



**LEBANON ZONING BOARD OF ADJUSTMENT
MAY 6, 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: 971 052 264#). If you have trouble accessing this meeting, please [email nathan.reichert@lebanonnh.gov](mailto:nathan.reichert@lebanonnh.gov).

2. Approval of Minutes

- A. April 1, 2024

3. Public Hearing Items

- A. **Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R2:** Applicant requests a Special Exception from Section 309.2, pursuant to Section 801.3 of the Zoning Ordinance to convert office space connected to an existing 5-unit dwelling into 2 additional dwelling units. **ZB2024-10-SE Continued from 4/1/2024 meeting**
- B. **Patrick Kennelly & Jeanne Roningen, 60 Spencer Street (Tax Map 78, Lot 31), zoned R-3:** The applicants request a Special Exception from Sections 310.2 and Section 310.3, pursuant to Section 801.3 and 703.1 of the Zoning Ordinance, to allow a two-family dwelling by conversion of a one-family dwelling and the expansion of a non-conforming garage structure. **ZB2024-11-SE**

4. Staff Comments

5. Other Business

- A. Review and comment on proposal to amend Section 214 of the Zoning Ordinance re: regulation of governmental uses

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
MONDAY, April 1, 2024
7:00 PM**

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

MEMBERS ABSENT: Chair William Koppenheffer

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Vice Chair Jeremy Katz called the meeting to order at 7:00 PM.

Mr. Reichert gave the Right to Know, RS 91A public announcement.

2. APPROVAL OF MINUTES

A. March 4, 2024

Mr. Morris is appointed a full voting member for this meeting.

Mr. Newlove MOVED to approve the March 4, 2024 Minutes as presented in the April 1, 2024 packet.

Seconded by Mr. Morris.

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

Ms. Barkley abstained as she did not attend the meeting.

3. PUBLIC HEARING ITEMS

A. Pinewood Village Condo Association and George Blike & Rebecca Johnson, 6 Oak Ridge Road #9 (Tax Map 4, Lot 23, Plot 906), zoned R-3: Applicants request a Variance from Section 310.3, pursuant to Section 801.2 of the Zoning Ordinance to construct an addition to the existing condominium unit to be located +/- 11 feet from the front lot line where 20 feet is required. ZB2024-05-VAR

George Blike and Geoffrey Blike appeared on behalf of the application. They are asking to change the existing patio into a structure that would be 13x20 feet. The purpose is to put in a hydrotherapy pool for medical reasons. The pool would be 6 feet deep. It needs to be an enclosed structure so it can be used year around. Normally a hot tub would be allowed without a variance, but due to the nature of the layout of the condo association and the amount of frontage for two abutting rear yards a variance is required. It appears there was a front setback requirement, but it is really a setback in the backyard of his property and a neighbor's property. The pool would have a full foundation with footings. The therapy pool would be set up inside the foundation and be at one level with the house.

Mr. Katz asked if the Condo Association is in approval and that was confirmed.

Vice Chair Katz opened the Public Hearing,

Jay Hutchins, living in the same neighborhood, spoke of extreme caution of granting variances. He stated, there is a good reason in most cases, but the zoning ordinance stipulates the requirements for a hardship. Mr. McDonough asked if in this specific application Mr. Hutchins feels that this situation is an encroachment. It appeared that Mr. Hutchins did not speak against this application, but he is concerned about granting variances in general.

Terry Melendy Jr., an abutter, spoke about water run off that happens during every storm. He is concerned that it would flow back onto his property. He also has permission to build a workshop and he believes it is very tight in that area. The Board asked for clarification regarding this specific request. He does not oppose it provided drainage conditions in that area are addressed. Because there are already drainage issues and it is very tight quarters, he would like to see a fence put in because he is right in the applicant's back yard.

Michael Foree, an adjacent neighbor, understands the need for medical treatment. He has some concerns. There were already trees in place for privacy, but he believes a two-story building would infringe on his privacy. He would like to know a plan for maintaining privacy. He would like to know the plan for bringing in construction equipment and how that would impact his leach field.

Mr. Blike commented that last year a drain was added where previous flooding was occurring. The patio blocks have gravel and there is a storm drain now. They intend to add additional drainage that is laid out in the plan for the permit. The access to the area for equipment would be from the front yard and would not travel on the neighbors' yard. It is going to be a one-story building, at ground level. The windows would be at the same level as the existing building. Neighbors would only see a roof. Mr. Katz asked if satisfactory drainage and a design that ensures privacy would be an acceptable condition of the application. Mr. Blike is willing to put in a fence.

Hearing no one else from the Public, the Public Hearing was closed.

Staff clarified there are two ways to look at this application. If the application meets all the criteria of a unique property for a hardship it would be a normal variance. If the pathway does not meet the full 5 criteria, there is another way to make an application for a medical variance for a life state. That variance would only be in force while there is a medical need and after it is no longer needed, the therapy pool would have to be removed. The Board could move forward under either variance.

It was discussed that there are several unique characteristics. There is something wrong with the property where the front and back are mixed up, and where it does not allow the owner full enjoyment of the property.

Mr. McDonough MOVED on April 1st 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared George Blike and Geoffrey Blike regarding 6 Oak Ridge Road Unit 9 (Tax Map 4, Lot 23, Plot 906). The Applicant requests an 8' – 9" front yard dimensional variance from section §310.3 to construct a deck and hydrotherapy pool enclosure +/-11' – 3" from the property line with 14 Oak Ridge Road.

I. FINDINGS OF FACT

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

1. The property is improved with a condominium complex constructed in 1977. At 355,449.6 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 and a hydrotherapy pool enclosure. The deck is proposed to be located +/-11' – 3" from the front lot line shared with the abutting property at 14 Oak Ridge Road (Tax Map 4, Lot 21) where a minimum unobstructed front yard of 20' is required.
3. In the R-3 District, Class 1 lots must maintain a minimum front yard unobstructed by buildings and structures of 20' pursuant to Section §310.3 of the Zoning Ordinance. Therefore, an 8' – 9" dimensional variance is required to permit construction of the proposed deck and lap pool enclosure, which will encroach approximately 11' – 3" into the minimum required 20' front yard.
4. To obtain the requested Variance from section §310.3, 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 February 5th 2024 this information was supplemented with additional information submitted on March 15th 2024.
6. There were members of the neighborhood and abutters spoke. Jay Hutchins is in the neighborhood and asked the Board to be careful about variances being granted unnecessarily. And Terry Melendy Jr. and Michael Foree, both part of the association or live in the neighborhood, did not object to this but they had conditions that they thought would be of assistance both to the neighborhood and to the applicant which included concerns regarding a drainage system which was agreed upon by the applicant, privacy fencing agreed to by the applicant, and to make sure that heavy construction equipment was not traveling over other peoples' property.
7. No one else spoke and no one spoke against it specifically.

II. CONCLUSIONS OF LAW

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

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):

The provisions of the property that are considered are the dimensions that have been mentioned both in the application and by Mr. Reichert that would justify that the Board could find a hardship unique to this particular property.

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

7. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of April, 2024**, hereby **GRANTS** the requested Variances from section §310.3 of the Zoning Ordinance to allow the construction of a deck and hydrotherapy pool enclosure +/- 8' - 3" from the front yard at **6 Oak Ridge Road Unit 9 (Tax Map 4, Lot 23, Plot 906)** where a minimum unobstructed front yard of 20' is required, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.
2. Applicant shall address any and all drainage issues that were raised by the abutters and neighbors to ensure that there are not drainage issues that are going to interfere with abutters and neighbors.
3. A privacy fence shall be in place consistent with the ordinances of the City of Lebanon.
4. Construction vehicles will not cross the property of neighbors in the construction of this project.

Seconded by Ms. Barkley.

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

Mr. Newlove voted nay

B. WISE of the Upper Valley, Inc., 38 Bank Street (Tax Map 92, Lot 116), zoned R-O: Applicant requests a Variance from Section 607.1, pursuant to Section 801.2 of the Zoning Ordinance to allow the elimination of 3 required parking spaces. ZB2024-06-VAR

Mr. McDonough spoke of his experience with WISE. He said he could be impartial during this hearing and will not recuse himself.

Frank J. Barrett Jr. and Peggy O'Neil appeared on behalf of the application. Mr. Barrett discussed the full letter that he provided in the application. He works as an architect with WISE as a volunteer.

Renovations are needed at 38 Bank Street. The building was built in the early 19th century. There is an existing garage. This project is proposed because Wise needs some additional office space and looking at the garage it was determined it would be best to build a new code compliant structure on the same footprint, but it would be two stories high. Two garage bays would remain, and the second floor would be office space. A second means of egress would be added to the second floor. There would be a new entrance from the rear. WISE owns 3 separate properties, but they do not intend to use parking from any of the other properties.

