



**LEBANON ZONING BOARD OF ADJUSTMENT
OCTOBER 7, 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: 964 174 635#). If you have trouble accessing this meeting, please [email nathan.reichert@lebanonnh.gov](mailto:nathan.reichert@lebanonnh.gov).

2. Approval of Minutes

- A. June 3, 2024
B. September 3, 2024

3. Public Hearing Items

- A. Mark Franklin, 18 Cottage Circle (Tax map 87, lot 134), zoned R3: The applicant requests a Variance from Section 310.3, pursuant to Section 801.3 of the Zoning Ordinance, to allow the construction of a garage +/- 5 ft from the right-side property line where 15 ft is required. ZB2024-19-VAR
- B. Brooks-Jackson Rev. Family Trust, 71 Water Street (Tax map 106, lot 97), zoned R2: The applicant requests a Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow the construction of an exterior staircase to be built +/- 7.5 ft from the side property line where 15 ft is required. ZB2024-20-VAR
- C. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1: An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. ZB2023-11-AAD
- Continued to the November 18, 2024 meeting per applicant request

4. Staff Comments

5. Other Business

- A. November meeting date reminder
B. XYZ Dairy Building Code Board of Appeals legal update

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:

Lebanon Zoning Board of Adjustment Agenda
October 7, 2024

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.

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

DRAFT

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

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

MEMBERS ABSENT: Chair William Koppenheffer, Jennifer Barkley

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.

Mr. Morris was given voting privileges for this meeting.

2. APPROVAL OF MINUTES

A. July 1, 2024

Mr. Newlove MOVED to approve the July 1, 2024, Minutes as presented in the September 3, 2024, packet.

Seconded by Mr. Morris.

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

B. August 5, 2024

Mr. Newlove MOVED to approve the August 5, 2024, Minutes as presented in the September 3, 2024, packet.

Seconded by Mr. Morris.

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

3. PUBLIC HEARING ITEMS

The order of the meeting was changed.

The applicants were given the option to postpone their application until there is a full Board.

A. Paul Mcauliffe, 71 Elm Street (Tax map 107, lot 137), zoned R3: The applicant requests a Special Exception from Section 310.3, pursuant to Section 703.1 & 801.3 of the Zoning

Ordinance, to allow the expansion of the existing non-conforming garage to be located +/- 2.5 feet from the right side lot line where 15 feet is required and 16 feet from the rear lot line where 20 feet is required and the expansion of non-conforming rear addition to be located +/- 10.5 feet from the left side lot line where 15 feet is required. **ZB2024-17-SE**

Mr. Mcauliffe appeared on behalf of the application. The house and garage were built in 1913. At this time the old garage is sinking and is in disrepair.

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

Mr. Newlove MOVED On September 3rd 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Paul Mcauliffe regarding 71 Elm Street (Tax Map 1077, Lot 137). The applicant requests a Special Exception from Section 310.3, pursuant to Section 703.1 & 801.3 of the Zoning Ordinance, to allow the expansion of the existing non-conforming garage to be located +/- 2.5 feet from the right side lot line where 15 feet is required and 16 feet from the rear lot line where 20 feet is required and the expansion of non-conforming rear addition to be located +/- 10.5 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 subject property is improved with a one-family dwelling constructed in 1923. The lot contains a primary residence and a dimensionally non-conforming rear addition and detached garage.
2. As described in the application the applicant proposes to tear down and rebuild the garage and widen the rear home addition. The new garage will be partially located within the side-yard 15 ft setback and the 20 ft rear setback and will be located +/- 2.5 ft from the right-side lot line and 16 ft from the rear lot line. The expanded rear addition will be partially located within the 15 ft side setback and will be approximately +/- 10.5 ft from the left-side lot 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 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 August 12, 2024.
6. There are no known existing zoning violations on the property.

- 1 7. No one from the public objected.
2

3 **II. CONCLUSIONS OF LAW**
4

5 As a result of the above findings of fact and based on testimony given, application materials presented,
6 and supporting documents submitted, the Board concludes the following with respect to the Special
7 Exception criteria set forth in §703.1 and §801.3 of the Zoning Ordinance:
8

- 9 1. The Special Exception is specifically authorized by Section §703.1 and Section §801.3 of the
10 Zoning Ordinance.
11
12 2. The following criteria of Section §703.1 **have been** met:
13
14 a. The reasonable use of abutting properties shall not be adversely affected by the proposed
15 expansion.
16
17 b. The proposed expansion shall not render the lot size proportionately less adequate, i.e.
18 any aspect of the building or structure that is currently nonconforming cannot be made
19 more nonconforming in the absence of a variance.
20
21 3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the
22 Special Exception would not remedy.
23
24 4. The character of the area **will not** be adversely affected.
25
26 5. **No** hazard or nuisance will be created.
27
28 6. The capacity of existing or planned community facilities and services (including streets and
29 highways) **will not** be adversely impacted.
30
31 7. The granting of the Special Exception **will not** result in undue municipal expense.
32
33 8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and
34 intent of the ordinance.
35
36 9. The general welfare of the City **will** be protected.
37

38 **III. DECISION**
39

40 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 3rd day of September,
41 2024, hereby **GRANTS** the requested Special Exception pursuant to Section §703.1 and §801.3 of the
42 Zoning Ordinance to permit the teardown and expansion of the existing non-conforming garage to be
43 replaced with a new 16 foot x 28 foot garage located +/-2.5 feet from the right-side lot line where 15 feet
44 is required and +/- 16 feet from the rear lot line where 20' is required; along with the teardown and
45 expansion of the non-conforming rear home addition to be replaced with a new 18 foot x 24 foot home
46 addition located +/- 10.5 feet from the left lot line where 15 feet is required at 71 Elm Street pursuant to
47 the attached plans and as set forth above and per testimony, plans, and materials submitted, and per the
48 following conditions:
49

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

1
2 *Seconded by Mr. Morris.*

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

5
6 **B. City of Lebanon & The Muse Lebanon, LLC, 20 Spencer Street (Tax map 92, lot 31), zoned**
7 **LD:** The applicant requests a Variance from Section 607.8, pursuant to Section 801.2 of the
8 Zoning Ordinance, to allow the elimination of required Electric Vehicle (EV) infrastructure
9 requirements. The applicant proposes none of the planned 87 parking spaces to be equipped with
10 EV charging infrastructure where 57 EV-capable; of which 18 EV-ready and 5 EVSE-installed
11 parking spaces are required. **ZB2024-16-VAR**

12
13 Nick Golon, engineer from TF Moran, appeared on behalf of the application. The City entered into an
14 agreement for the development of Spencer Street property. There have been some recent changes to tax
15 code requirements however timing is important. They would like to withdraw this application without
16 prejudice. They understand the importance of affordable housing and intend to get it done soon and get it
17 done right. The application was allowed to be withdrawn.

18
19 **4. STAFF COMMENTS**

20
21 A. New Board packet format discussion
22 Staff believe they are doing duplicate efforts and putting duplicate information into the packets. They
23 are wondering if the packet sufficiently organized, is there any additional information that the Board
24 would like as a standard offering, and lastly, can the format be modified and the way it is laid out to
25 make it easier to put multiple types of documents together.

26
27 The Board feels the materials are adequate and the cover page is not as important to the members.
28 The narratives are the most important. The general components that were in the packet will remain.
29 The Board is supportive of efficiency in the process. The logical components are what the applicants
30 are requesting in their own words, an evaluation of why they are coming before the Zoning Board,
31 and what the Board should consider. It is fine for Staff to express an opinion, but it is important that
32 Staff have a neutral position during a hearing. It is important that people believe they have a fair
33 opportunity to be considered in a contentious situation. All the materials in a packet become public
34 record.

35
36 Staff will try a new format and the Board will weigh in to help establish a uniform style for the
37 packet.

38
39 **5. ADJOURNMENT**

40
41 *Mr. McDonough MOVED to adjourn the meeting at 7:39 PM.*
42 *Seconded by Mr. Morris.*

43
44 **The Vote on the Motion was (4-0).*

45
46 Respectfully submitted,
47 Linda Billings, Recording Secretary



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT VARIANCE

STAFF NARRATIVE

Mark Franklin - 18 Cottage Circle

To: Zoning Board of Adjustment

Prepared By: Nathan Reichert, *Director of Planning & Development* and Zoning Administrator

Date: October 7, 2024 – Regular Meeting

Application Number: ZB2024-19-VAR

HEARING NOTICE:

Mark Franklin, 18 Cottage Circle (Tax map 87, lot 134), zoned R3: The applicant requests a Variance from Section 310.3, pursuant to Section 801.3 of the Zoning Ordinance, to allow the construction of a garage +/- 5 ft from the right-side property line where 15 ft is required. ZB2024-19-VAR

SITE DESCRIPTION / BACKGROUND:

The subject property is improved with a dimensionally conforming one-family dwelling constructed in 1990, per the City Assessor's records, and is conforming to the R3 zoning district, Class 1 lot minimum size requirement of 10,000 sq ft with +/- 17,424 sq ft and is not within any overlay district. There has been no previous ZBA action since 1995.

PROPOSAL:

The applicant proposes to construct a new 20 ft x 22 ft (440 sq ft) 2-car garage and 3 ft wide breezeway at the right side of the existing home, +/- 5 ft from the right-side property line shared with 14 Cottage Circle (map/lot 87-135). The new garage would be built in-line with the existing driveway.

ZONING ORDINANCE REQUIREMENTS - VARIANCE:

To obtain the requested Variance from Section §309.3, the applicant must demonstrate compliance with each of the five Variance Criteria as set forth in Section §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are state in the bold text below, followed by general staff commentary on the meaning and intent of each.

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

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

STAFF COMMENTS:

The applicant seeks to add a 2-car garage and breezeway to their existing home. The orientation of the existing home and driveway makes it difficult or impossible to locate the structure in a conforming location.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT VARIANCE

Decision Template
Mark Franklin - 18 Cottage Circle

DRAFT MOTION for:

Agenda Item 3.A

Case ZB2024-19-VAR

Request for Dimensional Variance from Section §310.3

Motion made by: _____

On October 7th, 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared _____ regarding 18 Cottage Circle (Tax Map 87, Lot 134). The applicant requests a Variance from Section 310.3, pursuant to Section 801.3 of the Zoning Ordinance, to allow the construction of a garage +/- 5 ft from the right-side property line where 15 ft 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 1990. At 17,424 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 applicant proposes to construct a garage and breezeway addition to the existing single-family dwelling to be located +/- 5 feet from the right-side lot line where 15-feet is required.
3. The applicant has submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on August 21st, 2024.
4. To obtain the requested Variance from section §310.3, the applicant 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. _____

6. _____

II. CONCLUSIONS OF LAW

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

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

2. The spirit of the ordinance is / is not observed.

3. Substantial justice is / is not done.

4. The values of surrounding properties are not / are diminished.

5. Literal enforcement of the provisions of the ordinance would / would not result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area.

6. There is not / is a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.

7. The proposed use is / is not a reasonable one.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **7th day of October, 2024**, hereby **GRANTS / DENIES** the Variance from Section 3010.3, pursuant to Section 801.2 of the Zoning Ordinance to construct a garage +/- 5 ft from the right-side property line where 15 ft 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. _____

3. _____

Motion seconded by: _____

Vote: _____

**CITY OF LEBANON
APPLICATION FOR**

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

PROPERTY OWNER (APPLICANT):

NAME: Mark Franklin TEL.#: 603-566-0013
MAILING ADDRESS: 18 Cottage Circle West Lebanon
E-MAIL ADDRESS: markjfrn@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Laurie Franklin TEL.#: 603-236-1920
MAILING ADDRESS: Same
E-MAIL ADDRESS: laurie.b.franklin@gmail.com

PROJECT LOCATION:

TAX MAP #: 87 LOT#: 134 PLOT #: ZONE: R3
STREET ADDRESS OF PROJECT: 18 Cottage Circle
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Add a 3ft breezeway and 2 car garage to existing house.
Add deck to back doorway instead of sm. porch & patio

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:

x m f Franklin DATE: 8/21/24
PROPERTY OWNER

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.

DATE: _____
PROPERTY OWNER

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
8/21/24	87-134	ZB2024-19-VAR			

Instructions for filing Appeals

Page 2 of 2

- After you have presented your application to the Board, your hearing is opened up for public comment. After public comment is taken, and if the Zoning Board is satisfied that all relevant questions concerning your application have been answered, your hearing is closed. Once a hearing is closed, no further testimony from the applicant or the public can be taken. *(Please do not send or distribute information to Board members after the public hearing is closed.)*
- The Board will hold deliberations after completing all other scheduled public hearings. After deliberations, the Board *may* finalize a decision and vote that evening on your request. If not, the decision is presented and voted on at the following meeting.
- Decisions are final once a motion is passed by at least 3 members* of the Zoning Board.

**ZBA By-Laws, Appeals, Section 4. "The failure of the Board to reach any result by 3 concurring votes constitutes a defacto denial unless a subsequent motion is made at the same meeting that garners the required 3 votes. If there are fewer than 5 members able to sit on the appeal, the applicant has the choice of either (a) wait until a 5 member board can sit or (b) proceeding with the understanding that the failure of any motion to receive at least 3 votes will automatically constitute grounds for a rehearing."*

- You may be given a copy of the decision that night. A formal copy of the decision and the Zoning Permit are usually prepared and mailed within two weeks of the final vote. Audio recordings of all public meetings are usually available on the City's website the day after the meeting.

If your appeal is granted, in most cases, you will also need to obtain a Building Permit for your construction project. Please contact the Codes Department at (603) 448-1524 for the appropriate Building Permit application and assistance.

If your appeal is denied, you have the right to request a rehearing. A motion for rehearing must be filed within 30 calendar days. The 30-day time frame to file an appeal begins the day after the Board voted. *See Rehearings and Appeals, Section 802.5 of the Zoning Ordinance.*

The Zoning Ordinance and Zoning Map are both available on-line at the City's website: www.Lebnh.net Please go to Codes Department page and look for the link to *Current Zoning Ordinance & Map*. Copies of all Zoning Board application packets are also available on-line, see Codes Department page, *Zoning Board Applications*.

If you have any questions concerning the filing of a Zoning Board application, appearing before the Lebanon Zoning Board of Adjustment, or have a question about a pending application before the Board, please contact the Codes Department at (603) 448-1524 or by email Codes@Lebcity.com

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) _____, Section(s) _____, 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.)

We hope to build a 2 car garage which is attached to the current house with a small breezeway. The 3ft breezeway includes basic foundation placement, decreases demolition to current structure and reduces overall expense and waste. The lot opens to a wide wedge in the back but placement of the 23 ft structure would place it 15 ft from the property line. There is a 14 ft buffer of trees and non-maintained "forest" between our home and the neighbor.

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

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

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

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

_____.

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

Confirmed

_____.

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

Confirmed

_____.

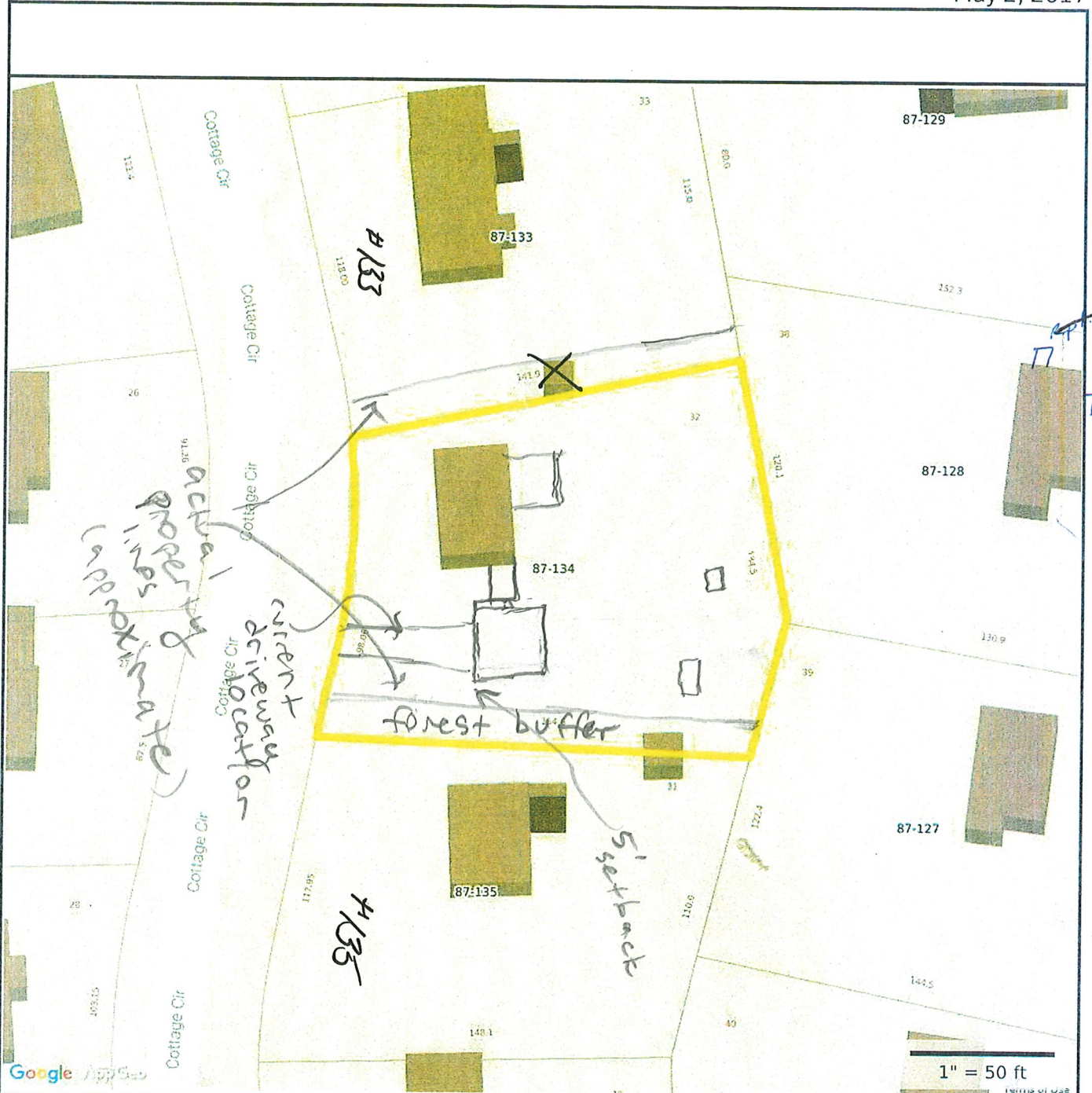
CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

- D. That the character of the area shall not be adversely affected:
Confirmed - The 2 car garage is in character with existing homes in the neighborhood.
- E. That no hazard or nuisance will be created:
Confirmed.
- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:
Non applicable / No impact
- G. That granting the special exception will not result in undue municipal expense:
No impact
- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:
Confirmed.
- I. That the general welfare of the City will be protected:
Yes

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.



Property Information

Property ID 87-134
 Location 18 COTTAGE CIR
 Owner FRANKLIN, MARK J

R3

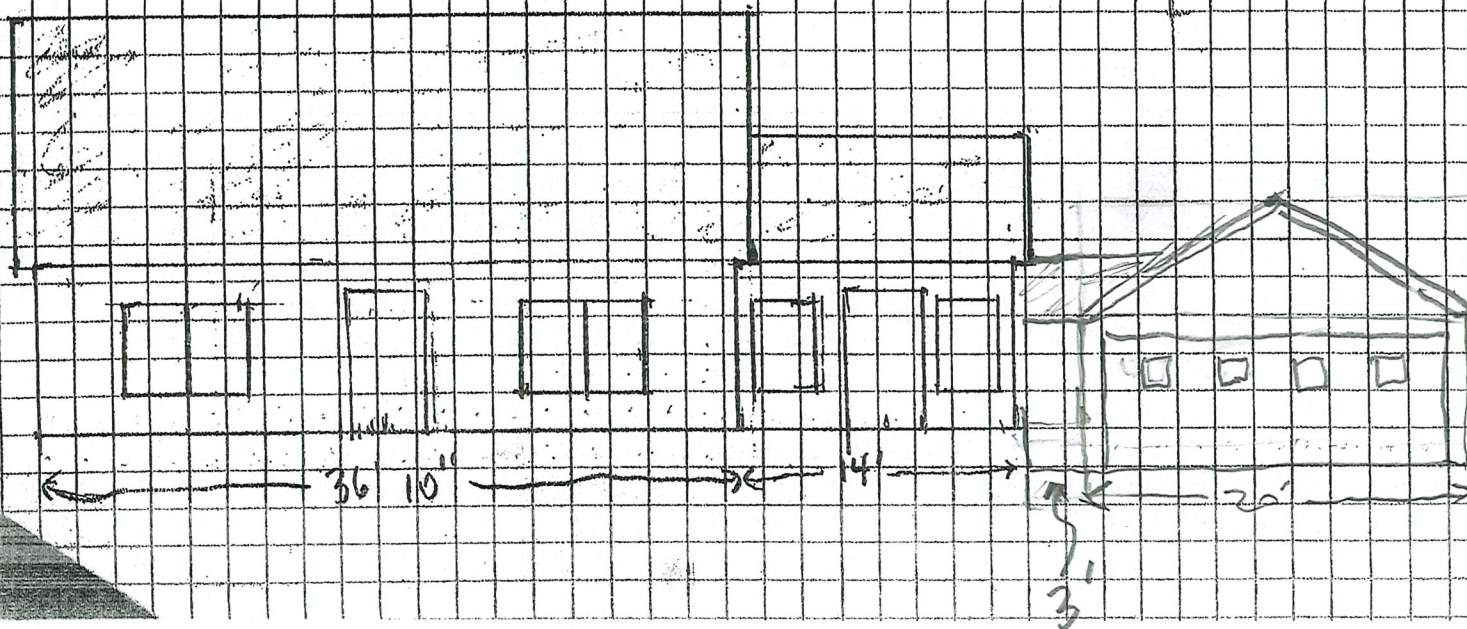


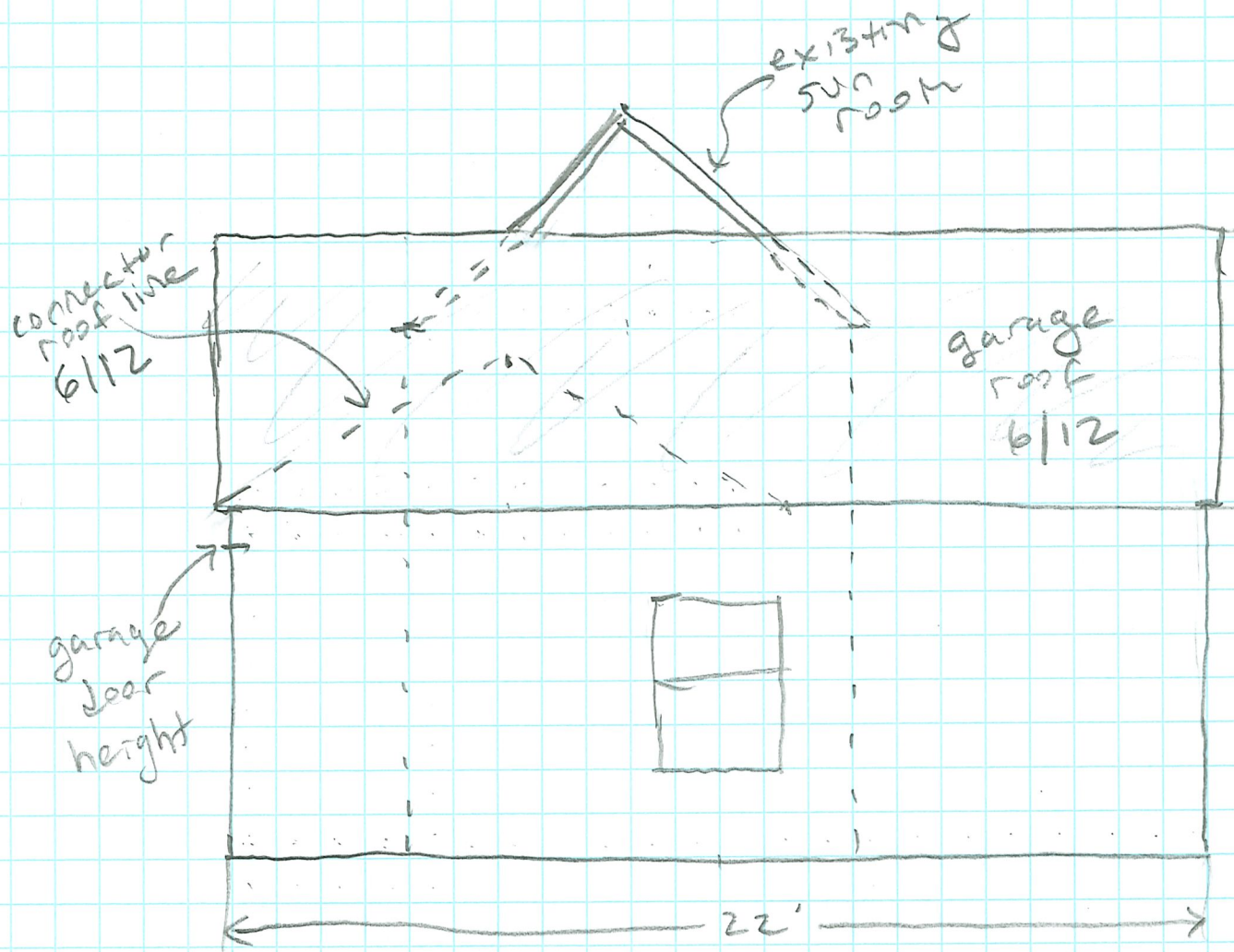
**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

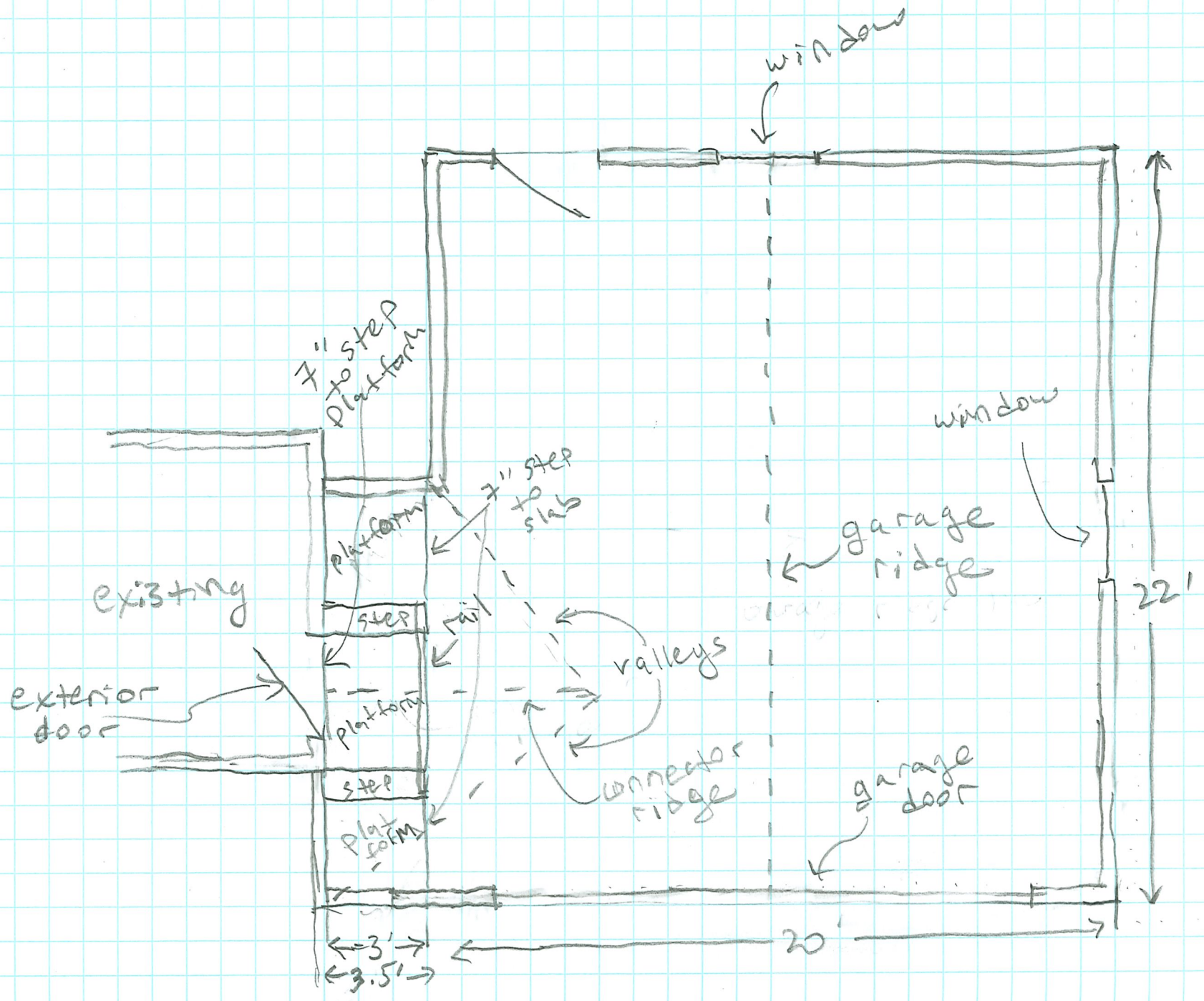
Parcels updated 7/1/2015
 Properties updated 05/02/2017

□ = 2'





□ = 1'



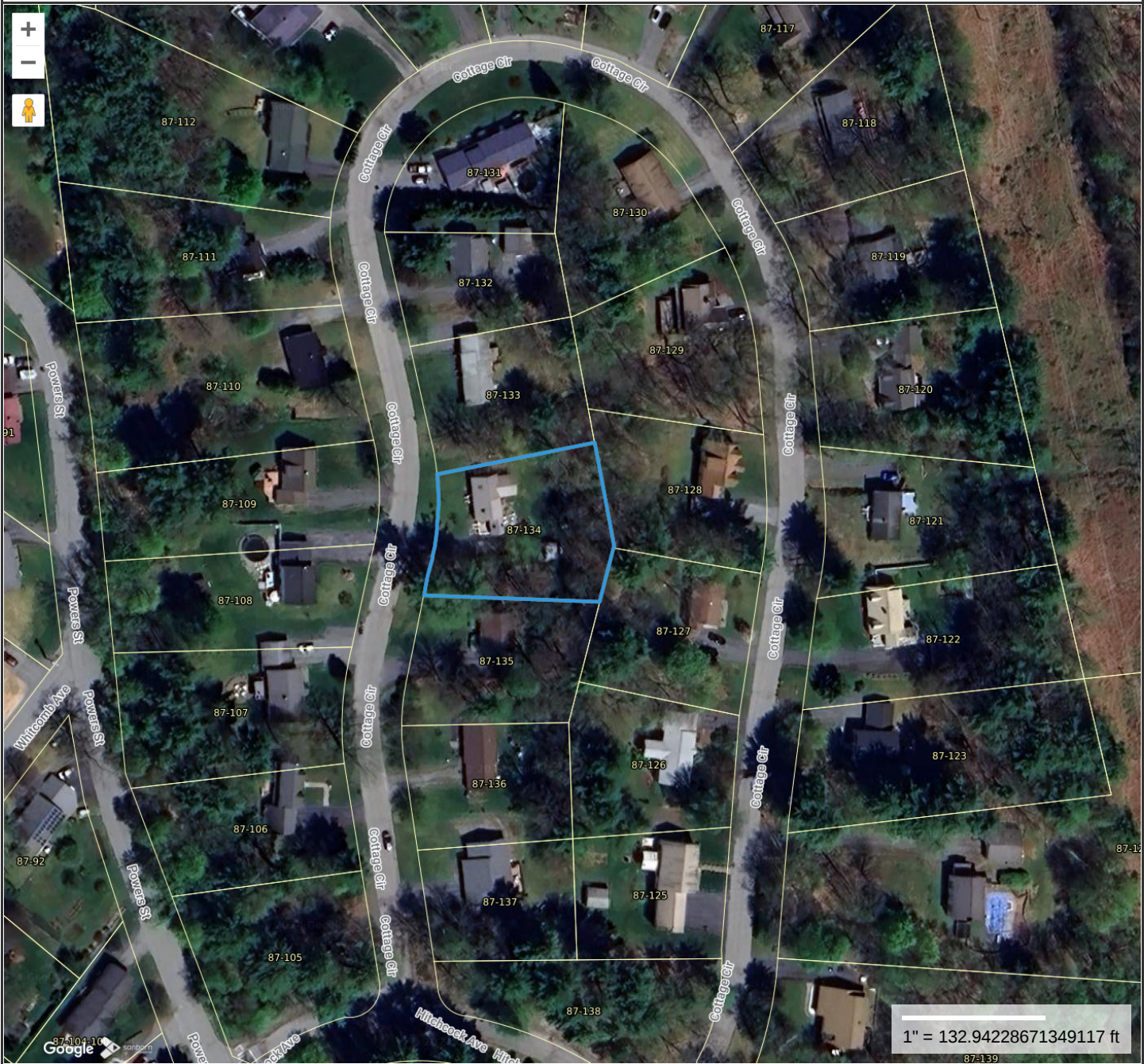








18 Cottage Top



Property Information

Property ID 87-134
Location 18 COTTAGE CIR
Owner FRANKLIN, MARK J



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 07/15/2024
Data updated 11/18/2018

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

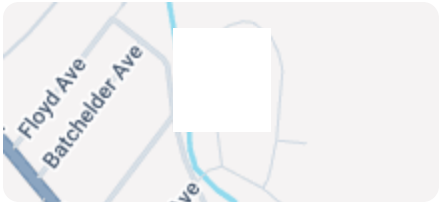


17 Cottage Cir
18 Cottage Cir Street View

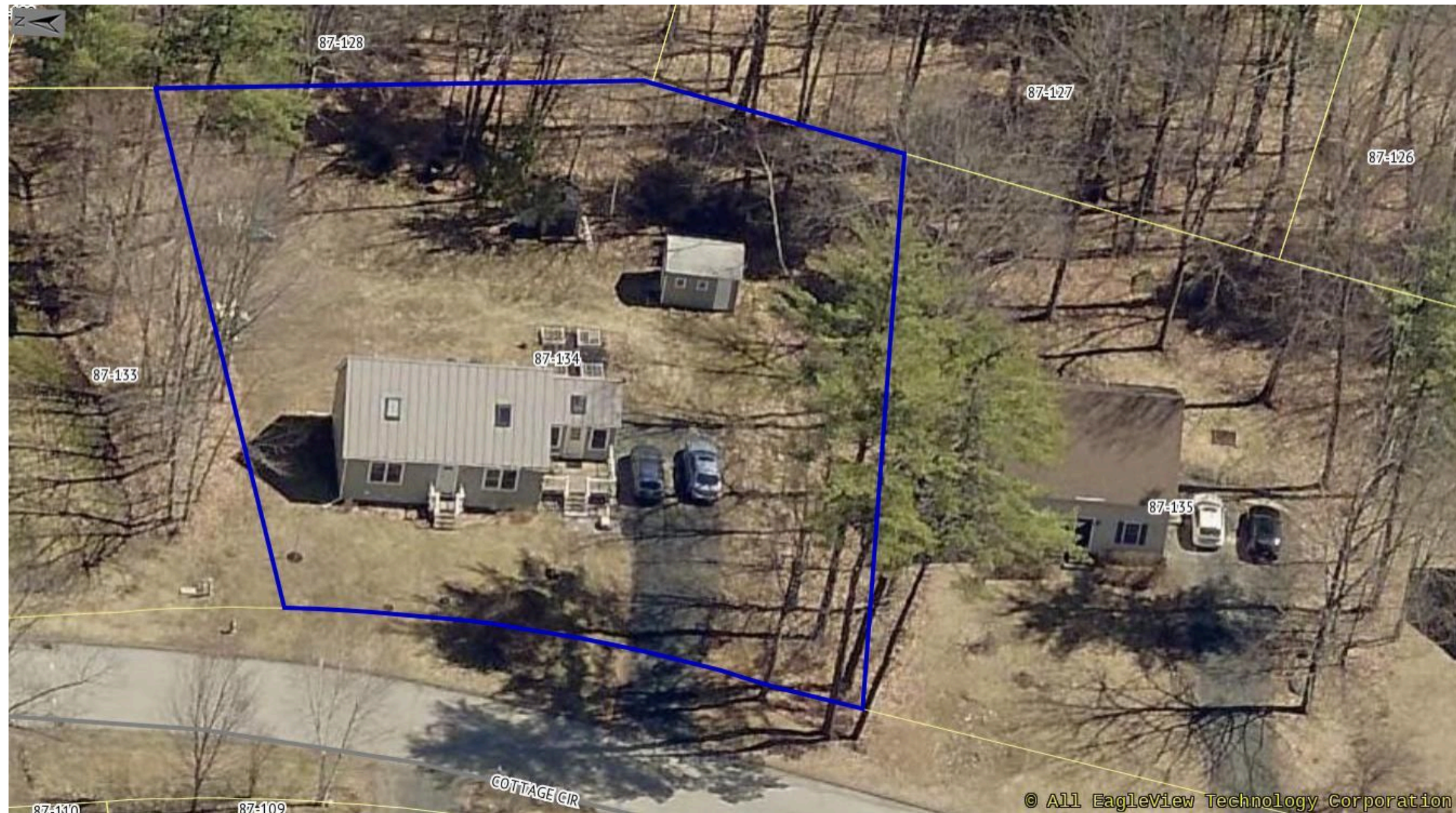
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Image capture: Jul 2024 © 2024 Google

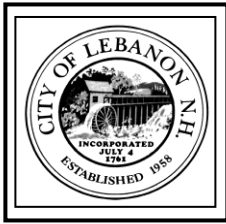


Cottage Eagle Front



18 Cottage





CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT VARIANCE STAFF NARRATIVE Brooks-Jackson Rev. Family Trust - 71 Water Street

To: Zoning Board of Adjustment

Prepared By: Nathan Reichert, *Director of Planning & Development* and Zoning Administrator

Date: October 7, 2024 – Regular Meeting

Application Number: ZB2024-20-VAR

HEARING NOTICE:

Brooks-Jackson Rev. Family Trust, 71 Water Street (Tax map 106, lot 97), zoned R2: The applicant requests a Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow the construction of an exterior staircase to be built +/- 7.5 ft from the side property line where 15 ft is required. ZB2024-20-VAR

SITE DESCRIPTION / BACKGROUND:

The subject property is improved with a dimensionally non-conforming one-family dwelling constructed in 1900, per the City Assessor's records, and is non-conforming to the R2 zoning district, Class 1 lot minimum size requirement of 10,000 sq ft with +/- 4,791 sq ft. A portion of the property is within the 125-foot Riverbank Protection and 100 ft high-value wetland buffer areas and is entirely within the NH Shoreland Protection area. There has been no previous ZBA action since 1995.

PROPOSAL:

The applicant proposes to construct a new exterior staircase that will be used to access living space within the 2nd story of the home. The staircase will be +/- 7.5 ft from the side property line shared with 51 Spring Street (map/lot 106-98).

ZONING ORDINANCE REQUIREMENTS - VARIANCE:

To obtain the requested Variance from Section §309.3, the applicant must demonstrate compliance with each of the five Variance Criteria as set forth in Section §801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are state in the bold text below, followed by general staff commentary on the meaning and intent of each.

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

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

STAFF COMMENTS:

The applicant seeks to add an external staircase that will be used to access a 2nd living unit. The home was built prior to current Zoning setback regulations resulting in the lack of ability to build the staircase in a location that both conforms to the current regulations and meets the Zoning Ordinance Section 610.H requirement for any necessary entrances or exits to the principal building, to serve an ADU, to be located to the side or rear of the building; should the applicant wish to define the additional unit as an ADU. As the applicant has demonstrated within their application, several homes within close proximity to the applicant's also have exterior dimensionally non-conforming staircases that are used to access living units on the 2nd and 3rd stories of the dwellings. This application is consistent with the current use and character of the applicant's neighborhood.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT VARIANCE

Decision Template
Brooks-Jackson Rev. Family Trust - 71 Water Street

DRAFT MOTION for:

Agenda Item 3.B

Case ZB2024-20-VAR

Request for Variance from Section §309.3

Motion made by: _____

On October 7th 2024, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared _____ regarding 71 Water Street (Tax Map 106, Lot 97). The Applicants request a Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance to allow the construction of an exterior staircase to be built +/- 7.5 ft from the side property line where 15 ft 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 1900. At 4,791 sq. ft., the lot is non-conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-2 District.
2. The applicants propose constructing an exterior staircase that will be used to access living space within the 2nd story of the existing one-family dwelling. The staircase will be +/- 7.5 feet from the side property line shared with 51 Spring Street (map/lot 106-98) 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 September 9th, 2024.
4. 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).

5. _____

6. _____

II. CONCLUSIONS OF LAW

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

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

2. The spirit of the ordinance is / is not observed.

3. Substantial justice is / is not done.

4. The values of surrounding properties are not / are diminished.

5. Literal enforcement of the provisions of the ordinance would / would not result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area.

6. There is not / is a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.

7. The proposed use is / is not a reasonable one.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **7th day of October, 2024**, hereby **GRANTS / DENIES** the Variance from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance to construct an exterior staircase +/- 7.5 ft from a 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.

2. _____

3. _____

Motion seconded by: _____

Vote: _____

**CITY OF LEBANON
APPLICATION FOR**

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

PROPERTY OWNER (APPLICANT):

NAME: David Brooks & Merideth Jackson TEL.#: 603-443-0477

MAILING ADDRESS: 71 Water Street, Lebanon, NH 03766

E-MAIL ADDRESS: brooksdr@hotmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: TEL.#:

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 106 LOT#: 97 PLOT #: ZONE: R-2

STREET ADDRESS OF PROJECT: 71 Water Street

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

SCOPE OF PROJECT:

Construct exterior staircase to access additional living area; stairs will extend ~7.5 feet into 15 foot side yard setback

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:


PROPERTY OWNER

DATE: Sept. 9, 2024

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

DATE:

PROPERTY OWNER

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #			
9-9-24	106-97	ZB2024-20-VAR			

(12/07/07)

SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement*

CITY OF LEBANON, NEW HAMPSHIRE_

Variance Standards: RSA 674:33 Effective Jan. 1, 2010

One cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 1/2 in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) III
Section(s) 309.3 of the Lebanon Zoning Ordinance.

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

801.2 Variances.

- A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:
1. That the variance, if authorized, will not be contrary to the public interest;
The stairs will be constructed to applicable codes and will enable the creation of an additional living space to help address the lack of available workforce housing.

 2. That the variance will observe the spirit of the Ordinance.
The R-2 district specifically refers to the preservation and conversion of large older dwellings, and two family dwellings and ADUs are permitted uses in the district.

 3. That by the granting of the variance, substantial justice will be done;
The new stairs will provide safe, direct access to living area, and are comparable to many other properties in the same neighborhood (see attached photos).

 4. That the variance, if authorized, will not diminish the values of surrounding properties The new stairs are comparable to many other properties in the same neighborhood, which is composed of a mix of 1-family and 2+ family properties. _____ and;
 5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

The parcel dates to at least 1906, and the house is even older; both have existed since well before zoning lot sizes and setbacks were applied; the parcel is among the smallest in the neighborhood, and is less than 1/2 the minimum lot size for the district; there is no conforming option for building the stairs to access the additional living area. Many other properties in the neighborhood have similar non-conforming stairs. 42 of 287

(ii) The proposed use is a reasonable one.

The R-2 district specifically refers to preservation and conversion of large older dwellings, and 2-family dwellings and ADUs are permitted uses in the district.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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

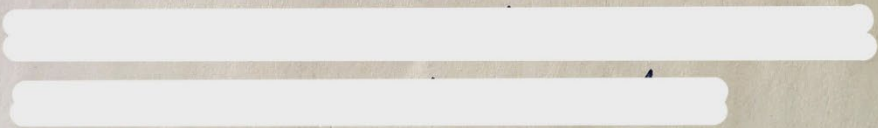
****This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent:

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



- Current site improvements, based on changes approved in Spring 2009: added front porch within front yard setbacks, shortened and widened driveway, and replaced rear stoop.
- Site plan derived from City of Lebanon plans for CSO-2.



- Proposed new stairs in easterly side yard

14.5'

7.5'

20'

15'

24'



Existing Conditions View from Spring Street



Rendering View from Spring Street



Existing Conditions View from Driveway



Rendering View from Driveway



Existing Conditions View from Backyard



Rendering View from Backyard



Existing Conditions View from Water-Spring Intersection



Rendering View from Water-Spring Intersection

Surrounding Properties:



37 Water Street



43 Water Street



54 Church Street



54 Church Street



61 Church Street



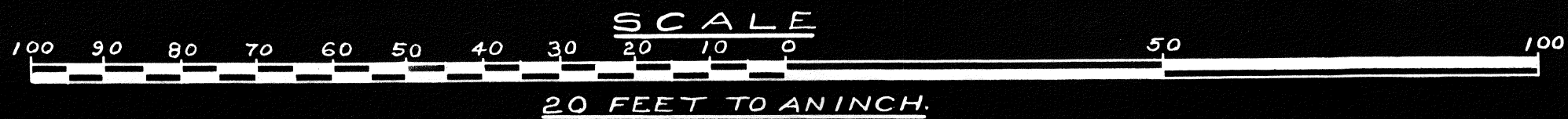
62 Church Street



6 Pine Street



8 Pine Street



LINE "E-F" ESTABLISHED BY AGREEMENT
BETWEEN THE ADJOINING OWNERS
RALPH J. & NELL F. MANLEY
AND
JOHN E. & JENNIE E. FLYNN.
DEC. 7-1934.
(AGREEMENT SIGNED)

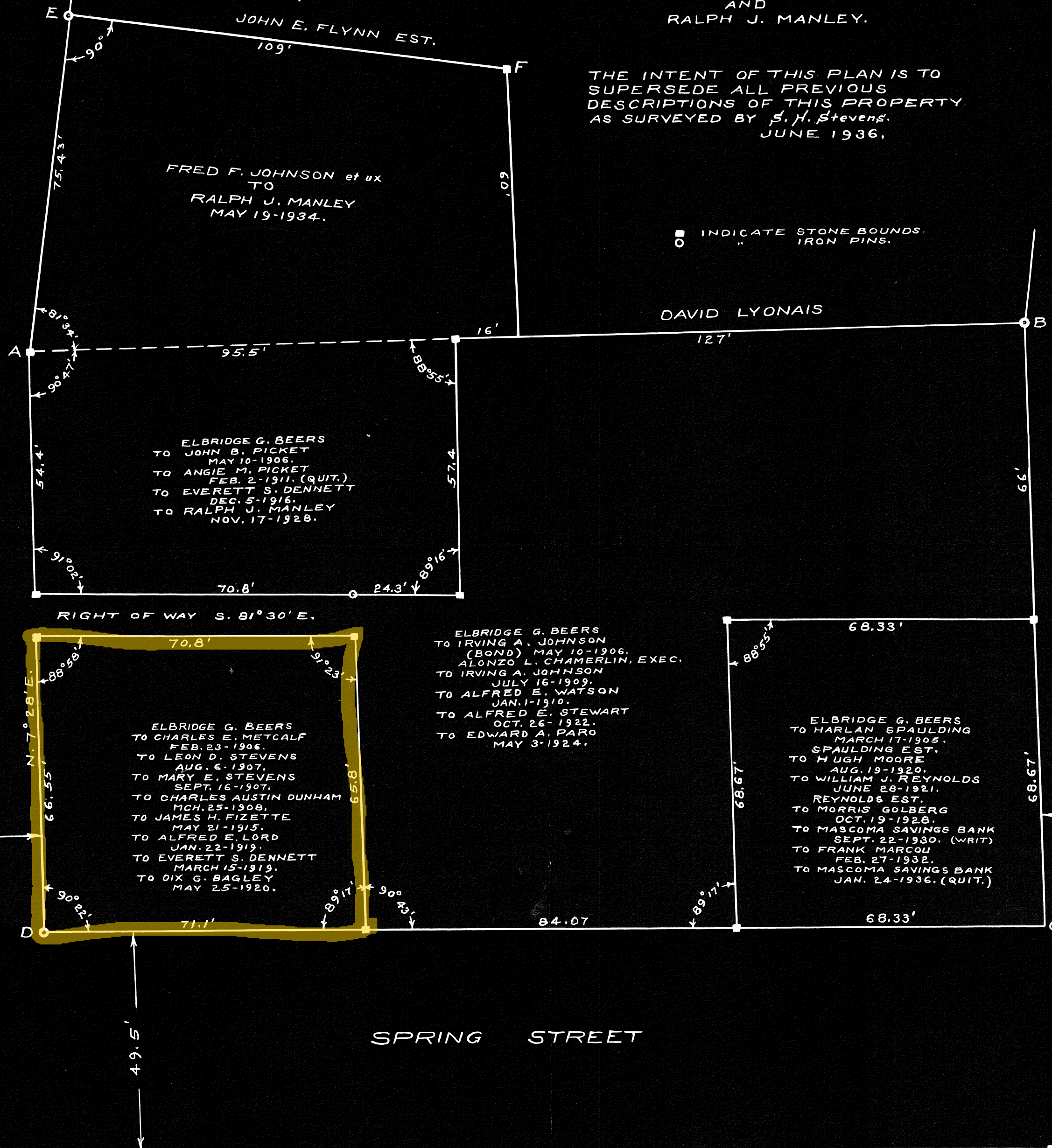
RIGHT OF WAY ESTABLISHED TO BE 9 FEET
IN WIDTH AND AGREED TO BE USED IN
COMMON BY THE PRESENT ADJOINING OWNERS.
DIX G. BAGLEY
EDWARD A. PARO
AND
RALPH J. MANLEY.

