

FINAL

LEBANON PLANNING BOARD
Regular Session
Monday, October 9, 2023, 6:30 PM
Council Chambers, City Hall
or Remote Via Microsoft Teams
LebanonNH.gov/Live

MEMBERS PRESENT: Matthew Hall (Chair), Karen Zook (City Council Rep), Andrew Faunce, Bruce Garland, Patrick Kennelly, Kathie Romano, Laurel Stavis - Remote, Richard Burley

MEMBERS ABSENT: Jeremy Rutter (Vice Chair - Remote)

STAFF PRESENT: Nathan Reichert (Planning Director), Tim Corwin (Deputy Planning Director), Brian Vincent (City Engineer)

1. Call to Order

Chair Hall called the meeting to order at 6:30 PM.

2. Notice of Regional Impact

The following applications were received by the Planning and Development Department on or before October 9, 2023:

Mason Storage, LLC, 38 Spencer Street (Tax Map 78, Lot 39), zoned LD: Applicant requests an extension of time per Section 4.10.B of the Site Plan Review Regulations to obtain a building permit pursuant to an approved site plan for a 15,000 sq. ft. addition to an existing storage building, originally approved on October 25, 2021 (PB2021-13-SPR). **PB2023-36-EXT**

SPNH Lebanon North, LLC, 402 & 392 Mount Support Road (Tax Map 24, Lots 9 & 10), zoned R-1: Applicant requests a Conditional Use Permit pursuant to Article III, Sections 305.2, 302.4(B) of the Zoning Ordinance to fit up 968 sq ft of space for an animal surgical center. **PB2023-37-CUP**

LVM Residential, LLC, 1 Foundry Street, 25 & 43 Mechanic Street (Tax Map 91, Lots 263 & 267 & 106-34) zoned LD: Pursuant to Section 9.1 of the Site Plan Review Regulations, applicant requests a modification to a previously approved Site Plan (PB2022-36-SPR) for a phased, 196-unit multi-family complex. Applicant proposes to reduce the number of dwelling units to 183 and to revise the building site configuration, together with related modifications to parking, utilities, landscaping, access, and other site improvements. **PB2023-38-SPA**

Mr. Corwin stated that the above applications have no potential for regional impact.

A MOTION by Bruce Garland that the submitted applications have no potential for regional impact. The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

3. Public Hearing Items

- A. Vincent & Tarah Cantore, 121 Slayton Hill Road (Tax Map 134, Lot 10), zoned RL-2:**
Request for approval of a proposed three (3)-lot Minor Subdivision. **PB2023-13-MIN**

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

A MOTION Bruce Garland that the Lebanon Planning Board finds the application of Vincent & Tarah Cantore, for a proposed three (3)-lot Minor Subdivision of 121 Slayton Hill Road (Tax Map 134, Lot 10), PB2023-13-MIN, **IS** complete enough to accept jurisdiction and commence review.

The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Ford Burley, Ms. Stavis

Voting Against – None

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

Vincent Cantore appeared in support of the application.

Chair Hall invited public comment.

Heather Johnson, a resident of Slayton Hill, expressed concern about the wildlife corridor and a larger concern over the culvert that washed out due to heavy rains. There is no plan for drainage when the properties are developed. All drainage from the properties goes through their culvert. Mr. Vincent stated that a small-scale development would have no impact on concern for drainage. Mr. Corwin noted that any other use than for a single-family home would trigger stormwater management. Cutting trees and increasing runoff is not

Steve Louziere, a resident of Slayton Hill, commented on clear cutting above these properties that caused a landslide with the heavy rains and severely damaging Slayton Hill. Chair Hall noted the limitations of the Planning Board's role regarding future problems. Mr. Corwin stated that developing the lots would require certain permits and approvals that require site plan review.

Jillian Ramter, a resident of Slayton Hill, inquired about the possibility of multi-family housing in that area given the need for workforce housing. Mr. Corwin stated that a PUD could be possible if the site plan regulations are met.

Kathy Pierce, a resident of Slayton Hill across from the properties in question, expressed concern for the wildlife and the water runoff. Her home sustained severe damage in the past, and a subdivision will increase the potential for water damage.