1 Most of the WISE staff are remote 60% of the time or work at other locations. There is not the normal
2 need for parking because some staff come and go. They have already used up all the space on the
3 property. It is improving the existing space on the second floor that created the requirement for the 3
4 extra parking spaces. It is a very different type of office use, as staff are not onsite at the same time and
5 are not required to be in the office.

6
7 Mr. Katz stated that granting of the variance requires something unique about the property that meets the
8 need for a hardship, something that makes this property different from other properties. Mr. Barrett
9 discussed how zoning has evolved, and the language that comes out of the courts. There is a balancing
10 act, and the laws allow making some exceptions. He said they could put some parking spaces on the front
11 lawn but that would mar the historical appearance of Bank Street. There would not be any benefit to the
12 community. The nature of the use of WISE is unique. The applicants are trying to improve the existing
13 building, by tearing it down because it is not safe. They are not trying to increase the footprint or the
14 amount of space that currently exists. The existing space is not being used because it is not structurally
15 safe. They would not be opposed to stating at any given time only a portion of staff would be present,
16 because they usually are not in the office.

17
18 **Vice Chair Katz opened the Public Hearing,**

19
20 Mr. Katz asked, if it is correct to say that there is a portion of the building that they are not able to make
21 useful without a variance. That is correct.

22
23 **Hearing no one else from the Public, the Public Hearing was closed.**

24
25 There was no additional discussion.

26
27 *Mr. McDonough MOVED On April 1st 2024, at a duly-noticed meeting of the Lebanon Zoning Board*
28 *of Adjustment, there appeared Peggy O'Neil and Frank J. Barrett Jr. regarding 38 Bank Street (Tax*
29 *Map 92, Lot 116). The Applicant requests a Variance from Section §607.1, pursuant to Section §801.2*
30 *of the Zoning Ordinance to allow the elimination of 3 required parking spaces for the tear down and*
31 *rebuild of an attached garage with the addition of office space.*

32
33 **I. FINDINGS OF FACT**

34
35 Based on testimony given, application materials presented, and supporting documents submitted, the
36 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 37
38 1. The property is improved with office space and an attached garage. The space has been
39 redeveloped over time and has been converted from a house into office space that houses the
40 WISE operation. The lot is 15,681 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot
41 size required for Class 1 lots in the R-O District.
42
43 2. The applicants propose demolishing an attached garage and reconstructing it to include a full
44 second-story office.
45
46 3. To obtain the requested Variance from section §308.3, the applicants must demonstrate
47 compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA
48 674:33, I(b).
49
50 4. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an
51 application received by the Planning and Development Department on March 11th 2024.

- 1
2 5. No one from the public appeared to testify in favor or against and there was no one online to
3 testify in favor or against.
4

5 **II. CONCLUSIONS OF LAW**
6

7 As a result of the above findings of fact and based on testimony given, application materials presented,
8 and supporting documents submitted, the Board concludes the following with respect to the Variance
9 criteria set forth in section §801.2 of the Zoning Ordinance:
10

- 11 1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
12
13 2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
14
15 3. Substantial justice **is** done. (Section 801.2.A.3)
16
17 4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
18
19 5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship.
20 Owing to **[the following]** special conditions of the property that distinguish it from other
21 properties in the area (Section 801.2.A.5.a):
22
23 Absent the variance relief, a portion of the structure will be stranded and unable to be enjoyed by
24 the landowner.
25
26 6. There **is not** a fair and substantial relationship between the general public purposes of the
27 ordinance provision and the specific application of that provision to the property. (Section
28 801.2.A.5.a.i)
29
30 7. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)
31

32 **III. DECISION**
33

34 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 1st **day of April 2024**,
35 hereby **GRANTS** the requested Variances from Section §607.1, pursuant to Section §801.2 of the Zoning
36 Ordinance to allow the elimination of 3 required parking spaces for the tear down and rebuild of an
37 attached garage with the addition of office space as set forth above and per testimony, plans, and
38 materials submitted, and per the following conditions:
39

- 40 1. The applicant shall obtain a building permit.
41

42 ***Seconded by Mr. Morris.***
43

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

46 ***C. Sean Lacey & Thomas Lacey, 7 Summer Street (Tax Map 77, Lot 153), zoned R3: Applicants***
47 ***request a Special Exception from Section 310.3, pursuant to Sections 703.1 & 801.3 of the***
48 ***Zoning Ordinance to allow the expansion of a non-conforming attached garage. ZB2024-07-***
49 ***SE***
50

Sean Lacey appeared on behalf of the application. He would like to add an ADU within his garage. His house was built around 1860 and part of the garage is in the setback. The setback was not in place when the house was built. He needs room for an aging parent or for a way to increase income. He is unhappy with the current roof structure as it is a hazard to the building.

He is asking to expand the current garage. The footprint would remain the same. He is just adding a space above it and wants to repair the roofline structure. Putting a living space on top of the garage would help with his income. He is not asking to add an ADU, but the space above the garage would be used as an ADU.

Vice Chair Katz opened the Public Hearing. Hearing no one, the Public Hearing was closed.

There was no further discussion regarding the application,

Mr. Newlove MOVED on April 1st 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Sean Lacey regarding 7 Summer Street (Tax Map 77, Lot 153). The Applicant requests a Special Exception per Section §703.1 and Section §801.3 of the Zoning Ordinance to allow the vertical expansion of a non-conforming attached garage by adding second story Accessory Dwelling Unit +/- 1-foot, from the rear property line where a 20-foot setback is required.

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 improved with a one-family dwelling constructed in 1860. The lot contains a primary residence and a dimensionally non-conforming attached garage.
2. As described in the application by the applicant, the applicant proposes to add a second story to the garage and construct an ADU. The addition will be located partially within the 20 ft. rear yard setback, it will be no closer to the rear yard lot line than then existing garage and will be approximately +/- **1-foot**, from the property line.
3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum rear yard (i.e. a space unobstructed by buildings and structures) of 20-feet. Pursuant to section §310.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance allows the expansion of “any increase in the footprint and/or volume of the non-conforming part of the building or structure” by Special Exception from the Zoning Board of Adjustment.
4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section §703.1.A of the Zoning Ordinance. Per Section §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section §801.3.
5. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3 criteria in an application received by the Planning and Development Department on March 5th 2024.
6. There are no known existing zoning violations on the property.
7. No one spoke up from the public.

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 §703.1 and §801.3 of the Zoning Ordinance:

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

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 1st day of April, 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the Zoning Ordinance to permit vertical expansion of a non-conforming attached garage by adding second story Accessory Dwelling Unit +/- 1-foot. from the rear property line where a 20-foot setback is required at 7 Summer Street, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

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

2. Prior to the issuance of a Building Permit, the Applicant shall provide an updated site plan sketch reflecting the finalized approved setbacks for the existing non-conforming garage and the proposed setback for the Accessory Dwelling Unit.
3. Prior to the issuance of a Building Permit, the Applicant shall obtain applicable City of Lebanon Sewer Use Permit and Water Service Permits from the Lebanon Department of Public Works.

Seconded by Ms. Barkley.

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

D. Dallas & Savannah Hammond, 16 Peabody Street (Tax Map 90, Lot 48), zoned R1: Applicants request a Variance from Section 308.3, pursuant to Section 801.2 of the Zoning Ordinance to construct an addition to the existing single-family dwelling to be located +/- 9 feet from the left side lot line where 15 feet is required. ZB2024-08-VAR

Savannah and Dallas Hammond appeared on behalf of the application. They provided the reasons they want to add the addition to the existing property on the left side of the house. That placement would be the least intrusive to the nature and aspects of the neighborhood. They would add an extra bedroom, bathroom and closet. Building it on a different side of the building would alter the entire layout of the house as it exists.

The Board asked for clarification of the hardship of the land and why it needs to be constructed as proposed. The placement of the house on the lot is the reason they need to build as requested. Otherwise, they would be interfering with other setbacks.

Vice Chair Katz opened the Public Hearing. Hearing no one, the Public Hearing was closed.

There was no additional discussion.

Mr. Morris MOVED on April 1st 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Dallas and Hammond regarding 16 Peabody Street (Tax Map 90, Lot 48). The Applicants request a Variance from Section 308.3, pursuant to Section 801.2 of the Zoning Ordinance to construct an addition to the existing single-family dwelling to be located +/- 9 feet from the left side lot line where 15-feet is required.

I. FINDINGS OF FACT

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

1. The property is improved with a single-family home constructed in 1931. At 6,098 sq. ft., the lot is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-1 District.
2. The applicants propose constructing an addition to the existing single-family dwelling to be located +/- 9 feet from the left side lot line where 15-feet is required.

3. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on February 5th 2024 this information was supplemented with additional information submitted on March 15th 2024.
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. No public comment.

II. CONCLUSIONS OF LAW

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

1. The variance **will not** be contrary to the public interest.
2. The spirit of the ordinance **is** observed.
3. Substantial justice **is** done.
4. The values of surrounding properties **are not** diminished.
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area.

The unique characteristics of the lot require in considering the age of the property, that this is the only practical place to have that addition.
6. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.
7. The proposed use **is** a reasonable one.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of April, 2024**, hereby **GRANTS** the Variance from Section 308.3, pursuant to Section 801.2 of the Zoning Ordinance to construct an addition to the existing single-family dwelling to be located +/- 9 feet from the left side lot line where 15-feet is required, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit.

Seconded by Mr. Newlove.

There was a request to add the hardship to the Conclusions of Law. The Board dispensed with rereading the Motion.

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

2
3 **E. Eric Agterberg & Sarah Riley, 45 Eldridge Street (Tax Map 77, Lot 5), zoned**

4 **R3:** Applicants request a Special Exception from Section 310.3, pursuant to Sections 703.1 &
5 801.3 of the Zoning Ordinance to allow the expansion of the existing non-conforming garage to
6 be located +/- 5.5 feet from the left side lot line where 15 feet is required and the expansion of the
7 non-conforming front porch to be located +/- 9.3 feet from the front lot line where 20 feet is
8 required. **ZB2024-09-SE**
9

10 Sarah Riley and Eric Agterberg appeared on behalf of the application. They would like to rebuild their
11 garage that is in disrepair. It is currently within the setback. They would like to slightly increase the
12 garage from 12 foot wide to 14 foot wide. They would like to move it closer to the street which would
13 shorten the driveway and would move it out of the rear setback. This would also increase the size of their
14 backyard. The driveway would not be any closer to the side setback. The garage would be slightly taller
15 as well, with a storage loft above it. Their front porch is a fully glassed extension of their living room,
16 but it is uninsulated and not weatherized. They would like to redo the front porch to be a four-season
17 porch and they would like to widen it slightly. It would not be any closer to the front line than the
18 existing porch, which is already within the setback.
19

20 Mr. Katz clarified, with the special exception, the applicants are really removing a rear lot line non-
21 conformity. Regarding the porch, it would be 3 feet wider, and the steps would be moved to the side,
22 which would be further from the front setback.
23

24 **Vice Chair Katz opened the Public Hearing. Hearing no one, the Public Hearing was closed.**
25

26 There was no additional discussion,
27

28 *Mr. McDonough MOVED On April 1st 2024, at a duly-noticed meeting of the Lebanon Zoning Board*
29 *of Adjustment, there appeared Sarah Riley and Eric Agterberg regarding 45 Eldridge Street (Tax Map*
30 *77, Lot 5). The Applicant requests a Special Exception from Section 310.3, pursuant to Sections 703.1*
31 *& 801.3 of the Zoning Ordinance to allow the expansion of the existing non-conforming garage to be*
32 *located +/- 5.5 feet from the left side lot line where 15 feet is required and the expansion of the non-*
33 *conforming front porch to be located +/- 9.3 feet from the front lot line where 20 feet is required*
34

35 **I. FINDINGS OF FACT**
36

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

- 40 1. The subject property is improved with a one-family dwelling constructed in 1920. The lot
41 contains a primary residence and a dimensionally non-conforming detached garage.
42
- 43 2. As described in the application by the applicant, the applicant proposes to tear down and rebuild a
44 garage and widen the front porch. The new garage will be located partially within the 15-foot left-
45 side yard setback, it will be no closer to the rear yard lot line than then existing garage and will be
46 approximately +/- 5.5-feet from the left side property line. The expanded front porch will be
47 located partially within the 20-foot front yard setback, it will be no closer to the front yard lot line
48 than then existing porch and will be approximately +/- 9 ft. 4 in. from the front property line.
49
- 50 3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must
51 maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20-feet

and side yards of 15-feet. Pursuant to section §310.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance allows the expansion of “*any increase in the footprint and/or volume of the non-conforming part of the building or structure*” by Special Exception from the Zoning Board of Adjustment.

4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section §703.1.A of the Zoning Ordinance. Per Section §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section §801.3.
5. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3 criteria in an application received by the Planning and Development Department on March 11th 2024.
6. There are no known existing zoning violations on the property.
7. No one from the public spoke for or against in public or online.

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 §703.1 and §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the Zoning Ordinance.
2. The following criteria of Section §703.1 **have been** met:
 - a. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
 - b. The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more nonconforming in the absence of a variance.
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy.
4. The character of the area **will not** be adversely affected.
5. **No** hazard or nuisance will be created.
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted.
7. The granting of the Special Exception **will not** result in undue municipal expense.
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance.

- 1 9. The general welfare of the City **will** be protected.
2

3 **III. DECISION**
4

5 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 1st day of April, 2024,
6 hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the Zoning
7 Ordinance to permit the expansion of the existing non-conforming garage to be located +/- 5.5 feet from
8 the left side lot line where 15 feet is required and the expansion of the non-conforming front porch to be
9 located +/- 9.3 feet from the front lot line where 20 feet is required at 45 Eldridge Street, as set forth
10 above and per testimony, plans, and materials submitted, and per the following conditions:

- 11
12 1. The applicant shall obtain a building permit, and shall comply with all applicable local, state, and
13 federal regulations in the construction of the proposed addition.
14

15 *Seconded by Ms. Barkley.*

16
17 **The Vote on the Motion was (5-0).*
18

19 *F. Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R2: Applicant*
20 *requests a Special Exception from Section 309.2, pursuant to Section 801.3 of the Zoning*
21 *Ordinance to convert office space connected to an existing 5-unit dwelling into 2 additional*
22 *dwelling units. ZB2024-10-SE*
23

24 The hearing was opened. The applicant requested continuance to the May meeting.
25

26 *Mr. Morris MOVED to continue this until the May meeting and honoring the applicant's request.*
27

28 *Seconded by Mr. Newlove.*
29

30 **The Vote on the Motion was (5-0).*
31

32 **4. STAFF COMMENTS**
33

34 None
35

36 **5. OTHER BUSINESS**
37

38 **A. Implicit Bias Training**
39

40 All members are asked to attend one of three sessions on April 15th or 16th. Pre-registration is not
41 required.
42

43 **6. ADJOURNMENT**
44

45 *Mr. McDonough MOVED to adjourn the meeting at 8:36 PM.*

46 *Seconded by Mr. Newlove*
47

48 **The Vote on the Motion was (5-0).*
49

50 Respectfully submitted,
51 Linda Billings, Recording Secretary



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 6, 2024 - Regular Meeting

Staff Memorandum – ZB2024-12-SE

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Special Exception
pursuant to §703.1 and §801.3

Location:

60 Spencer Street
Tax Map 78, Lot 31

Applicant/Property Owner:

Patrick Kennelly & Jeanne Roningen

Zoning District:

Residential Three (R-3) – Class 1

Property Size:

+/-0.11 acres (+/-4,791 sq. ft.) *(per the City Assessor's records; property is non-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
Eagleview and street view photos

HEARING NOTICE

Patrick Kennelly & Jeanne Roningen, 60 Spencer Street (Tax Map 78, Lot 31), zoned R-3: The applicants request a Special Exception from Sections 310.2 and Section 310.3, pursuant to Section 801.3 and 703.1 of the Zoning Ordinance, to allow a two-family dwelling by conversion of a one-family dwelling and the expansion of a non-conforming garage structure. **ZB2024-11-SE**

BACKGROUND

The property is improved with a one-family dwelling constructed in 1880 per the City Assessor's records and is non-conforming to the R-3 Class 1 District minimum lot size requirement of 10,000 sq. ft. as the lot is +/- 4,791 sq. ft., approx. 59.5 ft wide along Spencer Street, 76.5 ft wide along Suzon Court, and 74-76 ft deep. The R-3 Class 1 standard is for a 75' wide lot frontage.

