



**LEBANON ZONING BOARD OF ADJUSTMENT
NOVEMBER 6, 2023 - 7:00 PM
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. October 2, 2023
 - 3. Public Hearing Items**
 - A. **AAM Lebanon Residences, LLC, 25 Foothill Street (Tax Map 24 Lot 14, Plot 100), zoned IND-L:** The subject property is located within the Altaria Planned Unit Development (PUD) and is currently improved with a hotel which the applicant proposes to convert to a 120-unit multi-family dwelling. Per Section 501.4.D of the Zoning Ordinance, the Altaria PUD may include a maximum of 34 dwelling units, 33 of which have been constructed at 18 Merchant Street. To allow the proposed change of use at 25 Foothill Street, the applicant requests a Variance from Section 501.4.D of to allow 119 additional dwelling units, whereas only one (1) additional dwelling unit is allowed pursuant to the permitted residential density for the Altaria PUD. **ZB2023-16-VAR - Continued From 10/2/2023 Meeting - Applicant Requests Continuance to 12/4/23 Meeting**
 - 4. Other Business**
 - A. 2024 Meeting Calendar Review
 - B. Zoning Amendments Review
 - C. Edwards Properties LLC Rezoning Request
 - 5. Staff Comments**
 - 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](https://lebanonnh.gov/Live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the 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.

If you have any questions or would like to view the files for the application identified above, please contact the Planning & Development Department by sending an e-mail to planning@lebanonnh.gov, or by calling 603-448-1457, or by visiting the Planning and Development Office located in City Hall during regular work hours, Monday through Thursday, 7AM to 5PM. The application materials will also be posted to the City's website at [LebanonNH.gov/Agendas](https://lebanonnh.gov/Agendas).

DRAFT

**LEBANON ZONING BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE
TUESDAY, October 2, 2023
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jeremy Katz
Dan Nash, Dave Newlove, Catherine Hembree (Alt), Jennifer Barkley (Alt)

MEMBERS ABSENT: Paul McDonough

STAFF PRESENT: Nathan Reichert – Zoning Administrator

1. CALL TO ORDER

Chair Koppenheffer called the meeting to order at 7:00 PM.

2. APPROVAL OF MINUTES

A. September 5, 2023

Ms. Hembree was appointed as a voting member for this motion.

Mr. Katz MOVED to approve the September 5, 2023, Minutes as presented in the October 2, 2023 packet.

Seconded by Mr. Nash.

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

3. PUBLIC HEARING ITEMS

- A. Catherine Patch, 5 Mack Ave (Tax Map 73, Lot 43), zone R3 Class1:** A request for a Special Exception pursuant to section §801.3 to permit the conversion of a One-family dwelling into a Two-family dwelling pursuant to section §310 Residential Three District (R-3) requirements.
ZB2023-12-SE - Continued From 9/5/2023 Meeting

Mr. Nash is recused from this hearing.

Ms. Barkley and Ms. Hembree were given voting privileges for this hearing.

George Parker and Catherine Patch appeared on behalf of the application as well as Aaron Simpson and Laurie Pauli representing the applicant.

Ms. Patch said she is a long-term resident of Lebanon and continues to have a sincere interest in the well being of the property. She would like to add a second door to create a space that could be used by either unit. That would maintain some flexibility between the number of rooms available to either unit. The proposed second unit would have access through an outside door and through the garage. She has ensured that she has met all coding requirements and has brought things up to date. Minor changes were made to the house, and she has made several important safety improvements.

1 Two family buildings are permitted by special exception in this district. Laurie Pauli, architect for the
2 drawings submitted, spoke about the plans. She testified that these improvements would be a benefit to
3 the community and would solve some of the shortage of housing issues in the area. She is also a friend of
4 the applicant and spoke highly of the character of the applicant.

5
6 Each of the two units would be planned for families or up to 4 members who are not related. She does
7 not intend to create a lodging house. All leases would conform to City requirements. Ms. Patch reviewed
8 how she has met the criteria for a special exception. She believes there are several other properties in the
9 Zone 3 area that are two family dwellings, although not on Mack Avenue. She believes her tenants have
10 not caused any difficulties for the neighbors.

11
12 The ordinance requires 4 parking spaces for a two-family home. There are currently 5 parking spaces
13 available. At this time, not all the parking spaces are being used.

14
15 Ms. Patch was asked to add 3 smoke alarms by the fire department, which has been done. She feels
16 several incorrect allegations have been made against her tenants and cannot find any evidence that
17 supports the allegations. She feels she is making sound decisions regarding her selection of tenants and
18 signs leases with each of the tenants. She has improved the dwelling and the appearance of the property
19 by keeping it maintained.

20
21 Ms. Pauli described the plans for the building that were submitted. She explained where the egress would
22 be for each unit, the size of the units, and where the windows would be sized for egress. There is an exit
23 through the garage but it is not defined as an egress.

24
25 Separation has been defined by the applicant as a door that can be opened and closed. The Zoning Board
26 may define separation in a different way. The fire department said the door was a separation that met fire
27 code and the fire department's opinion of separation.

28
29 Mack Avenue is not a through street. Every house is a single-family home. Clearly what the neighbors
30 are saying is that there are no special exceptions in that immediate area. This area has been rather
31 exclusively maintained as a single-family area. The applicants and the members continued to discuss the
32 nature and parameters of the location of this house.

33
34 Parking was discussed. It is a logical assumption that four adults living in a house would each have a car.
35 With the addition of another unit, more parking could potentially be needed. Some of the parking spaces
36 identified in the drawings are now lawn. Right now, more parking is not needed, but if it becomes
37 necessary, Ms. Patch would create more parking as needed, including changing the front lawn. If this is
38 the only multi-family dwelling on Mack Avenue, it would be the only house with parking on the lawn. It
39 is believed that would change the nature and appearance of the neighborhood. The parking ordinances
40 were reviewed by the members and the applicants.

41
42 Georgia Tuttle, a resident of 10 Mack Ave appeared. She did not receive notice of the hearing. The
43 neighbors came to the meeting due to safety concerns about the work that was going on at the property.
44 She appreciates the drawings that were submitted. On the 2019 plan and the more recent plan, additional
45 walls were added. Initially there were numerous code violations. She believes some payments are
46 required for fees that should have been paid prior to any construction and should be paid retroactively.
47 She asked about snow storage and where it would be stored if the area that was used in the past became a
48 parking space. There is also a sidewalk that is plowed that is not shown in the drawings. Regarding the
49 parking spaces, she asked for clarification if the cars can be parked in a manner that jockeying cars is
50 required to use all the parking spaces.

1 Kirun Sakarani believes he is a member of the class that the applicant is proposing that her property
2 would be very suitable as a place to live for his wife and himself. He hopes the Zoning Board would
3 grant a variance as this is a good situation for them.

4
5 Sanaa Siddiqi, spoke and offered a few clarifications. His attendance at these meetings is not intended to
6 be vindictive. She said she was looking for a single-family home when she chose to move to this
7 neighborhood. She also said there is a very clear boundary defining a driveway and a front lawn.

8
9 Jonathan Hastings appeared. He lives at 3 Mack Avenue. He brought up the concerns of the bon fires
10 and said they happened on a day that there was a no-fire warning in the State of New Hampshire. He said
11 he also called the police because there was loud noise after 11 PM. In the case where they called the
12 police, he felt it had gone on too long and too loud. He feels that the area of Mack Avenue does not
13 represent all of the residential areas in Lebanon. His concern is that things may not be done right or as
14 promised, so he is still against turning the building into a 2-family home.

15
16 Sanan Siddiqi spoke again. She chose this neighborhood because it is a safe and friendly area to raise her
17 son.

18
19 The applicants appeared again to answer any questions about the concerns of the public. Ms. Patch
20 believes she has met all the requirements of the City and the fire department and is willing to meet any
21 additional requirements. Attorney Simpson referenced the wall improvements that were made when she
22 lived in the dwelling, which is a permitted right of a homeowner.

23
24 **Hearing no additional comments, Chair Koppenheffer closed the Public Hearing.**

25
26 The members deliberated the application. Ms. Hembree does see a need for affordable housing, but this
27 particular area is uniquely single-family. She has a concern about parking on the grassy area. Mr. Katz
28 believes if a series of requirements are met, then a special exception should be granted. He believes the
29 objection may be to a history with the specific landlord, not that it could not be a two-family dwelling.
30 He believes the Board is not here to judge the user, rather just the use. Chair Koppenheffer agreed they
31 should not be in the business of judging the landlord. Several people and some Board members have
32 concerns about parking in the yard that would adversely affect the nature of the neighborhood. Parking in
33 the front yard is not acceptable.

34
35 A short recess was taken at 8:30 PM and the Board reconvened at 8:35 PM.

36
37 ***Mr. Katz MOVED On August 7, and October 2 2023, at a duly-noticed meeting of the Lebanon Zoning***
38 ***Board of Adjustment, there appeared Attorney Aaron Simpson, Architect Lauri Pauli, Catherine***
39 ***Patch and George Parker regarding 5 Mack Ave (Tax Map 73, Lot 43) zoned R-3 Class 1: Applicant***
40 ***requests a Special Exception required by section §310 pursuant to Section §801.3. of the Zoning***
41 ***Ordinance to permit the conversion of a One-family dwelling into a Two-family dwelling under***
42 ***Application ZB2023-12-SE***

43
44 **I. FINDINGS OF FACT**

45
46 Based on testimony given, application materials presented, and supporting documents submitted, the
47 Lebanon Zoning Board of Adjustment makes the following findings of fact:

- 48
49 1. The subject property is improved with a one-family dwelling constructed in 1920.

2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must obtain a Special Exception pursuant to §801.3 approved by the Zoning Board of Adjustment.
3. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section 801.3 of the Zoning Ordinance.
4. The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on May 18th 2023 additional information and testimony was submitted at the August, September and October meetings.
5. The public members that testified include Dr. Luis Alvaraz who testified in opposition, Georgia Tuttle at 10 Mack Avenue who testified in opposition, Dr. Keily Thomas of White River Junction who testified in opposition, Sanaa Siddiqi who is a tenant at 30 Dana Street who testified in opposition, Kiran Sataran of Timberwood Drive who testified in support, and Margaret Hastings and Jonathan Hastings who are abutters at 3 Mack Drive who testified in opposition, in addition to Christine Apel-Eram who testified neither for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §310 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements **are** met (§801.3.B):
 - No Additional Criteria are Required.
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of the existing violations that are not cured by the issuance of this special exception.*
4. The character of the area **will not** be adversely affected. (§801.3.D)

The applicant provided reasonable testimony that the character of the area will not be adversely affected. There were multiple objections by abutters that were presented. There was objection that was substantially vague objections to the user and not to the proposed plans of the use. And furthermore, supplemental filings by the applicant mitigate several of these concerns in the opinion of the Board.
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)

- 1
2 9. The general welfare of the City will be protected. (§801.3.I)
3

4 **III. DECISION**
5

6 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of August, 2023,
7 hereby **GRANTS** the requested Special Exception per Section §801.3 of the Zoning Ordinance to allow
8 the conversion of a One-family dwelling into a Two-family dwelling at 5 Mack Ave (Tax Map 73, Lot
9 43), as set forth above and per testimony, plans, and materials submitted, and per the following
10 conditions:
11

- 12 1. The applicant shall obtain a building permit, fire permit, impact fee permit, water and sewer
13 impact and connection fees and shall comply with all applicable local, state, and federal
14 regulations. Any prior to construction deemed not to be in compliance with the fire code for a
15 two-family shall be upgraded to the satisfaction of the building code and fire inspectors.
16
17 2. The project shall be completed in accordance with the applicant's submitted representations and
18 proposed operational plan and shall be attached to this order.
19

20 *Seconded by Ms. Barkley.*
21

22 The Board discussed the motion. The Board does approve an actual plan and specifications help staff
23 understand the plans. They become part of the approval. The members discussed adding conditions
24 relative to the parking and the new wall on the second floor.
25

26 *Chair Koppenheffer MOVED to add the following conditions. 3. Onsite parking shall be limited to*
27 *four total vehicles. 4. The barrier shown in red on the second floor in the corridor leading to the unit*
28 *labeled unit 1 or 2 bedroom shall be either a door with locks on each side or a wall, thereby ensuring*
29 *the separation of the two units.*
30

