



**LEBANON ZONING BOARD OF ADJUSTMENT
JULY 1, 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: 720 164 453#). If you have trouble accessing this meeting, please [email nathan.reichert@lebanonnh.gov](mailto:nathan.reichert@lebanonnh.gov).

2. Approval of Minutes

- A. 5-6-2024 Building Code Board of Appeals
B. 6-3-2024 Zoning Board of Adjustment

3. Public Hearing Items

- A. **Oakes Storage LLC & Oakes Real Estate SPE LLC, 92 Riverside Drive (Tax map 111, lot 16), zoned RL-1:** The applicant requests 3 Variances from Sections 608.4.B.2, 608.4.B.1.b, and 608.4.B, pursuant to Section 801.2 of the Zoning Ordinance, to allow the installation of a single-sided sign that is 32 sq ft sign where 4 sq ft is allowed, 6 ft tall where 4 ft is allowed, and to be internally illuminated where illumination is not allowed. **ZB2024-14-VAR - Continued from 6/3/2024 meeting**
- B. **Lebanon Housing Authority, 31 Romano Circle (Tax map 101, lot 20), zoned R2:** The applicant requests a Special Exception from Section 309.2, pursuant to Section 702.5 of the Zoning Ordinance, and a Variance from section 702.5.D to allow the expansion of the existing non-conforming use via construction of a new 2-story, 3,882 sq ft office building for use in connection with the existing multi-family development. **ZB2024-15-SEVAR - Continued from 6/3/2024 meeting**

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 BUILDING CODE BOARD OF APPEALS
MONDAY, May 6, 2024 7:30 PM
(Meeting Begins Immediately Following
Zoning Board of Adjustment)
Council Chambers, City Hall or
Remote Via Virtual Platform
LebanonNH.gov/LIVE

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

The meeting was called to order at 7:30 PM by Chair William Koppenheffer.

Mr. Reichert gave the Right to Know, RSA91A public announcement.

2. APPROVAL OF MINUTES

Chair Koppenheffer abstained as he was absent from the previous meetings regarding the hearing.

Michael Morris was given voting privileges for the Minutes.

A. April 18, 2024

Mr. Katz MOVED to approve the April 18, 2024, Minutes as presented in the May 6, 2024, packet with corrections.

Page 1, Line 32 & 33, correct 105.51 to 105.5.

Seconded by Mr. Newlove.

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

3. PUBLIC REHEARING ITEMS

- A. XYZ Dairy, LLC, 1 River Park Dr (Tax Map 44, Lots 21-30 & Map 44, Lot 7), zoned R-3, CBD & IND-L: Pursuant to City of Lebanon Code §36-13.A, Building Code Board of Appeals, an appeal of the Building Official's determination that Lebanon Building Permit #2016-00293 has expired and is deemed to be invalid. BCBA2024-01 – Continued from 4/18/2024 Meeting**

Chair Koppenheffer recused himself.

Michael Morris was given voting privileges for this hearing.

1 The Board did not have any further discussion.

2
3 *Vice Chair Katz MOVED on March 6, 2024, XYZ Dairy, LLC (“XYZ”), 1 River Park Dr (Tax Map*
4 *44, Lots 21-30 & Map 44, Lot 7) Zoned R-3, CBD and IND-L. Pursuant to City of Lebanon Code*
5 *36-13. A Building Code Board of Appeals, an appeal of the Building Official’s determination that*
6 *Lebanon Building Permit #2016-00293 has expired and is deemed to be invalid. BCBA2024-01*
7

8 Duly noticed hearings were held on April 1st and 18th, 2024. Testimony and legal argument were taken
9 from Appellant, represented by Attorney Philip Hastings and XYZ representatives David Clem and Chet
10 Clem. Testimony and legal argument were taken from the City, represented by Attorney Matthew Decker
11 and Building Official Calvin Hunnewell. XYZ and the City were provided the opportunity to submit
12 additional briefing or information; as well as to refute, rebut and clarify until both rested their cases. Dan
13 Nash, a member of the public, spoke in favor of granting the appeal.
14

