FINAL

LEBANON PLANNING BOARD
Regular Session
Monday, July 10, 2023, 6:30 PM
Council Chambers, City Hall
or Remote Via Microsoft Teams
LebanonNH.gov/Live

MEMBERS PRESENT: Matthew Hall (Chair), Jeremy Rutter (Vice Chair), Karen Zook (City Council Rep), Andrew Faunce, Bruce Garland, Patrick Kennelly, Kathie Romano, Laurel Stavis

MEMBERS ABSENT: Kim Chewning

STAFF PRESENT: Nathan Reichert (Planning Director), Tim Corwin (Deputy Planning Director), Brian Vincent (City Engineer), Matthew Isham (Deputy Police Chief), and Alan Lowe (Captain, Lebanon Police Department)

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1. Call to Order

Chair Hall 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 July 10, 2023:

> **Mount Support Development, LLC (applicant/property owner) and Pat Lumber Jack, Inc. (property owner), 402 & 392 Mount Support Road (Tax Map 24, Lots 9 & 10), zoned R-1:** Request to amend the phasing schedule for a 4-building, 204-unit multi-family development originally approved on February 14, 2022 (PB2021-33-SPR). **PB2023-27-SPA**
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> **Mary Hitchcock Memorial Hospital, 1 Medical Center Drive (Tax Map 10, Lot 8), zoned MC:** Request for a site plan amendment to amend the phasing schedule for an expansion of the Dartmouth Health Outpatient Surgery building at 32 Lahaye Drive, originally approved on June 13, 2022 (PB2022-23-SPR), and to install a temporary trailer per Section 211.4 of the Zoning Ordinance for additional breakroom space during construction. **PB2023-28-SPA**

Mr. Corwin stated that neither application 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 as seconded by Bruce Garland.
****The MOTION was approved (7-0).***

Laurel Stavis joined the meeting.

3. Public Hearing Items

A. **NH Group, LLC (applicant), 369 Miracle Mile LLC (property owner), 369 Miracle Mile (Tax Map 103, Lot 11), zoned GC:** Request for Site Plan Review to convert the existing building into a +/-18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements. **PB2023-04-SPR - Continued from June 26, 2023**

Mr. Corwin reviewed the Board's progress to date on the application. He noted that the hearing was continued to consider safety concerns cited by the public and added that third-party consultant Jeff Santacruce of Weston & Sampson who reviewed the traffic study was online.

Dick Anagnost of Anagnost Investments, Stefan Huba of NH Group, LLC, and Adam Morse of Engineering Ventures appeared in support of the application.

Mr. Anagnost noted that Mr. Huba met with members of the Police Department to review the internal security plan. Mr. Huba noted that most of the calls for police service were related to alcohol and parking issues in the general area, which are not within the control of the facility. The facility does control its own alcohol service and parking areas and seeks to mitigate problems. The Police Department reviewed the security plan and found it to be very thorough.

Mr. Faunce inquired about the arrest warrant for an employee. Chief Isham stated that it was not related to employment. Mr. Anagnost noted that all employees go through background checks, but any employee who is arrested would no longer be employed.

Chair Hall invited public comment.

Bart Guetti inquired about the membership of the LLC. Mr. Anagnost stated that there are multiple members of the board and multiple locations. Chair Hall stated that the LLC membership is not under the Board's purview.

Mr. Faunce inquired about staff security training. Mr. Huba stated that all employees are extensively trained on de-escalation of problems. Mr. Anagnost noted that they use internal staff to de-escalate and call on the police as needed. There is a blacklist of people with previous issues who are barred from the facility.

Chair Hall closed the public hearing.