A MOTION by Patrick Kennelly that the Lebanon Planning Board **APPROVE** a waiver for the application of Vincent & Tarah Cantore for a proposed three (3)-lot Minor Subdivision of 121 Slayton Hill Road (Tax Map 134, Lot 10), PB2023-13-MIN, from Section 13.4.A of the Subdivision Regulations requiring soil testing and data.

The motion was seconded by Bruce Garland.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavits

Voting Against – None

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

A MOTION by Patrick Kennelly that the Lebanon Planning Board **APPROVE** the application of Vincent & Tarah Cantore for a proposed three (3)-lot Minor Subdivision of 121 Slayton Hill Road (Tax Map 134, Lot 10), PB2023-13-MIN, as shown on a plat titled “Subdivision Plan,” prepared by Paton Land Surveying, dated August 23, 2023, including any and all supplemental submissions and testimony provided during the public hearing.

In support of its decision, the Board finds that the applicant has submitted plans, testimony, and technical data prepared by a licensed land surveyor that together satisfactorily demonstrate compliance with the applicable requirements of the Subdivision Regulations except as may reasonably be addressed through the imposition of certain conditions of approval, set forth below.

This approval is subject to the following conditions:

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

1. The applicant shall provide a revised plat depicting the following changes to the satisfaction of the Planning and Development Department:
 - a. Add Grafton County to the title block (9.5.A.1).
 - b. Identify mailing address of the applicant (9.5.A.2).
 - c. Identify names and mailing addresses of the easement holder(s) (9.5.A.2).
 - d. Identify the zoning districts in which the property is located and identify the RL-2 and RL-3 district boundary on Lot 3 (9.5.A.4).
 - e. Provide the areas of all proposed lots in square feet in addition to acres (9.5.A.6).
 - f. Identify the existing wood areas/tree line (9.5.A.7).
 - g. Contact the Assessing Department to obtain the tax map/lot numbers for the new lots and add to the plat.
 - h. Contact the Police Department to obtain the street addresses for each new lot and add to the plat.
 - i. Add a note indicating that the plat was approved pursuant to the City of Lebanon Subdivision Regulations last revised June 28, 2021.
 - j. Add Planning Board number (PB2023-13-MIN).
 - k. Add a note to the plan that electric, telephone and cable TV distributions systems shall be underground, including services (13.8.C).
 - l. Identify acreage and square footage of existing lot.
 - m. To address the wildlife corridor identified in the November 2016 “Lebanon’s Wildlife Corridors” study, either delineate a building footprint on Lot 3 as far North as possible and a building footprint on Lot 2 as far South as possible to accommodate the wildlife corridor, or add a note referring to the wildlife study and indicating that the corridor would be best protected by placement of any future buildings on Lot 3 as far North as possible, and on Lot 2 as far south as possible.
 - n. Provide the date and description of the plat revisions. (9.5.A.1)
2. The applicant shall provide a digital record drawing (Cad .dwg format using NH State Plane Coordinate system or an alternative approved by the City’s GIS Coordinator).

General Conditions

3. This approval shall be considered void unless all conditions precedent have been met, and the plat has been recorded in the Registry of Deeds, within two (2) years from the date of the Notice of Action (Section 7.12.B).
4. Future development on the new lots shall be subject to City of Lebanon Impact Fees, Pursuant to Section 213 of the Zoning Ordinance. The Impact Fee shall be calculated at the time of Building Permit issuance based on the Impact Fee Schedule adopted on October 12, 2021, and such fees shall be due and payable at the time of issuance of a Certificate of Occupancy. In accordance with RSA 674:39, the approved site plan shall be exempt from any future changes in impact fees and methodology for five years from the date of approval; however, any building permits which are issued after the end of that five-year period shall be fully subject to whatever impact fees and methodology are in effect at the time of building permit issuance.
5. All future construction shall substantially conform with and shall be subject to the requirements and specifications of the recorded plat (Section 7.9.A.2).

The motion was seconded by Bruce Garland.

Chair Hall offered an amendment to the motion regarding the wildlife corridor, but it was determined that it would not be necessary.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

A MOTION by Patrick Kennelly that the Lebanon Planning Board authorizes the Chair to sign the Minor Subdivision plat of Vincent & Tarah Cantore, PB2023-13-MIN, titled “Subdivision Plan,” prepared by Paton Land Surveying, dated August 23, 2023, as revised per the Planning Board’s conditions of approval.

