



**LEBANON ZONING BOARD OF ADJUSTMENT
OCTOBER 2, 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. September 5, 2023
 3. **Public Hearing Items**
 - A. **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 - Continued From 9/5/2023 Meeting**
 - B. **City of Lebanon, 5 Airpark Rd (Tax Map 131, Lot 1), zoned IND-L and 0 Hall Rd (Tax Map 159, Lot 7) zoned RL-3:** Applicant requests a Special Exception pursuant to Wetlands Conservation District Section §401.5 of the Zoning Ordinance to allow wetland impacts associated with the extension taxiway "A", safety improvements, and the relocation of a localizer antenna, shed and access road at the Lebanon Municipal Airport. **ZB2023-13-SE - Continued From 9/5/2023 Meeting**
 - C. **AAM Lebanon Residences, LLC, 25 Foothill Street (Tax Map 24 Lot 14, Plot 100), zoned IND-L:** The subject property is located within the Altaria Planned Unit Development (PUD) and is currently improved with a hotel which the applicant proposes to convert to a 120-unit multi-family dwelling. Per Section 501.4.D of the Zoning Ordinance, the Altaria PUD may include a maximum of 34 dwelling units, 33 of which have been constructed at 18 Merchant Street. To allow the proposed change of use at 25 Foothill Street, the applicant requests a Variance from Section 501.4.D of to allow 119 additional dwelling units, whereas only one (1) additional dwelling unit is allowed pursuant to the permitted residential density for the Altaria PUD. **ZB2023-16-VAR**
 4. **Request for Rehearing**
 - A. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** Motion to rehear an appeal dismissed due to lack of subject matter jurisdiction by the Zoning Board on August 7, 2023, pursuant to Section 802.5 of the Zoning Ordinance, appealing 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. **ZB2023-11A-AAD**
 5. **Staff Comments**

6. 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
TUESDAY, September 5, 2023
7:00 PM**

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

MEMBERS ABSENT: Jennifer Barkley (Alt)

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:01 PM.

2. APPROVAL OF MINUTES

A. August 7, 2023

Mr. Katz MOVED to approve the August 7, 2023, Minutes as presented in the September 5, 2023 packet.

Seconded by Mr. McDonough.

**The Vote on the Motion was (3-0-2).*

Mr. Newlove and Mr. Nash abstained.

3. PUBLIC HEARING ITEMS

A. Steven Bickford, 22 Wheatley St (Tax Map 77, Lot 15), zoned R3:

Applicant requests a Special Exception pursuant to Sections §703.1 and §801.3 of the Zoning Ordinance to erect a 12 ft. x 16 ft. carport +/-8 ft. from the right-side property line where a 15 ft. side yard setback is required by section §310.3 of the Zoning Ordinance. **ZB2023-14-SE**

Steven Bickford appeared on behalf of the application. He said he would like a carport because he has a long driveway and needs a place to park a second car. Getting out of his driveway has been treacherous during the snow season. He said the garage that is built on the property is only 4 feet away from the property line. The carport would be further away from the property line. He believes it would not block the view for any neighbors because there is a fence and a hedge between him and his neighbors. He is located in a dense neighborhood and most of the other properties in the area encroach on the setback. The lots in the neighborhood are tightly packed and do not fit well into the zoning code due to the size of the lots and the current placement of the buildings on the property. Attaching the carport to the garage would make it sturdier. There has been a delay with his contractor, but the permit would be good for two years.

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

Mr. Nash MOVED on September 5, 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Steven Bickford regarding 22 Wheatley St (Tax Map 77, Lot 15), zoned R-3. The Applicant requests a Special Exception per Section §703.1 of the Zoning Ordinance to erect a

1 **12 ft x 16 ft carport +/- 8 ft from the right-side property line where a 15 ft side-yard setback is required.**
2 **ZB2023-14-SE**

3
4 **I. FINDINGS OF FACT**

5
6 Based on testimony given, application materials presented, and supporting documents submitted, the
7 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 8
9 1. The subject property is developed with a one-story single-family residence with a detached
10 garage constructed in 1915.
11
12 2. At this time, the applicant is seeking a Special Exception pursuant to Section §703.1 of the
13 Zoning Ordinance to expand the dimensionally non-conforming garage with the addition of a
14 attached carport.
15
16 3. In order to grant a Special Exception to change one non-conforming use to a different non-
17 conforming structure, the applicant must demonstrate that the proposal meets the general Special
18 Exception criteria, set forth in Section §801.3. The applicant has submitted testimony addressing
19 the Section 801.3 criteria in an application received by the Planning & Development Department
20 on August 8th 2023.
21
22 4. No one spoke for or against the application.

23
24 **II. CONCLUSIONS OF LAW**

25
26 As a result of the above findings of fact and based on testimony given, application materials presented,
27 and supporting documents submitted, the Board concludes the following with respect to the Special
28 Exception criteria set forth in §801.3 of the Zoning Ordinance:

- 29
30 1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the
31 Zoning Ordinance.
32
33 2. The following conditions/requirement of Section §703.1 **have been** met:
34
35 a. The reasonable use of abutting properties shall not be adversely affected by the proposed
36 expansion.
37
38 b. The proposed expansion shall not render the lot size proportionately less adequate, i.e.
39 any aspect of the building or structure that is currently nonconforming cannot be made
40 more non-conforming in the absence of a variance.
41
42 3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the
43 Special Exception would not remedy. (§801.3.C) *Staff is not aware of any Zoning Ordinance*
44 *violations on the property.*
45
46 4. The character of the area **will not** be adversely affected. (§801.3.D)
47
48 5. **No** hazard or nuisance will be created. (§801.3.E)
49
50 6. The capacity of existing or planned community facilities and services (including streets and
51 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 5th day of September, 2023, hereby **GRANTS** the requested Special Exception as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit and a Certificate of Completion.

Seconded by Mr. Newlove.

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

- B. City of Lebanon, 5 Airpark Rd (Tax Map 131, Lot 1), zoned IND-L and 0 Hall Rd (Tax Map 159, Lot 7) zoned RL-3:** Applicant requests a Special Exception pursuant to Wetlands Conservation District Section §401.5 of the Zoning Ordinance to allow wetland impacts associated with the extension taxiway “A”, safety improvements, and the relocation of a localizer antenna, shed and access road at the Lebanon Municipal Airport. **ZB2023-13-SE - To be opened and continued to the October Zoning Board meeting, pending Conservation Commission review.**

The City has asked to open this hearing to start the timeline. Because it is located in a Conservation Zone, a recommendation from the Conservation Commission to the Board is required. The Board would like to continue this hearing until the Conservation Commission has had time to review the proposal.

*Mr. Newlove MOVED to continue until the October 2, 2023 Meeting,
Seconded by Mr. Nash.*

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

- C. 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 - Continued from August 8, 2023 Meeting**

Mr. Nash recused himself from voting on this hearing because he was not present at the last meeting and has not reviewed the information from the previous meeting.

Ms. Hembree was given voting privileges for this hearing.

Aaron Simpson appeared with Catherine Patch and Laurie Pauli, member of the Public and Architect for Ms. Patch.

1 This hearing was continued in August due to lack of documentation that was previously requested and
2 was requested again the hearing; specifically, a site plan showing current conditions, a plan showing
3 what conditions were like before any construction was done on the property, and a proposed site plan.
4 In addition, a parking plan was requested. No new materials have been received; therefore it is not
5 possible to review this application. Ms. Patch said she has materials to hand out at the meeting. It is
6 felt that in a disputed case, it is not fair to the applicant or the neighbors to move forward. The Board
7 would like an opportunity to review the documents that were requested, and the Public need an
8 opportunity to review the materials.

9
10 Mr. Katz said he believes the application is for approval of use and the issue is if the use would meet
11 the criteria of a special exception. Mr. Reichert said the architect can introduce the materials into the
12 record, but some of the Board members felt it would be more beneficial to hear the testimony at the
13 next hearing. The applicant was under the impression that she could just hand deliver the documents
14 at the hearing. The Public need to be provided time to review the materials. The majority of the
15 members would like more time to review the materials and determine any questions.

16
17 ***Mr. Newlove MOVED to continue this hearing to the October 2, 2023 meeting.***

18 ***Mr. McDonough seconded the motion.***

19
20 ****The Vote on the Motion was (4-1).***

21 ***Mr. Katz voted nay.***

22
23 Mr. Nash returned to the meeting. He asked that the applicants be given a timeline for submission of
24 any materials they want included in the packet for the next meeting and to be published on the City
25 website. The deadline to submit materials would be Thursday 9/21.

26 27 **4. STAFF COMMENTS**

28
29 Mr. Reichert said the department will be working on changes to the Zoning Ordinance over the next
30 few weeks. He asked members to offer any suggestions within the next week if they have any
31 suggestions they would like to see in the ordinance. Chair Koppenheffer made comments about
32 parking requirements in residential areas. Now that 4 unrelated people can live in a space, it would
33 require additional parking. Mr. Reichert explained the process to change Zoning Ordinances.
34 Another section they would like addressed is lighted signs. There are many types of electronic signs,
35 and the price changes that are required for gas stations are problematic. How often the electronic
36 signs change is one consideration. Changes to the ordinance will be submitted to the City Council at
37 the first Council meeting in October and there will be several public hearings throughout the
38 community before any changes are passed.

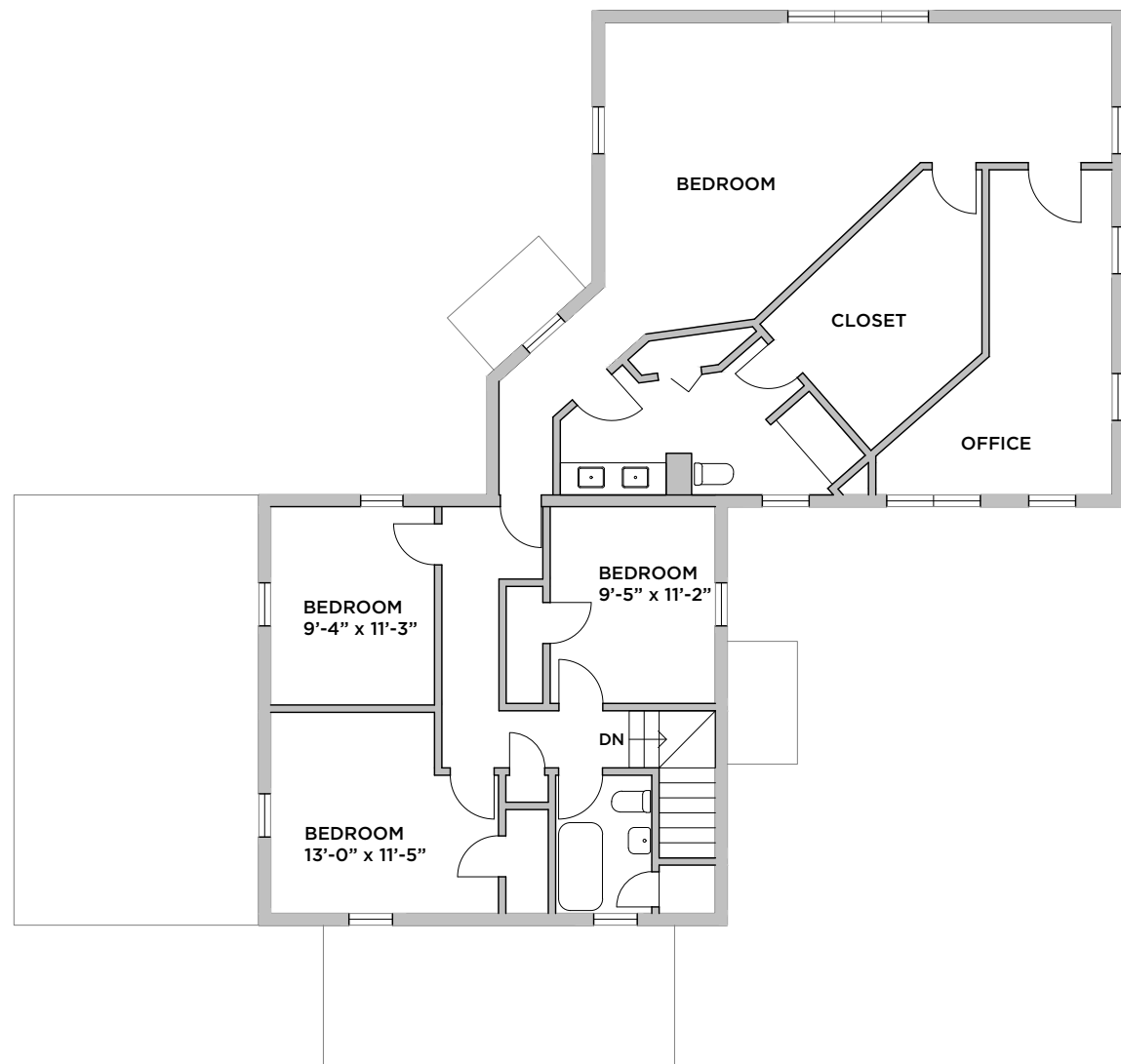
39 40 **5. ADJOURNMENT**

41
42 ***Mr. Nash MOVED to adjourn the meeting at 7:41 PM.***

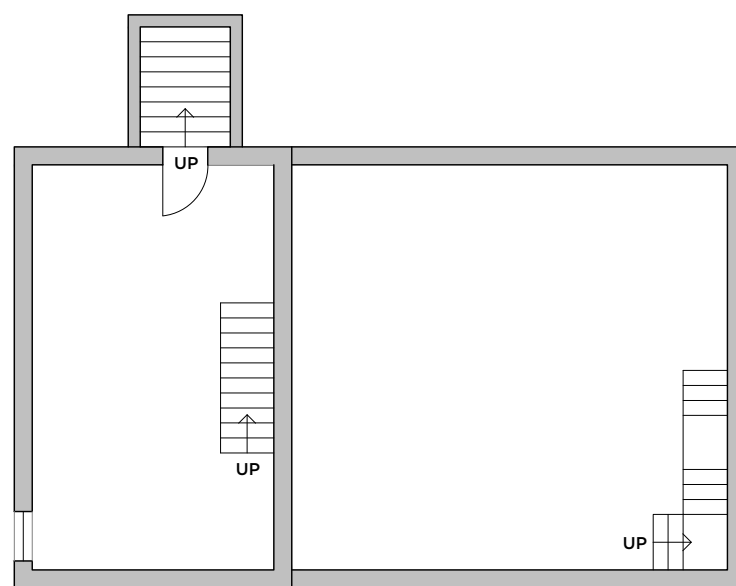
43 ***Seconded by Mr. Newlove.***

44
45 ****The Vote on the Motion was approved (5-0).***

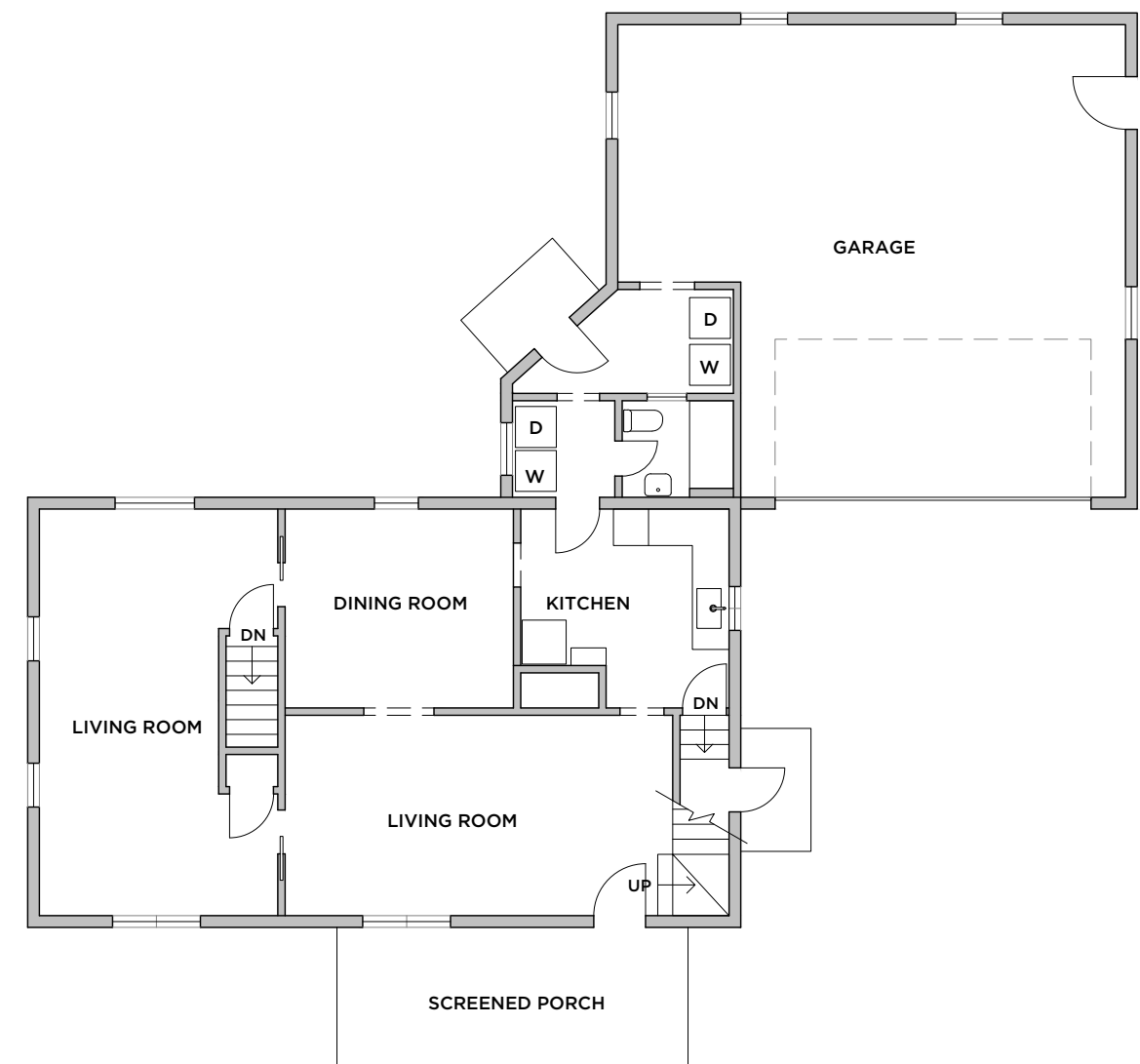
46
47 Respectfully submitted,
48 Linda Billings, Recording Secretary



UPPER LEVEL
3/32" = 1'-0"



BASEMENT LEVEL
3/32" = 1'-0"



LOWER LEVEL
3/32" = 1'-0"

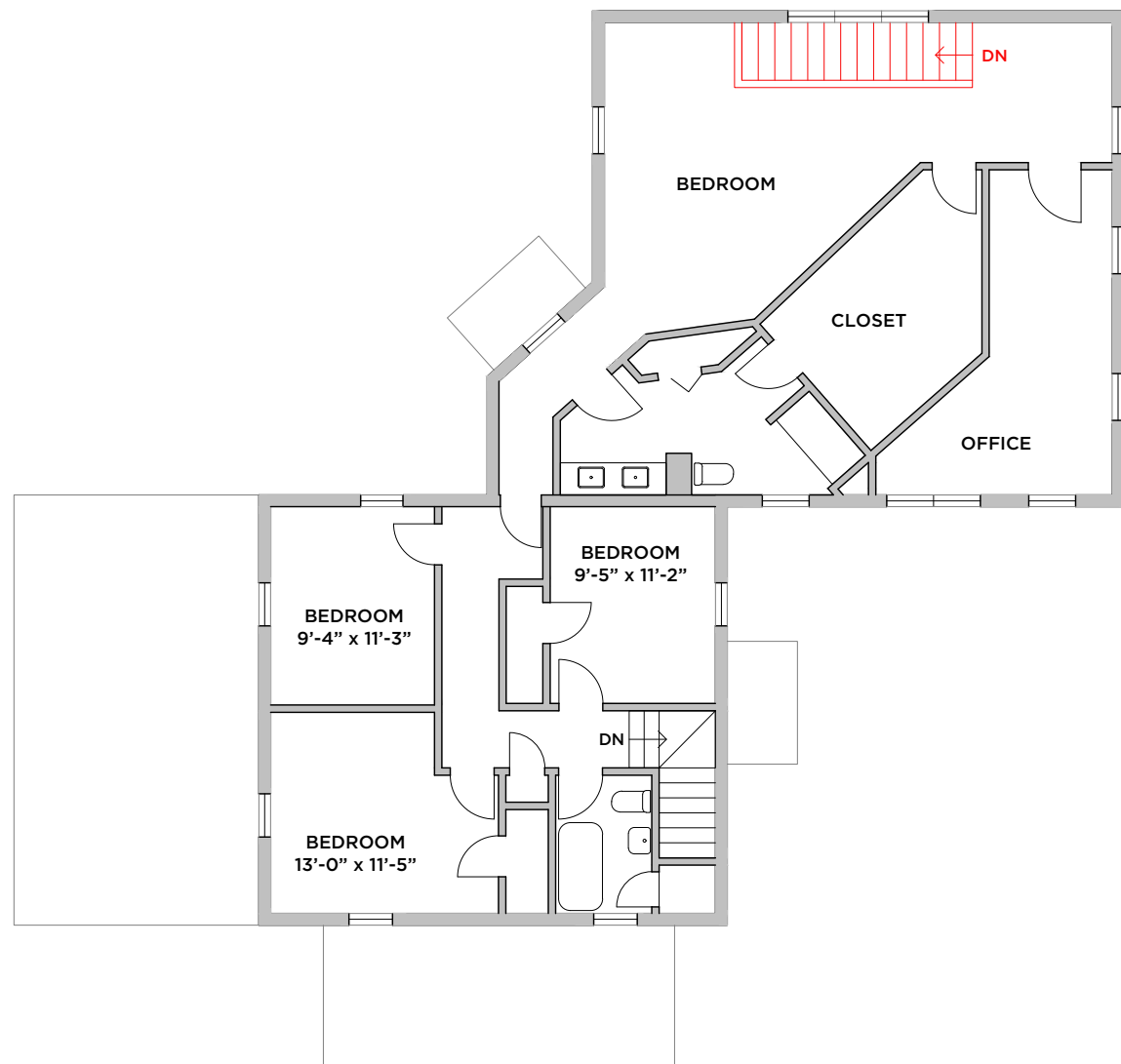
PROPERTY LINE

EXISTING PLANS (2019)

