITY
Normal

REQUEST TYPE
Private Property Issues
(Zoning/Code Violations)

ADDRESS
5 Mack Ave Lebanon, NH, 03784, USA

ASSIGNEE
Zoning Administrator

SLA EXPIRES
February 21, 2023 09:55
21 days late

REPORTED
February 15, 2023 09:55

LOCATION



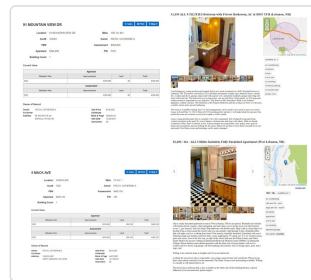
SUMMARY & DESCRIPTION

Private Property Issues (Zoning/Code Violations)

I apologize for issuing so many missives about this, but this past weekend (Superbowl) was well and truly the final straw.

Reported by: Lebanon, NH Neighbor 02/15/2023 - 09:55AM

MEDIA





CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT Violation Appeal

Staff Memorandum – ZB2023-11-AAD

June 5th 2023 Regular Meeting

Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Special Exception
pursuant to §703.1A.

Location:

51 Evans Dr.
Tax Map 78, Lot 40

Applicant/Property Owner:

Cicotte Holdings, LLC
Represented by Attorney Barry
Schuster

Zoning District:

Residential Office District 1
Class 1 (R-O-1)

Property Size:

+/- 3.32 acres (+/-144,619.2 sq. ft.)
(per the City Assessor's records;
property is conforming to the min.
required 10,000 sq. ft. lot size in the
R-2 Class 1 District per §311A.3)

Overlay Districts:

FEMA Flood Zone
Wetlands

Previous ZBA Action (since 1995):

Sign Violation 2015

Other Approvals Required:

Building Permit
Wetlands
Flood Zone
Planning

Attachments:

Application
GIS and street view photos

HEARING NOTICE

Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1: An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. ZB2023-11-AAD

BACKGROUND

The property is improved with a car dealership with a primary building constructed in 1969 per the City Assessor's records. The lot is dimensionally conforming to the R-O-1 Class 1 District with a minimum required lot size of 10,000 sq. ft. and a width of 75'. The lot is 144,619 sq. ft., approx.300 feet of frontage on Evans Drive. The Use of the property as a car sales lot / dealership is legal non-conforming pursuant to 311A.2 R-O-1 Table of Uses and prior determinations made by the Zoning Official.

PROPOSAL

The applicant is appealing the Notice of Violation Dated April 19th 2023 and May 16th 2023.

ZONING ORDINANCE REQUIREMENTS

APPEALS

The powers and duties of the Board shall be as prescribed by NH RSA 674:33, as amended. The powers and duties are:

§801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal knew or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6.

The Administrative Office hereby confers to the record as it stood at the time the decision to issue a Notice of Violation on April 19th and further stated in the letter of May 16th 2023:

Evidence:

Exhibit 1: Notice of Violation – April 19th 2023

Exhibit 2: Violation Letter of May 16th 2023

Exhibit 3: Site Photograph 1 taken by Tim Corwin

Exhibit 4: Site Photograph 2 taken by Tim Corwin

Exhibit 5: Site Photograph 3 taken by Tim Corwin

Exhibit 6: 2015 GIS Aerial Photo Pavement Edge

Exhibit 7: 2015 GIS Aerial Phot Entire Site

Exhibit 8: GIS Wetlands Overlay

Exhibit 9: 2021 GIS Aerial Photo Pavement Edge

Exhibit 10: GIS Flood Zone Overlay

Exhibit 11: FEMA FIRMETTE Map

Exhibit 12: 28 April 2023 Letter from ADG – Advanced Geomatics & Design to Planning and Development

Statement of Facts:

At the time of the Violation's discovery no permit application(s) that would permit the activities undertaken and completed had been received by the Planning and Development Office.

At the time of the Violation's discovery the work had been completed.

The Property is considered by the Zoning Official to be legal non-conforming by use.

The Property is within the FEMA Flood Zone. (Refer to GIS overlay and FEMA FIRMETTE Maps Exhibits 10 and 11)

The Property contains a wetland. (Refer to GIS overlay Exhibit 8)

APPEAL PROCEDURE REQUIREMENTS

The Zoning Board of Appeals is now obligated to stand in the shoes of the Zoning Official, contemplate the same evidence available to the Zoning Official at the time of the determination and make a finding.

The Applicant has the Burden to Prove that there *"is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance."*

The Zoning Official may testify as to the record and the reasoning for the making of the determination.

The Zoning Board of Appeals is empowered to *"reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken."*

APPLICATION AND SUPPORT STATEMENT

The applicant has submitted testimony addressing the §801.1 Appeal Criteria in an application received by the Planning and Development Department on May 22nd 2023 (see attached).

STAFF COMMENTS

The Zoning Official hereby prays that the Zoning Board of Adjustment Affirm Wholly the Notice of Violation Dated April 19th 2023 and May 16th 2023 for the following reasons:

The Application for Appeal contains only a short statement addressing the Appeal with no supporting evidence included. The statement is: *"The Nissan dealership property is not in the floodplain and appropriate evidence is being requested at this time. The alleged increase in parking area may pre-date the terms of the current ordinance as the property is a grandfathered, non-conforming use that has been in existence since the 1960's and vehicles have been parked in that area for many years. Additional research is being done to review any prior approvals and plans. The deadlines demanded by the City are unreasonable and prevent the applicant from providing the required information to the City."*

The previous statement is the extent of the appeal case that has been submitted to the City. City Staff does not understand precisely what is being appealed. There is no evidence that accompanies the assertions made in the prior statement. The burden of proof to prove that an "error" has been made by the Administrative Officer has been made rests with the Applicant. Given a lack of clarity of the Appeal and no Evidence to support the prior statements, staff requests that the Applicant's case be presented at the hearing and reserves the right to immediately continue the proceeding, thereby allowing for the preparation of a vigorous defense of the Notice of Violations and a response to any additional testimony, evidence or arguments made by the Applicant.

Further, the notice of this Appeal Hearing is narrowly crafted to address only three questions which are:

1. The property is not in the flood zone.
2. That the parking area is grandfathers.
3. That the deadlines are unreasonable.

Should the Applicant seek to expand arguments beyond the noticed topics which reflect the Applicant's Appeal Application additional public notice may be required.

