



**LEBANON ZONING BOARD OF ADJUSTMENT
MAY 3, 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. April 5, 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 April 5, 2021**
- B. **Diane Doe, 5 Richardson Place (Tax Map 8, Lot 9), zoned R-3:**
Applicant requests a Variance from Article II, Section 201.7 of the Zoning Ordinance to allow additional parking spaces within the minimum required 20 ft. front yard. **ZB2021-04-VAR - Continued from February 1, 2021**
- C. **Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67) and 82 Mascoma Street (Tax Map 106, Lot 67, Plot 701), zoned R-3:** 82 Mascoma Street currently conforms with the 10,000 sq. ft. minimum required lot size. The applicant proposes a boundary line adjustment between the subject properties that will reduce the size of 82 Mascoma Street to +/-8,414 sq. ft. To allow the proposed boundary line adjustment, the applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot area to less than the minimum required) and from Article III, Section 309.3 of the Zoning Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District). **ZB2021-09-VAR**
- D. **Providence Presbyterian Church, 99 Maple Street (Tax Map 59, Lot 14), zoned R-3:** Applicant requests a variance from Section 608.4.B.2 of the Zoning Ordinance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum sign area permitted for a single use. **ZB2021-10-VAR**
- E. **Michael McCarthy, 29 Summer Street (Tax Map 76, Lot 166), zoned R-3:** Applicant requests a Special Exception pursuant to Article III,

Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling. **ZB2021-11-SE**

- F. **Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 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 . **ZB2021-12-AAD**

- G. **Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2:** An appeal pursuant to Article VIII, Section 801.1 of the Zoning Ordinance regarding a communication made by the Zoning Administrator on April 7, 2021 in regard to a building permit application filed by Lyme Properties on April 6, 2021 for the subject property. **ZB2021-13-AAD**

- H. **Christopher & Erin Audino, 18 Peabody Street (Tax Map 90, Lot 49), zoned R-1:** Applicant proposes to construct a 10 ft. by 16 ft. covered porch onto the side of the existing non-conforming home, which is located +/- 0 ft. from the front lot line. The proposed porch will be located entirely within the minimum required 20 ft. front yard required for Class 1 lots. To permit the expansion of the non-conforming home, the applicant requests a Special Exception pursuant to Article VII, Section 703.1 of the Zoning Ordinance. **ZB2021-14-SE**

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 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
May 3, 2021**

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

April 5, 2021

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, April 5, 2021
7:00 PM**

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

MEMBERS ABSENT: Alan Patterson Sr.

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:03 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. March 1, 2021

*Vice Chair Mercer MOVED to approve the March 1, 2021 Minutes as presented in the April 5, 2021 agenda packet with amendments.
Seconded by Mr. Nash.*

Amendment: Page 1, Line 34; Correct spelling of ‘Bated’ to ‘Baited.’ Page 6 Line 36; Remove ‘unanimously.’

Mr. McDonough was appointed voting privileges for this Motion.

Roll Call Vote

*Mr. McDonough, Mr. Katz, 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** – Continued from March 1, 2021

Mr. Newlove was appointed voting privileges for this hearing.

1 Mike Donnelly, William Beattie Sr. and William Beattie Jr. appeared on behalf of the application.
2 They have submitted additional materials to answer some of the questions raised at the previous
3 hearing.
4

5 The Board asked the applicants about their plans to eliminate the light spill over. Bill Beattie, Jr
6 responded that the lights that were on last winter are now on a timer that will shut off earlier. There
7 are shields to push the light to the ground. They intend that the lights would be off by 7 PM, when
8 they plan to close in the winter. There were some malfunctions that kept the lights on later this year.
9

10 The applicants were asked about their intentions for the trailer. They intend to have a way to get
11 mobile and extend their services to other events, such as ice cream nights during little league. And
12 they may be able to sell ice cream from the trailer, right at the location, especially during busy times
13 at the restaurant. They still have a window to serve ice cream from the building.
14

15 The Baited Hook is located in a residential rural zone, and it is already a non-conforming use. The
16 applicants were asked if they are willing to have conditions imposed, similar to what they have
17 discussed in their application. Special Exceptions extend to future owners if the property changes
18 hands. It is important to make sure that in the future the level of business that is anticipated with this
19 application would not increase. The applicants said their indoor capacity is dictated by the fire
20 department. The Fire Marshall also limits the capacity on the deck, it is about the safety of the
21 structure. Customers eat at docks, in boats, in their cars, on the deck, at the picnic tables as well as in
22 the indoor areas. When their facilities are full, there is room for upwards of another 50 people on the
23 lawns in various locations on the property.
24

25 The hours they are requesting to operate are 11 AM to 9 PM during the summer and less during the
26 winter. They could open earlier than 11 AM, but do not intend to at this time. The applicants would
27 like to retain some flexibility in the summer and would like to stay open past 9 on some days. In the
28 summertime customers like to come later in the evening. Typically, customers continue to sit outside
29 after 9. In the past, Baited Hook served alcohol, but they do not intend to include alcohol services.
30

31 The applicants stated in the memo they submitted that the outdoor lights would be turned off no later
32 than one hour after closing. That would be 7:30 in the winter and 8:30 in the summer. It seems they
33 are saying these would be the closing hours and it was asked why those would not be the hours that
34 the Board approves. They responded that in the Winter they would close around 8. In the summer
35 they close the restaurant at 8:30 and the ice cream station closes by 9 PM. People stay later eating the
36 ice cream. They have some ambient lights that they keep turned on after closing. The applicants
37 were asked if they would accept the condition that they would stop taking orders for meals by 8:30
38 and ice cream by 9:00. Mr. Donnelly is asking that there be no time limitations, but they could live
39 with the condition. Mr. Beattie said they could operate with the limitation of closing by 9 PM and
40 lights out by 9:30.
41

42 **Chair Koppenheffer opened the Public Hearing.**
43

44 Mr. Robert Marchione, owner of the abutting property and year-round resident said he is concerned
45 about the congestion on the road when the Baited Hook is open. In the last 10 years he has never
46 seen the restaurant open all year long, until this year. In the summertime it is not usual to have 20
47 cars parked for services. The parking lot is inadequate. There is not enough parking for the number
48 of cars that are there. Cars are parked along the road. In the winter, there is no room to walk along
49 the edge of the road. The snow on the side of the road makes it worse for people and cars. Cars have
50 to back out onto the highway to get out of the parking lot.
51

1 The additional lighting during the Winter was more than he anticipated. This is a residential area. He
2 asked for specifics and the restrictions on the existing seasonal permit. Staff responded that the
3 applicants are permitted to operate at the same level of use that was allowed for the business at the
4 time that the business became non-conforming. It would be grandfathered to the applicants.

5 Mr. Corwin asked about the materials that Mr. Marchione said he submitted before the first hearing.
6 There is concern that the Board should have access to the materials that were submitted and due to
7 some error were not distributed to the Board.

8
9 The Board recessed at 7:35 until 7:41, to allow Mr. Corwin time to check the records.

10
11 Mr. Corwin confirmed that the area along Route 4A and Mascoma Lake was previously zoned
12 neighborhood commercial and rezoned to RL-2 in 2018. A restaurant was permitted by special
13 exception in the neighborhood commercial district and it became non-conforming when it was
14 rezoned. The extent of the restaurants level of operations is what is permitted and may continue by
15 legal right. It is the burden of the applicant to show what level of service was in place at that time.
16 Mr. Corwin also pointed out that Mr. Marchione's materials were not received, and he would like the
17 Board to see those materials before making a decision. If there is anything specific that needs to be
18 added as a special condition, it should be added in the Board's approval, rather than relying on the
19 testimony of the applicant. What the applicant states in testimony, is a condition, but it is better to
20 have it stated as a condition of approval. One condition that the Board may want to consider is
21 whether or not to get a site plan approval from the Planning Board. He is not sure if that is a
22 requirement. If there is value from that process, the Board could make it a condition. He reflected on
23 the additional materials that were provided, and he believes it should specifically state the exact
24 number of parking spaces that are available and where the trailer would be parked. Further, he is not
25 sure if the trailer is covered by Section 702.5. He does not know if that is considered an expansion of
26 the existing use.

27
28 Mr. Marchione will resubmit the package of materials that he previously submitted. He will send it
29 electronically, and he will resubmit the materials within two weeks.

30
31 Chair Koppenheffer asked the applicants to get a written statement from the previous owners, stating
32 how the restaurant operated at the time the applicants purchased it. This will help the Board
33 determine what kind of permission the applicants need from the Board. The Board would like a site
34 plan with measurements drawn to scale; the actual number and measured parking spaces related to the
35 parking requirements, testimony where the ice cream trailer is going to be parked, and an assurance
36 that the parking is not in the road right of way.

37
38 *Mr. Nash MOVED to continue this Hearing to the next meeting, Monday May 3, 2021 at 7:00 PM.*
39 *Seconded by Mr. Newlove.*

40
41 **Roll Call Vote**

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

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

- 45
46 **B. 10 School Street, LLC, 10 School Street (Tax Map 92, Lot 5), zoned R-2:** Applicant
47 requests a Variance from Article III, Section 309.3 of the Zoning Ordinance to construct an
48 exterior stairway to be located +/- 16 ½ ft. from the rear property line where 20 ft. is the
49 minimum required. **ZB2021-06-VAR**

1 **Mr. McDonough was appointed voting privileges for this hearing.**

2
3 Jordan Romano appeared on behalf of the application. He purchased the building with 3 dwelling
4 units, at 10 School Street. He is renovating the top of the 2-car garage to change the rear upstairs 1-
5 bedroom unit to a 2-bedroom unit. The current stairway to one of the units is very narrower and goes
6 through the building. He would like to build a better entrance and egress for the rear apartment. He
7 feels it would not be visible to anyone as it would be by his fence and it would be obscured by the
8 trees. He believes it is the only safe and reasonable location on the property. The applicant chose to
9 make the changes to the stairway because he feels the existing stairs are not to code, are too narrow
10 and not safe. It was not a change required by the Fire Department.

11
12 Mr. Corwin said this is a variance and not a special exception for expansion of the non-conforming
13 structure because the existing structure meets the setback requirements. It is the stairway that would
14 encroach into the setback.

15
16 The applicant stated there is currently 1 two-bedroom unit taking up the entire first floor and 2 one-
17 bedroom units on the second floor. He intends to increase the rear unit on the second floor to a 2-
18 bedroom unit by including an area over the garage and adding the new egress stairway. The previous
19 owner owned the building for 60 years and there were 3 dwelling units when the applicant purchased
20 it. He believes the appliances may have gotten into the rear apartment through a daisy chain of doors
21 through the front unit.

22
23 The applicant discussed the hardship regarding this property. He said the stairs cannot be rebuilt in a
24 way to make them safer. The new egress would make the structure safer. He believes that the third
25 apartment, in its current state of disrepair, does not appear to have been used in the last 10 years.
26 Improving the egress would maintain 3 dwelling units in the community. When the building
27 inspector looked at the building at the time of purchase, he stated that the egress should be improved.
28 The hardship as it relates to the size of the property was discussed and the reasonableness of the small
29 encroachment based on this request.

30
31 **Chair Koppenheffer opened the Public Hearing and hearing nothing from the Public, the**
32 **Public Hearing was closed.**

33
34 Mr. Katz said he is familiar with this property. He agrees with Mr. Romano, it was operated as a 3-
35 family building and was appropriate in the 1960s and 70s based on code and acceptability. Having
36 seen the interior steps and walls between the units, he agrees the new steps are appropriate. It is a
37 reasonable way to make this property safer. Other Board members agreed that the hardship is a large
38 building on a small lot, which was appropriate at one time. It keeps the applicant from strictly
39 following the ordinance. There is not another reasonable option for the stairs. And the request is
40 minimal and a needed relief.

41
42 *Mr. Nash MOVED On April 5, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of*
43 *Adjustment, there appeared Kathie Romano and Jordan Romano on behalf of 10 School Street, LLC,*
44 *regarding 10 School Street (Tax Map 92, Lot 5), zoned R-2. Applicant requests a Variance from Article*
45 *III, Section 309.3 of the Zoning Ordinance to construct an exterior stairway to be located +/-16 ½ ft.*
46 *from the rear property line where 20 ft. is the minimum required. ZB2021-06-VAR*
47

48 **I. FINDINGS OF FACT**

49
50 Based on testimony given, application materials presented, and supporting documents submitted, the
51 Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. 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.
2. 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.
3. 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.
4. To obtain a 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 applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on March 2, 2021.
5. No one spoke for or against the application.

II. CONCLUSIONS OF LAW

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

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
The new stairway will provide safe and code compliant access to an existing apartment.
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
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):

The property does not have space to allow an alternate location for a safe stairway.

- 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)

- 1 ii. The proposed use is a reasonable one. (Section 801.2.A.5.a.ii)

2
3 **III. DECISION**

4
5 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **5th day of April, 2021**,
6 hereby **GRANTS** the requested Variance from Section 309.3 of the Zoning Ordinance, as set forth above
7 and per testimony, plans, and materials submitted, and per the following conditions:

- 8
9 1. The applicant shall obtain a building permit.

10
11 *Seconded by Mr. Katz.*

12
13 **Roll Call Vote**

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

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

- 17
18 **C. Altaria Hotel, LLC, 25 Foothill Street (Tax Map 24, Lot 14, Plot 100); Anagnost Upper**
19 **Valley, LLC, 18 Merchant Street (Tax Map 24, Lot 14, Plot 200); Altaria Lebanon Park,**
20 **LLC, 260 NH Route 120 (Tax Map 24, Lot 14), 6, 15, 5, & 14 Merchant Street (Tax Map**
21 **24, Lot 14, Plots 300, 400, 500, & 600), 0 NH Route 120 (Tax Map 24, Lot 14, Plot 700),**
22 **and 1 Foothill Street (Tax Map 24, Lot 14, Plot 800); zoned IND-L: Applicant proposes to**
23 **convert the hotel use at 25 Foothill Street to a multi-family dwelling. In order to allow the**
24 **proposed conversion, the applicant requests a Variance from Article V, Section 501.4.D of**
25 **the Zoning Ordinance to permit the residential density of the Altaria PUD to exceed the**
26 **maximum allowed in a commercial planned unit development. ZB2021-07-VAR**

27
28 **Mr. Newlove was appointed voting privileges for this hearing.**

29
30 Mr. Corwin explained that all the stated lots are a part of the Altaria PUD. The Variance is given to
31 the PUD, not just to the lot where the hotel is situated. The PUD has a hotel and a 33 multi-family
32 building. The residential density that is permitted is based on the entire PUD, not just the lot they
33 would like to modify at this time. Only one additional dwelling can be built within any of the lots of
34 the PUD. Converting the Hotel to a 120 multi-family dwelling unit would create 119 more dwelling
35 units than what is allowed within a PUD per Section 501.2.d.4 of the Zoning Ordinance. The
36 variance that needs to be granted would exceed the maximum allowed density.

37
38 David Leatherwood appeared on behalf of the application. He is the Managing Member of Altaria,
39 LLC. Mark Rosenshein and Peter Knights were also present to answer questions. The Element Hotel
40 suffered an explosion in 2019 that devastated the building. Fortunately, no one was seriously injured.
41 On top of that, the COVID 19 hotel closures seriously impacted the industry. They anticipate the
42 hotel recovery would not happen until 2025 at best and they believe the building is no longer viable
43 as a hotel. They said there is additional need for housing in Lebanon, including short term housing.
44 Local employers say the lack of housing is a problem for bringing in new employees. The employers
45 are looking for 30 - 120-day temporary housing. The applicants are asking to operate as micro
46 apartments with short term leases.

47
48 Mr. Mark Rosenshein addressed the criteria for a variance. At this time the damaged building is not
49 being used. Putting it back on the tax role and having more housing would be in the public interest.
50 The PUD was intended to be economically viable and a mixed-use district and allowing it to continue

1 would seem appropriate. Due to the loss of the building caused by the explosion, and the COVID
2 pandemic, substantial justice would be done by letting them create a use of the building. He believes
3 taking this hotel out of the market would increase the value of other hotels in the area. The short-term
4 housing would be a feeder to permanent rental properties. The loss of the franchise, the explosion,
5 and the COVID epidemic have created an unnecessary hardship. Changing from an extended stay
6 hotel to a short-term rental is the closest change that they could find to the original approved and
7 intended use.

8
9 The applicants discussed the financial circumstances that are driving this adjustment and the viability
10 of the building in the marketplace. Their approach seems to be a hybrid. The micro apartments for
11 short tenancy are not really multi-family dwellings. But as micro apartments they are not operating as
12 a hotel. There is no front desk or cleaning services. Based on temporary occupancy, they really
13 would not be an apartment building, because it is not permanent housing. They are asking for
14 guidance from the Board to help determine if they really need a variance. If it is determined that this
15 is a hotel and that temporary occupancies meet the definition of a hotel, then it would be
16 economically viable. All of the rooms have kitchen and cooking facilities, including microwaves.
17 Each room has a kitchen cooktop, with the exception of 7 rooms that would need to be modified by
18 adding a cooktop,.

19
20 They would consider a condition that limits the duration of the temporary lease but would prefer if it
21 was 270 days rather than 120 days. The Board noted that if it was determined that the applicants do
22 not need a variance, they would save paying the change of use fees. The applicants are just looking
23 for approval that their intentions are acceptable to the Zoning Board.

24
25 There is concern about the traffic and parking. Mr. Rosenshein said he thought the difference
26 between an extended stay hotel and a micro apartment facility could be quantified. He believes there
27 would not be a difference between the parking needs and traffic because the extended stay hotel
28 already allowed for more parking and traffic. They allowed for it in their permitted process for the
29 PUD.

30
31 There are differences between the use as a micro apartment and an extended stay hotel. There is no
32 online booking for micro apartments, whereas hotels have online booking. The micro apartment
33 requires signing a lease agreement for a minimum 30 day stay. There is no housekeeping or 24-hour
34 services for micro apartments.

35
36 The Zoning Ordinances do not have a category for a micro apartment or short-term housing.
37 Therefore, this is either a multi-family building or a hotel. The Board's interpretation of these terms
38 does have precedent setting value. If they were to increase the number of units in this PUD, this
39 would likely cause additional requests. Whereas the decision is pertinent to the specifics of this
40 current application, it does not necessarily set precedence for other situations.

41
42 Mr. Leatherwood said the insurance from the explosion was assigned to the lender and the lender has
43 determined that the use of the insurance proceeds to rebuild the hotel is not viable. They cannot get
44 access to the insurance funds to rebuild this as a hotel. This hotel closed before COVID and
45 reopening at this time would not be viable. They discussed the finances of a hotel and this proposed
46 use, and the article that was recently published in the newspaper. If this application is not approved,
47 they could be stuck with a building that cannot be used as a hotel. The Chair questioned what is
48 unique about this property that justifies a variance.

49
50 If the Board makes length of stay a condition of a variance, it is unknown how the City would enforce
51 that limitation. Mr. Leatherwood said they are law abiding citizens. The hotel was already operating

1 as an extended stay hotel, but they cannot be a longer stay hotel, because they cannot get financing to
2 operate as a traditional hotel. There are ongoing expenses as a hotel that make it not viable. Mr.
3 Leatherwood said they can get financing if they can operate as they proposed in their application.
4 The applicants feel they are being straight forward. The Zoning Ordinance does not have any in-
5 between definitions. It has to be either a hotel or a multi-family dwelling. He feels it can be rebuilt
6 as a hotel and he would be happy to know that he can operate as a short term stay hotel. But once the
7 front desk and cleaning services are no longer provided, they do not meet the definition of a hotel.
8 They are asking for the Board to help with the definition of their proposed operations.

9
10 The Zoning Ordinances do not have any definitions or terms about leases or lengths of time for
11 leases. The concerns, on the short end, is whether a rental agency has to be called or can the room be
12 booked online for a very short period of time. If it cannot be booked like a hotel, it no longer meets
13 the definition of a hotel. Therefore, does the Board want to approve an extra 119 multi-family
14 dwellings in the PUD. The applicants stated that the building exists as 120 units, it is really just
15 administrative functions that would change, and that would save the applicants from financial
16 disaster. The Board has seen many applications for building extra units beyond the number of
17 permitted units. Potentially, the traffic could be less of a problem for short terms leases than for
18 extended stay hotel rentals. The rooms tax would still be paid to the City. The furniture would
19 remain in the rooms and customers would not be moving furnishings in and out.

20
21 **Chair Koppenheffer opened the Public Hearing.**

22
23 Dave Duncan appeared saying he supports the use of this building for micro apartment use. He said it
24 is difficult to find housing in the area and he suggests that it would be preferable if there was no limit
25 to the length of stay.

26
27 The Board discussed whether a traffic study and the availability of parking spaces should be
28 evaluated. It was determined that was not a majority opinion.

29
30 **Chair Koppenheffer closed the Public Hearing.**

31
32 The Board deliberated and discussed the condition of the length of stay. Mr. Katz said this applicant
33 does not require variance relief. It is a hotel just a different hotel. He believes this is merely an
34 interpretation of use, not a variance. People would be entering the property with the intention of
35 leaving, not to be a permanent residence, therefore it is a transient use. It would be a mistake to rule
36 this a multi-family dwelling as that would open the door for all multi-family dwellings to become a
37 vacation or short-term rentals. He has a draft Motion without a variance. There was continued
38 discussion that it is not operating as a hotel because it does not have all the services. It could be a
39 multi-family dwelling with a minimum stay. Some relief is in order and the explosion along with the
40 COVID pandemic makes it a unique situation. Adding an extra 120 units to the PUD would be a
41 mistake, even with all the changes that would occur if it remains a hotel.

42
43 Mr. Katz read his document.

44
45 *Mr. Katz MOVED On April 5, 2021, at a duly-noticed meeting of the Lebanon Zoning Board of*
46 *Adjustment, there appeared on behalf of Altaria Hotel, LLC regarding 25 Foothill Street (Tax Map 24,*
47 *Lot 14, Plot 100); Anagnost Upper Valley, LLC regarding 18 Merchant Street (Tax Map 24, Lot 14,*
48 *Plot 200); and Altaria Lebanon Park, LLC regarding 260 NH Route 120 (Tax Map 24, Lot 14), 6, 15,*
49 *5, & 14 Merchant Street (Tax Map 24, Lot 14, Plots 300, 400, 500, & 600), 0 NH Route 120 (Tax Map*
50 *24, Lot 14, Plot 700), and 1 Foothill Street (Tax Map 24, Lot 14, Plot 800); zoned IND-L. Applicant*
51 *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

I. FINDINGS OF FACT

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

1. The present use of the subject property, as defined by the Zoning Ordinance, is “Hotel.”
2. Pursuant to the Applicant’s submission, they propose to change their utilization of the property from what they describe as a “hotel” use, with an average length of tenancy of 11 days to a “micro-apartment residential use” with a proposed average length of tenancy of 60-90 days.
3. The applicant’s submission explains that the new use is technically very similar to the Hotel Use definition in the Ordinance.
4. The applicant’s submission explains that the change is not a “true modification of the underlying nature and intent of the building” but rather a “technical, financing issue.”
5. The applicant’s submission explains that the purpose of micro-apartments is to provide temporary accommodations while individuals transition to permanent housing in more traditional apartment buildings and homes. They further explain that having a short term residential product would allow for new recruit employees to immediately move to the market and commence work in a known and provided housing location while using extended stays to identify permanent residential options with traditional 12 month and longer lease options.
6. The applicant’s submission further explains that this use is an effective feeder for businesses, representing an unserved option of housing greater than 30 days but less than standard 12-month lease terms.
7. The applicant explains that, under the proposed use, the existing building, site and operation will remain substantially unchanged from the original approvals. The applicant further states that the proposed use will require no modification to the unit count, type and configuration other than minor building code upgrades for kitchen ventilation.
8. David Duncan, an employee of DHMC, spoke in support of the application.

