



**LEBANON ZONING BOARD OF ADJUSTMENT
FEBRUARY 5, 2024 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

1. Call to Order

- A. To participate in this meeting, please [join live via Microsoft Teams](#) or call 1-929-229-5356 (access code: 977606105#). If you have trouble accessing this meeting, please [email nathan.reichert@lebanonnh.gov](mailto:nathan.reichert@lebanonnh.gov).

2. Approval of Minutes

- A. November 6, 2023
B. January 2, 2024

3. Public Hearing Items

- A. **Becky P. Jones, TTEE, 67 Crafts Avenue (Tax Map 58, Lot 91), zoned R-3:** Applicant requests an Equitable Waiver pursuant to State of New Hampshire Code RSA 674:33-a Equitable Waiver of Dimensional Requirement for the construction of a single-family dwelling 17 +/- ft. from the front lot line, where a minimum of 20 ft. is required.
ZB2024-01-EW
- B. **Patch Orchards, Inc., 39 Patch Road (Tax Map 138, Lot 14), zoned RL-2:** Applicant appeals the Zoning Official's calculation of qualified gross living area in both the primary dwelling and accessory dwelling unit. **ZB2024-02-AAD - Continued to March 4, 2024 meeting - Pending City Council approval of proposed Zoning amendments**

4. Staff Comments

5. Adjournment

The order of agenda items is subject to change.

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

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

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, November 6, 2023
7:00 PM**

MEMBERS PRESENT: Vice Chair Jeremy Katz, Dave Newlove, Paul McDonough, Jennifer Barkley

MEMBERS ABSENT: Chair William Koppenheffer

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

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

2. APPROVAL OF MINUTES

A. October 2, 2023

Mr. Newlove MOVED to approve the October 2, 2023, Minutes as presented in the November 6, 2023 packet.

Seconded by Ms. Barkley.

**The Vote on the Motion was (3-0-1).*

Mr. McDonough abstained.

3. PUBLIC HEARING ITEMS

- A. 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 - Continued From 10/2/2023 Meeting - Applicant Requests Continuance to 12/4/23 Meeting

Mr. Newlove MOVED to continue the hearing to December 4, 2023.

Seconded by Ms. Barkley.

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

4. OTHER BUSINESS

A. 2024 Meeting Calendar Review

1 The new calendar was shared. There is a recommendation to change a few meeting dates due to
2 holidays and elections. Staff recommends changing the cutoff date to put a hearing on an agenda.
3 There are two instances when the cutoff could get in the way, a motion for a rehearing and an appeal
4 of an administrative decision. Those instances are rare, but Staff is comfortable with those
5 implications.

6
7 ***Ms. Barkley MOVED to accept the proposed meeting dates with cutoff dates as presented this***
8 ***evening.***

9 ***Seconded by Mr. Newlove.***

10
11 ****The Vote on the Motion was (4-0).***

12
13 **The order of the meeting was changed.**

14
15 **B. Edwards Properties LLC Rezoning Request**

16
17 Barry Schuster spoke about the suggested 4th amendment. This concerns the text of the ordinance,
18 suggesting some additional uses within the zone. By conditional use the permitted uses would be
19 expanded. He believes the text would be understandable if the series of uses by special exception or
20 conditional use were added. If they were added, the Board feels they would easily understand the
21 text.

22
23 **C. Zoning Amendments Review**

24
25 The Board discussed the zoning amendments. The point is to opine on the clarity of the amendments
26 and ability to follow the zoning rules. But this is open for some discussion this evening. In the end
27 there will be a full public hearing that will be held by the City Council. Mr. Reichert reviewed the
28 presentation that was given to the City Council.

29
30 The amendment regarding Impact Fees corrects a loophole regarding additions that are more or less
31 than 500 square feet. There is an amendment regarding PURDs in the GC-1 district, as requested by
32 DHMC. There is an amendment regarding the urban riverbank protection district, specifically the
33 downtown area that is already built out. One amendment pertains to the size of Accessory Dwelling
34 Units. The ratios between primary use and secondary use are not adequate in the current ordinance.
35 There are several miscellaneous amendments. A new Zoning Map Amendment is proposed.

36
37 No one from the Public had any comments. The Board believes if these changes are made, the
38 members will be able to interpret them.

39
40 **5. STAFF COMMENTS**

41
42 **6. ADJOURNMENT**

43
44 ***Mr. Newlove MOVED to adjourn the meeting at 7:40 PM.***
45 ***Seconded by Ms. Barkley.***

46
47 ****The Vote on the Motion was approved (4-0).***

48
49 Respectfully submitted,
50 Linda Billings, Recording Secretary

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, January 2, 2024
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Dave Newlove, Paul McDonough, Jennifer Barkley, Michael Morris (alternate)

MEMBERS ABSENT: None

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:05 PM.

2. APPROVAL OF MINUTES

A. December 4, 2023

*Mr. Katz MOVED to approve the December 4, 2023 Minutes as amended.
Seconded by Dave Newlove.*

Amendments. Page 5, Line 40; Remove “85%” and Add “98%”, Add “and the former hotel is 85% occupied”. Page 2, Line 13; Add

1. The property is improved with a one-family dwelling constructed in 2023. At 15,246 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.
 2. The applicants propose to construct a deck. The deck is proposed to be located 4 ft. from the rear yard lot line shared with the abutting property at 7 Dartmouth Avenue (Tax Map 49, Lot 16) where a minimum unobstructed side yard of 15’ is required.
 3. In the R-1 District, Class 1 lots must maintain a minimum rear yard unobstructed by buildings and structures of 15’ pursuant to Section §308.3 of the Zoning Ordinance. Therefore, an 11’ dimensional variance is required to permit construction of the proposed deck, which will encroach approximately 11’ into the minimum required 15’ side yard.
 4. To obtain the requested Variance from section §308.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b).
 5. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on November 14th 2023.
- Page 5, Line 30; Remove “HUD” and Add “PUD.” Page 5, Line 35; Remove “60–90–“ and Add “270.”