PROPOSAL

The applicant proposes to demolish an existing non-conforming 16 ft x 24 ft, 19 ft tall barn/garage that is +/- 0 ft from the left side lot line shared with 64 Spencer Street (Tax map 78, Lot 30) and +/- 6 ft from the right side lot line shared with 3 Suzon Court (Tax map 78, lot 32) and construct a new non-conforming 16 ft x 24 ft, 29 ft tall addition +/- 1.5 ft and 5 ft from the same side lot lines, where 15 ft is required. The applicant proposes to convert the existing 1-family dwelling to a 2-family dwelling. Section §703.1 permits the expansion of an existing dimensional non-conformity by Special Exception per Section 801.3

ZONING ORDINANCE REQUIREMENTS

SPECIAL EXCEPTION

Class 1 lots (lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15 ft and a minimum front yard of 20 ft. See the Dimensional Requirements specified in §310.3 of the Zoning Ordinance. §703.1 of the Zoning Ordinance allows the expansion of "any increase in the footprint and/or volume of the non-conforming part of the building or structure," by Special Exception from the Zoning Board of Adjustment. The applicable Special Exception Criteria are as follows:

703.1 Expansion.

In order to grant a Special Exception for the proposed expansion, the Board must make each of the following findings per §703.1.A:

- 1. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.*
- 2. The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance.*
- 3. These special exception standards shall apply in addition to the standards in Section 801.3 of the Zoning Ordinance.*

Note: §703.1.A.2 allows an expansion that is equally non-conforming or less non-conforming, but prohibits an expansion that would be more non-conforming. Here, the proposed addition will be located no closer to the lot line than the existing garage and, therefore, will not “render the lot size proportionately less adequate”.

By contrast, if the addition was proposed to be located closer to the lot line than the existing garage, the applicant would be unable to demonstrate compliance with §703.1.A.2 and, instead, would require a Variance from §309.3 to permit the carport to encroach further into the minimum required side yard.

801.3 Special Exceptions.

Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an expansion of a non-conforming structure, the Board must also determine that the proposal meets the general Special Exception criteria, set forth in §801.3 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §703.1.A of the Zoning Ordinance.*
- B. All special conditions required of the special exception have been met.
Note: The special conditions for an expansion of a non-conforming buildings are those set forth above in §703.1.A of the Zoning Ordinance.*
- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is unaware of any Zoning Ordinance violations on the property.*
- D. The character of the area shall not be adversely affected. In examining the GIS view of the neighborhood nearly every abutting property has zero-lot-line or near zero-lot-line buildings.*
- E. No hazard or nuisance will be created.*
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.*
- G. Granting the special exception will not result in undue municipal expense.*
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.*
- I. The general welfare of the City will be protected.*

APPLICATION AND SUPPORT STATEMENT

The applicant has submitted testimony addressing the §703.1 and §801.3 criteria in an application received by the Planning and Development Department on 14 April 2024 (see attached).

STAFF COMMENTS

Absent abutter testimony to the contrary, the proposed expansion does not appear to be inconsistent with any of the applicable criteria set forth in §703.1.A and §801.3.

During the processing of this application the neighbor, Jessica Gookins abutting neighbor at 3 Suzor Court reached out to staff about this application. Ms. Gookins had concerns about the location of the

existing garage / barn potentially being an encroachment onto her property. No survey has been provided by either the Applicant or the Abutter for the record. Additional testimony on this topic may be forthcoming at the hearing. It is within the Board's discretion to request a survey, a surveyed lay-out for the addition and / or a surveyed as-built drawing as a condition. Staff has not added such a condition to the decision template. Traditionally, the Board has not required a surveyed sight plan as a part of a Zoning Board application or approval.

The property is within the Flood Zone and will need to meet all flood zone requirements. Typically, an engineered foundation and an elevation of the proposed floor of the addition being 1-foot above flood stage. Flood stage elevation calculations have not been included in the Application. The Flood Plain Manager, Rod Finley and the Building Official will referee flood zone compliance concerns. A condition for the Zoning Permit is included in the draft resolution.

ATTACHEMENTS

Figure 1. Street View of Subject Property.

Figure 2. Eagle View of Subject Property

Respectfully submitted,



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



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT DRAFT DECISION – ZB2024-12-SE May 6, 2024 - Regular Meeting Sean Lacey & Thomas Lacey Patrick Kennelly & Jeanne Roningen 60 Spencer Street (Tax Map 78, Lot 31), zoned R-3

DRAFT MOTION for:

Agenda Item: 3.B

Case: ZB2024-12-SE

Request for Special Exception per Section Section §703.1 and Section §801.3

Motion made by: _____

On May 6th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared _____ regarding 60 Spencer Street (Tax Map 78, Lot 31). The applicants request a Special Exception from Sections 310.2 and Section 310.3, pursuant to Section 801.3 and 703.1 of the Zoning Ordinance, to allow a two-family dwelling by conversion of a one-family dwelling and the expansion of a non-conforming garage structure.

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 improved with a one-family dwelling constructed in 1880. The lot contains a primary residence and a dimensionally non-conforming detached garage.
2. As described in the application by the applicant, the applicant proposes to demolish the existing dimensionally non-conforming garage and construct in its place a slightly dimensionally non-conforming addition to the existing house. The addition will be located partially within the 20 ft. rear yard setback and the 15' left side-yard setback. The addition will convert the existing single-family home into a two-family home. The addition will be no closer to the rear yard lot line than the existing garage and will be approximately **5-feet** from the rear property line and approximately **1.5-feet** from the left side property line. The existing height of the garage / barn is approximately **19-feet** tall, where the proposed addition to the structure will be **29-feet**.
3. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must maintain a minimum rear yard (i.e. a space unobstructed by buildings and structures) of 20-feet. Pursuant to section §310.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance allows the expansion of "*any increase in the footprint and/or volume of the non-conforming part of the building or structure*" by Special Exception from the Zoning Board of Adjustment.

4. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section §703.1.A of the Zoning Ordinance. Per Section §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception criteria set forth in Section §801.3.
5. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3 criteria in an application received by the Planning and Development Department on March 5th 2024.
6. There are no known existing zoning violations on the property.
7. _____

8. _____

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 §703.1 and §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the Zoning Ordinance.
2. The following criteria of Section §703.1 **have been / have not been met**:
 - a. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.

 - b. The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more nonconforming in the absence of a variance.

3. There **are no / are** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy.

4. The character of the area **will not / will** be adversely affected.

-
5. **No / A** hazard or nuisance will be created.
-

6. The capacity of existing or planned community facilities and services (including streets and highways) **will not / will** be adversely impacted.
-

7. The granting of the Special Exception **will not / will** result in undue municipal expense.
-

8. The proposed Special Exception **will / will not** be developed in a manner compatible with the spirit and intent of the ordinance.
-

9. The general welfare of the City **will / will not** be protected.
-

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 6th day of May, 2024, hereby **GRANTS / DENIES** the requested Special Exception from Sections 310.2 and Section 310.3, pursuant to Section 801.3 and 703.1 of the Zoning Ordinance, to allow a two-family dwelling by conversion of a one-family dwelling and the expansion of a non-conforming garage structure as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit, and shall comply with all applicable local, state, and federal regulations in the construction of the proposed addition.
2. Prior to the issuance of a Building Permit, the Applicant shall obtain applicable City of Lebanon Sewer Use Permit and Water Service Permits from the Lebanon Department of Public Works.
3. The proposed addition must comply with all necessary FEMA flood zone regulations. A Floodplain Development Permit is required.

4. _____

Motion seconded by: _____

Vote: _____



3 Suzor Ct
60 Spencer Side

//



Image capture: Aug 2023 © 2024 Google

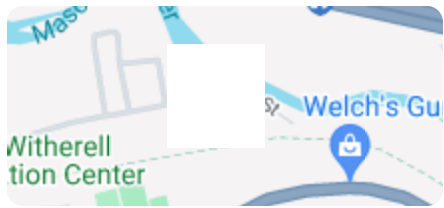
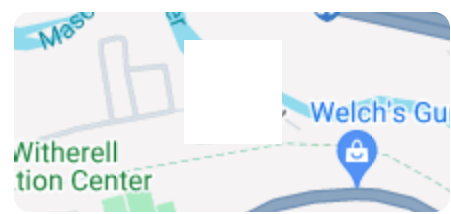




Image capture: Aug 2023 © 2024 Google



60 Spencer 2



60 Spencer



60 SPENCER ST

Location 60 SPENCER ST

Mblu 78/ 31/ / /

Acct# 1718

Owner KENNELLY, PATRICK J

PBN

Assessment \$207,900

Appraisal \$207,900

PID 1009

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$149,700	\$58,200	\$207,900
Assessment			
Valuation Year	Improvements	Land	Total
2022	\$149,700	\$58,200	\$207,900

Owner of Record

Owner KENNELLY, PATRICK J
Co-Owner RONINGEN, JEANNE M
Address 21 SUMMER ST
LEBANON, NH 03766

Sale Price \$80,000
Certificate
Book & Page 4586/445
Sale Date 12/16/2020
Instrument 99

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
KENNELLY, PATRICK J	\$80,000	#315-2017-GI	4586/445	99	12/16/2020
TWIN LLC, THE	\$40,500		4493/898	35	01/07/2020
BAILEY, SHIRLEY	\$0		1210/0014	99	12/07/1973
COWAN SR, EVERETT & DOROTHY	\$0		0/0	99	01/01/1901