II. CONCLUSIONS OF LAW

As a result of the findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to this application.

1. The fundamental question here is “As defined by the Ordinance, is the Applicant’s proposed use ‘hotel’ or ‘multi-family dwelling’”

Dwelling is defined in relevant part as “...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.” (emphasis added)

Dwelling Unit is defined in relevant part as ...” but does not include manufactured home, motel, hotel, lodging house or similar structures.” (emphasis added)

Hotel is defined in relevant part as “A building designed for or used commercially as more or less temporary living quarters ... usually occupied singularly or by families of transients.” (emphasis added)

As stated in finding of facts, above, the Applicant has credibly testified that its proposed use is “technically very similar” to the definition of Hotel under the Ordinance. The Board is persuaded by this testimony that, to the extent that the use might not be exactly what might otherwise be thought of a hotel, it is certainly a “similar structure.”

Furthermore, the property was designed for and commercially used as more or less temporary living quarters - and the Applicant has testified that, other than the change of average occupancy period, there will be no modification to the unit count, type, and configuration of the units (other than minor upgrades to kitchen ventilation).

The final part of the Ordinance that must be analyzed is the word “transients.” This term is not defined within the Zoning Ordinance itself, so the Board relies upon the definition as stated in Merriam Webster’s Online dictionary.

Transient (noun) One that is transient (see adjective entry)

Transient (adjective) Passing through or by a place with only a brief stay or sojourn

Core at the concept of the definitions is the temporary nature of transience. Although a “dwelling” might be leased for a period of time ranging from months to many years, there is generally a view that the occupant intends to “dwell” in it.

By contrast, Applicant has credibly testified that the proposed use is directed specifically at the transient market. Applicant’s materials deliberately use the word “temporary” to describe the period of time that an occupant will stay on their property while deliberately using the word “permanent” to describe the places that occupants will move on to when they leave. Furthermore, Applicant describes the intentionality of use of the site in that occupants will enter the site with the full knowledge that they will not be there very long, and that they will use the time that they are there planning their exit from temporary accommodations to permanent accommodations.

The application of the Ordinance to these facts makes a compelling case that the use of this property as proposed is fundamentally identical in nature to the use of the property as already approved.

III. DECISION

Now, therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th Day of April 2021 hereby dismisses the requested variance on the basis that the Applicant is already approved for hotel use, the use proposed by the Applicant as defined by the Ordinance is a hotel use, provided that the stays are transient in nature and do not exceed 90 days, and no relief from this Board is required for that use to be continued or the proposed use to be commenced.

The Board discussed the length of stay within the Motion. The number of days is up for discussion. It is a hotel because it is transient, and 270 days seems too long.

1
2 **Chair Koppenheffer reopened the Public Hearing.**
3

4 Mr. Leatherwood said the limitation of 90 days does not work for their operations. The size of the
5 unit and what is provided, is better for 30-90 days. But there could be extenuating circumstances,
6 possibly for only one or two customers, who need an exception for extra time. Dartmouth Hitchcock
7 is asking for accommodations up to 270 days to meet their needs, and a shorter length of stay would
8 likely end their potential business arrangement. He is in agreement that the label of a hotel is
9 appropriate for this building.

10
11 **Chair Koppenheffer closed the public hearing.**
12

13 *Mr. Katz, so MOVED that the document he read is the Motion.*
14 *Seconded by Mr. Nash.*
15

16 Mr. Katz said the Motion was based on the application, which asked for 30-90 days to figure out the
17 area and find a place to live. He feels when it is 270 days it infringes on permanent housing and
18 multi-family housing that has leases for less than a year. There has to be something that distinguishes
19 transient and permanent housing. The Board discussed their perspectives on the length of stay.
20

21 *Mr. Nash MOVED to change the limit to 270 days instead of 90.*
22 *Seconded by Mr. Newlove.*
23

24 **Roll Call Vote**

25 *Mr. Newlove, Mr. Nash, and Vice Chair Mercer all voting Yea.*
26 *Mr. Katz and Chair Koppenheffer voted Nay.*
27 **The Vote on the Motion was approved (3-2).*
28

29 The Board discussed if the Motioner, Mr. Katz, has to agree with the Motion's amendment, based on
30 the Rules of Order. It was determined that he does not. In further discussion Mr. Katz cited the NH
31 Department of Revenue Administration page where it states that the room tax is charged for a
32 maximum of 154 days. In the Motion, he believed he was giving the applicants everything they were
33 asking for in their application by offering 90 days. If it is changed to 270 days he believes it is no
34 longer a hotel and they need to vote on it as a variance. The amended Motion can be amended again
35 and then voted on. It was deliberated further by the Board.
36

37 *Vice Chair Mercer MOVED to amend the Motion to 184 days per the New Hampshire Room Tax*
38 *Regulations.*
39 *Seconded by Mr. Katz.*
40

41 **Roll Call Vote**

42 *Mr. Newlove, Mr. Katz, Vice Chair Mercer and Chair Koppenheffer all voting Yea.*
43 *Mr. Nash voted Nay.*
44 **The Vote on the Motion was approved (4-1).*
45

46 The MOTION remains as originally read with the exception that section III. Decision reads as
47 follows:
48

49 **III. DECISION**
50

Now, therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 5th Day of April 2021 hereby dismisses the requested variance on the basis that the Applicant is already approved for hotel use, the use proposed by the Applicant as defined by the Ordinance is a hotel use, provided that the stays are transient in nature and do not exceed 184 days, and no relief from this Board is required for that use to be continued or the proposed use to be commenced.

Roll Call Vote

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

Mr. Nash voted Nay.

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

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**

Mr. Newlove MOVED to continue this hearing until May 3, 2021.

Seconded by Chair Koppenheffer.

The applicant withdrew their application for an administrative appeal rather than postponing the hearing.

There was no vote on the Motion.

4. STAFF COMMENTS

If Board members have not completed the Welcoming Training, please do as soon as possible.

5. ADJOURNMENT

Mr. Katz MOVED to adjourn the meeting at 10:04 PM.

Seconded by Vice Chair Mercer.

Mr. McDonough was given voting privileges on this Motion.

Roll Call Vote

Mr. McDonough, Mr. Katz, 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,

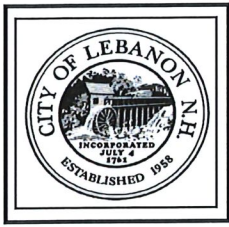
Linda Billings

Recording Secretary

**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

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



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2021-05-SE – *con't from April 5, 2021*

APPLICATION INFORMATION

Agenda Item:

3.A

Application Type:

Special Exception per §702.5 to expand non-conforming restaurant use

Location:

83 NH Route 4A (Tax Map 98, Lot 7)

Applicant/Property Owner:

Ohana, LLC

Zoning District:

Rural Lands Two (RL-2) District

Property Size:

+/-0.42 acres (+/-18,208 sq. ft.)

Overlay District:

- Floodplain District
- Riverbank Protection District

Previous ZBA Action (since 1995):

none

Other Approvals Required:

- Building Permit
- Floodplain Permit (*possible*)
- Site Plan Review (*possible*)

Attachments:

- 4/26/21 e-mail from Mike Donnelly
- 4/12/21 e-mail from Robert Marchione (9 pages)

HEARING NOTICE

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

BACKGROUND

The hearing on the subject application was continued to the May 3, 2021 Zoning Board meeting to allow the applicant an opportunity to provide additional information that was requested by the Board at the April 5th meeting (including, for example, a scaled site plan depicting parking spaces, existing improvements, and proposed improvements including the location of the proposed ice cream stand).

Per the attached e-mail from Mike Donnelly sent April 26, 2021, the applicant requests that the Board continue the application to the June 7th Zoning Board meeting to give the applicant additional time to prepare and submit the requested information.

Also attached is an e-mail staff received from the abutting property owner, Robert Marchione, sent on April 12, 2021. Mr. Marchione's April 12th e-mail includes a forward of a March 1, 2021 e-mail that he sent to the Planning & Development Department, but was misplaced by staff and not included with the March or April agenda packets.

STAFF NOTES

Prior to the April 5, 2021 meeting, it had been staff's understanding that the proposed trailer was to be used on-site and occasionally used off-site. (Even with this understanding, it's not clear that the proposed trailer use fits comfortably within the non-conforming use expansion criteria under Section 702.5). However, the applicant's testimony at the April 5th hearing seemed to indicate that the trailer would mostly be used *off-site* and that the trailer would be stored at the subject property. Staff contacted the applicant to confirm how the trailer will be used but have not received a response.

The zoning concern is that if in fact the trailer will primarily be used off-site and the subject property used to store the trailer, it's not clear how the trailer can be considered an expansion of the existing non-

STAFF MEMORANDUM

ZB2021-05-SE
83 NH Rt 4A (98-7)
May 3, 2021 ZBA Mtg
Agenda Item 3.A
Page 2 of 2

conforming use per Section 702.5. Staff recommends that the Board (a) ask the applicant to clarify how the trailer will be used, and (b) determine whether the trailer can be considered an expansion of a non-conforming use per Section 702.5. If it can't, it appears that a Variance would be needed from Section 313.2 (the RL-2 District Table of Uses) to allow the property to be used for outdoor storage (in which case the Variance would need to be added to the hearing notice and resent to abutters).

Attachments

cc: Ohana, LLC, property owner (via e-mail)
Robert Marchione (via e-mail)
File

Tim Corwin

From: Mike Donnelly <miked@hslsda.org>
Sent: Monday, April 26, 2021 3:02 PM
To: Tim Corwin
Cc: 127 Payment Systems
Subject: [EXTERNAL]Continuance for Ohanna LLC

Dear Tim, Pursuant to the previous meeting Ohanna LLC is in the process of pulling together additional information but have encountered some delays. We would appreciate a continuance in the discussions relating to the Baited Hook and hereby request a continuance to the June meeting from the board. Thanks very much. Regards,

Mike

Michael P. Donnelly, J.D., LL.M.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tim Corwin

From: MS - Robert Marchione <bmarsh@aadcomed.com>
Sent: Monday, April 12, 2021 2:49 PM
To: Tim Corwin
Subject: [EXTERNAL]Lebanon, NH Zoning Board of Adjustment, Agenda Item 3A, March 1, 2021 ZB2021-05-SE

Mr. Tim Corwin AICP
Senior Planner
Planning & Development Department
51 North Park St.
Lebanon NH 03766
Phone 603-448-1457 x6127

RE: The Zoning Board application of Ohana, LLC, dba The Baited Hook

Dear Mr. Corwin,

The attached forwarded letter and photos were sent to the Planning and Zoning Department, Board of Adjustment, just prior to the March Meeting. I attended the March meeting virtually, but made no comment and asked no questions, as the board seemed to be most concerned with the "Threadbare" nature of the applicants application.

After the April meeting, I realized that there are a number of questions that should be asked. The first and foremost should be about the new claim made by the applicant, that the restaurant had previously operated, year round. In my 10 years of residency of the abutting property, it never has. It has roughly been opened and closed in coordination with its key customer, the Campground directly across the street on Route 4a, also a summer seasonal use.

At that meeting it was suggested that O'hana LLC. acquire a letter, from the Murrays, stating the periods(years) during which the Baited Hook was open year round. In the interest of full disclosure, the board should know that the Murrays contacted me about acquiring the Baited Hook Property, after they already had an offer from the Beattie's. Although, I was outside the USA at that time, I did arrange for an experienced business person to visit the property. His opinion was to take the business-like approach by getting a professional appraisal of the property. However, the Murray's did not want to wait for an appraisal, and instead disclosed the Beattie's offer, to me. That offer was \$200,000 downpayment and a \$600,000 note, that the Murray's would hold on the property. Leveraged like this, the Murrays have a substantial beneficial interest in the success of the Baited Hook Business and property.

There is another more accurate way to ascertain the historical dates of operation, of the Baited Hook. The Restaurant Tax Filings should be available from the State of New Hampshire. If the Beattie's did their "Due Diligence", they would already have these, as these Documents would also show the total revenue from operating the restaurant, in past years.

Below is an easterly facing photo, which may be helpful as it better demonstrates the depth of the parking lot. As with all the photo's I've supplied, it was taken on February 28, 2021. As you can see, the snow was already melting early this year.



If you have any questions, that I can be helpful, please don't hesitate to contact me.

Best Regards,
Bob

Robert Marchione
New Hampshire Residence 603-727-9515
USA Cell +1 (603) 275-8526
[Email bmarch@aadcomed.com](mailto:bmarch@aadcomed.com)

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Begin forwarded message from 3/1/2021:

From: Robert Marchione <bmarch@aadcomed.com>
Subject: Lebanon, NH Zoning Board of Adjustment, Agenda Item 3A, March 1, 2021 ZB2021-05-SE
Date: March 1, 2021 at 11:09:21 AM EST

Zoning Board of Adjustment
Lebanon, NH

Agenda Item 3A, March 1, 2021 ZB2021-05-SE

From: Robert & Alice Marchione
77 Route 4A
Lebanon, NH 03766
603-275-8526

As abutters to the property of the Baited Hook, Tax Map 98, Lot 7, we object to the expansion of the conditional use of the restaurant to year round, rather than the current seasonal (summer) use. The seasonal use of the Baited Hook has, for the 10 years we have lived here, caused, due to an inadequate parking lot capacity approximately 12 spaces, a great deal of on-street parking, at times in excess of 25 automobiles. In the summer months, this is a burden, to the immediate RL-2 Rural Residential area around the Baited Hook, the residential neighborhood.

However, the winter condition of the road, Rte 4a, now introduce two new factors. The parking lot has been reduced by an estimated 6 parking spaces, having 6 remaining spaces, because of the introduction of the so-called Ice Cream Trailor, which when combined with the dumpster is currently occupying approximately 6 parking spaces. (See Photo Below).



Because of the reduction of off-street parking to 6 spaces, on-street parking will likely be increased, as it currently does in the summer season. However, in the Winter Season, the public sidewalk across the street becomes impassable to pedestrians, from the first snow until the last. This is also true of the narrow space beside the roadway on the opposite (East) side of the roadway. So, Pedestrian leaving there cars, parked along the roadway, on either side, have no place to safely walk, creating a public safety problem. (See Photos Below, taken Sidewalk, West Side and Right of Way East Side, covered with accumulated snow from plowing







The neighborhood has zoning of, RL2 and is predominantly residential, Single Family Homes, with off street parking. The neighborhood's off-street parking, keeps the roadway clear of parked cars either crowding or in the driven right of way. The Baited Hook, has inadequate off-street parking, forcing cars to park in along and in some cases in the driven right of way, creating a public safety hazard. The applicants answers under items D and E, fail to consider the conditions we have sited. The Ice Cream trailer will impact the off street parking by reducing it to approximately 50%, of current capacity.

The Baited Hook had successfully functioned for almost 50 years as a seasonal (summer) restaurant. When, it was well run it obviously had been profitable as a seasonal business or it would no longer exist.

Respectfully Submitted,
Alice & Robert L. Marchione
77 Rte 4a, Lebanon, NH 03766
[Email bmarch@aadcomed.com](mailto:bmarch@aadcomed.com)

THIS E-MAIL IS INTENDED ONLY FOR THE USE OF THE PERSON(S) NAMED IN THE ABOVE ADDRESS. IT MAY CONTAIN PRIVILEGED, CONFIDENTIAL, AND/OR LEGALLY PROTECTED INFORMATION, AND KEEPING A COPY OF THE E-MAIL, FORWARDING IT, OR USING IT IN ANY WAY IS STRICTLY PROHIBITED.

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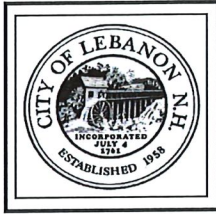
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**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Diane Doe,
5 Richardson Place
(Tax Map 8, Lot 9),
zoned R-3
ZB2021-04-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2021-04-VAR – *con't from February 1, 2021*

APPLICATION INFORMATION

Agenda Item: 3.B

Application Type:

Variance from §201.7 to allow parking within the min. front yard

Location: 5 Richardson Place (Tax Map 8, Lot 9)

Applicant/Property Owner:

Diane Doe

Zoning District: Residential Three (R-3) District

Property Size: +/-0.36 acres (+/-15,682 sq. ft.) (per the City's assessing records; property is conforming to the min. required 10,000 sq. ft. lot size required for Class 1 lots in the R-3 District per §310.3)

Existing Use: +/-1,439 sq. ft. (finished) one-story one-family dwelling constructed in 1952, per the City's assessing records (a conforming use per §310.2)

Proposed Use & Improvements:

expansion of existing parking area to meet minimum parking requirements for proposed conversion of basement to an ADU

Overlay Districts: None

Previous ZBA Action (since 1995):
none

Other Approvals Required:

- Building Permit
- Driveway Permit

HEARING NOTICE

Diane Doe, 5 Richardson Place (Tax Map 8, Lot 9), zoned R-3: Applicant requests a Variance from Article II, Section 201.7 of the Zoning Ordinance to allow additional parking spaces within the minimum required 20 ft. front yard. ZB2021-04-VAR

BACKGROUND

The public hearing for the subject application was opened on February 1, 2021 and continued to the May 3, 2021 Zoning Board meeting to give the applicant an opportunity to provide a boundary survey.

Included in the attached materials are the following:

- **Pages 1-4:** E-mail from applicant to the Zoning Administrator sent April 26, 2021, including attachments (sketch and 2 photos).
- **Pages 5-6:** Excerpt of February 1, 2021 Zoning Board meeting minutes, regarding discussion of the subject application.
- **Pages 7-23:** Packet for the subject application included with the agenda materials prepared for the February 1, 2021 Zoning Board meeting (*provided for reference given the length of time between the opening of the hearing and the continuation of the hearing on May 3rd*).

STAFF COMMENTS

As set forth in the staff memo prepared for the February 1st hearing (see pages 8-12 of the attached), it remains staff's recommendation that, prior to the Board making a determination on requested Variance, that the applicant provide a scalable plot plan (or a survey prepared by a NH Licensed Land Surveyor) identifying the location of the subject property's lot lines, the location and dimensions of the existing parking area, and the location of the driveway expansion with dimensions.

Attachment

cc: Diane Doe (via e-mail)
File

Tim Corwin

From: diane doe <dmdoe1@gmail.com>
Sent: Monday, April 26, 2021 1:43 PM
To: Tim Corwin; diane doe
Subject: Re: [EXTERNAL]Revised draft - variance application, Diane Doe
Attachments: Stake by road to west edge of driveway.pdf

Hello Tim,

The property stakes have now been identified. The top-most stake is clearly on my property. It is about 6 feet below the road.

It is 24 feet west of my current driveway. Thus I am currently using a driveway 24 feet east of Quail Hollow Land. It is very clear that I am not parking on Quail Hollow Land.

I have attached a shape and some photos.

If anyone wants to view the property in person, or walk the property lines, they are more than welcome to do so.

My property is a box shape with the top left corner cut off, and that cutoff section belongs to Quail Hollow. It is not nearly the angle shown on the city maps. The city drawing is askew a bit.

In the attached plot and attached photos, I inserted orange poles in the 2 northwestern most stakes. In the TOP view, It shows the view from roadside down to the stake about 6 feet.

The next image shows from the top stake going south (line of white rope) to my western-most stake.

This stake is just below road level and is yellow with an orange 4' pole in it.

The other photo shows the property line (white rope) to the lower stake, which is further west. Then from the second stake, the line heads south 103 feet..

Thank you.

Diane

Diane Doe
207-713-4204



Property NW roadside stake to next stake.jpg



Roadside to Top NW sproperty stake.jpg

On Wed, Apr 21, 2021 at 12:35 PM Tim Corwin <Tim.Corwin@lebanonnh.gov> wrote:

5 RICHARDSON PLACE -

^

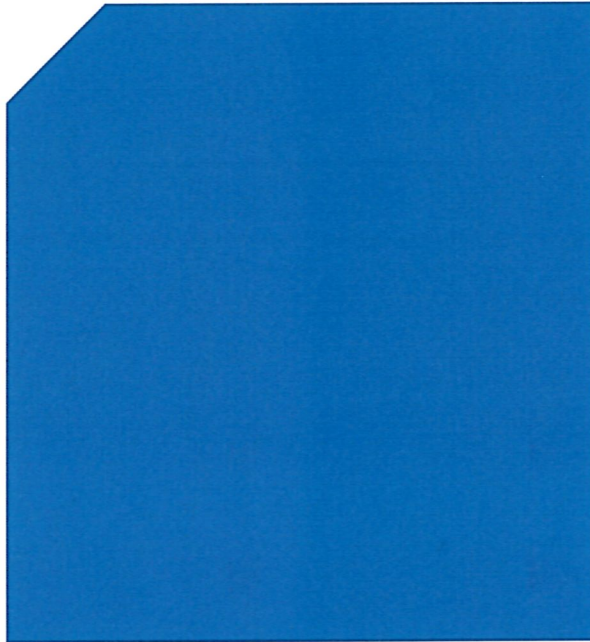
N

=====

===== from STAKE it is 24 ft to DRIVEWAY=====

=====

Quail Hollow







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)
3. Substantial justice is done. (Section 801.2.A.3)
4. The values of surrounding properties are not diminished. (Section 801.2.A.4)
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):

The property is in an airport zone that limits the vertical placement of these utilities.

The triangular shape of the lot prevents the orientation of the facilities to comply with setbacks.

- i. There is 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)
- ii. The proposed use is a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment on this **1st day of February, 2021**, hereby **GRANTS** the requested Variance from Section 303.3 of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain site plan approval from the Planning Board and a building permit, and shall comply with all applicable local, state, and federal regulations in the construction of the proposed improvements.
2. The applicant is advised that any substantial changes to the layout of the subject improvements as depicted on the Plan shall require approval of a new Variance from the Zoning Board of Adjustment pursuant to Section 801.2 of the Zoning Ordinance.

Seconded by Mr. Patterson.

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).*

E. Diane Doe, 5 Richardson Place (Tax Map 8, Lot 9), zoned R-3: Applicant requests a Variance from Article II, Section 201.7 of the Zoning Ordinance to allow additional parking spaces within the minimum required 20 ft. front yard. **ZB2021-04-VAR**

Ms. Doe spoke on behalf of the application. Her property is sited on an area that was filled in the early 1950s and there are steep slopes on each side of the property. She has applied for an ADU that is partially

constructed and it requires one additional parking space for that unit. In the past three cars were parked in this area when part of the property was rented. She is confident that three cars would fit in that area. She intends to extend the parking area by 6 feet. That area is currently covered with grass and none of the driveway is paved. The ADU is within the existing footprint. She has simply insulated the basement and added current electrical wiring and new bathroom fixtures are going into the existing bathroom.