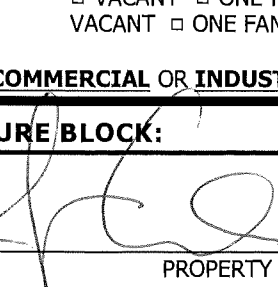
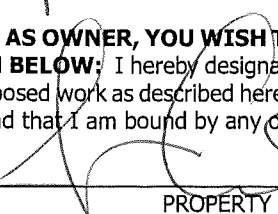
Should the Applicant not submit additional evidence or testimony which directly demonstrated that the Administrative Officer has made an "Error", the Officer pleads that the Board summarily Wholly Sustain the Determination of the Administrative Officer.

Respectfully submitted,



Nathan Reichert, Director
Planning and Development Department
Zoning Administrator

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

PROPERTY OWNER (APPLICANT):			
NAME: Clotte Properties, LLC		TEL.#:	
MAILING ADDRESS: PO Box 600, Lebanon, NH 03766			
E-MAIL ADDRESS:			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME: Barry Schuster		TEL.#: 603-448-4780	
MAILING ADDRESS: PO Box 388, Lebanon, NH 03766			
E-MAIL ADDRESS: barry@ivylegal.com			
PROJECT LOCATION:			
TAX MAP #: 78	LOT#: 40	PLOT #: 200	ZONE R-O-1:
STREET ADDRESS OF PROJECT: 51 Evans Drive			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES xx NO HISTORIC DISTRICT ☐ YES xx NO			
FLOOD PLAIN ☐ YES xx NO			
SCOPE OF PROJECT:			
appeal of Notice of Violation dated April 19, 2023 and administrative decision May 16, 2023			
TYPE OF OCCUPANCY:			
EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY xx COMMERCIAL ☐ INDUSTRIAL			
PROPOSED VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY x COMMERCIAL ☐ INDUSTRIAL			
IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE: _____			
SIGNATURE BLOCK:			
 _____ PROPERTY OWNER		DATE: 5/17/23	
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: 5/17/23	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
5/22/2023	78/40/200	ZB2073-11-AAD			

(12/07/07)

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR
AN APPEAL OF AN ADMINISTRATIVE DECISION**

A cover application, abutters list, filing fee and ten copies of the site plan (if applicable) must accompany this support statement.

City of Lebanon Zoning Ordinance:

APPEALS:

801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6.

802.4 Decisions of the Board.

In exercising its powers the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

- A. Majority Vote: The concurring vote of 3 members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant or any matter on which it is required to pass.

I am appealing the decision of: Nathan Reichert, Director, and Tim Corwin, Deputy Director made on this date: April 19 and May 16, 2023. (copies attached).
(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: The Nissan dealership property is not in the floodplain and appropriate evidence is begin requested at this time. The alleged increase in parking area may pre-date the terms of the current ordinance as the property is a grandfathered, non-conforming use that has been in existence since the 1960's and vehicles have been parked in that area for many years. Additional research is being done to review any prior approvals and plans. The deadlines demanded by the City are unreasonable and prevent the applicant from providing the required information to the City.

In Relation to Article(s): See City letters, attached.
--



CITY OF LEBANON - PLANNING & DEVELOPMENT

April 19, 2023

Via Certified Mail and Electronic Mail

Cicotte Properties, LLC
c/o Johanna Cicotte
PO Box 600
Lebanon, NH 03766
icicotte1@aol.com

NOTICE OF VIOLATION

RE: 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), Cicotte Properties, LLC (owner)
*Violation of Zoning Ordinance Sections 702.5.D, 311A.2, 402.2, and 901.1.D;
Site Plan Review Regulations Sections 1.6.A and 3.1.D; and City Code Chapter 74,
Sections 74-9 and 74-14*

Ms. Cicotte:

It has come to our attention that the above-referenced property is in violation of the City of Lebanon Zoning Ordinance ("ZO"), the Lebanon Site Plan Review Regulations, and Lebanon City Code Chapter 74 ("Flood Damage Prevention"). According to the records of the New Hampshire Department of State, you are a member of Cicotte Properties, LLC, which, according to the City's records, is the owner of 51 Evans Drive (Tax Map 78, Lot 40, Plot 200). As a member of the entity that owns the subject property, you are responsible for the violations identified above and further described below.

You are hereby ordered to bring all aspects of the property into compliance with the Zoning Ordinance Site Plan Review Regulations, and Chapter 74 of the City Code. Please be advised that should you fail to take action within the timeframe outlined below, the City of Lebanon will commence legal action against you in court.

PART I: Background

The subject property is situated in the Residential-Office-One (R-O-1) zoning district. The property is currently improved with a vehicular sales (i.e. car dealership) use, which is neither a Permitted use nor a use allowed by Special Exception or by Conditional Use Permit within the R-O-1 District. The existing vehicular sales use is considered a legal, non-conforming use per Section 700 of the Zoning Ordinance and, therefore, is subject to the regulations of Article VII of the Zoning Ordinance ("Non-Conformities").

Planning and Development Department staff recently observed that a newly paved surface has been installed on the property at the southern end of the parking lot. Judging by observation and subsequently measuring the area using the City's online GIS tool, it appears that the new surface on 175 Heater Road may be approximately 4,000 sq. ft. in size.

NOTICE OF VIOLATION

Cicotte Properties, LLC
51 Evans Dr (78-40-200)
April 19, 2023
Page 2 of 4

PART II: Violations of the Zoning Ordinance

As noted above, the property is currently improved with a vehicular sales use, which is neither a Permitted use nor a use allowed by Special Exception or by Conditional Use Permit within the R-O-1 District (see Section 311A.2 of the ZO). As such, the existing vehicular sales use is considered a legal, non-conforming use per Section 700 of the Zoning Ordinance and, therefore, is subject to the regulations of Article VII of the Zoning Ordinance ("Non-Conformities").

Section 702.5 of the Zoning Ordinance provides for the expansion of legal, non-conforming uses by Special Exception granted by the Zoning Board of Adjustment under certain conditions. However, Section 702.5.D states "[i]n no case shall a legal non-conforming use in whole or in part be allowed to expand [...] to any portion of the lot that was not occupied by the non-conforming use at the time such use became non-conforming pursuant to Section 700."

The newly paved surface adjoining the existing parking area of the car dealership on the subject property constitutes an impermissible expansion of a non-conforming use into an area of the lot that was not previously occupied by the non-conforming use at the time the use became non-conforming. As such, the newly paved surface on the property is in violation of Section 702.5.D and Section 303.2 of the Zoning Ordinance.

