

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
MONDAY, May 5, 2025
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Paul McDonough, Michael Morris, Rupert Burtan (alternate)

MEMBERS ABSENT: Jennifer Barkley, Dave Newlove

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

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

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

Mr. Burtan was given voting privileges for the meeting.

2. APPROVAL OF MINUTES

A. April 7, 2025

Mr. Katz MOVED to approve the April 7, 2025, minutes as presented in the May 5, 2025 packet.

Seconded by Mr. McDonough.

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

Mr. Morris abstained due to not being present at the meeting.

The order of the agenda was changed.

3. PUBLIC HEARING ITEMS

- A. Perry T. Moorman & Meredith Steinfels , 12 Kendrick St (Tax map 78, Lot 10), zoned R3:** The applicant requests a Special Exception from Article IV, Section 410.5, pursuant to Section 703.1 and 801.3 of the Zoning Ordinance to allow the expansion of a non-conforming structure within the Riverbank Protection District. **ZB2025-09-SE**

Philip Webster, the builder from High Meadow Builders, appeared on behalf of the application. They would like to expand the existing mud room and that would need a special exception. The addition is on the front side of the house, comes toward the driveway, does not impact the neighbors, and does not impact the river. Excess water would be shed onto the driveway and would not impact the river. The Conservation has waived the right to review due to the location. It was determined that their review was not necessary. They believe it is a minimum impact.

Chair Koppenheffer opened the Public Hearing. No one spoke and the Public Hearing was closed.

Mr. Katz, MOVED on May 5th, 2025, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Philip Webster regarding 12 Kendrick St (Tax map 78, Lot 10), zoned R3: The applicant requests a Special Exception from Article IV, Section §410.5, Section §703.1 pursuant to §801.3 of the Zoning Ordinance to allow the expansion of a non-conforming structure within the Riverbank Protection District.

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 dimensionally non-conforming 1-family dwelling constructed in 1880, per the City Assessor's records and is conforming to the R3 zoning district, Class 1, minimum lot size requirement of 10,000 sq ft with +/- 15,246 sq ft and is the riverbank protection, NH shoreland protection, and FEMA flood zone overlay district.
2. The applicant proposes to build an addition on the front side of the existing home, within the 50 ft buffer zone. The addition will be no closer to the riverbank than the existing house structure.
3. The applicant has applied for and received a NH DES shoreland permit for approx. 1,200 sq ft of impact within the shoreland protection zone.
4. In order to grant a Special Exception, the applicant must demonstrate that their proposal meets the general Special Exception criteria, set forth in Section §801.3. The applicant has submitted testimony addressing the Section §801.3 criteria in an application received by the Planning and Development Department on March 26, 2025.
5. There are no known existing zoning violations on the property.
6. No member of the Public appeared to speak either 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 Section §401.5, and §703.1 pursuant to §801.3 of the Zoning Ordinance.
2. There are **NO** special conditions of the special exception required by **Section §401.5 or §703.1** that must be met.
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 5th day of May, 2025 hereby **GRANTS** the requested Special Exception pursuant to Sections §410.5, §703.1 and §801.3 of the Zoning Ordinance to allow the expansion of a non-conforming structure within the Riverbank Protection District, 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. The applicant shall apply for a Floodplain Development permit.
3. The applicant shall apply for any necessary water or sewer user permits.

Seconded by Mr. Morris.

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

B. Michael Davidson, 3 Campbell St (Tax Map 92, Lot 65), zoned LD: An appeal of the Zoning Official's Notice of Violation and Administrative Decision, pursuant to Section §801.1 of the Zoning Ordinance, that the conversion of office space to dwelling units violates Sections 103, 307.2, 307.5, 408, and 607.8. **ZB2025-10-AAD**

Mr. Katz recused himself from this hearing.

The applicants can postpone this hearing until there is a full board. The applicants chose to continue.

Chair Koppenheffer stated that the City has conceded that there is no violation of section 307.2, dwelling units and street level conditions.

