



**LEBANON ZONING BOARD OF ADJUSTMENT
APRIL 5, 2021 - 7:00 PM
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE**

1. Call to Order

- A. Review of meeting procedures and NH RSA 91-A "Right-to-Know" requirements.

2. Approval of Minutes

- A. March 1, 2021

3. Public Hearing Items

- A. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2: Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming "seasonal" restaurant use to year-round and include an ice cream trailer. ZB2021-05-SE - Continued from March 1, 2021
- B. 10 School Street, LLC, 10 School Street (Tax Map 92, Lot 5), zoned R-2: Applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance to construct an exterior stairway to be located +/- 16 ½ ft. from the rear property line where 20 ft. is the minimum required. ZB2021-06-VAR
- C. Altaria Hotel, LLC, 25 Foothill Street (Tax Map 24, Lot 14, Plot 100); Anagnost Upper Valley, LLC, 18 Merchant Street (Tax Map 24, Lot 14, Plot 200); Altaria Lebanon Park, LLC, 260 NH Route 120 (Tax Map 24, Lot 14), 6, 15, 5, & 14 Merchant Street (Tax Map 24, Lot 14, Plots 300, 400, 500, & 600), 0 NH Route 120 (Tax Map 24, Lot 14, Plot 700), and 1 Foothill Street (Tax Map 24, Lot 14, Plot 800); zoned IND-L: Applicant proposes to convert the hotel use at 25 Foothill Street to a multi-family dwelling. In order to allow the proposed conversion, the applicant requests a Variance from Article V, Section 501.4.D of the Zoning Ordinance to permit the residential density of the Altaria PUD to exceed the maximum allowed in a commercial planned unit development. ZB2021-07-VAR
- D. XYZ Dairy, LLC, 215-217 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property. ZB2021-08-AAD

4. Staff Comments

5. Adjournment

The order of agenda items is subject to change.

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Microsoft

Lebanon Zoning Board of Adjustment Agenda
April 5, 2021

Teams. Members of the public are encouraged to attend 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 Microsoft Teams software or by phone. Please visit [LebanonNH.gov/Live](https://lebanonnh.gov/Live) for full details.

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).

**Agenda
Zoning Board of Adjustment
April 5, 2021**

**Agenda Item #2A
Approval of Minutes**

March 1, 2021

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, March 1, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Alan Patterson Sr., Jeremy Katz, Dave Newlove, (Alt), Paul McDonough (Alt)

MEMBERS ABSENT: NONE

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:00 PM by Chair Koppenheffer.

Board Members who participated remotely are listed above.

A. Review of meeting procedures and NH RSA 91-A “Right-to-Know” requirements

Mr. Corwin delivered the Right to Know procedures to the Members and the Public.

2. APPROVAL OF MINUTES

A. February 1, 2021

Mr. Patterson MOVED to approve the February 1, 2021 Minutes as presented in the March 1, 2021 agenda packet with amendment.

Seconded by Mr. Nash.

Amendment: Page 3, Line 41; Add ‘No one who appeared said they objected to the project.’

Roll Call Vote

Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea.

None voted Nay.

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

3. PUBLIC HEARING ITEMS

- A. Ohana, LLC, 83 NH Route 4A (Tax Map 98, Lot 7), zoned RL-2:** Applicant requests a Special Exception pursuant to Article VII, Section 702.5 of the Zoning Ordinance to expand the current non-conforming “seasonal” restaurant use to year-round and include an ice cream trailer. **ZB2021-05-SE**

Michael Donnelly and Bill Beattie from the Ohana, LLC appeared on behalf of the application. Mr. Beattie, Manager, said the Bated Hook was purchased last summer. In the past, the Bated Hook has not been open year-round, and this year they opened during the Winter and the season has been going well, even during COVID. They are proposing, that if the demand is sufficient and the ice cream trailer is successful, they would like to continue to be open year-round.

1
2 The Chair said the most recent application documents that were provided did not address all the
3 criteria and conditions for approval. Some Members said the application was complete enough, and it
4 could be moved forward, even if it is threadbare, because it is an expansion of a non-conforming use.
5 The Board discussed the materials that were submitted and the remaining questions that concerned
6 each Board Member. The documents could have been in more detail and expanded upon. Some
7 Members said if the applicants believe it is suffice, then it is up to the applicants to determine if they
8 want to continue this evening or come back with a more complete application. The criteria could be
9 more complete and if the applicants are willing, more elaboration would allow the Board to make a
10 better decision. It can be discussed this evening, and the Board could give them some additional
11 guidance on what is lacking. The Chair believed the application should be continued to document all
12 the concerns of the applicant, the neighbors, and the City. Mr. Beattie said his is willing.
13

14 ***Mr. Patterson MOVED to continue this Hearing to the next meeting.***
15 ***Seconded by Vice Chair Mercer.***
16

17 The Board discussed what additional information would allow the Board to make an informed
18 decision. Some of that information includes:

- 19 • Potential year-round hours of operation, the maximum and the future goal during Winter.
- 20 • Hours of operation impact on neighbors.
- 21 • Outdoor lighting, duration and impact on neighbors.
- 22 • Restaurant capacity and parking capacity.
- 23 • Business operations, restaurant, ice cream truck, and other business activities, such as rentals.
- 24 • Ice Cream truck operations, where the truck would be parked, would it travel, and if so
25 where.
- 26

27 The Board discussed which portions of the zoning ordinance are applicable to this application,
28

29 **Roll Call Vote**

30 ***Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea.***
31 ***None voted Nay.***

32 ****The Vote on the Motion was unanimously approved (5-0).***
33

34 **4. DELIBERATION**

- 35
- 36 **A. Robert G. Oakes & John T. Oakes, 92 Riverside Drive (Tax Map 111, Lot 16), zoned**
37 **RL-1:** Applicants obtained a Variance from Article III, Section 312.2 of the Zoning
38 Ordinance to construct commercial self-storage units, which is not a permitted use in the RL-
39 1 District (#ZB2020-08-VAR). Applicants now request an amendment to the Variance
40 approval in order to allow larger buildings and changes to the proposed site layout. **ZB2020-**
41 **36-VAR** Continued from February 1, 2021
42

43 Mr. Nash and Mr. Koppenheffer recused themselves from the hearing on February 1, 2021.
44 Mr. Newlove and Mr. McDonough were appointed voting members for the hearing.
45

46 Chair Koppenheffer turned the meeting over to Vice Chair Mercer. The Public Hearing was closed at
47 the previous meeting. To benefit the Public attending this evening, the Motion was read before Board
48 deliberation.
49

1 **Mr. McDonough MOVED on February 1, 2021, at a duly-noticed meeting of the Lebanon Zoning**
2 **Board of Adjustment, there appeared Robert Oakes and his counsel, Attorney Dick Hughes on behalf**
3 **of Robert G. Oakes & John T. Oakes regarding 92 Riverside Drive (Tax Map 111, Lot 16), zoned RL-1.**
4 **Applicants obtained a Variance from Article III, Section 312.2 of the Zoning Ordinance to construct**
5 **commercial self-storage units, which is not a permitted use in the RL-1 District (ZB2020-08-VAR).**
6 **Applicants now request an amendment to the Variance approval in order to allow larger buildings and**
7 **changes to the proposed site layout, as well as a Variance from Section 312.2 to allow building**
8 **coverage of +/-23.33% where a maximum of 15% is allowed for Class 3 lots in the RL-1 District.**
9 **ZB2020-36-VAR**

10
11 **I. FINDINGS OF FACT**
12

13 Based on testimony given, application materials presented, and supporting documents submitted, the
14 Lebanon Zoning Board of Adjustment makes the following findings of fact:
15

- 16 1. The subject lot is a triangular-shaped property located to the east of the I-89 interchange at Exit 17,
17 and is bounded by Dartmouth College Highway to the southeast, and Riverside Drive to the west.
18
- 19 2. Prior to August 2020, the property was bounded by Fellows Hill Road to the north. However, in
20 August 2020, the City Council approved a discontinuance of the portion of Fellows Hill Road
21 located between the subject property and the City's property at 0 Riverside Drive (identified as Tax
22 Map 111, Lot 3, Plot 100). Ownership of the discontinued right-of-way is now held by the abutters
23 on either side to the center of the former right-of-way.
24
- 25 3. The property is currently improved with a one-family dwelling.
26
- 27 4. The applicants obtained a Variance from the Zoning Board on March 2, 2020 (ZB2020-08-VAR)
28 to remove the existing one-family dwelling and to construct commercial self-storage units. Per
29 condition of approval #5 as set forth in the March 2, 2020 Zoning Board of Adjustment Notice of
30 Decision, the Variance was approved with several conditions including a condition that "[t]he site
31 plan will be substantially similar to what was presented to the Board."
32
- 33 5. The applicants now request an "amendment" to the Variance approval in order to allow larger
34 buildings (+/-9,600 sq. ft. was approved as part of ZB2020-08-VAR; a total of +/-26,176 sq. ft. is
35 now proposed) and changes to the proposed site layout. In the view of the Zoning Administrator,
36 the revised layout is substantially different than the layout approved by the Zoning Board, and
37 therefore does not comply with condition of approval #5 of the Board's March 2, 2020 Notice of
38 Decision.
39
- 40 6. There is no procedure under state statute or the Zoning Ordinance to "amend" a Variance approval.
41 Consequently, the applicants must reapply for the Variance from Section 312.2 of the Zoning
42 Ordinance and demonstrate compliance with the Variance criteria.
43
- 44 7. Moreover, the applicants now propose building coverage in an amount that exceeds the maximum
45 permitted in the RL-1 District and, therefore, require a Variance from the maximum building
46 coverage limitation set forth in Section 312.3 of the Zoning Ordinance.
47
- 48 8. A self-storage facility is considered a "warehouse" pursuant to the definition of "warehouse" set
49 forth in Appendix A of the Zoning Ordinance. A warehouse is not a permitted use in the RL-1
50 District per Section 312.2 of the Zoning Ordinance. Consequently, in order to allow a self-storage

facility on the property, the applicants must obtain a Variance from the RL-1 District table of uses set forth in Section 312.2.

9. The subject property is not served by municipal sewer and, therefore, is considered a Class 3 lot (per Appendix A, definition of “Classification (Classes) of Lots”). In the RL-1 District, maximum building coverage of 15% is allowed for Class 3 lots, whereas the applicant proposes total building coverage of the existing lot of +/-23.33%. Consequently, a Variance is required from Section 312.3.
10. To obtain the requested Variances, the applicants 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 applicants have submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on November 16, 2020.
11. The applicant testified that, after receiving the March 2020 relief, they learned that the plan upon which they had based their application was not feasible to construct.
12. Abutter Eric and Susan Morrill of Fellows Hill Road testified about their concerns regarding drainage and hydraulic issues on the road.
13. Abutter Tandy Tang of Mill Road testified that she was not completely opposed to having self-storage at the applicant’s property, but she expressed concerns about the business hours, access in the residential neighborhood, light pollution in a dark residential area, and the increased size of the proposal.
14. Abutter Scott Almstrom of Fellows Hill Road testified that if the variance was approved, he would like the use conditioned on being limited to only self-storage.

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)
The Board recognizes that the purpose of the RL-1 District is to provide areas of transition between denser urban areas and RL-2 and RL-3 areas, but agrees that this application does not violate that goal.
3. Substantial justice **is** done. (Section 801.2.A.3)
Construction of a storage facility, previously approved by the Board, which now proposes a larger footprint, does not violate the spirit or intent of the ordinance.
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
The applicant asserts, and there was no evidence presented, that the surrounding property values would be diminished in light of the improvements proposed to the current state of the property.
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):

Testimony provided by the applicant included the unchallenged assertion that a smaller structure would not be feasible.

- i. 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)

The size restrictions unfairly limit the development proposed by the applicant.

- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)
A storage facility, unopposed by any abutters, conditioned upon the successful addition of adjoining property and thereby reducing the percentage footprint, is reasonable. Approval is contingent upon the applicant acquiring the adjacent property described in the application.

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **1st day of March, 2021**, hereby **GRANTS** the requested Variances, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicants shall obtain site plan approval from the Planning Board, a building permit, and a certificate of occupancy; shall pay an impact fee pursuant to §213 of the Zoning Ordinance; and shall comply with all applicable local, state, and federal regulations in the construction and use of the proposed self-storage facility.
2. The applicants are advised that any changes to the site layout and/or building footprint as depicted on the applicant's exhibit, and/or any changes to the applicant's operations as described in the application materials and at the hearing shall require a new Variance from the Zoning Board of Adjustment pursuant to Section 801.2 of the Zoning Ordinance.
3. All available efforts to avoid drainage and hydraulic issues shall be required.
4. The site shall be used for interior self-storage only.
5. Business hours shall be limited to 6AM to 8PM.
6. Artificial lighting shall be designed to limit light pollution.

Seconded by Mr. Patterson.

The Board discussed the addition of properties that are going to be added to the lot and the discontinuation of the Road. This would result in the footprint covering 17% of the property. Mr. Corwin said the sale is contingent on the applicants getting this variance. There may be other contingencies.

The original wording of Section II, 5ii was changed by adding 'Approval is contingent upon the applicant acquiring the adjacent property described in the application.'

1 The original wording of Section III, 4 ‘self-storage only, including interior storage’ was changed to
2 ‘The site shall be used for interior self-storage only.’ Both changes were approved by Mr.
3 McDonough and Mr. Patterson.

4
5 Mr. Katz reviewed the recording of the original application that was approved, and he opposes the
6 motion. The recording from the previous application is clear in that the small size of the original
7 structure is what made the application pass. There is not a unique feature of the property that would
8 show that the footprint should exceed the coverage permitted by the zoning ordinance. The
9 applicants request has to do with the business model not the land. This is a very highly restricted
10 zone and this applicant seems to be giving the applicant special privileges. Section 5 i of the motion,
11 if approved is a nullification of the ordinance and is in opposition of the voting populace of the City.
12 In the future other landowners could request similar privileges and that opens the door for future
13 problems. Vice Chair Mercer was in agreement.

14
15 Mr. Patterson addressed Section III, 3 regarding drainage. The original wording referred to
16 ‘reasonable’ efforts and was changed to read ‘All available efforts to avoid drainage and hydraulic
17 issues shall be required.’ Mr. McDonough and Mr. Patterson approved this change to the Motion.

18
19 Vice Chair Mercer restated she agreed with Mr. Katz, the original application was approved because
20 it was a modest project. This application increased the size of the project. With the added land and
21 the closed road, it is still over the allowed land coverage. She would consider a variance that is a
22 change, but not to this substantial change. In this application they have not addressed the uniqueness
23 of the property or met the hardship criteria.

24
25 Mr. McDonough said Mr. Katz has raised important considerations. The applicants were previously
26 allowed to build a storage unit and it is a business that does not have a lot of activity. The size is a
27 problem but does not seem a significant size increase. He believes that this proposal, with the
28 improvements the applicants have agreed to, would enhance the property.

29
30 The meeting was paused while Mr. Patterson’s connection to the meeting was restored. Mr. Patterson
31 is in agreement with all the changes to the motion.

32 **Roll Call Vote**

33 *Mr. Patterson, Mr. McDonough and Mr. Newlove all voting Yea.*

34 *Mr. Katz and Vice Chair Mercer voted Nay.*

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

36
37
38 Chair Koppenheffer and Mr. Nash rejoined the meeting.

39 Vice Chair Mercer turned the meeting over to Chair Koppenheffer.

40 **5. OTHER BUSINESS-None**

41 **6. STAFF COMMENTS**

42
43
44
45 Mr. Corwin addressed the Lebanon Welcoming Ordinance, which includes mandatory training for all
46 Committee and Board members. The next training is March 31, 2021. A training video will be

provided at a later date. The Board will attend the March 31 training at 7:00 PM. The Members were asked to contact the City Manager to acknowledge their attendance.