A MOTION by Jeremy Rutter that the Lebanon Planning Board **APPROVE** the application of NH Group, LLC (applicant), 369 Miracle Mile LLC (property owner), regarding 369 Miracle Mile (Tax Map 103, Lot 11), zoned GC, PB2023-04-SPR, for Site Plan Review to convert the existing building into a +/-18,735 sq. ft. restaurant and indoor amusements use (charity gaming center), together with associated site improvements, as shown on a plan set titled "369 Miracle Mile Restaurant/Charity Gaming Center," prepared by Engineering Ventures, PC, dated January 23, 2023, revised March 20, 2023, EV Project #22506 (15 sheets), including any and all submissions and testimony provided for and during the public hearing.

In support of its decision, the Board finds that the applicant has submitted plans, testimony, technical data, information, reports, and studies that together satisfactorily demonstrate compliance with the applicable requirements of the Site Plan Review Regulations, except as may reasonably be addressed through the imposition of certain conditions of approval, set forth below, and except as may have been waived pursuant to Section 7.1.

This approval is subject to the following conditions:

General Conditions

1. It shall be the applicant's responsibility to be familiar with and aware of these conditions of approval, and it shall be the applicant's responsibility to satisfy these conditions of approval and to satisfy them within the relevant timeframes outlined below.

2. The development is subject to the Site Plan Review Regulations adopted May 13, 1991, last revised January 23, 2023, and the Zoning Ordinance adopted January 16, 2013, last amended January 18, 2023, which are the regulations in effect at the time the application was submitted.

3. A building permit must be applied for *and issued* within two (2) years of the date of this approval (4.10.A), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 4.10.B.

4. "Active and substantial development," as defined in Section 8.4.A.1 of the Site Plan Review Regulations, shall be achieved within two (2) years of the date of this approval (8.4.A.2), subject to an extension if applied for by the applicant and if approved by the Planning Board per Section 8.4.A.3. If active and substantial development is not achieved within two (2) years of the date of the Planning Board's approval, the development shall be subject to any changes in the City's land use regulations.

5. "Substantial completion," as defined in Section 8.4.B.1 of the Site Plan Review Regulations, shall be achieved within five (5) years of the date of this approval. If substantial completion is not achieved within five (5) years of the date of the Planning Board's approval, the development shall be subject to any changes in the City's land use regulations.

6. All required landscape plantings shall meet the minimum size requirements for such plantings as set forth in Section 6.2.B of the Site Plan Review Regulations at the time of installation.

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

8. Edge-of-disturbance fencing shall be installed and maintained before and during any site work, to be verified by the City Engineer or City's third-party inspector on site.

9. 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).

10. The ramp constructed located within the Miracle Mile right-of-way providing pedestrian access from the sidewalk to the site shall be maintained by the applicant in the event that the Department of Public Work determines that it is unable to do so for any reason.

11. The applicant shall comply with the Security Improvement Plan submitted at the July 10, 2023 Planning Board meeting.

Conditions to be Satisfied Prior to Application for a Building Permit and Prior to the Start of Any Construction Activities

12. Applicant shall satisfy all conditions of the off-lot parking Conditional Use Permit approved by the Planning Board on June 12, 2023 (PB2023-18-CUP), except to the extent any such conditions are required to be satisfied prior to the issuance of a Certificate of Occupancy per the Conditional Use Permit Notice of Action.

13. Finalize the design of the sidewalk and ramp to the satisfaction of the City Engineer. The sidewalk shall be designed to allow a future sidewalk connection to the east of the subject property.

14. The applicant shall make the following revisions to the plan set to the satisfaction of the Planning and Development Department, City Engineer, and the Fire Department:
    a) Depict the automatic fire sprinkler system fire department connection in a location that is readily visible and accessible.
    b) Update the stormwater plan(s) to include all symbol descriptions.
    c) Identify an ADA-accessible connection from the sidewalk ramp to the building.
    d) Provide construction details for the sidewalk and ramp.
    e) Incorporate all site-related recommendations of the traffic study.
    f) Incorporate all other revised plan sheets and changes submitted during the course of the hearing and update all other plan sheets as necessary to reflect the changes.
    g) Amend the cover sheet to provide description of all plan revisions (5.1.E.4.d).