The installation of the newly paved surface on the subject property also constitutes violations of the following Sections of the ZO:

- **Section 402.2** – The subject property is located in the Floodplain District overlay per Section 402 of the ZO. Section 402.2 of the ZO requires compliance with Chapter 74 ("Flood Damage Prevention") of the City Code. Section 74-14 of Chapter 74 requires that a floodplain permit shall be obtained "before construction or development begins within any area of special flood hazard[.]" Staff has verified that no Floodplain Permit has been issued for the installation of the paved area and, therefore, is out of compliance with Chapter 74. Consequently, the property is in violation of Section 402.2. of the Zoning Ordinance.
- **Section 901.1.D** – Staff has verified that that no Zoning Permit has been issued for the pavement as is required by Section 901.1.D of the Zoning Ordinance.

PART III: Violations of the Site Plan Review Regulations

Section 1.6.A of the Lebanon Site Plan Review Regulations, adopted May 13, 1991, last revised January 23, 2023, states "[t]hese Site Plan Review Regulations apply to all land development, and no such land development shall proceed without first obtaining a jurisdictional determination from the Planning and Development Department pursuant to Section 3.1."

Section 3.1.D of the Lebanon Site Plan Review Regulations, states "[L]and development that constitutes a major change to a property, including any land development that exceeds the thresholds set forth in Section 3.1.C.1.a-e, shall require site plan approval from the Planning Board in accordance with the procedures set forth in Article IV." Section 3.1.C.1.b establishes a threshold of 2,500 sq. ft. for new improved surfaces, including but not limited to, gravel or paved parking areas, driveways, walkways, or other improved surfaces, whether or not such surfaces are pervious or impervious. For new improved surfaces larger than 2,500 sq. ft. in area, site plan approval from the Planning Board is required.

NOTICE OF VIOLATION

Cicotte Properties, LLC
51 Evans Dr (78-40-200)
April 19, 2023
Page 3 of 4

As noted above, Planning and Development Department staff observed that the subject property has been covered with a newly paved surface of appears to be approximately 4,000 sq. ft. or more in size, which exceeds the threshold for requiring Site Plan approval from the Planning Board. Consequently, **the installation of the newly paved surface on the property constitutes a violation of Sections 1.6.A and 3.1.D of the Lebanon Site Plan Review Regulations.**

PART IV: Violation of City Code Chapter 74

The subject property is located in a special flood hazard area ("SFHA") as depicted on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA). Consequently, the property is subject to the requirements of City Code Chapter 74 ("Flood Damage Prevention"). See Section 74-7 and 74-8 of the City Code. Section 74-9 provides that, "[n]o structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations[.]" and Section 74-14 requires that a floodplain permit shall be obtained "before construction or development begins within any area of special flood hazard[.]"

The newly installed paved area has been constructed on the property entirely within the SFHA. As noted above, staff has verified that no Floodplain Permit has been issued for the installation of the paved area as required by Section 74-14 of the City Code. As a result, **the property is in violation of Sections 74-9 and 74-14 of Chapter 74 of the City of Lebanon Code.**

Part V: Remedies

YOU ARE HEREBY REQUIRED TO:

- (A) **REMEDY THE ABOVE-CITED VIOLATIONS AND BRING THE PROPERTY INTO COMPLIANCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS LETTER.**
- (B) **CONTACT THE PLANNING & DEVELOPMENT DEPARTMENT WITHIN TEN (10) DAYS OF THE DATE OF THIS LETTER TO PROVIDE A DETAILED PLAN AS TO HOW THE PROPERTY WILL BROUGHT INTO COMPLIANCE AS PRESRCIBED IN (A) ABOVE.**

Per Section 903 of the Zoning Ordinance, Article X of the SPRR, and RSA 676:17, *failure to comply with this order within the times stated herein may result in a civil penalty of **\$275 per violation** for the first offense, and **\$550 per violation** for subsequent offenses, for each day that such violations are found to continue after the date on which you receive this notice.*

Should you not voluntarily abate these violations, the City will seek (1) **injunctive relief** under RSA 676:15 to enforce this order, (2) **civil penalties** under RSA 676:17, I, **to the maximum extent allowed by law**, and (3) the recovery of its **attorney's fees and costs** under Section 903.5 of the ZO and RSA 676:17, II. Additionally, the City may be authorized under state law to enter upon your property and cause said violations to be remediated, removed or destroyed. If the City does undertake such action, state law also provides that you, as the property owner, will be liable for the expense of the removal and proper disposal of the items causing these violations. The City's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including the possible loss of the property if not paid.

This is a decision of the administrative officer, which you have the right to appeal to the Zoning Board of Adjustment. Should you wish to appeal my interpretation, application or construction of

NOTICE OF VIOLATION

Cicotte Properties, LLC

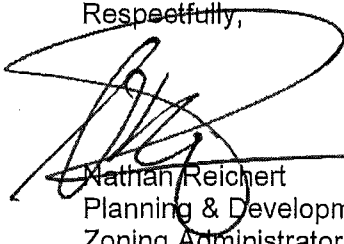
51 Evans Dr (78-40-200)

April 19, 2023

Page 4 of 4

the Zoning Ordinance you have thirty (30) days from the date of this Notice of Violation to file an appeal. Forms to appeal an administrative decision pursuant to RSA 674:33, I(a) and Section 801.1 of the Zoning Ordinance can be obtained from the Planning and Development Department or online at www.lebanonnh.gov.

Respectfully,

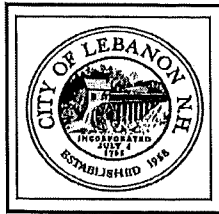


Nathan Reichert
Planning & Development Director
Zoning Administrator



Tim Corwin
Deputy Planning & Development Director

Cc: Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
State of NH Department of Safety – Division of Motor Vehicles
File



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

May 16, 2023

Via Certified Mail and Electronic Mail

Cicotte Properties, LLC
c/o Johanna Cicotte
PO Box 600
Lebanon, NH 03766
jcicotte1@aol.com

RE: 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), Cicotte Properties, LLC (owner)
*Violation of Zoning Ordinance Sections 702.5.D, 311A.2, 402.2, and 901.1.D;
Site Plan Review Regulations Sections 1.6.A and 3.1.D; and City Code Chapter 74,
Sections 74-9 and 74-14*

Ms. Cicotte:

We have reviewed the letter from Dan Nash, PE, dated April 28, 2023, sent to the Planning & Development Department on your behalf. In response to Mr. Nash's letter, the Planning & Development Department requires that you submit a **complete** application to the Zoning Board of Adjustment by no later than **Thursday, June 15, 2023**, requesting a Variance from Sections 702.5.D and 303.2 of the Zoning Ordinance to allow an expansion of the non-conforming vehicular sales use. Provided the Variance application is complete, staff will schedule a public hearing to be held at the July 3, 2023, meeting of the Zoning Board of Adjustment.