7. ADJOURNMENT

***Mr. Patterson MOVED to adjourn the meeting at 7:59 PM.
Seconded by Mr. Nash.***

Roll Call Vote

***Mr. Katz, Mr. Patterson, Mr. Nash, Vice Chair Mercer and Chair Koppenheffer all voting Yea.
None voted Nay.***

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

Respectfully submitted,
Linda Billings
Recording Secretary

**Agenda
Zoning Board of Adjustment
April 5, 2021**

**Agenda Item #3A
Public Hearing Items**

**Ohana, LLC,
83 NH Route 4A
(Tax Map 98, Lot 7),
zoned RL-2
ZB2021-05-SE
Continued from March 1, 2021**

Memorandum for Lebanon Zoning Board

From: Ohana, LLC, DBA The Baited Hook prepared by William Beattie and Mike Donnelly
RE: Response to additional questions requested by Lebanon Zoning Board as supplement to Special Exception request to formally be open year-round during normal business hours.
Date: March 30, 2021 for April 5th Meeting.

During the Board's online meeting in March, several of the board Members requested additional information relating to the operation of the Baited Hook in regard to the request by the Baited Hook for a special exception to its current "seasonal use" to an "open year-round" status.

The Baited Hook is a fixture of tradition and community for the Mascoma Lake Community and a vibrant part of the lake experience for many thousands of boaters, tourists and residents who enjoy the sport, recreation and life on the lake. The Baited Hook now under new management has a vision to be a more present part of life on the lake and serving the lake community by providing year-round food service.

The request to operate year-round does not change the nature of the business and The Baited Hook has at various times operated in all 4 seasons. The primary activities of the Baited Hook will be Food service. Related to this the hook plans to organize occasional events that bring the community together such as this winter's Fire and Ice that featured Ice sculptures on the lake, fishing and other activities.

The use of a mobile ice create trailer on the premises will not change the parking or footprint of the business. The trailer will be located on the paved area to the right of the hook when facing the lake. The hours of operation of the Baited Hook will continue to be 11-9 PM Tuesday through Sunday during the Summer Season (roughly May – September). Hours and days will taper off to mostly weekends during the fall and winter months. The trailer will be transported to support special events such as the Lebanon and Enfield Farmer's markets, Concerts on the Lawn and other activities.

The current restaurant capacity is 53 indoor and 21 outdoors. The current parking capacity is approximately 15-20 spaces on premises.

And as far as any exterior lights, these would be turned off no later than 1 hour after closing, in Summer by 9:30 PM and in winter by 8:30 PM. The lights do not have a long-distance impact. There are low lumens string lights that are kept on for security purposes, but the lights do not extend beyond the property.

We welcome the opportunity to answer any additional questions you may have.

**Agenda
Zoning Board of Adjustment
October 19, 2021**

**Agenda Item #3B
Public Hearing Items**

**10 School Street, LLC,
10 School Street
(Tax Map 92, Lot 5),
Zoned R-2
ZB2021-06-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

April 5, 2021 Meeting

Staff Memorandum – ZB2021-06-VAR

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type: Variance from §309.3 to allow a stairway to be constructed within the min. rear yard

Location:
10 School Street (Tax Map 92, Lot 5)

Applicant/Property Owner:
10 School Street, LLC

Zoning District: R-2

Property Size:
+/-0.23 acres (+/-10,018 sq. ft.) (per the City Assessor's records; property is non-conforming to the min. 13,000 sq. ft. lot size required per §309.3 for three-family Class 1 lots in the R-2 District)

Existing Improvements: +/-2,650 sq. ft. (finished) two-story three-family dwelling constructed in 1855, per the City Assessor's records (a conforming use per §309.32)

Proposed Improvements:
construction of proposed stairway at rear of building

Overlay Districts: None

Previous ZBA Action (since 1995):
None

Other Approvals Required:
• Building Permit

Attachments:
• Application (6 pages total)

HEARING NOTICE

10 School Street, LLC, 10 School Street (Tax Map 92, Lot 5), zoned R-2: Applicant requests a Variance from Article III, Section 309.3 of the Zoning Ordinance to construct an exterior stairway to be located +/-16 ½ ft. from the rear property line where 20 ft. is the minimum required. ZB2021-06-VAR

BACKGROUND

The property is improved with a three-family dwelling constructed in 1855 per the City Assessor's records. At 0.23 acres, it is non-conforming to the 13,000 sq. ft. minimum lot size required for Class 1 lots with three (3) dwelling units in the R-2 District. According to the application materials, the home is setback 20 ft. from the rear lot line, in conformance with the minimum 20 ft. rear yard requirement. (As an aside, the home appears to be non-conforming with respect to the minimum 20 ft. front yard setback, as well as the 15 ft. setback required from the side lot line shared with the abutter to the north at 8 School Street (Tax Map 92, Lot 6)).

PROPOSAL

The applicant proposes to construct a 3 ½ ft. wide exterior stairwell to the rear of the building (the footprint of the stairwell is depicted on the application drawings, although no dimension is provided for the proposed length of the stairwell). According to the application materials, the stairwell will be located +/-16 ½ ft. from the rear property line.

ZONING ORDINANCE REQUIREMENTS

In the R-2 District, Class 1 lots (i.e. lots that are served by municipal sewer) must maintain a minimum rear yard (i.e. a space unobstructed by buildings and structures) of 20 ft. per Section 309.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed stairwell, which will encroach approximately 3 ½ ft. into the minimum required 20 ft. rear yard.

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 set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

Figure 1. Location Map.



©2021 Google, <https://lebanonnh.mapgeo.io/>

Figure 2. Bird's Eye View of Subject Property (looking north).



©2018 Eagleview (image taken 5/1/2018)

- 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.

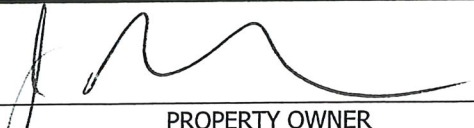
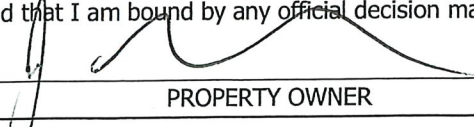
The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on March 2, 2021 (see attached).

Attachments

cc: Jordan Romano (via e-mail)
Kathie Romano (via e-mail)
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 ()

PROPERTY OWNER (APPLICANT):			
NAME: <u>10 School Street LLC</u>	TEL.#: <u>484-678-2419</u>		
MAILING ADDRESS: <u>PO Box 270-750 Boston, MA 02127</u>			
E-MAIL ADDRESS: <u>jjordanromano@gmail.com</u>			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME: <u>Kathie Romano</u>	TEL.#: <u>484-888-1371</u>		
MAILING ADDRESS: <u>13 Apple Blossom Dr., W. Lebanon, NH 03784</u>			
E-MAIL ADDRESS: <u>kathieromano@gmail.com</u>			
PROJECT LOCATION:			
TAX MAP #: <u>92</u>	LOT#: <u>825</u>	PLOT #: <u>8</u>	ZONE: <u>R2</u>
STREET ADDRESS OF PROJECT: <u>10 School St., Lebanon, NH 03766</u>			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO			
FLOOD PLAIN ☐ YES ☒ NO			
SCOPE OF PROJECT:			
<u>Construct exterior stairs to service new entrance to Unit 3.</u>			
<u>Stairs will extend 3 1/2 ft into 20ft deep backyard (garage-to-fence).</u>			
TYPE OF OCCUPANCY:			
EXISTING	☐ VACANT	☐ ONE FAMILY	☐ TWO FAMILY
PROPOSED	☐ VACANT	☐ ONE FAMILY	☐ TWO FAMILY
	☐ VACANT	☐ ONE FAMILY	☒ MULTI-FAMILY
	☐ VACANT	☐ ONE FAMILY	☐ COMMERCIAL
	☐ VACANT	☐ ONE FAMILY	☐ INDUSTRIAL
IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE: _____			
SIGNATURE BLOCK:			
 _____ PROPERTY OWNER			DATE: <u>3/2/2021</u>
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.			
 _____ PROPERTY OWNER			DATE: <u>3/2/2021</u>

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
3-2-21	092-005	ZB2021-	\$209.66	3-2-21	18104

06-VAR

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 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) _____
Section(s) _____ 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 proposed exterior stairway will be constructed to width & rise standards in the building code

2. That the variance will observe the spirit of the Ordinance.

The proposed stairway is safer than the current more narrow & steep entryway.

3. That by the granting of the variance, substantial justice will be done;

This new stairway will provide a safer entrance

4. That the variance, if authorized, will not diminish the values of surrounding properties

There are no properties beside or behind this and;
which will be able to look out upon this stairway

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

This property, unlike those on either side of it, has an attached 2 car garage so the entrance to the; and
finished area above it is best placed behind the garage

(ii) The proposed use is a reasonable one.

Other properties in this district have similar stairs to 2nd floor units.

(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.

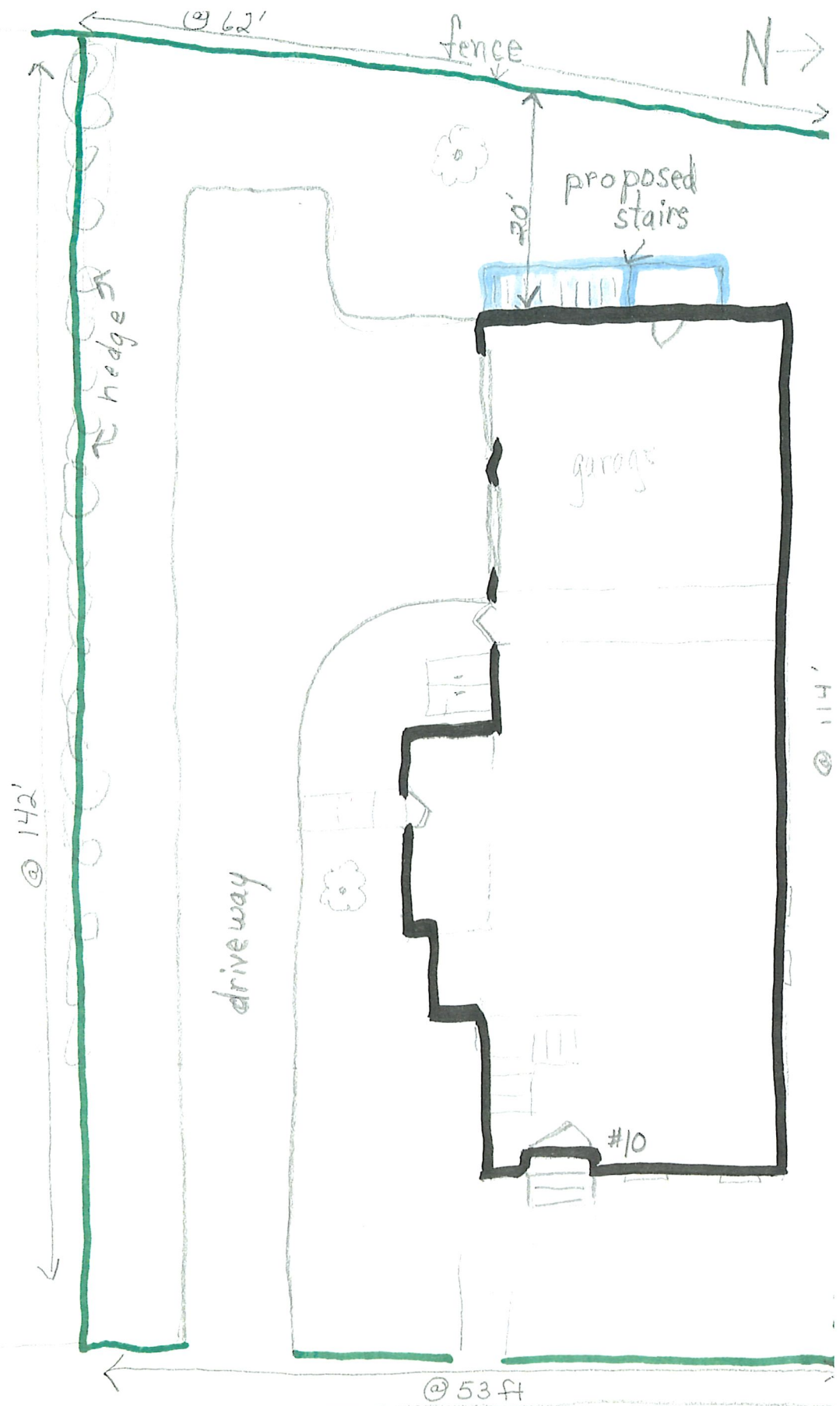
The stairway cannot go on either side because the North side is very near the lot line and the two garage doors open to the South facing side.

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.**

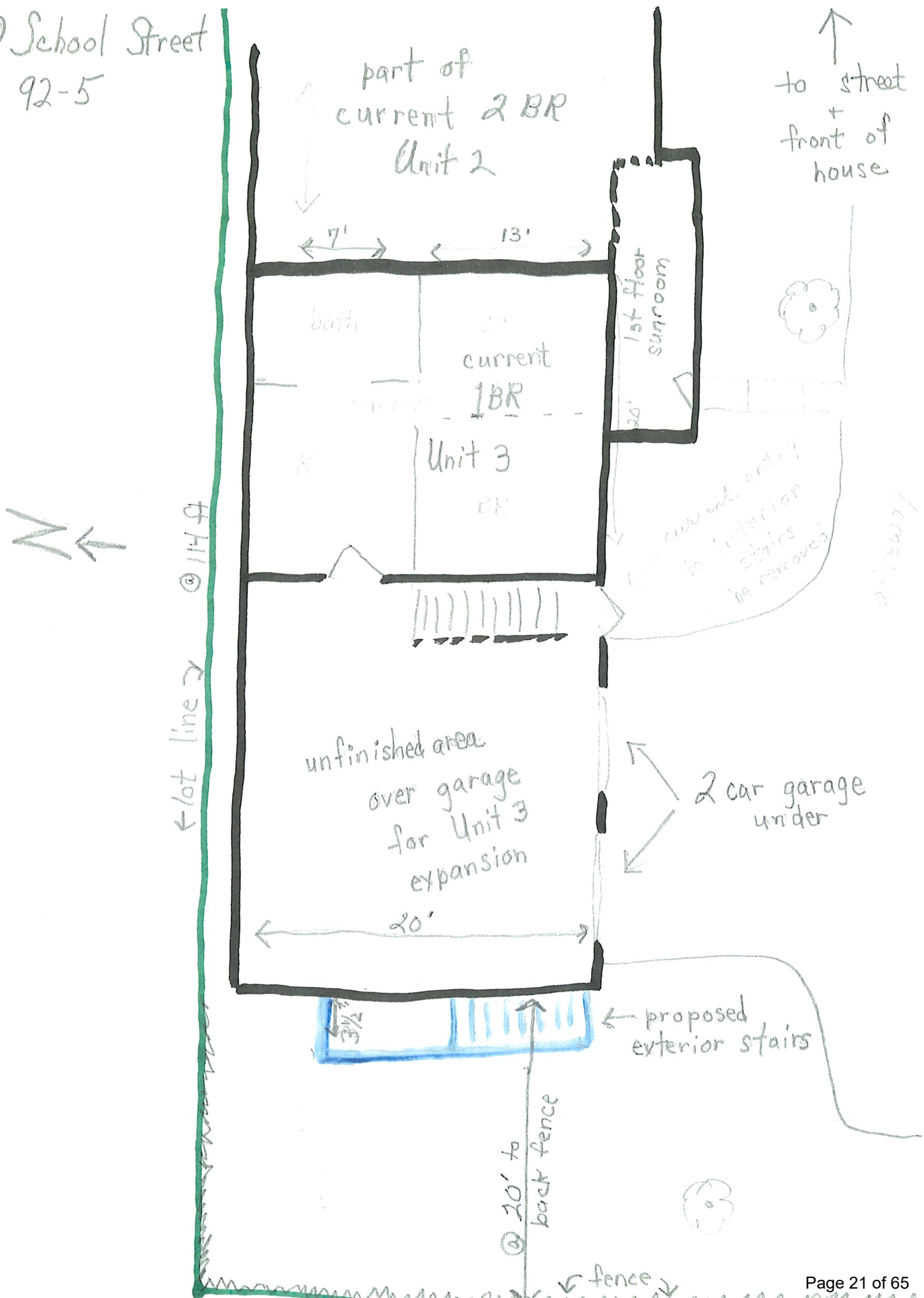
Statement of Intent:

"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)."