THE INTENT OF THIS PLAN IS TO
SUPERSEDE ALL PREVIOUS
DESCRIPTIONS OF THIS PROPERTY
AS SURVEYED BY S. H. Stevens.
JUNE 1936.

MAGNETIC NORTH
DECLINATION 15° 10' WEST.

WATER STREET

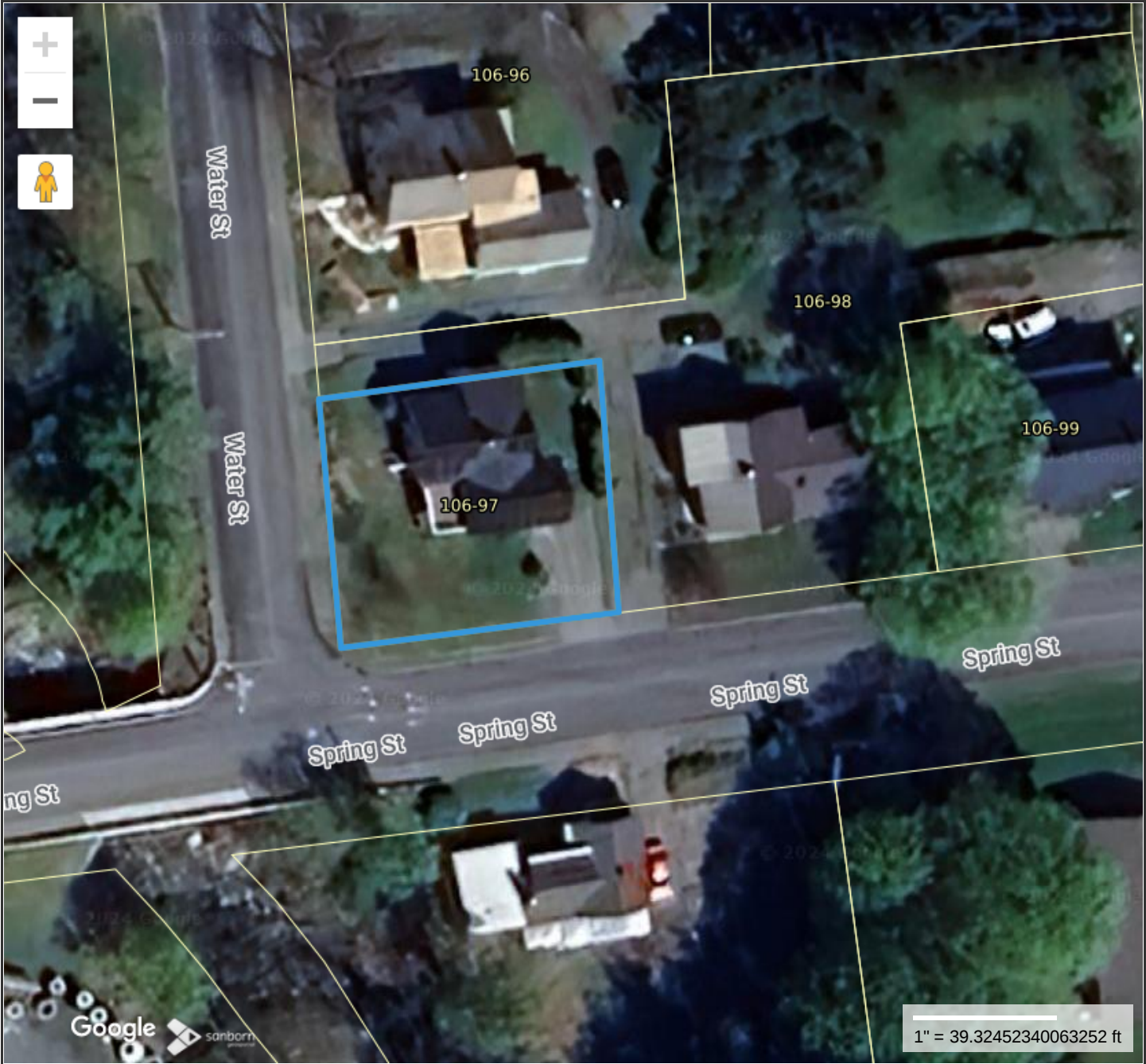
CHURCH STREET



LOTS NUMBERED 4-5 & 6 AS SHOWN ON PLAN OF STURTEVANT MFG. Co. HOUSE LOTS
TOWN RECORDS VOL. 7 PAGE 104 (A-B-C-D-A) CONVEYED BY

A. H. SPAULDING & WIFE TO FRANK B. KENDRICK	SEPT. 16-1889.	RECORDED IN GRAFTON Co. REGISTRY OF DEEDS	LIB. 398 FOL. 402.
FRANK B. KENDRICK & WIFE TO SAMUEL BEAN	SEPT. 28-1895.	" " " " " "	" 426 " 51.
SAMUEL BEAN & WIFE TO ELBRIDGE G. BEERS	OCT. 1-1896.	" " " " " "	" 429 " 46.

GIS 1



Property Information

Property ID 106-97
Location 71 WATER ST
Owner BROOKS D R & JACKSON M E TTEES



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 07/15/2024
Data updated 11/18/2018

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

Lebanon, New Hampshire

Google Street View

Aug 2023 [See more dates](#)

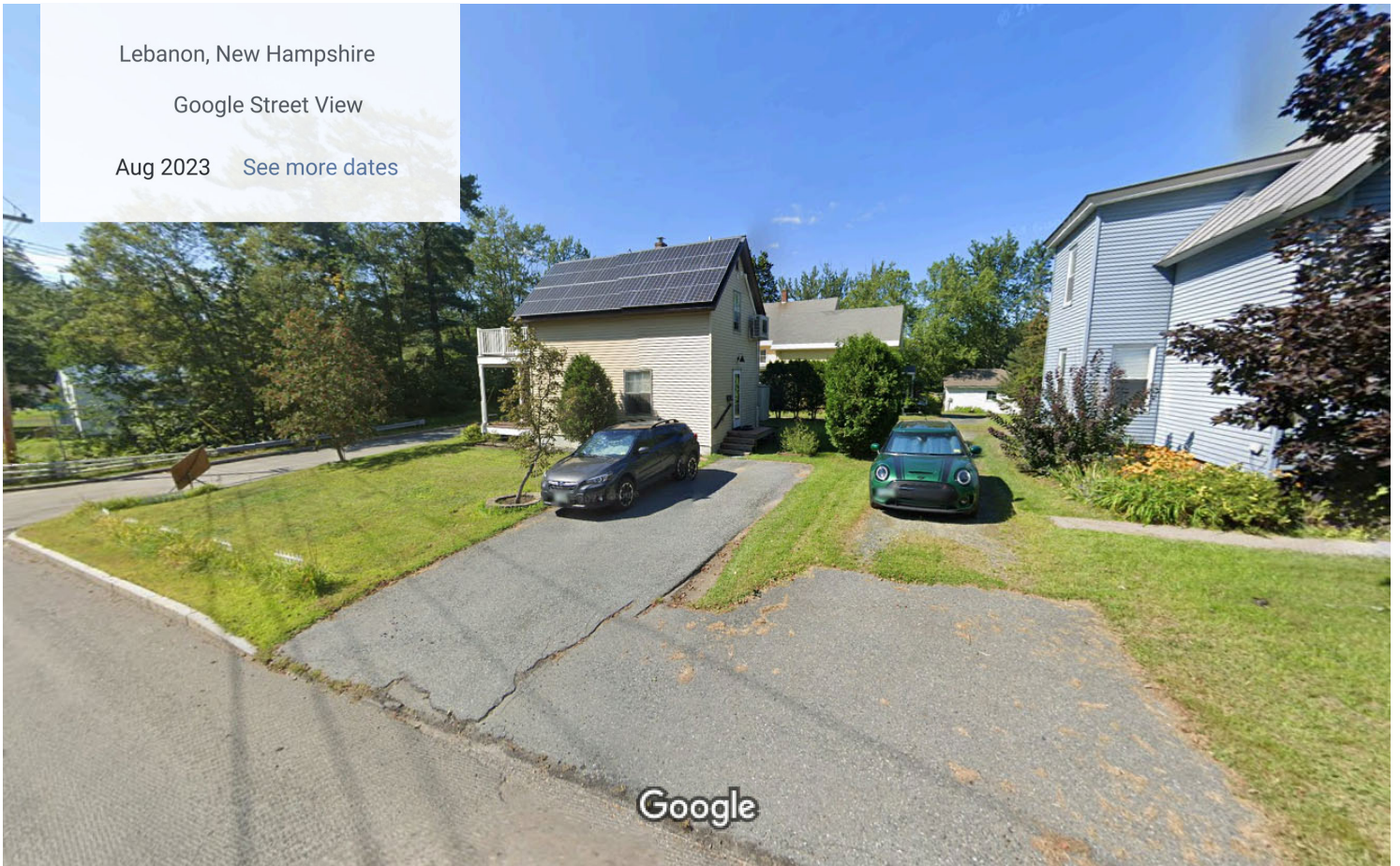
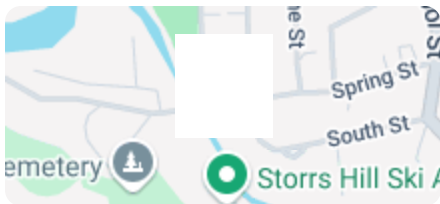
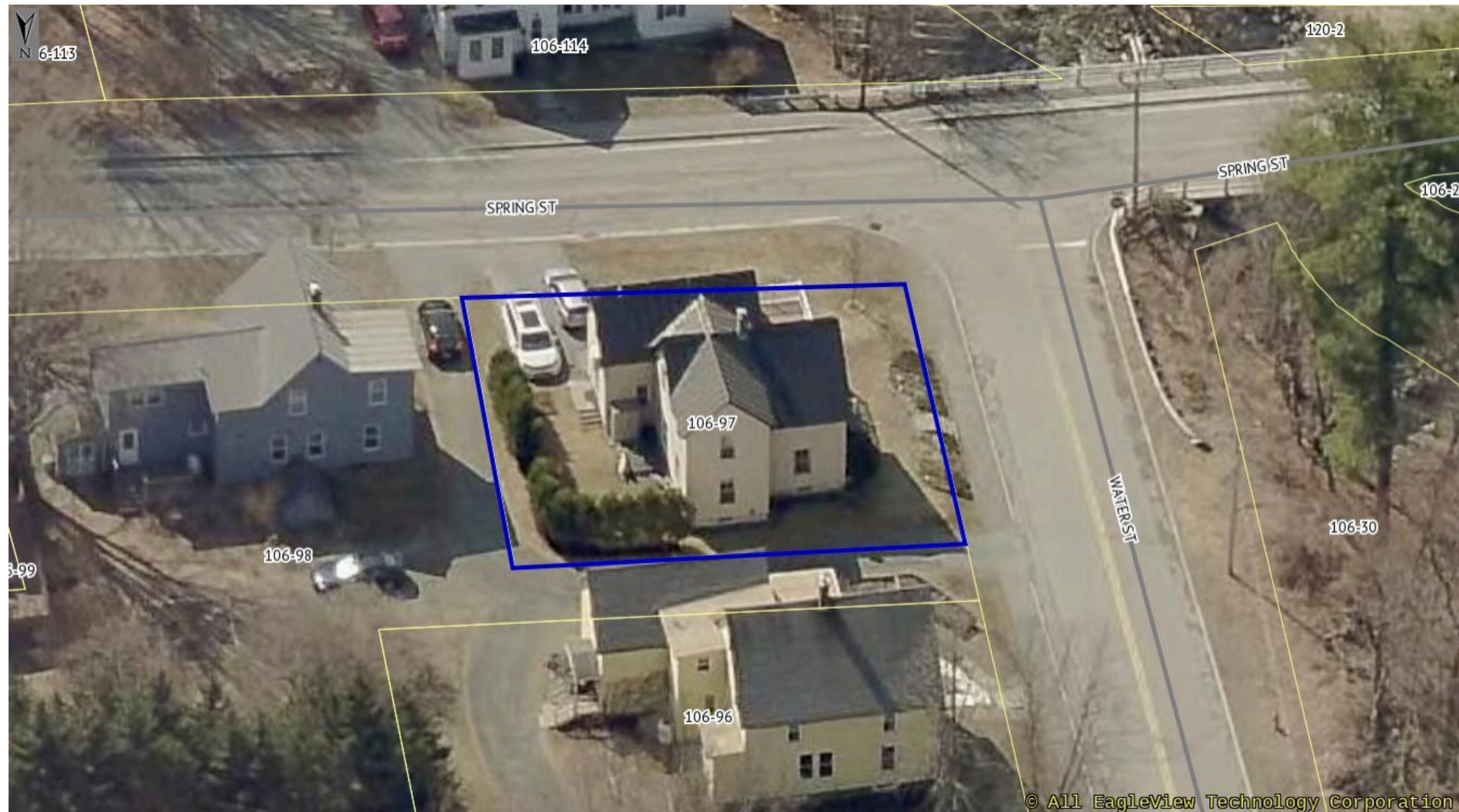


Image capture: Aug 2023 © 2024 Google

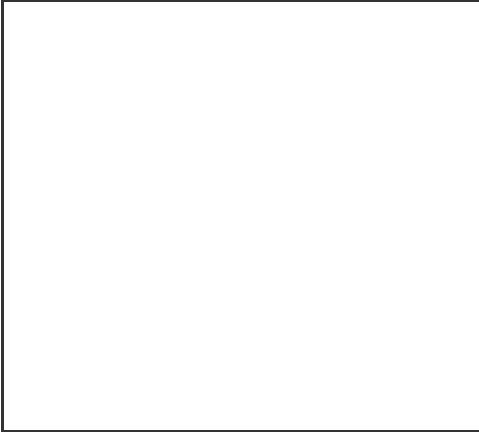
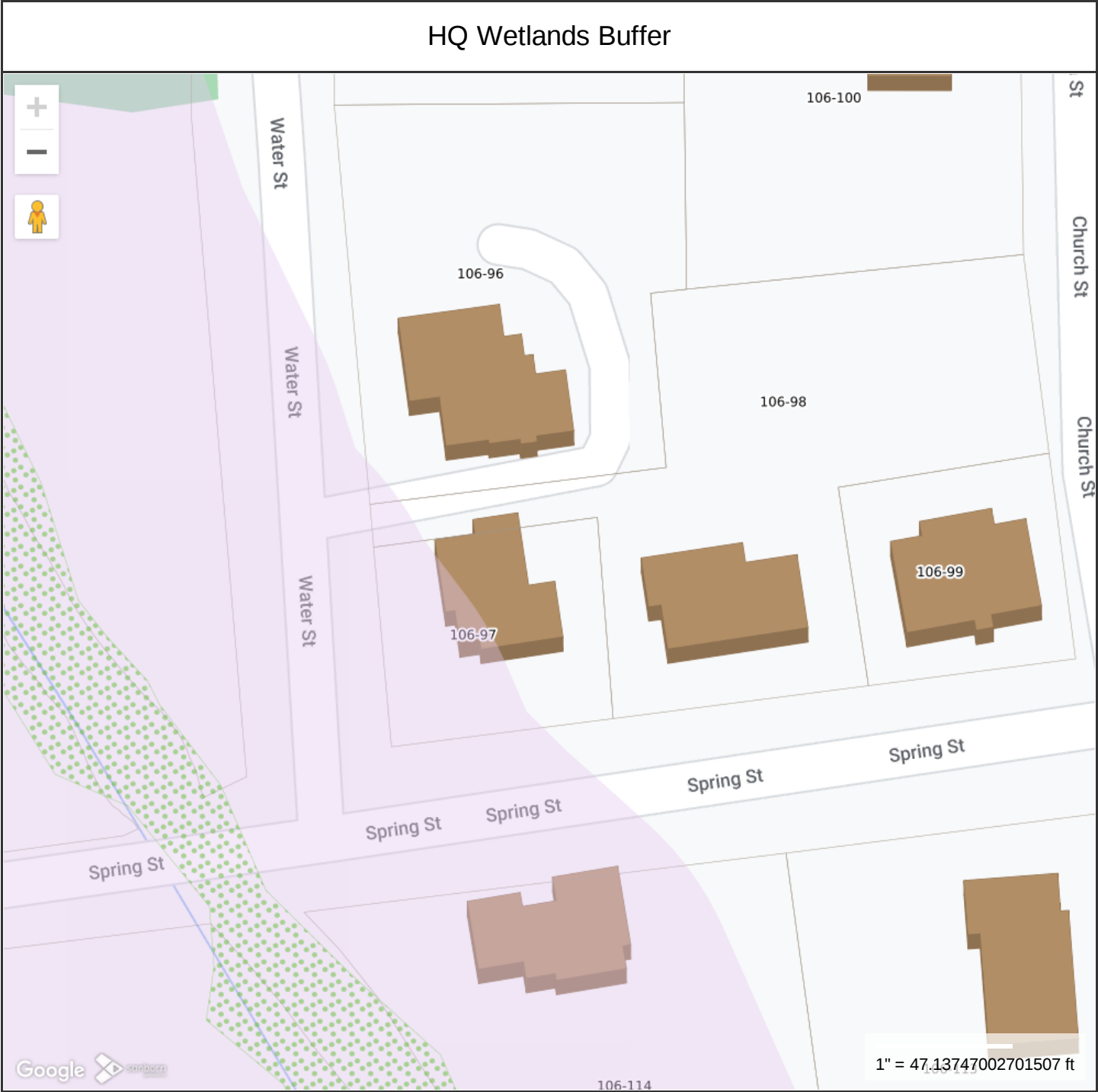


71 Water Eagle 1



Water Eagle 2





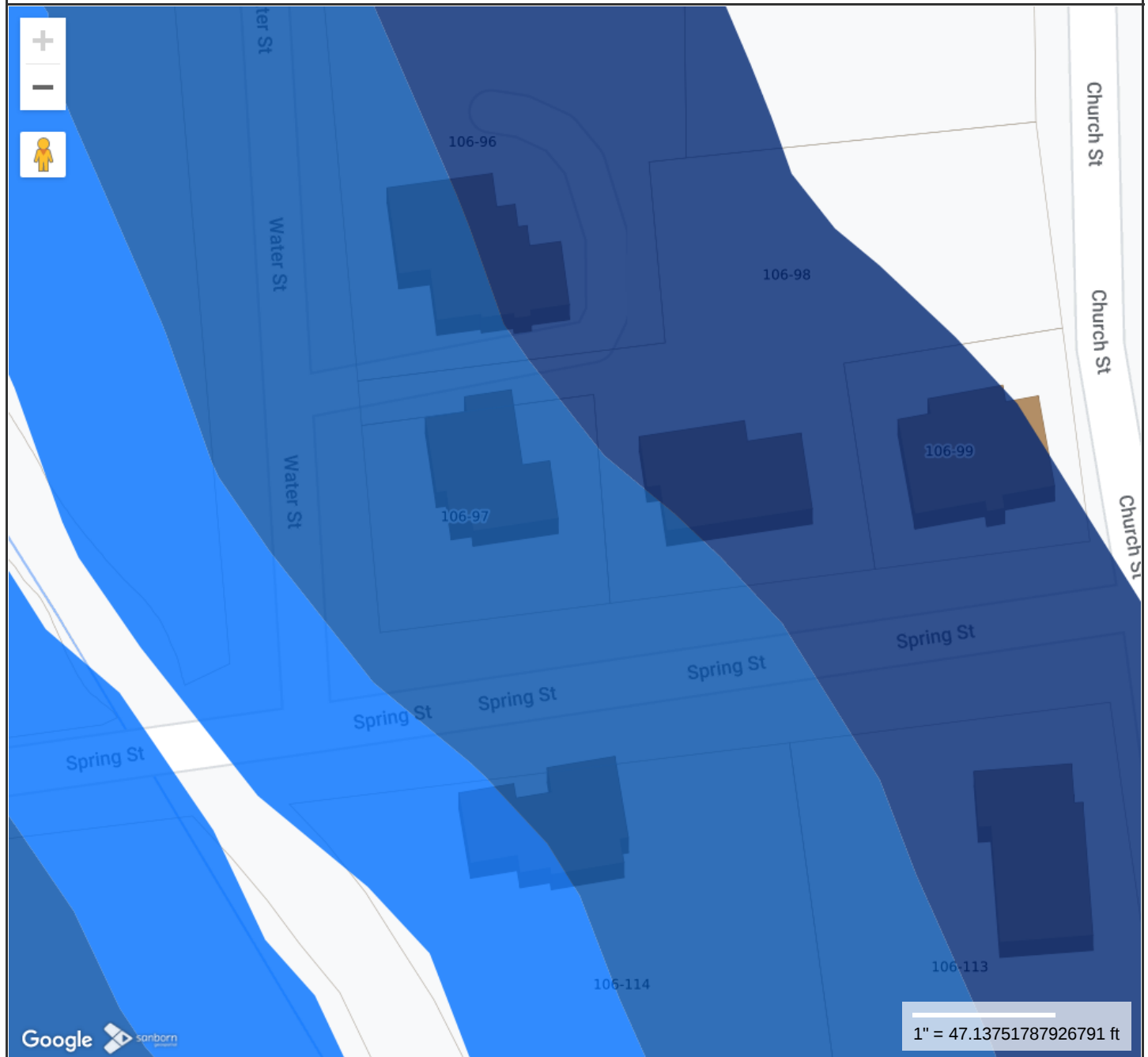

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NH Shoreland Protection

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Lebanon Riverbank Protection

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THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Docket No. 215-2023-CV-00267

CICOTTE HOLDINGS, LLC

v.

CITY OF LEBANON

CERTIFIED RECORD OF THE CITY OF LEBANON
ZONING BOARD OF ADJUSTMENT

The City of Lebanon, by its Deputy Planning and Development Director, Tim Corwin, hereby certifies and verifies that the following documents constitute copies of the record and all papers, plans, ordinances, transcripts, orders and decisions of the Lebanon Zoning Board of Adjustment from which the Plaintiff appeals, as required by the order of the Court in this case.

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THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Docket No. 215-2023-CV-00267

CICOTTE HOLDINGS, LLC

v.

CITY OF LEBANON

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ZONING BOARD OF ADJUSTMENT

THE STATE OF NEW HAMPSHIRE

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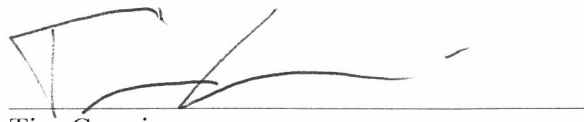
CITY OF LEBANON

CERTIFIED RECORD OF THE CITY OF LEBANON
ZONING BOARD OF ADJUSTMENT

Date:

1/18/24

By:



Tim Corwin
Deputy Planning and Development Director
Duly Authorized

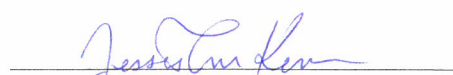
STATE OF NEW HAMPSHIRE
GRAFTON, ss

Personally appeared, Tim Corwin, Lebanon Deputy Planning and Development Director, and made oath that all the documents described above constitute certified copies of genuine records of the Lebanon Zoning Board of Adjustment, relating to Cicotte Holdings, LLC's appeal of administrative decision, which is the subject of this appeal.

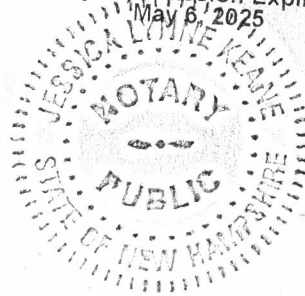
Before me,

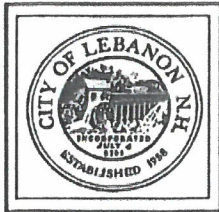
Date:

01/18/2024


Notary Public/Justice of the Peace

JESSICA LYNNE KEANE
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
May 6, 2025





CITY OF LEBANON ~ PLANNING & DEVELOPMENT

April 19, 2023

Via Certified Mail and Electronic Mail

Cicotte Properties, LLC
c/o Johanna Cicotte
PO Box 600
Lebanon, NH 03766
jcicotte1@aol.com

NOTICE OF VIOLATION

RE: 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), Cicotte Properties, LLC (owner)
*Violation of Zoning Ordinance Sections 702.5.D, 311A.2, 402.2, and 901.1.D;
Site Plan Review Regulations Sections 1.6.A and 3.1.D; and City Code Chapter 74,
Sections 74-9 and 74-14*

Ms. Cicotte:

It has come to our attention that the above-referenced property is in violation of the City of Lebanon Zoning Ordinance ("ZO"), the Lebanon Site Plan Review Regulations, and Lebanon City Code Chapter 74 ("Flood Damage Prevention"). According to the records of the New Hampshire Department of State, you are a member of Cicotte Properties, LLC, which, according to the City's records, is the owner of 51 Evans Drive (Tax Map 78, Lot 40, Plot 200). As a member of the entity that owns the subject property, you are responsible for the violations identified above and further described below.

You are hereby ordered to bring all aspects of the property into compliance with the Zoning Ordinance Site Plan Review Regulations, and Chapter 74 of the City Code. *Please be advised that should you fail to take action within the timeframe outlined below, the City of Lebanon will commence legal action against you in court.*

PART I: Background

The subject property is situated in the Residential-Office-One (R-O-1) zoning district. The property is currently improved with a vehicular sales (i.e. car dealership) use, which is neither a Permitted use nor a use allowed by Special Exception or by Conditional Use Permit within the R-O-1 District. The existing vehicular sales use is considered a legal, non-conforming use per Section 700 of the Zoning Ordinance and, therefore, is subject to the regulations of Article VII of the Zoning Ordinance ("Non-Conformities").

Planning and Development Department staff recently observed that a newly paved surface has been installed on the property at the southern end of the parking lot. Judging by observation and subsequently measuring the area using the City's online GIS tool, it appears that the new surface on 175 Heater Road may be approximately 4,000 sq. ft. in size.

NOTICE OF VIOLATION

Cicotte Properties, LLC
51 Evans Dr (78-40-200)
April 19, 2023
Page 2 of 4

PART II: Violations of the Zoning Ordinance

As noted above, the property is currently improved with a vehicular sales use, which is neither a Permitted use nor a use allowed by Special Exception or by Conditional Use Permit within the R-O-1 District (see Section 311A.2 of the ZO). As such, the existing vehicular sales use is considered a legal, non-conforming use per Section 700 of the Zoning Ordinance and, therefore, is subject to the regulations of Article VII of the Zoning Ordinance ("Non-Conformities").

Section 702.5 of the Zoning Ordinance provides for the expansion of legal, non-conforming uses by Special Exception granted by the Zoning Board of Adjustment under certain conditions. However, Section 702.5.D states "[i]n no case shall a legal non-conforming use in whole or in part be allowed to expand [...] to any portion of the lot that was not occupied by the non-conforming use at the time such use became non-conforming pursuant to Section 700."

The newly paved surface adjoining the existing parking area of the car dealership on the subject property constitutes an impermissible expansion of a non-conforming use into an area of the lot that was not previously occupied by the non-conforming use at the time the use became non-conforming. As such, the newly paved surface on the property is in violation of Section 702.5.D and Section 303.2 of the Zoning Ordinance.

The installation of the newly paved surface on the subject property also constitutes violations of the following Sections of the ZO:

- **Section 402.2** – The subject property is located in the Floodplain District overlay per Section 402 of the ZO. Section 402.2 of the ZO requires compliance with Chapter 74 ("Flood Damage Prevention") of the City Code. Section 74-14 of Chapter 74 requires that a floodplain permit shall be obtained "before construction or development begins within any area of special flood hazard[.]" Staff has verified that no Floodplain Permit has been issued for the installation of the paved area and, therefore, is out of compliance with Chapter 74. Consequently, the property is in violation of Section 402.2. of the Zoning Ordinance.
- **Section 901.1.D** – Staff has verified that that no Zoning Permit has been issued for the pavement as is required by Section 901.1.D of the Zoning Ordinance.

PART III: Violations of the Site Plan Review Regulations

Section 1.6.A of the Lebanon Site Plan Review Regulations, adopted May 13, 1991, last revised January 23, 2023, states "[t]hese Site Plan Review Regulations apply to all land development, and no such land development shall proceed without first obtaining a jurisdictional determination from the Planning and Development Department pursuant to Section 3.1."

Section 3.1.D of the Lebanon Site Plan Review Regulations, states "[L]and development that constitutes a major change to a property, including any land development that exceeds the thresholds set forth in Section 3.1.C.1.a-e, shall require site plan approval from the Planning Board in accordance with the procedures set forth in Article IV." Section 3.1.C.1.b establishes a threshold of 2,500 sq. ft. for new improved surfaces, including but not limited to, gravel or paved parking areas, driveways, walkways, or other improved surfaces, whether or not such surfaces are pervious or impervious. For new improved surfaces larger than 2,500 sq. ft. in area, site plan approval from the Planning Board is required.

NOTICE OF VIOLATION

Cicotte Properties, LLC
51 Evans Dr (78-40-200)
April 19, 2023
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As noted above, Planning and Development Department staff observed that the subject property has been covered with a newly paved surface of appears to be approximately 4,000 sq. ft. or more in size, which exceeds the threshold for requiring Site Plan approval from the Planning Board. Consequently, **the installation of the newly paved surface on the property constitutes a violation of Sections 1.6.A and 3.1.D of the Lebanon Site Plan Review Regulations.**

PART IV: Violation of City Code Chapter 74

The subject property is located in a special flood hazard area ("SFHA") as depicted on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA). Consequently, the property is subject to the requirements of City Code Chapter 74 ("Flood Damage Prevention"). See Section 74-7 and 74-8 of the City Code. Section 74-9 provides that, "[n]o structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations[.]" and Section 74-14 requires that a floodplain permit shall be obtained "before construction or development begins within any area of special flood hazard[.]"

The newly installed paved area has been constructed on the property entirely within the SFHA. As noted above, staff has verified that no Floodplain Permit has been issued for the installation of the paved area as required by Section 74-14 of the City Code. As a result, **the property is in violation of Sections 74-9 and 74-14 of Chapter 74 of the City of Lebanon Code.**

Part V: Remedies

YOU ARE HEREBY REQUIRED TO:

- (A) REMEDY THE ABOVE-CITED VIOLATIONS AND BRING THE PROPERTY INTO COMPLIANCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS LETTER.**
- (B) CONTACT THE PLANNING & DEVELOPMENT DEPARTMENT WITHIN TEN (10) DAYS OF THE DATE OF THIS LETTER TO PROVIDE A DETAILED PLAN AS TO HOW THE PROPERTY WILL BROUGHT INTO COMPLIANCE AS PRESRCIBED IN (A) ABOVE.**

Per Section 903 of the Zoning Ordinance, Article X of the SPRR, and RSA 676:17, *failure to comply with this order within the times stated herein may result in a civil penalty of **\$275 per violation** for the first offense, and **\$550 per violation** for subsequent offenses, for each day that such violations are found to continue after the date on which you receive this notice.*

Should you not voluntarily abate these violations, the City will seek (1) injunctive relief under RSA 676:15 to enforce this order, (2) civil penalties under RSA 676:17, I, to the maximum extent allowed by law, and (3) the recovery of its attorney's fees and costs under Section 903.5 of the ZO and RSA 676:17, II. Additionally, the City may be authorized under state law to enter upon your property and cause said violations to be remediated, removed or destroyed. If the City does undertake such action, state law also provides that you, as the property owner, will be liable for the expense of the removal and proper disposal of the items causing these violations. The City's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including the possible loss of the property if not paid.

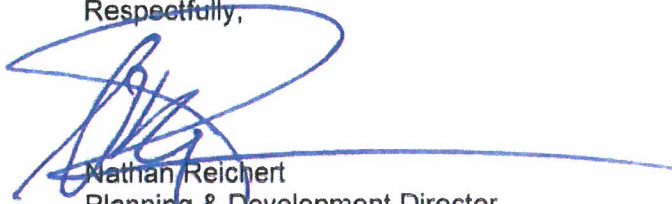
This is a decision of the administrative officer, which you have the right to appeal to the Zoning Board of Adjustment. Should you wish to appeal my interpretation, application or construction of

NOTICE OF VIOLATION

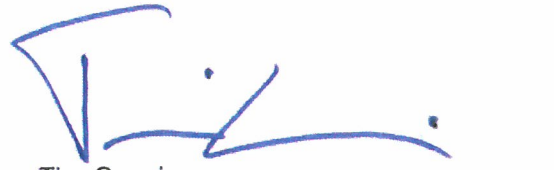
Cicotte Properties, LLC
51 Evans Dr (78-40-200)
April 19, 2023
Page 4 of 4

the Zoning Ordinance you have thirty (30) days from the date of this Notice of Violation to file an appeal. Forms to appeal an administrative decision pursuant to RSA 674:33, I(a) and Section 801.1 of the Zoning Ordinance can be obtained from the Planning and Development Department or online at www.lebanonnh.gov.

Respectfully,



Nathan Reichert
Planning & Development Director
Zoning Administrator



Tim Corwin
Deputy Planning & Development Director

Cc: Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
State of NH Department of Safety – Division of Motor Vehicles
File



28 April 2023

Nathan Reichert, Planning and Development Director
Tim Corwin, Deputy Planning and Development Director
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Notice of Violation
Lot 78-30, 51 Evans Drive

Dear Mr. Reichert and Mr. Corwin:

Cicotte Properties has asked me to prepare a response to your Notice of Violation.

Additional Pavement. Cicotte Properties purchased the property in May 2021. As relayed to me, upon purchase, the area you note as additional pavement was in place and in poor condition. Cicotte Properties engaged Twin State Paving to reclaim the poor paving and repave. A copy of the estimate stating the scope of work is attached. The scope clearly states it is a repair job, not an expansion of paving. It is our position that the expansion, and consequently a violation, was due to the actions of a previous owner. We are willing to work with you to obtain necessary permits for this paving to remain. However, there was no violation on the part of Cicotte Properties.

Flood. There is no violation of the Flood ordinance on the property. Flood maps are often prepared with coarse mapping that does not fully indicate contours and therefore flood limits. Attached is an extract from the Flood Map covering the subject parcel. The Flood elevation covering this area is 578'. Attached is a topographic plan of the property prepared from city GIS data. The actual contour is highlighted on this plan. The flood limit, contour 578, is well away from the area of concern and is NOT in the flood plain. While the parcel includes mapped flood plain, the map is in error. To that end, we can have our surveyor apply for a LOMA (Letter of Map Amendment) or a LOMR (Letter of Map Revision). The amendment will take the flood plain off practically all of this parcel.

Plan of Action. Owner proposes the following actions:

- Zoning. Seek necessary approvals for the parking use and expanded paving.
- Planning. Obtain Site plan approval for the expanded paving.
- Flood. Obtain a LOMA to remove the property, or applicable area, from the Flood Plain.

51 Evans Drive
City of Lebanon
28Apr2023

Please let us know if you need any additional materials to support this response.

Sincerely,

Daniel A. Nash, PE
Principal

Attached:

- Twin State Paving Estimate
- Extract of FEMA Flood Map
- Topo Plan with Flood Limit

CC: Shaun Mullholland, City Manager
David Brooks, Deputy City Manager
Cicotte Properties, LLC

M:\2023_projects\23-006\EXCELWORD\col_nissan_27apr2023.docx



Twin State Paving, LLC
P.O. Box 333
Sunapee, NH 03782 US
+1 6038657246
tspaving@yahoo.com
<http://www.twinstatepaving.com>

Estimate

ADDRESS

Johanna Cicotte
132 Ballardvale Drive
WRJ, Vermont 05001

ESTIMATE # 2441

DATE 05/25/2021

ACTIVITY

AMOUNT

1 - New Hampshire:1a - Paving
Services:NH - Paving
51 Evans dr.
Lebanon NH
03766

250,000.00

Reclaim; to reclaim existing lot,
based on 3" of asphalt and a sub
base mixing of 8". Grade and
compact.

Pave existing sub base area with
2.5" of base course asphalt and
1.5" of finish course asphalt.

FOR THE SUM OF: \$250,000.00

10% due at booking on all
commercial projects. 40% due at
start and balance is due within 30
days of finish.

Thank you for your interest in our company. Paving projects where we have constructed the sub base (12-18" min) will be warrantied for 18 months; paving projects where we have not constructed the sub base will be warrantied for 12 months. We do not guarantee chemical spills, tire marks, growth of vegetation, indents in pavement, broken edges, or delivery/service vehicles, work preformed by sub contractors hired by the customer, or sub base failure that we have not constructed. Payment is due upon completion. Projects/Accounts that exceed 30 days past due will incur finance charges at 1.5% per month; in addition, if litigation is required to satisfy an outstanding debt, Twin State Paving LLC will seek any and all fees associated with recouping funds due. Warranty repairs do not constitute for non-payment. Due to fluctuating liquid prices, this estimate is subject to change to

TOTAL

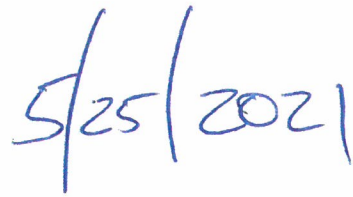
\$250,000.00

meet these changes, therefore this proposal may be withdrawn by us
if not accepted within 30 days.

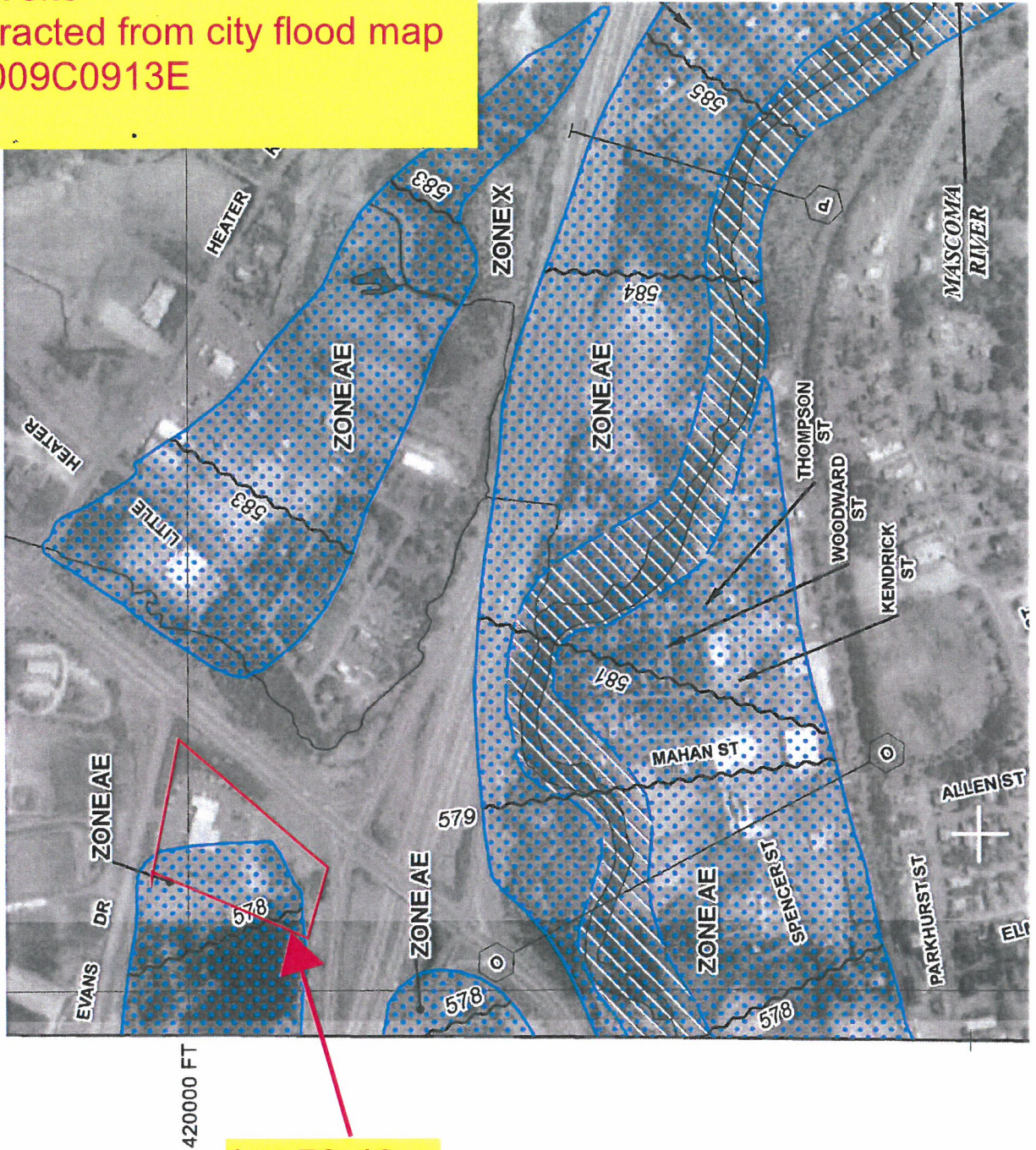
Accepted By

A handwritten signature in blue ink, consisting of a stylized 'H' followed by a cursive 'G'.

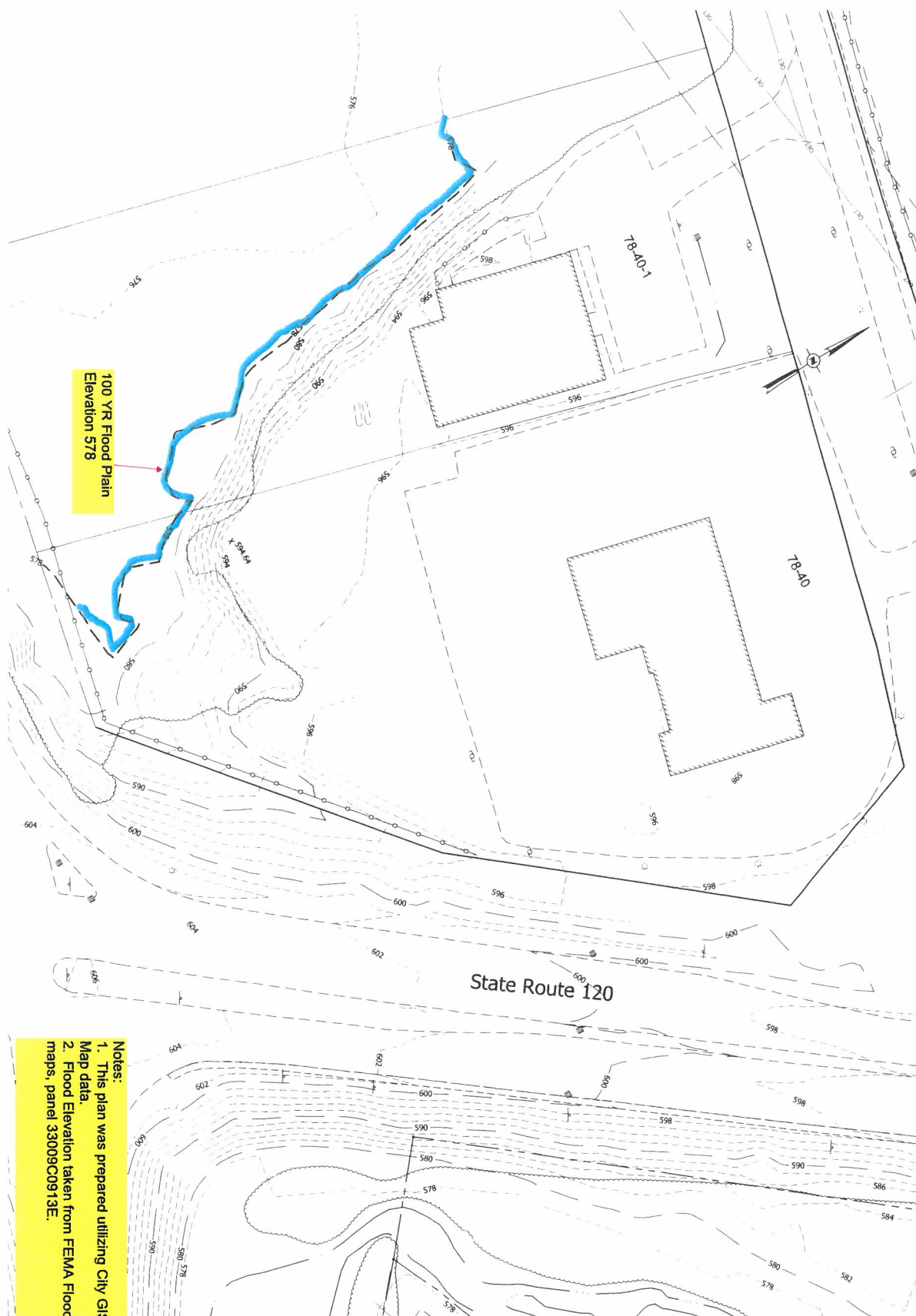
Accepted Date

A handwritten date in blue ink, reading '5/25/2021'.

Apx site
Extracted from city flood map
33009C0913E



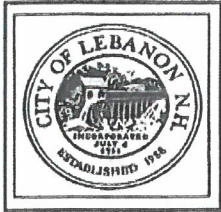
Lot 78-40



Notes:
 1. This plan was prepared utilizing City GIS Map data.
 2. Flood Elevation taken from FEMA Flood maps, panel 33009C0913E.



W-1 TOPO PLAN	DRAWN: JSC CHECKED: JSC DATE: 04/18/2023	ADVANCED GEOMATICS & DESIGN 105 BANK STREET - PO BOX 512 LEBANON, NEW HAMPSHIRE 03766 PHONE: (603) 448-6295 E-MAIL: advancedgeomatix@comcast.net	NISSAN SITE FOR CICOTTE PROPERTIES, LLC IN LEBANON, NEW HAMPSHIRE	REVISIONS NO. DATE DESCRIPTION



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

May 16, 2023

Via Certified Mail and Electronic Mail

Cicotte Properties, LLC
c/o Johanna Cicotte
PO Box 600
Lebanon, NH 03766
icicotte1@aol.com

RE: 51 Evans Drive (Tax Map 78, Lot 40, Plot 200), Cicotte Properties, LLC (owner)
*Violation of Zoning Ordinance Sections 702.5.D, 311A.2, 402.2, and 901.1.D;
Site Plan Review Regulations Sections 1.6.A and 3.1.D; and City Code Chapter 74,
Sections 74-9 and 74-14*

Ms. Cicotte:

We have reviewed the letter from Dan Nash, PE, dated April 28, 2023, sent to the Planning & Development Department on your behalf. In response to Mr. Nash's letter, the Planning & Development Department requires that you submit a **complete** application to the Zoning Board of Adjustment by no later than **Thursday, June 15, 2023**, requesting a Variance from Sections 702.5.D and 303.2 of the Zoning Ordinance to allow an expansion of the non-conforming vehicular sales use. Provided the Variance application is complete, staff will schedule a public hearing to be held at the July 3, 2023, meeting of the Zoning Board of Adjustment.