The Board reviewed arial photos of the area. Front yard parking is prevalent in the area. The applicant stated that all the parking would be on the applicant's property and access to the parking would not infringe on anyone else's property. The parking space locations and property markers were reviewed on the arial photos and discussed. There is some indication that the existing parking spaces may be on Quail Hollow property. A survey would show where the boundary is between the applicant's property and the Quail Hollow property. The Board discussed that a provision of the approval could be that the new parking space and access to the parking area does not encroach on the adjoining property.

Chair Koppenheffer opened the Public Hearing. No one from the Public spoke at this time and the Public Hearing was closed.

Mr. Koppenheffer MOVED to continue this hearing until Ms. Doe provides the Board with the boundary survey which would include conditions on the ground with respect to the driveway.

Seconded by Mr. Katz.

Roll Call Vote

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

Mr. Patterson and Mr. Nash voted Nay.

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

The Board discussed that the Public Hearing cannot be closed in this situation. The Public Hearing will remain open with a specific date, so the hearing does not need to be re-noticed. The Motion was revised to read as below and voted on.

Mr. Koppenheffer MOVED to continue this hearing until May 3, 2021, provisional upon receipt of a front boundary line survey with the current and proposed parking indicated on it.

Seconded by Mr. Katz.

Roll Call Vote

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

Mr. Patterson and Mr. Nash voted Nay.

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

4. ELECTION OF OFFICERS - CHAIR and VICE CHAIR

*Mr. Patterson MOVED to elect Dan Nash as Chair of the Zoning Board of Adjustment.
No one Seconded the Motion.*

*Mr. Nash MOVED to re-elect William Koppenheffer as Chair of the Zoning Board of Adjustment.
Seconded by Mr. Patterson.*

Agenda
Zoning Board of Adjustment
February 1, 2021

Agenda Item #3E
Public Review

Diane Doe, 5 Richardson Place (Tax
Map 8, Lot 9), zoned R-3
8-9



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

February 1, 2021 Meeting

Staff Memorandum – ZB2021-04-VAR

APPLICATION INFORMATION

Agenda Item: 3.E

Application Type:

Variance from §201.7 to allow parking within the min. front yard

Location: 5 Richardson Place (Tax Map 8, Lot 9)

Applicant/Property Owner:
Diane Doe

Zoning District: Residential Three (R-3) District

Property Size: +/-0.36 acres (+/-15,682 sq. ft.) (per the City's assessing records; property is conforming to the min. required 10,000 sq. ft. lot size required for Class 1 lots in the R-3 District per §310.3)

Existing Use: +/-1,439 sq. ft. (finished) one-story one-family dwelling constructed in 1952, per the City's assessing records (a conforming use per §310.2)

Proposed Use & Improvements: expansion of existing parking area to meet minimum parking requirements for proposed conversion of basement to an ADU

Overlay Districts: None

Previous ZBA Action (since 1995):
none

Other Approvals Required:

- Building Permit
- Driveway Permit

Attachments:

- Application (11 pages total)

HEARING NOTICE

Diane Doe, 5 Richardson Place (Tax Map 8, Lot 9), zoned R-3: Applicant requests a Variance from Article II, Section 201.7 of the Zoning Ordinance to allow additional parking spaces within the minimum required 20 ft. front yard. ZB2021-04-VAR

BACKGROUND

The property is improved with a one-family dwelling. A paved parking area wide enough to accommodate two vehicles is located at the front of the property with each space having direct access to Richardson Place. See Figure 2 below. Based on the City's tax map, it appears that the parking area may be at least partially located over the abutting property owned by Quail I, LP (Tax Map 8-2-200). See Figure 2 which outlines the Quail property in blue, highlights the subject property's front lot line in green, and circles the existing parking area in red.

The parking area appears to be approximately 15 ft. in depth and 18ft.-20 ft. wide based on the City's aerial photography. According to the application materials, the existing parking area is "20'x30".

Figure 1. Location Map.



©2020 Google, <https://lebanonnh.mapgeo.io/>

STAFF MEMORANDUM

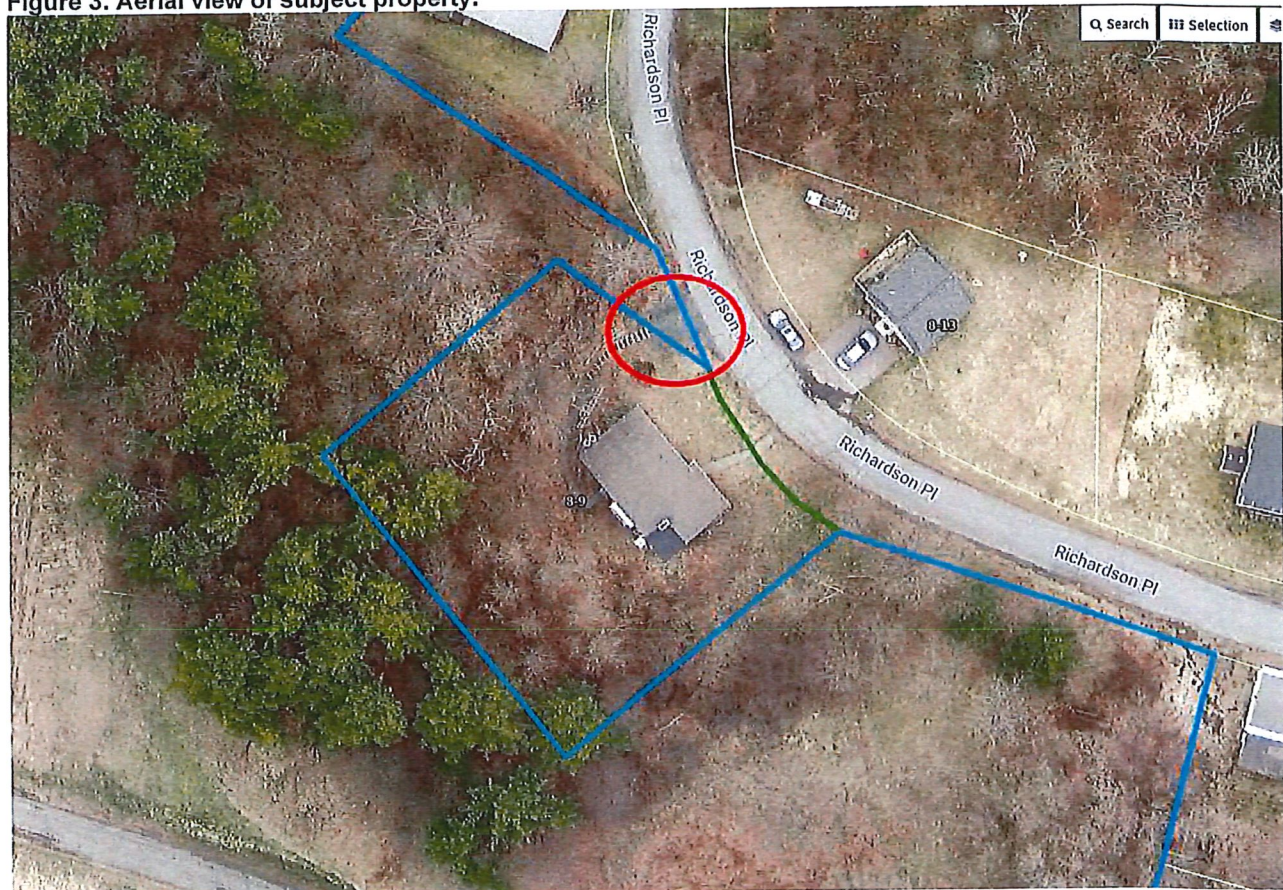
ZB2021-04-VAR
5 Richardson Place (8-9)
February 1, 2021 ZBA Mtg
Agenda Item 3.E
Page 2 of 5

Figure 2. Street View of Subject Property.



©2020 Google, <https://maps.google.com/maps/@43.054,71.234,15z> Image date: July 2019

Figure 3. Aerial view of subject property.



51 NORTH PARK STREET, LEBANON, NEW HAMPSHIRE 03766
TEL: 603-448-1457 FAX: 603-442-6141 WWW.LEBANONNH.GOV

STAFF MEMORANDUM

ZB2021-04-VAR
 5 Richardson Place (8-9)
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Figure 4. Bird's Eye View of Subject Property (looking west).



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

PROPOSAL

The applicant proposes to convert the basement of the home to an accessory dwelling unit (ADU). To accommodate the additional required parking space for the ADU, the applicant proposes to widen the existing parking area an additional 6 ft. eastward along Richardson Place (for a total of 120 sq. ft. of additional parking area), as depicted and described in the attached application materials.

ZONING ORDINANCE REQUIREMENTS

A minimum of three (3) off-street parking spaces are required for a one-family dwelling with an ADU, per Section 610.H of the Zoning Ordinance.¹ Per Section 201.7 of the Zoning Ordinance², off-street parking spaces are not permitted within the minimum required front yard (which is 20 ft. in the R-3 District). Consequently, to expand the existing parking area further eastward along Richardson Place and within the minimum required front yard, a Variance is required from Section 201.7.

Note that there is no specific minimum parking space size required in the Zoning Ordinance. Rather, per Appendix A of the Zoning Ordinance, an "off-street parking space" shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room." For reference in evaluating the adequacy of

¹ As codified in the version of the Zoning Ordinance that was in effect at the time the application was submitted.

² As written in the Zoning Ordinance that was in effect at the time the application was submitted, Section 201.7 provides that, "[p]arking areas in the residential districts and the R-O District shall be setback no less than the lesser of the minimum yard requirement or the building line, but in no case less than five (5) feet." See also definition of "parking area".

STAFF MEMORANDUM

ZB2021-04-VAR
5 Richardson Place (8-9)
February 1, 2021 ZBA Mtg
Agenda Item 3.E
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the proposed parking area, note that projects requiring Site Plan Review must provide parking spaces of at least 9 ft. wide by 18 ft. long.

To obtain a Variance from Section 201.7, 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

STAFF MEMORANDUM

ZB2021-04-VAR
5 Richardson Place (8-9)
February 1, 2021 ZBA Mtg
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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 January 19, 2021 (see attached).

STAFF COMMENTS

There appears to be a discrepancy between the data available to staff and the applicant's assertion as to the size of the existing parking area. Moreover, it also appears that the existing parking area and the proposed expansion may be at least partially located on the abutting property owned by Quail I, LP. For these reasons, staff recommends that prior to making a decision on the application, the Board should consider requiring the applicant to provide a *scalable* plot plan (or a survey prepared by a NH Licensed Land Surveyor) identifying the location of all the subject property's lot lines, the location of the existing parking area, and the location of the driveway expansion with dimensions.

Attachment

cc: Diane Doe (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 _____			

PROPERTY OWNER (APPLICANT):

NAME:

Diane Doe

TEL.#:

207. 713.4204

MAILING ADDRESS:

5 Richardson Place West Leb.

E-MAIL ADDRESS:

DMDOE1@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME:

TEL.#:

MAILING ADDRESS:

E-MAIL ADDRESS:

PROJECT LOCATION:

TAX MAP #:

8-9

LOT#:

9

PLOT #:

ZONE:

R3

STREET ADDRESS OF PROJECT:

5 Richardson Pl. W. Lebanon

IS THIS PROPERTY LOCATED IN THE:

WETLANDS

☐ YES ☒ NO

HISTORIC DISTRICT

☐ YES ☒ NO

FLOOD PLAIN

☐ YES ☒ NO

SCOPE OF PROJECT:

ADU - see building permit

Variance for driveway Variance to expand

TYPE OF OCCUPANCY:

driveway into required side front setback for parking spaces for ADU

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:

Diane M. Doe

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 _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER:

DATE:

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:

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
1-19-2021	8-9	ZB2021-	197.15	1-19-2021	18043

04-VAR

(Last Revised 4/04/18)

DMD ADU provisions to meet**LEBANON ZONING BOARD OF ADJUSTMENT****APPLICATION FOR VARIANCE**

I, Diane M. Doe, am the sole owner of my property. My property is 8-9, located at 5 Richardson Place, West Lebanon, NH 03784. I purchased the property in Sept. 2019. The lot size is .360 acre, or a little over 15,000 square feet, in Class 3. It is one of 7 houses on the dead-end street.

Abutters include two:

1 - Quail 1, LP, South Burlington, VT 05403, with the local physical site being known as Quail Hollow Senior Living Community (8-2-200), on east, south, and west sides. The north side of my property abuts the street.

2- Ken Blaisdell, north across the public way of Richardson Place, owns that property.

Required filing fee, the required filing fee must be paid upon submission of the application. \$197.15

➤ **Support Statement** RSA 236:13 referred to in Driveway Regulations.

I (we) hereby request a variance from the terms of Article(s) _____ Section(s) _____ of the Lebanon Zoning Ordinance.

1. *That the variance, if authorized, will not be contrary to the public interest;* _ The property lot is a somewhat rectangular property located to the west on Rte. 10. The immediate neighborhood is residential. The Highest and best use for this property is as a residence. Identifying the property as having an Auxiliary Dwelling Unit (ADU) is in keeping with the neighborhood; and no trees will be cut. _It will not alter the essential character of the neighborhood; threaten the health, safety, or general welfare of the public. _It will not require additional on-site water or wastewater disposal; the property's existing 3rd bedroom would be the ADU space. _____

2. *That the variance will observe the spirit of the Ordinance.* _The ordinance _and regulations for R-3 areas is for residential and ADU properties. This will not alter that. It will

provide an additional dwelling unit, in a city where this is much needed.

3. *That by the granting of the variance, substantial justice will be done;* _Granting the variance will do substantial justice. It is consistent with the R-3 use. The benefit of the variance is not outweighed by harm to the general public or to other individuals. It does not harm abutters. The public would realize no appreciable gain from denying this variance request, but the applicant will suffer the loss of the reasonable use of the property if denied.

4. *That the variance, if authorized, will not diminish the values of surrounding properties* _The values of the surrounding properties will not be diminished. Five of the 6 houses are now or have been in recent years shared, and/or rented, to others than the owners, with additional cars parked at each location. At least two of these properties consistently had 3 or more vehicles parked on the premise, including my current location. No harm or detriment was caused to the neighborhood, as the site would be in character with the surrounding homes. If anything, the value of the property and impact to the surrounding neighborhood has been improved since the new ownership in Fall 2019. Landscaping and general repairs and painting on the exterior of the property have been improvements. Neighbors have stopped by to personally express this.

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* _

As seen in the plot diagrams and images, the steep slope on either side of the house make the proposed driveway a very reasonable proposal. The property is surrounded on 3 sides by Quail Hollow. The property is different from other

properties on Richardson Drive. The intensity of use would not be changed. These conditions make the proposed use for driveway extension a very reasonable one.

The property cannot be reasonably used in strict conformance with the ordinances, and a variance is therefore necessary to reasonable use of it.

The specific application of the driveway regulations would not be able to be met without placing the driveway too close to the neighboring property line, adding extensive fill, cutting several trees, and altering the natural drainage of the area. The fill rises much higher than the natural contours of the lot (see topographic map of plot.). This would also negatively impact the wildlife that currently inhabits the area. The expressed interest of the city of Lebanon creating the ADU designation (updated in March 2020) is (from City ADU Regulations) to allow "an option for homeowners to offer separate and independent living space for their extended families, or to offer small dwelling units as rentals to offset the expense of maintaining the dwelling. The appearance and character of the existing or proposed new dwelling shall remain single family in nature." which it will remain. I will continue to occupy the main level of the property.

_____;

and (ii) *The proposed use is a reasonable one.*

Because of the neighborhood having similar status and/or usage, and that this property has in past years already had 3 parking spaces as Designated in drawings below, this is reasonable use of the property and it would blend in well in the neighborhood. Since the driveway is gravel, not asphalt, no additional drainage would be forced into the city water/sewer system.

(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.

My property is one of 7 houses on a short dead-end street. Five of the 6 houses are now or have been in recent years shared, and/or rented, to others than the owners, with additional cars parked at each location. At least two of these properties consistently had 3 or more vehicles parked on the premise, including my current location. No harm or detriment was caused to the neighborhood.

I have requested approval for an ADU designation, for a portion of my lower level, using my existing property with no additions to the one existing structure. It is consistent with the neighborhood to continue to allow this type of property use in this area. Having an ADU requires 3 parking space on my property.

The existing driveway 20'x30' has been used in the past for 3 cars. To have 3 "normal parking spots", it should be made to be an additional 6 feet wide, to 36 feet wide, not 30 feet. This means I need to extend the driveway 6 feet to the east, adding 120 Sf of driveway/parking, and reducing lawn space by that same 120 SF out of a .36 acre lot.

I am asking for a driveway/parking variance as using the 120sf as described this would violate the 25' setback for minimum yard in a Class 3 area. To place any added footage elsewhere to be further from the road would make the parking even closer to the front of the house, since the existing distance from house to road is only 30'. Also, the city water shut-off is located another 10-15 feet east from the proposed 120 sf driveway and should remain accessible. On the east side of the property there is also a utility power pole, about 16-18 feet to the east of the house.

The character of the area will not be changed; it is consistent with the neighborhood. It is not contrary to the public interest as the variance would allow maintenance of green space and wooded areas, and no trees would be cut. Visibility on the street would not be changes. No hazard or nuisance will be created. No municipal expense will be generated by the expanded parking. The pre-existing use of the property is not changing.

To be in strict compliance with the newer driveway policies provides practical difficulty largely due to configuration of

the property. This property is distinguished from other properties on Richardson Place because of the topography of the house as it is uniquely sited on steeply sloped land. The house was built on fill brought in, in 1950s, with just enough fill to be large enough for the house itself, with both basement E/W sides about 40-50% exposed on a diagonal, with steep slopes on either side. On those same sides, adjacent to the house, drop-offs exist. This has been in place for about 70 years.

There is just one building, Ranch Style House with Daylight Walk-out Basement; no other structures exist or would be added.

For these reasons, I respectfully request that the Lebanon Zoning Board of Adjustment grant my request for a variance.

310.2 Table of Uses.

Permitted Uses

Residential

1. *One-family dwelling*
2. *Accessory dwelling unit (ADU)*
per Section 610

SECTION 610 ACCESSORY DWELLING UNIT (ADU). Accessory dwelling units are intended as an option for homeowners to offer separate and independent living space for their extended families, or to offer small dwelling units as rentals to offset the expense of maintaining the dwelling. The appearance and character of the existing or proposed new dwelling shall remain single family in nature.

...

H. In addition to the two (2) on-site parking spaces required for the primary residence, one (1) additional on-site parking space for the ADU must be provided, and no more than two (2) ADU on-site spaces are allowed. The additional parking space shall comply with the parking standards contained in the Zoning Ordinance and the City of Lebanon's Driveway Regulations.

702.5 Expansion of Use. A. The Zoning Board of Adjustment may, by special exception, permit a legal nonconforming use pursuant to Section 700 to be expanded, provided that the following tests are met in lieu of Section 801.3:

1. The proposed expansion must reflect the nature and purpose of the existing nonconforming use, and must be closely related to the manner in which the property was used at the time the restriction was enacted.
2. The proposed expansion must

be merely a different manner of utilizing the same use, and shall not constitute a use which is different in character, nature, or kind.

3. The proposed expansion shall not have a substantially different effect on the neighborhood in which the property is located.

SECTION 704 PRE-EXISTING USES THAT ARE SPECIAL EXCEPTIONS OR CONDITIONAL USES. Any use which existed prior to the adoption of this Ordinance or amendment thereto which is allowed as a special exception or conditional use by this Ordinance shall not be deemed a non-conforming use, but shall, without further action be deemed a conforming use. Expansions of such uses shall be governed by Section 801.3 ("Special Exceptions") or by Section 302.4 ("Conditional Uses") rather than Section 702.5.

APPENDIX A DEFINITIONS ... DRIVEWAY: A private off-street travelway used to provide vehicular access to lots, buildings, structures and/or parking areas. A driveway shall not be used for parking more than two vehicles unless it contains enough area to allow any vehicle to be parked without moving another. See also definitions of "Parking Area" and "Parking Spaces.",,, PARKING SPACES, OFF-STREET: For the purpose of these regulations, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room....

LEBANON ZONING BOARD OF ADJUSTMENT
APPLICATION FOR VARIANCE

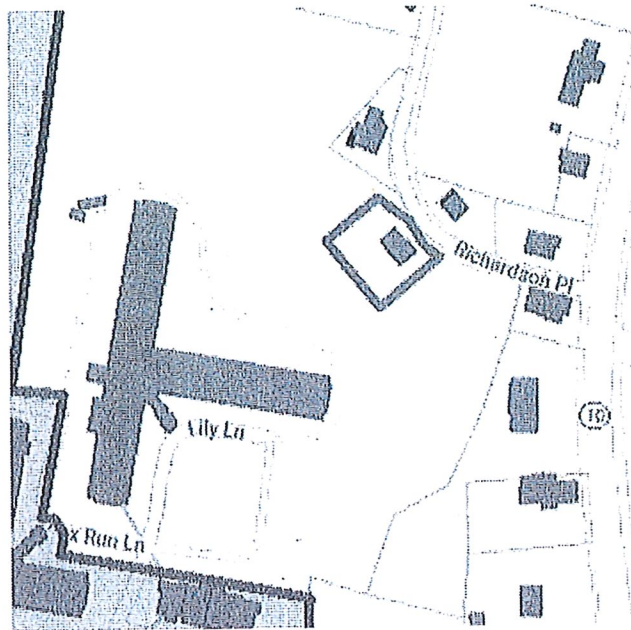
I, Diane M. Doe, am the sole owner of my property. My property is 8-9, located at 5 Richardson Place, West Lebanon, NH 03784. I purchased the property in Sept. 2019. The lot size is .360 acre, or a little over 15,000 square feet, in Class 3. It is one of 7 houses on the dead-end street.

➤ **Images and Plot Plan with measurements:**

This image from the City of Lebanon website shows the contour lines:



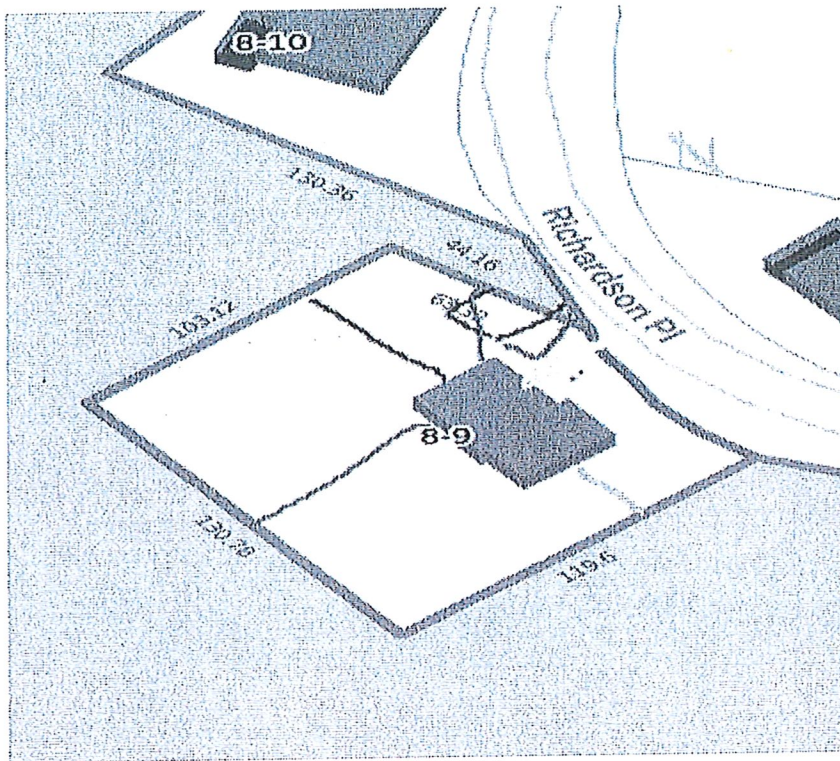
Here is the neighborhood map, with my property outlined in blue; as you can see, 3 sides are shared with Quail Hollow.