School Street # 92-5

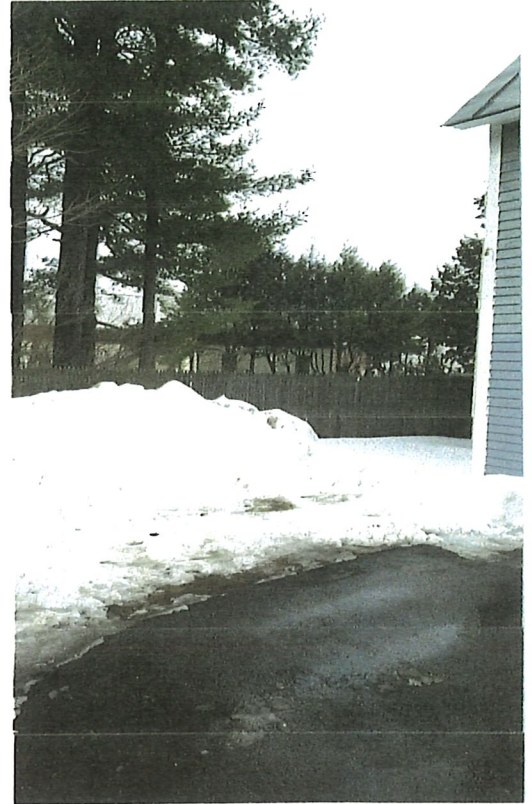
#10 School Street
92-5



10 School Street, Lebanon, NH 03766

Current back yard from garage to fence measures 20 ft. ->

With stairs @3 ft. wide, depth to back will be @17 ft.



View over back yard fence



View of garages & current entry door to interior stairs



**Yard behind garage where stairs
are proposed**

**Agenda
Zoning Board of Adjustment
October 19, 2021**

**Agenda Item #3C
Public Hearing Items**

**Altaria Hotel, LLC,
25 Foothill Street
(Tax Map 24, Lot 14, Plot 100);
zoned IND-L
ZB2021-07-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

April 5, 2021 Meeting

Staff Memorandum – ZB2021-07-VAR

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Variance from §501.4.D to permit residential density to exceed the maximum allowed in a commercial planned unit development

Location:

Altaria PUD, NH Route 120 (Tax Map 24, Lot 14)

Applicant/Property Owner:

- Altaria Hotel, LLC
- Anagnost Upper Valley, LLC
- Altaria Lebanon Park, LLC

Zoning District:

Light Industrial (IND-L)

Overlay District(s):

- Wetlands Conservation District

Previous ZBA Action (since 1995):

- Wetlands CUP granted in 2011

Other Approvals Required:

- Planning Board (CUP/Site Plan/Subdivision amendment)
- Building Permit

Attachments:

- Altaria PUD Final Plat (Staff Exhibit A)
- Application (14 pages total)

HEARING NOTICE

Altaria Hotel, LLC, 25 Foothill Street (Tax Map 24, Lot 14, Plot 100); Anagnost Upper Valley, LLC, 18 Merchant Street (Tax Map 24, Lot 14, Plot 200); Altaria Lebanon Park, LLC, 260 NH Route 120 (Tax Map 24, Lot 14), 6, 15, 5, & 14 Merchant Street (Tax Map 24, Lot 14, Plots 300, 400, 500, & 600), 0 NH Route 120 (Tax Map 24, Lot 14, Plot 700), and 1 Foothill Street (Tax Map 24, Lot 14, Plot 800); zoned IND-L: Applicant proposes to convert the hotel use at 25 Foothill Street [part of the Altaria Planned Unit Development (PUD)] to a multi-family dwelling. In order to allow the proposed conversion, the applicant requests a Variance from Article V, Section 501.4.D of the Zoning Ordinance to permit the residential density of the Altaria PUD to exceed the maximum allowed in a commercial planned unit development. ZB2021-07-VAR

BACKGROUND

On September 12, 2011, the Planning Board approved a Conditional Use Permit and Final Major Subdivision (PB2011-15-FMAJ) for an 8-lot Industrial Planned Unit Development (Altaria PUD) located off of NH Route 120. For reference, the final approved PUD layout is attached as Staff Exhibit A, and an excerpt of the City's Tax Map showing the Altaria PUD lot lines is shown below as Figure 1.

Section 501.4.D of the Zoning Ordinance (both as it provided when then PUD was originally approved and currently) allows multi-family dwellings within a PUD, with the permitted residential density based on "a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre." In the context of the Altaria PUD, the Section 501.4.D calculation allows a maximum of 34 dwelling units in the PUD.

The uses approved for the PUD included a mix of hotel, retail/service, office/R&D, and residential as follows (graphic taken from cover sheet of approved PUD plan):

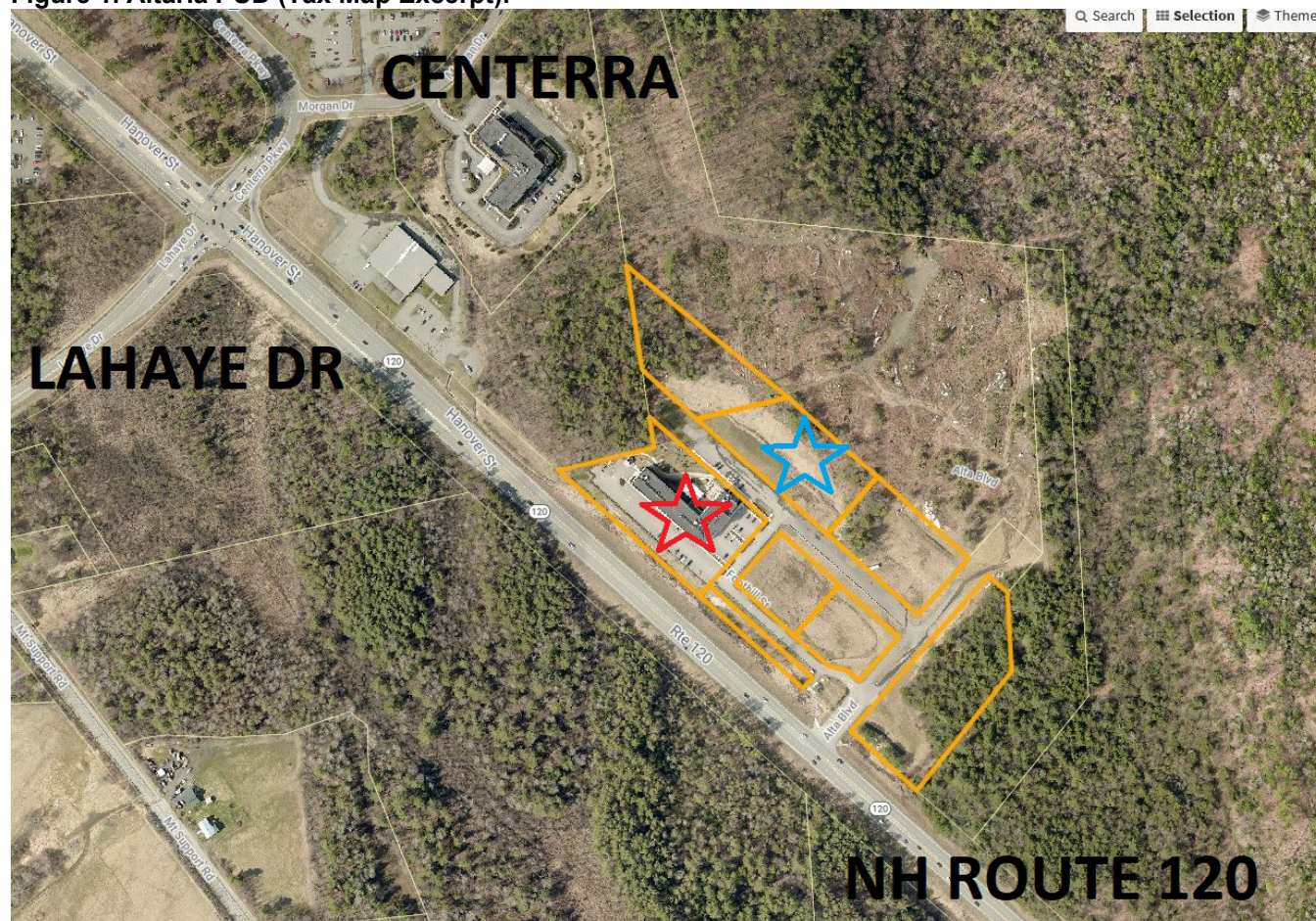
Land Use & Parking Requirements:	SF by Use	ratios	# of spaces
Hotel	81,752 120 rooms	1.2 sp/rm	144
Retail / Service	42,390	1 sp/200 or 250	190
Office / R&D	96,000	1 sp/250	384
Residential	34 units	1.5 sp/du	52
Total Non-Res Use:	220,142		

The hotel was constructed on Lot 1 of the PUD (i.e. 25 Foothill Street) in 2014. It was operated as the Element Hotel until a fire in December 2019 heavily damaged the interior. The building has sat vacant since the 2019 fire. A 33-unit multi-family residential building was constructed on Lot 2 of the PUD (i.e. 18 Merchant Street) in 2019 (at 33-units, the multi-family dwelling is one dwelling unit less than the 34-unit maximum permitted). The remaining lots in the PUD have not yet been developed.

PROPOSAL

The applicant proposes to convert the vacant building on Lot 1 of the PUD (i.e. the former Element Hotel building) to a 120-unit multi-family building. To do so, the applicant requires a Variance to allow the residential density to exceed the maximum 34 dwelling units allowed per Section 501.4.D of the Zoning Ordinance. If the Variance is approved, the applicant will also need to apply to the Planning Board for an amendment to the Altaria PUD Conditional Use Permit (and possibly an amendment to the approved plan pursuant to the Site Plan Review and/or Subdivision Regulations).

Figure 1. Altaria PUD (Tax Map Excerpt).



©2021 Google, <https://lebanonnh.mapgeo.io/>

ZONING ORDINANCE REQUIREMENTS

As a threshold matter, staff recommends that the Board consider whether the applicant's proposed use – as described by the applicant in their application materials – is a "hotel" or a "multi-family dwelling". If the Board determines that the applicant's proposed use meets the definition of "hotel", then no Variance

is required since a hotel is already an approved use of the site (per Section 501.D.4 of the Zoning Ordinance and pursuant to the existing Altaria PUD Planning Board approvals). For reference in evaluating what use category the applicant's proposed use falls within, pasted below are the definitions of "hotel" and "multi-family dwelling" as those terms are defined in Appendix A of the Zoning Ordinance.

- A **"hotel"** is defined as: "A building designed for or used commercially as more or less temporary living quarters for persons who are lodged with or without meals in which are ten or more sleeping rooms usually occupied singularly or by families of transients."
- A **"multi-family dwelling"** is defined as: "A dwelling with three (3) or more dwelling units." Related definitions include:
 - "Dwelling" which is defined as: "A building designed for and used primarily by one or more families for living quarters, but not including manufactured homes, trailers of any kind, hotels, motels, group residences, lodging houses, institutional homes, residential clubs, or other commercial accommodations offered for occupancy."
 - "Dwelling unit" is defined as: "One or more rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sanitary and sleeping facilities. The term includes sectional homes and modular units but does not include manufactured home, motel, hotel, lodging house or similar structures."

If the Board determines that the proposed use is a "multi-family" dwelling, the applicant requires a Variance from Section 501.4.D of the Zoning Ordinance to permit the residential density of the Altaria PUD to exceed the maximum allowed in a commercial planned unit development. Section 501.4.D provides, in relevant part, as follows: "The density of residential uses allowed pursuant to [Section 501.4.D] shall be determined based on a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 dwelling units per acre." As noted above, this calculation allows 34 dwelling units within the Altaria PUD, 33 of which have already been constructed. Since the applicant is requesting to convert the hotel into 120 dwelling units, a Variance is needed to allow the PUD to have a total of 153 dwelling units (120 proposed + 33 existing), where a maximum of 34 units are allowed.

To obtain the requested Variance from Section 501.4.D, 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 set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

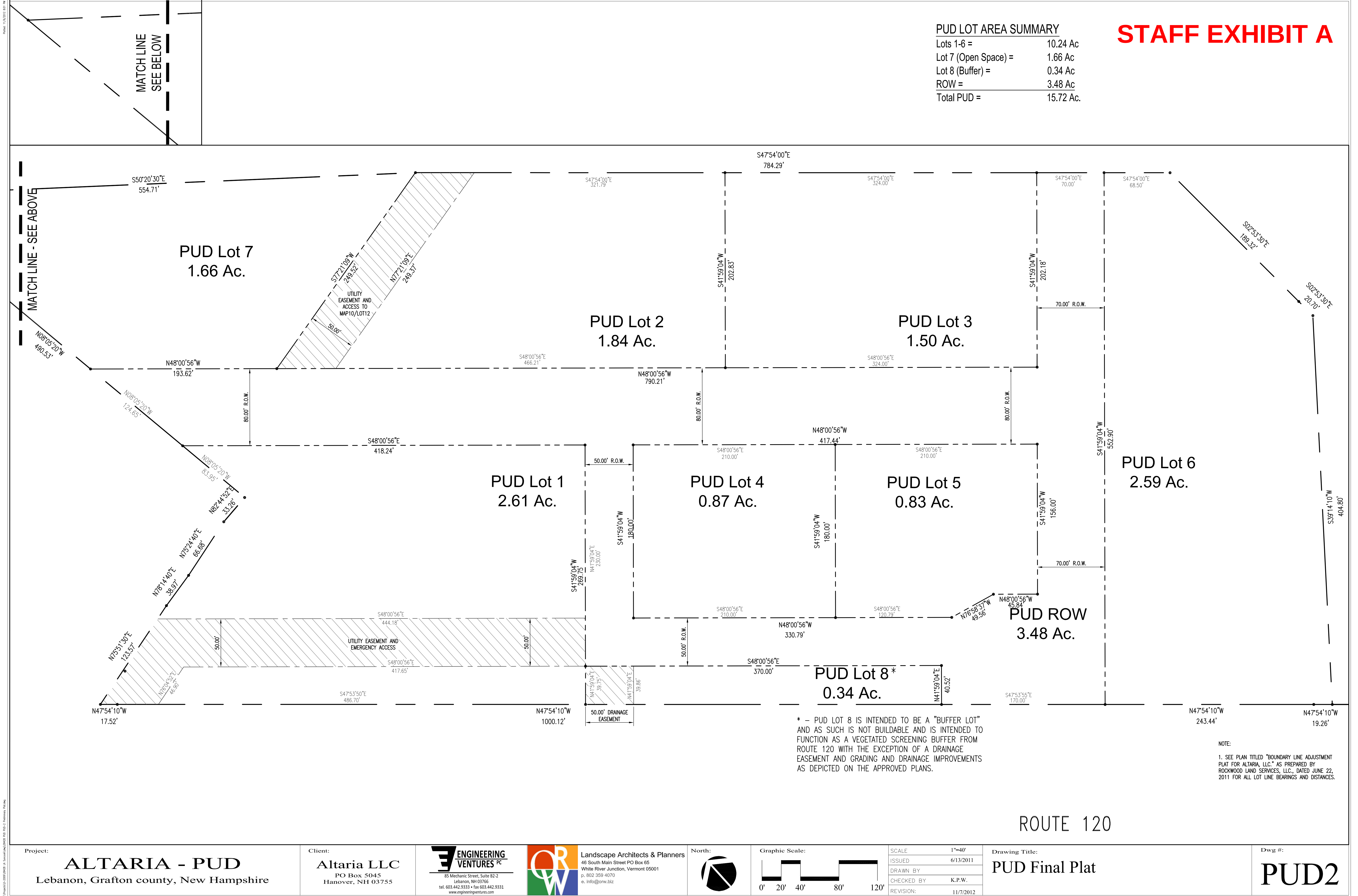
1. **Will the variance be contrary to the public interest?** According to the Board of Adjustment in NH, 2012 Edition, for a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance 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.

The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on March 18, 2021 (see attached).