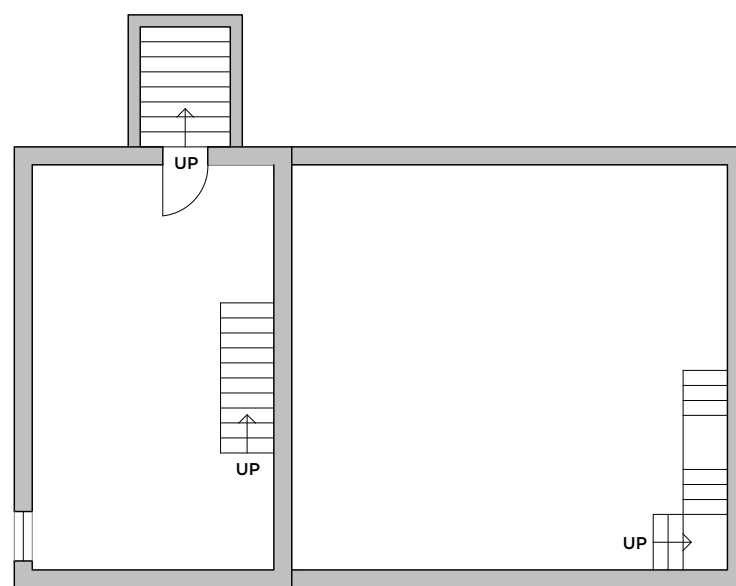
5 MACK AVE
WEST LEBANON, NH

LAURIE PAULI AIA

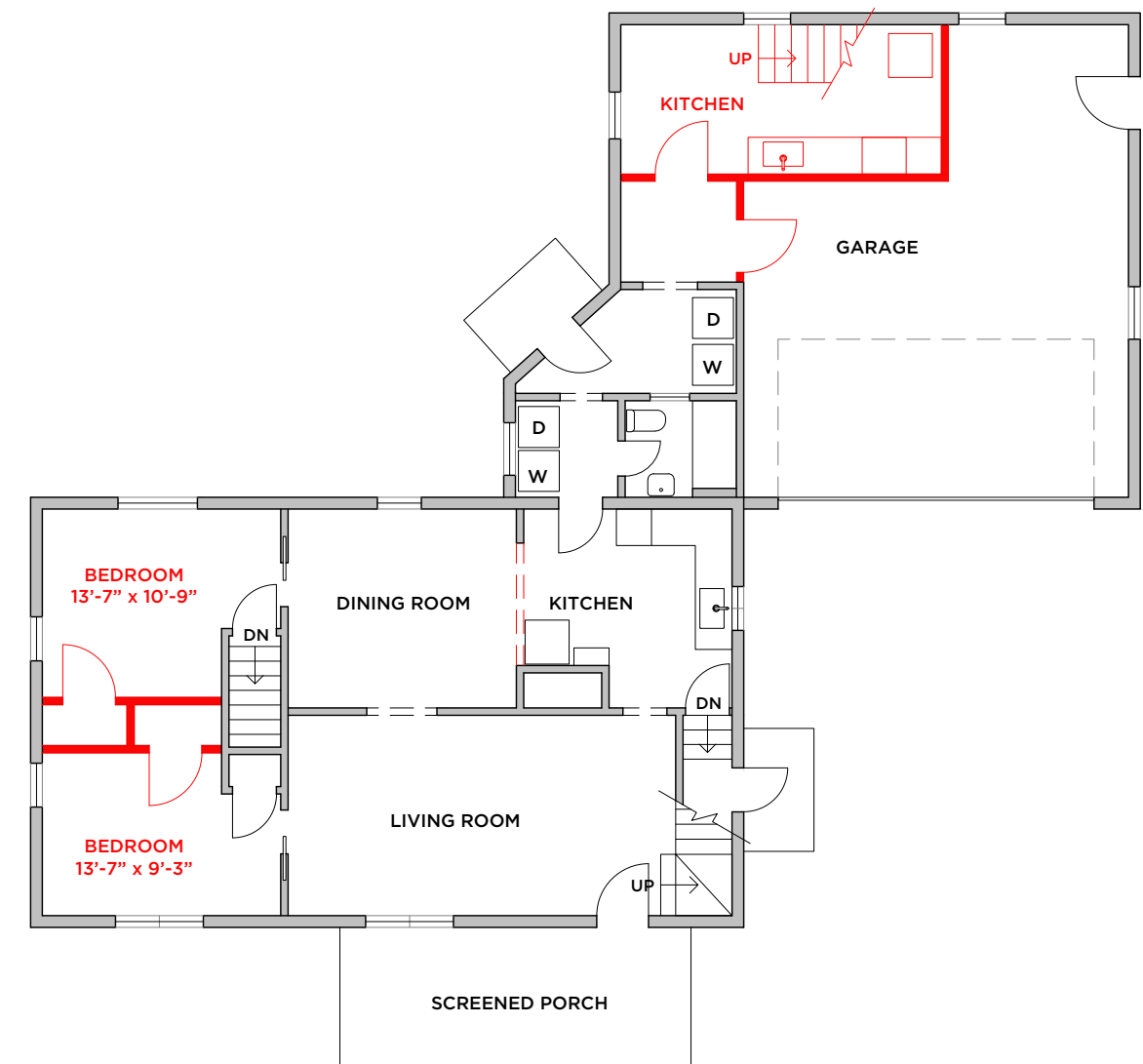
46 ELDRIDGE ST. LEBANON NH 03766
P: 518.461.4997 W: LAURIEPAULI.COM



UPPER LEVEL
3/32" = 1'-0"



BASEMENT LEVEL
3/32" = 1'-0"



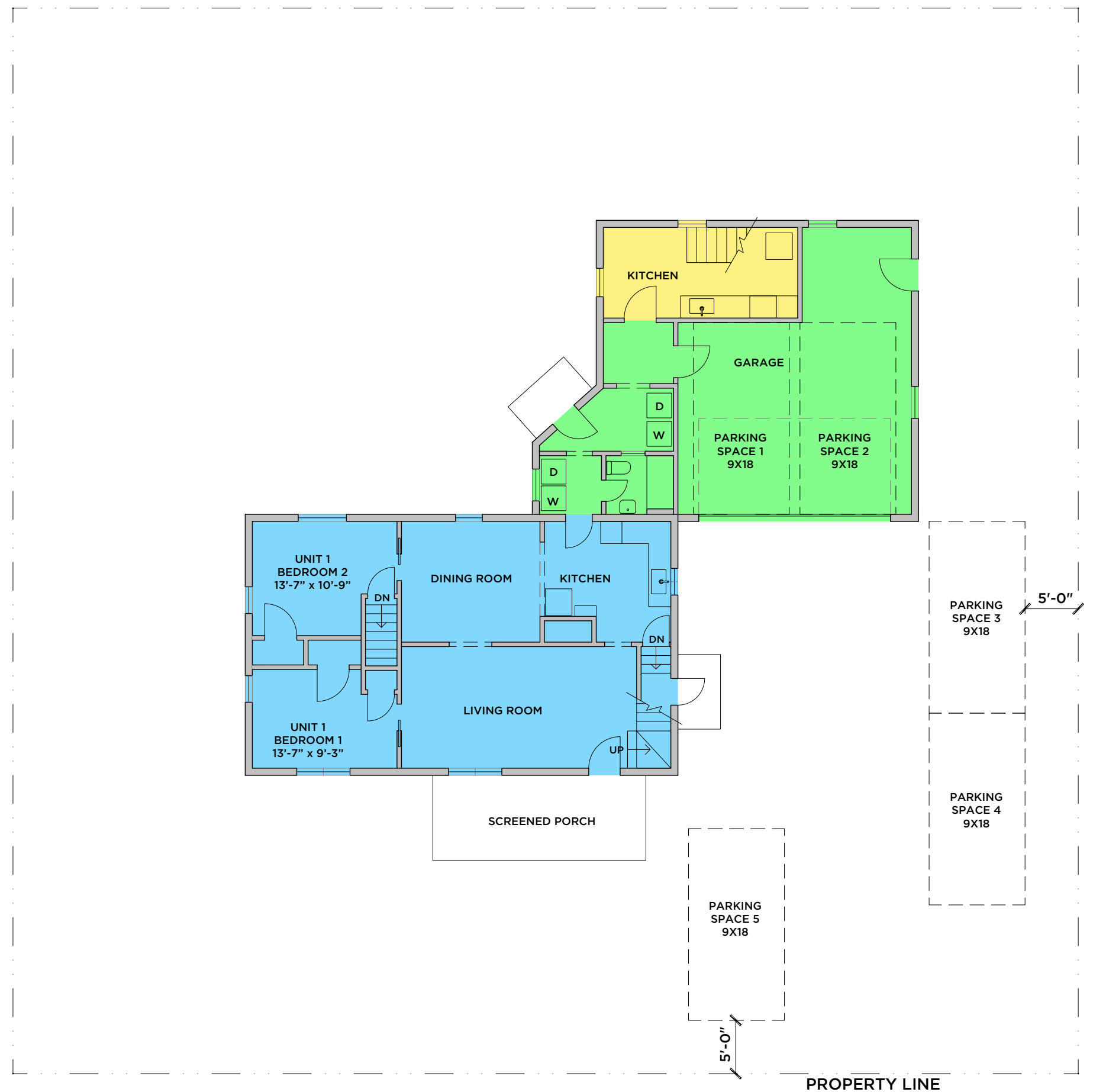
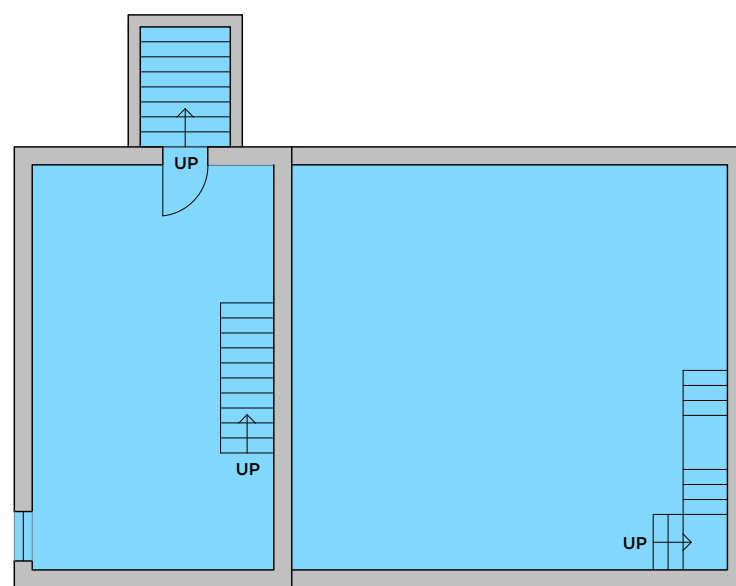
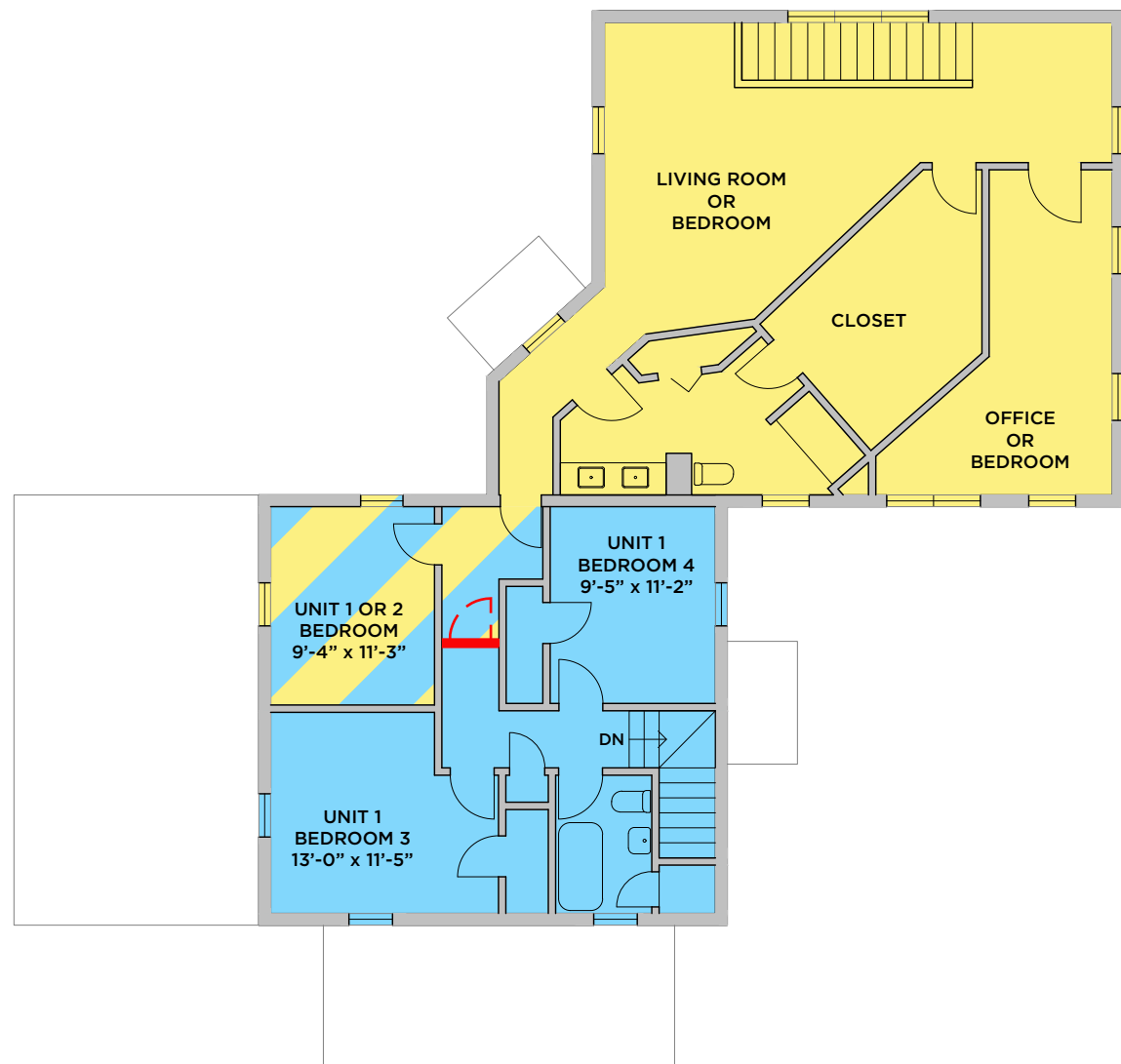
LOWER LEVEL
3/32" = 1'-0"

PROPERTY LINE

**CHANGES MADE
SINCE 2019**
5 MACK AVE
WEST LEBANON, NH

LAURIE PAULI AIA

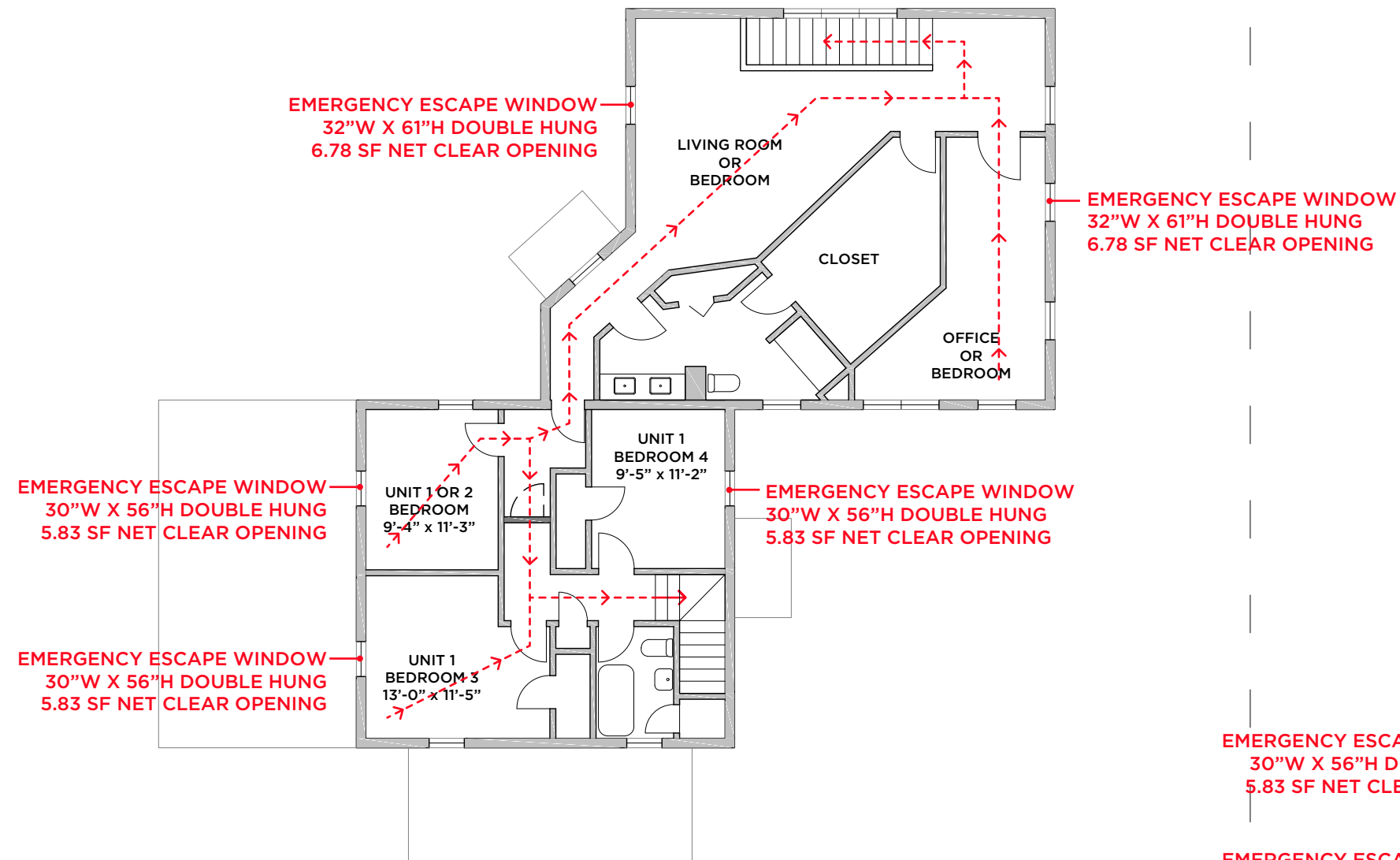
46 ELDRIDGE ST. LEBANON NH 03766
P: 518.461.4997 W: LAURIEPAULI.COM



