



**LEBANON PLANNING BOARD
NOVEMBER 8, 2021 - 6:30 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Notice of Regional Impact**
 - 3. Public Hearing Items**
 - A. Jaqueline H. Minard, 78 & 82 Mascoma Street (Tax Map 106, Lot 67 & Tax Map 106, Lot 67, Plot 70100), zoned R-3: Request for a Minor Subdivision to create two parcels. PB2021-31-MIN**
 - B. WM C. Solari Jr, Trustee & WM C. Solari Jr. Rev Trust, 60 & 0 Slayton Hill Road (Tax Map 119, Lot 1, Plots 200 & 300), zoned R-3: Request for a Boundary Line Adjustment. PB2021-32-BLA**
 - C. Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1). PB2021-02-EXT *The public hearing for this application closed on March 8, 2021. The Board denied the extension request and the applicant appealed. Pursuant to an Interim Order of the Housing Appeals Board, the public hearing will be reopened on November 8, 2021, for the Planning Board's reconsideration of the extension request.***
 - 4. Other Business**
 - 5. Approval of Minutes**
 - A. October 12, 2021**
 - 6. Adjournment**

The order of agenda items is subject to change.

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

**Agenda
Planning Board
November 8, 2021**

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

**Jaqueline H. Minard, 78 & 82
Mascoma Street (Tax Map 106, Lot
67 & Tax Map 106, Lot 67, Plot
70100), zoned R-3**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

November 8, 2021 Meeting

Staff Memorandum – PB2021-31-MIN

APPLICATION INFORMATION

Agenda Item: 3.A

Application ID:
PB2021-31-MIN

Application Type:
Minor Subdivision

Property Location & Tax Map:
78 Mascoma St (Tax Map 106, Lot 67)

Property Owner/Applicant:
Jaqueline H. Minard

Zoning District:
Residential Three (R-3)

Property Size (existing):
+/-0.49 acres (+/-21,389 sq. ft.) (per applicant's minor subdivision plat)

Overlay District(s): None

LEGAL NOTICE

Jaqueline H. Minard, 78 & 82 Mascoma Street (Tax Map 106, Lot 67 & Tax Map 106, Lot 67, Plot 701), zoned R-3: Request for a Minor Subdivision to create two parcels. PB2021-31-MIN

PLANS AND APPLICATION MATERIALS

- ▶ Application form (1 page)
- ▶ Memo from Christopher Rollins, LLS, dated September 29, 2021 (1 page; project description)
- ▶ Subdivision Regulations - Technical Checklist (3 pages)
- ▶ Plat titled, "Subdivision of Land of Jaqueline H. Minard, Trustee," prepared by Rollins Land Survey, dated September 29, 2021, last revised June 28, 2021, project no: 1055

COMPLETENESS REVIEW

This application has been reviewed in accordance with the Lebanon Subdivision Regulations. The Planning and Development Department recommends that the Board find that the application is complete enough to accept jurisdiction and to commence review.

APPLICATION OVERVIEW

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:

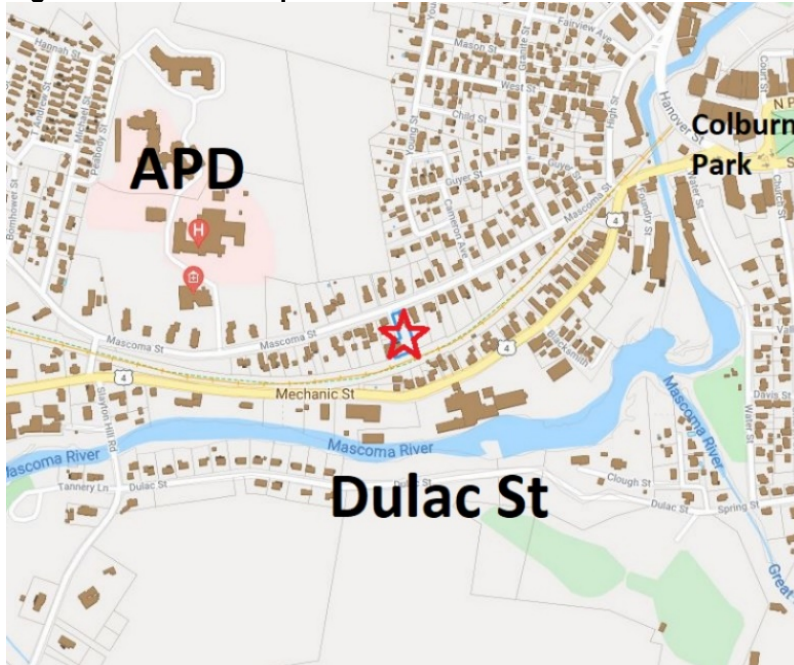
1. a +/-2,272 sq. ft. (finished) two-family dwelling constructed in 1900, per the City assessing records (*a conforming use in the R-3 District*), having an address of 78 Mascoma Street; and
2. a +/-2,108 sq. ft. (finished) multi-family dwelling constructed in 1860, per the City assessing records (*a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

As shown on the attached subdivision plat prepared by Rollins Land Survey, the applicant proposes to create two lots:

- Lot 1 (78 Mascoma Street) containing 11,050 sq. ft. (0.25 ac); and
- Lot 2 (82 Mascoma Street) containing 10,162 sq. ft (0.23 ac).

Because the lot is already developed, there are no site changes or physical improvements that are either proposed or required for the subdivision.

Figure 1. Location Map.



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

Figure 2. Tax Map.



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



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

STAFF COMMENTS

ASSESSING

The Parcel ID for 82 Mascoma Street will be "106-67-100".

BUILDING INSPECTION

No comment at this time.

ENGINEERING / PUBLIC WORKS

No comment at this time.

FIRE

No comment at this time.

PLANNING & ZONING:

The proposed lots comply with the minimum lot width and lot area requirements for Class 1 lots in the R-3 District, as set forth in Section 310.3 of the Zoning Ordinance. The properties are now and will continue to be served by City water and sewer.

POLICE

No comment at this time.

STAFF RECOMMENDATIONS

If the Board moves to approve this application, then based on the information reviewed by City staff, the Planning and Development Department recommends that the Board approve the application with the following conditions:

Conditions to be Satisfied Prior to the Signing and Recording of the Plat

1. The applicant shall provide a revised plat depicting the following changes to the satisfaction of the Planning & Development Department:
 - a. Change the "Parcel ID" for 82 Mascoma Street to "106-67-100".
2. The applicant shall provide a digital record drawing (Cad .dwg format using NH State Plane Coordinate system or an alternative approved by the City's GIS Coordinator).

Attachments

cc: Jacqueline Minard, Trustee (via e-mail)
Christopher Rollins, LLC (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: Jacqueline H. Minard, Trustee TEL#: 603-448-2195

MAILING ADDRESS: 78 Mascoma St., Lebanon, NH 03766

E-MAIL ADDRESS: minardt@comcast.net

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Christopher E. Rollins, LLS TEL#: 603-252-7204 cell

MAILING ADDRESS: PO Box 291, Plainfield, NH 03781

E-MAIL ADDRESS: rollinssurvey@gmail.com

PROJECT LOCATION:

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

STREET ADDRESS OF PROJECT: 78 and 82 Mascoma St.

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

SCOPE OF PROJECT:

Map 106-Lot 67 containing 21,112 s.f. with two existing dwellings
is proposed to be divided into two parcels, each exceeding 10,000 s.f 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: Two Family (78 Masc. St), 4-8 UNIT APARTMENT BLD (82 Masc. St.)

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 Nov. 8, 2021, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY Sign here:

OWNER: Christopher Rollins, LLS, Agent *Christopher Rollins* DATE: Sept. 29, 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 Sign here:

OWNER: Jacqueline H. Minard, Trustee *Jacqueline Minard* DATE: Sept. 29, 2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
9/29/2021	106/67	PB2021-31-min	289.24		

Rollins Land Survey

rollinssurvey@gmail.com

1216 Rt. 12a, P.O. Box 291
Plainfield, NH 03781

Tel. 603-675-5502, cell 603-252-7204

Sept. 29, 2021

Planning Board
City of Lebanon, NH

Re: Jacqueline H. Minard Minor Subdivision

Letter of Explanation:

Jacqueline Minard owns a dwelling at 78 Mascoma Street and a dwelling at 82 Mascoma Street which are shown on the tax map as being on one lot, Map 106- Lot 67. She seeks approval to divide the lot into two parcels so that each dwelling will be on a separate lot. Each of the proposed lots are served by city water and sewer and exceed 10,000 square feet in area as required in the R3 Zone.

Sincerely,

Rollins Land Survey



Christopher E. Rollins
Licensed Land Surveyor, NH & ME

CITY OF LEBANON, NH SUBDIVISION REGULATIONS – TECHNICAL CHECKLIST MINOR SUBDIVISION	
PROJECT NAME: Subdivision of Land of Jacqueline H. Minard, Trustee	
APPLICANT: Christopher E. Rollins, LLS	DATE: Sept. 29, 2021
GENERAL SUBMISSION REQUIREMENTS:	

All applications to the Planning Board for Subdivision Review must be submitted by 12:00 Noon on the day of the filing cutoff. [§7.7.C] Submissions must be accompanied by the following information or review of the application may be delayed:

- ☒ A properly completed and signed Application Form. [§7.7.A(1)]
- ☒ The appropriate filing fees. [§7.7.A(2)]
- ☒ A written project description. [§7.7.A(3)]
- ☒ A list of the names and mailing addresses of all persons to be notified, by certified mail, of the public hearing. [§7.7.A(4)]
- ☒ A completed and signed Technical Checklist. [§7.7.B]
[Applicants must complete the entire checklist to ensure that all necessary information and materials have been provided with the application or that written requests for waivers have been properly provided in accordance with Section 7.15 of the Subdivision Regulations, as appropriate.]
- ☒ Eight (8) sets of project plans to be distributed for Staff Review. [§9.5.A]
[A Staff Review meeting is held at City Hall one (1) week following the cutoff date. Staff Review meetings begin at 2:00PM, unless otherwise noted. All revised and/or additional information or materials must be submitted within one (1) week following the Staff Review meeting.]
- ☒ A digital copy of Subdivision plan in .PDF format. [§9.5.B]

NOTE: Applications shall contain sufficient information to enable the City Staff and the Planning Board to evaluate the proposed development for compliance with the Zoning Ordinance, the Planning Board's Regulations, and other applicable City Codes, and for the Planning Board to make an informed decision.

All required application materials shall be submitted as a single inclusive package, including any appropriate waiver requests as permitted by the Regulations. Submission of a complete application package ensures that the review process by City Staff is as efficient and effective as possible.

The purpose of the filing deadline is to provide adequate time for City review of the proposal. Submission of any altered, additional, or substitute application materials required by the Regulations, subsequent to the filing deadline, other than as directed by City Staff, shall cause the application to be deemed untimely filed, and such application shall not be heard until a subsequent month.

CITY OF LEBANON, NH
SUBDIVISION REGULATIONS - TECHNICAL CHECKLIST
MINOR SUBDIVISION

PLAN SUBMITTAL TECHNICAL CHECKLIST:

NOTE: Minor Subdivision plans shall include the information described below pursuant to Section 9 of the Lebanon Subdivision Regulations. Plans shall be submitted on sheets no larger than 24" x 36". Plan sets with multiple sheets shall include sheets of uniform size and be bound on the left edge. When more than three (3) sheets are required, an additional cover sheet shall be attached including a table of contents. The scale of the plans shall be appropriate to the size of the overall development. All lettering shall be of a size and type that is legible.

In order to facilitate the use of the City's Geographic Information System (GIS) for planning purposes, all surveys and engineered plans submitted for Subdivision Review shall utilize the NH State Plane Coordinate system and shall reference the North American Vertical Datum of 1988 (NAVD 88), unless prior approval to use an alternate coordinate system and/or vertical datum is granted by the Planning Office.

A written request for waiver shall be required, pursuant to Section 7.15 of the Subdivision Regulations, for any submission requirement for which the information or data is not provided by the applicant. [§9.5.C(5)]

Plan Requirements	Info. Provided	Waiver Sought
9.5.A(1) - - Name of the City and County in which the subdivision is proposed; - A Locus map; - North arrow; - Scale of the plat; - Date of the plat and of any revisions to the plat shall be shown on the first page or cover page, if applicable; (NOTE: The date on the plat at the time of initial submission for application review shall be included on all subsequent submissions to the City. Any subsequent change(s) to the plat shall include a revision date and description of the revision(s).)	☒ ☒ ☒ ☒ ☒	☐ ☐ ☐ ☐ ☐
9.5.A(2) - Names and mailing addresses of Applicant(s); Owner(s) of Record of subject properties; Owners of abutting properties, including tax map and lot references; and Holders of any easements, rights-of-way, or other restrictions.	☒	☐
9.5.A(3) - Names and business addresses of the surveyor, including license number and seal, and of every engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board.	☒	☐
9.5.A(4) - Zoning District in which the subdivision is located, including district boundaries if in more than one district.	☒	☐
9.5.A(5) - Boundary lines of the overall tract, and each of the proposed lots, including bearings and distances as determined by an actual field survey by a licensed land surveyor, including the date of the completion of the survey. All dimensions shall be shown in feet and decimals. Monuments shall be referenced on the plat as required under Section 13.5(A) of the Regulations.	☒	☐
9.5.A(6) - The area of all proposed lots shall be shown in square feet and acres.	☒	☐

CITY OF LEBANON, NH
SUBDIVISION REGULATIONS - TECHNICAL CHECKLIST
MINOR SUBDIVISION

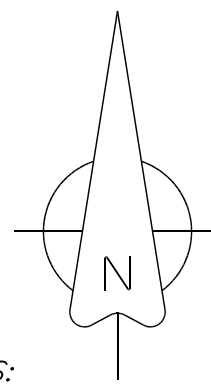
Plan Requirements (cont.)	Info. Provided	Waiver Sought
9.5.A(7) - Location of all existing structures, easements, permanent and intermittent watercourses, flood plains and wetlands, rock outcrops, wooded areas, and other significant existing features on the property. Indicate those natural and man-made features to be removed, retained, or altered. Wetlands on the property, if any, shall be delineated by a NH Certified Wetlands Scientist, whose seal and signature shall appear on the plat.	☒	☐
9.5.A(8) - If the application covers only a part of the applicant's entire holding, a map of the entire tract shall be drawn at a scale of not smaller than 1" = 400', showing all existing streets and an outline of the platted area.	☒	☐
9.4 - A statement shall be placed on the plat as follows: "A parcel of land which has been reviewed and approved as part of a minor subdivision shall not be eligible for further subdivision review under the Minor Subdivision procedures for a period of three (3) years from the date of the minor subdivision approval."	☒	☐
Supporting Documents and Information, Where Applicable	Info. Provided	Not Applicable
9.5.C(1) - Proposed covenants or deed restrictions as may be intended to apply to the property in whole or in part to be recorded in the Registry of Deeds.	☒ none	☐
9.5.C(2) - Where private individual wastewater systems are proposed, the applicant shall perform soil tests complying with requirements of Section 13.4 of the Regulations. For all proposed lots less than 5 acres in size, the applicant shall have a soil investigation made and a report prepared to establish the existence of at least 4,000 square feet of contiguous area meeting NHDES requirements. NHDES approval of all subdivision lots less than 5 acres in size shall be obtained and provided to the Board prior to the recording of the approved plat. Soil maps and information shall be in accordance with the most current USDA Natural Resource Conservation Service County Soil Maps. Maps prepared by field investigation shall be stamped and signed by a Certified Soil Scientist.	☒	☐
9.5.C(3) - Any access driveway to a State highway shall be approved by the NHDOT and provided to the Board prior to the recording of the approved plat.	☒	☐
9.5.C(4) - Approvals, as prescribed by law, from any other City agency which may have jurisdiction, including but not limited to, wetland permits.	☒	☐

NOTE: THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE REQUIRED INFORMATION PURSUANT TO SECTION 9 OF THE SUBDIVISION REGULATIONS. PLEASE BE AWARE THAT THIS CHECKLIST IS FOR INFORMATION AND GUIDANCE ONLY AND DOES NOT REPRESENT THE LAW DICTATING SUBMITTAL REQUIREMENTS NOR IS IT COMPLETE AND INCLUSIVE THEREOF.

Completed By: Christopher E. Rollins
Christopher E. Rollins, LLS

Planning office Use Only:		
Date Received ___/___/___	Checklist Complete YES or NO	Checked by: _____

(Last Revised 05/22/13)



Bearings on this plan are based on GRID NORTH. Coordinates are STATE PLANE and are based on two on-site dual-frequency GPS observations exceeding two hours in length, processed by the National Geodetic Survey Online Positioning User Service (OPUS).

NOTES:

- Underground utilities are not shown on this plan.
- Zoning District of site- R3
- The subject property is not within a flood zone according to FEMA flood maps.
- There is no wetland on the subject property.
- The property is served by city water and sewer.
- Myers Way, formerly called Abbott Court, was laid out 28-feet wide and 160-feet long on Feb. 20, 1901, all on land of George Abbott.
- Per Minard deed: "Also a common right of way 16 feet wide one half on land formerly of said Abbot 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."
- The deed description of the Minard property was drawn from a subdivision plan titled "Division of House Lot for Lizzie M. Lobbie" dated May 26, 1958, drawn by L. P. Davis. The plan, however, overlapped a portion of the Popescu/Orellana lot which had been previously conveyed out by deed recorded in book-page-. The subdivision plan also did not allow Myers Way its full 160-foot length. The boundaries shown hereon give Popescu/Orellana and Myers Way their full extent.

ABUTTERS:

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. ORELLANA
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

Others:

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

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

DATE AND DESCRIPTION OF PLAN REVISIONS

10/19/2021: 82 Mascoma Street:
Changed "4-8 unit apt. bld" to "4-unit multi-family bld"
10/19/2021: 82 Mascoma Street:
Changed proposed Parcel ID from 106-67-10100 to 106-701-00100. ("106-67-70100" was the assessing parcel ID number assigned to the 82 Mascoma Street building for tax purposes.)
10/19/2021: 82 Mascoma Street:
Changed color of dimension text from green to black.
10/19/2021: Identified date of completion of field survey as 10/19/2021.
10/19/2021: 82 Mascoma Street:
Changed R1903.11' to "Circular Curve Radius=1903.11'" Changed "Length 124.77'" to "Curve Length 124.77'"

Legend

Hydrant
Utility pole
Unmarked point
Iron pin with ID cap set)
Catch basin
Sewer manhole cover
Storm drain cover
Granite bound found
Iron pipe found

IPNS
GB
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

Drawn by: CER

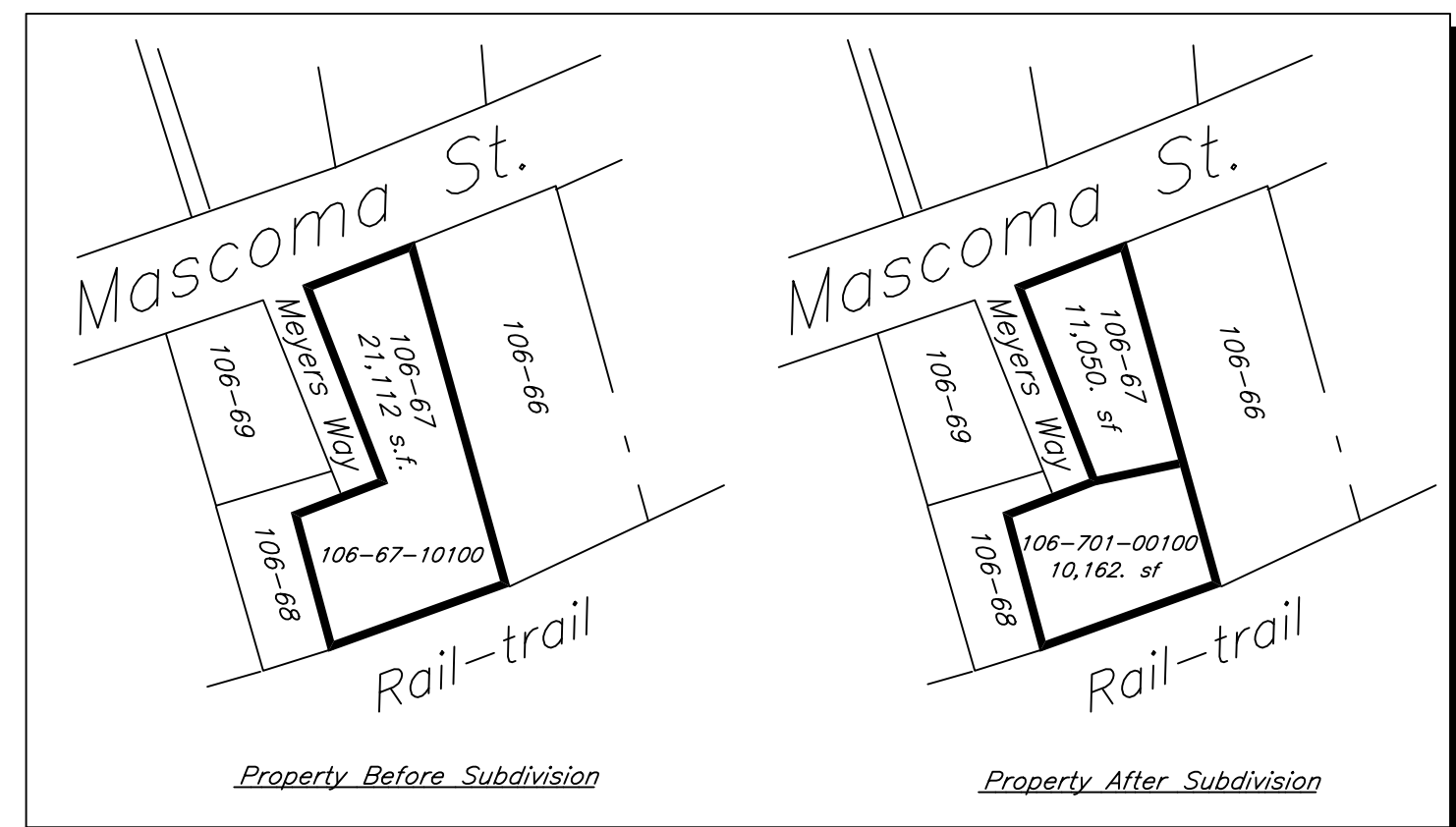
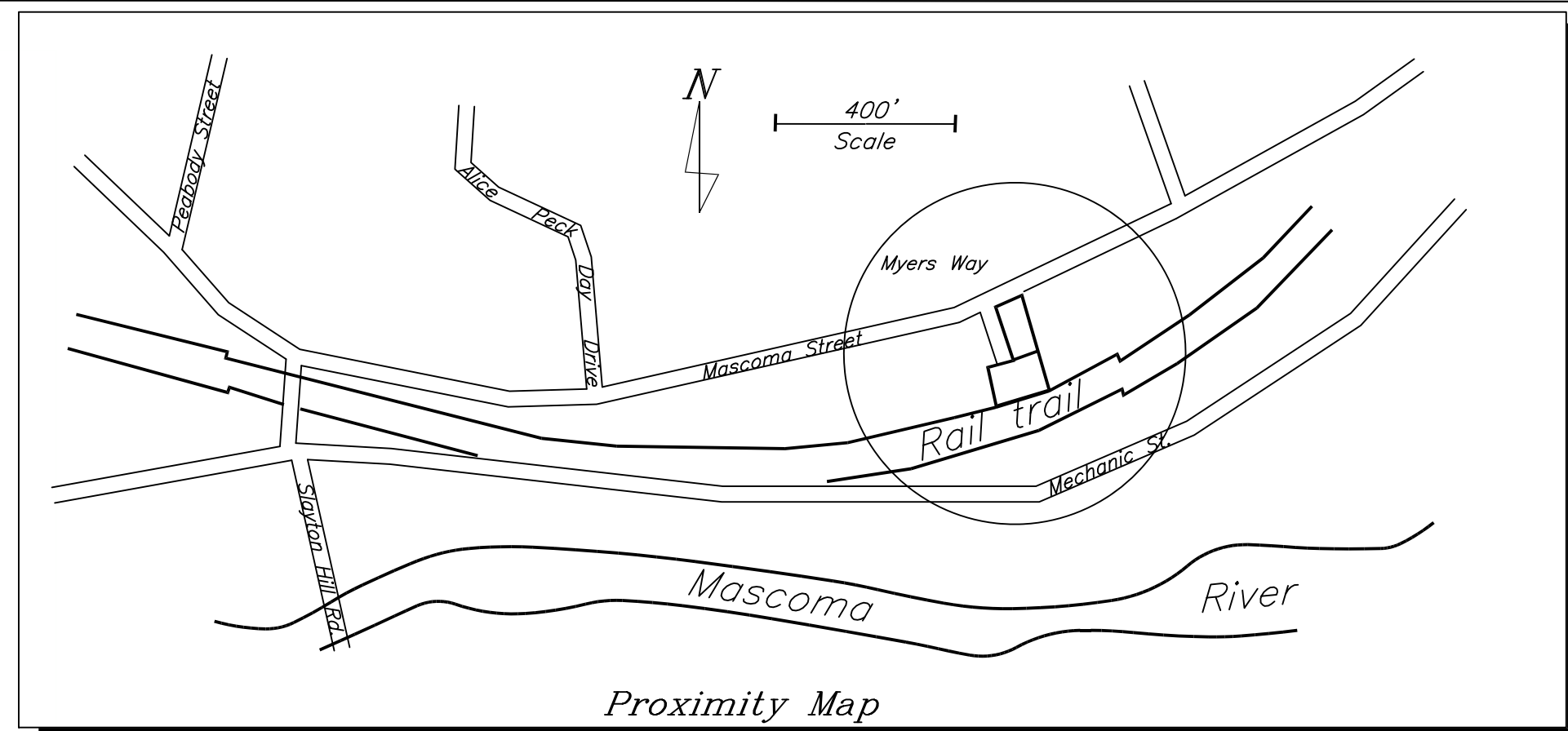
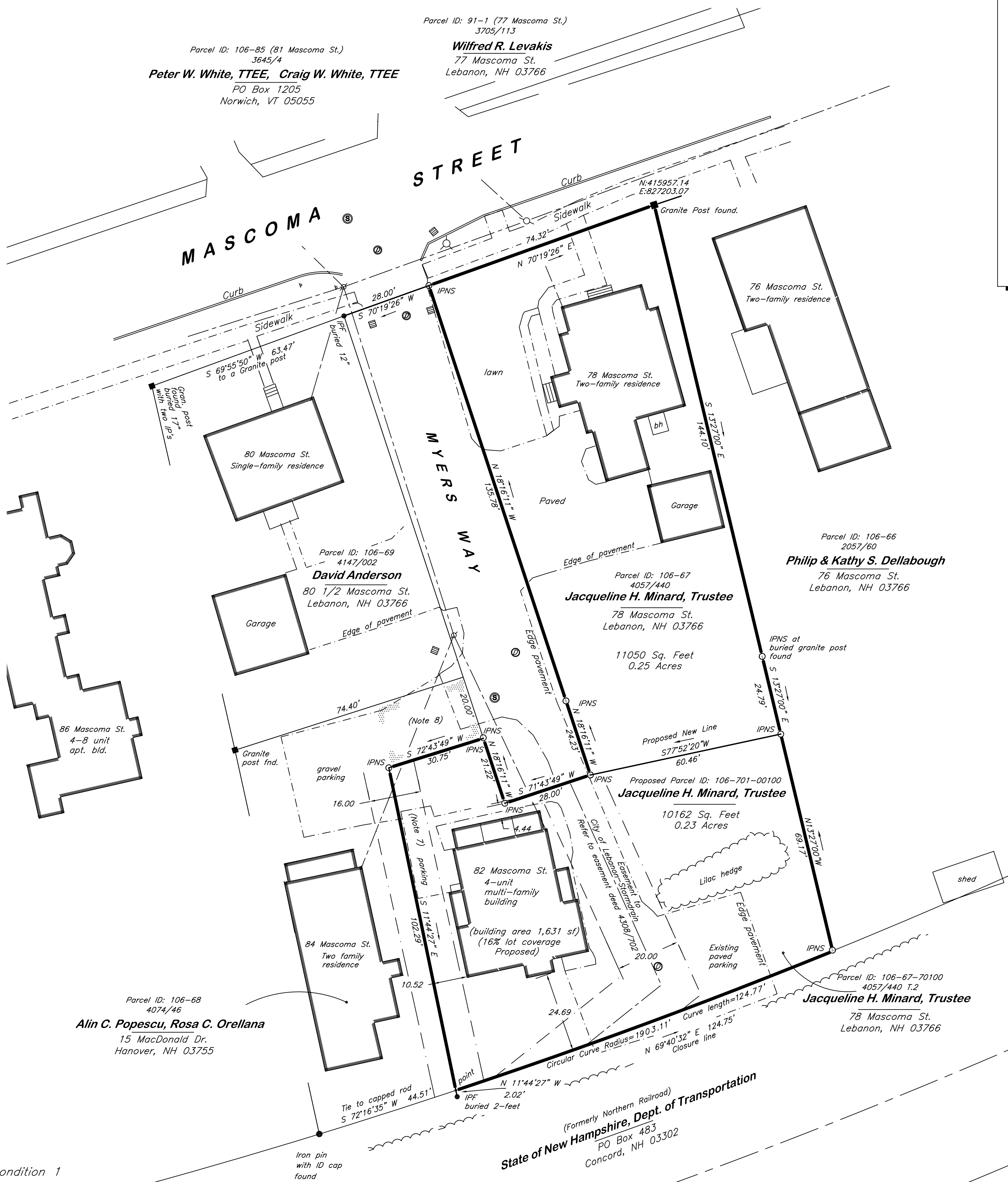
Revisions: See notes above left.

Initial plan date: Sept. 29, 2021

Map closure precision, Parcel 106-67----- 1 in 40,375

Map closure precision: Parcel 106-67-70100 ----- 1 in 53,665

(Formerly Northern Railroad)
State of New Hampshire, Dept. of Transportation
PO Box 483
Concord, NH 03302



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

"A parcel of land which has been reviewed and approved as part of a minor subdivision shall not be eligible for further subdivision review under the minor subdivision procedures for a period of three (3) years from the date of the minor subdivision approval."

Planning Board

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

0 20 40 60

One inch= 20 feet

Date: Sept. 29, 2021

Surveyor: Christopher E. Rollins, LLS
Rollins Land Survey
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

Rollins Land Survey
P.O. Box 291
Plainfield, NH 03781

**Agenda
Planning Board
November 8, 2021**

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

**William C. Solari Jr, Trustee & WM
C. Solari Jr. Rev Trust, 60 & 0
Slayton Hill Road (Tax Map 119,
Lot 1, Plots 200 & 300), zoned R-3**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

November 8, 2021 Meeting

Staff Memorandum – PB2021-32-BLA

APPLICATION INFORMATION

Agenda Item: 3.B

Application ID: PB2021-32-BLA

Application Type:
Boundary Line Adjustment

Property Location & Tax Map:

- 60 Slayton Hill Road (Tax Map 119, Lot 1, Plot 200)
- 0 Slayton Hill Road (Tax Map 119, Lot 1, Plot 300)

Property Owners/Applicants:
William C. Solari Jr, Trustee &
William C. Solari Jr. Rev Trust

Property Sizes (existing):

- 60 Slayton Hill Road (119-1-200): +/-10.0 acres *per boundary line plat*
- 0 Slayton Hill Road (119-1-300): +/-10.1 acres *per boundary line plat*

Property Sizes (proposed):

- 60 Slayton Hill Road (119-1-200): +/-5.0 acres *per boundary line plat*
- 0 Slayton Hill Road (119-1-300): +/-15.1 acres *per boundary line plat*

Zoning District:
Residential Three (R-3)

Zoning Overlay District(s):
None

LEGAL NOTICE

William C. Solari Jr, Trustee & Willaim C. Solari Jr. Rev Trust, 60 & 0 Slayton Hill Road (Tax Map 119, Lot 1, Plots 200 & 300), zoned R-3: Request for a Boundary Line Adjustment. PB2021-32-BLA

PLANS AND APPLICATION MATERIALS

- ▶ Application form (1 page)
- ▶ Letter dated October 25, 2021, from Al Michalovic, agent for applicant (project description; 1 page)
- ▶ Subdivision Regulations - Technical Checklist (2 pages)
- ▶ Lebanon GIS printout of 60 Slayton Hill Road (1 page)
- ▶ Plat titled "Boundary Line Adjustment Survey, Land of William C. Solari Jr. Revocable Trust", prepared by Holt Gilmour Survey Associates, LLC, dated August 30, 2021, revised October 22, 2021, Project No. 12858

COMPLETENESS REVIEW

This application has been reviewed in accordance with the Lebanon Subdivision Regulations. The Planning and Development Department recommends that the Board find that the application is complete enough to accept jurisdiction and to commence review.

APPLICATION OVERVIEW

This is a request for a Boundary Line Adjustment between lands located at 60 Slayton Hill Road (Tax Map 119, Lot 1, Plot 200), currently improved with a one-family dwelling, and 0 Slayton Hill Road (Tax Map 119, Lot 1, Plot 300), currently vacant. The shared lot line between the properties, highlighted in red in Figure 1 below, is proposed to shift to the south in the location approximately shown by the yellow line in Figure 1. As proposed, the changes resulting from the Boundary Line Adjustment are as follows:

- ▶ Map/Lot 119-1-200 will decrease by a net of +/-5.0 acres, from +/-10.0 acres to +/-5.0 acres.
- ▶ Map/Lot 119-1-300 will increase by a net of +/-5.0 acres, from +/-10.1 acres to +/-15.1 acres.

Figure 3. Bird's Eye View of Subject Properties (*looking west*). The red line identifies the existing shared lot line to be removed. The yellow roughly depicts the approximate location of the new lot line.



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

STAFF COMMENTS

ASSESSING

Once the subdivision has been approved and recorded, the property owner will need to provide the Assessing Department with an updated current use plan/map for the subject properties.

BUILDING INSPECTION

The plan should show the location of the existing septic system.

FIRE

No comment.

POLICE

No comment.

PUBLIC WORKS/CITY ENGINEER

No comment.

PLANNING & ZONING

Both lots currently conform to the applicable minimum lot sizes and dimensional requirements as set forth in the Zoning Ordinance and will continue to after reconfiguration.

STAFF RECOMMENDATIONS

If the Board moves to approve this application, then based on the information reviewed by City staff, the Planning and Development Department recommends that the Board approve the application with the following conditions prior to the signing and recording of the plat:

1. The applicant shall provide verification to the Planning and Development Department demonstrating that the septic system will remain on the 60 Slayton Hill Road property, as adjusted.
2. The applicant shall provide to the Planning and Development Department a digital record drawing (Cad .dwg Format using NH State Plane Coordinate system).
3. Within 30 days of the recording of the subdivision plat, the property owner shall provide the Assessing Department with an updated current use plan/map for the subject properties, as applicable.

Attachments

cc: William Solari (wcgsjr@gmail.com)
Al Michalovic (al.michalovic@fourseasonssir.com)
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: WILLIAM C. SOLARI JR REVOCABLE TRUST TEL #: 603-2760222
 MAILING ADDRESS: 2103 ST. JOHN & BARRY RD, LITTLETON NH. 03561
 E-MAIL ADDRESS: wcgsjr@gmail.com

CO-APPLICANT, AGENT, OR LESSEE:

NAME: Al MICHALOWIC TEL #: 603 359 4547
 MAILING ADDRESS: 68 FOLIAGE VIEW RD. LEBANON NH 03766
 E-MAIL ADDRESS: Al.Michalowic@Four Seasons Sir.com.

PROJECT LOCATION:

TAX MAP #: 119-1-300 LOT #: 1 PLOT #: 300 ZONE: R 3
119-1-200
 STREET ADDRESS OF PROJECT: 60 SLAYTON HILL RD 0 Slayton Hill Rd
 IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☒ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

LOT LINE ADJUSTMENT REDUCING LOT 119-1-200 TO A 5 ACRE PARCEL AND
ADDING THE OTHER 5 ACRES TO PARCEL 119-1-300 MAKING IT A 15.1 ACRE 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 Nov-9, 2021, unless I personally request, in writing, that the Board delay its determination of completeness to a later date.

PROPERTY OWNER: [Signature] DATE: 10/12/21

NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW: I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.

PROPERTY OWNER: [Signature] DATE: 10/12/21

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
10-12-21	119/1/200	PB 2021-	115.60	10-12-21	18468

119/1/300 32-BLA

City of Lebanon
Planning Board
51 N. Park Street
Lebanon, NH 03766

October 25, 2021

RE: Scope of work is a Lot Line Adjustment on Lot 119-1-300 and Lot 119-1-200

Currently, William C Solari Jr Revocable Trust owns both of these Parcels on the west side of Slayton Hill Rd .

Before adjustment:

- 1) Parcel 119-1-300 has 10.1 acres with 439,956 sq feet. Road frontage 576.5+-feet

After Lot Line adjustment 119-1-300 will have a total of 15.1 acres with a sq footage of 657,756 Road frontage 730.8+- feet

- 2) Parcel 119-1-200 has 10 acres with 435, 600 sq feet with a 3 bedroom house.
Road Frontage of 656.3 feet

After Lot Line Adjustment lot 119-1-200 will have 5 acres with a sq footage of 217,800 and the 3 bedroom House. Road frontage of 502 feet

Both of these parcels are in the **R3 zone**.

The Surveyor done this work is:

Ethan Gilmour
Holt Gilmour Survey Associates
39 Central Street
Woodstock, VT 05091
802-457-4649
Ethan@vtsrveyor.com

Please let us know if you have additional questions or concerns on this matter.

Sincerely

Al Michalovic Agent for William C. Solari Jr Revocable Trust
68 Foliage View Rd
Lebanon, NH 03766
603-359-4547
al.michalovic@fourseasonssir.com

CITY OF LEBANON, NH	
SUBDIVISION REGULATIONS – TECHNICAL CHECKLIST	
MINOR LOT LINE ADJUSTMENT / BOUNDARY LINE AGREEMENT	
PROJECT NAME:	
BOUNDARY LINE ADJUSTMENT S&R 60 Slayton Hill	
APPLICANT:	DATE:
WILLIAM C. SOLAR, JR. REVOCABLE TRUST	10/10/21
GENERAL SUBMISSION REQUIREMENTS:	

All applications to the Planning Board for Subdivision Review must be submitted by 12:00 Noon on the day of the filing cutoff. [§7.7.C] Submissions must be accompanied by the following information or review of the application may be delayed:

- ☐ A properly completed and signed Application Form. [§7.7.A(1)]
- ☐ The appropriate filing fees. [§7.7.A(2)]
- ☐ A written project description. [§7.7.A(3)]
- ☐ A list of the names and mailing addresses of all persons to be notified, by certified mail, of the public hearing. [§7.7.A(4)]
- ☐ A completed and signed Technical Checklist. [§7.7.B]
[Applicants must complete the entire checklist to ensure that all necessary information and materials have been provided with the application or that written requests for waivers have been properly provided in accordance with Section 7.15 of the Subdivision Regulations, as appropriate.]
- ☐ Eight (8) sets of project plans to be distributed for Staff Review. [§8.2.A]
[A Staff Review meeting is held at City Hall one (1) week following the cutoff date. Staff Review meetings begin at 2:00PM, unless otherwise noted. All revised and/or additional information or materials must be submitted within one (1) week following the Staff Review meeting.]
- ☐ A digital copy of Subdivision plan in .PDF format. [§8.2.B]

NOTE: Applications shall contain sufficient information to enable the City Staff and the Planning Board to evaluate the proposed development for compliance with the Zoning Ordinance, the Planning Board's Regulations, and other applicable City Codes, and for the Planning Board to make an informed decision.

All required application materials shall be submitted as a single inclusive package, including any appropriate waiver requests as permitted by the Regulations. Submission of a complete application package ensures that the review process by City Staff is as efficient and effective as possible.

The purpose of the filing deadline is to provide adequate time for City review of the proposal. Submission of any altered, additional, or substitute application materials required by the Regulations, subsequent to the filing deadline, other than as directed by City Staff, shall cause the application to be deemed untimely filed, and such application shall not be heard until a subsequent month.

CITY OF LEBANON, NH
SUBDIVISION REGULATIONS - TECHNICAL CHECKLIST
MINOR LOT LINE ADJUSTMENT / BOUNDARY LINE AGREEMENT

PLAN SUBMITTAL TECHNICAL CHECKLIST:

NOTE: Minor Lot Line Adjustment / Boundary Line Agreement plans shall include the information described below pursuant to Section 8 of the Lebanon Subdivision Regulations. Plans shall be submitted on sheets no larger than 24" x 36". Plan sets with multiple sheets shall include sheets of uniform size and be bound on the left edge. When more than three (3) sheets are required, an additional cover sheet shall be attached including a table of contents. The scale of the plans shall be appropriate to the size of the overall development. All lettering shall be of a size and type that is legible.

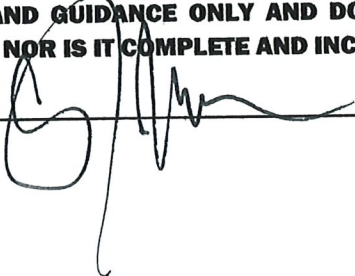
In order to facilitate the use of the City's Geographic Information System (GIS) for planning purposes, all surveys and engineered plans submitted for Subdivision Review shall utilize the NH State Plane Coordinate system and shall reference the North American Vertical Datum of 1988 (NAVD 88), unless prior approval to use an alternate coordinate system and/or vertical datum is granted by the Planning Office.

A written request for waiver shall be required, pursuant to Section 7.15 of the Subdivision Regulations, for any submission requirement for which the information or data is not provided by the applicant. [§8.2.C]

Plan Requirements	Info. Provided	Waiver Sought
8.2.A(1) - - Name of the City and County in which the subdivision is proposed; - A Locus map; - North arrow; - Scale of the plat; - Date of the plat and of any revisions to the plat; (NOTE: The date on the plat at the time of initial submission for application review shall be included on all subsequent submissions to the City. Any subsequent change(s) to the plat shall include a revision date and description of the revision(s).)	☒ ☒ ☒ ☒ ☒	☐ ☐ ☐ ☐ ☐
8.2.A(2) - Names and mailing addresses of Applicant(s); Owner(s) of Record of subject properties; Owners of abutting properties, including tax map and lot references; and Holders of any easements, rights-of-way, or other restrictions.	☒	☐
8.2.A(3) - Names and business addresses of the surveyor, including license number and seal, and of every engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board.	☒	☐
8.2.A(4) - Zoning District in which the subject lots are located, including district boundaries if in more than one district.	☒	☐
8.2.A(5) - Location of all existing structures on the subject lots.	☒	☐
8.2.A(6) - Site location map showing the original boundaries of the subject lots and adjacent lots.	☒	☐
8.2.A(7) - The new surveyed property line(s) as a result of the application, including bearings and distances, as determined by an actual field survey by a licensed land surveyor, including the date of the completion of the survey. All dimensions shall be shown in feet and decimals, and the area of the altered lots shall be shown in square feet and acres.	☒	☐

Plan Requirements (cont.)	Info. Provided	Waiver Sought
8.2.A(8) - The plat shall be titled to include the names of the owners of all lots altered by the application.	☒	☐
8.2.A(9) - A statement shall be placed on the plat as follows: "This plan shows Minor Lot Line Adjustments / Boundary Line Agreements and does not require the approval of the Lebanon Planning Board as a subdivision."	☒	☐

NOTE: THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE REQUIRED INFORMATION PURSUANT TO SECTION 8 OF THE SUBDIVISION REGULATIONS. PLEASE BE AWARE THAT THIS CHECKLIST IS FOR INFORMATION AND GUIDANCE ONLY AND DOES NOT REPRESENT THE LAW DICTATING SUBMITTAL REQUIREMENTS NOR IS IT COMPLETE AND INCLUSIVE THEREOF.

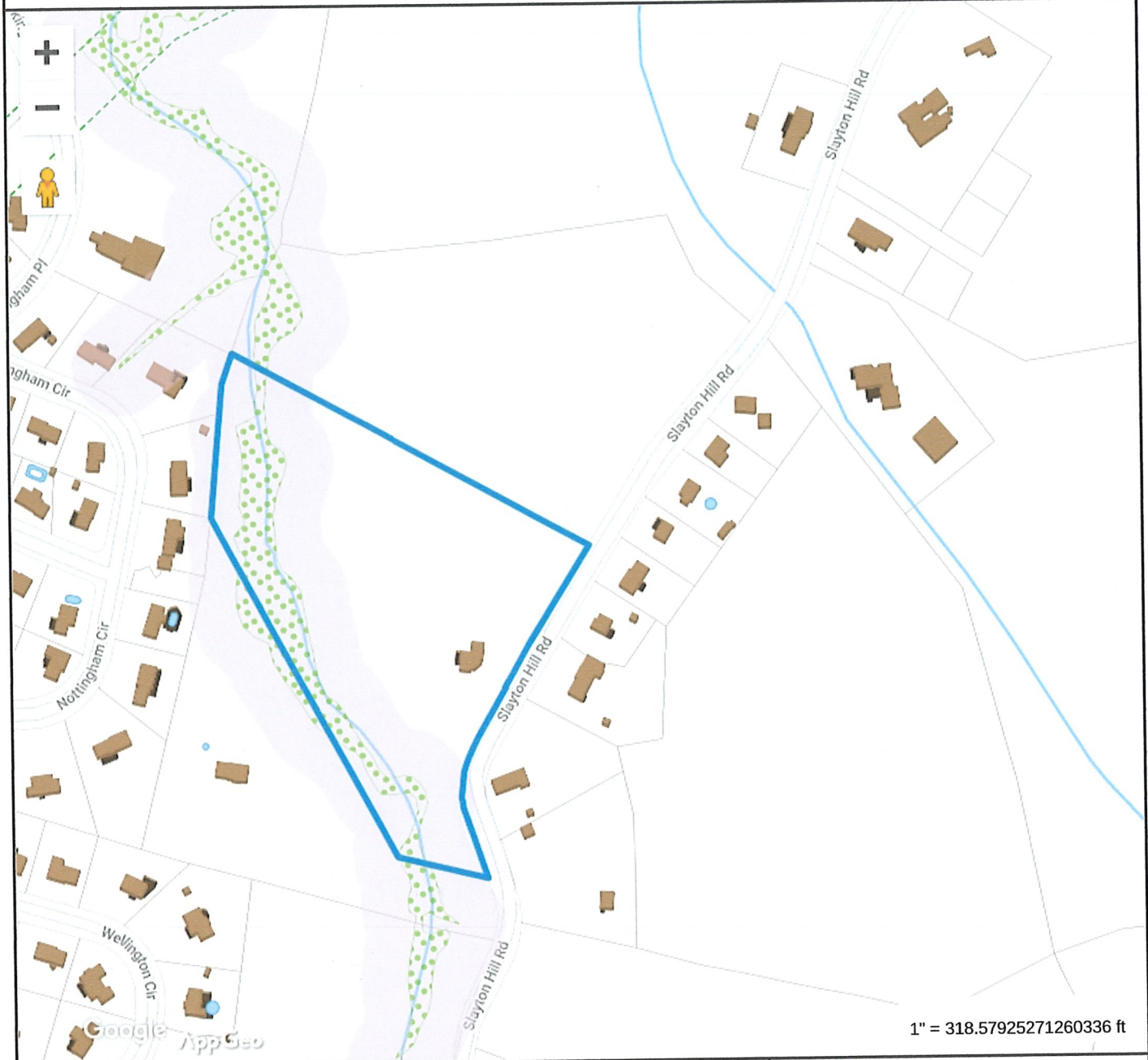
Completed By: 

Planning office Use Only:

Date Received ___/___/___ Checklist Complete YES or NO Checked by: _____

(Last Revised 05/22/13)

60 Slayton Hill rd

**Property Information**

Property ID 119-1-200
Location 60 SLAYTON HILL RD
Owner SOLARI JR, WM C TRUSTEE

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Lebanon, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 10/23/2018
Data updated 11/18/2018

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

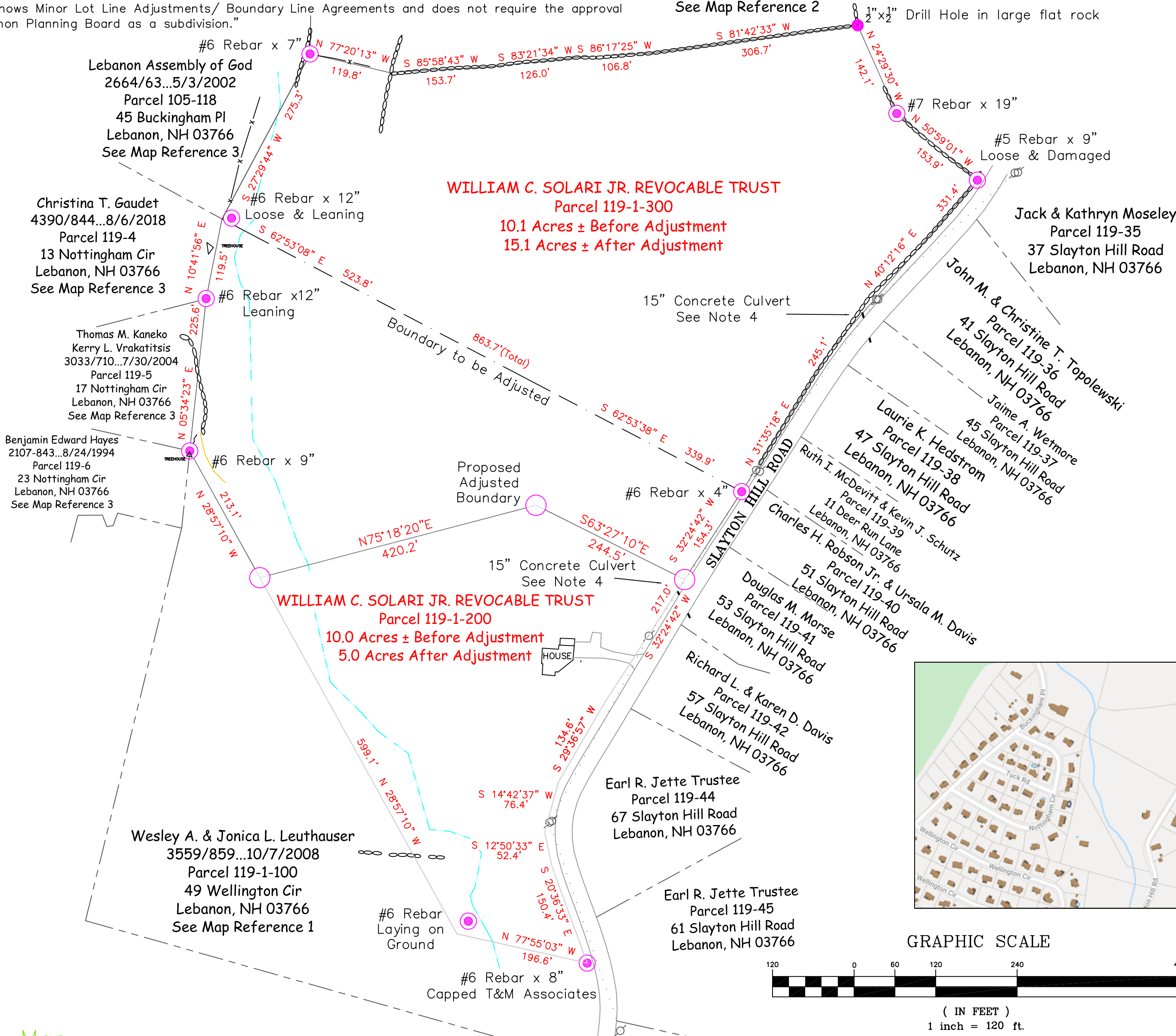
NOTES

1. Method of Survey: Random traverse with Leica TS12 Robotic Total Station #270520 & Leica GS14 GNSS/GPS base #3702373 & rover #3702399. Bearings are oriented to the meridian of the New Hampshire Coordinate System of 1983 as derived from GNSS/GPS observation and serve only to define angular relationships between courses. Field work was completed on July 21, 2021. Distances are ground.
2. This plat depicts a boundary line adjustment of the subject properties.
- Current Owners: William C. Solari Jr. Revocable Trust
Current Deed: Grafton County Land Records Book 4317, Page 584, dated 10/6/2017
Tax Map Parcel: 119-1-300
Area: 10.1 Acres ± 439,956 Sq. Ft. ±/15.1 Acres ± 657,756 Sq. Ft. ± After Adjustment
Tax Map Parcel: 119-1-200
Area: 10.0 Acres ± 435,600 Sq. Ft. ±/5.0 Acres ± 217,800 Sq. Ft. ± After Adjustment
This property is in Zone R3.
3. Title to these properties may extend to the centerline of Slayton Hill Road, subject to the public right of way. Area has been calculated to the right-of-way boundary only.
4. Property is subject to an easement to the City of Lebanon for the drainage of water from Slayton Hill. Said easement exists in Book 2144 Page 279 of the Grafton County Land Records. No other easements of record were found.
5. Unless otherwise noted, monuments set are #5x30" Iron Rods with 2" aluminum cap stamped: Survey Marker, Do Not Disturb, Gayle Burchard LS 878.
6. "This plan shows Minor Lot Line Adjustments/ Boundary Line Agreements and does not require the approval of the Lebanon Planning Board as a subdivision."

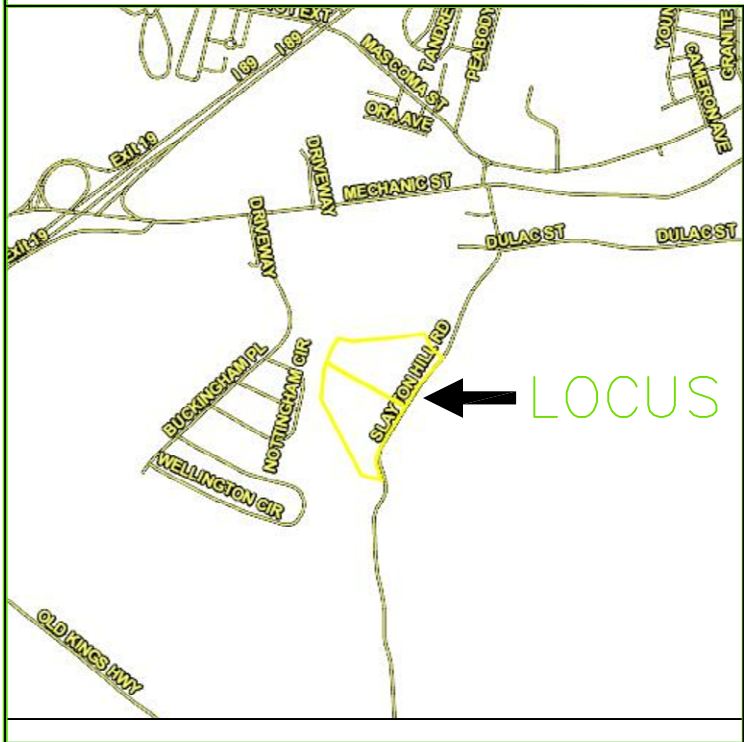
MAP REFERENCES

1. "Subdivision Plan for Carter Country Club, Inc.," dated November 11, 1994, by T&M Associates Inc., Timothy W. Rockwood, LS #618, recorded in the Grafton County Land Records as Plan 8310 & Project Number 408093.
2. "Subdivision Plat for Rivermere Family Housing," dated July 11, 2011, by Rockwood Land Services LLC, Timothy W. Rockwood, LS #618, recorded in the Grafton County Land Records as Plan 14282 & Project Number 1095.
3. "King's Grant" A Residential Community by S.M. Development Corporation," dated August 1977, by T&M Surveys Inc., Morgan E. Goodrich, LS #338, recorded in the Grafton County Land Records as Plan 751 & Project Number 61777A.