Attachments

cc: Altaria Hotel, LLC (via e-mail)
Anagnost Upper Valley, LLC
Altaria Lebanon Park, LLC
File

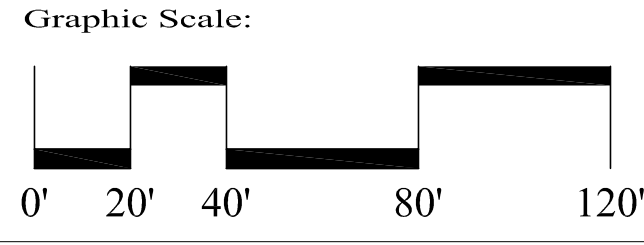
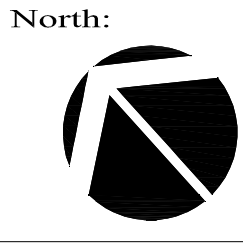


Project:
ALTARIA - PUD
Lebanon, Grafton county, New Hampshire

Client:
Altaria LLC
PO Box 5045
Hanover, NH 03755

ENGINEERING VENTURES PC
85 Mechanic Street, Suite B2-2
Lebanon, NH 03756
tel. 603.442.9333 • fax 603.442.9331
www.engineeringventures.com

ORW
Landscape Architects & Planners
46 South Main Street PO Box 65
White River Junction, Vermont 05001
p. 802.359.4070
e. info@orw.biz



SCALE	1"=40'
ISSUED	6/13/2011
DRAWN BY	
CHECKED BY	K.P.W.
REVISION:	11/7/2012

Drawing Title:
PUD Final Plat

Dwg #:
PUD2

**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: Altaria Hotel LLC TEL.#: 617-331-4281
MAILING ADDRESS: 67 Etna Road, Suite 360, Lebanon NH 03766
E-MAIL ADDRESS: mark@trademark.boston

CO-APPLICANT, AGENT, OR LESSEE:

NAME: TEL.#:
MAILING ADDRESS:
E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #: 24 LOT#: 14 PLOT #: 100 ZONE: IND L (PUD #)
STREET ADDRESS OF PROJECT: 25 Foothill Street, Lebanon NH 03766
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

The project is the repair of the former Element Hotel, which was damaged in an explosion in 2019. The project involves financing modification from zoning designation as a hotel to micro-apartments / short term residential use. The existing building will be repaired and remain a 120 unit building with the required code modifications to comply with the new use.

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: Existing Extended Stay Hotel Use

SIGNATURE BLOCK:



PROPERTY OWNER

DATE: 3.17.21

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 #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
3/17/2021	24-14-100	2B2021-07-VAR	\$226.10	3-18-21	18133

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 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) V
Section(s) 501.4.D 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;

Refer to attached response.

2. That the variance will observe the spirit of the Ordinance.

Refer to attached response.

3. That by the granting of the variance, substantial justice will be done;

Refer to attached response.

4. That the variance, if authorized, will not diminish the values of surrounding properties

Refer to attached response. 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

Refer to attached response.

_____; and

(ii) The proposed use is a reasonable one.

Refer to attached response.

(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.

Refer to attached response.

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)."

PROPERTY OWNER (APPLICANT):	
NAME: Altaria Hotel LLC	TEL.#: 617-331-4281
MAILING ADDRESS: 67 Etna Road, Suite 360, Lebanon NH 03766	
E-MAIL ADDRESS: mark@trademark.boston	

Request for Variance.

Altaria Hotel LLC, as the owner of the former Element Hotel and Applicant, understands that, based on the technical definition of a "Hotel" in the Lebanon Zoning Code, an option exists whereby the Planning Director and Zoning Administrator could write an opinion letter indicating that the change requested by the Applicant could be done in an Administrative method without a Variance being granted. However, for reasons related to national bank financing, rather than the technical nature of the Zoning Code definition, it is important, for administrative reasons, for the Use to be modified from Hotel to Residential, supported by a legal zoning opinion. Financing for the project repair and modification is contingent upon Residential zoning approval rather than the current Hotel use.

To that end, the Applicant is requesting the former Element Hotel property, identified as Plot #100, on Lot #14 on tax map #24, be granted a variance from the maximum permitted Residential density requirements of the approved Altaria PUD. The Applicant is proposing a modification of the approved site plan, to change the Use of the Former Element Hotel to a multi-family residential use for micro-apartments. This change will require an amendment to the approved site plan, however the Applicant, in order to facilitate this change of use, requires a variance from Section 501.4.D which indicates "multi-family dwellings may be allowed...based on a maximum of 25% of the net land area of the PUD not planned for open space, roads or utilities and calculated at a density of 13 dwelling units per acre".

The Altaria PUD was approved in 2013 for eight (8) lots and six (6) buildings including a mix of hotel, residential, office, retail and open space uses. The

Element Hotel was completed in 2014 and operated until an explosion and fire on Christmas eve 2019 damaged the building to the extent of requiring temporary condemnation by the City of Lebanon. Based on the current financing available and market conditions, the Applicant will not receive funds for a "Hotel" use project, however, short term, micro-apartment Residential Use, which is technically very similar to the Hotel Use definition in the Zoning Code, is eligible for financing and viable as a method of modification and restoration of the existing building. This is a technical, financing issue, rather than a true modification of the underlying nature and intent of the building, beyond the modification of the average length of tenancy from 11 days to an average length of 60 – 90 days. Based on the above, the Applicant will be requesting site plan amendment to micro-apartment Residential Use. In order for that modification to occur, the project requires a variance to exceed the maximum density noted in Section 501.4.D of 13 dwelling units per acre up to 45.98 dwelling units per acre on Lot 1 of the PUD, based on conversion of the previously approved 120 hotel units into 120 micro-apartment residential units on the 2.61 acres within the lot. Further, the previously approved Altaria PUD included a Net Site Area (ac) calculation of 1058 acres, resulting in a maximum of 25% of Site Area for Residential Use being calculated at 2.65 acres. The addition of the Lot 1 area to the existing approved residential acreage results in an increase above the 25% maximum net land area of the PUD allocated to Residential Uses per Section 501.4.D.

Support Statements for Variance Application.

Altaria Hotel LLC, as the owner of the former Element Hotel and Applicant, is requesting the above-described modification to the former Element Hotel zoning approval and approved Altaria PUD, for the purpose of restoring the building damaged by an explosion in December of 2019 and bringing this existing structure back onto the active tax rolls. The approval of the requested modification will result in significant benefit to the economy of the community of Lebanon, NH and provide a much-needed resource in the form of a short-term residential

housing program. The applicant believes that this request is consistent with the very intent of Zoning variances, which are meant to address unique circumstances and ensure ongoing consistency with the intent of the Zoning Ordinance. The request for the modification at the former Element Hotel building represents the best possible application of this process.

In December of 2019, the Element Hotel suffered an explosion which damaged the critical life safety systems and structure of the building. The building was immediately shut down and has remained condemned and unusable since that event. During the time the Applicant was working through the complex insurance and financing process required to fund renovations, a global pandemic has decimated the hospitality industry and resulted in an almost complete elimination of financing for hotel projects.

The confluence of events has presented an opportunity to modify the original use of the existing building and site from Extended Stay Hotel to Micro-Apartments. This modification is driven to a great degree by the financing market's appetite for residential projects and in many ways is purely administrative as the existing building, site and operation will remain substantially unchanged from the original approvals.

The Extended Stay Hotel business, represented by the Element Hotel and Residence Inn businesses, both owned and operated by affiliates of the Applicant, serve a specific market segment with average length of stay of approximately 11 days. This product type typically includes a kitchenette and substantial amenity areas in the building. In the case of the Element, the majority of units were built with kitchens and there are lounges, meeting rooms, and an indoor pool. Micro-apartment projects fill the need for longer tenancy than traditional hotels offer, with micro-apartment average stays of 60 – 90 days, accommodating, for instance, new employment recruits transitioning to a new area while awaiting permanent housing availability in more traditional apartment buildings and homes.

The Lebanon market does not currently have a project filling this important residential demand for longer than hotel stays but shorter than annual apartment rentals. The former Element Hotel building is ideally suited for this conversion with no modification to the unit count, type and configuration other than minor building code upgrades for kitchen ventilation. The Applicant has been contacted by numerous corporate employers in the market, including Dartmouth Hitchcock Medical Center, who have expressed desperate need for this type of housing capacity in the market. Similarly, there is need from numerous corporate demand generators for this important employment recruiting option. Having a short-term residential product in the market would allow for new recruit employees to immediately move to the market and commence work in a known and provided housing location while using the 60 to 90 days to identify permanent residential options with traditional 12 month and longer lease options.

The Applicant would note that this is not new “competition” for the existing residential projects but rather an effective feeder to those businesses, representing the unserved option of housing greater than 30 days but less than the standard 12-month lease terms. The overwhelming public and business interest and demand in this residential type in the market indicate that the modification represents a benefit to the community, consistent with the intent of the underlying Ordinance and PUD zoning, and an opportunity to address a unique condition involving an existing building that otherwise cannot be resorted to active use, contributing to the tax base and serving the needs of the community.

The Applicant requests the approval of the modification, based on the following criteria requested as part of the application process, and again notes that this is effectively a financing and administrative change only, based on the narrower definitions of Extended Stay Hotels and Micro-Apartment short term residential housing tenancy.

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;

For the foreseeable period going forward while the hotel and financing markets are in a potentially years-long recovery, the extended stay Hotel use, with average tenancy of 11 days, is no longer financially viable. Without a modification to a very similar micro-apartment multi-family use (average tenancy 60-90 days), involving the increase in the allowable residential density within the approved PUD, the building will remain in a condemned condition, providing no tax benefit to the community and leaving a segment of the residential market completely unserved by the existing available housing stock. The restoration of this existing building to a viable and usable condition is clearly within the public interest. Further, with strong expressions of demand from local corporate and institutional users, the restoration of the building represents an opportunity to serve a specific gap in the existing hybrid residential / hospitality stock.

2. That the variance will observe the spirit of the Ordinance.

The current Ordinance and approved PUD were intended to create an economically viable, mixed use district. The former Hotel use created an extended stay tenancy for a specific segment of the market. The minor revision to a short-term micro-apartment use generally retains the intent underlying the approved extended stay hotel with recognition of the evolved market and demand. An active use building is consistent with the spirit of the Ordinance.

3. That by the granting of the variance, substantial justice will be done;

The applicant has suffered both the loss of use of the existing approved building due to a gas explosion and the long-term viability of a Hotel use. The granting of the variance for micro-apartments does not in any way represent harm to the general public or community and creates an opportunity to restore the damaged building for the applicant.

4. That the variance, if authorized, will not diminish the values of surrounding properties

The granting of the variance would, in fact, increase the values of surrounding properties as a result of restoring a condemned building to active use and commercial viability. As previously noted, this product will not be in competition with the surrounding hotel and residential projects but rather serve as a bridge that feeds the existing traditional 12-month rental residential product in the market. Further, the decrease in hotel supply will benefit the other hotels throughout the City of Lebanon. Bringing this existing building back to the tax rolls ultimately represents an increase in value to the surrounding community; 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 denial of the requested variance for a change of use from hotel to micro-apartment would represent an unnecessary hardship to the applicant given the unique combination of an explosion in the existing building resulting in temporary condemnation and the impact of a global pandemic on the hospitality industry. Without the variance to the density cap at this approved PUD, the existing building cannot be restored, financially, to commercial viability. While the modification requested is administrative in nature, resulting from financing agency requirements and the narrow difference in use definition between an average 11-

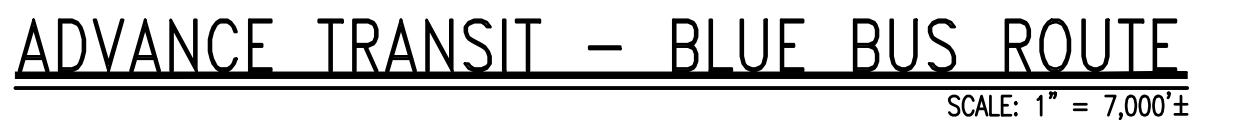
day tenancy at the prior Extended Stay Hotel use and the proposed 60 – 90 day short term tenancy at Micro-Apartment Residential use projects, the actual modifications to the existing building are focused on restoration of the damaged life safety systems and structural components damaged by the explosion.

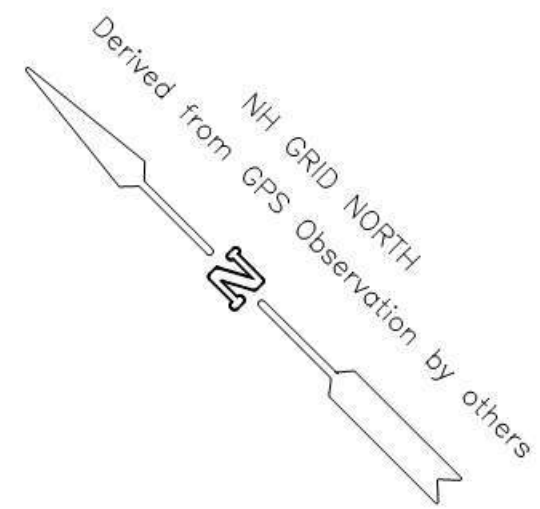
(ii) The proposed use is a reasonable one.

The proposed use is reasonable as it represents the smallest possible change in the actual condition from the former approved extended stay hotel model. A micro-apartment with average stay tenancy of 60-90 days is effectively at the same general use with only the Zoning Definition distinction of the length of stay differentiating the proposed condition from the formerly approved and operating condition.

(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.

As noted, given the specific and unique circumstances surrounding the former Element Hotel property, and the current and projected viability of the hospitality industry in New England, the property cannot reasonably be restored after the explosion within conformance of the ordinance, and a variance is therefore necessary to enable reasonable future use.





ABUTTERS LIST

10-12
ALTARIA LLC
10 Morgan Drive, No. 1A
Lebanon, NH 03766

10-11-1300, 24-8, 10-24-100
DARTMOUTH COLLEGE TRUSTEES
Real Estate Office
PO Box 5188
Hanover, NH 03755

10-11-1302
UPPER VALLEY HOTEL GROUP
c/o Upper Valley Lodging Group
Courtyard by Marriott
Lebanon, NH 03766

24-11
IVY COMMONS AT MT SUPPORT ROAD
LIMITED PARTNERSHIP
One Sundial Ave., Suite 510
Manchester, NH 03103

LOT 1
2.609 Acres
113,670 Sq. Feet

LINE	BEARING	DISTANCE
L1	S47°55'00"E	17.52'
L2	S47°54'10"E	486.72'
L3	N41°59'00"E	39.73'
L4	N41°59'00"E	230.00'
L5	N48°01'00"W	418.24'
L6	S08°05'20"E	83.95'
L7	S82°44'50"W	33.26'
L8	S75°24'40"W	66.68'
L9	S78°14'40"W	38.97'
L10	S75°51'30"W	123.57'

LOT 2
1.838 Acres
80,060 Sq. Feet

LINE	BEARING	DISTANCE
L11	S77°21'10"W	249.52'
L12	S48°01'00"E	466.21'
L13	N41°59'00"E	202.83'
L14	N47°54'00"W	321.79'

LOT 3
1.506 Acres
65,610 Sq. Feet

LINE	BEARING	DISTANCE
L15	S47°54'00"E	324.00'
L16	S41°59'00"W	202.18'
L17	N48°01'00"W	324.00'
L18	N41°59'00"E	202.83'

LOT 4
0.867 Acres
37,800 Sq. Feet

LINE	BEARING	DISTANCE
L19	N41°59'00"E	180.00'
L20	N48°01'00"W	210.00'
L21	S41°58'50"W	156.00'
L22	N48°01'00"W	45.85'
L23	N76°58'40"W	49.56'
L24	N48°01'00"W	120.79'

LOT 5
0.83 Acres
36,180 Sq. Feet

LINE	BEARING	DISTANCE
L19	N41°59'00"E	180.00'
L20	S48°01'00"E	210.00'
L21	S41°58'50"W	156.00'
L22	N48°01'00"W	45.85'
L23	N76°58'40"W	49.56'
L24	N48°01'00"W	120.79'

ROW ACREAGE
3.483 Acres
151760 Sq. Feet

LOT 6
2.587 Acres
112,720 Sq. Feet

LINE	BEARING	DISTANCE
L37	S47°54'10"E	216.85'
L38	S47°54'10"E	19.26'
L39	N39°14'10"E	404.80'
L40	N02°53'30"W	210.02'
L41	N47°54'00"W	68.50'
L42	S41°59'00"W	552.83'