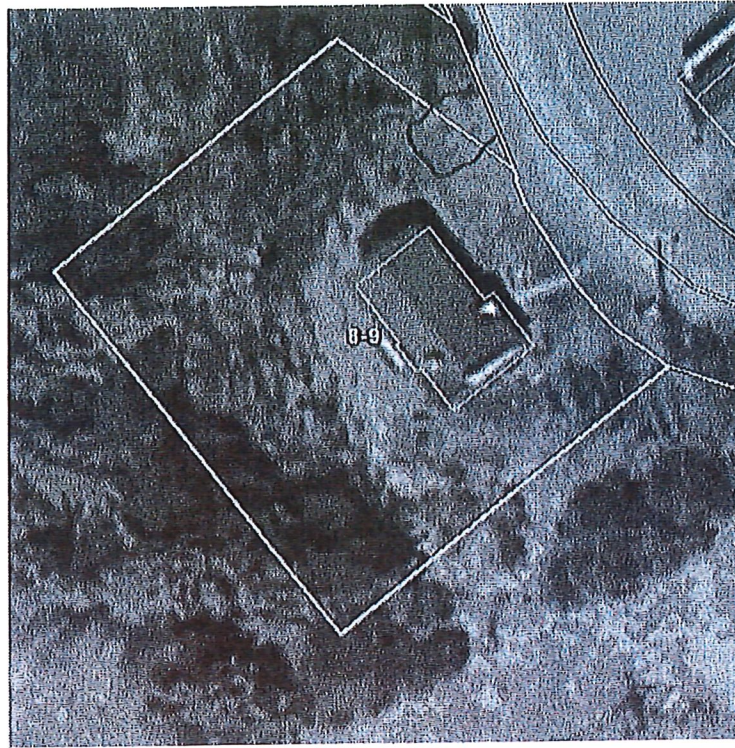
Here is plot plan with boundaries in blue and front boundary in green, plus existing driveway in bright blue (20x30) and proposed driveway expansion in red (20x12). The

maroon line to west from side of house to property line is about 60'. The dark green line to south is about 60'. The lime line to the east is about 24'. The yellow line (house front to road) is about 30'.

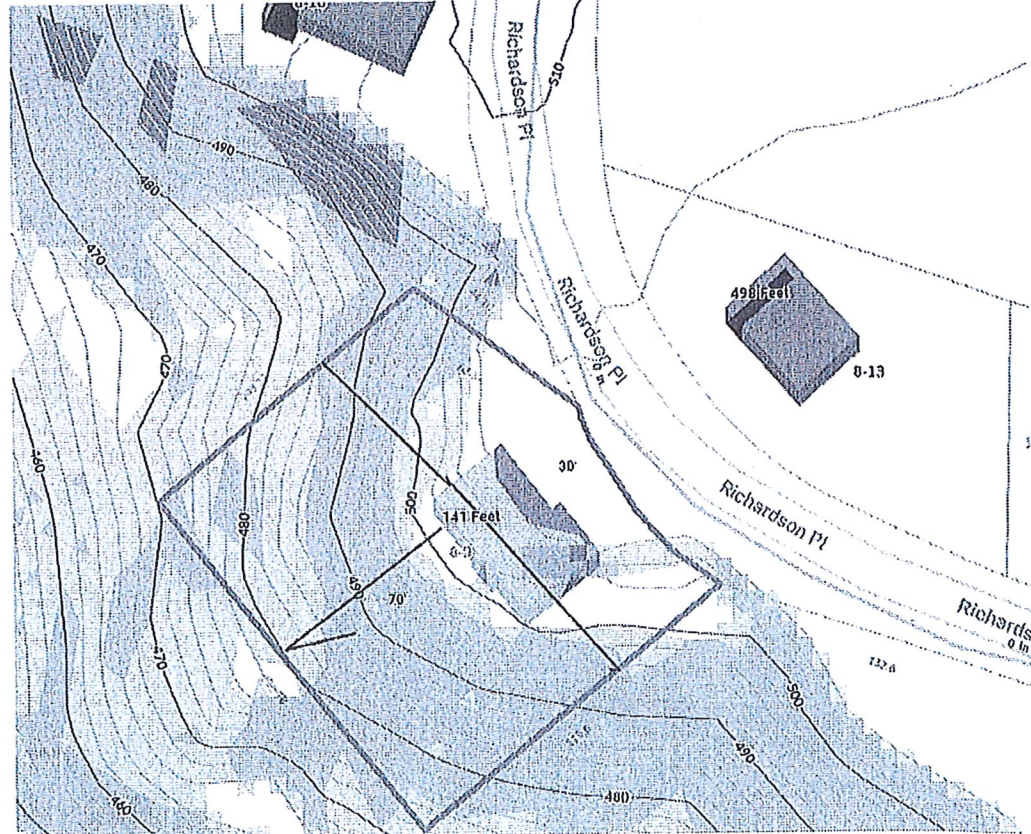
A significant line, magenta, shows the point of the drop off, at the northwest corner of the existing driveway, which cannot be changed because of the drop off of about 10-12' with a slope of about 70-80 % (see following topographical map).



Below is an aerial view. The blue line is the existing driveway. The STAR is the additional proposed driveway space. The red line is house to road, 30'.



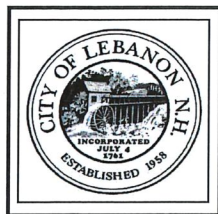
Below is the topographical map.



**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Jacqueline Minard, Trustee,
78 Mascoma Street
(Tax Map 106, Lot 67) and
82 Mascoma Street
(Tax Map 106, Lot 67, Plot701),
zoned R-3
ZB2021-09-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2021-09-VAR

APPLICATION INFORMATION

Agenda Item: 3.C

Application Type:

Variance from §310.3 to allow a subdivision of the property resulting in an undersized lot

Location:

78 Mascoma Street (Tax Map 106, Lot 67) / 82 Mascoma Street (Tax Map 106, Lot 67, Plot 701)

Applicant/Property Owner:

Jacqueline Minard, Trustee

Zoning District: R-3

Property Size:

+/-0.49 acres (+/-21,389 sq. ft.) (per figures provided on surveyor's plat submitted with Variance application) (property is conforming to the min. 10,000 sq. ft. lot size required per §310.3 for Class 1 lots in the R-3 District)

Overlay Districts: None

Previous ZBA Action (since 1995):

None

Other Approvals Required:

- Planning board minor subdivision approval

Attachments:

- Application (6 pages total)

HEARING NOTICE

Jacqueline Minard, Trustee, 78 Mascoma Street (Tax Map 106, Lot 67) and 82 Mascoma Street (Tax Map 106, Lot 67, Plot 701), zoned R-3: 82 Mascoma Street currently conforms with the 10,000 sq. ft. minimum required lot size. The applicant proposes a boundary line adjustment between the subject properties that will reduce the size of 82 Mascoma Street to +/-8,414 sq. ft. To allow the proposed boundary line adjustment, the applicant requests a Variance from Article II, Section 202 (prohibiting the reduction of lot area to less than the minimum required) and from Article III, Section 310.3 of the Zoning Ordinance (requiring a minimum lot size of 10,000 sq. ft. for Class 1 lots in the R-3 District). ZB2021-09-VAR

BACKGROUND

The property is an "L"-shaped, 0.49-acre property with frontage on Mascoma Street and on Myers Way (see Figures 2 and 3 below). The property is improved with two principal buildings:

1. a +/-2,272 sq. ft. (finished) two-family dwelling constructed in 1900, per the City assessing records (a conforming use in the R-3 District), having an address of 78 Mascoma Street; and
2. a +/-2,108 sq. ft. (finished) multi-family dwelling constructed in 1860, per the City assessing records (a non-conforming use in the R-3 District), having an address of 82 Mascoma Street.

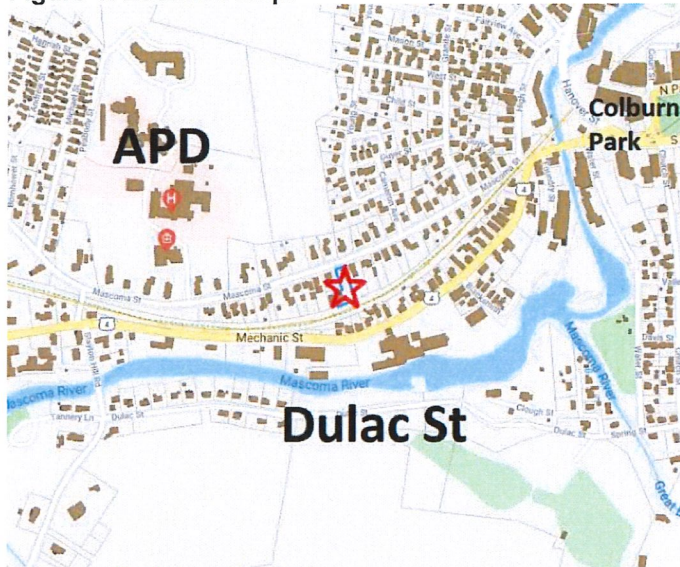
As such, the property is non-conforming to Section 205 of the Zoning Ordinance which provides that there shall be only one principal structure on a lot in the residential zoning districts (as noted above, the multi-family dwelling use is also non-conforming).

STAFF COMMENTS

The application materials presume that the subject property is in fact two legal lots of record. In preparing the hearing notice, however, staff discovered that the City's tax map shows a single lot that contains two buildings. Given time constraints, the hearing notice was prepared as the request appears in the application. However, further discussions between Planning staff and the Assessing Department have confirmed that the subject property is a single lot of record and that it has not already been subdivided as is presumed by the Variance application as

submitted. Consequently, the hearing notice is inaccurate in its description of the property's existing conditions and of the type of Planning Board approval that will be needed if the Variance is granted (a minor subdivision will be required, not a boundary line adjustment). The Board should consider whether the hearing notice adequately conveys the substance of the Variance that is actually required, or if instead a hearing notice should be prepared and sent to abutters (in which case the public hearing will need to be continued until the June 7th Zoning Board meeting).

Figure 1. Location Map.



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

PROPOSAL

As shown on the plat prepared by Rollins Land Survey, dated February 11, 2021, and submitted with the application materials, the applicant proposes to create two lots:

- Lot 1 (78 Mascoma Street) containing 12,975 sq. ft.;
- Lot 2 (82 Mascoma Street) containing 8,414 sq. ft.

The applicant will need to obtain minor subdivision approval from the Planning Board in order to create the two lots. However, the Planning Board can only approve the subdivision of lots that meet the applicable dimensional requirements in the zoning district in which the property to be subdivided is located. Therefore, prior to applying to the Planning Board to subdivide the property, the applicant first requires a Variance to allow one of the proposed lots (82 Mascoma Street) to have a lot area less than the minimum required 10,000 sq. ft. in the R-3 District.

ZONING ORDINANCE REQUIREMENTS

In the R-3 District, Class 1 lots (i.e. lots that are served by municipal sewer) require a minimum lot size of 10,000 sq. ft. per Section 309.3 of the Zoning Ordinance. Moreover, Section 202 of the Zoning Ordinance provides that, "[t]he configuration of a lot shall not be altered so that the area, yards, lot width, frontage, coverage or other requirements of this Ordinance are less than the minimums required herein." Therefore, a Variance is required to allow proposed lot 2 (82 Mascoma Street) to have a size of 8,414 sq. ft. where 10,000 sq. ft. is the minimum required.

STAFF MEMORANDUM

ZB2021-09-VAR
78/82 Mascoma Street
May 5, 2021 ZBA Meeting
Agenda Item 3.C
Page 3 of 4

Figure 2. Tax Map.



Figure 3. Bird's Eye View of Subject Property (looking east).



©2021 Eagleview (image taken 4/4/2021)

To obtain the requested Variance, 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,

STAFF MEMORANDUM

ZB2021-09-VAR
78/82 Mascoma Street
May 5, 2021 ZBA Meeting
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Page 4 of 4

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 29, 2021 (see attached).

Attachments

cc: Jacqueline Minard, Trustee (via e-mail)
Christopher Rollins, LLC (via e-mail)

**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 _____			

PROPERTY OWNER (APPLICANT):

NAME: Jacqueline H. Minard, Trustee TEL.#:
MAILING ADDRESS: 78 Mascoma Street, Lebanon, NH 03766
E-MAIL ADDRESS: MINARDT@COMCAST.NET

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Christopher E. Rollins, LLS TEL.#: 603-252-7204
MAILING ADDRESS: PO Box 291, Plainfield, NH 03781
E-MAIL ADDRESS: ROLLINSSURVEY@GMAIL.COM

PROJECT LOCATION: 82 Mascoma Street

TAX MAP #: 106 LOT#: 67-70100 PLOT #: ZONE: R3

STREET ADDRESS OF PROJECT: 82 Mascoma Street

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT: Jacqueline Minard owns two separate adjoining properties located at 78 and 82 Mascoma Street.

She would like to alter the common lot-line resulting in 82 Mascoma Street being less than 10,000 square feet in area.

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: Residential

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 _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER: _____

DATE: _____

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

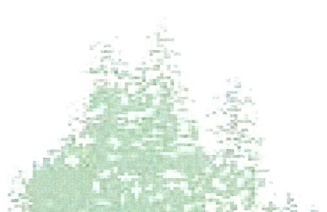
OWNER: Jacqueline Minard

DATE: 2-11-2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
3/29/21	106/67	2B2021-	9217.88	4-5-21	18143

106/67/70100 09-VAL

(Last Revised 4/04/18)



Rollins Land Survey

1216 RT 12A PO BOX 291 PLAINFIELD NH 03781

603.675.5502

ROLLINSSURVEY@GMAIL.COM

March 26, 2021

Lebanon Zoning Board of Adjustment
City of Lebanon
Lebanon, NH 03766

Re: Parcel 106-67-10700,
82 Mascoma Street,
Application for Zoning Variance

Background: Jacqueline Minard owns two adjoining properties at 78 Mascoma Street and 82 Mascoma Street. The properties have been in the family since 1903. Each property has one residential dwelling.

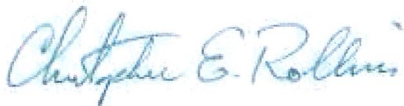
Article 2-Section 202 of the zoning ordinance specifies that each lot should have at least 10,000 square feet of area. Currently 78 Mascoma Street does not conform to this standard, but 82 Mascoma Street does. The applicant seeks approval to adjust the common boundary line between the two parcels. The result of the adjustment would be that 78 Mascoma Street will become conforming to the article, but 82 Mascoma Street will become non-conforming, but will remain larger than two of its abutting lots.

Reason for request: The property owner intends to place 82 Mascoma Street on the real estate market soon. The back yard of her home at 78 Mascoma Street extends from her home southerly to a certain lilac hedge, but the yard is divided by the current lot-line between 78 and 82 Mascoma Street. She is seeking approval to move the lot-line to coincide with the lilac hedgerow that has for many years been regarded as the division line. By allowing the lot-line adjustment she can place the 82 Mascoma Street on the market with confidence that her yard will be preserved.

After the boundary line adjustment, 78 Mascoma Street would become conforming to Article 2-Section 202, but 82 Mascoma Street would become non-conforming. The property owner seeks relief from the requirement of Article 2-Section 202 relative to 82 Mascoma Street.

Sincerely,

Rollins Land Survey



Christopher E. Rollins, LLS-NH, PLS-ME
Licensed Land Surveyor
BS-Forestry

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) 2
Section(s) 202 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 variance will allow the lilac hedge to continue to be used as the lot boundary as it has been used for many years.
 2. That the variance will observe the spirit of the Ordinance.

The variance will be in the public's interest by allowing the applicant to continue to keep the back yard maintained in its entirety.

3. That by the granting of the variance, substantial justice will be done;
The variance would cause no loss to the general public, and would give substantial peace of mind to the applicant.
4. That the variance, if authorized, will not diminish the values of surrounding properties The variance will not result in a lot that is smaller than two of the close abutting lots. 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

Denial of the variance would greatly diminish the applicant's quiet enjoyment of her home property.; and

(ii) The proposed use is a reasonable one.

The proposed use is reasonable because the land is already physically separated from the subject lot by the city street called Myers Way.

(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.

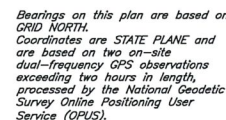
The area of lawn that will be adjusted is separated from the subject lot by Myers Way, the driveway, and by the lilac hedge and has long been considered as part of the applicants home place and will be a great loss to the applicant without the variance.

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)."



1. Underground utilities are not shown on this plan.
2. Zoning District of site- R3
3. The subject property is not within a flood zone according to FEMA flood maps.
4. There is no wetland on the subject property.
5. The property is served by city water and sewer.
6. Meyers Way, formerly called Abbott Court, was laid out 28'-feet wide and 160'-feet long on Feb. 20, 1901, all as part of George Abbott.
7. Per Minard deed: "Also a common right of way 16 feet wide one half on land formerly of said Abbott and centered on the westerly line of Parcel No. 2 and going to the Boston and Maine R.R. right of way and to the first mentioned right of way."
8. The deed description of the Minard property was drawn from a subdivision plan titled "Division of House Lot for Lizzie M. Labbie" dated May 26, 1958, drawn by L. P. Davis. The plan, however, overlapped a portion of the Popescu/Orrilana lot which had been previously conveyed but by deed recorded in book 100-10. The subdivision plan also did not allow Meyers Way its full 160'-foot length. The boundaries shown hereon give Popescu/Orrilana and Meyers Way their full extent.

Map ID: 106-69
ANDERSON, DAVID
80 1/2 MASCOMA ST
LEBANON, NH 03766

Map ID: 90-15
DESCOTEAU, TAMMY L
82 MECHANIC ST
LEBANON, NH 03766

Map ID: 106-84
WHITE, PETER CRAIG W TTEE
PO BOX 1205
NORWICH, VT 05055

Map ID: 106-66
DELLABOUGH, PHILIP & KATHY S
76 MASCOMA ST
LEBANON, NH 03766

Map ID: 106-68
POPESCU, ALIN C & ROSA C. ORILLANA
15 MACDONALD DR
HANOVER, NH 03755

Rail Trail
STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
PO BOX 483
CONCORD, NH 03302

Map ID: 91-1
LEVAKIS, WILFRED R
77 MASCOMA ST
LEBANON, NH 03766

OWNER:
Map ID: 106-67-70100
MINARD, JACQUELINE H TTEE
78 MASCOMA ST
LEBANON, NH 03766

Map ID: 106-67
MINARD, JACQUELINE H TTEE
78 MASCOMA ST
LEBANON, NH 03766

SURVEYOR:
CHRISTOPHER E. ROLLINS,
LLS
ROLLINS LAND SURVEY
PO BOX 291
PLAINFIELD, NH 03781

Hydrant	
Utility pole	
Unmarked point	•
Iron pin with ID cap set)	○ IPNS
Catch basin	▣
Sewer manhole cover	⊗
Storm drain cover	⊙
Granite bound found	■ GB
Iron pipe found	● IP

Overhead line (existing)

Basis of bearings: Grid North

Survey Classification: Standard Property Survey, Category 1, Condition 1

Precision of main traverse: 1/10,000+

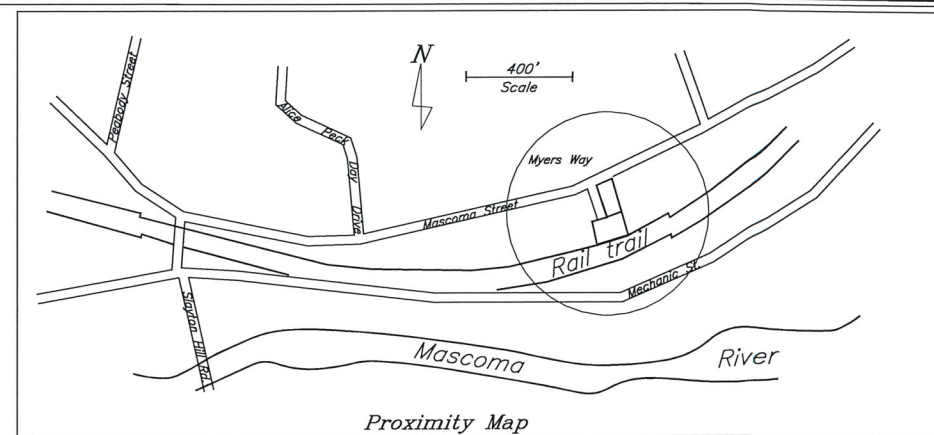
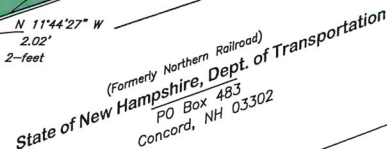
Description of monuments set: as noted

Chk: CER

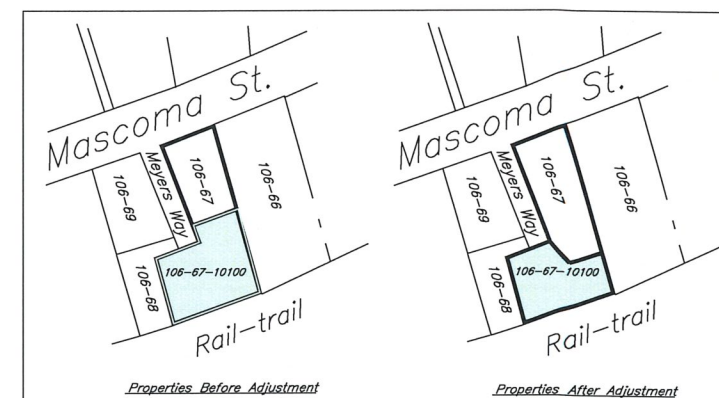
Map closure precision, Parcel 106-67----- 1 in 39,203

Map closure precision: Parcel 106-67-70100 -----1 in 29,182

Drawn by: CER Revised:



	<u>Parcel ID 106-67</u>	<u>Parcel ID 106-67-70100</u>
Area before boundary adjustment (sf)	9,547	11,842
Area after boundary adjustment (sf)	12,975	8,414



"This plan shows Minor Lot Line Adjustments/Boundary Line Agreements and does not require the approval of the Planning Board as a subdivision."

