

FINAL

LEBANON BUILDING CODE BOARD OF APPEALS
MONDAY, December 6, 2021, 6:30 PM
Council Chambers, City Hall or
Remote Via Virtual Platform
LebanonNH.gov/LIVE

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer (Remote), Dan Nash, David Newlove, Paul McDonough (Alt), Jennifer Barkley (Alt)

MEMBERS ABSENT: Jeremy Katz

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 6:36 PM by Chair Koppenheffer.

Vice Chair Mercer attended remotely because she is away from Lebanon, NH. No one objected to her continuance as a voting member.

Mr. McDonough was given voting privileges for this meeting.

2. APPROVAL OF MINUTES

A. November 15, 2021

Mr. Nash MOVED to approve the November 15, 2021, Minutes as presented in the December 6, 2021, with amendments.

Seconded by Mr. McDonough.

Amendments. Page 2, Line1; Add 'Request for a' before rehearing.

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

Mr. Newlove abstained because he was not at the meeting.

3. REHEARING REQUEST

A. One Mechanic Street, LLC, 1 Mechanic Street (Tax Map 91, Lot 264), zoned LD: An appeal concerning an interpretation of Section 306.1 ("Access") and Section 306.5 ("Equipment and Appliances on Roofs or Elevated Structures") of the International Mechanical Code (IMC) by the Building Code Official. **BCBA2021-01-01A**

This is a rehearing, and the applicant agrees that all the evidence in the previous meetings is deemed part of the record. The testimony at this meeting will be limited to items that have not been covered or items that are not clear.

Mr. Katz provided a summary of his submission and addressed the packet and discussed the standards of appeal. An appeal can be considered, according to RSA674.34, and can be granted for any of three reasons: 1) true intent of the codes have been incorrectly interpreted, 2) provisions of the code do not fully apply, and 3) there is an equally appropriate mode of construction proposed. He said the provisions of the code that were cited do not apply. The ICC stated that the sections of the code do not fully apply. Therefore, a determination cannot be made to apply when the authority says they do

not apply. It does not matter if the equipment is an appliance because it does not apply. The applicant provided pictures that the applicant's expert said are normal and ordinary installations. They show heat pumps that are higher than 16 feet without platforms. Other pictures show examples in the City of Lebanon where heat pumps are installed in a manner where the City codes have not been applied. The materials submitted by the applicant are a complete record. In Mr. Katz's opinion, this issue was resolved when input from the ICC was sought and the response from the ICC said that it did not apply.

Chair Koppenheffer asked about the pictures and how the heat pump units in the pictures would be serviced. He asked about the applicant's detrimental reliance. Mr. Katz responded that the process for renovating One Mechanic Street involved the provision of complex drawings, a code review and meetings with the building and zoning office. When a permit is granted, construction begins based upon the plan that was submitted and approved. When construction has occurred and the building penetrations have been made for the wiring to deliver to the planned location of the heat pumps, they rely upon the investment of that work. All the required penetrations that must be made have been completed. The cost of moving the heat pumps could be \$50-60,000. Those changes coupled with potentially changing the roof could add 10% to the building renovation costs. On the mechanical plans that were submitted and approved in the original building application, the heat exchangers were mounted on the wall and labeled heat pumps. It is possible that an error occurred on the part of the City, where the heat pump locations were missed in their review.

Brad Shaw, City Building Inspector, appeared and discussed the drawings the Board had been reviewing. The building inspectors assumed that the heat pumps were going to be put on the roof. One drawing described that the heat pump was going to be on the side of the building. Mr. Shaw stated that Section 306.1 gives no exceptions for the 30" x 30" platform. No where in the code is a heat pump hung on a wall discussed. He believes it is not discussed because a wall hung unit cannot add the platform. Further if the code does not discuss wall hung units, then another code allows for the local building inspector to make determinations based on safety. Section 306.5 allows a ladder to get to an elevated structure, it does not say that the equipment can be serviced from the ladder. The whole discussion about the ladder is to access the platform, not to work on the heat pump.

Vice Chair Mercer asked Mr. Shaw about the drawings that were submitted in the original application. It is clear to her that there are apparatus hanging off the wall in the drawings. There are 13 apparatus that are labeled wall hung heat pumps. Mr. Shaw said it was not clear because the plan does not show an elevation and therefore it is not possible to know how high the heat pumps were going to be installed. She clarified that it is easy to understand how this was missed or how assumptions were made that the heat pumps would be lower. And if the building inspectors did miss it, then things are missed from time to time. Mr. Shaw stated it is the responsibility of the design professional to make the plans according to code.