In order to address the violation of Sections 74-9 and 74-14 of Chapter 74 of the City of Lebanon Code, we also require that you submit to the Floodplain Administrator a **complete** application for a Floodplain Permit by no later than **Thursday, June 15, 2023**. If you wish to apply for a Letter of Map Amendment with the Federal Emergency Management Agency, you are free to do so, but that is not the City's concern at this time. The issue that must be addressed immediately is that the subject property is currently located in the Floodplain District and a Floodplain Permit for the new pavement was not obtained prior to construction as required by Chapter 74.

Finally, if the Variance is granted by the Zoning Board, the Planning & Development Department requires that you submit a full and complete Site Plan application to the Planning Board by the next submission date following approval by the Zoning Board. For example, if the Zoning Board approves the Variance request at its meeting on July 3, 2023, a full and complete Site Plan application will need to be submitted to the Planning & Development Department on or before the July 10, 2023 Planning Board application deadline.

Please note that in preparing the site plan application, the entire property is subject to all of the site plan submission and design requirements set forth in Article V and Article VI, respectively, of the Site Plan Review Regulations. Consequently, to the extent the property is non-conforming with the current requirements of the Site Plan Review Regulations, the entire property will need to be brought into compliance with the current requirements as part of your Site Plan application.

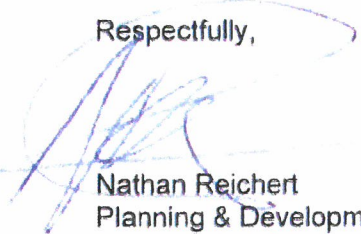
As a reminder, per Section 903 of the Zoning Ordinance, Article X of the SPRR, and RSA 676:17, *failure to comply with this order within the times stated herein may result in a civil penalty of \$275*

per violation for the first offense, and \$550 per violation for subsequent offenses, for each day that such violations are found to continue after the date on which you receive this notice.

Should you not voluntarily abate these violations in accordance with the deadlines set forth above, the City will seek (1) **injunctive relief** under RSA 676:15 to enforce this order, (2) **civil penalties** under RSA 676:17, I, **to the maximum extent allowed by law**, and (3) the recovery of its **attorney's fees and costs** under Section 903.5 of the ZO and RSA 676:17, II. Additionally, the City may be authorized under state law to enter upon your property and cause said violations to be remediated, removed or destroyed. If the City does undertake such action, state law also provides that you, as the property owner, will be liable for the expense of the removal and proper disposal of the items causing these violations. The City's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including the possible loss of the property if not paid.

We look forward to receiving your Variance application on or before June 15, 2023. Please be sure to carbon copy the Planning & Development Department when submitting the Floodplain Permit application to the Floodplain Administrator, also due on or before June 15, 2023.

Respectfully,



Nathan Reichert
Planning & Development Director
Zoning Administrator



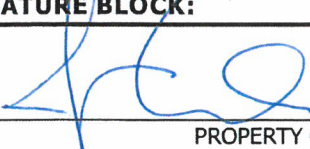
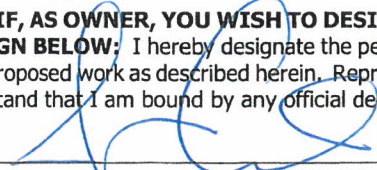
Tim Corwin
Deputy Planning & Development Director

Cc: Dan Nash, Advanced Geomatics & Design
Shaun Mulholland, City Manager
David Brooks, Deputy City Manager
Rod Finley, PE, Floodplain Administrator
State of NH Department of Safety – Division of Motor Vehicles
File

**CITY OF LEBANON
APPLICATION FOR**

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

ZBA

PROPERTY OWNER (APPLICANT):			
NAME: Cicotte Properties, LLC		TEL.#:	
MAILING ADDRESS: PO Box 600, Lebanon, NH 03766			
E-MAIL ADDRESS:			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME: Barry Schuster		TEL.#: 603-448-4780	
MAILING ADDRESS: PO Box 388, Lebanon, NH 03766			
E-MAIL ADDRESS: barry@ivylegal.com			
PROJECT LOCATION:			
TAX MAP #: 78	LOT#: 40	PLOT #: 200	ZONE R-O-1:
STREET ADDRESS OF PROJECT: 51 Evans Drive			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO			
FLOOD PLAIN ☐ YES ☒ NO			
SCOPE OF PROJECT:			
appeal of Notice of Violation dated April 19, 2023 and administrative decision May 16, 2023			
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:			
		DATE: 5/17/23	
PROPERTY OWNER			
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.			
		DATE: 5/17/23	
PROPERTY OWNER			

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #		
5/22/2023	78/40/200	ZB2023-11-AAD		

(12/07/07)

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

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

City of Lebanon Zoning Ordinance:

APPEALS:

801.1 Administrative Appeals.

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

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

802.4 Decisions of the Board.

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

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

I am appealing the decision of: Nathan Reichert, Director, and Tim Corwin, Deputy Director made on this date: April 19 and May 16, 2023. (copies attached).
(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: The Nissan dealership property is not in the floodplain and appropriate evidence is begin requested at this time. The alleged increase in parking area may pre-date the terms of the current ordinance as the property is a grandfathered, non-conforming use that has been in existence since the 1960's and vehicles have been parked in that area for many years. Additional research is being done to review any prior approvals and plans. The deadlines demanded by the City are unreasonable and prevent the applicant from providing the required information to the City.

In Relation to Article(s): See City letters, attached.
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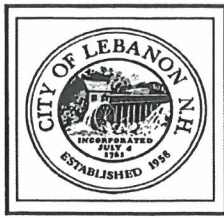
CERTIFIED NOTIFICATION LIST

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: 78-40-200	MAP & LOT NUMBER: 78-40-200
PROPERTY OWNER: Cicotte Properties PO Box 600 Lebanon, NH 03766	APPLICANT: Cicotte Properties PO Box 600 Lebanon, NH 03766
MAP & LOT NUMBER: 64-32-100	MAP & LOT NUMBER: 64-33
ABUTTER/OTHER: IKI OLD GATE LLC PO BOX 734 LEBANON, NH 03766	ABUTTER/OTHER: LEBANON SCHOOL DISTRICT 20 SEMINARY HILL WEST LEBANON, NH 03784
MAP & LOT NUMBER: 78-40-100	MAP & LOT NUMBER: _____
ABUTTER/OTHER: EVANS DR SPE LLC PO BOX 600 LEBANON, NH 03766	ABUTTER/OTHER: Barry Schuster PO Box 388 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:

(9/17/04)



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT NOTICE OF PUBLIC HEARINGS

Notice is hereby given that public hearings will be held at the next meeting of the Lebanon Zoning Board of Adjustment on **Monday, June 5, 2023**, at 7:00 pm in Council Chambers, Lebanon City Hall, 51 North Park Street, Lebanon, NH, concerning the following applications:

Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class 1: Applicant proposes to demolish an existing garage and construct in its place a 24 x 30 detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-09-VAR**

Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:
A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE**

Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1: An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD**

The public is invited to attend the hearings in person, on-line, or by phone. For instructions on how to attend on-line or by phone, please visit [LebanonNH.gov/Live](https://lebanonnh.gov/Live). The applications under consideration are available for review Monday - Thursday, 7:00 am to 5:00 pm at the Planning and Development Department, City Hall, 51 North Park Street, Lebanon, NH, and are also posted to the City's website prior to the meeting at <https://lebanonnh.gov/1422/Agendas-Minutes-and-Meetings>. For questions, please contact the Planning and Development Department at 603-448-1457 or planning@lebanonnh.gov.

NOTE: Any person with a disability who wishes to attend this public meeting and needs additional accommodations, please contact the ADA coordinator at City Hall by calling 448-1457 at least 72 hours in advance so that arrangements can be made.

MAY 25 2023



**CITY OF LEBANON
PLANNING & DEVELOPMENT**

**ZONING BOARD OF
ADJUSTMENT NOTICE OF
PUBLIC HEARINGS**

Notice is hereby given that public hearings will be held at the next meeting of the Lebanon Zoning Board of Adjustment on **Monday, June 5, 2023**, at 7:00 pm in Council Chambers, Lebanon City Hall, 51 North Park Street, Lebanon, NH, concerning the following applications:

Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class 1: Applicant proposes to demolish an existing garage and construct in its place a 24 x 30 detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance.
ZB2023-09-VAR

Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class 1: A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements.
ZB2023-12-SE

Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1: An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable.
ZB2023-11-AAD

The public is invited to attend the hearings in person, on-line, or by phone. For instructions on how to attend on-line or by phone, please visit [LebanonNH.gov/Live](https://lebanonnh.gov/Live). The applications under consideration are available for review Monday - Thursday, 7:00 am to 5:00 pm at the Planning and Development Department, City Hall, 51 North Park Street, Lebanon, NH, and are also posted to the City's website prior to the meeting at <https://lebanonnh.gov/1422/Agendas-Minutes-and-Meetings>. For questions, please contact the Planning and Development Department at 603-448-1457 or planning@lebanonnh.gov.

NOTE: Any person with a disability who wishes to attend this public meeting and needs additional accommodations, please contact the ADA coordinator at City Hall by calling 448-1457 at least 72 hours in advance so that arrangements can be made.

NE-419688

LAW OFFICES OF
SCHUSTER, BUTTREY & WING
Professional Association
79 Hanover Street
P.O. Box 388
Lebanon, New Hampshire 03766
Practice of Law in New Hampshire and Vermont

Barry C. Schuster
barry@ivylegal.com

Telephone
603-448-4780
Fax
603-448-3683

June 5, 2023

Zoning Board of Adjustment
Lebanon, NH

Re: Cicotte Holdings, LLC - Map 78, Lot 40

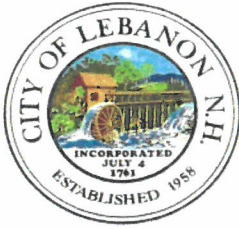
Dear Board Members:

The appeal of administration decision by Cicotte Holdings, LLC, is on the Board's agenda for June 5, 2023. Jeremy Katz is a member of the Board and may be present at that meeting. If he is present, Cicotte Holdings, LLC, respectfully requests that Mr. Katz not participate in this hearing and be recused. Mr. Katz has previously shown partiality against and prejudice to prior applications to the Board by Johanna Cicotte, the owner and member of Cicotte Holdings, LLC. Additionally, Mr. Katz had a prior professional relationship with the attorneys who represent Ms. Cicotte. Although that relationship has been terminated, that is likely to affect the impartiality of Mr. Katz. As a professional matter, our firm is limited on any further comments.

Given the potential for conflict or a lack of impartiality, Mr. Katz should be recused and should not sit on the Board for the consideration of the appeal by Cicotte Holdings, LLC

Very truly yours,
/s/ Barry C. Schuster

BCS/sf
cc: Cicotte Holdings, LLC



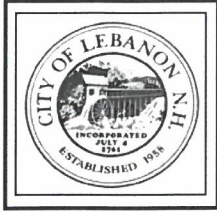
**LEBANON ZONING BOARD OF ADJUSTMENT
JUNE 5, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

- 1. Call to Order**
- 2. Approval of Minutes**
 - A. April 3, 2023
- 3. Public Hearing Items**
 - A. **Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class 1:** Applicant proposes to demolish an existing garage and construct in its place a 24 x 30 detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-09-VAR**
 - B. **Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE**
 - C. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD**
- 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).



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT Violation Appeal

Staff Memorandum – ZB2023-11-AAD

June 5th 2023 Regular Meeting

Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:
Special Exception
pursuant to §703.1A.

Location:
51 Evans Dr.
Tax Map 78, Lot 40

Applicant/Property Owner:
Cicotte Holdings, LLC
Represented by Attorney Barry
Schuster

Zoning District:
Residential Office District 1
Class 1 (R-O-1)

Property Size:
+/- 3.32 acres (+/-144,619.2 sq. ft.)
(per the City Assessor's records;
property is conforming to the min.
required 10,000 sq. ft. lot size in the
R-2 Class 1 District per §311A.3)

Overlay Districts:
FEMA Flood Zone
Wetlands

Previous ZBA Action (since 1995):
Sign Violation 2015

Other Approvals Required:
Building Permit
Wetlands
Flood Zone
Planning

Attachments:
Application
GIS and street view photos

HEARING NOTICE

Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1: An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. ZB2023-11-AAD

BACKGROUND

The property is improved with a car dealership with a primary building constructed in 1969 per the City Assessor's records. The lot is dimensionally conforming to the R-O-1 Class 1 District with a minimum required lot size of 10,000 sq. ft. and a width of 75'. The lot is 144,619 sq. ft., approx.300 feet of frontage on Evans Drive. The Use of the property as a car sales lot / dealership is legal non-conforming pursuant to 311A.2 R-O-1 Table of Uses and prior determinations made by the Zoning Official.

PROPOSAL

The applicant is appealing the Notice of Violation Dated April 19th 2023 and May 16th 2023.

ZONING ORDINANCE REQUIREMENTS

APPEALS

The powers and duties of the Board shall be as prescribed by NH RSA 674:33, as amended. The powers and duties are:
§801.1 Administrative Appeals.

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

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

STAFF MEMORANDUM

ZB2023-08-SE
43 Elm Street West
(Tax Map 86, Lot 39, Plot 100)
April 3rd 2023 ZBA Meeting
Agenda Item 3.B
Page 2 of 3

The Administrative Office hereby confers to the record as it stood at the time the decision to issue a Notice of Violation on April 19th and further stated in the letter of May 16th 2023:

Evidence:

Exhibit 1: Notice of Violation – April 19th 2023
Exhibit 2: Violation Letter of May 16th 2023
Exhibit 3: Site Photograph 1 taken by Tim Corwin
Exhibit 4: Site Photograph 2 taken by Tim Corwin
Exhibit 5: Site Photograph 3 taken by Tim Corwin
Exhibit 6: 2015 GIS Aerial Photo Pavement Edge
Exhibit 7: 2015 GIS Aerial Phot Entire Site
Exhibit 8: GIS Wetlands Overlay
Exhibit 9: 2021 GIS Aerial Photo Pavement Edge
Exhibit 10: GIS Flood Zone Overlay
Exhibit 11: FEMA FIRMETTE Map
Exhibit 12: 28 April 2023 Letter from ADG – Advanced Geomatics & Design to Planning and Development

Statement of Facts:

At the time of the Violation's discovery no permit application(s) that would permit the activities undertaken and completed had been received by the Planning and Development Office.

At the time of the Violation's discovery the work had been completed.

The Property is considered by the Zoning Official to be legal non-conforming by use.

The Property is within the FEMA Flood Zone. (Refer to GIS overlay and FEMA FIRMETTE Maps Exhibits 10 and 11)

The Property contains a wetland. (Refer to GIS overlay Exhibit 8)

APPEAL PROCEDURE REQUIREMENTS

The Zoning Board of Appeals is now obligated to stand in the shoes of the Zoning Official, contemplate the same evidence available to the Zoning Official at the time of the determination and make a finding.

The Applicant has the Burden to Prove that there *"is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance."*

The Zoning Official may testify as to the record and the reasoning for the making of the determination.

The Zoning Board of Appeals is empowered to *"reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken."*

STAFF MEMORANDUM

ZB2023-08-SE
43 Elm Street West
(Tax Map 86, Lot 39, Plot 100)
April 3rd 2023 ZBA Meeting
Agenda Item 3.B
Page 3 of 3

APPLICATION AND SUPPORT STATEMENT

The applicant has submitted testimony addressing the §801.1 Appeal Criteria in an application received by the Planning and Development Department on May 22nd 2023 (see attached).

STAFF COMMENTS

The Zoning Official hereby prays that the Zoning Board of Adjustment Affirm Wholly the Notice of Violation Dated April 19th 2023 and May 16th 2023 for the following reasons:

The Application for Appeal contains only a short statement addressing the Appeal with no supporting evidence included. The statement is: *"The Nissan dealership property is not in the floodplain and appropriate evidence is being requested at this time. The alleged increase in parking area may pre-date the terms of the current ordinance as the property is a grandfathered, non-conforming use that has been in existence since the 1960's and vehicles have been parked in that area for many years. Additional research is being done to review any prior approvals and plans. The deadlines demanded by the City are unreasonable and prevent the applicant from providing the required information to the City."*

The previous statement is the extent of the appeal case that has been submitted to the City. City Staff does not understand precisely what is being appealed. There is no evidence that accompanies the assertions made in the prior statement. The burden of proof to prove that an "error" has been made by the Administrative Officer has been made rests with the Applicant. Given a lack of clarity of the Appeal and no Evidence to support the prior statements, staff requests that the Applicant's case be presented at the hearing and reserves the right to immediately continue the proceeding, thereby allowing for the preparation of a vigorous defense of the Notice of Violations and a response to any additional testimony, evidence or arguments made by the Applicant.

Further, the notice of this Appeal Hearing is narrowly crafted to address only three questions which are:

1. The property is not in the flood zone.
2. That the parking area is grandfathers.
3. That the deadlines are unreasonable.

Should the Applicant seek to expand arguments beyond the noticed topics which reflect the Applicant's Appeal Application additional public notice may be required.

Should the Applicant not submit additional evidence or testimony which directly demonstrated that the Administrative Officer has made an "Error", the Officer pleads that the Board summarily Wholly Sustain the Determination of the Administrative Officer.

Respectfully submitted,



Nathan Reichert, Director
Planning and Development Department
Zoning Administrator

CERTIFIED NOTIFICATION LIST

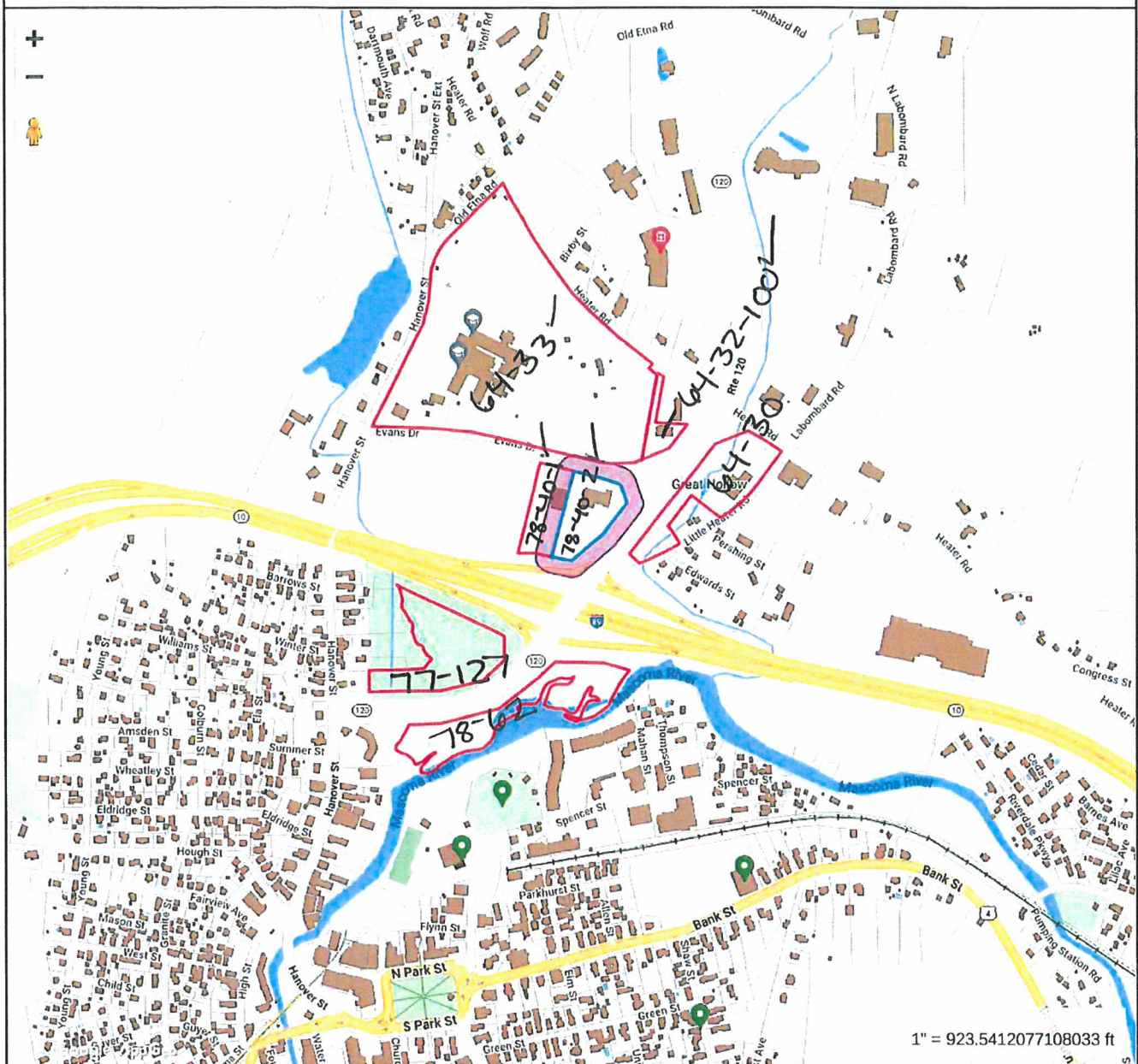
THE CITY OF LEBANON IS REQUIRED UNDER NH RSA 672:3 TO NOTIFY THE FOLLOWING PERSONS OF PUBLIC HEARINGS BEFORE THE PLANNING BOARD: ALL ABUTTERS; THE APPLICANT; PROPERTY OWNER; HOLDER OF CONSERVATION, PRESERVATION, OR AGRICULTURAL PRESERVATION RESTRICTION(S); AND EVERY ENGINEER, ARCHITECT, LAND SURVEYOR, 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: 78-40-200 ✓	MAP & LOT NUMBER: 78-40-200
PROPERTY OWNER: Cicotte Properties PO Box 600 Lebanon, NH 03766	APPLICANT: Cicotte Properties PO Box 600 Lebanon, NH 03766
MAP & LOT NUMBER: 64-32-100 ✓	MAP & LOT NUMBER: 64-33 ✓
ABUTTER/OTHER: IKI OLD GATE LLC PO BOX 734 LEBANON, NH 03766	ABUTTER/OTHER: LEBANON SCHOOL DISTRICT 20 SEMINARY HILL WEST LEBANON, NH 03784
MAP & LOT NUMBER: 78-40-100 ✓	MAP & LOT NUMBER: _____
ABUTTER/OTHER: EVANS DR SPE LLC PO BOX 600 LEBANON, NH 03766	ABUTTER/OTHER: Barry Schuster PO Box 388 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:

(9/17/04)

ID	Site Address	Owner Name	Co-Owner Name 1	Co-Owner Name 2	Owner Address	Owner City	Owner State	Owner Zip
64-33	195 HANOVER ST EXT	LEBANON SCHOOL DISTRICT 9589 0710 5270 0564 8275 77			20 SEMINARY HILL	WEST LEBANON	NH	03784
77-127	0 NH ROUTE 120	CITY OF LEBANON			51 NORTH PARK ST	LEBANON	NH	03766
78-40-100	63 EVANS DR	EVANS DR SPE LLC			PO BOX 600	LEBANON	NH	03766
78-62	0 HANOVER ST	CITY OF LEBANON			51 NORTH PARK ST	LEBANON	NH	03766
64-32-100	203 HEATER RD	IKI OLD GATE LLC 9589 0710 5270 0564 8275 84			PO BOX 734	LEBANON	NH	03766
64-30	175 HEATER RD	CICOTTE PROPERTIES LLC			PO BOX 600	LEBANON	NH	03766
78-40-200	51 EVANS DR	CICOTTE HOLDINGS, LLC 9589 0710 5270 0564 8275 91 BARRY SCHUSTER	CICOTTE PROPERTIES LLC EVANS DR SPE LLC		PO BOX 600	LEBANON	NH	03766
		9589 0710 5270 0564 8276 07			PO BOX 388	LEBANON	NH	03766

**Property Information**

Property ID 78-40-200
 Location 51 EVANS DR
 Owner CICOTTE HOLDINGS, LLC

**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/28/2022
 Data updated 11/18/2018

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

FEE SCHEDULE ZONING BOARD OF ADJUSTMENT

SPECIAL EXCEPTION:		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
CERTIFIED NOTIFICATION FEE (SEE NOTE)	Current USPS Rate x _____ notices	
TOTAL DUE		\$

VARIANCE:		
		TOTALS
FILING FEE	\$150.00	\$150.00
ADVERTISING FEE	\$100.00	\$100.00
CERTIFIED NOTIFICATION FEE (SEE NOTE)	Current USPS Rate x _____ notices	
TOTAL DUE		\$

APPEAL OF AN ADMINISTRATIVE DECISION:		
		TOTALS
ADVERTISING FEE	\$100.00	\$100.00
CERTIFIED NOTIFICATION FEE (SEE NOTE)	Current USPS Rate x <u>4</u> notices	\$19.00
TOTAL DUE		\$ 119.00

*REHEARING:		
		TOTALS
*ADVERTISING FEE	\$100.00	\$100.00
CERTIFIED NOTIFICATION FEE (SEE NOTE)	Current USPS Rate x _____ notices	
TOTAL DUE		\$

* Fees are only required if the motion for rehearing is granted by the board.



City of Lebanon
51 North Park Street
Lebanon, NH 03766-1381

Receipt: 0000763825
Date: 05/25/23
Cashier: TIFFANY.ADAMS
Received Of: SCHUSTER, BUTTREY & WING P.A.
PO BOX 388
The sum of: 119.00

ZON FEES	ZB2023-11-AAD		119.00
		1100-3401-0010-9390-0030	119.00
		Total:	119.00

TENDERED:	Check	27180	119.00
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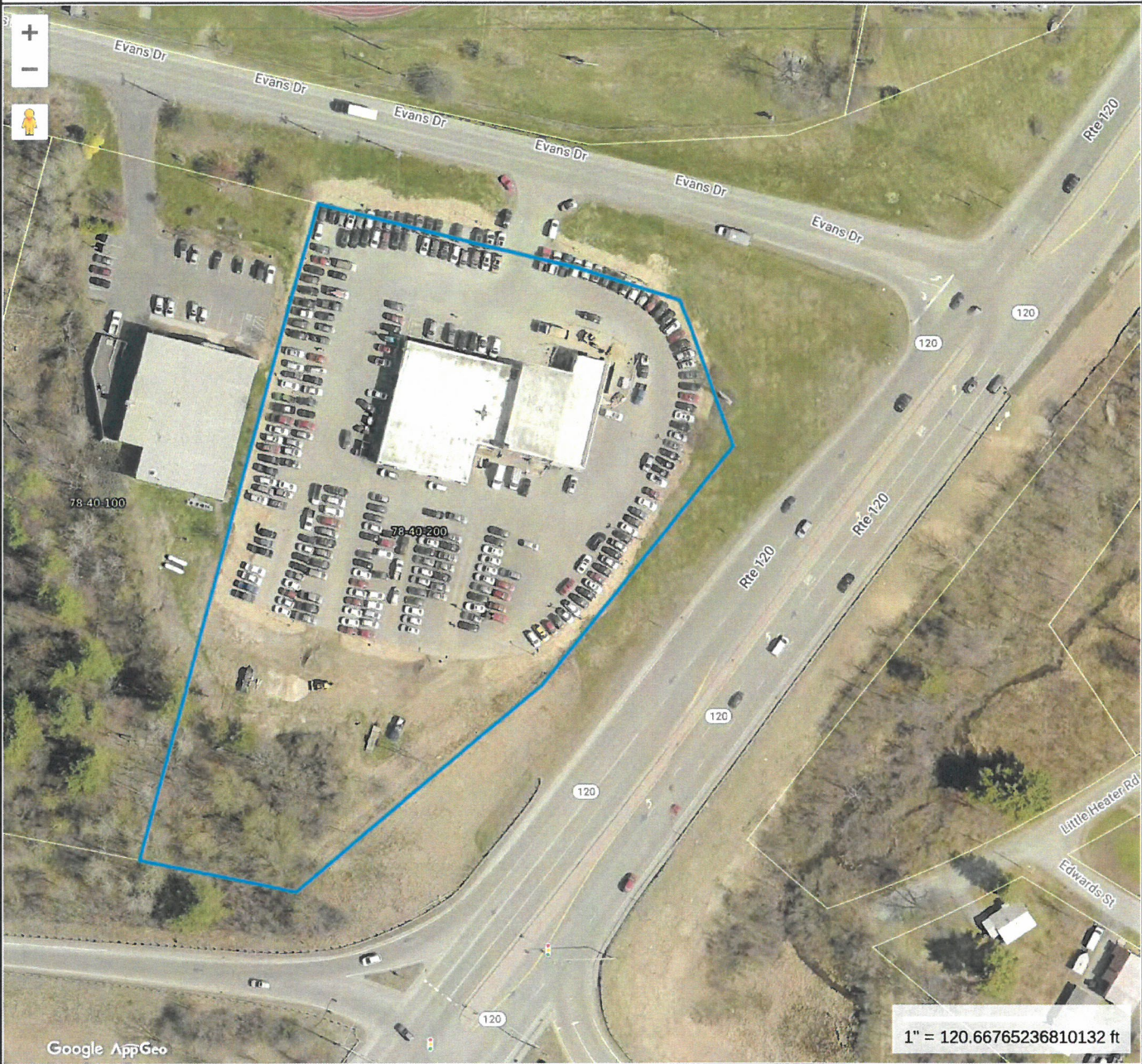




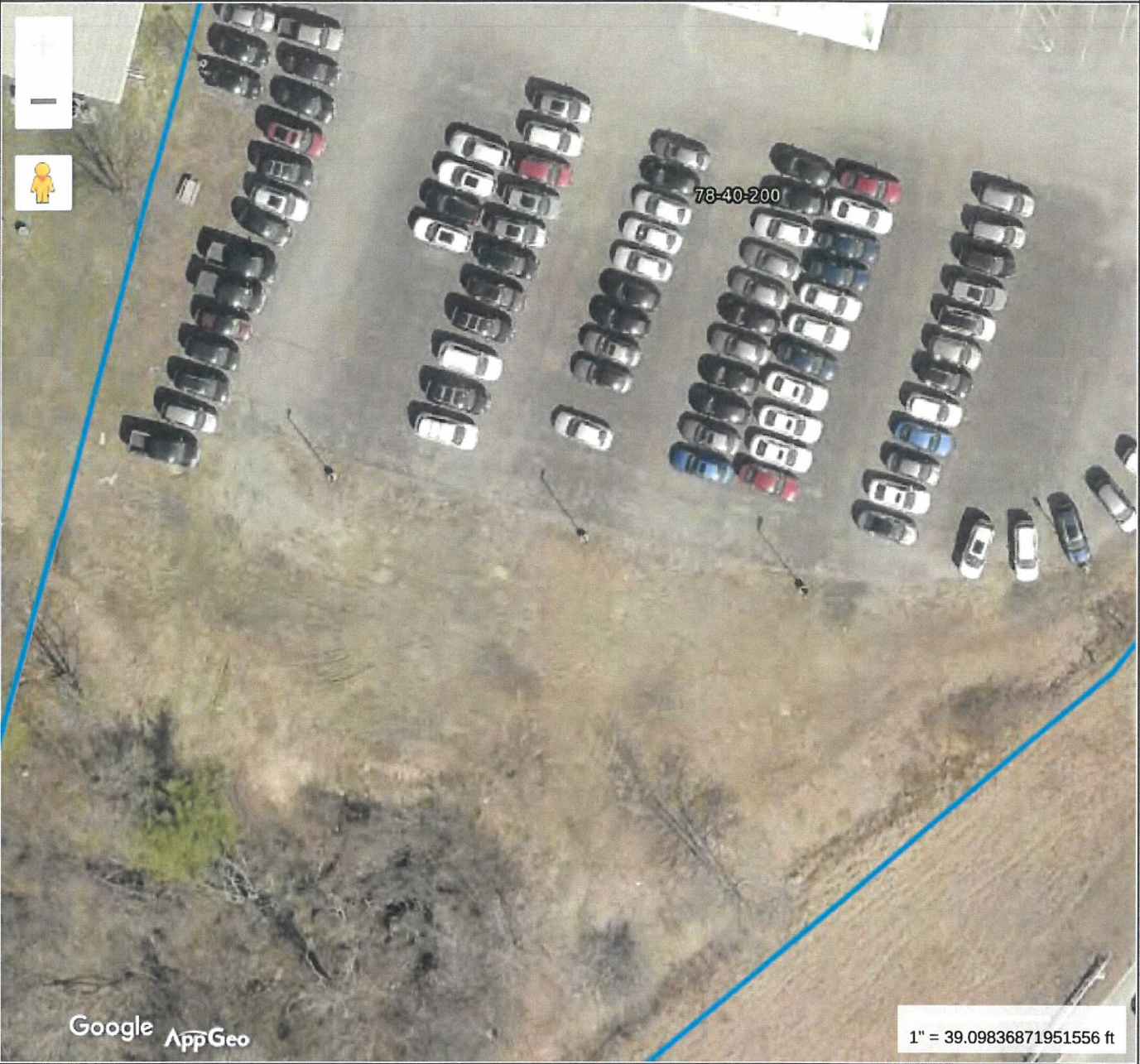




Property Information Property ID 78-40-200 Location 51 EVANS DR Owner CICOTTE HOLDINGS, LLC	 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/28/2022 Data updated 11/18/2018	Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
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Property Information Property ID 78-40-200 Location 51 EVANS DR Owner CICOTTE HOLDINGS, LLC	 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/28/2022 Data updated 11/18/2018	Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
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Property Information Property ID 78-40-200 Location 51 EVANS DR Owner CICOTTE HOLDINGS, LLC	 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/28/2022 Data updated 11/18/2018	Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
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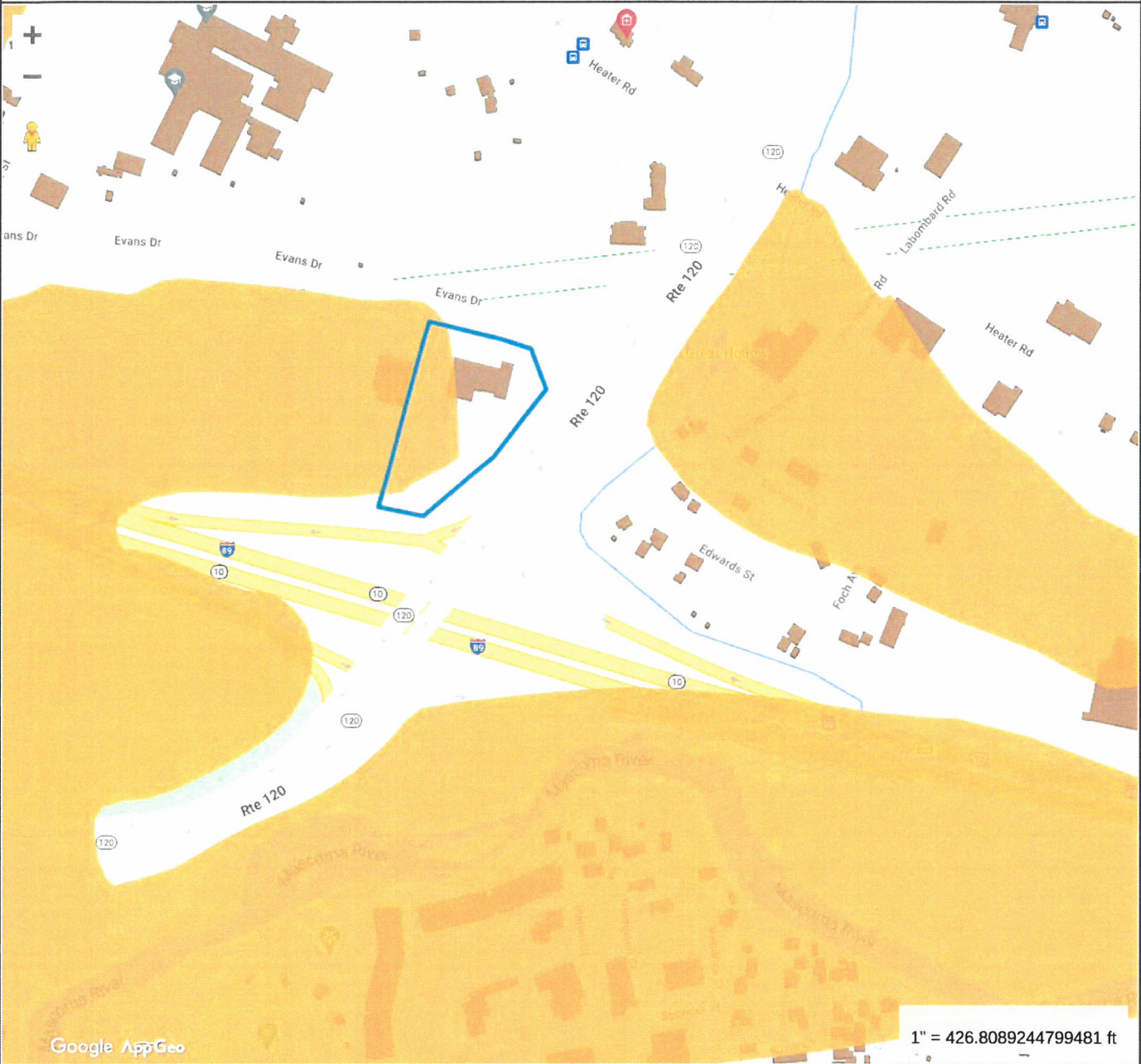


Property Information		 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/28/2022 Data updated 11/18/2018	Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
Property ID	78-40-200		
Location	51 EVANS DR		
Owner	CICOTTE HOLDINGS, LLC		

Map Theme Legends

Wetlands

-  Wetland
-  100 ft High Value Wetland Buffer



Property Information Property ID 78-40-200 Location 51 EVANS DR Owner CICOTTE HOLDINGS, LLC	 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 12/28/2022 Data updated 11/18/2018	Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
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Map Theme Legends

FEMA Flood Zones

- 100 YEAR
- 500 YEAR



FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, June 5, 2023
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Dan Nash, Paul McDonough, Jennifer Barkley (Alt)

MEMBERS ABSENT: Dave Newlove, Catherine Hembree (Alt)

STAFF PRESENT: Nathan Reichert – Zoning Administrator
Tim Corwin – Deputy Planning and Development Director

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:03 PM.

Ms. Barkley was given voting privileges for this meeting.

The hearings and the meeting agenda have been reordered.

2. PUBLIC HEARING ITEMS

- A. Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements.
ZB2023-12-SE

A notice to continue was received. Attorney Simpson appeared and has discovered there is additional material that they would like to submit. They would like to postpone the hearing until August.

Mr. Nash MOVED to continue this hearing until August 7, 2023.

Seconded by Mr. Katz.

Aleasandra van Loggerenberg asked about the process for delaying the meeting. Is there a guarantee that they would be notified regarding the time of the next hearing in August? The first meeting in August is August 7, 2023. There would be no additional notification because notice was given at this meeting. There is no assurance that the hearing would be that date, but if the hearing is continued again, prior to the 7th, it would typically be published on the agenda for the meeting that is published. Because this is a last-minute request for continuance there was not a way to give notification. There would be a notice on the City website.

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

3. APPROVAL OF MINUTES

- A. April 3, 2023**

Mr. Nash MOVED to approve the April 3, 2023, Minutes as presented in the June 5, 2023. Seconded by Mr. Katz.

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

2. PUBLIC HEARING ITEMS-CONTINUED

B. Joshua Tuohy & Meggin Dossett, 7 Riverdale Pkwy (Tax Map 93, Lot 17), zoned R-3 Class

1: Applicant proposes to demolish an existing garage and construct in its place a 24 x 30 detached garage with a finished room above. Applicant requests a 10' right-side yard setback variance pursuant to section §801.2 Variances of the Zoning Ordinance to construct the proposed garage +/- 5 ft from the right-side lot line where the minimum required setback is 15' as required by Section §309.3 of the Zoning Ordinance. **ZB2023-09-VAR**

Josh Tuohy appeared on behalf of the application. They would like to tear down the existing garage and rebuild it with a slightly larger footprint. It would not be closer to the property line but would be closer to the existing home. They hope to build a room on top of the garage to be used for storage. Jeff Curtis, the builder appeared. It would not be a full floor for the storage, they would be adding dormers to create head space.

Staff said it was thought this was a variance because a tear down and rebuild is considered the same as a new building. It would be a larger footprint, going further into the back yard and closer to the house. It would also be going higher. Mr. Corwin said if all the criteria for a variance can be met, then the Board could proceed. Otherwise, it would need to be re-noticed if the request is changed to a special exception.

The Chair felt the application was kind of sparse. In order to obtain a variance, there has to be a hardship on the property and parcel of land. The Board asked if the lot was unique compared to others in the neighborhood. The property is similar to other properties in the area, but they are all tightly packed smaller lots with limited off-street parking. There is no other place that the garage can be built on the property.

Chair Koppenheffer opened the public hearing and hearing no one from the public closed the public hearing.

The Board believed this is a reasonable request and the hardship has been addressed. The property is narrower towards the back. There is a slight change in the size of the footprint but it does not further violate any boundary lines than the existing garage.

Mr. Nash MOVED On June 5th 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Joshua Tuohy & Jeff Curtis regarding 7 Riverdale Parkway (Tax Map 93, Lot 17), zoned R-3. The Applicant requests a 10' right side yard dimensional variance from section §309.3 to construct a detached garage with a finished room above +/-5 ft. from the right-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 15,246 sq. ft., the lot is conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-3 District.

2. The applicants propose to construct a 24' x 30' detached garage with a finished room above. The garage is proposed to be located 5 ft. from the right-side lot line shared with the abutting property at 5 Riverdale Parkway (Tax Map 93, Lot 18) whereas a minimum unobstructed side yard of 15' is required.
3. In the R-3 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 10' dimensional variance is required to permit construction of the proposed garage, which will encroach approximately 10' into the minimum required 15' side yard.
4. 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).
5. The applicants have submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on May 2nd 2023.
6. No one spoke for or against the application.

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):
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 **5th day of June, 2023**, hereby **GRANTS** the requested Variances from section §309.3 of the Zoning Ordinance to allow the construction of a construct a 24' x 30' detached garage with a finished room above located +/- 5' from the right-side yard abutting the property at 5 Riverdale Parkway (Tax Map 93, Lot 18) where a minimum unobstructed side yard of 15' 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. Katz.

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

- C. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO- 1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD**

Mr. Nash recused himself from this hearing.

Johanna Cicotte and Attorney Barry Schuster appeared on behalf of the application. They were informed that in an appeal, if there are fewer than 5 people sitting, the applicant is required to receive at least 3 votes affirming the appeal. Procedurally, Mr. Katz was requested to be recused by the applicant. Mr. Katz is not willing to recuse himself because he believes none of the conditions that would require a recusal are in effect at this hearing. He does not believe Mr. Schuster's letter stated anything factual in nature. Attorney Schuster stated that if Mr. Katz is willing waive his attorney client privileges, Mr. Schuster would discuss the factual basis for the request.

There are three issues: 1) They believe that the property is not in the flood zone, 2) The deadlines are unreasonable, and 3) they are not sure if the parking area is grandfathered. Because all the information is not presented, the hearing should be postponed.

Mr. Katz felt there is no jurisdiction for an appeal, but the applicants should be given an opportunity to present all their information. This is a dispute of fact.

Attorney Schuster said they are not even clear that this is a violation. In the files it shows that the parking lot is not in the flood plain. He feels the City has not proven there is a violation. However, the Board is only present to hear an appeal of a decision.

Chair Koppenheffer MOVED to continue this hearing until July 11, 2023.

Seconded by Ms. Barkley.

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

Mr. Katz voted nay.

Mr. Nash rejoined the meeting.

4. STAFF COMMENTS

None

5. ADJOURNMENT

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

Seconded by Mr. Katz.

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

Respectfully submitted,
Linda Billings
Recording Secretary

LAW OFFICES OF
SCHUSTER, BUTTREY & WING
Professional Association
79 Hanover Street
P.O. Box 388
Lebanon, New Hampshire 03766
Practice of Law in New Hampshire and Vermont

Barry C. Schuster
barry@ivylegal.com

Telephone
603-448-4780
Fax
603-448-3683

June 21, 2023

Zoning Board of Adjustment
Lebanon, NH

Re: Cicotte Holdings, LLC - Map 78, Lot 40

Dear Board Members:

On April 19, 2023, the zoning office sent a "Notice of Violation" to Cicotte Properties, LLC, (the actual name of the owner of the property is Cicotte Holdings, LLC) asserting that its property "is in violation of the City of Lebanon Zoning Ordinance ("ZO"), the Lebanon Site Plan Review Regulations, and Lebanon City Code Chapter 74 ("Flood Damage Prevention')." The letter concludes that "newly paved surface adjoining the existing parking area of the car dealership," violates several City regulations.

Without describing or providing any dimensions of the alleged new paved area, the zoning letter claims that the paving violates several City regulations:

Section 702.5.D concerning the expansion of a non-conforming use;
Section 303.2 concerning the table of uses;
Section 402.2 concerning the Floodplain District overlay;
Section 901.1.D requiring a zoning permit;
Sections 1.6.A and 3.1.D of the Site Plan regulations; and,
City Code chapter 74 concerning flood hazards.

The letter from the Zoning office provides no evidence and, at the very least, is premature in its claims. Existing City files and documents, as well as photographic evidence, shows that there is a substantial doubt that the "new paved area" is new or whether it was an expansion of a non-conforming use. Rather, the use of the area has existed for many years and well prior to the recent ownership by Cicotte Holdings, LLC.

The Property Has Had Multiple Owners

A prior decision of the Zoning Board states in its findings of fact that the original building was constructed in 1969. Exhibit 1. Smith Auto was a long-time Buick and General Motors automobile sales company and operated on the property for many years. In 2000, it

applied to add a new car showroom, offices and a service bay. At that time, the property was in the General Commercial zoning district. As noted in a memorandum to the Planning Board, City Planner Kenneth Niemczyk states that “the site never received site plan approval, the use being established before the advent of site plan regulations. Therefore, relative to the Site Plan Review Regulations, the existing development is grandfathered.” Exhibit 2. The City’s files also include several plans of the property, each showing a different layout for parking and presenting new and used vehicles. Exhibits 3, 4 and 5. Given the lack of any consistent plan for the property, it is not possible to determine the extent of the parking that has existed over the years.

In 2005, the owner of Smith Auto sought to retire and sold the automobile dealership to Button Automotive. That ownership was short-lived and in 2006, Button sold the dealership to Miller Auto which operated the business until 2012, when it sold the dealership to Team Nissan. During the years of its ownership and operation, Team Nissan received zoning approvals for various improvements to the property. In 2019, Team Nissan sold the dealership to Key Automotive. In 2021, Cicotte Holdings, LLC, purchased the property and dealership from Key.

Cicotte Holdings Did Not Enlarge the Parking Area

When Cicotte Holdings acquired ownership in 2021, it found that the paved parking area had deteriorated and so it contracted with Twin State Paving to re-pave the parking lot area. As the estimate from Twin State shows, it proposed and did “reclaim existing lot.” Exhibit 6. Ms. Cicotte will confirm that Twin State only paved the parking lot area that had already been used for parking and that the parking lot was not enlarged or extended. Given the lack of a site plan showing a detailed layout of the parking area, neither the City nor Ms. Cicotte can confirm what may have been constructed by Smith Auto or any of the other prior owners. In any case, Cicotte Holdings inherited the site as it existed prior to its acquisition and did not expand, but only re-paved, the parking area.