***Subdivision of Land of
Jacqueline H. Minard, Trustee***

J. H. Minard Rev. Trust
Located at 78 & 82 Mascoma Street
in the
City of Lebanon

County of Grafton
State of New Hampshire



One inch = 20 feet Date: Feb. 11, 2021

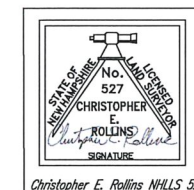
Surveyor: Christopher E. Rollins, LLS
Rollins Land Survey
1216 RT. 12A (PO Box 291)
Plainfield, NH 03781

Zoning District: R3-Residential 3, with city water and sewer
City Parcel ID: 106-67 and 106-67-70100

Subject property is described in deed(s) 4057/440 Tracts 1 & 2
of the Grafton County Registry of Deeds.

Owner of record according to city records is:

Jacqueline H. Minard, Trustee
78 Mascoma Street, Lebanon, NH 03766 Project 1740-4



Christopher E. Rollins NHLS 52

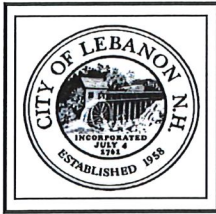




**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Providence Presbyterian
Church,
99 Maple Street
(Tax Map 59, Lot 14),
zoned R-3
ZB2021-10-VAR**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2021-10-VAR

APPLICATION INFORMATION

Agenda Item: 3.D

Application Type:

Variance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum permitted

Location:

99 Maple Street (Tax Map 59, Lot 14)

Applicant/Property Owner:

Providence Presbyterian Church

Zoning District: R-3

Property Size:

+/-0.64 acres

Existing Improvements: +/-10,722

sq. ft. (finished) non-residential building currently occupied by a house of worship (*a conforming use per Section 310.2*)

Overlay Districts: None

Previous ZBA Action (since 1995):

None

Other Approvals Required:

- Building Permit

Attachments:

- Application (5 pages total)

HEARING NOTICE

Providence Presbyterian Church, 99 Maple Street (Tax Map 59, Lot 14), zoned R-3: Applicant requests a variance from Section 608.4.B.2 of the Zoning Ordinance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum sign area permitted for a single use. ZB2021-10-VAR

SUMMARY OF REQUEST

The property is improved with a +/-10,722 sq. ft. building constructed in 1900 per the City Assessor's records, which is currently (and which has been historically) occupied by a church. "House of worship" is a permitted use in the R-3 District.

The applicant requests a variance from Section 608.4.B.2 of the Zoning Ordinance to allow an 11 sq. ft. freestanding sign where 4 sq. ft. is the maximum sign area permitted for a single use. The attached application materials include a rendering of the proposed sign and a plot plan showing the proposed location of the sign on the property.

ZONING ORDINANCE REQUIREMENTS

Section 608.4.B of the Zoning Ordinance sets forth the sign regulations for non-residential uses in the residential districts as follows:

Non-Residential Uses in Residential and Mixed Use Districts. For legally existing non-residential uses and for **home businesses** in the **residential** and **mixed use districts**, one **sign** is permitted per **lot** which may be either a **freestanding sign**, **projecting sign**, or **wall sign**. If located in a **mixed use district**, the **sign** may have **external illumination** in accordance with Section 608.4.A.6.c ("External Illumination").

1. **Freestanding Signs.** **Freestanding signs** shall:

- a. Comply with the landscaping requirements set forth in Section 608.4.A.4.c.i ("Landscaping").
- b. Have a height of no greater than eight (8) feet.

2. **Sign Area.** **Sign area** is limited to four (4) square feet if a single non-residential use is located on the **lot**. For each additional non-residential use on the **lot**, an additional two (2) square feet of **sign area** may be added to the single **sign** permitted on the **lot**. The total **sign area** for each **lot** shall not exceed sixteen (16) square feet.

STAFF MEMORANDUM

ZB2021-10-VAR
99 Maple Street (Tax Map 59, Lot 14)
May 3, 2021 ZBA Meeting
Agenda Item 3.D
Page 2 of 4

Figure 1. Google Street View of Subject Property (taken July, 2019).



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

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



©2021 Eagleview (image taken 4/3/2021)

STAFF MEMORANDUM

ZB2021-10-VAR
99 Maple Street (Tax Map 59, Lot 14)
May 3, 2021 ZBA Meeting
Agenda Item 3.D
Page 3 of 4

Here, because there is only a single use on the property (the church), the size of the freestanding sign is limited to 4 sq. ft. Because an 11 sq. ft. sign is proposed, a Variance is required from the maximum sign area limitations of Section 608.4.B.2 of the Zoning Ordinance.

To obtain the requested Variance from Section 608.4.B.2, 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?

STAFF MEMORANDUM

ZB2021-10-VAR
99 Maple Street (Tax Map 59, Lot 14)
May 3, 2021 ZBA Meeting
Agenda Item 3.D
Page 4 of 4

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 and Development Department on April 12, 2021 (see attached).

Attachment

cc: Issac Trudeau, Providence Presbyterian Church (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>Providence Presbyterian Church - Isaac Trudeau</u>		TEL.#: <u>443-406-6150</u>	
MAILING ADDRESS: <u>99 Maple St, West Lebanon, NH 03784</u>			
E-MAIL ADDRESS: <u>isaac@providencenh.org</u>			
CO-APPLICANT, AGENT, OR LESSEE:			
NAME:		TEL.#:	
MAILING ADDRESS:			
E-MAIL ADDRESS:			
PROJECT LOCATION:			
TAX MAP #: <u>59</u>	LOT#: <u>14</u>	PLOT #:	ZONE: <u>R3</u>
STREET ADDRESS OF PROJECT: <u>99 Maple St, West Lebanon, NH 03784</u>			
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO			
FLOOD PLAIN ☐ YES ☒ NO			
SCOPE OF PROJECT:			
<u>Erect a sign (11 sq ft) identifying Providence Presbyterian Church in front lawn area.</u>			
TYPE OF OCCUPANCY:			
EXISTING	☐ VACANT	☐ ONE FAMILY	☐ TWO FAMILY
PROPOSED	☐ VACANT	☐ ONE FAMILY	☐ TWO FAMILY
	☐ MULTI-FAMILY	☒ COMMERCIAL	☐ INDUSTRIAL
	☐ MULTI-FAMILY	☒ COMMERCIAL	☐ INDUSTRIAL
IF USE IS COMMERCIAL OR INDUSTRIAL , PLEASE NOTE SPECIFIC USE: <u>House of worship</u>			
SIGNATURE BLOCK:			
 PROPERTY OWNER		<u>(Isaac Trudeau, Trustee)</u> DATE: <u>4/9/2021</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: _____	

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
<u>4-12-21</u>	<u>59/14</u>	<u>ZB2021-</u>	<u>\$217.88</u>	<u>4-12-21</u>	<u>18174</u>

10-VAR

(12/07/07)

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) VI
Section(s) 608.4 B.2. 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;
Houses of worship are ordinarily permitted in residential zones, and it is furthermore in the public interest to have a sign to identify the particular house of worship.
 2. That the variance will observe the spirit of the Ordinance.
The residential character of the zone will be preserved with this variance.
 3. That by the granting of the variance, substantial justice will be done;
Two other houses of worship in the same residential zone on Maple St have signs of a larger area than proposed for Providence Presbyterian Church.
 4. That the variance, if authorized, will not diminish the values of surrounding properties
Property values will not be diminished by this ordinary use of a sign. 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 4 SQFT limit in 608.4. B.2 is inadequate to provide a legible sign at an ordinary distance on approach.; and

(ii) The proposed use is a reasonable one.

Houses of worship ordinarily have a sign for identification.

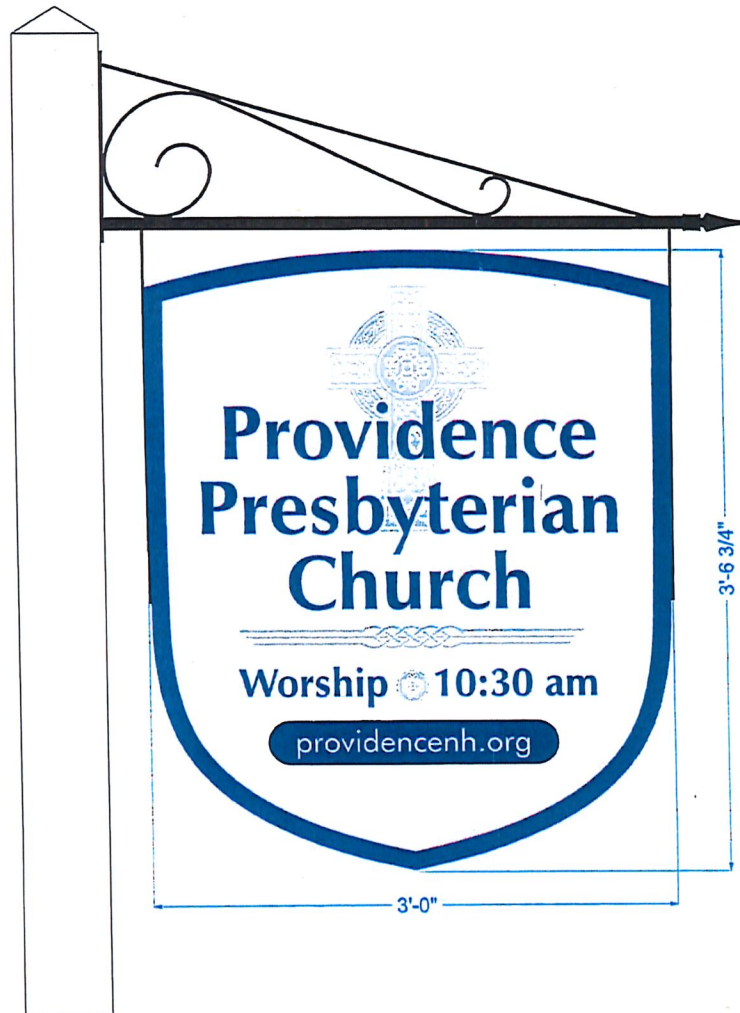
(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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)."



Please review this proof carefully! Spelling and phone numbers are your responsibility.
Colors represented in this proof may vary from final product.
If color accuracy is important, please notify us prior to approving the design.

ADVANTAGE
Signs

1314 Miller, Ste. C, Concord, NH 03301
603-224-7446 v. • 603-224-3888 f.
www.advantagesigns.net

Job Name:



Sales Rep:
Russ Aubertin
Drawn By:
RA
Date:
6/22/20
Revision #:
3-622

Design © Advantage Signs, Inc. 2020

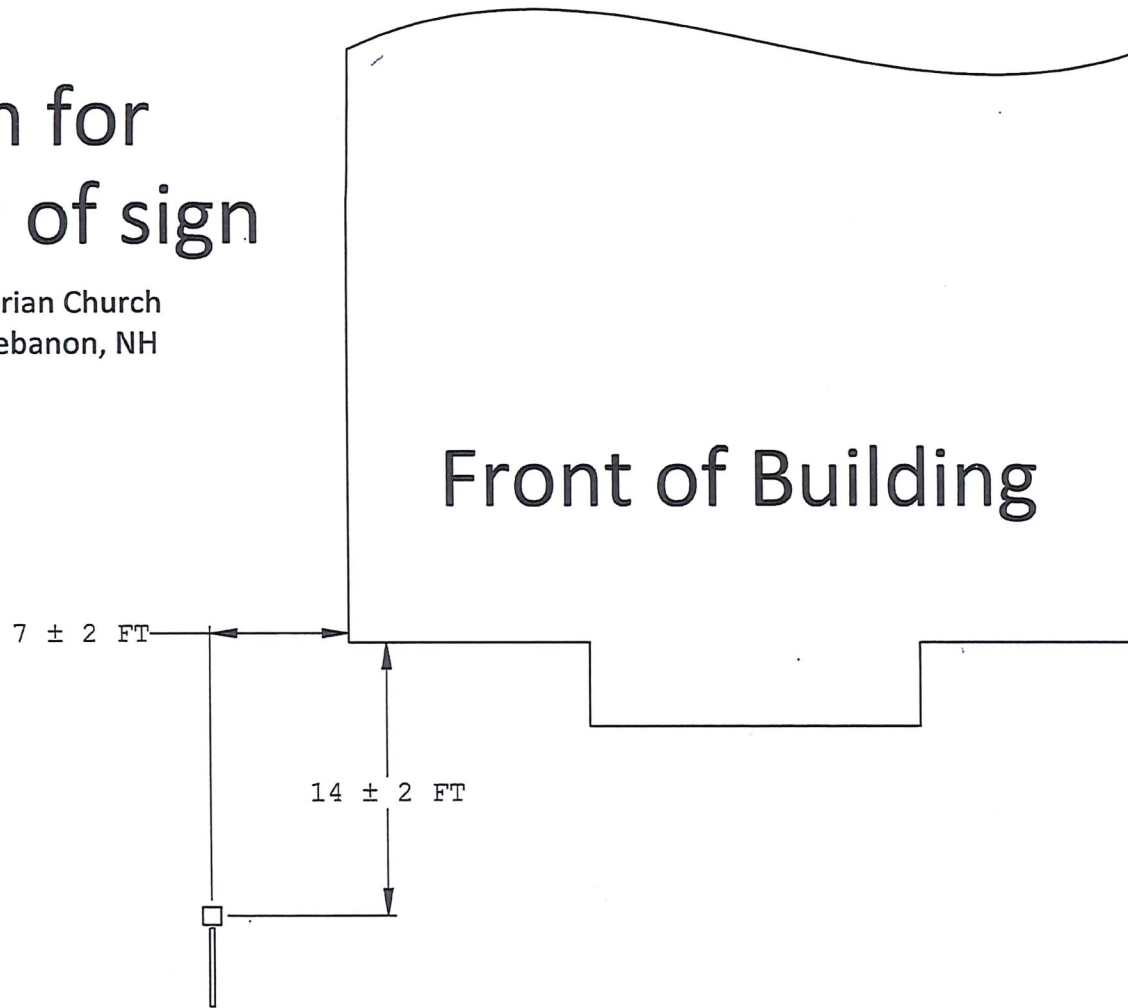
PRODUCTION WILL NOT BEGIN UNTIL SIGNED
APPROVALS ARE RECEIVED IN THIS OFFICE

☐ APPROVED SIGNATURE
☐ APPROVED DETAIL
☐ APPROVED AS NOTED
☐ RECALL REQUEST

Sign Types:

Site plan for location of sign

Providence Presbyterian Church
99 Maple St, West Lebanon, NH

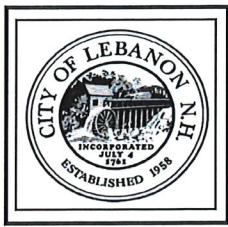


Maple Street

**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Michael McCarthy,
29 Summer Street
(Tax Map 76, Lot 166),
Zoned R-3
ZB2021-11-SE**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2020-11-SE

APPLICATION INFORMATION

Agenda Item: 3.E

Application Type:

Special Exception per §310.2 to convert a one-family dwelling to a two-family dwelling

Location:

29 Summer Street (Tax Map 76, Lot 166)

Applicant/Property Owner:

Michael McCarthy

Zoning District:

Residential Three (R-3)

Property Size: +/-9,148 sq. ft. (non-conforming to the minimum required 10,000 sq. ft. lot size required for Class 1 lots in the R-3 District per §310.3)

Existing Use: +/-1,946 sq. ft. (finished) two-story one-family dwelling constructed in 1920, per the City's assessing records (a conforming use in the R-3 District)

Proposed Use: Two-family dwelling

Overlay Districts: none

Previous ZBA Action (since 1995):
none

Other Approvals Required:

- Building Permit

Attachments:

- Application (7 pages total)

HEARING NOTICE

Michael McCarthy, 29 Summer Street (Tax Map 76, Lot 166), zoned R-3: Applicant requests a Special Exception pursuant to Article III, Section 310.2 of the Zoning Ordinance to convert an existing one-family dwelling to a two-family dwelling. ZB2021-11-SE

SUMMARY OF REQUEST

The property is a +/-0.21 acre lot located at the corner of Colburn Street and Summer Street. The property is improved with a 1,946 sq. ft. (finished) one-family dwelling constructed in 1920 (according to the City's assessing records), and has two driveway cuts: one from Summer Street providing access to a two-car garage (shown in Figure 2 below), and another from Colburn Street providing a one-car parking space (marked with a yellow star in Figure 3 below).

The applicant proposes to convert the existing one-family dwelling into a two-family dwelling. The applicant does not propose any site changes in connection with the conversion, but it may be necessary to expand the parking area off of Colburn Street (see Staff Comments below).

Figure 1. Location Map.



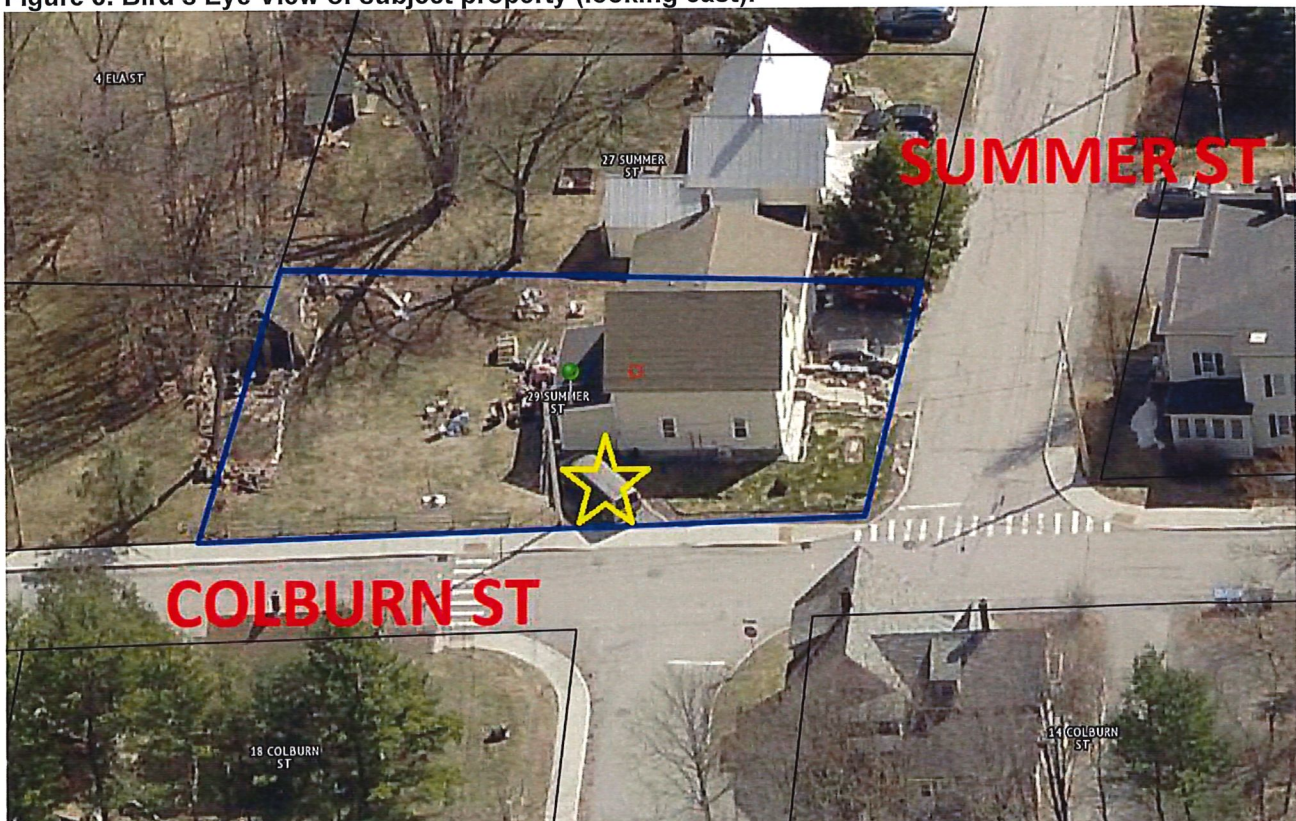
STAFF MEMORANDUM

ZB2021-11-SE
29 Summer Street (76-166)
May 3, 2021 ZBA Mtg
Agenda Item 3.E
Page 2 of 4

Figure 2. Google Street View (July, 2013)



Figure 3. Bird's Eye View of subject property (looking east).



©2021 Eagleview (image taken 4/4/2021)

ZONING ORDINANCE REQUIREMENTS

“Two-family dwelling by conversion of existing one-family dwelling” is a use permitted by **Special Exception** in the R-3 District per Section 310.2 of the Zoning Ordinance. To grant the requested Special Exception, the Board must determine that the proposal meets the general Special Exception criteria, set forth in Section 801.3 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §310.2 of the Zoning Ordinance.
- B. All special conditions required of the special exception have been met.
Note: There are no special conditions required for a conversion of a one-family dwelling to a two-family dwelling in the R-3 District.
- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is not aware of any Zoning Ordinance violations on the property.
- D. The character of the area shall not be adversely affected.
- E. No hazard or nuisance will be created.
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- G. Granting the special exception will not result in undue municipal expense.
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- I. The general welfare of the City will be protected.

The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on April 15, 2021 (see attached).

STAFF COMMENTS

Section 607 of the Zoning Ordinance requires a minimum of two (2) parking spaces per dwelling unit. Therefore, the proposed conversion to a two-family dwelling requires a minimum of four (4) off-street parking spaces. Additionally, Section 201.7 of the Zoning Ordinance requires “parking areas in the front yard in the residential districts [...] shall be set back no less than the lesser of the minimum front yard requirement or the building line, but in no case less than five (5) feet.” With the two-car garage, the home currently has two (2) conforming parking spaces. Assuming that the driveway cut and parking space off of Colburn Street has legal non-conforming status, then the property currently has a third parking space. However, to meet the minimum required parking requirements for a two-family dwelling, a fourth parking space must be provided. Staff recommends that the Board consider requiring the applicant to provide a plot plan showing the addition of a fourth parking space – located in conformance with Section 201.7 – as a condition of any approval of the requested Special Exception.

STAFF MEMORANDUM

ZB2021-11-SE
29 Summer Street (76-166)
May 3, 2021 ZBA Mtg
Agenda Item 3.E
Page 4 of 4

Absent abutter testimony to the contrary, and other than staff's concern with respect to Section 201.7, the proposed conversion does not appear to be inconsistent with any of the applicable criteria set forth in Section 801.3.

Attachment

cc: Michael M. McCarthy, property owner (via e-mail)
Barrett Architecture, PC, applicant's representative (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 _____

PROPERTY OWNER (APPLICANT):

NAME: MICHAEL M. M² CATTLEY TEL.#: (603) 252-9464
MAILING ADDRESS: P.O. Box 188; HANOVER, NH 03755
E-MAIL ADDRESS: LJAM@THECLIFE.COM

CO-APPLICANT, AGENT, OR LESSEE:

NAME: BARRETT ARCHITECTURE, PC TEL.#: (802) 296-0004
MAILING ADDRESS: P.O. Box 55; WHITE RIVER JCT., VT 05001
E-MAIL ADDRESS: FRANK.BARRETTJR@GMAIL.COM

PROJECT LOCATION:

TAX MAP #: 77 LOT#: 166 PLOT #: _____ ZONE: R-3
STREET ADDRESS OF PROJECT: 29 SUMMER STREET
IS THIS PROPERTY LOCATED IN THE: WETLANDS ☐ YES ☒ NO HISTORIC DISTRICT ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

ONE-FAMILY TO TWO-FAMILY CON-
VERSION.