Mr. Katz clarified that he became aware that there was an issue about the time he started the appeal, right before Labor Day. They evaluated the situation and tried to find a way to make the changes, to do what the building inspectors asked. It was not an easy thing to do both technically and economically. In the past they have never disagreed with the building inspectors. If the responsibility is that of the design expert, his engineer put his stamp on the plan because in his expertise and experience, this is an ordinary and normal installation. Also, all the other elevated heat pumps in Lebanon, apparently have not applied for any permits as they do not follow these same recommendations. He went located all the heat pumps in Lebanon that he could find and submitted all those pictures, except for half the heat pumps that are on the ground. He did not find any heat pumps that are elevated in the manner that the building inspectors suggest. He objects that the City

believes that even if it is not in the code, they can impose their rule. There is no regular code that is uniformly applied and enforced regarding heat pumps, as shown in all the pictures that he provided.

Chair Koppenheffer opened the Public Hearing.

Chet Clem of Lyme Properties spoke in support of the rehearing. Any situation with a lack of clarity on the part of the City should provide an opportunity for the affected builder to speak; especially in cases where there is a hardship that is a costly uncertainty and where there are ambiguities regarding the interpretation of ordinances.

Hearing no one else from the Public, Chair Koppenheffer closed the public hearing.

The Board discussed that the building inspectors' actions were performed in good faith. After hearing from the ICC, some members believe that the Sections do not apply and heat pumps are not appliances, some believe they do apply, and others believe there is ambiguity. The City attorney suggested that the correct approach is to consider the language as it is written in the context of the regulatory scheme and to only consider past interpretation if it is ambiguous. The basis for the appeal is sound. The intent of the code is to provide a safe workplace. However, there is an unfounded assumption that the heat pumps will be serviced in an unsafe manner. On the other hand, the detrimental reliance is valid. The applicant proceeded to construct the building according to the submitted and approved plans. The cost to bring the project into compliance with the City's code would be in the range of \$70-100,000 and that is an unfair request. Therefore, the applicant is entitled to relief.

Chair Koppenheffer MOVED On October 4 & 18, November 1 & 15 and December 6, 2021, at duly noticed meetings of the Lebanon Building Code Board of Appeals, there appeared Jeremy Katz and Daniel Dupras, PE consultant regarding 1 Mechanic Street (Tax Map 91, Lot 264), zoned LD Applicant appeals an interpretation of Sections 306.1 and 306.5 of the International Mechanical Code by the Building Code Official. BCA2021-01

I. FINDINGS OF FACT

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

1. As set forth in a memo prepared by the Building Inspector, the building inspector determined that pursuant to Section 306.1, a level working space of not less than 30"x30" must be provided for each heat pump.
2. Pursuant to Section 306.5, if the height of the level working space exceeds 16 ft. above finished grade, either a ladder fixed to the building, or an interior access will need to be provided in order to access the 30 in. by 30 in. level working spaces.
3. The applicant received a building permit from the City of Lebanon, approving plans submitted to the City for this construction project, on April 10, 2021.
4. In early September the City Building Inspectors raised issues concerning the placement of the heat pumps and the application of Sections 306.1 and 306.5 of the building codes to that placement.

5. The building inspectors suggested several different ways the applicant could change the placement of the heat pumps in order to comply with the code.
6. The applicant investigated and determined that it would cost between approximately \$70,000 and \$100,000 to apply the alternative placements suggested by the building inspectors.
7. Brad Shaw and Calvin Honeywell, Building Inspectors for the City of Lebanon testified at the hearings.
8. Chet Clem spoke in support of the applicant.

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 this appeal.

1. The applicant justifiably relied upon the City's approval and granting of his building permit in April 2021 for the construction of this project.
2. It would be inequitable and unjust to require the applicant five months after construction began to alter that construction at a cost of \$70,000 to \$100,000 in order to change the placement of the heat exchangers on the building.

III. DECISION

Now therefore be it resolved, the Lebanon Building Code Board of Appeals, on this **6th day of December 2021**, hereby **GRANTS** the appeal, as set forth above and per testimony and materials submitted.

Seconded by Mr. Nash.

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

Mr. Newlove voted nay.

4. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 7:39 PM.

Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings
Recording Secretary