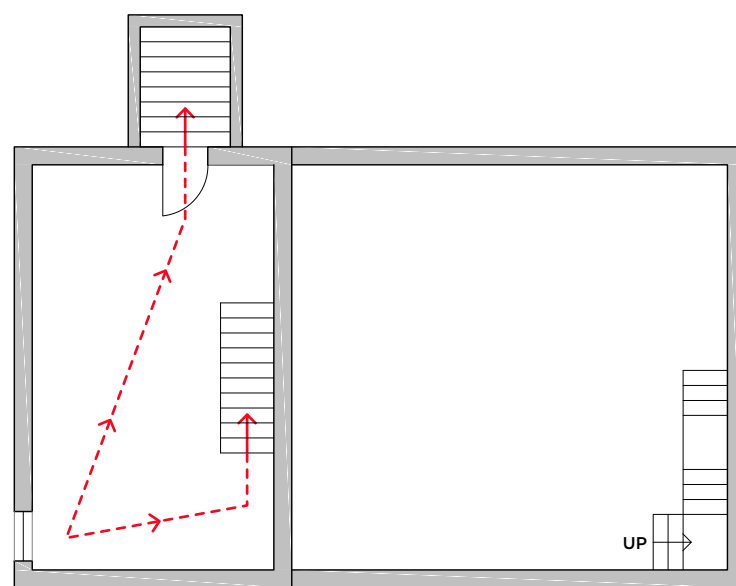
NEW WALL
EXISTING WALL

UNIT 1
UNIT 2
SHARED

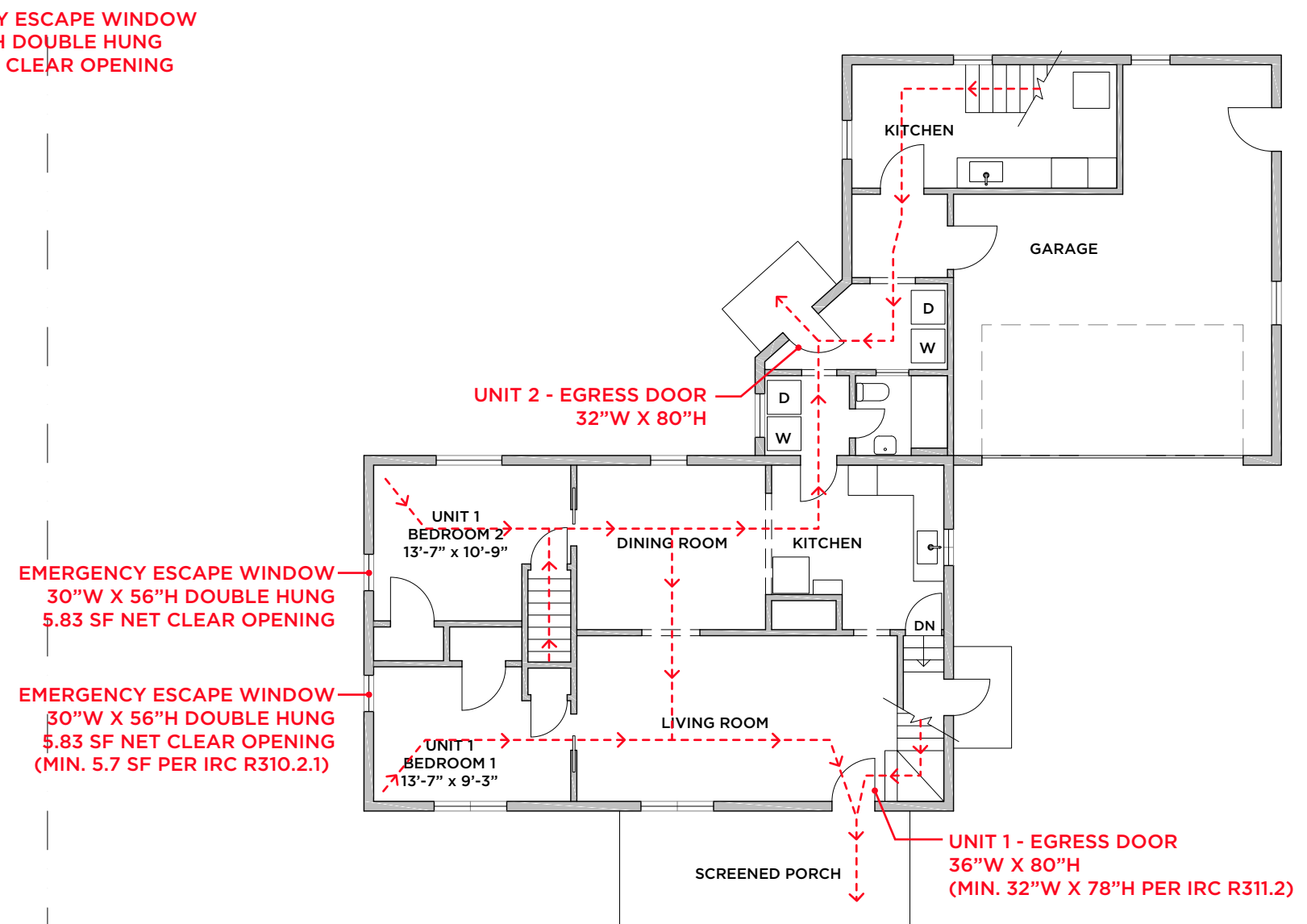
PROPOSED PLANS
5 MACK AVE
WEST LEBANON, NH
LAURIE PAULI AIA
46 ELDRIDGE ST LEBANON NH 03766
P: 518.461.4997 W: LAURIEPAULI.COM



UPPER LEVEL
3/32" = 1'-0"



BASEMENT LEVEL
3/32" = 1'-0"



LOWER LEVEL
3/32" = 1'-0"

EGRESS AND
EMERGENCY ESCAPE
5 MACK AVE
WEST LEBANON, NH

LAURIE PAULI AIA

46 ELDRIDGE ST LEBANON NH 03766
P: 518.461.4997 W: LAURIEPAULI.COM

Proposed Operational Plan: 5 Mack Ave West Lebanon, NH

Each of the two units will be rented to either individuals, couples or families. In no event will the two family home be rented in such a way that it would be considered a lodging house. Interviews and applications will be required to assist in finding tenants who are a good fit and will pay rent on time. Ideally housing will be provided on yearly leases, but will be subject to change as needed. The currently projected number of vehicles will be four or five total if the second unit is allowed to be rented. I will continue to maintain and improve the property while complying with all fire and building code requirements. All leases will conform to the fire code requirements and the City of Lebanon laws.

The current layout would allow me to rent the house as a two unit. The only future layout modification to work with the operations plan would be to add a door in the hallway upstairs. This would allow the room, highlighted in blue and yellow stripes, to be used for the second unit if needed. It is currently an unused room that could be my personal storage, a storage or office for a current tenant in the first unit or a 5th bedroom if I rent to a family in the future. I would like to request a door to be installed, shown by a red line, rather than a wall to keep the option to use the space for either side depending on need. A locked door from both sides will separate the two units as it stands now or with this additional door.

MLS Listing 2019	Current & Notes on changes
	
	Plumbers opened a 1x1 opening in the wall by the stairs to repair a leaking sewage pipe 2019. No other changes.
	
	No changes from this view of the living room.



I divided this extra living room into two bedrooms, with closets between the two rooms. No electrical work was done.



I opened up the doorway between the kitchen and living room by 3 feet. No electrical work was done in the process. I upgraded the light fixture. Top photo from the kitchen view. Bottom photo taken from the living room view



The doorway between the kitchen and dining room was widened by 3 feet, no electrical work was done.



Downstairs bathroom was painted.



Primary bedroom stairs were added.



Office- unchanged



Primary bathroom- unchanged

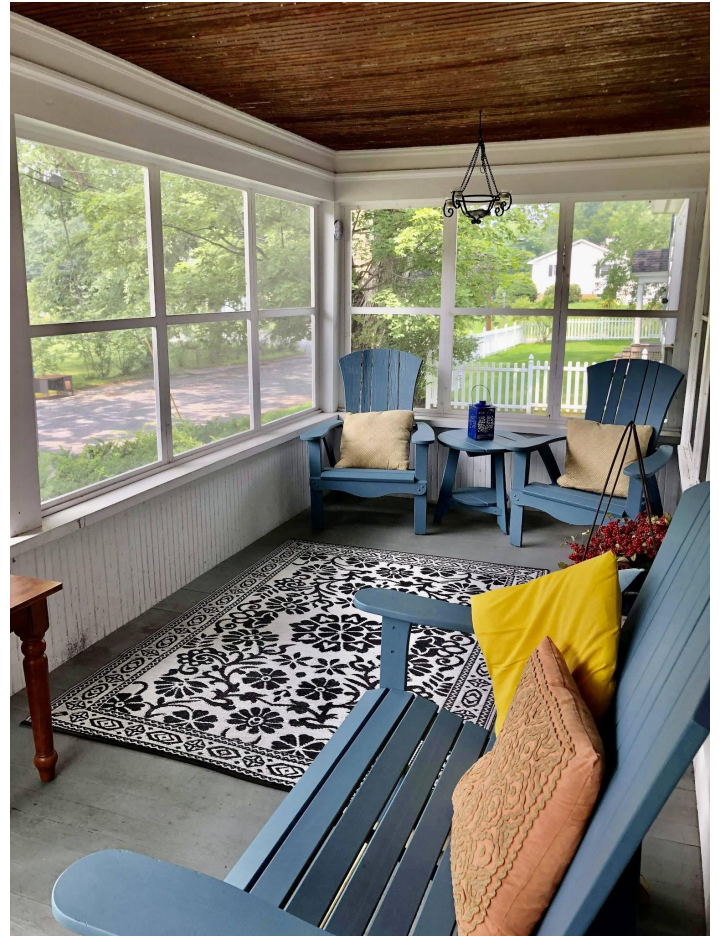


Upstairs bedroom unchanged

MLS Listing 2019	Current & Notes on changes
	
	Upstairs bedroom- painted
	
	Upstairs bedroom- painted



Upstairs bathroom- painted and a plumber added a showerhead.



Front porch- unchanged



2' firepit in backyard was added



Photo of the garage when I looked at the house.



Added a second means of egress & kitchen. Electricians did electrical work and a plumber did the sink plumbing.



New metal roof was installed by a roofing company.

New windows were installed.

Drainage was improved around the house to divert water away from the foundation

5 Mack Ave, West Lebanon, NH Police Report

In the entire time that I have owned this property, there has been only one complaint from neighbors. This was for "partying" which was made by Margaret Hastings on Saturday, April 15, 2023. The police report says there were two people involved, both of whom live at the house, and the exact narrative reads: "Residents were outside talking on the porch and the voices could be heard turning onto Mack Ave. [which is one house away] Residents were spoken to and made aware of the complaint."

For Date: 04/15/2023 - Saturday

2308

Location/Address: 5 MACK AVE
Party Entered By: 04/15/2023 2310
Calling Party: HASTINGS, MARGARET @ 3 MACK AVE - WEST LEBANON, NH 03784
Party Entered By: 04/15/2023 2330
Involved Party: [REDACTED] @ 5 MACK - W LEBANON, NH 03784
Party Entered By: 04/15/2023 2331
Involved Party: [REDACTED] M A @ 5 MACK AVE - LEBANON, NH 03784
ID: Sergeant Jeffrey M Perkins
Disp-23:18:39 Arvd-23:24:34 Clrd-23:32:44
Arrived By: Sergeant Jeffrey M Perkins
Cleared By: Sergeant Jeffrey M Perkins
ID: Officer Cameron s Young
Disp-23:18:55 Arvd-23:23:44 Clrd-23:34:08
Arrived By: Officer Cameron s Young
Cleared By: Officer Cameron s Young
Narrative:

88 reporting neighbors have been partying on their porch and it's carrying through the neighborhood.

Narrative:

Residents were outside talking on the porch and the voices could be heard turning onto Mack Ave. Residents were spoken to and made aware of the complaint.

One- and Two-Family Dwellings

CHAPTER

24

Although most people feel safest in their homes, fire deaths in the home account for some 80 percent of all fatalities attributable to fire in the United States. Chapter 24 highlights a number of factors that significantly mitigate the fire problem. A key and unique component addressed in this chapter and selectively applied to the other residential chapters is *means of escape* (see Section 24.2). The concept of means of escape focuses on providing a second way out of an occupied room or space within a living unit, regardless of whether it is a single-family home or a dwelling unit within an apartment building. Means of escape features do not need to meet the high standards and criteria that apply to means of egress, as described in Chapter 7. In short, means of escape is an important yet broadly applied concept that is intended to reduce the chance of occupants becoming trapped in a room or space if the primary escape route is unavailable.

Recognizing that the greatest number of fire fatalities occurs in what has historically been the least regulated occupancy, the *Code* has required, since the 2006 edition, all new one- and two-family dwellings to be protected by automatic sprinkler systems. Residential sprinkler systems have a phenomenal record of success in preventing fire deaths and injuries. Although residential sprinkler systems are designed exclusively to protect life, and not necessarily property, many homes and personal possessions have, in fact, been saved from the devastating effects of fire thanks to their installation.

While the 2006 edition of the *Code*, along with the 2006 edition of *NFPA 5000*[®], *Building Construction and Safety Code*[®],¹ were the first model codes in the United States to require sprinklers in new one- and two-family dwellings, numerous communities paved the way by enacting local sprinkler legislation. For example, Scottsdale, Arizona, was among the first cities in the United States to mandate sprinklers in new homes effective January 1, 1986. Ten years later, a report titled "Automatic Sprinklers: A 10 Year Study — A Detailed History of the Effects of the Automatic Sprinkler Code in Scottsdale, Arizona"² (commonly known as the *Scottsdale Report*), was published. The report provides compelling data to support the economic feasibility of mandating automatic sprinklers in dwellings. See the commentary following 24.3.5.1 for further discussion of the *Scottsdale Report*.

Prince Georges County, Maryland, is another community that is largely recognized as a leader for its residential sprinkler mandate, which became effective January 1, 1992.

In addition to requiring automatic sprinklers in new one- and two-family dwellings, Chapter 24 regulates interior wall and

ceiling finish and mandates the installation of smoke alarms. Chapter 24 also mandates the installation of carbon monoxide (CO) detection equipment in new dwellings. As is the case in other residential occupancies, these features work together to greatly improve the safety of occupants.

New to the 2018 edition of the *Code* are requirements for grab bars in new bathtubs and showers to prevent accidental falls (see 24.2.8). These provisions are consistent with the new 1.1.6, which expands the scope of the *Code* to include reducing injuries from falls.

24.1 General Requirements

24.1.1 Application.

24.1.1.1 This chapter shall apply to one- and two-family dwellings.

24.1.1.2* One- and two-family dwellings shall be limited to buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms.

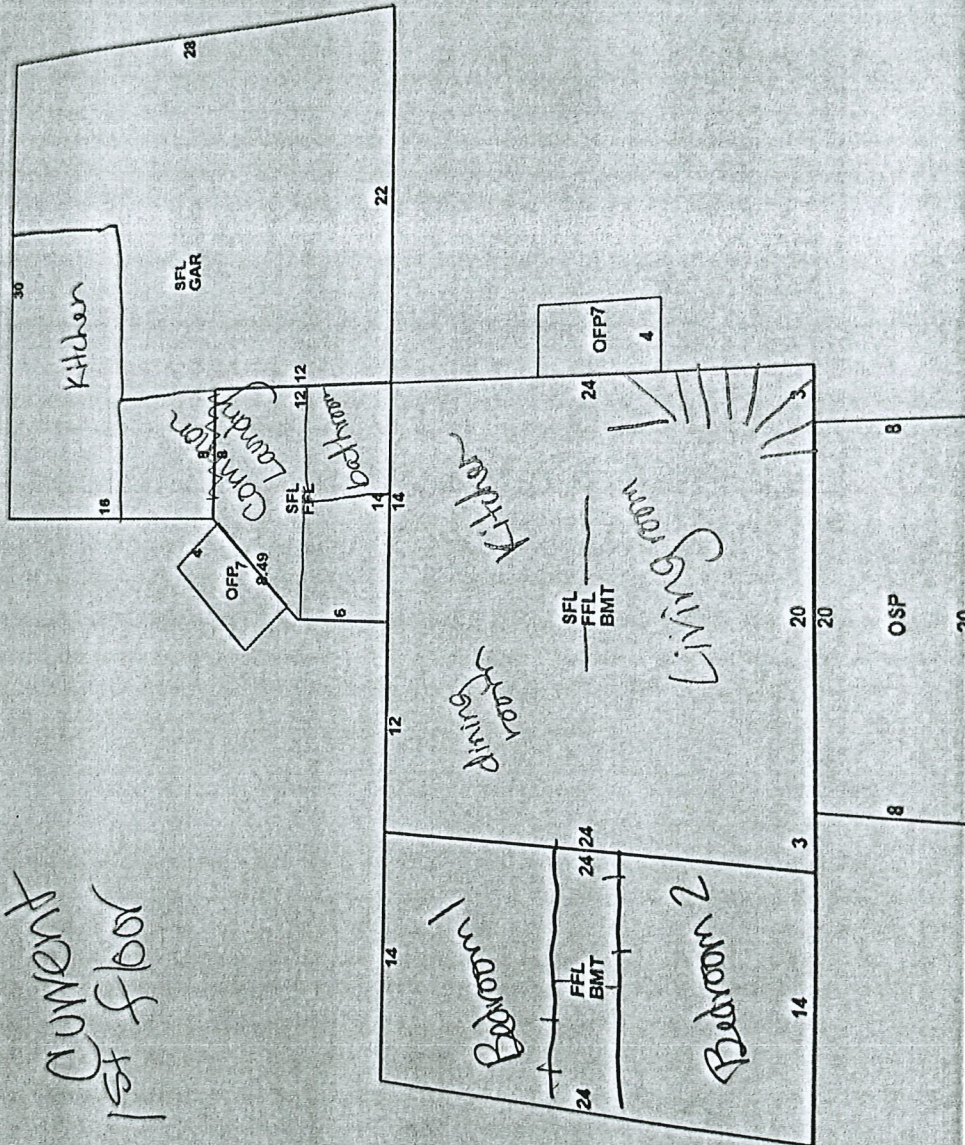
A.24.1.1.2 The *Code* specifies that, wherever there are three or more living units in a building, the building is considered an apartment building and is required to comply with either Chapter 30 or Chapter 31, as appropriate. A townhouse unit is considered to be an apartment building if there are three or more units in the building. The type of wall required between units in order to consider them as separate buildings is normally established by the authority having jurisdiction. If the units are separated by a wall of sufficient fire resistance and structural integrity to be considered as separate buildings, the provisions of Chapter 24 apply to each townhouse. Condominium status is a form of ownership, not occupancy; for example, there are condominium warehouses, condominium apartments, and condominium offices.

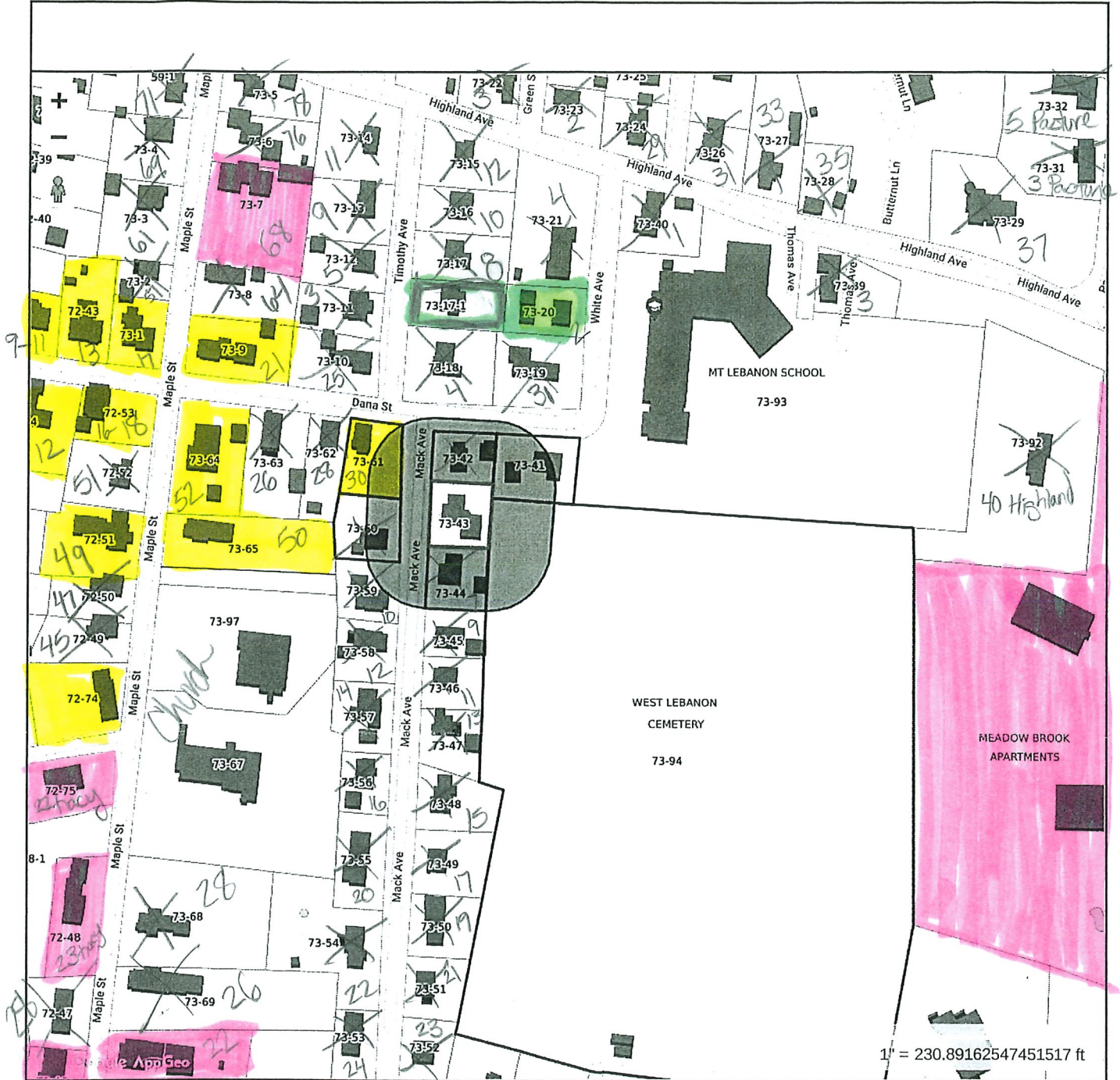
The provisions of 24.1.1.2 state that, in one- and two-family dwellings, each dwelling unit can be "occupied by members of a single family with not more than three outsiders." The *Code* does not define the term *family*. The definition of *family* is subject to federal, state, and local regulations and might not be restricted to a person or a couple (two people) and their children. The following examples aid in differentiating between a single-family dwelling and a lodging or rooming house:

- (1) An individual or a couple (two people) who rent a house from a landlord and then sublease space for up to three individuals should be considered a family renting to a maximum of three outsiders, and the house should be regulated as a single-family dwelling in accordance with Chapter 24.