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 _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER: _____

DATE: _____

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: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4-15-21	77/166	282021-	217.88	4-15-21	18187

11-SE

(Last Revised 4/04/18)

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION**

One cover application, one abutters list, a filing fee and ten copies of the site plan must accompany this support statement.

I (we) hereby request a Special Exception as provided for in Article(s) III,
Section(s) 310, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION (Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)

CONVERSION OF THE EXISTING
SINGLE-FAMILY RESIDENCE INTO A
TWO-FAMILY RESIDENCE.

SEE ATTACHED LETTER DATED
APRIL 13, 2021.

In order to grant a Special Exception, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

(You can respond in the space provided, or attach a separate statement. Please be prepared to address the conditions with the Board during your public hearing. You must show that you have met all the conditions.)

SECTION 801.3 Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon matters which the Board is required to pass under this ordinance. In passing upon any application for a special exception, the Board shall make each of the following findings:

- A. That the special exception is specifically authorized by a provision of this ordinance:

SEE ATTACHED LETTER

- B. That all special conditions required of the special exception have been met:

do.

- C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:

do.

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

D. That the character of the area shall not be adversely affected:

d.o.

E. That no hazard or nuisance will be created:

d.o.

F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:

d.o.

G. That granting the special exception will not result in undue municipal expense:

d.o.

H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:

d.o.

I. That the general welfare of the City will be protected:

d.o.

Please Note:

Pursuant to Section 802.4B, "Special Conditions", the Board may attach whatever conditions it deems necessary in order to assure compliance with the purposes of this ordinance.

A special exception 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 special exception or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.



April 13, 2021

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

Attn: Attn: Tim Corwin; Senior Planner / Zoning Administrator.

RE: Property Located at 29 Summer Street, Lebanon, NH; Tax map 77 / Lot 166; in the "R3" Residential Three Zoning District.

Dear Members of the City of Lebanon Zoning Board of Adjustment,

This Applications for Special Exception is to allow for the conversion of a one-family dwelling, a permitted use, into a two-family dwelling, a use allowed by Special Exception, as per the applicable terms of Zoning Ordinance #2 City of Lebanon, New Hampshire ("the Ordinance"), Adopted January 16, 2013; Last Amended March 9, 2012; Article III *Use Districts*; Section 310 *Residential Three District (R-3)*; *Table of Uses* 310.2.

The property in question is currently a compliant one family dwelling, a permitted use as per *Table of Uses* 310.2, and the current property owner, Michael M. McCarthy, is wanting to convert the property into a two family dwelling as allowed by *Table of Uses* 310.2 of the Ordinance as long as a Special Exception is granted from the Lebanon Zoning Board of Adjustment. The proposed conversion does not include any change to the existing physical envelope of the building, or to the overall appearance or presentation of the exterior of the property. Mr. McCarthy has owned the subject property since April 16, 2003.

The existing property was first developed as a single family residence early in the past century, has been consistently used as such, and is generally in overall good repair. The property is served by municipal water and sewer service, and there are no known issues with those services.

The property is located at the northeasterly corner of Summer and Colburn Streets; and is therefore a corner lot as per the terms of the Ordinance. As such, it has two (2) front and two (2) side yard zoning setbacks. The City's assessors records list the lot area as being 9,174.60 square feet. There is approximately 130-linear feet of frontage on Colburn Street; and approximately 75-linear feet of frontage on Summer Street. According to the City assessors records, the footprint of the existing house structure is approximately 1,406 gross square feet. Assuming this to be accurate, this makes the present lot coverage about 15-percent. Existing parking on site includes a garage area with two (2) vehicle bays, a paved driveway area in front of the garage bay doors that can accommodate two (2) vehicles, and a single existing gravel parking spot adjacent to Colburn Street.

At this time there are no zoning or building code violations or otherwise associated issues concerning this property known to this writer.

POST OFFICE BOX 55 ■ 215 GATES-BRIGGS BUILDING
WHITE RIVER JUNCTION, VERMONT 05001

TELEPHONE: (802) 296-0004 ■ FACSIMILE: (802) 296-0005 ■ E-MAIL: FRANK.J.BARRETT@MYFAIRPOINT.NET

Special Exception Criteria and Findings

As per the stated terms of the current adopted Ordinance, the writer offers the following responses for the Board's information and consideration.

A. That the special exception is specifically authorized by a provision of this ordinance:

This Applications for Special Exception to allow for the conversion of a one-family dwelling, a permitted use within the "R3" Residential Three Zoning District, into a two-family dwelling, is allowed by Special Exception, as per the applicable terms of *Zoning Ordinance #2 City of Lebanon, New Hampshire* ("the Ordinance"), Adopted January 16, 2013; Last Amended March 9, 2012; Article III *Use Districts*; Section 310 *Residential Three District (R-3)*; *Table of Uses* 310.2.

B. That all special conditions required of the special exception have been met:

To the best of this writer's knowledge, all special conditions required of this special exception have been met.

C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:

To the best of this writer's knowledge, there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy.

D. That the character of the area shall not be adversely affected:

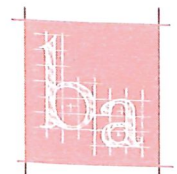
As stated above, this residential conversion does not require or otherwise call for any exterior changes to the existing building envelope, building appearance, or overall general massing or presentation of the existing structure.

E. That no hazard or nuisance will be created:

Both the current one-family use of the property, and the proposed conversion to a two-family dwelling facility, are very benign residential uses. These uses are in fact the intended principal uses within this residential zoning district. The current one-family use of the property as closely related to, and in concert with, the proposed two-family conversion and use as there could be. Both the existing residential structure and the existing residential lot are of sufficient size to properly handle the proposed two-family conversion. Therefore, this writer believes that there will be no hazard or nuisance resulting from the Board's approval of this Application for Special Exception.

F. That the capacity of existing or planned facilities and services (including streets and highways) will not be adversely impacted:

This area of Lebanon was from the start laid out as a residential neighborhood, with proportionally scaled and sized facilities and services. This proposal does not seek to increase the occupant load within the existing residential structure, but rather only to rearrange it from one dwelling unit to two. As a result there will not necessarily be any increase in water and sewer use for this property, nor any increase in vehicular traffic on streets or highways in the vicinity of the subject property.



G. That granting the special exception will not result in undue municipal expense:

As per the response given to item F. above, this writer does not foresee any resulting increase in municipal expenses associated by granting this Application for Special Exception. Once again, it should be stated that the use is relatively benign and generally intended for and broadly permitted within this residential zoning district.

H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:

The proposed special exception is to repurpose (convert) an existing one-family house into a two- dwelling unit. All of this is within a long existing residential neighborhood. Adopted state and local building, sanitation, and fire safety codes, with local enforcement, will provide a check that the conversion work is done in an appropriate manner, and within the spirit and intent of not only the Board's approval, but that of the Ordinance.

I. That the general welfare of the City will be protected:

For all of the stated reasons as outlined above, this writer fully believes that the general welfare of the City will be protected.

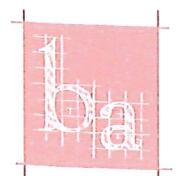
Thank you for your time and consideration of this matter. We look forward to further discussing this proposal with the Board and interested members of the public at the upcoming public hearing.

Sincerely,

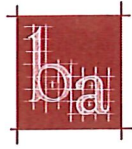

FRANK J. BARRETT, JR.
No. 1581
LICENSED ARCHITECT
STATE OF NEW HAMPSHIRE

Frank J. Barrett, Jr., A.I.A.
Architect

Cc: Michael M. McCarthy
File

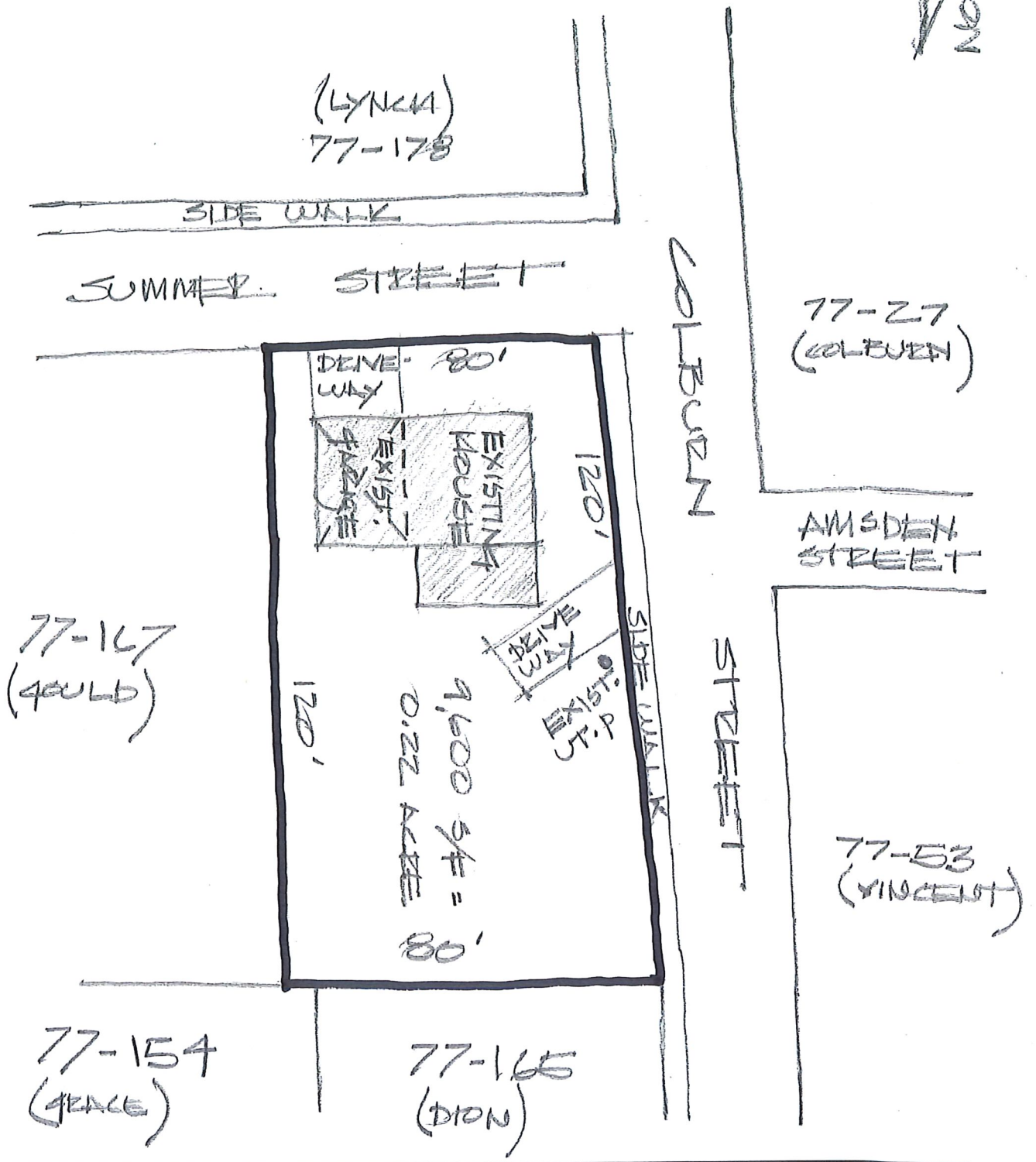


SKETCH PLAN OF M.M. McLELLAN PROPERTY
 29 SUMMER STREET, LYNN, VT
 4/14/2021



barrett architecture
 FRANK J. BARRETT, JR., AIA.

North



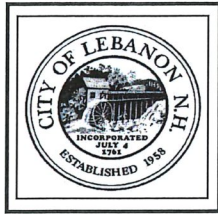
POST OFFICE BOX 55 ■ 215 GATES-BRIGGS BUILDING
 WHITE RIVER JUNCTION, VERMONT 05001

TELEPHONE: (802) 296-0004 ■ FACSIMILE: (802) 296-0005 ■ E-MAIL: FRANK.J.BARRETT@MYFAIRPOINT.NET

**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Lyme Properties
(applicant),
XYZ Dairy, LLC
(property owner),
215 N. Main Street
(Tax Map 21, Lot 1),
zoned RL-2
ZB2021-12-AAD**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2021-12-AAD

APPLICATION INFORMATION

Agenda Item: 3.F

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 (27 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]. ZB2021-12-AAD

BACKGROUND

The subject matter of this application is identical to application ZB2021-08-AAD which was scheduled to be heard at the April 5, 2021, Zoning Board meeting. Following a motion to postpone the ZB2021-08-AAD hearing to the May 3rd Zoning Board meeting, the applicant withdrew the application.

The applicant thereafter submitted a new application on April 15, 2021 (see attached). The new application includes:

- an application form;
- a letter from Chet Clem dated April 15, 2021; and
- the agenda packet for the now-withdrawn application (ZB2021-08-AAD), prepared for the April 5, 2021, Zoning Board meeting, (which includes the staff memo prepared for the now-withdrawn application).

STAFF COMMENTS

Given that the applicant's request remains identical to the now-withdrawn application (ZB2021-08-AAD), the staff memo for the now-withdrawn application (included as part of the applicant's new submission) can be utilized in connection with Board's review of the new application (ZB2021-12-AAD).

As a reminder, the applicant first argues that staff erroneously determined an appeal per Section 702.2 of the Zoning Ordinance is required in order to resume the non-conforming two principal building use (secondarily, the applicant argues that, in any event, the proposal to resume the non-conformity meets the applicable criteria of Section 702.2).

With respect to the applicant's first argument, staff's position is that it is substantively without merit (for the reasons set forth in the staff memo for the now-withdrawn application). However, staff also notes that the

STAFF MEMORANDUM

ZB2021-08-AAD
215 N. Main St (21-1)
May 3, 2021 ZBA Meeting
Agenda Item 3.F
Page 2 of 2

applicant's appeal of staff's determination as to the necessity of filing an appeal per Section 702.2 is time barred by Section 801.1 of the Zoning Ordinance which provides as follows:

801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6. (emphasis added)

Two appealable determinations were made with respect to the subject application:

1. The demolition permit issued in 2018 included a condition that provided, in part, "[r]esumption of non-conforming use and reconstruction of non-conforming structure(s) must occur within two (2) years of issuance of demolition permit[.]" To the extent the applicant disagreed with this condition, they would have needed to file an appeal to the Zoning Board within 30 days of their receipt of the demolition permit, per Section 801.1 of the Zoning Ordinance. Instead, the now-withdrawn Zoning Board application purporting to appeal the imposition of the original 2018 condition of approval wasn't submitted until March 18, 2021, long past the 30-day appeal deadline.
2. It's not clear that the Zoning Administrator's December 9, 2020, e-mail constituted a new determination that was separately appealable from the imposition of the original demolition permit condition of approval. But assuming that it was, the administrative appeal of the December 9, 2020 determination should have been made by no later than January 9, 2021, per Section 801.1 of the Zoning Ordinance. Instead, the now-withdrawn Zoning Board application purporting to appeal the December 9th determination wasn't submitted until March 18, 2021, long past the 30-day appeal deadline.

For these reasons, staff recommends that the Board (1) find that the applicant's administrative appeal with respect to the necessity of filing an appeal per Section 702.2 is time barred by Section 801.1 of the Zoning Ordinance, and (2) proceed directly to consideration of the applicant's request per Section 702.2 of the Zoning Ordinance to extend the time within which to resume the non-conforming two principal dwelling use.

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	☒	☐ OTHER ()

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#: 1

PLOT #:

ZONE:

STREET ADDRESS OF PROJECT: 215-217 North Main Street, West Lebanon

IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☐ NO **HISTORIC DISTRICT** ☐ YES ☐ NO

FLOOD PLAIN ☐ YES ☐ NO

SCOPE OF PROJECT:

See attached statement.

TYPE OF OCCUPANCY: Two principal structures on the same lot

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:

David Chen
PROPERTY OWNER

DATE: 4/15/2021

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.

am bound by any official decision
David Chen
PROPERTY OWNER

DATE: 4/15/2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4-15-21	21/1	ZB2021-	\$106.99	4/26/21	18203

(12/07/07)

12-AAA for 2app



April 15, 2021

Zoning Board of Appeals
City of Lebanon
51 N Park Street
Lebanon, NH 03766

Re: Re-filing: 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).

XYZ was on the advertised April 5, 2021 agenda for the City of Lebanon Zoning Board of Adjustment (ZBA), having met the requirements of the City of Lebanon's process ahead of the March 18, 2021 submission deadline to appear on the April 5, 2021 agenda. This was done at the direction of the Zoning Administrator, and XYZ complied despite disagreeing with the requirement.

Having been denied a request to be heard on April 5 by a motion from the Chair to continue the hearing to May 3, 2021, 18 days beyond the two-year time limit for the continuance of the non-conforming use, created an additional delay that put the project in jeopardy. As such, XYZ withdrew the application. Instead, XYZ decided to file Building Permit #2021-176 on April 6, 2021, in advance of the two-year anniversary of the actual demolition of the previously existing non-conforming structures.

On April 7, 2021 building permit application #2021-176 was deemed incomplete by the Zoning Administrator. That decision is being appealed separately to the ZBA.

It remains XYZ's position that an extension is unnecessary, having initiated enabling work, septic design, and NH DES approvals with a licensed Engineer in advance of the erroneous December 6, 2020 deadline. This was communicated to the City of Lebanon on December 2, 2020. In addition, XYZ filed a building permit in advance of the April 25, 2021 anniversary of demolition.

Notwithstanding our confidence in the representation of the real timeline, we re-submit the previous application for consideration on the May 3, 2021 ZBA Agenda at the direction of the Zoning Administrator.

Sincerely,

Lyme Properties. 57 Main Street, West Lebanon, NH 03784
Phone: 603-676-7800 • Fax: 603-676-7810 • Email: info@lymeproperties.com



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

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

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

**XYZ Dairy, LLC,
215-217 N. Main Street
(Tax Map 21, Lot 1),
Zoned RL-2
ZB2021-08-AAD**



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

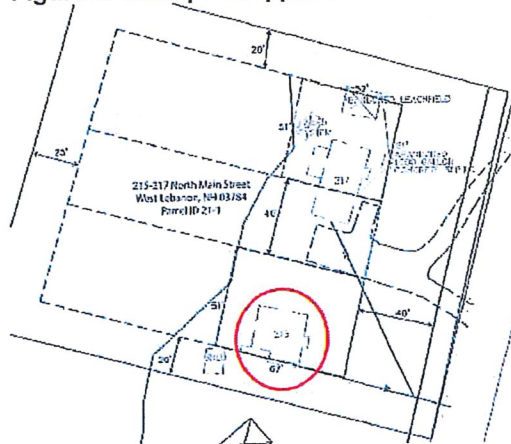
XYZ Dairy, LLC, 215-217 N. Main Street (Tax Map 21, Lot 1), **RL-2:** An appeal pursuant to Article VII, Section 702.2 of the Zoning Ordinance to allow the resumption of a discontinued non-conforming use of the subject property [two (2) one-family dwelling principal buildings where only one (1) principal 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.



STAFF MEMORANDUM

ZB2021-08-AAD
215 N. Main St (Tax Map 21, Lot 1)
April 5, 2021 ZBA Meeting
Agenda Item 3.D
Page 2 of 4

Figure 2. Location Map.

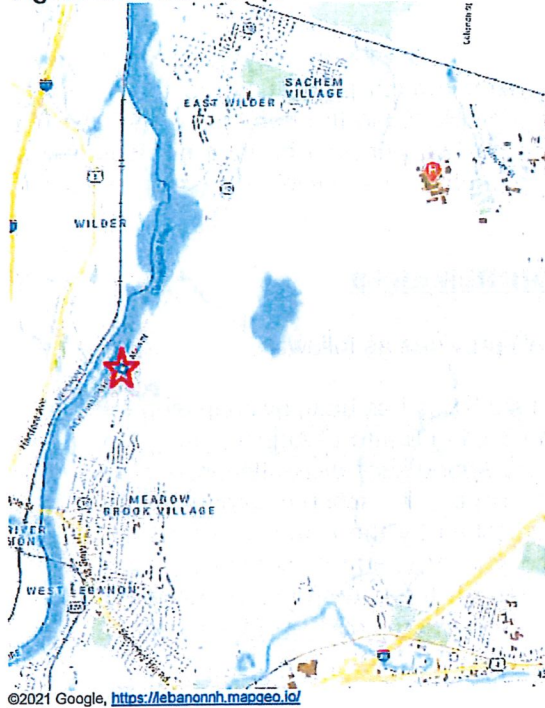
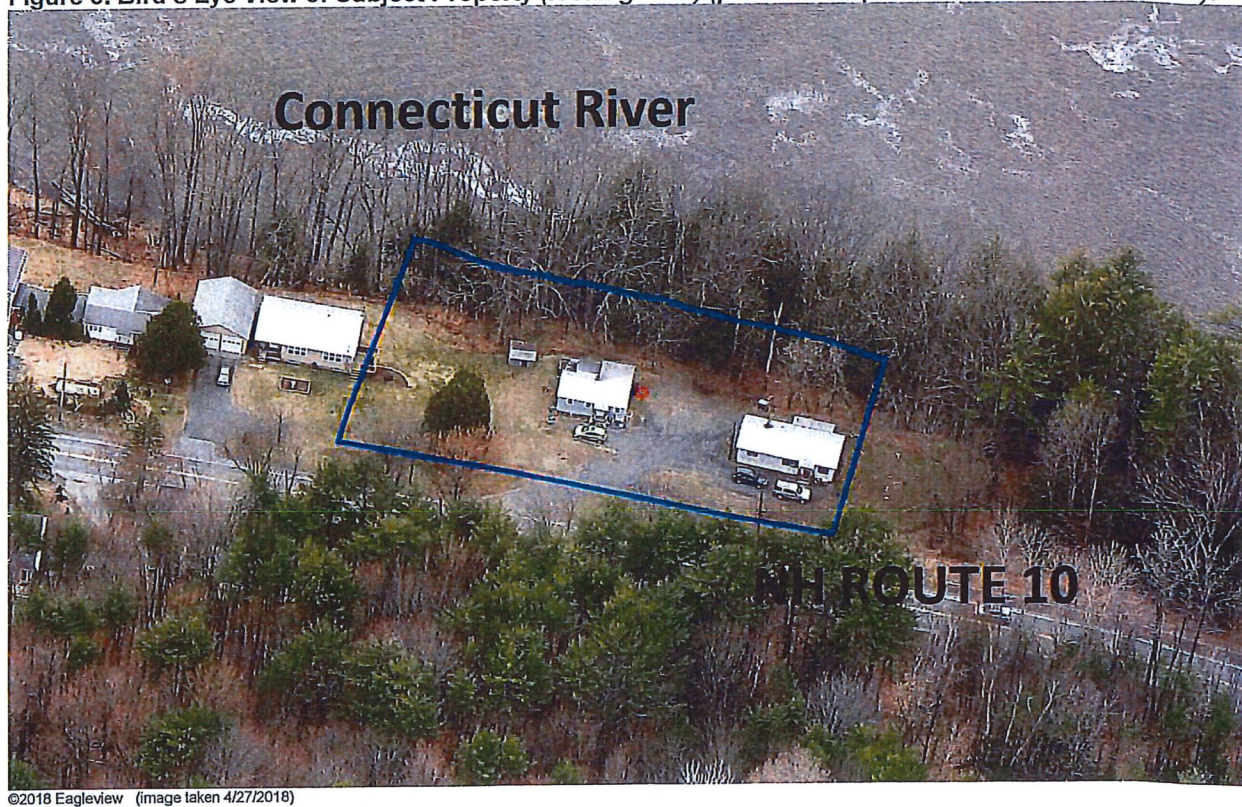


Figure 3. Bird's Eye View of Subject Property (looking west) (photo taken prior to demolition of homes).