Nick Harris and Tim Sidore appeared on behalf of Michael Davidson. The appeal documents were provided to the members of the board last week. The applicants believe no exterior alterations were made, so no historical exception or review is required at this time. Review does not occur until they are going to make a change to the exterior of the building. Regarding Section 607.8.c.1 and c.2, they believe that Mr. Davidson is not mandated to have EV charging devices until he proposes adding new spaces. There are already 18 compliant parking spaces. In

this case, they do not believe there is a violation. The submission to the Planning Board included the 1992 site plan and the parking spaces were on the plan.

Regarding the density violation 607.5, they are willing to engage with the Planning Board if there are any density issues, but this building has historically had 11 residential units, and it would now have 12. If this is an issue, they would work with the Planning Board. For the last 33 years there have been 9 units with 2 commercial units. They would continue to work with the Planning Board, so this is a hypothetical violation. There is difficulty with the heating and the egress in unit 6. The building permits to repair a window and install an egress window, needs Historical Commission review. They cannot move forward and get a building permit or go before the Historical Commission while these violations are unsettled.

They believe this is not a statement of a violation, but a statement that the ordinance applies. They believe they are not in violation, rather these violations have not come to pass, and they are willing to work with the Zoning Board and Planning Board to meet the requirements. There has been no change to the building and no change to the site, so they do not understand how these things can be mandated.

The applicants were asked why they did not ask for a change from commercial to residential units. They stated that when they purchased there were 11 residential units, and they made a change to 2 commercial spaces. They believe they were merely returning to 11 units. At this time, it is still permitted as office space. In their minds it was previously residential, and they thought it was reverting to its original use. Last summer they took down one office and turned it back into 2 residential units. There was plumbing and electrical work to return to residential use.

Brian Bouchard, an attorney for the applicant spoke. They intend tonight to meet the 30-day limitation for an appeal. They are not appealing that they did not need permits and they are going to the Planning Board. They will move forward with both of these things. They are merely determining if the applicants are in violation of any Zoning Ordinances, when the violations have not occurred as yet. There are no proposed parking spaces at this time, therefore how can there be a violation of the EV parking spaces.

Chair Koppenheffer addressed Mr. Sidore. He was asked why they did not pull any building permits. He restated because it was prior residential units. In 1992 it was converted to 9 units and 2 offices. They believe there is a vested right to convert back to 11 residential units. Mr. Bouchard said they are not appealing that they did not get a building permit. The appeal is in the sections that they believe violations have not occurred as of yet.

The Board asked for a 10-minute break at 7:51 PM. The Board returned at 8:02 PM

At 8:03 PM McDonough MOVED to go into non-public session for discussion and consideration of legal advice provided by legal counsel per section 91A:3II.

Seconded by Mr. Burtan.

Mr. Morris, Mr. Burtan, Mr. McDonough, and Chair Koppenheffer all voted yay.

The Board returned to the public meeting at 8:59 PM.

The applicant requested to have this hearing postponed until after the next Planning Board meeting which will take place next week.

Chair Koppenheffer asked if the hearing is continued and the Planning Board makes a recommendation regarding the EV issue, would the Zoning Board have to rule on the decision. The Zoning Board has the ultimate rule regarding the EV requirements.

Mr. McDonough MOVED, at the request of counsel for the applicant, to continue the issues they have been addressing here until the June meeting of the Zoning Board.

Seconded by Mr. Morris.

The hearing has been closed in this time matter. The Board is in the deliberation and decision stage.

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

Mr. Katz returned to the meeting.

- C. Brett Sowerby & Patricia Atchinson, 39 Spring St (Tax Map 107, Lot 62), zoned R2:** The applicant requests 2 variances to allow a carport to be build +/-6.5 ft from the left-side property line shared with 43 Spring St where 15 ft is required and to allow 44% building coverage on the lot where 25% is allowed. **ZB2025-11-VAR**

Brett Sowerby and Patricia Atchinson appeared on behalf of the application. Mr. Sowerby introduced a letter from the abutting neighbor on the side of the carport. They purchased the home in 2018. The previous owner had a building permit to demolish the garage and built a ledger board to add a carport and never built the carport. The applicants found a contractor to complete the project, and the carport was constructed in 2019.

The percentage of the property seems large but that is because it is a very small lot therefore the coverage is a larger percentage.