15. The applicant shall provide a letter or certification from the engineer or record or other qualified design professional confirming that the approved plan set meets the accessibility standards of the State of New Hampshire Building Code.

16. 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.

17. 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.

18. All engineering review fees shall be paid in full as required by Section 4.7.E.1 of the Site Plan Review Regulations. (*Note: applicant can request an invoice from the Department of Public Works).*

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

19. 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 City shall retain the services of an independent third-party inspector, for which the applicant shall be responsible for all inspection fees related to (a) on-site work related to sewer, water, temporary sedimentation and erosion control, and drainage improvements, and (b) all off-site work within the City's right-of-way (including but not limited to water, sewer, driveways, 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 and shall sign a Water & Sewer Extension and Infrastructure Inspection Agreement in accordance with Chapters 136 and 182 of the City Code.

20. All water and sewer fees shall be paid as set forth in City Code Chapter 68.

21. Prior to the start of any construction activities on the property, the applicant shall obtain or update (if appropriate) any required State approvals.

22. 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.

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

23. The trees at and along the access drive shall be pruned to the satisfaction of the Fire Department to help ensure safe and efficient access of emergency vehicles.

24. 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.

25. 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.

The motion was seconded by Laurel Stavis.
****The MOTION was approved (8-0).***

B. **XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3**: Request to amend the conditions of approval for the River Park development, approved by the Planning Board pursuant to Notices of Action dated September 9, 2019 for PB2018-34-and October 12, 2012 for PB2021-29-EXT. **PB2023-22-SPA - Continued from June 26, 2023**

Kathie Romano and Laurel Stavis recused themselves for this hearing.

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

A MOTION by Jeremy Rutter that the application of XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3, is complete enough for the Planning Board to accept jurisdiction and commence review.

The motion was seconded by Bruce Garland.
****The MOTION was approved (6-0).***

Chet Clem with Lyme Properties appeared in support of the application.

Mr. Clem reviewed the history of the project and described the items relevant to the Board regarding the River Park project, noting that there have been significant cost increases since the project was proposed. Mr. Clem provided a redline of the Staff Memo provided to the Board and explained the suggested changes. He also detailed the progress on the project to date and the specific phases related to the application. Phase 1 would be broken into five segments, three of which have been completed. The final two phases involving completing the roads would be done just prior to the certificate of occupancy.

Mr. Corwin addressed the details of the redline and the notice of action and suggested that a legal opinion be sought from the City's legal counsel regarding vesting. Mr. Clem noted that XYZ Dairy's attorney advised that the Board can approve the changes he is requesting.

The Board members, Staff, and the applicant had a lengthy discussion regarding changes to phasing and vesting.

Chair Hall invited public comment.

Kathie Romano, speaking as a W. Lebanon resident, commented on the need for clear information upon which to base a decision. She noted that the City Council is taking responsibility for the roads through River Park to allow for state and federal grant opportunities and the increase in units with a high demand for housing. Mr. Clem acknowledged the change from 85 to 125 units due to 2019 phasing changes asked for by the City Manager and the creation of a TIF district.

Brian Malloy, owner of the Irving Gas Station property, commented on the site being ready for development with $22K spent for a site plan and waiting for the Board to support it and move it forward. He voiced his support for the River Park project.

Chair Hall invited comments from the Board. There was general agreement that legal counsel should be sought regarding the Board's role vis a vis vesting. The need to resolve conflicting information between Staff and the developer was also noted.

David Clem joined the hearing in support of the application and provided his view of the vesting issue.

Sarah Vaughn stated that the developer was trying to benefit West Lebanon, suggesting it would be a waste not to take advantage of a broader approach to overcome hurdles and help a developer who wants to help the City.

Chair Hall asked the Board members how they would like to proceed. There was general agreement that a review by legal counsel would be requested.