Rivermere Community Housing Limited Partnership
3900/345...7/13/2012
Parcel 105-101
226 Holiday Dr. Ste 20
White River Jct, VT 05001
See Map Reference 2

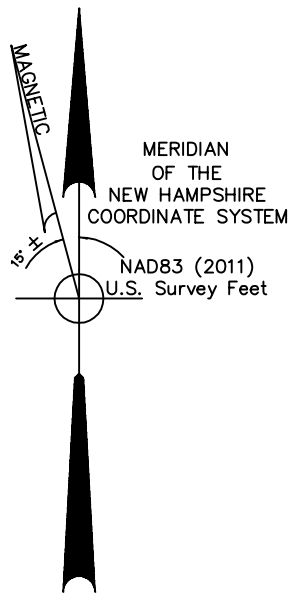


Location Map



LEGEND

- MONUMENT FOUND
- DRILL HOLE
- MONUMENT SET (See Note)
- CHAIN LINK FENCE
- BARBED WIRE FENCE REMNANTS
- CATCH BASIN
- HYDRANT
- SEWER MANHOLE
- UTILITY POLE
- UTILITY LINE
- STONE WALL
- TRAVELED WAY (Paved/Unpaved)
- BOUNDARY LINE (Subject)
- OTHER BOUNDARIES
- STREAM
- UTILITY POLE



BOUNDARY LINE ADJUSTMENT SURVEY

Land of
WILLIAM C. SOLARI JR.
REVOCABLE TRUST

LEBANON GRAFTON COUNTY, NEW HAMPSHIRE

Scale: 1"=120'

PRELIMINARY

Revised October 22, 2021
DATE: AUGUST 30, 2021

This survey was conducted in accordance with RULES OF THE BOARD OF LAND SURVEYORS, PART 5, STANDARDS FOR THE PRACTICE OF LAND SURVEYING. It is based on deed descriptions, the map references listed above, physical evidence found in the field, and conversations with various individuals. It is consistent with this information to the best of my knowledge and belief unless otherwise noted. This plat conforms with the requirements of 27 VSA 1403.

HOLT GILMOUR
SURVEY ASSOCIATES LLC
Woodstock, VT
www.vtsurveyor.com

(802) 457-4649

**Agenda
Planning Board
November 8, 2021**

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

**Brady Sullivan Prospect Hills, LLC,
0 Prospect Street (Tax Map 108,
Lot 2), zoned R-3**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

November 8, 2021 Meeting

Staff Memorandum – PB2018-39-EXT – *reopened from 3/8/21*

APPLICATION INFORMATION

Agenda Item: 3.C

Application ID#:
PB2021-02-EXT

Application Type:
Request for extension of time required for active and substantial development of an approved final major subdivision

Property Location:
Prospect Street

Property Owner/Applicant:
Brady Sullivan Prospect Hill, LLC

Property Size:
+/-39.48 Ac.

Zoning District(s):
Residential Three (R-3)

Overlay District:
Wetlands Conservation District

HEARING NOTICE

Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1). PB2021-02-EXT

APPLICATION AND OTHER MATERIALS

- ▶ Letter from John Cronin, Esq., of Cronin Bisson & Zalinsky, PC, dated October 26, 2021 (**attachment, pages 1-68**)

On-line only (not included with Planning Board hard copy agenda packets):

- ▶ **Staff Exhibits**
 - NH Housing Appeals Board, Interim Order, Brady Sullivan Prospect Hill, LLC v City of Lebanon, Case No. PBA-2021-06, dated September 28, 2021 (**attachment, pages 69-78**)
 - Application materials included in the 2/8/21 Planning Board agenda packet (**attachment, pages 79-90**)
 - Excerpt from the 2/8/21 Planning Board meeting minutes (**attachment, pages 91-93**)
 - Application materials included in the 3/8/21 Planning Board agenda packet (**attachment, pages 94-164**)
 - Excerpt from the 2/8/21 Planning Board meeting minutes (**attachment, pages 165-167**)
 - March 8, 2021 Notice of Action (**attachment, page 168**)

COMPLETENESS REVIEW

On February 8, 2021, the Planning Board found that the application is complete enough to accept jurisdiction and to commence review.

APPLICATION OVERVIEW

This application was originally heard by the Planning Board on February 8, 2021 and March 8, 2021 (for background, please see the February 8, 2021 staff memo, **pages 80-83** of the attachment, and the March 8, 2021 staff

memo, **pages 95-98** of the attachment). Following the closing of the public hearing on March 8th, the Planning Board approved a motion denying the applicant's request for an extension of time to achieve active and substantial development or building. The applicant thereafter appealed the Board's decision to the NH Housing Appeals Board (HAB). On September 28, 2021, the HAB issued an Interim Order requiring the Planning Board to reconsider its decision. Specifically, the HAB has ordered the following (see the HAB Interim Order, **pages 9 and 10** of attachment):

- 1) The vote denying the requested two-year extension is to be RECONSIDERED by REMANDING the RSA 674:39 request back to the Planning Board for further review consistent with this opinion. That review shall focus on "good cause" in the following manner:
 - a) The fact that the Applicant has previously requested and received plan extensions under RSA 674:39 shall not be factored into any decision.
 - b) Prior facts which remain relevant to the current request may be considered;
 - c) Other relevant factors for consideration can include, but are not limited to:
 - i. The Applicant's ability to have commenced substantial completion of improvements and active and substantial development of this specific project in light of existing business conditions including the impact of the COVID-19 pandemic; and,
 - ii. The current overall municipal impact, if any, resulting from the Applicant's failure to commence construction of Phase II during the previous extension.

The HAB's Interim Order further notes that, "[t]he above are non-exclusive items to be considered. In addition, this interim order is not intended to require the Planning Board to deny or approve the Applicant's extension request—it is intended to be a guide in the effort to find whether "good cause" exists in making a final decision."

STAFF COMMENTS

A. Active and Substantial Building or Development

Per Section 14.1.B.1.b of the Subdivision Regulations, "active and substantial development or building" ("ASDB") must be achieved within two (2) years from the date of the recording of the plat, or as otherwise specified by Board. Per Section 14.1.B.1.a, ASDB shall be implied when the following are inspected and approved by the Board's Reviewing Engineer:

- i) Construction of and/or installation of basic infrastructure to support the development [...] in accordance with the approved plans; and,
- ii) Construction and completion of drainage improvements to service the development (including all of the following: detention/retention basins, treatment swales, pipes, underdrains, catch basins, etc.) in accordance with the approved plans; and,
- iii) Placement and maintenance of all erosion control measures on the site as specified on the approved plans.

Generally, if ASDB is not achieved, the Planning Board may take action per Section 14.1.C.1 to revoke the subdivision approval. If ASDB is achieved, the development accrues certain vested rights per RSA 674:39 against any future changes in the land use regulations so that the development may be completed as approved.

Here, ASDB was not achieved by December 10, 2020, which was the date specified by the Planning Board in the December 10, 2018 Notice of Action granting an extension of the Phase 2 approval (PB2018-

39-EXT). Per Section 14.1.B.1.c of the Subdivision Regulations, the Planning Board may extend the deadline to achieve ASDB when the applicant demonstrates “good cause”:

The time for completion of Active and Substantial Development or Building may be extended for good cause by the Planning Board. A request for an extension of the time within which to complete such Active and Substantial Development or Building shall be submitted by the Applicant to the Planning Office prior to such expiration date.

As noted above, the HAB’s Interim Order provides guidance on how the Board should evaluate whether the applicant has demonstrated “good cause” for its request to extend the time within which to achieve ASDB of the Phase 2 site improvements. If the Board finds “good cause”, it would then be appropriate to grant the applicant’s extension request.

Staff recommends that the Board require the applicant to affirmatively identify a specific date by which ASDB shall be achieved. Note that Section 14.1.B.1.c provides that, “[i]n no event shall the time for completion of Active and Substantial Development or Building be extended to more than five (5) years from the date of the recording of the plat.” Consequently, the Board may not approve a date by which to achieve ASDB beyond June 12, 2024 (which is 5 years from June 12, 2019, the date the plat was recorded), unless the applicant requests in writing and is granted a waiver from Section 14.1.B.1.c.

B. Substantial Completion

If the Board grants the requested extension, it may also need to extend the date by which “substantial completion” is achieved (once substantial completion has occurred, the project is fully vested per RSA 674:39 against any future changes in the land use regulations). Section 14.1.B.2.b provides that, “Substantial Completion shall be achieved within five (5) years from the date of the recording of the plat.” Consequently, the Board may not approve a date by which to achieve substantial completion beyond June 12, 2024 (which is 5 years from June 12, 2019, the date the plat was recorded).

The requirements of Section 14.1.B.2.b are echoed in Section 14.5.A which requires that, “[t]he period within which required improvements must be completed shall be incorporated into the Performance Security Agreement and shall not exceed five (5) years from the date of the recording of the plat.” The applicant has requested a partial waiver of Section 14.5.A to allow substantial completion to be achieved later than 5 years from the recording of the plat. However, if they are seeking a date beyond June 12, 2024 to achieve substantial completion, the applicant will also need to apply for a waiver from Section 14.1.B.2.b.

WAIVER REQUESTS

As part of their original application, the applicant submitted an Application for Waivers (see **pages 99 and 100** of the attachment) requesting waivers from the following Sections of the Subdivision Regulations (the waiver requests have not yet been considered by the Board):

A. Waiver request relating to the requirement that all Phase 2 improvements shall be completed by June 12, 2024 (i.e. within 5 years of the recording of the plat):

- Section 14.5.A requiring, in part, that, “[t]he period within which required improvements must be completed shall be incorporated into the Performance Security Agreement and shall not exceed five (5) years from the date of the recording of the plat.”

The applicant may require additional waivers as follows:

- To the extent that the applicant proposes to achieve active and substantial development beyond June 12, 2024, a waiver is required from Section 14.1.B.1.c requiring, in part, that, “[i]n no event shall the time for completion of Active and Substantial Development or Building be extended to more than five (5) years from the date of the recording of the plat[.]”. (Staff had recommended to the applicant that they add Section 14.1.B.1.c to the Application for Waivers and submit the updated Application prior to the March 8, 2021 Planning Board meeting; an updated application was not received).
- To the extent that the applicant proposes to achieve substantial completion beyond June 12, 2024, a waiver is required from Section 14.1.B.2.b requiring, in part, that, “Substantial Completion shall be achieved within five (5) years from the date of the recording of the plat.”

B. Waiver requests relating to suspending the security provided for Phase 2

- Section 7.10 (*erroneously referred to as Section 14.7.10 in the Application for Waivers*), allowing an applicant to provide security in lieu of completing the required improvements in order to record the plat (otherwise, per Section 7.11, an approved subdivision plat can only be recorded once the required infrastructure improvements are constructed).
- Section 14.5.B providing, in part, that, “[t]he City shall not release nor reduce the amount of a Performance Security Agreement until the Reviewing Engineer, or designated agent, has certified that all required improvements have been satisfactorily completed in accordance with the approved subdivision plans and the City’s standards.”

With respect to the waivers requested from Section 7.10 and Section 14.5.B, please note that the performance security has already been suspended per an agreement between the applicant and the City, which was entered into in connection with the litigation. Staff recommends that the security should be reinstated prior to the issuance of any permits and prior to the start of any construction activities or site work on the property. Staff’s recommendation is consistent with the “Suspension of Project Security” agreement which includes the following provision: “If the final result of the Appeal is that Brady Sullivan has the legal right to continue with the Project, the Security Requirement will remain in full force and effect and Brady Sullivan will have the Bond reinstated in accordance with the Security Requirement prior to the commencement of any site work on the Project.” The Board may also want to ask the applicant to provide a date certain for when the security will be reinstated.

STAFF RECOMMENDATIONS

- A. Prior to taking any additional testimony, staff recommends that the Board first take action to revoke the motion approved on March 8, 2021 denying the applicant’s extension request. Next, as a preliminary matter of application completeness, staff recommends that the Board ask the applicant to affirmatively identify specific dates by which they propose to achieve ASDB and substantial completion.
- B. If the Planning Board moves to approve the extension request, then based on the information reviewed by City staff, the Planning and Development Department recommends that the Planning Board approve the application with the following conditions:

1. The applicant is required to achieve Active and Substantial Development or Building per Section 14.1.B.1.c of the Subdivision Regulations by _____, and is required to achieve Substantial Completion per Section 14.1.B.2.a by _____.
2. The applicant shall update all Subdivision Agreements, Security Agreements, and other documents, as necessary, to reflect the dates of the extended approval (per Section 14.1.B.1.c of the Subdivision Regulations).
3. The applicant shall comply with all applicable conditions of the Planning Board's prior Notices of Action for the Prospect Hills development, including but not limited to, the Notice of Action dated November 14, 2016, #PB2016-22-EXT-FMAJ.

If the Board grants the applicant's requested waiver from Section 7.10 and partial waiver of Section 14.5.B, staff recommends the following additional condition of approval:

4. No construction of any kind, including earthwork, shall take place until a new Performance Security Agreement is entered into and adequate security provided, in conformance with Sections 7.10 and 14.5.A of the Subdivision Regulations.



John G. Cronin
Admitted in NH and MA

October 26, 2021

Tim Corwin, Planner
City of Lebanon
51 North Park Street
Lebanon, New Hampshire 03766

Re: Factors to Consider for Remand – HAB Case # PBA 2021-06
Brady Sullivan Prospect Hill, LLC v. City of Lebanon

Dear Mr. Corwin:

This letter follows the remand of the above-referenced case to the Planning Board to reconsider the denial of the request to extend the period of time to allow active and substantial construction and substantial completion of Phase II of the development. Phase II of the development was approved for 118 housing units. The housing is allocated into 43 single family homes and 75 townhomes in a planned unit development.

LABOR SHORTAGES

The Applicant purchased the development in or near March of 2011 from a bankruptcy estate. At the time, Phase I was partially complete with roads and drainage in place. Two townhomes were constructed prior to the purchase. The Applicant completed repairs to the infrastructure and proceeded to build out the remainder of Phase I which included 28 single family homes and 24 townhomes. The Plan was to start Phase II after Phase I was completed.

The Applicant is based in Manchester and employs a number of full time employees, and hires local subcontractors who, together, undertake the construction work in the Greater Manchester area and other areas in which the Applicant has relationships with local subcontractors. Projects in Lebanon, require local subcontracted talent with whom the Applicant does not have relationships and who were not readily available to the Applicant when construction started to boom in 2017. When work was plentiful in areas in which the Applicant has relationships with subcontractors, such subcontractors were less willing to travel to Lebanon. As the material and labor crunch accelerated, the pandemic surfaced and created additional time delays.

SEWER PUMP STATION

The sewer system and infrastructure were designed and constructed to service both Phase I and II. The system is not working as designed due to the limited capacity, and the performance and useful life is impaired. Refusing to allow Phase II to move forward, places an unbearable economic burden on the existing owners and the association. The cost to repair, maintain, replace and operate the system should be carried by 168 unit owners. Without Phase II, the entire burden is carried by the 54 unit owners in Phase I. See Exhibit A, Letter of AAA Pump Service, Inc.

PLANNED DEVELOPMENT

The project was approved as a multi-phase project. Buyers in Phase I have a reasonable expectation that the units in Phase II would be built out to help subsidize the cost of operations. The unit count is an important factor in determining association fees. There is also an expectation that the units in Phase II will be compatible and consistent with Phase I.

STATEWIDE NEED FOR SHOVEL READY PROJECTS

Almost daily, the New Hampshire housing crunch appears in the headlines. There is a statewide need for all types of housing with an emphasis on housing priced at manageable levels for the workforce. The State of New Hampshire is experiencing a problem with attracting new businesses and sustaining existing businesses due to housing shortages. In Lebanon, housing is such a concern for the Dartmouth Hitchcock Medical Center (“DH”), it has entered the housing market to assist with retention and recruitment concerns. DH recently expressed an interest to lease or purchase units to be constructed Phase II.

On October 12, 2021, Andrew Cline, President of the Josiah Bartlett Center for Public Policy, published a report detailing the statewide housing crisis. The report identifies the lack of shovel ready projects, the long lead times required to obtain approvals, and the anti-development attitudes of many land use boards. See Exhibit B, Report.

ZONING CHANGE

In the recent hearing, the City mentioned a zoning change for Phase II. The Housing Appeals Board identified the zoning change as a matter to consider to support an extension. If the zoning has changed, it will preclude development as planned and the level of investment in the project is consistent with common law vesting. The completion of Phase I is a substantial step in completing the entire development.

INVESTMENT IN PROJECT

The Applicant has expended in excess of \$10,000,000 since acquiring this Project. Although the history cannot be changed, the focus should be on moving forward to develop housing that is in desperate need. Requiring the Applicant or a Successor to obtain new approvals does nothing for the health, safety or welfare of the community and only increases costs while restricting the supply of new housing.

OTHER EXTENSIONS

In the land use hearing, there has been finger pointing about oversight, bonding and timing. The good news is there is no need to revisit the history if Phase II is approved. If the history is revisited, the municipal records will show numerous extensions have been granted to others with little or no discussion or explanation of good cause. See Exhibit C, Minutes.

Sincerely yours,

CRONIN-BISSON & ZALINSKY, P.C.

By: _____

John G. Cronin, Esquire

JGC:lma
Enclosures

EXHIBIT B

[INSIDESOURCES]



NEWS

Politics (<https://nhjournal.com/category/politics/>)

Local Building Regulations Drive N.H. Housing Shortage, Bartlett Study Shows

Posted to Politics (<https://nhjournal.com/category/politics/>) October 12, 2021 by Andrew Cline (<https://nhjournal.com/author/drewcline/>)

This article originally appeared at the Josiah Bartlett Center for Public Policy website (<https://jbartlett.org/>).

Why have house prices and rents increased so much in New Hampshire? A new Josiah Bartlett Center for Public Policy study finds that residential building regulations, mostly at the local level, are a major cause. Examples of local regulations that prevent people from building homes include: minimum lot sizes, frontages and setbacks, single-family-only requirements, bureaucratic requirements for accessory dwelling units, maximum heights and densities, minimum parking requirements, historic and village district requirements, municipal land ownership, subdivision regulations, impact fees, and simply the unwillingness of zoning boards to issue variances. Widely available measures show that New Hampshire is one of the most restrictive states in the country for residential development. By suppressing building, land-use regulations drive up the price of housing as demand rises. Removing or relaxing these regulations would allow prices to rise more gradually.

Consequences

The consequences of housing scarcity for our state are significant. This study finds that residential building regulations are associated with growing socioeconomic segregation and slowing population growth. As housing becomes more expensive, fewer people are moving to New Hampshire, especially to those towns that are most expensive. Those who stay are disproportionately wealthy and college-educated, while middle- and lower-income families leave because they cannot find affordable housing.

8-Minute “Swing Cheat”

New Hampshire municipalities have enacted these restrictions on growth for several reasons. First, there is a widespread perception that allowing home-building would increase the number of children in local schools. However, the other side of the home-building equation is that new home construction leads to substantial growth in the tax base, relieving the tax burden on the rest of the town. Moreover, school populations are falling across most of the state, and so adding more children would not necessarily require more spending. So the “fiscal” motivation for restricting home-building does not make much sense today.

Rent-seeking

The main reason for growing development restrictions seems to be “rent-seeking.” In other words, some homeowners in the towns with the biggest housing demand see zoning as a way of boosting their wealth by artificially limiting the supply of housing.

This process may have gotten out of hand now, though, as pandemic-driven housing demand has well outstripped supply. Many Granite Staters have seen their homes rise in value, but this rise may be merely notional, because it is now so difficult to find a new house after selling the old one. The rapid aging of the New Hampshire population makes reform to relax local planning and zoning regulations all the more crucial.

As the rent-seeking explanation would predict, the places with the most stringent rules on building new homes tend to be the ones that historically saw big growth in housing demand. Portsmouth, Hanover, and some of their surrounding towns are among the most regulated towns in the state, along with a few Lakes Region and White Mountains locations. Some of the wealthier suburbs of Manchester and Nashua – Hollis, Windham, and Bedford – are also near the top of the list.

By contrast, the inland Appalachian belt of New Hampshire, running from western Cheshire County to the North Country, is the least regulated part of the state. There’s a definite trend in the historical data, whereby towns that saw large growth in the 1960s and 1970s enacted restrictions that then choked off growth in the later 1980s and 1990s. By contrast, population density does not seem to correlate with increases in regulatory stringency, even though it may have been a motivation for towns to adopt zoning to begin with. Some of the towns with the strictest rules have low densities and very little industrial activity, like Hanover and Lyme.

Another correlation observed in the data finds that towns that lie nearby other towns that increased their restrictions on housing were themselves more likely to enact new restrictions on housing. In other words, municipal land-use regulation in New Hampshire looks like a kind of “arms race.” When one town tightens, others are also provoked to tighten so that they don’t get a disproportionate share of new housing construction. As a result, all towns end up with less construction and stricter regulations than they really want.

Policy solutions

To get out of the arms race and make decent homes affordable to Granite Staters of all ages and walks of life, policymakers and citizens have to understand how local land use regulations affect the supply and price of housing. Better policies will come from a better understanding of the downstream effects of these regulations.

In addition to showing how land use regulations affect housing supply and prices, this study suggests several state- and local-level policy changes that could provide relief.

✓

8-Minute “Swing Cheat”

At the state level, the state could enact a regulatory takings compensation law, so that municipal governments would have to compensate landowners for new regulations that substantially take away the value of their property. The state could directly preempt the most egregious forms of exclusionary zoning, such as minimum lot sizes above a certain level and building permit caps. The state could also authorize towns to decentralize planning authority to neighborhood or even block levels. At such a small level, residents are unlikely to adopt rent-seeking forms of zoning, because builders and home-buyers could easily go elsewhere. State government could authorize municipal land-use compacts that would allow neighboring municipalities to offer multi-community planning, where the impacts of regulation on the whole commuting area could be considered. Finally, an open-enrollment law for public school choice would at least ameliorate one of the negative consequences of exclusionary zoning for middle- and low-income families: being locked out of good schools.

Top Ten Municipalities Where Housing Is Most Restricted

The study ranks N.H. municipalities by the inelasticity of their housing supply, that is, by how much local conditions, especially building and land-use regulations, restrict the ability to build new housing in response to rising demand. The ten most inelastic, regulated municipalities are:

1. New Castle
2. Rye
3. Portsmouth
4. Newington
5. New London
6. Hanover
7. North Hampton
8. Moultonboro
9. Hampton Falls
10. Waterville Valley

Download a copy of the full study here: [Residential Building Regulations in New Hampshire Report \(https://jbartlett.org/wp-content/uploads/Residential-Building-Regulations-in-New-Hampshire-Report.pdf\)](https://jbartlett.org/wp-content/uploads/Residential-Building-Regulations-in-New-Hampshire-Report.pdf)

About the Author

Andrew Cline (<https://nhjournal.com/author/drewcline/>)

Drew Cline is President of the Josiah Bartlett Center for Public Policy, a New Hampshire-based free-market think tank.

More from New Hampshire Journal



8-Minute “Swing Cheat”

Land use regulation event video now available

BLOG, HOUSING



On Oct 12, 2021, the Josiah Bartlett Center for Public Policy and the Center for Ethics in Society at St. Anselm College released a first-of-its-kind study on how local land use regulations affect the supply and price of housing in New Hampshire. The event included a panel discussion on housing regulation with Sarah Marchant of the City of Nashua and Ben Frost of the New Hampshire Housing Finance Authority.

The study and its findings are available [here](https://j.bartlett.org/2021/10/local-land-use-regulations-drive-n-h-housing-shortage-bartlett-study-shows/)

[<https://j.bartlett.org/2021/10/local-land-use-regulations-drive-n-h-housing-shortage-bartlett-study-shows/>].

This study finds that residential land use regulations are associated with growing socioeconomic segregation and slowing population growth.

As housing becomes more expensive, fewer people are moving to New Hampshire, especially to those towns that are most expensive. Those who stay are disproportionately wealthy and college-educated, while middle- and lower-income families leave because they cannot find affordable housing.

Costly housing in towns with better schools also limits families' access to educational opportunity. Finally, the sprawl caused by anti-density policies such as minimum lot sizes increases drive times and road maintenance costs and worsens air and water quality.

OCTOBER 22, 2021

BY ANDREW CLINE

Share this entry



EXHIBIT A



93 DEPOT RD- MANCHESTER, NH 03103- 603-645-8610
www.aaapumpservice.com

October 26, 2021

Brady & Sullivan
Prospect Hill LLC
670 North Commercial Street
Manchester, NH 03101

RE: Phase 1 Pump Station - Prospect Hills-Lebanon NH

Dear Jon,

This letter is in regards to the Phase 1 pump station for the above referenced property. The station is currently a quadraplex pump station that was designed to handle more flow than is currently being supplied to it. The pumps do not run as often as designed and the station has already gone septic once in the beginning stages of construction for the homes. When a pump station goes septic, the sewage becomes more corrosive to the equipment in the pump chamber. We have been dealing with the issues for this station with low flows being realized. We feel as the service provider for this pump station that having Phase 2 completed would offer an additional 115 units of flow that will allow the station to run as it was designed. The association has had to make several repairs due to degradation which we feel may not have happened if the original designed flows were present. The association is maintaining the station and working diligently to keep up with maintenance required of the system but if the actual designed flows were being realized, the station would be working as it was designed and would most likely require less maintenance.

Regards,

Nicole Frizzell
AAA Pump Service Inc

EXHIBIT C

FINAL

**LEBANON PLANNING BOARD
Regular Meeting
Monday, December 14, 2020, 6:30 PM
Remote Via Microsoft Teams
LebanonNH.gov/Live**

ROLL CALL OF

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice-Chair), Jim Winny (Council Representative), Gregorio Amaro, Kim Chewning, Joan Monroe, Kathie Romano, Jeremy Rutter, and Laurel Stavis

MEMBERS ABSENT: None

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner), Brian Vincent (City Engineer)

1. Call to Order Chair Garland called the meeting to order at 6:30 PM.

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

Mr. Corwin shared the State directive and participation details for the online meeting in Microsoft Teams. All members identified themselves.

Chair Garland conducted a roll call of members present as reported above.

2. Notice of Regional Impact

R.S. Audley, Inc. (applicant), Twin State Sand and Gravel Co. (property owner), 107 South Main Street (Tax Map 101, Lot 33), zoned GC: Applicant requests Site Plan Review and a Conditional Use Permit pursuant to Article III, Section 305.2 of the Zoning Ordinance for a proposed temporary contractor’s yard use in connection with the NHDOT I-89 Connecticut River bridge construction project. **PB2021-01-SPRCUP**

Mr. Corwin stated that the Planning Staff recommended there is no potential for regional impact.

A MOTION by Matthew Hall that the above application does not have the potential for regional impact.

Seconded by Joan Monroe.

Roll Call Vote:

Voting in Favor – Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Garland, Mr. Amaro, Mr. Rutter, Ms. Monroe, Mr. Winny, Mr. Hall

Voting Against - None

**The MOTION was approved (9-0).*

3. Public Hearing Items –

Note: Agenda Items were taken out of order by the Chair. These minutes reflect the order of agenda items as actually discussed by the Board.

- A. **Mary Hitchcock Memorial Hospital, One Medical Center Drive (Tax Map 10, Lot 8), zoned MC:** Request for Site Plan Review to expand the existing emergency department at Dartmouth Hitchcock Medical Center with the construction of +/-4,631 sq. ft. of additional building area, together with the reconfiguration of the ambulance staging area, construction of a new overflow ambulance parking area, as well as the installation of associated site improvements. **PB2020-34-SPR** - Completeness review only on 12/14/2020, public hearing to commence on 1/11/2021

Mr. Hall recused himself for this application.

Mr. Corwin stated that Staff recommends that the above application is complete enough for the Board to accept jurisdiction and commence review. The application would follow a two-month review schedule, with completeness to be determined at this meeting and the hearing continued until January 11, 2021.

A MOTION by Joan Monroe that the application of Mary Hitchcock Memorial Hospital, One Medical Center Drive (Tax Map 10, Lot 8), zoned MC is complete enough for the Planning Board to accept jurisdiction and commence review.

Seconded by Jeremy Rutter.

Roll Call Vote:

Voting in Favor – Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Garland, Mr. Amaro

Voting Against - None

Recused – Mr. Hall

**The MOTION was approved (8-0-1).*

A MOTION by Joan Monroe to continue the hearing on the application of Mary Hitchcock Memorial Hospital, One Medical Center Drive (Tax Map 10, Lot 8), zoned MC, to January 11, 2021 at 6:30PM.

Seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Amaro, Mr. Winny, Mr. Rutter, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against - None

Recused – Mr. Hall

**The MOTION was approved (8-0-1).*

Mr. Hall returned to the meeting.

- D. **Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3:**
Request for Final Major Subdivision Review, Site Plan Review, and a Conditional Use

Permit for a proposed Planned Unit Residential Development (PURD) pursuant to Section 501.2 of the Zoning Ordinance, containing 22 residential units together with related site improvements and amenities. **PB2020-31-FMAJ** - Completeness Review and Opening Public Hearing. Continued from November 9, 2020

Mr. Corwin referred to the Staff memo, stating that the applicant is in the process of obtaining the required sewer and water extension approvals and addressing technical concerns regarding the site design. Staff recommends deferring completeness until the January 11, 2021 meeting, at which time it should be possible to determine completeness. The applicant has given consent to the deferral.

A MOTION by Jeremy Rutter to defer the decision on completeness on the application of Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3, until the January 11, 2021 meeting.
Seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny

Voting Against - None

****The MOTION was approved (9-0).***

- E. **Rock Ridge Lebanon, LLC, Old Pine Tree Cemetery Road (Tax Map 74, Lot 3, Plots 101-146), zoned RL-2 and RL-3:** Pursuant to Section 7.12.D of the Subdivision Regulations, applicant requests an extension of time for the completion of the required infrastructure improvements for Phase 3 of the Rock Ridge planned unit residential development, originally approved by the Planning Board on July 7, 2005. **PB2020-33-EXT**

Mr. Corwin noted that Staff reviewed the application and recommends that it is complete enough for the Board to accept jurisdiction and commence review.

A MOTION by Matthew Hall that the Lebanon Planning Board finds the application of Rock Ridge Lebanon, LLC, Old Pine Tree Cemetery Road (Tax Map 74, Lot 3, Plots 101-146), zoned RL-2 and RL-3, is complete enough to accept jurisdiction and commence review.
Seconded by Jeremy Rutter.

Roll Call Vote:

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano

Voting Against - None

****The MOTION was approved (9-0).***

Mr. Corwin first stated that the topic of extensions would be an appropriate subject for a future discussion by the Planning Board. The background regarding extensions and vesting for this project was explained. In 2009, the Board approved a three-phase development for Rock Ridge. At the same time, the Board agreed to a partial suspension of the recorded plat, which allowed the developer to remove the security for Phases Two and Three. The applicant received an extension until 2016 to complete Phases Two and Three. The applicant will give an update on Phase Two. Phase Three is the subject of this discussion, and several extensions have been given to complete infrastructure work. The applicant is

requesting an extension until December 2021 to complete the site work. The extension of a plan approval under Section 7.12.D of the Subdivision Requirements states that a second extension request can only be granted if the Board finds that there would be a violation of vested rights. That limitation doesn't apply in this case as legal counsel determined that the 2009 notice of partial suspension supersedes that limitation.

Todd Westhaver, Project Manager of Rock Ridge, and Atty. Barry Schuster participated online in support of the application.

Mr. Schuster stated that the Site Plan Regulations mention unusual circumstances beyond the control of the applicant, which applies based upon COVID-19 concerns this year, which impacted the work on Phase Three. Phase Two is almost complete, except for the approval by National Grid to allow completion of the underground installation of power through existing conduit. Some work has begun on Phase Three, and the project has been diligently moving forward.

Mr. Westhaver described some significant gains despite COVID-19. They have sold an additional 10 houses, and the last units on White Birch Lane will be completed in April next year. Rock Ridge has come to an agreement with National Grid, and they will be working on the east side of the power line easement. Three permits have been approved, and the applicant is completing the first seven houses in that area. A Connecticut company scheduled to work on Phase Three had to lay off employees due to the pandemic, but they are hoping to move forward if the extension is approved. Phase 3 excavation materials were used to backfill sites in Phase Two and begin sitework for Phase 3. Progress has been made despite layoffs due to COVID-19.

Ms. Romano inquired if the developer was required to blast anywhere on the site. She also expressed her dismay that the project was approved more than a decade ago without the approval to cross the National Grid right-of-way. Atty. Schuster stated that they have worked with National Grid throughout and most work proceeded. The lack of an assent agreement did not slow down the development given that enough was happening on the west side. The agreement is now being signed. Mr. Westhaver added that National Grid wanted to change the original easement. To answer the other question, the applicant has been required to blast on the site and will need to do so on Phase Three.

Mr. Hall inquired if the applicant would rather have a two-year extension. Atty. Schuster noted that a two-year extension was suggested in the meeting with Staff and would be appropriate. Mr. Westhaver added that two years would coordinate with the wetlands permit timing and two other approvals. It would allow the work to be completed.

There was no public comment. Staff had no objection to changing the extension from one year to two. In the absence of further discussion, the Public Hearing was closed.

A MOTION by Matthew Hall that the Lebanon Planning Board **APPROVE** the application of **ROCK RIDGE LEBANON LLC, PB2020-33-EXT**, for an extension of time for the completion of the required infrastructure improvements for Phase 3 of the Rock Ridge development (formerly Sleeper Village), a 140-unit Planned Unit Residential Development at Old Pine Tree Cemetery Road, Tax Map 74, Lot 3, in the RL-3 zone, as requested in an application submitted by Barry Schuster, Esq., on behalf of Rock Ridge Lebanon, LLC, received November 9, 2020, including any and all submissions and testimony provided for and during the public hearing, with the following conditions:

1. The applicant shall be required to complete Phase 3 site improvements by December 1, 2022 pursuant to all applicable conditions of all of the Planning Board's Notices of Action for the Rock Ridge (f/k/a Sleeper Village) development, including but not limited to, the original

Subdivision and Conditional Use approval dated July 7, 2005 and the Notice of Partial Suspension of Final Subdivision Approval dated January 26, 2009.

- 2. The performance security for all required Phase 3 infrastructure improvements shall be in place prior to commencement of any site work in that phase. The applicant shall execute a new Performance Bond/Security Agreement to accompany the performance security.*
- 3. A "Removal of Hold" document for Phase 3, approved by the City's attorney, shall be executed by the Planning Board Chair and recorded in the Registry of Deeds prior to the commencement of any site work and prior to the sale or transfer of any lots or units within Phase 3.*
- 4. Prior to the start of construction activities for Phase 3, the applicant shall address all questions and comments from the NHDES in a letter to the City of Lebanon dated September 12, 2017 and a memorandum from Assistant City Engineer to Peter Bull dated September 22, 2017 to the satisfaction of the Department of Public Works.*
- 5. The applicant shall execute a new Water and Sewer Extension and Inspection Agreement in accordance with Chapter 136 and 182 of the City Code and Section 14 of the Subdivision Regulations for Phase 3 of the development.*
- 6. Prior to the start of any construction activities in Phase 3 for which construction inspection is required pursuant to this decision, or any applicable ordinance or code, the City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to construction and installation of roadways, sidewalks, water and sewer utilities, storm drainage systems, and erosion control, in accordance with Chapter 136 and 182 of the City Code and Section 14 of the Subdivision Regulations. The applicant shall provide funding for inspection services in a form acceptable to the City. As-built drawings provided by the applicant (using the NH State Plane Coordinate system), including tie sheets and Northing and Easting coordinates and elevations of underground utilities, and third-party engineer inspection reports shall be reviewed and approved by the City Engineer, prior to acceptance of any utility improvements by the City, and all such Inspection reports shall be made available to the applicant, upon request.*

Seconded by Jeremy Rutter.

Ms. Romano inquired if the City would receive a copy of the assent agreement from National Grid or if there would be a condition that there is an agreement by a certain time. Mr. Brooks stated that the Board could ask for a copy, but the City is not a party to the agreement. The Board cannot base its approval on the existence of that agreement. Mr. Corwin noted that it is between the applicant and the easement holder.

Mr. Brooks stated that the request the Board is considering is only with respect to Phase Three. The easement and assent agreement affect portions of Phase One and Phase Two. It does not affect Phase Three.

Roll Call Vote:

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chowning, Ms. Stavis, Mr. Hall, Mr. Garland

Voting Against - None

****The MOTION was approved (9-0).***

- B. **Jolin Salazar-Kish, 8-10 & 14 Bank Street (Tax Map 92, Lots 125 & 124), zoned LD:** Request for Site Plan Review of a proposed 47-unit multi-family residential development to consist of one existing building and two new buildings on two lots to be merged, together with associated site improvements. #PB2019-39-SPR - continued from July 13, 2020 (40 mins) - Continued from October 13, 2020

Ms. Chewning recused herself for this application.

Jolin Salazar-Kish, Sue Reed, and Dan Nash were present online to speak on behalf of the application.

Mr. Corwin noted that several changes were made to the plan, and the traffic study was included in the meeting packet.

Ms. Salazar-Kish described changes made to the façade based on Board comments and provided three views of the revised design for the 14 Bank Street building. Additional changes described included a reduction in the impact to traffic due to the reduction in units from 40 to 26. The one-way driveways would create fewer left hand turns toward the green. Additional shade trees were included in the landscaping plan, and the lighting analysis showed no spillage except where waived.

Mr. Corwin stated that the new proposal requires a few waivers. The waiver for lighting per Section 6.7.2.B was already approved. The proposed waivers are as follows:

- Partial Waiver of Section 6.2.B.1 – “On all parcels subject to these Regulations, a minimum landscaped area along the front, side, and rear property lines shall be provided, except within the Central Business District where proposed development of the site does not allow. This area shall be a minimum of 15 feet in width for the length of each property line, and shall total at least 20% of the entire lot area.” (emphasis added)

A perimeter landscape area of 15 ft. in width is not provided in some locations around the perimeter of the property (e.g. the area between the parking spaces along the entry drive and the Lebanon Library, and the area at the eastern end of the rear parking lot).

- Partial Waiver of Section 6.2.B.4 – requiring that trees to be planted no closer than 8 ft. to any lot line
- Waiver of Section 6.2.B.6 – requiring a 20 ft. wide opaque buffer between the proposed multifamily use and the abutting office use at 18 Bank Street (“Where necessary to mitigate the impact of a land use on neighboring properties or the neighborhood, the Planning Board will require that all or some of the perimeter landscaping required herein be planted as an opaque or semi-opaque buffer, and increased in width pursuant to the chart that appears on page 29 of the Site Plan Review Regulations.”)
- Partial Waiver of Section 6.2.D – “Landscaping around buildings shall be provided to a minimum width of 10 feet and planted with trees, shrubs, and ground cover appropriate to the architecture in order to buffer parking areas, define entrances, provide foundation planting, and soften large expanses of walls or long roof lines.”

- Section 6.5.B.5 – “Minimum access requirements shall include a 50-foot turning radius and 22-foot fire lanes at the rear of the buildings.” Note: It appears that the revised site plans satisfy this requirement and, therefore, a waiver is not required.

Staff has identified additional requirements of the Site Plan Review Regulations from which the revised proposal requires a waiver, and has asked the applicant to provide a written request for each:

- Partial Waiver of Section 6.2.E.1 – requiring parking areas to be visually screened with landscaping (the proposed trees along the perimeter are required to be “supplemented with shrubs, perennials, or understory trees to visually screen the parking area.”)
- Partial Waiver of Section 6.7.6.a – requiring “...areas within parks or along walkways and bikeways to be illuminated shall not exceed an average level of 1.0 foot-candle at grade level.”

Mr. Corwin stated that the Fire Department provided comments on the most recent plans and are satisfied with the revisions as proposed. The official approval will be confirmed at the January meeting. Most of the technical comments have been satisfied. The City Engineer has comments that should be addressed prior to the January meeting. On Page 6 of the Staff Memo, Engineering comment #1 noted parking space 56 could impact traffic entering the site, and Engineering may recommend that space be removed. The revised plan includes 56 parking spaces, which provides an average of 2.2 spaces per unit.

Mr. Vincent had no further comments.

Mr. Rutter expressed curiosity regarding the purpose of the driveway on the east side of 14 Bank Street. He suggested the driveway serves no purpose for #14 Bank Street, and removing it would allow for the required opaque, landscaping buffer. Ms. Salazar-Kish explained that it is a shared driveway with #18 Bank Street and is required to remain. Atty. Carolyn Cole, who owns #18 Bank Street, stated that her property does not require an opaque divider from the new building. It is a very narrow driveway, and she has no objection to the waiver.

Mr. Rutter referred to tabulation of the trees on Page 7 of the plan, noting that the math did not appear to add up. Ms. Salazar-Kish stated that a newer version of the plan corrects those numbers, which are given as the totals for trees versus plants and bushes.

Ms. Romano noted that the traffic study was done during a year when children were not in school and many parents were working from home. She suggested that future studies should reference typical traffic. Chair Garland suggested those circumstances may have been factored into the data, but Ms. Romano preferred leaving it for a future discussion. She noted that a number of proposed parking spaces, specifically #55, 56, 47, 48, 26, 27, and 39, are all in places that make turning difficult. Their removal would provide additional snow storage space and improve traffic flow within the site. She characterized the changes to the exterior of #14, such as the porch and modifications to the sides of the building, as very pleasing.

Mr. Amaro expressed his agreement with Ms. Romano regarding the same parking spaces and also noted their potential, negative impact on the pedestrian walkway.

Mr. Corwin commented on the roof pitch as being out of character with the neighborhood and making the building look larger than it actually is. Ms. Salazar-Kish stated that the pitch is 5/12 and anything less would make it almost flat. The neighbors disapproved of a flat roof on the previously-proposed building. Ms. Salazar-Kish added that the degree of pitch is needed for the roof to shed water properly.

Chair Garland asked for public comment, noting that Kathy Elfstrom's written comments expressed appreciation for the recent changes.

Doreen Schweizer, an abutter at 14 Green Street, has a fence behind her barn that is on Ms. Salazar-Kish's property. The fence was moved to that location about twenty years ago to prevent snow coming off the barn roof from knocking the fence down. Ms. Salazar-Kish suggested replacing the wooden fence with a vinyl fence along the property line, but Ms. Schweizer believes a fence on the property line would be knocked down by the snow from the roof.

Mr. Corwin stated that the Board could not approve an abutter's fence, as it is not part of the project. Ms. Salazar-Kish stated that creating a jog in the fence would be agreeable and suggested the Board could waive that portion of the landscape requirements. Any landscaping would be shrubs, which would limit parking lot shading. Ms. Monroe expressed the need to have the minimum required shading to keep the pavement cool. She added that moving two of the trees could be acceptable, and adding a low fence, like those along a road, could take the weight of snow and delineate the property line. The Board can make suggestions, but it is an awkward situation. Ms. Stavis stated her lack of support for the Board entertaining a private agreement with an abutter or granting a partial waiver to allow such an agreement.

Laura Harris-Hirsch suggested adding a roof over the rear parking area to help shield the pavement from the sun.

Ms. Schweizer noted that the solid mass coming off the barn roof has a tremendous impact, and any fence right on the property line would be in jeopardy. A separate agreement between Ms. Schweitzer and Ms. Salazar-Kish that incorporates the decision of the Planning Board would be acceptable.

Ms. Monroe stated that the Board is always concerned when an applicant's plan would negatively affect an abutter. Usually abutters want a sturdy barrier, but in this case the abutter doesn't want a fence on the property line. If Ms. Salazar-Kish can move the trees and still satisfy the shade requirement, it would likely be acceptable to the Board. Moving the fence would be the applicant's decision.

Mr. Winny suggested installing a snow rail or similar device to stop the snow from sliding off the barn roof.

Ms. Harris-Hirsch reiterated her suggestion for a roof to shade the parking area pavement.

Mary Ann Mastro of 15 Green Street inquired if the new plan needed to fall under the new Lebanon Downtown regulations. Mr. Corwin stated that Staff had raised the issue of whether the new plan was substantially different enough to require a new application. Although there are some significant changes, the applicant reduced the overall impact of the project, and the balance of the project was similar enough to the original plan. The changes were made in response to comments from the Board and the public. The Board is not required to make an official determination that the new plan is, in fact, similar enough.

Ms. Salazar-Kish explained that there is often a trade-off between maintaining aspects of a project and keeping it financially viable. The project is following the spirit of the regulations as closely as possible while balancing the other constraints of the project site. At present, the entire space has no landscaping. As much landscaping as possible is being added given the constraints that exist. The ten-foot landscape requirement is not possible throughout with the redesign that was based upon requested changes. The project has to be financially viable.

Fran Hanchett inquired about snow storage and the Library's trash. Ms. Salazar-Kish stated that they left a walkway for the Library's trash to be removed through her property as it is removed currently.

Ms. Romano observed that the proposed back fence appears to be touching the corner of the house to the east of 14 Green Street, and there is no space to walk around the house. Ms. Salazar-Kish stated that walking around the house at present would mean trespassing on someone else's property. The plan would be to allow the current four-foot fence to remain, and the new fence would attach to it and go to the west side of the property with a slight jog to accommodate the garden at 14 Green Street.

Ms. Monroe commented on the improvement to the proposed front of #14 and the front porch. She noted that parking spaces next to snow banks are difficult to maintain. If those spaces were removed, there could be more lawn area. Waivers are necessary because all projects are unique. The goal is to maximize the space available, and the scale of the new design is a great improvement. The lack of a landscape buffer on the west side by the Library is not a concern. It is not a residence but a public building.

Chair Garland suggested voting on the waivers.

***A MOTION by Joan Monroe to approve the partial waiver of Section 6.2.B.1.
Seconded by Laurel Stavis.***

Roll Call Vote:

Voting in Favor – Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter

Voting Against - None

Recused – Ms. Chewning

****The MOTION was approved (8-0-1).***

Ms. Chewning returned to the meeting.

***A MOTION by Matthew Hall to continue the hearing of Jolin Salazar-Kish, 8-10 & 14 Bank Street (Tax Map 92, Lots 125 & 124), zoned LD to January 11, 2021, at 6:30PM.
Seconded by Kathie Romano.***

Roll Call Vote:

Voting in Favor – Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe

Voting Against - None

****The MOTION was approved (9-0).***

- C. **89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC:** Request for Site Plan Review to construct a +/-1,332 sq. ft. drive-in restaurant (a Dunkin' Donuts with a drive-through window and walk-in service) within the existing parking lot, together with associated site improvements. **PB2020-32-SPR - Completeness Review and Opening of Public Hearing.** Continued from November 9, 2020

Mr. Corwin stated that the Planning Department recommends accepting the application as complete enough to accept jurisdiction and commence review. Additional information has been requested regarding parking, and an agreement on meeting Section 607 was reached by phone. The clarification will be included with the next meeting packet.

A MOTION by Laurel Stavis that the application of 89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC is complete enough for the Planning Board to accept jurisdiction and commence review.
Seconded by Jeremy Rutter.

Roll Call Vote:

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland

Voting Against - None

****The MOTION was approved (9-0).***

Rod Finley of Pathways Consulting attended online to speak in support of the application. Also in attendance were Greg Sagris of 89 Donuts, Andrew Burek of the Richmond Group, and Erica Wygonik of Resource Systems Group, who are doing the traffic study.

Mr. Finley described the project, which is a Dunkin' Donuts drive-through/walk-in facility to be located in the Miracle Mile Plaza in front of the movie theater. There would be no seating provided. There would be a mobile lane for drive-through service, and it would be adjacent to the new bus stop and the crosswalk between the shopping plaza and the Listen Center. There would be a small building with no kitchen or baking on site. The location details, parking, and proposed traffic flow were explained, and the plan meets the current ordinance for parking. Municipal sewer and water connections would be made underground using a directional drilling process, and stormwater management is improved with a reduction of impervious surface. Stormwater flow and catchment were determined and described. Shading calculations are in progress and will include details for proposed trees and landscaping.

Mr. Corwin described the updated waiver requests, which were sent to the Board. The project involves redevelopment of a portion of an existing property. The requirements under Section 6 would normally apply to the entire plaza, so a waiver request to limit compliance to just the project site was recommended. The City Engineer's comments need to be addressed, and all other comments are expected to be addressed by the January meeting. Staff is requesting that a decision be deferred on the waiver request from 5.1.E.5 until the January meeting. All other waiver requests were explained. The traffic impact analysis is in progress now, and a reduction in parking spaces is proposed with space reserved on site if more parking is needed later. The rail trail access needs to remain open.

Mr. Hall expressed significant concern about traffic at both entrances to the plaza. The space is extremely limited, and there is no current plan for traffic movement within the plaza. Both access and safety are issues.

Ms. Romano noted the site cleanup from the previous gas station. It is important to preserve access to a lot on the opposite side of the rail trail for a future recreation site. Exploring that with the Recreation Department was suggested. Exiting from Price Chopper is extremely difficult, and many drivers use the other plaza exits. The row of parking spaces closest to the site could be eliminated to provide better traffic flow.

Mr. Amaro expressed concern over access for pedestrians. The access appears to be geared toward cars, which would limit pedestrian and bicyclist use. The options for safely crossing traffic to and within the site are very limited.

Ms. Monroe shared the same concerns about the stacking of vehicles at the exits. In addition, the current practice of drivers crossing empty parking lanes is also an issue. The lanes in front of the theater may make parking and traffic complicated. Many children wait in theater lines, which could be a safety issue.

The property divisions are not clear. Mr. Brooks pointed out the property lines for the three sections of the plaza.

Mr. Corwin clarified that the parking areas to the rear of the theater would provide the minimum spaces required under the Zoning ordinance. Overflow would be in the western end of the Price Chopper parking lot. Mr. Finley explained that the spaces behind the theater are required to meet the current regulations. Ms. Monroe suggested that the excess parking spaces could provide needed driving space.

Chair Garland invited public comment. There was none.

Mr. Rutter inquired about the purpose of the space to the west of proposed building, which is empty. Mr. Finley stated that it is a landscaped, grassy area.

***A MOTION by Matthew Hall to extend the meeting to 9:45 PM.
Seconded by Kathie Romano.***

Roll Call Vote:

Voting in Favor – Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall

Voting Against - None

****The MOTION was approved (9-0).***

Ms. Stavis inquired about the hours of operation. Mr. Sagris stated it would likely be 5 AM to 9 PM, adding that over 70% of Dunkin' Donuts' business occurs before Noon, and the movies start at Noon. Ms. Stavis also inquired about the safety of pedestrian access and those walking through the plaza. She commented that it is nice to see the plaza coming back to life.

Ms. Chewning inquired about the process for bike customers to access the property and store their bikes while in the store. Mr. Rutter suggested outdoor seating given all of the proposed, grassy area. It would be possible for pedestrians or bicyclists to take a break there.

Chair Garland inquired about the number of cars parking at any time, given that the site is for drive-through and walk-in service. Mr. Sagris stated that the interior layout is only 8' by 11½' (92 sq. ft.) and not geared toward inside dining. A small indoor counter was added to accommodate pedestrians from the bus stop for placing and picking up their orders in winter months. There are no public rest rooms. He added that he would send along the interior design for inclusion in the next meeting packet.

A MOTION by Kathie Romano to continue the hearing of 89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC to January 11, 2021, at 6:30PM.

Seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano

Voting Against - None

****The MOTION was approved (9-0).***

4. Other Business

Chair Garland cited an article in the Valley News regarding a lawsuit filed by Timberwoods and asked for an update. Mr. Brooks explained that a lawsuit has been filed, but the City has not been served. The City will see what the case is once service is completed and will respond accordingly. The appellant has until January 9, 2021, to have it served and the City must respond within 30 days.

Mr. Brooks took a moment to thank the Board members for their patience and diligence with the new process. There was a great deal of hard work put in by the Board this year on some large, difficult projects. He sincerely appreciates their willingness to serve.

5. Approval of Minutes

A. November 9, 2020

Page 5, line 50, to read, "A Board member asked for more specifics regarding Section 602 on the topic of swimming pools and fencing."

B. November 23, 2020

Page 2, line 6, to read, "The exit to Mechanic Street from Foundry Street will eventually be right turn only."

Page 2, line 8, to read, "It was suggested to switch the positions of the magnolia tree and the serviceberry shad tree."

Page 2, line 20, to read, "...APPROVE the following waivers..."

Page 7, line 21, to add, "Chair Garland requested that Mr. Braverman provide the Board with a fiscal study for the next meeting."

Page 10, line 24, to read, "Chip Brown, who is a realtor in Lebanon, stated..."

Additional grammatical corrections as submitted via email.

***A MOTION by Laurel Stavis to approve the minutes of the November 9, 2020 and November 23, 2020 meetings as presented in the December 14, 2020 Planning Board meeting packet as amended.
Seconded by Jeremy Rutter.***

Roll Call Vote:

Voting in Favor – Mr. Garland, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro, Mr. Winny, Mr. Hall

Voting Against - None

****The MOTION was approved (9-0).***

6. Adjournment

***A MOTION by Matthew Hall to adjourn the meeting.
Seconded by Laurel Stavis.***

Roll Call Vote:

Voting in Favor – Mr. Garland, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro

Voting against - Mr. Hall

****The MOTION was approved (8-1).***

The meeting was adjourned at 9:43 PM.

Lebanon Planning Board, Minutes, December 14, 2020

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Respectfully submitted,
Holly Howes
Recording Secretary

FINAL

**LEBANON PLANNING BOARD
Regular Meeting
Monday, January 11, 2021, 6:30 PM
Remote Via Microsoft Teams
LebanonNH.gov/Live**

ROLL CALL OF

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice-Chair), Jim Winny (Council Representative), Gregorio Amaro, Kim Chewning, Joan Monroe, Kathie Romano, Jeremy Rutter, and Laurel Stavis

MEMBERS ABSENT: None

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner), Brian Vincent (City Engineer)

1. Call to Order Chair Garland called the meeting to order at 6:30 PM.

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

Mr. Corwin shared the State directive and participation details for the online meeting in Microsoft Teams. All members identified themselves.