Chair Koppenheffer opened the Public Hearing. No one spoke and the Public Hearing was closed.

Mr. Morris asked when the old carport was demolished. It was sometime in 2018, and they rebuilt the new carport in 2019. There is no additional pavement. It is as it was at the time they purchased the property.

If they did not get the variance, there is no other place on the property that the carport could be built. There was a miscommunication that there was a 2-year time limit to use the building permit, and they were not aware that the transfer of the property negated the existing building permit.

The only concern from staff is the runoff from the building and if it would impact any abutters. There would be no additional non permeable surfaces and no additional runoff from the roof. If there was an issue over the last 5 years it would be known.

Mr. Katz MOVED on May 5, 2025, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Brett Sowerby & Patricia Atchinson regarding 39 Spring St (Tax Map 107, Lot 62), zoned R2: The applicant requests 2 variances to allow a carport to be built +/-6.5 ft from the left-side property line shared with 43 Spring St where 15 ft is required and to allow 44% building coverage on the lot where 25% is allowed.

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 home constructed in 1880. At +/- 3,920 sq. ft., the lot is not conforming to the 10,000 sq. ft. minimum lot size required for Class 1 lots in the R-2 District.
2. The single-family home is dimensionally non-conforming on both the Pine Street and Spring Street sides but is conforming on the remaining two sides.
3. In 2018 a building permit was issued to the previous owner to demolish a portion of the existing dimensionally non-conforming garage and to convert the remaining portion to living space.
4. The subject property contains a legally non-conforming 38% building coverage.
5. The ability, per Section 703.2 of the Zoning Ordinance, to restore the non-conforming garage structure expired 2 years after its demolition.
6. The applicant has submitted testimony addressing the section §801.3 Variance criteria in an application received by the Planning and Development Department on April 14th, 2025.
7. 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 and NH RSA 674:33, I(b).
8. No member of the public spoke either for or against the application.
9. The property is an unusually small sized lot.

II. CONCLUSIONS OF LAW

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

1. The variance **will not** be contrary to the public interest.
2. The spirit of the ordinance **is** observed.
3. Substantial justice **is** done.
4. The values of surrounding properties **are not** diminished.

5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area:
specifically, the unusual small land size of the property in comparison to the other properties generally found within the neighborhood.
6. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.
7. The proposed use **is** a reasonable one.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **5th day of May, 2025**, hereby **GRANTS** the Variance from Section §309.3, pursuant to Section §801.2 of the Zoning Ordinance to allow a carport to be built +/-6.5 ft from the left-side property line shared with 43 Spring St where 15 ft is required and to allow 44% building coverage on the lot where 25% is allowed, as set forth above and per testimony, plans, and materials submitted.

Seconded by Mr. Burtan.

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

- D. William & Deborah Rafter, 12 Union St, (Tax map 92, Lot 194), zoned 2:** The applicants request 4 Variances from Section 309.3, pursuant to Section 801.2 of the Zoning Ordinance, to allow the construction of 1) a 160 sq ft shed +/- 5 ft from the right-side property line where 15 ft is required, 2) a 180 sq ft shed +/- 6 ft from the left-side property line where 15 ft is required, 3) both sheds will be located +/- 5 ft from the rear property line where 20 ft is required, 4) to allow 25.2% building coverage on the lot where 25% is the maximum. **ZB2024-22-VAR Continued from the November 18, 2024 meeting**

Mr. Katz Moved that ZB2024-22-VAR, William & Deborah Rafter, 12 Union St, (tax map 92, lot 194), zoned R-2 be dismissed as mute.

Seconded by Mr. Burtan.

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

4. OTHER BUSINESS

- A. Zoning Amendment review and discussion: Environmental Overlay**

The members are being asked to determine if the language is workable and understandable and if members can work with the language to administer the intent of the amendment. The Planning Board would be interpreting the application, and it would be only oversight of a decision that would involve the Zoning Board.

5. STAFF COMMENTS

None.

6. ADJOURNMENT

Mr. Katz MOVED to adjourn the meeting at 9:35 PM.

Seconded by Mr. Morris.

**The Vote on the Motion was (unanimous).*

Respectfully submitted,
Linda Billings, Recording Secretary