31 *Seconded by Ms. Barkley.*
32

33 **The Vote on the Motion was (5-0).*
34

35 The revised final motion is stated below.
36

37 *Mr. Katz MOVED On August 7, and October 2 2023, at a duly-noticed meeting of the Lebanon Zoning*
38 *Board of Adjustment, there appeared Attorney Aaron Simpson, Architect Lauri Pauli, Catherine*
39 *Patch and George Parker regarding 5 Mack Ave (Tax Map 73, Lot 43) zoned R-3 Class 1: Applicant*
40 *requests a Special Exception required by section §310 pursuant to Section §801.3. of the Zoning*
41 *Ordinance to permit the conversion of a One-family dwelling into a Two-family dwelling under*
42 *Application ZB2023-12-SE*
43

44 **I. FINDINGS OF FACT**
45

46 Based on testimony given, application materials presented, and supporting documents submitted, the
47 Lebanon Zoning Board of Adjustment makes the following findings of fact:
48

- 49 1. The subject property is improved with a one-family dwelling constructed in 1920.
50

2. Class 1 lots (i.e. lots that are served by municipal sewer and water) in the R-3 District must obtain a Special Exception pursuant to §801.3 approved by the Zoning Board of Adjustment.
3. In order to grant a Special Exception for the proposed expansion, the Board must determine that the proposal meets the criteria set forth in Section 801.3 of the Zoning Ordinance.
4. The applicant has submitted testimony addressing the Section 801.3 criteria in an application received by the Planning and Development Department on May 18th 2023 additional information and testimony was submitted at the August, September and October meetings.
5. The public members that testified include Dr. Luis Alvaraz who testified in opposition, Georgia Tuttle at 10 Mack Avenue who testified in opposition, Dr. Keily Thomas of White River Junction who testified in opposition, Sanaa Siddiqi who is a tenant at 30 Dana Street who testified in opposition, Kiran Sataran of Timberwood Drive who testified in support, and Margaret Hastings and Jonathan Hastings who are abutters at 3 Mack Drive who testified in opposition, in addition to Christine Apel-Eram who testified neither for or against the application

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in §801.3 of the Zoning Ordinance:

1. The Special Exception is specifically authorized by §310 of the Zoning Ordinance. (§801.3.A)
2. The following special conditions/requirements **are** met (§801.3.B):
 - No Additional Criteria are Required.
3. There **are no** existing violations of the Zoning Ordinance on the property that the granting of the Special Exception would not remedy. (§801.3.C) *Staff is not aware of the existing violations that are not cured by the issuance of this special exception.*
4. The character of the area **will not** be adversely affected. (§801.3.D)

The applicant provided reasonable testimony that the character of the area will not be adversely affected. There were multiple objections by abutters that were presented. There was objection that was substantially vague objections to the user and not to the proposed plans of the use. And furthermore, supplemental filings by the applicant mitigate several of these concerns in the opinion of the Board.
5. **No** hazard or nuisance will be created. (§801.3.E)
6. The capacity of existing or planned community facilities and services (including streets and highways) **will not** be adversely impacted. (§801.3.F)
7. The granting of the Special Exception **will not** result in undue municipal expense. (§801.3.G)
8. The proposed Special Exception **will** be developed in a manner compatible with the spirit and intent of the ordinance. (§801.3.H)

- 1
2 9. The general welfare of the City will be protected. (§801.3.I)
3

4 **III. DECISION**
5

6 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this 7th day of August, 2023,
7 hereby **GRANTS** the requested Special Exception per Section §801.3 of the Zoning Ordinance to allow
8 the conversion of a One-family dwelling into a Two-family dwelling at 5 Mack Ave (Tax Map 73, Lot
9 43), as set forth above and per testimony, plans, and materials submitted, and per the following
10 conditions:
11

- 12 1. The applicant shall obtain a building permit, fire permit, impact fee permit, water and sewer
13 impact and connection fees and shall comply with all applicable local, state, and federal
14 regulations. Any prior to construction deemed not to be in compliance with the fire code for a
15 two-family shall be upgraded to the satisfaction of the building code and fire inspectors.
16
17 2. The project shall be completed in accordance with the applicant's submitted representations and
18 proposed operational plan and shall be attached to this order, with the following exceptions.
19
20 3. Onsite parking shall be limited to four total vehicles.
21
22 4. The barrier shown in red on the second floor in the corridor leading to the unit labeled unit 1 or 2
23 bedroom shall be either a door with locks on each side or a wall, thereby ensuring the separation
24 of the two units.
25

26 *Seconded by Ms. Barkley.*
27

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

29 *Chair Koppenheffer opposed.*
30

31 **Mr. Nash returned to the meeting.**
32

33 **B. City of Lebanon, 5 Airpark Rd (Tax Map 131, Lot 1), zoned IND-L and 0 Hall Rd (Tax Map**
34 **159, Lot 7) zoned RL-3:** Applicant requests a Special Exception pursuant to Wetlands
35 Conservation District Section §401.5 of the Zoning Ordinance to allow wetland impacts associated
36 with the extension taxiway "A", safety improvements, and the relocation of a localizer antenna,
37 shed and access road at the Lebanon Municipal Airport. **ZB2023-13-SE - Continued From**
38 **9/5/2023 Meeting**
39

40 Leslie Merrithew, Gregg Cohen, and Carl Gross appeared on behalf of the application. A visual
41 presentation was in the packet. Ms. Merrithew is the consulting engineer. It is a safety improvement
42 project to address several issues at the airport. She addressed several hotspots on the runway that are a
43 problem and safety concern. There is no full-length taxi runway. Part of the current runway is used to
44 taxi down as well as takeoff, instead of using a full-length parallel runway. To do this they would need to
45 relocate a localizer antenna array which is a piece of equipment that allows landing in foggy conditions
46 and issues of visibility. It is currently located in a non-standard location off the center of the runway.
47

48 There would be minor potential impacts to the wetlands. There are some grading impacts, and some
49 removal of obstructions such as bushes and vegetation that have grown too high.
50

Gregg Cohen reviewed the requirements for a special exception. He said they are seeking an exception to add fill to 2.2 primary acres. A portion of the area is a drainage swale that would be completely filled and a new swale would be duplicated in another area. There would be a temporary disruption during the improvements to another 6 acres. He said there is not another area where these safety improvements can be made. Any other location would have more significant wetland impacts. This work is being done to meet the improved FAA safety standards.

They are trying to coordinate a meeting to get credit points to mitigate the disruption of the wetlands. The actual fee has not been determined. The Conservation Commission has not given final approval and they are working with the commission to proceed in a manner that is acceptable to the Conservation Commission. The plant species that are impacted would be mitigated with new plantings. A wetland permit and alteration of terrain permit have been submitted. The project is not located in a potential flood zone and all storm water drainage requirements would be met.

The Conservation Commission provides an advisory comment. The minutes from the Conservation Commission meeting were provided to the Board. Several of the criteria were not being met completely therefore they did not make a recommendation.

Chair Koppenheffer opened the Public Hearing.

Kirun Sankaran spoke on behalf of the application. The Lebanon airport should be safely operated and should not use the same runway to taxi and takeoff.

Sarah Riley, Chair of the Conservation Commission spoke to give some additional information. She believes the comments to the Zoning Board were not as clear as needed. The minutes from their meeting have been provided to the Zoning Board. Some of the purposes of the ordinance are being violated. While it is true this can only be done in this one location, the Commission believes it is important that the concerns of the Commission are heard. The intent is to provide dialogue between separate organizations within the City. There are issues with invasives, impacts to the Truesbrook watershed, and buffer areas among other things.

Hearing no one else from the Public, Chair Koppenheffer closed the Public Hearing.

Ms. Barkley was a voting member for this hearing.

Mr. Nash MOVED on October 2 2023, at a duly-noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Leslie Merrithew consultant with Stanton, Gregg Cohen consultant with Stanton, and Carl Gross Airport Manager with the City of Lebanon, on behalf of the City of Lebanon, 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7) zoned RL-3: Applicant requests a Special Exception pursuant to Article IV, Section 401.5 ("Wetlands Conservation District") of the Zoning Ordinance to allow wetland impacts associated with the safety improvements and extension of taxiway A. ZB2023-13-SE

I. FINDINGS OF FACT

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

1. The City of Lebanon is constructing safety improvements and extension of taxiway A over the City-owned lots on 5 Airpark Road (Tax Map 131, Lot 1) zoned IND-L and 0 Hall Road (Tax Map 159, Lot 7).

2. The construction of the safety improvements will impact a total of 2.2 acres of wetlands.
3. The City has applied for a wetlands permit from the NH Department of Environmental Services. The wetlands permit was reviewed by the Conservation Commission at its August 10, 2023 and September 26, 2023 meetings. The City now seeks a Special Exception pursuant to Section 401.5 of the Zoning Ordinance to allow the proposed wetland impacts.
4. The Conservation Commission reviewed the wetlands application and provided a positive referral to NHDES. However, the Commission expressed an opinion that the project did not meet criteria 401.1.A, B, & C.
5. Sarah Riley, Chairman of the Conservation Commission spoke further at the Commission's concern.
6. Kirun Sankaran spoke in favor of the project.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Special Exception criteria set forth in Section 401.5 of the Zoning Ordinance:

1. The use for which the exception is sought **cannot** feasibly, after consideration of all alternatives, be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District. (§401.5.A)

Airport design regulations do not allow flexibility for alternate location of improvements.
2. Due to the provisions of the Wetlands Conservation District, as applied to the particular characteristics, setting and environment of the property, the lot **cannot** reasonably be used for any of the uses permitted or allowed by special exception, without some form of special exception under this section. (§401.5.B)

The airport is a designated Federal use and alternate uses are not allowed.
3. The design and construction of the proposed use **is** consistent with the purpose and intent of §401.1 (A), (B) and (C) of the Zoning Ordinance, and adequate conservation measures **will** be taken to mitigate the detrimental effects of the proposed use on the natural function of the wetlands (§401.5.C)

The NHDES process incorporates the United States government Corp of Engineers (USACOE), and EPA, and United States Fish and Wildlife review input to ensure adequate conservation measures are taken.
4. The criteria set forth in Section 401.5.D relates to pipelines, powerlines, and other transmission of lines and, therefore, is not applicable.
5. The proposed use **will not** create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or any other reason. (§401.5.E)

1 The NHDES and Federal permitting process thoroughly address these concerns.

- 2
3 6. The project is capable of complying with all State and Federal wetlands and wetlands permitting
4 requirements. (§401.5.F)

5
6 The permits have been applied for and the project will not proceed until they are obtained.

- 7
8 7. The project is capable of conforming to all existing best management practices, as referenced in
9 Appendix A of the Zoning Ordinance, and will be implemented in a way which conforms to those
10 practices (§401.5.G)

11
12 The project will be required to obtain an Alteration Terrain Permit which mandates adherence to
13 best management practices.

14
15 **III. DECISION**

16
17 Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **2nd day of October,**
18 **2023**, hereby **GRANTS** the requested Special Exception, as set forth above and per testimony, plans, and
19 materials submitted, and per the following conditions:

20
21 *Seconded by Mr. Katz.*

22
23 **The Vote on the Motion was (5-0).*

- 24
25 **C. AAM Lebanon Residences, LLC, 25 Foothill Street (Tax Map 24 Lot 14, Plot 100), zoned**
26 **IND-L:** The subject property is located within the Altaria Planned Unit Development (PUD) and
27 is currently improved with a hotel which the applicant proposes to convert to a 120-unit multi-
28 family dwelling. Per Section 501.4.D of the Zoning Ordinance, the Altaria PUD may include a
29 maximum of 34 dwelling units, 33 of which have been constructed at 18 Merchant Street. To allow
30 the proposed change of use at 25 Foothill Street, the applicant requests a Variance from Section
31 501.4.D to allow 119 additional dwelling units, whereas only one (1) additional dwelling unit is
32 allowed pursuant to the permitted residential density for the Altaria PUD. **ZB2023-16-VAR**

33
34 Chair Koppenheffer suggested that the application is not complete. Several plans have been submitted,
35 including a current and a proposed site plan, and a parking plan, and there is no traffic report. Therefore,
36 the hearing should be continued.

37
38 Mr. Katz suggested that the applicant decides when the application is complete, and it is up to them to
39 provide all the necessary information or so to speak, suffer the consequences. If the applicant would like
40 to proceed it will be allowed.