15 This Board has jurisdiction over this matter pursuant to NH RSA 674:34. Lebanon’s Building Official,
16 interpreting Section 105.5 of the 2009 International Building Code (“IBC”), ruled that permit 2016-00293
17 has expired and is no longer valid. XYZ is the landowner and is aggrieved by that decision. In this
18 matter, our jurisdiction is derived from XYZ’s claim that the true intent of the code has been incorrectly
19 interpreted¹.
20

21 The positions of the parties are summarized as follows:
22

23 The Building Official, through the City Attorney, argues that IBC section 105.1 defines what activities
24 require a permit and section 105.2 defines what activities are exempt. The Building Official further
25 argues that if XYZ’s activities require a permit (105.1), then the activity required to ensure the permit’s
26 continued validity must be activities identical to those that required the permit in the first place. The City
27 advocated for denying XYZ’s appeal based on its belief that Section 105.5 requires that work be physical,
28 on the approved site, and any such work be the type that would [if considered individually] require a
29 permit.
30

31 XYZ, through its attorney, argues that the position taken by the City is overly constrained and not
32 reflective of the true intent of the code. XYZ argues that its continued investment in the project, and
33 development efforts over the relevant six-month period constitute “work.” XYZ also argues that it is
34 entitled to rely upon prior interpretations of Section 105.5 of the Code made by the City.
35

36 Interpretations of the IBC are a question of law, and our review is de novo.
37

38 **I. FINDING OF FACTS**

39

40 We find the following facts in this matter:
41

- 42 1. The Building Official issued XYZ Permit #2016-00293 on December 31, 2019².
- 43 2. XYZ paid a fee of \$90,492 for the permit.
- 44

¹ Neither party introduced the 2009 IBC into the record, but it is undisputed, and a public document adopted by New Hampshire State Law.

² The Building Permit file was not submitted in this case but is undisputed, in possession of both the City of Lebanon and XYZ, and a public record.

3. The Building Permit is for the development of a new mixed-use commercial building.

4. The building permit states:

Description of Work: New mixed-use commercial building within Lot #1 of the River Park Subdivision

5. The development of a new building on a previously undeveloped site is a complex, multi-part endeavor. This endeavor requires engineering, architectural planning, multi-agency coordination, materials procurement and contractor scheduling. Although not unusual for any major construction project, these complex activities are distinguishable from common single action activities that also require permits, such as a minor residential electrical upgrade or heating furnace installation.

6. The Building Official issued a letter to XYZ on March 24, 2023. That letter identified 8 bullet-pointed topics discussed on March 16, 2023. None of the eight topics discussed involved actual completed physical work at the building site. The written determination of the Building Official states as follows (emphasis added)³:

As a result of the meeting and your follow up e-mail sent later the same day, we agree that you have justified the preparation work you have been preparing with your construction partners constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon Building Permit #2016-00293.

7. The Building Official issued a letter to XYZ on February 1, 2024. The written determination of the Building Official states as follows:

It is my determination that the work on the site authorized by Building Permit #2016-00293 has been suspended or abandoned for a period of greater than 180 days. Consequently, Building Permit #2016-00293 has expired and is invalid.

8. In the six-month period preceding the Building Official's February 1, 2024, determination of expiration, XYZ incurred direct costs relative to the development of the site totaling \$221,838 and incurred contractual obligations to pay another \$652,303.⁴ In that same time period XYZ engaged three engineering firms and one architect to move the project forward. The amount of money invested in the project within the relevant six-month period equates to more than nine times the original cost of the permit and exceeds seven percent of the \$12,296,100 total estimated cost of construction.

9. The City conceded the following points in the hearings: that Section 105.5 does not set a high bar for "work"⁵, that it is "obvious that there are aspects of construction projects that are supported

³ This communication is unsigned, but neither party disputes its authenticity and the Building Official confirmed that he authored and sent it.

⁴ Testimony in April 1 and 18 hearings and sworn affidavit of David Clem.

