



**BUILDING CODE BOARD OF APPEALS
MONDAY, OCTOBER 6, 2025 - 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: 556 994 566#). If you have trouble accessing this meeting, please [email Nathan Reichert](#).

2. Approval of Minutes

- A. May 6, 2024
B. July 28, 2025

3. Public Hearing Items

- A. **XYZ Dairy, LLC, 0 River Park (Tax Map 44, Lot 21), Zoned CBD:** 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 is invalid due to work having been suspended for more than 180 days and the denial of an extension request. **BCBA2025-01 Continued from 7/28/2025 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 who 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 disrupt virtual or phone connection(s), the meeting will continue without remote access capabilities.

Any person with a disability who wishes to attend this public meeting and needs additional accommodation, please contact the ADA coordinator at City Hall by calling 603-448-4220 at least 72 hours in advance so that the City can make any necessary arrangements.

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

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

MEMBERS ABSENT: None

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1 **1. CALL TO ORDER**

2
3 The meeting was called to order at 7:30 PM by Chair William Koppenheffer.

4
5 Mr. Reichert gave the Right to Know, RSA91A public announcement.

6
7 **2. APPROVAL OF MINUTES**

8
9 **Chair Koppenheffer abstained as he was absent from the previous meetings regarding the hearing.**

10
11 **Michael Morris was given voting privileges for the Minutes.**

12
13 **A. April 18, 2024**

14
15 *Mr. Katz MOVED to approve the April 18, 2024, Minutes as presented in the May 6, 2024, packet with*

16 *corrections.*

17
18 *Page 1, Line 32 & 33, correct 105.51 to 105.5.*

19
20 *Seconded by Mr. Newlove.*

21
22 **The Vote on the Motion was approved (5-0).*

23
24 **3. PUBLIC REHEARING ITEMS**

25
26 **A. XYZ Dairy, LLC, 1 River Park Dr (Tax Map 44, Lots 21-30 & Map 44, Lot 7), zoned R-**

27 **3, CBD & IND-L: Pursuant to City of Lebanon Code §36-13.A, Building Code Board of**

28 **Appeals, an appeal of the Building Official’s determination that Lebanon Building Permit**

29 **#2016-00293 has expired and is deemed to be invalid. BCBA2024-01 – Continued from**

30 **4/18/2024 Meeting**

31
32 **Chair Koppenheffer recused himself.**

33
34 **Michael Morris was given voting privileges for this hearing.**

1
2 The Board did not have any further discussion.

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

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

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

21 The positions of the parties are summarized as follows:

22
23 The Building Official, through the City Attorney, argues that IBC section 105.1 defines what activities
24 require a permit and section 105.2 defines what activities are exempt. The Building Official further
25 argues that if XYZ’s activities require a permit (105.1), then the activity required to ensure the permit’s
26 continued validity must be activities identical to those that required the permit in the first place. The City
27 advocated for denying XYZ’s appeal based on its belief that Section 105.5 requires that work be physical,
28 on the approved site, and any such work be the type that would [if considered individually] require a
29 permit.

30
31 XYZ, through its attorney, argues that the position taken by the City is overly constrained and not
32 reflective of the true intent of the code. XYZ argues that its continued investment in the project, and
33 development efforts over the relevant six-month period constitute “work.” XYZ also argues that it is
34 entitled to rely upon prior interpretations of Section 105.5 of the Code made by the City.

35
36 Interpretations of the IBC are a question of law, and our review is de novo.

37
38
39 **I. FINDING OF FACTS**

40 We find the following facts in this matter:

- 41
42
43 1. The Building Official issued XYZ Permit #2016-00293 on December 31, 2019².

44

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

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

1 2. XYZ paid a fee of \$90,492 for the permit.

2
3 3. The Building Permit is for the development of a new mixed-use commercial building.

4
5 4. The building permit states:

6
7 **Description of Work:** New mixed-use commercial building within Lot #1 of the River Park
8 Subdivision

9
10 5. The development of a new building on a previously undeveloped site is a complex, multi-part
11 endeavor. This endeavor requires engineering, architectural planning, multi-agency coordination,
12 materials procurement and contractor scheduling. Although not unusual for any major
13 construction project, these complex activities are distinguishable from common single action
14 activities that also require permits, such as a minor residential electrical upgrade or heating
15 furnace installation.

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

21
22 *As a result of the meeting and your follow up e-mail sent later the same day, we agree that you*
23 *have justified the preparation work you have been preparing with your construction partners*
24 *constitutes commencement of work at 1 River Park Drive in accordance with City of Lebanon*
25 *Building Permit #2016-00293.*

26
27 7. The Building Official issued a letter to XYZ on February 1, 2024. The written determination of
28 the Building Official states as follows:

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

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

39
40 9. The City conceded the following points in the hearings: that Section 105.5 does not set a high bar
41 for “work”⁵, that it is “obvious that there are aspects of construction projects that are supported by

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

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

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

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

6
7 10. The Building Official testified that the instant case is unusual and the only time that he can
8 remember expiring a building permit in this manner. The City’s Director of Planning and
9 Development also added that the Planning and Development Office must contend with how to
10 dispense with voluminous numbers of permits that are applied for and never acted upon.