In order to address the violation of Sections 74-9 and 74-14 of Chapter 74 of the City of Lebanon Code, we also require that you submit to the Floodplain Administrator a **complete** application for a Floodplain Permit by no later than **Thursday, June 15, 2023**. If you wish to apply for a Letter of Map Amendment with the Federal Emergency Management Agency, you are free to do so, but that is not the City's concern at this time. The issue that must be addressed immediately is that the subject property is currently located in the Floodplain District and a Floodplain Permit for the new pavement was not obtained prior to construction as required by Chapter 74.

Finally, if the Variance is granted by the Zoning Board, the Planning & Development Department requires that you submit a full and complete Site Plan application to the Planning Board by the next submission date following approval by the Zoning Board. For example, if the Zoning Board approves the Variance request at its meeting on July 3, 2023, a full and complete Site Plan application will need to be submitted to the Planning & Development Department on or before the July 10, 2023 Planning Board application deadline.

Please note that in preparing the site plan application, the entire property is subject to all of the site plan submission and design requirements set forth in Article V and Article VI, respectively, of the Site Plan Review Regulations. Consequently, to the extent the property is non-conforming with the current requirements of the Site Plan Review Regulations, the entire property will need to be brought into compliance with the current requirements as part of your Site Plan application.

As a reminder, per Section 903 of the Zoning Ordinance, Article X of the SPRR, and RSA 676:17, *failure to comply with this order within the times stated herein may result in a civil penalty of \$275*

per violation for the first offense, and **\$550 per violation** for subsequent offenses, for each day that such violations are found to continue after the date on which you receive this notice.

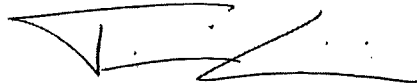
Should you not voluntarily abate these violations in accordance with the deadlines set forth above, the City will seek (1) **injunctive relief** under RSA 676:15 to enforce this order, (2) **civil penalties** under RSA 676:17, I, **to the maximum extent allowed by law**, and (3) the recovery of its **attorney's fees and costs** under Section 903.5 of the ZO and RSA 676:17, II. Additionally, the City may be authorized under state law to enter upon your property and cause said violations to be remediated, removed or destroyed. If the City does undertake such action, state law also provides that you, as the property owner, will be liable for the expense of the removal and proper disposal of the items causing these violations. The City's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including the possible loss of the property if not paid.

We look forward to receiving your Variance application on or before June 15, 2023. Please be sure to carbon copy the Planning & Development Department when submitting the Floodplain Permit application to the Floodplain Administrator, also due on or before June 15, 2023.

Respectfully,



Nathan Reichert
Planning & Development Director
Zoning Administrator



Tim Corwin
Deputy Planning & Development Director

Cc: Dan Nash, Advanced Geomatics & Design
Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
Rod Finley, PE, Floodplain Administrator
State of NH Department of Safety – Division of Motor Vehicles
File

CERTIFIED NOTIFICATION LIST

THE CITY OF LEBANON IS REQUIRED UNDER NH RSA 672:3 TO NOTIFY THE FOLLOWING PERSONS OF PUBLIC HEARINGS BEFORE THE PLANNING BOARD: ALL ABUTTERS; THE APPLICANT; PROPERTY OWNER; HOLDER OF CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTION(S); AND EVERY ENGINEER, ARCHITECT, LAND SURVEYOR, OR SOIL SCIENTIST WHOSE PROFESSIONAL SEAL APPEARS ON ANY PLAT SUBMITTED TO THE BOARD.

PLEASE PROVIDE NAMES & MAILING ADDRESSES FOR ALL PERSONS LISTED ABOVE.

MAP & LOT NUMBER: 78-40-200	MAP & LOT NUMBER: 78-40-200
PROPERTY OWNER: Cicotte Properties PO Box 600 Lebanon, NH 03766	APPLICANT: Cicotte Properties PO Box 600 Lebanon, NH 03766
MAP & LOT NUMBER: 64-32-100	MAP & LOT NUMBER: 64-33
ABUTTER/OTHER: IKI OLD GATE LLC PO BOX 734 LEBANON, NH 03766	ABUTTER/OTHER: LEBANON SCHOOL DISTRICT 20 SEMINARY HILL WEST LEBANON, NH 03784
MAP & LOT NUMBER: 78-40-100	MAP & LOT NUMBER: _____
ABUTTER/OTHER: EVANS DR SPE LLC PO BOX 600 LEBANON, NH 03766	ABUTTER/OTHER: Barry Schuster PO Box 388 Lebanon, NH 03766
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

May 16, 2023

Via Certified Mail and Electronic Mail

Cicotte Properties, LLC
c/o Johanna Cicotte
PO Box 600
Lebanon, NH 03766
jcicotte1@aol.com

RE: 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), Cicotte Properties, LLC (owner)
*Violation of Zoning Ordinance Sections 702.5.D, 311A.2, 402.2, and 901.1.D;
Site Plan Review Regulations Sections 1.6.A and 3.1.D; and City Code Chapter 74,
Sections 74-9 and 74-14*

Ms. Cicotte:

We have reviewed the letter from Dan Nash, PE, dated April 28, 2023, sent to the Planning & Development Department on your behalf. In response to Mr. Nash's letter, the Planning & Development Department requires that you submit a **complete** application to the Zoning Board of Adjustment by no later than **Thursday, June 15, 2023**, requesting a Variance from Sections 702.5.D and 303.2 of the Zoning Ordinance to allow an expansion of the non-conforming vehicular sales use. Provided the Variance application is complete, staff will schedule a public hearing to be held at the July 3, 2023, meeting of the Zoning Board of Adjustment.

In order to address the violation of Sections 74-9 and 74-14 of Chapter 74 of the City of Lebanon Code, we also require that you submit to the Floodplain Administrator a **complete** application for a Floodplain Permit by no later than **Thursday, June 15, 2023**. If you wish to apply for a Letter of Map Amendment with the Federal Emergency Management Agency, you are free to do so, but that is not the City's concern at this time. The issue that must be addressed immediately is that the subject property is currently located in the Floodplain District and a Floodplain Permit for the new pavement was not obtained prior to construction as required by Chapter 74.