⁵ See meeting media, video tape of April 18, 2024 Hearing at minute 11

by offsite operations and preparation to perform”⁶, that “one day of work every 179” would be sufficient to keep the permit active⁷, that the City believes that it “must do what the law says even when it makes no sense,”⁸ that there are items of work that could occur offsite that the City would accept as work⁹. The City furthermore conceded that Section 105.5 does not purport to regulate the intensity or pace of work progress¹⁰.

10. The Building Official testified that the instant case is unusual and the only time that he can remember expiring a building permit in this manner. The City’s Director of Planning and Development also added that the Planning and Development Office must contend with how to dispense with voluminous numbers of permits that are applied for and never acted upon.

II. RULINGS OF LAW

We make the following rulings of law in this matter:

1. The true intent of Section 105.5 of the Code is primarily administrative in nature. The Board finds that this section exists primarily to dispose of numerous permits that are applied for and never acted upon, rather than to be an enforcement lever in adjudicating active permit disputes or regulating the pace of construction. Section 105.5 does not purport to regulate “not inactive, but not really active enough” activities in construction.

It is possible that one developer may believe it to be economically advantageous to hyper-accelerate a project and complete a project quickly, paying substantial overtime and expedite fees in doing so. Conversely, it is possible that a different developer could elect to proceed at a more leisurely pace. To the extent that the City is concerned about “slow rolling” projects or “system gaming” and wishes to enact a policy to regulate construction intensity, this is best pursued through legislative process.

2. Section 202 of the IBC (“Definitions”) does not define “work.” Nonetheless, section 105.5 uses the term “work” thrice. See below with emphasis added:

Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the work is commenced.

Whatever “work” happens to be, the Board believes that the three instances of “work” within this section should be read harmoniously with each other.

The March 24, 2023, letter from the City to XYZ interpreted the first and third appearances of “work” when it opined “we agree that you have justified the preparation work you have been

⁶ Ibid at minutes 34-35

⁷ Ibid at minutes 41-42, the amount of work is not an issue and a hole in the ground suffices

⁸ Ibid at minute 45

⁹ Ibid at minutes 48-51, for instance “a signed notice to proceed from a contractor”, see also minutes 35-36

¹⁰ Ibid at minutes 41-42

1 preparing with your construction partners constitutes **commencement of work** at 1 River Park
2 Drive in accordance with City of Lebanon Building Permit #2016-00293.”

3
4 As a general rule, decisions must either adhere to precedent or indicate a valid reason why a
5 different result is reached on essentially the same set of facts. The City’s explanations that it
6 previously provided “charitable treatment” and a “longer lease” to the landowner are not valid
7 explanations for a different result on the same facts. Accordingly, we hold that since “work” as
8 previously found by the City in the March 2023 letter includes “preparation work”, similar
9 “preparation work” must also count as work in the absence of a valid justification for a different
10 approach.

- 11
12 3. Furthermore, the Board disagrees with the City’s position that, in order to keep a permit active,
13 Section 105.5 mandates very specific physical site activities identical to those that required the
14 original permit. It is correct that the developer has items in the project that, individually, would
15 require permits. However, the approved “Description of work” in the permit is for the end result
16 and not the individual, unbundled components. The end result of the permitted work is to be a
17 “New mixed use commercial building.” The proper question is not “did you perform a physical
18 activity on the site that would, if applied for individually, need a permit” but rather “did you
19 engage in effort, exertion or activity to produce a new mixed use commercial building on the
20 site.”

21
22 The City, several times in the hearings, conceded as much. Despite advocating for its constrained
23 reading of the code, the City repeatedly conceded that there were multiple off-site activities that
24 could constitute “work” under section 105.5.

- 25
26 4. If the project was completed the “new mixed use commercial building” on the site would be seen
27 by a reasonable person as “a product of effort, exertion or activity¹¹.” Based upon this, the
28 reasonable definition of “work” prior to a project’s completion would be “effort, exertion or
29 activity directed to produce or accomplish something¹².” In this case, the “something” to be
30 accomplished by the “work on the site authorized by the permit” is the “new mixed use
31 commercial building.”