Chair Garland conducted a roll call of members present as reported above.

2. Notice of Regional Impact

Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1). PB2021-02-EXT

ICV-NH, LLC, 67 Etna Road (Tax Map 26, Lot 2), zoned IND-L: Request for modifications to the required open space for the Industrial PUD approved in 2016 (PB2016-04-SPR), and to the subdivision plat required to be recorded for the 75-unit multi-family condominium conversion approved in 2018 (PB2018-30-FMAJ). PB2021-03-FMAJSPA

Staff recommended that neither application has the potential for regional impact.

A MOTION by Laurel Stavis that the above applications do not have the potential for regional impact. Seconded by Jeremy Rutter

Roll Call Vote:

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano

Voting Against - None

**The MOTION was approved (9-0).*

3. Public Hearing Items

- A. **Jolin Salazar-Kish, 8-10 & 14 Bank Street (Tax Map 92, Lots 125 & 124), zoned LD:** Request for Site Plan Review of a proposed 47-unit multi-family residential development to consist of one existing building and two new buildings on two lots to be merged, together with associated site improvements. **PB2019-39-SPR** - Continued from December 14, 2020

Kim Chewning recused herself.

Property Owner Jolin Salazar-Kish, Sue Reed, and Dan Nash of Advanced Geomatics attended on behalf of the application.

Ms. Kish explained the updates to the plan.

Mr. Corwin reported on a request by the Fire Department and a subsequent additional condition of approval.

Mr. Vincent explained the resolution of comments to date. The remaining comments would be resolved before issuing a building permit. The parking space #56 issue is still under discussion. Additional parking, grading, and walkway issues are also being resolved.

Mr. Corwin stated there are no parking requirements in the Lebanon Downtown District, and it is up to the Board to determine adequate parking. The current proposal provides 2.2 parking spaces per unit, but that must be approved by the Board. The spaces cannot be leased by anyone outside the property.

Chair Garland explained the order of business.

Ms. Salazar-Kish explained that parking space #56 would be designated motorcycle parking only, which would eliminate the impact on the property entrance. The parking is calculated as one space per bedroom; and parking is driving the design, as rental depends on access to parking.

Mr. Hall noted that parking was his concern, and motorcycle space is a good compromise.

Mr. Rutter inquired about rain gardens. Mr. Nash confirmed that there are no rain gardens on this version of the plan.

Ms. Romano reiterated her opinion that parking spaces #56 and #48 should be removed. Spaces #36, 29, and #37 should also be removed to provide room for snow storage in the winter and recreation space in the summer months. Ms. Salazar-Kish stated that she is willing to cover the cost of snow removal in order to maintain the planned parking spaces, which make the units rentable. Ms. Romano added that leasing parking spaces is not allowed per zoning ordinance. In response to concern over the abutters' fences, Ms. Salazar-Kish explained the three types of fencing required and confirmed responsibility for

maintenance of all fencing on the project property. Mr. Corwin explained the decision for replacement fencing is up to the applicant. Ms. Monroe suggested putting the fencing replacement in the conditions. She also expressed concern about space #56 due to fact that those backing out could interact with those leaving the green area and heading east on Bank Street. Ms. Monroe stated that removing spaces #26 and #39 would provide better area for snow storage. Ms. Salazar-Kish explained that most of the snow storage is planned to be at the other end of the parking lot. Snow would not be left in the walkway to the Library trash area. Ms. Romano suggested that most motorcycle owners want a more private parking location than #56 would provide and still recommended removing that space. The location would be convenient to public transit. Ms. Salazar-Kish reiterated that it is needed. Mr. Winny commented that he looks for a more protected space for his motorcycle and doesn't see space #56 as a problem.

Chair Garland invited public comments.

Frank Mastro and Maryann Mastro of 15 Green Street made comments. Mr. Mastro stated that space #56 could be an issue when someone backs out. The plan for snow area does not look adequate. Spaces #26 and #39 have very limited backout area, and piling snow will make it worse. Mrs. Mastro commented that parking should be more than adequate to keep units rented even with those spaces removed.

Doreen Schweitzer of 16 Bank Street expressed concern that the most recent plan from Ms. Salazar-Kish suggests that the fence behind the barn should be 6' high, not 4'. She would like to see the fence beige or brown rather than white as it would be less obvious.

Chair Garland opened the discussion of the waivers, suggesting that they be voted as a block.

Mr. Corwin noted that some landscaping had been removed due to the fence at the back of the building and explained the waivers. Ms. Monroe expressed concern that trees were being removed and inquired if trees were being added elsewhere for proper shading. Ms. Salazar-Kish stated that they did adjust the tree allocation to meet the shading requirement.

*A MOTION by Matthew Hall that the Lebanon Planning Board **APPROVE** waivers for the application of JOLIN SALAZAR-KISH, #PB2019-39-SPR, from the following section of the Site Plan Review Regulations:*

- **Partial Waiver of Section 6.2.B.4** – *requiring that trees to be planted no closer than 8 ft. to any lot line*
- **Waiver of Section 6.2.B.6** – *requiring a 20 ft. wide opaque buffer between the proposed multi-family use and the abutting office use at 18 Bank Street*
- **Partial Waiver of Section 6.2.D** – *“Landscaping around buildings shall be provided to a minimum width of 10 feet and planted with trees, shrubs, and ground cover appropriate to the architecture in order to buffer parking areas, define entrances, provide foundation planting, and soften large expanses of walls or long roof lines.”*
- **Partial Waiver of Section 6.2.E.1** – *requiring parking areas to be visually screened with landscaping*

Seconded by Jeremy Rutter

Roll Call Vote:

Voting in Favor – Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro

Voting Against - None

**The MOTION was approved (8-0).*

Chair Garland invited Board comment on the conditions of approval.

Ms. Romano commented on the fences at the rear of property, which are owned by abutters but on the applicant's property and lack consistency. The fence behind #16 is very close to the building. Ms. Salazar-Kish explained that the fence is as it is because the owner put it that close to the building, adding that they can remove a section for painting. They plan to use 4' fencing to limit damage from snow, and the intention is to have two heights. Ms. Romano wondered about the ability of abutters to access the back of their house. Ms. Salazar-Kish confirmed the abutter would need permission to paint now given the building's location. Ms. Monroe suggested that allowing neighbors access is desirable.

Mr. Brooks inquired if snow coming off the roof of the neighbor's barn would go beyond the fence. Ms. Salazar-Kish stated that it would.

Chair Garland invited public comment.

Mary Ann Mastro commented that the need for waivers is self-induced, and inquired why they would be granted by the Board. Chair Garland stated that the Board must consider that the plan meets the spirit of the waiver.

Chair Garland closed the Public Hearing.

Mr. Corwin noted that a few of the conditions have been rearranged except Condition #1.

*A MOTION by Matthew Hall that the Lebanon Planning Board **APPROVE** the application of **JOLIN SALAZAR-KISH** for Site Plan Review of a proposed 26-unit multi-family residential development to consist of one existing building and one new building on two lots to be merged, together with associated site improvements at 8-10 & 14 BANK STREET (Tax Map 92, Lots 125 & 124), zoned CBD, **PB2019-39-SPR**, as shown on a plan set titled "Bank Street Apartments" prepared by Advanced Geomatics and Design, dated December 28, 2020 (originally dated November 12, 2019), PN: 19-001 (27 sheets), including any and all submissions and testimony provided for and during the public hearing, with the following conditions:*

Conditions to be Satisfied Prior to Application for a Building Permit

1. Prior to the start of any construction activities on the property for which construction inspection is required pursuant to this decision or any applicable ordinance or code, the applicant shall provide two (2) revised plans sets depicting the following revisions to the satisfaction of the Planning & Development Department, the City Engineer, and the Fire Department, as follows:

- a) The plans shall be updated to satisfactorily address comments #2-#5 of the City Engineer and the Department of Public Works as set forth in the staff memo prepared for the January 11, 2021 Planning Board meeting.
 - b) Any changes to the driveway width and curbing height as may be deemed necessary by the Fire Department to ensure safe and efficient fire truck access.
 - c) Update the landscaping plan to:
 - i. Add a note that an opaque fence with a minimum height of 4 ft. shall be maintained along the rear of the property.
 - ii. Remove all existing conditions that are proposed to change (e.g. existing building footprints and existing driveway edge) and provide an updated legend to identify all lines used (e.g. dashed lines identifying parking overhangs should be identified).
2. The applicant shall provide a digital copy of the revised plan set and any revised application materials depicting any changes made pursuant to Condition of Approval #1, to the satisfaction of the Planning & Development Department and the City Engineer. The digital copy of the plan set shall use a PDF-A format for archival purposes.
3. Prior to the start of any construction activities on the property for which construction inspection is required pursuant to this decision or any applicable ordinance or code, the applicant shall schedule and hold a pre-building permit application meeting with the Planning Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process.
4. The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the City Code.
5. All outstanding engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations.
6. The applicant shall apply for a voluntary merger of 92-125 and 92-124 (10 and 14 Bank Street) with the Planning & Development Department. Upon approval by the City, the voluntary merger shall be recorded at the Grafton County Registry of Deeds.

Conditions to be Satisfied Prior to the Issuance of a Building Permit

7. The City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to the construction of sewer and water both on-site and work within the City's right-of-way (water, sewer, road, drainage), in accordance with Chapters 136 and 182 of the City Code and Section 8.2 of the Site Plan Review Regulations. The applicant shall provide funding for inspection services in a form and amount acceptable to the City. Prior to the start of any construction activities on the property for which construction inspection is required pursuant to this decision or any applicable ordinance or code, the applicant shall sign a Water & Sewer Extension and Inspection Agreement in accordance with Chapters 136 and 182 of the City Code.
8. The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on August 13, 2018. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for

five years from the date of approval; however, any building permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.

9. All water and sewer fees shall be paid as set forth in City Code Chapter 68.
10. Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required State approvals including, but not limited to, the following:
 - a) NHDES Sewer Connection Permit, if necessary

Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy

11. The impact fee calculated pursuant to Condition of Approval #8 shall be paid.
12. Third-party engineer or design engineer inspection reports and as-built drawings provided by the applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate System), including tie sheets, shall be reviewed and approved by the City Engineer prior to acceptance of any utility improvements by the City.
13. All improvements depicted on the plan shall be completed, and shall be constructed as depicted on the approved plan, including any modifications to the plan as may be approved by the Planning Board in accordance with the Site Plan Review Regulations.

General Conditions

14. The applicant shall obtain an Excavation Permit from the Department of Public Works for any site work in the public right-of-way prior to any work in the right-of-way, and construction or installation of any new driveway(s) shall also require a Driveway Permit from the Department of Public Works.
15. All required landscape plantings shall meet the minimum size requirements for such plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.
16. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.
17. The property owner is responsible for the maintenance and operation of the stormwater management system in accord with the O&M plan, and such responsibility shall run with the land. (Section 6.6.H.2.b of the Site Plan Review Regulations).

Seconded by Laurel Stavis

The Board members continued to discuss the details of the fence replacement. Mr. Brooks stated that the fence addresses the screening requirements, and a condition should require a solid fence if that is the Board's concern and not specify the type, color, or height. Ms. Romano suggested that the condition state, "The property owner shall maintain an opaque fence with a minimum height of 4' along the entire rear property line."

Roll Call Vote:

Voting in Favor – Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter

Voting Against - None

**The MOTION was approved (8-0).*

Ms. Chewning returned to the meeting

- B. 89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC:** Request for Site Plan Review to construct a +/-1,332 sq. ft. drive-in restaurant (a Dunkin' Donuts with a drive-through window and walk-in service) within the existing parking lot, together with associated site improvements. **PB2020-32-SPR** - Completeness determination and public hearing requested to be continued until February 8, 2021.

Mr. Corwin reported that the traffic study needs to be completed along with additional technical information. Further discussion with the applicant is also needed. Staff recommends postponing the hearing to February 8, 2021.

A MOTION by Laurel Stavis that the hearing of 89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC, be continued to February 8, 2021, at 6:30 PM.

Seconded by Jeremy Rutter

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland

Voting Against - None

****The MOTION was approved (9-0).***

- C. Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3:** Request for Final Major Subdivision Review, Site Plan Review, and a Conditional Use Permit for a proposed Planned Unit Residential Development (PURD) pursuant to Section 501.2 of the Zoning Ordinance, containing 22 residential units together with related site improvements and amenities. **PB2020-31-FMAJ** -Public hearing to commence on January 11, 2021 if the Board finds that the application is complete.

Staff recommended postponing the completeness determination to February 8, 2021.

A MOTION by Laurel Stavis to continue the completeness determination of Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3, to February 8, 2021, at 6:30 PM.

Seconded by Kathie Romano

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano

Voting Against - None

****The MOTION was approved (9-0).***

D. Mary Hitchcock Memorial Hospital, One Medical Center Drive (Tax Map 10, Lot 8), zoned MC: Request for Site Plan Review to expand the existing emergency department at Dartmouth Hitchcock Medical Center with the construction of +/-4,631 sq. ft. of additional building area, together with the reconfiguration of the ambulance staging area, construction of a new overflow ambulance parking area, as well as the installation of associated site improvements. **PB2020-34-SPR** - Application deemed complete on December 14, 2020; public hearing to commence on January 11, 2021.

Mr. Hall recused himself.

David Stiger, Director of Project Management at DHMC; David Duncan, VP of Facilities at DHMC; Joe Lonergan, Lavalle Brensinger Architects; and Nik Fiore of Engineering Ventures all attended on behalf of the application.

Mr. Stiger described the proposed expansion for a psychiatric patient and quarantine area in the Emergency Department (ED). The project adds seven new psychiatric safe rooms with a separate entrance to provide improved, safer care. The area can provide negative pressure rooms or be a large, decontamination space. The location is planned for the middle of the current ambulance drop off area.

Mr. Fiore described the location of the project, which would be north of the east entrance of the hospital.

Mr. Lonergan stated that it would be part of Level 2 of the hospital and an expansion of the current ED. It would have a separate entrance but connects to the present ED. Ambulance access would be reconfigured. Mr. Fiore gave a more detailed description of the new design's interface with the current building. DART ambulance can be accommodated, and ADA parking would be relocated. The utility connections were explained.

Mr. Corwin explained the waiver requests.

Chair Garland invited comments from the Board members.

Mr. Winny noted the benefit of an expanded psychiatric space to address a great need in the State.

Ms. Romano commented positively on the expansion of the ED and inquired about parking and drainage, noting that spaces were being eliminated and impervious surface increased. Mr. Vincent stated that the amount of change in impervious surface would be very small, with little change in flow of stormwater. Mr. Fiore explained the way stormwater is handled on the DHMC site, with much flowing toward the beaver pond. The modeling software shows no change to impervious surface, and the parking spaces being eliminated are ones designated for other service vehicles, not for visitors.

Ms. Chewing inquired about a possible increase in ambulance traffic. Mr. Fiore stated the goal is better service and does not expect an increase in traffic. There is no report on stormwater management.

Ms. Monroe inquired about the 25' poles for lighting, noting that she currently sees sky glow at her home. Mr. Fiore explained that the existing poles are 25' high. They will be adding one and moving others. Ms.

Monroe noted the changing regulations on the color of bulbs to a Correlated Color Temperature (CCT) rating of 3,000K. Mr. Corwin stated that the changes are pending. Mr. Fiore responded that they would change to 3,000K if the City changes its regulations. Mr. Stiger stated that it involves the area for ambulances. Ms. Monroe observed that the lower rating tones down the glow but doesn't dramatically change the color.

Ms. Stavis confirmed there is a dire situation for those with mental illness in the State and inquired if DHMC is in any agreement with the State to take on patients from other areas. Mr. Stiger stated that he is in facilities and unable to comment. Mr. Duncan offered to inquire and get back to the Board.

Chair Garland inquired if anyone had public comment. Hearing none, Chair Garland suggested approval of the waivers as a block.

A MOTION by Joan Monroe that the Lebanon Planning Board **APPROVE** waivers for the application of Mary Hitchcock Memorial Hospital regarding One Medical Center Drive (Tax Map 10, Lot 8), PB2020-34-SPR, from the following sections of the Site Plan Review Regulations:

- **Partial Waiver of Article VI design requirements** – The applicant requests a general waiver from having to comply with the Article VI design requirements outside of the specific area of the lot proposed to be redeveloped.
- **Section 5.1.E.5** – requiring a current survey certified by a land surveyor licensed in New Hampshire
- **Section 5.1.E.8** – requiring the plans to depict wetlands on the property shall be delineated by a NH Certified Wetlands Scientist
- **Section 5.1.E.15** – requiring a landscaping plan
- **Sections 5.1.E.16 & 17** – requiring a stormwater management plan and compliance with the Section 6.6. stormwater design requirements
- **Section 6.7.2.e** – requiring a maximum lighting fixture mounting height of no more than 20 feet

Seconded by Jeremy Rutter

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano

Voting Against – Ms. Chewning

**The MOTION was approved (7-1).*

Ms. Chewning explained her position.

Chair Garland closed the Public Hearing.

A MOTION by Joan Monroe that the Lebanon Planning Board **APPROVE** the application of Mary Hitchcock Memorial Hospital regarding One Medical Center Drive (Tax Map 10, Lot 8), PB2020-34-SPR, for Site Plan Review to expand the existing emergency department at Dartmouth Hitchcock Medical Center with the construction of +/-4,631 sq. ft. of additional building area, together with the

reconfiguration of the ambulance staging area, construction of a new overflow ambulance parking area, as well as the installation of associated site improvements, "Dartmouth-Hitchcock Medical Center Psych ED Expansion" prepared by Engineering Ventures, PC, dated November 9, 2020, last revised December 23, 2020, project no. 19235 (13 sheets), including any and all submissions and testimony provided for and during the public hearing, with the following conditions:

Conditions to be Satisfied Prior to Application for a Building Permit

1. The applicant shall schedule and hold a pre-building permit application meeting with the Planning Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process and to review applicable code requirements.
2. The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the City Code.
3. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations.
4. The applicant shall provide to the City Engineer documentation necessary to demonstrate to the satisfaction of the City Engineer that the proposed hazardous waste holding tank and associated indoor plumbing does not result in any release of hazardous waste compounds to the municipal sewer system.

Conditions to be Satisfied Prior to the Issuance of a Building Permit

5. The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on August 13, 2018. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for five years from the date of approval; however, any building permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.
6. All water and sewer fees shall be paid as set forth in City Code Chapter 68.
7. Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required State approvals.

Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy

8. The impact fee calculated pursuant to Condition of Approval #5 shall be paid.
9. All improvements depicted on the plan shall be completed, and shall be constructed as depicted on the approved plan, including any modifications to the plan as may be approved by the Planning Board in accordance with the Site Plan Review Regulations.

General Conditions

10. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.

Seconded by Jeremy Rutter

Roll Call Vote:

Voting in Favor – Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis

Voting Against - None

**The MOTION was approved (8-0).*

Matthew Hall returned to the Board.

4. Other Business

Chair Garland inquired about an update on the potential Timberwood lawsuit. Mr. Brooks stated that the City has been served regarding the Saxon application and is working with legal counsel. Saxon Partners are intervening to help defend the Board's decision.

Mr. Rutter expressed concern about the Dunkin' Donuts application traffic study due to the proximity to Listen and other factors. Mr. Brooks stated that it is still under review. He would take the comment as Staff continues to work with the applicant.

Ms. Romano referred to the policy change allowing the City to hire third party engineers at the expense of the applicants and asked if staff could discuss how many private engineers were hired and how it is working. Mr. Corwin stated that there have only been two projects that used the outside engineering review option, and it has worked well. Mr. Vincent noted that the City selected one engineering firm to be on call when necessary.

Ms. Monroe stated that Right to Know Laws governing comments by Planning Board members are clear and would caution the Board from ever discussing a project that is open and under review outside the designated time for that project.

Mr. Brooks commented on the development regulations subcommittee and the desired amendment for lighting and CCT rating requirements. The plan is to pause the subcommittee review of further amendments and bring forward the ones already discussed. The new amendments would be considered later in the spring as they are ready.

5. Approval of Minutes

- A. December 14, 2020

A MOTION by Matthew Hall to approve the minutes of the December 14, 2020, Planning Board Meeting as presented in the January 11, 2020 Planning Board meeting packet.

Seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Mr. Garland, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro, Mr. Winny, Mr. Hall

Voting Against - None

***The MOTION was approved (9-0).**

6. Election of Officers

A. Chair and Vice Chair

Mr. Brooks opened the nominations for Chair.

Matthew Hall Nominated Bruce Garland as Chair. No other nominations were received and the nomination period was closed.

Seconded by Kathie Romano

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland

Voting Against - None

***The Nomination of Bruce Garland as Chair was approved (9-0).**

Mr. Brooks opened nominations for Vice Chair.

Joan Monroe Nominated Matthew Hall as Vice Chair. No other nominations were received and the nomination period was closed.

Seconded by Laurel Stavis

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against - None

***The Nomination of Matthew Hall for Vice Chair was approved (9-0).**

6. Adjournment

A MOTION by Matthew Hall to adjourn the meeting.

Seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Mr. Garland, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro, Mr. Hall

Voting Against - None

***The MOTION was approved (9-0).**

The meeting was adjourned at 9:23 PM.

Respectfully submitted,
Holly Howes
Recording Secretary

FINAL

**LEBANON PLANNING BOARD
Regular Meeting
Monday, February 8, 2021, 6:30 PM
Remote Via Microsoft Teams
LebanonNH.gov/Live**

ROLL CALL OF

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice-Chair), Jim Winny (Council Representative), Gregorio Amaro, Kim Chewning, Joan Monroe, Kathie Romano, Jeremy Rutter, and Laurel Stavis

MEMBERS ABSENT: None

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner), Brian Vincent (City Engineer)

1. Call to Order Chair Garland called the meeting to order at 6:31 PM.

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

Mr. Corwin shared the State directive and participation details for the online meeting in Microsoft Teams. All members identified themselves.

Chair Garland conducted a roll call of members present as reported above.

2. Notice of Regional Impact

Mr. Brooks noted that there were no new applications received by the cutoff time for this meeting.

3. Public Hearing Items

A. **89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC:** Request for Site Plan Review to construct a +/-1,332 sq. ft. drive-in restaurant (a Dunkin’ Donuts with a drive-through window and walk-in service) within the existing parking lot, together with associated site improvements. **PB2020-32-SPR** - Public hearing continued from January 11, 2021.

Rod Finley, P.E., Pathways Consulting, LLC; Greg Sagris, Owner, 89 Donuts, LLC; Erica Wygonik, PE, of RSG, attended on behalf of the application.

Counselor Winny arrived at 6:38 PM.

Mr. Finley described the project and the modifications to the original plan. Testing for drainage patterns was completed. A bicycle rack was added, and changes to parking were presented. The mechanical services were also outlined. Landscaping for adequate shading was shown.

Ms. Wygonik reported on the traffic study and changes based upon City Staff input. The AM and PM peak national trip averages were reviewed. Both primary and pass-by trips were estimated. Fifty (50) new trips per day were projected. The traffic impact for congestion was reported as minimal. Exiting the plaza was expected to be somewhat delayed, and queuing was modeled. The signal warrant analysis revealed the signal criteria were met. Other remedies in the corridor were considered as being more helpful. Sight lines are adequate, and the parking changes are improvements. Pedestrian access is improved with designated pathways and crosswalks. Bicyclists will have adequate parking and connections to the rail trail.

Mr. Corwin stated that the changes in the Staff Memo for this meeting generated a condition that the applicant contribute to a Miracle Mile traffic improvement plan for the corridor.

Chair Garland expressed concern over the center turn lane and the lack of understanding on the part of the driving public as to how they are to be used. Ms. Wygonik suggested an education campaign to make the public aware of the use of those lanes.

Mr. Hall shared his concern over the new exit arrangement and observed that the island proposed for the end of the parking spaces makes a tighter area for exiting the plaza toward downtown Lebanon. In addition, the drive-thru queuing of six vehicles on average may be too low. There may not be enough space for the queue. Ms. Wygonik commented on the complexity of the current situation and the positive impact of the proposed changes to the traffic flow with the added island. The simplicity of the interface was characterized as clearer and structured well. The online ordering is expected to decrease the wait time and delays in the queue.

Ms. Romano inquired about the responsibility for stormwater maintenance for the site. The property owner has signed off on it. She expressed her concern over those waiting to turn into Listen to donate items. The new island and painted lanes will improve traffic flow. There may be a bottleneck with those leaving Dunkin' Donuts, going around the island and joining the queue to turn left toward downtown. There are no windows on the east side of the building for monitoring traffic flow. Mr. Sagris offered to add a monitor for that side of the building. Ms. Wygonik noted that the peak traffic would be at 7:15 AM, and Listen Center opens at 9:00 AM, which would not create an overlap of traffic. Exiting is estimated at 20 seconds, which matches the service time for the drive-thru. Mr. Sagris stated that the window time goal is 30 seconds and as much as 45 seconds, spacing those leaving the drive-thru. Ms. Wygonik observed that it spaces the traffic turning left. The congestion analysis was based upon everyone using that driveway. Some customers may use other exits. Ms. Romano inquired if the lanes and arrows would be painted as depicted. Mr. Sagris stated that they would.

Mr. Amaro expressed concern over the pedestrian crosswalk toward the Cinema with automotive traffic passing through the crosswalk. Ms. Wygonik agreed that it was a legitimate concern but suggested the crosswalk is offset from the lane leaving Dunkin' Donuts providing enough time and distance for the customer to be focused on driving and alert to people using the crosswalk. Lighting would also be important.

Mr. Rutter seconded the idea of a camera for the east side of the building. He noted the seasonal adjustment for traffic and the months chosen for comparison and asked for clarification. He also questioned the number of parking spaces. Ms. Wygonik explained the seasonal adjustment factor, which accounts for seasonal variations. In this location, the peak month is October, and the goal is to reflect that level of traffic. Mr. Finley addressed the northern row of parking and the suggested island. Mr. Corwin stated that the landscaped island would be in the middle of the northern parking lanes and would require moving the parking spaces. Mr. Sagris stated that the parking is needed, and plowing and navigation would be more difficult.

Ms. Stavis expressed her approval of the project. The Listen parking area entrance is in poor repair, causing drivers to slow down more than usual, which impacts traffic flow. Pedestrian use of Dunkin' Donuts may be much higher than anticipated. The experience for pedestrians walking to Dunkin' Donuts could be complicated with the automotive traffic. Mr. Sagris noted that customers walking down from Price Chopper or over from Huberts and would be turning toward the crosswalk to access Dunkin' Donuts.

Mr. Vincent agreed that there are issues with Listen that could be addressed by looking at the entire corridor and potential improvements.

Mr. Corwin discussed extending the sidewalk on the north side of Dunkin' Donuts parking for those customers going to the movie theater. Mr. Vincent stated that pedestrians generally want to use the shortest path to a location.

Chair Garland invited public comment.

Beth Young inquired if the building would have pedestrian access and use. If there is not, there would not be many people crossing. There is a bus stop, and a number of those people may want to go to Dunkin' Donuts. The crosswalk goes through the drive thru lane. Mr. Sagris explained the design was for only drive-thru customers at first, but it was changed to limited public access.

Ms. Monroe expressed concern over the lack of a window on the east side of the building and depending upon a camera monitor. Mr. Sagris noted that they use high definition cameras with large displays, so there is clear identification of customers. There are monitors in prep areas to monitor service needs.

Mr. Corwin discussed the waivers noting that the shading in the middle of the parking area would be a point of discussion.

Mr. Sagris stated that this would not be a typical Dunkin' Donuts with patrons parking and going inside. The parking is for the movie theater, not Dunkin' Donuts. The sidewalk would not be solely for Dunkin' Donuts.

Chair Garland suggested that landscape screening for the dumpsters should be 5 feet high.

Ms. Romano inquired about the requirement of a restroom. Mr. Brooks stated that it would be for employees only if there is no seating in the business.

Ms. Chewning noted that the picnic table area is grass and inquired about the location of the public entrance. Mr. Sagris stated that the entrance for the public would be on the north side in front of handicap parking spot. Ms. Chewning inquired about striping for the crosswalk. Mr. Sagris confirmed it would be striped.

Mr. Hall inquired of Ms. Wygonik as to the best location for crosswalk, suggesting it could be moved to the stop sign. Ms. Wygonik suggested pedestrians would still cross in the proposed location due to the location of the crosswalk at the street. Ms. Wygonik agreed it was a valid concern that people leaving the drive-thru may be distracted, and she wouldn't want to see it closer to the window. The goal is to make it as safe as possible. It would be desirable to have it at the stop sign, but the public would likely not make the effort to go to it.

A MOTION by Matthew Hall to continue the hearing of 89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC to March 8, 2021, at 6:30 PM.

Seconded by Kathie Romano

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against - None

The MOTION was approved (9-0).

- B. **Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3:** Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1).
PB2021-02-EXT - Completeness Review and Public Hearing

Staff recommended that the application was complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION by Kathie Romano that the Lebanon Planning Board finds the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), PB2021-02-EXT, IS complete enough to accept jurisdiction and commence review.

Seconded by Joan Monroe

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against – None

****The MOTION was approved (9-0)***

Jon Rokeh, Civil Engineer, and Mark Pinard of Brady Sullivan attended on behalf of the application.

Mr. Rokeh updated the Board on the status of Phase I. The last extension was in 2018. The Phase II plan had to be reengineered due to many site issues. Phase I is completed, and they are ready to start on the Phase II infrastructure in 2021. They are asking for an extension of time to achieve active and substantial development of Phase II. Housing is needed at present, and they are ready to complete the balance of the project.

Mr. Corwin stated that Staff identified four discussion points to evaluate the application:

- The request for a partial waiver from the extended application deadline.
- Whether there is good cause for granting the requested extension. The extension is to achieve active and substantial development of Phase II within two years of the plat recording.
- Determination of new dates for achieving active and substantial development and by what date to achieve substantial completion. A date of 2/8/2023 is suggested, and the maximum time is five years of until June 12, 2024.
- Applicant requested a waiver of requirement of Phase II improvements. They did supply security, and the applicant did not request it. Item D is not at issue.

Chair Garland inquired if Staff had any comment on the missed deadline. Mr. Corwin stated that it is up to the Board. The applicant must demonstrate unnecessary hardship or conditions of the site and have identified unnecessary hardship as the reason.

Chair Garland invited Board comments.

Ms. Romano expressed concern over Phase I due to many negative reactions regarding the quality of work done and way the developer responded to those problems. Local people need affordable housing, and this developer didn't perform. Therefore, she is not in favor of granting another extension.

Ms. Monroe expressed her agreement with Ms. Romano, noting there was no excuse for this recent deadline being missed, which is part of the job. The applicant listed many things they have been doing, but sidewalks were failing along with poor quality work. The closing of Phase I may not be accurate, and would be difficult to grant a waiver from missing the deadline.

Mr. Winny stated it would be important to know where they are in meeting requirements.

Mr. Hall suggested missing a deadline by one month is not a flagrant issue.

Mr. Winny shared the opinion of Rory Gawler in Ward 3, who is opposed to granting an extension, because the applicant has not met reasonable deadlines in the past on Phase I.

Mr. Corwin observed that the applicant has made multiple requests in the past. One resulted in making a new application, for which they missed getting the plat approved, so they applied for an extension in 2018. It was recorded and security was provided. However, once the plat is recorded they had two years to achieve active and substantial development by Dec. 10, 2020, which was not accomplished. That is

what this extension relates to, but the Board must first waive the deadline and then approve the extension. Mr. Brooks stated that they have recorded the plat but have not begun construction or erosion control measures. Mr. Rokeh agreed he missed the deadline, but he is asking for three weeks; and disapproval would cause unnecessary hardship.

*A MOTION by Matthew Hall that the Lebanon Planning Board **APPROVE** a partial waiver for the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), PB2021-02-EXT, from Section 14.1.B.1.c of the Subdivision Regulations, which required the extension application to be submitted by December 10, 2020.*

Seconded by Joan Monroe

Roll Call Vote:

Voting in Favor – Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Amaro,

Voting Against – Mr. Garland, Mr. Rutter, Mr. Winny

**The MOTION was approved (6-3)*

Mr. Rokeh stated that he will meet with Staff to get things ready for the March 8, 2021 meeting.

A MOTION by Kathie Romano to continue the hearing of Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3 to March 8, 2021, at 6:30 PM.

Seconded by Jerry Rutter.

Ms. Monroe asked about guidance regarding the meaning of active and substantial progress.

Roll Call Vote:

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, M. Hall, Mr. Garland

Voting Against – None

The MOTION was approved (9-0).

- C. ICV-NH, LLC, 67 Etna Road (Tax Map 26, Lot 2), zoned IND-L:** Request for modifications to the required open space for the Industrial PUD approved in 2016 (PB2016-04-SPR), and to the subdivision plat required to be recorded for the 75-unit multi-family condominium conversion approved in 2018 (PB2018-30-FMAJ). **PB2021-03-FMAJ-SPA - Completeness Review and Public Hearing**

Mr. Corwin stated that Staff recommends the application is complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION by Kathie Romano that the Lebanon Planning Board finds the application of ICV-NH, LLC, regarding 67 Etna Road (Tax Map 26, Lot 2), PB2021-03-FMAJ-SPA, IS complete enough to accept jurisdiction and commence review.

Seconded by Laurel Stavis

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewing

Voting Against - None

The MOTION was approved (9-0).

Mr. Corwin presented the background detail of the property at 67 Etna Road. The issue of an incorrectly designated open space did not come to light until the Certificate of Occupancy was requested in the summer of 2020. Staff worked with the applicant to address the error along with information for the condominium conversion. This request updates the open space designation from the RL-3 to the IND-L district near the multi-family building. They also prepared a plat that can be recorded to reflect the condominium conversion.

Atty. Barry Schuster, speaking on behalf of ICV, stated that Mr. Corwin explained the situation well. The common area would not be changing at all. They are overlaying open space with it, with no essential change. Nothing would be built there.

Mr. Brooks commented that the terms “open space” and “common area” are being mentioned as if they are interchangeable, but they are not in the regulations. Open space is a requirement of PUD regulations and subdivision regulations in order to protect natural resources and recreational space. Open space could be a ballfield or community garden. The condominium already has a common area, and they are trying to overlay the open space on it. They are not planning to develop that area, and they would have to come back to the Board with a request to do so.

Mr. Schuster noted that the common area is controlled by the condominium. Open space is also required, and it would be kept open.

Ms. Romano inquired if they could put in a swimming pool. Atty. Schuster stated that they would need approval from both the condominium folks and the City.

Ms. Monroe stated that open space is meant to be like a nature preserve and for passive activities without disturbing the natural environment. Atty. Schuster added that it could be for trails or other open activities. No development is proposed, and they would come back to the Board if they wanted a change. Ms. Romano noted that open space is to prevent crowding in the PUD. Mr. Brooks stated there are two sets of regulations, both zoning and subdivision. There can be developed open space or undeveloped space; it can be a ballfield or untouched, but the purpose is to offset density, protect natural resources, and provide recreational space.

Ms. Monroe inquired about the location of the wildlife corridor. Mr. Brooks stated from past conversations with NH Fish & Game that it is approximately between two rock outcrops that face Route 120 and is not very defined.

A MOTION by Jeremy Rutter to extend the meeting to 9:45 PM.

Seconded by Mr. Winny

Roll Call Vote:

Voting in favor – Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall

Voting Against - None

The MOTION was approved (9-0).

Chair Garland invited public comment. There was none.

A MOTION by Matthew Hall that the Lebanon Planning Board APPROVE the application of ICV-NH, LLC, regarding 67 Etna Road (Tax Map 26, Lot 2), PB2021-03-FMAJ-SPA, for modifications to the required open space for the Industrial PUD approved in 2016 (PB2016-04-SPR), and to the subdivision plat required to be recorded for the 75-unit multi-family condominium conversion approved in 2018 (PB2018-30-FMAJ), including any and all supplemental submissions and testimony provided during the public hearing, with the following conditions:

1. Prior to recording the plat, the applicant shall make the following revisions to the satisfaction of the Planning & Development Department:

a) Add a table identifying the acreage of the lot, the acreage of the IND-L portion of the lot, the acreage of the RI-3 portion of the lot, the required size of the open space as a percentage and in acres, and the provided open space as a percentage and in acres.

b) Add a note providing that the open space shall remain undeveloped in perpetuity per Section 501.2.K.3 of the May 20, 2015 Zoning Ordinance.

c) Add a note identifying the purpose of the plat, and add a reference to the Notice of Action and file number for the current Planning Board approval as well as the prior Planning Board approvals that are hereby amended [i.e. the 2016 PUD approval (PB2016-04-SPR) and the 2018 Final Major Subdivision approval (PB2018-30-FMAJ)].

d) Retitle the plat to more accurately convey the purpose of the plat (e.g. "Condominium Subdivision Plat and Revised Gateway Plaza PUD Open Space Plan").

e) Add the statement required by Section 7.11 of the Subdivision Regulations ("The Subdivision Regulations of the City of Lebanon and the Notice of Action are a part of the Plat, and approval of this Plat requires the completion of all the requirements of the Notice of Action and said Subdivision Regulations excepting only any modification or waiver set forth in the Notice of Action.")

f) Update the abutter's list per the current records of the City Assessor.

g) The applicant shall provide the Planning & Development Department with a full-size copy of the approved revised plat, and a digital copy saved in a PDF-A format for archival purposes.

2. The approved revised plat shall be submitted to the Planning & Development Department for recording at the Grafton County Registry of Deeds by no later than May 8, 2021.

Seconded by Jeremy Rutter.

Ms. Monroe stated that approval would establish a bad precedent, because it becomes an amenity.

Roll Call Vote:

Voting in Favor – Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Stavis

Voting Against – Ms. Monroe, Ms. Romano, Ms. Chewning

The MOTION was approved (6-3).

D. Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3:

Request for Final Major Subdivision Review, Site Plan Review, and a Conditional Use Permit for a proposed Planned Unit Residential Development (PURD) pursuant to Section 501.2 of the Zoning Ordinance, containing 22 residential units together with related site improvements and amenities. PB2020-31-FMAJ -Public hearing to commence on January 11, 2021 if the Board finds that the application is complete. Completeness review and public hearing expected to be postponed to March 8, 2021.

A MOTION by Kathie Romano to postpone the hearing for Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3 to March 8, 2021, at 6:30 PM.

Seconded by Matthew Hall

Ms. Monroe left the meeting at 9:34

Roll Call Vote:

Voting in Favor – Mr. Rutter, Mr. Winny, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro

Voting Against - None

The MOTION was approved (8-0).

4. Other Business

A. Novo Nordisk, 5 Technology Drive (Tax Map 130, Lot 1), zoned IND-L: Conceptual review per Section 4.3 of the Site Plan Review Regulations for a proposed demolition of existing shell space and construction of a new 14,000 SF warehouse. **PB2021-04-CON**

Toni Cavallini of DPS Group, Stuart Sawyer of Novo Nordisk, and Jim Jackson, Engineer attended on behalf of the application.

Ms. Cavallini explained that Novo Nordisk would like to renovate and construct a new warehouse. Mr. Sawyer stated that they are requesting to use the full capacity of the property for expansion due to limited warehouse space. The proposal would be to go higher on a section of the building to fully use the manufacturing space.

Ms. Cavallini noted the proximity to Lebanon Airport and an application to the FAA for a flight path study to determine the height allowed on the site. They are not aware of other concerns.

***A MOTION by Laurel Stavis to extend the meeting to 10:00 PM.
Seconded by Jeremy Rutter***

Voting in favor – Mr. Winny, Ms. Romano, Ms. Chewing, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter

Voting Against - None

The MOTION was approved (8-0).

Mr. Corwin stated that Staff had no comments at this time, noting that Novo Nordisk obtained a variance from the Zoning Board for equipment in the rear yard that is associated with the proposed project. There is a question of permitted height in the Airport Protection District, which is being reviewed and expected to gain approval. The height limit in IND-L district is 65 feet and subject to restrictions due to the location of the flight paths.

Mr. Sawyer explained that the facility creates medications for hemophilia. They develop a product that goes to Denmark for distribution. Their process uses single use bags that can be incinerated to create energy. The bags are used to contain media for growing cells to obtain proteins and to minimize the cleaning of vessels.

Chair Garland recommended submitting a rendering of the proposed building.

Mr. Jackson inquired if a traffic study would be required. The project would add 10 parking spaces, which would not have a significant traffic impact. Mr. Corwin stated that the requirement is only triggered if it created 100 peak hour vehicle trips. The Board can require it, but it would not likely be recommended. Mr. Jackson also inquired about the landscaping requirement, noting that the property is currently well landscaped. There would be some minor disruption and that would be redone. Mr. Corwin stated that there is no requirement for hiring a landscape architect, but a plan needs to be prepared.

B. XYZ Dairy, LLC. 55 Crafts Avenue & 0 Beyerle Street (Tax Map 58, Lots 20 & 18), zoned R-3: Conceptual review per Section 4.3 of the Site Plan Review Regulations for a proposed major subdivision. PB2021-05-CON

Chet Clem attended representing XYZ Dairy, LLC.

Mr. Brooks explained a communication from the City Attorney regarding Beyerle Street and the conceptual proposal. The ownership of the area was in question, and the attorney advised that the City no longer has the ability to accept the right-of-way as a public street. The information was conveyed to Atty. Hastings, who relayed it to XYZ Dairy. In an emailed response from David Clem, there was a request to continue the request to a future meeting. There may be additional questions outstanding, and it would be helpful to know which meeting the Board would propose for dealing with the issue.

Mr. Hall inquired if there was any urgency for the hearing. Mr. Clem stated that it was an urgent matter needing resolution. Based on the new information, it is important to have any questions answered.

Otherwise, they expect to withdraw the application. Mr. Brooks stated that this matter could be put on the March 8 or 22 meeting, but it may be resolved before that.

Brian Ware, a resident of Crafts Avenue, inquired about the legal status of paper streets. An historical document created in 2013 references these paper streets. Crafts Avenue was the first subdivision in W. Lebanon. Chair Garland noted that the issue was outside the Planning Board's jurisdiction and suggested following up with the Planning Staff and the City Attorney.

***A MOTION by Matthew Hall for Chair Garland to sign plat for ICV-NH, LLC, 67 Etna Road (Tax Map 26, Lot 2), zoned IND-L
Seconded by Kathie Romano***

Roll Call Vote:

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland

Voting Against - None

The MOTION was approved (8-0).

Mr. Brooks noted that the Board had previously approved the creation of a new public right-of-way off of Spring Street West last Fall, but staff could not recall whether the Planning Board had previously authorized the Chair to sign the plat and asked the Board to take that action now.

***A MOTION by Laurel Stavis for Bruce Garland to sign the plat for the Spring Street West and Guernsey Trust approved application.
Seconded by Kathie Romano***

Roll Call Vote:

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Romano

Voting Against - None

The MOTION was approved (8-0).

5. Approval of Minutes - Postponed

A. January 11, 2021

6. Adjournment

***A MOTION by Matthew Hall to adjourn the meeting.
Seconded by Laurel Stavis.***

Roll Call Vote:

Voting in Favor – Mr. Garland, Mr. Winny, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro, Mr. Hall

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Voting Against - None

****The MOTION was approved (8-0).***

The meeting was adjourned at 9:56 PM.

Respectfully submitted,
Holly Howes
Recording Secretary

FINAL

**LEBANON PLANNING BOARD
Regular Meeting
Monday, March 8, 2021, 6:30 PM
Remote Via Microsoft Teams
LebanonNH.gov/Live**

ROLL CALL OF

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice-Chair), Jim Winny (Council Representative), Gregorio Amaro, Kim Chewning, Joan Monroe, Kathie Romano, Jeremy Rutter, and Laurel Stavis

MEMBERS ABSENT: None

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner), Brian Vincent (City Engineer), Rebecca Owens (Associate Planner)

1. Call to Order Chair Garland called the meeting to order at 6:30 PM.

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

Mr. Corwin shared the State Covid-19 emergency directives and participation details for the online meeting in Microsoft Teams. All members identified themselves.

Chair Garland conducted a roll call of members present as reported above.

2. Notice of Regional Impact

City of Lebanon, 0 Airpark Road (Tax Map 159, Lot 4), zoned IND-L: Applicant requests a review per RSA 674:40, III, of a layout plan to extend Airpark Road. The proposed street extension is intended to serve the City’s Airport Tax Increment Financing (TIF) District. **PB2021-07-LAY**

XYZ Dairy, LLC, 55 Crafts Avenue & 0 Beyerle Street (Tax Map 58, Lots 20 & 18), zoned R-3: Request for a Boundary Line Adjustment. **PB2021-08-BLA**

Mr. Brooks stated that Staff recommends neither application has the potential for regional impact.

A MOTION by Matthew Hall that neither of the applications above has the potential for regional impact.

Seconded by Laurel Stavis

Roll Call Vote:

Voting in Favor – Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter

Voting Against – None

**The MOTION was approved (9-0).*

3. Public Hearing Items

- A. **89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC:** Request for Site Plan Review to construct a +/-1,332 sq. ft. drive-in restaurant (a Dunkin' Donuts with a drive-through window and walk-in service) within the existing parking lot, together with associated site improvements. **PB2020-32-SPR** - Continued from February 8, 2021.

Rod Finley, P.E., Pathways Consulting, LLC; Greg Sagris, Owner, 89 Donuts, LLC; Erica Wygonik, PE, of RSG, attended on behalf of the applicant.

Mr. Finley stated that no changes have been made to the plan since the last meeting.

Mr. Corwin stated that Staff has no additional comments.

Chair Garland invited questions and comments from the Board.

Mr. Hall inquired about the pedestrian crossing and its location. Mr. Finley stated that the location is about 25-30 feet from the drive-thru window. Mr. Vincent had suggested it be located near the stop bar, but most pedestrians would be unlikely to walk that far from the bus stop. Mr. Finley stated that eye contact would be important when crossing the traffic lanes. There was a suggestion of an island or a speed table. Mr. Hall agreed it is enough distance. The developer agreed to change it if needed.

Chair Garland invited public comment. There was none.

Ms. Romano inquired about the lighting waivers. Mr. Corwin stated that light spillage is the purpose of one of the sections, and lighting uniformity ratio information was not provided.

Mr. Hall asked if Staff has concerns about the lighting. Mr. Corwin stated Staff did not.

*A **MOTION** by Matthew Hall that the Lebanon Planning Board **APPROVE** waivers for the application of 89 Donuts, LLC (applicant) and Miracle Mile Realty, LLC (property owner) regarding 388 Miracle Mile (Tax Map 103, Lot 6), PB2020-32-SPR, from the following sections of the Site Plan Review Regulations:*

- **Partial Waiver of Article VI design requirements** – *The applicant requests a general waiver from having to comply with the Article VI design requirements outside of the specific area of the lot proposed to be redeveloped.*
- **Section 5.1.E.5** – *requiring a current survey certified by a land surveyor licensed in New Hampshire*
- **Section 6.2.D** – *landscaping around buildings requirements*
- **Partial Waiver of Section 6.6** – *stormwater design requirements*
- **Partial Waiver of Section 6.7.2.b** – *requiring maximum illumination of 0.5 foot-candles at commercial property boundaries*
- **Section 6.7.3.a** – *Lighting uniformity ratio requirements*

Seconded by Laurel Stavis

Roll Call Vote:

Voting in Favor – Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe

Voting Against – None

***The MOTION was approved (9-0)**

Mr. Rutter noted that Staff had recommended certain landscaping improvements to the double row of parking. Mr. Finley stated that the double row of parking is not part of the Dunkin' Donuts development site.

Chair Garland invited public comment. There was none.

Chair Garland closed the Public Hearing.

A MOTION by Matthew Hall moved that the Lebanon Planning Board APPROVE the application of 89 Donuts, LLC (applicant) and Miracle Mile Realty, LLC (property owner) regarding 388 Miracle Mile (Tax Map 103, Lot 6), PB2020-32-SPR, for Site Plan Review to construct a +/-1,332 sq. ft. drive-in restaurant (a Dunkin' Donuts with a drive-through window and walk-in service) within the existing parking lot, together with associated site improvements, as shown on a plan set titled "Site Plan for Miracle Mile Realty 'Dunkin Donuts'" prepared by Pathways Consulting, LLC, dated October 13, 2020, revised January 18, 2021, Proj. No. 12777-01 (15 sheets), including any and all submissions and testimony provided for and during the public hearing, with the following conditions:

1. The applicant shall make the following revisions to the plan set to the satisfaction of the Planning & Development Department and the City Engineer:
 - a) Amend the cover sheet to identify the height of each existing building [5.1.E.4.e(7)].
 - b) The sidewalk to be constructed to the rear of the Dunkin Donuts building shall be extended westward along the parking area to the western access drive.
 - c) Amend the lighting plan to:
 - i. Provide that all exterior lighting shall be 3,000K or warmer in CCT.
 - ii. Add Sections 6.7.2.c and 6.7.2.d of the Site Plan Review Regulations as plan notes.
 - d) Vegetative screening of at least 5 ft. in height shall be provided for the dumpster (Section 6.2.B.8).
 - e) Add a note that the property owner is responsible for the maintenance and operation of the stormwater management system in accordance with the "Stormwater Management Facilities Operation and Maintenance Manual for 89 Donuts, LLC," dated December 22, 2020, prepared by Pathways Consulting, LLC, Project No. 12777-01 (Section 6.6.H.2.b of the Site Plan Review Regulations).

The applicant shall provide the Planning & Development Department with two (2) full size copies of the revised plan set, and a digital copy of the revised plan set saved in a PDF-A format for archival purposes.

2. The applicant shall schedule and hold a pre-building permit application meeting with the Planning Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process and to review applicable code requirements.

3. The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the City Code.
4. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations.

Conditions to be Satisfied Prior to the Issuance of a Building Permit

5. The City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to the construction of sewer, water, and temporary erosion control, and for work within the City's right-of-way (water, sewer, road, drainage, and temporary erosion control), in accordance with Chapters 136 and 182 of the City Code and Section 8.2 of the Site Plan Review Regulations. The applicant shall provide funding for inspection services in a form and amount acceptable to the City, and shall sign a Water & Sewer Extension and Inspection Agreement in accordance with Chapters 136 and 182 of the City Code.
6. The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on August 13, 2018. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for five years from the date of approval; however, any building permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.
7. All water and sewer fees shall be paid as set forth in City Code Chapter 68.
8. Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required State approvals including, but not limited to, the following:
 - a) NHDES Sewer Connection Permit, if necessary

Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy

9. As demonstrated by the applicant's traffic study, the Miracle Mile/East Plaza Drive/Listen East Drive intersection is currently underperforming, and its level of service will further erode with the additional traffic that the proposed use will generate. Consequently, to help mitigate the anticipated increase in traffic generated by the applicant's use, the applicant shall be obligated to contribute its fair share to the cost of preparing a traffic improvement plan for the Miracle Mile corridor. Any financial contributions from the applicant required to prepare the mitigation plan of action shall be paid prior to the issuance of a certificate of occupancy. Any dispute between the applicant and the City regarding the applicant's responsibilities pursuant to this condition may be appealed to the Planning Board.
10. The impact fee calculated pursuant to Condition of Approval #6 shall be paid.
11. Third-party engineer or design engineer inspection reports and as-built drawings provided by the applicants (PDF format and CAD .dwg format, using the NH State Plane Coordinate System), including tie sheets, shall be reviewed and approved by the City Engineer prior to acceptance of any utility improvements by the City.

12. All improvements depicted on the plan shall be completed, and shall be constructed as depicted on the approved plan, including any modifications to the plan as may be approved by the Planning Board in accordance with the Subdivision Regulations and Site Plan Review Regulations.
13. The applicant shall install a security camera mounted on the east side of the building.

General Conditions

14. The applicant shall obtain an Excavation Permit from the Department of Public Works for any site work in the public right-of-way prior to any work in the right-of-way.
15. All required landscape plantings shall meet the minimum size requirements for such plantings set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.
16. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.
17. The property owner is responsible for the maintenance and operation of the stormwater management system in accordance with the operation and maintenance plan titled "Stormwater Management Facilities Operation and Maintenance Manual for 89 Donuts, LLC," dated December 22, 2020, prepared by Pathways Consulting, LLC, Project No. 12777-01 (26 pages), and such responsibility shall run with the land. (Section 6.6.II.2.b of the Site Plan Review Regulations).

Seconded by Jim Winny

Mr. Hall inquired about the timing of required monetary contributions per the proposed future traffic mitigation condition of approval.

Ms. Romano requested an additional condition of approval requiring a camera to be installed for the east side of the building.

Chair Garland reopened the Public Hearing to allow comments by the applicant.

Mr. Sagris stated that he plans to apply for a building permit within a month to allow for any changes that need to be made. Mr. Corwin suggested changing the timing of the traffic mitigation condition from the Building Permit stage to the Certificate of Occupancy stage. Mr. Sagris stated that he has no objection to adding language to the motion about the camera facing the east side of the property.

Ms. Monroe asked about the recommendation for a traffic light in the applicant's traffic study. Mr. Vincent stated that the applicant's traffic engineer identified it as warranted for a signal, but the City and applicant decided it was not the best choice for a number of reasons. Per the proposed traffic mitigation condition of approval, a study of the Miracle Mile corridor from Poverty Lane to the bridge will be undertaken to determine the best recommendations for changes.

Mr. Brooks noticed different plan project numbers in the motion, which need to be consistent.

Chair Garland closed the Public Hearing.

Mr. Hall and Mr. Winny agreed with the suggested changes to the motion.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against – None

***The MOTION was approved (9-0).**

[Note: the motion for agenda item 3.A that appears above is as amended.]

B. Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108, Lot 2 (phase 2) and Lot 14 (phase 1). **PB2021-02-EXT** - Public Hearing continued from February 8, 2021

Jon Rokeh and Atty. Marc Pinard appeared on behalf of the applicant.

Mr. Rokeh stated that Brady Sullivan took over an abandoned project, which needed a large amount of clean up. Phase I needed to be completed to begin Phase II, and they are now ready to begin Phase II. They are committed to beginning the infrastructure work in 2021. All through 2018, 2019, and 2020 they were working on items that needed to be finalized prior to beginning Phase II.

Mr. Pinard stated that much work and expense had been invested to date, and the project was making progress. The applicant is asking for an extension of two years. The character of the neighborhood has not changed since the project was originally approved; the area is and has been residential, so approval of the extension to begin construction is warranted. There has been no change in zoning, so there is no vesting issue, so the applicant's position is no extension is needed because the project is still approved. Nothing has changed and they should be permitted to move forward. The applicant is committed to break ground this year and has made significant progress as evidenced in the meeting packet information. The global pandemic has affected the applicant's ability to do business. They've made substantial progress in making sure that the plans, working with the Planning Department, were designed properly. For those reasons, an extension is a reasonable request.