Finally, if the Variance is granted by the Zoning Board, the Planning & Development Department requires that you submit a full and complete Site Plan application to the Planning Board by the next submission date following approval by the Zoning Board. For example, if the Zoning Board approves the Variance request at its meeting on July 3, 2023, a full and complete Site Plan application will need to be submitted to the Planning & Development Department on or before the July 10, 2023 Planning Board application deadline.

Please note that in preparing the site plan application, the entire property is subject to all of the site plan submission and design requirements set forth in Article V and Article VI, respectively, of the Site Plan Review Regulations. Consequently, to the extent the property is non-conforming with the current requirements of the Site Plan Review Regulations, the entire property will need to be brought into compliance with the current requirements as part of your Site Plan application.

As a reminder, per Section 903 of the Zoning Ordinance, Article X of the SPRR, and RSA 676:17, *failure to comply with this order within the times stated herein may result in a civil penalty of \$275*

per violation for the first offense, and \$550 per violation for subsequent offenses, for each day that such violations are found to continue after the date on which you receive this notice.

Should you not voluntarily abate these violations in accordance with the deadlines set forth above, the City will seek (1) **injunctive relief** under RSA 676:15 to enforce this order, (2) **civil penalties** under RSA 676:17, I, **to the maximum extent allowed by law**, and (3) the recovery of its **attorney's fees and costs** under Section 903.5 of the ZO and RSA 676:17, II. Additionally, the City may be authorized under state law to enter upon your property and cause said violations to be remediated, removed or destroyed. If the City does undertake such action, state law also provides that you, as the property owner, will be liable for the expense of the removal and proper disposal of the items causing these violations. The City's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including the possible loss of the property if not paid.

We look forward to receiving your Variance application on or before June 15, 2023. Please be sure to carbon copy the Planning & Development Department when submitting the Floodplain Permit application to the Floodplain Administrator, also due on or before June 15, 2023.

Respectfully,



Nathan Reichert
Planning & Development Director
Zoning Administrator



Tim Corwin
Deputy Planning & Development Director

Cc: Dan Nash, Advanced Geomatics & Design
Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
Rod Finley, PE, Floodplain Administrator
State of NH Department of Safety – Division of Motor Vehicles
File



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

April 19, 2023

Via Certified Mail and Electronic Mail

Cicotte Properties, LLC
c/o Johanna Cicotte
PO Box 600
Lebanon, NH 03766
jcicotte1@aol.com

NOTICE OF VIOLATION

RE: 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), Cicotte Properties, LLC (owner)
*Violation of Zoning Ordinance Sections 702.5.D, 311A.2, 402.2, and 901.1.D;
Site Plan Review Regulations Sections 1.6.A and 3.1.D; and City Code Chapter 74,
Sections 74-9 and 74-14*

Ms. Cicotte:

It has come to our attention that the above-referenced property is in violation of the City of Lebanon Zoning Ordinance ("ZO"), the Lebanon Site Plan Review Regulations, and Lebanon City Code Chapter 74 ("Flood Damage Prevention"). According to the records of the New Hampshire Department of State, you are a member of Cicotte Properties, LLC, which, according to the City's records, is the owner of 51 Evans Drive (Tax Map 78, Lot 40, Plot 200). As a member of the entity that owns the subject property, you are responsible for the violations identified above and further described below.

You are hereby ordered to bring all aspects of the property into compliance with the Zoning Ordinance Site Plan Review Regulations, and Chapter 74 of the City Code. Please be advised that should you fail to take action within the timeframe outlined below, the City of Lebanon will commence legal action against you in court.

PART I: Background

The subject property is situated in the Residential-Office-One (R-O-1) zoning district. The property is currently improved with a vehicular sales (i.e. car dealership) use, which is neither a Permitted use nor a use allowed by Special Exception or by Conditional Use Permit within the R-O-1 District. The existing vehicular sales use is considered a legal, non-conforming use per Section 700 of the Zoning Ordinance and, therefore, is subject to the regulations of Article VII of the Zoning Ordinance ("Non-Conformities").

Planning and Development Department staff recently observed that a newly paved surface has been installed on the property at the southern end of the parking lot. Judging by observation and subsequently measuring the area using the City's online GIS tool, it appears that the new surface on 175 Heater Road may be approximately 4,000 sq. ft. in size.

PART II: Violations of the Zoning Ordinance

As noted above, the property is currently improved with a vehicular sales use, which is neither a Permitted use nor a use allowed by Special Exception or by Conditional Use Permit within the R-O-1 District (see Section 311A.2 of the ZO). As such, the existing vehicular sales use is considered a legal, non-conforming use per Section 700 of the Zoning Ordinance and, therefore, is subject to the regulations of Article VII of the Zoning Ordinance ("Non-Conformities").

Section 702.5 of the Zoning Ordinance provides for the expansion of legal, non-conforming uses by Special Exception granted by the Zoning Board of Adjustment under certain conditions. However, Section 702.5.D states "[i]n no case shall a legal non-conforming use in whole or in part be allowed to expand [...] to any portion of the lot that was not occupied by the non-conforming use at the time such use became non-conforming pursuant to Section 700."

The newly paved surface adjoining the existing parking area of the car dealership on the subject property constitutes an impermissible expansion of a non-conforming use into an area of the lot that was not previously occupied by the non-conforming use at the time the use became non-conforming. As such, the newly paved surface on the property is in violation of Section 702.5.D and Section 303.2 of the Zoning Ordinance.

The installation of the newly paved surface on the subject property also constitutes violations of the following Sections of the ZO:

- **Section 402.2** – The subject property is located in the Floodplain District overlay per Section 402 of the ZO. Section 402.2 of the ZO requires compliance with Chapter 74 ("Flood Damage Prevention") of the City Code. Section 74-14 of Chapter 74 requires that a floodplain permit shall be obtained "before construction or development begins within any area of special flood hazard[.]" Staff has verified that no Floodplain Permit has been issued for the installation of the paved area and, therefore, is out of compliance with Chapter 74. Consequently, the property is in violation of Section 402.2. of the Zoning Ordinance.
- **Section 901.1.D** – Staff has verified that that no Zoning Permit has been issued for the pavement as is required by Section 901.1.D of the Zoning Ordinance.

PART III: Violations of the Site Plan Review Regulations

Section 1.6.A of the Lebanon Site Plan Review Regulations, adopted May 13, 1991, last revised January 23, 2023, states "[t]hese Site Plan Review Regulations apply to all land development, and no such land development shall proceed without first obtaining a jurisdictional determination from the Planning and Development Department pursuant to Section 3.1."