32
33 XYZ has spent hundreds of thousands of dollars, committed to spending hundreds of thousands
34 more, and retained at least four licensed and qualified professional service providers to promote
35 the completion of the described work - all within the six-month period preceding the appealed
36 decision. XYZ has also engaged in inter-departmental and inter-agency communication and
37 activity to advance its project.

38
39 We recognize that the City believes that these activities fall far short of an optimal level of
40 diligence and intensity, but Section 105.5 does not purport to regulate either diligence or
41 intensity. We also recognize that the City finds the interaction with XYZ to be extremely
42 difficult. XYZ may, in fact, be pursuing its project through antagonistic and confrontational
43 means. If true, that would be unfortunate, but it is also unfortunately outside of the parameters of
44 Section 105.5 to impose or develop a policy on preferred manners of developer-municipal
45 interaction.

46

¹¹ See, for instance, the definition of “work” at www.dictionary.com , definition #8

¹² See, for instance, the definition of “work” at www.dictionary.com, definition #1

The Board finds that the true intent of Section 105.5 of the code is to require effort, exertion or activity to accomplish the goal of developing the site. The City previously ruled that a minor breaking of ground at the site, possibly performative, was sufficient to satisfy the requirements of 105.5. “Work” does not necessarily mean that a physical alteration must occur at the site¹³. The efforts, exertions and activities testified to by XYZ to pursue the development of the site are substantially in excess of the “low bar” set by the City. Those efforts, including the substantial expenditure of investment capital, advanced the “work authorized on the site”, and need not have actually occurred on the land itself in order to qualify under Section 105.5.

5. Finally, the Board issues two clarifications. First, not every activity identified by XYZ qualifies as “work” pursuant to 105.5. A lease proposal to a prospective tenant for a building that is not yet built is not “work” as contemplated in the IBC. Second, nothing in this ruling diminishes the very extensive power of the Building Official to enforce compliance with the Code, as well as other ordinances and regulations through IBC 2009 Section 105.6.

III. DECISION

For all of the reasons set forth above, including but not limited our findings of fact and rulings of law, the City of Lebanon Building Code Board of Appeals on this 6th Day of May 2024 hereby **GRANTS** the appeal of XYZ Dairy, LLC.

Seconded by Mr. Newlove.

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

Mr. Morris voted nay.

4. STAFF COMMENTS

None.

5. ADJOURNMENT

Mr. Newlove MOVED to adjourn the meeting at 7:49 PM.

Seconded by Mr. McDonough.

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

Respectfully submitted,
Linda Billings
Recording Secretary

¹³ Although out-of-state rulings have no precedential value over us, the Board references the highly informative ruling from the North Carolina Supreme Court in *Morris Communs. Corp. v. City of Bessemer* 365 NC 152, ruling in favor of the landowner who argued that “work” encompasses the border range of activities necessary [to complete a project].” and “Webster’s Dictionary defines “work” to include “sustained physical or mental effort to overcome obstacles and achieve an objective or result”....Applying this definition to the Bessmer City ordinance, the term “work” has a broader meaning than mere visible evidence of construction.”

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, June 3, 2024
7:00 PM**

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

MEMBERS ABSENT: Jennifer Barkley

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

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

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

2. APPROVAL OF MINUTES

A. May 6, 2024

Michael Morris was given voting privileges for this meeting

Mr. Morris MOVED to approve the May 6, 2024, Minutes as presented in the June 3, 2024, packet.

Seconded by Mr. Newlove.

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

3. PUBLIC HEARING ITEMS

- A. Kelly Brandis, 2 Lewis Court (Tax map 107, lot 43), zoned R-2:** The applicant requests a Special Exception from Section 309.3, pursuant to Section 703.1 and 801.3 of the Zoning Ordinance, to allow the expansion of an existing non-conforming deck structure +/- 9 ft from the left side lot line where 15 ft is required. **ZB2024-12-SE**

Kelly Brandis appeared on behalf of the application. She had a preexisting deck that connected two doors into her house. She hired a contractor to enclose the deck to create a mud room. It was not going to be heated or have electric and the contractor said a permit was not required because it was preexisting. She has already built the mudroom because the contractor gave her incorrect information. The dimensions are the same size as the preexisting deck. The neighborhood does not have conforming setbacks to the existing dwellings.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