41
42 Tom Chesnard, Attorney, appeared representing the applicant. They are happy with a continuance. He
43 asked if they would be first on the next agenda. Unless there is a very simple matter to dispense with,
44 they will be first. There would be no additional notice requirements.

45
46 **Ms. Barkley was given voting privileges for this hearing.**

47
48 *Mr. Newlove MOVED to continue this hearing to November 6, 2023.*

49
50 *Seconded by Mr. Nash.*

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

2
3 **4. REQUEST for REHEARING**

- 4
5 **A. Cicotte Holdings, LLC, 51 Evans Dr (Tax Map 78, Lot 40), zoned RO-1:** Motion to rehear an
6 appeal dismissed due to lack of subject matter jurisdiction by the Zoning Board on August 7,
7 2023, pursuant to Section 802.5 of the Zoning Ordinance, appealing the Zoning Official's Notice
8 of Violation and Administrative Decision pursuant to section §801.1 Administrative Appeals, that
9 the property is not in the flood zone, that the parking area is grandfathered, and deadlines
10 demanded by the City are unreasonable. **ZB2023-11A-AAD**

11
12 **Mr. Nash recused himself.**

13
14 Although this is a request for a rehearing, this essentially cannot be a rehearing because the decision
15 that was reached at the last hearing was that the Board did not have jurisdiction. It is a request for
16 reconsideration. No testimony is taken, the Board simply considers if they were right in deciding
17 they have no jurisdiction, or do they want to reconsider that they did have jurisdiction and therefore
18 schedule a hearing in this matter. A solicitation of legal counsel was previously obtained regarding
19 the matter.

20
21 **Ms. Barkley and Ms. Hembree were voting members for this hearing.**

22
23 *Mr. Katz made a motion to move to nonpublic discussion to discuss the opinion from legal counsel*
24 *at 8:55 PM.*

25
26 *Seconded by Mr. Newlove.*

27
28 **The Vote on the Motion was (5-0).*

29
30 The Board returned at 8:58 PM.

31
32 The question about reconsideration was discussed.

33
34 *Mr. Katz MOVED to deny the request for reconsideration.*

35
36 *Seconded by Chair Koppenheffer.*

37
38 **The Vote on the Motion was (5-0).*

39
40 *Mr. Nash returned to the meeting.*

41
42 **5. STAFF COMMENTS**

43
44 Mr. Nash said they should consider having two meetings in a month. Because in the event there is an
45 exceptionally long meeting, one applicant has to wait another whole month before bringing forth their
46 application. It will be discussed in the future.

47
48 **6. ADJOURNMENT**

49
50 *Mr. Katz MOVED to adjourn the meeting at 10:00 PM.*

1 *Seconded by Mr. Nash.*

2

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

4

5 Respectfully submitted,

6 Linda Billings, Recording Secretary

Meeting Schedule Lebanon Zoning Board of Adjustment 2023

Meeting Date	Cutoff
*January 2, 2024	December 11, 2023
February 12, 2024	January 8, 2024
March 4, 2024	February 12, 2024
April 1, 2024	March 11, 2024
May 6, 2024	April 8, 2024
June 3, 2024	May 13, 2024
July 1, 2024	June 10, 2024
August 5, 2024	July 8, 2024
*September 3, 2024	August 12, 2024
October 7, 2024	September 9, 2024
*November 18, 2024	October 14, 2024
December 2, 2024	*November 12, 2024

* Meeting Date changed, due to a Monday holiday

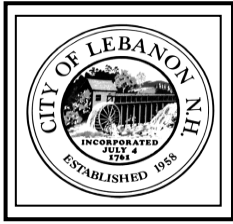
NOTE: APPLICATION DEADLINES ARE ON MONDAYS(unless the Monday is a holiday)

Note: All meetings begin at 7:00pm unless otherwise noted on the meeting agenda.

The Zoning Board meets once a month (The 1ST Monday of the Month, unless * due to a holiday)

Special meetings maybe required and will be scheduled accordingly

*November ZBA meeting will be held on the 3rd Monday of the month due to Election Day set up on the first Monday



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Planning and Development Department Staff

RE: 2023-2024 Proposed Zoning Amendments

DATE: November 2, 2023

On October 4, 2023, Planning and Development Department staff presented to the City Council a set of proposed Zoning Ordinance amendments for initial consideration. Following the presentation, the City Council agreed to move the proposed amendments forward for further review.

Pursuant to Section 1000.3.B.1 of the Zoning Ordinance, the Zoning Board is required to “comment on the proposed amendment as to whether it would be inconsistent with other applicable sections of the Ordinance, does not conflict with other sections of the Ordinance, and the meaning and effect is understood. The ZBA shall not comment as to whether or not the amendment is desirable from a planning viewpoint.” Note that, consequently, the Zoning Board does not review or comment on proposed changes to the Zoning Map.

For the Board’s reference and review, please find attached the following:

- A redline of the current Zoning Ordinance (redline last revised October 10, 2023).
- A staff memo to the City Council, dated September 26, 2023, providing a description of the proposed amendments.

Please note that staff has updated the redline in response to the City Council’s comments made at their October 4th meeting and in response to an initial review by the City’s legal counsel. Consequently, the page references in the 9/26/23 staff memo may no longer match the updated redline that is attached to this memo.

Once review has been completed by the Planning Board and the other land use boards, the City Council will hold a public hearing in January followed by a vote on whether to adopt the amendments.

DRAFT AMENDMENTS TO THE CITY OF LEBANON ZONING ORDINANCE

ARTICLE II GENERAL PROVISIONS

[...]

SECTION 213 IMPACT FEES.

[...]

213.3 Definitions.

[...]

E. New development means an activity that results in:

- (1) The creation of a new ***dwelling unit*** or units or new ***manufactured housing***; or
- (2) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of ***dwelling units***; or
- (3) Construction resulting in a new non-residential ***building*** or a net increase in the ***gross floor area*** of any non-residential ***building***; or
- (4) The conversion of a lawful existing use to another use if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment.

(5) A net increase in a residential building's gross floor area greater than 500 square feet.

Notwithstanding the above, new development shall not include:

- a. The creation of any new-studio or one-bedroom ***accessory dwelling unit*** with a ***gross living area*** of 500 sq. ft. or less;
- b. The replacement of an existing ***manufactured housing*** unit or any existing ***dwelling unit***; or
- c. The reconstruction of a ***structure*** that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

[...]

213.8 Waivers.

- A. The ~~Planning Board~~ Zoning Administrator ~~may~~ may administratively grant full or partial waivers of impact fees to an assessed property where the ~~Administrator~~ Board based on credible evidence presented by the applicant, finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

~~1. A.~~ — An assessed property may apply for a full or partial waiver of public-school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The ~~Planning Board~~ Administrator may waive school impact fee assessments on restricted-occupancy units where it finds that the ***dwelling unit*** will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years.

~~2. B.~~ — 2. An assessed property may apply for a full or partial waiver of public-school impact fees for those studio or one-bedroom residential units that have a ***gross living*** _____ ***area*** of 500 sq. ft. or less.

- B. The Planning Board may grant full or partial waivers of impact fees to an assessed property where the Board based on credible evidence presented by the applicant finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

~~1. a. C.~~ — An assessed property may apply to the Planning Board for a full or partial waiver of impact fee assessments imposed by this Ordinance on the basis of other contributions toward public capital facilities. The amount of such a waiver shall not exceed the value of land, facilities construction, or other contributions for public capital facilities. The value of on-site and off-site improvements which are required by the Planning Board as a result of subdivision or site plan review, and which would have to be completed by the developer, regardless of the impact fee provisions, shall not be considered eligible for waiver under this Ordinance. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. All costs incurred by the City for the review of a proposed waiver, including consultant and counsel fees, shall be paid by the applicant.

~~1.2.~~ D. — The Planning Board may waive an impact fee, in whole or in part where, in the opinion of the Board, such fee would ~~;~~ due to interference with constitutionally-vested rights, pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of this Ordinance.

[...]

ARTICLE III USE DISTRICTS

SECTION 305A GENERAL COMMERCIAL ONE DISTRICT (GC-1).

305A.1 Purpose.

The purpose of the GC-1 District is to provide opportunities for a mix of commercial and **multi-family** residential uses within close proximity to regional employers, public transportation routes, and pedestrian and biking trails. The GC-1 District is intended to provide for uses that are compatible with the limited access design of Route 120, and which would tend to retain and enhance the existing character of the area. New **multi-family** housing is encouraged to provide convenient access to major centers of employment, to facilitate future economic growth along the Route 120 corridor, and to complement the existing array of services and amenities within walking or biking distance of the GC-1 District.

305A.2 Table of Uses.

<u>Permitted Uses</u>	<u>Uses by Conditional Use Permit (see Section 302.4)</u>
<u>Residential</u> 1. Multi-family dwelling (see Section 305A.4) <u>Commercial/Non-Residential</u> 2. Dwelling unit(s) above first floor 3. Essential service 4. Financial institution 5. Group day care facility per Section 604 6. Office 7. Personal service 8. Renewable energy system per Section 612	<u>Commercial/Non-Residential</u> 1. Alternative treatment center per Section 613 2. Drycleaning pick-up station 3. Educational facility, college/university 4. Inpatient rehabilitation facility 5. Light industry 6. Research laboratory 7. Restaurant , sandwich shop 8. Retail store <u>Planned Developments</u> 9. Commercial PUD per Section 501 10. <u>Manufactured Housing PURD per Section 504</u>

[...]

ARTICLE IV OVERLAY DISTRICTS

[...]

SECTION 408 HISTORIC DISTRICT.

[...]

408.4 Certificate of Approval Required.

A Certificate of Approval shall be obtained from the Heritage Commission in the manner set forth herein prior to the commencement of any of the following activities within any Historic District:

- A. The construction of any new **building**;
- B. The addition to, alteration, or repair of any existing **building** which would require the issuance of a building permit pursuant to the provisions of the Lebanon Building Code, unless such addition, alteration, or repair does not, ~~in any way,~~ materially alter the exterior of such **building**;
- C. The following activities, whether or not a building permit is required for such activities:
 - 1. Roofing or re-roofing if the roof plane is changed;
 - 2. Siding, including new and re-siding, if it involves a change of design or materials;
 - 3. Replacement of doors and windows if it involves fenestration changes in the size, location, or number of openings in the exterior or facade of a **building**.
 - 4. Replacement or enclosure of porches, decks, and patios if it involves an architectural change in size, location, design, and/or materials;
 - 5. Replacement of exterior stairs, landings, and overhangs if it involves a change in size, location, design, and/or materials;
 - 6. Demolition or moving of a **building** or **accessory building**.

No building permit (when applicable) shall be issued prior to the receipt of a Certificate of Approval for the above-described activities.

[...]

SECTION 410 RIVERBANK PROTECTION DISTRICT.

[...]

410.2 Authority.

This section of the Zoning Ordinance is adopted pursuant to the authority granted by RSA 483-B:8, Shoreland Water Quality Protection Act: Municipal Authority; and RSA 674:16, Grant of Power to Zone; ~~and RSA 674:21, I(j), Innovative Land Use Controls: environmental characteristics zoning.~~

410.3 Description of the Riverbank Protection District.

The Riverbank Protection District includes all areas in the City that are located within an area beginning at the **ordinary high water mark** of the following designated **public rivers**, streams, and lakes:

- (1) Connecticut River

- (2) Mascoma River, [except for lots subject to an Urbanized Shoreland Exemption granted by the NH Department of Environmental Services pursuant to RSA 483-B:12.](#)
- (3) Stoney Brook
- (4) Blodgett Brook
- [...]

as identified by the United States Geological Survey, and depicted on the official Lebanon Riverbank Protection District Overlay Map, and extending inland to fifty (50) horizontal feet, with septic waste systems and fuel storage restrictions extending to one hundred and twenty-five (125) horizontal feet, as set forth in 410.7.F and 410.7.H.

[...]

ARTICLE V SUBDIVISIONS AND PLANNED DEVELOPMENTS

SECTION 500 GENERAL.

[...]