Mr. Corwin noted that the applicant is also asking to suspend the security that has been posted for Phase II, and that the applicant has requested a waiver to suspend the bond until construction begins. Mr. Pinard stated that construction may not start for several months, which would mean a savings in carrying costs. The bond would be back in place when the applicant is ready to break ground. The plan is to construct the multi-family units first, then the other units. The project is likely to be completed by 2024, but the applicant is asking to go a bit longer due to potential issues.

Mr. Corwin noted that at the last meeting, the applicant was granted a waiver from the missed December submission deadline. The applicant must now demonstrate good cause for extending the time frame to achieve active and substantial completion. If the Board denies the extension, that would close the application and no action would need to be taken on the other waiver requests.

Chair Garland noted that the focus is on the term "good cause," and to reach a consensus as to whether the applicant has demonstrated "good cause"; that would then lead the Board to consideration of the other waiver requests.

Mr. Hall asked the applicants why nothing was physically done by the deadline. Chair Garland noted that this project has been going on for many years before this extension request. Mr. Rokeh stated the current

plan was approved in 2016 and was extended in 2018. The extension granted in 2018 was to record the plat, and that has been completed. They are now asking for an extension to begin the construction process for Phase II. For the last two years, they have been actively working with the City on finalizing every item, doing as-builts for Phase I, getting plans recorded, and working on easements that the City needed. There were issues with Phase I that they wanted to make sure were completely cleaned up before beginning the Phase 2 construction process.

Mr. Hall, noting that the applicant said they have been working on a large number of supplementary issues for Phase I and had not been prepared to commence work on Phase II, asked why they did not ask for an extension well before the deadline. Mr. Pinard responded that Mr. Rokeh can talk about the timing of filing for extensions as he relies on Mr. Rokeh for those matters. Mr. Pinard noted that Brady Sullivan closed down a year ago due to the pandemic. Everyone was sent home and there was a period where they tried to figure out how to keep people working in a safe way, where to best put their resources, and how to reopen the office and job sites. The company is located in Manchester, and they tried to keep people working safely and to decide where to best put their resources among their project sites located in various areas. In dealing with the pandemic they were not in the position to get into the ground up in Lebanon, and of the past two-year period, nearly a year was consumed by the pandemic. They've been doing their best, but it wasn't possible to get up to Lebanon during the spring season and into the summer season. The unprecedented global pandemic fits the definition of "good cause". They're asking for an extension with a commitment to get into the ground notwithstanding the pandemic. They are planning to shift resources to make this happen. It's the global pandemic that is the good cause.

Mr. Hall noted that the City and surrounding area has still seen a lot of development during the pandemic, from firms from across New England. Mr. Pinard replied that the applicant has been working through the pandemic, but they had to pick and choose where to work and that in hindsight, they wished that they had gone to Lebanon and that they would have focused there, because they don't relish this process and that it's an imposition to everyone involved. In hindsight, he would have considered doing something differently, but it's just the way it rolled out.

Ms. Romano noted that the Board has a lot of things to take into account here. She remembers the problems with Phase I and they did not seem to be things that happened based on bad luck; rather, they seemed to be quality issues, homeowner dissatisfaction issues, and incompleteness of things that should have been completed – not good faith problems. Ms. Romano stated that the applicant is asking to suspend the bond, and she wonders if the reason for the extension request is not so that the applicant can begin construction but to sell the development. Mr. Pinard stated that the premium for the \$10M bond is \$175K per year. They paid this when they were not in the ground. But now that the plan is recorded, they want to suspend it until they get into the ground and reimpose it when construction begins.

Mr. Winny noted the goal is substantial completion, yet there hasn't been any groundbreaking, and that yes, the pandemic is an issue but there were things that still could have been done during the pandemic, and there was also a whole year before the pandemic, and there still hasn't been ground broken. Mr. Winny wondered what would be different this time. Mr. Winny expressed concern that the project has been dragged out and will continue to be dragged out. Ms. Monroe observed that the original plan for the project is dated October 5, 2011, so that not only has this been extended multiple times, but that we don't know if Phase II will drag along just as Phase I did. During the pandemic, City staff were back in the office after a month, and the Planning Board began meeting on-line right away. The day after the Board approved the Dartmouth student housing project in March or April, the applicant began construction. Projects both large and small have continued, really adding to the City's housing stock. One of the reasons the Board has previously discussed tightening up its regulations to limit the number of extensions that can be approved is that eventually the technology and the advancement of planning is way beyond what the original plan contained. We've become more aware of the significance of addressing climate

change and other environmental changes. Due to significant environmental changes, the City is tightening regulations regarding extensions. It is even more important to work in a timely fashion, and the current plan is outdated. In conclusion, Ms. Monroe stated that the excuses being used as to why it has not happened are specious because other companies have been able to do more, and that the plan is outdated due to technological developments.

Ms. Chewning commented that she's struggling to find good cause. While the pandemic may offer some level of excuses, she heard the applicant say that in the last year they still made a choice not to be in Lebanon, and when she hears that, it raises red flags as opposed to establishing that there was "good cause" for this additional delay. She also heard the applicant say that work will commence "sometime in 2021", or "maybe in the next few months". None of this is reassuring.

Mr. Pinard stated that the plans are current, and that if they reapplied, they would bring in the same plans. Mr. Garland agreed but stated that that is not relevant to demonstrating "good cause". Mr. Pinard stated that they have given explanations, not excuses, and that there are compelling reasons to require an extension, which includes the pandemic.

Mr. Rokeh noted that Phase II was approved for the Moultons back in 2007, but the plans were completely redesigned based on the new Alteration of Terrain standards. They will have an updated alteration of terrain permit meeting the most current AOT standards within the next few months, which is one of the reasons that their plan is to begin in the summer.

A MOTION by Matthew Hall that the Lebanon Planning Board DENY the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), originally approved as PB2016-22-EXP-FMAJ, for an extension of time pursuant to Section 14.1.B.1.c of the Subdivision Regulations to achieve active and substantial development as required by Section 14.1.B.1.b of the Subdivision Regulations, PB2021-02-EXT, noting the lack of active and substantial development or building by December 10, 2020, and not finding good cause for such lack of activity.

Seconded by Kim Chewning

Roll Call Vote:

Voting to Approve – Ms. Monroe, Ms. Romano, Ms. Stavis, Ms. Chewning, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny

Voting Against - None

**The MOTION was approved (9-0).*

C. **Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3:**
Request for Final Major Subdivision Review, Site Plan Review, and a Conditional Use Permit for a proposed Planned Unit Residential Development (PURD) pursuant to Section 501.2 of the Zoning Ordinance, containing 22 residential units together with related site improvements and amenities.
PB2020-31-FMAJ -Public hearing to commence on January 11, 2021 if the Board finds that the application is complete. Continued from February 8, 2021.

Jeff Shapiro, Owner; Rod Finley, P.E.; and Nate Stearns, Attorney, attended on behalf of the applicant.

Mr. Finley gave an overview of past and future plans. The project is now named "Occom Path," which is the same as the proposed road name. There will be a merger of #5 and #11 Oak Ridge. Renderings of the three types of units were shown. The majority are two-story, single family units. The configuration of the units and amenities were explained. There will be 22 units, which the Planning Board may allow under

the 12% density increase. The water and sewer extensions were granted by the City Council, and there will be a private sewer in the development that connects to Pinewood Village and goes on to the Hanover system. Stormwater management was explained, and a complete plan set is available. All previous issues and considerations raised by the Planning Board during design review have been addressed.

Mr. Corwin stated that Staff recommends the application is complete enough for the Planning Board to accept jurisdiction and commence review.

The minutes from the site visit held during design review will be provided to Mr. Amaro, Mr. Rutter, and Ms. Chewning.

Ms. Monroe noted that the ground would be suitable at present for a new site visit. Mr. Finley confirmed that the site markings should still be there. Mr. Corwin stated that per Section 4.11.D, following submission of an application, the Board can visit the property.

A MOTION by Matthew Hall that the application of Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3 is complete enough for the Planning Board to accept jurisdiction and commence review.

Seconded by Joan Monroe

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against - None

The MOTION was approved (9-0).

Mr. Shapiro confirmed that the shared garages will be physically divided.

In response to questions from the Board, Mr. Finley stated that the community garden could be fenced, there will be a street sign for the development, that there is sufficient road width to accommodate cars in the driveways and allow adequate site lines, and that refuse and recycling cans will be provided for each unit; Mr. Shapiro stated that the buildings are not sprinkled, that there will be basements in all units, and that benches would be possible in the common areas; and Atty. Stearns stated that the units could be converted to condominiums, but it would require Planning Board approval.

Mr. Rutter inquired about unit floor plans. Mr. Finley stated that the applicant has prepared these, but they were not included with the application as they are not required to be submitted

Ms. Monroe observed that the Board's regulations would soon be requiring color temp lighting of 3,000K or warmer. She suggested the applicant provide electric vehicle charging as an amenity.

A MOTION by Matthew Hall to continue the hearing of Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3 to Monday, March 29, 2021, at 6:30 PM.

Seconded by Kathie Romano

Roll Call Vote:

Voting in Favor – Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny

Voting Against – None

**The MOTION was approved (9-0)*

4. Other Business

- A. **XYZ Dairy, LLC. 55 Crafts Avenue & 0 Beyerle Street (Tax Map 58, Lots 20 & 18), zoned R-3:** Conceptual review per Section 4.3 of the Site Plan Review Regulations for a proposed major subdivision. **PB2021-05-CON** - Rescheduled from February 8, 2021

Chet Clem of Lyme Properties attended representing XYZ Dairy.

Mr. Clem stated that the issue of the property ownership began in August of 2020. It has been determined that XYZ Dairy, LLC, does own the segment of Beyerle Street that was in question. There has been incomplete information to date regarding the property, and XYZ Dairy is asking that the conceptual review remain open. They have asked for a lot line adjustment to be scheduled for the April 12, 2021, meeting when they will present the full subdivision application.

Chair Garland referred to a March 4, 2021 letter from Mr. Clem, Sr. regarding a plat signing.

Mr. Brooks stated that the City attorney notified the City that the City has no right, title, or interest in the unbuilt portion of Beyerle St. platted in 1892, which covers everything to the west of Crafts Ave. The City's attorney is still researching the unbuilt portions of other streets in the area. It is expected that once it is known which paper streets exist and which do not, the City records will be corrected.

Chair Garland stated that next month the Board would consider the boundary line adjustment and schedule a conceptual review of the major subdivision, if needed.

Chair Garland explained the need for Board members to take the training on the Welcoming Lebanon Ordinance, which takes about half an hour. Each member will need to sign an acknowledgement document stating that they have completed it.

Mr. Brooks stated that he would send a link to the Board members for the training. There are also two more live sessions, March 24 at 7 PM during the City Council meeting and March 31 at 7 PM. Mr. Brooks asked that the Board members let Staff know when they have completed the training, so Staff can provide the document to sign.

5. Approval of Minutes

- A. February 8, 2021

*A MOTION by Kathie Romano to approve the minutes of the February 8, 2021, Planning Board Meeting as presented in the March 8, 2021, Planning Board meeting packet.
Seconded by Joan Monroe.*

Roll Call Vote:

Voting in Favor – Mr. Garland, Ms. Monroe, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro, Mr. Winny, Mr. Hall

Voting Against - None

**The MOTION was approved (9-0).*

6. Adjournment

*A MOTION by Matthew Hall to adjourn the meeting.
Seconded by Laurel Stavis.*

Roll Call Vote:

Voting in Favor – Mr. Garland, Mr. Winny, Ms. Romano, Ms. Stavis, Mr. Rutter, Ms. Chewning, Mr. Amaro, Mr. Hall, Ms. Monroe

Voting Against - None

**The MOTION was approved (9-0).*

The meeting was adjourned at 9:13 PM.

Respectfully submitted,
Holly Howes
Recording Secretary

FINAL

**LEBANON PLANNING BOARD
Regular Meeting
Monday, April 12, 2021, 6:30 PM
Remote Via Microsoft Teams
LebanonNH.gov/Live**

ROLL CALL OF

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice-Chair), Karen Zook (Council Representative), Kim Chewning, Joan Monroe, Kathie Romano, and Laurel Stavis

MEMBERS ABSENT: Jeremy Rutter, Gregorio Amaro

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner), Brian Vincent (City Engineer)

1. Call to Order Chair Garland called the meeting to order at 6:31 PM.

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

Mr. Corwin shared the State directive and participation details for the online meeting in Microsoft Teams. All members identified themselves.

Chair Garland conducted a roll call of members present as reported above. An overview of the meeting agenda was outlined.

2. Notice of Regional Impact

The following applications were received by the Planning & Development Department on or before April 12, 2021:

Molloy Development, LLC, 89 & 0 Main Street (Tax Map 72, Lots 20 & 21), zoned CB: Request for Site Plan Review to convert the second floors of the two existing buildings from office to multi-family residential. A total of twelve (12) dwelling units are proposed. **PB2021-10-SPR**

Virginia Wong, 43 Mechanic Street (Tax Map 106, Lot 34), zoned LD: Request for Site Plan Review to convert an existing three (3) unit multi-family dwelling to a six (6) unit multi-family dwelling. **PB2021-11-SPR**

Quail I, LP, 69 Lily Lane (Tax Map 82, Lot 2, Plot 200), zoned R-3: Applicant requests an extension of time per Section 4.10.B of the Site Plan Review Regulations to obtain a building permit pursuant to an approved Site Plan for a 32-unit, 50,000 square foot building for senior housing, together with associated site improvements, to be operated as part of the existing Quail Hollow Senior Living Community (PB2019-13-SPR), originally approved by the Planning Board on September 9, 2019. **PB2021-12-EXT**

Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD: Request for Site Plan Review to construct a 15,000 sq. ft. addition to an existing warehouse building. **PB2021-13-SPR**

The Planning Office recommends that none of applications above have the potential for regional impact.

***A MOTION by Laurel Stavis that the applications above have no potential for regional impact.
Seconded by Kathie Romano***

Roll Call Vote:

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Garland, Ms. Monroe, Ms. Zook, Ms. Romano, Mr. Hall

Voting Against – None

****The MOTION was approved (7-0)***

3. Public Hearing Items

- A. XYZ Dairy, LLC, 55 Crafts Avenue & 0 Beyerle Street (Tax Map 58, Lots 20 & 18), zoned R-3: Request for a Boundary Line Adjustment. PB2021-08-BLA**

Mr. Corwin stated that Planning Department Staff reviewed the application and recommend that it is complete enough for the Planning Board to accept jurisdiction and commence review.

***A MOTION by Joan Monroe that the Lebanon Planning Board finds the application of XYZ Dairy, LLC, for a proposed Boundary Line Adjustment between 55 Crafts Avenue & 0 Beyerle Street (Tax Map 58, Lots 20 & 18), PB2021-08-BLA, IS complete enough to accept jurisdiction and commence review.
Seconded by Matthew Hall***

Roll Call Vote:

Voting in Favor – Mr. Hall, Mr. Garland, Ms. Monroe, Ms. Zook, Ms. Romano, Ms. Chewning, Ms. Stavis

Voting Against - None

****The MOTION was approved (7-0).***

Chet Clem of Lyme Properties attended representing XYZ Dairy LLC. Mr. Clem noted on Page 3 of the packet, which states, "...at the request of the applicant," the comment was related to all of the paper streets. In the March 8, 2021 minutes on Page 9, he suggested a correction that should read, "...a segment of Beyerle Street," not Crafts Ave. Mr. Clem referred to Page 5 in the packet and inquired about the minimum width requirement that was flagged as an uncertainty.

Mr. Corwin explained that this is a straightforward application with one condition of approval that is standard for that type of application. Regarding the zoning comments on Page 3, to the extent that the lot may be non-conforming to the minimum width requirement, it will remain so. It may or may not meet the width requirement, but whatever the status is, if it is nonconforming, the boundary line adjustment would not exacerbate that nonconformity. The width requirement is similar to the frontage requirement

Mr. Clem stated that the core of the issue for XYZ Dairy is to understand how the minimum width relates to the frontage requirement and affects the properties. Mr. Corwin stated that the minimum width requirement takes the place of a frontage requirement. If the applicant is asking for further clarification, the Board would have to continue the application, but it can be approved without it.

Ms. Stavis inquired about the concept of “paper streets.” Mr. Brooks explained that when subdivision plats are approved by the Planning Board, there is an assumption that the streets being created are dedicated to public use. When plats are recorded, but the streets are never actually built, they are considered to be “paper streets.” State law has changed regarding paper streets over the years. In some cases, when plats are recorded but the streets are never created or accepted, the dedications expire after 20 years. At other times, the dedications live on forever unless explicitly rejected by the City Council. The City Attorney has not completed the title research for all of the paper streets in this area, but did complete the one for Beyerle Street. Mr. Brooks expects all the title work to be completed in the next few weeks, when it will be shared.

Ms. Romano asked for clarification as to what the access would be to the proposed lots if the streets are not there. Mr. Brooks explained that Crafts Avenue is a built road, and one property fronts on that road. The other fronts on Beyerle Street, and the City has no right or title to that street. The applicant is changing the boundary line so that it would absorb the former right of way to the center line for both 58-18 and 58-20. Lot 58-18 is nonconforming and may not have physical access to any street.

Mr. Corwin stated that the issue of street access doesn’t impact the boundary line adjustment change, which is a routine matter. The Planning Board just needs to know that there are nonconforming factors. The lots would remain two parcels meeting at the center line of the paper street, and the line between the two lots is shifting with no impact on access.

Mr. Brooks agreed that they would become contiguous parcels.

Mr. Clem noted that there is rear access from another street as the driveway for 58-18.

Chair Garland invited public comment. Hearing none, the Public Hearing was closed.

Matthew Hall moved that the Lebanon Planning Board *APPROVE* the application of XYZ Dairy, LLC for a Boundary Line Adjustment of lands located at 55 Crafts Avenue & 0 Beyerle Street (Tax Map 58, Lots 20 & 18), zoned R-3, **PB2021-08-BLA, as shown on a plat titled “Boundary Line Adjustment Plan Prepared for XYZ Dairy, LLC,” prepared by Paton Land Surveying, LLC, dated March 18, 2021, Proj. No. 2017-273-21, including any and all supplemental submissions and testimony provided during the public hearing, with the following condition:**

1. *Prior to the signing and recording of the plat, the applicants shall provide one (1) full-size copy of the plat and a digital record drawing (Cad.dwg Format using NH State Plane Coordinate system).*

Seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Ms. Zook, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Ms. Monroe

Voting Against – None

***The Motion was approved (7-0).**

Matthew Hall moved that the Lebanon Planning Board authorizes the Chair to sign the plat for XYZ Dairy, LLC, PB2021-08-BLA, as shown on a plat titled “Boundary Line Adjustment Plan Prepared for XYZ Dairy, LLC,” prepared by Paton Land Surveying, LLC, dated March 18, 2021, Proj. No. 2017-273-21.

Seconded by Joan Monroe.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Ms. Hall, Mr. Garland Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Zook

Voting Against - None

****The MOTION was approved (7-0).***

- B. City of Lebanon, 0 Airpark Road (Tax Map 159, Lot 4), zoned IND-L: Applicant requests a review per RSA 674:40, III, of a layout plan to extend Airpark Road. The proposed street extension is intended to serve the City's Airport Tax Increment Financing (TIF) District. **PB2021-07-DED****

Mr. Corwin stated that Planning Department Staff has reviewed the application and recommends that it is complete enough for the Planning Board to accept jurisdiction and commence review.

Kathie Romano moved that the Lebanon Planning Board finds the application of the City of Lebanon for a review per RSA 674:40, III, of a layout plan to extend Airpark Road, PB2021-07-DED, IS complete enough to accept jurisdiction and commence review.

Seconded by Joan Monroe

Roll Call Vote:

Voting in Favor – Mr. Garland, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Ms. Zook, Mr. Hall

Voting Against – None

****The MOTION was approved (7-0)***

Mr. Brooks spoke to the application representing the City and explained that this parcel owned by the City is part of a tax increment finance (TIF) district. Prior to a road being constructed, it must be laid out and reviewed by the Planning Board before the City Council can act upon it. A sketch was displayed showing the proposed extension of Airpark Road that would end at a cul-de-sac. It overlaps a portion of the Hall School Road, a Class VI road, which it would overlay but not impact; the new road would be a Class V road on top of a Class VI road. The layout width is variable to allow access to the adjacent parcel, and the road would not go beyond the cul-de-sac.

Ms. Romano inquired about the nature of the trail at the end of the cul-de-sac and whether there is a satellite view to show how the proposed road relates to the airport property. Mr. Brooks said that there is a gravel road along the airport property and other trails that stay outside the fenced-in airport property. The property for development is higher than the runway, which may limit what can be built on the property.

Ms. Monroe inquired about the status of the Class VI road. Mr. Brooks stated that there would be no change to the Class VI road. Hall School Road on the west side of the property will remain untouched and will remain a Class VI. They would be laying a new Class V road on top of a Class VI right-of-way so there will be frontage for the adjacent property. This was at the City Attorney's recommendation. Mr. Brooks stated that notes referring to upgrading the Class VI road will be removed from the plan. Ms. Monroe noted that people could still walk on the Class VI road, first on the new paved portion and then on the old unpaved portion, which is conservation land. Mr. Brooks noted that there are 7.5 acres under conservation as a result of other wetland impacts around the airport. The development footprints are

hypothetical, but what gets built will be based on the applicant's needs. This application is only looking at the proposed road layout. The parcels would be leased lots for additional airport revenue.

Chair Garland invited public comment.

David Clem, Ward I, inquired about a conservation easement. Mr. Brooks confirmed that the Conservation Commission weighed in on the wetlands application .

Mr. Clem inquired about the necessity of a site plan review. Mr. Brooks stated that the road layout doesn't trigger site plan review until a future building is proposed. Water and sewer capacity have already been confirmed, and the FAA has released this land from airport obligation. The location of utility poles is already known, and compliance with FAA height requirements would have to be confirmed when buildings are proposed. Mr. Clem suggested checking on recent changes to FAA requirements.

Ms. Stavis inquired about the benefit of the TIF for the City and West Lebanon. In addition, what process is in place by which citizens would be able to see what is proposed in the TIF district.

Mr. Brooks explained that the TIF is related to a master plan objective to make the airport more self-sustainable. The FAA has released the property for airport obligation so it doesn't have to be for direct airport use. The City is free to seek Light Industrial development, and properties would be available for high-tech and bio-tech development. The TIF will help with funds to pay off the debt service for building the road and providing access. Lease revenues will also offset airport deficits. The TIF is being built in two phases with a minimal upfront investment. The City could choose to build the balance of the road to the cul-de-sac providing sites for further development. The sites would be leased by the City to prospective tenants, who would go through site plan review and subdivision review, which are fully noticed, public processes. Starting this in a timely manner would allow the City to increase tax revenue to pay off debt service and generate lease revenues.

Mr. Hall noted that the project has been approved by the City Council.

Ms. Chewning inquired about pursuing the road before having identified users. Mr. Brooks explained that there are very few shovel-ready sites available in the Upper Valley, because infrastructure hasn't been built on many approved developments. It adds cost and time, so it is more desirable if sites are ready to allow a company to go forward quickly. The City is making the investment to get pad sites available for current or new business to locate here.

Ms. Romano asked for clarification on the leases and if the tenant can sell the building. Mr. Brooks stated that they are leasing the land and would build and own the building that can be taxed. If the company later moves, the City would lease the land to a new party, and that party would buy the current building and pay taxes.

Ms. Stavis inquired if the citizens have any say in the type of businesses the City accepts as tenants. Mr. Brooks stated that it is a question for the City Council. The property is zoned for Light Industrial use, so it would be up to the City Council, City Manager, and the Airport Manager.

Ms. Monroe noted that development is determined by the zone along with other protections. The City has made some requirements.

Chair Garland invited additional public comment. Hearing none, the Public Hearing was closed.

Matthew Hall moved that the Lebanon Planning Board **APPROVE** the application of the City of Lebanon, **PB2021-07-DED**, for the creation as a public street the +/-96,575 sq. ft. area identified as

“Proposed Airpark Road Extension” on a plan titled “Road Layout Plan of Land of City of Lebanon, Airpark Road Extension”, prepared by Paton Land Surveying, LLC, dated March 20, 2021, Proj. No. 2019-281-17A, as contemplated by the City Council.

The motion was seconded by Laurel Stavis.

Roll Call Vote:

Voting in Favor – Mr. Hall, Mr. Garland, Ms. Monroe, Ms. Zook, Ms. Romano, Ms. Chewning, Ms. Stavis

Voting Against – None

**The motion was approved (7-0).*

Matthew Hall moved that the Lebanon Planning Board authorizes the Chair to sign the plat for the **City of Lebanon, PB2021-07-DED**, as shown on a plat titled “Road Layout Plan of Land of City of Lebanon, Airpark Road Extension”, prepared by Paton Land Surveying, LLC, dated March 20, 2021, Proj. No. 2019-281-17A.

The motion was seconded by Joan Monroe.

Roll Call Vote:

Voting in Favor – Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Ms. Monroe, Ms. Zook

Voting Against - None

**The Motion was approved (7-0).*

4. Approval of Minutes

A. March 8, 2021

Mr. Brooks stated that the City received an appeal from Brady Sullivan, Prospect Hills, which was made to the Housing Appeals Board. Brady Sullivan appealed the March 8, 2021 decision to not grant an extension of time. Planning Staff created a more detailed set of minutes for that agenda item based on the recorded meeting.

Mr. Corwin explained that Staff provided suggested edits to the draft minutes following a review of the audio to include more detail than typically in minutes. The amended version was shared with the Board. The only edits are specifically for the Brady Sullivan, Prospect Hills application.

Mr. Hall stated that he reviewed the video recording and the edits reflect a comprehensive view of what transpired and are very accurate.

Ms. Romano suggested the more detailed version would make it clearer for someone not at the meeting.

Ms. Monroe offered two additional corrections. Ms. Chewning’s comment regarding lack of work in Lebanon would require further review.

Matthew Hall moved to approve the Planning Board minutes of March 8, 2021, as amended following audio confirmation.

The motion was seconded by Joan Monroe.

Roll Call Vote:

Voting in Favor – Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Garland, Ms. Monroe, Ms. Zook, Ms. Romano

Voting Against – None

**The MOTION was approved (7-0)*

5. Other Business

- A. **Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3:**
Request to reconsider denial of density bonus per Section 507.2 of the Zoning Ordinance for a proposed 22-unit Planned Unit Residential Development (PURD). PB2020-31-FMAJ

Mr. Brooks explained that following the decision to deny the density bonus with a vote of 5-3, Atty. Stearns submitted a request for the Board to reconsider the vote.

Mr. Corwin stated that this is not a public hearing. The Board is being asked to reconsider the denial of the density bonus. The Board is not being asked to reverse its decision or to make a new decision to allow something else. The Board can vote to suspend its decision and revisit the decision if it would like to do so at the May 17, 2021 special meeting, when the hearing will resume. A letter was submitted for the request. If a majority of the Board agrees, the original vote would be suspended and the Board would have to vote again on the density bonus request. The Board could still vote to deny the density bonus at the May meeting. If the Board is open to considering the letter submitted for tonight's meeting, then the vote would be in favor of suspending the Board's original decision.

Chair Garland noted that the rounding of calculations up or down needs to be addressed in the zoning ordinance.

Mr. Hall asserted that the Board should revisit the decision, because there are important implications for the Board and City. He felt Atty. Stearns' letter was persuasive, and the issues for those who oppose the project are not in regard to the number of units. The development is a PURD in which the point is density. At the least, the Board should allow Mr. Shapiro to present the plan he wants, and the Board will approve or not. There were five meetings regarding the original preliminary application, and the Board was concerned with density but did not comment on the number of units. The Board members should have stated their problem with the number of units. The Board should suspend and revisit the density bonus decision.

Several Board members expressed agreement with Mr. Hall and would be in favor of revisiting the density bonus decision.

Ms. Chewning stated that she reviewed the minutes and video from the previous meetings in 2019, and density was definitely an issue. She would be willing to reconsider the decision.

Ms. Romano noted that there was considerable push back from the community, but it was not clear in the initial meetings if there was a density bonus.

A MOTION by Laurel Stavis to suspend and reconsider the March 29, 2021 decision to deny the density bonus for Basic Holdings, LLC, 5 & 11 Oak Ridge Road at the May 17, 2021 Planning Board Special Meeting.

The motion was seconded by Matthew Hall.

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Ms. Romano, Ms. Zook, Ms. Chewning

Voting Against – Ms. Monroe

****The MOTION was approved (6-1).***

6. Other Business

Mr. Brooks reminded the Board members of the next City Council meeting, April 21, 2021, when there will be a Resolution read at the beginning of the meeting in honor of Gregory Schwarz. All Planning Board members are encouraged to attend and share their thoughts.

7. Adjournment

A MOTION by Matthew Hall to adjourn the meeting.

Seconded by Kathie Romano

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Garland, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Zook, Mr. Hall

Voting Against - None

****The MOTION was approved (7-0).***

The meeting was adjourned at 8:39 PM.

Respectfully submitted,
Holly Howes
Recording Secretary

THE STATE OF NEW HAMPSHIRE
HOUSING APPEALS BOARD
Governor Hugh J. Gallen State Office Park

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CASE NAME: Brady Sullivan Prospect Hill, LLC v. City of Lebanon
CASE No.: PBA-2021-06

INTERIM ORDER

The matter before the Housing Appeals Board is an appeal of the City of Lebanon (the "City") Planning Board's 08 March 2021 denial of Brady Sullivan Prospect Hill, LLC's (the "Applicant") request for an extension to continue construction of Phase II of its two-phase residential project development referred to as "Prospect Hill," located in the Lebanon, New Hampshire.

FACTS:

In April of 2005, M&M Equities, LLC obtained approvals from the Lebanon Planning Board for a planned unit residential subdivision known as Prospect Hill. An amendment to the project was approved by the Planning Board in September of 2005. A plan of Phase I for the subdivision was recorded in December of 2005. At this time, M&M Equities, LLC began construction of infrastructure and homes in Phase I. The Applicant purchased the project in November of 2010. At this time, Phase I was partially complete. Phase II of the project was approved in 2007. On 14 April 2014, an amendment adjusting the project timeline for Phase II was approved by the Planning Board. The approved amended timeline required the Applicant to achieve active and substantial development on Phase II within two (2) years and substantial completion within five (5) years.

The Applicant did not begin construction on Phase II by 14 April 2016 per the approved timeline and did not request an amendment to the timeline prior to this date. For this reason, the Applicant submitted a new application for Phase II to the Planning Board on 12 September 2016. This application was approved by the Planning Board on 14 November 2016, including a

new timeline which required active and substantial development of Phase II by 14 November 2018, and substantial completion by 14 November 2021. Per this approval, completion of all Phase I construction and inspections was required prior to the commencement of any construction in Phase II.

By 14 November 2018, construction of Phase II had not yet commenced. The Applicant requested an extension to the Phase II deadlines. The Planning Board granted this extension on 10 December 2018, with new deadlines of 10 June 2019 to record the project plat, active and substantial development by 10 December 2020, and substantial completion by 10 December 2023. The Planning Board also noted in their decision that the Applicant was still subject to all remaining applicable conditions of the 14 November 2016 approval. The Applicant recorded the plat on 12 June 2019 and posted the required performance bond for Phase II.

On 23 March 2020, the City sent an e-mail reminding the Applicant that the active and substantial development deadline of 10 December 2020 was approaching and provided a list of the conditions of approval that still had to be satisfied prior to commencing any site work for Phase II.

On 22 July 2020, the Applicant contacted the City expressing concerns about its ability to meet impending deadlines due to challenges associated with the state of emergency associated with the COVID-19 pandemic.

In response to an inquiry by the Applicant on 06 January 2021, the City informed the Applicant that the deadline for active and substantial development had passed and that the project was in default. The City further informed the Applicant that they would be required to either demonstrate compliance with the Planning Board's 10 December 2018 Notice of Action, or submit an application to the Planning Board requesting an extension.

The Applicant filed an extension request and waiver requests to relax the requirement in the Subdivision Regulations that extensions be requested prior to the expiration of a deadline

(Section 14.1.B. I .c) and the requirement for substantial completion to be achieved within five (5) years of the 2016 project approval (Section 14.5.A). The Planning Board held a hearing on 08 February 2021, at which the 10 December 2020 deadline for submittal to request an extension was waived. The hearing was continued to 08 March 2021, at which the Planning Board voted to deny the Applicant's request for extension, citing "...the lack of active and substantial development or building by December 10, 2020, and not finding good cause for such lack of activity." (CR at 377). This appeal to the Housing Appeals Board followed.

LEGAL STANDARDS:

The legal standards for review of a Planning Board decision under RSA 677:15 are well established. "The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable." RSA 677:15, V; *Durant v. Town of Dunbarton*, 121 N.H. 352, 357 (1981). The burden of establishing that a determination of a Planning Board was unlawful or unreasonable lies with the appealing party. *K & P, Inc. v. Town of Plaistow*, 133 N.H. 283, 292 (1990). See also, RSA 679:9.

DISCUSSION:

The issue before the Housing Appeals Board is whether the City of Lebanon Planning Board denial of the Applicant's request to extend the time for substantial completion of Phase II of its residential housing project was illegal or unreasonable by balance of the probabilities. RSA 679:9, II.

A review of the facts presented discloses that: 1) based upon the Certified Record, the Lebanon Planning Board has not done anything illegal; and, 2) the focus of this case is whether the Planning Board's unwillingness to grant a further two-year extension as allowed by RSA 679:39 was unreasonable.

Under subparagraph I(a) of RSA 679:39, a subdivision approval is protected from changes to subdivision regulations, site plan review regulations, and zoning ordinances if the following conditions apply:

- (a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 24 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the cost of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;
- (b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and
- (c) At the time of approval and recording, the subdivision plat or site plat conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

The statute goes on to say:

III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

- (a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and
- (b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

Finally:

IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 5-year exemption described in paragraph I. The planning board may, for good cause, extend the 24-month period set forth in subparagraph I(a). (Emphasis supplied.)

As the facts reveal, this project was to be developed in two (2) phases. Essentially, both phases are separate and distinct from each other. Specifically, the infrastructure work and initial construction could be, and was, commenced for Phase I, while Phase II never "got off the ground."¹ As a result, the Applicant was required to approach the Planning Board under

¹ However, the pump station and location of utilities in easement areas provided by the Applicant, while "separate" from Phase II, would be beneficial to Phase II if Phase II is constructed. (CR at 88).

RSA 674:39, IV, to request, “for good cause, an extension to the 24-month period set forth in subparagraph I(a)” of the referenced statute.²

Prior to the 2021 extension denial, this same relief was previously granted by the Planning Board to give the Applicant additional time to commence active and substantial development of Phase II improvements. This the developer failed to do, which resulted in this appeal application being filed with the Housing Appeals Board after the most recent extension request was denied by the Planning Board on 08 March 2021.³

This case rests on two words: “good cause.” Unfortunately, there is no clear definition of those words in RSA 674:39, IV, which states: “The planning board may for good cause extend the 24-month period set forth in subparagraph I(a).” (Emphasis supplied). A further search of various statutes also discloses no good legislative assistance. New Hampshire case law also does not provide clear, focused assistance in applying the “good cause” allowance contained in RSA 674:39, IV.⁴ Thus, a good starting point may be to try to define this concept and then to apply it to available facts.

Black’s Law Dictionary 251 (9th ed. 2009) defines “good cause” as “a legally sufficient reason” or “the burden placed on a litigant to show why a request should be granted or an

² The Housing Appeals Board acknowledges the Applicant’s argument that they have a “vested right” to complete Phase II of the project; thus, no RSA 674:39 extension is needed. A review of the facts discloses no reasonable basis for that contention. Under the City’s ordinance and regulations, the two phases are separate. While money spent on the design of Phase II may be considered in a “good cause” request, this factor does not trigger Phase II vesting. *See, Piper v. Meredith*, 110 N.H. 290 (1970).

³ The Housing Appeals Board notes that throughout the previous 2-year extension, the City provided updates regarding the status of the time limit to remind the Applicant of its obligations. In spite of these reminders, the Applicant failed to meet the requirement to request a further extension within the appropriate timeline allowed by the City’s regulations. The Applicant should have made a request for an extension prior to the 10 December 2020 substantial completion date and failed to do so. However, at the Planning Board meeting on 08 February 2021, the Planning Board did waive that requirement in order to consider the Applicant’s request for an additional 2-year extension. The fact that the Applicant did not file a timely RSA 674:39 extension request should not be considered in evaluating “good cause” since the Planning Board granted a waiver of the time limit on 08 February 2021.

⁴ In *Carr v. Town of New London*, 170 N.H. 10 (2017), the Supreme Court in a tax abatement case considered “good cause” in evaluating the request. While the final result in the case was based on an objective date (a “...fire related building loss occurring after April 1 may constitute ‘good cause’ under RSA 76:16...”) it cited *Barksdale v. Town of Epsom*, 136 N.H. 511 (1992) for the proposition that “good cause” is not confined to financial inability. The Supreme Court further cited *Briggs Petition*, 29 N.H. 547 (1854), which allowed a “good cause” finding for “other misfortunes” and allowed the responsible decision maker a liberal framework to “...promote equitable resolutions.” *Id.* at 551-554.

action excused.” Put in slightly different terms: a reason for taking action or failing to take an action that is reasonable and justified when viewed in the context of surrounding circumstances.⁵

The Housing Appeals Board believes that “good cause” is a subjective concept based upon fundamental fairness, which must be carefully evaluated.⁶ That said, the factors that should be explored in determining whether “good cause” exists should be objective and free from underlying prejudice and emotions with the responsible agency focusing on the facts in making any decision.⁷

Oftentimes, when the words “good cause” are considered, the decision is an easy one. As an example, if one of the litigants in a legal matter is hospitalized the day before their trial, should the matter be continued for “good cause?” Of course it should, since this was an unexpected event and if the trial is not continued, it would be fundamentally unfair and unjust. Also, what if an attorney fails to file an appearance to preclude their client from being defaulted in a civil court action? Does it make a difference if the attorney “just forgot,” or whether there may have been a death in the attorney’s family a few days prior to the deadline? While the actual “good cause” event to be considered is exactly the same—failure to prevent the client from being defaulted—the underlying facts are somewhat different and may trigger a different analysis of “good cause” when applied to a motion or request to file a late appearance.

In the case before the Housing Appeals Board, a number of factors are in play; first among these are the several RSA 674:39 extensions granted by the Planning Board and the continued failure of the Applicant to focus on necessary statutory compliance to protect Phase II of the project from being subject to zoning or planning changes. However, should that factor have been considered in evaluating the “good cause” argument heard by the Planning Board

⁵ See, *Averbeck v. State*, 791 N.W. 2d 559 (Minn. App. 2010).

⁶ While RSA 674:39, IV outlines the extension procedure, it does not define “good cause.” But this is not fatal to a “good cause” analysis since “[t]he necessary specificity...need not be contained in the statute itself, but rather, the statute in question may be read in the context of related statutes, prior decisions, or generally accepted usage.” *State v. Porelle*, 149 N.H. 420, 423 (2003).

⁷ As discussed at the outset, the Housing Appeals Board finds that the City did not illegally deny the requested extension, since its own regulations clearly itemize how project phases are to be handled and the Applicant was well aware of this factor in 2016 when the renewal of Phase II needed to be approved.

on 08 March 2021? The Housing Appeals Board finds that prior-granting of an extension request should not be a factor in determining whether to grant the current extension request. The focus by the Planning Board must be on new and current facts and conditions presented by the Applicant, along with prior facts which continue to directly affect an analysis of “good cause.”

At the Planning Board meeting on 08 March 2021, the Applicant and the Planning Board had a discussion concerning the issues faced by the Applicant, together with the City’s concerns about the continued Phase II delays.⁸ Apparently, when the plan was revisited in 2016, the City zoning ordinances did not create an impediment to “re-approval” of Phase II of the project as originally proposed and approved. Since that time, the City zoning ordinances and planning regulations have been modified, which necessitates significant revision of the Phase II plan in order to allow Phase II to proceed, unless the City Zoning Board of Adjustment grants zoning relief and the Planning Board reviews and approves plan changes.⁹ This is a factor that merits consideration for at least two reasons.

First, the land area slated for development was designed as a two-phase project. This by itself is an important component in evaluating “good cause,” since funds were expended and a plan design was created and engineered for the two (2) phases. (CR at 204). To conclude that because each phase can “stand alone” disregards the original project intent and design.

Second, while the Phase I utilities do not directly service Phase II, a pump station and utilities were installed for future expansion into Phase II. Again, while this does not “link” the phases, it is a possible component of “good cause” under the Housing Appeals Board definition.¹⁰

⁸ It must be remembered that failure to comply with a substantial completion/active and substantial development requirements of RSA 674:39 does not necessarily extinguish the approval granted by the Planning Board. Essentially, if the time limits are not met, then the project is not protected from subsequent changes in subdivision regulations, site plan review regulations, or zoning ordinances.

⁹ See, Section 501 of the City of Lebanon Zoning Ordinance and Section 6.6 of the City of Lebanon Site Plan Regulations. See *also*, CR at 11 and Appendix E at 76, Appendix F at 77; Appendix B at 40, Appendix D at 38.

¹⁰ Clearly, the City’s regulations allow it to treat Phase II as a “separate” site and subdivision plan for the purposes of RSA 674:39 compliance. See, Footnote 7 and CR at Appendix A at 22.

Thus, “good cause” can include a requirement that, if the extension is not granted, the Applicant would need to re-engineer and prepare new plans for the Phase II land. While zoning and planning regulations have changed, Phase II was part of a plan approved by the Planning Board consistent with its then-existing ordinances and regulations. This is important since Phase I owners may have an expectation that what was fully approved is what will be built as well.

While emotions ran high at the 08 March 2021 Planning Board meeting, any denial of the extension for “good cause” should not be based on same. It must be viewed in light of relevant existing facts of record, including those presented by the Applicant, which included the impact of the COVID-19 epidemic. As the Planning Board pointed out, this did not prevent other developers from continuing with building projects, but, while the City may have experienced other residential development during the COVID-19 pandemic, what is central is the Applicant’s situation.

In this instance, the Applicant reduced its construction activity and evaluated where best to allocate resources. (CR at 376). What one developer may do versus what another developer may do in light of COVID-19 safety considerations can impact the availability of workers and materials in order to proceed with substantial completion of improvements. The Applicant’s base of operations and the location where construction is to be commenced is a factor that should be considered.

Along with the foregoing, the 08 March 2021 Planning Board meeting reveals that Phase I played a role in the Phase II delay. (CR at 375). As the Certified Record reflects, the Applicant was not the original developer and invested significant time and money “cleaning up” and completing Phase I issues. Thus, issues arose from the prior developer’s actions or inactions—not from the Applicant. This is a factor which continued into 2020 and should be considered since it likely impacted the Applicant’s ability to proceed during the latest extension. (CR at 375-376).

The Planning Board also referenced climate and environmental changes as reasons for voting against an extension. (CR at 376-377). While a possible concern, there was no expert evidence regarding how Phase II, as currently proposed, would contribute to climate change or cause environmental damage. While reasonable opinions based on a member's knowledge of the community are a relevant consideration, to insert these concepts into a "good cause" evaluation without some expert, scientific support is suspect.¹¹

The Town may have a right to be frustrated and concerned about the several prior Phase II extensions with no commencement of construction. However "good cause" must not be based on emotional considerations, but on relevant facts as applied to this specific extension. The prior extensions, while historical markers, should only be used in evaluating facts which still apply to the current extension request. Likewise, public and Planning Board comments about "quality of construction" or "we don't need more housing" are not relevant in examining "good cause" since, as noted, unsupported opinions should not play a role in an extension decision. (CR at 376).

In conclusion, based upon the Certified Record, the Housing Appeals Board believes an interim order is appropriate.¹² Rather than "guess" or engage in speculative assumptions, the Housing Appeals Board orders the following:

- 1) The vote denying the requested two-year extension is to be RECONSIDERED by REMANDING the RSA 674:39 request back to the Planning Board for further review consistent with this opinion. That review shall focus on "good cause" in the following manner:

¹¹ In *Derry Senior Center Development, LLC v. Town of Derry*, 157 N.H. 441 (2008), the Supreme Court held that "[a]lthough the board is entitled to rely upon its own judgment and experience in acting upon applications for site plan review, the board may not deny approval on an ad hoc basis because of vague concerns." (Citing, *Smith v. Town of Wolfeboro*, 136 N.H. 337 (1992)). "Further, the board's discussion must be based upon more than the mere personal opinions of the members." (Citing, *Condos East Corp v. Town of Conway*, 132 N.H. 431, 438 (1989)).

¹² While not statutorily required, the Housing Appeals Board notes that the 08 March 2021 vote to deny the Applicant's extension does not reference relevant facts considered. This contributes to the difficulty in evaluating the Planning Board's "good cause" analysis.

- a) The fact that the Applicant has previously requested and received plan extensions under RSA 674:39 shall not be factored into any decision.¹³
- b) Prior facts which remain relevant to the current request may be considered;
- c) Other relevant factors for consideration can include, but are not limited to:
 - i. The Applicant's ability to have commenced substantial completion of improvements and active and substantial development of this specific project in light of existing business conditions including the impact of the COVID-19 pandemic; and,
 - ii. The current overall municipal impact, if any, resulting from the Applicant's failure to commence construction of Phase II during the previous extension.

The above are non-exclusive items to be considered. In addition, this interim order is not intended to require the Planning Board to deny or approve the Applicant's extension request—it is intended to be a guide in the effort to find whether "good cause" exists in making a final decision.

As part of this order, the requests for findings and rulings submitted by the City of Lebanon shall be held in abeyance. The remanded hearing shall be held within 60 days of the date of this order with costs to be paid by the Applicant. Following the hearing, certified copies of the proceedings shall be furnished to the Housing Appeals Board for review and further action.

**HOUSING APPEALS BOARD
ALL MEMBERS CONCURRED
SO ORDERED:**



Elizabeth Menard, Clerk

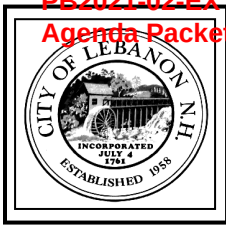
Date: September 28, 2021

¹³ The parties are reminded that because the Applicant was granted prior extensions does not mean a new extension request is a perfunctory matter since RSA 674:39 provides no such allowance.

**Agenda
Planning Board
February 8, 2021**

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

**Brady Sullivan
Prospect Hills, LLC,
0 Prospect Street
(Tax Map 108, Lot 2),
zoned R3
PB2021-02-EXT**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

February 8, 2021 Meeting

Staff Memorandum – PB2018-39-EXT

APPLICATION INFORMATION

Agenda Item: 3.B

Application ID#:
PB2021-02-EXT

Application Type:
Request for Extension of time
required for active and substantial
development of an approved final
major subdivision

Property Location:
Prospect Street

Property Owner/Applicant:
Brady Sullivan Prospect Hill, LLC

Property Size:
+/-39.48 Ac. (Phase 2 lot only)

Zoning District(s):
Residential Three (R-3)

Overlay District:
Wetlands Conservation District

HEARING NOTICE

Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1). PB2021-02-EXT

APPLICATION AND OTHER MATERIALS

- ▶ Application form
- ▶ Letter from Marc Pinard of Brady Sullivan Properties, dated January 29, 2021, to David Brooks, Planning & Development Director
- ▶ Application for Waivers
- ▶ *Staff Exhibits*
 - Notice of Action dated December 10, 2018 for PB2018-39-EXT
 - Plat titled, "Overall Development Plan, Prospect Hill – Phase 2", prepared by Rokeh Consulting, LLC, dated October 5, 2011, last revised September 16, 2015

COMPLETENESS REVIEW

This application has been reviewed in accordance with the Lebanon Subdivision Regulations. The Planning & Development Department recommends that the Board find that the application is complete enough to accept jurisdiction and to commence review.

APPLICATION OVERVIEW

The subject property is the larger portion of the Prospect Hills development project that was originally approved on April 12, 2005 for two phases. At this time, Phase 1 has been constructed but no work has begun on Phase 2.

In 2014, the Planning Board granted an amendment to the Conditional Use Permit for Prospect Hills (approved as a Planned Unit Residential Development) to update the project timelines and to allow the applicant to restore adequate performance security for installation of all site improvements for Phase 2. As part of the 2014 approval, the applicant was required to achieve Active and Substantial Development or Building as defined in Section 14.1 of the Subdivision Regulations for Phase 2 within 2 years of the decision, or no later than April 14, 2016.

Work on Phase 2 had not yet begun by the April 14, 2016 deadline and the applicant failed to submit a timely extension request to the City. Therefore, in August of 2016, the applicant submitted a new application for Phase 2, which was approved by the Planning Board on November 14, 2016 (PB2016-22-EXT-FMAJ). Per the Notice of Decision, the applicant was required to achieve “active and substantial development or building” of the Phase 2 site improvements by November 14, 2018.

On December 10, 2018, the Planning Board approved another extension (PB2018-39-EXT), pursuant to which the applicant was required to:

- a. record the plat by June 10, 2019;
- b. achieve “active and substantial development or building” (as defined in Section 14.1.B.1.a of the Subdivision Regulations¹) of the Phase 2 site improvements by December 10, 2020; and
- c. achieve “substantial completion” of the Phase 2 site improvements by December 10, 2023.

The applicant has recorded the plat for Phase 2 as required by the December 10, 2018 Notice of Action. Prior to recording the plat, the applicant provided the City with a performance bond in an amount sufficient to secure the satisfactory construction and installation of all required improvements. (Providing performance security in lieu of actual construction of the improvements in order to allow the plat to be recorded is allowed pursuant to Section 7.10 and Section 14.5.A of the Subdivision Regulations.)

However, work on Phase 2 has not yet begun and, therefore, the condition in the December 10, 2018 Notice of Action to achieve “active and substantial development or building” has not yet been achieved. Therefore, the applicant is requesting an extension of time needed to achieve “active and substantial development or building” (as defined in Section 14.1.B.1.a) and to achieve “substantial completion” (as defined in Section 14.1.B.2.a).

Finally, as set forth in the attached letter dated January 29, 2021, from Marc Pinard of Brady Sullivan Properties, it appears that the applicant is also asking the Planning Board to suspend the performance bond that has been posted for the Phase 2 site improvements until construction begins.

STAFF COMMENTS

Per Section 14.1.B.1.b of the Subdivision Regulations, “active and substantial development or building” must be achieved within two (2) years from the date of the recording of the plat, *or as otherwise specified by Board*. Here, “active and substantial development or building” of Phase 2 was not achieved by December 10, 2020, which was the date specified by the Board in the December 10, 2018 Notice of Action.

Per Section 14.1.B.1.c of the Subdivision Regulations, the Planning Board may extend the deadline to achieve “active and substantial development or building” provided that a) the applicant demonstrates “good cause” and b) the extension request is submitted prior to the expiration date:

¹ “Active and substantial development or building” is defined as:

- i) Construction of and/or installation of basic infrastructure to support the development [...] in accordance with the approved plans; and,
- ii) Construction and completion of drainage improvements to service the development (including all of the following: detention/retention basins, treatment swales, pipes, underdrains, catch basins, etc.) in accordance with the approved plans; and,
- iii) Placement and maintenance of all erosion control measures on the site as specified on the approved plans.

The time for completion of Active and Substantial Development or Building may be extended for good cause by the Planning Board. A request for an extension of the time within which to complete such Active and Substantial Development or Building shall be submitted by the Applicant to the Planning Office prior to such expiration date. Requests for extension of time to complete Active and Substantial Development or Building received after the expiration date shall not be considered by the Board.

Here, the applicant submitted the extension request on January 11, 2021, after the December 10, 2020 expiration date had passed. To address the missed deadline, the applicant has submitted an Application for Waivers requesting that the Planning Board waive Section 14.1.B.1.c.

Should the Board grant the applicant's waiver, it should then determine whether the applicant has demonstrated "good cause" for its request to extend the time within which to achieve "active and substantial development or building" of the Phase 2 site improvements. If the Board grants the requested waiver and finds "good cause", it would then be appropriate to grant the applicant's extension request.

Note that the applicant has not identified a new date by which to achieve "active and substantial development or building". As a starting point for discussion, therefore, staff has supplied proposed dates in draft condition of approval #1 below based on two years from the February 8, 2021 hearing date to achieve "active and substantial development or building", and five years from the February 8, 2021 hearing date to achieve "substantial completion".

To approve the applicant's request to suspend the requirement to post a subdivision bond, the Planning Board will need to waive Section 14.5.B of the Subdivision Regulations which provides that, "[t]he City shall not release nor reduce the amount of a Performance Security Agreement until the Reviewing Engineer, or designated agent, has certified that all required improvements have been satisfactorily completed in accordance with the approved subdivision plans and the City's standards."

With respect to the date of substantial completion, a waiver may also be needed from Section 14.5.A which requires that, "[t]he period within which required improvements must be completed shall be incorporated into the Performance Security Agreement and shall not exceed five (5) years from the date of the recording of the plat."

Staff has asked the applicant to provide a revised Application for Waivers for any additional waiver requests.

STAFF RECOMMENDATIONS

In summary, the Planning Board needs to:

- A. The Board should first evaluate the applicant's request for a partial waiver from Section 14.1.B.1.c which, as applied here, required the extension application to be submitted to the Planning & Development Department by December 10, 2020.
- B. If the waiver from Section 14.1.B.1.c is granted, the Board should then determine if the applicant has demonstrated "good cause" for granting the requested extension.
- C. If "good cause" has been demonstrated, the Board should then determine the dates by which "active and substantial development or building" and "substantial completion" of the Phase 2 site improvements must be achieved.
- D. Finally, the Board should evaluate the applicant's request to suspend the requirement to post a bond for the Phase 2 improvements, provided that the applicant submits a written request for the necessary waivers.

If the Planning Board moves to approve the extension request, then based on the information reviewed by City staff, the Planning & Development Department recommends that the Planning Board approve the application with the following conditions:

1. The applicant shall be required to (a) achieve Active and Substantial Development or Building, as defined in Section 14.1 of the Subdivision Regulations, for Phase 2 site improvements by *February 8, 2023* (or TBD); and (c) achieve Substantial Completion, as defined in Section 14.1, for Phase 2 site improvements by *February 8, 2026* (or TBD).
2. The applicant shall update all Subdivision Agreements, Security Agreements, and other documents, as necessary, to reflect the dates of the extended approval (per Section 14.1.B.1.c of the Subdivision Regulations).
3. The applicant shall comply with all applicable conditions of the Planning Board's prior Notices of Action for the Prospect Hills development, including but not limited to, the Notice of Action dated November 14, 2016, #PB2016-22-EXT-FMAJ.