Building Layout

Current
1st floor





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.

Mult unit
 2 unit
 1 farm w/acre



Img 1629
3/27/20
YCN



IMG 1428
3/27/20



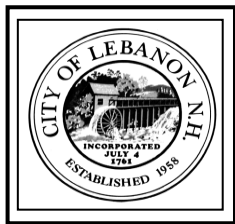
2/9/2020



2/9/2026



2/9/2020



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Planning and Development Department Staff

RE: City of Lebanon, Safety Improvements & Taxiway A Extension
Request for Wetlands Special Exception - ZB2023-13-SE
September 5, 2023 Zoning Board Meeting – *Agenda Item 3.B*

DATE: August 30, 2023 and Continued September 26, 2023.

HEARING NOTICE

City of Lebanon, 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7) zoned RL-3: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 (“Wetlands Conservation District”) of the Zoning Ordinance to allow wetland impacts associated with the safety improvements and extension of taxiway A. ZB2023-13-SE

BACKGROUND

UPDATE – 26 Sept 2023

The City of Lebanon Municipal Airport is seeking to construct airport safety improvements at 5 Airpark Road and 0 Hall Road. Pursuant to Section §401.5 a project of this size of wetlands impact must obtain a Special Exception from the Zoning Board. Prior to the Zoning Board’s deliberations an advisory opinion must be made by the Conservation Commission.

The application was shared with the Zoning Board in the September meeting packet. The extract version of the Application was provided for the Boards reading with a Full copy of the DES application being available for the Zoning Boards further consideration.

The Zoning Board is set to consider the Special Exception Criteria as attached below.

The Applicant provides a detailed Conformance Statement addressing the necessary criteria.

The Conservation Commissions motion to the Zoning Board is a negative referral with a statement that the application does not meet the standards. ... *“the project as described is not consistent with the purpose and intent of Section 401.1, Parts A, B, and C of the Zoning Ordinance”*... Within the motion there does not appear specific that the Zoning Board may consider as possible conditions of approval. Nor is there included specific evidence or testimony for how the application fails to meet the necessary criteria and why it should therefore be denied.

In addition to the negative referral to the Zoning Board the Conservation Commission re-states the concerns included in the Positive referral to the State Department of Environmental Services from the previous month. There is no reconciliation as to how the Commission makes a positive referral to the State and a Negative Referral to the Zoning Board.

The Lebanon Conservation Commission considered the application and its advisory opinion to the Lebanon Zoning Board in the matter. The following motion was made:

A MOTION was made by Chair Sarah Riley that, For the Special Exception Application made by the City of Lebanon and Lebanon Municipal Airport for safety improvement projects for the Lebanon Municipal Airport, which includes extension and relocation of Taxiway 'A' and associated relocation of localizer antenna, localizer shed & localizer access road, 5 Airpark Rd & 0 Hall Rd (Tax Map 131, Lot 1 & Tax Map 159, Lot 7), pursuant to Sections 401.7.D and 410.8.B of the Zoning Ordinance. - ZB2023-13-SE;

The Conservation Commission notes that the project as described is not consistent with the purpose and intent of Section 401.1, Parts A, B, and C of the Zoning Ordinance, that it is important that adequate conservation measures are taken, and that communication and cooperation is maintained from the City to recover the in-lieu fees by pursuing ARM fund grants; and

With respect to Section 401.5, Part G of the Zoning Ordinance, the Conservation Commission feels it is very important that this project take into consideration best management practices to avoid and remove invasive plant species and to maintain the ecological integrity of wooded areas when removing obstructions from wetland and high value or very high value wetland buffers.

As such, the Conservation Commission asks that the following concerns, that were shared with the DES, be considered: The Lebanon Conservation Commission is concerned that Wetland D may be hydrologically connected to the larger Trues Brook watershed and would not want the project to divert waters from or contaminate that watershed. (The City's NRI states "The continued attraction of Trues Brook will rest upon the careful monitoring of upstream affects from the roadway and nearby development. In spite of some scattered concerns, the water quality still remains very high.")

The Lebanon Conservation Commission is concerned about the method of 'obstruction' (meaning trees) removal and would like to see snags left standing for wildlife where appropriate (so please consider girdling as a form of snag creation), and request that the applicant please notify the Conservation Commission directly when marking trees for removal. If forestry does need to happen on the conservation easement, we expect that easement restriction 1A will be followed: "Activity shall be reviewed by the Lebanon Conservation Commission and done with care so as to produce minimal impact on the environment and be done in accordance with recognized forestry and conservation practices..."

Invasive vegetation (e.g., glossy buckthorn, purple loosestrife) can become more dominant following vegetation management activities and will require management. Loosestrife is already present in Wetland F and likely many others. Buckthorn is ready and waiting to take over in obstruction removal in the cut areas. What is the invasives management plan?

We recommend maintaining wildlife friendly habitat where possible on the Lebanon Airport, and that the Lebanon Airport or DES work with NH Audubon on a Memorandum of Understanding regarding mowing to support rare or threatened grassland bird species where safe to do so. If any of the affected area is suitable for the Karner Blue Butterfly, is reintroduction of this species and its host lupine an option?

We recommend that DES and the Lebanon Airport work with the NH Natural Heritage Bureau on conserving the rare plant species found on site where appropriate, with particular attention to impacted wetlands with enriched seepages and high plant species diversity.

The Lebanon Conservation Commission is concerned that noise pollution may increase in nearby neighborhoods, including the Foliage View Neighborhood. Given the complicated topography from landforms and trees, have the noise-level analyses correctly captured how vegetation removal will impact noise levels in and around the area?

The Motion was seconded by Bruce James.

** The Vote on the MOTION was approved (7-0).*

Update August 2023

At the August 2023 Conservation Commission, the Commission discussed and made a positive referral of the project to the State DES. The minutes of the meeting are as follows:

A MOTION was made by Mr. James to recommend approval of the project which involves a wetland permit application for safety improvements projects for safety improvement projects for the Lebanon Municipal Airport. Extension and relocation of Taxiway 'A' and associated relocation of localizer antenna, localizer shed & localizer access road, 5 Airpark Rd & 0 Hall Rd (Tax Map 131, Lot 1 & Tax Map 159, Lot 7).

The Commission asked that the following concerns be considered:

- 1. The Lebanon Conservation Commission is concerned that Wetland D may be hydrologically connected to the larger Trues Brook watershed and would not want the project to divert waters from or contaminate that watershed. (The City's NRI states "The continued attraction of Trues Brook will rest upon the careful monitoring of upstream affects from the roadway and nearby development. In spite of some scattered concerns, the water quality still remains very high.")*
- 2. The Lebanon Conservation Commission is concerned about the method of 'obstruction' (meaning trees) removal and would like to see snags left standing for wildlife where appropriate (so please consider girdling as a form of snag creation), and request that the applicant please notify the Conservation Commission directly when marking trees for removal. If forestry does need to happen on the conservation easement, we expect that easement restriction 1A will be followed: "Activity shall be reviewed by the Lebanon Conservation Commission and done with care so as to produce minimal impact on the environment and be done in accordance with recognized forestry and conservation practices..."*
- 3. Invasive vegetation (e.g., glossy buckthorn, purple loosestrife) can become more dominant following vegetation management activities and will require management. Loosestrife is already present in Wetland F and likely many others. Buckthorn is ready and waiting to take over in obstruction removal in the cut areas. What is the invasives management plan?*
- 4. We recommend maintaining wildlife friendly habitat where possible on the Lebanon Airport, and that the Lebanon Airport or DES work with NH Audubon on a Memorandum of Understanding regarding mowing to support rare or threatened grassland bird species where safe to do so. If any of the affected area is suitable for the Karner Blue Butterfly, is reintroduction of this species and its host lupine an option?*
- 5. We recommend that DES and the Lebanon Airport work with the NH Natural Heritage on conserving the rare plant species found on site where appropriate, with particular attention to impacted wetlands with enriched seepages and high plant species diversity.*

6. *The Lebanon Conservation Commission is concerned that noise pollution may increase in nearby neighborhoods, including the foliage view. Given the complicated topography from landforms and trees, have the noise-level analyses correctly captured how vegetation removal will impact noise levels in and around the area?*

The Motion was seconded by Mr. Johnson.

** The Vote on the MOTION was approved (7-0).*

At the August 2023 Conservation Commission meeting the topic was raised but no official action was taken. The Commission rendered an advisory opinion to the State of New Hampshire on its required DES Wetlands permit and did not take up consideration of the advisory opinion to the Zoning Board. As such at the September 5th 2023 Zoning Board meeting it is recommended that the Zoning Board accept jurisdiction of the noticed application, open the public hearing and immediately continue the hearing until the October 2nd meeting pending receipt of the advisory recommendation from the Conservation Commission.

Attached are the application materials submitted to the Zoning Board. A copy of the State of New Hampshire DES Wetlands application is available for review at City Hall should members of the public or Zoning Board seek additional information.

ORDINANCE REQUIREMENTS

In order to grant the requested Special Exception, the Board must make each of the following findings per Section 401.5 of the Zoning Ordinance, as applicable:

- A. The use for which the exception is sought cannot feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District; and
- B. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot cannot reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section; and
- C. The design and construction of the proposed use is consistent with the purpose and intent of Section 401.1 (A), (B) and (C) of this Ordinance, and adequate conservation measures shall be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands. Such measures may include but are not limited to wetland restoration or enhancement, wetland preservation, or the construction and maintenance of new wetland areas adjacent to the proposed use to replace those portions of the natural wetland affected by the proposed use; and
- D. The proposed construction design of pipelines, powerlines and other transmission lines shall include provisions for restoration of the site as closely as possible to its original grade and conditions; and
- E. The proposed use shall not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason; and

- F. All required Federal and State wetlands permits have been applied for. Note: A zoning permit shall not be issued until all such permits have been granted; and
- G. The project is capable of conforming to all existing best management practices, as referenced in Appendix A, and will be implemented in a way which conforms to those practices, and which complies with any other conditions imposed by the Zoning Board of Adjustment.

City of Lebanon
Zoning Board of Adjustment
October 1st 2023 Meeting

DRAFT MOTION for:
Agenda Item 3.B
Case ZB2023-13-SE

Motion made by: _____

On October 1st 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared _____, on behalf of the **City of Lebanon, 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7) zoned RL-3**: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 ("Wetlands Conservation District") of the Zoning Ordinance to allow wetland impacts associated with the safety improvements and extension of taxiway A. ZB2023-13-SE

I. FINDINGS OF FACT

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

1. The City of Lebanon is constructing safety improvements and extension of taxiway A over the City-owned lots on 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7).
2. The construction of the safety improvements will impact a total of _____ sq. ft. of wetlands.
3. The City has applied for a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed by the Conservation Commission at its August 10th 2023 meeting. The City now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed wetland impacts.
4. _____

5. _____

6. _____

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in Section 401.5 of the Zoning Ordinance:

1. The use for which the exception is sought can / cannot feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District. (§401.5.A)

2. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot can / cannot reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section. (§401.5.B)

3. The design and construction of the proposed use is / is not consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures will / will not be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)

4. The criteria set forth in Section 401.5.D relates to pipelines, powerlines, and other transmission of lines and, therefore, is not applicable.
5. The proposed use will / will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)

6. The project is capable of complying with all State and Federal wetlands and wetlands permitting requirements. (§401.5.F)

7. The project **is / is not** capable of conforming to all existing best management practices, as referenced in Appendix A of the Zoning Ordinance, and **will / will not** be implemented in a way which conforms to those practices (§401.5.G)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of October, 2023**, hereby **GRANTS / DENIES** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1.

2.

Motion seconded by:

Vote:

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):

City of Lebanon

NAME: Carl Gross, Lebanon Municipal Airport Manager

TEL.#: (603) 298-8878

MAILING ADDRESS: 5 Airpark Road, Suite 1, West Lebanon, NH 03784

E-MAIL ADDRESS: carl.gross@lebanonnh.gov

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Gregg Cohen, Stantec Consulting Services Inc.

TEL.#: (207) 887-3824

MAILING ADDRESS: 2211 Congress Street, Suite 380, Portland, Maine 04102

E-MAIL ADDRESS: gregg.cohen@stantec.com

PROJECT LOCATION:

TAX MAP #: 131; 159

LOT#: 1; 7

PLOT #:

ZONE: Industrial Light, RL3

STREET ADDRESS OF PROJECT: 5 Airpark Road, West Lebanon, NH 03784

IS THIS PROPERTY LOCATED IN THE:

WETLANDS

☒ YES ☐ NO

HISTORIC DISTRICT

☐ YES ☐ NO

FLOOD PLAIN

☐ YES ☐ NO

SCOPE OF PROJECT:

Airport safety improvements including the extension of Taxiway 'A,' the relocation of localizer antenna and

localizer equipment shed, 200-ft Runway 34 extension, and the removal of trees obstructing airspace.

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: Airport

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 August 14, 2023, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

Documented by:

OWNER:

Carl Gross

DATE: 8/2/2023

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 #		
8/3/2023	131-1 + 159-7	ZB2023-13-SE		

**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) IV, Section(s) 401.5, 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.)*

Please see Article IV, Section 401.5 Conformance Statement included with this submission.

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

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

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

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

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

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

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

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

E. That no hazard or nuisance will be created:

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

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

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

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

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.



Stantec Consulting Services Inc.
2211 Congress Street, Suite 380
Portland ME 04102-1955

August 2, 2023

Project/File: 179450422

Nathan Reichert

City of Lebanon
Planning and Development
City Hall
51 N Park Street
Lebanon, NH 03766

Dear Mr. Reichert,

Reference: Lebanon Municipal Airport Safety Improvement Project: Application for Special Exception

Per Lebanon zoning regulations and Zoning Board requirements, this Special Exception permit application has been prepared to address the safety improvement projects and associated wetland impacts proposed for construction at Lebanon Municipal Airport.

Proposed projects include safety improvement projects to be conducted at Lebanon Municipal Airport including extension of Taxiway 'A' and associated relocation of localizer antenna, localizer shed & localizer access road. Taxiway 'A' is a partial parallel taxiway that serves Runway 18-36, the airport's primary runway. The FAA has identified the taxiway as a "hot spot" as it does not provide landing aircraft immediate egress from Runway 36 end. Rather, aircraft must turn around on the runway and back taxi approx. 2,700 feet on the runway prior to accessing Taxiway 'A,' contributing to a potential safety hazard and opportunity for incursion. To extend Taxiway 'A' to the full length of the runway, the localizer antenna, which provides approaching aircraft with precision vertical guidance, must be relocated, as the existing antenna and its associated clear zone (localizer critical area) would be too close to the extended taxiway and aircraft per FAA design standards. Thus, the existing localizer antenna, access road and localizer electrical shed must be relocated. Construction of the 2,900 ft taxiway extension (to tie into 200 ft RW 36 extension) and relocation of the localizer, localizer service road and shed results in 2.2 ac (95,733 sq ft) of permanent wetland impact from cut and fill activities. The runway is being extended to provide more usable runway length for landing in inclement weather to larger aircraft currently using the runway. The ultimate runway length of 5,400 ft satisfies FAA runway design standards for the current fleet of aircraft using the runway. Construction of the runway extension will not impact wetlands. Additionally, approximately 19.8 acres of obstructions to Runway 36 approach surfaces is proposed from airport property and existing easement areas. Tree removal in wetlands will result in approx 0.67 acres (29,185 sq ft) of temporary impacts. Trees will be selectively removed (only vegetation identified as obstructions will be removed), no stumping/grubbing will occur. Impacts will consist of habitat alteration.

The direct wetland fill impacts resulting from safety improvement projects proposed at Lebanon Municipal Airport will occur within the airport's perimeter security fence. Access is restricted to the general public for purposes other than those activities associated with commercial and general aviation operations. Permanent fill impacts to Wetlands D (0.59ac), F (0.7ac), & G (0.76ac) resulting from proposed actions comprise 2.05 acres of the anticipated 2.2 acres of total direct impact, see attached *Wetlands Plan*. Wetland D is a large 50-acre wetland complex consisting of Forested, scrub-shrub, emergent and wet meadow habitat. Direct grading and fill impacts to Wetland D are proposed within the wet-meadow habitat

Reference: Lebanon Municipal Airport Safety Improvement Project: Application for Special Exception

at the northern edge of the wetland. This area is currently mowed by the airport and is being regraded to provide a compliant runway safety area beyond the edge of pavement and to conform with localizer critical area grading standards. Similarly, Wetland F, a seven acre (approx.) emergent wetland is also characterized by wet-meadow habitat, located on airport, north of Wetland D and west of Runway 38, that is routinely mowed and includes a stormwater ditch running north-south through the wetland. Impacts to Wetland F are limited to several locations along the eastern edge of the wetland and have been minimized by steepening new swale slopes to be constructed east of the wetland. Wetland G is a constructed stormwater conveyance ditch to be filled to accommodate the extended taxiway. New swales and BMPs including vegetated filter strips & underdrained sand filters will be constructed to promote infiltration and manage stormwater runoff. The remainder of wetland impacts (indirect) are associated with vegetative obstruction removal efforts proposed at multiple locations in the southern region of airport property. Only vegetation identified as obstructions will be removed (approx 0.7 ac). No stumping/grubbing or grading is proposed for vegetation removal in wetland locations.

It is important to note that the City of Lebanon and Lebanon Municipal Airport originally received NHDES & USACE permits for these projects as proposed in 1994 and in 1997 for 12.71 acres of wetland impacts. As mitigation for the wetland impacts associated with the projects, a 28.56-acre conservation easement (comprised of 26.59 acres of uplands & 1.97 acres of wetlands) was obtained and recorded in 1996 over land at the southern end of airport property. However, the projects were not constructed and the permit for the taxiway and runway extensions and localizer relocation expired. Improved design measures have been implemented and the proposed project now results in only 2.2 acres of direct wetland fill impacts. Due to changes in state and federal mitigation requirements since the project was originally permitted, mitigation (the acquisition of a 26-acre conservation easement) is longer adequate. Discussions with NHDES and USACE have indicated the conservation easement may account for one credit (10,628 sq ft) of impact reduction, with the remaining balance to be provided via the NHDES in-lieu fee mitigation program. The agencies have agreed however, to meet on site to determine whether additional credits are warranted due to the low value of wetlands impacted (the principal function of wetlands impacted is stormwater conveyance, which is being replaced at a 4:1 ratio (approx.)). The on-site meeting will be scheduled once NHDES has had the opportunity to review the recently submitted wetlands permit application.

Additional materials included with this application include a Wetlands Plan, documentation of compliance with Section 401.5 of Article IV Overlay Districts established in the City's Zoning Ordinance, last amended March 14, 2023, and a project abutters list. Should you have any questions or require additional information, please do not hesitate to contact me. Your assistance with this matter is greatly appreciated.