LOT 7 - OPEN SPACE
1.66 Acres
72,270 Sq. Feet

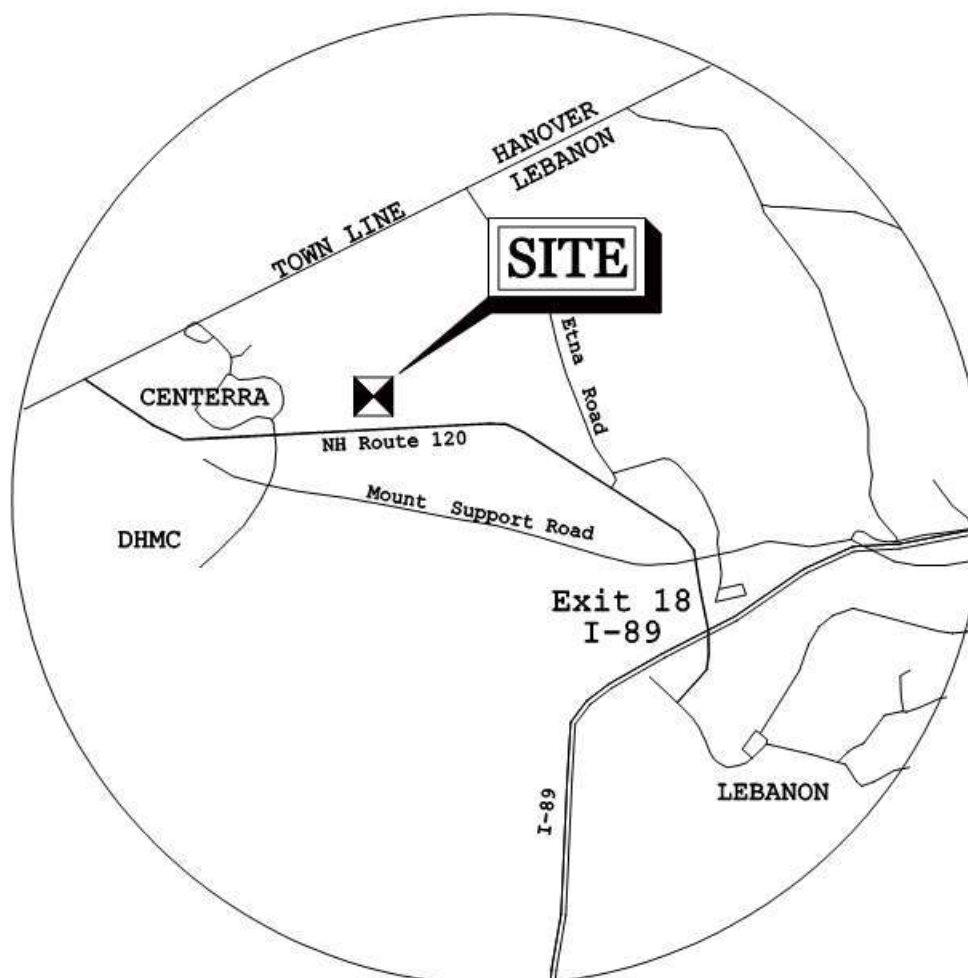
LINE	BEARING	DISTANCE
L33	S08°05'20"E	281.93'
L34	S48°01'00"E	193.62'
L11	N77°21'10"E	249.52'
L36	N50°20'30"W	554.71'

LOT 8 - BUFFER LOT
0.34 Acres
14,830 Sq. Feet

LINE	BEARING	DISTANCE
L3	N41°59'00"E	39.73'
L27	S48°01'00"E	370.00'
L28	S41°59'00"W	40.46'
L29	N47°54'10"W	370.00'

CORNER MONUMENT DESCRIPTIONS

- 1 Found a 6"x6" Concrete Highway Bound labeled "N H", Protruding 4"
- 2 Set a 5/8" by 36" Blue Rebar straight, with Purple Cap to refusal and 20" reveal and constructed a rock pile
- 3 Compute Point at Lot Corner
- 4 Found 3/4" Yellow Rebar Protruding 17" on Road side of Woven Wire Fence being S 42°05'00"W, 0.16 feet from the Lot Corner
- 5 Computed Point at Lot Corner
- 6 Set a 5/8" by 11" Blue Rebar with Purple Plastic Cap in a Drill Hole in Ledge with 4" of soil cover and 9" reveal from Ledge and Sealed with Mortar
- 7 Found 1.5" Yellow/Green Iron Pipe Supported by a Rock Pile, Protruding 33"
- 8 Set a 5/8" by 36" Blue Rebar with Purple Plastic Cap in a Ledge Crack with a slight lean to the west and 6" of reveal, good at the top with a Constructed Rock Pile
- 9 Set a 5/8" by 36" Blue Rebar straight with Purple Plastic Cap and 7" of reveal and constructed a rock pile
- 10 Set a 5/8" by 36" Blue Rebar straight with Purple Plastic Cap and 8" of reveal and a constructed rock pile
- 11 Found a Small Nail in a Drill Hole with an Orange Painted Triangle on a 30" Dia. Rock
- 12 Found 1.25" Yellow Iron Pipe in the Center of the Stone Wall, Protruding 9"
- 13 Found a 6"x6" Concrete Highway Bound labeled "N H", Protruding 18"
- 14 Found a 6"x6" Concrete Highway Bound labeled "N H", Protruding 11"
- 15 Set a 5/8" by 8" Blue Rebar with Purple Plastic Cap in the western face of a large boulder with 7" of reveal and sealed with mortar, being N 89°44'40" W, 0.09 ft to the Lot Corner



LOCUS

SURVEY NOTES

1. This Subdivision Plat shows the Planned Unit Development (PUD) on Lebanon Map 24, Lot 14. All internal Lot information shown is Not Yet Constructed.
2. The zoning district is Industrial Light (IND-L).
3. The following referenced plans are a part of this subdivision:
 - A. GCRD Plan No. 14365 titled boundary Line Adjustment Plat for ALTARIA, LLC", dated June 22, 2011 and revised October 27, 2011;
 - B. GCRD Plan No. 11914 titled "Dartmouth College Trustees" dated July 8, 2004 with two revisions;
 - C. NHDOT Federal Aid Project S-287(2), NH Project S-7018 for NH Route 120 dated July 1, 1964.
4. No conservation, preservation, or agriculture preservation restrictions were identified on the abutting parcels.
5. Corner Monuments noted as "SET" were set in October 2011. PUD Lot Corners, as required, will be SET following site construction. See GCRD Plan 14365.

Open Space Chart

Lots 1 - 6	= 10.237 acres
Roads and Lot 8	= 3.823 Acres
Total Developed Area	= 14.06 acres
Total Open Space - Lot 7	= 1.66 acres
Area of Subdivision	= 15.72 acres

MAP 10, LOT 11-1302
Upper Valley Hotel Group

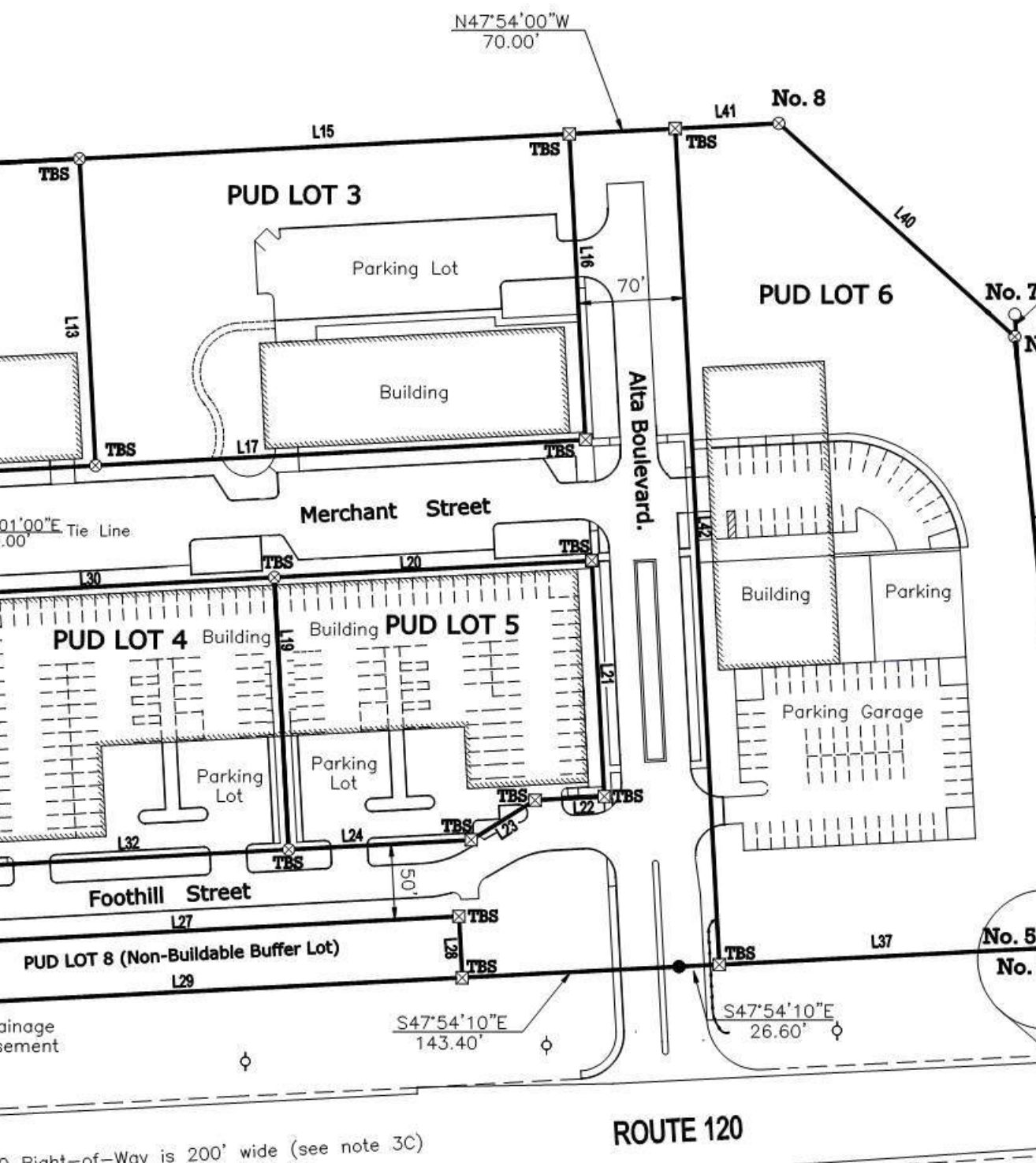
MAP 10, LOT 11-1300
TRUSTEES OF DARTMOUTH COLLEGE
Book 1457, Page 766
Plan No. 11914

MAP 10, LOT 24-100
Dartmouth College Trustees

LEGEND:

- FOUND IRON PIPE OR REBAR
- SET CAPPED REBAR, as described
- FOUND NHDOT CONCRETE BOUND
- FOUND DRILL HOLE
- CONCRETE OR STONE BOUND to be set
- CAPPED REBAR, to be set
- COMPUTED POINT
- BOUNDARY LINE
- STONE WALL
- EDGE OF PAVEMENT
- UTILITY POLE
- GRAFTON COUNTY REGISTRY OF DEEDS DENOTED BY
- PLASTIC REBAR CAP LABEL
- GCRD DEED REFERENCE
- GCRD PLAN REFERENCE
- DENOTES CHART COURSE/DISTANCE
- Edge of Proposed Building
- Parking beneath Building
- AS NOTED
- TBS
- TBS
- GCRD
- "TIM ROCKWOOD, VT 537 NH 618"
- BOOK, PAGE
- PLAN NO.
- L15

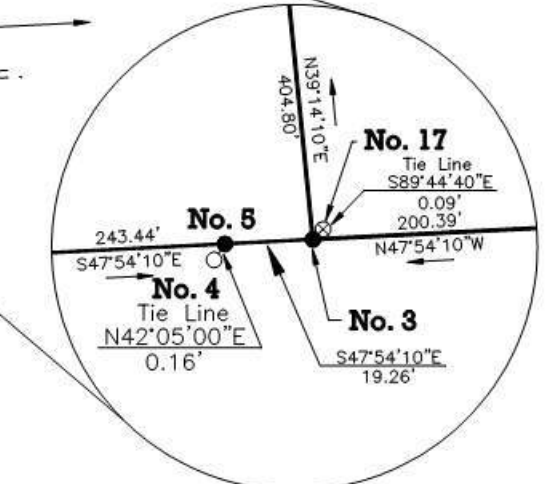
MAP 10, LOT 12
ALTARIA LEBANON PARK LLC
Book 3897, Pages 518 - 537



MAP 24, LOT 8
Dartmouth College Trustees

MAP 24, LOT 11
Ivy Common at MT Support Road

MAP 10, LOT 12
ALTARIA LEBANON PARK LLC
Book 3897, Pages 518 - 537



RECORD OWNER: MAP 24, LOT 14
ALTARIA LEBANON PARK LLC
10 Morgan Drive, Suite 1A
Lebanon, New Hampshire 03766

Deed Reference: Book 3897, Pages 518 to 537

MAJOR SUBDIVISION PLAT FOR

ALTARIA LEBANON PARK, LLC Planned Unit Development

NH Route 120, Grafton County, Lebanon, New Hampshire

Project No. 1060-05 Date: July 16, 2013

Scale: 1" = 100'

ROCKWOOD LAND SERVICES, LLC
PO BOX 347, HARTLAND, VERMONT 05048
(802)436-1039 rock@vermontel.net

LEBANON'S STATEMENT

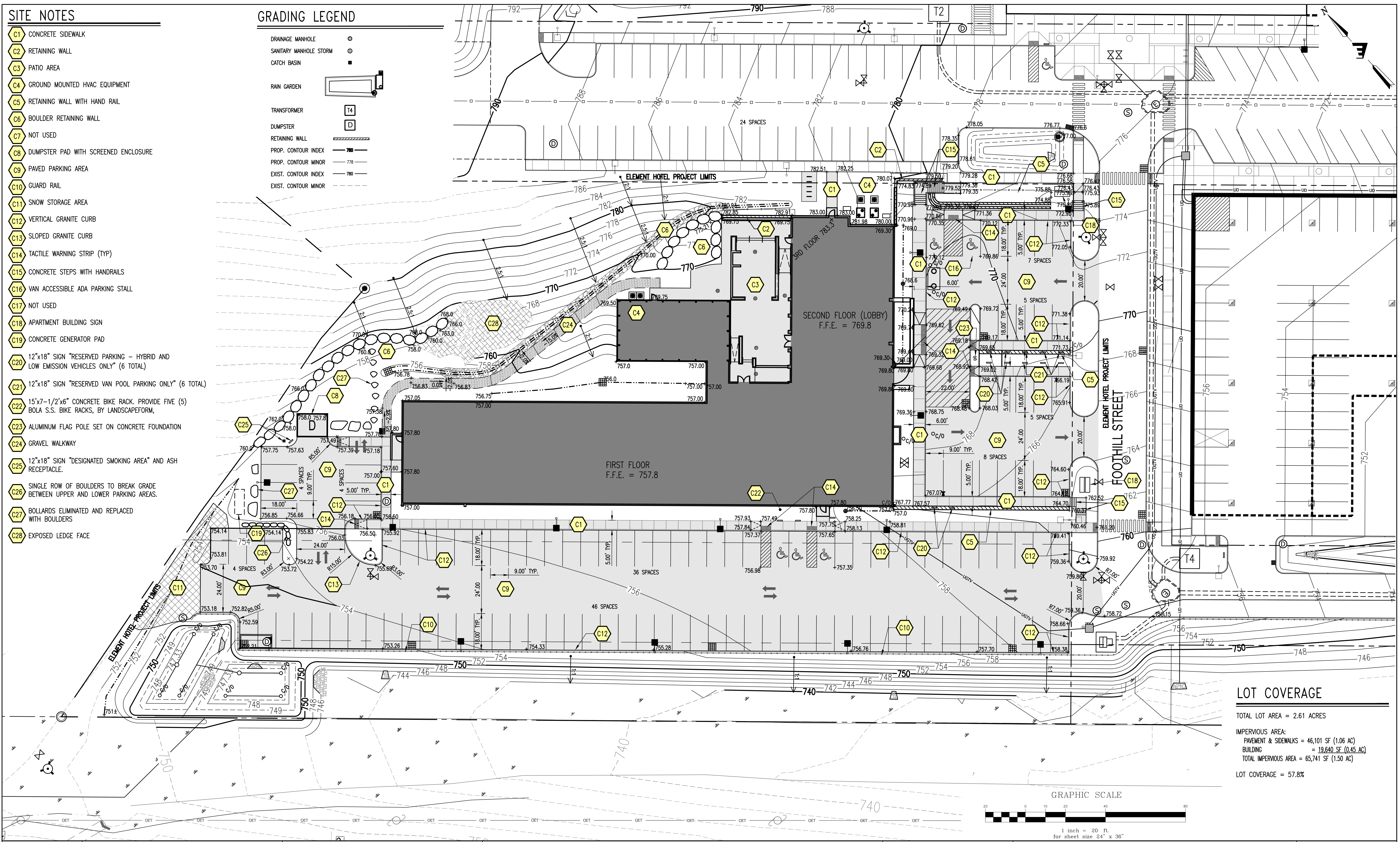
The Subdivision Regulations of the City of Lebanon and the Notice of Action are a part of the Plat, and approval of this Plat requires the completion of all the requirements of the Notice of Action and said Subdivision Regulations excepting only any modification or waiver set forth in the Notice of Action.