Finally, please note that staff will recommend additional conditions of approval if the Planning Board grants the applicant's request to suspend the requirement to provide performance security for the Phase 2 site improvements.

**CITY OF LEBANON
APPLICATION FOR**

SPECIAL EXCEPTION	☐	☐	SITE PLAN REVIEW
VARIANCE	☐	☐	SUBDIVISION
MOTION FOR REHEARING	☐	☐	LOT LINE ADJUSTMENT
APPEAL OF AN ADMIN. DECISION	☐	☒	OTHER (EXTENSION)

PROPERTY OWNER (APPLICANT):

NAME: BRADY SULLIVAN PROSPECT HILLS, LLC TEL.#: 603-622-6223
MAILING ADDRESS: 670 N. COMMERCIAL STREET, SUITE 303, MANCHESTER, NH 03101
E-MAIL ADDRESS: MPINARD@BRADYSULLIVAN.COM

CO-APPLICANT, AGENT, OR LESSEE:

NAME: ROKEH CONSULTING, LLC TEL.#: 603-387-8688
MAILING ADDRESS: 89 KING ROAD, CHICHESTER, NH 03258
E-MAIL ADDRESS: JON@ROKEHCONSULTING.COM

PROJECT LOCATION:

TAX MAP #: 108 LOT#: 2 PLOT #: ZONE: R3
STREET ADDRESS OF PROJECT: 0 PROSPECT STREET
IS THIS PROPERTY LOCATED IN THE: **WETLANDS** ☐ YES ☒ NO **HISTORIC DISTRICT** ☐ YES ☒ NO
FLOOD PLAIN ☐ YES ☒ NO

SCOPE OF PROJECT:

AN EXTENSION REQUEST IS BEING MADE TO ALLOW TIME TO MOBILIZE AND BEGIN CONSTRUCTION ON THE PROJECT. ALL PLANS HAVE BEEN FINALIZED AND RECORDED AND THE CONSTRUCTION BOND HAS BEEN POSTED.

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: Arthur W. Sullivan, Manager DATE: 1-8-2021

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
1-11-21	108-2	PB2021-	\$427.70	1-11-21	18020

02-EXT

(Last Revised 10/09/09)



Marc A. Pinard, General Counsel
Direct Line: 603 657-9715
Email: mpinard@bradysullivan.com
Licensed to practice in New
Hampshire & Massachusetts

January 29, 2021

VIA EMAIL

City of Lebanon Planning Board
David R. Brooks, Director of Planning and Zoning
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Prospect Hills Subdivision Phase II Status

Dear Mr. Brooks:

Over the course of 2019 and 2020 Brady Sullivan has worked closely with the City of Lebanon on final items toward the Phase I close out and required items for Phase II.

In 2019 the as-builts plans for Phase I were completed and recorded at the registry of deeds. Also completed and recorded were all the final plans for Phase II and the surety bond was posted with the City of Lebanon. In 2020 we worked with the City of Lebanon on all the final easements that were required for the project and recorded all documents with the Registry.

Due to the Covid 19 pandemic in 2020 further progress on the project became impossible. However, Brady Sullivan is committed to commencing site work during calendar 2021 regardless of the status of the continuing pandemic.

We respectfully request an extension of the project approval for Phase II in order to continue our progress and move forward with the construction phase of the project.

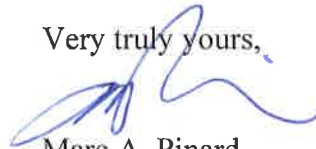
As part of this extension request, we desire that the bond requirement be waived until construction has commenced. It is extremely costly to carry the bond and there is no risk to the City until construction begins. Based on that risk reality and the related terms of the approval, we seek to suspend the bond and reinstate it when actually required by the City to protect its interests.

670 N. COMMERCIAL STREET MANCHESTER NH 03101
P 603.622.6223 F 603.622.7342
BRADYSULLIVAN.COM

City of Lebanon Planning Board
David R. Brooks, Director of Planning and Zoning
January 29, 2021
Page Two

Thank you for your attention to this matter and please let me know if you have any questions or comments.

Very truly yours,



Marc A. Pinard





City of Lebanon, New Hampshire APPLICATION FOR WAIVERS

Office Use Only

Date Received: _____

File No.: _____

PROJECT INFORMATION

Name of Applicant: Brady Sullivan Prospect Hill, LLC

Project Name: PROSPECT HILL PHASE 2

Project Address: PROSPECT STREET

WAIVER REGULATIONS

In order to grant a Waiver from a requirement of the City of Lebanon Site Plan Review or Subdivision Regulations, the Planning Board must find that the Waiver is justified under one of the following criteria (See Article VII of the Site Plan Review Regulations and Section 7.15 of the Subdivision Regulations):

Criteria A. Strict conformity would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulations;

OR

Criteria B. Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

WAIVER REQUEST(S)

I (we) hereby request a Waiver from:

[You can respond in the space provided, or attach a separate statement. Please be prepared to address each request during your public hearing. You must show that you have justified granting the Waiver(s).]

Section 14.1.B.1.c

1. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

Strict conformity would cause unnecessary hardship on the applicant in that a new application for the development would potentially need to be applied for. The developer has worked extensively with the City of Lebanon on the project and all conditions of approval have been met and mylars recorded for the project. The intent of ordinance is for the applicant to keep the board informed of the process and show that progress is being made on the project.

The request for an extension is consistent with the ordinance.

2. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

3. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

4. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

5. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

6. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

7. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

8. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

SIGNATURE

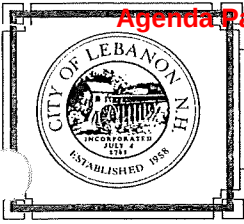
I (we) hereby submit this application to the Planning Board and attest that to the best of my (our) knowledge all of the information on this application form and in the accompanying application materials and documentation is true and accurate. As the applicant or as the agent of the applicant, I attest that I am duly authorized to act in this capacity.

Signature of Applicant: _____

Date: 1-25-2021

Shane D. Brady, member

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CITY OF LEBANON ~ PLANNING OFFICE
51 North Park Street ~ Lebanon, NH ~ 03766

**NOTICE OF ACTION
LEBANON PLANNING BOARD**

Notice is hereby given that on **DECEMBER 10, 2018**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision Regulations:

Carl Porter moved that the Lebanon Planning Board finds the application of **BRADY SULLIVAN PROSPECT HILLS, LLC** for an Extension of a Final Review of a Major Subdivision and Conditional Use Permit, #PB2018-39-EXT, is complete enough to accept jurisdiction and commence review.

The motion was seconded by Matthew Hall. The vote on the motion was unanimous in favor, 9-0.

Notice is hereby given that on **DECEMBER 10, 2018**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision Regulations:

Carl Porter moved that the Lebanon Planning Board **APPROVE** the application of **BRADY SULLIVAN PROSPECT HILLS, LLC** for an Extension of a Final Review of a Major Subdivision and Conditional Use Permit (#PB2016-22-EXP-FMAJ) for Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) Lot 14 (phase 1), #PB2018-39-EXT, including any and all supplemental submissions and testimony provided during the public hearing, with the following conditions:

1. The applicant shall be required to (a) record the plat within six (6) months of the date of the date of this decision, or by June 10, 2019; (b) achieve Active and Substantial Development or Building, as defined in Section 14.1 of the Subdivision Regulations, for Phase 2 site improvements within two (2) years of the date of this decision, or by December 10, 2020; and (c) achieve Substantial Completion, as defined in Section 14.1, for Phase 2 site improvements within 5 years of the date of this decision, or by December 10, 2023.
2. The applicant shall comply with all applicable conditions of the Planning Board's prior Notices of Action for the Prospect Hills development, including but not limited to, the Notice of Action dated November 14, 2016, #PB2016-22-EXT-FMAJ.

The motion was seconded by Sarah Welsch. The vote on the motion was 7 in favor, 1 opposed, and 1 abstention.

THE CITY OF LEBANON

By: Kristin Dyer
Planning Board Chair

DATE: 1/14/19

SIGNED

DATED

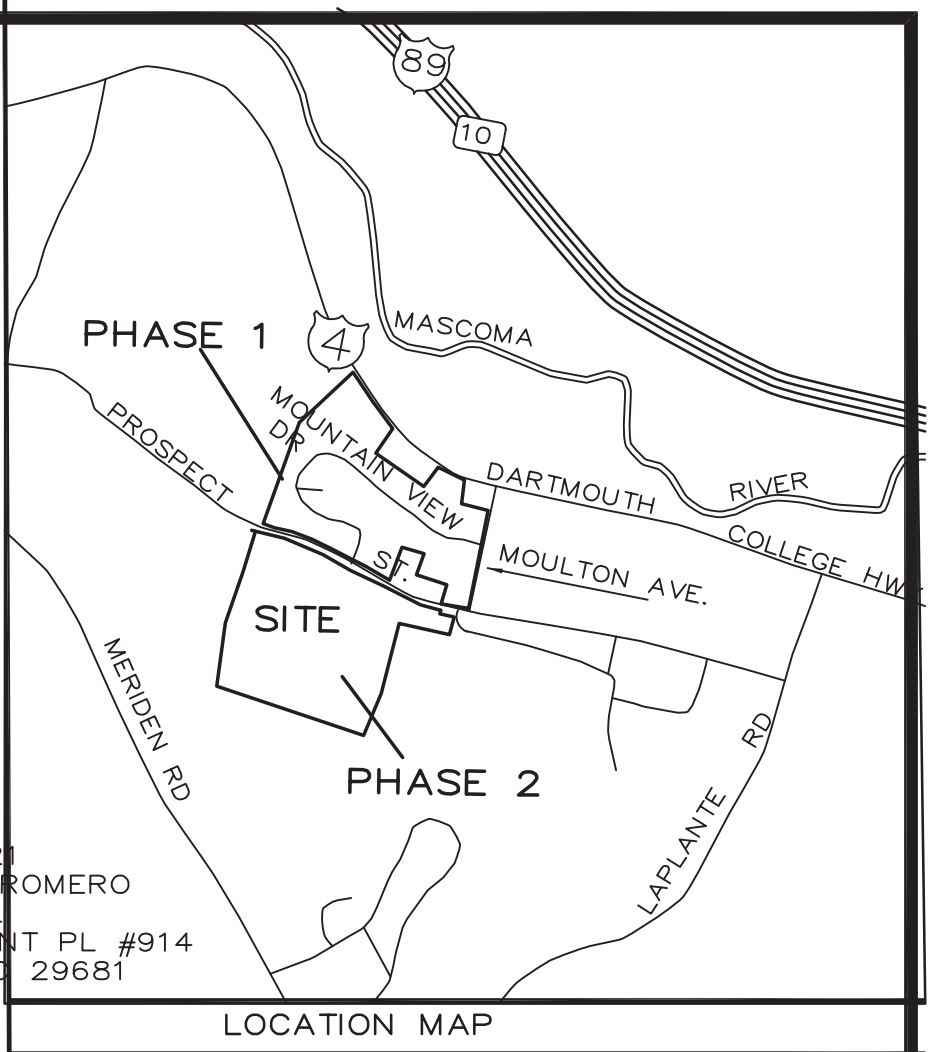
Shane D. Brady, member

2-20-2019

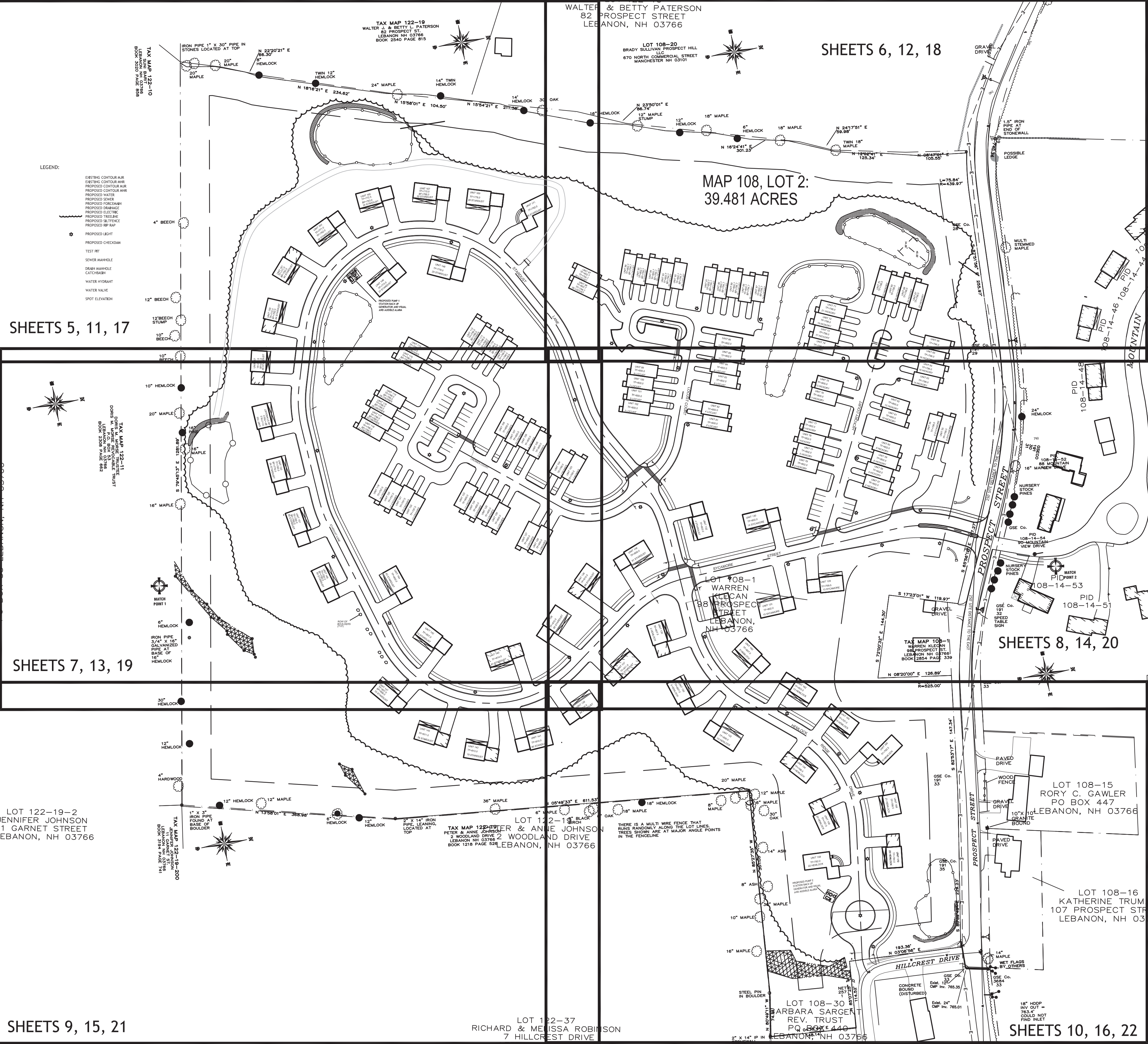
PHASE 2 DEVELOPMENT MAP

SCALE: 1"=100'

PHASE 1 DEVELOPMENT MAP COMPLETED



LOT 122-10 SUNIL BAROT
21 WESTGATE CROSSING
NASHUA, NH 03052



SHEETS 5, 11, 17

SHEETS 7, 13, 19

SHEETS 9, 15, 21

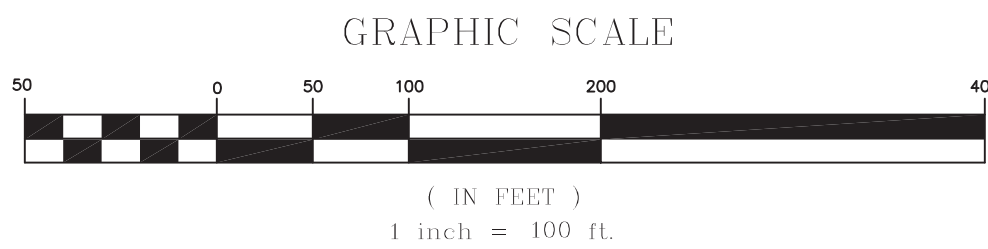
SHEETS 6, 12, 18

SHEETS 8, 14, 20

SHEETS 10, 16, 22

MAP 108, LOT 14:
31.058 ACRES

MAP 108, LOT 2:
39.481 ACRES



DEVELOPER:
BRADY SULLIVAN PROSPECT HILL, LLC
670 N. COMMERCIAL STREET, SUITE 303
MANCHESTER, NH 03101

OVERALL DEVELOPMENT PLAN
PROSPECT HILL - PHASE 2
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE
DATE: 10-5-11

REVISIONS			
DATE	DESCRIPTION	DWN BY	CK BY
2-21-14	REVISIONS TO COVER SHEET PER COMMENTS	JR	JR
3-16-15	EDITS PER ENGINEERING COMMENTS.	JR	JR
9-16-15	EDITS PER ENGINEERING COMMENTS.	JR	JR

Rokeh Consulting, LLC
89 KING ROAD, CHICHESTER, NH 03258
PH: 603-387-8688 FAX: 603-513-6242

SCALE: 1" = 100'
DR. BY: JR CK. BY: JR
JOB NO. 2010.0023
SHEET NO. 2 OF 53

Ms. Chewning noted that the picnic table area is grass and inquired about the location of the public entrance. Mr. Sagris stated that the entrance for the public would be on the north side in front of handicap parking spot. Ms. Chewning inquired about striping for the crosswalk. Mr. Sagris confirmed it would be striped.

Mr. Hall inquired of Ms. Wygonik as to the best location for crosswalk, suggesting it could be moved to the stop sign. Ms. Wygonik suggested pedestrians would still cross in the proposed location due to the location of the crosswalk at the street. Ms. Wygonik agreed it was a valid concern that people leaving the drive-thru may be distracted, and she wouldn't want to see it closer to the window. The goal is to make it as safe as possible. It would be desirable to have it at the stop sign, but the public would likely not make the effort to go to it.

A MOTION by Matthew Hall to continue the hearing of 89 Donuts, LLC (applicant), Miracle Mile Realty, LLC (property owner), 388 Miracle Mile (Tax Map 103, Lot 6), zoned GC to March 8, 2021, at 6:30 PM.

Seconded by Kathie Romano

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against - None

The MOTION was approved (9-0).

- B. Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3:** Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1).
PB2021-02-EXT - Completeness Review and Public Hearing

Staff recommended that the application was complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION by Kathie Romano that the Lebanon Planning Board finds the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), PB2021-02-EXT, IS complete enough to accept jurisdiction and commence review.

Seconded by Joan Monroe

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against – None

****The MOTION was approved (9-0)***

Jon Rokeh, Civil Engineer, and Mark Pinard of Brady Sullivan attended on behalf of the application.

Mr. Rokeh updated the Board on the status of Phase I. The last extension was in 2018. The Phase II plan had to be reengineered due to many site issues. Phase I is completed, and they are ready to start on the Phase II infrastructure in 2021. They are asking for an extension of time to achieve active and substantial development of Phase II. Housing is needed at present, and they are ready to complete the balance of the project.

Mr. Corwin stated that Staff identified four discussion points to evaluate the application:

- The request for a partial waiver from the extended application deadline.
- Whether there is good cause for granting the requested extension. The extension is to achieve active and substantial development of Phase II within two years of the plat recording.
- Determination of new dates for achieving active and substantial development and by what date to achieve substantial completion. A date of 2/8/2023 is suggested, and the maximum time is five years of until June 12, 2024.
- Applicant requested a waiver of requirement of Phase II improvements. They did supply security, and the applicant did not request it. Item D is not at issue.

Chair Garland inquired if Staff had any comment on the missed deadline. Mr. Corwin stated that it is up to the Board. The applicant must demonstrate unnecessary hardship or conditions of the site and have identified unnecessary hardship as the reason.

Chair Garland invited Board comments.

Ms. Romano expressed concern over Phase I due to many negative reactions regarding the quality of work done and way the developer responded to those problems. Local people need affordable housing, and this developer didn't perform. Therefore, she is not in favor of granting another extension.

Ms. Monroe expressed her agreement with Ms. Romano, noting there was no excuse for this recent deadline being missed, which is part of the job. The applicant listed many things they have been doing, but sidewalks were failing along with poor quality work. The closing of Phase I may not be accurate, and would be difficult to grant a waiver from missing the deadline.

Mr. Winny stated it would be important to know where they are in meeting requirements.

Mr. Hall suggested missing a deadline by one month is not a flagrant issue.

Mr. Winny shared the opinion of Rory Gawler in Ward 3, who is opposed to granting an extension, because the applicant has not met reasonable deadlines in the past on Phase I.

Mr. Corwin observed that the applicant has made multiple requests in the past. One resulted in making a new application, for which they missed getting the plat approved, so they applied for an extension in 2018. It was recorded and security was provided. However, once the plat is recorded they had two years to achieve active and substantial development by Dec. 10, 2020, which was not accomplished. That is

what this extension relates to, but the Board must first waive the deadline and then approve the extension. Mr. Brooks stated that they have recorded the plat but have not begun construction or erosion control measures. Mr. Rokeh agreed he missed the deadline, but he is asking for three weeks; and disapproval would cause unnecessary hardship.

A MOTION by Matthew Hall that the Lebanon Planning Board APPROVE a partial waiver for the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), PB2021-02-EXT, from Section 14.1.B.1.c of the Subdivision Regulations, which required the extension application to be submitted by December 10, 2020.

Seconded by Joan Monroe

Roll Call Vote:

Voting in Favor – Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, Mr. Hall, Mr. Amaro,

Voting Against – Mr. Garland, Mr. Rutter, Mr. Winny

****The MOTION was approved (6-3)***

Mr. Rokeh stated that he will meet with Staff to get things ready for the March 8, 2021 meeting.

A MOTION by Kathie Romano to continue the hearing of Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3 to March 8, 2021, at 6:30 PM.

Seconded by Jerry Rutter.

Ms. Monroe asked about guidance regarding the meaning of active and substantial progress.

Roll Call Vote:

Voting in Favor – Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning, Ms. Stavis, M. Hall, Mr. Garland

Voting Against – None

The MOTION was approved (9-0).

- C. ICV-NH, LLC, 67 Etna Road (Tax Map 26, Lot 2), zoned IND-L:** Request for modifications to the required open space for the Industrial PUD approved in 2016 (PB2016-04-SPR), and to the subdivision plat required to be recorded for the 75-unit multi-family condominium conversion approved in 2018 (PB2018-30-FMAJ). **PB2021-03-FMAJ-SPA** - Completeness Review and Public Hearing

Mr. Corwin stated that Staff recommends the application is complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION by Kathie Romano that the Lebanon Planning Board finds the application of ICV-NH, LLC, regarding 67 Etna Road (Tax Map 26, Lot 2), PB2021-03-FMAJ-SPA, IS complete enough to accept jurisdiction and commence review.

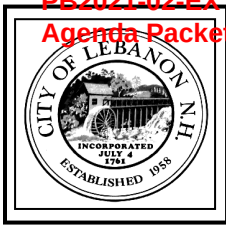
Seconded by Laurel Stavis

Roll Call Vote:

**Agenda
Planning Board
March 8, 2021**

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

**Brady Sullivan
Prospect Hills, LLC,
0 Prospect Street
(Tax Map 108, Lot 2),
zoned R-3
PB2021-02-EXT**



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

PLANNING BOARD

March 8, 2021 Meeting

Staff Memorandum – PB2021-02-EXT – *continued from 2/8/21*

APPLICATION INFORMATION

Agenda Item: 3.B

Application ID#:
PB2021-02-EXT

Application Type:
Request for Extension of time
required for active and substantial
development of an approved final
major subdivision

Property Location:
Prospect Street

Property Owner/Applicant:
Brady Sullivan Prospect Hill, LLC

Property Size:
+/-39.48 Ac. (Phase 2 lot only)

Zoning District(s):
Residential Three (R-3)

Overlay District:
Wetlands Conservation District

HEARING NOTICE

Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) and Lot 14 (phase 1). PB2021-02-EXT

APPLICATION AND OTHER MATERIALS

New:

- ▶ *Applicant submission included with printed agenda packet:*
 - Application for Waivers (*additional waiver requests*)
- ▶ *Applicant submissions included with on-line agenda packet only:*
 - Corrective Deed Without Covenants, dated June 4, 2020 (2 pages)
 - Performance Bond/Security Agreement, dated June 3, 2019 (35 pages)
 - Turn Lane Dedication Plan, last revised July 31, 2019 (1 sheet)
 - Corrected Turn Lane Dedication Plan, last revised May 28, 2020 (1 sheet)
 - Easement Deed, dated September 10, 2020 (10 pages)
 - Overall Open Space Plan, Prospect Hill – Phase 2, last revised May 24, 2019 (2 sheets)
 - Water and Sewer Line Transfer and Access Easement Deed, September 30, 2020 (4 pages)
 - Water Line As-Built, Prospect Hill-Phase 1, dated October 5, 2011 (2 sheets)
- ▶ *Other submissions included with printed agenda packet:*
 - *Correspondence from Allan & Pamela Green, Warren Klecan, Gerry Gatz, Melissa & Rich Robinson, Rory Gawler, and David Kuhn*

Included with the February 1, 2021 agenda packet:

- ▶ Application form

- ▶ Letter from Marc Pinard of Brady Sullivan Properties, dated January 29, 2021, to David Brooks, Planning & Development Director
- ▶ Application for Waivers
- ▶ *Staff Exhibit:* Notice of Action dated December 10, 2018 for PB2018-39-EXT

ADDITIONAL WAIVER REQUESTS

The applicant has submitted a second Application for Waivers (see attached) requesting waivers from the following sections of the Subdivision Regulations:

- A. Waiver requests relating to the requested suspension of the security provided for Phase 2:
- **7.10** (*erroneously referred to as Section 14.7.10 in the Application for Waivers*), allowing an applicant to provide security in lieu of completing the required improvements in order to record the plat (*otherwise, per Section 7.11, an approved subdivision plat can only be recorded once the required infrastructure improvements are constructed*).
 - **14.5.B** providing, in part, that, “[t]he City shall not release nor reduce the amount of a Performance Security Agreement until the Reviewing Engineer, or designated agent, has certified that all required improvements have been satisfactorily completed in accordance with the approved subdivision plans and the City’s standards.” (*Approving the requested partial waiver from Section 14.5.B and the waiver from Section 7.10 would permit the Board to suspend the security that was provided to the City in 2019 for the Prospect Hills Phase 2 required infrastructure improvements. The applicant provided such security in order to record the Prospect Hills Phase 2 plat (the recording of the plat was not permissible without the provision of security since construction on Phase 2 has not been completed (nor has it since begun))*).
- B. Waiver requests relating to the requirement that all Phase 2 improvements shall be completed by June 12, 2024 (i.e. within 5 years of the recording of the plat):
- **14.5.A** requiring, in part, that, “[t]he period within which required improvements must be completed shall be incorporated into the Performance Security Agreement and shall not exceed five (5) years from the date of the recording of the plat.” (*Here, the Phase 2 plat was recorded on June 12, 2019 which means that all Phase 2 improvements must be constructed by no later than June 12, 2024, unless Section 14.5.A is waived*).
 - **14.1.B.1.c** requiring, in part, that, “[i]n no event shall the time for completion of Active and Substantial Development or Building be extended to more than five (5) years from the date of the recording of the plat, unless the subdivision has been approved for completion in phases in accordance with Section 7.13 of these Regulations. (*Staff has asked the applicant to add Section 14.1.B.1.c to the attached Application for Waivers and submit prior to the March 8, 2021 Planning Board meeting*).

STAFF RECOMMENDATIONS

Following the closing of the public hearing, staff recommends that the Planning Board discuss the applicant's requests as follows:

- A. Discuss whether to suspend the requirement to post a bond for the Phase 2 improvements, and make a formal determination with respect to the applicant's requested waiver from Section 7.10 and partial waiver of Section 14.5.B.
- B. Discuss whether the applicant has demonstrated "good cause" for granting the requested extension to achieve "active and substantial development", as discussed in the prior staff memo. (As a reminder, Section 14.1.B.1.c of the Subdivision Regulations provides that, "The time for completion of Active and Substantial Development or Building may be extended for **good cause** by the Planning Board.") (emphasis added)
- C. Make a formal determination with respect to the applicant's requested partial waivers of Sections 14.5.A and 14.1.B.1.c.
- D. If "good cause" has been demonstrated with respect to the extension request, determine the dates by which "active and substantial development or building" and "substantial completion" of the Phase 2 site improvements must be achieved. *(As a reminder, the applicant has not identified any dates by which "active and substantial development or building" and "substantial completion" of the Phase 2 site improvements will be met.)*
 - a. Note that if the Board does *not* grant the requested partial waivers from Sections 14.5.A and 14.1.B.1.c, then the date by which active and substantial development must be accomplished can be no later than June 12, 2024, which is five (5) years from the date the plat was recorded.
- E. Make a formal motion with respect to granting the applicant's extension request. In its motion, the Board should consider identifying the basis for its finding with respect to "good cause".

If the Planning Board moves to approve the extension request, then based on the information reviewed by City staff, the Planning & Development Department recommends that the Planning Board approve the application with the following conditions:

- 1. The applicant shall be required to (a) achieve Active and Substantial Development or Building, as defined in Section 14.1 of the Subdivision Regulations, for Phase 2 site improvements by _____; and (c) achieve Substantial Completion, as defined in Section 14.1, for Phase 2 site improvements by _____.
- 2. The applicant shall update all Subdivision Agreements, Security Agreements, and other documents, as necessary, to reflect the dates of the extended approval (per Section 14.1.B.1.c of the Subdivision Regulations).
- 3. The applicant shall comply with all applicable conditions of the Planning Board's prior Notices of Action for the Prospect Hills development, including but not limited to, the Notice of Action dated November 14, 2016, #PB2016-22-EXT-FMAJ.

If the Board grants the applicant's requested waiver from Section 7.10 and partial waiver of Section 14.5.B, staff recommends the following additional condition of approval:

4. At its expense, the applicant shall work with the City to prepare and record an agreement to suspend the Performance Bond/Security Agreement, dated June 3, 2019, subject to review and approval by the City's legal counsel. No construction of any kind including earthwork shall take place until a new Performance Security Agreement is entered into and adequate security provided, in conformance with Sections 7.10 and 14.5.A of the Subdivision Regulations.

Q:\Development_Review\Large-Scale_Dev-Projects\Prospect.Hills\2021-02-EXT_0 Prospect St_108-002\2021-03-01_Staff Memo.docx



City of Lebanon, New Hampshire APPLICATION FOR WAIVERS

Office Use Only

Date Received: _____

File No.: _____

PROJECT INFORMATION

Name of Applicant: Brady Sullivan Prospect Hill, LLC

Project Name: PROSPECT HILL PHASE 2

Project Address: PROSPECT STREET

WAIVER REGULATIONS

In order to grant a Waiver from a requirement of the City of Lebanon Site Plan Review or Subdivision Regulations, the Planning Board must find that the Waiver is justified under one of the following criteria (See Article VII of the Site Plan Review Regulations and Section 7.15 of the Subdivision Regulations):

Criteria A. Strict conformity would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulations;

OR

Criteria B. Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

WAIVER REQUEST(S)

I (we) hereby request a Waiver from:

[You can respond in the space provided, or attach a separate statement. Please be prepared to address each request during your public hearing. You must show that you have justified granting the Waiver(s).]

Section 14.5.B

1. Section ___ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

A waiver is requested to suspend the bond until such time that construction begins. The bond amount is approved and has been put in place. A waiver is requested only to temporarily suspend the bond. The purpose of the bond is insure that all improvements are constructed according to the approved construction plans and the bond is in place to insure that there is never a partially constructed project. No infrastructure work will occur without Brady Sullivan renewing the existing bond prior to commencement of infrastructure improvements in 2021. Because the project and subsequent bond are very large as compared to other projects, the suspension of the bond until actual construction begins would be consistent with spirit and intent of the ordinance.

Section 14.7.10

2. Section ___ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

A waiver is requested to suspend the bond until such time that construction begins. The bond amount is approved and has been put in place. A waiver is requested only to temporarily suspend the bond. The purpose of the bond is insure that all improvements are constructed according to the approved construction plans and the bond is in place to insure that there is never a partially constructed project. No infrastructure work will occur without Brady Sullivan renewing the existing bond prior to commencement of infrastructure improvements in 2021. Because the project and subsequent bond are very large as compared to other projects, the suspension of the bond until actual construction begins would be consistent with spirit and intent of the ordinance.

Section 14.5.A

3. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

A waiver is requested for completion of improvements within 5 years of the recording of the plat.

~~The date would currently be June 12, 2024 and we are requesting that time period to be extended. Phase Two of the Prospect Hills development is a large construction project and it is anticipated that it will take time to complete. Construction is proposed to start in 2021 and work through the project in sections until the infrastructure is completed. The intent of the ordinance is make sure a project gets completed in a timely manor. The size of this project makes it unique as compared to other projects that can easily be completed in a short amount of time. The spirit of the ordinance will be preserved with the waiver being granted.~~

4. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

5. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

6. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

7. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

8. Section ____ of the (circle one) Site Plan Review / Subdivision Regulations. A Waiver of this Section meets (circle one) Criteria A / Criteria B because _____

SIGNATURE

I (we) hereby submit this application to the Planning Board and attest that to the best of my (our) knowledge all of the information on this application form and in the accompanying application materials and documentation is true and accurate. As the applicant or as the agent of the applicant, I attest that I am duly authorized to act in this capacity.

Signature of Applicant: _____ Date: 2-24-2021

Arthur W. Sullivan, member/manager

S:\PLN\FORMS - APPLICATION\Planning Board Applications\WAIVER\Waiver Application.docx

2/2/2021

To the members of Lebanon planning board

In regards to the Brady Sullivan Prospect Hills LLC project. We have concerns about this project. My wife and I bought this property from my wife's father, Walter Patterson. It is at 82 Prospect St. We talked to my father-in-law about what went on last time. He told us that the project could only be extended 3 times. He believes that it has. And that they were suppose to maintain boundary lines, which was not done.

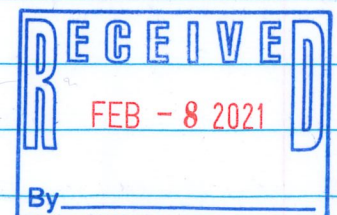
Another concern is that we have a artesian well. This area is all ledge which means that there will be blasting done. We are concerned that it may do something to the well, and we are also concerned about the foundation.

We will not be able to attend meeting, but we ask that you notify us of the results of meeting.

Thank-you
Allan R. Green
Pamela L. Green

82 Prospect St.
Lebanon NH 03766

cell-phone Allan 603 398 6198
Pam 603 398 6197



From: wfklecan@comcast.net
To: [David Brooks](#)
Subject: [EXTERNAL]Brady Sullivan Phase 2
Date: Monday, February 8, 2021 5:59:17 PM

As you know, I'm an abutter on 3 sides and am opposed to another extension for B-S. They apparently have been wanting to sell it as an approved development parcel according to a broker from down state who talked with me sometime back and said he was under contract to them. Additionally the ledge will make it financially prohibitive to install/construct the infrastructure.

Warren Klecan

Sent from my iPhone

This email has been scanned for spam and viruses by Proofpoint Essentials. Visit the following link to report this email as spam:

https://us3.proofpointessentials.com/index01.php?mod_id=&mod_option=gitem&mail_id=12825151-isuqM9ay0Bis&r_address=vid.brooks%40lebcity.com&report=

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

From: [Gerry Gatz](#)
To: [Jim Winny](#); [David Brooks](#); cc: [Rory Gawler](#); [Gordon Sargent \(email\)](#); [Warren Klecan](#); [Elizabeth Larsen](#); [Andy Anderson](#); [Valerie Nevel](#); [Mary Danko](#); [David Kuhn](#); [Gerry Gatz](#)
Subject: [EXTERNAL]Fwd: Opposition to Brady Sullivan's Request for an Extension
Date: Thursday, February 18, 2021 9:39:40 AM

I would like to recommend that you not offer the Brady Sullivan group an extension. I live on Hillcrest Drive and also agree with the concerns raised by Rory Gawler. They have demonstrated that they are interested in nothing more than their profits. They seem not to be, in any way, interested in what is in the best interest of Lebanon. Please do not offer them an extension.

----- Forwarded message -----

From: **Melissa Robinson** <melissa.robinson@fourseasonssir.com>
Date: Thu, Feb 18, 2021 at 8:31 AM
Subject: Opposition to Brady Sullivan's Request for an Extension
To: <jim.winny@lebanonnh.gov>, Brooks, David <David.Brooks@lebcity.com>
Cc: Rory Gawler <rory.c.gawler@gmail.com>, Gordon Sargent (email) <gbsarge@myfairpoint.net>, Warren Klecan <wfklecan@comcast.net>, Elizabeth Larsen <elizabeth.larsen@dartmouth.edu>, Andy Anderson <awa0423@gmail.com>, Valerie Nevel <valerienyl@gmail.com>, Mary Danko <byram1107@yahoo.com>, David Kuhn <Dlkuhn573@yahoo.com>, Gerry Gatz <gerry.gatz@gmail.com>, Dick & Selma Sanborn <selsanborn@comcast.net>

Dear Planning Board,

My husband, Rich and I live at 7 Hillcrest Drive, direct abutters to the Brady Sullivan property at issue. We agree wholeheartedly with Rory Gawler's concerns noted in his email to you below.

Brady Sullivan should not be granted yet another extension. They have proven over and over again that they do not have the City of Lebanon's best interests in mind.

Sincerely,

Melissa & Rich Robinson

Melissa Robinson
Upper Valley/REALTOR®
Licensed in NH & VT

Four Seasons Sotheby's International Realty
17.5 Lebanon Street, Hanover, NH 03755
mobile: [603-667-7761](tel:603-667-7761)
office: [603-643-6070](tel:603-643-6070)





From: **Rory Gawler** <rory.c.gawler@dartmouth.edu>
Date: Mon, 8 Feb 2021 at 19:54
Subject: Opposition to Brady Sullivan proposal
To: Jim Winny <jim.winny@lebanonnh.gov>, Brooks, David <David.Brooks@lebcity.com>

Dear Planning board,

Thank you for your work. I apologize for not being able to give this testimony in person, I had another meeting that I had to attend at 8 PM.

My name is Rory Gawler and I live at 103 Prospect St, in Ward 3.

I am opposed to approving Brady Sullivan's request for an extension.

Brady Sullivan does not have the City of Lebanon's best interests in mind and has demonstrated this on numerous occasions in the past.

- They have not made any attempt to meet reasonable deadlines for submitting requests
- They delayed well beyond promised deadlines in completing required pieces of phase 1 requests made by the city
- They have sent brokers to view the property in the interest of selling it - they clearly simply want to ensure that they can market it as ready for development
- They don't respect the homeowners or their tenants. I understand from talking to neighbours that they retained ownership of 51% of the units in the phase 1 development in order to effectively render impotent the HOA and be able to vote whatever costs they wanted onto the remaining owners.
- I've seen how they behaved in previous meetings where they were disrespectful to city staff, city attorney, and members of the planning board.

They are not a good partner, yet they are asking for exceptional treatment in requesting this waiver WELL after deadline. This has nothing to do with Covid and everything to do with their lack of good faith.

>>>

This is not the type of development we need in Lebanon. There have been a lot of high end units approved for building recently, especially on Mt. Support Rd. Putting more poorly built, expensive single family homes and duplexes here would not solve the housing crunch in Lebanon. We need affordable housing in dense, walkable areas.

Further, the impact fees assessed in these types of developments don't counterbalance the eventual cost burden to the city in supporting this type of development.

As well, as we saw very clearly this summer, the site is centered on very hard granite bedrock ledge and is not a suitable building site.

It is, however, an excellent outdoor classroom for the nearby middle school, as well as a valuable resource for the existing neighbourhoods. As we saw this past year during the pandemic lockdown, access to green space is critical for mental health. There are multiple trails frequently utilised by the neighbours, but also by residents who live farther away.

It is also an important wildlife corridor as it connects large green spaces together. I have seen deer, bear, lots of foxes, coyotes and even a bobcat come through there, not to mention our local murder of crows that nests in the trees regularly. It numbers in the thousands of birds.

If this space must be developed, let it be by a responsible developer who will be an active partner with the city, creating reasonable housing options, in an ecologically conscious way.

Or more suitably, let this green space remain green and let's repurpose some already impacted space into the housing units we need.

Thank you for your time.

.

Security Advisory: Crimes involving Internet, email and wire fraud are a constant threat. **Do not wire funds or send nonpublic personal information**, such as social security numbers, credit card or debit card numbers or bank account and/or routing numbers **to anyone (including your attorney or your Realtor)** who appears to be requesting the same by email **without personal verification of authenticity**. If you should receive such a request by email do not reply to that message. Verify by making alternate direct personal contact.

MANDATORY DISCLOSURE CONCERNING REPRESENTATION AND CONFIDENTIALITY: Licensed real estate professionals are required to disclose information regarding confidentiality and agency status to persons with whom they communicate regarding real estate. Four Seasons Sotheby's International Realty (FSSIR) has elected to practice as a Designated Agency Firm. Within a written Listing Agreement or Buyer Broker Agreement, a specific Designated Agent(s) is appointed to represent you as a client. Your designated agent(s) must keep your confidences and act according to your interests and lawful instructions. Other agents of the firm may represent other buyers or sellers whose interests conflict with yours. Until you have entered into a written Listing Agreement or Buyer Broker Agreement with us, your communications with us are not confidential and we are not acting on your behalf as your agent. I am happy to answer any questions you may have or you may access further information regarding confidentiality and designated agency on-line through the Secretary of State/Real Estate Commission web site. This transmission contains information that may be confidential and that may also be proprietary; unless you are the intended recipient of the message (or authorized to receive it for the intended recipient), you may not copy, forward, or otherwise use it, or disclose its contents to anyone else. If you have received this transmission in error, please notify us immediately and delete it from your system.

--

Gerry
11 Hillcrest Drive
Lebanon, NH 03766
what three words: capable.permit.graciously

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: City of Lebanon-Planning
Sent: Thursday, February 25, 2021 5:43 PM
To: David Kuhn
Cc: Crystal Taplin; Tim Corwin
Subject: FW: [EXTERNAL]Online Form Submission #4664 for Boards and Committees Contact Form

Good Afternoon,

I am writing to let you know we have received your letter and we will distribute it to the members of the Planning Board.

Please let us know if you have any other questions.

Thank you,
Crystal Taplin

From: noreply@civicplus.com <noreply@civicplus.com>
Sent: Wednesday, February 24, 2021 1:58 PM
To: webmaster <webmaster@lebcity.com>; Beth Beraldi <beth.beraldi@lebanonnh.gov>; City of Lebanon-Planning <Planning@lebanonnh.gov>
Subject: [EXTERNAL]Online Form Submission #4664 for Boards and Committees Contact Form

Boards and Committees Contact Form

Please complete this form to contact a City of Lebanon board or committee. Your submission will be received by a city staff member who will forward your communication to members of the board or committee you choose below. Please be aware that your submission will become part of the public record.

Visit our [Boards and Committees page](#) to find rosters, agendas, meeting details, and more. Please [contact the City Manager's office](#) if you have questions about this form.

(Section Break)

Your First Name	David
Your Last Name	Kuhn
Contact Email Address	dlkuhn573@yahoo.com
Contact Phone Number	6094955930

(Section Break)

Which board or committee
do you wish to contact?

Planning Board

Please enter your
comments:

Dear Planning Board, My wife and I are new to the area. We live at 15 Hillcrest Dr. We are writing to you concerning the proposed development of "Prospect Woods". In our opinion it would be very detrimental to approve of this area for a housing development. The area is a wildlife corridor. We have seen deer, fishers, bears, foxes, hawks, owls, and countless birds. There are vernal ponds, small streams, and hundreds of trees. Like all of the surrounding families in the area we enjoy using the area for recreation; walking, snowshoeing, and cross country skiing. As has been evident with our pandemic, outdoor recreation is a requirement for mental and physical health. The area would provide a very valuable resource for the middle school as an outdoor environmental classroom. There is an access point on Prospect Street that could be made into a small parking area for a trail head, making the area more accessible to other Lebanon residents. While we do not have previous experience with this particular developer we don't believe that their interests lie with the town of Lebanon but with their own pockets. We thank you for your time in considering our comments and our neighbors. Please do not approve the area for development but save it as a "Green Space".
Dave & Linda Kuhn

Do you need to attach a
file?

No

Email not displaying correctly? [View it in your browser.](#)

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



Return to:

E- C. Christine Fillmore, Esq.
DRUMMOND WOODSUM
670 N. Commercial Street Suite 207
Manchester, NH 03101

20007658

06/25/2020 12:27 PM

Book 4530 Page 598

Page 1 of 2

Register of Deeds, Grafton County

CORRECTIVE DEED WITHOUT COVENANTS

KNOW ALL MEN BY THESE PRESENTS, that Lebanon School District, a New Hampshire school corporation with a mailing address of 20 Seminary Hill, West Lebanon, New Hampshire 03784, for nominal consideration, grants all its right, title and interest to the CITY OF LEBANON, a New Hampshire municipal corporation with a primary place of business of 51 North Park Drive, Lebanon, New Hampshire 03766, without covenants of title, for highway purposes, the following:

A certain tract or parcel of land, with any improvements thereon, situated in the City of Lebanon, County of Grafton and State of New Hampshire, being depicted as "Dedication Area" on a plan entitled "Corrected Turn Lane Dedication Plan, Tax Map 109 Lot 30, 3 Moulton Ave Lebanon NH Grafton County," by J.E. Belanger Land Surveying PLLC, revised date May 28, 2020, and to be recorded at the Grafton County Registry of Deeds on or about the same date as this Deed, being further bounded and described as follows, to wit:

Beginning at a railroad spike found at the northwesterly corner of Lot 30 as shown on the City of Lebanon, New Hampshire Tax Map 109 on the southerly side of Dartmouth College Highway and the easterly side of Moulton Avenue; thence along the southerly side of Dartmouth College Highway South 84° 25' 0" East a distance of 27.72 feet to a point; thence South 09° 11' 10" West a distance of 238.83 feet to the easterly side of Moulton Avenue; thence along the easterly of Moulton Avenue North 02° 31' 50" East a distance of 238.70 feet to the southerly side of Dartmouth College Highway and the point of beginning.

Containing 3,304 square feet or 0.076 acres, more or less.

Meaning and intending to describe and convey a portion of the same premises as conveyed to the within Grantor by Deed of M&M Equities, LLC dated November 7, 2008 and recorded at the Grafton County Registry of Deeds at Book 3563, Page 990. It is intended by the parties that the delivery of this deed by the Grantor, and its acceptance by the City of Lebanon, shall constitute the creation of a public highway by dedication and acceptance according to

New Hampshire law, and that at any time in the future, should the public highway hereby created, or portion thereof, be legally discontinued, the City shall have no further interest in the above-described premises.

Reference is made to the Deed without Covenants of the Lebanon School District dated June 12, 2019, recorded in the Grafton County Registry of Deeds at Book 4447, Page 43, being the deed hereby corrected. The purpose of this Corrective Deed is to correct and confirm the statement of the area of the land subject to the easement and being dedicated to the City of Lebanon for highway purposes, which was recited incorrectly in the original Deed as "0.76 acres." Reference is also made to a plan entitled "Turn Lane Dedication Plan, Tax Map 109 Lot 30, 3 Moulton Ave Lebanon NH Grafton County," by J.E. Belanger Land Surveying PLLC, revised date July 21, 2018, recorded at the Grafton County Registry of Deeds as Plan #15742, said plan having been superseded by the corrected plan referenced above, which is to be recorded on near or even date herewith at the Grafton County Registry of Deeds.

Executed this 7 day of June, 2020.

Lebanon School District

By: Wendy Hall
Wendy Hall, Chair
Lebanon School Board

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON, ss.

The above-named Wendy Hall, Chair of the Lebanon School Board, duly authorized to act for the Lebanon School District, has personally appeared before me this ____ day of June, 2020, known to me, or satisfactorily proven to me to be the individual who executed the foregoing instrument and acknowledged the same to be her voluntary act and deed, on behalf of said School District.

Dianne E. Estes
Notary Public/Justice of the Peace
My Commission Expires: 11/4/2021

DIANNE E. ESTES
Notary Public - New Hampshire
My Commission Expires November 4, 2021

CITY OF LEBANON, NEW HAMPSHIRE**PERFORMANCE BOND/SECURITY AGREEMENT**

Agreement made this 3rd day of June 2019, between the **CITY OF LEBANON** ("City"), with a place of business at 51 North Park Street, Lebanon, NH 03766 and **BRADY SULLIVAN PROSPECT HILL, LLC**, with a place of business at 670 N. Commercial Street, Suite 303, Manchester, NH 03101 ("Developer"),

WHEREAS, the Lebanon Planning Board pursuant to a Notice of Action dated **APRIL 12, 2005** granted a Conditional Use Permit and final Major Subdivision approval to **M&M EQUITIES, LLC**, in accordance with the Site Plan Review Regulations and the Subdivision Regulations, for the development of Prospect Hills, a 171-unit Planned Unit Residential Development, consisting of a mix of single family dwellings, both attached and detached, at Moulton Avenue and Prospect Street, Tax Map 108, Lots 2 & 14, Lebanon, New Hampshire, located in the R-3 zoning district (application #PB2004-11) ("Prospect Hills"), as shown on plans titled Prospect Hill drawn by Holden Engineering and Surveying, Inc. initially dated January 8, 2004, last revised February 11, 2005, Drawing No. 0220075; and

WHEREAS, the final subdivision plan for Phase 1 (North of Prospect Street) was recorded on December 30, 2005 in the Grafton County Registry of Deeds as Plan #12133 (Sheets 1 through 4); and

WHEREAS, the Subdivider acquired the **M&M EQUITIES, LLC** properties located at Moulton Avenue and Prospect Street, Tax Map 208, Lots 2 & 14, pursuant to a deed recorded on November 11, 2010, in the Grafton County Registry of Deeds at Book 3748, page 402; and

WHEREAS, the Planning Board approvals for Prospect Hills Phase II expired in 2016, and, pursuant to a Notice of Action dated **NOVEMBER 16, 2016**, the Lebanon Planning Board subsequently granted Conditional Use Permit and Final Major Subdivision approval to the application of the Subdivider for Phase II (application #PB2016-22-EXP-FMAJ), as shown on plans titled "Prospect Hill – Phase II, Lebanon, Grafton County, New Hampshire," prepared by Jon Rokeh, PE, dated October 5, 2011, revised March 16, 2015, including any and all supplemental submissions, and testimony provided during the public hearing; and

WHEREAS, the Lebanon Planning Board, pursuant to a Notice of Action dated **DECEMBER 10, 2018**, granted an Extension of a Final Major Subdivision and Conditional Use Permit for Phase II (application #PB2018-39-EXT), including any and all supplemental submissions and testimony provided during the public hearing; and

WHEREAS, the **Developer** desires to record the Phase II plat prior to completion of the required improvements and, pursuant to Sections 7.10 and 14.5 of the Subdivision Regulations, agrees to post and maintain security to provide for and secure to the City the actual construction and installation of the required Phase II improvements, both on and off-site, to include but not limited to streets, sidewalks, water and sewer utilities, storm drainage systems, and erosion control, as described in the November 14, 2016 Notice of Action.

NOW THEREFORE, in consideration of the provisions set forth below, the parties agree as follows:

*Performance Bond/Security Agreement
City of Lebanon and Brady Sullivan Prospect Hill, LLC
#PB2016-22-EXP-FMAJ
Prospect Hills Phase II
Page 1 of 4*

1. Obligation of Developer: The **Developer** is required by the **City** to complete certain improvements for the development at the sole expense of the **Developer** as referenced in the April 12, 2005, November 14, 2016, and December 10, 2018 Notices of Action (collectively, the "Notices of Action"), and as shown on the plans referenced therein, and as referenced in the Subdivision Agreement of even date herewith, entered into by and between the Subdivider and the City. All terms and conditions of the Subdivision Agreement, including the terms and conditions of the Notices of Action attached thereto, shall be considered incorporated herein and made a part hereof. The estimated cost of the construction of such improvements is **Nine Million Thirty-Six Thousand Seven Hundred Fifty-Nine Dollars and Sixty Cents (\$9,036,759.60)**.
2. Amount of Security and Form of Security: The obligation of the **Developer** under paragraph 1 shall be secured by an Irrevocable Standby Letter of Credit or Surety Bond in the amount of **Nine Million Thirty-Six Thousand Seven Hundred Fifty-Nine Dollars and Sixty Cents (\$9,036,759.60)** to be attached as **Exhibit A** and made part of this agreement.
3. Termination of Obligation: If the **Developer** on or before **November 14, 2021** performs and completes the terms, conditions and improvements described in the Notices of Action, the obligation under paragraph 1 of this Agreement will be null and void and the **City** shall provide written notice to the **Developer** that this Performance Bond/Security Agreement is null, void and canceled; otherwise the Agreement shall remain in full force and effect to be enforced by the **City** according to its terms.
4. Reduction in the Amount of the Performance Bond/Security Agreement: When any of the required individual improvements are completed, the **Developer** may request a reduction in the amount of the Performance Bond/Security Agreement pursuant to Section 14.5 of the Subdivision Regulations. The amount of the Performance Bond/Security Agreement may be reduced by the **City** in such amount as deemed to be in the best interest of the **City** provided that the remaining security shall be sufficient to complete all remaining construction of required improvements. The **Developer** shall be liable for the actual cost of the construction and installation of all required improvements regardless of the amount of the Performance Bond/Security Agreement.
5. Statutory Security: This Performance Bond/Security Agreement is given pursuant to RSA 674:44, III(d) and in compliance with the Site Plan Review and Subdivision Regulations for the purpose of providing for and securing to the **City** the actual construction and installation of the improvements described in the Notices of Action within the period specified in paragraph 1. The amount of the Performance Bond/Security Agreement is based on the estimated costs of the required improvements, but such estimate shall not limit the liability of the **Developer** for the actual cost of the construction of the improvements. The amount of the Performance Bond/Security Agreement shall, however, limit the liability of any bank issuing an irrevocable letter of credit or a surety company issuing a surety bond to secure the performance of the **Developer** hereunder. The **City** shall be entitled to payment of the security without any obligation to first seek payment from the **Developer**.
6. Default: Unless the **Developer** has obtained an extension of time pursuant to Section 4.10 of the Site Plan Review Regulations or Section 7.12 of the Subdivision Regulations, the **Developer** agrees that in the event any of the terms, conditions and improvements described in the Notices of Action are not performed and completed within the period specified in paragraph 1, the **City** shall have the right to declare this Performance Bond/Security Agreement to be in default and to demand payment of the security attached hereto as **Exhibit A** to the City for the actual cost of the construction and installation of all required improvements to then be constructed by the **City** or its agents in accordance with the requirements of the Notices of Action. In the event of litigation to enforce this Performance Bond/Security Agreement, if the **City** prevails then the Court shall award to the **City** reasonable attorney's fees and Court costs incurred in connection therewith.