This extent of the parking can be shown by Google aerial and street-view photographs of the property taken over the years. The first is a July 2009 street-view from Rt. 120 which shows cars parked at the far left, or south side of the property. Exhibit 7. The next is a 2015 Google aerial view which also shows cars parked on the southerly end of the property. Exhibit 8. A November 2015 street-view, taken from Rt. 120, again shows vehicles parked at the south end of the property. Exhibit 9. An aerial view taken in November 2018, again shows cars parked on the south end of the property. Exhibit 10. All of the photographs were taken at a time prior to Cicotte’s ownership of the property. Having acquired the property in 2021, Cicotte simply restored and paved a parking area that had been established by prior owners.

The Notice of Violation is in error in that it assumed that Cicotte violated a zoning regulation when, if there even is such a violation, it occurred long prior to any ownership by Cicotte Holdings, LLC. The Notice fails to describe the paving and fails to establish the prior existing parking area or the extent of any claimed enlargement.

The Parking Area Is Not in the Flood Hazard Zone

The City's Notice of Violation is also in error in that it claims that the parking area is in a flood hazard area. This claim rests on an incorrect delineation flood area on a flood map and also is contradicted by a plan in the City's file. When Smith Auto applied for Site Plan review in 2000, T & M Associates, Inc., provided a plan as part of that application. Exhibit 5. A note on that plan states "The Site is Not Within the Wetlands Conservation/Floodplain District." Exhibit 11 (enlarged section of plan). At the very least, prior to issuing a Notice of Violation, the zoning office should have reviewed its files to determine if there was any information concerning flood plain compliance in its files.

Additionally, as explained by Daniel Nash, P.E., in his April 28, 2023, letter to the City, flood plain maps often are incorrect and an updated survey of the property will demonstrate that the parking area is not in the floodplain hazard area. Finally, whether or not a LOMA (Letter of Map Amendment) is obtained, a Floodplain Development Permit has been issued by the City as of May 31, 2023. Exhibit 12. Any claimed violation of Section 402.2 concerning the Floodplain District overlay or City Code chapter 74 concerning flood hazards is both incorrect and now moot.

Given the initial development of an auto dealership prior to the adoption of site plan review regulations, and the absence of any defined area of parking, no zoning violation exists. Cicotte is willing, however, to undertake site-plan review for the parking so that a plan can be submitted and reviewed by the planning board which will define the parking area so that future concerns may be avoided.

Very truly yours,
/s/ Barry C. Schuster

BCS/sf
cc: Cicotte Holdings, LLC

- 1
- 2 1. The location of the sign on the property shall not obstruct visibility for drivers entering or exiting
- 3 the subject property.
- 4
- 5 2. The sign shall not exceed a height of 8 feet from the highest point of ground beneath it.
- 6
- 7 3. The signage granted under this Special Exception shall accommodate all current and future
- 8 tenants and signage requirements for this property and shall not exceed a total of 20 square
- 9 feet. Signs under Section 608.8.J are excluded from this condition.

10
11 **Seconded by Dan Nash.**

12 ***The motion was passed as amended, 3-0.**

13
14
15
16
17
18 **C. 51 EVANS DRIVE, LLC:**

19
20 **Jeffrey Halpin moved passage of the following:**

21
22 **NOTICE OF DECISION**
23 **ZONING BOARD OF ADJUSTMENT**

24
25 On December 1, 2014, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there
26 appeared **Evan Mullen of Port One Architects and Christopher Dessureau, General Manager of Team**
27 **Nissan, representing 51 Evans Drive, LLC (Team Nissan)** seeking a Special Exception pursuant to Article
28 VII, Section 702.5 to allow the expansion or alteration of a non-conforming use (Vehicular Sales) to
29 enclose +/-572 square feet of additional space under an existing canopy to expand the showroom. The
30 property is located at 51 Evans Drive, Tax Map 78, Lot 40, Plot 200, Lebanon, NH, in the RO-1 zone.
31 #ZB2014-40-SE

32
33 Based on testimony given, plans presented, and supporting documents submitted, the Lebanon Zoning
34 Board of Adjustment makes the following findings of fact:

- 35
- 36 1. The subject property is situated within the Residential-Office One (RO-1) zoning district. The
- 37 property is developed with a 16,348 sq ft. building housing the showroom, offices, service
- 38 facility, and storeroom of Team Nissan, a Vehicular Sales business.
- 39
- 40 2. The original building was constructed in 1969 and a 2,700 sq ft. addition was approved in 2000
- 41 when the property was zoned General Commercial.
- 42
- 43 3. In December 2001, the City rezoned the subject property and others along Evans Drive, Heater
- 44 Road, and Route 120 from General Commercial to Residential-Office One.
- 45
- 46 4. Vehicular Sales is not a use allowed by right or by Special Exception in the RO-1 district and the
- 47 current business operation is considered pre-existing, non-conforming.
- 48

5. The applicant is seeking a Special Exception pursuant to Article VII, Section 702.5 for the expansion of a non-conforming use. The expansion involves the enclosure of an existing +/-572 square foot canopy on the northern side of the showroom area. This area represents an increase of +/-3.5 percent in the gross floor area of the building.

6. The applicant testified that the expansion and the overall project are an attempt to improve upon the character and appearance of the property and that there should be no adverse affects on the surrounding neighborhood.

7. No-one in the audience spoke for or against the application.

As a result of the above findings of fact, documentation, testimony, and inspections, the Board concludes under Section 702.5 (Expansion of Use) that:

1. The proposed alteration must reflect the nature and purpose of the existing non-conforming use, and must be closely related to the manner in which the property was used at the time the restriction was enacted.

The Applicant has demonstrated that this criterion will be met.

2. The proposed alteration or expansion must be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature, or kind.

The Applicant has demonstrated that this criterion will be met.

3. The proposed alteration or expansion shall not have a substantially different effect on the neighborhood in which the property is located.

The Applicant has demonstrated that this criterion will be met.

4. In the case of non-conformities with respect to dimensional or numerical requirements, the proposed alteration or expansion shall not render the property proportionally less adequate, in terms of the requirement to which the property does not conform.

The Applicant has demonstrated that this criterion will be met.

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment hereby **GRANTS** the request of **51 Evans Drive, LLC (Team Nissan)** for a Special Exception to allow the expansion or alteration of a pre-existing, non-conforming use, as referenced above.

Seconded by Dan Nash.

***The motion was approved, 3-0.**

MEMORANDUM

TO: Lebanon Planning Board
FROM: Kenneth Niemczyk, City Planner KEN (PM)
DATE: March 3, 2000
RE: Application for Site Plan Review
by Smith Auto Sales Company

REQUEST

Application for site plan review to construct a 2,700 sq. ft. addition for a new car showroom, offices, and service bay, 51 Evans Drive, Lebanon, in the GC zone, Tax Map 78, Lot 40, Plot 2 (PB2000-05)

MAPS AND OTHER SUBMISSIONS

- ▶ Letter to Ken Niemczyk from Tim McNamara dated February 10, 2000.
- ▶ Elevation Plan drawn by Trumbull-Nelson Construction Co., Inc., dated October 25, 2000, last revised November 5, 2000.
- ▶ Site Plan titled, "Smith Auto Sales Company", drawn by T&M Associates, Inc., dated February 8, 2000, project #558899.

STAFF COMMENTS

The applicant is asking for a number of waivers. See letter dated February 10 from T&M Associates. The Planning Office recommends that the Board move that the application is complete enough to commence review and to accept jurisdiction.

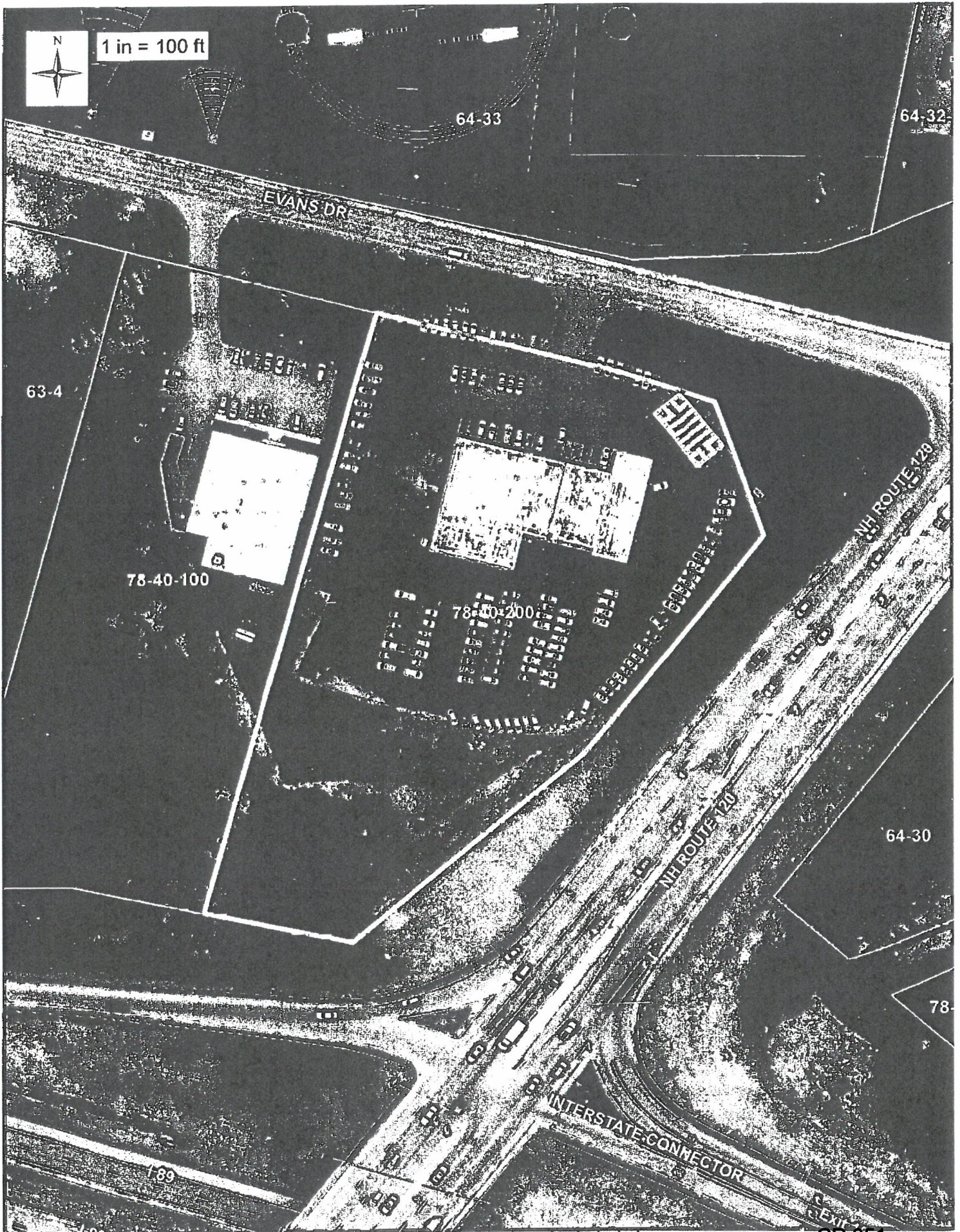
The Zoning Administrator reports that the zoning district is General Commercial, and the use is permitted. The proposal conforms with the setbacks and lot coverage. The plan shows 155 parking spaces, 95 of which are for display leaving 60 for employees and customer parking. Pursuant to the Zoning Ordinance, 31 spaces are required for employee and customer parking.

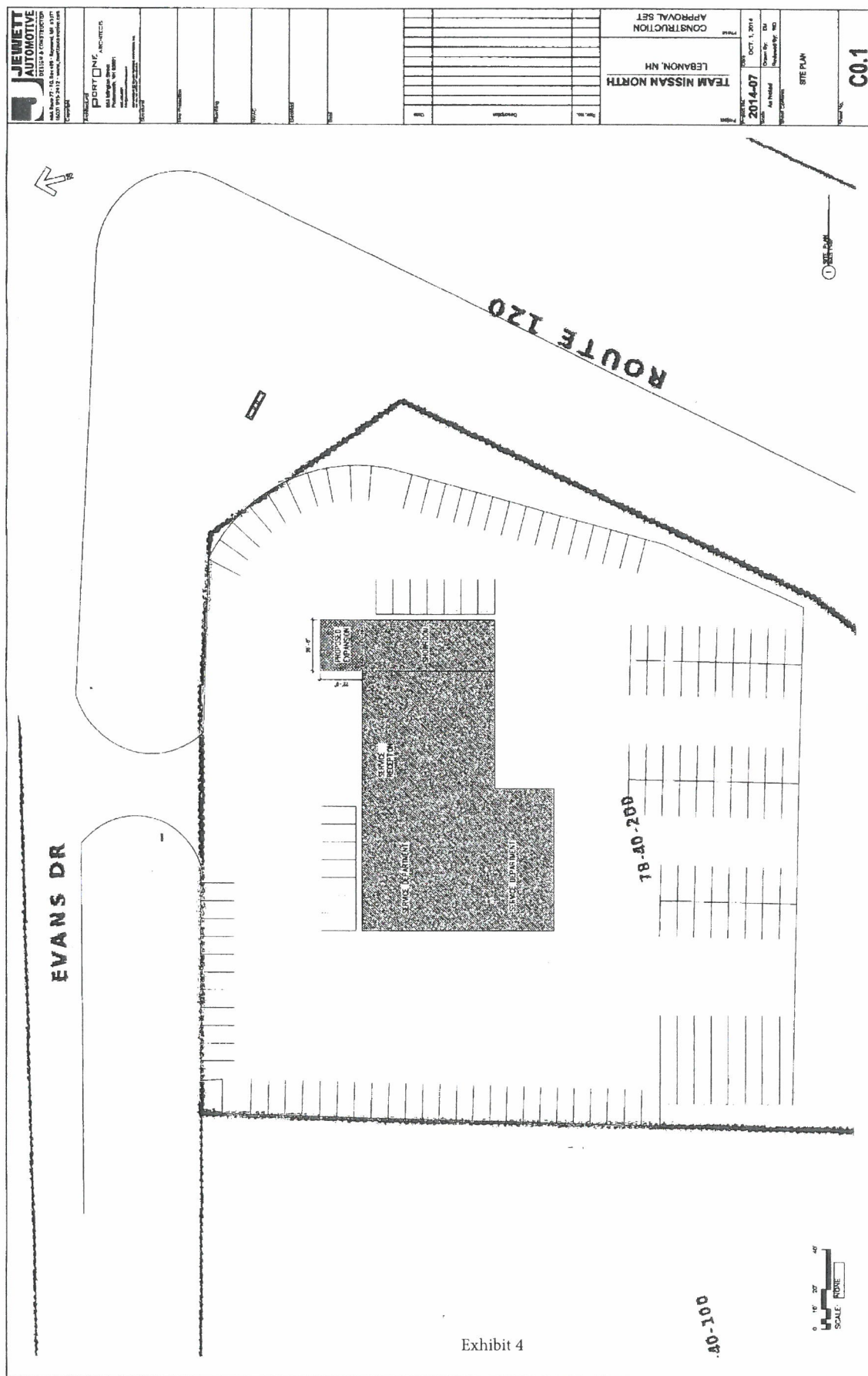
The Planning Office reports that this site never received site plan approval, the use being established before the advent of site plan regulations. Therefore, relative to the Site Plan Review Regulations, the existing development is grandfathered.

There are no other staff comments.

S:\PLN\KEN\PLANNING\STAFFR\W\SMITH.WPD

Exhibit 2







Twin State Paving, LLC
P.O. Box 333
Sunapee, NH 03782 US
+1 6038657246
tspaving@yahoo.com
<http://www.twinstatepaving.com>

Estimate

ADDRESS

Johanna Cicotte
132 Ballardvale Drive
WRJ, Vermont 05001

ESTIMATE # 2441

DATE 05/25/2021

ACTIVITY

1 - New Hampshire:1a - Paving
~~Services:NH - Paving~~
51 Evans dr.
Lebanon NH
03766

AMOUNT

250,000.00

Reclaim; to reclaim existing lot,
based on 3" of asphalt and a sub
base mixing of 8". Grade and
compact.

Pave existing sub base area with
2.5" of base course asphalt and
1.5" of finish course asphalt.

FOR THE SUM OF: \$250,000.00
10% due at booking on all
commercial projects. 40% due at
start and balance is due within 30
days of finish.

Thank you for your interest in our company. Paving projects where we
have constructed the sub base (12-18" min) will be warrantied for 18
months; paving projects where we have not constructed the sub base
will be warrantied for 12 months. We do not guarantee chemical spills,
tire marks, growth of vegetation, indents in pavement, broken edges,
or delivery/service vehicles, work preformed by sub contractors hired
by the customer, or sub base failure that we have not constructed.
Payment is due upon completion. Projects/Accounts that exceed 30
days past due will incur finance charges at 1.5% per month; in
addition, if litigation is required to satisfy an outstanding debt, Twin
State Paving LLC will seek any and all fees associated with recouping
funds due. Warranty repairs do not constitute for non-payment.
Due to fluctuating liquid prices, this estimate is subject to change to

TOTAL

\$250,000.00

Google Maps NH-120



Lebanon, New Hampshire

Google Street View

Jul 2009 See latest date

Google

Exhibit 7

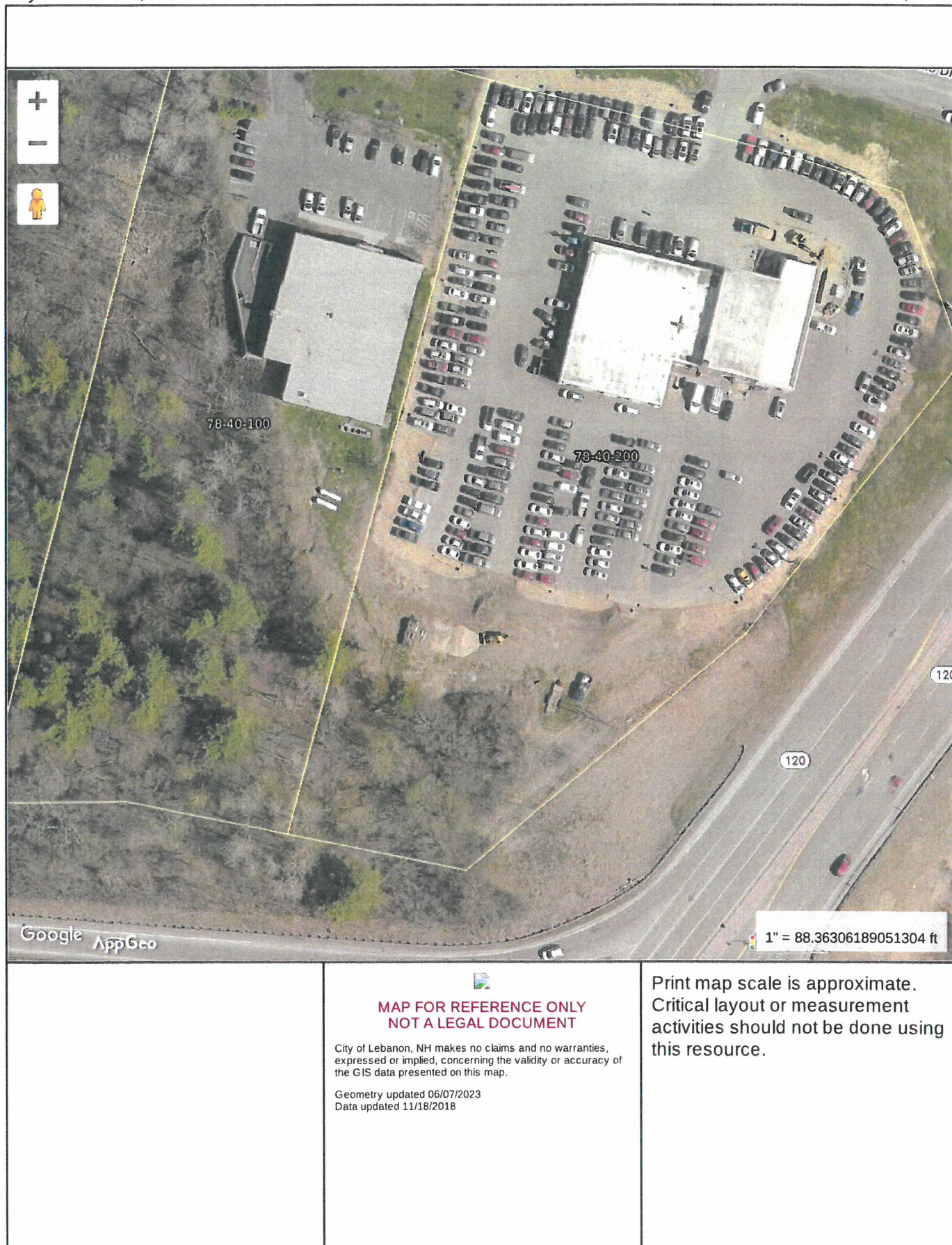
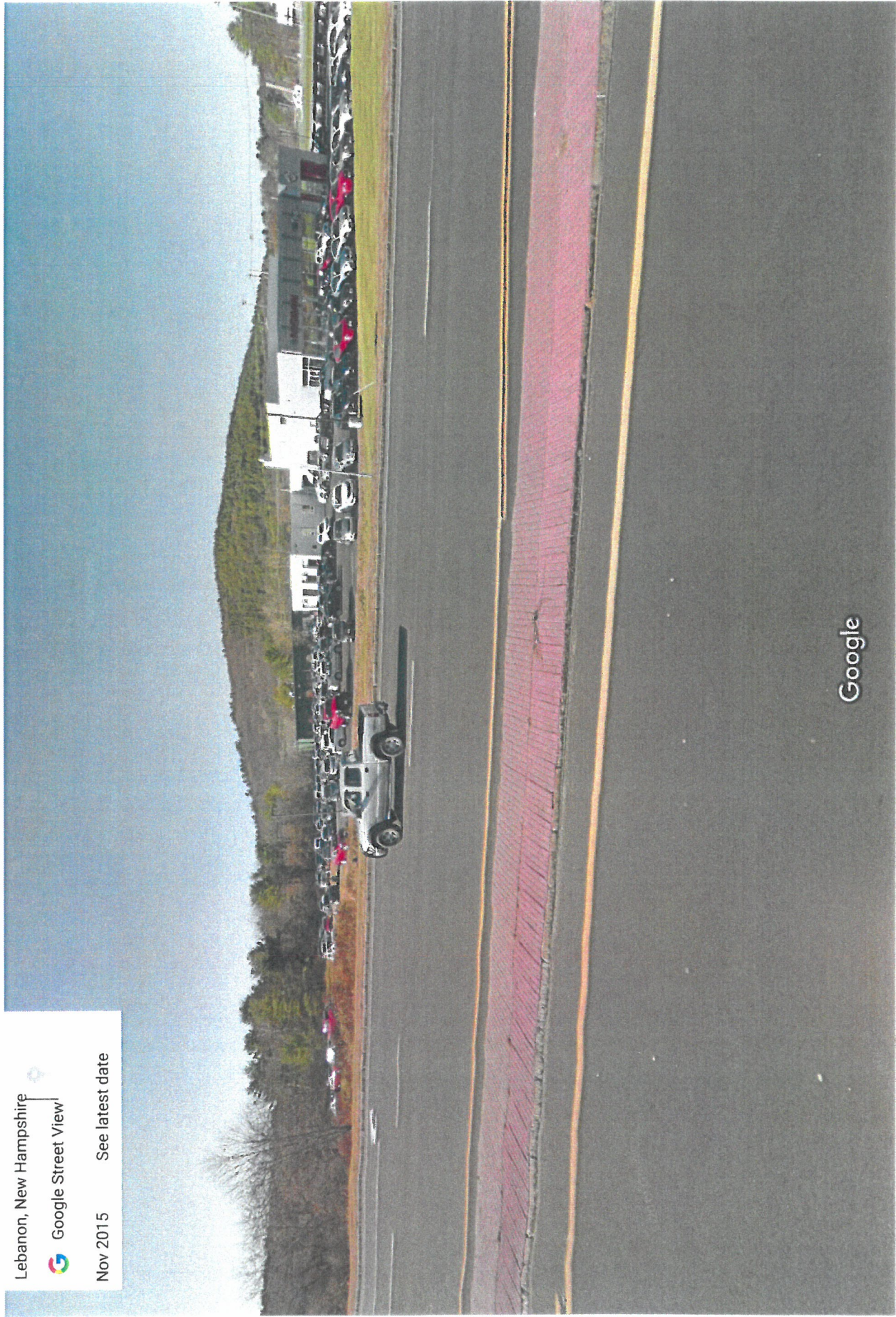


Exhibit 8

Google Maps NH-120



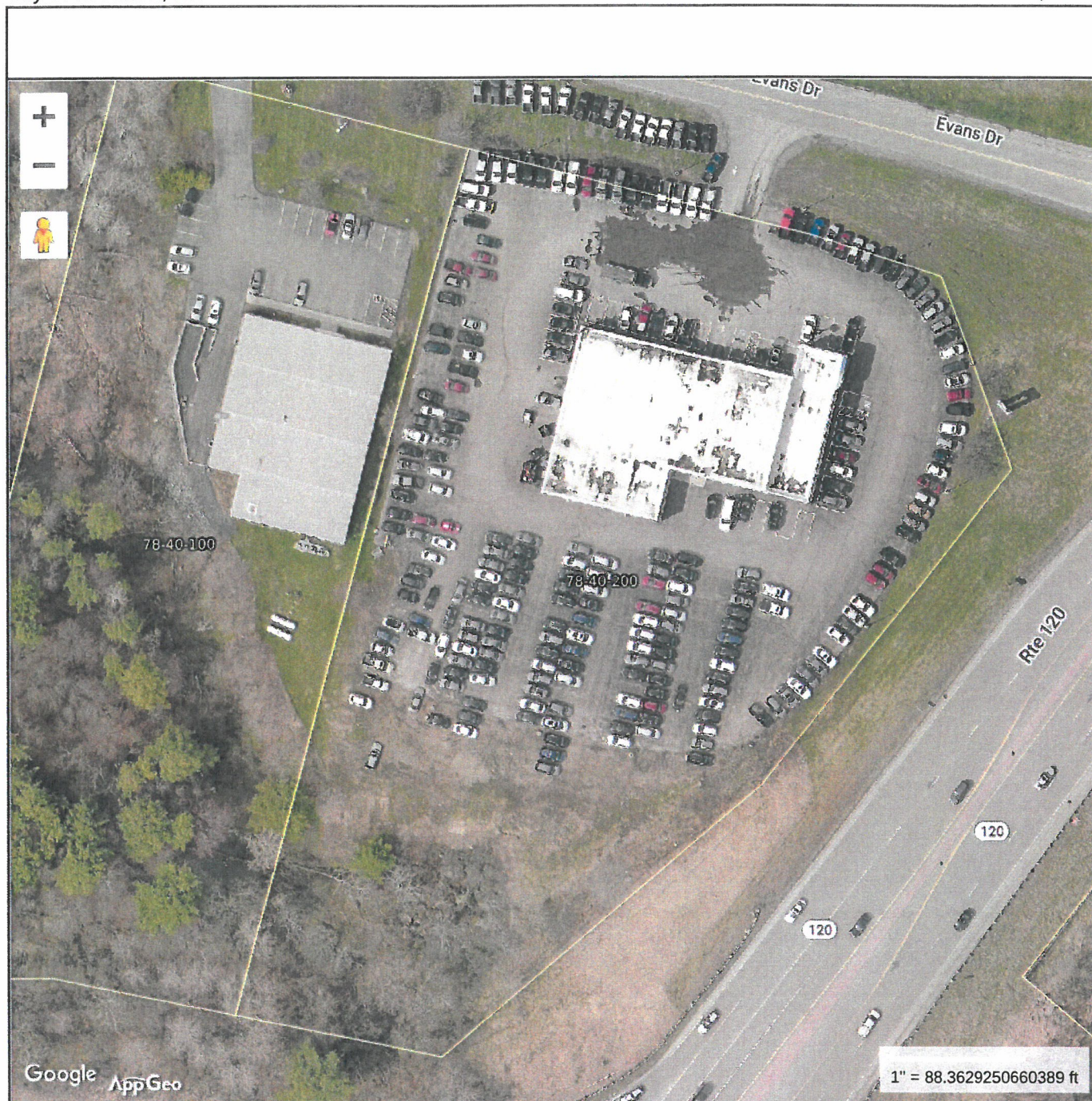
Lebanon, New Hampshire

Google Street View

Nov 2015 See latest date

Google

Exhibit 9



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 06/07/2023
Data updated 11/18/2018

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

Page 134 of 287

CITY OF LEBANON - APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

The undersigned hereby makes application for a permit to develop in a Local Regulatory Floodplain or in a Local Regulatory Conveyance Zone. The work to be performed is as described below and in attachments hereto. The undersigned agrees that all such work shall be done in accordance with the requirements of all local, state, and federal regulations.

Project Name 51 EVANS DRIVE Date 17MAY2023
Contact Name DAN NASH, PE Contact Telephone 603-448-6295

Owner or Developer <u>CICOTTE HOLDINGS, LLC</u> <u>PO BOX 600, LEBANON, NH</u> Address <u>603-448-6363</u> Telephone <u>DAN NASH, PE 5737</u> Engineer <u>105 BANK ST, LEBANON, NH</u> License Number Address <u>603-448-6295</u> Telephone	Builder/Contractor <u>-WORK ALREADY COMPLETE</u> Address Telephone Architect License Number Address Telephone
--	---

SITE DATA

- Property Location (Physical Address) 51 EVANS DRIVE
- City of Lebanon Tax Map 78 Lot 40
- FEMA Flood Map Panel Number 33009C0913E Effective Map Date 20FEB2008
- Type of Development (Check All That Apply):
☐ New Construction ☐ Alteration or Repair of Existing Structure ☒ Site Grading
☐ Filling ☐ Excavation ☐ Other—Please describe: _____
- Type of Facility (Check All That Apply):
☐ Residential ☐ Functionally Dependent Facility ☐ Critical Facility
☐ Manufactured Home ☒ Other—Please describe: EXISTING AUTO DEALERSHIP
- Description of Development REGRADE SITE, ADD PAVEMENT
- Structure: -NO NEW STRUCTURE
New Structure sq ft _____ + Existing Structure sq ft _____ + Improvement sq ft _____ = Total sq ft _____
Principal Use _____ Accessory Uses _____
- Value of Improvement (Fair Market) \$ N/A Pre-improvement Value of Structure \$ _____
- Is the development located within the Local Regulatory Conveyance Zone? ☐ Yes ☒ No
- Other Permits Required (Check All That Apply):
☐ NHDES Shoreland Permit ☐ NHDES Wetland Permit ☐ NHDES Alteration of Terrain
☐ Other—Please describe: -NONE-

CITY OF LEBANON - APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

ELEVATIONS

1. Elevation of 100-Year Base Flood Elevation (BFE) at development site: 578.00 feet
2. Elevation of lowest floor of structure (minimum one foot above BFE): 598+/- (Exist) feet
3. Elevation of all attendant utilities, including all heating and electrical equipment, servicing the structure for floodproofing (minimum one foot above BFE): N/A-NO NEW STRUCTURE feet
4. Type of flood protection method? ☐ Flood Proofing ☐ Elevating the development: N/A-NO NEW STRUCTURE
5. Elevation Datum used for determination of BFE: ☐ NGVD 1929 ☒ NAVD 1988
6. Has Compensatory Floodplain Storage been provided for all fill areas? ☐ Yes ☒ No N/A-NO FILL

I certify that the information on this form is true and correct. I understand that false or inaccurate information submitted to the City of Lebanon on which a permit for proceeding with construction work is issued by the City of Lebanon may be the basis for revocation of the permit or assessment of a civil fine or other penalties. I also understand that construction plans submitted to and approved by the City of Lebanon in the form of a permit issued must be followed and adhered to and any deviance there from not approved by the City of Lebanon may also be the basis for a notice of violation, notice of citation and revocation of the of the permit or assessment of a penalty by the City of Lebanon.

Signature of Owner or Developer

Date

JOHANNA CICOTTE, for CICOTTE HOLDINGS, LLC

Printed Name of Owner or Developer

OFFICIAL USE ONLY

PERMIT APPLICATION IS HEREBY:

☒ APPROVED ☐ DENIED

Comments: RECOMMEND THAT YOU APPLY FOR A LETTER OF MAP AMENDMENT WITH FEMA.

Signature of Authorizing City Official

Date

RODRICK J. FINLEY, P.E.
Printed Name of Authorizing City Official

MAY 31, 2023
Date
CITY ENGINEER
Title of Authorizing City Official

FLOODPLAIN PERMIT CHECKLIST

51 EVANS DRIVE

17May2023

Project Name

Date

- ☒ 1. A Completed and Signed Permit Form.
- ☒ 2. The Permit Fee (none set at this time)
- ☒ 3. Current survey certified by a land surveyor licensed in NH that shows the following information:
 - ☒ A. North Arrow (MAP PREPARED USING CITY GIS DATA)
 - ☒ B. Scale of the plan
 - ☒ C. Date of the plan and any revisions
 - ☒ D. Perimeter boundaries of the lot(s), including compass bearings, distances, and lot areas
 - ☒ E. Location of existing improvements on the property
 - ☒ F. Location of existing natural features such as streams, marshes, lakes, ponds, wetlands, rock outcrops, or wooded areas, and existing man-made features such as roads and structures.
 - ☒ G. Width and location of rights-of-way and/or easements on property
 - ☒ H. Existing grades, including topographic contours with spot elevations, prepared by a professional engineer or land surveyor licensed in NH. (Contours shall be at 2 ft. intervals)
- ☒ 4. Proposed development plans showing the following information:
 - ☒ A. Vicinity Sketch (suggested scale: 1"=500')
 - ☒ B. Names and mailing addresses of Owner of record of site, holders of any easements, rights-of-way, or other restrictions
 - ☒ C. Names and business addresses of preparer(s) of the plan, and every surveyor, engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted.
 - ☒ D. North Arrow
 - ☒ E. Scale of the plan
 - ☒ F. Date of the plan and any revisions
 - ☒ G. Zoning designation
 - ☒ H. Tax Map and Lot number(s) for the subject property
 - ☒ I. Area of the lot
 - ☒ J. Gross floor area of existing and proposed buildings/additions
 - ☒ K. A legend that clearly indicates all symbols, line types, and shading
 - ☒ L. Perimeter boundaries of the lot(s), including compass bearings, distances, and lot areas
 - ☒ M. Location of existing and proposed improvements on the property
 - ☒ N. Location of existing natural features such as streams, marshes, lakes, ponds, wetlands, rock outcrops, or wooded areas, and existing man-made features such as roads and structures. Indicate those natural and man-made features that are to be removed, retained, or altered
 - ☒ O. Width and location of rights-of-way and/or easements on property
 - ☒ P. Existing and proposed grades, including topographic contours with spot elevations, prepared by a professional engineer or land surveyor licensed in NH. (Contours shall be at 2 ft. intervals)
 - ☒ Q. Wetlands on the property, if any, shall be delineated by a NH Certified Wetlands Scientist, whose seal and signature shall appear on the plan (NONE IN AREA OF WORK)
 - ☒ R. The 100-year flood elevation, floodway, and floodplain limits
 - ☒ S. The NHDES Shoreland setback lines, if applicable
 - ☒ T. Size and location of all existing and proposed public and private utilities
- ☒ 5. Calculations for Compensatory Storage
- ☒ 6. Completed Floodplain Permit Checklist



**LEBANON ZONING BOARD OF ADJUSTMENT
JULY 11, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. June 5, 2023
 - 3. Public Hearing Items**
 - A. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. ZB2023-11-AAD- Continued from June 5, 2023 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 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.



*City of Lebanon
Planning Office*

51 North Park Street
Lebanon, NH 03766

Phone: 603-448-1457
Fax: 603-448-0684

**NOTICE OF ACTION
LEBANON PLANNING BOARD**

Notice is hereby given that on **March 13, 2000**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

James Mulligan moved to accept the application of **SMITH AUTO SALES** for site plan review as being complete. The motion was seconded by Russell Barber. The vote on the motion was unanimous in favor.

Dennis Blankenbeker moved to approve the application of **SMITH AUTO SALES** for site plan review to construct a 2,700 sq. ft. addition for a new car showroom, offices, and service bay at 51 Evans Drive, Lebanon, in the GC zone, Tax Map 78, Lot 40, Plot 2 (PB2000-05), including all maps and submissions as listed in a memo to the Lebanon Planning Board from City Planner Ken Niemczyk, dated March 3, 2000.

The motion was seconded by Judy Macnab.

Ralph Akins moved to amend the motion to include the following condition:

1. That all existing light fixtures shall be modified as cutoff type fixtures or replaced with new cutoff type fixtures to be approved by the City Planner.

The amendment was seconded by Russell Barber. The vote on the amendment was six in favor, two opposed. The vote on the motion as amended (including the condition) was seven in favor, one opposed.

SIGNED: _____

William Koppenheffer, Chair

DATED: _____

10 April 2000



Codes

Department

Building and Zoning

51 North Park Street
Lebanon, NH 03766

Telephone: 603-448-1524
Facsimile: 603-448-0684

ZONING PERMIT

On approval by the Board of Adjustment of an administrative appeal, variance or special exception, the Zoning Administrator shall issue a Zoning Permit as of the date of approval of the Board of Adjustment.

Zoning Permit Issued to:

51 EVANS DRIVE, LLC: A request for a Special Exception pursuant to Article VII, Section 702.5 to allow the expansion or alteration of a non-conforming use (vehicular sales) to enclose 575 square feet of space under an existing canopy to expand the showroom. The property is located at 51 Evans Drive, Tax Map 78, Lot 40, Plot 200, Lebanon, NH, in the RO-1 zone. #ZB2014-40-SE.

THIS ZONING PERMIT IS GRANTED PURSUANT TO THE ATTACHED ZONING BOARD OF ADJUSTMENT NOTICE OF DECISION AND APPROVED PLAN.

Signed: David Brooks
David Brooks, Director of Planning and Zoning

Date of Zoning Board Approval/Issuance of Zoning Permit: December 1, 2014

Zoning Ordinance:

901.6 Time Limit of Permit.

A zoning permit shall become void if construction is not begun thereunder within 2 years from the date of issuance of the permit or grant of a special exception or variance.

901.7 Non-Transferable.

No permit issued hereunder shall be transferable to a subsequent owner.

901.8 Date of Issuance of Zoning Permit.

On approval by the Board of Adjustment of an administrative appeal, variance or special exception, the Zoning Administrator shall issue a zoning permit as of the date of approval of the Board of Adjustment. Zoning permits shall be conditioned upon receipt of Site Plan Review approval from the Planning Board, when such approval is required. When Site Plan Review is required, the date of the zoning permit for the purposes of SECTION 901.6 shall be the date of receipt of Site Plan Review approval.



Codes

Department

Building and Zoning

51 North Park Street
Lebanon, NH 03766

Telephone: 603-448-1524
Facsimile: 603-448-0684

NOTICE OF DECISION ZONING BOARD OF ADJUSTMENT

On December 1, 2014, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared **Evan Mullen of Port One Architects and Christopher Dessureau, General Manager of Team Nissan, representing 51 Evans Drive, LLC (Team Nissan)** seeking a Special Exception pursuant to Article VII, Section 702.5 to allow the expansion or alteration of a non-conforming use (Vehicular Sales) to enclose +/-572 square feet of additional space under an existing canopy to expand the showroom. The property is located at 51 Evans Drive, Tax Map 78, Lot 40, Plot 200, Lebanon, NH, in the RO-1 zone. #ZB2014-40-SE

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

1. The subject property is situated within the Residential-Office One (RO-1) zoning district. The property is developed with a 16,348 sq ft. building housing the showroom, offices, service facility, and storeroom of Team Nissan, a Vehicular Sales business.
2. The original building was constructed in 1969 and a 2,700 sq ft. addition was approved in 2000 when the property was zoned General Commercial.
3. In December 2001, the City rezoned the subject property and others along Evans Drive, Heater Road, and Route 120 from General Commercial to Residential-Office One.
4. Vehicular Sales is not a use allowed by right or by Special Exception in the RO-1 district and the current business operation is considered pre-existing, non-conforming.
5. The applicant is seeking a Special Exception pursuant to Article VII, Section 702.5 for the expansion of a non-conforming use. The expansion involves the enclosure of an existing +/-572 square foot canopy on the northern side of the showroom area. This area represents an increase of +/-3.5 percent in the gross floor area of the building.
6. The applicant testified that the expansion and the overall project are an attempt to improve upon the character and appearance of the property and that there should be no adverse affects on the surrounding neighborhood.
7. No-one in the audience spoke for or against the application.

As a result of the above findings of fact, documentation, testimony, and inspections, the Board concludes under Section 702.5 (Expansion of Use) that:

1. The proposed alteration must reflect the nature and purpose of the existing non-conforming use, and must be closely related to the manner in which the property was used at the time the restriction was enacted.

*The Applicant **has** demonstrated that this criterion will be met.*

2. The proposed alteration or expansion must be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature, or kind.

*The Applicant **has** demonstrated that this criterion will be met.*

3. The proposed alteration or expansion shall not have a substantially different effect on the neighborhood in which the property is located.

*The Applicant **has** demonstrated that this criterion will be met.*

4. In the case of non-conformities with respect to dimensional or numerical requirements, the proposed alteration or expansion shall not render the property proportionally less adequate, in terms of the requirement to which the property does not conform.

*The Applicant **has** demonstrated that this criterion will be met.*

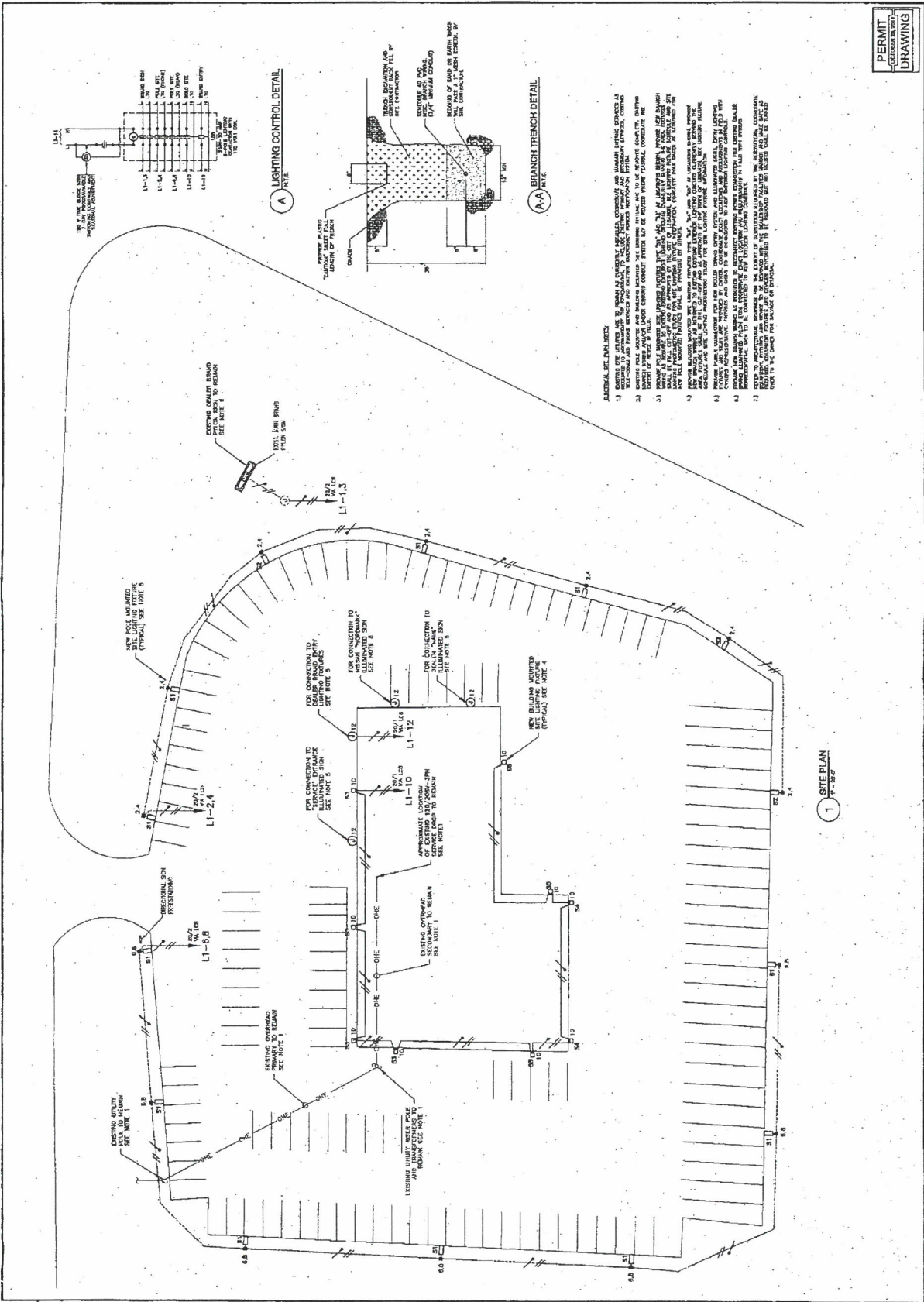
Now therefore be it resolved, the Lebanon Zoning Board of Adjustment hereby **GRANTS** the request of **51 Evans Drive, LLC (Team Nissan)** for a Special Exception to allow the expansion or alteration of a pre-existing, non-conforming use, as referenced above.

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 of a special exception by the Zoning Board of Adjustment; 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.

NOTE: (RSA 677:2) Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

The Zoning Board of Adjustment voted to **GRANT** this appeal on December 1, 2014.

PROJECT: TEAM NISSAN NORTH LEAVEN, NH		THE OFFICE OF Interstate Technical Services 1000 BRIDGE STREET, SUITE 200 LEAVEN, NH 03240 TEL: 603-271-1111 WWW.INTERSTATE-TECHNICAL.COM			
DATE: 10-23-14	DESIGNED BY: M. HARRLOW	CHECKED BY: M. WHITE	DRAWING TITLE: ELECTRICAL SITE PLAN		
PROJECT NUMBER: 87125			DRAWING NUMBER: ES1		
DATE: 10/23/14			SHEET 5 OF 5		



FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, July 11, 2023
7:00 PM**

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

MEMBERS ABSENT: Jennifer Barkley (Alt)

STAFF PRESENT: Nathan Reichert – Zoning Administrator
Tim Corwin – Deputy Planning and Development Director

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

A. June 5, 2023

Mr. Nash MOVED to approve the June 5, 2023, Minutes as presented in the July 11, 2023 with amendments.

Seconded by Mr. Katz.

Amendments; Page 4, Line 18: Remove 'If Mr. Katz is willing to relinquish his attorney privileges the applicants agree to continue.' And Add 'Attorney Schuster stated that if Mr. Katz is willing waive his attorney client privileges, Mr. Schuster would discuss the factual basis for the request.' Page 4, Line 25: Remove 'reason' and Add 'jurisdiction'.

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

Mr. Newlove abstained.

3. PUBLIC HEARING ITEMS

- A. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD-**
Continued from June 5, 2023 Meeting

Mr. Nash recused himself from this hearing.

Chair Koppenheffer pointed out that the Zoning Administrator has approved a wetlands permit. Therefore, the issue of the wetland is no longer an issue because a flood plain permit has been issued.