- B. [...] Planned developments shall be permitted in accordance with the following table:

District	PURD per Section 501.2	PRec per Section 501.3	Industrial PUD per Section 501.4	Commercial PUD per Section 501.4	<i>Manufactured Housing PURD</i> per Section 501.24 / <i>Manufactured Housing Park</i> per Section 503	Recreational Camping Parks per Section 505	<i>Medical Center Complexes</i> per Section 506	<i>Planned Business Park</i> per Section 508	<i>Cottage Development</i>
IND-L			CUP					CUP	
IND-RA			CUP					CUP	
GC				CUP					
GC-1				CUP	CUP (Manufactured Housing PURD per Section 501.4 only)				
CB				CUP					
LD									
R-1	CUP				CUP / P				CUP
R-2	CUP								CUP
R-3	CUP*								CUP
R-O	CUP								CUP
R-O-1	CUP								CUP
PB						SE			
RL-1	CUP *	CUP			CUP / P	SE			
RL-2	CUP *	CUP			CUP / P	SE			
RL-3	CUP *	CUP							
MC				CUP			P		

P = permitted

SE = **special exception** required

CUP = **conditional use** permit required

*Subject to Section 501.2.B.1.

SECTION 501 PLANNED UNIT DEVELOPMENT (PUD).

501.1 General Requirements.

[...]

F. Open Space.

[...]

2. Minimum Required Open Space.

[...]

- a. Commercial or Industrial PUD. At least ~~ten (10)~~ 15% percent of the property utilized for a Commercial or Industrial PUD shall be preserved as Open Space. None of the **curtilage** of a **principal building** shall be used to meet the ~~10 percent~~ 15% criteria.

[...]

ARTICLE VI ADDITIONAL STANDARDS FOR SPECIFIC USES

[...]

SECTION 607 PARKING.

[...]

607.5 Off-Lot Parking.

Parking shall be provided on the same **lot** as the use for which the parking is accessory, except as follows:

- A. In the IND-L, IND-H, IND-RA, GC, GC-1, CB, LD, RO, RO-1, PB, and MC Districts, the Planning Board may approve private off-lot parking as a **conditional use** permit. Instead of the findings required by Section 302.4, the Board shall determine that:

[...]

4. Such parking arrangements are either permanently deeded and recorded or conveyed by an irrevocable 99-year lease or some other legal instrument, acceptable to an attorney representing the City, and submitted with the Conditional Use Permit application for approval by the Planning Board. Such legal agreement shall ~~that will~~ ensure that such parking arrangement will remain as long as the need exists.

[...]

- B. For conversions of **one-** or **two-family dwellings** to **multi-family dwellings** or where adding additional **dwelling units** to an existing **multi-family dwelling**, the

Planning Board may approve private off-lot parking, as a **conditional use** permit. Instead of the findings required by Section 302.4, the Board shall determine that:

[...]

5. Such parking arrangements are permanently and irrevocably deeded and recorded or conveyed by an irrevocable 99-year lease or some other legal instrument, acceptable to an attorney representing the City, and submitted with the Conditional Use Permit application for approval by the Planning Board. Such legal agreement shall~~that will~~ ensure that such parking arrangement will remain as long as the need exists.

[...]

SECTION 610 ACCESSORY DWELLING UNIT (ADU).

Accessory dwelling units are intended as an option for homeowners to offer separate and independent living space for their extended families, or to offer small **dwelling units** as rentals to offset the expense of maintaining the **dwelling**.

An **accessory dwelling unit** shall comply with the following criteria:

- A. An **ADU** is allowed on any **lot** in any zoning district with a **one-family dwelling**. For lots in any zoning district with a **two-family dwelling**, a detached or attached ADU is allowed. Only one such **ADU** is permitted per **lot**. The dwelling unit density requirements of the underlying zoning district shall not apply to ADUs.
- B. ~~The~~If attached, the appearance and character of the existing or proposed **ADU** shall remain single family in nature if converting a one-family dwelling to a one-family dwelling with an ADU, and shall remain two-family in nature if converting a two-family dwelling to a two-family dwelling with an ADU. If detached, the ADU shall maintain the primary building's architectural style, proportional mass, size, and height to ensure it is not taller than the principal building on the lot. A detached ADU may be permitted to be taller than the principal building by special exception.
- C. The property owner must occupy one of the **dwelling units** as their permanent residence. A temporary leave of absence of no more than one (1) year by the property owner is allowed, provided the owner-occupied unit is not rented or occupied by anyone other than the property owner during the temporary leave or absence.

Prior to the issuance of a zoning/~~building~~-permit, the owner shall record in the Grafton County Registry of Deeds an ~~acknowledgment of the above owner-occupancy requirement~~ Accessory Dwelling Unit Owner Occupancy Restriction, in a form satisfactory to the Zoning Administrator, in order to put prospective buyers on notice of the prohibition against renting out both units. All recording fees shall be the responsibility of the applicant.

- D. The **ADU** must be located in the same **building** as the principal **dwelling unit(s)** unless the **lot** meets or exceeds the minimum required lot size for the respective zoning district. If the **lot** meets or exceeds the required minimum lot size, the **ADU** may be located in a separate detached accessory **structure** such as a garage or

barn, provided the existing accessory **structure** conforms with the minimum required **yard** requirements for the respective zoning district. An **ADU** may also be in a new **structure**. By **special exception**, the Zoning Board of Adjustment may allow an **ADU** to be located in a detached **structure** on a **lot** that is non-conforming to the minimum lot size and/or to be allowed in an existing accessory **structure** that is legally non-conforming to the applicable minimum yard requirements.

- E. If the **ADU** is located within or by an addition to the existing **principal building**, an interior door shall be provided between the **ADU** and the principal **dwelling unit** or between the **ADU** and one of the principal **dwelling units** if the principal building is a **two-family dwelling**.
- F. If applicable, the owner must seek a permit from the State of NH Dept. of Environmental Services Subsurface Systems Bureau, in accordance with NH RSA 485-A:38, for any increased load on an existing sewage disposal system as a result of the addition of an **ADU** to the **lot**.

G. Size of ADU.

- 1. ~~O~~Conversion of one-family dwellings: If the **gross living area** of the principal **dwelling unit** is 1,500 square feet or less, the **gross living area** of the **ADU** may be no greater than ~~65~~50% of the **gross living area** of the principal **dwelling unit**. If the **gross living area** of the principal **dwelling unit** is greater than 1,500 square feet, but less than 3,000 square feet, the **gross living area** of the **ADU** shall not exceed ~~960~~750 square feet. If the principal **dwelling unit** is greater than 3,000 square feet, the **gross living area** of the **ADU** can exceed ~~960~~750 square feet provided the **ADU** is no greater than ~~33~~25% of the **gross living area** of the principal **dwelling unit**. If the ADU is located on a parcel of land greater than 4 acres a detached ADU can exceed 960 square feet provided that the detached ADU is no greater than 50% of the gross living area of the principal dwelling unit.
- 2. ~~I~~Conversion of two-family dwellings: If the **gross living area** of the smaller of the two principal **dwelling units** is 1,500 square feet or less, the **gross living area** of the **ADU** may be no greater than ~~65~~50% of the **gross living area** of the smaller of the two principal **dwelling units**. If the **gross living area** of the smaller of the two principal **dwelling units** is greater than 1,500 square feet, but less than 3,000 square feet, the **gross living area** of the **ADU** shall not exceed ~~960~~750 square feet. If the smaller of the two principal **dwelling units** is greater than 3,000 square feet, the **gross living area** of the **ADU** can exceed ~~960~~750 square feet provided the **ADU** is no greater than ~~33~~25% of the **gross living area** of the smaller of the two principal **dwelling units**.

~~H. A detached ADU, if permitted under paragraph B above, shall maintain a proportional mass, size, and height to ensure it is not taller than the principal building on the lot. An ADU may be permitted to be taller than the principal building by special exception.~~

~~H.~~H. Any necessary additional entrances or exits to the **principal building**, to serve the **ADU**, shall be located to the side or rear of the **building**. All new or altered **structures**, intended to be used as an **ADU**, must be located behind the **front building line** of the existing **principal building** except by **special exception** if the

Zoning Board finds that the placement of the **ADU** on the **lot** will not adversely affect the character of the neighborhood; traffic on roads and highways; safety of pedestrians, and will not create a hazard or nuisance to abutting property owners.

J. In addition to the two (2) parking spaces required for each principal **dwelling unit**, one (1) additional parking space for the **ADU** must be provided.

K. An **ADU** located within the **principal building** shall have interconnected smoke and carbon monoxide alarms.

K. An ADU Permit application submission shall include a minimum of the following materials and exhibits demonstrating compliance with the applicable Zoning Ordinance requirements:

1. Existing and proposed site conditions and parking plan.

2. Existing and proposed floor plans for all dwelling units and structures.

A. If applicable this floor plan shall show compliance with ADU entrance, interconnection and smoke and carbon monoxide alarm plan requirements.

3. A gross living area square footage calculation which includes existing and proposed floor plans, and a square footage calculation for both the primary dwelling and ADU demonstrating adherence with 610.G ADU Size pursuant to the definition of gross living area within Appendix A Definitions.

4. A signed, recordable "Accessory Dwelling Unit Owner Occupancy Restriction"

5. A bank or business check or money order for all recording fees made payable to the Grafton County Registry of Deeds.

6. If applicable a copy of the State of NH Dept. of Environmental Services Subsurface Systems Bureau Approval and plans.

7. If applicable a Water Connection Permit Application.

8. If applicable a Sewer Connection Permit Application.

9. Impact Fee Invoice Acknowledgment.

[...]

ARTICLE VIII BOARD OF ADJUSTMENT

[...]

SECTION 801 POWERS AND DUTIES.

The powers and duties of the Board shall be as prescribed by NH RSA 674:33, as amended. The powers and duties are:

801.1 Administrative Appeals.

~~To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement of this Ordinance, as~~ As set forth in RSA 676:5, I, appeals to the Board concerning any matter within the Board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination

appealed from and may make such order or decision as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

For the purposes of this section:

(a) The "administrative officer" shall mean the Zoning Administrator.

(b) As set forth in RSA 676:5, II, a "decision of the administrative officer" includes any decision involving construction, interpretation or application of the terms of the Zoning Ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation or application of the terms of the Zoning Ordinance which is implicated in such enforcement proceedings.

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

[...]

SECTION 802 BOARD PROCEDURES.

802.1 Applications.

Applications to the Board for an administrative appeal, ***variance, special exception*** or equitable waiver shall be made on forms provided by the Board in compliance with procedures established by the Board.

- A. Fees: The application shall be accompanied by whatever fees are required by ~~the Board to defray the costs.~~ Chapter 68 of the City Code.
- B. Plans and Information: The application shall be accompanied by whatever plans and other information are required by the Board including but not limited a scaled plan of the subject property identifying existing and proposed conditions and improvements, and a business operations plan, if applicable.

[...]

802.3 Hearing Procedure.

[...]

- D. Conflicts of Interest: Conflicts of interest are governed by RSA 673:14, the City of Lebanon Ethics policy (ADM-108, as amended), and the Board's Rules of Procedure. No member of the Board shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualifications do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the

member's official duties. If a member is disqualified or unable to act in any particular case pending before the Board, the chairman shall designate an alternate to act in his place.

[...]

802.4 Decisions of the Board.

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

[...]

APPENDIX A DEFINITIONS

[...]

DWELLING: A building, or space within a building, designed for and used primarily by one or more families for living quarters including permanent provisions for sleeping, eating, cooking and sanitation, but not including recreational vehicles (RVs), **manufactured housing**, trailers of any kind, **hotels, motels, group residences, lodging houses**, institutional homes, residential clubs, or other commercial accommodations offered for occupancy.

[...]

EDUCATIONAL FACILITY, PRIMARY/SECONDARY: A public or private school offering instruction at the primary and/or secondary school levels in the branches of learning and study required to be taught in the public schools of the state of New Hampshire. This term shall include preparatory schools and progressive schools and shall not include group day care facilities.

[...]

GROSS LIVING AREA: The total area of above-grade residential space ~~of a~~ within a dwelling unit as measured using exterior building dimensions, with a ceiling height of 7 ft. or greater, excluding unheated areas such garages, as enclosed or open porches, covered or open decks, outside stairs, and balconies, garages, or and other unenclosed areas. ~~Gross living area does not include the area within a garage, deck or other unenclosed area.~~ The floor area of a walk-out basement with a ceiling height of 7 feet or greater shall be included.