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

3. PUBLIC HEARING ITEMS

- A. 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 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 - Continued From 12/4/2023 Meeting**

When the December meeting was adjourned the Board was in the deliberation phase and the Public Hearing was closed. There were mixed opinions about the approval and two motions have been drafted for this evening.

Mr. Newlove MOVED On October 2nd 2023 at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment the public hearing was opened and immediately continued to the November 6th meeting then was continued at the request of the applicant to December 4th when the Board's primary hearing took place. At the conclusion of the December 4th meeting the hearing was closed and the Board continued their deliberations and decision to January 2nd 2024. Craig F. Pfannenstiehl VP of Acquisitions for AAM Lebanon Residences, LLC and Attorney Thomas J. Chesnard, Esq. with Cleveland, Waters and Bass, P.A. appeared regarding the 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) variance application.

The Applicant requests a 119 dwelling unit variance from the Industrial Planned Unit Development maximum residential dwelling requirements within section §501.4.D of the Zoning Ordinance to convert 120 permitted hotel rooms into dwelling units, where a maximum number of permitted dwelling units within the Industrial Planned Unit Development is 34 and 33 units have previously been permitted and constructed.

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 applicants propose to convert 120 existing hotel rooms into 120 dwelling units.
2. The property is improved with a 120-room hotel, originally permitted in 2011 as the Altaria PUD was constructed in 2014 and re-constructed 2021 by the current owners following a 2019 explosion and fire.
3. The lot is 113,691.6 sq. ft., the lot conforms to the 87,120 sq. ft. minimum lot size required for lots within the Light Industrial (IND-L) District and an Industrial PUD. The building conforms to the required dimensional regulations within the IND-L / iPUD requirements.
4. The Hotel, constructed on Lot 1 of the development, was approved on September 12, 2011, by the Planning Board with 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.

5. Section 501.4.D of the Zoning Ordinance, unchanged since the 2011 Altaria PUD approval, 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.
6. A multi-family residential building constructed on Lot 2 of the PUD (18 Merchant Street) in 2019 contains 33-dwelling units, thereby consuming 33 of the maximum of 34 multi-family dwelling units within the Altaria PUD.
7. The applicant has submitted an application, materials and testimony addressing the section §801.2 Variance criteria in an application to the Planning and Development Department dated on 11 September 2023 and testimony provided during the public hearing. Following requests for further information from the Zoning Board during the public hearing supplemental supporting materials were by the applicant demonstrating adherence to all Zoning Ordinance provisions including electric vehicle charging and parking requirements.
8. Kirun Sankaran, a Lebanon resident, spoke in favor of granting the application.
9. Sherry Boschert from the Lebanon Energy Advisory Committee and Chair of the EV Subcommittee spoke in favor of requiring compliance with City codes for EV charging.
10. The applicant provided a letter of support for the application was received from the DHMC and Clinics citing the need for safe and convenient residences in the area, and a low or non-existent vacancy rate for rental units nearby.
11. The applicant provided testimony that the DOT was contacted regarding the driveway permit and did not believe the proposed change would create a concern regarding traffic.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Variance criteria set forth in section §801.2 of the Zoning Ordinance:

1. The variance will be contrary to the public interest. (Section 801.2.A.1)
 - a. Granting the exception would be a hardship for the City of Lebanon/State due to a loss of Meals and Rooms tax revenue if the hotel became apartments or condos.
 - b. Granting an exception is likely have a negative impact on the City of Lebanon Schools by increased enrollment without the benefit of school impact fees.
2. The spirit of the ordinance is observed. (Section 801.2.A.2)
 - a. The Hotel was permitted under the provisions of the current ordinance as a part of an Industrial PUD and conforms to the current ordinance. The proposed density of residential housing does not keep with the spirit of the ordinance as it greatly exceeds the necessary balance of housing density contemplated by the current conforming PUD approval.
3. Substantial justice is not done. (Section 801.2.A.3)

- a. Granting the proposed variance is not justified. Justice is served by denying the requested variance and retaining compliance with the existing Industrial PUD regulations to which the existing structure, site and its use conforms.
 - b. The hotel owners have the option to go to the City Council if they seek a zoning change for the property. The Zoning Board of Adjustment does not make policy, rather its primary function is to sit as a quasi-judicial body and grant justified adjustments to individual properties pursuant to the Zoning Ordinance. The Variance requested constitutes an injustice to the ordinance as it greatly exceeds the 25% residential density threshold contemplated in the Industrial PUD regulations by expanding from residential units from 33 units to 153 units.
4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
 - a. The applicant did not provide any substantive testimony or evidence to demonstrate compliance with the no diminishment of surrounding properties criteria.
5. Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship. Owing to the lack special conditions of the property pursuant to (Section 801.2.A.5.a) that distinguish it from other properties in the area and a lack of hardship as determined by the following:
 - a. The building was built within code for the PUD. The applicant is asking to convert a currently occupied building to a different use and asserts that the building's size is the "special conditions" that distinguish it from other properties in the area. In making its claim, the applicant relied on mere assertion and provided no supporting data or analysis. Moreover, even if the applicant had demonstrated that the building was of a size that distinguishes it from other properties in the area, it did not demonstrate how a hardship would be suffered because of the size of the building if it were not permitted to convert the use of the building from a hotel to a multi-family dwelling.
 - b. The owner's potential ability to make more money by converting hotel rooms to apartments or condos is not a hardship.
 - c. When the building was recently purchased, the ZBA's 2021 decision not granting a the requested variance to convert the building to "long term rentals" was part of the public record and was known by the current owner.
 - d. 85% Occupancy is excellent when compared to other Upper Valley hotels. There is no hardship in having an 85% occupancy.
6. There is a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
 - a. The Industrial PUD approval conforms to the existing ordinance which provides for general public purposes in calling for limited residential use within a light industrial zone.
7. The proposed use is not a reasonable one. (Section 801.2.A.5.a.ii)
 - a. The variance request is substantially similar to the 2021 case made by the previous owner which sought to repurpose the building for long term rental. The current Hotel use was confirmed in the 2021 decision that an occupant of a room is permitted rental up to 184 days under the definition of a hotel.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 2nd day of January, 2024, hereby DENIES the requested Variances from section §501.4.D of the Zoning Ordinance to allow a 119