Johanna Cicotte and Barry Schuster, representing Cicotte Holdings, appeared on behalf of the application. At the last hearing, the attorney was going to pursue information about the flood plain permit and grandfathering. The applicants said they believe the parking area may be grandfathered, and they reviewed with the Board the documents, exhibits, and photographs taken over several years of the area

that are part of the packet provided this evening. Attorney Schuster referred to a photograph with red highlighting, that indicates an area that has been used for parking over several owners and years. Cicotte Holdings purchased the property in 2021. The current owners suggest the area has been used for parking throughout time, but Cicotte Holdings chose to pave the area and clean up the area. There are no site plan approvals that indicate anywhere that parking was approved. Given the ambiguity, there is no record that states what is a parking area. Cicotte Holdings did not have any intent of expanding the parking area that was already there.

Mr. Katz requested that the applicant identify the specific section of the ordinance that has been misinterpreted and for the applicant's proposed interpretation for the Board to consider. The applicant confirmed that there is no dispute regarding the meaning of the ordinance, but that they are disputing the City's position that they are in violation of the ordinance. If the City interpreted the ordinance incorrectly, that would be one thing that the Zoning Board could determine in an appeal. The applicants say this is a factual matter.

This is a discretionary enforcement of the City and is not a decision that the Zoning Board can make. Mr. Katz believes this should be dismissed because it is not an issue that the Zoning Board can adjudicate. Whether or not the applicant is in violation of the zoning ordinance is a matter of adjudication that needs to be determined in a court of law. It should be dismissed due to lack of jurisdiction.

In this case, the asphalt paving was expanded, and there was never a request for approval of the expansion. It is the burden of the applicant to demonstrate that the parking is legally nonconforming and that something about the Zoning Administrator's decision was wrong.

Ms. Hembree MOVED to seek A: a legal opinion from the City Attorney on the question of whether or not we have jurisdiction to hear the appeal and B: to continue this hearing until the scheduled August 7, 2023 meeting of the Zoning Board.

Mr. McDonough seconded.

Ms. Hembree clarified that she would like to meet with the attorney. Certainty has value and time is money. This has been going on for many months and no one's justice is being served and it does not increase certainty. Mr. Katz believes the Board should get out of the way of both parties.

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

Mr. Katz and Mr. Newlove voted nay.

Mr. Nash rejoined the meeting.

4. STAFF COMMENTS

Mr. Reichert suggested that the Board may want to add to the agenda of the proceedings for the Board of Appeal. In the future, if there is an appeal of a decision of a zoning official, the City Attorney may want to participate in the appeal meeting. It might help move these decisions along quicker. It will involve more discussion.

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 7:52 PM.

Seconded by Mr. Newlove.

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

Respectfully submitted,
Linda Billings, Recording Secretary

THE STATE OF NEW HAMPSHIRE

CITY OF LEBANON

ZONING BOARD OF ADJUSTMENT

*
In Re: *
*
CICOTTE HOLDINGS, LLC *
51 Evans Drive *
Tax Map 78, Lot 40 *
*

PUBLIC HEARING

EXCERPT OF MEETING OF THE LEBANON ZONING BOARD OF
ADJUSTMENT HELD AT COUNCIL CHAMBERS, CITY HALL, 51 NORTH
PARK STREET, LEBANON, NEW HAMPSHIRE ON JULY 11, 2023, AS
RECORDED ON DIGITAL VIDEO BY THE CITY OF LEBANON.

Members of the Board Present:

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

Staff Present:

Nathan Reichert - Zoning Administrator
Tim Corwin - Deputy Planning and Development Director

Appearing on behalf of the Appellant:

Johanna Cicotte
Attorney Barry Schuster

Transcriber: Judith A. Park, CET-450

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1 TUESDAY, JULY 11, 2023

2 CHAIRMAN WILLIAM KOPPENHEFFER (THE CHAIRMAN):

3 The next item on the agenda is a public hearing in the
4 matter of Cicotte Holdings, LLC, 51 Evans Drive, Tax
5 Map 78, Lot 40, zoned RO; an appeal of the zoning
6 officials' notice of violation and administrative
7 decision pursuant to §801.1 Administrative Appeals, that
8 the property is not flood zoned, that the parking area
9 is grandfathered, and deadlines demanded by the City are
10 unreasonable. It's continued from the June 5, 2023,
11 meeting.

12 [Vice Chairman Dan Nash recuses himself.]

13 THE CHAIRMAN: I might point out, both to the
14 appellant and the Board that the zoning administrator
15 recognizes that the city engineer has approved a
16 wetlands permit so that the issue of the wetlands is no
17 longer an issue before us tonight. Is that correct,
18 Mr. Reichert?

19 ZONING ADMINISTRATOR NATHAN REICHERT (REICHERT):
20 (Indiscernible) the equivalent. So a Flood Plain Permit
21 has been obtained by the applicant in the interim.

22 Let the record reflect (indiscernible).

23 THE CHAIRMAN: Okay. So with that being said,
24 is there anybody here representing the appellant? Would
25 you tell us who you are, and please spell your first and

1 last name?

2 JOHANNA CICOTTE (CICOTTE): My name is Johanna
3 Cicotte, J-o-h-a-n-n-a C-i-c-o-t-t-e.

4 BARRY SCHUSTER (SCHUSTER): My name is Barry
5 Schuster; I'm an attorney in Lebanon, representing
6 Cicotte Holdings, LLC.

7 THE CHAIRMAN: Mr. Schuster, when we
8 continued -- Attorney Schuster, when we continued this
9 hearing back in June, you were going to further
10 investigate the issue of the wetland as well as the
11 issue of grandfathering. For purposes of this hearing,
12 the wetlands issue is moot. What can you tell us about
13 the use of this lot and grandfathering?

14 SCHUSTER: Well, I would like to just comment
15 that, at the last meeting, we did present the wetlands
16 permit or the Flood Plain permit -- excuse me. It was
17 in the package. And also, I received from Tiffany today
18 two --

19 THE CHAIRMAN: And who is Tiffany?

20 SCHUSTER: -- Notice of Planning Action and a
21 Zoning Permit.

22 THE CHAIRMAN: Attorney Schuster --

23 SCHUSTER: Yes?

24 THE CHAIRMAN: Who is Tiffany?

25 SCHUSTER: Oh, I'm sorry. Tiffany in the

1 planning office. And she sent those to me. And the
2 only reason I point that out is that on the planning
3 board notice of March 13, 2000, there is a plan, which
4 has two purposes tonight, but it specifically says that
5 the site is not within the Wetlands Conservation or
6 Flood Plain District.

7 THE CHAIRMAN: The wetlands issue is moot.

8 SCHUSTER: I understand.

9 THE CHAIRMAN: In the interest of saving time,
10 unless that somehow pertains to grandfathering, we don't
11 need to hear --

12 SCHUSTER: Well, I point it out because we were
13 accused, my client was accused of violating that, and
14 the City had it in its files for over 23 years. And I
15 just wanted to point that out.

16 THE CHAIRMAN: I would like --

17 SCHUSTER: Now, that plan --

18 THE CHAIRMAN: -- to point out that the City
19 didn't find that document except at my behest this
20 morning.

21 SCHUSTER: This was in our package that we
22 submitted at the last meeting. This very plan was
23 submitted --

24 THE CHAIRMAN: From 2000?

25 SCHUSTER: Yes.

1 THE CHAIRMAN: Okay.

2 SCHUSTER: It is --

3 THE CHAIRMAN: It got overlooked, then.

4 SCHUSTER: -- Exhibit 5 in the packet from last
5 time. And if the City had seen that, they would not
6 have sent the Notice of Violation on that issue.

7 But I will now move along --

8 ZONING ADMINISTRATOR REICHERT: I don't want to
9 belabor this point, but to this point I really would
10 object to his point on this. I don't want to go down
11 the road arguing it, but at the end of the day, I object
12 to his point about --

13 SCHUSTER: I am done with the issue.

14 THE CHAIRMAN: Wait, wait. The wetlands is not
15 an issue.

16 SCHUSTER: Correct.

17 THE CHAIRMAN: So let's drop it and move on.

18 SCHUSTER: And I intend to do that.

19 I will say that the way the notice of the
20 hearing tonight is stated it says that the parking area
21 *is* grandfathered was not what we put in the application.
22 It was that the parking area *may be* grandfathered. And
23 the reason I put it in that way is to demonstrate that
24 we're not sure, and there are no records that the City
25 shows, as to what the parking area is. And that's where

1 the plans that were submitted, including the exhibits
2 that are in our package -- now, I presume you have the
3 package that -- I see Mr. Newlove has some. But we've
4 got Exhibit 3, 4, Exhibit 5 is what Tiffany in the
5 planning office sent out today. And then there are a
6 series of photographs, 7, 8, 9 and 10, taken at various
7 times over the last ten years.

8 THE CHAIRMAN: Excuse me, Attorney Schuster, our
9 exhibits are not numbered. So --

10 SCHUSTER: They should be numbered on the bottom
11 of the paper. It might be small, but they are all
12 numbered. The only one that's not -- you can't read it
13 is the dark page. Now, if you have black-and-white
14 pictures, then they won't be visible.

15 THE CHAIRMAN: What's the first exhibit you're
16 referring to?

17 SCHUSTER: I believe those were submitted by the
18 planning office and not by us. Those are not exhibits
19 that I submitted.

20 THE CHAIRMAN: Are you referring to exhibits
21 from your June 21st packet --

22 SCHUSTER: Yes.

23 THE CHAIRMAN: -- or from the original?

24 SCHUSTER: The June 21st package is the only one
25 submitted.

1 THE CHAIRMAN: Okay. So -- thank you. Looking
2 at those, I see exhibit numbers. So would you go
3 through again and tell us what you have?

4 SCHUSTER: There are several plans, beginning
5 with Exhibit 3, which is not a very good rendition,
6 but -- it's a very dark copy -- but it does say three
7 buried in the dark ink. The next page says Jewett
8 Automotive in the upper corner, but it's a site plan.
9 It says Exhibit 4. Then there is Exhibit 5; again, the
10 exhibit number five text is very small, but it is on
11 the -- if you hold it in a landscape, it does show
12 Exhibit 5. And that is the one that, again, you
13 submitted today.

14 And then after those exhibits, we have 7, 8, 9
15 and I believe it's 10, which are photographs of the
16 property taken over various times since 2009. And I can
17 only vouch to say that Google has a photograph, a street
18 view, and it calls it July 2009. I take it that it is.
19 If it's on the internet, it must be true, right? And
20 then there's some aerial photos, and then another,
21 November 2015 street view; a 2018 aerial view.

22 The only explanation for the violation of the
23 parking was in the April 24th email from Mr. Corwin to
24 Mr. Nash, and it outlines a red area. That red area
25 shows up in the aerial photos and the street views of

1 where parking has been since 2009. And --

2 THE CHAIRMAN: Excuse me. What's that area
3 you're referring to?

4 SCHUSTER: Well, there was a memo that
5 Mr. Corwin sent explaining that approximately this
6 little red area -- and I'll pass it around.

7 (Request to put exhibit on screen.)

8 SCHUSTER: And while he does that, I'll just
9 mention that this property, as I outlined in the
10 June 21st memo, has been a car dealership since the
11 1960s. And there are many people who might be of a
12 certain age, you remember Smith Auto? And they operated
13 there until 2000. And then in 2005, they retired and
14 sold it to a car dealer named Andy Button, who had a
15 short-lived tenure there. And he sold it to Miller
16 Auto, which was in business there for a few years, but
17 then Team Nissan bought it. And then Key Automotive
18 bought it, and Cicotte Holdings only purchased it in
19 2021. So it's very possible that whatever has been
20 there occurred long before Ms. Cicotte and Cicotte
21 Holdings ever took over the property.

22 And in fact, as one of the exhibits at the end
23 shows -- it is the estimate for the paving of the area,
24 and that is Exhibit 6, and it's to reclaim the existing
25 lot. And so Twin State Paving simply went in and paved

1 what was already being used as the parking lot. So
2 there was no intent to expand the lot; it was simply to
3 clean it up, fix it up and repave it. But, again,
4 that's the area where cars have been parked since Smith
5 Auto or earlier have been there, certainly since he and
6 the others -- again, the photographs that were included
7 go back to 2009.

8 The real issue here -- and, again, there's a
9 memo again included in our package that says that this
10 property really never had a site plan approval for
11 parking. There were site plan approvals when there were
12 additions to the building, but I could not find anything
13 in the city files that talks about any site plan
14 approval or where the parking is. Frankly, if this went
15 to site plan review, that would be perfectly acceptable,
16 and we'd get a baseline of what is there. But given the
17 ambiguity of what was claimed to be improper and what
18 has happened over the years, we just don't have a record
19 of that. We have photographs which may be somewhat
20 ambiguous, but they certainly show cars parked back
21 there. Now, I don't know what the date of the current
22 picture is --

23 UNIDENTIFIED: 2012.

24 SCHUSTER: 2012.

25 UNIDENTIFIED: 2012.

1 SCHUSTER: 2012?

2 UNIDENTIFIED: Yes.

3 SCHUSTER: Okay. And then there's pictures from
4 2015 and 2018 that show parking far beyond that, long
5 before Cicotte Holdings took the property. So there's
6 an ambiguity as to what the parking is. And, again,
7 that could have been the parking in 2012. We don't know
8 what it was in 2011; we don't know what it was in 2015.
9 But that is the issue, that I don't think there's any
10 real evidence as to what the parking was. And when
11 Johanna Cicotte had Twin State Paving go in, they went
12 and paved where parking had been and cleaned up the
13 site. Site plan review would be perfectly acceptable,
14 but we don't think that there was any intent to exceed
15 what was already there.

16 THE CHAIRMAN: Mr. Corwin, do you have a
17 photograph or a plan of what the parking is today?

18 DEPUTY PLANNING AND DEVELOPMENT DIRECTOR TIM
19 CORWIN (CORWIN): Yes.

20 VICE CHAIR JEREMY KATZ (KATZ): So what I think
21 I'm hearing so far is the City believes you're in
22 violation, and you believe you're not in violation.

23 SCHUSTER: We don't know. Looking at the email
24 that Mr. Corwin had up earlier with the little red lines
25 through it, cars have been there forever. We don't know

1 what the approved parking is, and we can't find any
2 evidence in the record what the approved parking is.
3 That's where we stand. And so it's hard to say we're in
4 violation if we don't know what the baseline is.

5 KATZ: Okay, so let me just ask this a different
6 way. If the City interpreted any part of the ordinance
7 in a manner that you disagree with, can you point to the
8 interpretation they made and what your recommended
9 interpretation would be that you would like us to adopt?

10 SCHUSTER: I don't think it's an interpretation
11 of the ordinance; it's a factual interpretation of
12 whether this red rectangle is improper parking or has it
13 been there for how long, or we don't know. And I don't
14 know if the City knows how long it's been there because
15 we cannot find a record of what was approved because the
16 plans that were included in our package show four
17 different layouts of parking at different times before
18 prior owners have been before the planning board.

19 KATZ: I got that. So you're not -- it's not an
20 interpretative issue; you're objecting to the fact that
21 the City has decided they want to attempt to enforce a
22 violation, and you disagree with that attempt to enforce
23 it?

24 SCHUSTER: The City's attempting to state that
25 there is a violation. If there is a violation, then

1 they have every right to enforce it. We're saying we
2 don't know, and we don't think the City can prove that
3 there's a violation because there is no record, there's
4 no baseline record of what the parking is or should be.

5 KATZ: So my concern here is that this is
6 specifically what this Board does not have jurisdiction
7 to decide. There's a discretionary enforcement action
8 by the City. If the City wanted to pursue that, they
9 have a right to be presumed innocent of that when they
10 go to court and bring whatever defense that they want to
11 bring. Boards are properly set up to adjudicate facts
12 and hear this, and that's what they exist for. And if
13 we look at -- and I have right here -- RSA 676:5-2-b,
14 "The decision of the administrative officer includes any
15 decision involving construction, interpretation or
16 application of the terms of the ordinance. It does not
17 include a discretionary decision to commence formal or
18 informal enforcement proceedings but does include any
19 construction, interpretation or application of terms of
20 the ordinance which is implicated in such enforcement
21 proceedings." If there's not a disagreement about what
22 the ordinance means and there's simply a disagreement
23 about whether there's a violation, I don't think that
24 should be in front of us.

25 THE CHAIRMAN: So what are you saying?

1 KATZ: I think this should be dismissed for lack
2 of jurisdiction because we can't find them in violation,
3 and we can't find them not in violation.

4 THE CHAIRMAN: (Indiscernible)

5 KATZ: Because that's the appropriate process of
6 the courts. When the City alleged a violation here,
7 (indiscernible).

8 THE CHAIRMAN: Mr. Corwin?

9 CORWIN: There's plenty more to say
10 substantively (indiscernible) that's been said tonight,
11 not the least of which is that the party who is
12 asserting or claiming that there might be
13 (indiscernible) a nonconforming use, it's their burden
14 to demonstrate that there is a nonconforming use. I can
15 cite a legal authority for that --

16 THE CHAIRMAN: You don't have to. That's their
17 burden.

18 CORWIN: But I think fundamentally this -- I
19 think fundamentally that -- I don't want to speak for
20 the planning director, but I'm in complete agreement
21 with Mr. Katz's remarks. This is a factual
22 determination; it's not a matter of interpreting or
23 misapplying the zoning ordinance. If the applicant
24 believes that the use is nonconforming, they can
25 demonstrate that as a defense to the violation.

1 THE CHAIRMAN: Mr. Reichert?

2 REICHERT: I think the narrow question in front
3 of the Board is, you know, the applicant's burden to
4 prove that there was an error created by staff in this
5 case. And it's their burden to prove that. And I don't
6 know that we have achieved that yet.

7 UNIDENTIFIED: Is that our rule for proceeding
8 with (indiscernible) appeals, or am I mistaken?

9 REICHERT: Correct. An appeal of the -- under
10 this area of the ordinance would require that, you know,
11 the applicant needs to demonstrate that there was an
12 error made by the official that's being appealed. And
13 it's not on the -- it's not on the -- it's not on
14 staff's perspective, it's not our burden to defend
15 ourselves. We have the right to defend our position and
16 articulate that, but it's the burden of the applicant to
17 say that something about the decision was clearly wrong.
18 And that's -- I don't have it in front of me.

19 Mr. Corwin, do you have the actual burden the
20 way it's laid out in the ordinance?

21 CORWIN: Yeah. I can bring that up. I guess I
22 would just -- I would reserve our right to object to
23 the -- respectfully reserve our right to object to the
24 Board's jurisdiction, if you determine that you do have
25 jurisdiction, but we're certainly more than prepared to

1 target the merits of the case.

2 THE CHAIRMAN: Well --

3 CORWIN: It's a very straightforward case. It
4 shouldn't -- it really shouldn't take any time at all.

5 THE CHAIRMAN: I agree. But on the one hand
6 you're telling me we can decide it as a -- I think
7 you're telling me -- under our administrative procedure
8 section of the zoning, we can decide it. And then on
9 the other hand, you're agreeing with Mr. Katz that you
10 don't have jurisdiction. So, you know, (indiscernible).

11 CORWIN: I didn't -- I said I agree -- I was
12 just saying if you decide to move forward, then we would
13 reserve our right to -- on appeal to --

14 THE CHAIRMAN: I am trying to decide which way I
15 fall. I would guess that there are other members of the
16 Board who want to decide, as well, whether to move
17 forward, looking for values --

18 CORWIN: Can I read some of the statute?

19 THE CHAIRMAN: Yes.

20 CORWIN: So the statute, 676:5, Appeals to Board
21 of Adjustment of Appeals: "The board of adjustment --
22 may be taken by any person aggrieved by any officer,"
23 etc., etc., let me see -- sorry, "may be taken by any
24 person aggrieved by an officer, department, board or
25 bureau of a municipality affected by any" -- sorry, this

1 is the key part -- "by any decision of the
2 administrative officer." "Any decision of the
3 administrative officer," and that term is defined in
4 676:5-ii-b as, "A decision of the administrative
5 officer," so, you know, what can be appealed to the
6 board, "includes any decision involving construction,
7 interpretation or application of the terms of the
8 ordinance. It does not include a discretionary decision
9 to commence formal or informal enforcement proceedings
10 but does include any construction, interpretation or
11 application of the terms of the ordinance which is
12 implicated in such enforcement proceedings."

13 So I think that's the -- I think that's what
14 Mr. Katz' questioning was trying to get at, what aspect
15 of the ordinance are we misapplying or misinterpreting
16 in this case.

17 THE CHAIRMAN: Well, but you correctly applied
18 grandfathering.

19 CORWIN: It's not -- it's not our -- it's not
20 our burden in the first instance to examine whether
21 something is a nonconforming use.

22 THE CHAIRMAN: I'm not asking you that. What
23 I'm asking you, if there's a question of whether a
24 property is grandfathered or not, the administrator
25 makes a decision one way or the other, does a party

1 who's opposed to that decision get an administrative
2 hearing or have to go directly to the court?

3 CORWIN: I've had that question myself. I think
4 there are some, just as a general matter, not with
5 respect to this particular application or matter, there
6 are some fine lines as to what exactly can and can't be
7 appealed to the zoning board. And there's some
8 relatively recent case law that's discussed this. So I
9 would say if we were -- if -- what I would have expected
10 from any applicant, if the applicant believed that they
11 were a nonconforming use or they may be a nonconforming
12 use, they would have communicated that to us. They
13 would have said, "In response to your Notice of
14 Violation, it's our view that we are a nonconforming
15 use, and here's why." And then we would make a
16 determination on that point. And perhaps that would
17 have been appealable to the Zoning Board, but that
18 didn't happen. The applicant instead chose to come to
19 the Board to make that flat fact-finding determination,
20 not to appeal the one that we made but to have you, you
21 know, you make that determination. It's just -- it's
22 putting the cart before the horse, at a minimum.

23 REICHERT: My view is I don't believe that we
24 ever made a determination on whether or not there was a
25 grandfathered use that's in place. I draw a very clear

1 distinction between the area being paved or not. The
2 use of one thing is whether or not what you're using it
3 for, you know. Whether or not the pavement has been
4 expanded in and of itself is changing the nature of the
5 use of that space. Whether it was grandfathered for
6 parking or not wasn't a part of the discussions and the
7 thought that I had as we were looking at this case. The
8 fact is the pavement clearly has been expanded in this
9 case, and it was expanded without the benefit of
10 permits. And when you are in a situation where you have
11 a nonconforming use, that triggers a requirement for a
12 zoning approval. In addition to that, because of the
13 size of the expansion, a planning approval is also
14 required, neither of which were done before the work was
15 completed. Thus, it becomes a violation.

16 REICHERT: I just -- just one quick -- I think
17 the Board's just being leery as a practical matter about
18 getting involved in enforcement actions, you know, as
19 a -- because the applicant is unhappy about it and wants
20 to use this Board in a way that's just not appropriate,
21 in a way, you know, in order to defer enforcement or,
22 you know, impede enforcement proceedings. To get into
23 the technicalities of that kind of fact-finding when we
24 didn't even make a determination with respect to that, I
25 just think it's unripe for this Board, again at a

1 minimum.

2 THE CHAIRMAN: Mr. Katz.

3 KATZ: So we might be saying many of the same
4 things using different words. I think that if there's
5 no part of the ordinance that can be pointed to of this
6 is your interpretation, this is the appellant's
7 interpretation, and we're being asked to say which is
8 the correct interpretation, I don't think there's
9 anything for us to do here. I think that the factual
10 nature of the appeal -- of the violation and the
11 defenses thereto are what Courts exist for. We're
12 simply here to act as an interpretive body if there's an
13 allegation that you have made of wrong interpretation.
14 And there's no allegation that's been stated that we've
15 made a wrong interpretation. There's a disagreement of
16 a violation exists. There's a disagreement with a
17 discretionary decision to enforce. And so, therefore, I
18 think this should be dismissed. This should be
19 dismissed for lack of jurisdiction. If you guys decide
20 you want to pursue this and cite the landowner in court,
21 they'll have their right to defend themselves, and
22 whoever's right will prevail. But I don't think this is
23 the right place to hear this.

24 SCHUSTER: When you have a moment, I just have
25 one question.

1 THE CHAIRMAN: Oh, we've got a moment.

2 SCHUSTER: Okay. May I?

3 THE CHAIRMAN: Yes.

4 SCHUSTER: Just to clarify something
5 Mr. Reichert said, if it's a matter of paving where
6 there had been parking, if this had site plan review,
7 would that be one step to help cure this issue? If
8 there had already been parking there and it was a matter
9 of the paving, then we'd be glad to go for site plan
10 review, make the baseline plan, show where the parking
11 is and do all of that.

12 CORWIN: This is a discussion that's appropriate
13 between staff --

14 SCHUSTER: I was asking for a clarification of
15 Mr. Reichert --

16 CORWIN: -- not before the Zoning Board. Not
17 before the Zoning Board.

18 SCHUSTER: I was asking for a clarification --
19 (Chairman strikes gavel.)

20 SCHUSTER: -- from Mr. Reichert --
21 (Chairman strikes gavel.)

22 CORWIN: It's not necessary. It's not
23 appropriate conversation.

24 SCHUSTER: He can speak for himself.
25 (Chairman strikes gavel.)

1 SCHUSTER: No, he was out of line to interrupt
2 me.

3 THE CHAIRMAN: This is not an appropriate forum
4 for you to ask the director what's your course of
5 action. Not tonight.

6 SCHUSTER: I was looking for a clarification of
7 what he said, that's all.

8 THE CHAIRMAN: I guess I would hear how the
9 rest of the Board feels. I think we should get a legal
10 opinion. I would hesitate to go there. (Indiscernible)
11 how do you feel?

12 CATHERINE HEMBREE (HEMBREE): (Inaudible.)

13 UNIDENTIFIED: Didn't hear you.

14 MONITOR: No, no, we can't hear anything.

15 HEMBREE: Sorry, I didn't turn it on.

16 THE CHAIRMAN: Start over, please.

17 HEMBREE: I will start over. I was just saying
18 I thought there was a lot more to this case than just
19 added concrete, considering there's no site plan
20 approval in the history of this property. And like,
21 we're looking at pictures of cars parked in dirt. Was
22 that a violation 10 years ago that never got cited? I
23 just thought there was a lot more here that we need to
24 dig into. And I agree that we'd need an opinion from
25 someone who knows more than us about the legality of it.

1 THE CHAIRMAN: Mr. Newlove?

2 DAVE NEWLOVE (NEWLOVE): I agree with Jeremy
3 Katz' point of view.

4 THE CHAIRMAN: Mr. McDonough?

5 PAUL MCDONOUGH: First of all, I think the
6 recommendation to get a legal opinion is probably the
7 way to bring this together and try to get some
8 clarification.

9 But I had -- I wanted to ask Tim a question if
10 that's okay. So the way I read 801.1, there's not much
11 to it. It just -- it seems to me it's saying anybody
12 who's got a problem or they don't like the decision,
13 they have a right to an appeal if they don't like the
14 decision made regarding their petition. And so what
15 that says to me is there's an argument that, hey, go to
16 court, let them debate the differences here and
17 understand the differences and apply the law as they see
18 it. But isn't this a statute, the 801.1, a statute
19 that's enabling a petitioner to get an answer faster and
20 less expensive than having to go to court all the time
21 to petition to see when they have a disagreement with a
22 decision made by an administrative assistant? And
23 that's what this Board is supposed to do. I mean, I
24 think that Mr. Katz's argument is very interesting about
25 the jurisdictional argument, but that 801 to me says

1 anybody that sneezes can bring an appeal.

2 And then my second point I'd like to ask of you
3 is let's assume just for the point of view for a
4 question right now that they're in violation, what are
5 the consequences of that? What would happen if let's --
6 everybody agrees that they're in violation, what would
7 the office do as a result of that? Is that a fine? Do
8 they have to tear up the parking lot? Do they have to
9 move to North Carolina? What happens with that kind of
10 violation?

11 CORWIN: Sure. Thank you. The result -- with
12 respect to 801.1, I agree; it does appear to be more
13 broadly written than the statute that it refers to. And
14 so I think that alone might be a reason to obtain a
15 legal opinion on this question. I think 801.1, the way
16 that it's written, as you point out -- and I haven't
17 given this a ton of thought -- but it does appear to
18 muddy the waters a little bit. And so to the extent
19 that 801.1 as written is indeed broader than what the
20 statute contemplates, A, is that permissible; and B, if
21 it is, then does this hearing fall within 801.1. And so
22 I think there's probably enough -- I hesitate to
23 recommend or endorse seeking a legal opinion only
24 because this is a violation, and we'd like to see these
25 things be addressed sooner rather than later. But I

1 think all in all it does make sense to seek a legal
2 opinion. So that's just my view.

3 MCDONOUGH: And then the second part of the
4 question: What happens with the violation? If they're
5 in this kind of situation, what are we all looking at?

6 CORWIN: So --

7 REICHERT: (Indiscernible) here. Do you want me
8 to read it? This is directly from the notice letter
9 that was sent to the applicant. "Per Section 903 of the
10 Zoning Ordinance, Article 10 (indiscernible), RSA 676-
11 17, Failure to comply with this order within the time
12 stated," which was, you know, within 30 days rectify the
13 matter, "within the time stated herein, result in a
14 civil penalty of \$225 per violation for the first
15 offense and \$550 per violation for subsequent offenses
16 for each day that such violations are found to continue
17 after the date on which you receive this notice."

18 So 30 days from the date the notice was sent the
19 clock started on any of the violations. The first
20 violation would be \$275 per day; the second violation
21 will be \$550 per day, meaning subsequent violation
22 thereafter. So effectively -- and I may have to go back
23 and add up the specific violations in the case -- we're
24 talking about somewhere around \$700 to \$1,000 per day in
25 fines that would be applicable and they would be subject

1 to relative to the violations.

2 Now, for the City to move those violations
3 forward, two things occur. One, filing the appeal that
4 was filed automatically stays the case. So there's a
5 question as to whether or not during that stay are
6 violation fees actually occurring or not. That would be
7 a question that ultimately would be adjudicated by the
8 judge if we get to court. If the Zoning Board chooses
9 to sustain the decision of the zoning official in this
10 case, then clearly the violations would be still in
11 order and rectified as being violations and would need
12 to be cured. If the Zoning Board chose to overturn the
13 decision of the zoning official, then at that point in
14 time it's overturned, and the case goes away. Or
15 if -- the third option that the Zoning Board has is to
16 sort of -- I would say it's to split the baby, is there
17 a solution different than sustain or not sustain that
18 resolves part of the matter or not part of the matter.

19 So it's a question of -- there's some deference
20 to the Board as to what your power in this case is, but
21 ultimately the question you need to ask yourselves are
22 has the applicant demonstrated to this Board that an
23 error has been made in the interpretation of the Zoning
24 Ordinance by the zoning official; and if there has been
25 an error, then they overturn the decision. If there has

1 not been, the ability -- and there's no proof that
2 there's been -- that there has been demonstrated by the
3 applicant, then they sustain the determination of the
4 zoning official at that point. The next step would be
5 to try to resolve the matter either between the parties
6 or proceed to court.

7 THE CHAIRMAN: One -- one last thing. One third
8 alternative would be that if the appeal from the
9 administrator's decision is upheld the applicant
10 (indiscernible) --

11 MONITOR: Chairman Koppenheffer, please --

12 THE CHAIRMAN: Sorry.

13 MONITOR: Thank you.

14 THE CHAIRMAN: A third alternative is that the
15 applicant could apply for a variance while the question
16 of the appeal is being decided or even after it's been
17 decided.

18 MCDONOUGH: So just as a follow-up, I
19 appreciate -- thank you for -- but my question wasn't
20 carefully drafted or articulated. What I was asking, to
21 try to get beyond just the fine scheduling
22 (indiscernible), is that just -- does that just stay in
23 place until they back up and are no longer in violation,
24 or do they --

25 REICHERT: They would have --

1 MCDONOUGH: Do they get the violation cleared
2 because they've worked with your office?

3 REICHERT: They would have to remedy the
4 violation to the satisfaction of either the Court or the
5 zoning official, one of the two. Obviously, there's the
6 ability for the zoning official to work with them to
7 resolve the matter. Now, there's multiple ways you
8 could resolve the issue. You could tear it apart and
9 remove the violation, which sometimes that's a solution.
10 There may be ways to permit it. You know, there's
11 potentially multiple ways to remedy the matter. But
12 ultimately, it's one of those things that those options
13 as to what the remedy is would be up to the applicant
14 to -- they're just obliged to remedy it. And until it's
15 remedied, the civil penalties are applicable.

16 MCDONOUGH: And they could seek that remedy by
17 continuing this and working with your department to try
18 to find a remedy that was acceptable without going
19 through this whole process, is that correct?

20 REICHERT: Potentially. I mean, there's -- from
21 the position of staff, I mean, I would ask that the
22 Board make a ruling (indiscernible), you sustain the
23 decision that there's a violation that's been created or
24 not, because that brings clarity to the situation. If
25 there's not a violation and you're going to overturn the

1 determination of the zoning official, at that point in
2 time the game's over. If the zoning official is
3 sustained, at that point there is a violation that
4 exists, and it's been determined by the Zoning Board,
5 and at that point in time it needs to be remedied.

6 MCDONOUGH: Thank you.

7 THE CHAIRMAN: Ms. Hembree or Mr. McDonough,
8 would you care to make a motion?

9 HEMBREE: I (inaudible).

10 THE CHAIRMAN: Mr. Corwin?

11 CORWIN: Can I just make a point? If the Board
12 receives legal advice, the legal advice is to proceed
13 with the -- adjudicating the substance of the
14 appellant's claims, I just want to make it clear right
15 now at the outset that, to the extent the applicant
16 wants to -- to the extent the applicant believes that
17 the parking use of the area that's been paved is legally
18 nonconforming, there's some sort of protection of a
19 legal nonconforming use, it is their burden at the
20 outset, in the first instance, to demonstrate that
21 that's the case. It's not up to the Board to sift
22 through various facts and put pieces together and come
23 up with the conclusion that, yes, that area is legal
24 nonconforming as a parking area for a -- it's -- they
25 have to go back to the point in time where the Zoning

1 Ordinance prohibited what they're purporting the use to
2 be of that area today. It's an extensive analysis, and
3 it's their burden to do that. I just -- I think that's
4 important to make clear at this juncture.

5 THE CHAIRMAN: Well --

6 CORWIN: Before it becomes a question two months
7 down the road.

8 THE CHAIRMAN: Okay. So the motion is to -- and
9 correct me if I'm wrong, Ms. Hembree -- to seek A, a
10 legal opinion from the city attorney on the question of
11 whether or not we have jurisdiction to hear this appeal;
12 B, to continue this hearing until the August meeting --
13 the scheduled August meeting of the ZBA; is that
14 correct?

15 MCDONOUGH: Just to be clear, would you like a
16 written legal opinion, or would you like to meet with
17 legal counsel to discuss?

18 THE CHAIRMAN: What does the Board --

19 HEMBREE: I think it might be nice to actually
20 meet in case we have more questions come up from what
21 they're telling us.

22 THE CHAIRMAN: Mr. Katz?

23 KATZ: I still have opinions from before I want
24 to share.

25 THE CHAIRMAN: You can share them. Well, we

1 have a motion on the floor that hasn't been seconded.

2 HEMBREE: No.

3 MCDONOUGH: And before I second it, the
4 discussion whether we would meet with legal counsel to
5 get a legal opinion out from him --

6 THE CHAIRMAN: You can discuss anything
7 concerning the motion that you want to, literally; but
8 we need a second first.

9 MCDONOUGH: I would like to --

10 THE CHAIRMAN: Mr. Katz, you had some
11 discussion?

12 KATZ: Yes. Throughout multiple cases that
13 we've had, both the City, as well as different parties
14 that have appealed, have said repeatedly that certainty
15 has value, that time is money. And this is an appeal
16 that was filed in May to be heard in June, continued,
17 and then heard in July and continued to August to
18 potentially hear again and carry this forward even more.
19 And I don't think anyone's justice is being served by
20 pushing this off. This doesn't help the City, and it
21 doesn't help the applicant, and it doesn't increase
22 certainty. And so I'm -- I'll just say in advance I'm
23 against continuing it. I think that the interest of
24 certainty is to get out of the way of both of these
25 parties and let them figure it out in an appropriate

1 venue. And this is prolonging the agony for all
2 involved, and I think it's a bad idea.

3 THE CHAIRMAN: Any other discussion?

4 All right, hearing none, all those in favor of
5 the motion?

6 Ms. Hembree, how do you vote?

7 HEMBREE: I vote aye.

8 THE CHAIRMAN: Mr. Newlove?

9 NEWLOVE: I vote no.

10 THE CHAIRMAN: Mr. McDonough?

11 MCDONOUGH: I vote yes.

12 THE CHAIRMAN: Mr. Katz?

13 KATZ: No.

14 THE CHAIRMAN: And I vote yes. The motion
15 carries three to two. We're continued until our August
16 meeting.

17 Do we have a date?

18 UNIDENTIFIED: August 7th.

19 THE CHAIRMAN: Thank you, Attorney Schuster.

20 SCHUSTER: Thank you, sir.

21 UNIDENTIFIED: (Indiscernible) Are we going to
22 meet in person with legal counsel, or only written?

23 (Chairman strikes gavel.)

24 (End requested portion of meeting at marker
25 50:47.)

CERTIFICATION

I, Judith A. Park, a Certified Electronic Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the video recording taken by the City of Lebanon of the official proceedings in the above-entitled matter.

I, Judith A. Park, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.


Judith A. Park, CET-450



Proceedings recorded by digital video recording;
transcript produced by computer.

January 10, 2024
Date

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IN RE: CICOTTE HOLDINGS, LLC
THE STATE OF NEW HAMPSHIRE
CITY OF LEBANON

\$ \$1,000 ^[1] 24:24 \$225 ^[1] 24:14 \$275 ^[1] 24:20 \$550 ^[2] 24:15,21 \$700 ^[1] 24:24 * ***** ^[2] 1:4,12 0 03842 ^[1] 32:22 03842-4030 ^[1] 32:17 1 10 ^[5] 6:6 7:15 21:22 24:10 32:14 11 ^[2] 1:16 2:1 13 ^[1] 4:3 17 ^[1] 24:11 1960s ^[1] 8:11 2 2000 ^[3] 4:3,24 8:13 2005 ^[1] 8:13 2009 ^[4] 7:16,18 8:1 9:7 2011 ^[1] 10:8 2012 ^[5] 9:23,24,25 10:1,7 2015 ^[3] 7:21 10:4,8 2018 ^[2] 7:21 10:4 2021 ^[1] 8:19 2023 ^[3] 1:16 2:1,10 2024 ^[1] 32:14 21st ^[3] 6:21,24 8:10 23 ^[1] 4:14 24th ^[1] 7:23 3 3 ^[4] 6:4 7:5 32:16,21 30 ^[2] 24:12,18 4 4 ^[2] 6:4 7:9 40 ^[2] 1:10 2:5 5 5 ^[5] 2:10 5:4 6:4 7:9,12 50:47 ^[2] 31:25,26 51 ^[3] 1:9,15 2:4 6 6 ^[1] 8:24 603-929-0972 ^[2] 32:18,23 676 ^[1] 24:10 676:5 ^[1] 15:20	676:5-2-b ^[1] 12:13 676:5-ii-b ^[1] 16:4 7 7 ^[2] 6:6 7:14 78 ^[2] 1:10 2:5 7th ^[1] 31:18 8 8 ^[2] 6:6 7:14 801 ^[1] 22:25 801.1 ^[6] 22:10,18 23:12,15,19,21 9 9 ^[2] 6:6 7:14 903 ^[1] 24:9 ? ?801.1 ^[1] 2:7 A ability ^[2] 26:1 27:6 above-entitled ^[1] 32:6 acceptable ^[3] 9:15 10:13 27:18 accurate ^[1] 32:4 accused ^[2] 4:13,13 achieved ^[1] 14:6 act ^[1] 19:12 action ^[5] 3:20 12:7 21:5 32:9,11 actions ^[1] 18:18 actual ^[1] 14:19 actually ^[2] 25:6 29:19 add ^[1] 24:23 added ^[1] 21:19 addition ^[1] 18:12 additions ^[1] 9:12 addressed ^[1] 23:25 adjudicate ^[1] 12:11 adjudicated ^[1] 25:7 adjudicating ^[1] 28:13 adjustment ^[4] 1:3,15 15:21,21 administrative ^[9] 2:6,7 12:14 15:7 16:2,3,4 17:1 22:22 administrator ^[5] 1:23 2:14,19 5:8 16:24 administrator's ^[1] 26:9 adopt ^[1] 11:9 advance ^[1] 30:22 advice ^[2] 28:12,12 aerial ^[3] 7:20,21,25 affected ^[1] 15:25 age ^[1] 8:12	agenda ^[1] 2:3 aggrieved ^[2] 15:22,24 ago ^[1] 21:22 agony ^[1] 31:1 agree ^[5] 15:5,11 21:24 22:2 23:12 agreeing ^[1] 15:9 agreement ^[1] 13:20 agrees ^[1] 23:6 allegation ^[2] 19:13,14 alleged ^[1] 13:6 alone ^[1] 23:14 already ^[3] 9:1 10:15 20:8 alt ^[1] 1:21 alternative ^[2] 26:8,14 ambiguity ^[2] 9:17 10:6 ambiguous ^[1] 9:20 analysis ^[1] 29:2 andy ^[1] 8:14 another ^[1] 7:20 answer ^[1] 22:19 anybody ^[3] 2:24 22:11 23:1 anyone's ^[1] 30:19 apart ^[1] 27:8 appeal ^[12] 2:5 14:9 15:13 17:20 19:10 22:13 23:1 25:3 26:8,16 29:11 30:15 appealable ^[1] 17:17 appealed ^[4] 14:12 16:5 17:7 30:14 appeals ^[4] 2:7 14:8 15:20,21 appear ^[2] 23:12,17 appearing ^[1] 1:25 appellant ^[3] 1:25 2:14,24 appellant's ^[2] 19:6 28:14 applicable ^[2] 24:25 27:15 applicant ^[17] 2:21 13:23 14:11,16 17:10,10,18 18:19 24:9 25:22 26:3,9,15 27:13 28:15,16 30:21 applicant's ^[1] 14:3 application ^[5] 5:21 12:16,19 16:7,11 17:5 applied ^[1] 16:17 apply ^[2] 22:17 26:15 appreciate ^[1] 26:19 appropriate ^[6] 13:5 18:20 20:12,23 21:3 30:25 approval ^[5] 9:10,14 18:12,13 21:20 approvals ^[1] 9:11 approved ^[4] 2:15 11:1,2,15 approximately ^[1] 8:5	april ^[1] 7:23 area ^[16] 2:8 5:20,22,25 7:24,24 8:2,6,23 9:4 14:10 18:1 28:17,23,24 29:2 arguing ^[1] 5:11 argument ^[3] 22:15,24,25 around ^[2] 8:6 24:24 article ^[1] 24:10 articulate ^[1] 14:16 articulated ^[1] 26:20 aspect ^[1] 16:14 asserting ^[1] 13:12 assistant ^[1] 22:22 assume ^[1] 23:3 attempt ^[2] 11:21,22 attempting ^[1] 11:24 attorney ^[7] 1:27 3:5,8,22 6:8 29:10 31:19 august ^[5] 29:12,13 30:17 31:15,18 authority ^[1] 13:15 auto ^[3] 8:12,16 9:5 automatically ^[1] 25:4 automotive ^[2] 7:8 8:17 avenue ^[2] 32:16,21 away ^[1] 25:14 aye ^[1] 31:7 B baby ^[1] 25:16 back ^[6] 3:9 9:7,20 24:22 26:23 28:25 bad ^[1] 31:2 barry ^[3] 1:27 3:4,4 baseline ^[4] 9:16 11:4 12:4 20:10 becomes ^[2] 18:15 29:6 beginning ^[1] 7:4 behalf ^[1] 1:25 behest ^[1] 4:19 belabor ^[1] 5:9 believe ^[4] 6:17 7:15 10:22 17:23 believed ^[1] 17:10 believes ^[3] 10:21 13:24 28:16 benefit ^[1] 18:9 between ^[3] 18:1 20:13 26:5 beyond ^[2] 10:4 26:21 bit ^[1] 23:18 black-and-white ^[1] 6:13 board ^[32] 1:3,14,18 2:14 4:3 11:18 12:6 14:3 15:16,20,21,24 16:6 17:7,17,19 18:20,25 20:16,17 21:9 22:23 25:8,12,15,20,22
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ZONING BOARD OF ADJUSTMENT
July 11, 2023
APPEAL HEARING

IN RE: CICOTTE HOLDINGS, LLC
THE STATE OF NEW HAMPSHIRE
CITY OF LEBANON

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IN RE: CICOTTE HOLDINGS, LLC
THE STATE OF NEW HAMPSHIRE
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CITY OF LEBANON

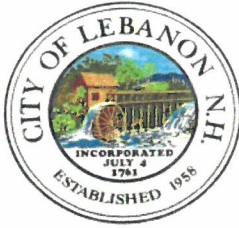
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ZONING BOARD OF ADJUSTMENT
July 11, 2023
APPEAL HEARING

IN RE: CICOTTE HOLDINGS, LLC
THE STATE OF NEW HAMPSHIRE
CITY OF LEBANON

22:10,15 23:22 25:4,19 26:1,2 27:5,7,10,20,23,25 28:18 thereto ^[1] 19:11 they'll ^[1] 19:21 they've ^[1] 27:2 third ^[3] 25:15 26:7,14 three ^[2] 7:6 31:15 throughout ^[1] 30:12 tiffany ^[5] 3:17,19,24,25 6:4 tim ^[3] 1:24 10:18 22:9 today ^[5] 3:17 6:5 7:13 10:17 29:2 together ^[2] 22:7 28:22 ton ^[1] 23:17 tonight ^[5] 2:17 4:4 5:20 13:10 21:5 took ^[2] 8:21 10:5 transcriber ^[2] 1:28 32:3 transcribing ^[1] 32:20 transcript ^[2] 32:4,13 triggers ^[1] 18:11 true ^[2] 7:19 32:4 try ^[4] 22:7 26:5,21 27:17 trying ^[2] 15:14 16:14 tuesday ^[1] 2:1 turn ^[1] 21:15 twin ^[2] 8:25 10:11 two ^[6] 3:18 4:4 25:3 27:5 29:6 31:15 U ultimately ^[3] 25:7,21 27:12 under ^[2] 14:9 15:7 understand ^[2] 4:8 22:17 unhappy ^[1] 18:19 unidentified ^[7] 9:23,25 10:2 14:7 21:13 31:18,21 unless ^[1] 4:10 unreasonable ^[1] 2:10 unripe ^[1] 18:25 until ^[5] 8:13 26:23 27:14 29:12 31:15 up ^[14] 7:25 9:3,3 10:12,24 12: 11 14:21 23:8 24:23 26:23 27: 13 28:21,23 29:20 upheld ^[1] 26:9 upper ^[1] 7:8 using ^[2] 18:2 19:4 V value ^[1] 30:15 values ^[1] 15:17 variance ^[1] 26:15 various ^[3] 6:6 7:16 28:22	venue ^[1] 31:1 vice ^[3] 1:19 2:12 10:20 video ^[3] 1:17 32:4,12 view ^[8] 7:18,21,21 17:14,23 22: 3 23:3 24:2 views ^[1] 7:25 violating ^[1] 4:13 violation ^[38] 2:6 5:6 7:22 10: 22,22 11:4,22,25,25 12:3,23 13: 2,3,6,25 17:14 18:15 19:10,16 21:22 23:4,6,10,24 24:4,14,15, 20,20,21 25:6 26:23 27:1,4,9,23, 25 28:3 violations ^[7] 24:16,19,23 25: 1,2,10,11 visible ^[1] 6:14 vote ^[5] 31:6,7,9,11,14 vouch ^[1] 7:17 W wait ^[2] 5:14,14 wanted ^[3] 4:15 12:8 22:9 wants ^[2] 18:19 28:16 waters ^[1] 23:18 way ^[12] 5:19,23 11:6 14:20 15: 14 16:25 18:20,21 22:7,10 23: 15 30:24 ways ^[3] 27:7,10,11 wentworth ^[2] 32:16,21 wetland ^[1] 3:10 wetlands ^[7] 2:16,16 3:12,15 4: 5,7 5:14 whatever ^[2] 8:19 12:10 whether ^[12] 11:12 12:23 15: 16 16:20,23 17:24 18:2,3,5 25: 5 29:11 30:4 whoever's ^[1] 19:22 whole ^[1] 27:19 who's ^[2] 17:1 22:12 will ^[5] 5:7,19 19:22 21:17 24: 21 william ^[2] 1:19 2:2 within ^[5] 4:5 23:21 24:11,12, 13 without ^[2] 18:9 27:18 words ^[1] 19:4 work ^[2] 18:14 27:6 worked ^[1] 27:2 working ^[1] 27:17 written ^[5] 23:13,16,19 29:16 31:22 Y years ^[5] 4:14 6:7 8:16 9:18 21:	22 yourselves ^[1] 25:21 Z zba ^[1] 29:13 zoned ^[2] 2:5,8 zoning ^[30] 1:3,14,23 2:5,14,19 3:21 5:8 13:23 15:8 17:7,17 18: 12 20:16,17 24:10 25:8,9,12,13, 15,23,24 26:4 27:5,6 28:1,2,4, 25
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ZONING BOARD OF ADJUSTMENT
July 11, 2023
APPEAL HEARING



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

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. July 11, 2023
 - B. July 11, 2023 Building Code Board of Appeals
 - 3. Public Hearing Items**
 - A. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD-** Continued from July 11, 2023 Meeting
 - B. **Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE** - Continued from June 5, 2023 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).