[...]

- A. **CHILD DAY CARE FACILITY:** A day care center, a day nursery, a private nursery school or kindergarten, a child development center, a play group, a head start center, ~~progressive school~~ or any other facility which cares for seven (7) or more children under the age of 16 for a part but not all of a 24 hour day. This term shall not include primary/secondary educational facilities.

Such facilities may be privately operated or sponsored by a house of worship, social agency, cooperative group or a community or by a public agency other than public schools.

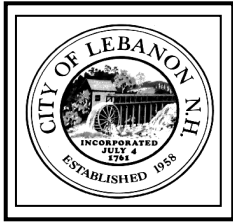
[...]

HEALTH CLUB: An establishment that provides indoor and/or outdoor exercise facilities, programs, instruction and/or training related to fitness, wellness, aerobics, weight lifting, court sports, and/or swimming, ~~as well as~~ and which may also include locker rooms, showers, massage rooms, saunas, and/or related ***accessory uses***. This term shall not include any ***local government use***.

[...]

STRUCTURE: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. The term includes, but is not limited to, buildings, swimming pools, tennis courts, manufactured homes, wind and solar energy facilities, satellite dishes and antenna. The term does not include bus stops and minor installations such as fences less than three and a half feet high, agricultural and safety fences, mail boxes, flagpoles and children's play equipment, nor does it include subsurface waste disposal systems.

[...]



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: Planning and Development Department Staff

RE: 2023-2024 Proposed Zoning Amendments

DATE: September 26, 2023

Honorable Mayor and City Councilors,

The Planning and Development Department has prepared draft amendments to the Zoning Ordinance for consideration by the City Council, and requests that the proposed amendments be placed on the October 4, 2023 meeting agenda for discussion.

It is staff's practice to present a set of proposed zoning amendments to the Council each fall for review and consideration. Presenting in the fall allows the amendments to move through the required review process in time for placement on the ballot the following March, when necessary.

The current set of proposed amendments are summarized below and are highlighted in the attached redlined excerpt of the Zoning Ordinance. The new or revised text is blue and underlined. The text to be deleted is shown as ~~red with a strike-out~~.

If the Council chooses to move forward with staff's proposal, the draft amendments will be sent to the City's legal counsel and land use boards for further review. Once the review process is complete, the amendments will be scheduled for a public hearing before the City Council.

OVERVIEW OF AMENDMENTS

A. Text Amendments

1. Amend Section 213 ("Impact Fee") (see p. 1-3 of the redline) to:

- **500 square foot additions:** Collect impact fees for residential additions larger than 500 sq. ft. The proposal is intended to address a "loophole" whereby once a dwelling is completed, any future additions are exempt from impact fees regardless of the size of the addition and regardless of the size of the addition compared to the size of the original home. For example, a 1,000 sq. ft. addition to a 500 sq. ft. home would be wholly exempt from impact fees. The typical case scenario is that an applicant will show the smallest number of square feet for a project on a plan to minimize impact fee costs. Then, when finished they will finish all habitable space in the home. In one case an impact fee was based on an application of 1200 square feet, two years later the same applicant has another application for a related use and claims the home's living area exceeds 5000 square feet including

area finished in the attic, walk out basement, and above the connected garage. Closing this loophole will allow the Department to accomplish two tasks. The 1st will be closing a loophole in the code and making the impact fees fairer for all homeowners in Lebanon. 2nd when discovering unpermitted finished work in a home that exceeds 500 square feet an impact fee can be required, thereby bringing equality to the system. Closing this loophole will help build a culture of compliance with permit requirements within the community as it will encourage applicants to permit all square footage upfront and avoid having to pay the impact fee when the work is discovered.

- **Amend the waiver and appeals provisions.** The Planning Board recently had its first case where an applicant brought forward an appeal to waive school impact fees for apartments under 500 square feet that were included in the project's previous approval. After the hearing the Planning Board recommended that staff make the process of appeal easier for the applicant as there are no articulated standards that the Board had in the Zoning Ordinance to make the decision. Based upon the recommendation of the Planning Board's experience with the existing regulations, staff has brought forward several proposed reforms to the process:
 - Administrative approvals for waiver of impact fees. If the waiver is based upon easily verifiable standards such as 500 square feet or smaller, or a deed restriction then the Zoning Administrator is empowered to waive the school impact fee administratively. The standard of review is rather simple: it either meets the criteria or it does not. If the standard is met, then the waiver is granted.
 - The second classification of review contains a more subjective standard of "hardship" and as such is best left to a Board to interpret. Removing a judgement of hardship from an administrative determination leaves the Applicant a pathway to a waiver but a slightly higher bar to prove to the Board that a hardship exists and therefore a waiver should be granted.
 - The Review Board is shifted from the Planning Board to the Zoning Board. The Planning Board writes the policy and sets the impact fees, as they are the author of the impact fees the interpretation of the written policy should then shift to the Zoning Board. Hardship is a Zoning Board standard that is used in all variance cases. As such the Zoning Board is more familiar with the standard. Removing the ability for one Board to write and interpret the standard avoids ethical conflicts and makes the system more resilient. Ultimately the standard is; the Planning Board writes the impact fee policy, the Zoning Board interprets and enforces the policy.

2. **Amend Section 305A.2 ("GC-1 District Table of Uses") and Section 500 (planned developments table)** (see p. 4 and 6 of the redline) to allow Manufactured Housing Planned Unit Residential Developments (PURDs) in the GC-1 District by Conditional Use Permit from the Planning Board per Section 504 of the Zoning Ordinance. This amendment is in furtherance of a concept recently presented by DHMC to Planning staff for a single-family development utilizing a "CrossMod" product at DHMC's property on the east side of Route 120 (between Jesse's restaurant and Centerra). The "CrossMod" product (pictured below) constitutes "manufactured housing" as defined in the City of Lebanon Zoning Ordinance. The GC-1 District already allows multi-family development with density to be determined by the Planning Board through Site Plan Review. As such, Manufactured Housing PURDs is a less intensive use than those already permitted in the GC-1 and will allow for much needed affordable single unit detached home ownership opportunities to serve the City's workforce. The development remains subject to the

extensive regulatory framework for PURDs, including the requirement to provide a minimum of 50% open space, and per Section 504, a maximum permitted density of 1 unit per 5,000 sq. ft. It is the staff's understanding that DHMC will be submitting a letter to the Council in support of this amendment request.



Example of a “CrossMod” single family residence where a portion of the home is stick-built on site which meets the State Building Code, and a portion of the house is built at an off-site facility which meets HUD housing code.

3. **Amend Section 410.3 (“Description of Riverbank Protection District”)** (see p. 5 of the redline) to remove properties within the Lebanon Downtown (LD) District from the Riverbank Protection District. This amendment is in tandem with an application that the City is preparing to the NH Department of Environmental Services requesting an exemption for downtown Lebanon from the provisions of the state’s Shoreland Water Quality Protection Act (SWQPA). The vast majority of New Hampshire’s historic downtowns in cities and towns of comparable size to Lebanon have already requested and been approved for such an exemption, which has been available since the original passage of the SWQPA’s predecessor in 1991 (the Comprehensive Shoreland Protection Act). The exemption allowed by the SWQPA recognizes that New Hampshire’s historic downtowns were typically built up to and around a river (or other water body) – for example, the Cocheco River in Dover, the Merrimack River in Manchester, the Nashua River in Nashua, the Androscoggin River in Berlin, and in Lebanon, the Mascoma River. What the SWQPA is intended to protect or prevent is no longer attainable in these areas and only serves as an unnecessary impediment to much needed downtown redevelopment. Likewise, the Riverbank Protection District regulations – which substantially mirror the requirements of the SWQPA – also create a regulatory barrier to downtown redevelopment without any significant benefit to the community. Please note that FEMA Flood Zone building requirements remain in effect within this area.
4. **Amend Section 610 (“Accessory Dwelling Unit (ADU)”)** (see p. 7-9 of the redline). Staff brings forward several ADU reforms based upon our lived experience with the ADU regulations over the last year. The ADU standards have begun to catch on and we are seeing more homeowners seek to permit ADUs.
 - “FHA only requires that a home be marketable in the area and have adequate space necessary to assure suitable living, sleeping, cooking and dining accommodations and sanitary facilities.” Traditionally, FHA underwriting has used 960 square feet as a minimum number of square feet for a house to meet the articulated standard. Thus, there is not an interpretive question about the size of the dwelling unit if 960 square feet standard is made. Based upon this 960 sq ft FHA standard staff recommends amending the size ratios for ADU calculations as the present 750 square foot standard is too small to meet a traditional FHA habitability standard. Thus, the number is proposed to be changed to allow a larger ADU to be constructed.

- Square footage calculation has been a major concern with several ADU cases currently seeking permits that are running up against the smaller ratio standards. The definition of “gross living area” in Appendix A is proposed to be amended to make the calculation clearer.
- Further, square footage ratios are increased to allow for a larger ratio-based home with a by right standard of 960 square feet, thereby resolving permitting log jams by making meeting the ratios easier for many applicants and not adversely impacting surrounding neighborhoods.
- The large 4-acre lot provision was added to ease ratio concerns and permit mass and proportionality continuity. We have several cases currently seeking approval for a larger ADU on a very large lot. The 4 acres number allows for ample room for septic and well configuration for both lots. The larger ratio of 50% of the main house creates a scenario where the Large House and Small house remain more proportional to the scale of the neighborhood and house/lot configuration. The large lot standard allows for a significant second dwelling unit to be created, often in a configuration where the primary house and the ADU appear more as neighboring houses as opposed to a Primary/ADU relationship. Consequently, allowing the larger ADU will maintain mass, proportionality and not adversely impact a neighborhood with pre-existing large lots. Additionally, if configured correctly a larger ratio may underwrite the ease of sub-dividing a lot in the future and creating a stand-alone home on its own lot that meets all the regulatory standards while fitting the character of the neighborhood.
- A clear checklist of items needed for the ADU is included to inform an applicant of the necessary submissions at the time of application. Informing the applicant before an application is made helps develop a clear understanding of timelines and necessary obligations to achieve a favorable permit outcome and generate a successful project.

5. Amend Appendix A (“Definitions”) (see p. 11-12 of the redline) to:

- “Gross Living Area” For purposes of calculating impact fees and the size of accessory dwelling units, amend the definition of “gross living area” to specify more clearly those areas of a dwelling unit – including walk out basements - that are included as part of the “gross living area”.

6. Miscellaneous minor amendments:

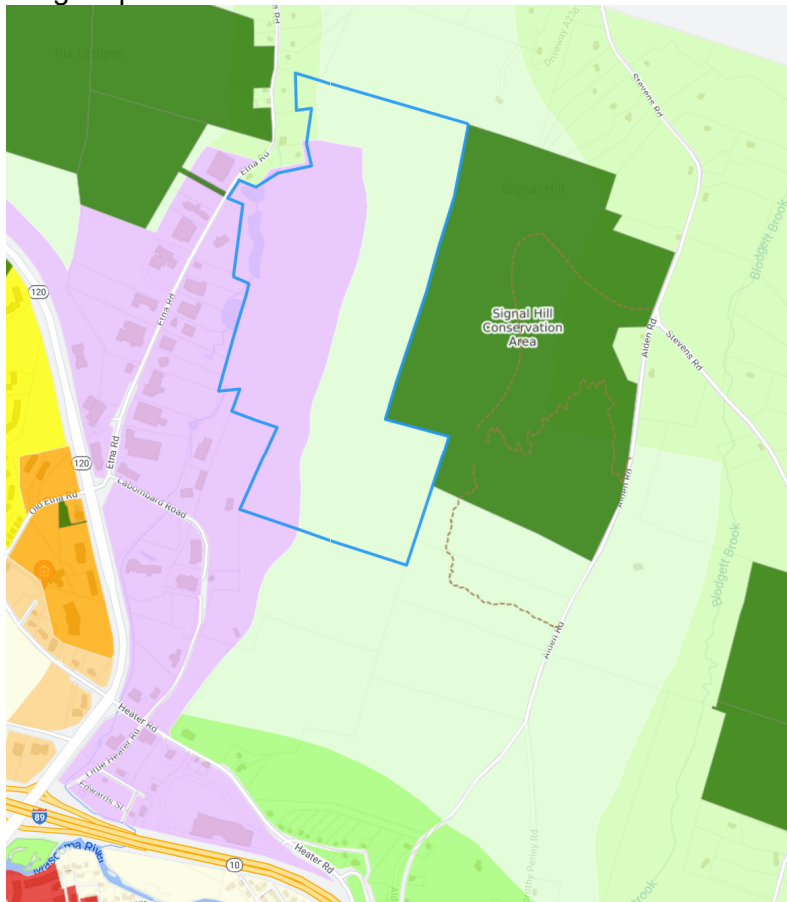
- **Amend Section 408.4 (Historic District Certificate of Approval requirements)** (see p. 4 of the redline) to clarify the activities within the Historic District that require a Certificate of Approval from the Heritage Commission.
- **Amend Section 410.2 (Riverbank Protection District enabling authority)** (see p. 5 of the redline) to remove the reference to RSA 674:21 (innovative land use controls) which implicates the cumbersome procedural requirements for innovative land use controls, and which are not currently followed by City staff in the administration of the Riverbank Protection District.
- **Amend Section 501.1.F.2.a (commercial and industrial PUD open space requirements)** (see p. 6 of the redline) to make the minimum open space requirements consistent with the minimum open space requirements of the Lebanon Subdivision Regulations (which require a minimum of 15% whereas the commercial and industrial PUD regulations only require 10%).