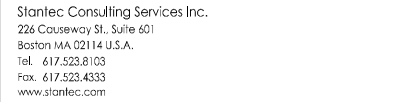
Regards,

STANTEC CONSULTING SERVICES INC.



Gregg Cohen MS
Senior Environmental Analyst, Associate
Phone: (207) 887-3824
gregg.cohen@stantec.com

Attachment: As referenced

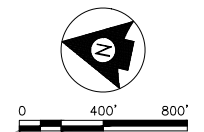
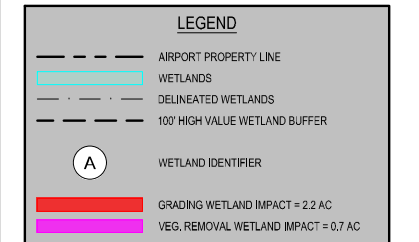


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Wetland ID	Wetland Type	Impact Action	Impact (ac)	Buffer Impact (ac)	Location
A	Palustrine Forested (PFO)	None	0	0	South of RW 36, east of airport property line
B	Paustrine Forested (PFO)	Tree Removal	0	0.1	South of Wetland A, on and off airport property
C	Palustrine Emergent (PEM)	Tree Removal	0.04	N/A	South of RW 36
D	Palustrine Forested (PFO)	Tree Removal	0.19	N/A	South, southwest of RW 36
D	Palustrine Emergent (PEM)	Grading/Fill	0.59	N/A	South of RW 36
E	Palustrine Scrub-Shrub (PSS)	Tree Removal	0.44	1.57	Southeast of RW 36
F	Palustrine Emergent (PEM)	Grading/Fill	0.7	N/A	West of RW 36
G	PEM Ditch	Grading/Fill	0.76	N/A	West of RW 36
H	Constructed PEM/Stormwater detention	None	0	N/A	West of RW 36, south of terminal apron
I	PEM/PSS Stormwater features		0.02	N/A	West of RW 36, south of terminal apron
J	Palustrine Emergent (PEM)	None	0	N/A	South of RW 36
K	Palustrine Emergent (PEM)	Grading/Fill	0.08	N/A	South of RW 36
L	Palustrine Emergent (PEM)	None	0	N/A	South of Runway 36
M	PEM /Stormwater swale	Grading/Fill	0.06	N/A	East, south of RW 36
N	Palustrine Emergent (PEM)	None	0	N/A	East of Wetland M

[illegible]

Client/Project
LEBANON MUNICIPAL AIRPORT
5 AIRPARK ROAD, WEST LEBANON, NH

Title
WETLAND IMPACT PLAN

Project No. 179450422	Scale AS NOTED
Figure No.	Revision 0

City of Lebanon Zoning Ordinance

Article IV Overlay District

Section 401.5

Conformance Statement

401.5 Special Exceptions.

Except for projects proposed within the High and Very High Value wetlands portion of the Wetland Conservation District, projects that qualify for a Permit by Notification, Minimum Impact Expedited Permit or any other type of Minimum Impact Permit from the State of NH Dept. of Environmental Services Wetlands Bureau shall be exempt from the requirement to obtain a special exception. However, a notification form informing of said projects shall be supplied to the Zoning Administrator.

Upon application to the Zoning Board of Adjustment, excepting the Wetland Conservation District identified as Very High or High Value wetland, a special exception may be requested to permit the erection of a structure; the construction of streets, roads, and other access ways; for pipelines, powerlines, and other transmission lines; and the construction of fences, footbridges, catwalks and docks within the Wetlands Conservation District, provided that all of the following conditions are found to exist, in lieu of the findings required by Section 801.3:

A. The use for which the exception is sought cannot feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District; and

The Taxiway 'A' extension cannot be constructed on another region of airport property. Taxiway design and construction must adhere to FAA design standards, including separation distances between runway and taxiway centerlines, thus the proposed taxiway extension cannot move more easterly, or closer to the runway, to avoid wetland impacts. The taxiway extension cannot be constructed on the west side of the runway as this scenario would create a what is referred to as a "hot spot," or an unsafe operational scenario as it would create an additional crossing of the runway. Additionally, due to the presence of a large wetland complex on the east side of the runway, construction of a taxiway on the east side of Runway 18-36 would result in greater wetland impacts than is proposed in the current design.

B. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot cannot reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section; and

The use of the property is solely restricted to those activities associated with the operation of a public airport as directed by the FAA and outlined within the grant assurances committed to by the City with regard to the safe operation and maintenance of the airport.

C. The design and construction of the proposed use is consistent with the purpose and intent of Section 401.1 (A), (B) and (C) of this Ordinance, and adequate conservation measures shall be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands. Such measures may include but are not limited to wetland restoration or enhancement, wetland preservation, or the construction and maintenance of new wetland areas adjacent to the proposed use to replace those portions of the natural wetland affected by the proposed use; and

401.1.A The current design has incorporated features to minimize wetland impacts to the greatest extent possible. Segments of the taxiway extension and localizer access road have been super elevated, meaning one edge of the taxiway and gravel road will be elevated to drain back towards the airfield where stormwater conveyance channels and infiltration structures will be constructed, rather than constructed with a crown, which sheds water on both sides of taxiway and road and back into the affected wetlands. Sediment filters within new drainage swales and two retention basins have also been proposed to provide infiltration to support ground water recharge and to protect water quality.

Wetlands impacted as a result grading and fill actions will not adversely affect wildlife habitat as most areas of impact are currently mowed meadow. Several of the wetlands are part of a larger wetland complex comprised of multiple wetland types that provide greater wildlife habitat value. However, it should be noted that wildlife attractants, including habitat, are regarded as hazards to aircraft operations and incompatible with airport operations. Trees identified as obstructions to The Runway 36 approach surfaces do occur in wetlands (approx. 0.67 ac) and are proposed for removal. Only vegetation identified as penetrations to protected airspace will be selectively removed. There will be no stump grubbing or ground disturbance associated with obstruction removal and impacts to wetlands will include habitat alteration and tree removal will occur in winter months during frozen ground conditions to avoid soil disturbances. Loss of wetland functions and values as a result of obstruction removal is not anticipated.

401.1.B As illustrated on the Wetlands Plan, in most instances, impacts will result within small areas of larger wetlands that will remain undisturbed. One constructed drainage swale will be filled in its entirety but similarly functioning swales will be replicated adjacent to the filled swale. Controls to protect water, including vegetated buffers, sediment filter swales, and check dams to slow stormwater velocity are proposed to ensure water quality standards are met (an Alteration of Terrain permit application including these BMPs has been submitted to NHDES). No area of the project is proposed within a designated flood hazard area and the BMPs mentioned above to address water quality have also been designed to ensure proposed stormwater drainage structures provide adequate infiltration, storage, and flow to prevent the potential for flooding.

401.1.C Once constructed, the project is not anticipated impact or alter the City's current expenses with regard to essential services. The proposed development will not disrupt ground transportation nor will the project segment or separate any communities, businesses, or recreational areas. The potential for flooding will not increase, nor will additional demands on electrical services will result.

D. The proposed construction design of pipelines, powerlines and other transmission lines shall include provisions for restoration of the site as closely as possible to its original grade and conditions; and

All areas disturbed by the installation of underground stormwater pipes or electrical conduit will be restored and, in all instances, will be seeded with grass to match existing landscape (with the exception of certain BMPs requiring riprap or other media required for stormwater management). Existing grades will be adhered to unless otherwise required to meet FAA design standards but grade changes required for compliant safety areas and newly the localizer critical area are nominal and will visually resemble existing conditions and grades at this area of the airport.

E. The proposed use shall not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason; and

The primary intent of the project is to eliminate hazards to individual and public health, safety and welfare by rectifying existing safety concerns at the airport. The loss of wetlands (2.2 ac) is spread across multiple wetland systems, whose principal functions, values, and geographic extent will be left undisturbed. Stormwater management controls have been designed in accordance with NHDES requirements (and are illustrated in the Grading and Drainage & Erosion Control plans included with the NHDES wetland permit application on file with the City) and with particular focus on minimizing wetland impacts to the greatest extent practicable. Previously discussed BMPs are in place to meet water quality standards and the stormwater system has been designed to meet specific storm event standards required by NHDES to reduce the potential of flooding, the loss of property, and adverse effects to individuals and public safety & health.

F. The project is capable of complying with all State and Federal wetlands and wetlands permitting requirements. Note: Applications for required Federal and State wetland permits need not have been applied for, but a zoning permit shall not be issued until all such permits have been granted. Page 70 of 210 G. The project is capable of conforming to all existing best management practices, as referenced in Appendix A, and will be implemented in a way which conforms to those practices, and which complies with any other conditions imposed by the Zoning Board of Adjustment.

The project is capable of complying with all permits required. An Alteration of Terrain permit application meeting all necessary criteria has been submitted to ensure the design meets stormwater and other land development criteria. This permit application has been deemed administratively complete by NHDES. Similarly, a Major Impact Wetlands Application has been submitted to NHDES and will be reviewed concurrently by the Army Corps of Engineers under the programmatic general permit program. Preapplication materials were provided to the Army Corps in advance of submission, and it was determined that an Individual Permit would not be required by the Corps.

G. The project is capable of conforming to all existing *best management practices*, as referenced in Appendix A, and will be implemented in a way which conforms to those practices, and which complies with any other conditions imposed by the Zoning Board of Adjustment.

The project has been designed in accordance with BMPs outlined *Best Management Practices for Ground Water Protection in New Hampshire, NH Code of Administrative Rules, Chapter Env-wq 400 Groundwater Protection, 2007* (or later edition, as may be amended or updated.) Trees identified as

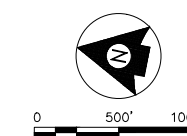
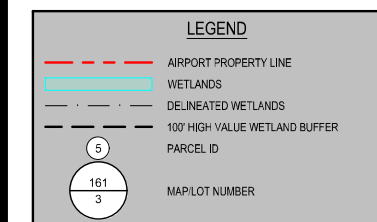
City of Lebanon
Zoning Board
Special Exception Application

obstructions will be removed in conformance with BMPs outlined in *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, NH Department of Resources and Development, 2004 (or later edition, as may be amended or updated), *Best Management Practices for Forestry: Protecting New Hampshire's Water Quality*, UNH Cooperative Extension, 2006 (or later edition, as may be amended or updated).



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The Contractor shall verify and be responsible for all dimensions. DO NOT scale the drawing - any errors or omissions shall be reported to Stantec without delay.
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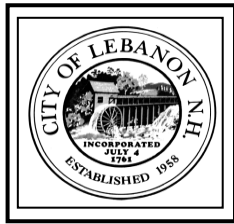
File Name: fig_xx_obutters.pln.dwg	LAM	GAC	LRK	23
	Dwn.	Chkd.	Dsgn.	YY.MM

Permit-Seal

Client/Project
LEBANON MUNICIPAL AIRPORT
5 AIRPARK ROAD, WEST LEBANON, NH

Title
ABUTTERS PLAN

Project No. 179450422	Scale AS NOTED
Figure No. X	Revision 0



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Planning and Development Department Staff

RE: City of Lebanon, Safety Improvements & Taxiway A Extension
Request for Wetlands Special Exception - ZB2023-13-SE
September 5, 2023 Zoning Board Meeting – *Agenda Item 3.B*

DATE: August 30, 2023

HEARING NOTICE

City of Lebanon, 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7) zoned RL-3: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 ("Wetlands Conservation District") of the Zoning Ordinance to allow wetland impacts associated with the extension of Airpark Road. ZB2023-13-SE

BACKGROUND

The City of Lebanon Municipal Airport is seeking to construct airport safety improvements at 5 Airpark Road and 0 Hall Road. Pursuant to Section §401.5 a project of this size must obtain a Special Exception from the Zoning Board. Prior to the Zoning Board deliberations an advisory opinion must be made by the Conservation Commission.

At the August 2023 Conservation Commission meeting the topic was raised but no official action was taken. The Commission rendered an advisory opinion to the State of New Hampshire on its required DES Wetlands permit and did not take up consideration of the advisory opinion to the Zoning Board. As such at the September 5th 2023 Zoning Board meeting it is recommended that the Zoning Board accept jurisdiction of the noticed application, open the public hearing and immediately continue the hearing until the October 2nd meeting pending receipt of the advisory recommendation from the Conservation Commission.

Attached are the application materials submitted to the Zoning Board. A copy of the State of New Hampshire DES Wetlands application is available for review at City Hall should members of the public or Zoning Board seek additional information.

ORDINANCE REQUIREMENTS

In order to grant the requested Special Exception, the Board must make each of the following findings per Section 401.5 of the Zoning Ordinance, as applicable:

- A. The use for which the exception is sought cannot feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District; and
- B. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the

lot cannot reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section; and

- C. The design and construction of the proposed use is consistent with the purpose and intent of Section 401.1 (A), (B) and (C) of this Ordinance, and adequate conservation measures shall be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands. Such measures may include but are not limited to wetland restoration or enhancement, wetland preservation, or the construction and maintenance of new wetland areas adjacent to the proposed use to replace those portions of the natural wetland affected by the proposed use; and
- D. The proposed construction design of pipelines, powerlines and other transmission lines shall include provisions for restoration of the site as closely as possible to its original grade and conditions; and
- E. The proposed use shall not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason; and
- F. All required Federal and State wetlands permits have been applied for. Note: A zoning permit shall not be issued until all such permits have been granted; and
- G. The project is capable of conforming to all existing best management practices, as referenced in Appendix A, and will be implemented in a way which conforms to those practices, and which complies with any other conditions imposed by the Zoning Board of Adjustment.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

October 2, 2023 Meeting

Staff Memorandum – ZB2021-07-VAR

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Variance from §501.4.D to permit residential density to exceed the maximum allowed in a commercial planned unit development

Location:

Altaria PUD, NH Route 120 (Tax Map 24, Lot 14)

Applicant/Property Owner:

- AAM Lebanon Residences, LLC

Zoning District:

Light Industrial (IND-L)

Overlay District(s):

- Wetlands Conservation District

Previous ZBA Action (since 1995):

- Wetlands CUP granted in 2011

Other Approvals Required:

- Planning Board (CUP/Site Plan/Subdivision amendment)
- Building Permit

Attachments:

- Altaria PUD Final Plat (Staff Exhibit A)
- Application (14 pages total)

AAM Lebanon Residences, LLC, 25 Foothill Street (Tax Map 24 Lot 14, Plot 100), zoned IND-L: The subject property is located within the Altaria Planned Unit Development (PUD) and is currently improved with a hotel which the applicant proposes to convert to a 120-unit multi-family dwelling. Per Section 501.4.D of the Zoning Ordinance, the Altaria PUD may include a maximum of 34 dwelling units, 33 of which have been constructed at 18 Merchant Street. To allow the proposed change of use at 25 Foothill Street, the applicant requests a Variance from Section 501.4.D of to allow 119 additional dwelling units, whereas only one (1) additional dwelling unit is allowed pursuant to the permitted residential density for the Altaria PUD. ZB2023-16-VAR

BACKGROUND

On September 12, 2011, the Planning Board approved a Conditional Use Permit and Final Major Subdivision (PB2011-15-FMAJ) for an 8-lot Industrial Planned Unit Development (Altaria PUD) located off of NH Route 120. For reference, the final approved PUD layout is attached as Staff Exhibit A, and an excerpt of the City's Tax Map showing the Altaria PUD lot lines is shown below as Figure 1.

Section 501.4.D of the Zoning Ordinance (both as it provided when then PUD was originally approved and currently) allows multi-family dwellings within a PUD, with the permitted residential density based on "a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre." In the context of the Altaria PUD, the Section 501.4.D calculation allows a maximum of 34 dwelling units in the PUD.

The uses approved for the PUD included a mix of hotel, retail/service, office/R&D, and residential as follows (graphic taken from cover sheet of approved PUD plan):

Land Use & Parking Requirements:	SF by Use	ratios	# of spaces
Hotel	81,752 120 rooms	1.2 sp/rm	144
Retail / Service	42,390	1 sp/200 or 250	190
Office / R&D	96,000	1 sp/250	384
Residential	34 units	1.5 sp/du	52
Total Non-Res Use:	220,142		

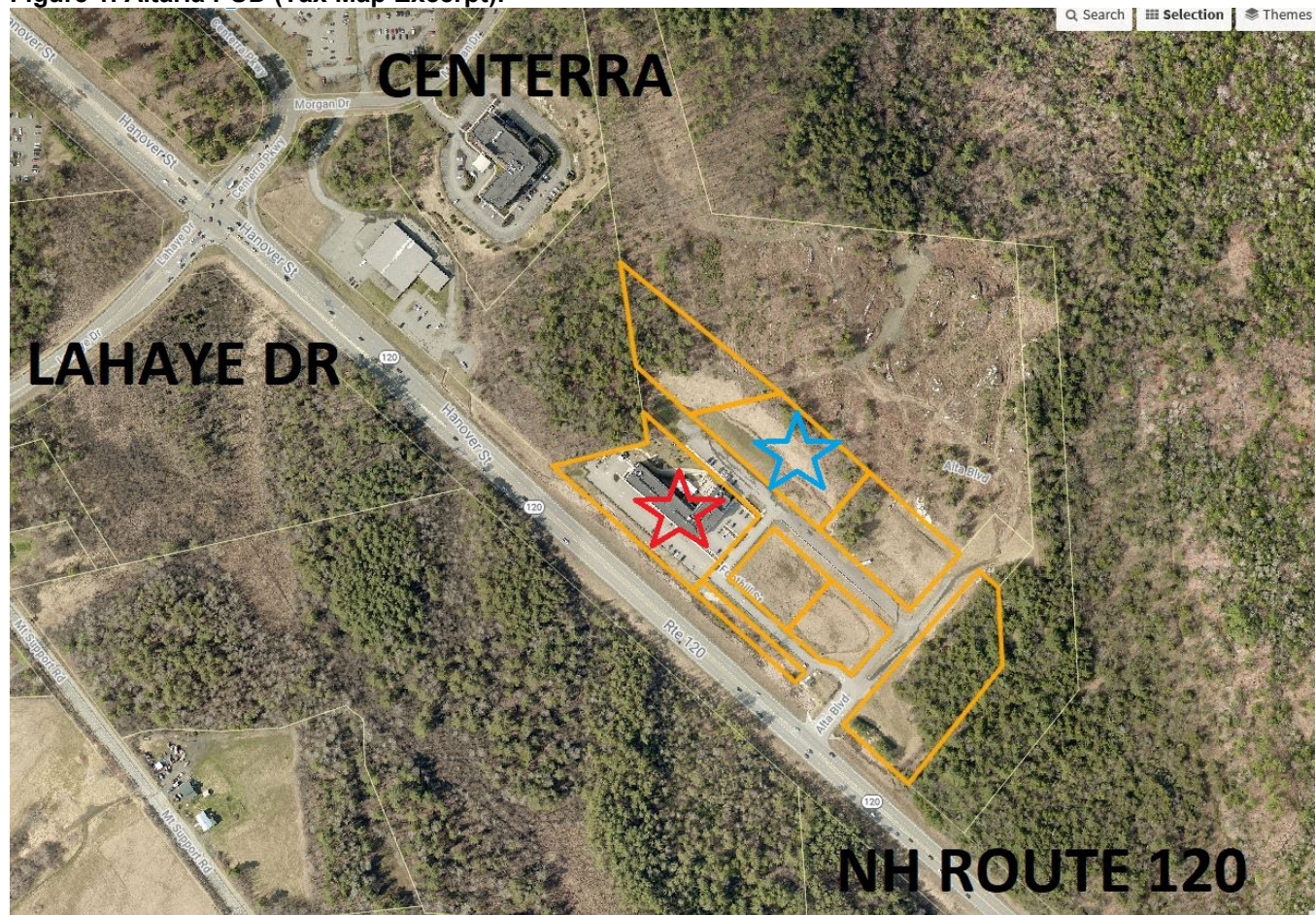
HEARING NOTICE

The hotel was constructed on Lot 1 of the PUD (i.e. 25 Foothill Street) in 2014. It was operated as the Element Hotel until a fire in December 2019 heavily damaged the interior. The building has sat vacant and was re-constructed under a hotel use. A 33-unit multi-family residential building was constructed on Lot 2 of the PUD (i.e. 18 Merchant Street) in 2019 (at 33-units, the multi-family dwelling is one dwelling unit less than the 34-unit maximum permitted). The Hotel use was defined in 2021 by a Zoning Board decision that concluded that a Hotel May let a room up to 184 days to the same occupant.