FINAL

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

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Paul McDonough, Jennifer Barkley (Alt)

MEMBERS ABSENT: Dan Nash, Dave Newlove, Catherine Hembree (Alt)

STAFF PRESENT: Nathan Reichert – Zoning Administrator
Tim Corwin – Deputy Planning and Development Director

1. CALL TO ORDER

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

Ms. Barkley was given voting privileges for this meeting.

2. APPROVAL OF MINUTES

A. July 11, 2023

Mr. Katz MOVED to approve the June 5, 2023, Minutes as presented in the July 11, 2023 with amendments.

Seconded by Mr. McDonough.

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

Ms. Barkley abstained.

B. July 11, 2023 Building Code Board of Appeal

Approval of these minutes was postponed until the next meeting.

3. PUBLIC HEARING ITEMS

- A. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** An appeal of the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11-AAD-** Continued from July 11, 2023 Meeting

Mr. Katz MOVED to dismiss the appeal for lack of subject matter jurisdiction on the basis that there is no dispute regarding the meaning of the ordinance that was brought up but rather it is disputing the City's position of the violation and as a result it does not fall within what we have jurisdiction over under 67652.B.

Second by Mr. McDonough

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

B. Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1: A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE** - Continued from June 5, 2023 Meeting

Aaron Simpson appeared with Catherine Patch on behalf of the application. She has 4 tenants living in the house and is not using it as a 2-family dwelling at this time. She does not have the apartment available as a unit. She has 4 current tenants, two who came in June 2022, one in June 2021, and one in June 2020. She is looking to maintain long-term renters. She would like to comply with the Fire Department regulations and does not want to ask any of her current tenants to leave. Currently there are 3 cars parking there. She would like to follow the law that would allot 2 parking spaces per unit. Except during the winter, there is street parking and other residents of Mack Avenue also use street parking. She would like to make a door between the two units to allow flexible housing between the units. If she rented to one single large family in the future and a 5th bedroom is needed for a larger family, they would have access to five bedrooms. Aside from this legal situation, the fifth bedroom would not be used as part of the main house. She would like to install a wall with a doorway but is willing to make it a solid wall to alleviate any burden of enforcement. And she is open to future inspections. The current floor plan as proposed was distributed to the Board. She provided the building permits for the work she has done. There are kitchen appliances in one room because they became available. Her real estate taxes have increased substantially between 2021 and 2022.

Mr. Simpson said there were preexisting violations, but there are no violations at this time due to the number of occupants. He believes there is no nuisance from parking. There is no winter parking on the street. They meet the parking requirements in the drawing they submitted and intend to meet the setbacks, all City requirements and any other regulation that is expected of them, including those of the Fire Department. The City allows 4 unrelated people while the Fire Department only allows 3 unrelated people to live in one house before it becomes a boarding house. There are work arounds with the Fire Department with a master tenant lease who then rents to 3 more people. They would change egress windows and door locks that are required by the Fire Department.

The diagrams are difficult to follow and hard to read. The applicants described the floor plans regarding how the proposed two units would be laid out and how they would potentially be used. The applicants clarified that they would like two units that have two floors of unit space. The Board is concerned with privacy and movement between the two units.

The Board asked for clarification of the violations and what she is proposing to address the violations. First it was declared that 5 people shared one kitchen, but there are only 4. It was alleged that it is being used as a two-family home. It is not. But she would like to have it approved to be a two-family dwelling. One of the solutions is four bedrooms in one unit. And then make a second unit that is 2 potential bedrooms. She has a single-family home with 4 people living there and she would like to turn it into a two-family home. It is not intended to be owner occupied. She is not proposing to have sprinklers. There are smoke alarms. She has egress for both of the units, but it is not clear on the drawings how that would work with two units. There are 2 bedrooms on the first floor. There are two sets of stairs. There are 4 outside doors to the house.

A clearer plan would be helpful showing doors, walls, steps, and exits with the 2 ways of egress for each unit. It might be best to have the fire department approve the floor plans and then come before the Board. The Board needs a clear set of plans and specifications that meet all the requirements for fire and building code requirements and zoning code. Sprinklers were discussed but it was unclear if they would be needed with changes to the building.

Chair Koppenheffer opened the Public Hearing.

Dr. Luis Alvaraz, neighbor, spoke about the criteria for a special exception. He believes due to the irregularities, past violations, and potential fire violations, he is concerned about granting a special exception. One of the requirements is that all conditions of the special exception are met, and that the character of the area is not adversely affected. He asked if there is any way to regulate or enforce that no violations occur in the future. There are a limited number of options to address purported violations. It is dependent upon the public to inform the City staff. The City is dependent on voluntary compliance and correcting any violations. Dr. Alvaraz opposes the application because he believes there has already been Boarding House violations regarding nuisance and parking issues. His concern is that he is not clear who is living there and how many people are living there at any given time. There are 9 conditions that the applicant has to meet in order to get a special exception. So far there is no evidence that there is an adverse effect on the neighborhood.

Georgia Tuttle, 10 Mack Avenue spoke next. She is against the application. Several houses, including her own, have the same floor plans and they are all single family homes. She said there has been construction going on at the 5 Mack property since 2020 and she said there should be some evidence for past permit requirements. She highlighted the conditions of a special exception. The City made a decision to have single family homes in some areas and she believes there are options for two family homes in other areas of the City.

Mr. Katz asked for clarification about any violations that would not be remedied through the granting of a special exception. She clarified that ADUs would be supported because the owner would live on site and it would not be the nature of a boarding house. There is one two-family home because it was grandfathered in at the time the zoning ordinances were put in place.

Dr. Keily Thomas, spoke in opposition of the application. She is a former tenant at the home. She believes the drawings of the home are confusing to her as well. When she moved into the apartment, she was under the impression that it was a separate unit, with 5 other associated tenants in the building on one lease. They were all on individual leases. She became concerned about the issues of hazards and nuisances. Safety and privacy are her concerns as well as the access and egress in that unit. She spoke to the electrical concerns. She addressed a number of landlord and tenant issues. The Chair stated the Board does not have any jurisdiction or control over landlord and tenant matters. Ms. Thomas stated that she believes the owner is not reliable and the house as it stands is not in good condition and has several safety and fire hazards. Given the structure of the house, a duplex does not seem to be feasible. If the same issues remain, more people and more allowable individuals would exasperate the situations.

Mr. Katz proposed a 10 minute break at 8:57 and the Board returned at 9:09.

Sanaa Siddiqi lives at 30 Dana Street, the only 2 family unit that was grandfathered into the neighborhood. There is a property manager on site. She is opposed to the application. She referenced a large party that had police involvement. There have been 5 cars in the parking in the past and there are a number of people coming and going that come at late hours and do not stay a long time. She is uncomfortable with her sense of what is going on in the house. There is no one paying attention to who is living there and what they are doing. There is no manager on the premises. Mr. Katz asked if she would have opposition to a two-family dwelling if it was managed similar to where she lives. She said she would not oppose that.

Margaret Hastings, an abutter at 3 Mack Avenue appeared in opposition. She has lived in the neighborhood for many years. Prior to the sale in 2020 the house was a family neighborhood. Since the new owner, and the large number of tenants, this dwelling has become a revolving door. She voiced concerns about the changing nature of the community with the number of tenants and nature of the tenants. Mr. Katz said he is struggling that Ms. Patch owns the house and she has a right to rent it to anyone. There have been complaints brought to the City and Ms. Patch has made efforts to comply with the City. He asked if the application was approved would the neighbors be better off. Her hope is that moving forward the owner follows the laws. She would like it if it was a two-family unit and it was two families instead of an increased number of individuals.

Christine Apel-Eram has lived on the street for over 37 years. It was developed in the 1920s and all the houses were built in the same style. She expressed her experiences about the family nature of the neighborhood. She is not sure if she agrees with converting it to a two-family home but is not completely against it. She wishes it would become a home where two families move in and live there. Mr. Katz said considering her neutral stance, are there any logical conditions that could be imposed that would appease some of the other owners in the neighborhood. She did not provide any concrete ideas.

Georgia Tuttle returned to speak. If nothing is done, the house would return to a single-family home with a maximum of 4 people living there. It is hard to know how many people have lived there at any one time. Mr. Katz clarified that if the application is denied there is a maximum of 4 unrelated people. There can be visitors that stay overnight. He asked if an organized plan with limitations of a duplex would be preferable to what is currently happening.

Attorney Simpson and Ms. Patch returned to speak. They provided the Board with additional documents showing the certificate of completion and final approval of the changes she has made to the building that were approved 9/2/2020. It is clear that this should be addressed at the next meeting. The Board would like a floor plan that is unambiguous. It needs to show all the doors and windows and the egress. Mr. Reichert suggested what it could be beneficial to do a code assessment of the building done by a professional which would help the owner meet the requirements of the building codes. The Site plan would show the size and location of parking, all doors, and all windows.

***Mr. Katz MOVED to continue this hearing until Tuesday, September 5, 2023 at 7:00 PM.
Seconded by Ms. Barkley.***

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

4. STAFF COMMENTS

Mr. Reichert is pleased with how tonight's meeting was operated. It is a complex topic.

5. ADJOURNMENT

***Mr. Katz MOVED to adjourn the meeting at 10:04 PM.
Seconded by Ms. Barkley.***

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

Respectfully submitted,
Linda Billings, Recording Secretary

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August 23, 2023

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

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

Dear Board Members:

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

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

[t]his is a decision of the administrative officer, which you have the right to appeal to the Zoning Board of Adjustment. Should you wish to appeal by interpretation, application, or construction of the Zoning Ordinance you thirty (30) days from the date of this Notice of Violation to file an appeal. Form to appeal an administrative decision pursuant to RSA 674:33, I(a) and Section 801.1 of the Zoning Ordinance can be obtained from the Planning and Development

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

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

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

Section 801.1 of the zoning ordinance authorizes the zoning board to,

hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as set forth in RSA 676:5. I

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

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

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

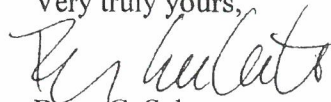
5. Immediately upon the opening of the first hearing by the board on this appeal application, Cicotte requested that board member Jeremy Katz be recused. Despite Mr. Katz’s conflicts of interest, his prejudice, and his having repeatedly objected to Cicotte on other matters before the zoning board, Mr.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

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

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

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

Very truly yours,



Barry C. Schuster

BCS/sf

cc: Cicotte Holdings, LLC



**LEBANON ZONING BOARD OF ADJUSTMENT
OCTOBER 2, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
1. **Call to Order**
 2. **Approval of Minutes**
 - A. September 5, 2023
 3. **Public Hearing Items**
 - A. **Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3**
Class1: A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements. **ZB2023-12-SE - Continued From 9/5/2023 Meeting**
 - B. **City of Lebanon, 5 Airpark Rd (Tax Map 131, Lot 1), zoned IND-L and 0 Hall Rd (Tax Map 159, Lot 7) zoned RL-3:** Applicant requests a Special Exception pursuant to Wetlands Conservation District Section §401.5 of the Zoning Ordinance to allow wetland impacts associated with the extension taxiway "A", safety improvements, and the relocation of a localizer antenna, shed and access road at the Lebanon Municipal Airport. **ZB2023-13-SE - Continued From 9/5/2023 Meeting**
 - C. **AAM Lebanon Residences, LLC, 25 Foothill Street (Tax Map 24 Lot 14, Plot 100), zoned IND-L:** The subject property is located within the Altaria Planned Unit Development (PUD) and is currently improved with a hotel which the applicant proposes to convert to a 120-unit multi-family dwelling. Per Section 501.4.D of the Zoning Ordinance, the Altaria PUD may include a maximum of 34 dwelling units, 33 of which have been constructed at 18 Merchant Street. To allow the proposed change of use at 25 Foothill Street, the applicant requests a Variance from Section 501.4.D of to allow 119 additional dwelling units, whereas only one (1) additional dwelling unit is allowed pursuant to the permitted residential density for the Altaria PUD. **ZB2023-16-VAR**
 4. **Request for Rehearing**
 - A. **Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** Motion to rehear an appeal dismissed due to lack of subject matter jurisdiction by the Zoning Board on August 7, 2023, pursuant to Section 802.5 of the Zoning Ordinance, appealing the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11A-AAD**
 5. **Staff Comments**

6. Adjournment

The order of agenda items is subject to change.

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

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

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
TUESDAY, October 2, 2023
7:00 PM**

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

MEMBERS ABSENT: Paul McDonough

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

A. September 5, 2023

Ms. Hembree was appointed as a voting member for this motion.

Mr. Katz MOVED to approve the September 5, 2023, Minutes as presented in the October 2, 2023 packet.

Seconded by Mr. Nash.

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

3. PUBLIC HEARING ITEMS

- A. Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements.
ZB2023-12-SE - Continued From 9/5/2023 Meeting

Mr. Nash is recused from this hearing.

Ms. Barkley and Ms. Hembree were given voting privileges for this hearing.

George Parker and Catherine Patch appeared on behalf of the application as well as Aaron Simpson and Laurie Pauli representing the applicant.

Ms. Patch said she is a long-term resident of Lebanon and continues to have a sincere interest in the well being of the property. She would like to add a second door to create a space that could be used by either unit. That would maintain some flexibility between the number of rooms available to either unit. The proposed second unit would have access through an outside door and through the garage. She has ensured that she has met all coding requirements and has brought things up to date. Minor changes were made to the house, and she has made several important safety improvements.

Two family buildings are permitted by special exception in this district. Laurie Pauli, architect for the drawings submitted, spoke about the plans. She testified that these improvements would be a benefit to the community and would solve some of the shortage of housing issues in the area. She is also a friend of the applicant and spoke highly of the character of the applicant.

Each of the two units would be planned for families or up to 4 members who are not related. She does not intend to create a lodging house. All leases would conform to City requirements. Ms. Patch reviewed how she has met the criteria for a special exception. She believes there are several other properties in the Zone 3 area that are two family dwellings, although not on Mack Avenue. She believes her tenants have not caused any difficulties for the neighbors.

The ordinance requires 4 parking spaces for a two-family home. There are currently 5 parking spaces available. At this time, not all the parking spaces are being used.

Ms. Patch was asked to add 3 smoke alarms by the fire department, which has been done. She feels several incorrect allegations have been made against her tenants and cannot find any evidence that supports the allegations. She feels she is making sound decisions regarding her selection of tenants and signs leases with each of the tenants. She has improved the dwelling and the appearance of the property by keeping it maintained.

Ms. Pauli described the plans for the building that were submitted. She explained where the egress would be for each unit, the size of the units, and where the windows would be sized for egress. There is an exit through the garage but it is not defined as an egress.

Separation has been defined by the applicant as a door that can be opened and closed. The Zoning Board may define separation in a different way. The fire department said the door was a separation that met fire code and the fire department's opinion of separation.

Mack Avenue is not a through street. Every house is a single-family home. Clearly what the neighbors are saying is that there are no special exceptions in that immediate area. This area has been rather exclusively maintained as a single-family area. The applicants and the members continued to discuss the nature and parameters of the location of this house.

Parking was discussed. It is a logical assumption that four adults living in a house would each have a car. With the addition of another unit, more parking could potentially be needed. Some of the parking spaces identified in the drawings are now lawn. Right now, more parking is not needed, but if it becomes necessary, Ms. Patch would create more parking as needed, including changing the front lawn. If this is the only multi-family dwelling on Mack Avenue, it would be the only house with parking on the lawn. It is believed that would change the nature and appearance of the neighborhood. The parking ordinances were reviewed by the members and the applicants.

Georgia Tuttle, a resident of 10 Mack Ave appeared. She did not receive notice of the hearing. The neighbors came to the meeting due to safety concerns about the work that was going on at the property. She appreciates the drawings that were submitted. On the 2019 plan and the more recent plan, additional walls were added. Initially there were numerous code violations. She believes some payments are required for fees that should have been paid prior to any construction and should be paid retroactively. She asked about snow storage and where it would be stored if the area that was used in the past became a parking space. There is also a sidewalk that is plowed that is not shown in the drawings. Regarding the parking spaces, she asked for clarification if the cars can be parked in a manner that jockeying cars is required to use all the parking spaces.

Kirun Sakarani believes he is a member of the class that the applicant is proposing that her property would be very suitable as a place to live for his wife and himself. He hopes the Zoning Board would grant a variance as this is a good situation for them.

Sanaa Siddiqi, spoke and offered a few clarifications. His attendance at these meetings is not intended to be vindictive. She said she was looking for a single-family home when she chose to move to this neighborhood. She also said there is a very clear boundary defining a driveway and a front lawn.

Jonathan Hastings appeared. He lives at 3 Mack Avenue. He brought up the concerns of the bon fires and said they happened on a day that there was a no-fire warning in the State of New Hampshire. He said he also called the police because there was loud noise after 11 PM. In the case where they called the police, he felt it had gone on too long and too loud. He feels that the area of Mack Avenue does not represent all of the residential areas in Lebanon. His concern is that things may not be done right or as promised, so he is still against turning the building into a 2-family home.

Sanan Siddiqi spoke again. She chose this neighborhood because it is a safe and friendly area to raise her son.

The applicants appeared again to answer any questions about the concerns of the public. Ms. Patch believes she has met all the requirements of the City and the fire department and is willing to meet any additional requirements. Attorney Simpson referenced the wall improvements that were made when she lived in the dwelling, which is a permitted right of a homeowner.

Hearing no additional comments, Chair Koppenheffer closed the Public Hearing.

The members deliberated the application. Ms. Hembree does see a need for affordable housing, but this particular area is uniquely single-family. She has a concern about parking on the grassy area. Mr. Katz believes if a series of requirements are met, then a special exception should be granted. He believes the objection may be to a history with the specific landlord, not that it could not be a two-family dwelling. He believes the Board is not here to judge the user, rather just the use. Chair Koppenheffer agreed they should not be in the business of judging the landlord. Several people and some Board members have concerns about parking in the yard that would adversely affect the nature of the neighborhood. Parking in the front yard is not acceptable.

A short recess was taken at 8:30 PM and the Board reconvened at 8:35 PM.

Mr. Katz MOVED On August 7, and October 2 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Attorney Aaron Simpson, Architect Lauri Pauli, Catherine Patch and George Parker regarding 5 Mack Ave (Tax Map 73, Lot 43) zoned R-3 Class 1: Applicant requests a Special Exception required by section §310 pursuant to Section §801.3. of the Zoning Ordinance to permit the conversion of a One-family dwelling into a Two-family dwelling under Application ZB2023-12-SE

I. FINDINGS OF FACT

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

1. The subject property is improved with a one-family dwelling constructed in 1920.

2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must obtain a Special Exception pursuant to §801.3 approved by the Zoning Board of Adjustment.
3. 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 801.3 of the Zoning Ordinance.
4. The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on May 18th 2023 additional information and testimony was submitted at the August, September and October meetings.
5. The public members that testified include Dr. Luis Alvaraz who testified in opposition, Georgia Tuttle at 10 Mack Avenue who testified in opposition, Dr. Keily Thomas of White River Junction who testified in opposition, Sanaa Siddiqi who is a tenant at 30 Dana Street who testified in opposition, Kiran Sataran of Timberwood Drive who testified in support, and Margaret Hastings and Jonathan Hastings who are abutters at 3 Mack Drive who testified in opposition, in addition to Christine Apel-Eram who testified neither for or against the application.

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 §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §310 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements **are** met (§801.3.B):
 - No Additional Criteria are Required.
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of the existing violations that are not cured by the issuance of this special exception.*
4. The character of the area **will not** be adversely affected. (§801.3.D)

The applicant provided reasonable testimony that the character of the area will not be adversely affected. There were multiple objections by abutters that were presented. There was objection that was substantially vague objections to the user and not to the proposed plans of the use. And furthermore, supplemental filings by the applicant mitigate several of these concerns in the opinion of the Board.

5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)

9. The general welfare of the City will be protected. (§801.3.1)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of August, 2023, hereby **GRANTS** the requested Special Exception per Section §801.3 of the Zoning Ordinance to allow the conversion of a One-family dwelling into a Two-family dwelling at 5 Mack Ave (Tax Map 73, Lot 43), as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit, fire permit, impact fee permit, water and sewer impact and connection fees and shall comply with all applicable local, state, and federal regulations. Any prior to construction deemed not to be in compliance with the fire code for a two-family shall be upgraded to the satisfaction of the building code and fire inspectors.
2. The project shall be completed in accordance with the applicant's submitted representations and proposed operational plan and shall be attached to this order.

Seconded by Ms. Barkley.

The Board discussed the motion. The Board does approve an actual plan and specifications help staff understand the plans. They become part of the approval. The members discussed adding conditions relative to the parking and the new wall on the second floor.

Chair Koppenheffer MOVED to add the following conditions. 3. Onsite parking shall be limited to four total vehicles. 4. The barrier shown in red on the second floor in the corridor leading to the unit labeled unit 1 or 2 bedroom shall be either a door with locks on each side or a wall, thereby ensuring the separation of the two units.

Seconded by Ms. Barkley.

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

The revised final motion is stated below.

Mr. Katz MOVED On August 7, and October 2 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Attorney Aaron Simpson, Architect Lauri Pauli, Catherine Patch and George Parker regarding 5 Mack Ave (Tax Map 73, Lot 43) zoned R-3 Class 1: Applicant requests a Special Exception required by section §310 pursuant to Section §801.3. of the Zoning Ordinance to permit the conversion of a One-family dwelling into a Two-family dwelling under Application ZB2023-12-SE

I. FINDINGS OF FACT

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

1. The subject property is improved with a one-family dwelling constructed in 1920.

2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must obtain a Special Exception pursuant to §801.3 approved by the Zoning Board of Adjustment.
3. 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 801.3 of the Zoning Ordinance.
4. The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on May 18th 2023 additional information and testimony was submitted at the August, September and October meetings.
5. The public members that testified include Dr. Luis Alvaraz who testified in opposition, Georgia Tuttle at 10 Mack Avenue who testified in opposition, Dr. Keily Thomas of White River Junction who testified in opposition, Sanaa Siddiqi who is a tenant at 30 Dana Street who testified in opposition, Kiran Sataran of Timberwood Drive who testified in support, and Margaret Hastings and Jonathan Hastings who are abutters at 3 Mack Drive who testified in opposition, in addition to Christine Apel-Eram who testified neither for or against the application

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 §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §310 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements **are** met (§801.3.B):
 - No Additional Criteria are Required.
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of the existing violations that are not cured by the issuance of this special exception.*
4. The character of the area **will not** be adversely affected. (§801.3.D)

The applicant provided reasonable testimony that the character of the area will not be adversely affected. There were multiple objections by abutters that were presented. There was objection that was substantially vague objections to the user and not to the proposed plans of the use. And furthermore, supplemental filings by the applicant mitigate several of these concerns in the opinion of the Board.

5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)

9. The general welfare of the City will be protected. (§801.3.1)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of August, 2023, hereby GRANTS the requested Special Exception per Section §801.3 of the Zoning Ordinance to allow the conversion of a One-family dwelling into a Two-family dwelling at 5 Mack Ave (Tax Map 73, Lot 43), as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit, fire permit, impact fee permit, water and sewer impact and connection fees and shall comply with all applicable local, state, and federal regulations. Any prior to construction deemed not to be in compliance with the fire code for a two-family shall be upgraded to the satisfaction of the building code and fire inspectors.
2. The project shall be completed in accordance with the applicant's submitted representations and proposed operational plan and shall be attached to this order, with the following exceptions.
3. Onsite parking shall be limited to four total vehicles.
4. The barrier shown in red on the second floor in the corridor leading to the unit labeled unit 1 or 2 bedroom shall be either a door with locks on each side or a wall, thereby ensuring the separation of the two units.

Seconded by Ms. Barkley.

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

Chair Koppenheffer opposed.

Mr. Nash returned to the meeting.

B. City of Lebanon, 5 Airpark Rd (Tax Map 131, Lot 1), zoned IND-L and 0 Hall Rd (Tax Map 159, Lot 7) zoned RL-3: Applicant requests a Special Exception pursuant to Wetlands Conservation District Section §401.5 of the Zoning Ordinance to allow wetland impacts associated with the extension taxiway "A", safety improvements, and the relocation of a localizer antenna, shed and access road at the Lebanon Municipal Airport. **ZB2023-13-SE - Continued From 9/5/2023 Meeting**

Leslie Merrithew, Gregg Cohen, and Carl Gross appeared on behalf of the application. A visual presentation was in the packet. Ms. Merrithew is the consulting engineer. It is a safety improvement project to address several issues at the airport. She addressed several hotspots on the runway that are a problem and safety concern. There is no full-length taxi runway. Part of the current runway is used to taxi down as well as takeoff, instead of using a full-length parallel runway. To do this they would need to relocate a localizer antenna array which is a piece of equipment that allows landing in foggy conditions and issues of visibility. It is currently located in a non-standard location off the center of the runway.

There would be minor potential impacts to the wetlands. There are some grading impacts, and some removal of obstructions such as bushes and vegetation that have grown too high.

Gregg Cohen reviewed the requirements for a special exception. He said they are seeking an exception to add fill to 2.2 primary acres. A portion of the area is a drainage swale that would be completely filled and a new swale would be duplicated in another area. There would be a temporary disruption during the improvements to another 6 acres. He said there is not another area where these safety improvements can be made. Any other location would have more significant wetland impacts. This work is being done to meet the improved FAA safety standards.

They are trying to coordinate a meeting to get credit points to mitigate the disruption of the wetlands. The actual fee has not been determined. The Conservation Commission has not given final approval and they are working with the commission to proceed in a manner that is acceptable to the Conservation Commission. The plant species that are impacted would be mitigated with new plantings. A wetland permit and alteration of terrain permit have been submitted. The project is not located in a potential flood zone and all storm water drainage requirements would be met.

The Conservation Commission provides an advisory comment. The minutes from the Conservation Commission meeting were provided to the Board. Several of the criteria were not being met completely therefore they did not make a recommendation.

Chair Koppenheffer opened the Public Hearing.

Kirun Sankaran spoke on behalf of the application. The Lebanon airport should be safely operated and should not use the same runway to taxi and takeoff.

Sarah Riley, Chair of the Conservation Commission spoke to give some additional information. She believes the comments to the Zoning Board were not as clear as needed. The minutes from their meeting have been provided to the Zoning Board. Some of the purposes of the ordinance are being violated. While it is true this can only be done in this one location, the Commission believes it is important that the concerns of the Commission are heard. The intent is to provide dialogue between separate organizations within the City. There are issues with invasives, impacts to the Truesbrook watershed, and buffer areas among other things.

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

Ms. Barkley was a voting member for this hearing.

Mr. Nash MOVED on October 2 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Leslie Merrithew consultant with Stanton, Gregg Cohen consultant with Stanton, and Carl Gross Airport Manager with the City of Lebanon, on behalf of the City of Lebanon, 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7) zoned RL-3: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 ("Wetlands Conservation District") of the Zoning Ordinance to allow wetland impacts associated with the safety improvements and extension of taxiway A. ZB2023-13-SE

I. FINDINGS OF FACT

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

1. The City of Lebanon is constructing safety improvements and extension of taxiway A over the City-owned lots on 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7).

2. The construction of the safety improvements will impact a total of 2.2 acres of wetlands.
3. The City has applied for a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed by the Conservation Commission at its August 10, 2023 and September 26, 2023 meetings. The City now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed wetland impacts.
4. The Conservation Commission reviewed the wetlands application and provided a positive referral to NHDES. However, the Commission expressed an opinion that the project did not meet criteria 401.1.A, B, & C.
5. Sarah Riley, Chairman of the Conservation Commission spoke further at the Commission's concern.
6. Kirun Sankaran spoke in favor of the project.

II. CONCLUSIONS OF LAW

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

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

Airport design regulations do not allow flexibility for alternate location of improvements.

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

The airport is a designated Federal use and alternate uses are not allowed.

3. The design and construction of the proposed use **is** consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures **will** be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)

The NHDES process incorporates the United States government Corp of Engineers (USACOE), and EPA, and United States Fish and Wildlife review input to ensure adequate conservation measures are taken.

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

The NHDES and Federal permitting process thoroughly address these concerns.

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

The permits have been applied for and the project will not proceed until they are obtained.

7. The project is capable of conforming to all existing best management practices, as referenced in Appendix A of the Zoning Ordinance, and will be implemented in a way which conforms to those practices (§401.5.G)

The project will be required to obtain an Alteration Terrain Permit which mandates adherence to best management practices.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **2nd day of October, 2023**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

Seconded by Mr. Katz.

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

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

Chair Koppenheffer suggested that the application is not complete. Several plans have not been submitted, including a current and a proposed site plan, and a parking plan, and there is no traffic report. Therefore, the hearing should be continued.

Mr. Katz suggested that the applicant decides when the application is complete, and it is up to them to provide all the necessary information or so to speak, suffer the consequences. If the applicant would like to proceed it will be allowed.

Tom Chesnard, Attorney, appeared representing the applicant. They are happy with a continuance. He asked if they would be first on the next agenda. Unless there is a very simple matter to dispense with, they will be first. There would be no additional notice requirements.

Ms. Barkley was given voting privileges for this hearing.

*Mr. Newlove **MOVED** to continue this hearing to November 6, 2023.*

Seconded by Mr. Nash.

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

4. REQUEST for REHEARING

- A. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** Motion to rehear an appeal dismissed due to lack of subject matter jurisdiction by the Zoning Board on August 7, 2023, pursuant to Section 802.5 of the Zoning Ordinance, appealing the Zoning Official's Notice of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that the property is not in the flood zone, that the parking area is grandfathered, and deadlines demanded by the City are unreasonable. **ZB2023-11A-AAD**

Mr. Nash recused himself.

Although this is a request for a rehearing, this essentially cannot be a rehearing because the decision that was reached at the last hearing was that the Board did not have jurisdiction. It is a request for reconsideration. No testimony is taken, the Board simply considers if they were right in deciding they have no jurisdiction, or do they want to reconsider that they did have jurisdiction and therefore schedule a hearing in this matter. A solicitation of legal counsel was previously obtained regarding the matter.

Ms. Barkley and Ms. Hembree were voting members for this hearing.

Mr. Katz made a motion to move to nonpublic discussion to discuss the opinion from legal counsel at 8:55 PM.

Seconded by Mr. Newlove.

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

The Board returned at 8:58 PM.

The question about reconsideration was discussed.

Mr. Katz MOVED to deny the request for reconsideration.

Seconded by Chair Koppenheffer.

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

Mr. Nash returned to the meeting.

5. STAFF COMMENTS

Mr. Nash said they should consider having two meetings in a month. Because in the event there is an exceptionally long meeting, one applicant has to wait another whole month before bringing forth their application. It will be discussed in the future.

6. ADJOURNMENT

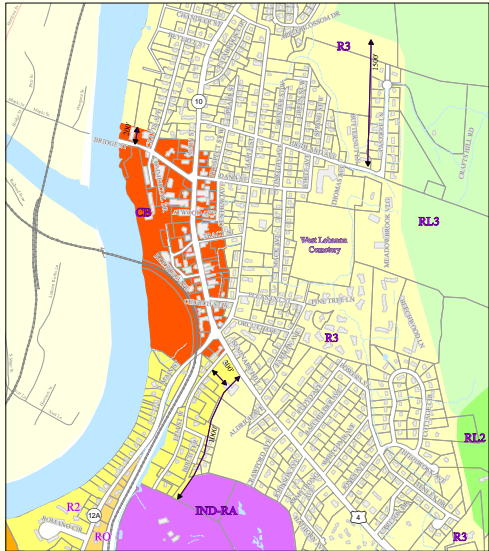
Mr. Katz MOVED to adjourn the meeting at 10:00 PM.

Seconded by Mr. Nash.

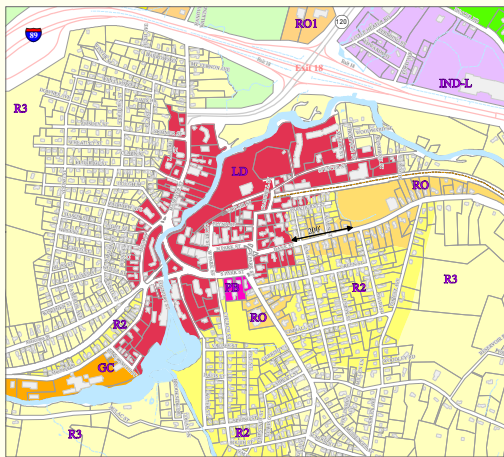
**The Vote on the Motion was approved (5-0).*

Respectfully submitted,
Linda Billings, Recording Secretary

LebGIS
Map Printed: 6/1/2020

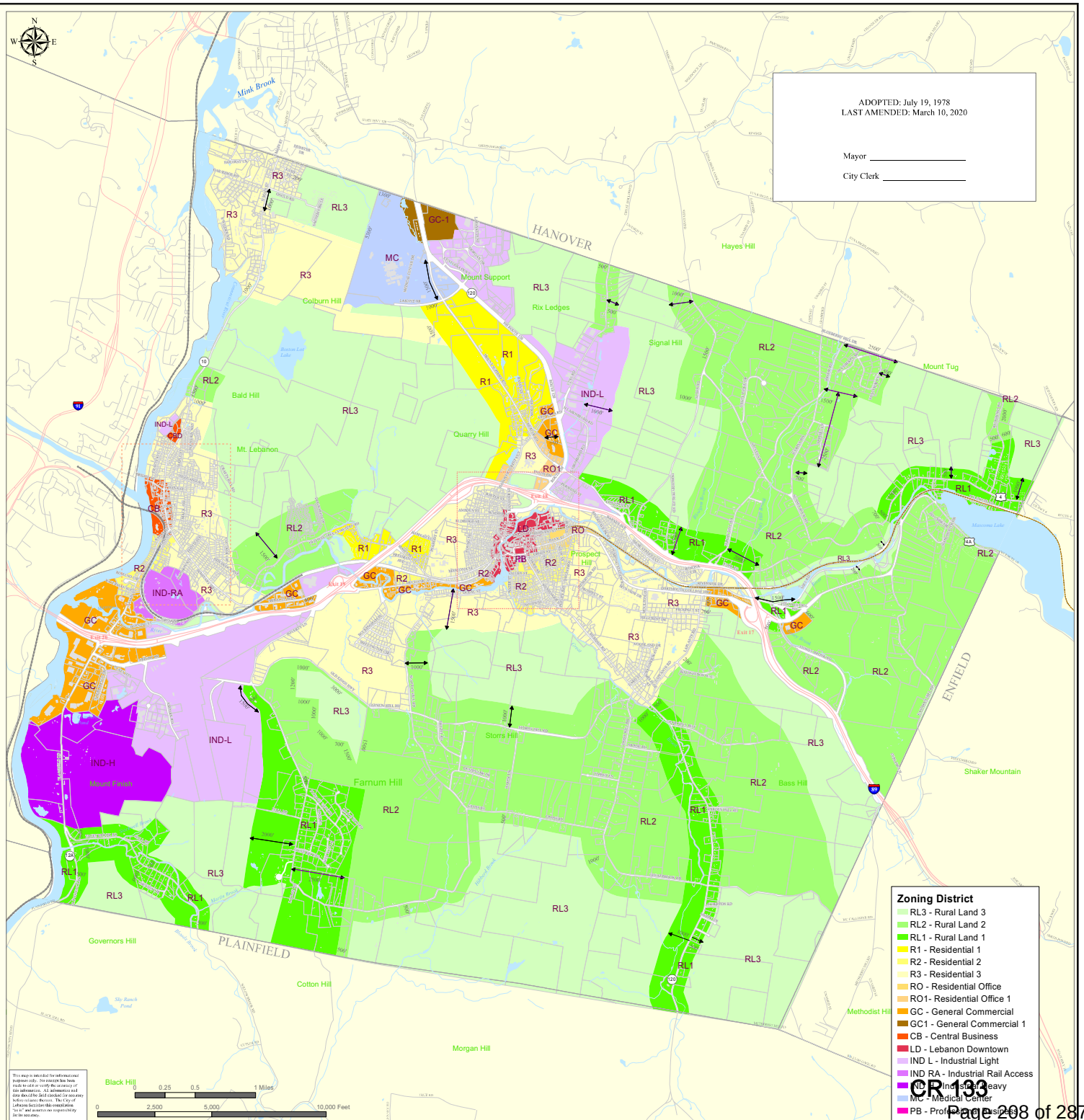


WEST LEBANON



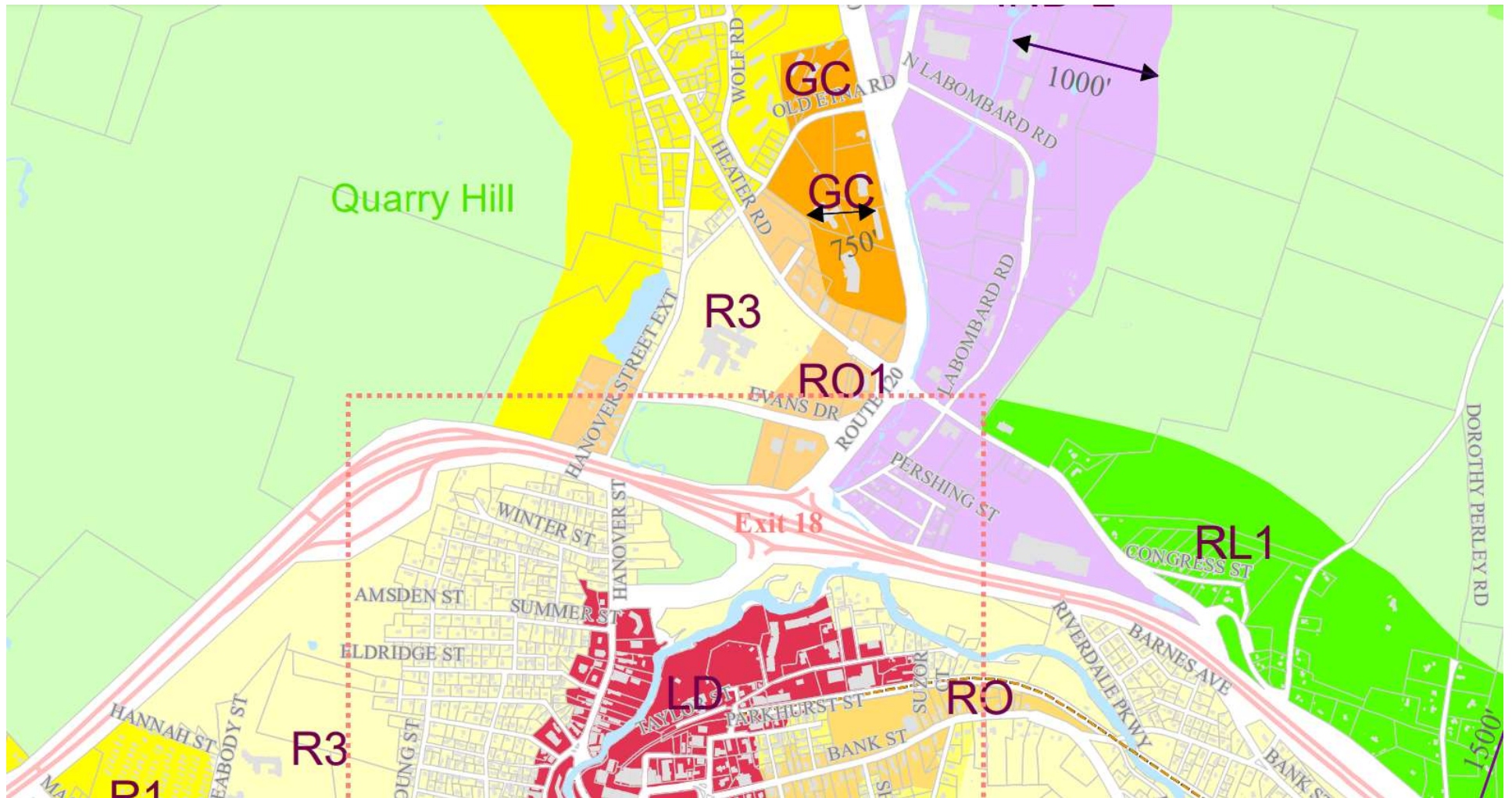
DOWNTOWN LEBANON

For Additional Information: Lebanon Zoning Regulations available at the Planning / Codes Office, City Hall 1st Floor, and on-line at www.lebanon-nj.org



Zoning District

- RL3 - Rural Land 3
- RL2 - Rural Land 2
- RL1 - Rural Land 1
- R1 - Residential 1
- R2 - Residential 2
- R3 - Residential 3
- RO - Residential Office
- RO1 - Residential Office 1
- GC - General Commercial
- GC1 - General Commercial 1
- CB - Central Business
- LD - Lebanon Downtown
- IND L - Industrial Light
- IND RA - Industrial Rail Access
- MC - Medium Density Heavy
- MC - Medical Center
- PB - Professional Business



ZONING ORDINANCE



Ordinance #2

CITY OF LEBANON, NEW HAMPSHIRE

ADOPTED: January 16, 2013
LAST AMENDED: March 14, 2023

ARTICLE I INTRODUCTION

SECTION 100 TITLE.

This Ordinance may be known and may be cited as "Zoning Ordinance of the City of Lebanon, New Hampshire."

SECTION 101 AUTHORITY.

This Ordinance is enacted pursuant to the Planning and Zoning Enabling Legislation of the State of New Hampshire Revised Statutes Annotated, Title LXIV, Chapters 672-677, as amended.

SECTION 102 PURPOSE.

This Ordinance is enacted for the purpose of promoting the health, safety and general welfare of the community; for the purposes listed in RSA 674:16; for the purposes stated in the City of Lebanon Master Plan; for the specific purposes stated for each zoning district or section herein; and for any and all purposes for which land use regulations may be validly enacted under New Hampshire law. The Ordinance is designed to:

- Lessen congestion in the streets and promote safe and efficient movement of people, vehicles, and goods;
- Secure safety from fire, panic and other dangers;
- Promote health and the general welfare;
- Promote adequate natural light and clean air;
- Prevent the overcrowding of land by people and structures by avoiding undue concentration of population and preserving open space;
- Promote adequate facilities and infrastructure for transportation, solid waste, water, sewerage, energy schools, recreation, parks, and child day care;
- Protect and assure proper stewardship of natural resources;
- Provide a range of housing choices and affordability;
- Provide a range of economic opportunities and services;
- Encourage the preservation of agricultural lands and buildings; and
- Encourage energy-efficient land uses and installation of renewable energy systems.

SECTION 103 APPLICABILITY.

No land in the City of Lebanon shall hereafter be used for building, development or otherwise and no **structure** shall be erected, enlarged, materially altered, moved or used, except in conformance with this Ordinance.

SECTION 104 ORIGINS.

This Ordinance repeals and replaces the Zoning Ordinance currently in effect in the City of Lebanon, which was adopted on December 5, 1990, and amended several times.

SECTION 105 COMPLIANCE WITH SITE PLAN REVIEW REGULATIONS AND SUBDIVISION REGULATIONS.

The regulations set forth in this Ordinance are not intended to and shall not be construed to relieve a proposed land development from compliance with any applicable requirement set forth in the Lebanon Site Plan Review Regulations or to relieve a proposed subdivision from compliance with any applicable requirement of the Lebanon Subdivision Regulations.

Whenever the regulations set forth in this Ordinance conflict with any applicable requirements set forth in the Lebanon Site Plan Review Regulations or the Lebanon Subdivision Regulations, the provision which imposes the greater restriction or the higher standard shall apply; provided, however, that neither set of Regulations shall be construed as permitting anything prohibited by this Ordinance.

ARTICLE III USE DISTRICTS

SECTION 300 ESTABLISHMENT OF USE DISTRICTS.

The City of Lebanon is hereby divided into the following use districts:

IND-L	Light Industrial
IND-RA	Industrial Rail Access
IND-H	Heavy Industrial
GC	General Commercial
GC-1	General Commercial One
CB	Central Business
LD	Lebanon Downtown
R-1	Residential One
R-2	Residential Two
R-3	Residential Three
R-O	Residential-Office
R-O-1	Residential-Office-One
PB	Professional Business
RL-1	Rural Lands One
RL-2	Rural Lands Two
RL-3	Rural Lands Three
MC	Medical Center

Each district may be referred to by its respective abbreviation.

SECTION 301 ZONING MAP.

301.1 Establishment.

The districts and the boundaries of such districts shall be as shown on a map entitled "OFFICIAL ZONING MAP OF THE CITY OF LEBANON, NEW HAMPSHIRE." This map, which was adopted on July 19, 1978, and amended several times thereafter, is hereby re-adopted. Said map is to be prepared and maintained by the City of Lebanon Planning & Development Department, and amendments thereto shall be certified by the City Clerk.

301.2 Location.

The original (an electronic and paper copy) of said Official Zoning Map shall remain on file with the City Clerk.

301.3 Final Authority.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be published, the Official Zoning Map which is on file with the City Clerk shall be the final authority on current zoning.

301.4 Boundaries of Districts.

Where uncertainty exists with respect to the boundaries of the various districts shown on the Official Zoning Map, the following rules shall apply:

- A. Where a district boundary is shown as following a street, road, railroad, utility line or watercourse, the boundary shall be construed as following the centerline of such facility, unless otherwise indicated.
- B. District boundaries shown as being set back from roads, streets, railroads, utility lines or watercourses are defined by a line parallel to such facility and set back from the centerline the number of feet shown on the map.
- C. Where a district boundary approximates the location of a lot line, the lot line, as it existed at the date of enactment of this Ordinance, shall be construed to be the boundary, unless otherwise indicated.
- D. Where a district boundary cuts across a lot, the boundary location shall be determined from the scale of the Official Zoning Map, unless otherwise indicated by dimensions noted on the map.

SECTION 302 USES.

302.1 Permitted Uses. In the districts described herein, only those uses listed as "permitted uses" shall be permitted. Uses listed as "**special exception**" may be allowed, but only at the discretion of the Board of Adjustment pursuant to Section 801.3. Uses listed as "conditional use permit" may be allowed, but only at the discretion of the Planning Board pursuant to Section 302.4. It is the intent of this Ordinance that no other uses be allowed. All uses shall comply with the dimensional requirements of the "Table of Area, Dimensions and Coverage" of the zoning district in which the use is located. Uses not listed are neither permitted nor allowed by **special exception** nor allowed by **conditional use** permit.

302.2 Accessory Uses. **Accessory uses** shall be considered permitted uses in all districts except that where such uses are accessory to uses permitted by **conditional use** permit or by **special exception**, the **accessory use** shall also require a **conditional use** permit or **special exception**, respectively.