1 dwelling unit variance to permit the conversion of 120 hotel rooms into 120 dwelling units on the
2 property at 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) within the Altaria PUD where the maximum
3 permissible dwelling units remaining is 1-unit as set forth above and pursuant to the testimony, plans, and
4 materials submitted into the record.

5
6 ***Seconded by Chair Koppenheffer.***

7
8 The Board discussed the motion. Ms. Barkley commented on the occupancy rate. It was
9 clarified that by local standards it is a high rate of occupancy.

10
11 Mr. Katz clarified that Section 2 in Conclusions of Law should read the spirit of law is not
12 observed. The primary issue is the applicant put forth a contention that the size of the structure
13 was a hardship, and Mr. Katz questioned if size of a structure is a legitimate hardship. In
14 actuality, the size of the structure is comparable in size to other new hotels and other commercial
15 buildings. It does not appear that it is a special condition about the property. He would like to
16 add as a Finding of Fact that the size is similar to other structures.

17
18 Mr. Katz further suggested under Conclusions of Law, Section 1b, the impact fees, should be
19 deleted as it is speculative. Also, in Section 4, it should read surrounding properties are not
20 diminished, and Section 4a should be deleted. Under Section 5, if a fact is adopted, in the
21 absence of a special condition, there cannot be a hardship. That should be added. Section 7a,
22 residential use is not a use by right or special exception in Light Industrial. It is allowed in PUD,
23 but at the density prescribed.

24
25 ***Mr. Newlove MOVED to accept the proposed changes.***

26 ***Seconded by Ms. Barkley.***

27
28 The Motion was revised to read as follows.

29
30 ***Mr. Newlove MOVED on October 2nd 2023 at a duly-noticed meeting of the Lebanon Zoning Board***
31 ***of Adjustment the public hearing was opened and immediately continued to the November 6th meeting***
32 ***then was continued at the request of the applicant to December 4th when the Board's primary hearing***
33 ***took place. At the conclusion of the December 4th meeting the hearing was closed and the Board***
34 ***continued their deliberations and decision to January 2nd 2024. Craig F. Pfannenstiehl VP of***
35 ***Acquisitions for AAM Lebanon Residences, LLC and Attorney Thomas J. Chesnard, Esq. with***
36 ***Cleveland, Waters and Bass, P.A. appeared regarding the 25 Foothill Street (Tax Map 24 Lot 14, Plot***
37 ***100) variance application.***

38
39 ***The Applicant requests a 119 dwelling unit variance from the Industrial Planned Unit Development***
40 ***maximum residential dwelling requirements within section §501.4.D of the Zoning Ordinance to***
41 ***convert 120 permitted hotel rooms into dwelling units, where a maximum number of permitted***
42 ***dwelling units within the Industrial Planned Unit Development is 34 and 33 units have previously been***
43 ***permitted and constructed.***

44
45 **I. FINDINGS OF FACT**

46 Based on testimony given, application materials presented, and supporting documents submitted, the
47 Lebanon Zoning Board of Adjustment makes the following findings of fact:
48

1. The applicants propose to convert 120 existing hotel rooms into 120 dwelling units.
2. The property is improved with a 120-room hotel, originally permitted in 2011 as the Altaria PUD was constructed in 2014 and re-constructed 2021 by the current owners following a 2019 explosion and fire.
3. The lot is 113,691.6 sq. ft., the lot conforms to the 87,120 sq. ft. minimum lot size required for lots within the Light Industrial (IND-L) District and an Industrial PUD. The building conforms to the required dimensional regulations within the IND-L / iPUD requirements.
4. The Hotel, constructed on Lot 1 of the development, was approved on September 12, 2011, by the Planning Board with 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.
5. Section 501.4.D of the Zoning Ordinance, unchanged since the 2011 Altaria PUD approval, 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.
6. A multi-family residential building constructed on Lot 2 of the PUD (18 Merchant Street) in 2019 contains 33-dwelling units, thereby consuming 33 of the maximum of 34 multi-family dwelling units within the Altaria PUD.
7. The applicant has submitted an application, materials and testimony addressing the section §801.2 Variance criteria in an application to the Planning and Development Department dated on 11 September 2023 and testimony provided during the public hearing. Following requests for further information from the Zoning Board during the public hearing supplemental supporting materials were by the applicant demonstrating adherence to all Zoning Ordinance provisions including electric vehicle charging and parking requirements.
8. Kirun Sankaran, a Lebanon resident, spoke in favor of granting the application.
9. Sherry Boschert from the Lebanon Energy Advisory Committee and Chair of the EV Subcommittee spoke in favor of requiring compliance with City codes for EV charging.
10. The applicant provided a letter of support for the application was received from the DHMC and Clinics citing the need for safe and convenient residences in the area, and a low or non-existent vacancy rate for rental units nearby.
11. The applicant provided testimony that the DOT was contacted regarding the driveway permit and did not believe the proposed change would create a concern regarding traffic.
12. Applicant presented the size of the structure as proof of hardship and its location as secondary hardship. The Zoning Board finds as a matter of fact that the building is not unusually large and approximately the size of three hotels in the nearby area, specifically the Courtyard, Residence Inn and Hilton Hotel; and that other commercial and industrial buildings in the area tend to be in the 50,000-100,000 sq ft range.