11
12 **II. RULINGS OF LAW**

13 We make the following rulings of law in this matter:

- 14
15
16 1. The true intent of Section 105.5 of the Code is primarily administrative in nature. The Board
17 finds that this section exists primarily to dispose of numerous permits that are applied for and
18 never acted upon, rather than to be an enforcement lever in adjudicating active permit disputes or
19 regulating the pace of construction. Section 105.5 does not purport to regulate “not inactive, but
20 not really active enough” activities in construction.

21
22 It is possible that one developer may believe it to be economically advantageous to hyper-
23 accelerate a project and complete a project quickly, paying substantial overtime and expedite fees
24 in doing so. Conversely, it is possible that a different developer could elect to proceed at a more
25 leisurely pace. To the extent that the City is concerned about “slow rolling” projects or “system
26 gaming” and wishes to enact a policy to regulate construction intensity, this is best pursued
27 through legislative process.

- 28
29 2. Section 202 of the IBC (“Definitions”) does not define “work.” Nonetheless, section 105.5 uses
30 the term “work” thrice. See below with emphasis added:

31
32 *Every permit issued shall become invalid unless the **work** on the site authorized by such permit is*
33 *commenced within 180 days after its issuance, or if the **work** authorized on the site by such*
34 *permit is suspended or abandoned for a period of 180 days after the **work** is commenced.*

35
36 Whatever “work” happens to be, the Board believes that the three instances of “work” within this
37 section should be read harmoniously with each other.

38
39 The March 24, 2023, letter from the City to XYZ interpreted the first and third appearances of
40 “work” when it opined “we agree that you have justified the **preparation work** you have been

⁶ Ibid at minutes 34-35

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

⁸ Ibid at minute 45

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

¹⁰ Ibid at minutes 41-42

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

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

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

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

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

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

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

46

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

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

1 The Board finds that the true intent of Section 105.5 of the code is to require effort, exertion or
2 activity to accomplish the goal of developing the site. The City previously ruled that a minor
3 breaking of ground at the site, possibly performative, was sufficient to satisfy the requirements of
4 105.5. “Work” does not necessarily mean that a physical alteration must occur at the site¹³. The
5 efforts, exertions and activities testified to by XYZ to pursue the development of the site are
6 substantially in excess of the “low bar” set by the City. Those efforts, including the substantial
7 expenditure of investment capital, advanced the “work authorized on the site”, and need not have
8 actually occurred on the land itself in order to qualify under Section 105.5.
9

- 10 5. Finally, the Board issues two clarifications. First, not every activity identified by XYZ qualifies
11 as “work” pursuant to 105.5. A lease proposal to a prospective tenant for a building that is not
12 yet built is not “work” as contemplated in the IBC. Second, nothing in this ruling diminishes the
13 very extensive power of the Building Official to enforce compliance with the Code, as well as
14 other ordinances and regulations through IBC 2009 Section 105.6.
15

16 **III. DECISION**

17
18 For all of the reasons set forth above, including but not limited our findings of fact and rulings of law, the
19 City of Lebanon Building Code Board of Appeals on this 6th Day of May 2024 hereby **GRANTS** the
20 appeal of XYZ Dairy, LLC.
21

22 *Seconded by Mr. Newlove.*

23
24 **The Vote on the Motion was approved (4-1).*

25 *Mr. Morris voted nay.*
26

27 **4. STAFF COMMENTS**

28
29 **None.**
30

31 **5. ADJOURNMENT**

32
33 *Mr. Newlove MOVED to adjourn the meeting at 7:49 PM.*

34 *Seconded by Mr. McDonough.*

35 **The Vote on the Motion was unanimously approved (5-0).*
36

37 Respectfully submitted,
38 Linda Billings
39 Recording Secretary

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

DRAFT

LEBANON BUILDING CODE BOARD OF APPEALS
MONDAY, July 28, 2025 7:30 PM
(Meeting Begins Immediately Following
Zoning Board of Adjustment)
Council Chambers, City Hall or
Remote Via Virtual Platform
LebanonNH.gov/LIVE

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

MEMBERS ABSENT: Chair William Koppenheffer, Jennifer Barkley,

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1 **1. CALL TO ORDER**

2

3 The meeting was called to order at 7:33 PM by Vice Chair Katz.

4

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

6

7 **2. APPROVAL OF MINUTES**

8

9 **NONE**

10

11 **3. PUBLIC REHEARING ITEMS**

12

13 **A. XYZ Dairy, LLC, 0 River Park (Tax Map 44, Lot 21), Zoned CBD:**

14 Pursuant to City of Lebanon Code §36-13.A, Building Code Board of Appeals, an appeal of
15 the Building Official's determination that Lebanon Building Permit #2016-00293 is invalid
16 due to work having been suspended for more than 180 days and the denial of an extension
17 request. **BCBA2025-01**

18

19 David Clem, manager of XYZ Dairy, appeared on behalf of the hearing. Vice Chair Katz discussed
20 that recently House Bill 413 was signed into law with an effective date of July 1, 2025. The Bill
21 divests the Building Code Board of Appeals of the Authority to hear appeals of a decision of the
22 building officer, unless there is a local code. This hearing is an issue related to the IBC International
23 Building Code. The Board is concerned that this may no longer be the appropriate venue for this
24 hearing. The appeal may need to be transferred to the State.