I HEREBY CERTIFY THAT TO THE BEST OF MY BELIEF AND KNOWLEDGE THIS SURVEYS MEETS THE NEW HAMPSHIRE URBAN CLASS SURVEY STANDARD. THE BOUNDARY LINES AND MONUMENTS SHOWN ARE CONSISTENT WITH THE REFERENCED DEEDS AND PLANS, UNLESS NOTED OTHERWISE, AND ARE THE BASIS FOR THE SURVEYOR'S OPINION OF THE BOUNDARY LINE LOCATIONS.

TIMOTHY W. ROCKWOOD
LLS. NO. 618

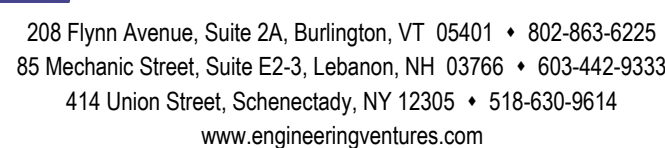
C1	CONCRETE SIDEWALK
C2	RETAINING WALL
C3	PATIO AREA
C4	GROUND MOUNTED HVAC EQUIPMENT
C5	RETAINING WALL WITH HAND RAIL
C6	BOULDER RETAINING WALL
C7	NOT USED
C8	DUMPSTER PAD WITH SCREENED ENCLOSURE
C9	PAVED PARKING AREA
C10	GUARD RAIL
C11	SNOW STORAGE AREA
C12	VERTICAL GRANITE CURB
C13	SLOPED GRANITE CURB
C14	TACTILE WARNING STRIP (TYP)
C15	CONCRETE STEPS WITH HANDRAILS
C16	VAN ACCESSIBLE ADA PARKING STALL
C17	NOT USED
C18	APARTMENT BUILDING SIGN
C19	CONCRETE GENERATOR PAD
C20	12"x18" SIGN "RESERVED PARKING – HYBRID LOW EMISSION VEHICLES ONLY" (6 TOTAL)
C21	12"x18" SIGN "RESERVED VAN POOL PARKING
C22	15"x7–1/2"x6" CONCRETE BIKE RACK. PROVIDE BOLA S.S. BIKE RACKS, BY LANDSCAPEFORM,
C23	ALUMINUM FLAG POLE SET ON CONCRETE FOUNDATION
C24	GRAVEL WALKWAY
C25	12"x18" SIGN "DESIGNATED SMOKING AREA" AND RECEPTACLE.
C26	SINGLE ROW OF BOULDERS TO BREAK GRADE BETWEEN UPPER AND LOWER PARKING AREAS.
C27	BOLLARDS ELIMINATED AND REPLACED WITH BOULDERS
C28	EXPPOSED LEDGE FACE

DRAINAGE MANHOLE
 SANITARY MANHOLE STORM
 CATCH BASIN
 RAIN GARDEN
 TRANSFORMER
 DUMPSTER
 RETAINING WALL
 PROP. CONTOUR INDEX **750**
 PROP. CONTOUR MINOR 775
 EXIST. CONTOUR INDEX **750**
 EXIST. CONTOUR MINOR ---



LOT COVERAGE = 57.8%

1 inch = 20 ft.
for sheet size 24" x 36"



Sheet Title:

Project Title:

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Drawn By:

Checked By:

Scale:

Date:

2113

No

Descr

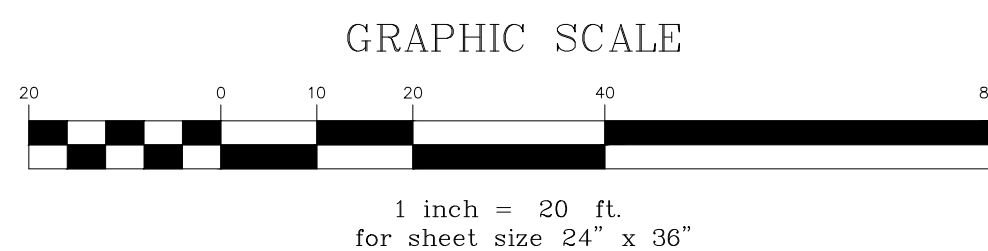
Date _____

C1.1

WATER SCHEDULE

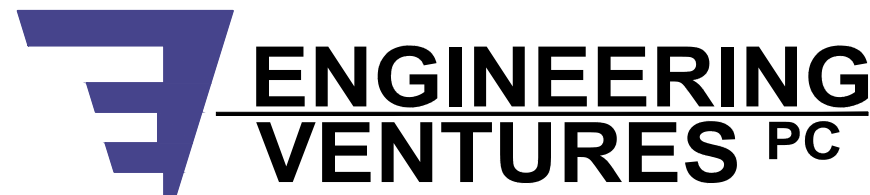
- | | | | |
|---|---|---|--|
|  | WATER LINE & APPURTENANCES |  | 6" FIRE SPRINKLER/STANDPIPE SERVICE MAIN. INV. AT BLDG=761.8 |
|  | 12"x6", D.I., REDUCING TEE, MJXMJ, & 6" GATE VALVE |  | 3" DOMESTIC WATER SERVICE MAIN. INV. AT BLDG=761.8 |
|  | 6"x3" D.I., REDUCING TEE MJXMJ WITH MECHANICAL RESTRAINTS |  | FIRE HYDRANT |
|  | 6" GATE VALVE, MJXMJ, WITH MECHANICAL RESTRAINTS | | |
|  | 3" GATE VALVE, MJXMJ, WITH MECHANICAL RESTRAINTS | | |
- 

Pipe Name	Diameter	n	s	Q25 (cfs)	Qmax(cfs)	%Qmax
ST1-ST2	12	0.010	0.020	0.39	5.46	7.14
ST2-ST3	12	0.010	0.061	1.32	9.55	13.82
ST11-ST9-GW12	12	0.010	0.034	0.48	7.07	6.79
ST17-OUTLET	12	0.010	0.010	2.00	3.84	52.08



GRAPHIC SCALE

1 inch = 20 ft.
or sheet size 24" x 36"



208 Flynn Avenue, Suite 2A, Burlington, VT 05401 • 802-863-6225
85 Mechanic Street, Suite E2-3, Lebanon, NH 03766 • 603-442-9331
414 Union Street, Schenectady, NY 12305 • 518-630-9614
www.engineeringventures.com

ALTARIA HOTEL, LLC
67 ETNA ROAD, SUITE 360
LEBANON, NEW HAMPSHIRE 03766

Sheet Title:

UTILITY PLAN

Project Title

ALTARIA - FOOTHILL STREET MICRO APARTMENTS
(FORMERLY ELEMENT HOTEL)
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE

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Drawn By:

Checked By

Scale:

Date: _____

No.

Desc

Date _____

C1.2



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

April 5, 2021 Meeting

Staff Memorandum – ZB2021-08-AAD

APPLICATION INFORMATION

Agenda Item: 3.D

Application Type:

Appeal per Section 702.2 to permit resumption of non-conforming use

Location: 215 N. Main Street (Tax Map 21, Lot 1)

Applicant/Property Owner:

XYZ Dairy, LLC

Zoning District:

Rural Lands Two (RL-2)

Property Size: +/-1.07 acres (*per the City Assessor's records; the property is non-conforming to the minimum 3-acre lot size required per §313.3 for a Class 3 lot in the RL-2 District*)

Existing Improvements/Use:

currently vacant; two one-family dwellings formerly occupied the property and were demolished in 2019

Proposed Improvements:

construction of two (2) one-family dwellings; proposed size of dwellings unknown

Overlay Districts:

- Riverbank Protection District

Previous ZBA Action (since 1995):

None

Other Approvals Required:

- Building Permit
- NH DES Shoreland Permit
- NH DES septic system approval

Attachments:

- Application (19 pages total)

HEARING NOTICE

XYZ Dairy, LLC, 215-217 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property [two (2) one-family dwelling principal buildings where only one (1) principal building is allowed in RL-2 District per Section 205]. ZB2021-08-AAD

BACKGROUND

The subject property is a 1.07 acre lot, which is non-conforming to the minimum 3-acre lot size required for Class 3 lots in the RL-2 District. Until 2019, the subject property was improved with two (2) one-family dwellings. With two principal buildings, the property was non-conforming to Section 205 of the Zoning Ordinance which provides that, "[t]here shall be only one principal structure on a lot in the residential districts." The homes as they appeared prior to demolition are shown in Figure 3 below. Based on the plot plan submitted by the applicant, it appears that one of the homes (circled in red in Figure 1 below) was non-conforming to the minimum 35 ft. side yard required for Class 3 lots in the RL-2 District (note that the plot plan incorrectly identifies the minimum required rear and side setbacks which are 30 ft. and 35 ft., respectively, per Section 313.3 of the Zoning Ordinance).

A building permit for the demolition of the two homes was issued on December 6, 2018 (#BP2018-00397). According to the applicant, the homes were demolished on April 25, 2019.

Figure 1. Excerpt of Applicant's Plot Plan.

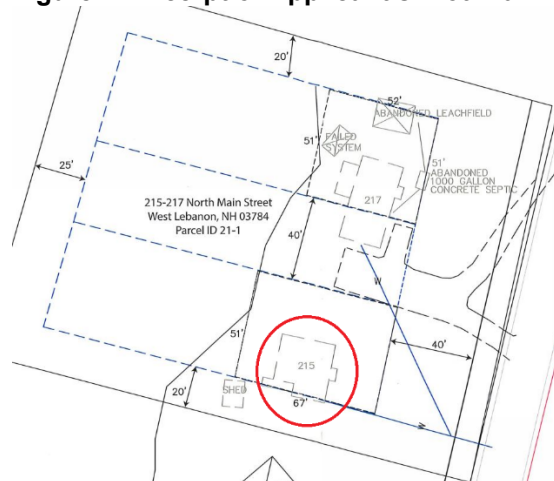
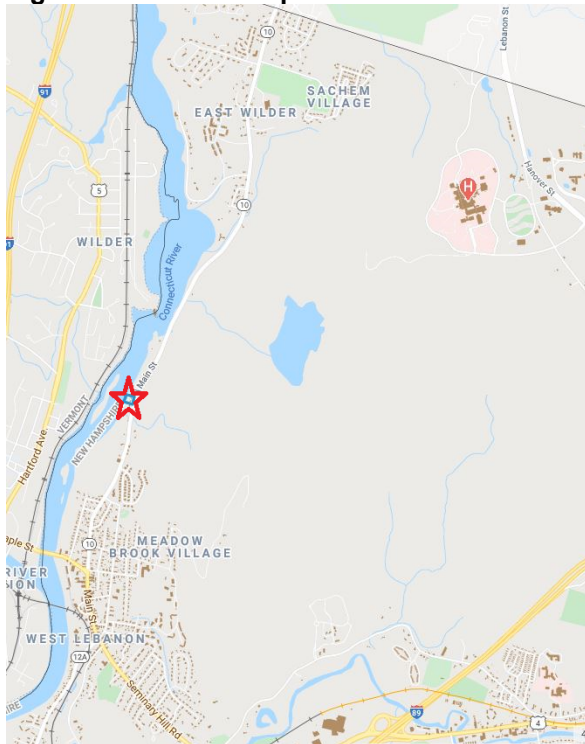
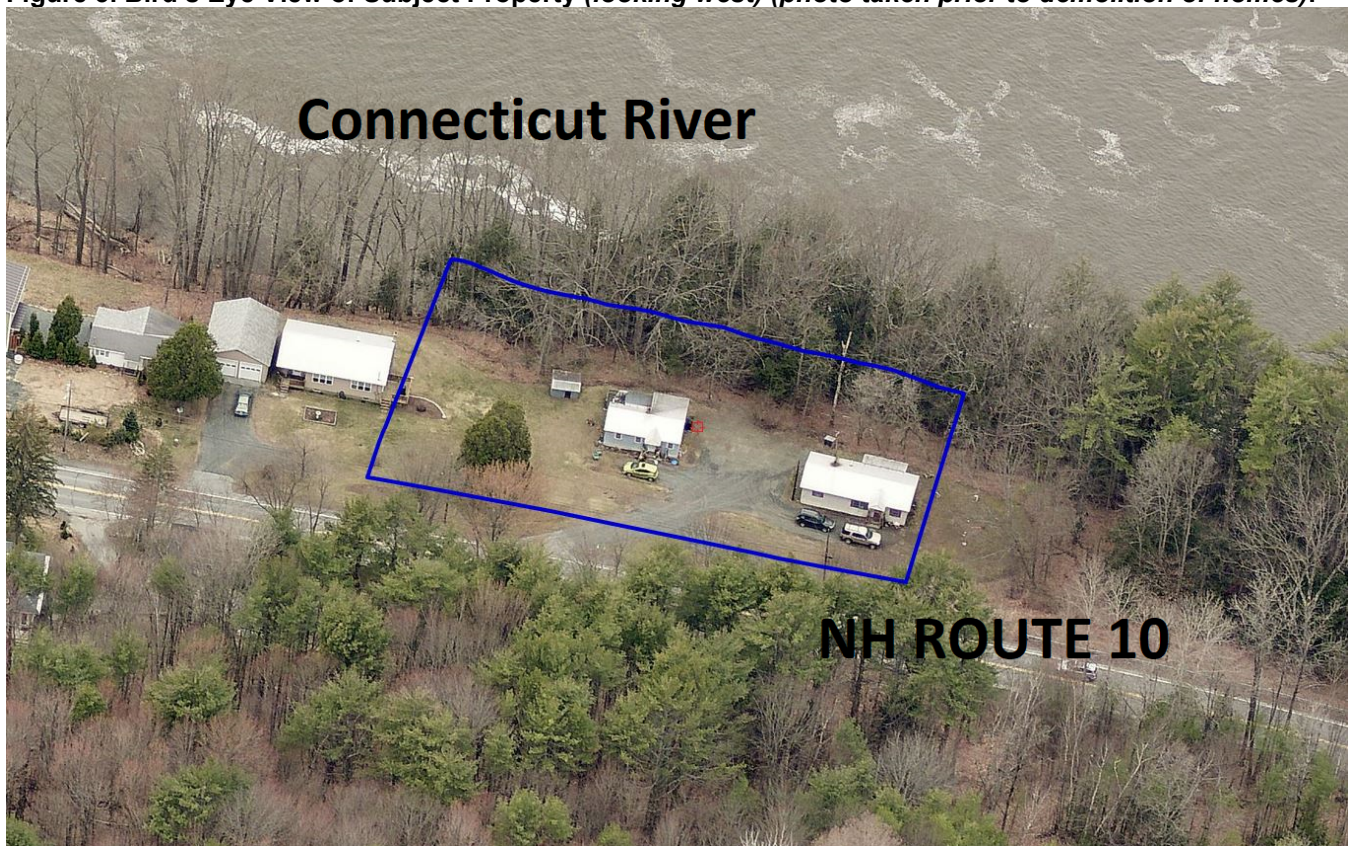


Figure 2. Location Map.



©2021 Google, <https://lebanonnh.mapgeo.io/>

Figure 3. Bird's Eye View of Subject Property (looking west) (photo taken prior to demolition of homes).



©2018 Eagleview (image taken 4/27/2018)

PROPOSAL

The applicant proposes to construct two (2) one-family dwellings on the lot, thereby resuming the non-conformity with respect to Section 205 of the Zoning Ordinance which prohibits more than one (1) principal building on properties in the residential zoning district. Because the non-conformity was not resumed within two (2) years, the proposed resumption of the two principal building non-conformity requires approval from the Zoning Board of Adjustment pursuant to Section 702.2 of the Zoning Ordinance.