Building Information

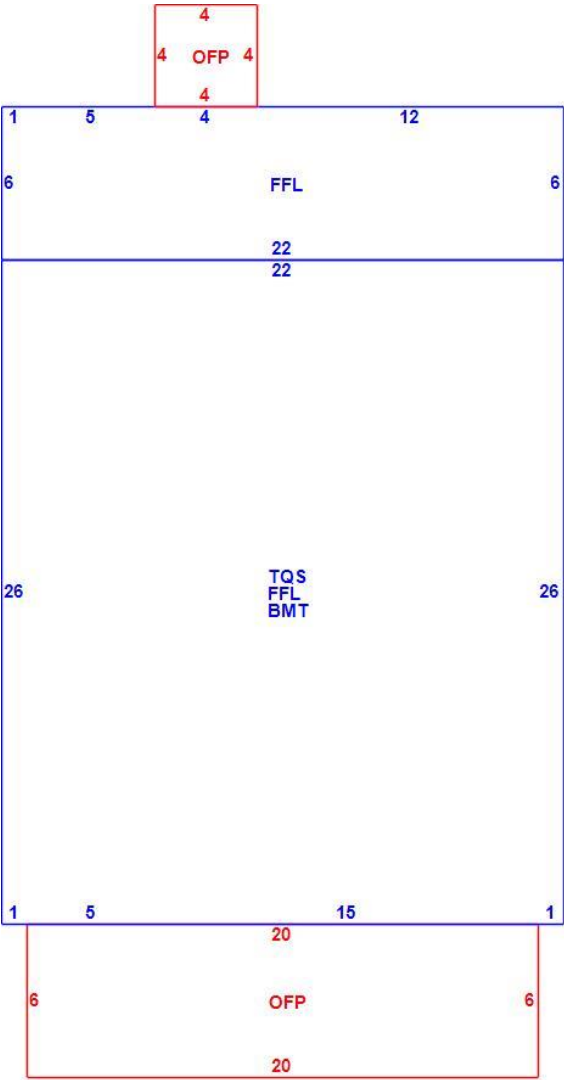
Building 1 : Section 1

Year Built: 1880
Living Area: 1,133
Replacement Cost: \$234,065
Building Percent Good: 67
Replacement Cost
Less Depreciation: \$149,000

Building Photo

 [Building Photo](https://images.vgsi.com/photos/lebanonnhPhotos///0010/IMG_0917_1068)
(https://images.vgsi.com/photos/lebanonnhPhotos///0010/IMG_0917_1068)

Building Layout



([ParcelSketch.ashx?pid=1009&bid=1009](#))

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
FFL	1ST FLOOR	704	704
TQS	3/4 STORY	572	429
BMT	BASEMENT	572	0
OFF	OPEN PORCH	136	0
		1,984	1,133

Building Attributes	
Field	Description
CNS_USRFLD_108	
Model	RESIDENTIAL
Style	CONVENT`NL
Grade	AVG. (-)
Stories	1T
Comm Units	0
Exterior Wall 1	VINYL
Exterior Wall 2	
Roof Structure	GABLE
Roof Cover	ASPHALT SH
Interior Wall 1	PLASTER
Interior Wall 2	PLYWD PANL
Interior Floor 1	SOFTWOOD
Interior Floor 2	CARPET
Basement Floor	CONCRETE
% Heated	100.00
Heat Fuel	OIL
Heat Type	FORCED H/A
# Heat Systems	1.00
AC Percent	0.00
Bedrooms	3
Full Bath(s)	2
Bath Rating	AVERAGE
Half Bath(s)	0
Extra Fixture(s)	0
Plumbing	TYPICAL
Kitchen(s)	1
Kitchen Rating	AVERAGE
Total Rooms	5
Frame	WOOD
Foundation	CONCRETE
Bsmt Garage	0
Parking	
Fireplace(s)	0
Fireplace Rating	

WS Flues	0
WS Flue Rating	
Interior/Exterior	
View	AVERAGE
Electric	ADEQUATE
Insulation	TYPICAL
Partition	TYPICAL
Solar Hot Water	No
Central Vac	No
Nbhd Modifier	FLOOD 100
MH Make	

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use		Land Line Valuation	
Use Code	1010	Size (Acres)	0.11
Description	ONE FAM	Frontage	
Zone	R3	Depth	
Neighborhood	R6	Assessed Value	\$58,200
Alt Land Appr Category	No	Appraised Value	\$58,200

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
32	BARN/LFT			384.00 SF	\$700	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2023	\$24,800	\$58,200	\$83,000
2022	\$94,500	\$64,700	\$159,200
2021	\$33,500	\$42,900	\$76,400

Assessment			
Valuation Year	Improvements	Land	Total
2023	\$24,800	\$58,200	\$83,000

2022	\$94,500	\$64,700	\$159,200
2021	\$33,500	\$42,900	\$76,400

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**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: Patrick Kennelly TEL.#: (603) 266-7058

MAILING ADDRESS: 21 Summer St. Lebanon NH 03766

E-MAIL ADDRESS: patrickandjeanne@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: _____ TEL.#: _____

MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

PROJECT LOCATION:

TAX MAP #: _____ LOT#: 78 PLOT #: 31 ZONE: R-3

STREET ADDRESS OF PROJECT: 60 Spencer St.

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

SCOPE OF PROJECT:

Demolition of an existing barn/garage and rebuilding in roughly the same footprint, thereby converting the existing single family home into a duplex.

TYPE OF OCCUPANCY:

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

SIGNATURE BLOCK:

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

PROPERTY OWNER: Patrick Kennelly DATE: 1/29/24

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.

PROPERTY OWNER: _____ DATE: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
4-15-24	78-31	ZB2024-11-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) III,
Section(s) 310, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION *(Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)*

I plan to convert an existing single family dwelling into a duplex
by expanding the structure into the space currently occupied by a
dilapidated garage immediately adjacent to the house.

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:

Two family dwelling by conversion of existing one family dwelling
is specifically authorized; 310.2

- 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:
The neighborhood is already fairly densely built up with several smaller
lots immediately adjacent. Directly across the street is an existing 2
family dwelling.
- E. That no hazard or nuisance will be created:
Use will remain the same.
- 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.