II. CONCLUSIONS OF LAW

1 As a result of the above findings of fact and based on testimony given, application materials presented,
2 and supporting documents submitted, the Board concludes the following with respect to the Variance
3 criteria set forth in section §801.2 of the Zoning Ordinance:
4

- 5 1. The variance will be contrary to the public interest. (Section 801.2.A.1)
 - 6 a. Granting the exception would be a hardship for the City of Lebanon/State due to a loss of
7 Meals and Rooms tax revenue if the hotel became apartments or condos.
8
- 9 2. The spirit of the ordinance is not observed. (Section 801.2.A.2)
 - 10 a. The Hotel was permitted under the provisions of the current ordinance as a part of an
11 Industrial PUD and conforms to the current ordinance. The proposed density of residential
12 housing does not keep with the spirit of the ordinance as it greatly exceeds the necessary
13 balance of housing density contemplated by the current conforming PUD approval.
14
- 15 3. Substantial justice is not done. (Section 801.2.A.3)
 - 16 a. Granting the proposed variance is not justified. Justice is served by denying the requested
17 variance and retaining compliance with the existing Industrial PUD regulations to which
18 the existing structure, site and its use conforms.
 - 19 b. The hotel owners have the option to go to the City Council if they seek a zoning change
20 for the property. The Zoning Board of Adjustment does not make policy, rather its primary
21 function is to sit as a quasi-judicial body and grant justified adjustments to individual
22 properties pursuant to the Zoning Ordinance. The Variance requested constitutes an
23 injustice to the ordinance as it greatly exceeds the 25% residential density threshold
24 contemplated in the Industrial PUD regulations by expanding from residential units from
25 33 units to 153 units.
26
- 27 4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
28
- 29 5. Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship.
30 Owing to the lack special conditions of the property pursuant to (Section 801.2.A.5.a) that
31 distinguish it from other properties in the area and a lack of hardship as determined by the
32 following:
 - 33 a. The building was built within code for the PUD. The applicant is asking to convert a
34 currently occupied building to a different use and asserts that the building's size is the
35 "special conditions" that distinguish it from other properties in the area. In making its
36 claim, the applicant relied on mere assertion and provided no supporting data or analysis.
37 Moreover, even if the applicant had demonstrated that the building was of a size that
38 distinguishes it from other properties in the area, it did not demonstrate how a hardship
39 would be suffered because of the size of the building if it were not permitted to convert the
40 use of the building from a hotel to a multi-family dwelling.
 - 41 b. The owner's potential ability to make more money by converting hotel rooms to apartments
42 or condos is not a hardship.
 - 43 c. When the building was recently purchased, the ZBA's 2021 decision not granting the
44 requested variance to convert the building to "long term rentals" was part of the public
45 record and was known by the current owner.
 - 46 d. 85% Occupancy is excellent when compared to other Upper Valley hotels. There is no
47 hardship in having an 85% occupancy.
 - 48 e. The Board has found as a matter of fact that neither the size nor the location of the structure
49 is special within the neighborhood. Thus, in the absence of a special condition there can be
50 no hardship defined.

6. There is a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
 - a. The Industrial PUD approval conforms to the existing ordinance which provides for general public purposes in calling for limited residential use within a light industrial zone.
7. The proposed use is not a reasonable one. (Section 801.2.A.5.a.ii)
 - a. The variance request is substantially similar to the 2021 case made by the previous owner which sought to repurpose the building for long term rental. The current Hotel use was confirmed in the 2021 decision that an occupant of a room is permitted rental up to 184 days under the definition of a hotel.
 - b. Residential use is not permitted by right or exception within the Light Industrial Zone. Residential use is permitted within the IND-L Zone by a 25% ratio standard within an Industrial PUD. The proposed residential ratio far exceeds the residential ratio allowed within the PUD.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 2nd day of January, 2024, hereby DENIES the requested Variance from section §501.4.D of the Zoning Ordinance to allow a 119 dwelling unit variance to permit the conversion of 120 hotel rooms into 120 dwelling units on the property at 25 Foothill Street (Tax Map 24 Lot 14, Plot 100) within the Altaria PUD where the maximum permissible dwelling units remaining is 1-unit as set forth above and pursuant to the testimony, plans, and materials submitted into the record.

****The Roll Call Vote on the Motion was Koppenheffer - aye, Katz - aye, Newlove - aye, and Barkley – aye; (4-1).
McDonough – nay.***

Jennifer Barkley left the meeting.

The order of the meeting was changed and the Strategic Plan was discussed next.

4. STAFF COMMENTS

Michael Morris introduced himself to the Board. He is a new alternate, and he expressed his interest in participating in public service. He is a local librarian.

5. OTHER BUSINESS

Mr. Morris was given voting privileges for the rest of the meeting.