PROPOSAL

The applicant proposes to convert the long-stay hotel on Lot 1 of the PUD (i.e. the former Element Hotel building) to a 120-unit multi-family single family residential building. To do so, the applicant requires a Variance to allow the PUD's residential density to exceed the maximum 34 dwelling units allowed per Section 501.4.D of the Zoning Ordinance. If the Variance is approved, the applicant will also need to apply to the Planning Board for an amendment to the Altaria PUD Conditional Use Permit (and possibly an amendment to the approved plan pursuant to the Site Plan Review and/or Subdivision Regulations).

Figure 1. Altaria PUD (Tax Map Excerpt).



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ZONING ORDINANCE REQUIREMENTS

As a threshold matter, staff recommends that the Board consider whether the applicant's proposed use "multi-family dwelling" meets the standards of granting a variance. The Board determined in 2021 that

the applicant's proposed use meets the definition of "hotel", then no Variance was required since a hotel is already an approved use of the site (per Section 501.D.4 of the Zoning Ordinance and pursuant to the existing Altaria PUD Planning Board approvals). For reference in evaluating what use category the applicant's proposed use falls within, pasted below are the definitions of "hotel" and "multi-family dwelling" as those terms are defined in Appendix A of the Zoning Ordinance.

- A **"hotel"** is defined as: "A building designed for or used commercially as more or less temporary living quarters for persons who are lodged with or without meals in which are ten or more sleeping rooms usually occupied singularly or by families of transients."
- A **"multi-family dwelling"** is defined as: "A dwelling with three (3) or more dwelling units." Related definitions include:
 - "Dwelling" which is defined as: "A building designed for and used primarily by one or more families for living quarters, but not including manufactured homes, trailers of any kind, hotels, motels, group residences, lodging houses, institutional homes, residential clubs, or other commercial accommodations offered for occupancy."
 - "Dwelling unit" is defined as: "One or more rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sanitary and sleeping facilities. The term includes sectional homes and modular units but does not include manufactured home, motel, hotel, lodging house or similar structures."

Section 501.4.D provides, in relevant part, as follows: "The density of residential uses allowed pursuant to [Section 501.4.D] shall be determined based on a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre." As noted above, this calculation allows 34 dwelling units within the Altaria PUD, 33 of which have already been constructed. Since the applicant is requesting to convert the hotel into 120 dwelling units, a Variance is needed to allow the PUD to have a total of 153 dwelling units (120 proposed + 33 existing), where a maximum of 34 units are allowed.

To obtain the requested Variance from Section 501.4.D, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

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

is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.

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

Staff Comment:

The applicant essentially proposes the same question to the Zoning Board in 2021. No variance was granted as the Zoning Board determined that a Hotel Use covered stays up to 184 days.

Industrial PUD –

The underlying zoning within this Zone seeks industrial uses as the center of the area's use. The Residential ratio allowed within the industrial PUD has been consumed. 33 units of the 34 available within the PUD have been consumed. Expanding the use to 120 additional units would essentially quadruple the allowed density within the Industrial PUD area that is permitted. Expanding residential use on this magnitude within an industrial area greatly exceeds the balance anticipated within and industrial PUD. Further additional limits for Commercial use to support the proposed residents of the development may need to be defined.

"Additionally, no more than 25 percent of the gross floor area in an Industrial PUD may be allocated to hotels, restaurants, personal services and retail sales necessary to serve the needs of the other

businesses in the PUD (or of their employees).” With the excess of residential use being proposed what is the applicable balance of Industrial, Commercial and Residential uses moving forward? Disturbing this balance clearly requires significant consideration by the Zoning Board.

Avoiding Taxes or making more money is not Hardship:

The 6-month stay standard also requires that the applicant must pay applicable Room and Meals Taxes on occupancy fees. The amount of these fees being due to the State and in part as revenue being passed onto the to the City of Lebanon is NOT justification for hardship. Rather, owing these taxes is simply a cost of doing business as a hotel in the state of New Hampshire. Should the applicant use this element as a justification for hardship they are asking for the Zoning Board to set policy that has already been set by the State of New Hampshire and is not within the jurisdiction of the Zoning Board to waive nor is it a justification for hardship.

Plans and specifications: Application Appears Incomplete:

The application provided is vague and non-descript. Evidence of the current use as well as the proposed use are not included in the form of plans and specifications. No site plan, floor plan or use plan are provided. Rather, the application rests on a legal brief alone. This lack of specificity leaves the Zoning Board in a position where it lacks sufficient evidence to conclude that the possible use is even possible in compliance with all Zoning and Planning regulations. Given this lack of specificity there is no pathway to clearly condition an approval in a way that is clear and understandable without quality plans specifications and a use plan. Given this lack of specificity staff recommends that the application be deemed incomplete until an existing and proposed conditions site, floor and operations plans are submitted for the Board’s review. Upon receipt of said plans and specifications, and a Board conclusion that the granting of a variance is warranted, the Board should condition an approval to adherence with the approved plans and specifications. Failure to clarify the proposed use may cause significant confusion about the approval and cause massive problems with oversight and compliance efforts by the project’s Developers and City staff.

Plans and specifications, including existing and proposed floor plans need to demonstrate adherence with creating a dwelling unit out of the existing Hotel rooms which includes “independent cooking, sanitary and sleeping facilities” as required by the definition of a dwelling unit. Clearly a floor plan that demonstrates that it is even possible to meet the standards of improvement necessary to create a “dwelling unit” is needed for the Zoning Board to be able to confirm that it is possible to convert the long stay hotel into 120 individual dwelling units in conformity with all Planning and Zoning requirements and without a need for additional variances.

Parking Plan:

The conversion of a use from hotel to Dwelling units may greatly impact parking requirements. What is the parking plan for the proposed use? No plan is included. The Board may wish to require a parking plan to be submitted for its consideration which demonstrates adherence with applicable parking requirements.

Planning Board oversight is required:

Any Zoning approval of this request shall be conditioned in such a way as to guarantee additional Planning Board consideration and approval. The proposed change of use must meet all site plan requirements as established by the Planning Board’s regulations and discretion.

501.4 Commercial or Industrial Planned Unit Developments.

A. Objectives. The purposes of the Commercial or Industrial Planned Unit Development provisions of this Ordinance are (1) to allow flexibility in the site design and development of large-scale commercial and/or industrial development; (2) to encourage the preservation of valuable open spaces and/or natural features; and (3) to provide for the efficient utilization of land and community facilities, services and utilities.

B. Location. Commercial or Industrial Planned Unit Developments are permitted uses in the Industrial, CB, GC, and GC-1 Districts, in accordance with the provisions of this section.

C. Tract Size. All Commercial and Industrial PUDs shall have a minimum tract size as follows:

District Minimum Tract Size

Industrial 10 acres

CB 10 acres

GC 10 acres

GC-1 10 acres

Land within the Wetlands Conservation District and land having slopes in excess of 25 percent shall be included in determining the minimum tract size. Land within the Floodplain District shall not be included in determining the minimum tract size.

*D. Uses Allowed in a Commercial or Industrial PUD. Any non-residential use permitted or allowed by **special exception** or **conditional use** in the IND-L, CB, GC, or GC-1 Districts is allowed in a Commercial PUD. Such uses allowed by **special exception** or **conditional use** shall be considered permitted uses when included as part of a proposed Commercial PUD and shall not require separate **special exception** or **conditional use** approval.*

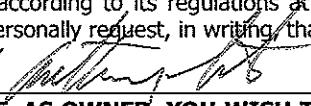
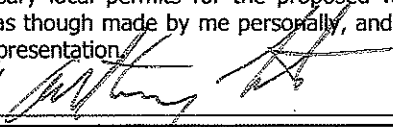
*Any non-residential use permitted or allowed by **special exception** or **conditional use** permit in the IND-L and IND-RA Districts is allowed in an Industrial PUD. Such uses allowed by **special exception** or **conditional use** shall be considered permitted uses when included as part of a proposed Industrial PUD and shall not require separate **special exception** or **conditional use** approval. Additionally, no more than 25 percent of the **gross floor area** in an Industrial PUD may be allocated to **hotels, restaurants, personal services** and retail sales necessary to serve the needs of the other businesses in the PUD (or of their employees).*

***Dwelling units in one-family, two-family and multi-family dwellings** or appropriate mixes thereof may be allowed in Commercial or Industrial PUDs, at the discretion of the Planning Board, provided that the Board determines that such residential uses are compatible within the proposed PUD. The density of residential uses allowed pursuant to this section shall be determined based on a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 **dwelling units** per acre. Where allowed, such **dwelling units** may be clustered together and/or distributed within the Commercial or Industrial PUD in **mixed use buildings** at the discretion of the Planning Board.*

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: AAM Lebanon Residences, LLC			TEL.#: (617) 207-4951		
MAILING ADDRESS: 78 Blanchard Road, Suite 100, Burlington, MA 01803					
E-MAIL ADDRESS: cpfannenstiehl@aam15.com					
CO-APPLICANT, AGENT, OR LESSEE:					
NAME: Philip M. Hastings			TEL.#: (603) 224-7761		
MAILING ADDRESS: Two Capital Plaza, 5th Floor, Concord, NH 03301					
E-MAIL ADDRESS: hastingssp@cwbp.com					
PROJECT LOCATION:					
TAX MAP #: 24	LOT#: 14	PLOT #: 100	ZONE: Light Industrial		
STREET ADDRESS OF PROJECT: 25 Foothill Street, Lebanon, NH 03766					
IS THIS PROPERTY LOCATED IN THE:					
WETLANDS		☐ YES ☒ NO	HISTORIC DISTRICT		☐ YES ☒ NO
FLOOD PLAIN		☐ YES ☒ NO			
SCOPE OF PROJECT:					
The project involves converting hotel units being used as short-term rentals into 120 dwelling units.					
TYPE OF OCCUPANCY:					
EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☒ COMMERCIAL ☐ INDUSTRIAL PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☒ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE: Existing: Hotel					
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: 9/11/2023 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: 9/11/2023					
DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #

(Last Revised 4/04/18)

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) V
Section(s) 501.4.D of the Lebanon Zoning Ordinance.

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

801.2 Variances.

- A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:
1. That the variance, if authorized, will not be contrary to the public interest;
Please see attached response.

 2. That the variance will observe the spirit of the Ordinance.
Please see attached response.

 3. That by the granting of the variance, substantial justice will be done;
Please see attached response.

 4. That the variance, if authorized, will not diminish the values of surrounding properties
Please see attached response. _____ 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

Please see attached response.
_____ ; and

(ii) The proposed use is a reasonable one.

Please see attached response.

(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.

Please see attached response.

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

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

Statement of Intent:

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

AAM LEBANON RESIDENCES, LLC
25 Foothill Street
Lebanon, NH
Tax Map 24, Lot 14, Plot 100

APPLICATION FOR VARIANCE

STATEMENT OF FACTS AND LAW

This Statement of Facts and Law is submitted by AAM Lebanon Residences LLC (the “Applicant”). The Applicant owns real property, identified as Tax Map 24, Lot 14, Plot 100, located at 25 Foothill Street (the “Property”) in the City of Lebanon (the “City”). See Property Record Card for the Property, Exhibit 1. This Statement of Facts and Law is submitted by the Applicant in connection with and to supplement the Application for Variance (the “Application”) to permit the conversion of 120 hotel units in a single building (the “Building”) to 120 dwelling units. Attached hereto are the following exhibits:

- Exhibit 1: Property Report Card for the Property.
- Exhibit 2(a): Property Report Card for 10 Morgan Drive.
- Exhibit 2(b): Property Report Card for 18 Merchant Street.
- Exhibit 2(c): Property Report Card for 296 NH Route 120.
- Exhibit 2(d): Property Report Card for 60 Alta Boulevard.

All testimony, statements, representations, evidence, plans, reports, studies and other information submitted or to be submitted by or on behalf of the Applicant in connection with the Application at or prior to the public hearing on the Application are incorporated by reference hereto. The Applicant requests that the Zoning Board of Adjustment (“ZBA”) approve this Statement of Facts and Law as the specific findings required pursuant to RSA 676:3, I.

Background, Description and Applicable Zoning Provision(s)

The Property is a 2.6-acre parcel of land located in the Light Industrial (“IND-L”) zoning district and is part of an industrial planned unit development (the “Altaría PUD”), which was approved in 2013 for eight (8) lots and six (6) buildings including a mix of hotel, residential, office, retail and open space uses.

The Building is located on the Property and consists of 120 units. Compared to the seven closest buildings to it in the Light Industrial zoning district, the Building is a uniquely large building. It has a gross area of 83,284 square feet, whereas the seven closest buildings to it in the Light Industrial zoning district all have less than 56,000 square feet of gross area except for one building that has 78,402 square feet of gross area. See Exhibit 1 and Exhibits 2(a) – 2(d)(Property Report Cards for four nearby properties in the Light Industrial district with existing buildings).

The Building was built on the Property in 2014 and operated as the Element Hotel until a fire or explosion in December of 2019 heavily damaged its interior. The Building sat vacant until at least April of 2021, if not later.

In 2021, the then-owner of the Property—Altaria Hotel, LLC (“Altaria”)—in connection with its plan to convert the hotel use of the 120 units in the Building to a multi-family dwelling sought a variance from the Zoning Board of Adjustment (the “ZBA”). At the ZBA hearing, the ZBA found that pursuant to Altaria’s submission they proposed to change their utilization of the Property from “hotel” use with an average length of tenancy of 11 days to a “micro-apartment residential use” with a proposed average length of tenancy of 60-90 days. See Exhibit 4, p. 9, Lebanon ZBA Minutes – Monday April 5, 2021. Following the discussion at the hearing, the ZBA issued the following decision:

Now, therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th Day of April 2021 hereby dismisses the requested variance on the basis that [Altaria] is already approved for hotel use, the use proposed by [Altaria] as defined by the Ordinance is a hotel use, provided that the stays are transient in nature and do not exceed 184 days, and no relief from this Board is required for that use to be continued or the proposed use to be commenced.

A little over one year after the 2021 ZBA decision, the Applicant acquired title to the Property from Altaria. The Applicant has continued to operate the Building’s 120 units as short-term rental units. However, due to the short-term nature of the occupancy agreements and quick turnovers with the current use of the Property, the Applicant’s vacancy rate is usually at 15% or higher. Accordingly, the Applicant at this time intends to convert the use of the Building to a multi-family dwelling with 120 dwelling units.

Converting the hotel units to dwelling units requires a variance from Article V, Section 501.4(D) of the Zoning Ordinance, which limits the residential density of property in an industrial PUD. Specifically, Article V, Section 501.4(D), of the Zoning Ordinance provides, among things, as follows:

Dwelling units in ***one-family***, ***two-family*** and ***multi-family dwellings*** or appropriate mixes thereof may be allowed in Commercial or Industrial PUDs, at the discretion of the Planning Board, provided that the Board determines that such residential uses are compatible within the proposed PUD. The density of residential uses allowed pursuant to this section shall be determined based on a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 ***dwelling units*** per acre. Where allowed, such ***dwelling units*** may be clustered together and/or distributed within the Commercial or Industrial PUD in ***mixed use buildings*** at the discretion of the Planning Board.

See Zoning Ordinance, §501.4(D).

The total acreage of the Altaria PUD is 15.72 acres, and one of the eight lots (not the lot owned by the Applicant) already has 33 dwelling units on it. Accordingly, the calculation pursuant to Section 501.4(D) of the Zoning Ordinance indicates that, without a variance, only a total of 34 dwelling units can exist within the eight lots comprising the Altaria PUD. Thus, since one lot already has 33 dwelling units, literal enforcement of the Zoning Ordinance only allows one additional dwelling unit to exist within the Altaria PUD.

The Applicant requests a variance from the terms of Section 501.4(D) of the Zoning Ordinance to convert the existing 120 hotel units in the Building to dwelling units, where only one (1) dwelling unit is permitted as of right.

Variance Standards

1. The variance will not be contrary to the public interest.

A variance is contrary to the public interest when it unduly, and to a marked degree, conflicts with the Zoning Ordinance such that it violates the Zoning Ordinance's basic zoning objectives. *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). There are two methods for determining whether a variance would violate a Zoning Ordinance's basic zoning objectives: (1) "whether granting the variance would alter the essential character of the neighborhood" or (2) "whether granting the variance would threaten the public health, safety or welfare." *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011).

The variance requested by the Applicant would not alter the essential character of the area where the Property is located. The Applicant is seeking a variance to convert the Building's 120 hotel units into 120 dwelling units. This proposed use is consistent with other properties located in the same area and in the same zone as the Property. For example, a nearby property located at 60 Alta Blvd.—in the Light Industrial Zone and in close proximity to the Property—contains four buildings consisting of 24, 33, 33, and 30 dwelling units, respectively, for a total of 120 dwelling units in that lot. See Exhibit 2(d).

Additionally, the Applicant's proposed use of the Property will likely have an impact on the frequency of turnover at the Building. Average stays at the Building exceed 100 days, and a conversion to a multi-family dwelling would lengthen the average stay and reduce turnover but would not change the essential character. Accordingly, converting the 120 short-term rental units into the same number of dwelling units will not alter the essential character of the area that already has multiple buildings close by with 20 or more dwelling units.

It is in the public interest to allow the highest and best use of real estate. The proposed variance will allow the Property to be put to a more productive use—potentially with fewer vacancies—maximizing the Property's value with no negative impact on any other property. Also, the City has a need for additional housing. In fact, according to an article published in the Valley News on April 20, 2022, "[the City Manager for the City of Lebanon] said the housing situation has grown so bad that even if a person can afford a rental or to buy a home, there's no guarantee one can be found." Darren Marcy, *Lebanon May Step Up City Actions to Fight Housing Shortage*,

VALLEY NEWS (April 20, 2022, 11:05:10 PM), <https://www.vnews.com/Lebanon-City-Council-to-hold-special-housing-meeting-45996882>. The proposed variance would have a positive impact on the City's housing situation. Further, addressing the housing need by converting 120 hotel units into 120 dwelling units is clearly in the public interest.

Additionally, there is no reason to suspect that the variance, or the proposed use that the Applicant is seeking permission for, will threaten the public health, safety, or welfare of the City of Lebanon and its residents. Less frequent turnover will result in a more stable tenant base with more familiarity with the neighborhood and roads and less traffic.

2. *The spirit of the ordinance is observed by granting the variance.*

The requirement that the variance not be "contrary to the public interest" is "related to the requirement that the variance be consistent with the spirit of the Zoning Ordinance." *Malachy Glen Assocs., Inc.*, 155 N.H. at 105. Article V, Section 501.4 (A) of the Ordinance, states:

The purposes of the Commercial or Industrial Planned Unit Development provisions of this Ordinance are (1) to allow flexibility in the site design and development of large-scale commercial and/or industrial development; (2) to encourage the preservation of valuable open spaces and/or natural features; and (3) to provide for the efficient utilization of land and community facilities, services and utilities.

See Zoning Ordinance, §501.4(D) (emphasis added).

The Property is approved for 120 hotel units. Using the 120 units on the Property as dwelling units is no less consistent with the spirit, or objectives, of the specific ordinance at issue than using the units as a hotel. The proposed use would not require adding any units to the Building but would simply involve converting the 120 existing units from hotel rooms to units where people could stay for longer than 184 days.

3. *Substantial justice will be done by granting the variance.*

The "substantial justice" element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general public is an injustice, and whether the proposed development is consistent with the area's present use. *Malachy Glen Assocs.*, at 109. In *Malachy Glen Associates*, the New Hampshire Supreme Court "upheld the trial court's conclusion that the proposed storage facility project worked a substantial justice because it "pose[d] no further threat to the wetlands[, [... [was] appropriate for the area [,] and [did] not harm its abutters[:] [therefore,] the general public [would] realize no appreciable gain from denying this variance." *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 515 (2011)(citing *Malachy Glen Assocs.*, 155 N.H. at 109).

Currently, the Building's vacancy rate exceeds 15%. It is anticipated that there would be fewer vacancies if the units were converted to dwelling units as they would permit people to lease for longer than 184 days and create less resident turnover. Notably, based on information and

belief, as of September 11, 2023, one of the residential buildings located on another nearby lot in the Altaria PUD has 0% vacancy. Thus, if the variance is denied, the loss to the Applicant is that it will not be able to avail itself of a reasonable use of the Building that likely will attract more long-term renters and lead to fewer vacancies and higher revenues and lower expenses. This loss is not outweighed by a gain to the general public. In fact, there does not appear to be any gain to the general public at all if the variance is denied. The general public does not receive any gain from numerous vacant hotel units. Furthermore, there is a benefit to the public by reducing the number of transient occupants who have less connection with the community than more permanent tenants.

Further, as mentioned above, other properties located in the same area and the same zoning district as the Property contain buildings with over 30 dwelling units. One previously mentioned property—also located in the Light Industrial Zoning District—contains a total of 120 dwelling units. Accordingly, the proposed use is consistent with the area’s present character.