302.3 Mixed use buildings. **Mixed use buildings** are permitted in all zoning districts.

302.4 Enhanced Performance Standards.

- A. Objective. The City hereby provides for the use of Enhanced Performance Standards as an Innovative Land Use Control authorized pursuant to RSA 674:21, I(h) in order to ensure a thorough and comprehensive review of the compatibility of certain land uses while providing for an integrated and streamlined public review by the Planning Board of certain proposed multi-family residential and non-residential development within the non-residential zoning districts of the City of Lebanon.

- B. Authorization. Pursuant to RSA 674:21, II, the Planning Board is hereby authorized to grant a **conditional use** permit for uses identified in Article III as permitted by **conditional use** permit, or as otherwise specified herein, if the application is found to be in compliance with the enhanced performance standards set forth in Section 302.4.D.
- C. Procedures. Applications to the Planning Board for a **conditional use** permit under this section shall be made on forms provided by the Board, and shall be accompanied by any required application fees as may be established by the Board, and by whatever plans and other information is required by the Board as set forth on the application form. In all cases, the applicant shall provide, either as part of the application or through evidence at the public hearing, information sufficient to demonstrate that the application conforms with the criteria set forth in subsection D below.

The Planning Board shall act upon the application in accordance with the applicable procedural requirements of its Site Plan Review Regulations.

- D. Approval Standards. A **conditional use** permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following standards:
1. The site is suitable for the proposal. This includes:
 - a. Adequate vehicular and pedestrian access for the intended use.
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, safe access, and other municipal services.
 - c. The absence of environmental constraints (floodplain, steep slope, etc.) proposed to be impacted by the intended use.
 - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater treatment, electricity, and similar utilities.
 2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood shall be commensurate with the impacts of adjacent existing uses or other uses permitted in the zoning district. This shall include, but not be limited to, water runoff, drainage, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the **structure** and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood. The proportion of the site proposed to be occupied by impervious surfaces shall be minimized to the extent necessary to preclude unreasonable risk of runoff, erosion, sedimentation, and other potentially adverse on-site or off-site effects.
 3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the

neighborhood and shall mitigate any external impacts on **abutters**, the neighborhood, and nearby public ways and infrastructure. This shall include, but not be limited to, the relationship of the building(s) to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.

4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the **building** or structure, the roof line, locations of access, and visual compatibility with the area.
 5. Preservation of natural, cultural, historic, and scenic resources: The proposed use and layout of the site, including all related development activities, shall to the greatest extent practicable preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified **wetlands**, floodplains, significant wildlife habitat and documented wildlife corridors, stonewalls, mature tree lines, identified historic buildings or sites, scenic views, and viewsheds.
- E. Safeguards and Other Conditions. Additionally, the Planning Board may impose conditions as it finds reasonably appropriate to safeguard the neighborhood and the general public or otherwise serve the purposes of this Ordinance, including such measures as set forth in Section 802.4 ("Special Conditions").
- F. Appeals. Any person aggrieved by a Planning Board decision on a **conditional use** permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a **conditional use** permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5, III).
- G. Telecommunication Facilities, PUDs, Planned Business Parks, and Non-Accessory Renewable Energy Facilities. Uses permitted by **conditional use** pursuant to Section 203.4 ("Telecommunication Facilities"), Section 501 ("Planned Unit Development (PUD)"), Section 508 ("Planned Business Park"), and Section 612.3 ("Non-Accessory Renewable Energy Systems") shall be subject to the provisions and requirements set forth in those sections and shall not be subject to Section 302.4.
- H. Expiration.
1. For projects that require site plan review from the Planning Board, a **conditional use** permit shall expire:
 - a. If a site plan review application is not submitted to the Planning and Development Department and accepted as complete by the Planning Board within two (2) years of the date of the **conditional use** permit approval;

- b. If and when the site plan approval expires or is deemed void; or
 - c. If the **conditional use** permit is abandoned.
- 2. For projects not requiring site plan approval, a **conditional use permit** shall expire:
 - a. If the **conditional use** is not exercised within two years of the date of **conditional use** permit approval by the Planning Board; or
 - b. If the conditional use permit is abandoned.

302.5 Off-Lot Parking. **Parking areas** to serve off-site uses are allowed by **conditional use** permit in accordance with the requirements of Section 607.5 ("Off-Lot Parking").

SECTION 311A RESIDENTIAL-OFFICE-ONE DISTRICT (R-O-1).

311A.1 Purpose.

The purpose of the R-O-1 district is to provide for well-planned neighborhoods of **offices** and higher density housing by carefully guiding the integration of multi-residential housing and **office** uses. The district balances the goals of: (1) preserving the economic viability of older, large **dwelling**s modified to accommodate multiple residential units or **office** space or both; (2) providing for attractive locations for small **offices**; and (3) providing for new **office** buildings compatible with surroundings.

311A.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
<u>Residential</u> One-family dwelling Two-family dwelling Multi-family dwelling (4 dwelling units or less) per Section 601 Accessory dwelling unit (ADU) per Section 610 <u>Commercial/Non-Residential</u> - Construction of new office building (3,000 sq. ft. or less) per Section 601 - Conversion of a dwelling to office use per Section 601 Financial institution Group day care facility per Section 604 Home business per Section 600 - House of worship Personal service Renewable energy system per Section 612 <u>Planned Developments</u> - PURD per Section 501	<u>Residential</u> Multi-family dwelling (5 dwelling units or more) per Section 601 Senior housing complex <u>Commercial/Non-Residential</u> - Construction of new office building (3,001 sq. ft. – 6,000 sq. ft.) per Section 601 Educational facility, college/university Educational facility, primary/secondary Essential service - Funeral home Group residence Health club Hospice Lodging house Public safety facility Recreational facility, indoor Recreational facility, outdoor Tourist home (or bed and breakfast facility)

	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
	<u>Residential</u> 1. Cottage development per Section 509

311A.3 Table of Area, Dimensions and Coverage.

Minimum Lot Size

Class	Area	Width	Additional Area per D.U. After Two	Maximum Height
1	10,000 sq.ft.	75'	3,000 sq.ft.	45'
2	15,000 sq.ft.	75'	5,000 sq.ft.	45'
3	40,000 sq.ft.	100'	15,000 sq.ft.	45'

Minimum Yard

Class	Front	Side	Rear	Maximum Building Coverage
1	20'	15'	20'	25%
2	20'	15'	20'	20%
3	25'	25'	30'	15%

All other required dimensional setbacks for the respective zoning district, in the absence of a ***variance*** or a ***special exception*** as the case may be, shall be met.

- F. No underground chemical or fuel storage tank(s) (excluding propane) of any size shall be constructed, enlarged or replaced underground within 200 feet of a wetland.

401.7 Applications to Zoning Board of Adjustment.

- A. Appeals of Administrative Decisions: Appeals of decisions of the Building Inspector, Zoning Administrator, Planning Board or other administrative officials relative to the Wetlands Conservation District may be made to the Zoning Board of Adjustment as administrative appeals pursuant to RSA 674:33. If such an appeal is from a determination of the district boundary, the appellant, if owner of the land in question, shall submit a map produced by a ***certified wetland scientist*** depicting the ***wetlands*** boundary. After initial hearing, the Zoning Board of Adjustment may require additional mapping, if necessary, at the expense of the applicant.
- B. Environmental Impact Assessment: The Board may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Section. For all projects involving fill or dredge in ***wetlands*** of High or Very High Value, an environmental impact statement shall be required. The cost of this assessment shall be borne by the applicant.
- C. Notice and Hearing Procedures: Shall comply with Article VIII, Section 802 Board Procedures.
- D. Interested Parties: The Lebanon Conservation Commission is hereby determined to be an interested party to any Zoning Board of Adjustment proceeding under this section. Upon receipt of an application, the Zoning Board of Adjustment shall immediately forward a copy of the complete application to the Conservation Commission. The Conservation Commission shall receive notice of all proceedings of the Zoning Board of Adjustment, and the Zoning Board of Adjustment shall give due weight to all evidence submitted to it by the Conservation Commission.

SECTION 402 FLOODPLAIN DISTRICT.

402.1 Description of Floodplain District.

The Floodplain District includes all special flood hazard areas designated by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Grafton, NH" dated February 20, 2008, together with the associated Flood Insurance Rate Maps dated February 20, 2008. Said maps are on file with the City Clerk, Planning Board and City Engineer.

402.2 Floodplain District Regulations.

Within the Floodplain District, all requirements of the Flood Damage Prevention Ordinance of June 4, 1980, City Code Chapter 74, as amended, shall be complied with.

402.3 Floodplain Official.

The Floodplain Official is responsible for administering and enforcing Section 402.2. The City Engineer will normally serve as the Floodplain Official. See City Code Chapter 74-15.

SECTION 403 STEEP SLOPES DISTRICT.

403.1 Purpose.

The purpose of the Steep Slope District is to prevent development on slopes in excess of 25 percent. Development on such slopes causes soil erosion and stream sedimentation; unnecessary loss of vegetative **ground cover** and destruction of **trees**; on-site waste disposal problems; difficult street construction; and expensive street maintenance.

403.2 Description of Steep Slopes District.

The Steep Slope District includes all areas having slopes in excess of 25 percent that are located within the RL-3 District. The slope of the natural terrain shall be determinative of whether or not land is within the district. As a general guide, areas of slope in excess of 25 percent are delineated on the Steep Slopes Map prepared as part of the Lebanon Master Plan.

403.3 Permitted Uses.

No buildings, structures or **parking lots** shall be permitted in the Steep Slopes District. Otherwise, the following uses are permitted:

- A. Wildlife refuges, conservation areas and nature trails.
- B. Open space and outdoor recreation.

403.4 Special Exceptions.

- A. Roads and **driveways** may be granted **special exceptions** to cross the Steep Slopes District subject to the following findings by the Board of Adjustment.
 - 1. The **lot** cannot be reasonably used without such a crossing.
 - 2. The design and construction of the crossing will not cause:
 - a. Soil erosion; or
 - b. Stream sedimentation; or
 - c. Loss of excessive vegetative cover; or

ARTICLE VII NON-CONFORMITIES

SECTION 700 GENERAL.

Any **building** or structure, or any use of any **building**, **structure**, or land, which was in existence at the time of the adoption of this Ordinance, or any amendment thereto and which does not conform to the current provisions of this Ordinance, shall be considered legal non-conforming and may be continued indefinitely without complying with the provisions of this Ordinance, if such use, **building**, or structure, at the time it came into existence, was in compliance with all applicable laws, Ordinances, and regulations then in effect, subject to the provisions of this Article. Any uncertainty over the application of this Article to particular property shall be resolved by administrative decision made by the Zoning Administrator. Such an administrative decision may be appealed to the Zoning Board of Adjustment under 801.1.

SECTION 701 NON-CONFORMING LOTS.

A new use or structure, or addition to an existing structure, *if otherwise* allowed by this Ordinance, may be established on a **lot** which has **frontage** meeting the requirements of RSA 674:41 and which was a legal **lot of record** as of the date of adoption or amendment of this Ordinance even though such **lot** fails to meet the minimum **lot area**, **frontage** or **lot width** requirements of this Ordinance; provided, however, that such **lots** shall be subject to all other requirements of this Ordinance; and provided, further, that if the owner of the **lot** also owns contiguous land which, if merged with the **lot** in question would cause the legal **lot of record** to be either conforming or less non-conforming with respect to **lot area**, **frontage** and **lot width** requirements, then such use, **structure** or addition shall not be permitted unless the **lots** are voluntarily merged under RSA 674:39-a.

SECTION 702 NON-CONFORMING USES.

702.1 Change of Use.

A conforming use shall not be changed to a **non-conforming use**. A **non-conforming use** may, as a **special exception**, be changed to another **non-conforming use** provided that the Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing **non-conforming use**.

702.2 Resumption of Use.

Any **non-conforming use** shall not be re-established if such use has been discontinued for a period of two (2) years; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator's decision concerning such discontinuance, may permit the re-establishment of the same use if it finds: (a) that no action incorporating an intent to abandon the **non-conforming use** has been taken by the owner or occupant, including but not limited to a change to a permitted use or razing or remodeling of a **building**; and (b) that the failure to continue or re-establish the use during the two-year

period was due to economic, regulatory or other forces beyond the control of the owner or occupant.

702.3 Restoration of Use.

Any **non-conforming use**, except signs, may be restored after involuntary damage from any cause provided the same **non-conforming use** is reinstated within two years of such damage. If the reconstruction of the premises is not substantially completed within two years, the **non-conforming use** of such **building** shall be deemed to have been discontinued, unless such **non-conforming use** is carried on without interruption in an undamaged part of the **building**.

702.4 (Reserved).

702.5 Expansion of Use.

- A. The Zoning Board of Adjustment may, by **special exception**, permit a legal **non-conforming use** pursuant to Section 700 to be expanded, provided that the following tests are met in lieu of Section 801.3:
1. The proposed expansion must reflect the nature and purpose of the existing **non-conforming use**, and must be closely related to the manner in which the property was used at the time the restriction was enacted.
 2. The proposed expansion must be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature, or kind.
 3. The proposed expansion shall not have a substantially different effect on the neighborhood in which the property is located.
- B. As part of a proposed expansion under subsection A, the Board of Adjustment may allow a legal **non-conforming use** to expand into an addition to an existing **building** occupied by the **non-conforming use** provided that the gross floor area of the addition is no greater than ten percent (10%) of the size of the gross floor area of the existing **building** measured as of January 22, 2020.
- C. The Board of Adjustment may attach conditions and parameters to its decision, as set forth in Section 802.4.B, to assure that the scope of the expansion continues to meet the standards set forth in subsection A.
- D. In no case shall a legal **non-conforming use** in whole or in part be allowed to expand into a new **building**, or (except as allowed under subsection B) to any portion of the **lot** that was not occupied by the **non-conforming use** at the time such use became non-conforming pursuant to Section 700.

SECTION 703 NON-CONFORMING BUILDINGS AND STRUCTURES.

703.1 Expansion.

Expansion of non-conforming parts of buildings or structures, may be allowed only by **special exception** as set forth herein. For purposes of this section, the term “expansion” shall include any increase in the footprint and/or volume of the non-conforming part of the **building** or structure.

- A. The Board shall make each of the following findings:
 - 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 non-conforming 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.
- B. Those parts of any **non-conforming building** or **structure** which are conforming may be expanded provided the expansion is conforming and the use is not changed.

703.2 Abandonment, Discontinuance, Destruction.

Any **non-conforming building** or **non-conforming structure** which is partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire, explosion, storm, floods, or other acts of God, may be resumed or restored and operated in its former non-conformity if same is done within two (2) years; thereafter, any **non-conforming building** or **structure** shall not be re-established if such **building** or **structure** has been discontinued for a period of two (2) years or more; provided, however, that the Zoning Board of Adjustment, upon an appeal from the Zoning Administrator’s decision concerning such resumption or restoration, may permit the resumption or restoration of the same **building** or **structure** if it finds: (a) that no action incorporating an intent to abandon the **non-conforming building** or **structure** has been taken by the owner or occupant, including but not limited to a change in **non-conforming use** to razing or remodeling the **building** or structure; and (b) that the failure to resume or restore the use during the two-year period was due to economic, regulatory, or other forces beyond the control of the owner or occupant.

Non-conforming signs shall be subject to Section 608.8 in lieu of Section 703.2. Non-conforming sign structures shall be subject to Section 703.2.

SECTION 704 PRE-EXISTING USES THAT ARE SPECIAL EXCEPTIONS OR CONDITIONAL USES.

Any use which existed prior to the adoption of this Ordinance or amendment thereto which is allowed as a ***special exception*** or ***conditional use*** by this Ordinance shall not be deemed a ***non-conforming use***, but shall, without further action be deemed a conforming use. Expansions of such uses shall be governed by Section 801.3 ("Special Exceptions") or by Section 302.4 ("Conditional Uses") rather than Section 702.5.

SECTION 705 PRIOR UNLAWFUL USES.

Nothing in this Ordinance or section shall validate any use which was declared unlawful or was prohibited by any prior zoning Ordinance of the City of Lebanon whether or not such unlawful or prohibited use had been prosecuted prior to, or at the time this Ordinance became effective, and no such unlawful or prohibited use shall be deemed conforming under the terms of this Ordinance.

ARTICLE IX ADMINISTRATION AND ENFORCEMENT

SECTION 900 ZONING ADMINISTRATOR.

The administrative and enforcement officer for this Ordinance shall be known as the Zoning Administrator who shall be appointed by the City Manager. The Zoning Administrator shall administer the Zoning Ordinance literally and shall not have the power to permit any use of land or buildings which is not in conformance with this Ordinance. If a vacancy exists in the office of the Zoning Administrator or the Zoning Administrator is unavailable, the City Manager shall perform these duties or appoint an acting Zoning Administrator.

SECTION 901 ZONING PERMITS.

901.1 General.

Written application for a zoning permit must be filed by the owner or his agent with the City of Lebanon for any of the following. Until such a permit has been received, none of the following shall be commenced:

- A. The erection or use of any new **building**, exterior sign, or other structure.
- B. The alteration, renovation, restoration, or moving of any **building**, structure, exterior sign or part thereof, except that ordinary repairs to structures may be made without a zoning permit. Ordinary repairs shall include any renovation, upgrade, or repair to (i) a **one-family** or **two-family dwelling** that does not increase floor area or volume and where no additional **dwelling unit** is proposed; and (ii) a non-residential **building** that does not increase floor area or volume and where no change of use is proposed.
- C. Any use identified in this Ordinance as requiring a zoning permit, including but not limited to yard sales (Section 207), temporary uses (Section 211), the keeping of hens (Section 611), and beekeeping (Section 611A).
- D. Any other use of premises, whether or not provided for in this Ordinance, including but not limited to a change in the nature of the use of any **building** or premises to a **non-conforming use** from any lawful prior use, the expansion of any existing lawful **non-conforming use**, or any change in lot size or shape.

901.2 Application Requirements.

Application for a zoning permit shall be upon an appropriate form to be prescribed by the City and shall be accompanied by:

- A. Plans, drawn to scale, showing the actual shape, dimensions, and location of the **lot** to be used, of existing buildings, and of proposed new buildings or structures.
- B. Information as to the existing and intended use of each **building**, **lot** or part

thereof, and as to the number of families, lodgers, or other occupants which any **building** upon the premises is designed to accommodate.

- C. A copy of the plans and information described above shall also be submitted to the City Planner or his or her designee for review in accordance with the provisions of Article III of the City of Lebanon Site Plan Review Regulations.

901.3 Approval or Denial.

The Zoning Administrator shall determine whether an application for a permit is in compliance with this Ordinance. If the Zoning Administrator determines that it is, the application shall be approved and a zoning permit issued. If the Zoning Administrator determines that it is not, the application shall be denied. The Zoning Administrator shall act upon any application within 30 days after it has been filed.

901.4 Scope of Permit.

Issuance of a zoning permit pursuant to this Ordinance constitutes approval by the City of the proposed use only under the requirements of this Zoning Ordinance. The owner shall continue to be responsible for compliance with all other applicable City Ordinances or federal or state laws, including but not limited to the Environmental Quality Act, the NH Shoreland Protection Act, and the state building code.

901.5 Building Permit.

The issuance of a zoning permit shall precede or be in conjunction with the issuance of a building permit.

SECTION 902 OCCUPANCY.

No **building** or **structure** shall be occupied except in conformance with this Ordinance. The Building Inspector shall not issue a Certificate of Occupancy for any **building** or **structure** that has not received a zoning permit and that is not in conformity thereto.

SECTION 903 ENFORCEMENT.

903.1 Enforcing Authority.

This Ordinance shall be enforced by the Zoning Administrator. It shall be the duty of the Zoning Administrator to enforce all of the requirements set forth herein, to the fullest extent provided by the laws of the City and of the State of New Hampshire.

903.2 Notice of Violation.

The Zoning Administrator may issue a notice of violation personally, or through Municipal Counsel.

903.3 Penalties and Remedies.

The Zoning Administrator shall institute, in the name of the City, any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate any violation of this Ordinance or to prevent in or about the premises any act, conduct, or use constituting a violation, and shall have all enforcement powers provided by statute including but not limited to RSA 676:15, 676:17, 676:17-a, and 676:17-b.

903.4 Injunctive Relief.

In addition to other remedies provided by law, the Zoning Administrator acting through municipal counsel may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate or remove erections, construction, alterations or reconstructions that are in violation of this Ordinance.

903.5 Recovery of Legal Costs.

As permitted by NH RSA 676:17, as amended, the Zoning Administrator shall seek to recover all costs and attorney's fees in any legal action necessary to enforce these regulations.



SITE PLAN REVIEW REGULATIONS

CITY OF LEBANON, NEW HAMPSHIRE

ADOPTED: MAY 13, 1991
LAST REVISED: JANUARY 23, 2023

ARTICLE I – ENACTMENT AND GENERAL PROVISIONS

Section 1.1 – Authority

Under the general authority granted in the New Hampshire Revised Statutes Annotated Title LXIV, these Regulations are adopted by the Lebanon Planning Board, procedurally under RSA 675:6, after having adopted both a zoning ordinance and subdivision regulations as required under RSA 674:43, and as authorized by the City Council on July 16, 1986 and on March 21, 1990. Pursuant to RSA 674:43, the Planning Board (or, as applicable, the Minor Site Plan Committee) will review and may approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multifamily dwelling units, which are defined as containing more than two dwelling units.

Section 1.2 – Short Title

These Regulations shall be known and may be cited as the “Site Plan Review Regulations” for the City of Lebanon, New Hampshire.

Section 1.3 – Interpretation, Conflict, and Separability

- A. In the interpretation and application of these Regulations, the provisions shall be held to be minimum requirements, except where they are expressly stated to be maximum requirements. More stringent provisions may be required if it is demonstrated that different standards are necessary to promote the public health, safety, and welfare.
- B. Where the conditions imposed by any provisions of these Regulations are either more restrictive or less restrictive than comparable conditions imposed by these Regulations or other ordinances, laws, or regulations, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- C. To facilitate the understanding of the hierarchy in provisions, restrictiveness is typically prefaced by prescriptive or permissive language. “Must” or “shall” signifies an obligation, “must not” or “shall not” is for a prohibition, “may” signifies a discretionary action, “should” indicates a recommendation, and “includes” or “including” provides an example but not a limitation.
- D. The provisions of these Regulations are separable. If a section, sentence, clause, or phrase of these Regulations is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the remaining portions of these Regulations.

Section 1.4 – General Purpose

It is the purpose of these Regulations to protect the public health, safety, and general welfare while allowing for cost-saving efficiencies. The provisions shall be administered to ensure orderly growth and development and to supplement and facilitate the provisions in the City of Lebanon’s Master Plan, Zoning Ordinance, and capital budget. Site plan standards are to ensure that the design of new development will respect the site’s natural environment, give appropriate consideration to the scale and character of existing neighborhoods, and be an asset to the community.

Section 1.5 – Specific Purposes

- A. Provide for the safe and attractive development or change or expansion of use of the site, and guard against such conditions as would promote danger or injury to health, safety, or prosperity by reason of, but not limited to:
 - 1. Inadequate drainage or conditions conducive to flooding of the property, or that of another property;
 - 2. Inadequate protection for the quality of groundwater and other water resources;
 - 3. Undesirable and preventable elements of pollution, including but not limited to noise, smoke, soot, particulates, soil erosion, or any other discharge into the environment which might prove harmful to the environment, persons, structures, or adjacent properties;
 - 4. Inadequate provision for fire safety, prevention, and control.
- B. Provide for the harmonious and aesthetically pleasing development of the municipality and its environs by:
 - 1. Protecting existing historic and environmental features as much as feasibly possible on the site reviewed, and minimizing the impact on adjacent areas that contain historic and environmental resources;
 - 2. Assuring compliance and consistency with zoning districts and overlay zones and the determinations of other commissions that have or will have jurisdiction over the site;
 - 3. Assuring that suitably located streets and sidewalks of sufficient width are provided to accommodate existing and prospective motor vehicle, bicycle, and pedestrian traffic, and to afford adequate light, air, and convenience of access to properties;
 - 4. Assuring that the site plan provides for open spaces and green spaces of adequate proportion;
 - 5. Assuring that the intensity of development of a site is harmonious with the community, the neighborhood surrounding the site, and the adjacent properties.
- C. Provide guidance and management for orderly municipal growth that allows for the appropriate provision of services to the citizens of the community, to include but not limited to:
 - 1. Police protection, fire protection, and ambulance service;
 - 2. Water and sewerage facilities;
 - 3. Educational facilities.

- D. Provide for prosperity and protection of property investments for the citizens of Lebanon by:
 - 1. Assuring that land is used in a manner that is harmonious with the surrounding areas such that it does not interfere with the prosperity of neighboring lands;
 - 2. Assuring that the type and intensity of proposed use is appropriate for the area in which it is situated.

Section 1.6 – Compliance

- A. These Site Plan Review Regulations apply to all *land development*, and no such *land development* shall proceed without first obtaining a jurisdictional determination from the Planning and Development Department pursuant to Section 3.1.
- B. Site plans shall be prepared in accordance with all applicable local, state and federal ordinances, laws, codes, regulations, and requirements. A reference sheet prepared by the Planning and Development Department identifying some of the more common ordinances, laws, codes, regulations, and requirements that an applicant may need to comply with and which may impact the design of a proposed land development shall be made available on the City of Lebanon website.
- C. No Building Permit shall be approved for a building or structure on a site that does not comply with these Regulations.
- D. The Building Inspector shall not issue a Certificate of Occupancy under the Lebanon Building Code for any building on a site plan that does not comply with the Notice of Action on the approved site plan. Any requirement of the Notice of Action to be performed in the future and that has been bonded under Section 8.2 of these Regulations will satisfy the condition for the issuance of the Certificate of Occupancy.

ARTICLE II – DEFINITIONS

For the purpose of these Site Plan Regulations, in addition to the terms included in this Article, the meaning of terms used herein shall be as defined in the Lebanon Zoning Ordinance and the Lebanon Subdivision Regulations.

Accessory building (or accessory structure). A building (or structure) subordinate and customarily incidental to the principal building or structure on the same lot. The term “accessory building”, when used in connection with agriculture shall include all buildings customarily used for farm purposes.

Accessory use. A use subordinate and customarily incidental to the principal use of a lot.

Best management practices (BMPs). Structural, non-structural, and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in storm water volumes and flows, reduce point source and non-point source pollution, and promote storm water quality and protection of the environment. BMPs are

impervious surfaces. WQV should be calculated using the following equation: $WQV = (P)(R_v)(A)$, where: $P = 1$ inch R_v = the unitless runoff coefficient, $R_v = 0.05 + 0.9(I)$ I = the percent impervious cover draining to the structure, in decimal form, and A = total site area draining to the structure.

Water quality treatment. the capture of sediment, nutrients, metals and hydrocarbons suspended in stormwater runoff from impervious surfaces before being conveyed to a storm sewer network or to another water quality treatment system. In most cases where no other local water body impairments exist, adequate treatment refers to documenting the treatment systems ability to remove 80% of the total suspended solids (TSS) on an annual basis. Where water quality impairments do exist adequate treatment refers to a system's ability to meet maximum load allocations or not further impair the receiving water. U. Water Quality Volume (WQV): The storage volume needed to capture and treat the runoff from the 1-inch 24-hour rainstorm for a specific contributing area. WQV shall be calculated using the following equation: $WQV = (P)(R_v)(A)$, where: $P = 1$ inch, R_v = the unitless runoff coefficient, $R_v = 0.05 + 0.9(I)$, where I = the percent impervious cover draining to the discharge point, in decimal form, and A = total site area draining to the discharge point.

ARTICLE III – ADMINISTRATION

Section 3.1 – Site Plan Review Jurisdiction

Before the formal submission of a site plan review application for any proposed *land development*, the property owner and/or developer is encouraged to meet with Planning and Development Department staff to informally review the proposal. The applicant is encouraged to use this opportunity to ask staff questions regarding the site plan review process and applicable design regulations. Staff is generally available to meet in person or by phone, and may also be contacted via e-mail (see the City of Lebanon website for contact information).

A. JURISDICTIONAL DETERMINATION

1. Any person proposing a *land development* shall be required to submit a site plan drawing and project description to the Planning and Development Department to:
 - a. Verify whether the proposed *land development* is:
 - i. Exempt from site plan review per Section 3.1.B, or
 - ii. Eligible for site plan review by the Minor Site Plan Committee per Section 3.1.C, or
 - iii. Requires site plan review by the Planning Board per Section 3.1.C; and
 - b. To provide a record of such change on the property.

The Planning and Development Department may request additional information as reasonably needed to make the jurisdictional determination.

2. The jurisdictional determination of the Planning and Development Department may be appealed to the Planning Board provided the appeal is filed within 20 days of the Department's decision. The Board shall act on the appeal within a reasonable time. Such a determination shall be

considered administrative, and no noticed public hearing shall be required for the Board to act on the appeal.

B. LAND DEVELOPMENT EXEMPT FROM SITE PLAN REVIEW.

Site plan review shall not be required for any *land development* that, in the reasonable determination of the Planning and Development Department, does not necessitate or result in any appreciable change to access; parking, vehicular and/or pedestrian circulation; traffic; drainage patterns or drainage structures; topography; lighting; visual features; natural resources; City services or facilities; improved surfaces; and/or required landscaping, provided that:

1. Prior to the commencement of any such *land development*, a plan depicting the proposed changes shall be provided to the Planning and Development Department to mark the plan approved as an amendment to the approved site plan; and
2. The proposed *land development* complies with any applicable design requirements of the Site Plan Review Regulations, as determined by the Planning and Development Department.

C. MINOR SITE PLAN COMMITTEE REVIEW

Minor site plan approval from the Minor Site Plan Committee in accordance with the procedures set forth in Section 3.2 shall be required for any of the following:

1. Minor site plan approval from the Minor Site Plan Committee in accordance with the procedures set forth in Section 3.2 shall be required when one or more of the criteria in Column A is satisfied. However, if ANY of the criteria in Column B is also satisfied, the application for *land development* shall be reviewed by the Planning Board per Section 3.1.D.

Type of <i>Land Development</i>	Column A	Column B
Increase in <i>gross floor area</i> of a building	a) between 500 sq. ft and 2,500 sq. ft.; and, b) less than 25% of the existing <i>gross floor area</i>	a) equal to or greater than 2,500 sq. ft; or, b) equal to or greater than 25% of the existing <i>gross floor area</i>
Reconstruction of demolished buildings	a) between 500 sq. ft and 2,500 sq. ft.; and, b) less than 25% of the existing <i>gross floor area</i>	a) equal to or greater than 2,500 sq. ft.; or, b) equal to or greater than 25% of the existing <i>gross floor area</i>
New improved surfaces, including but not limited to gravel or paved parking areas, driveways, walkways, or other improved surfaces, whether or not such surfaces are pervious or impervious.	between 500 sq. ft. and 2,500 sq. ft.	equal to or greater than 2,500 sq. ft.

For a multi-family dwelling of five (5) or more units	an increase in the number of dwelling units not to exceed 20% of the existing units	an increase in the number of dwelling units that exceeds 20% of the existing units
Conversion of an existing building, in whole or in part	to a multifamily dwelling containing five (5) or fewer dwelling units	to a multifamily dwelling containing more than (5) dwelling units
Conversion of an existing building, in whole or in part	from a residential use to a non-residential use	<i>land development</i> proposal is a major change
Any other type of <i>land development</i>	<i>land development</i> proposal is a minor change	<i>land development</i> proposal is a major change

2. Notwithstanding the criteria in the table above, the proposal shall be reviewed by the Planning Board per Section 3.1.D. for any of the following cases:
 - a. In the reasonable judgment of the Planning and Development Department the proposal constitutes a **major change**.
 - b. The application is submitted less than (2) years from the date that a previous minor site plan was approved for the same lot as the current application.

Applications for *land development* that meet one or more of the criteria set forth above and which are submitted less than two (2) years from the date of the last minor site plan approval shall be reviewed by the Planning Board per Section 3.1.D.

D. PLANNING BOARD REVIEW

Land development that constitutes a **major change** to a property, including any *land development* that exceeds the thresholds set forth in Section 3.1.C.1.a-e, shall require site plan approval from the Planning Board in accordance with the procedures set forth in Article IV.

Section 3.2 – Minor Site Plan Review

A. MINOR SITE PLAN COMMITTEE

1. **Establishment.** A Minor Site Plan Committee is established in accordance with RSA 674:43, III, and the resolution passed by the City Council on September 1, 2021, for the purpose of reviewing minor site plan applications per Section 3.1.C.
2. **Membership.** The Minor Site Plan Committee consists of the Planning and Development Department's Senior Planner and Associate Planner, and a representative from each of the following City departments: Fire, Police, and Public Works. The Senior Planner shall serve as chair and may use his or her reasonable discretion in coordinating the activity of the committee in an efficient and effective manner. The Director of Planning and Development may, at his or her discretion, substitute for the Senior Planner or Associate Planner and may, at his or her discretion, serve as chair while

substituting. A majority of the members shall constitute the quorum necessary to transact business.

B. REVIEW PROCESS

1. **Pre-Submission Review.** Prior to submitting an application for minor site review, the applicant is encouraged to meet with the Planning and Development Department for a determination as to the applicability of the Article VI design and construction requirements to the applicant's project. The applicant may request that Planning staff provide the determination in writing. See *also* Section 3.2.B.8 (Design Standards).
2. **Application.** Fees for a minor site plan application may be assessed in accordance with the Fee Schedule adopted by the Planning Board pursuant to Section 4.2.

Upon receipt of an application for minor site review, the Planning and Development Department shall review the application to determine if it qualifies for minor site plan review per Section 3.1.D and if all required materials have been submitted per Section 3.2.B.7 (Submission Materials). The Planning and Development Department shall coordinate with the applicant to obtain any additional necessary information, documentation, or clarifications to understand the proposal and to help determine if it qualifies for minor site review and if all required application materials have been submitted. The Planning and Development Department shall also make a determination as to the applicability of the Article VI design and construction requirements to the applicant's project, pursuant to Section 3.2.B.8.

If the Planning and Development Department determines that the proposal is a minor site plan and that all required materials have been submitted, the application shall be forwarded to the Minor Site Plan Committee for review. If the plan does not address the applicable design and construction requirements of Article VI as determined by the Planning and Development Department, the Department shall forward the plan to the Minor Site Plan Committee with a recommendation that the application is transferred to the Planning Board per Section 3.2.B.5 (Referral to Planning Board).

Minor site plan applications are subject to the provisions of Section 4.4 which outlines the procedure when approvals from the Zoning Board of Adjustment are required. References in Section 4.4 to the Planning Board shall be deemed to be references to the Minor Site Plan Committee for purposes of this section.

Submission of a minor site plan application shall be deemed as the granting of permission to visit the property in accordance with Section 4.11. References to the Planning Board in Section 4.11 shall be deemed to be references to the Minor Site Plan Committee for purposes of this section.

3. Public Hearing.

- a. If the proposal is approved for minor site review, the Planning and Development Department shall set a date for a public hearing before the Minor Site Plan Committee. The date of the public hearing shall be set for no later than 30 days following the submission of the application.
- b. The Planning and Development Department shall send notices to abutters and other parties in accordance with RSA 676:4, I(d)(1) and shall post public notice at least ten (10) days in advance of the public hearing, as specified in RSA 676:4, I(d)(1).
- c. Prior to the opening of the hearing, the Minor Site Plan Committee shall:
 - i. Determine if the application has regional impact in accordance with Section 4.6. References therein to the Planning Board shall be deemed to be references to the Minor Site Plan Committee for purposes of this section. If deemed to have regional impact, the Committee shall refer the application to the Planning Board for review per Section 3.2.B.5.
 - ii. Determine if the application is complete according to the Submission Requirements in Section 3.2.B.7. If it is determined that the application is complete, the Committee shall accept the application. If it is determined that the application is incomplete, the Committee shall vote to find the application incomplete and shall state the reasons for such findings. The Committee may postpone the opening of the hearing to a new date or may require the submission of a new application.
- d. The Committee shall open the public hearing on the completed formal minor site plan application. Any abutter, member of the general public or any person with a direct interest in the matter may testify in person or in writing.

4. Final Action.

- a. Following the conclusion of the public hearing, the Minor Site Plan Committee shall either:
 - i. approve the application as submitted;
 - ii. approve the application with conditions;
 - iii. deny the application;
 - iv. decline to make a final decision itself and refer the application to the Planning Board for review per Section 3.2.B.5; or
 - v. request an extension of time from the applicant if needed.
- b. The Board shall provide a written decision within five (5) days of the conclusion of the public hearing.

- c. A digital copy of the approved plan, modified as necessary pursuant to any conditions of approval, shall be provided to the Planning and Development Department by the applicant for digital signature by the Chair of the Minor Site Plan Committee.
 - d. The Planning and Development Department shall announce the decision of the Minor Site Plan Committee at the next regularly scheduled Planning Board meeting and shall provide a brief summary of the application and decision for inclusion with the meeting agenda materials.
 - e. The time periods set forth in Section 4.10 shall apply to minor site plan approvals. References in Section 4.10 to the Planning Board shall be deemed to be references to the Minor Site Plan Committee for purposes of this section.
5. **Referral To Planning Board.** At or before the time of the Minor Site Plan Committee completeness review under Section 3.2.B.3.c.ii, the Minor Site Plan Committee in its reasonable discretion and/or at the request of the Applicant may transfer the application to the Planning Board. If such a transfer occurs, the Planning Board shall act on the proposed site plan within 65 days following a completeness finding, regardless of whether the completeness finding was made by the Minor Site Plan Committee or the Planning Board.

When an application is referred to the Planning Board for review it shall be treated as a regular site plan application with new notices and a new public hearing, and shall be placed on the next available Planning Board agenda. All applicable procedures of Article IV shall apply except that (a) no additional application fees shall be charged other than for notices, (b) the materials submitted for the minor site plan review shall be adequate unless the Planning Board determines that other materials are needed, and (c) the site plan application deadline shall not apply.

6. **Appeal to Planning Board.** A decision of the Minor Site Plan Committee may be appealed to the Planning Board in accordance with RSA 674:43, III, provided the appeal is filed within 20 days of the Committee's decision. The appeal shall identify the reasons for the appeal.

The Planning Board shall hold a public hearing on any appeal, pursuant to the notice requirements and procedures set forth in Section 4.8. Any additional fees for notices shall be paid by the appellant. No new application fee shall be charged. All applicable procedures of Article IV shall apply.

The hearing shall generally be limited to the reasons for the appeal identified by the appellant, unless the applicant, appellant, other interested party, or any Board member requests a de novo hearing, which request the Board may grant upon demonstration of good cause. The Board may either affirm or reverse the decision of the Minor Site Plan Committee and may modify or add to any conditions of the Committee's decision.

7. **Submission Materials.** An applicant for minor site plan review shall submit the following:
- a. A completed minor site application utilizing a form to be provided by the Planning and Development Department.
 - b. A completed minor site plan technical checklist utilizing a form to be provided by the Planning and Development Department.
 - c. The appropriate fees as established by the Board's fee schedule.
 - d. A list of the name(s) and address(es) of all persons to be notified by certified mail in accordance with RSA 676:4, I(d), including the following:
 - i. The Applicant(s);
 - ii. The Owner(s) of record of the site;
 - iii. The Owners of abutting properties;
 - iv. Every surveyor, engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board;
 - v. All persons holding conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property, or, when there are no such restrictions on the subject property, the applicant shall provide a definitive statement to that effect;
 - vi. The holders of any easements, rights-of-way, or other restrictions on or over the subject property, or, when there are no such easements, rights-of-way, or other restrictions on the subject property, the applicant shall provide a definitive statement to that effect;
 - e. A scaled plan clearly illustrating the proposal, utilizing the approved site plan as a base map, if available, and identifying all abutters. Plans must be sufficiently accurate and detailed so as to:
 - i. Indicate the site location, the address and zoning classification of the subject property, and the uses of adjoining properties;
 - ii. Describe the size, shape, and use of the subject property, together with relevant information about existing site topography, drainage, hydrologic features, vegetation, and other natural features, and about proposed changes to these;
 - iii. Show the size, dimensions, location, and height of existing and proposed structures, expansions to existing structures,

or other improvements, including landscaping, parking areas, ramps, walkways, driveways, lighting fixtures, signs, stormwater control devices, exterior waste receptacles, exterior equipment, utilities, solar panels, wind generators, condensers, transformers, or other;

- iv. Demonstrate conformity with the standards and requirements for proposed developments set forth in Article VI, as determined to be applicable by the Planning and Development Department pursuant to Section 3.2.B.8; and
 - v. Demonstrate full compliance with the Zoning Ordinance, including the conditions of approval of any special exception or variance granted by the Zoning Board of Adjustment.
- f. Any additional materials and documentation which the Minor Site Plan Committee reasonably requires to fully understand the proposal.

The Planning and Development Department or Minor Site Plan Committee (per Section 3.2.B.3.c.ii) may postpone action on an application that is not complete.

8. Design Standards.

- a. The design and construction requirements of Article VI shall apply to minor site plans (i) to the extent reasonably related to the scope of the proposed project, and (ii) to the maximum extent practicable to bring the property into compliance with the Article VI design and construction requirements.
- b. The applicability of the Article VI requirements to an applicant's project shall be determined by the Planning and Development Department in consultation with the applicant. See *also* Section 3.2.B.1.

ARTICLE IV – PROCEDURE

Section 4.1 – Purpose

The purpose of this article is to set forth the procedure for Planning Board review and action on applications for site plan approval per Section 3.1.D (“Planning Board Review”). The procedure is intended to facilitate the orderly and expeditious processing of such applications.

Section 4.2 – Fees

The Planning Board has established, and from time to time may amend, a Fee Schedule, which is a part of the City of Lebanon Site Plan Review Regulations and is on file at the Planning and Development Department and available on the City's website.

Chapter 74. Flood Damage Prevention

Article I. Statutory Authorization; Finding of Fact; Purpose

§ 74-1. Statutory authorization.

The legislature of the State of New Hampshire has in RSA 674:16 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the City Council of the City of Lebanon, New Hampshire, does ordain as follows.

§ 74-2. Finding of fact.

- A. The flood hazard areas of Lebanon are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

§ 74-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health.
- B. To minimize expenditure of public money for costly flood control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 74-4. Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting and prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters.
- D. Controlling filling, grading, dredging and other development which may increase flood damage.
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwater or which may increase flood hazards in other areas.

Article II. Definitions and Word Usage

§ 74-5. Word usage.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

§ 74-6. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPEAL

A request for review of the Floodplain Official's interpretation of any provision of this chapter or a request for a variance.

AREA OF SPECIAL FLOOD HAZARD

The land in the floodplain within a community with a one-percent or greater chance of flooding in any given year. The area is designated as Zone(s) A and AE on the Flood Insurance Rate Map (FIRM).

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT

Any area of a building having its floor subgrade on all sides.

BUILDING

See "structure."

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

FEMA

The Federal Emergency Management Agency.

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation or normally dry land areas from the overflow of inland or tidal water and/or the unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD ELEVATION STUDY

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM)

An official map incorporated with this chapter, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Lebanon.

FLOOD INSURANCE STUDY

See "flood elevation study."

FLOODPLAIN or FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source. See definition of "flooding."

FLOODPROOFING

Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOODWAY

See "regulatory floodway."

FUNCTIONALLY DEPENDENT USE

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and shipbuilding/repair facilities but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE

Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district, historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR

The floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered the building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter. A "basement" means any area of the building having its floor subgrade (below ground level) on all sides.

MANUFACTURED HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL

The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION

Includes substantial improvement, and means the date the building permit was issued, provided that actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of the structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

NEW MANUFACTURED HOME PARK OR SUBDIVISION

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

ONE-HUNDRED-YEAR FLOOD

See "base flood."

RECREATIONAL VEHICLE

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are

designated on the FIRM map.

SPECIAL FLOOD HAZARD

An area having flood, mudslide and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A or AE (see "area of special flood hazard.")

START OF CONSTRUCTION

Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

STRUCTURE

For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should equal the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCES

A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

VIOLATION

Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION

The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

Article III. General Provisions

§ 74-7. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Lebanon.

§ 74-8. Basis for establishing areas of special flood hazard.

Pursuant to RSA 674:56, by resolution of the City Council, all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Grafton, NH" dated February 20, 2008, together with the associated Flood Insurance Rate Maps dated February 20, 2008, are declared to be part of the City of Lebanon Code, Chapter **74** and are hereby incorporated by reference. The Flood Insurance Study is on file at the office of the City Clerk, 51 North Park Street, Lebanon, New Hampshire.

§ 74-9. Compliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations.

§ 74-10. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§ 74-11. Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

§ 74-12. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Lebanon, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder.

§ 74-13. Penalties for offenses.

Violation of any provision of this chapter shall be punishable as provided in Chapter **1**, General Provisions.

Article IV. Administration

§ 74-14. Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 74-8. Application for a development permit shall be made on forms furnished by the Floodplain Official and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 74-21B; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

§ 74-15. Designation of the Floodplain Official.

The Floodplain Official is responsible for administering and implementing this chapter by granting or denying development permit applications in accordance with its provisions. The Floodplain Official will normally be the City Engineer.

§ 74-16. Duties and responsibilities of Floodplain Official.

Duties of the Floodplain Official shall include, but not be limited to:

- A. Permit review. The Floodplain Official shall:
 - (1) Review all development permits to determine that the permit requirements of this chapter have been satisfied.
 - (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.
 - (3) Review all development permits to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard. For purposes of this chapter, "adversely affects" means the cumulative effects of proposed development when combined with all other existing and anticipated developments increases the water surface elevation of the base flood more than one foot at any point.
- B. Use of other base flood data. When base flood elevation data has not been provided in accordance with § 74-8, Basis for establishing the areas of special flood hazard, the Floodplain Official shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer § 74-21, Specific Standards, Subsection A, Residential construction, and Subsection B, Nonresidential construction.
- C. In special flood hazard areas, the Floodplain Official shall determine the one-hundred-year-flood elevation in the following order of precedence according to the data available:

- (1) In Zones AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

D. Information to be obtained and maintained. The Floodplain Official shall:

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures located in Zones A or AE. The applicant shall furnish the following information to the Building Inspector.
- (2) For all new or substantially improved floodproofed structures:
 - (a) Verify and record the actual elevation (in relation to mean sea level); and
 - (b) Maintain the floodproofing certifications required in § 74-14C.
- (3) Maintain for public inspection all records pertaining to the provisions of this chapter.

§ 74-17. Alteration of watercourses.

- A. In riverine situations, prior to the alternation or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Floodplain Official, including notice to all scheduled hearings before the Wetlands Board and any hearings before the Zoning Board of Adjustment for a special exception or conditional use permit under Section 401 of the Lebanon Zoning Ordinance.^[1]

[1] *Editor's Note: The Zoning Ordinance is on file in the City offices.*

- B. Along watercourses with a designated regulatory floodway, no encroachments, including fill, new construction, substantial improvements and other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meets the floodway requirements of this section.
- C. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

§ 74-18. Variance procedure; Floodplain Appeal Board.

- A. The Floodplain Appeal Board shall be the Lebanon Zoning Board of Adjustment. The Zoning Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Floodplain Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Official in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Floodplain Appeal Board, or any taxpayer, may appeal such decision to the Grafton County Superior Court as provided in RSA 676:5.
- D. In passing upon such applications, the Floodplain Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.
- E. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots within existing structures constructed below the base flood level, provided that Subsections (1) through (11) in § 74-18D have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- F. Upon consideration of the factors of § 74-18D and the purposes of this chapter, the Floodplain Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- G. The Floodplain Official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

§ 74-19. Conditions for variances.

- A. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances shall only be issued upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud

on or victimization of the public as identified in § **74-18D**, or conflict with existing local laws or ordinances.

- E. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Article V. Provisions for Flood Hazard Reduction

§ 74-20. General standards.