A. Election of Officers – Chair and Vice Chair

***Mr. Katz nominated Chair Koppenheffer for Chair.
Seconded by Mr. Newlove.***

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

1 ***Mr. McDonough nominated Mr. Katz for Vice Chair.***
2 ***Seconded by Mr. Newlove.***

3
4 ****The Vote on the Motion was (5-0).***

5
6 **B. Strategic Plan Discussion**

7
8 All of the Boards across the Planning Department are asked to review the Strategic Plan for the City.
9 Mr. Reichert spoke of the strategic objective and the Vision Statement. One objective that is germane
10 to Zoning is to specifically enhance code enforcement efforts that bring adherence to the zoning
11 ordinance. He reviewed Action Plans and Key Performance Indicators. While there are no big asks
12 for the Zoning Board, the Board has been asked if there are any strategic objectives they would like to
13 ask of the other Boards and Commissions; are there proposals for projects, objectives and
14 conclusions. It is an opportunity for communication with the City Manager and City Council that
15 takes place during January and February. Mr. Katz believes access to public records regarding a
16 library of Zoning Board cases and decisions could be helpful for future applications.

17
18 **6. ADJOURNMENT**

19
20 ***Mr. Katz MOVED to adjourn the meeting at 8:01 PM.***
21 ***Seconded by Mr. Newlove.***

22
23 ****The Roll Call Vote on the Motion was Koppenheffer - aye, Katz - aye, Newlove - aye,***
24 ***McDonough - aye, and Morris – aye; (5-0).***

25
26 Respectfully submitted,
27 Linda Billings, Recording Secretary



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

Equitable Waiver

Staff Memorandum – ZB2024-01-EW

February 5, 2024

Becky Jones, TTEE

67 Crafts Avenue (Tax Map 58, Lot 91) Zone R3 Class1

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:

Equitable Waiver
pursuant to §674:33-a

Location:

67 Crafts Avenue
Tax Map 58, Lot 91

Applicant/Property Owner:

Becky P. Jones, TTEE

Zoning District:

Residential Three (R-3) – Class 1

Property Size:

+/-0.25 acres (+/-10,890 sq. ft.) (per
the City Assessor's records; property
is conforming to the min. required
10,000 sq. ft. lot size in the R-3
Class 1 District per §310.3)

Overlay Districts:

None

Previous ZBA Action (since 1995):

None

Other Approvals Required:

Building Permit

Attachments:

Application
GIS and street view photos

HEARING NOTICE

Becky P. Jones, TTEE, 67 Crafts Avenue (Tax Map 58, Lot 91), zoned R-3: Applicant requests an Equitable Waiver pursuant to State of New Hampshire Code RSA 674:33-a Equitable Waiver of Dimensional Requirement for the construction of a single-family dwelling 17 +/- ft. from the front lot line, where a minimum of 20 ft. is required. **ZB2024-01-EW**

BACKGROUND

The property is improved with a one-family dwelling constructed in 2023 and is in an R-3 Class 1 District minimum lot size requirement of 10,000 sq. ft. as the lot is .35 acres or 10,890sq. ft., approx. 75' – 100' wide and 140' deep. The R-3 Class 1 standard is for a 75' wide lot frontage. The home's front projects approximately 3' into the minimum required front yard of 20 ft. The 3' encroachment into the front yard setback was discovered by the surveyor employed to produce a Mortgage Plot Plan as the buyers sought to refinance a construction loan into a permanent mortgage.

PROPOSAL

The applicant is requesting an Equitable Waiver pursuant to Section 801.4.B of the Zoning Ordinance and RSA 674:33-a to address the Zoning violation. The Equitable Waiver is sought given that the single-family dwelling has been fully constructed since at least November 2023 at which time the violation was discovered by the Owner's mortgage lender who performed a Zoning compliance review of the property.

NEW HAMPSHIRE STATE STATUE REQUIREMENTS for EQUITABLE WAIVER

State of New Hampshire law conveys the power to the Zoning Board to issue an equitable waiver in the event that a good faith error was made, and that the correction of the error far outweighs any public benefit to be gained in correcting the matter. The Applicant has the burden of proof to demonstrate that all the necessary criteria outlined in the law are met, upon which the Zoning Board shall approve the relief.

TITLE LXIV

PLANNING AND ZONING - CHAPTER 674

LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals - Section 674:33-a

674:33-a Equitable Waiver of Dimensional Requirement. –

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

Source. 1996, 226:4, eff. Jan. 1, 1997.

APPLICATION AND SUPPORT STATEMENT

The applicant has submitted testimony addressing the §674:33-a criteria in an application received by the Planning and Development Department on January 8th 2024 (see attached).

STAFF COMMENTS

Absent additional testimony or evidence to the contrary, the proposed equitable waiver does not appear to be inconsistent with any of the applicable criteria set forth in §674:33-a provided above.

STAFF MEMORANDUM

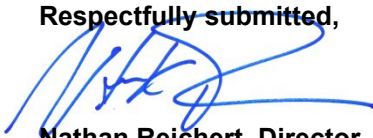
ZB2024-01-EW
67 Crafts Avenue
(Tax Map 58, Lot 91)
February 5th 2024 ZBA Meeting
Agenda Item 3.A
Page **3** of **3**

ATTACHEMENTS

Figure 1. No Street View of Subject Property is available due to it being new construction.

Figure 2. GIS View of Subject Property

Respectfully submitted,



Nathan Reichert, Director
Planning and Development Department
Zoning Administrator



**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 11/20/2023
Data updated 11/18/2018

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



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

Equitable Waiver

Staff Memorandum – ZB2024-01-EW

February 5, 2024

Becky Jones, TTEE

67 Crafts Avenue (Tax Map 58, Lot 91) Zone R3 Class1

DRAFT MOTION for:

Agenda Item 3.A

Case ZB2024-01-EW

Request for Special Exception per RSA 674:33-a

Motion made by: _____

On February 5, 2024, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared _____ regarding 67 Crafts Avenue (Tax Map 58, Lot 91), zoned R-3 class1. The Applicant requests an Equitable Waiver per State of New Hampshire Code RSA 674:33-a and section §801.4.B of the Zoning Ordinance to permit a 3' front yard encroachment into the required 20' front yard setback thereby permitting the house to be 17' from the front property line.