- **Amend Section 607.5 (off-lot parking requirements)** (see p. 7 of the redline) to require that the legal documentation securing the right to use the off-lot parking is provided as part of the Conditional Use Permit application.
- **Amend Section 801** (see p. 10 of the redline) to amend the ZBA administrative appeal procedures for consistency with state statutory requirements.
- **Amend Section 802** (see p. 10-11 of the redline) to amend the ZBA application and hearing procedures and to clarify that application fees are established pursuant to City Code Chapter 68.
- To clarify existing language and to make certain editorial changes to Section 213 (“Impact Fees”), Section 410 (“Riverbank Protection District”), Section 610 (“Accessory Dwelling Unit (ADU)”), and Appendix A (revise definitions of “child day care facility,” “dwelling,” “educational facility, primary/secondary,” and “health club”).

B. Map Amendment

7. 0 Etna Road (Tax Map 26, Lot 17) (see attachments provided by the property owner, Choice Storage, LLC, depicting the existing and proposed zoning):

Current Zoning Map:



The subject property is a +/-182 acre lot (per City assessing records) that is split-zoned IND-L and RL-3, and abuts the City’s Signal Hill Conservation Area to the west (see image above). The use of the property is identified as “Rural” on the Future Land Use Map. The property owner has

requested that the Council rezone approximately 50 acres of the RL-3 portion of the property to IND-L in exchange for the rezoning of approximately 50 acres that is currently zoned IND-L to RL-3. It is the applicant's intent to transfer some of the land to be rezoned to RL-3 to the City of Lebanon for the development of recreational playing fields and has been working with the Recreation, Arts and Parks Department on preliminary concepts. Given the substantial need for recreational playing fields, staff are supportive of the applicant's request. However, it should be noted that the rezoning request cannot be made contingent on the City's acquisition of any portion of the property. The property owner has provided the attached exhibits depicting the existing and proposed zoning and will be present at the City Council's meeting on October 4th to describe the rezoning proposal in more detail as well as his current plans for the development of the property which, as staff understands it, includes a significant housing component. The proposed re-zone exchange will open an opportunity for possible development of City owned ball/soccer fields, housing options and mixed-use light industrial upon the parcel.

SCHEDULE

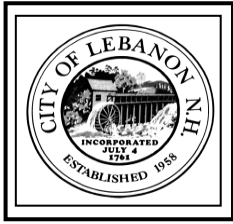
The procedure to adopt zoning amendments is set forth in Section 1000 of the Zoning Ordinance and is summarized below:

1. Staff presents amendments to City Council for initial consideration - *scheduled for the October 4, 2023 Council meeting*. Section 1000.2.A.
2. If Council decides to move forward with the amendments, they will set a tentative schedule including review by legal counsel, review before the City's land use boards, and a public hearing before the Council. Section 1000.3.A.
3. The amendments will be forwarded to the City's attorney for review. *Legal opinion expected to be received by the end of October*. Section 1000.3.B.2.
4. The amendments are forwarded to the City's land use boards for review. Sections 1000.3.B.1 and C.
 - a. Planning Board - *expected to be scheduled for the October 23, 2023 meeting*.
 - b. Zoning Board – *expected to be scheduled for the November 6, 2023 meeting*.
 - c. Conservation Commission – *expected to be scheduled for the November 9, 2023 meeting*.
5. The Council will then hold a work session to review the amendments as modified based on legal input and land use board feedback – *expected to be scheduled for the January 3, 2024 Council meeting*.
6. Finally, the Council will hold a public hearing followed by a vote on whether to adopt the amendments and/or to place amendments on the March ballot for voter consideration - *expected to be scheduled for January 17, 2024 Council meeting*. Section 1000.3.D.

Please note that the proposed amendments may be adopted by the City Council per Section 1000.4.B of the Zoning Ordinance, and do not require approval by referendum vote (subject to verification by the City's legal counsel). Per Section 1000.4, the Council does have the ability to voluntarily place any proposed amendment on the March ballot for voter approval.

ATTACHMENTS

- 0 Etna Road (Tax Map 26, Lot 17) – existing zoning
- 0 Etna Road (Tax Map 26, Lot 17) – proposed zoning
- Redline excerpt of current Zoning Ordinance (redline last revised 9/26/23)



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Planning and Development Department Staff

RE: Request by Cicotte Properties, LLC to Amend Section 311A.2 of the Zoning Ordinance – R-O-1 District Table of Uses

DATE: November 2, 2023

On September 28, 2023, the City received a request from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, pursuant to Section 1000.2.C of the Zoning Ordinance, for three Zoning Map amendments and an amendment to Section 311A.2 of the Zoning Ordinance to add several additional uses as permitted uses in the R-O-1 District. The proposed amendments are outlined in the attached staff memo dated October 10, 2023.

On October 18, 2023, the City Council voted to submit the petitioner's proposed amendments to the Zoning Board of Adjustment, Planning Board and Conservation Commission for review and comment, in accordance with Section 1000 of the Zoning Ordinance.

Pursuant to Section 1000.3.B.1 of the Zoning Ordinance, the Zoning Board is required to "comment on the proposed amendment as to whether it would be inconsistent with other applicable sections of the Ordinance, does not conflict with other sections of the Ordinance, and the meaning and effect is understood. The ZBA shall not comment as to whether or not the amendment is desirable from a planning viewpoint."

Consequently, the Zoning Board does not review or comment on proposed changes to the Zoning Map. In the case of the zoning amendments petitioned by Cicotte Properties, LLC, only amendment #4 (relating to proposed changes to the R-O-1 District Table of Uses) requires review and comment by the ZBA.

For the Board's reference and review, please find attached the following:

- A staff memo to the City Council, dated September 10, 2023, providing a description of the proposed amendments.
- September 28, 2023 rezoning request letter from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, including attachments.

Once review has been completed by the City's land use boards, the City Council will hold a public hearing in January followed by a vote on whether to adopt the proposed amendments.



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

CC: Shaun Mulholland, City Manager

FROM: Planning & Development Department Staff

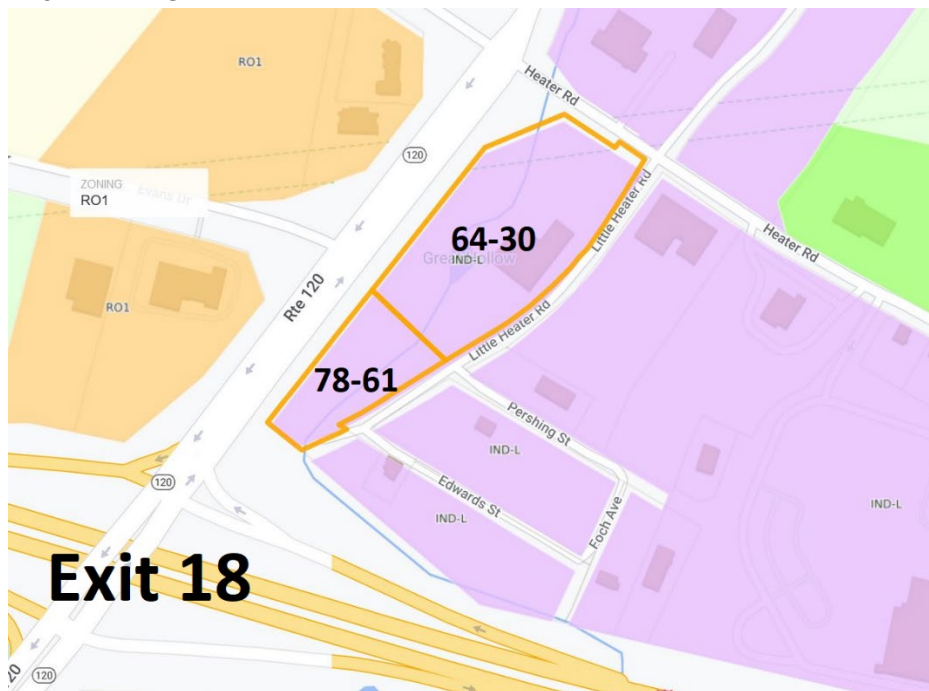
RE: Request for Zoning Map Amendments from Cicotte Properties, LLC;
Tax Map/Lot Numbers 64-30, 78-61, 78-40-200, 78-40-100, and 63-4

DATE: October 10, 2023

AMENDMENT REQUESTS

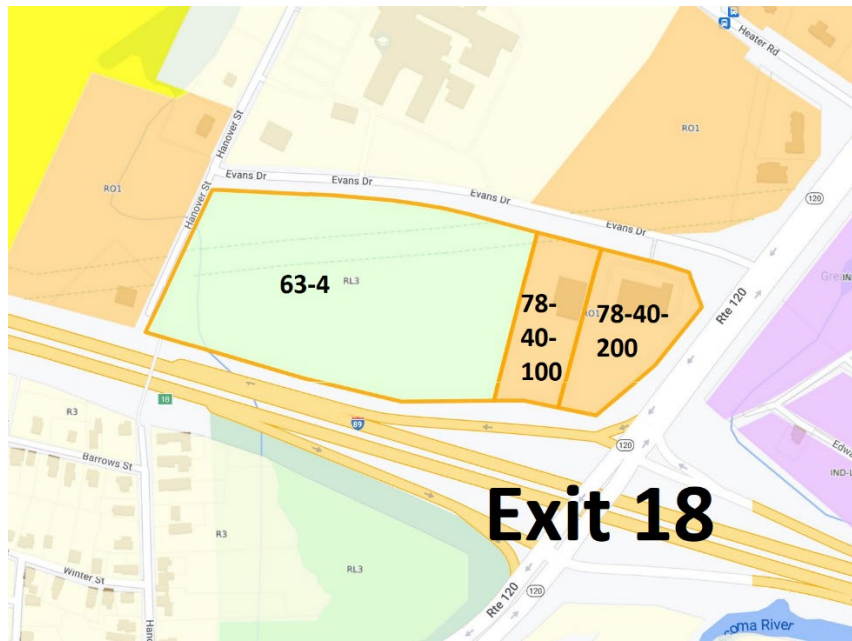
On September 28, 2023, the City received a request from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, pursuant to Section 1000.2.C of the Zoning Ordinance, for the following four (4) Zoning Map and Zoning Ordinance amendments:

1. Zoning Map amendment. Request to rezone the following properties from Light Industrial (IND-L) to General Commercial (GC):
 - a. 175 Heater Road (Tax Map 64, Lot 30), a +/-4.71 acre lot owned by Cicotte Properties, LLC, improved with a vehicular sales use (Volvo dealership).
 - b. 30 Little Heater Road (Tax Map 78, Lot 61), a vacant +/-2.15 acre¹ lot owned by Johanna Cicotte.