7. Extension & Inspection Agreement: In order to effectuate the requirements of condition of approval #5 of the November 14, 2016 Notice of Action, and in accordance with condition of approval #4 of the November 14, 2016 Notice of Action and Chapter 181 of the City Code, the applicant shall enter into a Water and Sewer Main Extensions and Infrastructure Improvements, Extension and Inspection Agreement with the City prior to the start of any construction activities in Phase 2 for which construction inspection is required. The terms and conditions of the executed Agreement shall be considered incorporated herein and made a part hereof.

Dated this 3rd day of June, 2019

BRADY SULLIVAN PROSPECT HILLS, LLC

By: 

Title: Shane D. Brady
member/manager
Duly Authorized

CITY OF LEBANON

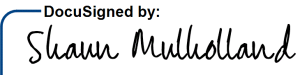
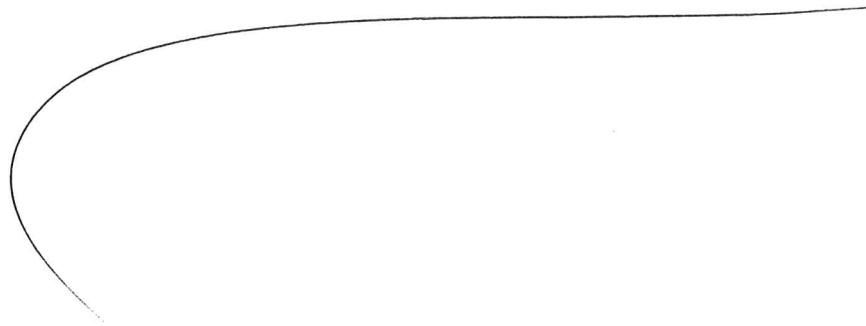
DocuSigned by:
By: 
A58C225904D9436...
Shaun Mulholland, City Manager
Duly Authorized

Exhibit A

Security

BRADY•SULLIVAN
P R O P E R T I E S
670 North Commercial Street
Suite 303
Manchester, NH 03101

Revised + Final Bond



SUBDIVISION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that BRADY SULLIVAN PROSPECT HILL, LLC, as Principal, and U.S. SPECIALTY INSURANCE COMPANY authorized to do business in the State of NEW HAMPSHIRE and having an office at 801 SOUTH FIGUEROA STREET, SUITE 700, LOS ANGELES, CA 90017, as Surety, are held and firmly bound unto CITY OF LEBANON, NEW HAMPSHIRE as Obligee, in the penal sum of TEN MILLION FORTY FOUR THOUSAND SIX HUNDRED TWENTY EIGHT AND 54/100 DOLLARS (\$10,044,628.54) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounded Principal has been granted approval by the above named Obligee for PROSPECT HILLS PHASE II, NOA2016-11-14, 2016-22-EXP-FMAJ and NOA 2019-01-14, 2018-36-EXT ("Project Approvals").

NOW, THEREFORE, the condition of the above obligation is such, that if the said Principal shall complete the above improvements in accordance with the Project Approvals issued by CITY OF LEBANON, NH PLANNING BOARD within the period specified in the Project Approvals; and shall indemnify and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and fully reimburse and repay the Obligee any outlay and expense which it may incur in making good any such default, then this obligation shall be null and void, otherwise it will remain in full force and effect.

THE FOREGOING OBLIGATION, however, is limited by the following express conditions, the performance of which shall be a condition precedent to any rights of claims or recovery hereunder;

1. Upon the discovery by the Obligee, or by the Obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the Obligee shall endeavor to give written notice thereof with the fullest information obtainable at the time to the Surety at its office at 801 SOUTH FIGUEROA STREET, SUITE 700, LOS ANGELES, CA 90017.
2. Legal proceeding for recovery hereunder may not be brought unless begun within twelve (12) months from the date of the discovery of the act or omission of the Principal on account of which claim is made.
3. The Principal shall be made a party of any suit or action for recovery hereunder, and no judgment shall be rendered against the Surety in excess of the penalty of this instrument.
4. No right of action shall accrue hereunder to or for the use or benefit of anyone other than the Obligee, and the Obligee's right hereunder may not be assigned without the written consent of the Surety.
5. Non-renewal by the surety shall not constitute a loss recoverable by the Obligee under this bond.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representative of the Principal and the Surety.

SIGNED, SEALED AND DATED: JUNE 5, 2019

BRADY SULLIVAN PROSPECT HILL, LLC

BY 

U.S. SPECIALTY INSURANCE COMPANY

BY 

MELANIE BONNEVIE, ATTORNEY-IN-FACT

POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Joline Binette, Melanie Bonnevie, Robert Shaw or Heidi Rodzen of Lewiston, Maine

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed *****Fifty Million***** Dollars (\$ *50,000,000.00*).

This Power of Attorney shall expire without further action on November 3, 2019. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1st day of November, 2016.

AMERICAN CONTRACTORS INDEMNITY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals



By:

[Signature]
Daniel P. Aguilar, Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles SS:

On this 1st day of November, 2016, before me, Sabina Morgenstein, a notary public, personally appeared Dan P. Aguilar, Vice President of American Contractors Indemnity Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature *[Signature]* (Seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 5th day of June, 2019

Corporate Seals



[Signature]
Kio Lo, Assistant Secretary

Bond No. 1001019623
Agency No. 16573

To inquire about this bond, please write to us at surety-bond-inquiry@hcc.com

CITY OF LEBANON, NEW HAMPSHIRE

SUBDIVISION AGREEMENT

Agreement made this _____ day of June, 2019, between the **CITY OF LEBANON** ("City"), with a place of business at 51 North Park Street, Lebanon, NH 03766 and **BRADY SULLIVAN PROSPECT HILL, LLC**, with a place of business at 670 N. Commercial Street, Suite 303, Manchester, NH 03101 ("Subdivider").

WHEREAS, the Lebanon Planning Board pursuant to a Notice of Action dated **APRIL 12, 2005** granted a Conditional Use Permit and final Major Subdivision approval to **M&M EQUITIES, LLC**, in accordance with the Site Plan Review Regulations and the Subdivision Regulations, for the development of Prospect Hills, a 171-unit Planned Unit Residential Development, consisting of a mix of single family dwellings, both attached and detached, at Moulton Avenue and Prospect Street, Tax Map 108, Lots 2 & 14, Lebanon, New Hampshire, located in the R-3 zoning district (application #PB2004-11) ("Prospect Hills"), as shown on plans titled Prospect Hill drawn by Holden Engineering and Surveying, Inc. initially dated January 8, 2004, last revised February 11, 2005, Drawing No. 0220075. The April 12, 2005 Notice of Action was amended by the Planning Board on September 26, 2005. A copy of the April 12, 2005 Notice of Action, including specific conditions of approval, and an excerpt of the September 26, 2005 Planning Board meeting minutes identifying the approved amendments to the April 12, 2005 Notice of Action, are collectively attached hereto as **Exhibit A**; and

WHEREAS, the final subdivision plan for Phase 1 (North of Prospect Street) was recorded on December 30, 2005 in the Grafton County Registry of Deeds as Plan #12133 (Sheets 1 through 4); and

WHEREAS, the Subdivider acquired the **M&M EQUITIES, LLC** properties located at Moulton Avenue and Prospect Street, Tax Map 208, Lots 2 & 14, pursuant to a deed recorded on November 11, 2010, in the Grafton County Registry of Deeds at Book 3748, page 402; and

WHEREAS, the Planning Board approvals for Prospect Hills Phase II expired in 2016, and, pursuant to a Notice of Action dated **NOVEMBER 16, 2016**, the Lebanon Planning Board subsequently granted Conditional Use Permit and Final Major Subdivision approval to the application of the Subdivider for Phase II (application #PB2016-22-EXP-FMAJ), as shown on plans titled "Prospect Hill – Phase II, Lebanon, Grafton County, New Hampshire," prepared by Jon Rokeh, PE, dated October 5, 2011, revised March 16, 2015, including any and all supplemental submissions, and testimony provided during the public hearing. A copy of the November 16, 2016 Notice of Action, including specific conditions of approval, is attached hereto as **Exhibit B**; and

WHEREAS, the Lebanon Planning Board, pursuant to a Notice of Action dated **DECEMBER 10, 2018**, granted an Extension of a Final Major Subdivision and Conditional Use Permit for Phase II (application #PB2018-39-EXT), including any and all supplemental submissions and testimony provided during the public hearing. A copy of the December 10, 2018 Notice of Action, including specific conditions of approval, is attached hereto as **Exhibit C**; and

WHEREAS, the City and the Subdivider are required to enter into a Subdivision Agreement for Phase II as provided in Section 7.4 of the Subdivision Regulations for the purpose of setting forth the rights and obligations of the parties, which agreement shall incorporate all exhibits attached hereto.

NOW THEREFORE, in consideration of the provisions set forth below, the parties agree as follows:

- A. All streets, regardless of whether such streets are to be dedicated and accepted by the City, shall be constructed in accordance with applicable requirements of the City and shall comply with all applicable requirements and conditions of approval of the April 12, 2005, November 14, 2016, and December 10, 2018 Notices of Action (collectively, the "Notices of Action"). **(Subdivision Regulations 7.9.B(1))**
- B. All water lines and wastewater lines, regardless of whether such water lines and wastewater lines are to be dedicated and accepted by the City, shall be constructed in accordance with applicable requirements of the City and shall comply with all applicable requirements and conditions of approval set forth in the Notices of Action. **(Subdivision Regulations 7.9.B(2))**
- C. The Subdivider will include a statement in all contract documents for the construction of improvements required by the Planning Board stating that the required improvements shall be built and constructed in accordance with applicable City requirements regardless of whether or not the improvements are intended to be transferred to the City for ownership and maintenance. **(Subdivision Regulations 7.9.B(3))**
- D. The Subdivider will pay to the City an amount equal to the reasonable cost of inspection of the improvements identified in condition of approval #5 of the November 14, 2016 Notice of Action. To effectuate the requirements of condition of approval #5 and in accordance with condition of approval #4 and Chapter 181 of the City Code, the applicant shall enter into a Water and Sewer Main Extensions and Infrastructure Improvements, Extension and Inspection Agreement with the City prior to the start of any construction activities in Phase 2 for which construction inspection is required. The terms and conditions of the executed Agreement shall be considered incorporated herein and made a part hereof. **(Subdivision Regulations 7.9.B(4))**
- E. The Subdivider and its successors and assigns shall be responsible for repairing any deficiency in the creation of improvements transferred to the City of Lebanon for a period of 8 years from the date of substantial completion as set forth in NH RSA 508:4-b. This obligation shall not include damages caused by routine maintenance of such improvements by the City. The City's review of the construction documents, inspection during the period of construction, and inspection prior to acceptance of the improvements shall not bar or preclude, in any way, the rights of the City to assert claims against the Subdivider and its successors and assigns for such deficiencies pursuant to this paragraph. In the event of litigation to enforce this paragraph, if the City prevails, the Court shall award to the City reasonable attorney's fees and costs incurred in connection therewith. The Subdivider shall require all performance bonds provided by any contractors constructing and installing said improvements to be in substantially the same form attached as **Exhibit D. (Subdivision Regulations 7.9.B(5))**
- F. Pursuant to Sections 7.10 and 14.5 of the Subdivision Regulations, in lieu of the completion of the improvements required by the Planning Board and in order to enable the recording of the Final Plat prior to the completion of such improvements, the Subdivider and the City entered into a Performance Bond/Security Agreement of even date herewith, securing to the City the completion of actual construction and installation of all such required improvements, both on and off-site, to include but not limited to: streets, sidewalks, water and sewer utilities, storm drainage systems, and erosion control, in conformity with the requirements of Section 14. All terms and conditions as set forth in the Performance Bond/Security Agreement shall be considered incorporated herein and made a part hereof.

*Subdivision Agreement
City of Lebanon and Brady Sullivan Prospect Hill, LLC
#PB2016-22-EXP-FMAJ
Prospect Hill Phase II
Page 2 of 7*

The Subdivider shall be liable for the entire actual cost of constructing and installing all improvements required by the Board regardless of the amount of the performance security. Upon delivery of the performance security to the satisfaction of the City, the Chairperson of the Board shall sign the Final Plat for recording in the Registry of Deeds by the City. Upon recording of the Final Plat, the Subdivider shall have the right to convey lots or units in the Subdivision. The Performance Bond/Security Agreement shall be secured by an irrevocable standby letter of credit, a surety bond, or an escrow account.

- G. Nothing in this Agreement shall alter or contravene any provision of the Lebanon Site Plan Review or Subdivision Regulations applicable to Prospect Hills Phase II except as specifically waived or modified by the Planning Board, as set forth in the Notices of Action.

DATED this 3rd day of June, 2019

BRADY SULLIVAN PROSPECT HILL, LLC

By: _____

Title: _____

Duly Authorized

CITY OF LEBANON

DocuSigned by:

By: _____

Shaun Mulholland
Shaun Mulholland, City Manager
Duly Authorized

Exhibit A

**April 12, 2005 Notice of Action and
Amendments Approved on September 26, 2005**

**NOTICE OF ACTION
LEBANON PLANNING BOARD**

Notice is hereby given that on **May 10, 2004**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision and Site Plan Review Regulations:

James Dean moved that the Lebanon Planning Board finds the application of **M&M EQUITIES, LLC** for site plan review and final review of a major subdivision for development of a 170-unit Planned Unit Residential Development consisting of a mix (both detached and attached) of single-family dwellings at Moulton Avenue and Prospect Street, Tax Map 108, Lots 2 & 14, Lebanon, NH, in the R-3 zone, #PB2004-11, is complete enough to accept jurisdiction and commence review.

The motion was seconded by Matthew Brown. The vote on the motion was unanimous in favor.

Notice is hereby given that on **April 12, 2005**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision and Site Plan Review Regulations:

Kenneth Morley moved that the Lebanon Planning Board **APPROVES** the Conditional Use Permit and final Major Subdivision for **M&M EQUITIES, LLC**, in accordance with the Site Plan Review Regulations and the Subdivision Regulations, for development of a 170-unit Planned Unit Residential Development consisting of a mix of single family dwellings, both attached and detached, at Moulton Avenue and Prospect Street, Tax Map 108, Lots 2 & 14, Lebanon, New Hampshire located in the R-3 zoning district, city application #PB2004-11, as shown on plans titled Prospect Hill drawn by Holden Engineering and Surveying, Inc. initially dated January 8, 2004, last revised February 11, 2005, Drawing No. 0220075, consisting of 39 sheets, and further described with the following materials:

DRAWINGS AND OTHER SUBMISSIONS:

- ▶ Application for Subdivision Approval, submitted to the Lebanon Planning Board, by Peter Holden, Holden Engineering & Surveying, Inc., dated April 12, 2004. Documents including all submissions as listed in the original May 3, 2004 staff memo,

Exhibit A**Page 2 of 15****NOTICE OF ACTION
LEBANON PLANNING BOARD
M&M EQUITIES, LLC
APRIL 12, 2005**

- ▶ Plan titled, "Prospect Hill" drawn by Holden Engineering & Surveying, Inc., dated January 8, 2004, Last Revised , 2005, Job No. 0220075,
- ▶ Plan titled, "Wetland Impact Plan" drawn by Holden Engineering & Surveying, Inc., dated February 12, 2004, Job No. 0220075,
- ▶ Plan titled, "Conservation Easement Plan" drawn by Holden Engineering & Surveying, Inc., dated February 10, 2004, Job No. 0220075,
- ▶ Revised Traffic Impact Assessment Report prepared by William Rossignol, P.E., Holden Engineering & Surveying dated October 15, 2004. (In accordance with Section 502.1.1.4),
- ▶ Traffic Impact Assessment Report prepared by William Rossignol, P.E., Holden Engineering & Surveying dated March 4, 2004. (In accordance with Section 502.1.1.4),
- ▶ Fiscal Impact Analysis prepared by Applied Economic Research, dated February 10, 2003 (In accordance with Section 502.1.1.10),
- ▶ Revised Property Tax Impact Analysis prepared by Applied Economic Research, dated August 2004. (In accordance with Section 502.1.1.10),
- ▶ Property Tax Impact Analysis prepared by Applied Economic Research, dated February, 2003. (In accordance with Section 502.1.1.10),
- ▶ Graphic illustration of proposed housing types. Provided to Planning Office, February 11, 2004,
- ▶ Graphic illustration of proposed gate at Hillcrest Entrance. Provided to Planning Office, February 11, 2004,
- ▶ Letter to Ken Niemczyk from Peter Holden, Holden Engineering & Surveying dated May, 3, 2004. Summary of the parking layout,
- ▶ Proposal for Prospect Hill Construction Costs received by the Planning Office on April 26, 2004,
- ▶ Letter to the Lebanon Planning Board, from Erik Moulton, M&M Equities, dated November 5, 2004,

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Exhibit A**Page 3 of 15****NOTICE OF ACTION
LEBANON PLANNING BOARD
M&M EQUITIES, LLC
APRIL 12, 2005**

- ▶ Letter to the Lebanon Planning Board, from Peter Holden, Holden Engineering, dated November 4, 2004. Proposed conditions of approval,
- ▶ Letter to Ken Niemczyk from Peter Holden, Holden Engineering & Surveying dated April 23, 2004,
- ▶ Letter to City Clerk, from NH DES, dated April 20th, 2004. Letter testifying to the receipt of a request for a site specific permit,
- ▶ Statement for Suitability for Development dated April 9, 2004,
- ▶ Letter to Douglas King, NHDOT, from Peter Holden, Holden Engineering & Surveying dated April 9, 2004,
- ▶ Drainage report prepared by Holden Engineering and Surveying, Inc., dated April 09, 2003 (In accordance with Section 502.1.I.10),
- ▶ Statement Addressing Subdivision Application Support Statement dated March 8, 2004,
- ▶ Letter to Ken Niemczyk from Peter Holden, Holden Engineering & Surveying dated March 15, 2004. Request for continuance,
- ▶ New Hampshire Warranty Deed establishing conservation easement on map/lot 109-30. Signature and seal provided.
- ▶ Lebanon ZBA Notice of Decision, dated March 15, 2004,
- ▶ Decision of Lebanon Conservation Commission contained in minutes of meeting dated: February 12, 2004,
- ▶ Letter from NH DOT to Robert Kline dated 7/8/2004,
- ▶ Memorandum from the City Engineer and Police Captain dated February 23, 05, regarding Prospect/development intersection,
- ▶ Undated letter from Gordon Sargent to Leb. Planning Board,
- ▶ Letters from Stephanie Jackson dated October 22, 2004; November 22, 2004; February 8, 2005,

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**NOTICE OF ACTION
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M&M EQUITIES, LLC
APRIL 12, 2005**

- ▶ Interoffice memo from Janet Levy, P.E. to Peter Holden regarding proposed water service,
- ▶ Email from Lebanon Police Capt. Gary Smith to Lebanon Planning Office dated November 3, 2004 regarding accident data at Prospect St. intersections,
- ▶ Letter from Sonya Janson, dated June 9, 2004 regarding neighborhood impact,
- ▶ Letter from Paul and Nancy Adley, dated February 10, 2005,
- ▶ Letter from Upper Valley Housing Coalition, dated June 14, 2004,
- ▶ Letters (2) from David Bradley, dated February 9, 2004 and February 28, 2004,
- ▶ Petition dated January 28, 2005. Signed by 63 "Prospect Hill Residents" outlining objections to the proposed M&M development,
- ▶ Letter to Lebanon Planning Board, dated November 2, 2004, signed by Al Picconi, Warren Klecan, Gordon Sargent and Hugh Sullivan,
- ▶ All testimony, both Public and Professional, recorded in the minutes of applicable public hearings of the Lebanon Planning Board.

AND to include any and all supplemental submissions and testimony provided during the public hearing, with the following conditions:**1. COVENANTS, DEED RESTRICTIONS & OWNERS ASSOCIATION**

- 1.1 The applicant shall provide proposed Declaration of Covenants and Deed Restrictions that govern the proposed owners association, (Condominium or Homeowners) including specific provisions for the collection of fees, assessments and charges to pay for the operation and maintenance of such common facilities. Owners Association documents to be reviewed and approved by the City Attorney and the Planning Board. Owners Association documents to include but not be limited to the following:
 - a. A list identifying invasive and forbidden vegetation with instructions to residents to avoid use of these vegetation. (Site Plan Review Regulations 6.2.H.3)

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**NOTICE OF ACTION
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M&M EQUITIES, LLC
APRIL 12, 2005**

- b. Any Emergency Gates shall be Opticon controlled and shall be maintained for year round emergency access.
 - c. On-site sewer lines and appurtenances shall remain private and shall be maintained by the Owners Association.
 - d. Detention ponds shall remain private and shall be maintained by the Owners Association.
 - e. All landscaping, streets, and street lighting shall remain private and shall be maintained by the Owners Association.
 - f. Parking within proposed development is to be limited to one side of the street.
 - g. Maintaining proper pavement markings and signage for traffic control at development entrances/exits intersections.
 - h. The applicant and subsequent Owners Association shall maintain compliance with all City & State regulations and conditions of approval in effect at the time of signing of the final plat.
 - i. Covenants to contain a mechanism for City enforcement if the Owners Association fails to do so. (Language to be approved by the City Attorney)
 - j. Covenants and Deeds Restrictions governing open space shall be written to assure compliance with Section 501.2.K of the Zoning Ordinance. (Language to be approved by the City Attorney)
 - k. The public will be allowed access to all sidewalks within the development.
- 1.2 The applicant shall effect an Owners Association with all Articles of Agreement and Covenants prior to issuance of the first building permit.

2. BONDING -- INSPECTION -- FEES

- 2.1 City shall obtain the services of a 3rd party inspector, for which the applicant shall be responsible for all inspection fees related to construction and installation of streets and utilities. Applicant shall provide funding for inspection services in a form acceptable to the City, and in accordance with Section 14.2 of the Subdivision Regulations.

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LEBANON PLANNING BOARD
M&M EQUITIES, LLC
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- 2.2 Pursuant to Section 14.3 of the Subdivision Regulations, the applicant shall provide a Maintenance Bond for all utility lines to be conveyed to the City prior to signing and recording of the final mylar in an amount considered adequate by the City Engineer, and in a form satisfactory to the City Attorney. Maintenance Bond shall be secured by an insurance bond, a letter of credit, or an escrow account.
- 2.3 Pursuant to Section 14.6 of the Subdivision Regulations and Section 8.2 of the Site Plan Review Regulations, the applicant shall provide a Performance Bond for all required improvements, both on and off-site, to include but not limited to: landscaping, lighting, paving, utilities, sidewalks, etc., prior to signing and recording of the final mylar in an amount considered adequate by the City Engineer, and in a form satisfactory to the City Attorney. Performance Bond shall be secured by an insurance bond, a letter of credit, or an escrow account.
- 2.4 The applicant has stated that as a result of installation of its water system improvements, increased water pressure and volume capacity will become available to some of the existing neighborhood. The Board finds that there is some possibility that such an increase could adversely affect those existing residents' water lines, fixtures and equipment. Therefore, it is a condition of this approval that the applicant shall be responsible, during the first 180 days of the activation of the new water main, for repairs of existing residential water lines, fixtures, etc. caused by this new pressure and volume. The applicant's performance bond or other security shall include language to cover this responsibility. Prior to activating the new main, the applicant shall propose, and the City Engineer shall approve, a method for establishing initial base-line water pressure and volume capacity for the existing neighborhood. Disputes over causation shall be determined in the first instance by the City Engineer, subject to review by an independent arbitrator. After the passage of the 180 days from the activation of the new main, the applicant may apply to the City for partial release of the Performance Bond per Section 14.6.B. of the Subdivision Regulations.

3. SITE CONSTRUCTION

- 3.1 There shall be no construction work between the hours of 5 PM to 7 AM. There shall be no construction work on Sundays.
- 3.2 Applicant shall implement Site Specific Best Management Practices during construction.

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LEBANON PLANNING BOARD
M&M EQUITIES, LLC
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- 3.3 As proposed by the applicant (November 4, 2004 memo), all erosion control measures shall be inspected and maintained on a daily basis with an inspection log being maintained on site by the contractor.
- 3.4 Edge-of-Disturbance fencing shall be in place prior to initiation of any site work, to be verified by City Engineer on site.
- 3.5 The applicant shall provide Engineer stamped soil reports for areas containing existing fill per approval of the Building Inspector, and prior to issuance of a building permit.
- 3.6 Applicant shall provide Engineered foundation plans for houses located on filled areas per approval of the Building Inspector, and prior to issuance of a building permit.
- 3.7 For reasons of natural boundary hardship and possibility of attractive nuisance (unnecessary and premature environmental impact of the southern development infrastructure without use for a period of approximately three years), the Planning Board waives for a period of five years the requirement of Subdivision Regulation 14.6.a. concerning timeliness of infrastructure construction in the southern development.

4. UTILITIES

- 4.1 Council Approval for the request for extension of Sewer and Water shall be obtained prior to the signing and recording of the final mylar
 - a. The applicant shall grant an easement to the City providing access to service those on-site utilities which are to be conveyed to the City. The applicant shall request that the City Council, at the time of approval of the extension of the utilities, delegate to the Manager the authority to accept, on the City's behalf, a conveyance to be recorded which would include the utility facilities and the aforementioned easement.
- 4.2 The applicant shall submit final design, including construction drawings, of utility, & infrastructure features to the City Engineer for approval prior to signing and recording of the final mylar.
- 4.3 All sewer and water designs shall be constructed to City Specifications and shall be reviewed and approved by a 3rd party Engineer to be contracted by the City and paid for by the applicant (as agreed by the applicant - November 4, 2004 memo), prior to signing and recording of the final mylar.

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- 4.4 The municipal water system serving this development shall provide adequate fire flow, including volume and pressure, and shall not diminish services to the existing area. Calculations shall be approved by the Fire Department, City Engineer, and the requisite 3rd party reviewer. Availability of public water is subject to approval of these calculations, and is required prior to signing and recording of the final mylar.
- 4.5 By memo of November 4, 2004, the applicant proposed to extend the municipal sewer line from the Water Treatment Plant Pump Station along Pumping Station Road, Route 4 and Moulton Avenue to the intersection of the development entrance and Moulton Avenue. The Planning Board is requiring this line to be extended to the Prospect Street/Moulton Avenue Intersection. The sewer line shall be constructed in a manner that will allow the other homes in the neighborhood to be connected to the municipal sewer if it is extended by the City to the balance of the neighborhood. The construction of said line is to be approved by the City Engineer and shall incorporate the requirements of Section 14.5 of the Subdivision Regulations.
- 4.6 Applicant shall provide documents for the transfer of water and sewer lines to be dedicated to the City. Documents shall be approved by the City Attorney and the Director of Public Works prior to signing and recording of the final mylar.

5. STREETS/SIDEWALKS/TRAFFIC SAFETY

- 5.1 The applicant shall submit final design, including construction drawings, of all proposed streets and sidewalks to the City Engineer for approval prior to signing and recording of the final mylar.
- 5.2 As proposed by the applicant (November 4, 2004 Memo), the cul-de-sac at Hillcrest Avenue shall have an emergency gate installed to prevent traffic from entering Hillcrest Avenue. This gate will only be open for maintenance and or an emergency situation. It is to be operated by an Opticon (or equivalent) system, pursuant to Fire and Police Department approval, and shall be owned and maintained by the Owners Association.
- 5.3 The Board finds credible the testimony of the neighborhood that additional traffic on Prospect Street poses a threat to the safety of pedestrians and vehicles. Therefore, for the Northern portion of the development, the applicant shall limit vehicular access to Moulton Avenue ONLY. The roadway design is to include a cul-de-sac to serve residents of the Northern section, as well as a roadway segment to provide emergency access to Prospect Street. This segment shall contain a school bus turnaround. An emergency gate, setback a minimum of 40' from Prospect Street, is to be provided and shall be

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- operated by an Opticon (or equivalent) system, pursuant to Fire and Police Department approval, and shall be owned and maintained by the Owners Association. Applicant shall design and construct the gate and cul-de-sac pursuant to the approval of the Planning Board, the Fire Department, and the City Engineer.
- 5.4 As proposed by the applicant (November 4, 2004 memo), a bypass shoulder shall be constructed on the northerly side of Route 4 at the Moulton Avenue intersection. This bypass shoulder shall be constructed in accordance with, and approved by the New Hampshire DOT District Engineer, prior to issuance of the Certificate of Occupancy for the first dwelling unit.
- 5.5 Street names to be approved by the City prior to signing and recording of the final mylar.
- 5.6 Parking within proposed development to be limited to one side of the street
- 5.7 Applicant shall provide pavement markings and signage for traffic control at new intersections per approval of the City Engineer.
- 5.8 As proposed by the applicant (November 4, 2004 memo), a right-turn lane shall be constructed on Moulton Avenue for access to Route 4 subject to approval by the City Engineer, the NHDOT, and acceptance by the City Council. Lane shall be constructed prior to issuance of the first building permit.
- 5.9 The intersection on Prospect Street shall be located 60 ft. west of the original design in accordance with the design depicted on the original submission, Plan titled, "Prospect Hill" drawn by Holden Engineering & Surveying, Inc., dated January 8, 2004, Last Revised February 11, 2005, Job No. 0220075.
- 5.10 As proposed by the applicant (November 4, 2004 memo), improvements shall be made to the portion of Prospect Street, with approval of the City Engineer, where any development roads intersect Prospect Street or Moulton Avenue to assure that a minimum of 250 foot stopping sight distance is maintained in all directions
- 5.11 As proposed by the applicant (November 4, 2004 memo), speed tables shall be constructed on Prospect Street to the east and west of the development intersection. Speed table locations and design details shall be included in site drawings and shall have the approval of the City Engineer, Police Department and Fire Department prior to issuance of any Building Permits. Speed tables shall be installed prior to issuance of the Certificate of Occupancy for the first dwelling unit.

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- 5.12 Applicant shall provide a paved 4'-0 wide asphalt "bike path and pedestrian walkway" to be constructed from the intersection of Moulton Avenue and Prospect Street to the intersection of Prospect Street and Reservoir Road, construction to be completed prior to the certificate of occupancy for the first dwelling in the southern development, per approval of the Planning Board and the City Engineer.
- 5.13 Applicant has volunteered and shall resurface Moulton Avenue, in its entirety, following installation of any sewer, water, power, etc. infrastructure within, adjacent to or underneath Moulton Avenue. Such resurfacing, including scheduling, shall be approved by the City Engineer.
- 5.14 As proposed by the applicant (November 4, 2004 memo), applicant shall overlay the section of roadway from the existing Moulton Avenue/ Prospect Street intersection to the development entrance, including drainage improvements at Hillcrest Avenue to City specifications and per approval of the City Engineer.
- 5.15 The proposed parking plan is to be approved by the City Engineer, Police Department, and Fire Department prior to issuance of any Building Permits.

6. OPEN SPACE & RECREATION

- 6.1 Applicant is granted a waiver from further development of on-site recreational facilities from those shown on the final site plan dated February 11, 2005.

7. MISCELLANEOUS**7.1 LANDSCAPING**

- a. As proposed by the applicant (November 4, 2004 memo), applicant shall provide a landscaping plan showing mitigation of visual impact of the development from land of the following abutters: (108-01), (108-30), (108-26), (108-15), and (108-16), pursuant to Planning Board approval prior to signing and recording of the final mylar.
- b. Applicant shall achieve perimeter landscaping standards as defined within the Site Plan Review Regulations pursuant to Planning Board approval.

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- c. Applicant shall provide revised landscaping plans to include details of all common areas (e.g. parking areas, post-office area, curbed islands, etc.) Additionally, a landscape typical (either 8½ x 11 or 11 x 17) shall be provided for each individual housing type, e.g. single family, duplex, 4 unit, 9 unit, etc, pursuant to Planning Board approval.
- 7.2 As proposed by the applicant (November 4, 2004 Memo), all detention ponds must drain dry within 48 hours, must be planted with conservation mix, must be mowed as needed, and shall not be fertilized.
- 7.3 Applicant shall sign a Subdivision Agreement in accordance with Section 6.25 of the Lebanon Subdivision Regulation.
- 7.4 As proposed by the applicant (November 4, 2004 memo), applicant shall design and construct a community school bus waiting area at the development entrance on the North side of Prospect Street per approval of the Planning Board with consultation from the Lebanon School District and the Lebanon Police Department.
- 7.5 As proposed by the applicant (November 4, 2004 memo), applicant shall design and construct one or more community postal kiosk(s), pursuant to the approval of the City Engineer and the Lebanon Post Office.
- 7.6 Prior to signing and recording of the final mylar, the applicant shall obtain State approvals including but not limited to the following:
- NHDOT approval for the Route 4/Moulton Avenue Intersection improvements.
 - NHDES approval for a Site Specific Permit
 - NHDES approval for Sewer Discharge
 - NHDES approval for Wetlands

8. ADDITIONAL SUBMISSION MATERIALS:

In addition to submission materials referenced in the above conditions, the following are also required to be submitted:

- 8.1 Applicant shall provide two complete sets of revised plans in accordance with submission requirements outlined in the Subdivision and Site Plan Review Regulations. Plans are to be submitted to the Planning Office and shall be reviewed and approved prior to signing and recording of the final mylar, and shall include the following:

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**NOTICE OF ACTION
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- a. A plan showing the Edge of Disturbance Line for proposed site work. Said plan shall be reviewed and approved by the Planning Office and City Engineer.
 - b. An Open Space plan that delineates, as well as differentiates, open space areas, roadways, and developed areas (to be defined by structures and associated curtilage). Open space plan to include special setback lines demonstrating compliance with the Zoning Ordinance, Article V, Section 501.2.G.3
 - c. In accordance with Subdivision Regulations, Section 13.5.H.7, the applicant shall detail curbing on revised plans to show handicap accessibility. Curbing must be designed to provide ramps for bicycles and/or wheelchairs as required by State Law.
- 8.2. Applicant shall provide a digital format (CAD DWG) plan to be provided to the Planning Office, prior to signing and recording of the final mylar.

When the Planning Board determines that Conditions 1.1.a - k; 5.3; 5.12 (plan only); 6.1; and 7.1.a - c have been satisfied, this approval shall become FINAL APPROVAL.

When conditions 2.2; 2.3; 2.4; 4.1; 4.2; 4.3; 4.4; 5.1; 5.5; 8.1; and 8.2 are satisfied the final mylar will be signed and recorded with Grafton County Registry of Deeds.

The motion was seconded by James Dean. The vote on the motion was unanimous in favor.

James Dean moved to authorize the Chair to sign the plat. The motion was seconded by Douglas Gross. The vote on the motion was unanimous in favor.

SIGNED: _____
Kenneth Morley, Chair

DATED: _____

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City of Lebanon, Planning Board, Minutes, Sept. 26, 2005

letter, but they have had discussions, so they know it is coming.

Ms. Maville said if the City knows sufficient bonding is in place, the rest can be handled administratively. Mr. Dean said they should focus only on the exceptions the applicant is requesting, not other issues. If the City is comfortable with the amount of the bonding, and staff feels the City is not at risk, the Board should approve the request.

Chair Morley asked for public comment. Gordon Sargent said the developers have spoken to neighbors, and the decision is up to the Board.

Chair Morley closed the Public Hearing.

Mr. Gross asked where the information about the current system came from if the plans were destroyed. Mr. Holden said the City's water consultant provided some information, and in some cases, they are excavating to find things. Mr. Gross said they might have had to do that anyway because the system is so old.

Mr. Brooks listed the necessary components for a motion. Ms. Maville noted that there should be a condition that requires bonding sufficient for all the infrastructure, not just what is mentioned in the conditions that will be changed. Mr. Dean suggested the following motion:

Moved that the Lebanon Planning Board approves the requested changes to Conditions of Approval, Section 4, as identified in the letter from Jon Levenstein dated September 14, 2005, with the condition that the City Engineer and the applicant notify in writing the Planning Office of the bond (maintenance and performance) amounts. Bonding shall cover all utilities.

Ms. Maville added that it should be in a format approved by the City attorney. Mr. Niemczyk said they need to address the suggested language changes in the applicant's letter. Mr. Dean said that is covered by reference to the letter. Chair Morley said the motion should incorporate that language.

Ms. Windt moved that the Lebanon Planning Board approves the requested changes to Conditions of Approval, Section 4, as identified in the letter from Jon Levenstein dated September 14, 2005, with the condition that the City Engineer and the applicant notify in writing the Planning Office of sufficient bond (maintenance and performance) amounts. Bonding shall cover all infrastructure.

The following changes will be made to the Conditions of Approval for the application approved for M&M Equities on April 12, 2005:

- 4.2.1 The applicant shall submit final design, including construction drawings of all utility and infrastructure features not requiring third-party review and approval (as**

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City of Lebanon, Planning Board, Minutes, Sept. 26, 2005

- noted on paragraph 4.3.1 below) to the City Engineer for Approval prior to signing and recording of the final mylar.
- 4.2.2 All sewer and water installations not requiring third-party inspection and approval shall be constructed to City specifications and shall be inspected and approved by the City Engineer prior to the issuance of any building permit. Installation of the features described in the paragraph 4.2.1 above shall not occur prior to approval from the City Engineer, and the State of New Hampshire (if required).**
- 4.3.1 The applicant shall submit final design, including construction drawings for utility and infrastructure features requiring third-party reviews and approval as determined by the City Engineer to the City prior to the issuance of any building permits. These shall include, but may not be limited to, the design of upgrades to existing water and sewer pump stations, and the design of the sewer overflow chamber.**
- 4.3.2 All sewer and water installations required by paragraph 4.3.1 above shall be constructed to City specifications and shall be inspected and approved by the requisite third-party engineer, prior to the issuance of any building permit. Installation of the features described in paragraph 4.3.1 above shall not occur prior to Approval by the third-party engineer, or the State of New Hampshire (if required).**
- 4.4 The municipal water system serving this development shall provide adequate fire flow, including volume and pressure, and shall not diminish services to the existing area. Calculations shall be approved by the Fire Department, City Engineer, and the requisite third-party reviewer. Availability of public water is subject to approval of these calculations, and is required prior to the issuance of any building permits.**
- 4.6 Applicant shall provide documents for the transfer of water and sewer lines to be dedicated to the City. Documents shall be approved by the City attorney and the Director of Public Works prior to the issuance of any building permits.**

Seconded by Vice Chair Brown.

Mr. Moses asked if the bonding applies to all items in the relevant paragraphs. He asked if the staff feels the language is sufficient to mitigate the risk. Mr. Brooks said the performance bond will cover not just water and sewer but also streets, sidewalks and landscaping. Mr. Moses asked if it is correct that this motion applies only to the changes requested in the letter, and all other items required before signing of the mylar are still in place.

Vice Chair Brown asked what “a form acceptable to the City attorney” means. Ms. Maville said

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City of Lebanon, Planning Board, Minutes, Sept. 26, 2005

that means the bond must be judged to be adequate.

Mr. Peress said the bonding covers construction of the approved sewer system. He asked how they can determine what bond is adequate before the State reviews it. Mr. Holden said he does not believe the State will make big changes to the design. Mr. Peress asked where the DES process is. Mr. Holden said they will review the documents presented and the capacity of the sewage treatment plant then issue a sewage discharge permit. Mr. Peress asked if that process has not started. Mr. Holden said it has not, but it is fairly routine. Mr. Peress asked of the City is comfortable that they can establish an appropriate bond level without State approval. Mr. Brooks said they are. The applicant will work with the City Engineer on this. Mr. Peress asked if there will be a manageable contingency. Mr. Brooks said there will.

Mr. Gross said he does not believe that the missing plans rises to the level of an “unforeseen condition requiring modification.” Chair Morley asked the Planning Office for their opinion. Mr. Niemczyk said this was a circumstance that no one knew about when the Planning Board approved this application. He is assuming the applicant was moving along in good faith and hit a roadblock. It is a judgment call and up to the Board. Mr. Gross said he does not feel that modification of timing--as opposed to modification of design--is called for in the regulations.

There being no further discussion, a vote was held, and the motion passed by a vote of 5-3. Voting for the motion: Chair Morley, Vice Chair Brown, Mr. Moses, Mr. Narins, Ms. Windt. Voting against: Mr. Gross, Mr. Jacobs, Mr. Peress. Abstaining: Ms. Monroe.

The meeting was recessed at 8:23 p.m. and reconvened at 8:29 p.m. Ms. Monroe left the meeting at this time.

IV. PUBLIC REVIEW

A. Review and Recommendations to the City Council re: 2006-2011 Capital Improvement Program

Mr. Gross said the big issue is funding hangar development from the General Fund. Stephen Flanders, chair of the Airport Advisory Committee, made a good presentation to the City Council and convinced the Council that this is a good idea. The City’s consultant said this is a good idea because the City will be involved, not just private developers. It looks positive that this will be funded. Vice Chair Brown asked what year it will be funded. Mr. Gross said it will be funded next year. Chair Morley said he felt the Airport report was one of the most upbeat he has seen in a long time. The Advisory Committee was positive about the prospect for Airport improvements.

Mr. Narins asked if the reference on page 2 of the minutes to a 30% increase referred to national figures or just Lebanon. Chair Morley said that is just Lebanon. Mr. Dean said that is commercial travel. Mr. Narins said a 30% increase is not supported nationally. Mr. Dean said the Airport

Exhibit B

November 16, 2016 Notice of Action

**NOTICE OF ACTION
LEBANON PLANNING BOARD**

Notice is hereby given that on **September 12, 2016** the following action was taken by majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan and Subdivision Regulations.

Ken Morley moved that the Lebanon Planning Board finds the application of **BRADY SULLIVAN PROSPECT HILLS, LLC** for a Final Review of a Major Subdivision and Conditional Use Permit, #PB2016-22-EXP-FMAJ, is complete enough to accept jurisdiction and commence review.

The motion was seconded by Seconded by Keith Davio. The vote on the motion was unanimous in favor.

Notice is hereby given that on **October 11, 2016** the following action was taken by majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan and Subdivision Regulations.

Carl Porter moved that the Lebanon Planning Board did not grant the request of Brady Sullivan to reduce the amount of the security bond for Phase 1 of the Prospect Hills project and require that Brady Sullivan complete the punch list within 12 months, with the City to call the bond in the event that the Certificate of Occupancy is not in place.

The motion was seconded by Seconded by Keith Davio. The vote on the motion was eight in favor and one abstaining.

Notice is hereby given that on **November 14, 2016**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision Regulations.

Elizabeth Celtrick moved that the Lebanon Planning Board approve the application of **BRADY SULLIVAN PROSPECT HILLS, LLC**, for a Final Review of Major Subdivision and Conditional Use Permit for a 171-unit Planned Unit Residential Development and to update the construction timelines for Phase 2, located off Moulton Avenue and Prospect Street, Tax Map 108, Lot 2 (Phase 2) and Lot 14 (Phase 1), Lebanon, NH, in the R-3 zone, #PB2016-22-EXP-FMAJ, as shown on plans titled "Prospect Hill – Phase II, Lebanon, Grafton County, New Hampshire," prepared by Jon Rokeh, PE, dated October 5, 2011, revised March 16, 2015, including any and all supplemental submissions, and testimony provided during the public hearing, with the following conditions:

1. A performance security for all required Phase 2 infrastructure improvements shall be in place prior to commencement of any site work in that phase, in an amount considered adequate by the City Engineer and in a form acceptable to the City Manager. The applicant shall execute a new Performance Bond/Security Agreement to accompany the performance security for Phase 2.
2. The applicant shall be required to achieve Active and Substantial Development or Building, as defined in Section 14.1 of the Subdivision Regulations, for Phase 2 site improvements within two years of the date of this decision, or by November 14, 2018. Substantial Completion of such improvements, as defined in Section 14.1, shall be achieved within 5 years of the date of this decision, or by November 14, 2021.

**Lebanon Planning Board Notice of Action
Brady Sullivan Prospect Hills, LLC
Final Major Subdivision Review and Conditional Use Permit (original approval lapsed)**

3. The applicant shall comply with all applicable conditions of the Planning Board's approval for the Prospect Hills development, dated April 12, 2005, as amended by the Planning Board on September 26, 2005, to the satisfaction of the Planning Office.
4. The applicant shall execute a new Water and Sewer Extension and Inspection Agreement in accordance with Chapter 181 of the City Code and Section 14 of the Subdivision Regulations for Phase 2 of the development.
5. Prior to the start of any construction activities in Phase 2 for which construction inspection is required pursuant to this decision, or any applicable ordinance or code, the City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to construction and installation of roadways, sidewalks, water and sewer utilities, storm drainage systems, and erosion control, in accordance with Chapter 181 of the City Code and Section 14 of the Subdivision Regulations. The applicant shall provide funding for inspection services in a form acceptable to the City. As-built drawings provided by the applicant (using the NH State Plane Coordinate system), including tie sheets and Northing and Easting coordinates and elevations of underground utilities, and third-party engineer inspection reports shall be reviewed and approved by the City Engineer, prior to acceptance of any utility improvements by the City, and all such inspection reports shall be made available to the applicant, upon request.
6. The applicant shall update or obtain any required State approvals for Phase 2 of the development, including but not limited to:
 - NHDES Alteration of Terrain
7. Whereas more than five years has lapsed since the Prospect Hills development was originally approved, the applicant is advised that future Building Permit requests within the development will be subject to City of Lebanon Impact Fees pursuant to Section 213 of the Zoning Ordinance. Impact fees shall be calculated based on the fee schedule and methodology in effect at the time of building permit issuance, and such fees shall be due and payable at the time of issuance of a Certificate of Occupancy.
8. The applicant shall provide a digital record drawing of the subdivision plan (CAD .dwg format using the NH State Plane Coordinate system) to the Planning Office prior to the signing and recording of the mylar.
9. All proposed roadways, sidewalks, water and sewer lines, and hydrants, shall be constructed pursuant to the City's standards.
10. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide as-built plans, to the satisfaction of the Department of Public Works.
11. The applicant shall obtain an Excavation Permit from the Department of Public Works for any site work in the public right-of-way prior to any work in the right-of-way
12. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.
13. The applicant shall provide a digital record drawing (CAD .dwg format using the NH State Plane Coordinate system) to the Planning Office prior to the issuance of the Final Certificate of Occupancy.

Lebanon Planning Board Notice of Action
Brady Sullivan Prospect Hills, LLC
Final Major Subdivision Review and Conditional Use Permit (original approval lapsed)

14. Prior to the issuance of a Certificate of Occupancy, the applicant shall provide automatic fire sprinkler systems to the proposed townhomes to the satisfaction of the Fire Department.
15. Prior to the commencement of any site work in Phase 2, the applicant shall provide two complete sets of revised plans to the Planning Office, depicting the following plan changes:
 - a. The revised open space area calculations for Phase 2 and within the overall development shall be included on a revised Open Space Plan to be recorded in the Grafton County Registry.
 - b. The applicant shall revise the plans to indicate the location of a mail kiosk within the Phase 2 development, with the associated parking and signage to serve the mail kiosk.
 - c. The applicant shall revise the plans to the satisfaction of the Planning and Police Departments and the Lebanon School District to indicate the location of a community school bus stop within the development, since the bus stop was never provided within the Phase 1 site as originally indicated.
16. Prior to the issuance of a Building Permit, the applicant shall complete a water study for Phase 2, to the satisfaction of the Department of Public Works.
17. The applicant shall arrange for a traffic study to be completed by a licensed third party of the Moulton Avenue/Route 4 intersection and the Laplante Road/Route 4 intersection upon the issuance of the certificate of occupancy for the 90th unit in Phase 2. The applicant shall work with the Department of Public Works, the Planning Office, and the Police Department to provide appropriate mitigation if necessary and as identified in the traffic study as it relates to the Phase 2 development, with the exclusion of the commuter and pass-through traffic. The applicant shall provide a performance security to the City in an amount sufficient to complete the traffic study to ensure its proper completion as required by this condition.

The motion was seconded by Carl Porter. The vote on the motion was seven in favor with one abstaining.

On September 12, 2016 the Lebanon Planning Board granted the request for a waiver from the requirement of Section 11.4 of the Subdivision Regulations, allowing the applicant to proceed directly to Final Major Subdivision Review

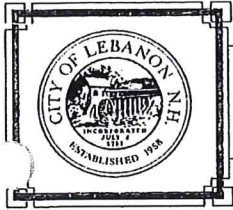
On October 11, 2016 the Lebanon Planning Board denied the request for a waiver from the requirements of Section 7.7.A(2) of the Subdivision Regulations

SIGNED: _____
The City of Lebanon, Planning Board Chair

DATE: _____

Exhibit C

December 10, 2018 Notice of Action

PB2021-02-EXT
Agenda Packet
Exhibit C

CITY OF LEBANON ~ PLANNING OFFICE
51 North Park Street ~ Lebanon, NH ~ 03766

**NOTICE OF ACTION
LEBANON PLANNING BOARD**

Notice is hereby given that on **DECEMBER 10, 2018**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision Regulations:

Carl Porter moved that the Lebanon Planning Board finds the application of **BRADY SULLIVAN PROSPECT HILLS, LLC** for an Extension of a Final Review of a Major Subdivision and Conditional Use Permit, #PB2018-39-EXT, is complete enough to accept jurisdiction and commence review.

The motion was seconded by Matthew Hall. The vote on the motion was unanimous in favor, 9-0.

Notice is hereby given that on **DECEMBER 10, 2018**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Subdivision Regulations:

Carl Porter moved that the Lebanon Planning Board **APPROVE** the application of **BRADY SULLIVAN PROSPECT HILLS, LLC** for an Extension of a Final Review of a Major Subdivision and Conditional Use Permit (#PB2016-22-EXP-FMAJ) for Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108 Lot 2 (phase 2) Lot 14 (phase 1), #PB2018-39-EXT, including any and all supplemental submissions and testimony provided during the public hearing, with the following conditions:

1. The applicant shall be required to (a) record the plat within six (6) months of the date of the date of this decision, or by June 10, 2019; (b) achieve Active and Substantial Development or Building, as defined in Section 14.1 of the Subdivision Regulations, for Phase 2 site improvements within two (2) years of the date of this decision, or by December 10, 2020; and (c) achieve Substantial Completion, as defined in Section 14.1, for Phase 2 site improvements within 5 years of the date of this decision, or by December 10, 2023.
2. The applicant shall comply with all applicable conditions of the Planning Board's prior Notices of Action for the Prospect Hills development, including but not limited to, the Notice of Action dated November 14, 2016, #PB2016-22-EXT-FMAJ.

The motion was seconded by Sarah Welsch. The vote on the motion was 7 in favor, 1 opposed, and 1 abstention.

THE CITY OF LEBANON

SIGNED

Shane D. Brady, Mayor

DATED

2-20-2019

By: Kevin D. Porter
Planning Board Chair

DATE: 1/14/19

Exhibit D

Performance Bond Format

****SAMPLE****
PERFORMANCE BOND

This form is to be used in contracts between the subdivider and contractors constructing required improvements and included as an exhibit to the Subdivision Agreement

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____ hereinafter called Principal, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto _____
hereinafter called OWNER, in the penal sum of \$ _____, in lawful money of
the United States, for the payment of which sum well and truly to be made, we bind ourselves,
successors, and assigns, jointly and severally, firmly by the presents.

THE CONDITION OF THE OBLIGATION is such that whereas, the Principal entered into a certain
contract with the OWNER dated the _____ day of _____, 200__, a copy of
which is attached hereto and made a part hereof for the construction of _____

_____.

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the
undertakings, covenants, terms, conditions, and agreements of said contract during the original
term thereof, and any extensions thereof which may be granted by the OWNER, with or without
notice to the Surety, and if he shall satisfy all claims and demands incurred under such
contract, and shall fully indemnify and save harmless the OWNER from all costs and damages
which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all
outlay and expense which the OWNER may incur in making good any default, then this
obligation shall be void, otherwise to remain in full force and effect.

Exhibit D

Page 2 of 2

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extensions of time, alteration or addition to the terms of the contract or to Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Specifications.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 200__.