I. FINDINGS OF FACT

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

1. The subject property is developed with a one-story single-family residence in 2023.
2. At this time, the applicant is seeking an Equitable Waiver per State of New Hampshire Code §674:33-a and section §801.4.B of the Zoning Ordinance to permit a 3' front yard encroachment into the required 20' front yard setback.
3. In order to grant an Equitable Waiver, the applicant must demonstrate that the proposal meets the §674:33-a criteria. The applicant has submitted testimony addressing the Equitable Waiver criteria in an application received by the Planning & Development Department on January 8th 2024.

4. _____

5. _____

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 Equitable Waiver criteria set forth in §674:33-a of the New Hampshire Code:

1. That the violation **was / was not** noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

2. That the violation **was / was not** an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

3. That the physical or dimensional violation **does / does not** constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far **outweighs / does not outweigh** any public benefit to be gained, that it **would be / would not be** inequitable to require the violation to be corrected.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th day of February 2024, hereby **GRANTS / DENIES** the requested Equitable Waiver as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

DRAFT MOTION

ZB2024-01-EW
67 Crafts Avenue
(Tax Map 58, Lot 91)
February 5th 2024 ZBA Meeting
Agenda Item 3.A
Page **3** of **3**

1. The applicant shall obtain a Final Certificate of Occupancy.

2. _____

3. _____

4. _____

5. _____

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	☐	☒	OTHER (<i>equitable waiver</i>)

PROPERTY OWNER (APPLICANT):

NAME: *Becky Jones* TEL.#: *603-667-3938*

MAILING ADDRESS: *67 Crafts Ave West Lebanon NH 03784*

E-MAIL ADDRESS: *beckyjones@comcast.net*

CO-APPLICANT, AGENT, OR LESSEE:

NAME: *C&M Homes LLC* TEL.#: *(603-252-6757) 802-356-5645*

MAILING ADDRESS: *13 NH 2K 4A Enfield NH 03748 : 63 Crafts Ave WLeb*

E-MAIL ADDRESS: *(sharemac2@comcast.net) (jc-builder1983@yahoo.com)*

PROJECT LOCATION:

TAX MAP #: *58* LOT#: *91* PLOT #: _____ ZONE: _____

STREET ADDRESS OF PROJECT: *67 Crafts Ave West Lebanon NH 03784*

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

SCOPE OF PROJECT:

Construction of Single Family 3 bedroom, 2 bath home

TYPE OF OCCUPANCY:

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

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

SIGNATURE BLOCK:

Becky Jones
PROPERTY OWNER

DATE: *1/8/2024*

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.

Becky Jones
PROPERTY OWNER

DATE: *1/8/2024*

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
<i>1/8/2024</i>	<i>58/91</i>	<i>ZB2024-01-EW</i>			

(12/07/07)

Equitable Waiver for 67 Crafts Ave West Lebanon NH 03784

My name is Shane MacDonald, I am partners with Jeff Curtis, and we are owners of C&M Homes LLC. We were hired by Becky Jones to build a single-family home on lot #58-91 located at 67 Crafts Ave West Lebanon NH 03784.

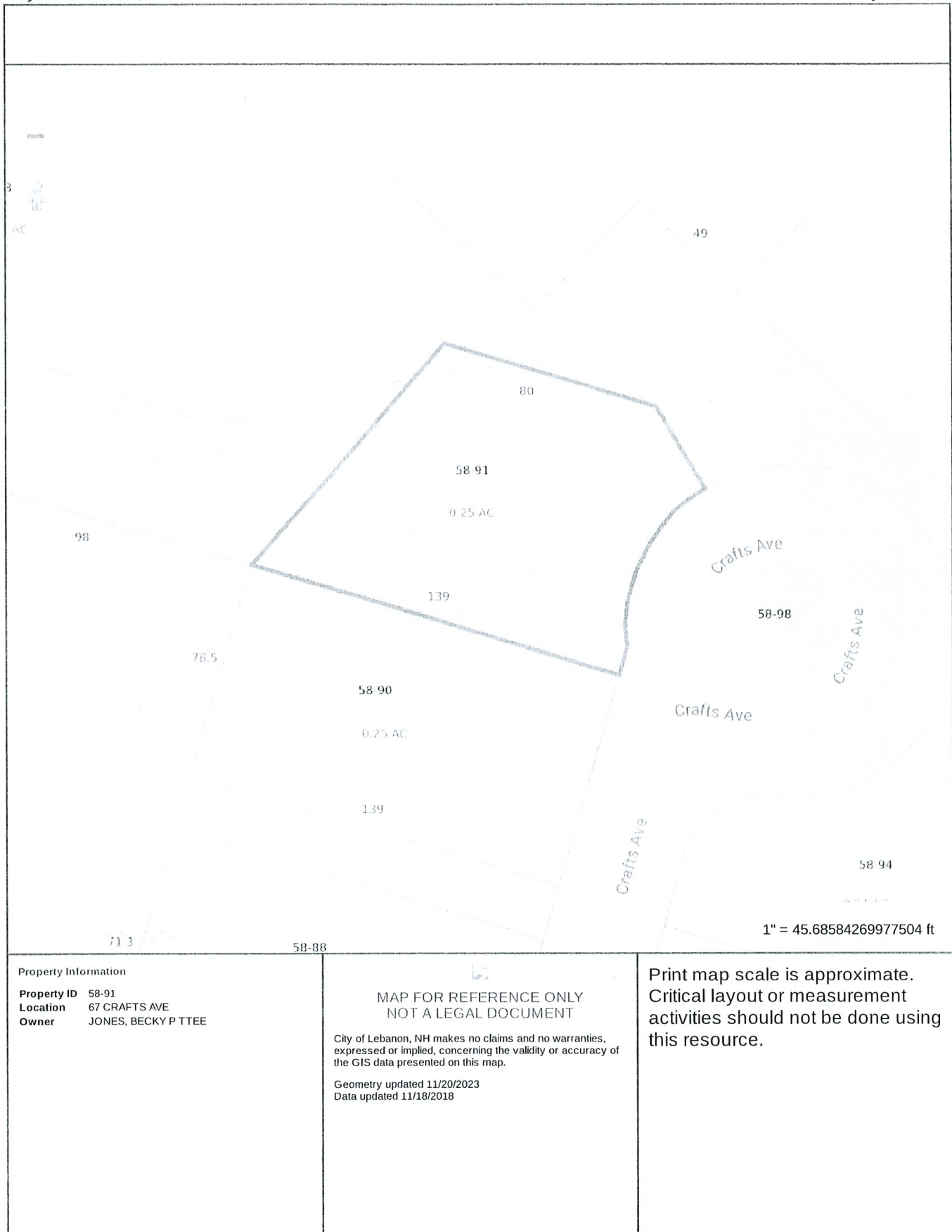
The lot was a difficult lot with its size and the significant drop off on the back. The lot isn't a standard square or rectangle lot, which made fitting on home on the lot a little challenging plus the additional topography of this lot.