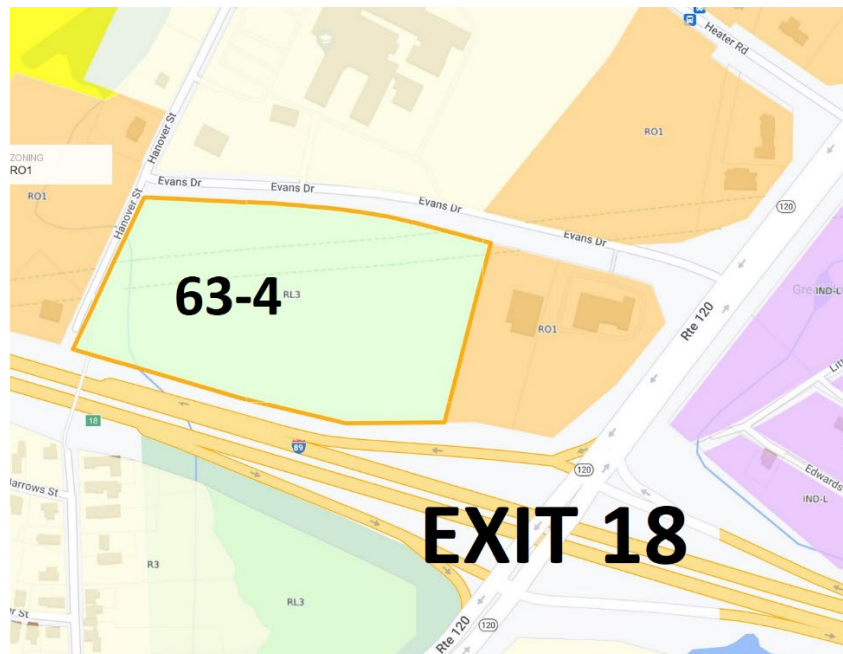


¹ Pursuant to a boundary line adjustment plat approved by the Planning Board on October 9, 2023 (PB2022-42-BLA)

2. Zoning Map amendment. Request to rezone the following properties to General Commercial (GC):
- a. 51 Evans Drive (Tax Map 78, Lot 40-200), a +/-3.32 acre lot owned by Cicotte Holdings, LLC, currently zoned Residential-Office-One (R-O-1) and improved with a vehicular sales use (Nissan dealership).
 - b. 63 Evans Drive (Tax Map 78, Lot 40-100), a +/-2.74acre lot owned by Evans Dr SPE, LLC, currently zoned Residential-Office-One (R-O-1) and improved with an animal hospital use.
 - c. 0 Evans Drive (Tax Map 63, Lot 4), a vacant +/-14.31 acre lot owned by Cicotte Properties, LLC, currently zoned Rural Lands Three (RL-3).



3. Zoning Map amendment. In the alternative to number 2, a request to rezone 0 Evans Drive (Tax Map 63, Lot 4), a vacant +/-14.31 acre lot owned by Cicotte Properties, LLC, from Rural Lands Three (RL-3) to Residential-Office-One (R-O-1).



4. Zoning Ordinance amendment. In the alternative to numbers 2 and 3, an amendment to Section 311A.2 of the Zoning Ordinance to allow the following uses in the R-O-1 District either by Special Exception or Conditional Use Permit:
- a. Renewable energy system per Section 612 (*already permissible in the R-O-1*)
 - b. Restaurant, sandwich shop
 - c. Retail product pickup
 - d. Retail store
 - e. Service station
 - f. Vehicular repair
 - g. Vehicular sales

A copy of the request and other materials from Mr. Nash are attached for the Council's review.

AMENDMENT PROCESS

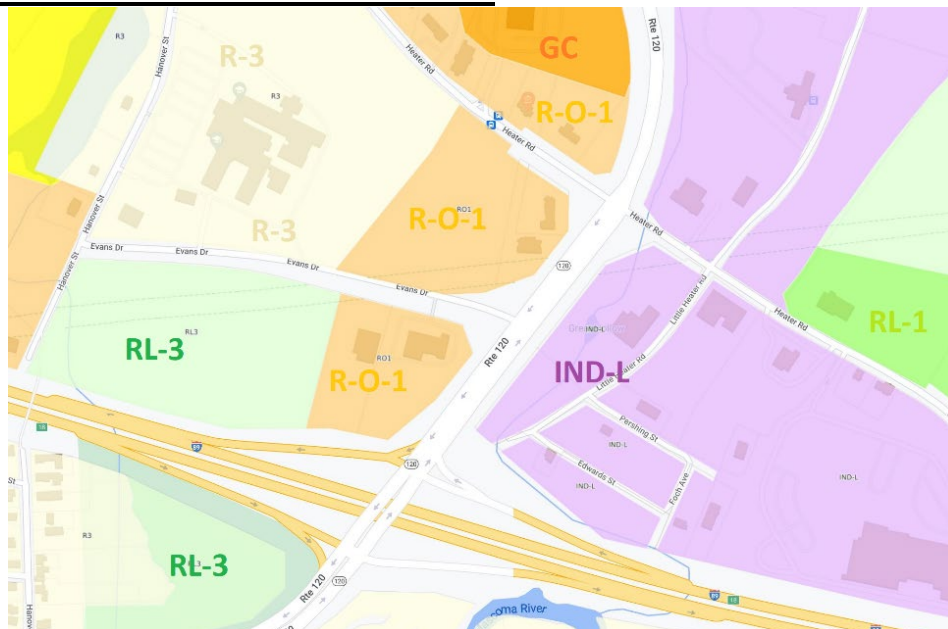
Section 1000.2.C states that zoning amendments may be proposed:

By petition of any number of voters, provided however, that unless the petition is submitted utilizing the "Citizens Binding Initiative" procedure contained in Section 419:23a of the Lebanon City Charter, it will be within the sole discretion of the City Council as to whether or not to proceed in any way with the requested amendment.

The petition received on September 28th was not submitted utilizing the Citizens Binding Initiative procedure. As a result, on October 18th, the City Council will discuss the requested map and text amendments for the purpose of determining whether or not to proceed with consideration of the amendments in accordance with Article X, Section 1000.3.A. If the Council elects to move the requests forward, a legal review is required pursuant to Section 1000.3.B(2) and a schedule for review and comment by the Planning Board and Conservation Commission must be established in accordance with Section 1000.3.C. Finally, a public hearing before the City Council must be tentatively scheduled in accordance with Section 1000.3.D. Review by the Zoning Board of Adjustment will only be required if the Council elects to move forward with request 4 (requests 1, 2, 3, are zoning map amendments which do not require Zoning Board review).

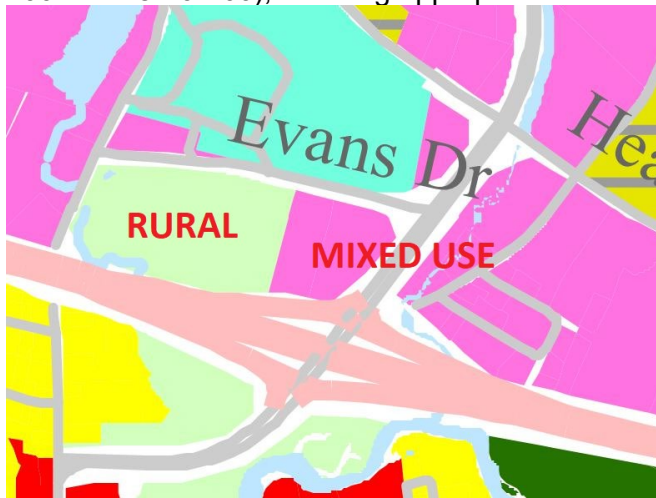
The proposed amendments do not automatically trigger a ballot referendum pursuant to Section 1000.4.A and the City Council may act on the request in accordance with Section 1000.4.B.

CURRENT ZONING OF SURROUNDING AREA



FUTURE LAND USE MAP

The Future Land Use Map identifies M/L 64-3 (requests 2 and 3) as “Rural” and identifies the other properties that are the subject of request 1 (M/L 64-30 and 78-61) and request 2 (78-40-200 and 78-40-100), as being appropriate for “Mixed Use” in the future.



MASTER PLAN

The City’s current Master Plan, adopted in March 2012, describes the current land use of the Exit 18 area as follows [Section 2|C-2b]:

- **Exit 18.** In the vicinity of Exit 18, there are several auto-related business (gas stations, convenience stores, auto dealerships, trucking facilities), as well as additional general commercial uses within close proximity (hotels, retail, etc.) In recent years, new construction and some redevelopment has been occurring in this area.

The Master Plan identifies the desired land uses north of Exit 18 as including “small-scale commercial, light industrial, office and residential uses”, but also recommends a study of the Route 120 corridor to address traffic patterns, land uses, and aesthetic concerns. See Section 2|D-2j:

- 2|D-2j) **Heater Road-Route 120-Evans Drive-Hanover Street.** For the Heater Road area, the general recommendation is to determine the appropriate level and type of future development. The area surrounding the Hanover Street School and Lebanon High School would be appropriate for mixed-use development, including small-scale commercial, light industrial, office, and residential uses. Because of the proximity to schools and residential areas, surrounding wetlands, and difficult access for traffic from Route 120 onto Evans Drive, development must meet well-defined performance standards for traffic, hours of operation, impervious surface, and parking. A study of the entire Route 120 corridor is needed to address traffic patterns, land uses, and aesthetic concerns. The City supports the NHDOT’s position that no further curb cuts should be granted on Route 120 north of Exit 18. The entry corridor from Exit 18 to Hanover Street should be landscaped by the state to reduce the current expanse of impervious pavement.

See also Action# 2.2.A6 (“Conduct a study of the Route 120 corridor to address traffic patterns, land uses & aesthetic concerns”); and Action# 2.3.A10 (“Determine the appropriate level and type of future development in the Heater Road area”).

STAFF NOTES

With respect to M/L 64-3 (requests 2 and 3), the property is almost entirely located within the Floodplain District and Wetlands Conservation District overlays. It was rezoned in 2018 from R-O-1 to RL-3 in order to align it with the desired “Rural” land use as set forth on the Future Land

Use Map (M/L 77-127, across from M/L 64-3 on the south side of I-89, was also rezoned to RL-3 at the same time and for the same reasons).

Finally, with respect to request 4 (to add certain uses to the R-O-1 District), the amendment would impact all areas zoned R-O-1, which are outlined in red below:



Parcel #78-40-200, 51 Evans Drive, is currently in violation of the Zoning Ordinance due to unpermitted development being done on the site and the unpermitted expansion of a non-conforming use. The parcel must receive a Zoning Amendment, map or use table, from the City Council or a Variance granted by the Zoning Board and Planning Board Site Plan approval to cure the exiting violations.

RECOMMENDATION / RATIONALE:

The Planning & Development Department recommends that the City Council keep in mind the statements and recommendations of the City's Master Plan in determining whether to move forward with consideration of the rezoning requests. Staff is bound by the confines of the Master Plan, its requirements and recommendations:

1. The Master Plan was written and approved in 2012.
2. The Master Plan calls for a study of the 120 corridor and action based upon said study.
3. The Master Plan Future Land Use Map calls for the M/L 63-4 parcel to remain Rural to protect against adverse wetlands and conservation area impacts.
4. The Master Plan Future Land Use Map calls for Mixed Use development for the remaining three parcels.
5. The neighborhood is contiguous with the Hanover Street Elementary School and Lebanon High School.

The Planning Board is currently working on updating the Master Plan one chapter at a time, and the Future Land Use chapter is currently set for consideration in 2025. In the meantime, the Exit 18/Route 120 corridor study recommended under the current Master Plan is expected to be undertaken in 2024.

Should City Council elect to proceed with consideration of the requested amendment, the Planning & Development Department offers the following tentative schedule for review and comment in accordance with Section 1000.3:

City Council decision to proceed:	October 18, 2023
Legal review:	by November 1, 2023
Zoning Board (request #4 only):	November 6, 2023
Conservation Commission:	November 12, 2023
Planning Board:	November 27, 2023
City Council public hearing:	January 17, 2024

=====

Supporting Materials:

- September 28, 2023 rezoning request letter from Dan Nash, of Advanced Geomatics, on behalf of Cicotte Properties, LLC, including attachments.



28 September 2023

Honorable Mayor and City Council
City of Lebanon
51 North Park Street
Lebanon, NH 03766

Re: Request for Zoning Changes

Dear Mayor and Councilors:

On behalf of Cicotte Properties, this letter is being written to request zoning changes to be part of the city's annual zoning review.

Request #1. Rezone parcels 64-30 and 78-61 on Little Heater Road to GC (see attached "Little Heater").