Section 3.1.D of the Lebanon Site Plan Review Regulations, states "[L]and development that constitutes a major change to a property, including any land development that exceeds the thresholds set forth in Section 3.1.C.1.a-e, shall require site plan approval from the Planning Board in accordance with the procedures set forth in Article IV." Section 3.1.C.1.b establishes a threshold of 2,500 sq. ft. for new improved surfaces, including but not limited to, gravel or paved parking areas, driveways, walkways, or other improved surfaces, whether or not such surfaces are pervious or impervious. For new improved surfaces larger than 2,500 sq. ft. in area, site plan approval from the Planning Board is required.

NOTICE OF VIOLATION

Cicotte Properties, LLC

51 Evans Dr (78-40-200)

April 19, 2023

Page 3 of 4

As noted above, Planning and Development Department staff observed that the subject property has been covered with a newly paved surface of appears to be approximately 4,000 sq. ft. or more in size, which exceeds the threshold for requiring Site Plan approval from the Planning Board. Consequently, **the installation of the newly paved surface on the property constitutes a violation of Sections 1.6.A and 3.1.D of the Lebanon Site Plan Review Regulations.**

PART IV: Violation of City Code Chapter 74

The subject property is located in a special flood hazard area ("SFHA") as depicted on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA). Consequently, the property is subject to the requirements of City Code Chapter 74 ("Flood Damage Prevention"). See Section 74-7 and 74-8 of the City Code. Section 74-9 provides that, "[n]o structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations[.]" and Section 74-14 requires that a floodplain permit shall be obtained "before construction or development begins within any area of special flood hazard[.]"

The newly installed paved area has been constructed on the property entirely within the SFHA. As noted above, staff has verified that no Floodplain Permit has been issued for the installation of the paved area as required by Section 74-14 of the City Code. As a result, **the property is in violation of Sections 74-9 and 74-14 of Chapter 74 of the City of Lebanon Code.**

Part V: Remedies

YOU ARE HEREBY REQUIRED TO:

- (A) **REMEDY THE ABOVE-CITED VIOLATIONS AND BRING THE PROPERTY INTO COMPLIANCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS LETTER.**
- (B) **CONTACT THE PLANNING & DEVELOPMENT DEPARTMENT WITHIN TEN (10) DAYS OF THE DATE OF THIS LETTER TO PROVIDE A DETAILED PLAN AS TO HOW THE PROPERTY WILL BROUGHT INTO COMPLIANCE AS PRESRCIBED IN (A) ABOVE.**

Per Section 903 of the Zoning Ordinance, Article X of the SPRR, and RSA 676:17, *failure to comply with this order within the times stated herein may result in a civil penalty of **\$275 per violation** for the first offense, and **\$550 per violation** for subsequent offenses, for each day that such violations are found to continue after the date on which you receive this notice.*

Should you not voluntarily abate these violations, the City will seek (1) **injunctive relief** under RSA 676:15 to enforce this order, (2) **civil penalties** under RSA 676:17, I, **to the maximum extent allowed by law**, and (3) the recovery of its **attorney's fees and costs** under Section 903.5 of the ZO and RSA 676:17, II. Additionally, the City may be authorized under state law to enter upon your property and cause said violations to be remediated, removed or destroyed. If the City does undertake such action, state law also provides that you, as the property owner, will be liable for the expense of the removal and proper disposal of the items causing these violations. The City's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including the possible loss of the property if not paid.

This is a decision of the administrative officer, which you have the right to appeal to the Zoning Board of Adjustment. Should you wish to appeal my interpretation, application or construction of

NOTICE OF VIOLATION

Cicotte Properties, LLC

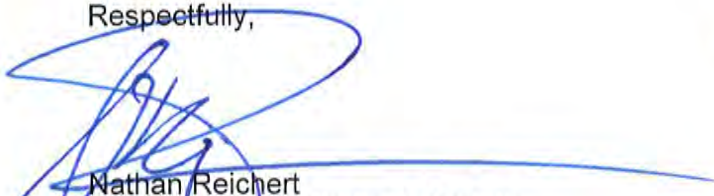
51 Evans Dr (78-40-200)

April 19, 2023

Page 4 of 4

the Zoning Ordinance you have thirty (30) days from the date of this Notice of Violation to file an appeal. Forms to appeal an administrative decision pursuant to RSA 674:33, I(a) and Section 801.1 of the Zoning Ordinance can be obtained from the Planning and Development Department or online at www.lebanonnh.gov.

Respectfully,



Nathan Reichert
Planning & Development Director
Zoning Administrator



Tim Corwin
Deputy Planning & Development Director

Cc: Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
State of NH Department of Safety – Division of Motor Vehicles
File