ZONING ORDINANCE REQUIREMENTS

Section 702.2 of the Zoning Ordinance ("Resumption of Use") provides as follows:

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.

The building permit issued for the demolition of the homes included the following condition of approval:

CONDITIONS OF APPROVAL

Subject	Condition
Zoning Review	Buildings appear to be non-conforming uses (two principal structures on the same lot) and non-conforming to the RL-2 District dimensional regulations. Resumption of non-conforming use and reconstruction of non-conforming structure(s) must occur within two (2) years of issuance of demolition permit, and is subject to the requirements of Article VII (Non-Conformities) of the Zoning Ordinance. For questions, contact the Zoning Administrator at 448-1524.

The building/demolition permit was issued on **December 6, 2018**, and no building permit application for construction of the new dwelling has been submitted. By no measure will the non-conforming two principal building use resume with the two-year timeframe required by Section 702.2 of the Zoning Ordinance. Consequently, an appeal to the Zoning Board pursuant to Section 702.2 is required in order to allow the non-conforming use to resume.

As noted above, Section 702.2 allows the Zoning Board to approve the resumption of a non-conforming use beyond the two (2) year timeframe. In order to grant such an appeal, the Board must find:

- (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.

Please note that Section 702.3 of the Zoning Ordinance, which is referenced in the attached letter from the applicant dated March 18, 2021, is not relevant to this application. Neither is Section 702.5 which the Zoning Administrator mistakenly referenced in the attached December 9, 2020 e-mail to the applicant. The Zoning Administrator's December 9, 2020 e-mail also mistakenly quotes Section 703.2 instead of Section 702.2.

STAFF COMMENTS

Staff recommends that any approval of the applicant's appeal include conditions to:

- Establish the timeframe within which the applicant must file a complete building permit and obtain a final certificate of occupancy for both homes;
- Prior to submission of a building permit application, require the applicant to obtain all required state approvals including but not limited to NH DES shoreland and septic approval, and a driveway permit from NH DOT;
- Prior to submitting an application to NH DES for septic approval, require the applicant to first obtain approval of the septic design from the Zoning Administrator for the purpose of verifying compliance with the Riverbank Protection District requirements set forth in Section 410 of the Zoning Ordinance;
- Require that the proposed homes meet the minimum required setbacks for Class 3 lots in the RL-2 District, in addition to complying with all other applicable zoning requirements (other than Section 205).

Attachments

cc: XYZ Dairy, LLC (via e-mail)
Lyme Properties (via e-mail)
File

CITY OF LEBANON APPLICATION FOR

SPECIAL EXCEPTION ☐	SITE PLAN REVIEW ☐
VARIANCE ☐	SUBDIVISION ☐
MOTION FOR REHEARING ☐	LOT LINE ADJUSTMENT ☐
APPEAL OF AN ADMIN. DECISION ☐	CONDITIONAL USE PERMIT ☐

☒ OTHER Extension

PROPERTY OWNER (APPLICANT):

NAME: XYZ Dairy, LLC TEL.#: (603) 676-7800
MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784
E-MAIL ADDRESS: dclem@lymeproperties.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Lyme Properties TEL.#: (603) 676-7800
MAILING ADDRESS: 57 Main Street, West Lebanon, NH 03784
E-MAIL ADDRESS: chet@lymeproperties.com

PROJECT LOCATION:

TAX MAP #: 21 LOT#: 2441 PLOT #: _____ ZONE: RL2
STREET ADDRESS OF PROJECT: 215-217 N. Main St. W. Leb.
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

Extend Deadline on Permit # 2018-00397
Reconstruct two homes on one lot

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:

FOR PLANNING BOARD APPLICATIONS ONLY: I, the undersigned, hereby submit this application on the date noted below with the knowledge and understanding that the Planning Board shall determine if the submitted application is complete according to its regulations at its next regularly scheduled meeting on April 5, 2021, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: David Clem DATE: 3/18/2021

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.

PROPERTY OWNER: David Clem DATE: 3/18/2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
3/18/2021	21-1	ZB2021-	\$71.99	3-30-21	18141

08-EXT



March 18, 2021

Zoning Board of Adjustment
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: 215-217 N. Main Street - Intent to resume non-conforming use

To Whom It May Concern:

Lyme Properties is operating as the development agent for XYZ Dairy, LLC (XYZ), the owner of record of 215-217 N. Main Street, West Lebanon, NH 03784 (Parcel 21-1). This matter is related to XYZ's intent to resume the non-conforming use (two primary structures on one parcel) that was discontinued by the demolition of the two (2) previously existing manufactured homes on the parcel in April, 2019.

Firstly, it is the position of XYZ that the two-year period to resume the non-conforming use on this parcel in accordance with Section 702.3 of the Lebanon Zoning Ordinance should have commenced on April 25, 2019, the date the non-conformity was suspended by the actual demolition of the dilapidated structures. Not, as the permit states, December 6, 2018 which was the date the permit was issued. Although we acknowledge that date was included on the permit, we believe it to be erroneous. By simple logic, the issuance of a demolition permit does not constitute discontinuance of use.

On December 2, 2020 XYZ communicated to the Building and Planning Departments our intent to resume the non-conforming use at 215-217 N. Main Street, having initiated preparatory site work to facilitate the redevelopment. The response (attached) I received from Tim Corwin, Senior Planner for the City of Lebanon, on December 9, 2020 suggested that XYZ would be required to seek an extension before the ZBA.

As stated above, we do not agree that is the case. The intent of our December communication was to confirm that XYZ is able to re-build two (2) single-family homes, and confirm the buildable footprints of each, before incurring further development costs towards satisfying the requirements of a building permit. Having been unable to achieve that, and in an effort to avoid further costly delays, we have elected to advance the building permit and ZBA filing simultaneously.

Should the ZBA or Planning Staff be willing to correct this error and accept the filing of a building permit as sufficient to establish resumption of use, then the issue is moot and the remainder of this letter is unnecessary. XYZ will be filing a new building permit in April prior to the April 25, 2021 expiration date of the non-conforming two structures on Parcel 21-1.



Lyme's Intended Plans for 215-217 N. Main Street

In response to the oft-referenced local, regional, and state studies related to the deficit of housing units in the Upper Valley, Lyme Properties has been exploring numerous modular and prefabricated housing options that could serve towards addressing this shortage, while meeting the economic realities of the West Lebanon housing market where the median assessed values and recent sales values on a \$/S.F. basis are well below the current market costs of traditional stick-built new construction.

Lyme recently partnered with *Bequall*, a start-up modular housing company out of Boston and their award-winning architecture partner (CBT Architecture of Boston) and their market-leader manufacturing partner who bring over 50 years of experience building modular housing. We have formed a collaborative team working towards offsetting the rising housing costs in our cities by providing an alternative to traditional construction and design. Bequall partners with real estate professionals to rapidly produce rental housing designed for 50% of the rental market. Their entrepreneurial approach to housing production was recently covered in the *Boston Globe*¹.

XYZ has contracted to design, purchase, and install two Bequall 2-BR modular micro-loft units on Parcel 21-1, replacing the inferior housing that previously existed. The Bequall BePod units will be inspected and certified at the factory to meet State and Local building codes for New Hampshire. The Bequall units are intentionally designed to be highly energy efficient, communicate with the natural surroundings of this unique parcel, and facilitate enjoyment of the outdoors with a focus on private and common outdoor space. Much in line with the broader goals of our River Park project just down the street, and we intend this project to serve as an experiment that can help inform future housing development efforts in the Upper Valley.

Mobilizing efforts for the redevelopment of this parcel took place in 2020 but were impacted by the Covid-19 pandemic and the shortage of materials and labor during an abnormal and busy year for Upper Valley contractors. Site work to enable the resumption of use was initiated in December, 2020, with exploratory septic work conducted in advance of December 6, 2020 by XYZ's Site Work subcontractor at the direction of XYZ's Civil Engineer, Pathways Consulting. Having properly abandoned the previous system in accordance with the requirements of the demolition permit, XYZ and Pathways have been consulting with the New Hampshire Department of Environmental Services (NHDES) to ensure the new wastewater solution is in compliance with present standards and correctly located given the topography of the site.

Resumption of Non-Conforming Use

In accordance with the response I received from Tim Corwin, Senior Planner for the City of Lebanon, on December 9, 2020 I am appealing to the Zoning Board of Adjustment per Section 702.3 of the Zoning Ordinance:

¹ <https://www.bostonglobe.com/2021/01/03/business/could-you-live-this-330-square-foot-pod-apartment/>



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.

XYZ Dairy, LLC intends to resume the non-conforming use and structures of two single-family residential units at 215-217 N. Main Street, West Lebanon, NH 03784 (Parcel ID 21-1). The planned construction of two principal structures on the same lot is in keeping with the non-conformity of the previously existing condition outlined in City of Lebanon Building Permit #2018-00397.

The professional remediation and demolition was completed on April 25, 2019, as communicated by Angela McCanna of Lyme Properties to City of Lebanon Assessor Rick Vincent on April 29, 2019 (communication attached).

Enclosed please find the requisite application materials for an extension of the two (2) year period to resume the non-conforming use per Building Permit #2018-00397 issued December 6, 2018 (attached). Much of the below is a recitation of my December 2, 2020 communication to Calvin Hunnewell, Building Inspector for the City of Lebanon, which is also attached for reference.

Previous Condition

Parcel 21-1 was previously improved with two, independent, single-family homes when XYZ Dairy, LLC purchased the property on November 15, 2012. XYZ purchased this parcel and these structures as rental properties, and towards facilitating the goal of a contiguous trail corridor running north from the publicly accessible waterfront parcel at River Park, to connect with the conservation land and trail network at the Wilder Hydroelectric Dam and Boston Lot Lake property. Those recreational connectivity plans are outlined at www.friendsofriverpark.org and were presented to the Lebanon Conservation Commission on November 11, 2019.

Each structure on Parcel 21-1 was previously inhabited as a single-family home with the Lebanon street addresses of 215 N. Main Street and 217 N. Main Street, respectively. Following XYZ's purchase, each structure was leased for numerous years as independent, residential rental properties. Boxer Property Management of West Lebanon oversaw the leasing and property management of each unit.

In 2018 the condition of the two structures, which were manufactured homes built circa 1966, had deteriorated to the point that XYZ Dairy, LLC elected to demolish them. This would allow XYZ to



redevelop the two structures in a manner more in keeping with the demands of the Upper Valley's residential rental market. This decision was made in conjunction with XYZ Dairy's other West Lebanon projects in an effort to achieve associated efficiencies and cost-savings.

Lyme Properties, in its role as Development Agent for XYZ Dairy, LLC, subsequently spent 2019 focused on completing the Crafts Avenue Sewer & Roadway Improvement project, and an 11-month process before the Lebanon Planning Board to amend the River Park phasing plan to expedite the approved multi-family housing component of the River Park West Lebanon project. Both were, to various degrees, efforts to enable construction of additional housing units in Lebanon in keeping with the espoused goals of Local, Regional, and State planners.

In 2020 we mobilized for the commencement of construction of Phase 1 of River Park, only to have work suspended in April, 2020 following a declaration of emergency due to the COVID-19 pandemic. The Crafts Avenue Extension utility and roadway work to perfect the single-family home sites at River Park fell outside the restrictions and was deemed complete by the City of Lebanon on July 28, 2020. The construction of commercial and residential structures remained suspended throughout 2020 given both the public health concerns and financial uncertainty associated with the pandemic.

Redevelopment efforts of Parcel 21-1 were similarly affected by the unprecedented impacts of the COVID-19 pandemic. Rising construction costs, material shortages, and broader market uncertainty beyond XYZ's control contributed to the failure to continue or re-establish the use during the two-year period.

However, as stated above, XYZ proceeded with Civil Engineering work necessary to resume the non-conforming use prior to the December 6, 2020 expiration, via an engagement with Pathways Consulting, LLC and in consultation with the New Hampshire Department of Environmental Services (NHDES).

Although the past two years have not gone according to our plans, the plan for Parcel 21-1 remains functionally the same: the reconstruction of the non-conforming uses (two (2) principal structures on the same lot) and non-conforming to the RL-2 District dimensional regulations. As such, we request that the ZBA issue an extension to ***permit the re-establishment of the same use as no action incorporating an intent to abandon the non-conforming use has been taken by the owner.***

The non-conformity to the RL-2 District dimensional regulations as stated in Permit #2018-00397 deserves additional attention, and we request determination from the Zoning Board of Adjustment before proceeding. Other than there being two primary structures on a single lot (which is additionally non-conforming to Minimum Lot Area and Minimum Lot Frontage), the only other known dimensional non-conformity was an encroachment on the 20' side-yard setback by the 215 N. Main primary structure and detached shed.



The proposed reconstruction will correct the side-yard setback issue and otherwise respect the front/side/rear yard setbacks, maximum height, and building coverage limitations in Section 313.3 of the City of Lebanon Zoning Ordinance. As the attached *Proposed Buildable Footprints For 215 & 217 N. Main Street* illustrates, there is adequate space to maintain a 40' buffer between the buildings (20' side-yard setback per structure). The resultant buildable footprints allow for the installation of the two Bequall units in a manner reflected in the attached progress-print renderings.

Sincerely,

Chet Clem
President
Lyme Properties 2, LLC
57 Main Street
West Lebanon, NH 03784

Cc:

David Clem, Lyme Properties
Angela McCanna, Lyme Properties
Philip Hastings, Attorney, Cleveland, Waters & Bass

Attachments:

December 2, 2020 Letter to Hunnewell
December 9, 2020 Response from Corwin
Building Permit #2018-00397, as issued on December 6, 2018
April 25, 2019 Email to Vincent
Proposed Buildable Footprint Areas
CBT Schematic Design (progress print) for Bequall Bepod Microlofts at 215-217 N. Main Street



December 2, 2020

Calvin Hunnewell
Lebanon Building Department
City of Lebanon
51 N Park Street
Lebanon, NH 03766

Re: Resumption of non-conforming use at 215-217 N. Main Street, West Lebanon, NH 03784

Mr. Hunnewell,

This letter is to signify XYZ Dairy, LLC's intent to resume the non-conforming use and structures of two single-family residential units at 215-217 N. Main Street, West Lebanon, NH 03784 (Lebanon Parcel ID 21-1). The planned construction of two principal structures on the same lot is in keeping with the non-conformity of the previously existing condition outlined in City of Lebanon Building Permit #2018-00397, as issued on December 6, 2018, attached and excerpted herein.

Description of Work: DEMO TWO HOMES ON ONE LOT. NO REPLACEMENT @ THIS TIME	
CONDITIONS OF APPROVAL	
Subject	Condition
Zoning Review	Buildings appear to be non-conforming uses (two principal structures on the same lot) and non-conforming to the RL-2 District dimensional regulations. Resumption of non-conforming use and reconstruction of non-conforming structure(s) must occur within two (2) years of issuance of demolition permit, and is subject to the requirements of Article VII (Non-Conformities) of the Zoning Ordinance. For questions, contact the Zoning Administrator at 448-1524.

Figure 1: Zoning Review, City of Lebanon Building Permit 2018-00397, 12/6/2018

Parcel 21-1 was improved with two, independent, single-family homes when XYZ Dairy, LLC purchased the property on November 15, 2012. XYZ purchased this parcel and these structures as rental properties, and to facilitate the long-term goal of a contiguous trail corridor running north from River Park to connect with the conservation land and trail network at the Wilder Hydroelectric Dam and Boston Lot Lake property. Those recreational connectivity plans are outlined at www.friendsofriverpark.org and were presented to the Lebanon Conservation Commission on November 11, 2019.

Each structure on Parcel 21-1 was previously inhabited as a single-family home with the Lebanon street addresses of 215 N. Main Street and 217 N. Main Street, respectively. Following XYZ's purchase, each structure was leased for numerous years as independent, 3-bedroom, residential



rental properties. Boxer Property Management of West Lebanon oversaw the leasing and property management of each unit.

In 2018, given the deteriorating condition of the two structures, XYZ Dairy, LLC elected to demolish and redevelop the two structures in a manner more in keeping with the demands of the Upper Valley's residential rental market. This decision was made in conjunction with XYZ Dairy's other West Lebanon projects in an effort to achieve associated efficiencies and cost-savings.