We understood the setback requirements and thought our design would fit on the lot and meet the setback requirements. We did stake out the lot began took measurements before we started digging the foundation and did have the necessary inspections done throughout the build.

In the end the house was complete, Becky Jones is extremely happy, and we thought everything was ok. Unfortunately, when the lender had a mortgage plot plan done it showed because of a radius at the section of Crafts Ave a portion of the house does encroach on the 20' setback for the front of the house.

After we were notified, we went back to see how the error was made. It appears we took out setback measurements for the two pins on the lot, which were located on both side of the lot. With the sidewalk curb being straight and not seeing another pin to mark the radius we just went straight across the front of the lot to establish our setback.

The owner is currently living in the house on a temporary Certificate of Occupancy, and we are hoping for a waiver so she can get a Certificate of Occupancy and C&M Homes LLC can get our final payment from the lender.



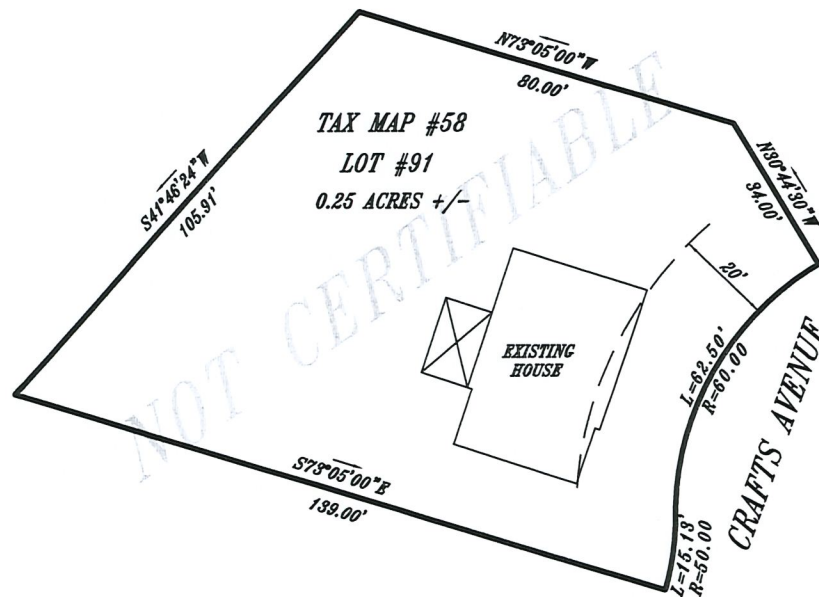


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DESIGNATED CLIENT AND IS NOT TO BE REDISTRIBUTED

MORTGAGE PLOT PLAN

NOT A SURVEY

OUR FILE#: **MASP02323**



NOTE:
HOUSE ENCRDACHING INTO FRONT 20' SETBACK.

FOR MORTGAGE PURPOSES ONLY
NOT FOR RECORDING PURPOSES
NOT FOR FLOOD DETERMINATION PURPOSES

SCALE: 1"=30'

BUYER: **BECKY JONES**

ADDRESS: **67 CRAFTS AVE, LEBANON, NH**

SELLER: _____

DEED REFERENCE: **4713/912**

PLAN REFERENCE: **15441 & TOWN RECORDS**

FILE REFERENCE #: **220920888**

I HEREBY DO NOT CERTIFY
THE FOLLOWING TO:

MASCOMA BANK

1. The building(s) on this attached plan is/are approximately as shown hereon and it was NOT in compliance with the Zoning Laws of the Town/City of **LEBANON** in the County of **GRAFTON** when constructed except as shown.
2. To the best of my belief and knowledge, all evidence of Easements and/or Encroachments, whether they be overhead or underground, but plainly visible from the surface, are located approximately as shown.