A MOTION by Jeremy Rutter that the hearing be continued to August 14, 2023, at 6:30 PM.
The motion was seconded by Bruce Garland.
****The MOTION was approved (6-0).***

C. **XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3**: Appeal of administrative decision to require Minor Site Plan Review per Section 3.1.C of the Site Plan Review Regulations for a proposed restaurant use. **PB2023-23-AAD - Continued from June 26, 2023**

Kathie Romano and Laurel Stavis recused themselves from the hearing.

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

***A MOTION by Bruce Garland that the application of* XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3,** is complete enough for the Planning Board to accept jurisdiction and commence review.

The motion was seconded by Jeremy Rutter.
****The MOTION was approved (6-0).***

Chet Clem of Lyme Properties appeared representing XYZ Dairy, LLC.

Mr. Corwin asked for copies of the materials distributed by Mr. Clem and the digital items for display.

Mr. Clem stated that the dining car could be attached to sewer and water and provided a history of the dining car. He outlined the issues to date, the problems encountered, and the delay that jeopardized an event.

Mr. Corwin stated that there was nothing to add to the information in the Staff Memo.

Chair Hall invited comments from the Board members.

Mr. Garland inquired what prevented the connections required to be ready for the Hootenanny event.

Mr. Corwin stated that the regulations require Minor Site Plan Review for this type of project. The applicant would like to connect the River Park Diner to the water and sewer for events, which would be a minor project.

Ms. Zook noted similar conversations regarding this site and the issue of a temporary structure. She added that the use seems reasonable and asked if revision is needed for the regulations. Mr. Clem stated that there was discussion about temporary use, but the regulations have not been adjusted. Ms. Zook inquired if there could be an exception for an event.

Chair Hall stated that this would fall under Minor Site Plan Review and asked Mr. Clem why it was not done. Mr. Clem stated that they couldn’t get it done in time, and they had to protect the work already done. He asked if it conflicted with a previous approval for retail use on the lot with water and sewer access and added that events had been taking place.

Mr. Reichert stated that if the applicant had gone through with the Minor Site Plan approval process, the work could have been done in time for the Hootenanny. A restaurant must meet site requirements, and a sewer connection involves public safety and public health. It could have been permitted with Minor Site Plan approval, and they had an option to get the permit in time. Instead, they chose to wait and appear after the event before the full Planning Board for the Board to decide whether Mr. Corwin made an error in judgment with the referral to the Minor Site Plan Review Committee.

Mr. David Clem noted that they are trying to do things to benefit the residents.

Chair Hall stated that he was receiving emergency reports of power and water damage in both West Lebanon and other parts of Lebanon and suggested that the Board adjourn the meeting as soon as possible.

Laurel Stavis of Ward 1 inquired about the difference between the closed area of Court Street to accommodate Three Tomatoes and Salt Hill Pub and the area under discussion. Mr. Reichert stated that the Court Street area was a public right of way as opposed to private property.

Mr. Clem expressed his dissatisfaction with the Site Plan Review Regulations and the functioning of the Planning Department. Mr. Reichert took exception to the remarks and noted the applicant's choice to appear before the full Board and miss the scheduled event.

Chair Hall asked for a motion to continue the hearing.

A MOTION by Bruce Garland to continue the hearing on August 14, 2023, at 6:30 PM.

The motion was seconded by Jeremy Rutter.
****The MOTION was approved (8-0).***

4. Study Items

A. Review of proposed amendments to the Site Plan Review Regulations re: electric vehicle (EV) charging infrastructure - **Continued from May 22, 2023 & June 26, 2023**

5. Other Business

6. Approval of Minutes

A. May 22, 2023

7. Adjournment

A MOTION by Bruce Garland to adjourn the meeting.

The motion was seconded by Jeremy Rutter.
****The MOTION was approved (8-0).***

The meeting was adjourned at 9:17 PM.

Respectfully submitted,

Holly Howes
Recording Secretary