**Property Information**

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

**Property Information**

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

**Property Information**

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

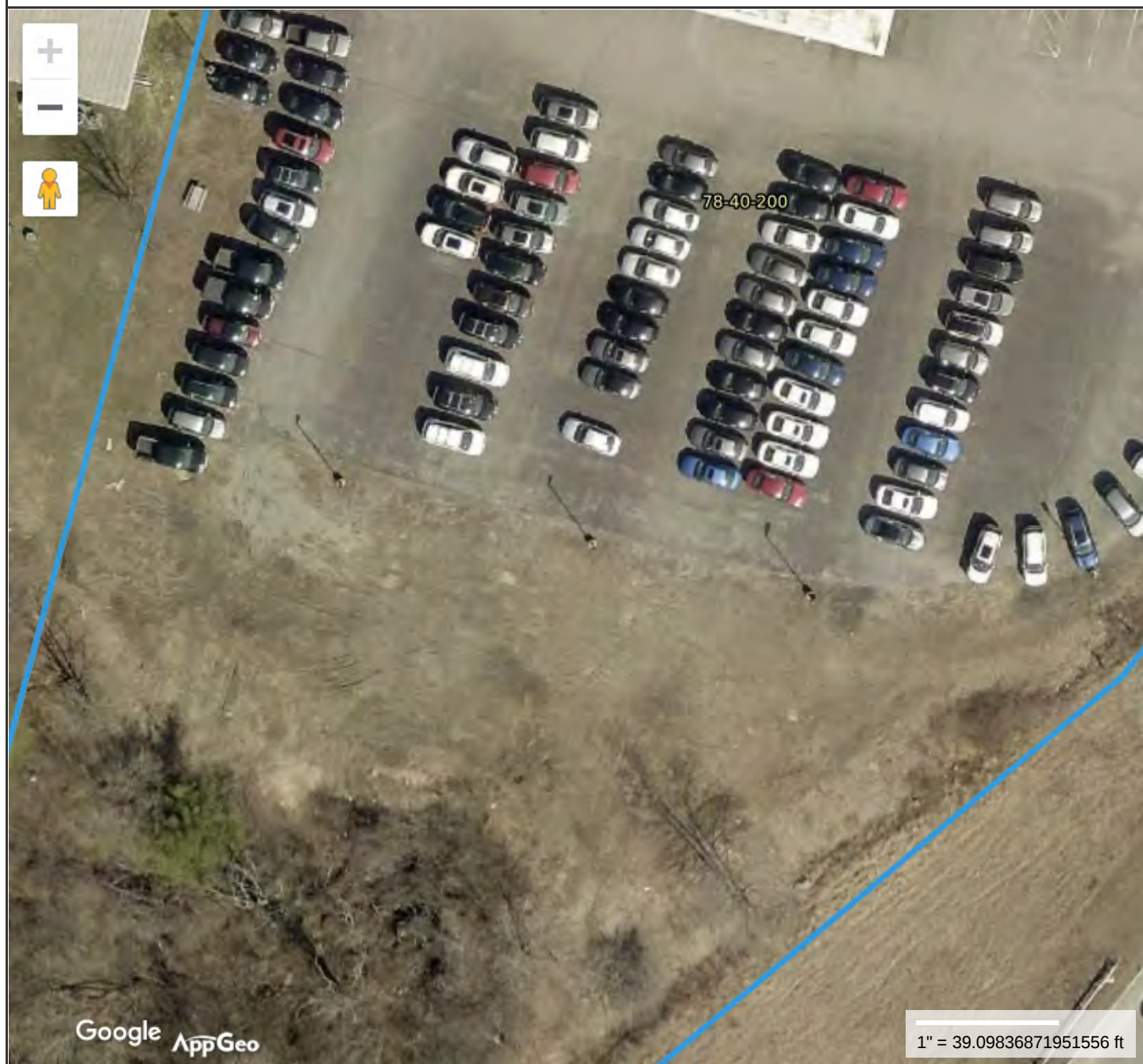
Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Map Theme Legends

Wetlands

-  Wetland
-  100 ft High Value Wetland Buffer

**Property Information**

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.



Property Information

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement activities should not be done using this resource.

Map Theme Legends

FEMA Flood Zones

- 100 YEAR
- 500 YEAR

National Flood Hazard Layer FIRMette



72°15'10"W 43°39'16"N



0 250 500 1,000 1,500 2,000 Feet 1:6,000 72°14'32"W 43°38'50"N
Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

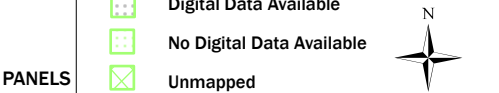
SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D

OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
		Area of Undetermined Flood Hazard Zone D

GENERAL STRUCTURES		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall

OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance
		Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 5/23/2023 at 10:46 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



28 April 2023

Nathan Reichert, Planning and Development Director
Tim Corwin, Deputy Planning and Development Director
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Notice of Violation
Lot 78-30, 51 Evans Drive

Dear Mr. Reichert and Mr. Corwin:

Cicotte Properties has asked me to prepare a response to your Notice of Violation.

Additional Pavement. Cicotte Properties purchased the property in May 2021. As relayed to me, upon purchase, the area you note as additional pavement was in place and in poor condition. Cicotte Properties engaged Twin State Paving to reclaim the poor paving and repave. A copy of the estimate stating the scope of work is attached. The scope clearly states it is a repair job, not an expansion of paving. It is our position that the expansion, and consequently a violation, was due to the actions of a previous owner. We are willing to work with you to obtain necessary permits for this paving to remain. However, there was no violation on the part of Cicotte Properties.

Flood. There is no violation of the Flood ordinance on the property. Flood maps are often prepared with coarse mapping that does not fully indicate contours and therefore flood limits. Attached is an extract from the Flood Map covering the subject parcel. The Flood elevation covering this area is 578'. Attached is a topographic plan of the property prepared from city GIS data. The actual contour is highlighted on this plan. The flood limit, contour 578, is well away from the area of concern and is NOT in the flood plain. While the parcel includes mapped flood plain, the map is in error. To that end, we can have our surveyor apply for a LOMA (Letter of Map Amendment) or a LOMR (Letter of Map Revision). The amendment will take the flood plain off practically all of this parcel.

Plan of Action. Owner proposes the following actions:

- Zoning. Seek necessary approvals for the parking use and expanded paving.
- Planning. Obtain Site plan approval for the expanded paving.
- Flood. Obtain a LOMA to remove the property, or applicable area, from the Flood Plain.

51 Evans Drive
City of Lebanon
28Apr2023

Please let us know if you need any additional materials to support this response.

Sincerely,

Daniel A. Nash, PE
Principal

Attached:

- Twin State Paving Estimate
- Extract of FEMA Flood Map
- Topo Plan with Flood Limit

CC: Shaun Mullholland, City Manager
David Brooks, Deputy City Manager
Cicotte Properties, LLC

M:\2023_projects\23-006\EXCELWORD\col_nissan_27apr2023.docx



Twin State Paving, LLC
P.O. Box 333
Sunapee, NH 03782 US
+1 6038657246
tspaving@yahoo.com
<http://www.twinstatepaving.com>

Estimate

ADDRESS

Johanna Cicotte
132 Ballardvale Drive
WRJ, Vermont 05001

ESTIMATE # 2441
DATE 05/25/2021

ACTIVITY

AMOUNT

1 - New Hampshire:1a - Paving
Services:NH - Paving
51 Evans dr.
Lebanon NH
03766

250,000.00

Reclaim; to reclaim existing lot,
based on 3" of asphalt and a sub
base mixing of 8". Grade and
compact.
Pave existing sub base area with
2.5" of base course asphalt and
1.5" of finish course asphalt.

FOR THE SUM OF: \$250,000.00
10% due at booking on all
commercial projects. 40% due at
start and balance is due within 30
days of finish.

TOTAL

\$250,000.00

Thank you for your interest in our company. Paving projects where we have constructed the sub base (12-18" min) will be warrantied for 18 months; paving projects where we have not constructed the sub base will be warrantied for 12 months. We do not guarantee chemical spills, tire marks, growth of vegetation, indents in pavement, broken edges, or delivery/service vehicles, work preformed by sub contractors hired by the customer, or sub base failure that we have not constructed. Payment is due upon completion. Projects/Accounts that exceed 30 days past due will incur finance charges at 1.5% per month; in addition, if litigation is required to satisfy an outstanding debt, Twin State Paving LLC will seek any and all fees associated with recouping funds due. Warranty repairs do not constitute for non-payment. Due to fluctuating liquid prices, this estimate is subject to change to

meet these changes, therefore this proposal may be withdrawn by us
if not accepted within 30 days.