Drawn By: _____

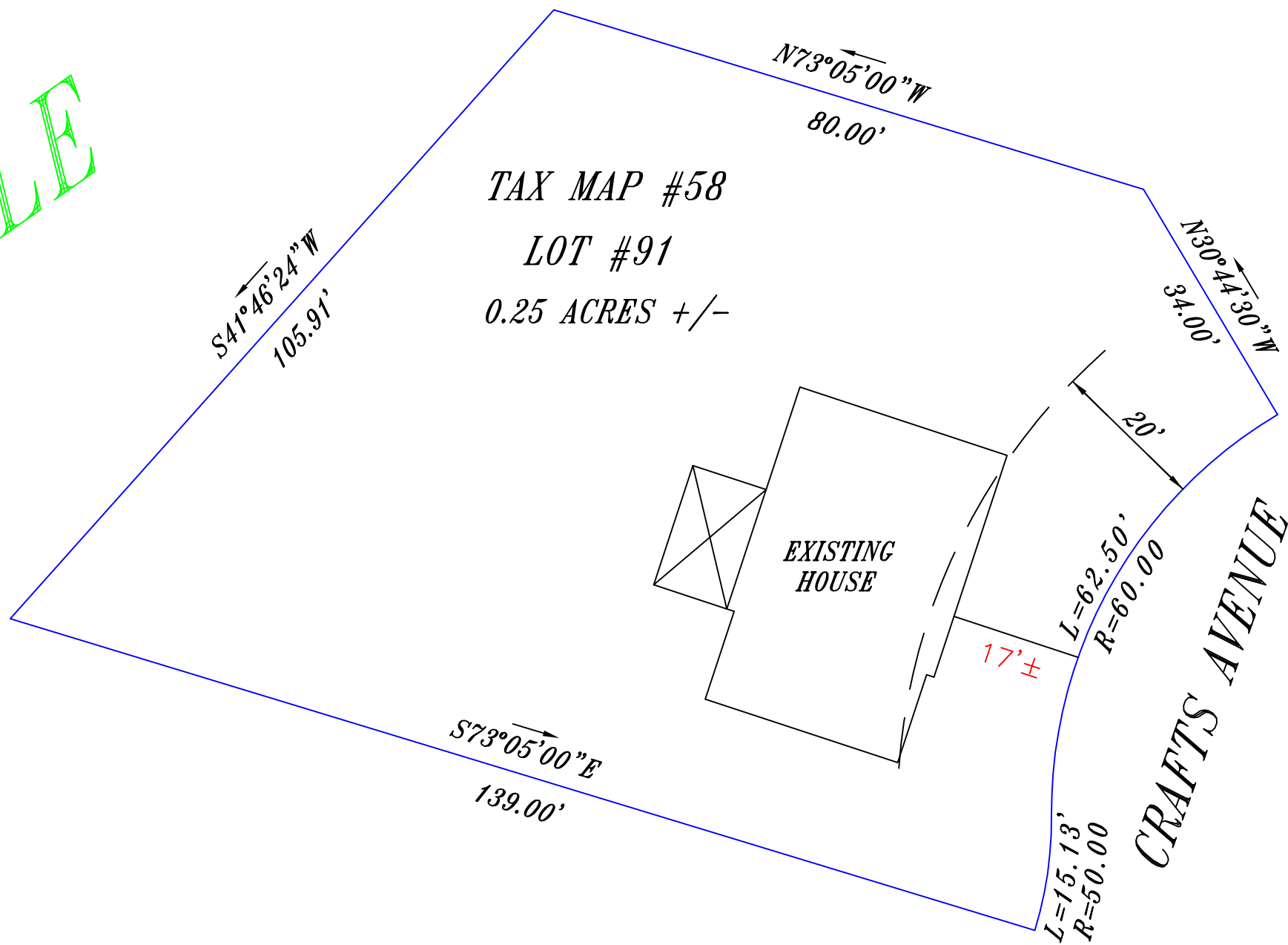
DATE: 11/02/2023

GCE

G. C. ENGINEERING INC.

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

BLE



NOTE:
HOUSE ENCROACHING INTO FRONT 20' SETBACK.

CITY OF LEBANON APPLICATION FOR

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

PROPERTY OWNER (APPLICANT):

NAME: Pitch Orchards Inc TEL#: 603 443 0944

MAILING ADDRESS: 39 Patch Rd, Lebanon NH 03766

E-MAIL ADDRESS: Patch Orchards@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Josh Patch TEL#: 603 296 5782

MAILING ADDRESS: 40 Patch Rd, Lebanon NH 03766

E-MAIL ADDRESS: JOSHUA SPATCH@gmail.com

PROJECT LOCATION:

TAX MAP #: 138 LOT#: 14 PLOT #: ZONE: RL2

STREET ADDRESS OF PROJECT: 37 PATCH RD Lebanon NH 03766

IS THIS PROPERTY LOCATED IN THE:

WETLANDS	☐ YES	☒ NO	HISTORIC DISTRICT	☐ YES	☒ NO
FLOOD PLAIN	☐ YES	☒ NO			

SCOPE OF PROJECT:

Building Permit for Accessory Dwelling Unit

TYPE OF OCCUPANCY:

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

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

SIGNATURE BLOCK:

Matthew Patch
PROPERTY OWNER

DATE: 1/9/24

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.

Matthew Falt PROPERTY OWNER

DATE: 1/9/24

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
1/9/24	138/14	ZB2024-02-AAD			

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

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

City of Lebanon Zoning Ordinance:

APPEALS:

801.1 Administrative Appeals.

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

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

802.4 Decisions of the Board.

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

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

I am appealing the decision of: Nathan Reichert Zoning Administrator,
(Name/Title of Official)
made on this date: December 13 2023.

(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: Section 610 G-1 of Zoning Ordinance, gross living area does not include garages. Mr. Reichert is including the garage for the ADU and not the primary Dwelling Unit.

In Relation to Article(s): <u>610</u> , Section(s): <u>G-1</u> of the City of Lebanon Zoning Ordinance.
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