Lyme Properties, in its role as Development Agent for XYZ Dairy, LLC, subsequently spent 2019 focused on completing the Crafts Avenue Sewer & Roadway Improvement project, and an 11-month process to amend the River Park phasing plan to expedite the approved multi-family housing component of the River Park West Lebanon project. Both were, to various degrees, efforts to enable construction of additional housing units in Lebanon in keeping with the espoused goals of Local, Regional, and State planners.

In 2020 we mobilized for the commencement of construction of Phase 1 of River Park, only to have work suspended in April, 2020 following a declaration of emergency due to the COVID-19 pandemic. The Crafts Avenue Extension utility and roadway work to perfect the single-family home sites at River Park fell outside the restrictions and was deemed complete by the City of Lebanon on July 28, 2020. The construction of commercial and residential structures remained suspended throughout 2020 given the health concerns and financial uncertainty associated with the pandemic.

Although the past two years have not gone according to our plans, the plan for Parcel 21-1 remains functionally the same. In accordance with Section 702.2 of the City of Lebanon Zoning Ordinance, XYZ Dairy, LLC will resume the non-conforming use of two primary structures within the two (2) year window since the discontinuance.

Building permit #2018-00397 for demolition was issued on December 6, 2018, which enabled the preparatory work to proceed. However, the actual discontinuation of the non-conforming use did not occur until the demolition was completed on April 25, 2019, as was reported by email to the City of Lebanon on April 29, 2019. Thusly, it is XYZ's position that the 2-year discontinuation period should not expire until April 25, 2021, despite the Zoning Review of the building permit stating otherwise.

Nonetheless, XYZ has already commenced work on-site in advance of the December 6, 2020 anniversary to enable the resumption of use, with the bulk of construction anticipated to occur when weather conditions permit in the Spring of 2021. A complete application for a building permit from the City of Lebanon will be submitted accordingly. Hopefully there will not be additional Covid-19 restrictions beyond our control that cause additional delays.

It is my hope that the Building Department is in agreement with these circumstances and the time-clock, and that we can avoid engaging the Zoning Board of Adjustment per Section 702.2 to



demonstrate "no action incorporating an intent to abandon the non-conforming use has been taken" and that "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."

We appreciate the City of Lebanon's prompt review of this matter and ask that any questions or comments be directed to my attention as soon as possible so that we may finalize building plans accordingly and align requisite trades in preparation for the Spring 2021 construction season.

Sincerely,

Chet Clem
Lyme Properties 2, LLC
57 Main Street
West Lebanon, NH 03784

Cc:

David Brooks, City of Lebanon
Angela McCanna, Lyme Properties
David Clem, Lyme Properties
Phil Hastings, Cleveland, Waters and Bass, P.A.

Attached:

December 6, 2018 Building Permit #2018-00397

CITY OF LEBANON
Building Permit

Lebanon, NH 03766
603-448-1524
www.lebanonNH.gov

Permit Number
2018-00397

Date of Issue
12/06/2018

Owner: DAVID CLEM
Applicant: DAVID CLEM

Location of Work: 215 N MAIN ST & 217 N MAIN ST
(No. and Street) (Unit or Building)

Description of Work: DEMO TWO HOMES ON ONE LOT. NO REPLACEMENT @ THIS TIME

ZONING DATA: District: RL2 - RL2

Map\Lot: 21-1

CONTRACTOR: RAYMOND NOTT

REMARKS:

THIS PERMIT IS BEING ISSUED WITH THE FOLLOWING CONDITIONS:
SEE ATTACHED CONDITIONS LIST

WORK SHALL NOT PROCEED UNTIL THE CITY INSPECTORS HAVE APPROVED THE FOLLOWING STAGES OF CONSTRUCTION:

1. Foundation footings, forms and reinforcements. Lot pins must be in place at this inspection to assure the setback requirements are met. If the pins are not there or the setbacks cannot be verified, the construction will not be approved or allowed to continue. Mistakes in the location of boundary lines are the sole responsibility of the owner. **DO NOT POUR CONCRETE UNTIL THE ABOVE HAS BEEN APPROVED!**
2. Foundation insulation, waterproofing and drainage, prior to backfilling.
3. Structural rough frame, rough electrical and rough plumbing, prior to covering.
4. Prior to concealing any work authorized under this permit.
5. Final Inspection for Certificate of Occupancy, to include plumbing, heating, electrical, and any other code issue or miscellaneous item as applicable to the project including site improvements. **PLEASE SCHEDULE THIS AT LEAST 5 DAYS IN ADVANCE.**

A building or structure shall not be used or occupied in whole or in part until a **CERTIFICATE OF OCCUPANCY** has been issued.

APPROVED PLANS MUST BE KEPT AT THE JOB SITE – THIS CARD MUST BE KEPT UNTIL POSTED UNTIL FINAL INSPECTIONS HAVE BEEN COMPLETED

Permit Holder: DAVID CLEM

(Taking Responsibility for the work)

Company/Affiliation: XYZ DAIRY LLC

Job Site Phone Number: 603 676 7800 X1

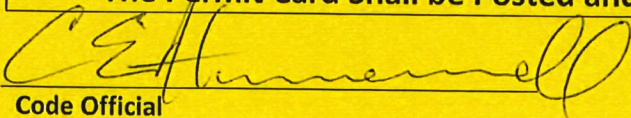
Constr Cost: \$3000

Permit Fee: \$58.00

Check No.: 2548

Cash: \$0.00

The Permit Card Shall be Posted and Visible From the Street During Construction


Code Official

12/6/2018

Date

CITY OF LEBANON
Building Permit

Lebanon, NH 03766
603-448-1524
www.lebanonNH.gov

Permit Number
2018-00397

Date of Issue
12/06/2018

Owner: DAVID CLEM
Applicant: DAVID CLEM

Location of Work: 215 N MAIN ST & 217 N MAIN ST (Map 21/Lot 1)
(No. and Street) (Unit or Building)

Description of Work: DEMO TWO HOMES ON ONE LOT. NO REPLACEMENT @ THIS TIME

CONDITIONS OF APPROVAL

Subject	Condition
Zoning Review	Buildings appear to be non-conforming uses (two principal structures on the same lot) and non-conforming to the RL-2 District dimensional regulations. Resumption of non-conforming use and reconstruction of non-conforming structure(s) must occur within two (2) years of issuance of demolition permit, and is subject to the requirements of Article VII (Non-Conformities) of the Zoning Ordinance. For questions, contact the Zoning Administrator at 448-1524.
Fire Dept Review	1. Structures undergoing construction, alterations, or demolition operations including those in underground locations shall comply with NFPA 241 standard for Safeguarding construction, alterations and demolition operations. 2. Call when completed.
Building Dept Review	Septic tank is required to be properly abandoned. Make sure the electrical services and all other utilities have been discontinued prior to demolishing the buildings.

From: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Date: December 9, 2020 at 2:13:02 PM EST
To: chet@lymeproperties.com
Subject: FW: 215-217 N. Main Street - Intent to resume non-conforming use

Hi Chet –

I'm following up from the e-mail that you sent to Calvin Hunnewell last week regarding 215 N. Main Street (Tax Map 21, Lot 1). Thank you for the letter that you provided regarding your intent to resume the non-conforming use (two principal structures on the lot). I assume that your intent is to build two (2) new one-family dwellings. If that's not the case, please let me know.

In order to resume the non-conformity, you'll need to apply to the [Zoning Board of Adjustment](#) as required per [Section 702.5 of the Zoning Ordinance](#) which provides that:

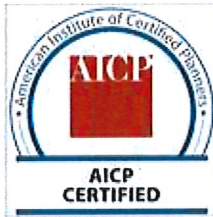
Any non-conforming building or non-conforming structure which is partially or wholly destroyed by reason of any cause whatsoever [...] may be resumed or restored and operated in its former non-conformity if same is done within two (2) years; thereafter, any non-conforming building or structure shall 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. (emphasis added)

I appreciate the detail that you provided in the letter, but because the use did not resume within two years of the issuance of the demolition permit, an appeal to the Zoning Board is required. For your reference, a similar appeal was heard (and approved) by the Zoning Board in 2018 for a demolished non-conforming structure at 3 Green Street (the staff memo to the Board and the application materials for that case [can be found on-line here](#)).

To apply for Zoning Board approval, please submit an [application form](#), a written narrative describing your request and addressing the criteria set forth in Section 702.5, [an abutters list](#), and a [fee schedule](#), as well as any other materials that you believe would be helpful. The Zoning Board's 2021 application deadline and meeting schedule [can be found on-line here](#).

Thank you Chet. If you have any questions or would like to discuss, please don't hesitate to let me know. -
Tim

Tim Corwin, AICP
Senior Planner
City of Lebanon 51 North Park Street Lebanon, NH 03766 603-448-1524 x1445
tim.corwin@lebanonnh.gov
www.lebanonnh.gov



NOTICE: THIS E-MAIL AND ANY REPLY TO THIS E-MAIL MAY BE CONSIDERED A "GOVERNMENTAL RECORD" PER NH RSA 91-A:1-A. THE CITY OF LEBANON IS REQUIRED TO MAKE GOVERNMENTAL RECORDS AVAILABLE TO THE PUBLIC UPON REQUEST, IN ACCORDANCE WITH NH RSA 91-A:4. THE CITY IS ALSO REQUIRED TO RETAIN GOVERNMENTAL RECORDS FOR MINIMUM PERIODS OF TIME AS SET FORTH IN NH RSA 33-A:3-A.

From: David Brooks <David.Brooks@lebanonnh.gov>
Sent: Tuesday, December 8, 2020 12:33 PM
To: Tim Corwin <Tim.Corwin@lebanonnh.gov>
Subject: FW: 215-217 N. Main Street - Intent to resume non-conforming use

David

DAVID R. BROOKS
DIRECTOR OF PLANNING & ZONING
CITY OF LEBANON

From: Chet Clem <chet@lymeproperties.com>
Sent: Wednesday, December 2, 2020 4:52 PM
To: Calvin Hunnewell <Calvin.Hunnewell@lebanonnh.gov>; David Brooks <David.Brooks@lebanonnh.gov>
Cc: Angela McCanna <angela@lymeproperties.com>; David Clem <dclem@lymeproperties.com>; Philip Hastings <hastingsp@cwbp.com>
Subject: 215-217 N. Main Street - Intent to resume non-conforming use

Mr. Hunnewell,

Please see the attached memo outlining our intent to proceed with resuming the non-conforming use at 215-217 N. Main Street (Lot 21-1). After the many delays of 2020 we have initiated work on the site and will file the building permit once it is fully informed.

Thank you,

Chet Clem
President
Lyme Properties

chet@lymeproperties.com
(603) 676-7106 (direct)
(207) 576-1410 (mobile)
www.lymeproperties.com
www.riverparkwestlebanon.com
it's easy being green



Angela McCanna <angela@lymeproperties.com>

XYZ DAIRY LLC: 215/217 North Main Street

1 message

Angela McCanna <angela@lymeproperties.com>
To: "Vincent, Rick" <rick.vincent@lebanonnh.gov>
Cc: David Clem <dclem@lymeproperties.com>

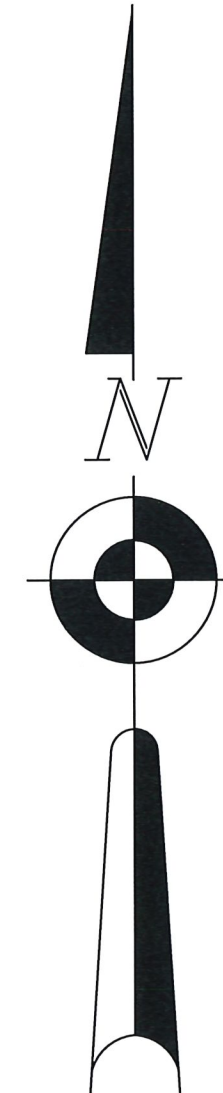
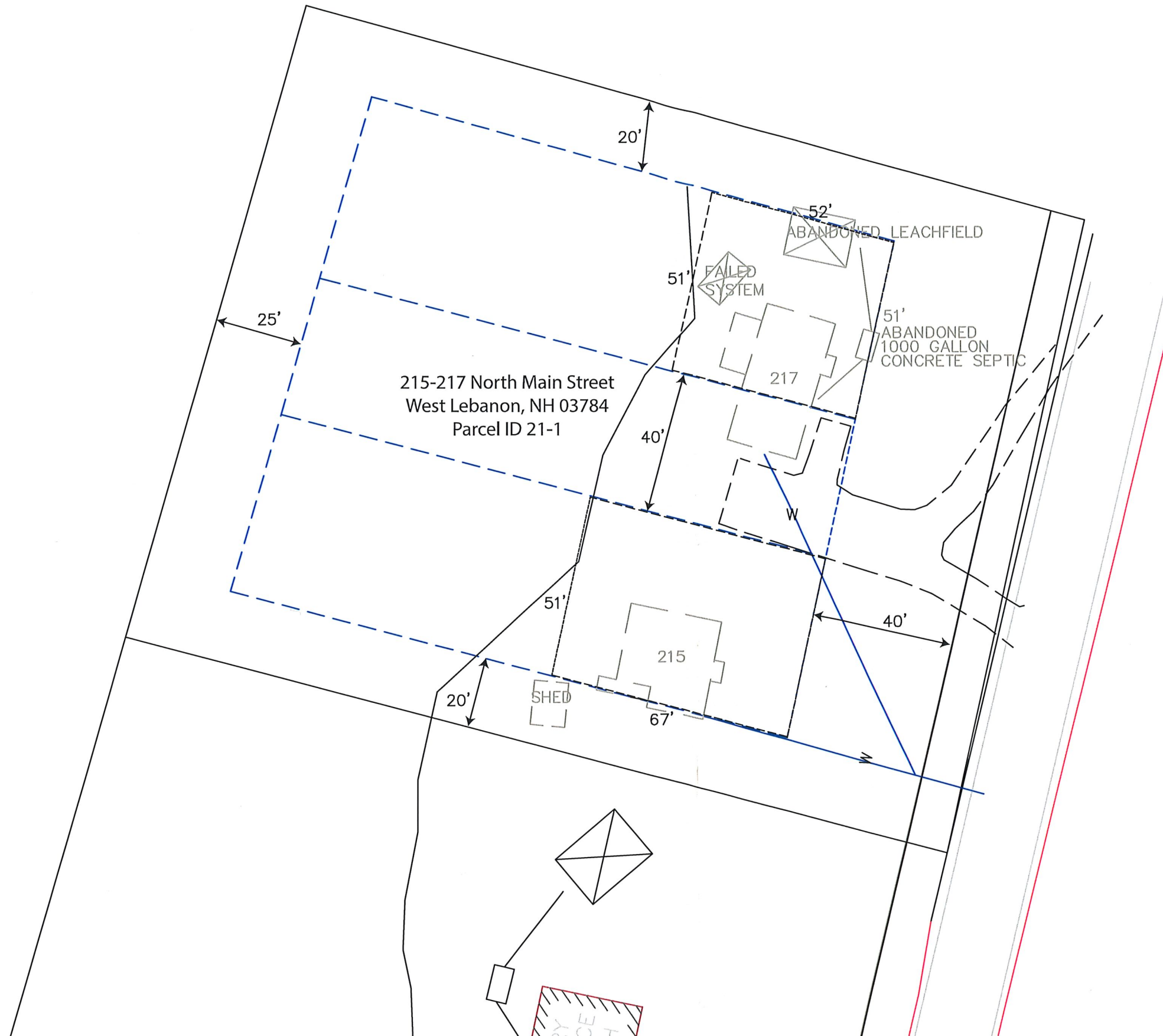
Mon, Apr 29, 2019 at 11:24 AM

Hi Rick,
Please note that all structures (on Parcel ID 21-1) were demolished per our demo permit from the City on April 25, 2019 due to their deteriorated and unsafe condition.

Thank you,
Angela

ANGELA McCANNA | EXECUTIVE ASSISTANT TO DAVID CLEM | (603) 676-7042
LYME PROPERTIES 2 LLC

57 Main Street
West Lebanon, NH 03784
Main: (603) 676-7800 Fax: (603) 676-7810
www.lymeproperties.com



Proposed Buildable Footprints

Owner:
XYZ Dairy, LLC
57 Main Street
West Lebanon, NH 03784
(603) 676-7800

Date: 3/18/2021