4. *The values of surrounding properties will not be diminished.*

As explained above, the Applicant’s proposal is consistent with the area’s present use and would be bringing more permanent residents to the area. There does not appear to be any reasonable likelihood that the values of the surrounding properties will be diminished to any degree should the variance be granted.

5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

In 2001, the New Hampshire Supreme Court relaxed the unnecessary hardship standard to require only that the zoning restriction interfere with the applicant’s “reasonable use of the property, considering the unique setting of the property in its environment.” *Simplex Techs., Inc. v. Town of Newington*, 145 N.H. 727, 731 (2001). In other words, if the proposed use is reasonable, considering the unique setting of the property, a hardship may still exist to justify a variance even if other reasonable uses exist which would be permitted under the zoning ordinance. *Id.*

The analysis of the New Hampshire Supreme Court in *Simplex* was based on the constitutional protections afforded to landowners. “Inevitably and necessarily there is a tension between zoning ordinances and property rights, as courts balance the right of citizens to the enjoyment of private property with the right of municipalities to restrict property use. In this balancing process, constitutional property rights must be respected and protected from unreasonable zoning restrictions.” *Id.* The Court found that the New Hampshire Constitution limits “all grants of power to the State that deprive individuals of the reasonable use of their land” and held that the prior standard was too restrictive. *Id.*

Since *Simplex*, the unnecessary hardship standard has been clarified by statute and further Court decisions. *See, e.g., Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003) (“Where as before *Simplex*, hardship existed only when special conditions of the land rendered it uniquely unsuitable for the use for which it was zoned, after *Simplex*, hardship exists when special

conditions of the land render the use for which the variance is sought ‘reasonable.’) (internal citations omitted).

Accordingly, an applicant for a variance need not show that the proposed use is “necessary,” only that it is “reasonable.” See *Harborside Assocs., L.P.*, 162 N.H. at 518-19. “This factor, however, does not require the landowner to show that he or she has been deprived of all beneficial use of the land.” *Harrington v. Town of Warner*, 152 N.H. 74, 80-81 (2005). The question of whether the property can possibly be used differently from what the applicant has proposed is not a material consideration. *Malachy Glen Assocs., Inc.*, 155 N.H. at 108.

A. Special conditions of the Property distinguish it from other properties in the area.

An unnecessary hardship may arise from conditions that are not shared by all lots within the district. See *Cnty. Res. For Just., Inc. v. City of Manchester*, 154 N.H. 748, 752 (2007) (“While the property need not be the only such burdened property, the burden cannot arise as a result of the zoning ordinance’s equal burden on *all* property in the district”) (internal quotations omitted). Moreover, an unnecessary hardship does not require the special characteristics to be detrimental characteristics. A hardship may arise if characteristics of the Property render it unusually suited to a proposed use that is otherwise prohibited by the ordinance. See *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003).

In *Farrar v. City of Keene*, the New Hampshire Supreme Court considered whether the superior court erred by overlooking evidence of unnecessary hardship in an appeal of a ZBA decision. *Farrar v. City of Keene*, 158 N.H. 684, 687 (2009). The appeal related to an application for a variance from an ordinance for a .44-acre property with a historic building on it consisting of nineteen rooms and over 7,000 square feet of living area. *Id.* The owner of the property sought a variance in order to change the use of the property from a residential single-family dwelling to a mixed use with two residential units and office space. *Id.* A mixed use was not expressly permitted for the applicable zoning districts the property was located in. *Id.* Ultimately, the matter went before the superior court. *Id.* With respect to whether unnecessary hardship had been established at the ZBA hearing, the superior court found—among other things—that the owner had failed to present the ZBA with evidence of his property’s unique setting in its environment and instead presented evidence of his own personal financial hardship. *Id.* at 689. Disagreeing with the superior court’s finding, the New Hampshire Supreme Court stated:

There was evidence before the ZBA that the property is unique in that it is a large residence that cannot reasonably be used as such consistent with the zoning ordinance. [The owner] submitted evidence that the property includes a historic building that, unlike the other buildings in the area, is used as a residence. He submitted a partial list of properties in the office district, and represented that his residence is one of the larger buildings. He testified that “the house is not usable for a private family and ... the location

of it and the size of it rule this out.” [The owner] further testified that he is unable to sustain the property as his residence without the additional income. Based upon all the evidence, the ZBA concluded that the “economics [of] trying to maintain it as a private home is [sic] understandable.”

Id. Accordingly, as shown by the *Farrar* case, the size of a building has been a relevant factor in determining whether the property in question is unique in its environment. *Id.*

In another New Hampshire Supreme Court case, *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, the respondent, Parade Residence Hotel, LLC, sought—among other things—a variance so that it could install certain over-sized marquee signs on its large hotel building. *Harborside Assocs., L.P.*, 162 N.H. at 518. In that case, the petitioner, Harborside Associates L.P., argued that the size of the respondent’s existing hotel building was not a relevant factor for unnecessary hardship and that both the ZBA and the trial court had erred by relying upon the size of the respondent’s hotel building to determine whether the respondent’s property had “special conditions.” *Id.* The New Hampshire Supreme Court disagreed with the petitioner and held that—since the variance at issue was to install a sign on a building—the ZBA and trial court did not err by focusing upon the building’s size to determine whether the property has “special conditions.” *Id.*

Similar to *Farrar*, the unique setting and characteristics of the Property in the instant case make it especially suitable for the proposed use, and not necessarily ideal for the current use. Notably, the Building located on the Property consists of 120 hotel units and approximately 83,284 square feet of gross area, which includes 81,160 square feet of living area. See Exhibit 1. The sheer size of the Building on the Property, along with its large number of units, make it unsuitable for many uses. However, those unique characteristics make the proposed use a very suitable and, more importantly, a very reasonable use for the Property. It can reasonably be inferred from the fact that—with the current hotel use—over 10% of the 120 units on the Property are vacant, that the current use of the Property is not the most reasonable use of the Building on the Property or of its unique setting and characteristics. Converting the 120 units to dwelling units, however, appears to be a much more reasonable use of the Property, given its unique setting, location, and characteristics.

- a. *No fair and substantial relationship exists between the general public purposes of the Zoning Ordinance provision and the specific application to the Property.*

The harms a zoning ordinance is designed to prevent are not created by the proposed use. Zoning Ordinances, for example, are often intended to prevent overcrowding of land, undue concentration of population, and negative externalities such as traffic, noise, or odors. None of those would be created by this proposed use. Given how similar the proposed use is to the current use, the proposed use would pose no material impact on overcrowding or population density.

Accordingly, there is no fair and substantial relationship between the purposes of the Ordinance provision and their application to the Property.

b. The proposed use is a reasonable use.

A proposed use is presumed to be reasonable if it is a permitted use under the Town's Ordinance. *Malachy Glen Assocs., Inc.*, 155 N.H. at 107. The Applicant's proposed use is already permitted as a use for other properties in the same zoning district.

Further, the current use allows the units to be rented for a period of up to 184 days. Allowing the units to be leased for longer than 184 days does not suddenly make the use unreasonable. The proposed use is the same as that being used by other nearby lots in the same zoning district and it is very similar in nature to the current use. Accordingly, the proposed use is clearly reasonable, and, under these circumstances, a denial of this variance would result in unnecessary hardship.

The Applicant reserves the right to amend, modify, and/or supplement this Application at or before the hearing thereon.

EXHIBIT 1

25 FOOTHILL ST

Location	25 FOOTHILL ST	Mblu	24/ 14/ 100/ /
Acct#	103015	Owner	AAM LEBANON RESIDENCES LLC
PBN		Assessment	\$16,392,400
Appraisal	\$16,392,400	PID	5622
Building Count	1		

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$15,595,300	\$797,100	\$16,392,400

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$15,595,300	\$797,100	\$16,392,400

Owner of Record

Owner	AAM LEBANON RESIDENCES LLC	Sale Price	\$17,600,000
Co-Owner		Certificate	
Address	78 BLANCHARD RD, STE 100 BURLINGTON, MA 01803	Book & Page	4732/1
		Sale Date	05/26/2022
		Instrument	00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
AAM LEBANON RESIDENCES LLC	\$17,600,000		4732/1	00	05/26/2022
ALTARIA HOTEL LLC	\$3,600,002		4091/0539	40	09/04/2014
ALTARIA LEBANON PARK LLC	\$12,400,006		3897/0537	21	07/03/2012
ALTARIA LLC	\$0		0/0	99	01/01/1901

Building Information

Building 1 : Section 1

Year Built: 2014
Living Area: 81,160
Replacement Cost: \$16,742,720
Building Percent Good: 92
Replacement Cost Less Depreciation: \$15,403,300

Building Attributes

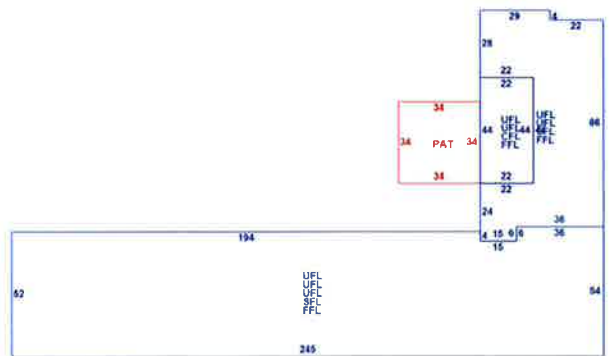
Field	Description
Style	HOTEL/DORM
Model	COMMERCIAL
Grade	Good
Stories	5
Comm Units	0.00
Exterior Wall 1	STUCCO
Exterior Wall 2	
Roof Structure	FLAT
Roof Cover	MEMBRANE
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	CARPET
Interior Floor 2	
Heat Fuel	GAS
Heat Type	FORCED H/A
Nbhd Modifier	
Struct Class	
Bldg Use	HOTEL
Total Rooms	120
Bedrooms	120
Full Bath(s)	120
Half Bath(s)	0
Extra Fixture(s)	0
1st Floor Use	
Plumbing	TYPICAL
Frame	WOOD
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	
Wall Height	10.00
AC Percent	100.00
Fireplace(s)	0
CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//6331.JPG>)

Building Layout



([ParcelSketch.ashx?pid=5622&bid=5622](#))

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
UFL	UPPR FLOOR	47,440	47,440
FFL	1ST FLOOR	17,344	17,344
SFL	2ND FLOOR	16,376	16,376
CFL	CATHEDRAL CEILING	968	0
PAT	PATIO	1,156	0
		83,284	81,160

View	
Parking	
WS Flue Rating	
% Sprinkled	100
Electric	ADEQUATE
WS Flues	0
2nd Heat Type	
Rec Room	
Units	120
Residential Units	120
Interior/Exterior	SAME
Kitchen(s)	115
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Extra Features

Extra Features					<u>Legend</u>
Code	Description	Size	Value	Bldg #	
61	ELEV-PAS	5.00 LEN	\$92,000		1

Land

Land Use

Use Code 3000
Description HOTEL
Zone INDL
Neighborhood I1
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 2.61
Frontage
Depth
Assessed Value \$797,100
Appraised Value \$797,100
 IblIndfront

Outbuildings

Outbuildings					Legend	
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
85	PAVING			40800.00 SF	\$71,400	1
77	LITE-SGL			19.00 LEN	\$4,800	1
78	LITE-DBL			2.00 LEN	\$700	1
10	POOL I-C			2100.00 SF	\$23,100	1

Valuation History

Valuation Year	Improvements	Land	Total
2022	\$15,595,300	\$797,100	\$16,392,400
2021	\$127,700	\$682,000	\$809,700
2020	\$127,700	\$682,000	\$809,700

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$15,595,300	\$797,100	\$16,392,400
2021	\$127,700	\$682,000	\$809,700
2020	\$127,700	\$682,000	\$809,700

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EXHIBIT 2(a)

10 MORGAN DR

Location 10 MORGAN DR

Mblu 10/ 11/ 1302/ /

Acct# 101341

Owner MHH LEBANON HOLDINGS LLC

PBN

Assessment \$15,733,100

Appraisal \$15,733,100

PID 5055

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$13,678,700	\$2,054,400	\$15,733,100
Assessment			
Valuation Year	Improvements	Land	Total
2022	\$13,678,700	\$2,054,400	\$15,733,100

Owner of Record

Owner	MHH LEBANON HOLDINGS LLC	Sale Price	\$15,006,000
Co-Owner		Certificate	
Address	50 S STEELE ST # 200 DENVER, CO 80206	Book & Page	4777/267
		Sale Date	12/15/2022
		Instrument	00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
MHH LEBANON HOLDINGS LLC	\$15,006,000		4777/267	00	12/15/2022
UPPER VALLEY HOTEL GROUP	\$2,000,000		3180/0566	00	08/18/2005
DARTMOUTH COLLEGE TRUSTEES	\$0		1852/0983	99	03/27/1990
CENTERRA LTD PARTNERSHIP	\$0		0/0	99	01/01/1901

Building Information

Building 1 : Section 1

Year Built: 2006
Living Area: 74,917
Replacement Cost: \$15,772,237
Building Percent Good: 86
Replacement Cost Less Depreciation: \$13,564,100

Building Attributes

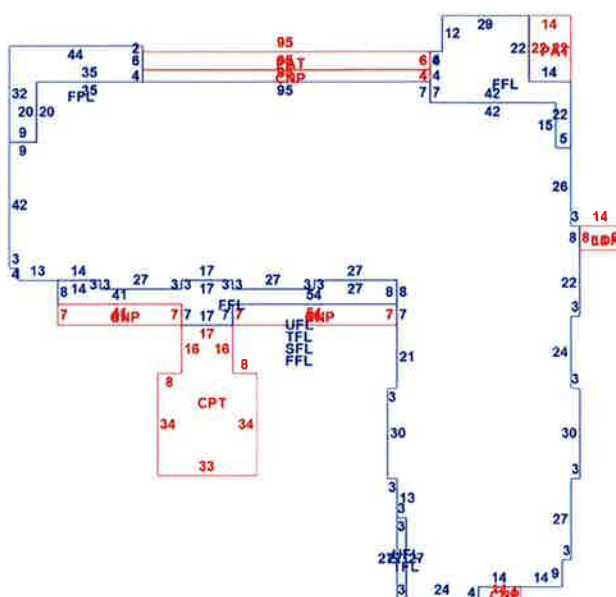
Field	Description
Style	HOTEL
Model	COMMERCIAL
Grade	V Good-
Stories	4
Comm Units	0.00
Exterior Wall 1	BRICK
Exterior Wall 2	CONC BLOCK
Roof Structure	FLAT
Roof Cover	MEMBRANE
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	CARPET
Interior Floor 2	
Heat Fuel	GAS
Heat Type	FORCED H/A
Nbhd Modifier	
Struct Class	
Bldg Use	HOTEL
Total Rooms	124
Bedrooms	124
Full Bath(s)	124
Half Bath(s)	0
Extra Fixture(s)	0
1st Floor Use	
Plumbing	TYPICAL
Frame	STEEL
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	
Wall Height	9.00
AC Percent	100.00
Fireplace(s)	0
CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//4740.JPG>)

Building Layout



([ParcelSketch.aspx?pid=5055&bid=5055](#))

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	20,671	20,671
TFL	3RD FLOOR	18,109	18,109
UFL	UPPR FLOOR	18,109	18,109
SFL	2ND FLOOR	18,028	18,028
CNP	CANOPY	1,101	0
CPT	CARPORT	1,394	0
LDK	LOADING DK	112	0
PAT	PATIO	878	0
		78,402	74,917

View	AVERAGE
Parking	TYPICAL
WS Flue Rating	
% Sprinkled	100
Electric	ADEQUATE
WS Flues	0
2nd Heat Type	
Rec Room	
Units	124
Residential Units	124
Interior/Exterior	
Kitchen(s)	1
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Extra Features

Extra Features				Legend
Code	Description	Size	Value	Bldg #
61	ELEV-PAS	4.00 LEN	\$68,800	1
96	WHIRL PL	1.00 LEN	\$1,300	1

Land

Land Use

Use Code	3000
Description	HOTEL
Zone	INDL
Neighborhood	I1
Alt Land Appr	No
Category	

Land Line Valuation

Size (Acres)	7.97
Frontage	
Depth	
Assessed Value	\$2,054,400
Appraised Value	\$2,054,400

Outbuildings

Outbuildings					Legend	
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
77	LITE-SGL			27.00 LEN	\$6,800	1
85	PAVING			20000.00 SF	\$35,000	1
11	POOL I-V			300.00 SF	\$2,700	1

Valuation History

Valuation Year	Improvements	Land	Total
2022	\$13,678,700	\$2,054,400	\$15,733,100
2021	\$13,909,800	\$1,745,500	\$15,655,300
2020	\$13,909,800	\$1,745,500	\$15,655,300

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$13,678,700	\$2,054,400	\$15,733,100
2021	\$13,909,800	\$1,745,500	\$15,655,300
2020	\$13,909,800	\$1,745,500	\$15,655,300

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EXHIBIT 2(b)

18 MERCHANT ST

Location 18 MERCHANT ST

Mblu 24/ 14/ 200/ /

Acct# 103016

Owner ANAGNOST UPPER VALLEY
LLC

PBN

Assessment \$5,148,300

Appraisal \$5,148,300

PID 5623

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$4,586,900	\$561,400	\$5,148,300
Assessment			
Valuation Year	Improvements	Land	Total
2022	\$4,586,900	\$561,400	\$5,148,300

Owner of Record

Owner ANAGNOST UPPER VALLEY LLC
Co-Owner
Address 1662 ELM ST
MANCHESTER, NH 03101

Sale Price \$3,850,002
Certificate
Book & Page 4335/0530
Sale Date 12/21/2017
Instrument 21

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
ANAGNOST UPPER VALLEY LLC	\$3,850,002		4335/0530	21	12/21/2017
ALTARIA LEBANON PARK LLC	\$12,400,006		3897/0537	21	07/03/2012
ALTARIA LLC	\$7,200,000		3688/0318	20	03/05/2010
ALTARIA LLC	\$15,538,733		3473/0889	49	12/04/2007
UPPER VALLEY PRESERVATIONS	\$3,500,000		3309/0635	99	07/26/2006

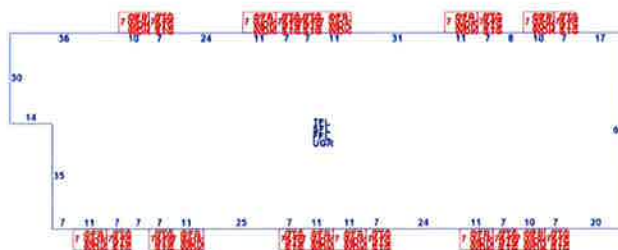
Building Information

Year Built:	2019
Living Area:	38,310
Replacement Cost:	\$4,642,273
Building Percent Good:	97
Replacement Cost	
Less Depreciation:	\$4,503,000

Field	Description
Style	MULTI-GRDN
Model	COMMERCIAL
Grade	Avg. (+)
Stories	3
Comm Units	
Exterior Wall 1	VINYL
Exterior Wall 2	
Roof Structure	GABLE
Roof Cover	ASPHALT SH
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	LAMINATE
Interior Floor 2	
Heat Fuel	GAS
Heat Type	FORCED H/A
Nbhd Modifier	
Struct Class	
Bldg Use	APT 9+UP
Total Rooms	147
Bedrooms	60
Full Bath(s)	36
Half Bath(s)	
Extra Fixture(s)	
1st Floor Use	
Plumbing	TYPICAL
Frame	WOOD
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	
Wall Height	8.00
AC Percent	100.00
Fireplace(s)	

A photograph of a modern, multi-story apartment building with a light-colored facade and multiple balconies, set against a clear blue sky. The building features a series of gabled roof sections and is situated next to a paved road.