The motion was seconded by Bruce Garland.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

- B. **Johanna Cicotte & Edwards Properties, LLC, 30 Little Heater Road (Tax Map 78, Lot 61) and 1 Edwards Street (Tax Map 78, Lot 56), zoned IND-L: Request for a Boundary Line Adjustment. PB2022-42-BLA**

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

A MOTION by Andrew Faunce that the Lebanon Planning Board finds the application of Johanna Cicotte & Edwards Properties, LLC, for a proposed Boundary Line Adjustment between 30 Little Heater Road (Tax Map 78, Lot 61) and 1 Edwards Street (Tax Map 78, Lot 56), PB2023-42-BLA, **IS** complete enough to accept jurisdiction and commence review.

The motion was seconded by Kathie Romano.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

Dan Nash of Advanced Geomatics and Design appeared in support of the application.

Mr. Nash explained the reason for the request.

Mr. Corwin stated that there are conditions of approval.

Ms. Romano inquired about the accuracy of the drawing of the lots in question. Mr. Nash explained the reason for the drawing and the need to change it.

Amy Stebbins, who owns a business at 5 Edwards St., and Ed Corley, the property owner, stated that the section directly behind 5 Edwards St. is not legally part of the lot in question. Mr. Nash explained that per Atty. Schuster, the court decided that this strip was added to the property in question. Mr. Corwin stated that the plan was prepared by a licensed land surveyor, and more evidence would be required to decide an error was made. Ms. Stebbins stated that she wants to be sure it was a legal transfer. Mr. Corwin suggested a condition that the applicant must show legal ownership of that portion of the property. Mr. Nash stated that another survey by a different surveyor would be required.

Ms. Romano noted that notice must be given to abutters regarding a transfer of property. Mr. Corwin stated that it would be appropriate to give the abutter time to get a new survey. Mr. Garland suggested contacting Atty. Schuster for confirmation of the property ownership.
Continue to November.

A MOTION by Bruce Garland to continue the hearing of Johanna Cicotte & Edwards Properties, LLC, to November 13, 2023, meeting at 6:30PM.

The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

- C. **SPNH Lebanon North, LLC, 402 & 392 Mount Support Road (Tax Map 24, Lots 9 & 10), zoned R-1:** Pursuant to Section 9.1 of the Site Plan Review Regulations, a request for a modification to a previously approved Site Plan (PB2021-33-SPR) for a 204-unit multi-family development. Applicant proposes to construct 3, 4-story multi-family dwellings and a community amenity building in place of the 4, 3-story multi-family dwellings currently approved, together with related modifications to parking, utilities, landscaping, access, and

other site improvements. **PB2023-34-SPR**

Chair Hall noted that the packet information was provided very late to the Board members. Mr. Garland agreed that there was not sufficient time to review the information. Mr. Corwin noted that the information was online last Thursday with the exception of Mr. Fiore's memo. Chair Hall agreed to proceed.

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

A MOTION by Andrew Faunce that the Lebanon Planning Board find the application of SPNH Lebanon North, LLC, for 402 Mount Support Road (Tax Map 24, Lot 9) and 392 Mount Support Road (Tax Map 24, Lot 10) (PB2023-34-SPA) is complete enough to accept jurisdiction and commence review.

The motion was seconded by Patrick Kennelly.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

Tom Greco of Saxon Partners, Nick Fiore of Engineering Ventures, Attorney Phil Hastings, and Landscape Architect Paul Simon appeared in support of the application.

Mr. Fiore described the change requested. The number of units has not changed, but the configuration has changed.

Mr. Faunce inquired about the underground parking. Mr. Fiore confirmed and described the parking arrangements.

Mr. Fiore stated that they would be reducing impervious surface and increasing the wildlife corridor. Mr. Greco stated that the addition of EV stations is important.

Mr. Fiore described the new waivers being requested. Mr. Greco added information about lighting changes.

Mr. Corwin stated that the previous waivers don't need to be revisited. The new light trespass waiver needs to be approved. He explained the conditions of approval.

Ms. Romano commented on the new building height and the lack of benches near the buildings. Mr. Fiore described the new outdoor seating and grilling area between the buildings.

Mr. Faunce inquired about the waiver regarding egress doors. Mr. Fiore stated that there is no issue with limited egress.

Chair Hall invited public comment. There was none.

