

**FINAL**

**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

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**1. CALL TO ORDER**

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

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

**2. APPROVAL OF MINUTES**

**NONE**

**3. PUBLIC REHEARING 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**

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

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

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

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

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

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

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

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

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

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

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

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

*Seconded by Mr. Morris.*

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

#### **4. STAFF COMMENTS**

**None.**

#### **5. ADJOURNMENT**

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

*Seconded by Mr. Morris.*

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

Respectfully submitted,  
Linda Billings  
Recording Secretary