ATTEST:

(Principal)

(Principal Secretary)

By _____(s)

(Witness to Principal)

(Address)

(Address)

ATTEST:

(Surety)

(Surety Secretary)

By _____(s)

(Witness to Surety)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

- 15742 07/01/2019 01:25 PM
Register of Deeds, Grafton County

Handwritten signature

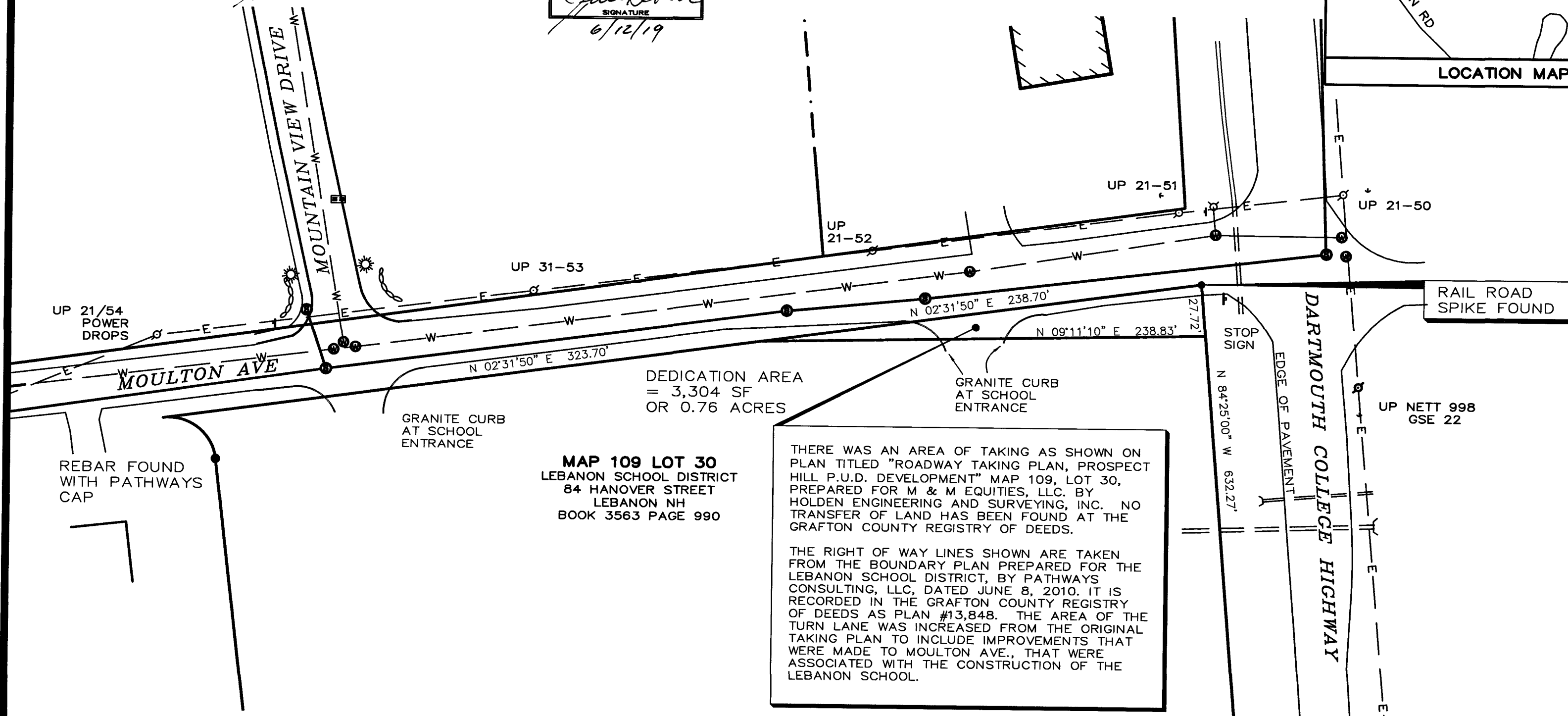
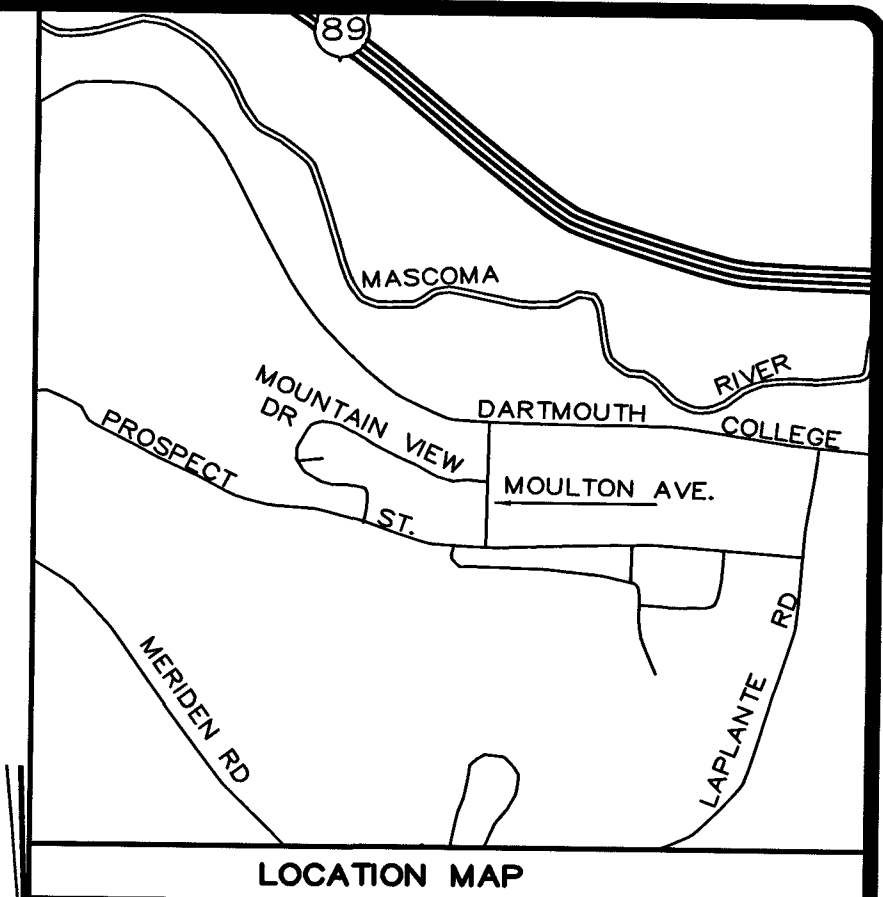
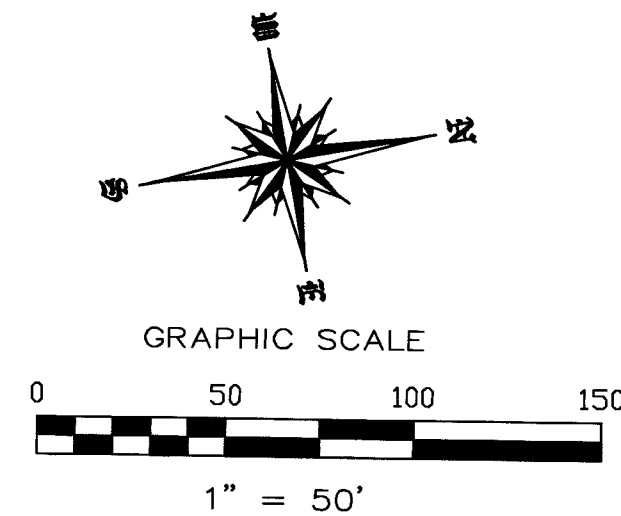
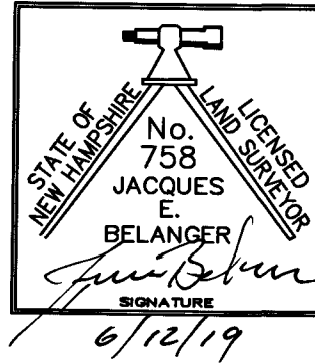
CERTIFICATIONS

I HEREBY CERTIFY THAT THIS MAP HAS BEEN MADE UNDER MY SUPERVISION.
6/12/19 DATE *Handwritten signature*
LICENSED LAND SURVEYOR

I HEREBY CERTIFY THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY & HAS A MAXIMUM ERROR OF CLOSURE OF 1:10,000 ON ALL PROPERTY LINES IN & BORDERING THE SUBJECT PROPERTY.
6/12/19 DATE *Handwritten signature*
LICENSED LAND SURVEYOR

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE & THAT THE LINES OF STREETS & WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED & THAT NO NEW WAYS ARE SHOWN.
6/12/19 DATE *Handwritten signature*
LICENSED LAND SURVEYOR

I CERTIFY THAT I HAVE FILED A COPY OF THIS PLAN WITH THE PLANNING BOARD OF Lebanon IN ACCORDANCE WITH RSA 676:18 (IV).
6/12/19 DATE *Handwritten signature*
LICENSED LAND SURVEYOR



MAP 109 LOT 30
LEBANON SCHOOL DISTRICT
84 HANOVER STREET
LEBANON NH
BOOK 3563 PAGE 990

THERE WAS AN AREA OF TAKING AS SHOWN ON PLAN TITLED "ROADWAY TAKING PLAN, PROSPECT HILL P.U.D. DEVELOPMENT" MAP 109, LOT 30, PREPARED FOR M & M EQUITIES, LLC. BY HOLDEN ENGINEERING AND SURVEYING, INC. NO TRANSFER OF LAND HAS BEEN FOUND AT THE GRAFTON COUNTY REGISTRY OF DEEDS.

THE RIGHT OF WAY LINES SHOWN ARE TAKEN FROM THE BOUNDARY PLAN PREPARED FOR THE LEBANON SCHOOL DISTRICT, BY PATHWAYS CONSULTING, LLC, DATED JUNE 8, 2010. IT IS RECORDED IN THE GRAFTON COUNTY REGISTRY OF DEEDS AS PLAN #13,848. THE AREA OF THE TURN LANE WAS INCREASED FROM THE ORIGINAL TAKING PLAN TO INCLUDE IMPROVEMENTS THAT WERE MADE TO MOULTON AVE., THAT WERE ASSOCIATED WITH THE CONSTRUCTION OF THE LEBANON SCHOOL.

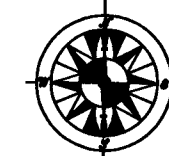
PLAN INTENT:

THE INTENT OF THIS PLAN IS INTENDED TO ILLUSTRATE A WIDENING DEDICATION NEAR THE INTERSECTION OF MOULTON AVE. AND THE DARTMOUTH COLLEGE HIGHWAY. THE CURRENT OWNER OF THE TRACT IS THE LEBANON SCHOOL DISTRICT, SEE DEED 3563 PAGE 0990. THIS DEDICATION WAS TO TAKE PLACE AS PART OF THE APPROVAL OF THE PROSPECT HILL DEVELOPMENT.

**TURN LANE DEDICATION
PLAN
TAX MAP 109 LOT 30**
3 MOULTON AVE
LEBANON NH
GRAFTON COUNTY

OWNED BY:
LEBANON SCHOOL DISTRICT
20 SEMINARY HILL
WEST LEBANON NH 03784

J.E. BELANGER LAND SURVEYING PLLC
LICENSED LAND SURVEYOR
61 OLD HOPKINTON ROAD, DUNBARTON, NH 03046



TEL (603) 774-3601

- * BOUNDARY SURVEYS
- * SUBDIVISIONS
- * LAND PLANNING
- * SEPTIC DESIGN

REVISED JULY 31, 2018
PLAN DATE JANUARY 17, 2016
SCALE 1" = 50'
JN 101267/INTERSECTION
SHEET 1 OF 1

CERTIFICATIONS

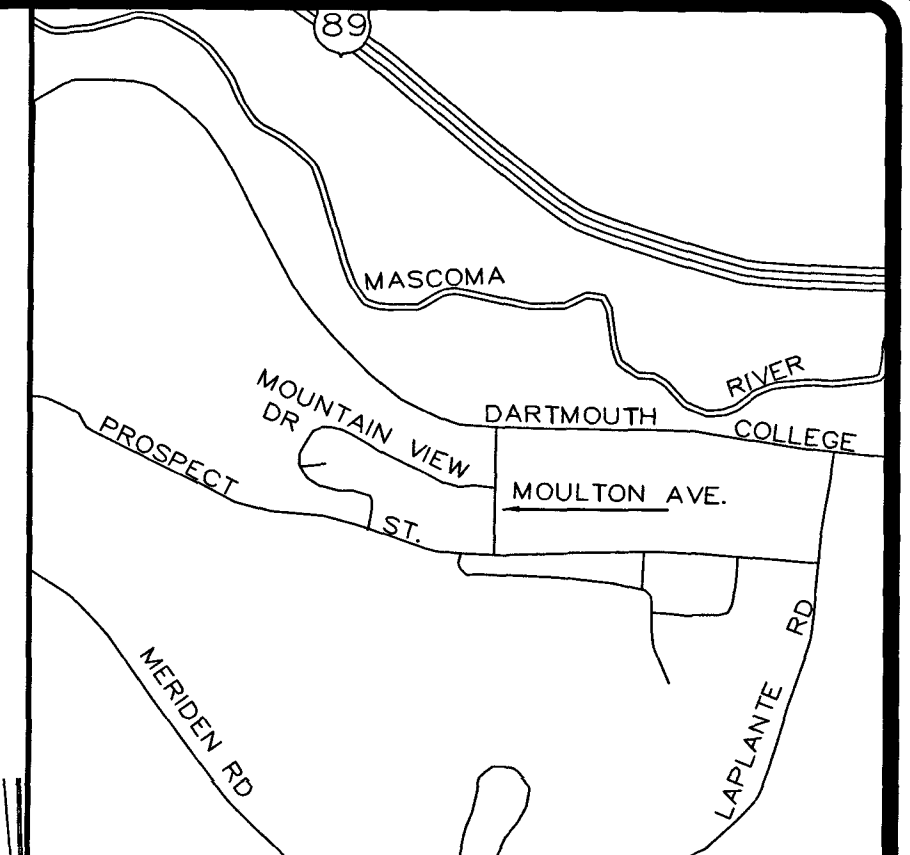
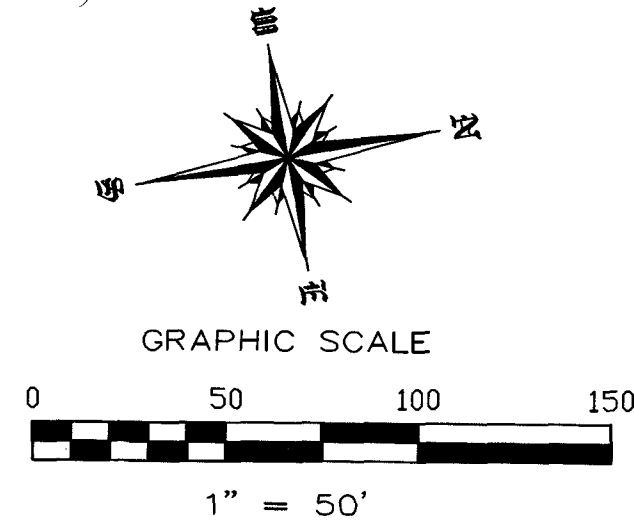
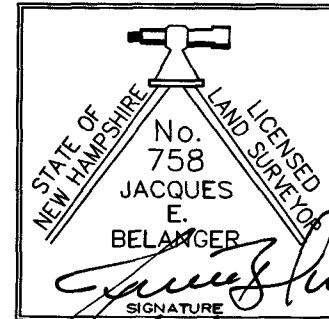
I HEREBY CERTIFY THAT THIS MAP HAS BEEN MADE UNDER MY SUPERVISION.
6/15/20 DATE *Jacques E. Belanger*
LICENSED LAND SURVEYOR

I HEREBY CERTIFY THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY & HAS A MAXIMUM ERROR OF CLOSURE OF 1:10,000 ON ALL PROPERTY LINES IN & BORDERING THE SUBJECT PROPERTY.
6/15/20 DATE *Jacques E. Belanger*
LICENSED LAND SURVEYOR

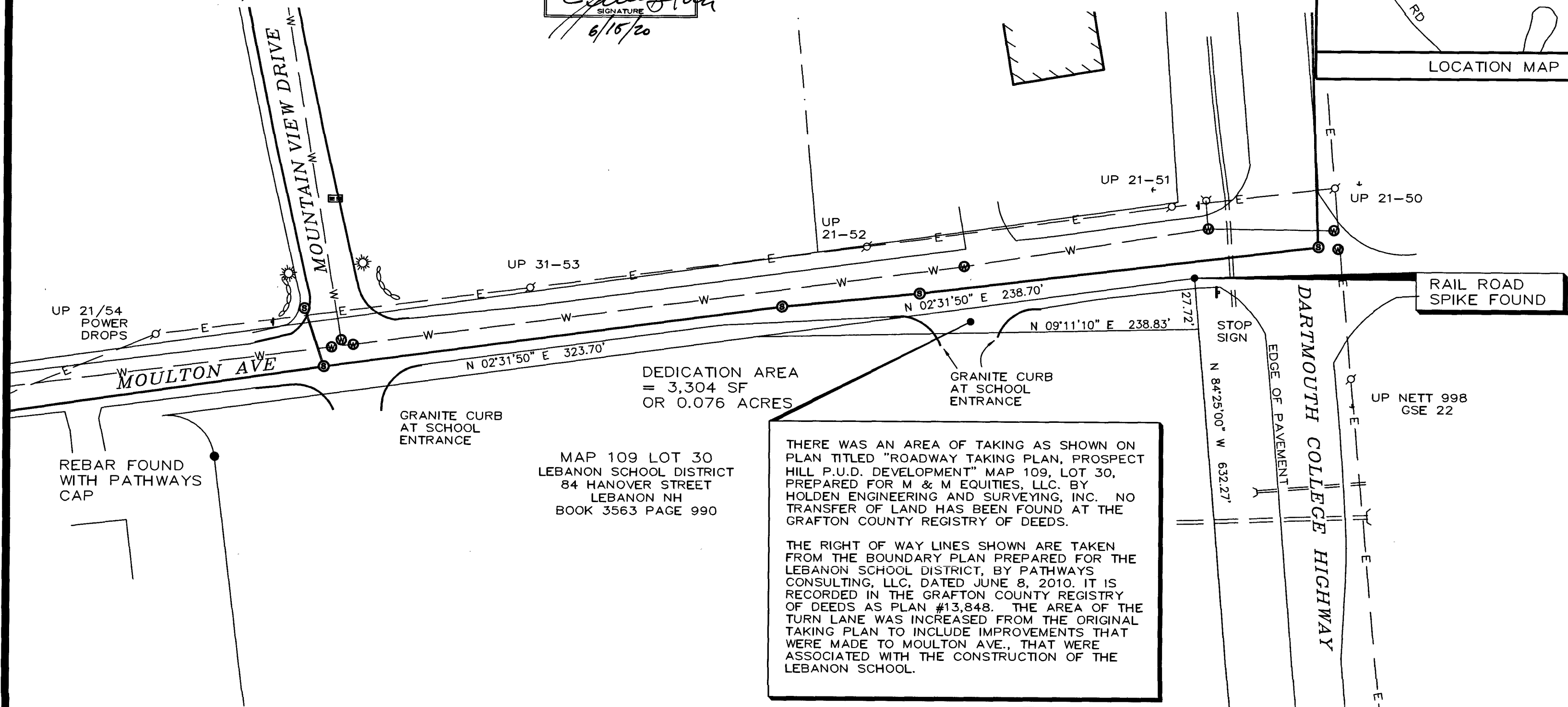
I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE & THAT THE LINES OF STREETS & WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED & THAT NO NEW WAYS ARE SHOWN.
6/15/20 DATE *Jacques E. Belanger*
LICENSED LAND SURVEYOR

I CERTIFY THAT I HAVE FILED A COPY OF THIS PLAN WITH THE PLANNING BOARD OF LEBANON IN ACCORDANCE WITH RSA 676:18 (IV).
6/15/20 DATE *Jacques E. Belanger*
LICENSED LAND SURVEYOR

- 15947 06/16/2020 10:03 AM
Register of Deeds, Grafton County
LCHIP FEE GRA146154 25.00



LOCATION MAP



MAP 109 LOT 30
LEBANON SCHOOL DISTRICT
84 HANOVER STREET
LEBANON NH
BOOK 3563 PAGE 990

THERE WAS AN AREA OF TAKING AS SHOWN ON PLAN TITLED "ROADWAY TAKING PLAN, PROSPECT HILL P.U.D. DEVELOPMENT" MAP 109, LOT 30, PREPARED FOR M & M EQUITIES, LLC. BY HOLDEN ENGINEERING AND SURVEYING, INC. NO TRANSFER OF LAND HAS BEEN FOUND AT THE GRAFTON COUNTY REGISTRY OF DEEDS.

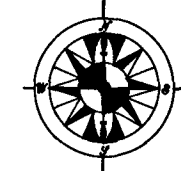
THE RIGHT OF WAY LINES SHOWN ARE TAKEN FROM THE BOUNDARY PLAN PREPARED FOR THE LEBANON SCHOOL DISTRICT, BY PATHWAYS CONSULTING, LLC, DATED JUNE 8, 2010. IT IS RECORDED IN THE GRAFTON COUNTY REGISTRY OF DEEDS AS PLAN #13,848. THE AREA OF THE TURN LANE WAS INCREASED FROM THE ORIGINAL TAKING PLAN TO INCLUDE IMPROVEMENTS THAT WERE MADE TO MOULTON AVE., THAT WERE ASSOCIATED WITH THE CONSTRUCTION OF THE LEBANON SCHOOL.

PLAN INTENT:
THE INTENT OF THIS PLAN IS TO CORRECT THE AREA OF THE TURN LANE DEDICATION. THE AREA OF 0.76 ACRES IS ACTUALLY IN ERROR ON THE RECORDED PLAN #15,742 AS FOUND IN THE GRAFTON COUNTY REGISTRY OF DEEDS. THE ACTUAL AREA 0.076 ACRES.

CORRECTED
TURN LANE DEDICATION
PLAN
TAX MAP 109 LOT 30
3 MOULTON AVE
LEBANON NH
GRAFTON COUNTY

OWNED BY:
LEBANON SCHOOL DISTRICT
20 SEMINARY HILL
WEST LEBANON NH 03784

J.E. BELANGER LAND SURVEYING PLLC
LICENSED LAND SURVEYOR
61 OLD HOPKINTON ROAD, DUNBARTON, NH 03046



* BOUNDARY SURVEYS
* SUBDIVISIONS
* LAND PLANNING
* SEPTIC DESIGN

TEL (603) 774-3601

REVISED MAY 28, 2020
REVISED JULY 31, 2018
PLAN DATE JANUARY 17, 2016
SCALE 1" = 50'
JN 101267/INTERSECTION
SHEET 1 OF 1



20013910

10/05/2020 01:45 PM

Book 4561 Page 913

Page 1 of 3

Register of Deeds, Grafton County

544

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS, that **Brady Sullivan Prospect Hill, LLC**, with a mailing address of 670 N. Commercial Street, Manchester, N.H. 03101 ("Grantor"), for consideration paid, grants to the **CITY OF LEBANON**, a municipal corporation with a business address of 51 North Park Street, County of Grafton, State of New Hampshire 03766, the following described easements with QUITCLAIM COVENANTS:

An easement, with the right of ingress and egress, on that certain parcel of land located in the City of Lebanon, County of Grafton, State of New Hampshire, commonly known as 26 Mountain View Drive and identified on the City of Lebanon's tax maps as Parcel ID 108-14 ("Grantor's Property"), for the purpose of installing, constructing, maintaining and repairing drain line and drainage improvements. The easement is bounded and described as follows:

Beginning at a point on the northerly edge of Prospect Street, on the boundary line of the adjacent property known as Parcel ID 108-15 and currently owned by Rory C. Gawler; thence N9°24'50"E a distance of 25.00 feet along said boundary line to a point; thence S87°00'40"E a distance of 23.00 feet to a point; thence S9°24'50"W a distance of 10.00 feet to a point; thence S48°30'30"W a distance of 14.18 feet to a point; thence S9°24'50"W a distance of 5.00 feet to a point; thence N87°00'40"W a distance of 14.00 feet to the place of beginning. Said Easement contains an area of 482 square feet, more or less.

The boundaries of the Easement are shown on a plan entitled "Easement Plan for City of Lebanon, Property of Brady Sullivan Prospect Hill, LLC, 26 Mountain View Drive, Lebanon, Grafton Co., New Hampshire," dated March 10, 2020, and prepared by Pathways Consulting, LLC, which plan is on file and available for review at the Lebanon City Clerk's Office.

Meaning and intending hereby to describe and convey an easement over a portion of the property conveyed to Brady Sullivan Prospect Hill, LLC by Confirmatory Fiduciary Deed of M&M Equities, LLC, dated March 2, 2011, and recorded March 4, 2011 in the Grafton County Registry of Deeds, Book 3779, Page 67.

During any periods of construction or maintenance, the size of the easement may be extended, at the option of the City of Lebanon, an additional 10 feet in any direction to accommodate construction equipment and trucks.

It is a condition of this easement that the City of Lebanon, in the exercise of its rights, shall do no unnecessary damage to the property of the Grantor and that the City of Lebanon will restore the surface of the ground to substantially the same condition it was in prior to any construction and/or maintenance, including grading and seeding.

The Grantor, including heirs and assigns, covenants and agrees that no structures, trees or ornamental shrubs shall be established, constructed or located within the boundaries of said easement.

The within conveyance is a transfer to a municipality and therefore is exempt from the New Hampshire Property Transfer Tax under RSA 78-B:2, I.

DATED this 10th day of September, 2020.

Grantor



Arthur Sultan (name)
member / manager (title)

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON, SS.

On this 10th day of September, 2020, before me, the undersigned personally appeared Arthur A. Sultan, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that he/she executed the same as his/her voluntary act and deed for the purposes therein contained.


Notary Public/Justice of the Peace
My commission expires: 7-19-22



The within conveyance to the City of Lebanon for an easement is accepted and authorized to be recorded in the Grafton County Registry of Deeds.

CITY OF LEBANON


City Manager



20013911

10/05/2020 01:46 PM

Book 4561 Page 916

Page 1 of 3

Register of Deeds, Grafton County

A handwritten signature in cursive script, appearing to read "Kelley Mahan".

544

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS, that **Brady Sullivan Prospect Hill, LLC**, with a mailing address of 670 N. Commercial Street, Manchester, N.H. 03101 ("Grantor"), for consideration paid, grants to the **CITY OF LEBANON**, a municipal corporation with a business address of 51 North Park Street, County of Grafton, State of New Hampshire 03766, the following described easements with QUITCLAIM COVENANTS:

Easements, with the right of ingress and egress, on that certain parcel of land located in the City of Lebanon, County of Grafton, State of New Hampshire, commonly known as Prospect Street and identified on the City of Lebanon's tax maps as Parcel ID 108-2 ("Grantor's Property"), for the purpose of installing, constructing, maintaining and repairing drainage line and improvements. The easements comprise two distinct easement areas, hereinafter referred to as "the Easements," and are bounded and described as follows:

Beginning at the northeastern-most point of Grantor's Property at a 3/4" Rebar (Bent) at the corner of Prospect Street Extension and Hillcrest Drive; thence S2°55'00"W a distance of 160.00 feet to a point; thence N87°05'00"W a distance of 4.50 feet to a point; thence N2°55'00"E a distance of 145.00 feet to a point; thence N26°34'50"W a distance of 19.10 feet to a point; thence S80°25'10"E a distance of 14.00 feet to the place of beginning. Said Easement A containing an area of 794 square feet, more or less.

Beginning at a 4" X 4" Concrete Monument (Broken) on the easterly side of Grantor's property, at the point of the curve of Hillcrest Drive, thence S85°42'30"E a distance of 35.31 feet to the place of beginning; from this place of beginning, thence S4°21'40"W a distance of 5.00 feet to a point; thence S85°42'30"E a distance of 80.00 feet to a point; thence N4°21'40"E a distance of 5.00 feet to a point; thence N85°42'30"W a distance of 80.00 feet to the place of beginning. Said Easement B containing an area of 400 square feet, more or less.

The boundaries of the Easements are shown on a plan entitled "Easement Plan for City of Lebanon, Property of Brady Sullivan Prospect Hill, LLC, Prospect Street, Lebanon, Grafton Co.,

New Hampshire," dated March 10, 2020, and prepared by Pathways Consulting, LLC, which plan is on file and available for review at the Lebanon City Clerk's Office.

Meaning and intending hereby to describe and convey an easement over a portion of the property conveyed to Brady Sullivan Prospect Hill, LLC by Confirmatory Fiduciary Deed of M&M Equities, LLC, dated March 2, 2011, and recorded March 4, 2011 in the Grafton County Registry of Deeds, Book 3779, Page 67.

During any periods of construction or maintenance, the size of the easement may be extended, at the option of the City of Lebanon, an additional 10 feet in any direction to accommodate construction equipment and trucks.

It is a condition of this easement that the City of Lebanon, in the exercise of its rights, shall do no unnecessary damage to the property of the Grantor and that the City of Lebanon will restore the surface of the ground to substantially the same condition it was in prior to any construction and/or maintenance, including grading and seeding.

The Grantor, including heirs and assigns, covenants and agrees that no structures, trees or ornamental shrubs shall be established, constructed or located within the boundaries of said easement.

The within conveyance is a transfer to a municipality and therefore is exempt from the New Hampshire Property Transfer Tax under RSA 78-B:2, I.

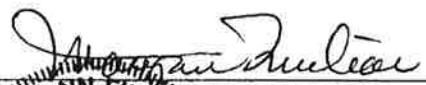
DATED this 10th day of September, 2020.

Grantor


Arthur W. Sullivan (name)
Member / Manager (title)

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON, SS.

On this 10th day of September, 2020, before me, the undersigned personally appeared Arthur W. Sullivan, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that he/she executed the same as his/her voluntary act and deed for the purposes therein contained.


Notary Public
My Commission Expires: 7-14-2022
COMMISSION EXPIRES JULY 19, 2022
NOTARY PUBLIC
NEW HAMPSHIRE

The within conveyance to the City of Lebanon for an easement is accepted and authorized to be recorded in the Grafton County Registry of Deeds.

CITY OF LEBANON



City Manager



Return to:
City of Lebanon
51 N. Park Street
Lebanon, NH 03766

544

20015818 11/02/2020 01:09 PM
Book 4571 Page 217 Page 1 of 4
Register of Deeds, Grafton County

Keely Monahan

WATER AND SEWER LINE TRANSFER AND ACCESS EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS, that **BRADY SULLIVAN PROSPECT HILL, LLC**, a New Hampshire limited liability company with an address of 670 N. Commercial Street, Manchester, Hillsborough County, New Hampshire 03101 ("Grantor"), for consideration paid, grants to the **CITY OF LEBANON**, a municipal corporation with a principal place of business at 51 North Park Street, Lebanon, Grafton County, New Hampshire 03766 ("Grantee"), with **QUITCLAIM COVENANTS**, the following:

Ownership of Existing Waterline Infrastructure and 20-Foot Water Line Easement.

The existing water main(s), service lines between the water main(s) and curb shut-off valves, the water valves, and the fire hydrant(s) (excluding service connections beyond the curb shut-off valves), and the permanent right and easement to enter upon and to construct, lay, or build, and to re-enter as necessity may require, to repair, replace, or maintain the water mains, service lines, water valves, and fire hydrants, on or through a portion of the Grantor's land located at Mountain View Drive and Cherry Circle, Lebanon, Grafton County, New Hampshire, further described as follows:

The water main(s), service lines, the water valves and fire hydrant(s) (excluding service connections beyond the curb shut-off valves) situated in the City of Lebanon, County of Grafton and State of New Hampshire, being depicted on Plan entitled, "Water Line As-Built Prospect Hill Phase I, Lebanon, Grafton County, New Hampshire, prepared by J.E. Belanger Land Surveying, PLLC, dated 10-5-11, and recorded with the Grafton County Registry of Deeds as Plan No. 15946, located on the private streets comprising Phase I of the Prospect Hill P.U.D. Development as shown on said Plan. The width of the easement granted herein shall be ten (10) feet from either side of the location of said water main(s) shown on the Plan.

The Grantee's ownership of the water main(s), the water valves and fire hydrant(s) shall only extend to the curbside shutoff valves and not from the shutoff valves to the dwellings of the individual homeowners.

In the exercise of its rights hereunder, the Grantee agrees that it shall make all reasonable efforts to do no unnecessary damage to the property of the Grantor and further agrees to restore the surface of the ground to substantially the same condition it was in prior to any construction and/or maintenance, provided however, that such restoration of the surface of the ground will be limited to re-paving of street and driveway areas, re-seeding lawn and resetting curbing. The easement area shall remain free of trees and other physical improvements that would interfere with Grantee's maintenance of the water lines, water valves, and hydrants.

Notwithstanding any other provisions of this Deed, Grantor and any successor in interest shall have the right to use any area covered by the easements granted therein for any lawful purpose not prohibited by this conveyance, and to grant such rights to others, including without limitation a) access to any lot in the Planned Unit Development or any adjoining land of Grantor; and b) use of the easement areas for private sewer, and other utility lines, provided that such use shall not impair Grantee's rights hereunder.

Ownership of Off-Site Sewer Infrastructure. Grantor also transfers to City of Lebanon, with Quitclaim covenants, the existing off-site gravity sewer main constructed by it or its predecessor in interest within Moulton Avenue, Dartmouth College Highway (N.H. Route 4) and Pumping Station Road to the boundary line of the Planned Unit Development.

Meaning and intending to describe and convey easements on a portion of the same premises as conveyed to Grantor by Fiduciary Deed of M & M Equities, LLC dated November 11, 2010 and Confirmatory Fiduciary Deed dated March 2, 2011, recorded with the Grafton County Registry of Deeds at Book 3748, Page 0402 and 3779, Pg. 0067, respectively.

This transfer is a transfer of title to the state, a state agency, a county, a city, a town, a school district, or a village district, and is exempt from transfer tax pursuant to RSA 78-B:2.

Executed this 30th day of September, 2020.

BRADY SULLIVAN PROSPECT HILL, LLC

By:


Arthur W. Sullivan Its Member
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this 30th day of September, 2020, before me, the undersigned, personally appeared the above named Arthur W. Sullivan, as Member of Brady Sullivan Prospect Hill, LLC, duly authorized, who executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his free act and deed.



Maryann Finocchiaro
Notary Public/Justice of the Peace
My Commission Expires:

ACCEPTANCE

The within conveyance to the City of Lebanon is accepted and authorized to be recorded in the Grafton County Registry of Deeds.

CITY OF LEBANON

By: [Signature]
Name: Shawn Mulholland
Title: CITY MANAGER
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this 28th day of October, 2020, before me, the undersigned, personally appeared the above named Shawn Mulholland, as City Manager of the City of Lebanon, duly authorized, who executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his/her free act and deed.

[Signature]
Notary Public/Justice of the Peace
My Commission Expires:

ANN M. CORMIER, Notary Public
My Commission Expires April 6, 2021

MORGAGEE CONSENT
AND
SUBORDINATION OF MORTGAGE

Northway Bank, of 3424 White Mountain Highway, North Conway, New Hampshire 03860, holder of a Mortgage from Brady Sullivan Prospect Hill, dated June 18, 2014, and recorded in the Grafton County Registry of Deeds, Book 4063, Page 0850, hereby consents to the above described conveyance and hereby subordinates said Mortgage to the above-described Water Line Transfer and Access Easement Deed, being conveyed herein to the City of Lebanon, but said Mortgage in all other respects, terms and conditions shall remain in full force and effect.

Dated this 30th day of September, 2020

Northway Bank

By: [Signature]

Name: THOMAS S. CARUSO

Title: Senior Vice President

Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

On this 30 day of September, 2020, before me, the undersigned, personally appeared the above named Thomas Caruso, as Senior VP of Northway Bank, duly authorized, who executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his/her free act and deed.



[Signature]
Notary Public/Justice of the Peace
My Commission Expires: 6/21

- 15734 06/12/2019 10:40 AM
Register of Deeds, Grafton County
LCHIP FEE GRAL33397 25.00
1 of 2

LOT 122-10 SUNIL BAROT
21 WESTGATE CROSSING
NASHUA, NH 03052

LOT 122-10
WALTER & BETTY PATERSON
82 PROSPECT STREET
LEBANON, NH 03766

MAP 108, LOT 2:
39.481 ACRES

LOT 108-13
NELSON C. BARDEN
14 ARMORY ROAD,
UNIT 5
WALTHAM, MA 02453

LOT 108-22
CITY OF LEBANON
51 NORTH PARK
DRIVE
LEBANON NH 03766

EDGAR LOT 108-21
SANDONSO ROMERO
535 BROOKWOOD POINT PL #914
SIMPSONVILLE, SC 29661

LOT 93-125
CITY OF LEBANON
51 NORTH PARK STREET
LEBANON, NH 03766

MAP 108, LOT 14:
31.058 ACRES

LOT 108-1
WARREN
KEGAN
98 PROSPECT
STREET
LEBANON,
NH 03766

LOT 108-20
CARLOS B. & NANCY
FLEMING JR
180 DARTMOUTH
COLLEGE HIGHWAY
LEBANON NH 03766

LOT 108-19
MARJORIE HAYWARD
184 DARTMOUTH
COLLEGE HIGHWAY
LEBANON NH 03766

LOT 108-17
UPPER VALLEY
EDUCATORS
INSTITUTE
194 DARTMOUTH
COLLEGE HIGHWAY
LEBANON, NH 03766

LOT 109-30
LEBANON SCHOOL DISTRICT
SAU #88
20 SEMINARY HILL
WEST LEBANON, NH 03784

LOT 109-25
JEFFREY & KAREN ROBBINS
13 MOULTON AVENUE
LEBANON, NH 03766

LOT 109-26
HW SULLIVAN TRUST AND EJ SULLIVAN TRUST
23 ALICE PECK DAY DRIVE APT. 239 LEBANON,
NH 03766

LOT 108-30
BARBARA SARGENT
REV. TRUST
PO BOX 440
LEBANON, NH 03766

LOT 108-29
SUSAN LEMAY REV. TRUST
116 PROSPECT STREET
LEBANON, NH 03766

LOT 122-37
RICHARD & MELISSA ROBINSON
7 HILLCREST DRIVE
LEBANON, NH 03766

LOT 122-19-2
JENNIFER JOHNSON
11 GARNET STREET
LEBANON, NH 03766

LOT 122-19
PETER & ANNE JOHNSON
2 WOODLAND DRIVE
LEBANON, NH 03766

LOT AREA CALCULATIONS:

MAP 108, LOT 2: 39.481 ACRES
MAP 108, LOT 14: 31.058 ACRES

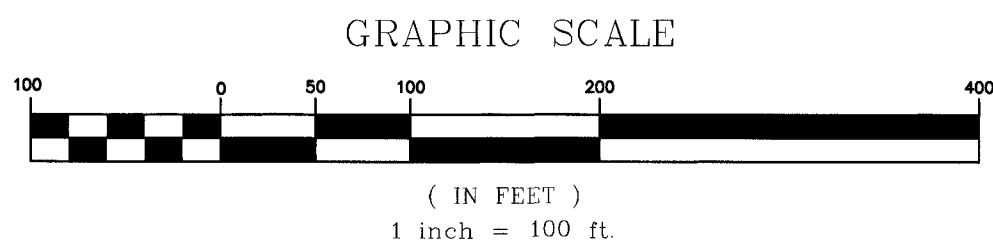
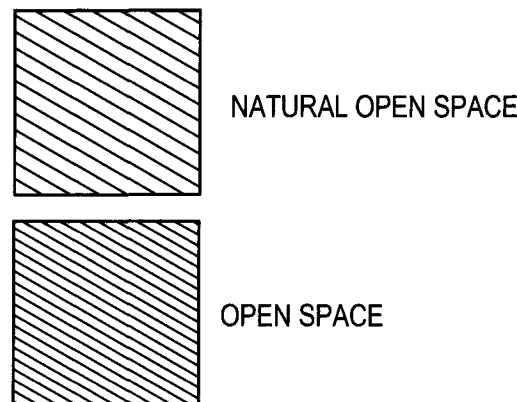
CURRENT OPEN SPACE CALCULATIONS: 2013 RECORDING

MAP 108, LOT 2 & 14 = 70.539 ACRES
NATURAL OPEN SPACE = 24.61 ACRES
OPEN SPACE = 13.476 ACRES
TOTAL OPEN SPACE = 38.086 ACRES
PERCENTAGE OF OPEN SPACE = 54.0%

PROPOSED OPEN SPACE CALCULATIONS:

MAP 108, LOT 2 & 14 = 70.539 ACRES
NATURAL OPEN SPACE = 23.692 ACRES (-.918)
OPEN SPACE = 16.766 ACRES (+3.29)
TOTAL OPEN SPACE = 40.458 ACRES
PERCENTAGE OF OPEN SPACE = 57.35%

AREA CALCULATION LEGEND:



DEVELOPER:

BRADY SULLIVAN PROSPECT HILL, LLC
670 N. COMMERCIAL STREET, SUITE 303
MANCHESTER, NH 03101

OVERALL OPEN SPACE PLAN
PROSPECT HILL - PHASE 2
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE
DATE: 10-5-11

REVISIONS

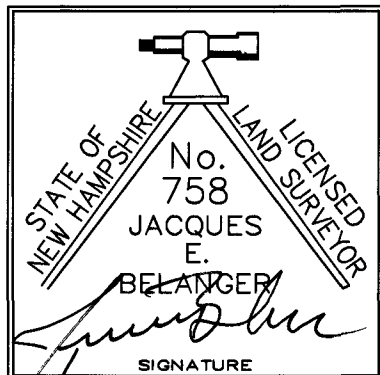
DATE	DESCRIPTION	DWN BY	CK BY
10-18-11	EDITS TO PLAN PER CITY COMMENTS	JR	JR
11-28-11	EDITS TO PLAN PER PLANNING BOARD APPROVAL	JR	JR
5-2-13	REMOVE WALKING PATH PER 2013 APPROVAL	JR	JR
10-20-14	UPDATE PLAN PER 2014 PHASE 2 APPROVAL	JR	JR
5-24-19	UPDATE PLAN PER 2016 PHASE 2 APPROVAL	JR	JR

CERTIFICATIONS

I HEREBY CERTIFY THAT THIS MAP HAS BEEN MADE UNDER MY SUPERVISION.
6/6/19 DATE
JAMES BLANER LICENSED LAND SURVEYOR

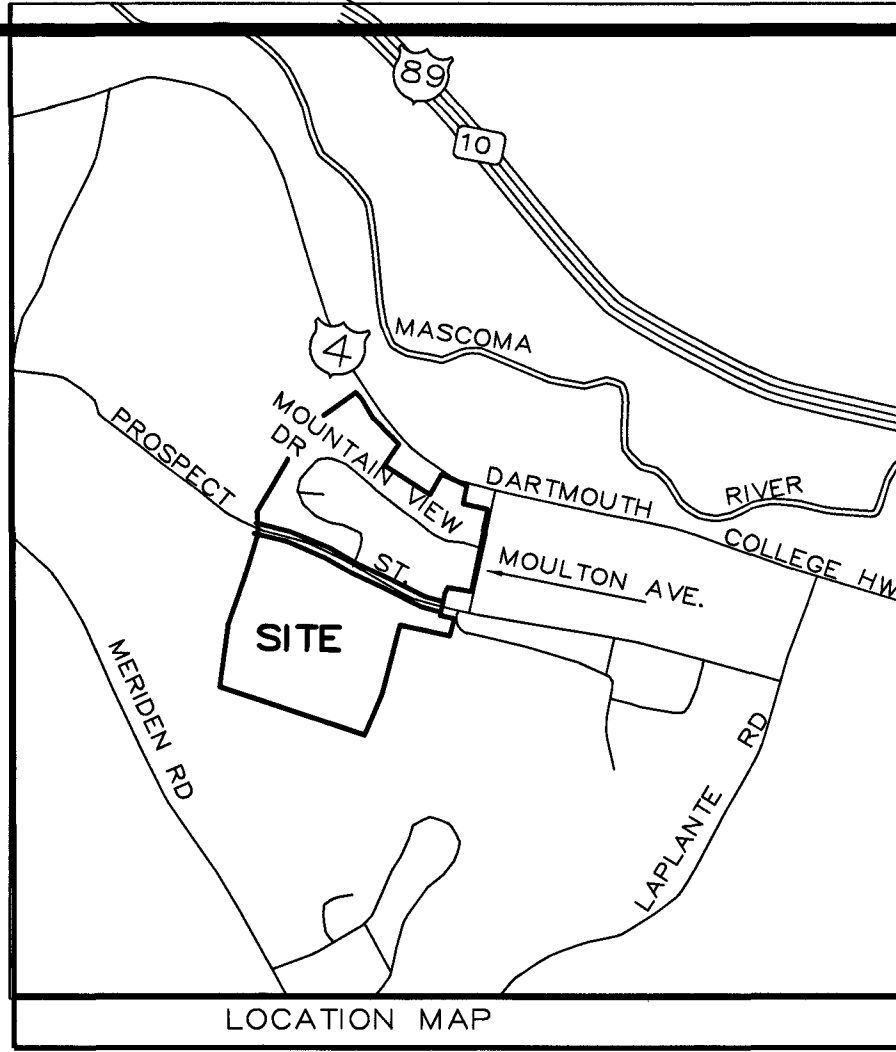
I HEREBY CERTIFY THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY & HAS A MAXIMUM ERROR OF CLOSURE OF 1:10,000 ON ALL PROPERTY LINES IN & BORDERING THE SUBJECT PROPERTY.
6/6/19 DATE
JAMES BLANER LICENSED LAND SURVEYOR

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE & THAT THE LINES OF STREETS & WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED & THAT NO NEW WAYS ARE SHOWN.
6/6/19 DATE
JAMES BLANER LICENSED LAND SURVEYOR



Rokeh Consulting, LLC
89 KING ROAD, CHICHESTER, NH 03258
PH: 603-387-8688

SCALE: 1" = 50'
DR. BY: JR CK. BY: JR
JOB NO. 2010.0023
SHEET NO. 1 OF 2



LEBANON PLANNING BOARD
APPROVED: Nov 14, 2016
CHAIRMAN
DATE OF SIGNATURE
June 7, 2019
TIME: 10:00 AM

REFERENCE PLAN:

- 'OPEN SPACE PLAN - PROSPECT HILL, LEBANON, NH', DATED 4-8-04 AND LAST REVISED ON 11-11-05; SCALE 1"=100, PREPARED BY HOLDEN ENGINEERING AND SURVEYING AND RECORDED AT THE GRAFTON COUNTY REGISTRY OF DEEDS A PLAN NO. 12133.
- 'OPEN SPACE ADJUSTMENT PLAN - PROSPECT HILL, LEBANON, NH', DATED 10-5-11 AND LAST REVISED ON 11-28-11; SCALE 1"=100, PREPARED BY ROKEH CONSULTING LLC AND RECORDED AT THE GRAFTON COUNTY REGISTRY OF DEEDS A PLAN NO. 14152.
- 'OPEN SPACE ADJUSTMENT PLAN - PROSPECT HILL, LEBANON, NH', DATED 10-5-11 AND LAST REVISED ON 5-2-13; SCALE 1"=100, PREPARED BY ROKEH CONSULTING LLC AND RECORDED AT THE GRAFTON COUNTY REGISTRY OF DEEDS A PLAN NO. 14459.

PLAN NOTES:

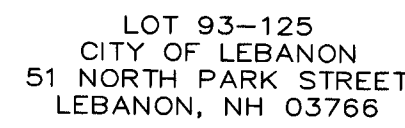
- THE OWNER OF RECORD FOR LOT 108-14 AND 108-2 IS BRADY SULLIVAN PROSPECT HILLS, LLC, 670 NORTH COMMERCIAL STREET, SUITE 303, MANCHESTER, NH 03101 DEED REF: BOOK 3748, PAGE 0402
- THE SUBJECT PARCELS ARE LOCATED IN THE RESIDENTIAL THREE (R-3) ZONING DISTRICT.

OPEN SPACE ADJUSTMENT CALCULATION NOTES:

- THE PURPOSE OF THIS PLAN IS TO SHOW ADJUSTMENTS TO THE CURRENTLY APPROVED OPEN SPACE. PHASE ONE OF THE DEVELOPMENT (MAP 108-14) IS COMPLETELY BUILT OUT AND THERE ARE NO CHANGES TO THE AREAS ASSOCIATED WITH THAT PORTION OF THE DEVELOPMENT. ADJUSTMENTS TO THE OPEN SPACE IN PHASE TWO OF THE DEVELOPMENT ARE SHOWN AS THEY HAVE BEEN APPROVED BY THE LEBANON PLANNING BOARD PURSUANT TO A NOTICE OF ACTION BY THE BOARD DATED NOVEMBER 14, 2016. (#PD 2016-22-EXT-FMHA)
- THE BOUNDARY OF LOT 108-14 AND EXISTING BUILDING LOCATIONS SHOWN ON LOT 108-14, HAVE BEEN CONFIRMED BY J.E. BELANGER LAND SURVEYING PLLC DURING THE CONSTRUCTION PROCESS.

SCALE: 1"=100'

PHASE 1 DEVELOPMENT MAP (COMPLETED)



LEBANON PLANNING BOARD

APPROVED: Nov 14 2016

CHAIRMAN

[Signature]

DATE OF SIGNATURE

June 7, 2019

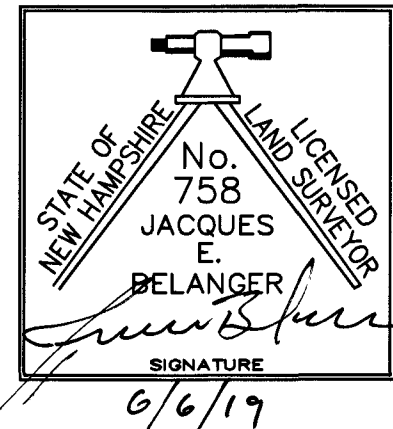
TIME: 10:00 AM

CERTIFICATIONS

I HEREBY CERTIFY THAT THIS MAP HAS BEEN MADE UNDER MY SUPERVISION:
6/6/19 
DATE LICENSED LAND SURVEYOR

I HEREBY CERTIFY THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY & HAS A MAXIMUM ERROR OF CLOSURE OF 1:10,000 ON ALL PROPERTY LINES IN & BORDERING THE SUBJECT PROPERTY.

6/6/19
DATE
LISCENCED LAND SURVEYOR
I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE & THAT THE LINES OF STREETS & WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED & THAT NO NEW WAYS ARE SHOWN.
6/6/19
DATE
LISCENCED LAND SURVEYOR



LOT 108-13
NELSON C. BARDEN
14 ARMORY ROAD,
UNIT 3
WALTHAM, MA 02453

LOT 108-22
CITY OF LEBANON
51 NORTH PARK
DRIVE
LEBANON NH 03766

EDGAR LOT 108-21
ALFONSO ROMERO
SANDOVAL
535 BROOKWOOD POINT PL #914
SIMPSONVILLE, SC 29681

LOT 122-11 DORIS MORSE
REVOCABLE TRUST
PO BOX 53 LEBANON, NH
03766

LOT 122-19-2
JENNIFER JOHNSON
11 GARNET STREET
LEBANON, NH 03766

LOT 122-19
PETER & ANNE JOHNSON
2 WOODLAND DRIVE
LEBANON, NH 03766

PLAN NOTES:
1. THE OWNER OF RECORD FOR LOT 108-14 AND 108-2 IS BRADY SULLIVAN PROSPECT HILLS, LLC, 670 NORTH COMMERCIAL STREET, SUITE 303, MANCHESTER, NH 03101 DEED REF: BOOK 3748, PAGE 0402

2. THE SUBJECT PARCELS ARE LOCATED IN THE RESIDENTIAL THREE (R-3) ZONING DISTRICT.

3. THE PURPOSE OF THIS PLAN IS TO SHOW THE LAYOUT OF THE PHASE TWO PORTION OF THE DEVELOPMENT AS THEY HAVE BEEN APPROVED BY THE LEBANON PLANNING BOARD PURSUANT TO A NOTICE OF ACTION BY THE BOARD DATED NOVEMBER 14, 2016. (JPD 2016-22-EXT-FMHA)

PROPOSED PUMP 2
STATION BACK UP
GENERATOR AND VISUAL
AND AUDIBLE ALARM

N 85°07'25" W
114.52'

N 04°18'44" E
148.14'

N 80°49'11" W
74.91'

LOT 122-37
RICHARD & MELISSA
ROBINSON
7 HILLCREST DRIVE
LEBANON, NH 03766

LOT 108-29
SUSAN LEMAY REV. TRUST
116 PROSPECT STREET
LEBANON, NH 03766

LOT 109-26
TRUST AND EJ SULLIVAN TRUST
RAY DRIVE ART. 232 LEBANON

JEFFREY & KAREN ROBBINS
13 MOULTON AVENUE
LEBANON, NH 03766

LOT 109-30
LEBANON SCHOOL DISTRICT
SAU #88
20 SEMINARY HILL
WEST LEBANON, NH 03784

GRAPHIC SCALE



(IN FEET)
inch = 100 ft.

DEVELOPER:

BRADY SULLIVAN PROSPECT HILL, LLC

670 N. COMMERCIAL STREET, SUITE 303
MANCHESTER, NH 03101

OVERALL DEVELOPMENT PLAN

PROSPECT HILL - PHASE 2

LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE

DATE: 10-5-11

REVISIONS

DATE	DESCRIPTION	DWN BY	CK BY
2-21-14	REVISIONS TO COVER SHEET PER COMMENTS.	JR	JR
3-16-15	EDITS PER ENGINEERING COMMENTS.	JR	JR
9-16-15	EDITS PER ENGINEERING COMMENTS.	JR	JR
5-26-19	EDITS PER FINAL APPROVALS	JR	JR

Rokeh Consulting, LLC

89 KING ROAD, CHICHESTER, NH 03258

PH: 603-387-8688

SCALE: 1" = 100'

DR. BY: JR CK. BY: JR

JOB NO. 2010.0023

SHEET NO. 2 OF 2



Return to:
City of Lebanon
51 N. Park Street
Lebanon, NH 03766

544

20015818 11/02/2020 01:09 PM
Book 4571 Page 217 Page 1 of 4
Register of Deeds, Grafton County

WATER AND SEWER LINE TRANSFER AND ACCESS EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS, that **BRADY SULLIVAN PROSPECT HILL, LLC**, a New Hampshire limited liability company with an address of 670 N. Commercial Street, Manchester, Hillsborough County, New Hampshire 03101 ("Grantor"), for consideration paid, grants to the **CITY OF LEBANON**, a municipal corporation with a principal place of business at 51 North Park Street, Lebanon, Grafton County, New Hampshire 03766 ("Grantee"), with **QUITCLAIM COVENANTS**, the following:

Ownership of Existing Waterline Infrastructure and 20-Foot Water Line Easement.

The existing water main(s), service lines between the water main(s) and curb shut-off valves, the water valves, and the fire hydrant(s) (excluding service connections beyond the curb shut-off valves), and the permanent right and easement to enter upon and to construct, lay, or build, and to re-enter as necessity may require, to repair, replace, or maintain the water mains, service lines, water valves, and fire hydrants, on or through a portion of the Grantor's land located at Mountain View Drive and Cherry Circle, Lebanon, Grafton County, New Hampshire, further described as follows:

The water main(s), service lines, the water valves and fire hydrant(s) (excluding service connections beyond the curb shut-off valves) situated in the City of Lebanon, County of Grafton and State of New Hampshire, being depicted on Plan entitled, "Water Line As-Built Prospect Hill Phase I, Lebanon, Grafton County, New Hampshire, prepared by J.E. Belanger Land Surveying, PLLC, dated 10-5-11, and recorded with the Grafton County Registry of Deeds as Plan No. 15946, located on the private streets comprising Phase I of the Prospect Hill P.U.D. Development as shown on said Plan. The width of the easement granted herein shall be ten (10) feet from either side of the location of said water main(s) shown on the Plan.

The Grantee's ownership of the water main(s), the water valves and fire hydrant(s) shall only extend to the curbside shutoff valves and not from the shutoff valves to the dwellings of the individual homeowners.

In the exercise of its rights hereunder, the Grantee agrees that it shall make all reasonable efforts to do no unnecessary damage to the property of the Grantor and further agrees to restore the surface of the ground to substantially the same condition it was in prior to any construction and/or maintenance, provided however, that such restoration of the surface of the ground will be limited to re-paving of street and driveway areas, re-seeding lawn and resetting curbing. The easement area shall remain free of trees and other physical improvements that would interfere with Grantee's maintenance of the water lines, water valves, and hydrants.

Notwithstanding any other provisions of this Deed, Grantor and any successor in interest shall have the right to use any area covered by the easements granted therein for any lawful purpose not prohibited by this conveyance, and to grant such rights to others, including without limitation a) access to any lot in the Planned Unit Development or any adjoining land of Grantor; and b) use of the easement areas for private sewer, and other utility lines, provided that such use shall not impair Grantee's rights hereunder.

