

FINAL

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

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz, Paul McDonough, Dave Newlove, Michael Morris

MEMBERS ABSENT: Jennifer Barkley, Rupert Burtan (alternate),

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:04 PM.

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

2. APPROVAL OF MINUTES

A. June 2, 2025

Mr. Katz MOVED to approve the June 2, 2025, minutes as presented in the July 7, 2025, packet.

Seconded by Mr. McDonough.

**The Vote on the Motion was (3-0-2).*

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

3. PUBLIC HEARING ITEMS

- A. SPNH Mount Support, LLC, 0 Mount Support Rd (Tax Map 24, Lot 1, Plot 100), Zoned R-1 & RL-3:** The applicant requests a Special Exception pursuant to Article IV, Section 401.5, of the Zoning Ordinance, to allow 106 sq ft of temporary and 12,623 sq ft of permanent wetland impacts. **ZB2025-07-SE**

Dave Fenstermacher, a civil engineer, appeared on behalf of the application. They would like to add additional housing in the area next to their existing property, 343 Mount Support. On April 29, they received a letter from the DES with comments from the Conservation Commission. The applicants agreed to add 30 acres of conservation land. They also agreed that the wetlands they deemed valuable would be protected. They are now pending final approval from the State.

Mr. Fenstermacher reviewed the criteria. The site is about 57 acres. There are some isolated high value wetlands that would be protected, similar to the adjacent 343 Mount Support Road. He reviewed the protections they would provide to protect the land and conservation requirements. All the special conditions have been met. The majority of the site would not be

disturbed. It would not have a negative impact on the wetlands, or storm water. There would be no impact on abutting properties. This would be the end of the development on the property.

Brenden Gilmore stated that the construction period would be around 24 months, typical of what has been on their nearby properties. It is safe to say that the Conservation Commission is satisfied with their plans because they take into account all of the feedback from the mitigated concerns. During the site plan approval, the conserved land would be identified.

The Chair asked about the open issues. Those have been reviewed and there are no further issues from the Conservation Commission as of June 12, 2025. They did not have any further design considerations.

Chair Koppenheffer opened the public hearing. Hearing no one, the public hearing was closed.

Vice Chair Katz MOVED on July 7th, 2025, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Dave Fenstermacher and Brenden Gilmore regarding 0 Mount Support Rd (Tax Map 24, Lot 1, Plot 100), Zoned R-1 & RL-3: The applicant requests a Special Exception pursuant to Article IV, Section 401.5, of the Zoning Ordinance, to allow 106 sq ft of temporary and 12,623 sq ft of permanent wetland impacts. ZB2025-07-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 applicant seeks to construct 3 three, 4-story residential apartment complex buildings with associated infrastructure and parking.
2. Construction will impact a total of 12,729 sq. ft. of wetlands.
3. The applicant has applied for a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed by the Conservation Commission at its June 12, 2025, meeting. The applicant now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed wetland impacts.
4. There are no known existing zoning violations on the property.
5. No member of the public spoke 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 §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)

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

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of July 2025 hereby **GRANTS** the requested Special Exception pursuant to Section §401.5 of the Zoning Ordinance to allow 106 sq ft of temporary and 12,623 sq ft of permanent wetland impacts associated with construction of three, 4-story residential apartment buildings and associated infrastructure at 0 Mount Support Road, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The project will be completed materially and substantially in conformity with the plans, materials and testimony submitted as presented in this application.

Seconded by Mr. Newlove.

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

B. Brickyard One Nominee Trust, 174 Hanover St Ext (Tax Map 48, Lots 1,2,4 & Tax Map 63, Lot 1), Zoned R1, RO-1 & R-3: The applicant requests a Special Exception pursuant to Article IV, Section 401.5, of the Zoning Ordinance to allow 253 sq ft of temporary and 831 sq ft of permanent wetland impacts. **ZB2025-13-SE**

Dave Fenstermacher appeared on behalf of the application. This special exception is partially related to the crossings they need during the construction. It is only classified as major because it crosses a stream. The site plan was applied for in May 2024. There was a lot of feedback, and they finally received approval in December 2024. They submitted alternative terrain alterations that were submitted in June and authorized. They had a site walk with the Conservation Commission, as it is a historical site. There are two streams to access the land. They are going

to be adding crossing areas and making improvements that are going to be added to the site. They are moving the driveway up to minimize disturbance of the wetlands. They would protect more of the upper land and open space that would be dedicated to natural space. They want to make sure there is a distribution of access, thus the two crossings that are being requested, and that would also ensure emergency access. The impacts are minimal; it is just the area that is under the crossings. There would be no fill done. There are no concerns from the Conservation Commission. The Commission was in agreement with the site design. There were significant funds invested in a flood study. With the improvements it would be less likely to flood in the future. Access is not restricted for people to go there, but it is not being encouraged.