1 **Mr. McDonough MOVED On June 3rd 2024, at a duly-noticed meeting of the Lebanon Zoning Board**
2 **of Adjustment, there appeared Kelly Brandis regarding 2 Lewis Court (Tax Map 107, Lot 43). The**
3 **Applicant requests a Special Exception per Section §703.1 and Section §801.3 of the Zoning**
4 **Ordinance to allow the vertical expansion of a non-conforming attached deck by adding an enclosed**
5 **mudroom +/- 9-feet from the left property line where a 15-foot setback is required.**

6
7 **I. FINDINGS OF FACT**
8

9 Based on testimony given, application materials presented, and supporting documents submitted, the
10 Lebanon Zoning Board of Adjustment makes the following findings of fact:
11

- 12 1. The subject property is improved with a one-family dwelling constructed in 1911. The lot
13 contains a primary residence and a dimensionally non-conforming attached garage and porch.
14
- 15 2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-2 District must
16 maintain a minimum side yard (i.e. a space unobstructed by buildings and structures) of 15-feet.
17 Pursuant to section §309.3 of the Zoning Ordinance. Section §703.1 of the Zoning Ordinance
18 allows the expansion of “any increase in the footprint and/or volume of the non-conforming part
19 of the building or structure” by Special Exception from the Zoning Board of Adjustment.
20
- 21 3. In order to grant a Special Exception for the proposed expansion, the Board must determine that
22 the proposal meets the criteria set forth in Section §703.1.A of the Zoning Ordinance. Per Section
23 §703.1.A.3, the Board must also determine that the proposal meets the general Special Exception
24 criteria set forth in Section §801.3.
25
- 26 4. The applicant has submitted testimony addressing the Section §703.1.A and Section §801.3
27 criteria in an application received by the Planning and Development Department on May 2nd
28 2024.
29
- 30 5. There are no known existing zoning violations on the property that this permit will not cure.
31
- 32 6. No one from the Public spoke in favor or against the application.
33

34 **II. CONCLUSIONS OF LAW**
35

36 As a result of the above findings of fact and based on testimony given, application materials presented,
37 and supporting documents submitted, the Board concludes the following with respect to the Special
38 Exception criteria set forth in §703.1 and §801.3 of the Zoning Ordinance:
39

- 40 1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the
41 Zoning Ordinance.
42
- 43 2. The following criteria of Section §703.1 **have been met**:
44
 - 45 a. The reasonable use of abutting properties shall not be adversely affected by the proposed
46 expansion.
47
 - 48 b. The proposed expansion shall not render the lot size proportionately less adequate, i.e.
49 any aspect of the building or structure that is currently nonconforming cannot be made
50 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 3rd day of June, 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the Zoning Ordinance to permit the vertical expansion of a non-conforming attached deck by adding an enclosed mudroom +/- 9-feet from the left property line where a 15-foot setback is required at 2 Lewis Court, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

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

Seconded by Mr. Newlove.

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

- B. D.G. Schweizer Rev. Trust, 14 Green Street (Tax map 92, lot 132), zoned R2:** The applicant requests 2 Variances from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow a carport to be built +/- 10 ft from the left-side lot line where 15 ft is required, and to allow 35% building coverage on the lot where 25% is allowed. **ZB2024-13-VAR**

Mr. Peter Scoppettone, representing agent and Doreen Schweizer, appeared on behalf of the application. The family has been parking between the house and the barn for many years and they would like to cover that area with an open car port. The main house and the barn are about 3 feet from the property line. This structure would be at the 10 ft back line where most of the house is. They do not believe they are intruding any further on the lot line or other neighbors.

This is a multi-dwelling unit that has 3 cars. The applicants say the adjacent properties have coverage that exceeds the allowable 25%. The neighborhood seems to have been built in the late 19th century. There is no street parking in the winter. The hardship is due to the age of the structures and the size of the lots that already do not meet the allowable coverage requirements for this property.