Ownership of Off-Site Sewer Infrastructure. Grantor also transfers to City of Lebanon, with Quitclaim covenants, the existing off-site gravity sewer main constructed by it or its predecessor in interest within Moulton Avenue, Dartmouth College Highway (N.H. Route 4) and Pumping Station Road to the boundary line of the Planned Unit Development.

Meaning and intending to describe and convey easements on a portion of the same premises as conveyed to Grantor by Fiduciary Deed of M & M Equities, LLC dated November 11, 2010 and Confirmatory Fiduciary Deed dated March 2, 2011, recorded with the Grafton County Registry of Deeds at Book 3748, Page 0402 and 3779, Pg. 0067, respectively.

This transfer is a transfer of title to the state, a state agency, a county, a city, a town, a school district, or a village district, and is exempt from transfer tax pursuant to RSA 78-B:2.

Executed this 30th day of September, 2020.

BRADY SULLIVAN PROSPECT HILL, LLC

By:


Arthur W. Sullivan Its Member
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this 30th day of September, 2020, before me, the undersigned, personally appeared the above named Arthur W. Sullivan, as Member of Brady Sullivan Prospect Hill, LLC, duly authorized, who executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his free act and deed.



Maryann Finocchiaro
Notary Public/Justice of the Peace
My Commission Expires:

ACCEPTANCE

The within conveyance to the City of Lebanon is accepted and authorized to be recorded in the Grafton County Registry of Deeds.

CITY OF LEBANON

By: [Signature]
Name: Shawn Mulholland
Title: CITY MANAGER
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this 28th day of October, 2020, before me, the undersigned, personally appeared the above named Shawn Mulholland, as City Manager of the City of Lebanon, duly authorized, who executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his/her free act and deed.

[Signature]
Notary Public/Justice of the Peace
My Commission Expires:

ANN M. CORMIER, Notary Public
My Commission Expires April 6, 2021

MORGAGEE CONSENT
AND
SUBORDINATION OF MORTGAGE

Northway Bank, of 3424 White Mountain Highway, North Conway, New Hampshire 03860, holder of a Mortgage from Brady Sullivan Prospect Hill, dated June 18, 2014, and recorded in the Grafton County Registry of Deeds, Book 4063, Page 0850, hereby consents to the above described conveyance and hereby subordinates said Mortgage to the above-described Water Line Transfer and Access Easement Deed, being conveyed herein to the City of Lebanon, but said Mortgage in all other respects, terms and conditions shall remain in full force and effect.

Dated this 30th day of September, 2020

Northway Bank

By: [Signature]

Name: THOMAS S. CARUSO

Title: Senior Vice President

Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

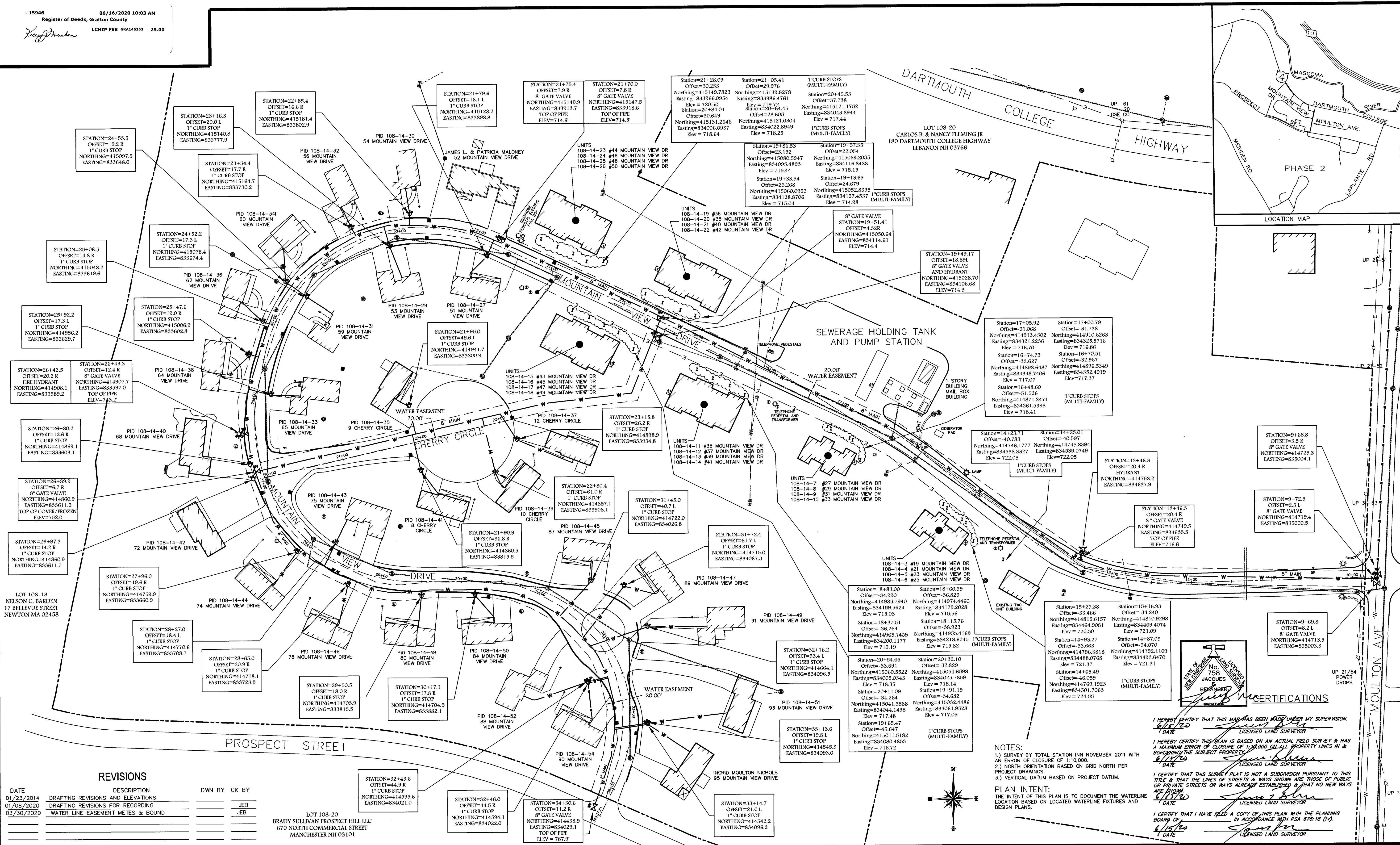
On this 30 day of September, 2020, before me, the undersigned, personally appeared the above named Thomas Caruso, as Senior VP of Northway Bank, duly authorized, who executed the foregoing instrument for the purposes therein contained and acknowledged the same to be his/her free act and deed.



[Signature]
Notary Public/Justice of the Peace
My Commission Expires: 6/21

- 15946 06/16/2020 10:03 AM
Register of Deeds, Grafton County
LCHIP FEE 6RA16153 25.00

Handwritten signature



REVISIONS

DATE	DESCRIPTION	DWN BY	CK BY
01/23/2014	DRAFTING REVISIONS AND ELEVATIONS		
01/08/2020	DRAFTING REVISIONS FOR RECORDING		JEB
03/30/2020	WATER LINE EASEMENT METES & BOUND		JEB

LOT 108-20
BRADY SULLIVAN PROSPECT HILL LLC
670 NORTH COMMERCIAL STREET
MANCHESTER NH 03101

STATION=32+43.6
OFFSET=14.9 R
1" CURB STOP
NORTHING=414595.6
EASTING=834021.0

STATION=32+46.0
OFFSET=44.5 R
1" CURB STOP
NORTHING=414394.1
EASTING=834022.0

STATION=34+30.6
OFFSET=11.2 R
8" GATE VALVE
NORTHING=41438.9
EASTING=834029.1
TOP OF PIPE
ELEV = 787.9'

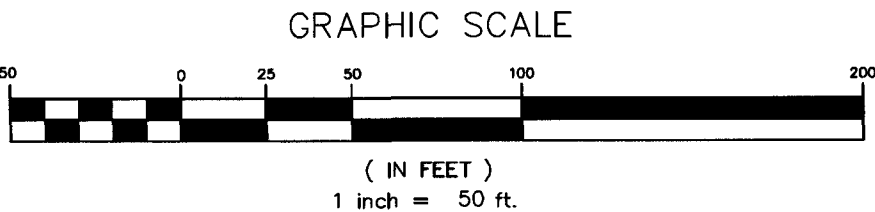
STATION=33+14.7
OFFSET=21.0 L
1" CURB STOP
NORTHING=414542.2
EASTING=834096.2

WATER LINE AS-BUILT
PROSPECT HILL - PHASE 1
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE
DATE: 10-5-11

J.E. BELANGER LAND SURVEYING, PLLC
111 CEDAR STREET, SUITE 200
LEBANON, NH 03606
TEL (603) 774-3601

Rokeh Consulting, LLC
89 KING ROAD, CHICHESTER, NH 03258
PH: 603-387-8688 FAX: 603-513-6242

SCALE: 1" = 50'
DR. BY: JR CK. BY: JR
JOB NO. 2010.0023
SHEET NO. 1 OF 2



NOTES:
1.) SURVEY BY TOTAL STATION IN NOVEMBER 2011 WITH AN ERROR OF CLOSURE OF 1:10,000.
2.) NORTH ORIENTATION BASED ON GRID NORTH PER PROJECT DRAWINGS.
3.) VERTICAL DATUM BASED ON PROJECT DATUM.

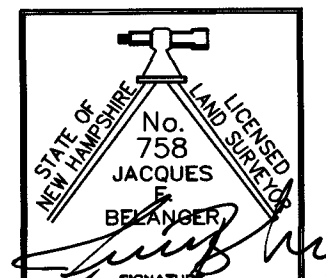
PLAN INTENT:
THE INTENT OF THIS PLAN IS TO DOCUMENT THE WATERLINE LOCATION BASED ON LOCATED WATERLINE FIXTURES AND DESIGN PLANS.

I HEREBY CERTIFY THAT THIS MAP HAS BEEN MADE UNDER MY SUPERVISION.
DATE 6/15/20
J.E. BELANGER
LICENSED LAND SURVEYOR

I HEREBY CERTIFY THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY & HAS A MAXIMUM ERROR OF CLOSURE OF 1:10,000 ON ALL PROPERTY LINES IN & BORDERING THE SUBJECT PROPERTY.
DATE 6/15/20
J.E. BELANGER
LICENSED LAND SURVEYOR

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE & THAT THE LINES OF STREETS & WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED & THAT NO NEW WAYS ARE SHOWN.
DATE 6/15/20
J.E. BELANGER
LICENSED LAND SURVEYOR

I CERTIFY THAT I HAVE FILED A COPY OF THIS PLAN WITH THE PLANNING BOARD OF
DATE 6/15/20
J.E. BELANGER
LICENSED LAND SURVEYOR

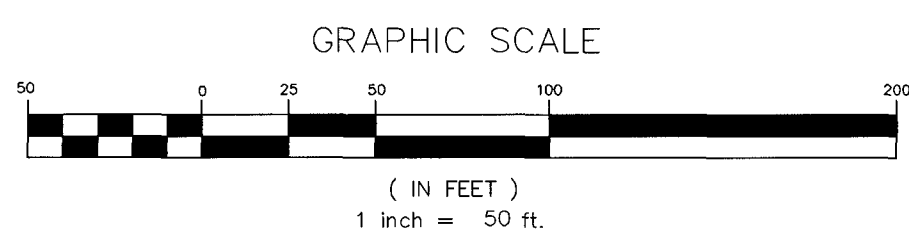


CERTIFICATIONS

LOT 108-13
NELSON C. BARDEN
17 BELLEVUE STREET
NEWTON MA 02458

REVISIONS			
DATE	DESCRIPTION	DWN BY	CK BY
01/23/2014	DRAFTING REVISIONS AND ELEVATIONS		
01/08/2020	DRAFTING REVISIONS FOR RECORDING		JEB
03/30/2020	WATER LINE EASEMENT METES & BOUND	JEB	

LOT 108-20
BRADY SULLIVAN PROSPECT HILL LLC
670 NORTH COMMERCIAL STREET
MANCHESTER NH 03101



DEVELOPER:
BRADY SULLIVAN PROSPECT HILL, LLC
670 N. COMMERCIAL STREET, SUITE 303
MANCHESTER, NH 03101

WATER LINE EASEMENT
PROSPECT HILL - PHASE 1
LEBANON, GRAFTON COUNTY, NEW HAMPSHIRE
DATE: 10-5-11

J.E. BELANGER LAND SURVEYING P.L.L.C.
LICENSED LAND SURVEYOR
 61 OLD HOPKINTON ROAD, DUNBARTON, NH 03046



- * BOUNDARY SURVEYS
- * SUBDIVISIONS
- * LAND PLANNING
- * SEPTIC DESIGN

TEL (603) 774-3601

PLAN DATE: NOVEMBER, 2011
SCALE: 1" = 50'
PROJECT NO.: 101267/WATERLINE AB
SHEET 1 OF 1

Rokeh Consulting, LLC
89 KING ROAD, CHICHESTER, NH 03258
PH: 603-387-8688 FAX: 603-513-6242

SCALE: 1" = 50'
DR. BY: JR CK. BY: JR
JOB NO. 2010.0023
SHEET NO. 2 OF 2

Page 193 of 210

Roll Call Vote:

Voting in Favor – Ms. Stavis, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny, Ms. Monroe, Ms. Romano, Ms. Chewning

Voting Against – None

****The MOTION was approved (9-0).***

[Note: the motion for agenda item 3.A that appears above is as amended.]

B. Brady Sullivan Prospect Hills, LLC, 0 Prospect Street (Tax Map 108, Lot 2), zoned R-3: Pursuant to Section 14.1.B.1.c of the Subdivision Regulations, a request for an extension of time to achieve active and substantial development of Phase II of a project identified as Prospect Hills, a 171 unit Planned Unit Residential Development located off Moulton Drive and Prospect Street, Tax Map 108, Lot 2 (phase 2) and Lot 14 (phase 1). **PB2021-02-EXT** - Public Hearing continued from February 8, 2021

Jon Rokeh and Atty. Marc Pinard appeared on behalf of the applicant.

Mr. Rokeh stated that Brady Sullivan took over an abandoned project, which needed a large amount of clean up. Phase I needed to be completed to begin Phase II, and they are now ready to begin Phase II. They are committed to beginning the infrastructure work in 2021. All through 2018, 2019, and 2020 they were working on items that needed to be finalized prior to beginning Phase II.

Mr. Pinard stated that much work and expense had been invested to date, and the project was making progress. The applicant is asking for an extension of two years. The character of the neighborhood has not changed since the project was originally approved; the area is and has been residential, so approval of the extension to begin construction is warranted. There has been no change in zoning, so there is no vesting issue, so the applicant's position is no extension is needed because the project is still approved. Nothing has changed and they should be permitted to move forward. The applicant is committed to break ground this year and has made significant progress as evidenced in the meeting packet information. The global pandemic has affected the applicant's ability to do business. They've made substantial progress in making sure that the plans, working with the Planning Department, were designed properly. For those reasons, an extension is a reasonable request.

Mr. Corwin noted that the applicant is also asking to suspend the security that has been posted for Phase II, and that the applicant has requested a waiver to suspend the bond until construction begins. Mr. Pinard stated that construction may not start for several months, which would mean a savings in carrying costs. The bond would be back in place when the applicant is ready to break ground. The plan is to construct the multi-family units first, then the other units. The project is likely to be completed by 2024, but the applicant is asking to go a bit longer due to potential issues.

Mr. Corwin noted that at the last meeting, the applicant was granted a waiver from the missed December submission deadline. The applicant must now demonstrate good cause for extending the time frame to achieve active and substantial completion. If the Board denies the extension, that would close the application and no action would need to be taken on the other waiver requests.

Chair Garland noted that the focus is on the term "good cause," and to reach a consensus as to whether the applicant has demonstrated "good cause"; that would then lead the Board to consideration of the other waiver requests.

Mr. Hall asked the applicants why nothing was physically done by the deadline. Chair Garland noted that this project has been going on for many years before this extension request. Mr. Rokeh stated the current

plan was approved in 2016 and was extended in 2018. The extension granted in 2018 was to record the plat, and that has been completed. They are now asking for an extension to begin the construction process for Phase II. For the last two years, they have been actively working with the City on finalizing every item, doing as-builts for Phase 1, getting plans recorded, and working on easements that the City needed. There were issues with Phase 1 that they wanted to make sure were completely cleaned up before beginning the Phase 2 construction process.

Mr. Hall, noting that the applicant said they have been working on a large number of supplementary issues for Phase I and had not been prepared to commence work on Phase II, asked why they did not ask for an extension well before the deadline. Mr. Pinard responded that Mr. Rokeh can talk about the timing of filing for extensions as he relies on Mr. Rokeh for those matters. Mr. Pinard noted that Brady Sullivan closed down a year ago due to the pandemic. Everyone was sent home and there was a period where they tried to figure out how to keep people working in a safe way, where to best put their resources, and how to reopen the office and job sites. The company is located in Manchester, and they tried to keep people working safely and to decide where to best put their resources among their project sites located in various areas. In dealing with the pandemic they were not in the position to get into the ground up in Lebanon, and of the past two-year period, nearly a year was consumed by the pandemic. They've been doing their best, but it wasn't possible to get up to Lebanon during the spring season and into the summer season. The unprecedented global pandemic fits the definition of "good cause". They're asking for an extension with a commitment to get into the ground notwithstanding the pandemic. They are planning to shift resources to make this happen. It's the global pandemic that is the good cause.

Mr. Hall noted that the City and surrounding area has still seen a lot of development during the pandemic, from firms from across New England. Mr. Pinard replied that the applicant has been working through the pandemic, but they had to pick and choose where to work and that in hindsight, they wished that they had gone to Lebanon and that they would have focused there, because they don't relish this process and that it's an imposition to everyone involved. In hindsight, he would have considered doing something differently, but it's just the way it rolled out.

Ms. Romano noted that the Board has a lot of things to take into account here. She remembers the problems with Phase 1 and they did not seem to be things that happened based on bad luck; rather, they seemed to be quality issues, homeowner dissatisfaction issues, and incompleteness of things that should have been completed – not good faith problems. Ms. Romano stated that the applicant is asking to suspend the bond, and she wonders if the reason for the extension request is not so that the applicant can begin construction but to sell the development. Mr. Pinard stated that the premium for the \$10M bond is \$175K per year. They paid this when they were not in the ground. But now that the plan is recorded, they want to suspend it until they get into the ground and reimpose it when construction begins.

Mr. Winny noted the goal is substantial completion, yet there hasn't been any groundbreaking, and that yes, the pandemic is an issue but there were things that still could have been done during the pandemic, and there was also a whole year before the pandemic, and there still hasn't been ground broken. Mr. Winny wondered what would be different this time. Mr. Winny expressed concern that the project has been dragged out and will continue to be dragged out. Ms. Monroe observed that the original plan for the project is dated October 5, 2011, so that not only has this been extended multiple times, but that we don't know if Phase II will drag along just as Phase I did. During the pandemic, City staff were back in the office after a month, and the Planning Board began meeting on-line right away. The day after the Board approved the Dartmouth student housing project in March or April, the applicant began construction. Projects both large and small have continued, really adding to the City's housing stock. One of the reasons the Board has previously discussed tightening up its regulations to limit the number of extensions that can be approved is that eventually the technology and the advancement of planning is way beyond what the original plan contained. We've become more aware of the significance of addressing climate

change and other environmental changes. Due to significant environmental changes, the City is tightening regulations regarding extensions. It is even more important to work in a timely fashion, and the current plan is outdated. In conclusion, Ms. Monroe stated that the excuses being used as to why it has not happened are specious because other companies have been able to do more, and that the plan is outdated due to technological developments.

Ms. Chewning commented that she's struggling to find good cause. While the pandemic may offer some level of excuses, she heard the applicant say that in the last year they still made a choice not to be in Lebanon, and when she hears that, it raises red flags as opposed to establishing that there was "good cause" for this additional delay. She also heard the applicant say that work will commence "sometime in 2021", or "maybe in the next few months". None of this is reassuring.

Mr. Pinard stated that the plans are current, and that if they reapplied, they would bring in the same plans. Mr. Garland agreed but stated that that is not relevant to demonstrating "good cause". Mr. Pinard stated that they have given explanations, not excuses, and that there are compelling reasons to require an extension, which includes the pandemic.

Mr. Rokeh noted that Phase II was approved for the Moultons back in 2007, but the plans were completely redesigned based on the new Alteration of Terrain standards. They will have an updated alteration of terrain permit meeting the most current AOT standards within the next few months, which is one of the reasons that their plan is to begin in the summer.

***A MOTION by Matthew Hall** that the Lebanon Planning Board **DENY** the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), originally approved as PB2016-22-EXP-FMAJ, for an extension of time pursuant to Section 14.1.B.1.c of the Subdivision Regulations to achieve active and substantial development as required by Section 14.1.B.1.b of the Subdivision Regulations, PB2021-02-EXT, noting the lack of active and substantial development or building by December 10, 2020, and not finding good cause for such lack of activity.*

Seconded by Kim Chewning

Roll Call Vote:

Voting to Approve – Ms. Monroe, Ms. Romano, Ms. Stavis, Ms. Chewning, Mr. Hall, Mr. Garland, Mr. Amaro, Mr. Rutter, Mr. Winny

Voting Against - None

***The MOTION was approved (9-0).**

C. Basic Holdings, LLC, 5 & 11 Oak Ridge Road, (Tax Map 4, Lots 5 & 6), zoned R-3:
Request for Final Major Subdivision Review, Site Plan Review, and a Conditional Use Permit for a proposed Planned Unit Residential Development (PURD) pursuant to Section 501.2 of the Zoning Ordinance, containing 22 residential units together with related site improvements and amenities.
PB2020-31-FMAJ -Public hearing to commence on January 11, 2021 if the Board finds that the application is complete. Continued from February 8, 2021.

Jeff Shapiro, Owner; Rod Finley, P.E.; and Nate Stearns, Attorney, attended on behalf of the applicant.

Mr. Finley gave an overview of past and future plans. The project is now named "Occom Path," which is the same as the proposed road name. There will be a merger of #5 and #11 Oak Ridge. Renderings of the three types of units were shown. The majority are two-story, single family units. The configuration of the units and amenities were explained. There will be 22 units, which the Planning Board may allow under

**CITY OF LEBANON ~ PLANNING & DEVELOPMENT****LEBANON PLANNING BOARD
NOTICE OF ACTION
PB2021-02-EXT**

Notice is hereby given that on **FEBRUARY 8, 2021**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

Kathie Romano moved that the Lebanon Planning Board finds the application of **BRADY SULLIVAN PROSPECT HILLS, LLC** regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), PB2021-02-EXT, is complete enough to accept jurisdiction and commence review.

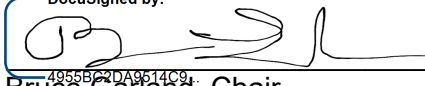
The motion was seconded by Joan Monroe. The vote on the motion was 9-0.

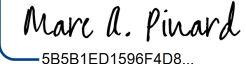
Notice is hereby given that on **MARCH 8, 2021**, the following action was taken by a majority of the Lebanon Planning Board in accordance with the City of Lebanon Site Plan Review Regulations:

Matthew Hall that the Lebanon Planning Board **DENY** the application of Brady Sullivan Prospect Hills, LLC, regarding Phase II of the Prospect Hills development (Tax Map 108, Lot 2), originally approved as PB2016-22-EXP-FMAJ, for an extension of time pursuant to Section 14.1.B.1.c of the Subdivision Regulations to achieve active and substantial development as required by Section 14.1.B.1.b of the Subdivision Regulations, PB2021-02-EXT, noting the lack of active and substantial development or building by December 10, 2020, and not finding good cause for such lack of activity.

The motion was seconded by Kim Chewning. The vote on the motion was 9-0.

THE CITY OF LEBANON PLANNING BOARD

DocuSigned by:
By:  DATE: 3/18/2021
Bruce Garland, Chair

DocuSigned by:
 DATE: 3/22/2021
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**Agenda
Planning Board
November 8, 2021**

**Agenda Item #5A
Approval of Minutes**

October 12, 2021

DRAFT

LEBANON PLANNING BOARD
Regular Meeting
Tuesday, October 12, 2021, 6:30 PM
City Council Chambers, City Hall
or Remote Via Webex
LebanonNH.gov/Live

MEMBERS PRESENT: Bruce Garland (Chair), Matthew Hall (Vice Chair), Kim Chewning, Joan Monroe, Jeremy Rutter, Kathie Romano, Laurel Stavis, Gregorio Amaro

MEMBERS ABSENT: Karen Zook (Council Representative), , Michael Smith (Alt.)

STAFF PRESENT: David Brooks (Planning Director), Tim Corwin (Senior Planner), Brian Vincent (City Engineer)

1. Call to Order

Chair Garland called the meeting to order at 6:30 PM.

2. Notice of Regional Impact

The following applications were received by the Planning and Development Department on or before October 12, 2021:

Jaqueline H. Minard, 78 & 82 Mascoma Street (Tax Map 106, Lot 67 & Tax Map 106, Lot 67, Plot 70100), zoned R-3: Request for a Minor Subdivision to create two parcels. PB2021-31-MIN

WM C. Solari Jr, Trustee & WM C. Solari Jr. Rev Trust, 60 & 0 Slayton Hill Road (Tax Map 119, Lot 1, Plots 200 & 300), zoned R-3: Request for a Boundary Line Adjustment. PB2021-32-BLA

Mr. Brooks stated that Planning Staff has reviewed the above applications and recommends that neither has the potential for regional impact.

A MOTION by Jeremy Rutter that the above applications do not have the potential for regional impact. The motion was seconded by Matthew Hall.

**The MOTION was approved (7-0).*

Kim Chewning arrived immediately after the vote.

3. Public Hearing Items

A. Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD: Request for Site Plan Review to construct a 15,000 sq. ft. addition to an existing warehouse building. PB2021-13-SPR - Continued from September 13, 2021

1 Sean Mason of Mason Storage, Frank Barrett of Barrett Architecture, Dan Nash of Advanced Geomatics,
2 and Mara Robinson, Landscape architect, appeared on behalf of the application.

3
4 Mr. Mason introduced the changes to the application based upon previous feedback. Mr. Barrett described
5 the existing building, which was pre-engineered, and the proposed building addition, which would also be
6 pre-engineered. There are two levels in the addition with little embellishment. There would be minimal
7 changes to the original building including repairs and freshening the façade and doorways. The addition
8 was designed for agreement with City building requirements. The purpose of the building is storage,
9 which does not lend itself to windows.

10
11 Mr. Nash described the changes to the site plan for landscaping, screening, and sidewalk access.

12
13 Mr. Corwin noted the non-conforming use of the current building in the Lebanon Downtown district
14 (LD). The Zoning Board approved the site addition. This is the first construction under the new
15 regulations. A good deal of progress was made to adjust the design to make it more compatible with the
16 LD requirements. Per the Staff Memo, several issues remain to be addressed. The waivers were reviewed,
17 with potential, further adjustments noted.

18
19 Mr. Vincent commented on the technical aspects of the proposed addition. Access to the rear of the
20 building could present a problem. Stormwater treatment lacks technical information. Soil tests are
21 recommended. Additional data on the water table would be helpful.

22
23 Ms. Romano noted the improved physical appearance of the proposed building but expressed concern
24 regarding the flood zone and protection of the property and surrounding properties. Mr. Hall agreed with
25 Ms. Romano and sees it as an existing structure with an addition that looks better for the downtown
26 district. He felt it could move forward. Chair Garland expressed concern over the west side of the
27 building, which would be seen by new residential property on the adjacent lot. Mr. Rutter noted that snow
28 removal would be challenging.

29
30 Mr. Mason described the level of traffic in and out of the property. There would be a security gate for
31 access by customers. The loading dock would be used throughout the day by customers.

32
33 The other Board members commented. Ms. Stavis agreed with the other members. Mr. Hall inquired
34 about the potential longevity of the current structure. Mr. Barrett stated that it could last another forty or
35 more years. Ms. Monroe inquired about the view from the residential building. Mr. Nash stated that
36 landscaping would be in place for screening. Ms. Robinson described the landscaping. Mr. Rutter noted
37 that there is a ten-foot setback requirement, but Mr. Nash explained that the rear corner was approved by
38 the Zoning Board.

39
40 Chair Garland invited comments on the landscaping and shading. Mr. Nash noted that there is 36%
41 shading to meet the requirement. Ms. Robinson stated that as many trees as possible have been
42 incorporated in the design.

43
44 Mr. Vincent explained the roof layout, which is slightly sloped to the rear to allow as much stormwater as
45 possible to flow to the rear. Management systems are proposed to handle the flow.

46
47 Ms. Monroe inquired about the creation of individual storage spaces. Mr. Mason confirmed that there
48 would be individual spaces.

49
50 Mr. Barrett described the building process for the addition.

1 Ms. Romano inquired if breakaway panels would be required. Mr. Barrett stated that they would not be
2 required. Ms. Monroe inquired if the drainage would require a condition of approval. Mr. Vincent stated
3 that the applicant is currently meeting the requirements.

4
5 Mr. Corwin explained the changes that the Fire Department is requiring as conditions of approval. Mr.
6 Nash stated that the building would be sprinkled, which would eliminate the need for rear access to the
7 building.

8
9 Chair Garland stated that the Board's comments on the application are clear at this point.

10
11 Mr. Nash stated that the HVAC equipment would be inside the building.

12
13 ***A MOTION by Matthew Hall to continue the application of Mason Storage, LLC, 38 Spencer Street***
14 ***(Tax Map 78, Lot 39), zoned LD to October 25, 2021, at 6:30 PM.***

15 ***The motion was seconded by Kathie Romano.***

16
17 ****The MOTION was approved (8-0).***

- 18
19
20 B. **Michaels Student Living, LLC (applicant) and Trustees of Dartmouth College**
21 **(property owner), 401 Mount Support Road (Tax Map 24, Lot 2), zoned R-1, R-3**
22 **and RL-3: A 309-unit multi-family development is currently under construction**
23 **pursuant to an approved Major Subdivision and Site Plan (PB2020-07-SPR & PB2020-**
24 **29-SPA). The applicant requests a modification to the conditions of approval in order to**
25 **allow two of the four proposed residential buildings to be occupied prior to the**
26 **completion of all site improvements. PB2021-30-SPA**

27
28 Matthew Hall and Gregorio Amaro recused themselves from this application.

29
30 Phil Hastings, Attorney; Kristina Vagen, representing Michaels Student Living; and Dan Justynski,
31 Director of Development for Dartmouth College, appeared on behalf of the application.

32
33 Mr. Brooks stated that the Planning Department reviewed the application and finds it complete enough for
34 the Planning Board to accept jurisdiction and commence review.

35
36 ***A MOTION by Laurel Stavis that the Planning Board accept jurisdiction and commence review.***

37 ***The motion was seconded by Kim Chewning.***

38
39 ****The MOTION was approved (6-0).***

40
41 Ms. Vagen stated that much progress has been made, and the project is ahead of schedule. The history of
42 the project was described. An aerial image of the work to date was shown. This is the second amendment
43 to the original plan based upon the progress to date. The Temporary Certificate of Occupancy (TCO) was
44 approved, and the clubhouse is ready for occupancy as rental office space. Juniper Circle is the name of
45 the road created within the project. Move-in is planned for March 1, 2022, for buildings 2 and 3.
46 Buildings 1 and 4 are expected to be completed by August 19, 2022. The new TCO would be for
47 buildings 2 and 3.

48
49 Mr. Corwin confirmed that Staff is in support of the proposed phasing. The only items outstanding are
50 conditions for all improvements to be complete, such as landscaping. In addition, the applicant should
51 satisfy the original conditions, including completion of the water mains and hydrants.

Ms. Romano inquired about the removal of the construction trailers. Ms. Vagen confirmed that the trailers will be moved. Ms. Stavis inquired if there would be adequate parking. Ms. Vagen stated that it would be adequate. Ms. Monroe noted that there was a difference in the name of the new road. Ms. Vagen stated that the name would be corrected on the updated plan. Chair Garland inquired if there would be any change to the agreement among the new projects in the Mount Support Road Special Assessment District. Mr. Corwin stated that they would be satisfied with the terms of the TCO.

Chair Garland invited public comment. There were no comments. The Public Hearing was closed.

Joan Monroe moved that the Lebanon Planning Board **APPROVE** the application of **Michaels Student Living, LLC and Trustees of Dartmouth College, PB2021-29-SPA**, to modify the conditions of approval for an approved Major Subdivision and Site Plan for a 309-unit multi-family development at 401 Mount Support Road (Tax Map 24, Lot 2) (PB2020-07-SPR & PB2020-29-SPA) as depicted on a plan set titled "Proposed Multi-Family Housing Project, 401 Mount Support Road, Lebanon, Grafton County, New Hampshire," prepared by VHB, dated February 10, 2020, revised March 18, 2020, VHB Project: 52621.01, as further revised pursuant to the Planning Board's Notice of Action dated June 22, 2020 for PB2020-07-SPR ("Approved Plan"), in order to allow two of the four proposed residential buildings - as shown on a plan sheet submitted to the Planning Board for application PB2021-30-SPA titled, "Overall Site Plan," dated February 10, 2020, prepared by VHB, Project No. 52621.01 ("Plan Sheet") - to be occupied prior to the completion of all site improvements for the development, including any and all submissions and testimony provided for and during the public hearing, with the following conditions:

Pursuant to the granting of a partial waiver on June 22, 2020, from the requirements of Section 8.1 of the Site Plan Review Regulations, the Planning Board's Notice of Action dated June 22, 2020 (PB2020-07-SPR), as modified by the Planning Board's Notice of Action dated October 13, 2020 (PB2020-34-SPA), is hereby further modified to allow a temporary certificate of occupancy for Buildings 2 and 3 ("Plan Sheet")) to be issued prior to the completion of all site improvements, provided that all improvements identified within the area outlined in red on the Plan Sheet are substantially complete and have been constructed per the Approved Plan and all applicable regulations to the satisfaction of the Planning and Development Department and the Department of Public Works, and provided that all life safety improvements are complete to the satisfaction of the Building Inspector and the Fire Department.

Within 30 days of the Planning Board's approval, the applicant shall make the following revisions to the Plan Sheet to the satisfaction of the Planning and Development Department:

- a) Provide a revised date and a description of the revision as required by Section 5.1.E.4.d of the Site Plan Review Regulations.
- b) Revise the title of the Plan Sheet to reflect the purpose of the plan which is to depict the area of improvements to be constructed prior to the issuance of temporary certificates of occupancy for Buildings 2 and 3.
3. Prior to the issuance of a temporary certificate of occupancy for Buildings 2 and 3 (as identified on the Plan Sheet), the applicant shall:
 - a) Provide a hard copy and PDF of the Approved Plan set which shall incorporate all approved changes to date, including but not limited to adding the Plan Sheet as revised per condition of approval #2 above as an additional plan sheet and revising the Table of Contents and plan set pagination accordingly.

b) Provide security in a form and amount acceptable to the City necessary to secure completion of any remaining improvements within the area outlined in red on the Plan Sheet that are required per the Approved Plan.

c) Satisfy the following conditions of approval as set forth in the Planning Board's Notice of Action dated June 20, 2020, for PB2020-07-SPR:

23. The applicant shall work with Advance Transit to identify and construct bus stop improvements within the vicinity of the project site, if determined to be necessary by Advance Transit. The location of any new or improved bus stops should consider sightlines for traffic, turning movements, and convenience as well as coordination of access (i.e., safe and accessible facilities). The development of the proposed improvements shall be coordinated with the Planning & Development Department and the Department of Public Works and shall be implemented prior to the issuance of a Certificate of Occupancy."

24. The applicant shall prepare and record an open space covenant or deed restriction for the hatched area depicted on the plat titled "Open Space Exhibit," prepared by VHB, undated, VHB Project: 52621.01, included with the agenda packet for the June 8, 2020, Planning Board meeting. The open space covenant or restriction shall be in accordance with Section 12.2 of the Subdivision Regulations and shall be in form and content acceptable to the Planning & Development Department and the City Attorney."

4. Following the issuance of a temporary certificate of occupancy for Buildings 2 and 3 (as identified on the Plan Sheet), the applicant shall ensure that the development's center access drive and the easternmost drive aisle of the parking area located to the west of Building 3 remain at all times (a) clear of obstacles including but not limited to construction equipment, vehicles and material, and (b) accessible to emergency vehicles.

The motion was seconded by Kim Chewning.

**The MOTION was approved (6-0).*

Mr. Amaro returned to the Board.

Mr. Hall continued to be recused for the next application.

C. **Alice Peck Day Memorial Hospital, 10 Alice Peck Day Drive (Tax Map 90, Lot 59), zoned R-3:** Request for Site Plan Review to construct a +/-5,590 sq. ft. addition to the hospital, together with associated site work including a new loading dock, renovated sidewalks, and an expanded courtyard. PB2021-28-SPR

Shawn Courtemanche, Director of Plant Operations at APD, and Nik Fiore of Engineering Ventures appeared on behalf of the application.

Planning Staff reviewed the application and recommended that it was complete enough for the Planning Board to accept jurisdiction and commence review.

A MOTION by Jeremy Rutter that the application of Alice Peck Day Memorial Hospital, 10 Alice Peck Day Drive (Tax Map 90, Lot 59), zoned R-3 is complete enough for the Planning Board to accept jurisdiction and commence review.

The motion was seconded by Kathie Romano.

1
2 ***The MOTION was approved (7-0).**

3
4 Mr. Courtemanche explained that Central Sterile is undersized for the current demands. The addition
5 would create a better facility for the staff and a better loading dock for the entire facility.

6
7 Mr. Fiore noted that there is no increase in the capacity of the hospital facility. The new loading dock
8 would allow better access to the facility.

9
10 Mr. Fiore described the property rendering and indicated replacement of pavement with landscaping and
11 the location of the new addition. The internal floor plan was also shown and described. Adjustments to
12 the compactor, dumpsters, landscaping, and traffic flow were explained. The stormwater management
13 would be handled by a rain garden and the additional pervious surface provided by the conversion to
14 landscaping.

15
16 Ms. Romano inquired about the ambulance access. Mr. Courtemanche stated that an ambulance would not
17 likely be accessing that area. Ms. Stavis inquired about the DHMC Superliner ambulance. Mr. Fiore
18 stated that it was used to measure for ambulance access, but it is no longer used. Ms. Monroe inquired
19 about the landscaping plan.

20
21 Chair Garland invited public comment.

22
23 Mark Farnum, 36 West Street, commented that the street in Figure 1 should be labeled Mascoma Street.
24 The sidewalk could impact the nature trails. Mr. Courtemanche confirmed that there is no plan at present
25 to change the nature trails. Regarding the West Street entrance to the nature trails and to avoid future
26 obstruction to the access, some posts should be placed on the boundaries to prevent obstructing access to
27 the trails. A placard with a map of the nature trails would be helpful on West Street.

28
29 Beau Moulton, 1 Michael Street, commented that his mobile home is behind the HVAC system that runs
30 constantly. There has been no noise reduction provided. He inquired if the new addition would have
31 another HVAC system and if there would be a reduction in the noise. Mr. Courtemanche stated that the
32 chiller is for Harvest Hill. The new HVAC for the addition would be on the roof, and he would share the
33 comment about the chiller unit with Harvest Hill.

34
35 Ms. Monroe inquired about the survey requirement. Mr. Courtemanche confirmed that the new project
36 would be well away from the setback. Ms. Monroe commented on the nature trail on the APD property
37 that goes up Young Street and Hough Street to raise awareness of the trail for the abutters.

38
39 ***A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Section 5.1.E.5***
40 ***- current survey.***

41 ***The motion was seconded by Kathie Romano.***

42 ****The MOTION was approved (7-0).***

43
44 ***A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Section 5.1.E.7***
45 ***- requiring information relating to properties, buildings, and features within 200 feet of the site.***

46 ***The motion was seconded by Kathie Romano.***

47 ****The MOTION was approved (7-0).***

48
49 ***A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Section***
50 ***5.1.E.8 - requiring depiction of natural features including delineation of wetlands.***

51 ***The motion was seconded by Kathie Romano.***

1 ***The MOTION was approved (7-0).**

2
3 **A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Section 5.1.E.9**
4 **– abutting properties and rights-of-way.**

5 **The motion was seconded by Kathie Romano.**

6 ***The MOTION was approved (7-0).**

7
8 **A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Sections**
9 **5.1.E.16 and 6.2- requiring a landscaping plan and design requirements.**

10 **The motion was seconded by Kathie Romano.**

11 ***The MOTION was approved (7-0).**

12
13 **A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Section**
14 **5.1.E.17- stormwater data.**

15 **The motion was seconded by Kathie Romano.**

16 ***The MOTION was approved (7-0).**

17
18 **A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a waiver from Section**
19 **5.1.E.18 and 6.6 – stormwater management and design.**

20 **The motion was seconded by Kathie Romano.**

21 ***The MOTION was approved (7-0).**

22
23 **A MOTION by Laurel Stavis that the Lebanon Planning Board APPROVE a partial waiver from Section**
24 **Article VI design requirements – to waive compliance with the Article VI design requirements outside of**
25 **the specific area of the lot proposed to be redeveloped.**

26 **The motion was seconded by Kathie Romano.**

27 ***The MOTION was approved (7-0).**

28
29 Chair Garland invited public comment. There was none. The Public Hearing was closed.

30
31 **Joan Monroe moved** that the Lebanon Planning Board **APPROVE** the application of Alice Peck Day
32 Memorial Hospital, regarding 10 Alice Peck Day Drive (Tax Map 90, Lot 59), PB2021-28-SPR, for Site
33 Plan Review to construct a +/-5,590 sq. ft. addition to the hospital building, together with associated site
34 improvements, as shown on a plan set titled “Alice Peck Day Memorial Hospital Central Sterile
35 Reprocessing (CSR) Addition,” prepared by Engineering Ventures, PC, dated September 13, 2021, last
36 revised September 27, 2021, Project Number: EV 21284 (16 Sheets), including any and all submissions
37 and testimony provided for and during the public hearing, with the following conditions:

38
39 **Conditions to be Satisfied Prior to Application for a Building Permit**

- 40
41 1. Prior to the start of any construction activities on the property, the applicant shall provide two (2)
42 revised plans sets depicting the following revisions to the satisfaction of the Planning &
43 Development Department and the City Engineer, as follows:
44
45 a) Revise the Lighting Fixture Schedule on the lighting plan to identify (i) the number of new lighting
46 fixtures by type of lighting fixture, (ii) the mounting height of each fixture, and (iii) the CCT for
47 each lighting fixture in conformance with the standards set forth in Section 6.7.B.9.
48
49 b) Remove floor plans and architectural renderings and update table of contents on cover sheet and
50 the plan set pagination.
51

c) Remove clouding added to identify changes made in response to staff comments.

d) Update Zoning Chart and Parking Summary table on the cover sheet to correct parking for maintenance barn (1 space / 600 sq. ft. is required), update the required parking spaces for the site, correct Note 1 of the Parking Summary table to reference Section 607.1, and update note number 3 to reference correct number of required parking spaces.

The applicant shall provide the Planning and Development Department with one (1) full size copy of the revised plan set, and a digital copy of the revised plan set saved in a PDF-A format for archival purposes.

2. The applicant shall submit new lighting specifications demonstrating that all proposed outdoor lighting will have a color correlated temperature (CCT) of 3000 Kelvin (K) or less. (6.7.B.9).
3. The applicant shall obtain approval from the City Council or the City Manager's office for any additional water and/or sewer flows in accordance with the applicable Chapter 136 and 182 of the City Code.
4. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Subdivision Regulations.
5. The applicant shall schedule and hold a pre-building permit application meeting with the Planning and Development Department, City Building Inspectors, City Engineer/Department of Public Works, and Fire Department, in order to help streamline the building permit review process and to review applicable code requirements.

Conditions to be Satisfied Prior to the Issuance of a Building Permit

6. The development shall be subject to City of Lebanon Impact Fees, pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on August 13, 2018. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for five years from the date of approval; however, any building permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.
7. Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required State approvals.

Conditions to be Satisfied Prior to the Issuance of a Certificate of Occupancy

8. The impact fee calculated pursuant to Condition of Approval #6 shall be paid.
9. All improvements depicted on the plan shall be completed and shall be constructed as depicted on the approved plan, including any modifications to the plan as may be approved by the Planning Board in accordance with the Site Plan Review Regulations.

General Conditions

10. The applicant shall implement and maintain NHDES Site Specific Best Management Practices before, during, and after construction.

1 ***The motion was seconded by Laurel Stavis.***

2
3 ****The MOTION was approved (7-0).***

4
5 Mr. Hall returned to the Board.

6
7 ***A MOTION by Matthew Hall that the meeting be extended to 10:00 PM.***

8 ***The motion was seconded by Jeremy Rutter.***

9
10 ****The MOTION was approved (5-3).***

11
12 D. **XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7 & Tax Map 58, Lot**
13 **27), zoned CBD, IND-L and R-3:** Applicant requests an extension of the timelines set
14 forth in the Planning Board Notice of Action dated September 9, 2019 (PB2018-34-
15 SPA) for the commencement of construction and completion of the River Park
16 development. PB2021-29-EXT

17
18 Chet Clem of Lyme Properties appeared on behalf of the application.

19
20 Ms. Romano noted that the original applicant, David Clem, requested that any Board members living in
21 the Falls recuse themselves from the discussion of the project. There is only one portion of the involved
22 property that is near any of the members' property. They are officers of the HOA.

23
24 Mr. Clem noted that the members noted are officers of the HOA.

25
26 Mr. Brooks stated that staff has regularly advised representatives of the Falls to recuse themselves.

27
28 Ms. Romano requested that a legal opinion be sought before any further applications related to that area
29 come before the Board.

30
31 Ms. Romano and Laurel Stavis recused themselves.

32
33 City Manager Shaun Mulholland commented on discussions with representatives of Lyme Properties.
34 This project has a public interest aspect. River Park has a TIF District being proposed to develop the
35 property. It would be similar to 20 Spencer Street and is necessary for revitalization of the area. There is a
36 letter from Jim Winny in favor of the proposed extensions.

37
38 Mr. Brooks stated that the Planning Department has no concerns.

39
40 Chair Garland invited public comment. There was none.

41
42 Ms. Monroe noted that the application appears to be very complex.

43
44 The Planning Staff reviewed the application and recommended that the Planning Board accept
45 jurisdiction and commence review.

46 ***A MOTION by Matthew Hall that the Planning Board accept jurisdiction and commence review.***

47 ***The motion was Seconded by Jeremy Rutter.***

48
49 ****The motion was approved (6-0).***

50
51 Chair Garland invited public comment.

1
2 Kathie Romano, a West Lebanon resident, noted the 2019 extension for Lots 1 and 2. Without COVID,
3 they would have started 18 months ago, and there would likely be occupants in both buildings. Due to all
4 the barriers, they needed additional time. Now they are asking for a new extension. Mr. Clem stated that
5 the project was suspended in April of 2020, and they are now ready to proceed. They have the
6 opportunity to create a better project with broader benefits to the community if they can partner with the
7 City. Since that time, two TIF District properties have since been approved, and now XYZ Dairy is in a
8 lesser position to compete. Ms. Romano inquired if the decision-making is now in the hands of the City.
9 Mr. Clem stated that the purpose of new request is to change the dates due to the amount of work yet to
10 be done.

11
12 Ms. Stavis, as a member of the public, noted the admirable record of Lyme Properties with seeking public
13 input and inquired if the City partnership would interfere with public engagement. Mr. Clem stated that
14 they would continue to be open to both the City and the public throughout the process.

15
16 Chair Garland invited public comment. There was none. The Public Hearing was closed.

17
18 Matthew Hall moved that the Lebanon Planning Board **APPROVE** the application of **XYZ Dairy, LLC**,
19 PB2021-29-EXT, for a two-year extension of the timelines set forth in the Planning Board Notice of
20 Action dated September 9, 2019 (PB2018-34-SPA) ("2019 Notice of Action"). Consequently, the
21 following conditions of approval from the 2019 Notice of Action are hereby revised as follows (the text
22 of each condition to be removed is struck through; the new language is in bold and underlined):

- 23
24 14-2. The construction of Phase 1 infrastructure improvements, which commenced in 2018, shall be
25 completed within ~~5~~ 7 years from the date of the Planning Board's final subdivision approval,
26 unless the applicant requests and receives an extension of time for such build-out from the
27 Planning Board.
- 28
29 15-1. As proposed by the applicant, the construction of Phase 1-A improvements shall commence
30 before the end of ~~2023~~ 2025 and shall be completed within 2 years of commencement, unless the
31 applicant requests and receives an extension of time for such build-out from the Planning Board.
- 32
33 16-1. As proposed by the applicant, the construction of Phase 1-B improvements shall commence
34 before the end of ~~2024~~ 2026 and shall be completed within 5 years of commencement, unless the
35 applicant requests and receives an extension of time for such build-out from the Planning Board.
- 36
37 17-1. As proposed by the applicant, the construction of Phase 2 infrastructure improvements shall
38 commence before the end of ~~2026~~ 2028 and shall be completed within 5 years of commencement,
39 unless the applicant requests and receives an extension of time for such build-out from the
40 Planning Board.
- 41
42 18-1. As proposed by the applicant, the construction of Phase 3 improvements shall commence before
43 the end of ~~2028~~ 2030 and shall be completed within 5 years of commencement, unless the
44 applicant requests and receives an extension of time for such build-out from the Planning Board.
- 45
46 19-1. As proposed by the applicant, the construction of Phase 4 improvements shall commence before
47 the end of ~~2030~~ 2032 and shall be completed within 5 years of commencement, unless the
48 applicant requests and receives an extension of time for such build-out from the Planning Board.
- 49

- 20-1. As proposed by the applicant, the construction of Phase 5 improvements shall commence before the end of ~~2032~~ **2034** and shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
- 21-1. As proposed by the applicant, the construction of Phase 6 improvements shall commence before the end of ~~2035~~ **2037** shall be completed within 5 years of commencement, unless the applicant requests and receives an extension of time for such build-out from the Planning Board.
29. Effect of Approval. This approval is a final, conditional site plan approval for a “phased development” under Section 4.9 of the Site Plan Review Regulations and is a final decision of the Planning Board for purposes of RSA 677:15, I. As set forth in Section 4.10(C) of those Regulations, the deadlines for the construction of improvements within each phase shall be as stated in the approved phasing plan, rather than the 1-year period under Section 4.10(A). It is the intent and effect of this approval, subject to the satisfactory completion of the financial security requirements set forth in Condition #5 of the Final Major Subdivision approval (#PB2011-01-FMAJ) for the development, that upon completion of the Phase 1 infrastructure improvements within ~~5~~ **7** years of the final subdivision approval, as set forth in Condition #14-2 above, the subdivision as a whole, including all phases, shall vest as provided in RSA 674:39, II, and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect this phased development, provided that the applicant and its successors-in-interest continue to comply with all conditions of this approval and of the Planning Board’s approval of Final Major Subdivision application #PB2011-01-FMAJ, including the time limits set forth in the phasing plan, unless such a limit is extended for good cause by the Planning Board, acting upon an application submitted prior to the expiration of such limit.

The motion was seconded by Jeremy Rutter.

Ms. Monroe noted that despite the disruptions in the supply chain during the pandemic, the applicant has done what could be done, and she would support the request.

**The MOTION was approved (6-0).*

Ms. Romano and Ms. Stavris rejoined the Board.

E. The Lebanon Planning Board, pursuant to Section 213.5.C of the Zoning Ordinance, will be conducting a Public Hearing for the purpose of taking public input and considering adoption of the “City of Lebanon Impact Fee Update 2021” report dated August 30, 2021, and a revised Impact Fee Schedule for collecting fees associated with development in the City.

Chair Garland noted that this evening the public may comment on the impact fee. There was no public comment.

A MOTION by Joan Monroe that the Lebanon Planning Board APPROVE the “City of Lebanon Impact Fee Update 2021; Basis for School, Recreation, Police and Fire Department Impact Fees” report, dated August 30, 2021, prepared by Bruce Mayberry of BCM Planning, LLC, and the “Lebanon Impact Fee Schedule - 2021” presented in the Planning Department packet of October 12, 2021, for collection of impact fees associated with development in the City, pursuant to Section 213.5 of the Lebanon Zoning Ordinance. The new impact fee schedule shall become effective immediately upon approval.

1 ***The motion was seconded by Kim Chewning.***

2
3 Mr. Hall stated that any increase in the impact fees will discourage the creation of new housing. Ms.
4 Monroe noted some editing needed on the new fee schedule. Ms. Romano stated that she does not support
5 the size of the increase.

6
7 ****The MOTION was approved (6-2). Matthew Hall and Kathie Romano voted against.***

8
9 **4. Other Business**

10
11 Mr. Brooks stated that the Housing Appeals Board reviewing the Brady Sullivan petition issued an
12 interim decision that the Planning Board did nothing illegal, but the case was remanded back to the Board
13 for further consideration. There will be a special non-meeting with legal counsel on Monday, October 25,
14 2021, at 5:30 PM prior to the regular work session to explain the interim decision. The City's legal
15 counsel will explain the decision and offer guidance as to how to continue the hearing. The rehearing will
16 be on November 8, 2021. Brady Sullivan must pay for the notices and the hearing costs.

17
18 Mr. Brooks reported on the activities of the owner of the Little Heater Road neighborhood behind the
19 Volvo dealership and the truck stop, which are currently being cleared and paved. Violations will be
20 issued to the owner and a plan will be created to bring it into compliance. Several zoning problems have
21 been created, and the Planning Board will eventually get an application once the zoning issues are
22 resolved. Ms. Stavis asked what her response should be to members of the public. Mr. Brooks stated that
23 it is an enforcement situation, and no application has been submitted to the Planning Board. The City
24 Council has scheduled a hearing for the discontinuance of several roadways in the neighborhood. Ms.
25 Romano noted the wetland issues involved. Mr. Brooks noted that DES has issued a letter to the owner.

26
27 **5. Approval of Minutes**

28
29 A. September 13, 2021

30
31 ***A MOTION by Matthew Hall to approve the Planning Board minutes of September 13, 2021, as***
32 ***presented.***

33 ***The motion was seconded by Laurel Stavis.***

34
35 ****The MOTION was approved (8-0).***

36
37 Ms. Stavis stated that the Governor was at Westboro Railyard to take down an initial piece of the
38 dilapidated buildings. There will be a block party on October 23, 2021, as a celebration.

39
40 **6. Adjournment**

41
42 ***A MOTION by Matthew Hall to adjourn the meeting.***
43 ***The motion was seconded by Jeremy Rutter.***

44
45 ****The MOTION was approved (8-0).***

46
47 The meeting was adjourned at 9:55 PM.

48
49 Respectfully submitted,

50
51 Holly Howes, Recording Secretary