Mr. Burley inquired about the trees for the parking areas. Mr. Simon stated that native trees are used along with irrigation systems to increase the viability of trees.

A MOTION by Bruce Garland to approve a waiver of Section 6.7.B.2 regarding light trespassing onto adjacent properties and streets.

The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavits

Voting Against – None

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

Chair Hall closed the public hearing.

A MOTION by Patrick Kennelly that the Lebanon Planning Board **APPROVE** the application of SPNH Lebanon North, LLC, pursuant to Section 9.1 of the Site Plan Review Regulations for a modification to a previously approved Site Plan (PB2021-33-SPR) for a 204-unit multi-family development, PB2023-34-SPA. Applicant proposes to construct 3, 4-story multi-family dwellings and a community amenity building in place of the 4, 3-story multi-family dwellings currently approved, together with related modifications to parking, utilities, landscaping, access, and other site improvements, as depicted on a plan set titled “Marek 2 Site Development Plans” prepared by Engineering Ventures, PC, dated September 11, 2023, EV Project #22715 (46 Sheets), per application materials submitted and including any and all submissions and testimony provided for and during the public hearing, subject to the following conditions:

1. The applicant shall satisfy and comply with the Planning Board Notice of Action for PB2021-33-SPR, dated February 14, 2022, and all conditions of approval thereof except as provided in Condition of Approval #2 below. This approval shall supersede the Planning Board’s Notice of Action dated August 14, 2023, for PB2023-27-SPA.
2. Condition #17 set forth in the Planning Board Notice of Action for PB2021-33-SPR, dated February 14, 2022, is hereby stricken and replaced with the following:
Pursuant to Section 4.9 of the Site Plan Review Regulations, the project may be constructed in phases per the phasing plan submitted for PB2023-34-SPA and per the conditions of approval set forth in the Planning Board Notice of Action for PB2021-33-SPR, dated February 14, 2022, and in the Planning Board Notice of Action for PB2023-34-SPA, dated October 9, 2023.
3. Prior to any construction activities and prior to the application for a Building Permit, the applicant shall make the following revisions to the plan set to the satisfaction of the Planning and Development Department and the City Engineer:
 - a. Identify the on-site water main easement area to be conveyed to the City;
 - b. Add sheet numbers to each sheet (Sheets 1 – 46);
 - c. Revise the plan date to November 21, 2021, to match the original approved plan, and provide all subsequent revision dates and descriptions thereof (5.1.E.4.d); and
 - d. To the satisfaction of the Lebanon Fire Department, amend the landscaping plan as needed to remove bushes and other plantings where the Fire Department connection for the automatic fire sprinkler system will be located.
 - e. Incorporate all other revised plan sheets and changes submitted during the course of the hearing and update all other plan sheets as necessary to reflect the changes.

The applicant shall provide the Planning and Development Department with one (1) full size copy of the revised plan set, and a digital copy of the revised plan set saved in a PDF-A format for archival purposes.

4. Prior to any construction activities and prior to the application for a Building Permit, the applicant shall apply to the Planning and Development Department for a voluntary merger of 402 & 392 Mount Support Road (Tax Map 24, Lots 9 & 10). Upon approval, the voluntary merger shall be recorded at the Grafton County Registry of Deeds.
5. Prior to application for a Building Permit, the applicant shall provide a wildland fire hazard assessment per 2018 NFPA 1, Section 17.1.1, and shall provide such assessment to the Lebanon Fire Department for review.
6. Prior to issuance of a Building Permit, the applicant shall request approval pursuant to City Code Chapter 182, Section 182-40.B, to extend the water main from Mount Support Road through the development.

The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

4. Deliberation

- A. **XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 3 & 7, and Tax Map 44, Lots 21-30), zoned CBD, IND-L and R-3:** Request to amend the conditions of approval for the River Park development, approved by the Planning Board pursuant to Notices of Action dated September 9, 2019 for PB2018-34-and October 12, 2012 for PB2021-29-EXT.
PB2023-22-SPA - Continued from September 11, 2023

Ms. Romano, Ms. Stavis, and Mr. Burley recused themselves.

Chair Hall explained the reasoning behind the deliberation.

Mr. Garland offered some clarity regarding the issue of vesting and the Notice of Restriction. He suggested a change to the Notice of Restriction to recognize the phasing.