Chair Koppenheffer opened the Public Hearing.

Sylvia Dowd spoke on behalf of the application. She is in support of building the car port.

Hearing no one else, the Public Hearing was closed.

Mr. Morris MOVED on June 3rd 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Peter Scoppettone and Doreen Schweizer regarding 14 Green Street (Tax Map 92, Lot 132), zoned R-2. The Applicant requests a +/- 5 ft left side yard dimensional variance and a 10% maximum building coverage variance from section §309.3 to construct an attached 31' by 24'-8" carport to an existing dimensionally non-conforming structure +/-10 ft. from the left-side property line.

I. FINDINGS OF FACT

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

1. The property is improved with a one-family dwelling constructed in 1860 per the City Assessor's records. At 10,018 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-2 District.
2. The applicants propose to construct an attached 31' by 24'-8" carport to an existing dimensionally non-conforming structure. The carport is proposed to be located 10 ft. from the left-side lot line shared with the abutting property at 12 Green Streer (Tax Map 92, Lot 131) whereas a minimum unobstructed side yard of 15' is required.
3. In the R-2 District, Class 1 lots must maintain a minimum side yard unobstructed by buildings and structures of 15' pursuant to Section §309.3 of the Zoning Ordinance. Therefore, a 5' dimensional variance is required to permit construction of the proposed carport, which will encroach approximately 5' into the minimum required 15' side yard.
4. In the R-2 District, Class 1 lots must maintain a maximum building coverage of 25% pursuant to section §309.3 of the Zoning Ordinance. Therefore, a 10% maximum building coverage variance is required to permit construction of the proposed carport, which will exceed the 25% maximum by 10%.
5. To obtain the requested Variance from section §309.3, the applicants must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 and NH RSA 674:33, I(b).
6. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on May 6th 2024.
7. Abutter Sylvia Dowd testified in favor of the variances.

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):

Owing to the confined dimensions of the property that distinguish it from other properties in the area.
6. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
7. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. **DECISION**

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **3rd day of June, 2024**, hereby **GRANTS** the requested Variances from section §309.3 of the Zoning Ordinance to allow a +/- 5 ft left side yard dimensional variance and a 10% maximum building coverage variance from section §309.3 to construct an attached 31' by 24'-8" carport to an existing dimensionally non-conforming structure +/-10 ft. from the left-side property line where 15 ft is required at 14 Green 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.

Seconded by Mr. Newlove.

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

The order of the meeting was changed.

- C. **Lebanon Housing Authority, 31 Romano Circle (Tax map 101, lot 20), zoned R2:** The applicant requests a Special Exception from Section 309.2, pursuant to Section 702.5 of the Zoning Ordinance, and a Variance from section 702.5.D to allow the expansion of the existing non-conforming use via construction of a new 2-story, 3,882 sq ft office building for use in connection with the existing multi-family development. **ZB2024-15-SEVAR**

Ditha Alonso, Executive Director Lebanon Housing Authority, appeared. Megan Carrier, Attorney, Jeff Merritt, and Jerry Wuebbolt, all online, appeared on behalf of the application.

They would like to expand their office with a two-story office. Recently they built a new building, and they now have additional personnel. They would like to expand the office building on the same property,

1 next door to their existing small office. Megan Carrier spoke next. There are two housing projects
2 currently situated on the property. They intend to build the office building as an accessory use, even
3 though it is an increased physical change. They provided a rendering on the screen of the proposed
4 office. Attorney Carrier reviewed the proposed Conclusions of Law. It is used as a multi dwelling
5 facility and already has an accessory office use on the property. The property is a large property. The
6 office would be used to provide assistance to residents, meet with new applicants, and conduct their
7 business of providing low-income housing.
8

9 The Lebanon Housing Authority program manages 6 properties or facilities for work force housing or
10 low-income housing. This location is the office for the Lebanon Housing Authority.
11

12 The Board asked for clarification of what is unique about the property that is the source of the hardship.
13 It is believed that Ramono Circle preexisted the zoning designation of R-2. It is possible that the location
14 needs to be rezoned to accurately reflect its current use. The old office would be used for storage or for
15 maintenance personnel.
16