STAFF MEMORANDUM

ZB2021-08-AAD

215 N. Main St (Tax Map 21, Lot 1)

April 5, 2021 ZBA Meeting

Agenda Item 3.D

Page 3 of 4

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

STAFF MEMORANDUM

ZB2021-08-AAD
215 N. Main St (Tax Map 21, Lot 1)
April 5, 2021 ZBA Meeting
Agenda Item 3.D
Page 4 of 4

- (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 <u>Extension</u>			

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

(Last Revised 4/04/18)



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 Properties, 57 Main Street, West Lebanon, NH 03784
Phone: 603-676-7800 • Fax: 603-676-7810 • Email: info@lymeproperties.com



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

Lyme Properties. 57 Main Street, West Lebanon, NH 03784
Phone: 603-676-7800 • Fax: 603-676-7810 • Email: info@lymeproperties.com



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>

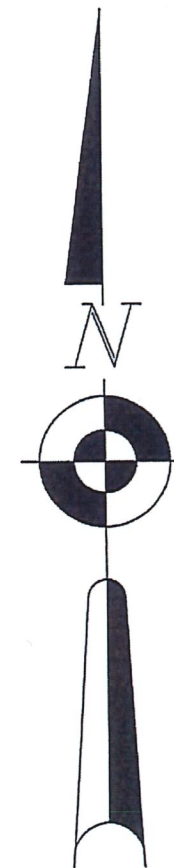
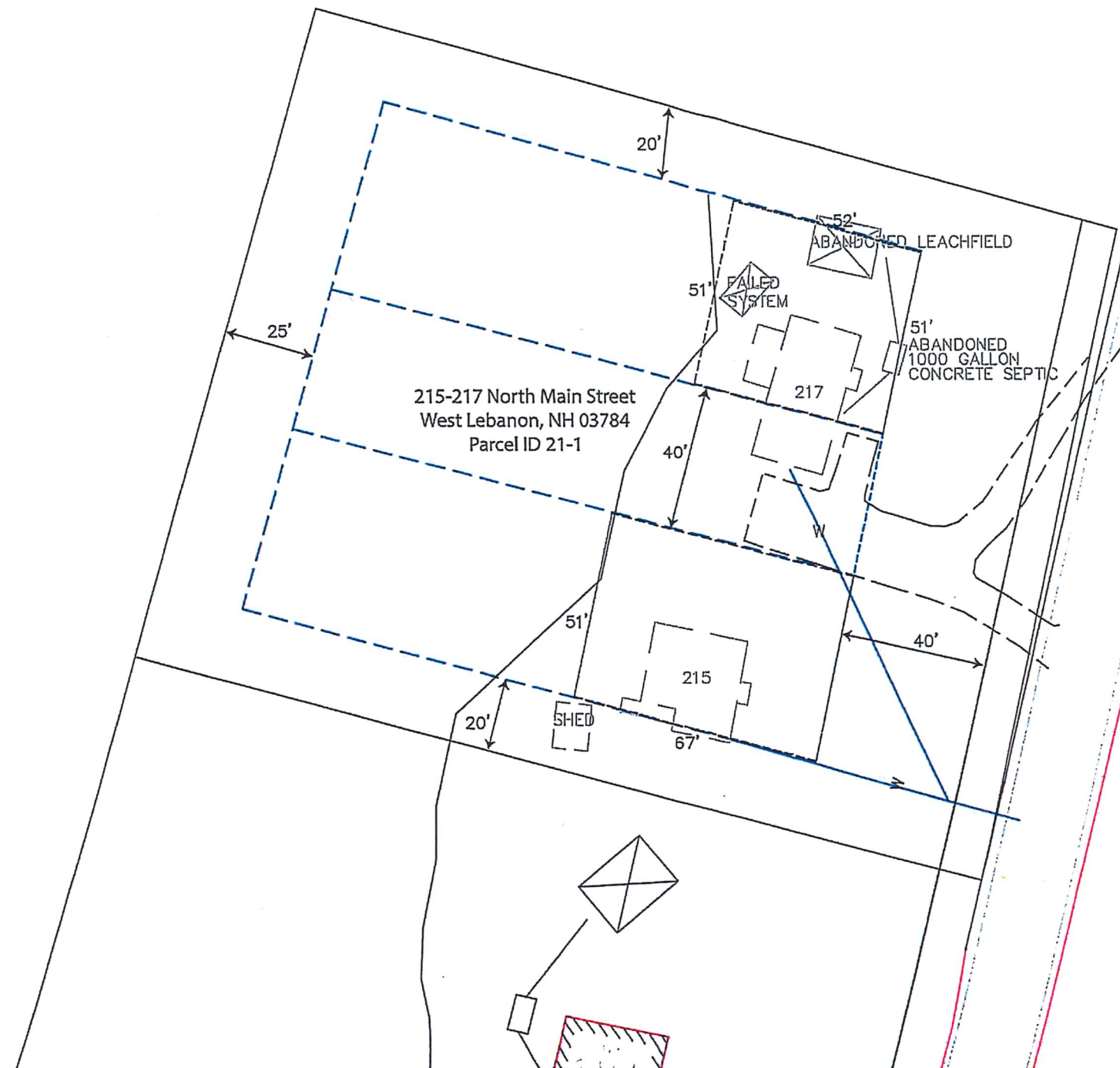
Mon, Apr 29, 2019 at 11:24 AM

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

215-217 N MAIN STREET
LEBANON, NH

OPTION 2



LYME PROPERTIES / BEQUALL

MARCH 2021 **cbt**

215-217 N MAIN STREET
LEBANON, NH

OPTION 2



LYME PROPERTIES / BEQUALL

MARCH 2021 cbl

215-217 N MAIN STREET
LEBANON, NH

OPTION 2



LYME PROPERTIES / BEQUALL

MARCH 2021 **cbt**

215-217 N MAIN STREET
LEBANON, NH

OPTION 2



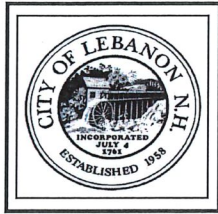
LYME PROPERTIES / BEQUALL

MARCH 2021 cbt

**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Lyme Properties
(applicant),
XYZ Dairy, LLC
(property owner),
215 N. Main Street
(Tax Map 21, Lot 1),
zoned RL-2
ZB2021-13-AAD**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

ZONING BOARD OF ADJUSTMENT

May 3, 2021 Meeting

Staff Memorandum – ZB2021-13-AAD

APPLICATION INFORMATION

Agenda Item: 3.G

Application Type:

Administrative Appeal per Section 801.1 of the Zoning Ordinance

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*)

Overlay Districts:

- Riverbank Protection District

Previous ZBA Action (since 1995):

None

Attachments:

- Application (8 pages total)

HEARING NOTICE

Lyme Properties (applicant), XYZ Dairy, LLC (property owner), 215 N. Main Street (Tax Map 21, Lot 1), zoned RL-2: An appeal pursuant to Article VIII, Section 801.1 of the Zoning Ordinance regarding a communication made by the Zoning Administrator on April 7, 2021 in regard to a building permit application filed by Lyme Properties on April 6, 2021 for the subject property. ZB2021-13-AAD

SUMMARY OF REQUEST

The applicant's administrative appeal is discussed in the attached letter from Chet Clem of Lyme Properties, dated April 15, 2021.

STAFF COMMENTS

Should the Board approve the applicant's request per Section 702.2 to resume the non-conforming two principal building use at 215 N. Main Street, as set forth in ZB2021-12-AAD, item 3.F. on the Zoning Board's May 3, 2021 agenda, the subject matter of this appeal (ZB2021-13-AAD) will be moot.

With respect to the three issues on appeal as outlined in the attached letter from Chet Clem dated April 15, 2021, staff notes the following:

1. Staff agrees that the applicant must seek approval per Section 702.2 to resume the non-conforming two principal building use of the subject property. This is what the applicant has applied for in ZB2021-12-AAD, item 3.F. on the Board's May 3, 2021 agenda. The reference to "the non-conforming two-family use" in the Zoning Administrator's April 7, 2020 e-mail was merely an inconsequential misstatement of the nature of the non-conforming use.
2. Staff agrees that there is nothing in the Zoning Ordinance that requires any necessary approvals from the Zoning Board of Adjustment to be obtained in advance of deeming a building permit complete.
3. As discussed in the staff memo for ZB2021-12-AAD, the applicant is time barred per Section 801.1 of the Zoning Ordinance from appealing the Zoning Administrator's determination regarding the application of Section 702.2 to the subject property.

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	☒	☐	OTHER ()

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#: 1 PLOT #: ZONE:
STREET ADDRESS OF PROJECT: 215-217 North Main Street, West Lebanon
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☐ NO **HISTORIC DISTRICT** ☐ YES ☐ NO
FLOOD PLAIN ☐ YES ☐ NO

SCOPE OF PROJECT:

See attached statement.

TYPE OF OCCUPANCY: Two principal structures on the same lot

EXISTING ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL
PROPOSED ☐ VACANT ☐ ONE FAMILY ☐ TWO FAMILY ☐ MULTI-FAMILY ☐ COMMERCIAL ☐ INDUSTRIAL

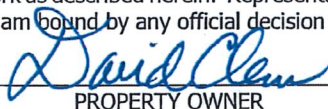
IF USE IS **COMMERCIAL** OR **INDUSTRIAL**, PLEASE NOTE **SPECIFIC** USE:

SIGNATURE BLOCK:


PROPERTY OWNER

DATE: 4/15/2021

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

DATE: 4/15/2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4-15-21	21/1	ZB2021- 13-AAO	\$106.99 for 2 apps	4/24/21	18203

(12/07/07)



April 15, 2021

Zoning Board of Appeals
City of Lebanon
City Hall
51 N Park Street
Lebanon, NH 03766

Re: Appeal of Zoning Administrator's Decision Regarding Building Permit #2021-176 Application

To Whom It May Concern:

This letter serves as our appeal, under Section 801.1 of the Lebanon Zoning Ordinance, of the communication by Senior Planner/Zoning Administrator Tim Corwin on April 7, 2021 in regard to the building permit application filed by Lyme Properties (Lyme) on April 6, 2021 on behalf of the property owned by XYZ Dairy, LLC (XYZ) at 215-217 N. Main Street, West Lebanon, NH 03784 (Lebanon Parcel ID 21-1).

This appeal addresses three inaccuracies in Mr. Corwin's April 7, 2021 decision not to accept a building permit application from XYZ regarding 215-217 N. Main Street:

1. Non-Conformity In Question

First, XYZ is appealing the erroneous communication by Mr. Corwin that we are seeking to "resume the non-conforming two-family use per Section 702.2 of the Zoning Ordinance." That is not the nature of the non-conformity in question.

Two-family dwellings, as defined by the Lebanon Ordinance, are two dwelling units within a single dwelling. Per Section 313.2, two-family dwellings are not permitted in the Rural Lands Two District (RL-2) which Parcel 21-1 falls in.

The previously existing non-conformities on Parcel 21-1 as documented on Demolition Permit #2018-00397 are "two principal structures on the same lot" and "non-conforming to the RL-2 District dimensional regulations." This was confirmed by Mr. Corwin in his December 9, 2020 communication:

"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 *[sic]* of the Zoning Ordinance..."

Lyme Properties. 57 Main Street, West Lebanon, NH 03784
Phone: 603-676-7800 • Fax: 603-676-7810 • Email: info@lymeproperties.com

ZB 2021-13-AAD



As per previous communication and the April 6, 2021 Building Permit Application, XYZ is seeking the Resumption of Use (per Section 702.2) of the two primary structures on one lot. The replacement project as proposed has eliminated what we believe to be the other dimensional non-conformity– the side-yard setback between the structure(s) at 215 N. Main Street and the abutting Parcel 44-11 (211 N. Main Street).

An April 7, 2021 communication from Mr. Corwin via the City of Lebanon's *City Squared* permit system repeats the inaccurate classification of the non-conformity in question. We request a correction of this misclassification on the record, as previous errors by the City have created confusion that have proven costly to XYZ to correct.

2. Completeness of Application

Second, XYZ is appealing the Zoning Administrator's decision as communicated on April 7, 2021 regarding building permit application #2021-176:

Unfortunately, we will not be able to issue a building permit (nor will your building permit application be deemed complete) unless and until you obtain approval from the Zoning Board of Adjustment to resume the non-conforming two-family use per Section 702.2 of the Zoning Ordinance.

Nowhere in the multiple, and in some cases conflicting, checklists provided at www.lebanonnh.gov by the City of Lebanon Planning & Building Department does it require approval from the Zoning Board of Adjustment in advance of deeming a building permit complete:

CITY OF LEBANON - BUILDING PERMIT PROCEDURE RESIDENTIAL ONE AND TWO FAMILY HOMES NEW CONSTRUCTION

<https://lebanonnh.gov/DocumentCenter/View/800/Residential-New-Construction-Check-List-PDF>

CITY OF LEBANON - BUILDING INSPECTION DEPARTMENT CHECKLIST FOR - ARCHITECTS, ENGINEERS, GENERAL CONTRACTORS

<https://lebanonnh.gov/DocumentCenter/View/739/Complete-Application-Checklist-PDF>

In fact, the previous City of Lebanon Building Permit issued on this property (#2018-00397) includes "Zoning Review" under Conditions of Approval. That would suggest that a permit application can be reviewed by the Building Department and any ZBA Approval could be mandated as a Condition of Approval upon issuance.

Given that the unique typology of these modular structures has never been proposed in the City of Lebanon, we anticipate there will be questions from the Building Department. Allowing the Building Permit review process to run simultaneously with solving the date issue at the ZBA would allow Lyme Properties, Bequall, and the project's design/engineering team to address those questions while this is being sorted out, and still meet critical project milestones.



As such, we appeal to the ZBA to correct Mr. Corwin's decision and allow review of the Building Permit application to proceed, and include the ZBA Approval of an extension of the non-conformity as a condition of the Building Permit should it remain a requirement.

3. Timing of Events and Tolling

Third, it is XYZ's position that going before the ZBA for an extension of the non-conformity was never necessary but was resultant only from the Zoning Administrator's erroneous condition in the demolition permit for the previous two structures.

Work on 215-217 N. Main Street (Parcel 21-1) commenced on December 2, 2020 at the direction of XYZ and its consultants. This was prior to the erroneous resumption date of December 6, 2020 as claimed by Mr. Corwin.

XYZ filed Building Permit #2021-176 on April 6, 2021, prior to the 2-year anniversary of the discontinuance of the non-conforming use that occurred on April 25, 2019 and was reported to the City on April 29, 2019.

The timeline of events related to 215-217 N. Main Street (Parcel 21-1) illustrates that XYZ has been diligently pursuing the resumption of two primary structures on this property for two years. There has been no action resembling an intent to abandon the nonconformity, even despite the procedural delays and uncertainties created by the Covid-19 pandemic.

As such, we believe we meet the requirements for the application to be deemed complete and advanced for consideration by the Lebanon Building Department. XYZ is appealing these decisions to the Zoning Board of Adjustment and request that it be included on the May 3, 2021 Agenda.

Sincerely,

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

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR
AN APPEAL OF AN ADMINISTRATIVE DECISION**

A cover application, abutters list, filing fee and ten copies of the site plan (if applicable) must accompany this support statement.

City of Lebanon Zoning Ordinance:

APPEALS:

801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6.

802.4 Decisions of the Board.

In exercising its powers the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

- A. Majority Vote: The concurring vote of 3 members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant or any matter on which it is required to pass.

I am appealing the decision of: Tim Corwin, AICP. Senior Planner, City of Lebanon,
(Name/Title of Official)
made on this date: April 7, 2021.

(Please describe the decision you are aggrieved by in the space provided or attach a separate statement.)

Concerning: Building Permit Application #2021-176

In Relation to Article(s): _____, Section(s): _____ of the
City of Lebanon Zoning Ordinance.

From: **Tim Corwin** Tim.Corwin@lebanonnh.gov
Subject: **RE: [EXTERNAL]Application for Building Permit - 215-217 N. Main Street, West Lebanon, NH 03784**
Date: **April 7, 2021 at 8:39 AM**
To: **Chet Clem** chet@lyneproperties.com
Cc: **David Brooks** David.Brooks@lebanonnh.gov, **Calvin Hunnewell** Calvin.Hunnewell@lebanonnh.gov, **David Clem** dclem@lyneproperties.com, **Philip Hastings** hastingsp@cwbp.com

TC

Hi Chet –

Thank you for your e-mail. Unfortunately, we will not be able to issue a building permit (nor will your building permit application be deemed complete) unless and until you obtain approval from the Zoning Board of Adjustment to resume the non-conforming two-family use per Section 702.2 of the Zoning Ordinance.

If you would like to reapply to the Zoning Board, we can use the same materials from the application that you withdrew on Monday. However, you will need to submit payment for the applicable fees including the application fee, advertising fee, and the abutter notice fees.

Also, as an aside, please note that the issue of when the two-year period began to toll is no longer appealable. Section 801.1 of the Zoning Ordinance provides as follows:

801.1 Administrative Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as set forth in RSA 676:5. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

An appeal under this section shall be taken within 30 days of the date of the administrative decision being appealed, or within 30 days of the time that the person filing the appeal know or had reason to know that the administrative decision had been made. The effect of an appeal shall be as set forth in RSA 676:6. (emphasis added)

The demolition permit issued in 2018 included a condition that provided, in part, “[r]esumption of non-conforming use and reconstruction of non-conforming structure(s) must occur within two (2) years of issuance of demolition permit[.]” To the extent that you disagreed with this condition, you would have needed to file an appeal to the Zoning Board within 30 days of your receipt of the permit. Even if we say that the determination was made at the time of my December 9, 2020 e-mail, to the extent you disagreed with my interpretation and application of the Zoning Ordinance to your property, the administrative appeal of that December 9th determination should have been made by no later than January 9, 2021. Instead, we did not receive your application to the Zoning Board until March 18, 2021.

If you have any questions, or would like to discuss, please let me know.

Thank you. Tim

Tim Corwin, AICP

Senior Planner
City of Lebanon

From: Chet Clem <chet@lymeproperties.com>
Sent: Tuesday, April 6, 2021 5:14 PM
To: David Brooks <David.Brooks@lebanonnh.gov>
Cc: Tim Corwin <Tim.Corwin@lebanonnh.gov>; Shaun Mulholland <Shaun.Mulholland@lebanonnh.gov>; Calvin Hunnewell <Calvin.Hunnewell@lebanonnh.gov>; David Clem <dclem@lymeproperties.com>; Angela McCanna <angela@lymeproperties.com>; Philip Hastings <hastingsp@cwbp.com>; Kevin Saba <kevin@bequall.com>
Subject: [EXTERNAL]Application for Building Permit - 215-217 N. Main Street, West Lebanon, NH 03784

Our application has been submitted via the City of Lebanon's online portal, including the cover letter attached herein.

Chet Clem
President
Lyme Properties

chet@lymeproperties.com
(603) 676-7106 (direct)
(207) 576-1410 (mobile)

www.lymeproperties.com

it's easy being green

www.riverparkwestlebanon.com

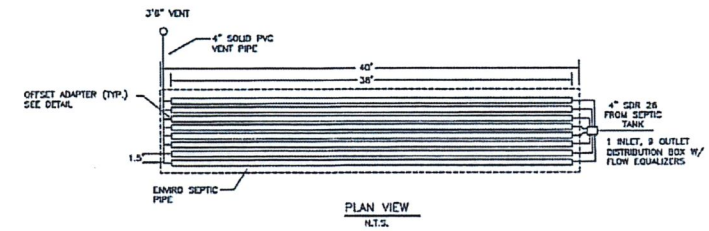
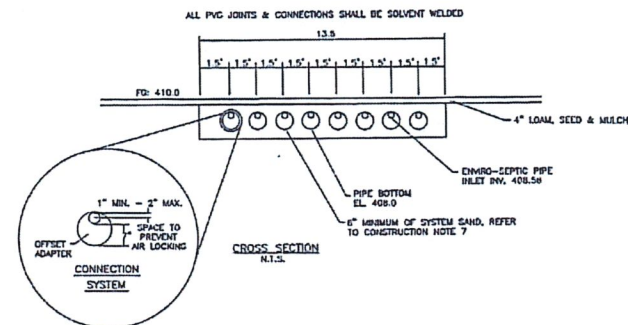
Kendall Square has lousy skiing

[Lyme @ Proud Places - YouTube](#)

Can we use humor to make people give a damn about their downtown?

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

1. SYSTEM DESIGNED ONLY TO ACCOMMODATE SANITARY SEWER ASSOCIATED WITH NORMAL USE.
2. SET HOLE AND PERCOLATION TEST LOCATIONS ARE APPROXIMATE.
3. SYSTEM MUST BE INSTALLED IN STRICT ACCORD WITH APPROVED PLAN, ANY CHANGES TO BE APPROVED IN WRITING BY THE DESIGNER.
4. ALL DISCREPANCIES IN APPROVED PLANS AND ACTUAL SITE CONDITIONS MUST BE REPORTED TO THE DESIGNER BY THE INSTALLER PRIOR TO CONSTRUCTION.
5. ALL CHANGES TO STATE SPECIFICATIONS MUST BE OBTAINED BY THE SAME DESIGNER.
6. ANY FUTURE REPLACEMENT SYSTEMS MAY HAVE TO BE CONSTRUCTED IN THE SAME LOCATION.
7. DESIGN LOADINGS FOR STRUCTURES TO BE H-10 ASDHIT RATED. IF VEHICULAR TRAFFIC IS NOT A DESIGN CONSIDERATION, STRUCTURES TO BE H-15 ASDHIT RATED.
8. PROVIDE 10% FACTOR OF SAFETY BASED ON THE HIGHER OF THE ABOVE AND ASHED RATED.
9. PROVIDE 10% FACTOR OF SAFETY BASED ON THE HIGHER OF THE ABOVE AND MAINTENANCE.
10. ALL CONTROL POINTS TO BE SET NEAR SEWER DISPOSAL SYSTEM PRIOR TO CONSTRUCTION, AS REQUESTED BY OWNER.
11. ALL STRUCTURES SHALL BE CONSTRUCTED BY BUTYL RUBBER OR AN EQUIVALENT SEALANT.
12. PUMP ALL TANKS AT REGULAR INTERVALS, AT LEAST EVERY THREE YEARS OR LESS, AS NECESSARY.