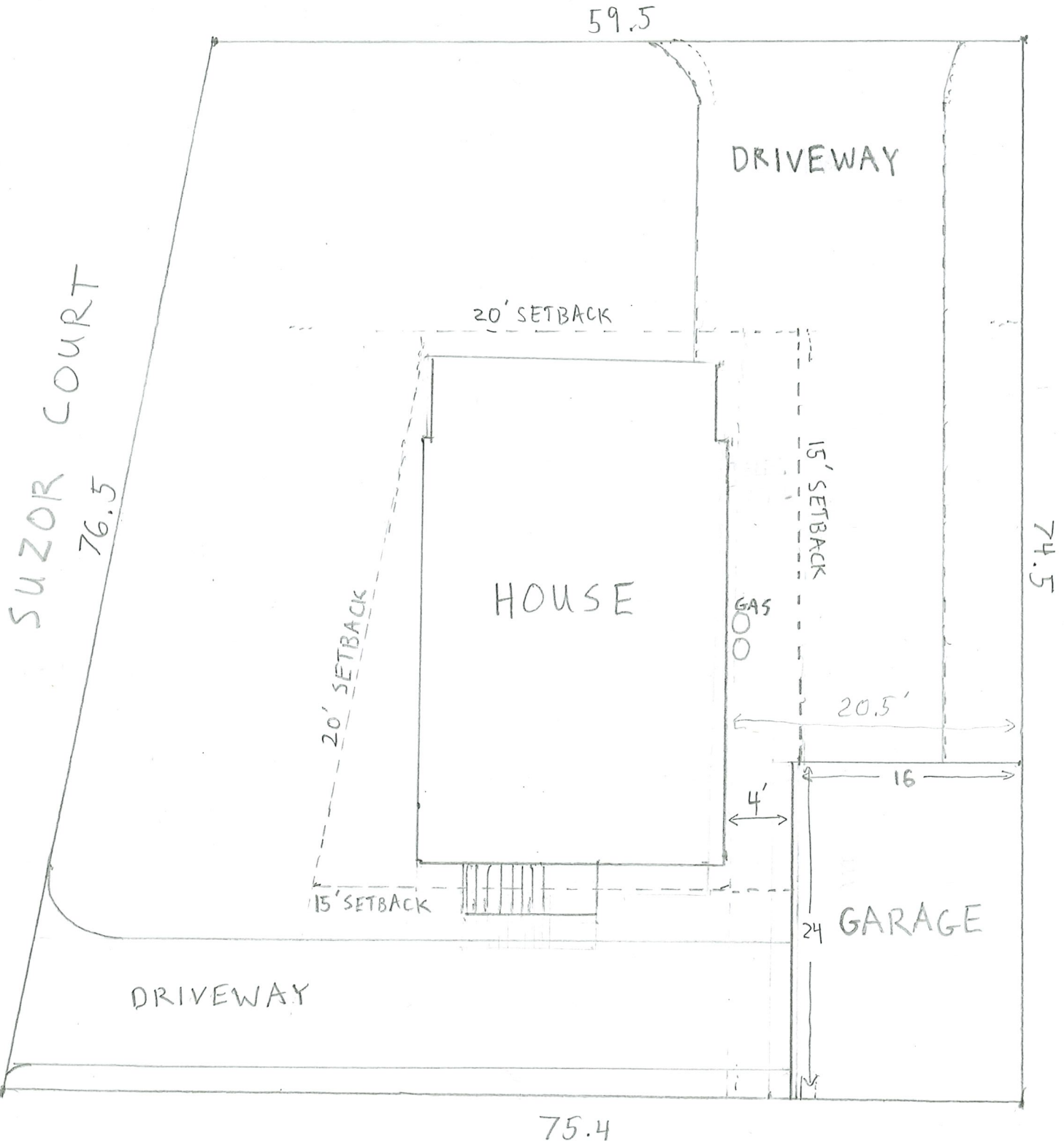
AS IS SITE PLAN

3/08/24

12051



SPENCER STREET



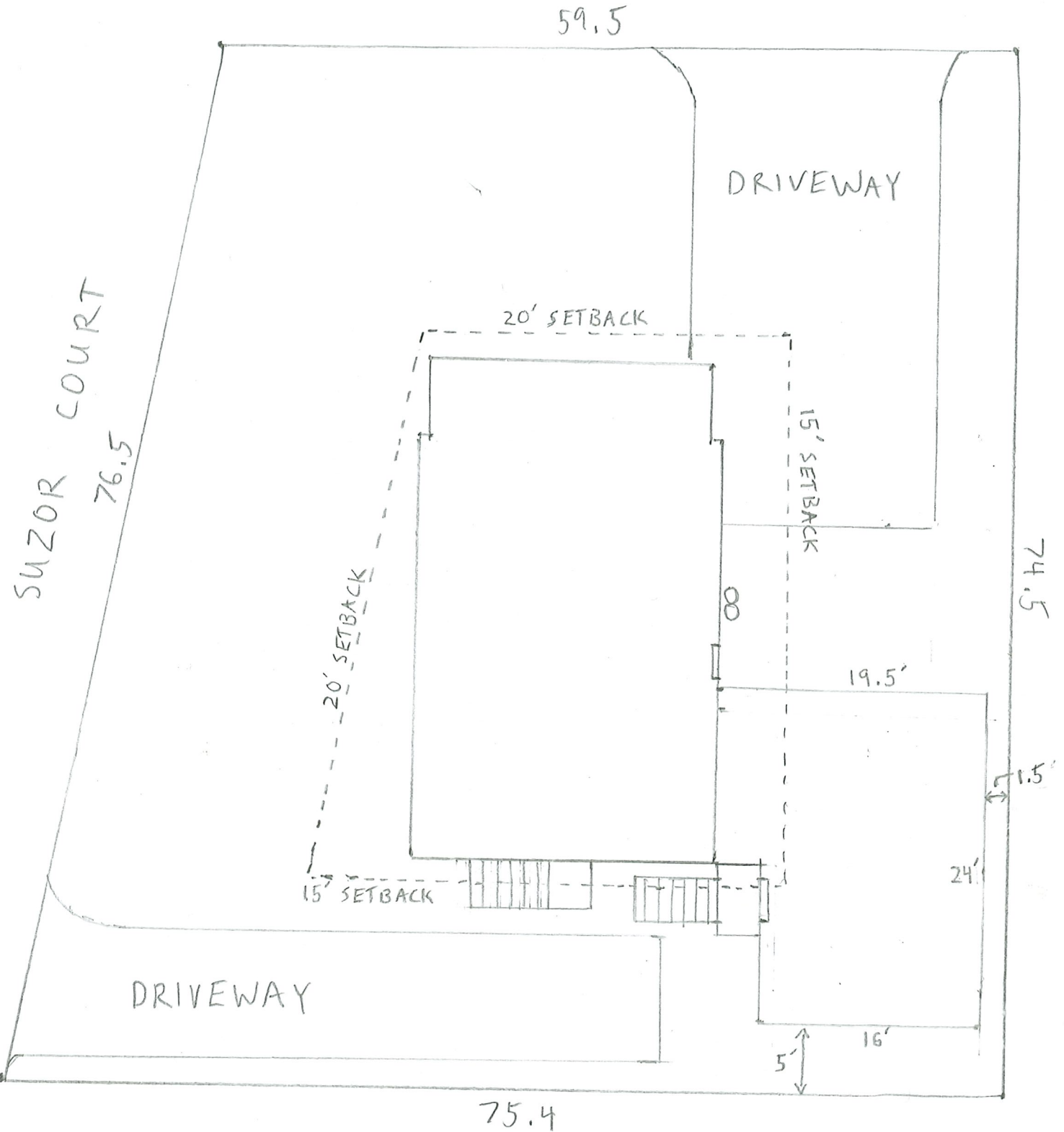
PROPOSED SITE PLAN

3/16/24

120:1



SPENCER STREET



4/19/24
60 Spencer St.