17 The Board asked for clarification of why the property cannot be used in strict agreement with the law.
18 The applicants believe they are not increasing any use that is prohibited. The multi-dwelling use and the
19 office use is already approved. But expanding to a 3800 square foot building is increased use. The
20 applicants feel this is not expansion because the same number of current employees would be present.
21 This is the largest property that the Authority owns. In the future, they could have more employees. The
22 Executive Director is hoping to create an office that would serve the program for future needs when they
23 might need to expand. They intend to have a larger staff.
24

25 Attorney Carrier stated the hardship is the large size of the property. No legal citation was provided that
26 supports the statement that the large size of a property is a hardship and a distinguishing characteristic.
27 They believe there would be no harmful effects to the area and the property. This is the only property
28 they own where there is enough room to build the office.
29

30 **Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was**
31 **closed.**
32

33 Chair Koppenheffer believes they need a legal opinion regarding the issue of largeness of a lot and if that
34 distinction is a hardship.
35

36 ***Chair Koppenheffer Moved to continue this hearing to July 1, 2024.***
37 ***Seconded by Mr. Newlove.***
38

39 ****The Vote on the Motion was (4-0).***
40

41 **The Board took a recess at 8:13 until 8:19 PM**
42

43 **D. Oakes Storage LLC & Oakes Real Estate SPE LLC, 92 Riverside Drive (Tax map 111,**
44 **lot 16), zoned RL-1:** The applicant requests 3 Variances from Sections 608.4.B.2, 608.4.B.1.b,
45 and 608.4.B, pursuant to Section 801.2 of the Zoning Ordinance, to allow the installation of
46 a single-sided sign that is 32 sq ft sign where 4 sq ft is allowed, 6 ft tall where 4 ft is allowed, and
47 to be internally illuminated where illumination is not allowed. **ZB2024-14-VAR**
48

49 **Chair Koppenheffer recused himself.**
50

Vice Chair Katz joined the meeting at 8:17 PM and took over the meeting.

Vice Chair Katz gave the applicant the opportunity to continue this hearing due to only 4 voting members. The applicants declined.

Rick Mullaly, Attorney, Robert Oakes and Dan Nash appeared on behalf of the application. They believe they are making a reasonable request due to the speed of traffic on the roadways near the property. Although this property is on Route 4, a busy road, it also has a frontage on Riverside Drive. A 4-foot square sign would not be visible to the general public. The terrain along both of those frontages is unique and makes it difficult to find the property. The interstate crosses near there and nearby areas are zoned commercial. They feel the enterprise at that location is fair and reasonable to need a larger sign. Other properties near that area are of mixed use with many businesses in that area. The new larger sign would not be visible to neighbors. The sign would only be illuminated during the hours of operation, 6:00 am to 8:00 pm.

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

The Members indicated that they would be inclined to deny the application due to illumination and the large size of the sign. While it is important to promote business, it is difficult to approve this request. There have been other rulings on this property where neighbors have had significant concerns about the use of the property. It would be important to ensure that neighbors are aware of this request.

There have been two rulings where this property was determined a special distinguishable property. Mr. Katz would approve the size of the sign; larger square footage would be helpful. Illumination is not something he would support as it is primarily going to be used during day lights hours. Members are more in support of an increased signage without illumination. Mr. Katz believes the location of the sign as described by Mr. Nash is a reasonable distinction of the property.

Mr. Newlove MOVED to continue this hearing until the July 1, 2024 meeting. In the meantime, Mr. Oakes will notify staff when the mockup sign is placed at the right location, height and size of the sign they want installed. The Board will have one week to make drive by observations and will note the date and time of each observation.

Seconded by Mr. McDonough

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

4. STAFF COMMENTS

None

5. ADJOURNMENT

Mr. Newlov4 MOVED to adjourn the meeting at 8:53 PM.

Seconded by Mr. Morris

1
2 ****The Vote on the Motion was (4-0).***
3
4 Respectfully submitted,
5 Linda Billings, Recording Secretary