25

26 Mr. Clem was given the opportunity to speak to this law. The attorney for XYZ and Mr. Clem
27 received notice of this new law this afternoon and have not had a chance to review the new law. The
28 matter pertaining to this appeal is in Grafton County Superior Court at this time, along with other
29 matters. They are not allowed to speak of this matter until a final brief has been filed by his lawyer
30 by August 4. Then an additional 10 days are allowed for the City to file their brief. The application
31 was filed prior to the new law, so they believe they are entitled to be heard. This hearing was moved
32 from August to July, and all the fees have been paid. Mr. Clem is here to be available for anything
33 that the Board wants, and he defers to the Board how to move forward. He believes the Court will
34 have a response before this matter can be heard at the State Board of Appeals.

1 Vice Chair Katz said the intention is that the appeal would be heard at the correct place. One
2 potential solution tonight, and with an imminent response coming from the Court, is to postpone this
3 hearing.

4
5 Matthen Decker, the attorney representing the building inspector, addressed the Board and the
6 applicant. This Board is limited to appeals for local jurisdiction. This Board no longer has
7 jurisdiction, effective July 1, 2025. Jurisdiction is something that can be granted by the State and
8 taken away by the State. Parties can request a dismissal based on jurisdiction. It would be the
9 quickest resolution, to dismiss with lack of prejudice. By August 4 and August 14, all briefs will be
10 filed in court. A continuance could also be considered. The City is not looking for a way for XYZ to
11 lose any opportunity to be heard. It seems continuation may be the best opportunity for Mr. Clem. A
12 continuance for a specific length of time would leave the most opportunity for a fair chance in front
13 of the most appropriate venue.

14
15 Mr. Clem spoke about the historical steps and proceedings that have been ongoing for a number of
16 years regarding this building permit. The Board’s primary concern is whether or not the Board has
17 the jurisdiction to hear this appeal.

18
19 ***Vice Chair MOVED to take a break to seek legal advice at 7:56 PM.***
20 ***Second by Mr. Newlove.***

21
22 ***Morris, aye, Newlove aye, Burtan aye, McDonoguh aye, Katz aye.***

23
24 ***Mr. McDonough MOVED to return to session at 8:18 PM.***
25 ***Second by Mr. Morris.***

26
27 ***Morris, aye, Newlove aye, Burtan aye, McDonoguh aye, Katz aye.***

28
29 Mr. Clem was asked to return to the microphone. After conferring with counsel: giving the totality of
30 what is going on, the surprise date moving the hearing up, late notice for the attorney, and if this is
31 still the correct venue, it is believed a 60-day continuance should be made. This would also allow for
32 the response from the court and the possibility of moving to the State Board of Appeals. It is up to
33 Mr. Clem to take the recommendation and request for a continuance. This would provide access to
34 the appropriate remedies.

35
36 Mr. Clem does not want to request a continuance. He is encouraged that independent council was
37 consulted during the break. If Mr. Clem does not request a continuance, the Board has three options.
38 They would merely vote on whether or not this Board has prerogative to have subject matter
39 jurisdiction, or they could impose a continuance, or they can merely move forward and hear the case.
40 Mr. Clem reconsidered and is willing to request a continuance. There is still too much ambiguity
41 regarding the new law.

42
43 ***Vice Chair Katz MOVED that case BCBA2025-01, XYZ Dairy, LLC, 0 River Park (Tax Map 44, Lot***
44 ***21), Zoned CBD be continued until the regularly scheduled meeting on October 6th, 2025, which***
45 ***will allow for adequate time for the applicant, should they so choose, to consult with counsel and***
46 ***potentially transfer this case to the State Building Code Board of Appeals. Or potentially for both***
47 ***parties to receive clarity from the Grafton County Superior Court. Or for any other actions that***
48 ***either the City or the applicant feel are just inappropriate, and if this issue is still before us on October***
49 ***6th, we will pick it up again.***

50

1 *Secoded by Mr. Morris.*

2

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

4

5 **4. STAFF COMMENTS**

6

7 **None.**

8

9 **5. ADJOURNMENT**

10

11 *Mr. Burtan MOVED to adjourn the meeting at 8:28 PM.*

12 *Secoded by Mr. Morris.*

13

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

15

16 Respectfully submitted,

17 Linda Billings

18 Recording Secretary