Patrick Kennelly

N. Elevation

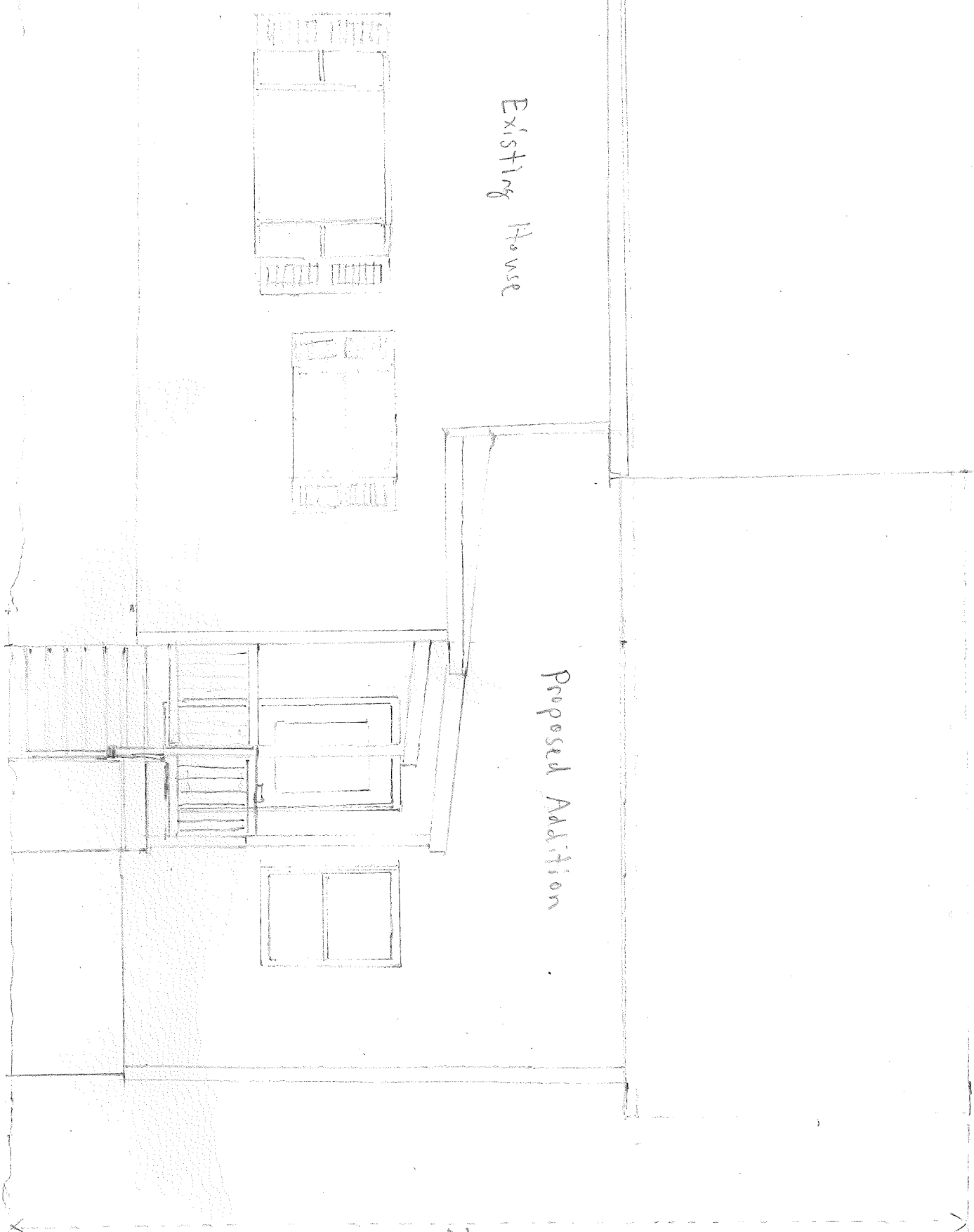
1" = 4'
48:1



Existing House

Proposed Addition

29'±



4/19/24

60 Spencer St., Proposed

W. Elevation

48:1

Patrick Kennelly











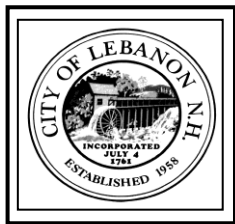


CERTIFIED NOTIFICATION LIST

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

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

MAP & LOT NUMBER: <u>78-21</u>	MAP & LOT NUMBER: <u>78-32</u>
PROPERTY OWNER: Shawn Ricker 61 Spencer St. Lebanon, NH 03766	APPLICANT: Cody + Jessica Gookins 3 Suzor Ct. Lebanon, NH 03766
MAP & LOT NUMBER: <u>78-38</u>	MAP & LOT NUMBER: <u>78-20</u>
ABUTTER/OTHER: Geokon Inc. 48 Spencer St. Lebanon, NH 03766	ABUTTER/OTHER: Yaowaluck Vorachak 59 Spencer St. Lebanon, NH 03766
MAP & LOT NUMBER: <u>78-30</u>	MAP & LOT NUMBER: <u>78-36</u>
ABUTTER/OTHER: Mark Cole 64 Spencer St. Lebanon, NH 03766	ABUTTER/OTHER: Edward Wintermyer 56 Spencer St. Lebanon, NH 03766
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:
MAP & LOT NUMBER: _____	MAP & LOT NUMBER: _____
ABUTTER/OTHER:	ABUTTER/OTHER:



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Planning and Development Department Staff

RE: Proposed Amendment to Section 214 of the Zoning Ordinance – Governmental Uses

DATE: May 6, 2024

On March 20, 2024, City staff presented to the City Council a proposed amendment to Section 214 (“Governmental Uses”) of the Zoning Ordinance for initial consideration. The proposed amendment is discussed in the attached materials included with the March 20, 2024 City Council meeting agenda packet. Following the March 20th presentation, the City Council voted to submit the proposed amendment to the Zoning Board of Adjustment, Planning Board and Conservation Commission for review and comment, in accordance with Section 1000 of the Zoning Ordinance.

Pursuant to Section 1000.3.B.1 of the Zoning Ordinance, the Zoning Board is required to “comment on the proposed amendment as to whether it would be inconsistent with other applicable sections of the Ordinance, does not conflict with other sections of the Ordinance, and the meaning and effect is understood. The ZBA shall not comment as to whether or not the amendment is desirable from a planning viewpoint.”

For the Board’s reference and review, attached are the relevant materials from the March 20, 2024, City Council agenda packet, which including the following:

- Staff Memo to the City Council providing a description of the proposed amendment.
- A redline of Section 214 of the Zoning Ordinance.
- A legal memo providing background on Section 214.
- A copy of RSA 674:54 (“Governmental Uses”).
- A legal opinion from Christine Fillmore, Esq., dated March 21, 2024.

Once review has been completed by the Planning Board and the other land use boards, the City Council will hold a public hearing followed by a vote on whether to adopt the amendment.

Attachments

Agenda
Lebanon City Council
March 20, 2024

10. New Business:

**10.C – Request for Zoning Amendment: Text Amendment for
Section 214, Governmental Uses, of the Lebanon Zoning Ordinance**

Background

“Governmental use” is defined in NH RSA 674:54, I, as meaning: “a use, construction, or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.” Pursuant to the statute, governmental uses are not subject to local land use regulations, including zoning regulations and site plan review regulations. Projects that meet the statutory definition of “governmental use” may be reviewed by the governing body or by the Planning Board, but any comments issued pursuant to such reviews are non-binding and advisory only.

By contrast, Section 214 of the Lebanon Zoning Ordinance regulates Governmental Uses as follows: “Governmental Uses shall be governed by RSA 674:54; provided, however, that governmental uses proposed by the City of Lebanon shall be considered to be subject to this Ordinance, unless expressly exempted from it by vote of the City Council.” Rather than rely on NH RSA 674:54, which exempts governmental uses from local zoning regulations, Section 214 specifically requires the City’s governmental use projects to conform to the requirements of the Zoning Ordinance.

Requiring the City’s governmental use projects to comply with local zoning regulations has the potential effect that certain projects will be designed in a suboptimum manner in order to comply with Zoning Ordinance requirements that were primarily drafted and intended to apply to private land developments and not public infrastructure projects. Alternatively, it requires those projects to obtain zoning relief from the Zoning Board of Adjustment. This concern was recently brought to the Council’s attention in the context of the Trues Brook Road bridge reconstruction project, which would have required both a Variance and a Special Exception from the Zoning Board. Similarly, the Lahaye Drive/Mt. Support Road Intersection Project and the Lahaye Drive Multi-Use Path/TAP Project would have required Special Exceptions from the Zoning Board. The City Council ultimately exempted all three projects from the requirements of the Zoning Ordinance.

The conditions for granting a variance or special exception, as the case may be, are listed in the Zoning Ordinance and the Zoning Board is tasked with approving or denying the request on the merits of the application. Even if approved, any aggrieved abutter could appeal the ZBA decision. Any appeal could adversely affect a project’s construction schedule and potentially lead to an undesirable result that is contrary to public interest.

As explained further in the attached memorandum from Attorney Christine Johnston, the statutory exemption of governmental uses from local zoning regulations reflects the nature of governmental

uses, which have fundamentally different issues than private development. It is City staff's position that modifying Section 214 to exempt all governmental uses from the requirements of the Zoning Ordinance will ensure that municipal improvement projects, such as building roads, replacing bridges, constructing public facilities, and other governmental needs, are optimally designed to serve the public interest and aren't jeopardized by having to obtain approval from the Zoning Board of Adjustment. However, it is understood and acknowledged that projects undertaken by the City, or on City land or property, which do not meet the statutory definition of a Governmental Use, would continue to be fully subject to the provisions of the local zoning ordinance and land use regulations.

Action

If the Council decides to move forward with the proposed amendment to Section 214, the following motion is offered for consideration:

MOVED, that the Lebanon City Council in accordance with the City of Lebanon Zoning Ordinance, Article X, Section 1000.3, Amendment Procedures, submits the Zoning Ordinance amendment as shown in the redline dated March 11, 2024, included with the March 20, 2024 City Council agenda packet, to the Planning Board, Conservation Commission, and Zoning Board of Adjustment for their review and comment. The City Council hereby sets the following tentative review schedule:

Planning Board – April 22, 2024

Zoning Board of Adjustment – May 6, 2024

Conservation Commission – May 9, 2024

City Council Final Review – June 5, 2024

City Council Public Hearing – June 19, 2024

Included in this Section:

1. Proposed amendment (redline) of Section 214 of the Zoning Ordinance, prepared on March 11, 2024
2. Memorandum of Background Information on Section 214 of the Zoning Ordinance from Attorney C. Christine Johnston, dated March 10, 2024
3. NH RSA 674:54, Governmental Land Uses

DRAFT AMENDMENT TO SECTION 214 OF THE CITY OF LEBANON ZONING ORDINANCE

ARTICLE II GENERAL PROVISIONS

SECTION 214 GOVERNMENTAL USES.

Governmental ~~u~~Uses ~~shall be governed by as defined in~~ RSA 674:54; ~~whether proposed by the City of Lebanon or another governmental entity, shall be subject to the provisions of that statute and shall not be subject to the City of Lebanon Zoning Ordinance. Any use, construction, or development of land occurring on governmentally owned or occupied land but which is not a governmental use as defined in RSA 674:54 is fully subject to the City of Lebanon Zoning Ordinance;~~ provided, however, that ~~the City Council may vote governmental uses proposed by the City of Lebanon shall be considered to be subject to this Ordinance, unless to~~ expressly exempted from it by vote of the City Council ~~any non-governmental use by the City of Lebanon from compliance with the Ordinance.~~

MEMORANDUM

TO: Lebanon City Council; Shaun Mulholland, City Manager
FROM: C. Christine Johnston
DATE: March 10, 2024
RE: Background Information –Section 214 of Zoning Ordinance

This information is provided pursuant to a request from the City Manager’s Office for background information on Section 214 of the City’s Zoning Ordinance and the current discussion of a potential amendment to that section.