Parcel 64-30 is an auto dealership and has been since 1985. The existing operation essentially maxes out the usable property. As can be seen on the sketch, the parcel is divided by a drainage feature. The land on the west side of the drain feature is likely wetlands and difficult to permit for use. The inclusion of the vacant parcel to the south, 78-61, is to preclude a claim of "spot zoning". As discussed, there is little risk of this change promoting a project that has harmful impacts, as it is essentially fully developed. The need is to restore the use of this land as a "Permitted Use". This status was lost when the zoning was changed to IND-L some time ago. This change placed an unnecessary burden on the landowner to obtain either a zoning special exception or a variance to make any changes to the property. The city's recent change to the expansion of non-conforming properties required the applicant to obtain a Variance to expand a legitimate addition to an auto dealership. This property has been a responsible and productive business for the city. The property generates roughly \$90,000 of tax revenue each year.

Restoring the proper zoning to these parcels would be just, appropriate, and not cause the potential for harmful impacts from development.

Request #2. Rezone parcels 78-40-1, 78-40-2, and 63-4 on Evans Drive to GC (see attached "Evans Drive").

These parcels were GC before their conversion to RO-1. It is my opinion that this change was inappropriate for the parcels involved and should be undone. In particular, the zoning of parcel 64-3 to RL-3 was "Spot zoning" and should never have been allowed. Parcel 78-40-2 has been an auto dealership since the 1960's and it is unjust for it to lose its "Permitted Use" status for no legitimate public purpose. There is no need or purpose for residential uses on these properties.

Request #3. Rezone parcel 63-4 on Evans Drive to RO-1 (see attached “Evans Drive”).

If request #2 does not find favor with the city, we request Parcel 63-4 be converted to RO-1, to be zoned as the abutting parcels. The zoning of parcel 64-3 to RL-3 was “Spot zoning” and should never have been allowed.

Request #4. Add several uses allowed in GC to be allowed in RO-1 by Special Exception or Conditional Use (see attached “GC”).

If requests #2 or #3 do not find favor with the city, we request the city allow several uses, namely uses 25-31, be allowed in the RO-1 zone as Special Exceptions or Conditional Uses. These uses were permitted uses before the parcels were inappropriately converted to RO-1 from GC. By placement of the uses under Special Exception or Conditional Use, allows additional city review of proposed uses to prevent adverse impacts to the city from development of these uses.

Please let me know if you have any questions regarding this request.

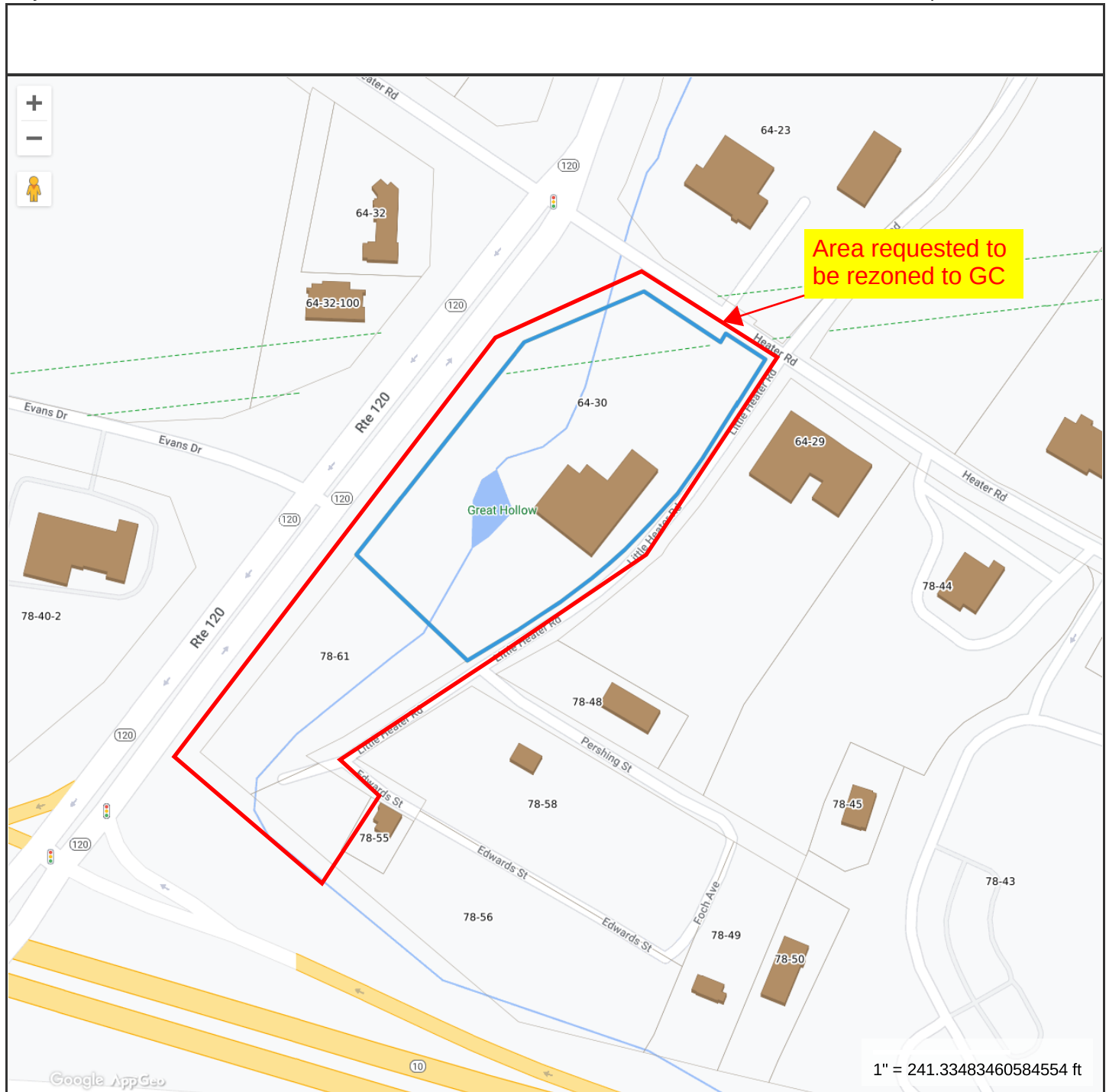
Sincerely,

Daniel A. Nash, PE
Principal

Attachments:
-Little Heater
-Evans Drive
-GC

CC: Johanna Cicotte

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**Property Information**

Property ID 64-30
Location 175 HEATER RD
Owner CICOTTE PROPERTIES LLC

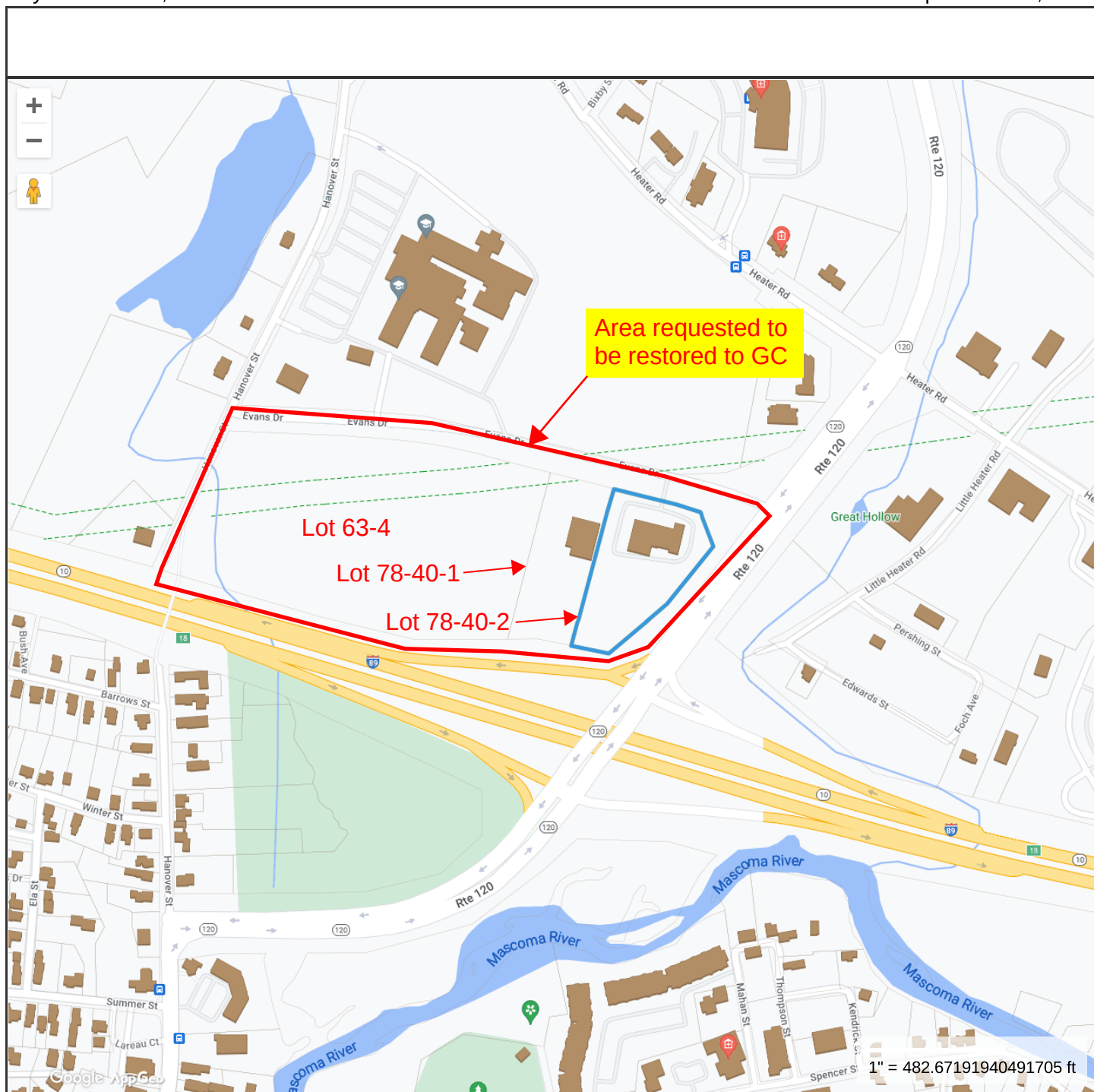


**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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 08/11/2023
 Data updated 11/18/2018

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

**Property Information**

Property ID 78-40-200
Location 51 EVANS DR
Owner CICOTTE HOLDINGS, LLC



**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 08/11/2023
 Data updated 11/18/2018

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

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
25. Renewable energy system per Section 612 26. Restaurant, sandwich shop 27. Retail product pickup 28. Retail store 29. Service station 30. Vehicular repair 31. Vehicular sales <u>Planned Developments</u> 32. Commercial PUD per Section 501	

305.3 Table of Area, Dimension and Coverage.

Minimum Lot Requirements					Maximum Limitations	
Area	Frontage	Front Yard	Side Yard	Rear Yard	Building Coverage	Height
50,000 square feet	150'	40'	20'	20'	30%	45' See Section 305.4

305.4 Special Height Restriction.

On **parcels** adjacent to residential districts the height limitation of the adjacent residential district shall apply; but, on such **parcels**, **building height** may be increased above the residential limitation by one (1) foot for each two (2) feet that the **building** is set back from the required set back line(s) on sides of the **lot** adjacent to the residential district. However, in no case shall the height exceed 45 feet.

305.5 Dwelling Unit Density.

Density determinations for **multi-family dwellings** and **mixed use buildings** shall be made by the Planning Board during the course of site review based on site specific conditions and factors such as the availability of parking and/or the ability to provide required parking, the availability of adequate water and sewer, and the ability to provide required site improvements and to meet all other requirements of the Site Plan Review Regulations and all other applicable City regulations.

Petition for Zoning Changes vicinity Exit 18

(Little Heater Road and Evans Drive)

29 September 2023

Members of the Lebanon City Council,

As voters of the City of Lebanon, we petition you to make changes to the zoning ordinance.

-Our request is under the provisions of the Zoning Ordinance, Section 1002.2.C..

-Our requests are outlined in AGD letter to the City Council dated 28Sep23

We, the voters, call on the City of Lebanon to make these changes to restore a fair and just zoning for these properties.

[illegible]