1. DESIGNER: PATRICK A. RUCCELLATO PERMIT NO. 142
2. U.S.A. SOL CIRCUMFERENCE SERVICE CLASSIFICATION
3. ESTIMATED DRAINAGE RATE: 0.008 INCHES PER HOUR PERCOLATION TEST
4. DEPTH OF PERCOLATION HOLE: 5'-0"
5. DEPTH OF CORROSION RESISTANT LINING (MOTTILING LINE) : 1'-0"
6. DEPTH OF CASING WATER HEAD: 11'-0"
7. DEPTH OF LEAK DETECTION SYSTEM (INSTRUMENTATION EXCAVATOR): 11'-0"
8. DESIGN NOTES:
THE BOTTOM OF THE EFFLUENT DISPOSAL SYSTEM (EDS) EXTENSION SHALL BE CONSTRUCTED AT A MINIMUM OF 48.0 INCHES AND THIS IS APPROPRIATELY 24" BELOW ORIGINAL GROUND ON THE HIGH CHAIR SIDE OF THE EDS.
9. WASTEWATER FLOW: 2 + 2 BEDROOM HOUSE = 500 GPD
ESTD SEWAGE LOADS PER PRESTY ENVIRO-SEPTIC
80% GPD REQUIRED FIELD AREA: 230 SQ. FT.
TOTAL LOTS REQUIRED FIELD AREA: 230 SQ. FT. REQUIRED
10. TOTAL LOT REQUIRED FIELD AREA: 230 SQ. FT. DIVARO-SEPTIC PROVIDED

1. SITE PREPARATION: CLEAR ALL VEGETATION AND ROOTS, REMOVE ORGANIC LOAM LAYER AND TOPSOIL FOR LATER USE, ORGANIC LOAM LAYER MUST BE REMOVED FROM BED AND SLOPE. EXTENDED GRASS PRIOR TO EXCAVATION MUST BE REMOVED TO PREVENT DISEASE. EROSION CONTROL: EROSION CONTROL WILL BE FACILITATED BY THE USE OF MAT BALES/SLIPS AT 10% OF SLOPE, SLOPE AND EDGE. EROSION CONTROL AREAS, COULD BE PAVED OR GRAVEL SURFACES SHOULD BE SEDED AS SOONLY AS POSSIBLE TO MINIMIZE SEDIMENT TRANSPORT. THIS INCLUDES SPECIFIC REQUIREMENTS:

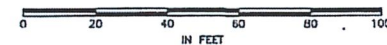
- (A) MINIMUM CONCRETE STRENGTH-5000 PSI AT 28 DAYS,
- (B) STEEL REINFORCEMENT-ASTM A-615-79, GRADE 60, 1"MIN. DIAMETER,
- (C) EARTH COVER OF 12" MINIMUM,
- (D) WATER TABLE 2' BELOW FINISHED GRADE,
- (E) CONSTRUCTION JOINT-SEALED WITH 1" DIAMETER BUTYL RUBBER OR EQUIVALENT, AND
- (F) EROSION LOAM ASH/10% OF SLOPE FOR VEHICULAR TRAFFIC.

2. TANK EXCAVATION: THE CONTRACTOR WILL PROVIDE AN EXCAVATION FEE OF OBSTRUCTIONS FROM EXISTING UTILITY LINES. EXCAVATION SHALL OCCUR TO THE EROSION SHIELD OF 3/4" CRUSHED STONE FOR BEDDING, WHEN PLACING THIS BEDDING MATERIAL, IT SHOULD BE NOTED THAT THE BED WILL BE OF A UNIFORM THICKNESS AND LEVEL. PREPARING A PROPER BED WILL INSURE THE TANK WILL BE PROPERLY SLOPED. TO THE EXCAVATION SHALL BE FREE OF WATER AND STABLE, TO ALLOW EQUIPMENT TO SET UP THE NECESSARY SLOPE.

3. TANK BACKFILL: BACKFILL ABOVE ALL VALUITS SHOULD CONSIST OF GOOD COMPACTABLE MATERIAL, SUCH AS SAND, GRAVEL, OR CRUSHED STONE. THE TANK SHALL BE BACKFILLED BETWEEN THE EXISTING AND NATIVE SOIL OF EXCAVATION. BACKFILLING SHOULD BE DONE WITHIN CERTAIN TO COMPACT THE BACKFILL PROGRESSIVELY FROM THE BOTTOM TO TOP. BACKFILLING BACKFILLING SHALL BE DONE IN 12" LAYERS. H.O.D.C.E. INSPECTIONS: H.O.D.C.E. SHALL BE CONTACTED TO PERFORM AN INSPECTION PRIOR TO THE BACKFILLING OF THE TANK.

4. SYSTEM SAND: ALL CONFIGURATIONS OF CHIMNEY-SEPTIC REQUIRE A MINIMUM OF 6" OF SYSTEM SAND SURROUNDING THE CIRCUMFERENCE OF THE PIPE. THIS SAND, TYPICALLY GRAVELLY, MUST BE MOST OF THE FOLLOWING GRADES AND QUALITY RESTRUCTIONS:

- (A) PERCENTAGE RESTRICTIONS:
 - LESS THAN 5% OF THE TOTAL SAND MAY BE COMPOSED AND VERY COARSE SAND
 - 40%-90% OF THE TOTAL SAND IS TO BE COMPOSED AND VERY COARSE SAND
- (B) GRAVEL QUALITY RESTRICTIONS:
 - GRAVEL IS TO BE LESS THAN 1/4" IN DIAMETER.
 - NO GRAVEL IS SMALLER THAN 2mm/0.075" IN DIAMETER. (IT MUST NOT PASS THROUGH A #10 SIEVE)
- (C) COARSE SAND QUALITY RESTRICTIONS:
 - NO COARSE SAND IS SMALLER THAN 0.5mm/0.19mm" IN DIAMETER. (IT MUST NOT PASS THROUGH A #20 SIEVE)
- (D) FINE QUALITY RESTRICTIONS:
 - NO MORE THAN 2% OF THE TOTAL SAND MAY PASS THROUGH A #200 SIEVE.
- (E) 3-33% (SODIUMICENT) MEETS THE ABOVE REQUIREMENTS.



1. THE TOPOGRAPHY ON THIS PLAN IS BASED ON PUBLICLY AVAILABLE INFORMATION FROM THE CITY OF LEANOR FOR THE PURPOSE OF SITE PLAN DEVELOPMENT.
2. THE EXPANDED ON-SITE WASTEWATER DISPOSAL SYSTEM IS SHOWN IN THE AREA OF THE EXISTING SYSTEM (APPROVED BY THE NHDOS).
3. TEST PITS WERE EXCAVATED AND OBSERVED ON DECEMBER 2, 2020 TO CONFIRM SUITABLE SOIL CONDITIONS FOR THE PROPOSED WASTEWATER DISPOSAL SYSTEM.
4. TOPOGRAPHIC SURVEYING WILL BE CONDUCTED FOR FINAL DESIGN, CONFIRMATION OF LOT SIZING BY SOIL TYPE, AND PERMITTING WITH THE NHDOS.

A map showing the location of the site. The Connecticut River flows from the top left towards the bottom right. To the right of the river is the Boston Lot Reservation. A line labeled 'ROUTE 10' runs parallel to the river. A box labeled 'SITE' is located on Route 10, between the river and the reservation. A north arrow points towards the top right.

REV. NO.	DATE	DESCRIPTION	MADE BY	CHKD BY	APP'D BY		
SITE PLAN FOR XYZ DAIRY, LLC. 215-217 NORTH MAIN STREET - WEST LEBANON, NH						1	
PATHWAYS CONSULTING, LLC 240 MECHANIC STREET, SUITE 100 LEBANON, NEW HAMPSHIRE 03766 (603) 448-2200							SHEET: 1 OF 1 SCALE: 1"=20' DES. BY: ANS DRAWN BY: PAB CHKD. BY: DATE: 03/21 PROJ. NO. 12308

**Agenda
Zoning Board of Adjustment
May 3, 2021**

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

**Christopher & Erin Audino,
18 Peabody Street
(Tax Map 90, Lot 49),
zoned R-1
ZB2021-14-SE**



PROPOSAL

As shown on the attached plot plan, the applicant proposes to construct a 10 ft. by 16 ft. covered porch to the south-facing side of the home, in the location approximately marked by the yellow star in Figure 3 below. The addition is proposed to be located ± 2 ft. back from the street-facing side of the home. If the home is currently located on the front lot line, this means that the porch is proposed to be constructed ± 2 ft. from the front lot line and will be located entirely within the minimum required 20 ft. front yard.

Figure 2. Google Street View (July, 2013) (Note: the image below predates the existing 4 ft. by 8 ft. deck to be removed and replaced by the proposed covered porch)



Figure 3. Bird's Eye View of subject property (looking west).



©2021 Eagleview (image taken 4/4/2021)

ORDINANCE REQUIREMENTS

Class 1 lots (lots that are served by municipal sewer and water) in the R-1 District must maintain a minimum front yard (i.e. a space unobstructed by buildings and structures) of 20 ft. See §308.3 of the Zoning Ordinance. **§703.1** of the Zoning Ordinance allows the expansion of “any increase in the **footprint** and/or volume of the non-conforming part of the building or structure,” by Special Exception from the Zoning Board of Adjustment.

703.1 Expansion.

In order to grant a Special Exception for the proposed expansion, the Board must make each of the following findings per §703.1.A:

1. The reasonable use of abutting properties shall not be adversely affected by the proposed expansion.
2. The proposed expansion shall not render the lot size proportionately less adequate, i.e. any aspect of the building or structure that is currently nonconforming cannot be made more non-conforming in the absence of a variance.

Note: §703.1.A.2 allows an expansion that is equally non-conforming or less non-conforming, but prohibits an expansion that would be more non-conforming. Here, the proposed addition will be located no closer to the front lot line than the existing home and, therefore, will not “render the lot size proportionately less adequate”.

By contrast, if the porch was proposed to be located closer to the front lot line than the existing home, the applicant would be unable to demonstrate compliance with §703.1.A.2 and, instead, would require a Variance from §308.3 to permit the porch to encroach further into the minimum required front yard.

3. These special exception standards shall apply in addition to the standards in Section 801.3 of the Zoning Ordinance.

801.3 Special Exceptions.

Per §703.1.A.3 of the Zoning Ordinance, in order to grant a Special Exception for an expansion of a non-conforming structure, the Board must also determine that the proposal meets the general Special Exception criteria, set forth in §801.3 as follows:

- A. The Special Exception is specifically authorized by a provision of this Ordinance.
Note: The Special Exception is authorized by §703.1.A of the Zoning Ordinance.
- B. All special conditions required of the special exception have been met.
Note: The special conditions for an expansion of a non-conforming buildings are those set forth above in §703.1.A of the Zoning Ordinance.
- C. There are no existing violations of this Ordinance on the property that the granting of this special exception would not remedy.
Note: Staff is unaware of any Zoning Ordinance violations on the property.
- D. The character of the area shall not be adversely affected.

- E. No hazard or nuisance will be created.
- F. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- G. Granting the special exception will not result in undue municipal expense.
- H. The proposed special exception will be developed in a manner compatible with the spirit and intent of the Ordinance.
- I. The general welfare of the City will be protected.

The applicant has submitted testimony addressing the §801.3 criteria in an application received by the Planning and Development Department on April 15, 2021 (see attached).

STAFF COMMENTS

Absent abutter testimony to the contrary, the proposed expansion does not appear to be inconsistent with any of the applicable criteria set forth in §703.1.A and §801.3.

Attachment

cc: Christopher & Erin Audino, property owners (via e-mail)
File

APPLICATION FOR

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

PROPERTY OWNER (APPLICANT):

NAME: CHRIS AVOINO TEL#: 919 610 2214
 MAILING ADDRESS: 18 PEARSON ST. LEBANON, NH
 E-MAIL ADDRESS: CHRIS.AVOINO@GMAIL.COM

CO-APPLICANT, AGENT, OR LESSEE:

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

PROJECT LOCATION:

TAX MAP #: 90 LOT#: 49 SHEET #: 1 ZONE: R1
 STREET ADDRESS OF PROJECT: 18 PEARSON ST.
 IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT: INSTALLATION OF 10X16 COVERED PORCH
within the side yard setback where
15' is required

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 _____, 20____, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY

OWNER: _____

DATE: _____

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: _____

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
4/15/2021	90-49- 2502	282021- 14-SE	\$217.88		

**CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION**

One cover application, one abutters list, a filing fee and ten copies of the site plan must accompany this support statement.

I (we) hereby request a Special Exception as provided for in Article(s) VIII,
Section(s) 801.3, of the Lebanon Zoning Ordinance.

PROJECT DESCRIPTION (Please provide your plans for the property with as much detail as possible with respect to your proposed. You can respond in the space provided, or attach a separate statement.)

ON THE SOUTH SIDE OF THE RESIDENCE, A 10x16 COVERED PORCH
IS PROPOSED. THE EXISTING 4x8 DECK WILL BE REMOVED. THE FRONT
EDGE OF THE HOUSE IS THE START OF THE ^{FRONT} SETBACK. THEREFORE,
THIS DECK WILL BE ENTIRELY IN THE SETBACK. THE HOUSE IS 24' FROM
THE ~~EDGE~~ OF THE ROAD.
EDGE

In order to grant a Special Exception, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:

(You can respond in the space provided, or attach a separate statement. Please be prepared to address the conditions with the Board during your public hearing. You must show that you have met all the conditions.)

SECTION 801.3 Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon matters which the Board is required to pass under this ordinance. In passing upon any application for a special exception, the Board shall make each of the following findings:

- A. That the special exception is specifically authorized by a provision of this ordinance:

THE SPECIAL EXCEPTION IS SPECIFICALLY AUTHORIZED BY A PROVISION OF
THIS ORDINANCE.

- B. That all special conditions required of the special exception have been met:

ALL SPECIAL CONDITIONS REQUIRED OF THE SE
HAVE BEEN MET.

- C. That there are no existing violations of this ordinance on the property that the granting of this special exception would not remedy:

THERE ARE NO EXISTING VIOLATIONS OF THE ORDINANCE
ON 18 GRADY ST. THAT THE GRANTING OF THIS SE WOULD
NOT REMEDY.

CITY OF LEBANON, NEW HAMPSHIRE
SUPPORT STATEMENT FOR A SPECIAL EXCEPTION
Page 2

- D. That the character of the area shall not be adversely affected:

THE CHARACTER OF THE AREA SHALL BE POSITIVE/BENEFICIAL
BY MAKING PROPERTY IMPROVEMENT

- E. That no hazard or nuisance will be created:

NO HAZARD OR NUISANCE WILL BE CREATED IF THIS
SE WERE TO BE GRANTED.

- F. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted:

THERE WILL BE NO ADVERSE IMPACT ON EXISTING OR
PLANNED COMMUNITY FACILITIES + SERVICES.

- G. That granting the special exception will not result in undue municipal expense:

GRANTING OF THIS SE WILL NOT RESULT IN
UNDUE MUNICIPAL EXPENSE

- H. That the proposed special exception will be developed in a manner compatible with the spirit and intent of the ordinance:

THE PROPOSED SE WILL BE DEVELOPED IN A MANNER
COMPATIBLE WITH THE SPIRIT + INTENT OF THE
TO CITY OF LEBANON'S ZONING ORDINANCE.

- I. That the general welfare of the City will be protected:

THE GENERAL WELFARE OF THE CITY WILL BE
PROTECTED.

Please Note:

Pursuant to Section 802.4B, "Special Conditions", the Board may attach whatever conditions it deems necessary in order to assure compliance with the purposes of this ordinance.

A special exception 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 special exception or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a special exception must be completed.



Overview

Legend

-  Roads
-  Buildings
-  Parcel Labels
-  Parcels

Parcel ID	90-49	Alternate ID	1683	Owner Address	AUDINO, CHRISTOPHER & ERIN M
Sec/Twp/Rng	n/a	Class	SINGLE FAMILY		18 PEABODY ST
Property Address	18 PEABODY ST LEBANON	Acreage	n/a		LEBANON, NH 03766
District	Leb				
Brief Tax Description	n/a				

(Note: Not to be used on legal documents)

Date created: 4/15/2021
Last Data Uploaded: 4/14/2021 5:15:14 PM

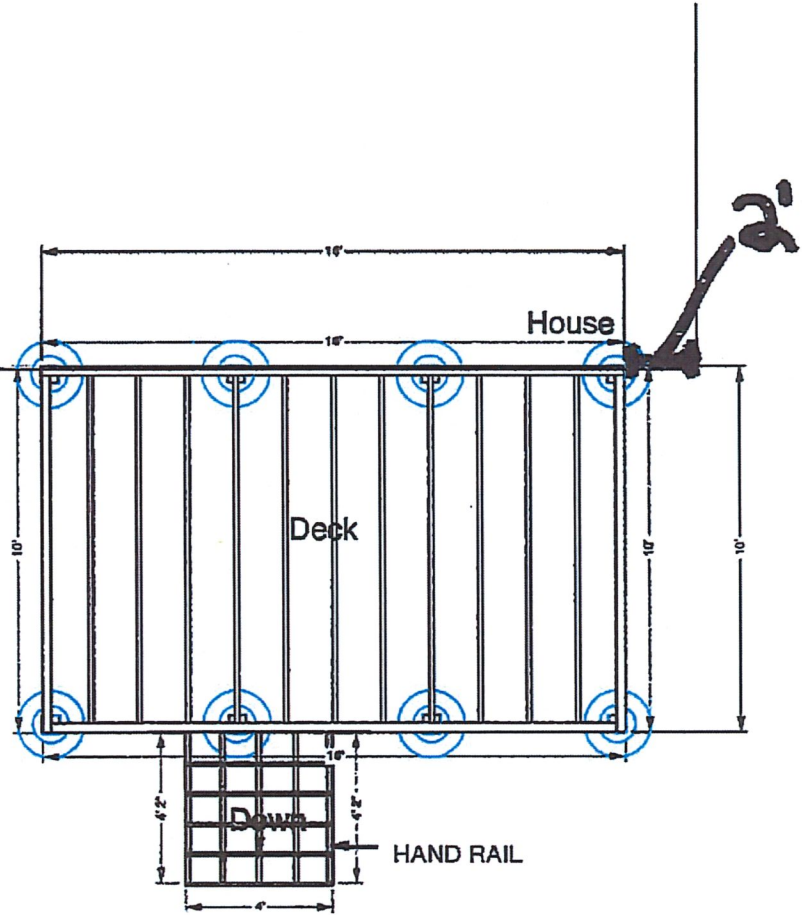
Developed by  **Schneider**
GEOSPATIAL

SCALE: 1/4" = 1' WHEN PRINTED ON 11X17 PAPER

BASED ON THE INTERNATIONAL RESIDENTIAL CODE

STAIRWAY ILLUMINATION: ALL EXTERIOR STAIRWAYS SHALL BE ILLUMINATED AT THE TOP LANDING TO THE STAIRWAY. ILLUMINATION SHALL BE CONTROLLED FROM INSIDE THE DWELLING OR AUTOMATICALLY ACTIVATED.

DISCLAIMER: THIS PLAN IS NOT CONSIDERED COMPLETE UNLESS APPROVED BY YOUR BUILDING INSPECTOR OR STRUCTURAL ENGINEER. BUILDER ACCEPTS ALL RESPONSIBILITY AND LIABILITY. DECKS.COM LLC AND ASSOCIATED SPONSORS ACCEPT NO LIABILITY FOR THE USE OF THIS PLAN.



Total Depth: 48
Base Diameter: 22
Pier Diameter: 12

Footings to be installed to 48" depth as is required by your local building ordinance. Frost footing sizes based on 55 lbs per square foot tributary loads applied to 1500 psi soil compression capacity (assumed clay soil). See footing detail in deck construction guide.

DISCLAIMER: ONLY USE #2 OR BETTER PRESSURE TREATED SOUTHERN PINE 2X10 FOR FRAMING MATERIALS. NEVER SUBSTITUTE SOFTWOODS OR COMPOSITE FOR FRAMING MATERIALS.



2x10 Ledger Board to be flashed and bolted (2) 1/2" bolts with washers or equivalent every 16" on center. (See ledger detail in deck construction guide)
Joists to be 2x10 pressure treated southern yellow pine installed 16" on center.
Beams to be 2x2x10 pressure treated southern yellow pine nailed.
Guard Rails to be 36" high with less than 4" openings per IRC code. (See rail detail in deck construction guide)
Stairs to be built max rise 7-3/4" min rise 4" in run 10" per IRC code. (See stair detail in deck construction guide)
Decking to be 5/4x6 Pressure Treated Pine. (Follow manufacturers' installation instructions)
All hardware to be corrosion resistant and installed per manufacturers' instructions.

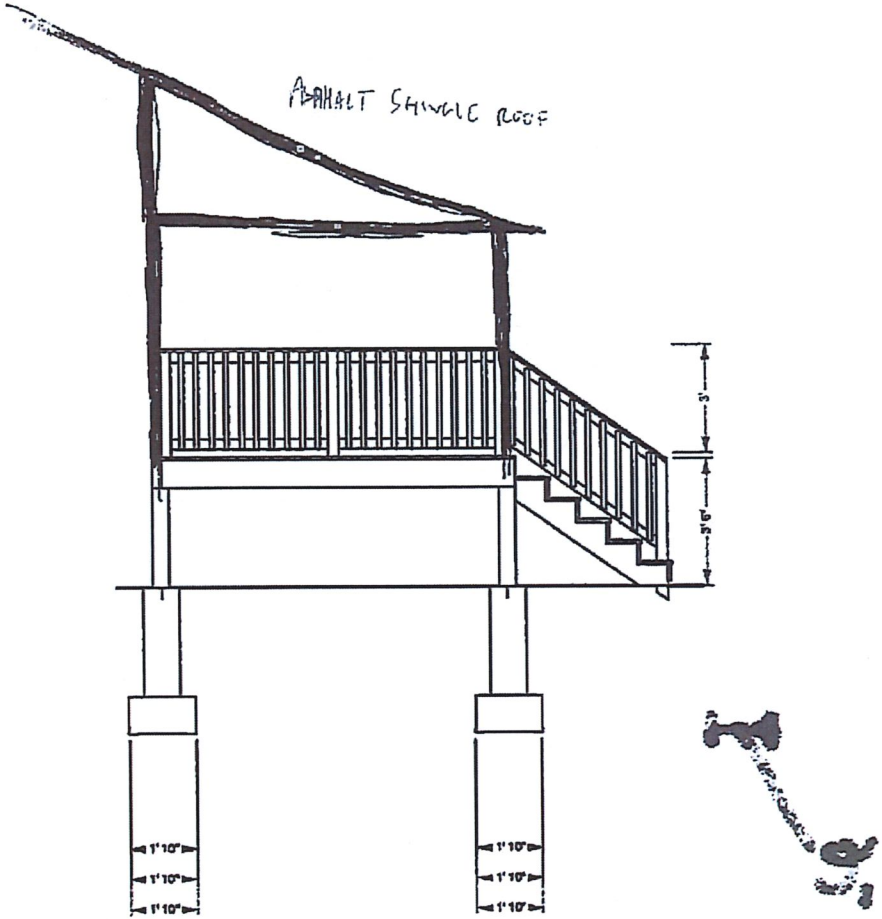
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