Section 214 currently reads as follows:

“Governmental Uses shall be governed by RSA 674:54; provided, however, that governmental uses proposed by the City of Lebanon shall be considered to be subject to this Ordinance, unless expressly exempted from it by vote of the City Council.”

In other words, governmental uses by any governmental entity other than the City are not subject to the Zoning Ordinance, but governmental uses proposed by the City itself are subject to it unless the Council votes specifically to make it exempt.

Historical background of the regulation of governmental uses of land:

Historically, municipalities have not been subject to their own zoning ordinances unless they have affirmatively chosen to include a provision in the zoning ordinance stating that the ordinance applies to the municipality itself. *McGrath v. Manchester*, 113 N.H. 355 (1973). In 1996, however, there was still some confusion about whether subdivision and site plan regulations applied to municipal land use projects. RSA 674:54 was first enacted in 1996 to answer this question and provide a clear process for municipalities to follow for their own land use projects.

The original form of the 1996 bill would have made almost all governmental projects subject to local land use ordinances and regulations to the same extent as private developments. However, significant concerns were raised by NH DOT, the university system, other state agencies, and some municipalities. Aside from the costs associated with the application and hearing process before various land use boards, the major concerns involved the very real potential for significant delays that could make many projects difficult or impossible to complete, and the potential that approvals would be denied, either at the local level or by a court on appeal. Although the new land use docket and the Housing Appeals Board have sped up land use appeals somewhat, complicated cases can still be tied up on appeal for a year or more, and a further appeal to the NH Supreme Court usually takes another year. Furthermore, many appeals go to court and are remanded back to the local land use board, only to be appealed again after the next round. This kind of delay can make some projects impossible to complete or take so long that they are no longer useful or effective.

Ultimately, the bill that was adopted in 1996 as RSA 674:54 was one that had been changed to substantially the form it is in today, in which a governmental entity planning a project for a governmental use is required to notify the Planning Board and governing body of the project, provide details, and obtain non-binding comments before the project can occur. In reaching this final language (which is, other than a few additions over the years, still the law today), the legislature concluded that there are fundamentally different issues involved with governmental land uses than there are with private development. While some private development may be focused on the common good (and that is usually the goal of land use regulation, of course), governmental land uses are intended to carry out governmental functions, which are, by definition, intended to benefit the public good in some way. The reason we have local government is to provide services and structure that society needs. When a government needs to build a road, replace a bridge, operate a wastewater treatment facility, build a fire station, expand or renovate City offices, develop a park, etc., such projects are all intended to directly or indirectly benefit the public. The legislature recognized that government can't be subjected to all of the same regulations as private developers because, if it is, government can't function in the way that we all need it to.

As a practical matter, very few cities and towns around New Hampshire have provisions in their zoning ordinances that specifically subject the municipality itself to its own zoning restrictions. Of the 13 cities, Lebanon is one of only two in which city land use projects are entirely subject to zoning (Nashua is the other one). Two others subject themselves to some but not all zoning: The City of Laconia requires its projects to obtain a conditional use permit from the planning board but is otherwise exempt; Keene includes standards for the construction of public infrastructure, regardless of who constructs them, but otherwise does not subject itself to its own land use regulations. The remainder of the cities are not subject to their own zoning.

RSA 674:54:

This statute applies to “governmental uses” of land, which are defined in the law as “a use, construction, or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.” RSA 674:54, I.

- When a governmental entity plans a land use project which is “statutorily or traditionally governmental in nature” and which “constitutes a substantial change in use or a substantial new use,” it must provide written notice to the governing body and planning board of the municipality in which the project will occur.
- The notice must include plans, specifications, explanations of the proposed changes available at the time, a statement of the governmental nature of the use, and a proposed construction schedule.
- This notice must be provided at least 60 days before the beginning of construction.
- Either the governing body or planning board of the municipality where the project will occur may conduct a public hearing relative to the proposed governmental use. If a hearing is to be held, it must occur within 30 days after receipt of the notice. A representative of the governmental entity which provided the notice must be available at

the hearing to present the plans, specifications, and construction schedule, and to provide explanations.

- Within 30 days after the hearing, the governing body or planning board may issue non-binding written comments to the entity proposing the project regarding whether the proposal conforms (or not) with the normally-applicable land use regulations.

Of course, sometimes governmental entities are involved in land use projects which are not traditionally or statutorily “governmental” in nature (such as building a housing development). In those cases, the government would be fully subject to the provisions of the local zoning ordinance and land use regulations. RSA 674:54, II-a.

Certain kinds of projects are exempt from both local zoning and from the RSA 675:54 process:

- The layout and construction of public highways of any class
 - Distribution lines or transmission apparatus of governmental utilities (not including wireless communications facilities)
 - Erection, installation, or maintenance of poles, structures, conduits, and cables, or wires in, under, or across any public highways under RSA 231
 - Licenses or leases for telecommunication facilities in, under, or across railroad rights of way (other than wireless communications facilities)
 - The Governor also may declare any governmental use exempt from RSA 674:54 in the event of exigent circumstances where the delay entailed by compliance with that statute would endanger public health or safety
- RSA 674:54, III and IV.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Governmental Use of Property

Section 674:54

674:54 Governmental Land Uses. –

I. In this section, "governmental use" means a use, construction, or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, the community college system of New Hampshire, or by a county, town, city, school district, or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.

II. The state, university system, community college system of New Hampshire, county, town, city, school district, or village district shall give written notification to the governing body and planning board, if such exists, of a municipality of any proposed governmental use of property within its jurisdiction, which constitutes a substantial change in use or a substantial new use. Written notification shall contain plans, specifications, explanations of proposed changes available at the time, a statement of the governmental nature of the use as set forth in paragraph I, and a proposed construction schedule. Such notification shall be provided at least 60 days prior to the beginning of construction. Either the governing body or planning board of the municipality may conduct a public hearing relative to the proposed governmental use. Any such hearing shall be held within 30 days after receipt of notice by the governing body or planning board. A representative of the governmental entity which provided notice shall be available to present the plans, specifications, and construction schedule, and to provide explanations. The governing body or planning board may issue nonbinding written comments relative to conformity or nonconformity of the proposal with normally applicable land use regulations to the sponsor of the governmental use within 30 days after the hearing.

II-a. Any use, construction, or development of land occurring on governmentally owned or occupied land, but which is not a governmental use as defined in paragraph I, shall be fully subject to local land use regulations.

II-b. The construction and operation of any solid waste disposal facility on land owned or occupied by any city or town within another city or town shall be subject to local land use regulations to the same extent as if the land were owned and occupied by a private entity. Nothing in this paragraph shall affect the construction and operation of a solid waste facility on land owned by a solid waste management district formed under RSA 53-A or RSA 53-B or any combination of municipalities authorized by an act of the general court, if the land is located within a city or town that is part of the district.

III. This section shall not apply to:

(a) The layout or construction of public highways of any class, or to the distribution lines or transmission apparatus of governmental utilities, provided that the erection of a highway or utility easement across a parcel of land, shall not, in and of itself, be deemed to subdivide the remaining land into 2 or more lots or sites for conveyance for development purposes in the absence of subdivision approval under this title. For purposes of this subparagraph, "transmission apparatus" shall not include wireless communication facilities.

(b) The erection, installation, or maintenance of poles, structures, conduits and cables, or wires in, under, or across any public highways under RSA 231, or licenses or leases for telecommunication facilities in, under, or across railroad rights of way. For purposes of this subparagraph, "structures" shall not include wireless communications facilities.

IV. In the event of exigent circumstances where the delay entailed by compliance with this section would endanger public health or safety, the governor may declare a governmental use exempt from the requirements of this section.

Source. 1996, 262:1. 1998, 281:2. 2007, 29:1, eff. May 14, 2007; 361:32, eff. July 17, 2007.

March 21, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Proposed Zoning Amendment
Governmental Uses; Section 214**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a proposed amendment to revise Section 214 (“Governmental Uses”). The proposed amendment would provide that “governmental uses” as defined in RSA 674:54, whether by the City or by another governmental entity, are subject to the process in RSA 674:54. Uses by the City which do not constitute governmental uses would be fully subject to the provisions of the Zoning Ordinance unless the City Council voted to make a particular use exempt.

I have reviewed the following documents in connection with this opinion:

- Proposed amendment language dated March 11, 2024
- Staff Memo to City Council provided March 20, 2024 regarding the requested amendment

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

My answer to the three questions in Section 1000.2.B(2) is “yes” and I discern no legal or administrative issues of concern with that request.

Please do not hesitate to contact me about any aspect of this.

Sincerely,



C. Christine Johnston