In all areas of special flood hazards the following standards are required:

A. Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes that are placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
 - (a) Outside of a manufactured home park or subdivision;
 - (b) In a new manufactured home park or subdivision;
 - (c) In an expansion to an existing manufactured home park or subdivision; or
 - (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of § **74-20A(2)** be elevated so that either:
 - (a) The lowest floor of the manufactured home is at or above the base flood elevation; or
 - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (4) Recreational vehicles.
 - (a) All recreational vehicles placed on sites within Zone AE shall either:
 - [1] Be on the site for fewer than 180 consecutive days;
 - [2] Be fully licensed and ready for highway use; or
 - [3] Meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in Paragraph (c)(6) of Section 60.3.
 - (b) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices and has no permanently attached additions.

B. Construction materials and methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall have electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities.

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).
- (5) Residential subdivisions shall not be approved unless the applicant can demonstrate that lands sufficient to meet the lot area, frontage and yard requirements of the Zoning Ordinance^[1] exist on each proposed lot in areas outside the special flood hazard area.

[1] *Editor's Note: The Zoning Ordinance is on file in the city offices.*

§ 74-21. Special standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in § 74-8, Basis for establishing the areas of special flood hazard, or § 74-16B, Use of other base flood data, the following provisions are required.

- A. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
[Amended 7-10-2019 by Ord. No. 2019-08]
- B. Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:
- (1) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official set forth in § **74-16D**.
- C. Residential and nonresidential construction. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements:
 - (1) The enclosed area is unfinished or flood resistant, used solely for parking of vehicles, building access or storage.
 - (2) The area is not a basement.
 - (3) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwater.

§ 74-22. Floodways.

Located within areas of special flood hazard established in § **74-8** are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. If Subsection **A** is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article **V**, Provisions for Flood Hazard Reduction.
- C. Prohibit the placement of manufactured homes.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

Cicotte Holdings, LLC

v.

City of Lebanon

Docket No. 215-2023-CV-00267

Order

The petitioner, Cicotte Holdings, LLC (“Cicotte”), brought this action against the respondent, the City of Lebanon (the “City”), appealing the City’s Zoning Board of Adjustment’s (“ZBA”) dismissal of Cicotte’s appeal of a Notice of Violation for lack of subject matter jurisdiction. Cicotte also petitions for declaratory judgment. The City counterclaimed for injunctive relief, civil penalties, and attorney’s fees.¹ On March 25, 2024, the Court held a hearing on this matter. Cicotte and the City filed post-hearing memoranda on April 2, and April 4, 2024, respectively.

For the following reasons, the Court declares that the ZBA has subject matter jurisdiction over Cicotte’s appeal and, therefore, the ZBA’s decision is REVERSED and REMANDED.

Facts

The following facts are derived from the Certified Record (“CR”) supplied by the City. In the summer of 2021, Cicotte commissioned Twin State Paving to “reclaim poor

¹ Following a status conference held on February 12, 2024, the Court agreed to bifurcate the Plaintiff’s zoning board appeal from the remaining issues raised by the parties. (See Court Doc. 8.)

paving and repave” a parking area at 51 Evans Drive (the “Property”) in Lebanon. (CR, 5.) Roughly two years later, on April 19, 2023, the City’s zoning administrator and deputy planning director sent Cicotte a Notice of Violation (the “Notice”) stating that the Property was in violation of Lebanon’s Zoning Ordinance (“LZO”), Site Plan Review Regulations, and Lebanon City Code Chapter 74 regarding flood damage prevention. (Id. at 1–4.) The City alleged that the paving expanded the parking area by approximately 4,000 sq. ft. (Id. at 3–4.) Notably, the Notice stated that it was “a decision of the administrative officer,” and provided Cicotte with thirty days to appeal the decision to the ZBA. (Id. at 3–4.) On May 22, 2023, Cicotte appealed the Notice to the ZBA. (Id. at 13, 17.)

On June 5, 2023, the ZBA first heard Cicotte’s appeal. (Id. at 16, 19.) Cicotte moved orally and by letter to have one of the ZBA board members, Jeremy Katz, recused from the appeal. (Id. at 18, 43.) Cicotte asserted that “Mr. Katz has previously shown partiality against and prejudice to prior applications to the [ZBA] by Johanna Cicotte.” (Id.) Further, Cicotte stated that “Mr. Katz had a professional relationship with the attorneys who represent Ms. Cicotte. Although that relationship has been terminated, that is likely to affect the impartiality of Mr. Katz.” (Id.) Mr. Katz refused recusal. (Id. at 43.) Cicotte’s counsel stated that he would be willing to discuss the factual basis of the request if Mr. Katz was willing to waive attorney client privilege. (Id.) Such waiver is not reflected in the record. The ZBA’s hearing was continued to July 11, 2023. (Id. at 43, 70.)

At the July 11, 2023 hearing, Mr. Katz asked Cicotte to identify the specific section of the LZO that had been misinterpreted. (Id. at 71.) Cicotte stated that it did not

dispute the interpretation of the LZO. (Id.) Rather, Cicotte factually disputed whether it was “in violation” of the LZO. (Id.) Mr. Katz stated that he believed the appeal should be dismissed for lack of jurisdiction. (Id.) The ZBA approved a motion to continue the hearing to August 7, 2023, and to seek a legal opinion from the City Attorney regarding whether the ZBA had jurisdiction to hear the appeal. (Id.)

On August 7, 2023, the ZBA continued the hearing. (Id. at 111–112.) At the outset, Mr. Katz moved to dismiss Cicotte’s appeal for lack of jurisdiction. (Id. at 112.) Specifically, Mr. Katz moved:

[T]o dismiss the appeal for lack of subject matter jurisdiction on the basis that there is no dispute regarding the meaning of the ordinance that was brought up but rather is disputing the City’s position of the violation and as a result it does not fall within what we have jurisdiction over under [RSA 676:5, II(b)].

(Id.) The motion passed 4-0. (Id.)

On August 23, 2023, Cicotte requested a rehearing. (Id. at 116–118.) On October 2, 2023, the ZBA denied Cicotte’s request. (Id.) This appeal followed. Cicotte filed its Complaint on October 18, 2023, with Grafton County Superior Court. The case was subsequently transferred to the Land Use Review Docket upon such docket’s creation by operation of administrative order. See Super. Ct. Admin. Order #2023-06, December 27, 2023, at p. 2.

Standard of Review

“Judicial review of zoning cases is limited.” Fox v. Town of Greenland, 151 N.H. 600, 603 (2004). The Court acts as an appellate body and not as a fact finder. Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 583 (2005). “The factual findings of the board are deemed *prima facie* lawful and reasonable, and will not be set aside by

the [Court] absent errors of law, unless the [C]ourt is persuaded, based upon a balance of the probabilities of the evidence before it, that the board's decision is unreasonable." McKibbin v. City of Lebanon, 149 N.H. 59, 61 (2003); see RSA 677:6. The appealing party bears the burden of proof. See McKibbin, 149 N.H. at 61; RSA 677:6. The Court's review "is not to determine whether it agrees with the zoning board of adjustment's findings, but to determine whether there is evidence upon which they could have been reasonably based." Rochester City Council v. Rochester Zoning Bd. of Adjustment, 171 N.H. 271, 275 (2018) (quotation omitted). In essence, the Court "does not sit as a 'super zoning board.'" Id. (quotation omitted).

Analysis

The primary issue that is ripe for review in this appeal is whether the ZBA erred in dismissing Cicotte's appeal for lack of subject matter jurisdiction. However, as a preliminary matter, Cicotte asserts that Mr. Katz should have recused himself from the case and that Mr. Katz acted in bad faith by intentionally delaying the appeal. The Court first addresses this threshold matter prior to turning to the jurisdictional question.

I. Member Disqualification

RSA 673:14 governs the disqualification of ZBA members, and states that no ZBA member shall preside over a case where such member has a "direct or personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the same matter in any action at law." RSA 673:14, I. If there is uncertainty as to whether a ZBA member should be disqualified and any ZBA member requests a vote, the ZBA shall vote on the member's qualification. RSA 673:14, II. However, "[s]uch a vote shall be advisory and

non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.” *Id.*

To begin, the City contends that the issue of Mr. Katz’s alleged conflict is not ripe for review, in part because the ZBA declined subject matter jurisdiction in this case. The Court is not persuaded by this argument. The mere fact that an application is dismissed on jurisdictional grounds does not insulate an otherwise tainted board member. A contrary finding would conflict with the plain language of RSA 674:13, I, which requires disqualification of a member if cause exists when such member “participate[s] in deciding” or “sit[s] upon the hearing or any question which the board is to decide in a judicial capacity[.]” As such, the Court moves the merits of Cicotte’s recusal argument.

Upon review of the underlying facts alleged in connection with the recusal request, the Court determines that the record contains insufficient grounds to require the recusal of Mr. Katz. While Cicotte alleged that Mr. Katz was biased against Ms. Cicotte’s prior applications, the record does not articulate how Mr. Katz’s prior votes demonstrate unfair bias rather. Similarly, Cicotte’s bare allegations about Mr. Katz’s prior professional relationship with its attorneys are insufficient to evidence a conflict that warrants disqualification.

Cicotte further alleges that Mr. Katz acted in bad faith by raising subject matter jurisdiction despite his knowledge that the New Hampshire Supreme Court rejected such an argument in N.H. Alpha of SAE Tr. v. Town of Hanover, 174 N.H. 269, 291 (2021) (“SAE II”). In support of this position, Cicotte cites to exhibits attached to its memorandum of law that are not contained within the certified record. While Cicotte moved for Mr. Katz’s recusal when the case was before the ZBA, it did not articulate this

particular basis for recusal. (See CR at 18, 43.) As such, the Court concludes that the issue was not adequately preserved for this Court's review. See Fox v. Town of Greenland, 151 N.H. 600, 604 (2004) (holding that petitioners cannot raise disqualification of a ZBA member on appeal if the issue was not raised at the earliest possible time).

In light of the foregoing, the Court cannot find error in permitting Mr. Katz to preside as a ZBA member on Cicotte's application.

II. The ZBA's Dismissal for Lack of Subject Matter Jurisdiction

The Court now addresses the merits of the ZBA's decision to dismiss Cicotte's appeal for lack of subject matter jurisdiction. Cicotte argues that the ZBA erred because the Notice is a decision of an administrative officer that expressly provided the opportunity to appeal to the ZBA. The City contends that Cicotte's appeal does not fall within the ZBA's statutory jurisdiction because Cicotte did not dispute the interpretation of the LZO. Rather, the City asserts that Cicotte's appeal only related to factual determinations made by the zoning administrator and that the Notice was a discretionary decision to commence enforcement proceedings.

The ZBA has the power to "[h]ear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance" RSA 674:33, I(a)(1). Under RSA 676:5, I, appeals to the ZBA within the scope of RSA 674:33 "may be taken by any person aggrieved . . . by any decision of the administrative officer." RSA 676:5, II(b) broadly defines a "decision of the administrative officer" as "any decision involving construction, interpretation or application of the terms of the ordinance." Here, the

underlying issue between the parties is whether Cicotte's use of its property constituted a lawful expansion of a legal non-conforming use. Non-conformities are specifically governed by the LZO. (See CR 147.)

The Court finds the SAE litigation to be both legally and factually applicable to this case. See N.H. Alpha of SAE Tr. v. Town of Hanover, 172 N.H. 69 (2019) ("SAE I"); SAE II at 269. That litigation surrounded a Dartmouth College fraternity, SAE, that was suspended by its parent national organization. SAE I at 71. As a result, Dartmouth derecognized SAE as a student organization. Id. The Town of Hanover then issued a Notice of Zoning Violation to SAE, stating that because residences in the institution zoning district were required "to be operated in conjunction with another institutional use," any continued use of the residence by SAE would be a violation of the zoning ordinance. Id. The Town's Notice stated that continued use of the residence would subject SAE to fines of \$275 for each day of violation and provided for a right to appeal the decision to the ZBA. SAE II at 272.

After the case was remanded to the ZBA in SAE I, SAE challenged the ZBA's subject matter jurisdiction to hear the appeal of the Notice. In SAE II, the New Hampshire Supreme Court interpreted RSA 676:5, II(b) to answer that question and determined that "a notice of violation can serve as the initiation of an enforcement action and also as the basis for an administrative appeal." SAE argued that the dispute at the ZBA focused on whether SAE's use of the residence was "in violation" of the ordinance. Id. However, the NH Supreme Court agreed with the Town that "the Notice and subsequent appeal proceedings at the ZBA [were] not a prosecution of a zoning violation" Id. The supreme court clarified that a ZBA has subject matter jurisdiction

to “hear and decide an administrative appeal of a notice of violation to the extent that it is alleged that the administrative officer committed an error involving the construction, interpretation, or application of a zoning ordinance.” Id. However, “the ZBA has no authority to hear and decide issues arising from the notice of violation beyond contesting an officer’s construction, interpretation or application of a zoning ordinance.” Id.

The facts underlying the SAE litigation are similar to the record in this case. In both cases, a town official sent a Notice of Violation to a party stating that the party was in violation of a zoning ordinance, warned them of potential fines in the event of continued noncompliance, and provided the party with an opportunity to appeal the official’s decision to the ZBA. Additionally, the legal arguments posed by the parties fighting against ZBA jurisdiction are comparable. In both cases, the parties opposing ZBA jurisdiction argued that the Notice served as the commencement of an enforcement proceeding rather than an administrative decision involving the construction, interpretation or application of the zoning ordinance. In both cases, that party also argued that the dispute at the ZBA focused on whether the affected party was “in violation” of the ordinance.

In light of the foregoing, considering the plain language of the Notice and of RSA 676:5, the supreme court’s guidance in SAE II, together with well-established practice in New Hampshire, the Court determines that Cicotte’s appeal of the Notice challenged the zoning administrator’s “construction, interpretation or application of a zoning ordinance.” Therefore the ZBA has subject matter jurisdiction to hear Cicotte’s appeal. See SAE II at 277.

Accordingly, the ZBA's decision to dismiss Cicotte's appeal for lack of subject matter jurisdiction is REVERSED and REMANDED. All remaining claims and counterclaims before this Court are stayed pending further order.

So Ordered.

May 28, 2024

Date



Michael A. Klass
Associate Justice

Clerk's Notice of Decision
Document Sent to Parties
on 05/29/2024

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

Docket No. 215-2023-CV-00267

CICOTTE HOLDINGS, LLC
v.

CITY OF LEBANON

CITY OF LEBANON'S
MOTION TO RECONSIDER

The City of Lebanon (the “City”), by and through its attorneys, Drummond Woodsum & MacMahon, hereby respectfully moves the Court to reconsider or clarify its Order in the above-captioned action with a clerk’s notice date of May 29, 2024. In support of its motion, the City says as follows:

1. Per Superior Court Rule 12(e), a party may seek reconsideration of an order by stating “with particular clarity, points of law or fact that the court has overlooked or misapprehended”.
2. **The City seeks reconsideration** in this instance because it appears the Court may have overlooked or misapprehended a key distinction between the SAE II case (New Hampshire Alpha of SAE Trust v. Town of Hanover, 174 N.H. 269, 278 (2021)) and the present case when the Court stated at p. 8 of its Order that “the legal arguments posed by the parties fighting against ZBA jurisdiction are comparable.” The City respectfully submits that it raised a significant, material distinction between SAE’s unsuccessful argument against jurisdiction and the Lebanon ZBA’s argument against jurisdiction, and the two are not comparable.

3. The City argued at the merits hearing in this matter, and again in its post-hearing memorandum,¹ that the SAE case and the instant appeal are not “on all fours” or comparable with one another. The important distinction is that while the fraternity disagreed with the interpretation of specific words (“in conjunction with”) in Hanover’s zoning ordinance, in this case Cicotte only disagrees with the City about an issue of fact outside of the terms of the zoning ordinance: whether an area of land was previously paved or used for automobile inventory parking.

4. In SAE II, the administrative decision over which the ZBA had proper jurisdiction was the interpretation of the definition of “Student Residence, ‘I’ Institutional District” as it applied to SAE. 174 N.H. 272, 279. The zoning ordinance defined “Student Residence” as a “building designed for and occupied by students and operated in conjunction with another institutional use”. Id. Proceedings before the ZBA concerned whether past use of the fraternity building as a student residence was a legal nonconforming use in connection with the “in conjunction with” requirement. See New Hampshire Alpha of SAE Trust v. Town of Hanover, 172 N.H. 69, 72 (2019) (“SAE I”). The parties presented evidence of the college’s provision of fire safety services to the fraternity, the college’s establishment of an independent governing board for fraternities, and the fraternity’s attempts to maintain independence, all towards the ZBA’s review of whether these facts supported a conclusion, as a matter of law, that the fraternity building had been operated “in conjunction with” the college prior to 1976. SAE I, 172 N.H. at 71-72.

5. By contrast, Cicotte has never disputed the meaning of any words in the Lebanon Zoning Ordinance. Instead, as shown clearly on the record at CR 005, 014, 043, 045-047, 077,

¹ See, e.g., p. 7 and FN2 to the City’s post-hearing memorandum.

and 082-085, Cicotte has only ever disputed a pure matter of fact – whether the parking lot was paved before the auto-dealership use became nonconforming.

6. In short, the Hanover ZBA had jurisdiction over SAE’s appeal because it had to make a decision about the interpretation of the words “in conjunction with” in the Hanover zoning ordinance, but the Lebanon ZBA should not have jurisdiction over Cicotte’s appeal because Cicotte never asked the ZBA to interpret the meaning of any words in the Lebanon zoning ordinance.²

7. **The City also seeks reconsideration** or clarification of the Court’s statement that, in both the SAE case and the Cicotte appeal, “the parties opposing ZBA jurisdiction argued that the Notice served as the commencement of an enforcement proceeding rather than an administrative decision involving the construction, interpretation or application of the zoning ordinance.” The City does not dispute that its NOV to Cicotte, as a whole, might serve as both an “initiation of an enforcement action and also as the basis for an administrative appeal”.³ SAE II, 174 N.H. at 276. However, the City’s argument has consistently been that the single discrete issue as repeatedly characterized by Cicotte (see, e.g., CR 083, “I don’t think it’s an interpretation of the ordinance; it’s a factual interpretation of whether this red rectangle is

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³ For example, the NOV does include an apparent administrative decision that “[t]he newly paved surface adjoining the existing parking area of the car dealership on the subject property constitutes an impermissible expansion of a non-conforming use into an area of the lot that was not previously occupied by the non-conforming use at the time the use become non-conforming.” (CR 002). Cicotte’s appeal to the ZBA did not reference this language, perhaps because the burden to prove a lawful nonconforming use is on the party asserting that right, see Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 751 (2017) (citing Town of Wolfeboro v. Smith, 131 N.H. 449, 457 (1989)), and Cicotte seems to have already conceded that it cannot meet this burden. (See, e.g., CR083: “we don’t know”).

improper parking or has it been there for how long, or we don't know.") is not an appealable "decision of the administrative officer" as defined in RSA 676:5, II(b).

8. The ZBA's argument against jurisdiction has all along been that the specific question raised by Cicotte was not a decision "involving construction, interpretation or application of the terms of the zoning ordinance" under RSA 676:5, II(b). If RSA 676:5, II(b) defines a binary system, then the City's determination that the parking area was newly-paved must fall within the second category, a "discretionary decision to commence formal or informal enforcement proceedings". If RSA 676:5, II(b) does not define a binary system, then perhaps the decision challenged by Cicotte falls into some third, undefined category. However, it certainly does not fall into the first, appealable category of decisions "involving construction, interpretation or application of the terms of the ordinance", and this should be dispositive of Cicotte's appeal.

9. **The City also seeks reconsideration** or clarification of the Court's statement that "[i]n both [the SAE and Cicotte] cases, [the party opposing jurisdiction] also argued that the dispute at the ZBA focused on whether the affected party was 'in violation' of the ordinance." This comparison is too superficial. Whether SAE was "in violation" of the ordinance depended on an interpretation of the ordinance, i.e. whether or not its fraternity building had been operated "in conjunction with" the college prior to 1976, a question that required in-depth analysis of the meaning of the term "in conjunction with". See SAE I, 172. N.H. at 74-75. Whether Cicotte is "in violation" of the Lebanon zoning ordinance does not depend on an interpretation of the ordinance. As formulated by Cicotte, it only depends on the purely factual circumstance whether or not the cited ~4,000 sq. ft. of pavement existed prior to the time when the auto-dealership use was rendered non-conforming.

10. The City observes and acknowledges the Court’s concern about “well-established practice in New Hampshire” with respect to appeals of administrative decisions to zoning boards. The City asserts that the ruling in this case may be confined to the very unique facts of this case, where the appellant has repeatedly and unequivocally declined to connect its appeal to any question of “construction, interpretation or application of the terms of the ordinance”, both before the ZBA and on appeal to this Court.

WHEREFORE, the City of Lebanon respectfully requests that this Honorable Court:

- A. Reconsider and reverse its May 29, 2024 Order that the Lebanon ZBA had subject matter jurisdiction over Cicotte’s appeal of administrative decision, based on the narrow facts of the appeal issue chosen by Cicotte;
- B. Affirm the Zoning Board of Adjustment’s decision that it lacked subject matter jurisdiction over Cicotte’s appeal of administrative decision;
- C. Order that the City’s enforcement counterclaims⁴ concerning Cicotte’s unpermitted expansion of a legal nonconforming use may proceed before this Court; and
- D. Grant such other and further relief as justice requires.

⁴ The City has filed counterclaims for (i) injunctive relief (RSA 676:15) for the removal of an expanded paved parking area, (ii) civil penalties (RSA 676:17, I) and (iii) attorney’s fees and costs (RSA 676:17, II). As discussed at the March 25 hearing, the Lebanon City Council has approved a zoning amendment that now permits the auto dealership use in the Property’s zoning district. The City’s counterclaim for injunctive relief is not yet moot, but may be mooted if Cicotte is successful in attaining amended site plan approval and a conditional use permit from the City’s planning board.

Dated this 10th day of June 2024.

Respectfully submitted,
CITY OF LEBANON
By its attorneys,

/s/ Matthew C. Decker
Matthew C. Decker, Esq., #267540
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(603) 792-7421
mdecker@dwmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reconsider has been served on the Appellant's attorney through the Court's electronic filing system on this 10th day of June, 2024.

/s/ Matthew C. Decker
Matthew C. Decker, Esq.

STATE OF NEW HAMPSHIRE

HILLSBOROUGH NORTH, SS

SUPERIOR COURT
Docket No. 215-2023-CV-00267

CICOTTE HOLDINGS, LLC

v.

CITY OF LEBANON

PLAINTIFF'S OBJECTION TO MOTION TO RECONSIDER

NOW COMES Cicotte Holdings, LLC, by and through its attorneys, Schuster, Buttrey & Wing, P.A., objects to the City's Motion to Reconsider, and states as follows:

1. The Court Did Not Misapprehend *New Hampshire Alpha of SAE Trust v. Town of Hanover*, 174 N.H. 269 261 A.3d at 936 (2021).

The Trial Court's Order states:

In both cases, a town official sent a Notice of Violation to a party stating that the party was in violation of a zoning ordinance, warned them of potential fines in the event of continued noncompliance, and provided the party with an opportunity to appeal the official's decision to the ZBA.

Order, page 8.

In both cases, the parties opposing ZBA jurisdiction argued that the Notice served as the commencement of an enforcement proceeding rather than an administrative decision involving the construction, interpretation or application of the zoning ordinance. In both cases, that party also argued that the dispute at the ZBA focused on whether the affected party was "in violation" of the ordinance.

Id.

When the fraternity in the *Hanover* case argued its jurisdictional claims, our Supreme Court stated,

However, the statutory scheme expressly contemplates circumstances in which a dispute over a notice of violation is appealable to the ZBA. Municipalities are required to set forth a reasonable period for appealing a notice of violation to the ZBA, and land use citations may not be served until the end of such period "[i]f

the notice involves or includes a decision which may be appealed to the zoning board of adjustment pursuant to RSA 676:5." RSA 676:17-b, I. "[A]ny person aggrieved ... by any decision of the administrative officer" may appeal to the ZBA "concerning any matter within the board's power as set forth in RSA 674:33." RSA 676:5, I. The "administrative officer" is "any official or board" who has the responsibility for issuing permits and certificates or enforcing zoning ordinances, "and may include a building inspector, board of selectmen, or other official or board with such responsibility." RSA 676:5, II(a). A "decision of the administrative officer" is "any decision involving construction, interpretation or application of the terms of the ordinance." RSA 676:5, II(b).

New Hampshire Alpha of SAE Trust, 261 A.3d at 942.

The City's Notice of Violation was exactly the form of notice described by the Court where the City's notice stated that,

[t]his is a decision of the administrative officer, which you have the right to appeal to the Zoning Board of Adjustment. Should you wish to appeal my interpretation, application, or construction of the Zoning Ordinance you thirty (30) days from the date of this Notice of Violation to file an appeal. Forms to appeal an administrative decision pursuant to RSA 674:33, I(a) and Section 801.1 of the Zoning Ordinance can be obtained from the Planning and Development Department

CR 3-4.

The Trial Court properly described the circumstances of both the Hanover fraternity case and the City's actions in this case.

2. Cicotte Appealed the Notice of Violation Alleged under the Zoning Ordinance.

Cicotte filed its "appeal of Notice of Violation dated April 19, 2023, and administrative decision dated May 16, 2023." CR 013. In response the zoning staff provided the following instruction, quoting directly from the zoning ordinance, to the zoning board.

801.1 Administrative Appeals.

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

CR 014.

Despite its own instructions and rules set forth in the zoning ordinance, the City now claims that what it did was not a basis for an appeal to the zoning board. The City provided no case law basis for such a claim and it conflicts with the City's own zoning ordinance and instructions provided to the zoning board.

3. Notices of Violation Are Appealable to the Zoning Board.

The Supreme Court stated that "the statutory scheme expressly contemplates circumstances in which a dispute over a notice of violation is appealable to the ZBA." *New Hampshire Alpha of SAE Trust*, 261 A.3d at 942. The City's zoning ordinance provides, and the City staff instructed the zoning board, to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this ordinance, as set forth in RSA 676:5. CR 014. That the City now claims that Cicotte could not follow the law set forth in *New Hampshire Alpha of SAE Trust* is an argument that failed in the Supreme Court. The City also cites no cases that support its arguments that Cicotte could not follow the regulations set forth in the zoning ordinance.

The facts are not unique in this case. As noted in the cases cited in plaintiff's Hearing Memorandum, pages 6-8, there are numerous undisputed instances which routinely involve appeals of administrative decisions to zoning board.

The court did not overlook or misapprehend any facts or points of law.

WHEREFORE, Cicotte Properties, LLC, respectfully requests that this Honorable Court:

- A. Deny the City's Motion to Reconsider; and,
- B. Grant such other relief as is fair and just.

Respectfully submitted:
Cicotte Holdings, LLC
By its Attorneys:
Schuster, Buttrey & Wing, P.A.

June 14, 2024

by: /s/ Barry C. Schuster
Barry C. Schuster, Esq., Bar #2280
Schuster, Buttrey & Wing, P.A.
79 Hanover Street, PO Box 388
Lebanon, NH 03766
603-448-4780
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Certification

I hereby certify that a copy of this Hearing Memorandum was served this day, June 14, 2024, with Matthew C. Decker, Esq., counsel for the City of Lebanon, by means of the Court's e-file and service system.

By: /s/ Barry C. Schuster
Barry C. Schuster, Esq. - #2280

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

Docket No. 215-2023-CV-00267

CICOTTE HOLDINGS, LLC
v.

CITY OF LEBANON

CITY OF LEBANON'S
MOTION TO RECONSIDER

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3. The City argued at the merits hearing in this matter, and again in its post-hearing memorandum,¹ that the SAE case and the instant appeal are not “on all fours” or comparable with one another. The important distinction is that while the fraternity disagreed with the interpretation of specific words (“in conjunction with”) in Hanover’s zoning ordinance, in this case Cicotte only disagrees with the City about an issue of fact outside of the terms of the zoning ordinance: whether an area of land was previously paved or used for automobile inventory parking.

4. In SAE II, the administrative decision over which the ZBA had proper jurisdiction was the interpretation of the definition of “Student Residence, ‘I’ Institutional District” as it applied to SAE. 174 N.H. 272, 279. The zoning ordinance defined “Student Residence” as a “building designed for and occupied by students and operated in conjunction with another institutional use”. Id. Proceedings before the ZBA concerned whether past use of the fraternity building as a student residence was a legal nonconforming use in connection with the “in conjunction with” requirement. See New Hampshire Alpha of SAE Trust v. Town of Hanover, 172 N.H. 69, 72 (2019) (“SAE I”). The parties presented evidence of the college’s provision of fire safety services to the fraternity, the college’s establishment of an independent governing board for fraternities, and the fraternity’s attempts to maintain independence, all towards the ZBA’s review of whether these facts supported a conclusion, as a matter of law, that the fraternity building had been operated “in conjunction with” the college prior to 1976. SAE I, 172 N.H. at 71-72.

5. By contrast, Cicotte has never disputed the meaning of any words in the Lebanon Zoning Ordinance. Instead, as shown clearly on the record at CR 005, 014, 043, 045-047, 077,

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improper parking or has it been there for how long, or we don't know.") is not an appealable "decision of the administrative officer" as defined in RSA 676:5, II(b).

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WHEREFORE, the City of Lebanon respectfully requests that this Honorable Court:

- A. Reconsider and reverse its May 29, 2024 Order that the Lebanon ZBA had subject matter jurisdiction over Cicotte’s appeal of administrative decision, based on the narrow facts of the appeal issue chosen by Cicotte;
- B. Affirm the Zoning Board of Adjustment’s decision that it lacked subject matter jurisdiction over Cicotte’s appeal of administrative decision;
- C. Order that the City’s enforcement counterclaims⁴ concerning Cicotte’s unpermitted expansion of a legal nonconforming use may proceed before this Court; and
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⁴ The City has filed counterclaims for (i) injunctive relief (RSA 676:15) for the removal of an expanded paved parking area, (ii) civil penalties (RSA 676:17, I) and (iii) attorney’s fees and costs (RSA 676:17, II). As discussed at the March 25 hearing, the Lebanon City Council has approved a zoning amendment that now permits the auto dealership use in the Property’s zoning district. The City’s counterclaim for injunctive relief is not yet moot, but may be mooted if Cicotte is successful in attaining amended site plan approval and a conditional use permit from the City’s planning board.

Dated this 10th day of June 2024.

Respectfully submitted,
CITY OF LEBANON
By its attorneys,

/s/ Matthew C. Decker
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reconsider has been served on the Appellant's attorney through the Court's electronic filing system on this 10th day of June, 2024.

/s/ Matthew C. Decker
Matthew C. Decker, Esq.

Before the Court is the City of Lebanon's Motion to Reconsider. Upon review of the motion and the objection, the Court concludes that the City has failed to identify any points of law or fact that the Court has overlooked or misapprehended. Accordingly, the City's Motion to Reconsider is DENIED.



Honorable Michael A. Klass

July 21, 2024

Clerk's Notice of Decision
Document Sent to Parties
on 07/22/2024

Meeting Schedule **Lebanon Zoning Board of Adjustment** **2024**

Meeting Date	Cutoff
*January 2, 2024	December 11, 2023
February 5, 2024	January 8, 2024
March 4, 2024	February 12, 2024
April 1, 2024	March 11, 2024
May 6, 2024	April 8, 2024
June 3, 2024	May 13, 2024
July 1, 2024	June 10, 2024
August 5, 2024	July 8, 2024
*September 3, 2024	August 12, 2024
October 7, 2024	September 9, 2024
*November 18, 2024	October 14, 2024
December 2, 2024	*November 12, 2024

* Meeting Date changed, due to a Monday holiday

NOTE: APPLICATION DEADLINES ARE ON MONDAYS(unless the Monday is a holiday)

Note: All meetings begin at 7:00pm unless otherwise noted on the meeting agenda.

The Zoning Board meets once a month (The 1ST Monday of the Month, unless * due to a holiday)

Special meetings maybe required and will be scheduled accordingly

*November ZBA meeting will be held on the 3rd Monday of the month due to Election Day set up on the first Monday



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

BUILDING CODE BOARD OF APPEALS

Appeal of Building Official

Staff Memorandum – BCBA2024-01

October 7th 2024 Regular Meeting

XYZ Dairy, LLC, 1 River Park Dr

(Tax Map 44, Lot 21), zoned CBD

APPLICATION INFORMATION

Agenda Item: 3.A

Application Type:

Appeal of Building Official's
Determination pursuant to City of
Lebanon Code §36-13.A.

Location:

1 River Park Dr
Tax Map 44, Lot 21

Zoning Board

Represented by
Attorney Cordell A. Johnston
603.748.4019
cordell@cajohnston.com

Building Official

Calvin Hunnewell / Leigh Hays
Represented by
Attorney Matthew C. Decker
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Applicant/Property Owner:

XYZ Dairy, LLC,
Represented by
Attorney Philip M. Hastings
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Attachments:

Transmission of Order

HEARING NOTICE

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**

BACKGROUND

- Building Permit 2016-00293
- Appeal BCBA2024-1 was filed, a public hearing conducted and a LBCBA decision made on May 6th 2024.
- The Decision of the LBCBA was appealed by the City of Lebanon Building Official to the State Building Code Board of Appeals.
- A final order in the State Building Code Board of Appeals (SBCBA) was made on 31 July 2024. (See attached order)
- On 30 August 2024 XYZ Dairy, LLC's 30-day appeal window for the SBCBA decision to New Hampshire Superior Court closed, thereby leaving the decision of the SBCBA as final.
- No Communication between XYZ Dairy, LLC or its Attorney has been received by the Chief Building Official, LBCBA Staff, the LBCBA's Attorney or the Chief Building Official's Attorney concerning this matter since the SBCBA's Order on 31 July 2024.
- XYZ Dairy, LLC has filed a lawsuit against the Lebanon Building Official in Grafton Superior Court seeking the re-instatement of the Building Permit. The City was served on 30 September 2024 of this action. The case and its travel is not a direct appeal of the LBCBA or SBCBA actions.

ORDER CLARIFICATION

- The final SBCBA made the following order as the conclusion of its proceedings on July 31st 2024:

"We note the issuance of permits and collection of fees under the state building code is expressly reserved for local municipalities. See RSA 155-A:2, III. We therefore remand this

matter to the City of Lebanon and its Building Code Board of Appeals for any additional and necessary proceedings to be held consistent with this Order.

Based upon the above, it is: ORDERED that the decision of the Lebanon Building Code Board of Appeals is REVERSED and this matter is REMANDED for further proceedings consistent with this Order."

- Lebanon Zoning Board Staff made a request of Attorney Cordell Johnson to review the order and recommend any necessary steps for the Lebanon BCBA to undertake in the wake of the Order from the SBCBA. The following email responses was made by the Lebanon Building Code and Appeals Attorney Cordell Johnson as advice to the Lebanon Building Code of Review:

"Good morning, Nate—

I am following up on our conversation from Friday afternoon. Having read the state Building Code Review Board's order, I do not believe there is anything further for the Lebanon Building Code Board of Appeals to do. The local board had reversed the building inspector's decision solely based on an interpretation of the word "work" in the building code, and that was the only issue appealed to the BCRB. The BCRB reversed the Lebanon board's decision on that sole basis, with the result that the building inspector's decision was reinstated. There were no other issues before the BCRB.

The building code board of appeals has no authority in the matter other than ruling on the building inspector's decision, and the state BCRB has disposed of that issue, leaving nothing for the local board to do.

The "remand" language in the BCRB's order is as follows:

We note the issuance of permits and collection of fees under the state building code is expressly reserved for local municipalities. We therefore remand this matter to the City of Lebanon and its Building Code Board of Appeals for any additional and necessary proceedings to be held consistent with this Order.

I can only conclude from this language that the BCRB meant to have the city's administration (not the BCRB) determine what further action—if any—it needs to take regarding "the issuance of permits and collection of fees." Those would be matters for the building inspector, not the building code board of appeals.

I hope this clarifies the matter. Please let me know if you have any questions.

Cordell

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STAFF MEMORANDUM

BCBA2023-01
XYZ Dairy, LLC
1 River Park Dr (Tax Map 44, Lots 21-30 & Map 44, Lot 7)
7 Oct 2024 ZBA Meeting
Agenda Item Staff Comments
Page 3 of 3

STAFF COMMENTS

LBCBA Staff simply passes along the advice of Legal Counsel contained above.

Respectfully submitted,



Nathan Reichert, Director
Planning and Development Department
Zoning Administrator
Staff to the Building Code Board of Appeals



State of New Hampshire State Building Code Review Board

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NH State Fire Marshal's Office
Department of Safety
110 Smokey Bear Blvd
Concord, NH 03301

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Docket No. 24-3

Appeal of the City of Lebanon Building Code Board of Appeals
in Re: Appeal of Administrative Decision of Building Inspector

FINAL ORDER

This is an appeal from the City of Lebanon's Building Code Board of Appeals based on the interpretation of the word "work." Specifically, what actions qualify as "work" sufficient to keep an issued building permit active under the New Hampshire Building Code, specifically Subsection 105.5 of the International Building Code.¹ In applying this subsection of the Code, the City of Lebanon Building Inspector determined a building permit was rendered invalid due to a period of physical inactivity at the proposed building site. XYZ Dairy, LLC, the permittee (and Intervenor), appealed this decision to the City of Lebanon Building Code Board of Appeals (BCBA). The BCBA reversed, holding that "work" under Subsection 105.5 encompassed a broad realm of activities and therefore had been misapplied by the building inspector. This appeal followed.

On July 12, 2024, we held a hearing and heard arguments from the City of Lebanon Building Inspector and XYZ Dairy, LLC. After hearing the arguments and reviewing the record of the BCBA, we hold that the BCBA incorrectly interpreted the word "work" given the context and use of the word throughout Section 105 of the Code. We therefore reverse the BCBA's decision and remand.

MATERIAL FACTS

The material facts, as found by the Lebanon Building Code Board of Appeals,² include the following:

¹ The "New Hampshire Building Code" includes the adoption of the of the International Building Code 2018, as published by the International Code Council Inc. *See* RSA 155-A:1, IV. The parties agree, however, that the permit at issue here should be reviewed under the 2009 edition of the International Building Code. The provision subject to review, Subsection 105.5 of the International Building Code, is the same under the 2009 and 2018 editions of the International Building Code.

² These material facts were uncontested by the parties and we, as a body with limited appellate review authority focused on questions of law, give deference to the local building code board of appeals as the fact-finder. *See* RSA 155-A:10, IV(e) and RSA 155-A:11-b.

1. The City of Lebanon Building Inspector issued XYZ Dairy, LLC (XYZ) a building permit on December 31, 2019, based on the 2009 edition of the International Building Code. CR170, CR176.³
2. The permit is for the development of a new mix-use commercial building. CR171, CR176.
3. Under “Description of Work” the building permit states: “New mixed-use commercial building within Lot#1 of the River Park Subdivision.” *Id.*
4. The development of a new building on a previously undeveloped site is a complex, multipart endeavor, requiring engineering, architectural planning, multi-agency coordination, materials procurement, and contractor scheduling. *Id.*
5. On March 24, 2023, the Lebanon Building Inspector issued a written determination via letter to XYZ regarding the commencement of “work” at the building site. That letter identified eight topics discussed with XYZ, but none of these involved physical work at the building site. Nevertheless, the Building Inspector determined, “[a]s 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 [the issued building permit].” *Id.*
6. On February 1, 2024, the Building Inspector issued a letter to XYZ Dairy, LLC containing a written determination that its building permit was invalid. Specifically, the letter states, in part: “It is my determination that the work on the site authorized by [the building permit] has been suspended or abandoned for a period of greater than 180 days. Consequently, [the building permit] has expired and is invalid.” *Id.*
7. In the six-month period preceding the Building Inspector’s February 1, 2024, determination, XYZ incurred direct costs in excess of \$220,000 and entered into contractual obligations in excess of \$650,000 in furtherance of the development of the new, mixed-use commercial building for which the permit was issued. *Id.*
8. In the six-month period preceding the Building Inspector’s February 1, 2024, XYZ also engaged three engineering firms and one architect in support of developing the new, mixed-use commercial building. *Id.*

STANDARD OF REVIEW

This matter is before us pursuant to RSAs 155-A:10, IV(e); 155-A:11-b; and 674:34, II. The singular claim is that the New Hampshire Building Code, specifically Subsection 105.5 of the International Building Code, has been incorrectly interpreted by the Lebanon Building Code Board

³ “CR” refers to the Certified Record of the Lebanon Building Code Board of Appeals, which was bates numbered and provided to this Board. The decision of the BCBA is contained in the record twice, at CR 170-174 and CR175-179.

of Appeals. As the New Hampshire Building Code has been adopted by the General Court–RSA 155-A:1, IV–this appeal is focused on the interpretation of a statute.

The interpretation and application of a statute presents questions of law, which as an appellate body, this Board reviews *de novo*. *Bennett v. Town of Hampstead*, 157 N.H. 477, 483 (2008). Accordingly, we use the record of the local building code board of appeals but review the board’s interpretation and application of the Code without deference to the board’s decision.

ANALYSIS & CONCLUSIONS OF LAW

The issue before us is the interpretation of the State Building Code of New Hampshire Subsection 105.5 and its use of the term “work.” Subsection 105.5 uses the term “work” three times. And Section 105, Permits, as a whole uses the term “work” nineteen times. Yet the term is undefined in this section and throughout the Code.

Subsection 105.5 states, in full, the following:

105.5 Expiration

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 time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

In interpreting this provision, the Lebanon Building Code Board of Appeals (BCBA) held that engagement in any effort, exertion, or activity directed to accomplish the goal completing the permitted building on the site qualified as “work” sufficient for a permit to remain active. *See* CR178-179. We conclude that such an expansive interpretation of the term “work” is unsupported by the context.

When reviewing the interpretation of the New Hampshire Building Code, we apply the rules of statutory construction. *See Harrington v. Town of Warner*, 152 N.H. 74, 79 (2005). Under these rules, words and phrases must be given their ordinary meaning unless it appears from the context that a different meaning was intended. *Greenland v. Bunker*, 118 N.H. 783, 785 (1978); *see also*, Subsection 201.4 of the International Building Code (mandating that undefined terms must have ordinarily accepted meanings such as the context implies). We interpret the intended meaning of the Code from the words used and enacted; we do not consider what the legislature might have said or add language that was not included. *N. H. Alpha of SAE Trust v. Town of Hanover*, 174 N.H. 269, 274 (2021). We do not interpret a word or phrase of the Code in isolation, but in the context of the overall scheme. *See id.*; *see also* Subsection 201.4. So, to understand the term “work” as used within Subsection 105.5, we look to Section 105 and the Code as a whole. *See*

Dembiec v. Town of Holderness, 167 N.H. 130, 134 (2014); see also Subsection 201.4; Antonin Scalia and Bryan Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, 167-173 (explaining the “Whole Text” and the “Presumption of Consistent Usage” canons of statutory interpretation).

Subsection 105.1 details what “work” requires the issuance of a permit, while Subsection 105.2 exempts certain “work” from the permit requirements of the Code. Under Subsection 105.1, any “owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by [the] code, or to cause any such work to be performed,” must first apply to the appropriate building official and obtain the required permit.

To apply for a permit, the applicant must, among other things, identify and describe the “work to be covered by the permit”, describe in a manner that readily identifies and definitively locates the “proposed building or work”, “indicate the use and occupancy for which the proposed work is intended”, and “state the valuation of the proposed work.” See Subsection 105.3.

After receiving an application, the appropriate building official must issue a building permit if satisfied that the “proposed work conforms to the requirements of [the] code” and the applicable laws and ordinances. Subsection 105.3.1. The issued permit, however, is rendered invalid if the “work authorized on the site by the permit” is not commenced within 180 days of issuance or if the “work authorized on the site by the permit” is suspended or abandoned for a period of 180 days. Subsection 105.5. Upon issuance of a permit, the permittee is required to keep the permit or a copy of the permit “on the site of the work until the completion of the project.” Subsection 105.7.

In reviewing the term “work” within Section 105 as a whole, it is apparent that the appropriate interpretation of “work” is neither overly expansive nor extremely narrow.

From its use throughout the section, the term “work” refers to activities that are regulated by the Code. The activities range from constructive acts to destructive acts and vary from large to small. But it does not include all efforts, exertions, or activities directed toward an ultimate end result. Nor does the term “work” encompass efforts and activities that occur beyond the identified and definitively located site listed in the permit and where the permit must be posted. For example, mental exertion associated with complex commercial building projects or particularly intricate residential projects (even if small) undoubtedly requires taxing effort by professionals. But this type of exertion is not readily encompassed by the term “work” as used within Section 105 of the Code.

To hold otherwise makes the Section confusing and incoherent, requiring multiple interpretations of “work” within a single section of the Code. As noted above, an applicant is required to describe the work covered by the permit and identify the location of the proposed work. But the BCBA interpreted the term “work” as used within Subsection 105.5 to encompass

more than physical activities and favorably cited a North Carolina decision holding the word “work” includes the mental effort to overcome obstacles. CR174, CR178.⁴

We conclude this interpretation of “work” goes too far. We find the meaning of the term “work” within Section 105 to be more limited, which becomes apparent from when reviewing the full context of the provision. Qualifying activities are those that are authorized by the permit and occur at the identified location, i.e., physical acts that take place at the physical site where the permit must be posted.

Last, it is evident that the BCBA based its interpretation and ultimate holding, at least in part, on the representations of City Officials to the permittee about what qualified as work in the early stages of the project. CR177-178. Because the City previously communicated in a March 2023 letter to XYZ that “preparation work” was sufficient to meet the requirements of “work” under Subsection 105.5, the BCBA held similar “preparation work” must also suffice as “work” in 2024. *Id.* It is beyond our jurisdiction to opine on whether there are equitable claims against the City of Lebanon for representations to XYZ. Here, our authority is limited to reviewing the interpretation of the text of the Code by the BCBA. *See* RSA 155-A:11-b. And it is beyond our authority to waive or grant variances to requirements of the code. *Id.* Accordingly, we do review whether the BCBA or another body may appropriately find the City is estopped from invalidating the permit because of representations made by city officials concerning the types of conduct that would qualify as work under Subsection 105.5.

CONCLUSION

Because we hold that the local building code board of appeals incorrectly interpreted the term “work” as used within Section 105 of the Building Code, we reverse its decision. We hold that proper definition of “work” as used in Subsection 105.5 of the code refers to physical work authorized by the permit and conducted at the site.

We note the issuance of permits and collection of fees under the state building code is expressly reserved for local municipalities. *See* RSA 155-A:2, III. We therefore remand this matter to the City of Lebanon and its Building Code Board of Appeals for any additional and necessary proceedings to be held consistent with this Order.

⁴ The Notice of Decision and accompanying decision of the Lebanon Building Code Board of Appeals at CR175-179 lacks footnotes. The BCBA’s decision, however, is also printed, in full, in the May 6, 2024 minutes of the Lebanon Building Code Board of Appeals at CR169-174. The decision as reflected in the minutes contains the missing footnotes. As the minutes reflect the adoption of the Order via proper motion and vote of 4-1, we construe the omission of footnotes in the decision accompanying the Notice of Decision at CR175-179 to be a simple scrivener’s error and not an intentional deletion with legal significance.

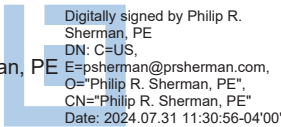
Based upon the above, it is:

ORDERED that the decision of the Lebanon Building Code Board of Appeals is **REVERSED** and this matter is **REMANDED** for further proceedings consistent with this Order.

BY ORDER OF THE BOARD⁵

Dated: July 31, 2024

Philip R. Sherman, PE



Digitally signed by Philip R. Sherman, PE
DN: C=US,
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O="Philip R. Sherman, PE",
CN="Philip R. Sherman, PE"
Date: 2024.07.31 11:30:56-04'00'

Philip Sherman, Chair
New Hampshire State Building Code Review Board

⁵ This Order is the formalization of a decision previously made during the Board’s meeting held on July 12, 2024 by unanimous vote of the participating Board members. The Board members participating and specific motions are captured in the Board’s meeting minutes.