The Commission imposed 4 conditions at their June 4, 2025, meeting approval. The applicants have no concern about including them in the decision.

Chair Koppenheffer opened the public hearing.

Mary Ann Levin appeared. Her property is next to where the secondary access is going to come through. There is a small stream there that is the property line between the woods and the hill. She asked what the effect would be on her land and stream.

As part of the wetlands the applicants had to address the flood analysis. There is no evidence of flood elevation. On the Southern entrance the stream goes through some broken culverts. They would be pulling out those restrictions to keep the water flowing. Work has not been recently ongoing. They are working with Planning staff to finalize site plans and right now they are on hold. They were originally doing erosion control.

Hearing no one else, the public hearing was closed.

Mr. Newlove MOVED On July 7th, 2025, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Dave Fenstermacher regarding 174 Hanover St Ext (Tax Map 48, Lots 1,2,4 & Tax Map 63, Lot 1), Zoned R1, RO-1 & R-3: The applicant requests a Special Exception pursuant to Article IV, Section 401.5, of the Zoning Ordinance to allow 253 sq ft of temporary and 831 sq ft of permanent wetland impacts. ZB2025-13-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 applicant seeks to construct 5-four-story residential apartment buildings containing 422 units with parking beneath, 51 townhomes arranged in six groupings, an additional building which is anticipated to contain the development's leasing office and maintenance shop, one residential unit for the on-site property manager, and associated parking and infrastructure.
2. Construction will permanently impact a total of 831 sq ft. of wetlands and allow two stream crossing necessary for road access to the property.
3. The applicant has applied for a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed by the Conservation Commission at its June 12, 2025,

meeting. The applicant now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed wetland impacts.

4. There are no known existing zoning violations on the property.
5. Mary Ann Levin of 248 Hanover Street spoke up and asked some questions.

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

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of July 2025 hereby **GRANTS** the requested Special Exception pursuant to Section §401.5 of the Zoning Ordinance to allow 253 sq ft of temporary and 831 sq ft of permanent wetland impacts associated with construction at 174 Hanover St Ext as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The four conditions as set by the Conservation Commission in its decision of June 12.

Seconded by Mr. Morris.

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

C. Alice Peck Day Memorial Hospital, 10 Alice Peck Day Dr (Tax Map 90, Lot 59), Zoned MC-2: The applicant requests a Variance from Article VI Section 608.4.A.4.a, pursuant to Article VIII Section 801.2, of the Zoning Ordinance to allow +/- 75 sq ft of freestanding sign area where none is allowed. **ZB2025-14-VAR**

Eric Janiel and Jamie Chiasson appeared on behalf of Alice Peck Day. The existing sign is smaller than what they are requesting. The increase would be about 17%. They are intending to rebrand and create a consistent design across all Dartmouth Health. The hospital is set back from the road. A larger sign would help with wayfinding and identifying emergency access.

Mr. Morris asked about the illumination. It is internally illuminated through the letters, and the emergency sign is on a timer. They believe the illumination would not impact neighbors. The new sign is narrower and taller than the sign that is currently there.

The existing sign is difficult to read and not easy to see. There is a safety issue, not just rebranding. They believe the existing sign is not providing adequate access in case of an emergency. The Board asked for clarification about the hardship, other than the setback of the hospital.

APD was built in the 1960s and there is no history of the inability to find the hospital or difficulty finding the emergency entrance.

Chair Koppenheffer opened the public hearing. Hearing no one, the public hearing was closed.

Mr. Morris is in favor. Newlove does not see a hardship. McDonough believes it is a small percentage increase and is in favor. Mr. Katz thinks that the property is clearly unique and distinguishable from other properties in the area. It is a medical complex in an area that has some single and duplex residencies. It does stand out and seems to have special conditions. An extraordinarily large property has some need for larger signage to be clearly identified. This is a low traffic and low speed street. He believes the use is reasonable.