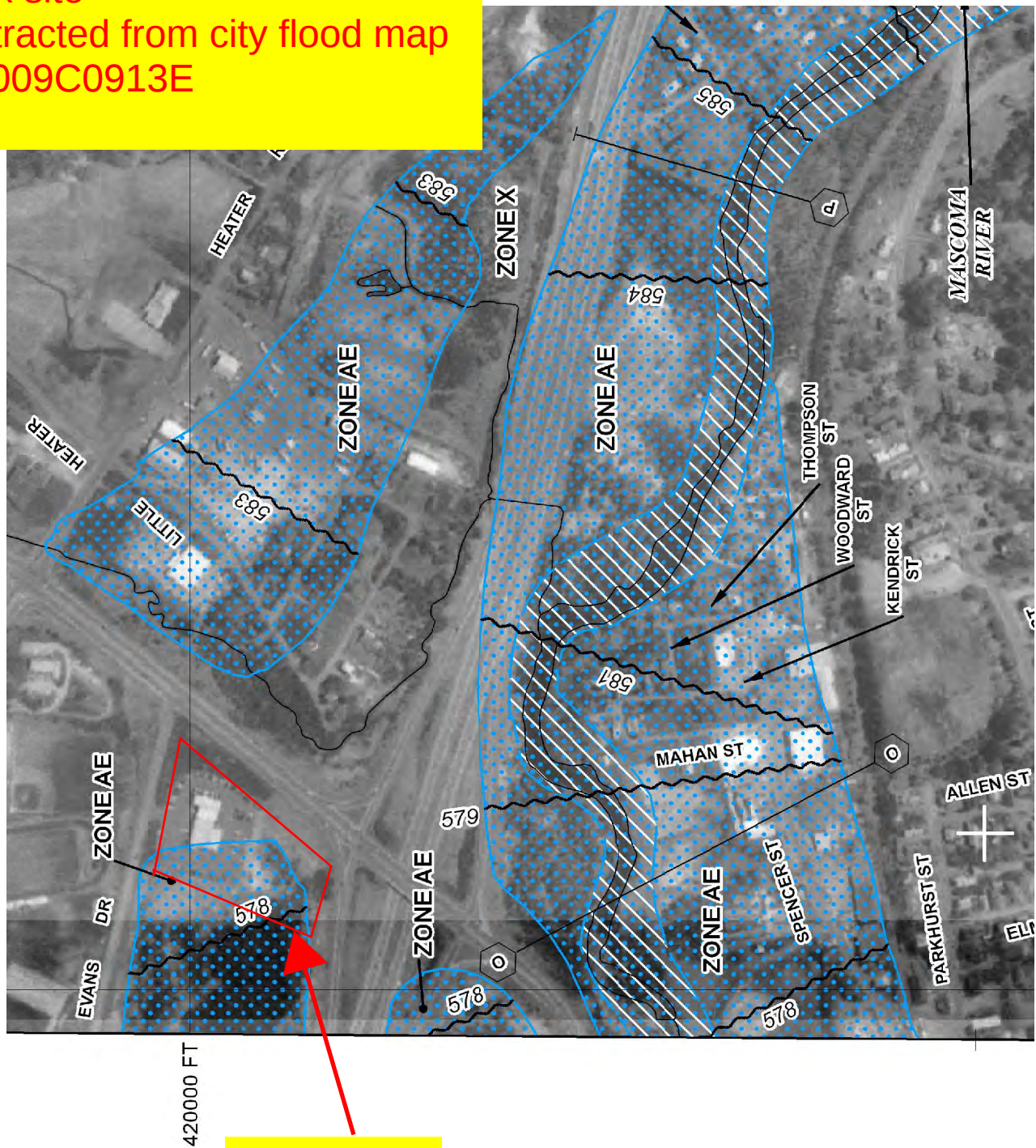
Accepted By



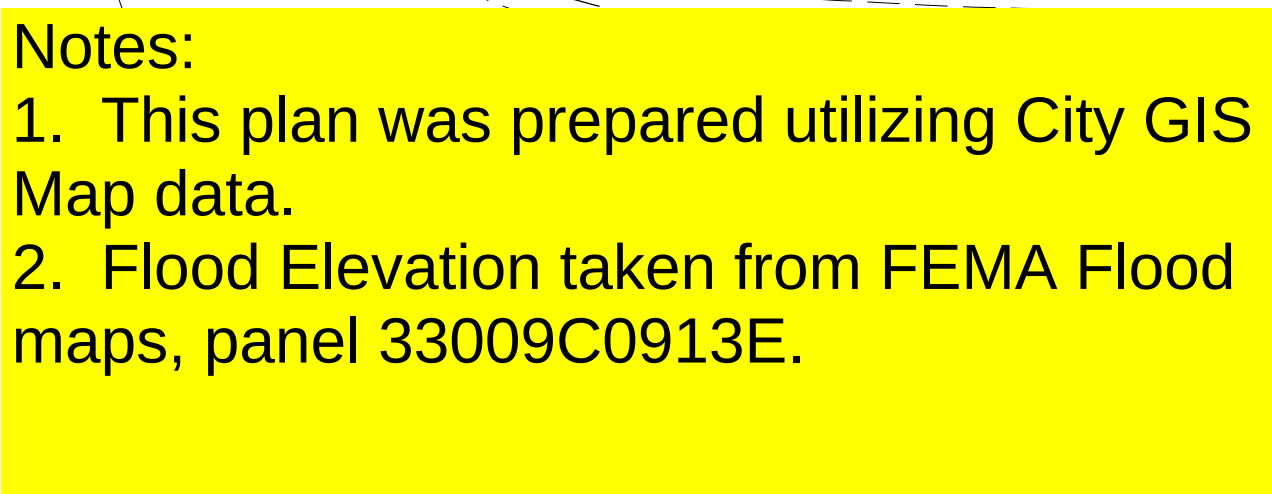
Accepted Date

5/25/2021

Apx site
Extracted from city flood map
33009C0913E



Lot 78-40



105 BANK STREET - PO BOX 512
LEBANON, NEW HAMPSHIRE 03766

PHONE: (603) 448 6295

E-MAIL: advancedgeomatics@comcast.net

E-MAIL: advancedgeomatics@comcast.net

© 2023
ADVANCED GEOMATICS & DESIGN
DWG: 23006-BA

[illegible]