Building Layout



Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	12,770	12,770
SFL	2ND FLOOR	12,770	12,770
TFL	3RD FLOOR	12,770	12,770
OFP	OPEN PORCH	826	0
STG	STORAGE	1,617	0
UGR	GARAGE UNDER	12,770	0
WDK	WOOD DECK	1,652	0
		55,175	38,310

CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	
View	AVERAGE
Parking	VRY GOOD
WS Flue Rating	
% Sprinkled	100
Electric	ADEQUATE
WS Flues	
2nd Heat Type	
Rec Room	
Units	33
Residential Units	33
Interior/Exterior	
Kitchen(s)	33
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Extra Features

Extra Features					Legend
Code	Description	Size	Value	Bldg #	
61	ELEV-PAS	4.00 LEN	\$38,800	1	

Land

Land Use

Use Code 1120
Description APT 9+UP
Zone INDL
Neighborhood I1
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 1.84
Frontage
Depth
Assessed Value \$561,400
Appraised Value \$561,400
 IblIndfront

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
85	PAVING			25000.00 SF	\$43,800	1
77	LITE-SGL			1.00 LEN	\$1,300	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$4,586,900	\$561,400	\$5,148,300
2021	\$4,140,900	\$480,400	\$4,621,300
2020	\$4,140,900	\$480,400	\$4,621,300

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$4,586,900	\$561,400	\$5,148,300
2021	\$4,140,900	\$480,400	\$4,621,300
2020	\$4,140,900	\$480,400	\$4,621,300

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EXHIBIT 2(c)

296 NH ROUTE 120

Location 296 NH ROUTE 120

Mblu 10/ 11/ 1300/ /

Acct# 262

Owner EXCHANGE AT CENTERRA LLC

PBN

Assessment \$2,347,200

Appraisal \$2,347,200

PID 218

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$848,700	\$1,498,500	\$2,347,200
Assessment			
Valuation Year	Improvements	Land	Total
2022	\$848,700	\$1,498,500	\$2,347,200

Owner of Record

Owner EXCHANGE AT CENTERRA LLC
Co-Owner
Address PO BOX 929
HANOVER, NH 03755

Sale Price \$1,700,001
Certificate
Book & Page 4253/0038
Sale Date 12/02/2016
Instrument 36

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
EXCHANGE AT CENTERRA LLC	\$1,700,001		4253/0038	36	12/02/2016
	\$0		1852/0983	99	03/27/1990
CENTERRA LTD PARTNERSHIP	\$0		0/0	99	01/01/1901

Building Information

Building 1 : Section 1

Year Built: 1962
Living Area: 22,478

Replacement Cost: \$1,102,658
Building Percent Good: 63
Replacement Cost
Less Depreciation: \$694,700

Building Attributes

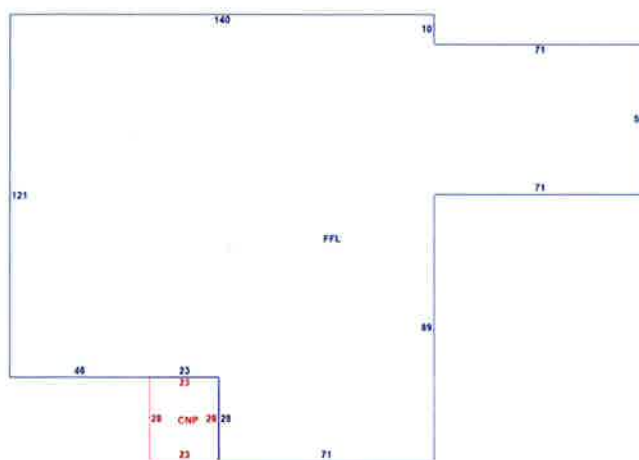
Field	Description
Style	WAREHOUSE
Model	INDUSTRIAL
Grade	Avg. (-)
Stories	1
Comm Units	1.00
Exterior Wall 1	CONC BLOCK
Exterior Wall 2	STEEL
Roof Structure	FLAT
Roof Cover	METAL
Interior Wall 1	MINIMUM
Interior Wall 2	
Interior Floor 1	CONCRETE
Interior Floor 2	
Heat Fuel	OIL
Heat Type	FORCED H/W
Nbhd Modifier	
Struct Class	
Bldg Use	IND WHSE
Total Rooms	
Bedrooms	
Full Bath(s)	0
Half Bath(s)	0
Extra Fixture(s)	0
1st Floor Use	
Plumbing	TYPICAL
Frame	OTHER
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	OFFICE
Wall Height	
AC Percent	33.00
Fireplace(s)	0
CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	
View	AVERAGE

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//5981.JPG>)

Building Layout



([ParcelSketch.ashx?pid=218&bid=218](#))

Building Sub-Areas (sq ft)			<u>Legend</u>
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	22,478	22,478
CNP	CANOPY	644	0
		23,122	22,478

Parking	TYPICAL
WS Flue Rating	
% Sprinkled	0
Electric	ADEQUATE
WS Flues	0
2nd Heat Type	
Rec Room	
Units	
Residential Units	0
Interior/Exterior	
Kitchen(s)	0
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Extra Features

Extra Features					Legend
Code	Description	Size	Value	Bldg #	
64	MEZ-FIN	1988.00 SF	\$37,600		1
64	MEZ-FIN	1064.00 SF	\$20,100		1

Land

Land Use

Use Code 4010
Description IND WHSE
Zone INDL
Neighborhood I1
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 9.89
Frontage
Depth
Assessed Value \$1,498,500
Appraised Value \$1,498,500
 IblIndfront

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
85	PAVING			55000.00 SF	\$96,300	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$848,700	\$1,498,500	\$2,347,200
2021	\$902,200	\$1,232,800	\$2,135,000

2020	\$902,200	\$1,232,800	\$2,135,000
Assessment			
Valuation Year	Improvements	Land	Total
2022	\$848,700	\$1,498,500	\$2,347,200
2021	\$902,200	\$1,232,800	\$2,135,000
2020	\$902,200	\$1,232,800	\$2,135,000

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EXHIBIT 2(d)

60 ALTA BLVD

Location	60 ALTA BLVD	Mblu	10/ 12/ / /
Acct#	288	Owner	ANAGNOST UPPER VALLEY LLC
PBN		Assessment	\$23,025,115
Appraisal	\$23,591,700	PID	235
Building Count	4		

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$16,924,200	\$6,667,500	\$23,591,700

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$16,924,200	\$6,100,915	\$23,025,115

Owner of Record

Owner	ANAGNOST UPPER VALLEY LLC	Sale Price	\$3,850,002
Co-Owner		Certificate	
Address	1662 ELM ST MANCHESTER, NH 03101	Book & Page	4335/0530
		Sale Date	12/21/2017
		Instrument	21

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
ANAGNOST UPPER VALLEY LLC	\$3,850,002		4335/0530	21	12/21/2017
BOGART, RUTH TUCKER	\$109,733		4232/0288	45	07/12/2016
ALTARIA LLC	\$109,733		4232/0288	45	07/12/2016
UPPER VALLEY PRESERVATIONS	\$109,733		4232/0288	45	07/12/2016
BOGART, RUTH TUCKER	\$109,733		4232/0288	45	07/12/2016

Building Information

Building 1 : Section 1

Year Built: 2020
Living Area: 33,800
Replacement Cost: \$4,095,740
Building Percent Good: 98
Replacement Cost Less Depreciation: \$4,013,800

Building Attributes

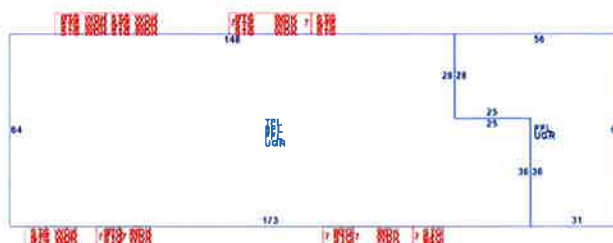
Field	Description
Style	MULTI-GRDN
Model	COMMERCIAL
Grade	Avg. (+)
Stories	3
Comm Units	
Exterior Wall 1	VINYL
Exterior Wall 2	
Roof Structure	GABLE
Roof Cover	ASPHALT SH
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	LAMINATE
Interior Floor 2	CARPET
Heat Fuel	GAS
Heat Type	FORCED H/W
Nbhd Modifier	
Struct Class	
Bldg Use	APT 9+UP
Total Rooms	144
Bedrooms	72
Full Bath(s)	24
Half Bath(s)	
Extra Fixture(s)	
1st Floor Use	
Plumbing	TYPICAL
Frame	WOOD
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	
Wall Height	10.00
AC Percent	
Fireplace(s)	

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//8212.JPG>)

Building Layout



([ParcelSketch.ashx?pid=235&bid=235](#))

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	13,056	13,056
SFL	2ND FLOOR	10,372	10,372
TFL	3RD FLOOR	10,372	10,372
STG	STORAGE	1,323	0
UGR	GARAGE UNDER	13,056	0
WDK	WOOD DECK	1,680	0
		49,859	33,800

CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	
View	AVERAGE
Parking	ABOVE AVG
WS Flue Rating	
% Sprinkled	
Electric	ADEQUATE
WS Flues	
2nd Heat Type	
Rec Room	
Units	24
Residential Units	24
Interior/Exterior	
Kitchen(s)	24
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Building 2 : Section 1

Year Built:	2020
Living Area:	36,465
Replacement Cost:	\$4,055,634
Building Percent Good:	98
Replacement Cost Less Depreciation:	\$3,974,500

Building Attributes : Bldg 2 of 4

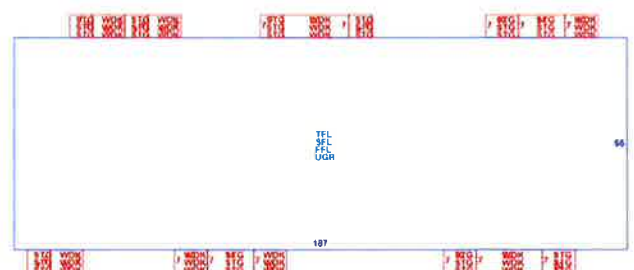
Field	Description
Style	MULTI-GRDN
Model	COMMERCIAL
Grade	Average
Stories	3
Comm Units	
Exterior Wall 1	VINYL
Exterior Wall 2	
Roof Structure	GABLE
Roof Cover	ASPHALT SH
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	LAMINATE
Interior Floor 2	CARPET

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//8213.JPG>)

Building Layout



([ParcelSketch.ashx?pid=235&bid=105897](#))

Heat Fuel	GAS
Heat Type	FORCED H/W
Nbhd Modifier	
Struct Class	
Bldg Use	APT 9+UP
Total Rooms	120
Bedrooms	33
Full Bath(s)	33
Half Bath(s)	
Extra Fixture(s)	
1st Floor Use	
Plumbing	TYPICAL
Frame	WOOD
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	
Wall Height	10.00
AC Percent	
Fireplace(s)	
CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	
View	AVERAGE
Parking	ABOVE AVG
WS Flue Rating	
% Sprinkled	
Electric	ADEQUATE
WS Flues	
2nd Heat Type	
Rec Room	
Units	33
Residential Units	33
Interior/Exterior	
Kitchen(s)	33
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	12,155	12,155
SFL	2ND FLOOR	12,155	12,155
TFL	3RD FLOOR	12,155	12,155
STG	STORAGE	1,953	0
UGR	GARAGE UNDER	12,155	0
WDK	WOOD DECK	2,100	0
		52,673	36,465

Building 3 : Section 1

Living Area: 36,465
Replacement Cost: \$4,420,641
Building Percent Good: 98
Replacement Cost
Less Depreciation: \$4,332,200

Building Attributes : Bldg 3 of 4

Field	Description
Style	MULTI-GRDN
Model	COMMERCIAL
Grade	Avg. (+)
Stories	3
Comm Units	
Exterior Wall 1	VINYL
Exterior Wall 2	
Roof Structure	GABLE
Roof Cover	ASPHALT SH
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	LAMINATE
Interior Floor 2	CARPET
Heat Fuel	GAS
Heat Type	FORCED H/W
Nbhd Modifier	
Struct Class	
Bldg Use	APT 9+UP
Total Rooms	120
Bedrooms	33
Full Bath(s)	33
Half Bath(s)	
Extra Fixture(s)	
1st Floor Use	
Plumbing	TYPICAL
Frame	WOOD
Kitchen Rating	AVERAGE
Fin Attic	
Sketch Area Adj	
Wall Height	10.00
AC Percent	
Fireplace(s)	
CNS_USRFLD_302	
CNS_USRFLD_301	
Fireplace Rating	

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//8214.JPG>)

Building Layout



(<ParcelSketch.ashx?pid=235&bid=105898>)

Building Sub-Areas (sq ft)			<u>Legend</u>
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	12,155	12,155
SFL	2ND FLOOR	12,155	12,155
TFL	3RD FLOOR	12,155	12,155
STG	STORAGE	1,953	0
UGR	GARAGE UNDER	12,155	0
WDK	WOOD DECK	2,100	0
		52,673	36,465

View	AVERAGE
Parking	ABOVE AVG
WS Flue Rating	
% Sprinkled	
Electric	ADEQUATE
WS Flues	
2nd Heat Type	
Rec Room	
Units	33
Residential Units	33
Interior/Exterior	
Kitchen(s)	33
Insulation	TYPICAL
Bath Rating	AVERAGE
Solar Hot Water	No
Central Vac	No

Building 4 : Section 1

Year Built:	2020
Living Area:	36,465
Replacement Cost:	\$4,394,808
Building Percent Good:	98
Replacement Cost	
Less Depreciation:	\$4,306,900

Building Attributes : Bldg 4 of 4

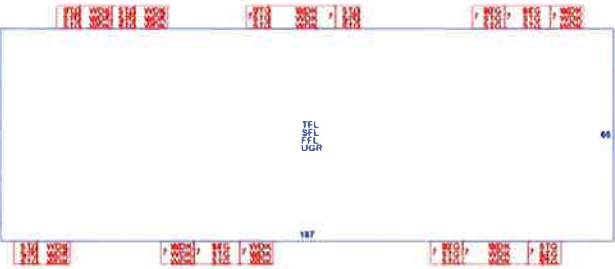
Field	Description
Style	MULTI-GRDN
Model	COMMERCIAL
Grade	Avg. (+)
Stories	3
Comm Units	
Exterior Wall 1	VINYL
Exterior Wall 2	
Roof Structure	GABLE
Roof Cover	ASPHALT SH
Interior Wall 1	DRYWALL
Interior Wall 2	
Interior Floor 1	LAMINATE
Interior Floor 2	CARPET
Heat Fuel	GAS
Heat Type	FORCED H/W
Nbhd Modifier	

Building Photo



(<https://images.vgsi.com/photos/lebanonnhPhotos//8215.JPG>)

Building Layout



([ParcelSketch.ashx?pid=235&bid=105899](#))

Building Sub-Areas (sq ft)		Legend	
Code	Description	Gross Area	Living Area

Struct Class		FFL	1ST FLOOR	12,155	12,155
Bldg Use	APT 9+UP	SFL	2ND FLOOR	12,155	12,155
Total Rooms	105	TFL	3RD FLOOR	12,155	12,155
Bedrooms	30	STG	STORAGE	1,953	0
Full Bath(s)	30	UGR	GARAGE UNDER	12,155	0
Half Bath(s)		WDK	WOOD DECK	2,100	0
Extra Fixture(s)				52,673	36,465
1st Floor Use					
Plumbing	TYPICAL				
Frame	WOOD				
Kitchen Rating	AVERAGE				
Fin Attic					
Sketch Area Adj					
Wall Height	10.00				
AC Percent					
Fireplace(s)					
CNS_USRFLD_302					
CNS_USRFLD_301					
Fireplace Rating					
View	AVERAGE				
Parking	ABOVE AVG				
WS Flue Rating					
% Sprinkled					
Electric	ADEQUATE				
WS Flues					
2nd Heat Type					
Rec Room					
Units	30				
Residential Units	30				
Interior/Exterior					
Kitchen(s)	30				
Insulation	TYPICAL				
Bath Rating	AVERAGE				
Solar Hot Water	No				
Central Vac	No				

Extra Features

Extra Features					Legend
Code	Description	Size	Value	Bldg #	
61	ELEV-PAS	4.00 LEN	\$156,800	1	

Land

Land Use		Land Line Valuation	
Use Code	1120	Size (Acres)	17.23
Description	APT 9+UP	Frontage	
Zone	INDL	Depth	
Neighborhood	I1	Assessed Value	\$6,100,915
Alt Land Appr	No	Appraised Value	\$6,667,500
Category		lblndfront	

Outbuildings

Outbuildings					Legend
Code	Description	Sub Code	Sub Description	Size	Value
85	PAVING			80000.00 SF	\$140,000
					1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$16,924,200	\$6,667,500	\$23,591,700
2021	\$16,174,100	\$2,199,500	\$18,373,600
2020	\$11,369,200	\$1,208,100	\$12,577,300

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$16,924,200	\$6,100,915	\$23,025,115
2021	\$16,174,100	\$1,746,462	\$17,920,562
2020	\$11,369,200	\$1,208,100	\$12,577,300

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SCHUSTER, BUTTREY & WING
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Telephone
603-448-4780
Fax
603-448-3683

August 23, 2023

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

Re: Cicotte Holdings, LLC - Map 78, Lot 40 - Request for Rehearing

Dear Board Members:

Cicotte Holdings, LLC, requests that the zoning board grant a rehearing concerning the board's decision of August 7, 2023, that the board does not have jurisdiction to hear the appeal by Cicotte Holdings of zoning administrator's decision as stated in the City's Notice of Violation dated April 19, 2023. The decision of the board is unreasonable and unlawful for the reasons here stated.

1. On April 19, 2023, the city planning staff sent a Notice of Violation to Cicotte Properties, LLC (the actual name of the property owner is Cicotte Holdings, LLC). On pages 3 and 4 of the letter, the planning staff write that,

[t]his 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 by interpretation, application, or construction of the Zoning Ordinance you thirty (30) days from the date of this Notice of Violation to file an appeal. Form 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

The planning staff who authored the Notice of Violation made clear that the letter is "decision of the administrative officer" that involves the "interpretation, application, or construction of the Zoning Ordinance." The staff memorandum to the zoning board for the June 5, 2023, hearing specifically sets forth the "Appeal Procedure Requirements," all of which were followed by Cicotte. The decision of the zoning board is unlawful and unreasonable in that it contradicts the very language of the Notice of Violation and violates the procedure and advice which the planning staff provided to the board.

2. The “construction, interpretation or application of a zoning ordinance” is appealable to the zoning board. *NH Alpha of SAE Trust v. Town of Hanover*, 174 N.H. 269 (2021). The zoning board unreasonably and unlawfully failed to hear the appeal as prescribed in the Notice of Violation, as set forth in the zoning ordinance and as required by law.

3. RSA 674:33 provides that the zoning board of adjustment shall have the power to hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance

Section 801.1 of the zoning ordinance authorizes the zoning board 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. I

RSA 676:5, I provides that “appeals to the board of adjustment ... may be taken by any person aggrieved ... by any decision of the administrative officer.” An administrative officer who has responsibility for enforcing the zoning ordinance.

The Notice of Violation was not a discretionary decision to commence formal or informal enforcement proceedings. It was the decision to apply terms of the zoning ordinance to Cicotte’s property. The Notice of Violation set forth the procedure to appeal that decision and order and the zoning board’s attempt to change the terms of the Notice of Violation is unlawful and unreasonable.

4. The planning staff incorrectly applied the zoning ordinance to the Cicotte property by claiming that the parking area was not a permitted non-conforming use. The City’s records confirm that the property has been an automotive dealership since the 1960's and that only in 2001 was the zoning for the property changed from General Commercial - in which automotive dealerships were a permitted use - to Residential-Office One - which did not permit auto dealerships. The Notice of Violation was in error in that it misapplied the ordinance to non-conforming use of the property. The zoning board unreasonably and unlawfully refused to hear this appeal of the administrative decision.

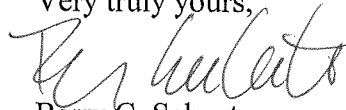
5. Immediately upon the opening of the first hearing by the board on this appeal application, Cicotte requested that board member Jeremy Katz be recused. Despite Mr. Katz’s conflicts of interest, his prejudice, and his having repeatedly objected to Cicotte on other matters before the zoning board, Mr. Katz unreasonably refused to recuse himself. Mr. Katz’s initiated the actions to prevent the zoning board from hearing this appeal as set forth in the very advice and instructions from the planning staff to the zoning board and to Cicotte, all of which amounted to a further demonstration of his prejudice against Cicotte Holdings and, apparently, Johanna Cicotte.

6 The planning office refused to provide any specificity with regard to the basis for its interpretation or construction of the ordinance and how Cicotte's conduct was a violation of the ordinance. By failing to provide specificity for the nature of the alleged violation, the planning staff failed to provide a basis for its interpretation or application of the zoning ordinance. The zoning board unreasonably and unlawfully refused to hear this administrative appeal concerning the planning staff's failure to provide such specificity for its interpretation zoning ordinance.

7. The planning office and zoning board refused to allow any inquiry by the applicant to determine the nature or scope of the planning staff's interpretation or construction of the ordinance regarding any alleged violation. The planning staff failed to provide any dimensions of the alleged new parking area or alleged new paved area on which the Notice and order was apparently issued.

Cicotte Holdings, LLC, appreciates that the planning staff has acknowledged that no violation exists with regard to any floodplain issues. On the remaining issues described above which are before the zoning board, Cicotte requests that the zoning board grant a rehearing in order to hear the appeal of administrative decision.

Very truly yours,



Barry C. Schuster

BCS/sf

cc: Cicotte Holdings, LLC