Vice Chair Katz MOVED On July 7, 2025, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Eric Janiel and Jamie Chiasson regarding 10 Alice Peck Day Dr (Tax Map 90, Lot 59), Zoned MC-2: The applicant requests a Variance from Article VI Section 608.4.A.4.a, pursuant to Article VIII Section 801.2, of the Zoning Ordinance to allow +/- 75 sq ft of freestanding sign area where none is allowed. ZB2025-14-VAR

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 conforming medical center with buildings constructed between 1880 and 2015.

2. The subject property is conforming to the required minimum 30,000 sq ft lot size.
3. The proposed sign is able to be replaced with a sign that is equal in area and height to the existing sign.
4. The proposed sign will be located in accordance with Section 206 with landscaping and illumination that comply with Zoning requirements.
5. The applicant has submitted testimony addressing the section §801.2 Variance criteria in an application received by the Planning and Development Department on June 9th, 2025.
6. To obtain the requested Variance from section §608.4.A.4.a, 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).
7. 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 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 this property is a very large piece of land belonging to a medical center that is substantially different in both size and in use to the entire neighborhood. That difference in size along with the need for emergency vehicles to access and the property setback on the land distinguishes 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.
7. The proposed use **is** a reasonable one.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **7th day of July, 2025**, hereby **GRANTS** the Variance from Section §608.4.A.4.a, pursuant to Section §801.2 of the Zoning Ordinance to allow +/- 75 sq ft of freestanding sign area where none is allowed, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The Applicant shall apply for a building permit.
2. The sign shall be constructed in size, aesthetic and location materially and substantially set forth in the testimony and materials of this application.

Seconded by Mr. Morris.

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

Mr. Newlove and Chair Koppenheffer voted nay.

4. DELIBERATION AND DECISION

- A. 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 - Continued from June 2, 2025 meeting**

Mr. Katz recused himself.

The proposed notice of action has been provided to the members.

Mr. Morris MOVED Notice is hereby given that on July 7, 2025, the following action was taken by the Lebanon Zoning Board of Adjustment.

With respect to the property owner Michael Davidson’s appeal of the Zoning Official’s Notice of Violation and Administrative Decision that conversion of office space to dwelling units within the front building at 3 Campbell Street (Tax map 92, Lot 65) violates various sections of the Lebanon Zoning Ordinance (“ZO”), **William Koppenheffer** moved to:

- **Grant** the appeal with respect to Section 307.2, because the Zoning Official stated he would withdraw his determination that a violation of this section occurred;
- **Deny** the appeal with respect to Section 307.5, because the property owner altered the residential density of the property without first receiving a density determination from the Planning Board;
- **Grant** the appeal with respect to Section 408.4, because the property owner has not altered the exterior of the building and his interior alterations have already been cited as a building code violation for work without permits; and
- **Deny** the appeal with respect to Section 607.8.C.2, because the addition of new residential units to the property triggers a requirement for minimum EV spaces and the property owner has not provided the mandatory EV-installed and EV-ready spaces.

The property owner has not appealed the Zoning Official’s finding of a violation of Section 901.1 (alteration of a building without a zoning permit), and therefore the Board takes no action with respect to this cited violation.

A written decision, consistent with the draft prepared by Mr. Koppenheffer and discussed by the Board, including findings of fact and reasoning for this decision, and consistent with the testimony and information submitted during the hearings, will be prepared for the Chair's signature.

Seconded by Mr. Newlove.

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

The Notice of Action is made by the Zoning Board of Adjustment. Legal Council assisted with the drafting of the written notice of the decision. The Board Members reviewed the notice before the meeting and voted to adopt the motion consistent with the written decision which contains the Findings of Fact and Conclusions of Law.

Vice Chair Katz reentered the meeting.

5. STAFF COMMENTS

A. Discussion re: Building Code Board of Appeals meeting scheduling

They would like to reschedule the August 4 meeting to July 28.

Vice Chair Katz MOVED that the Zoning Board of Appeals and the Planning Board of Appeals will meet on July 28, 2025.

Seconded by Mr. Morris.

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

Noah Bennett, a member of the Boy Scouts from Tokyo, Japan, attended the meeting. He is working on his citizenship and community badge.

6. ADJOURNMENT

Mr. Katz MOVED to adjourn the meeting at 8:20 PM.

Seconded by Mr. McDonough.

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

Respectfully submitted,
Linda Billings, Recording Secretary