Chair Hall stated that all the changes over time have created confusion. Mr. Garland further explained the reasoning behind his suggestions. Mr. Faunce noted that the applicant could have narrowed down the request. Chair Hall stated that the applicant could come back to the Board with a new solution to the vesting dilemma. Mr. Garland stated that the situation is unique based upon the temporary parking. Councilor Zook stated that her inclination is to deny the application to allow the applicant the opportunity to restructure the request.

The Board members continued the discussion of possible actions.

A MOTION by Patrick Kennelly that the Lebanon Planning Board **DENY** the application of XYZ Dairy, LLC, to amend the conditions of approval for the seven (7)-phase River Park development, consisting of

the properties identified on Tax Map 44 as Lots 3, 7 and 21-30 (PB2023-22-SPA).

APPLICANT'S REQUESTS

It is the Board's understanding that the applicant requests the following:

1. An amendment to the River Park subdivision and site plan conditions of approval to deem the entire River Park development "vested" based on the portion of the Phase 1 infrastructure constructed to date. (Request #1)
2. Removal of the recorded Notice of Restriction in order to permit the sale or transfer of the individual River Park lots without having to provide financial security for the completion of the required infrastructure improvements. (Request #2)

BACKGROUND

The River Park development subdivision and site plan were originally approved in 2011, followed by multiple extensions and amendments with respect to both the subdivision and site plan approvals.

As set forth in Condition of Approval #28 of the Planning Board's Notice of Action for PB2011-01-FMAJ dated October 11, 2011, the River Park subdivision would vest as provided in RSA 674:39, II, upon completion of the Phase 1 infrastructure. Likewise, as set forth in Condition of Approval #28 of the Planning Board's Notice of Action for PB2010-25-SPR dated October 24, 2011, the River Park site plan would vest as provided in RSA 674:39, II, also upon completion of the Phase 1 infrastructure. The latter condition was reiterated as Condition of Approval #29 of the Planning Board's Notice of Action for PB2018-34-SPA dated September 9, 2019 ("2019 Notice of Action").

Pursuant to the 2019 Notice of Action, a revised phasing schedule for the River Park development was approved as follows:

Phase	Improvements
1	46,925-square-foot building for office and retail use located on Lot 1 with temporary parking located on Lot 2 and Lot 3. Phase 1 also includes construction of a portion of the development roadway sufficient to access Lot 3, the southerly development entrance intersection, the extension of Crafts Avenue, and the installation of water and sewer lines necessary for this portion of the site.
1-A	125,125-square-foot building for 125 units of multi-family housing located on Lot 2, and the construction of a temporary parking lot on Lot 3 and Lot 4. Phase 1-A also includes the extension of the development roadway and construction of proposed Lyman Street.
1-B	95,800-square-foot building for office and retail use located on Lot 10 with temporary parking on Lot 3, Lot 4, and Lot 5.
2	178,650-square-foot building for laboratory/office use located on Lot 3 with temporary parking located on Lot 3, Lot 4, and Lot 5. Phase 2 also includes the construction of the remainder of the development roadway and the northerly access intersection.
3	23,000-square-foot building for office and retail use and a 585-space parking garage located on Lot 8.
4	153,120-square-foot building for laboratory/office use located on Lot 5.
5	81,500-square-foot building for laboratory/office use and an 808-space parking garage located on Lot 3.
6	133,200-square-foot building for laboratory/office use located on Lot 4.

To date, the applicant has completed a portion of the Phase 1 improvements including:

- Crafts Avenue sewer and roadway improvements (identified as part of Phase 1 in the 2011 approvals, but not identified as part of Phase 1 in the 2019 Notice of Action);
- Extension of Crafts Avenue (identified as part of Phase 1 in the 2011 approvals, but not identified as part of Phase 1 in the 2019 Notice of Action);
- Installation of water and sewer lines from Crafts Avenue to Lot 1.

The remaining Phase 1 improvements include the construction of the southerly development entrance intersection (Route 10) and the portion of the development roadway sufficient to access Lots 1, 2 and 3.

The River Park subdivision plat was recorded on January 2, 2018, together with a Notice of Restriction signed by the applicant providing as follows:

This Notice of Restriction is given in accordance with Section 1 of the Performance Bond/Security Agreement between the City of Lebanon and the Subdivider (a copy of which is attached hereto as Exhibit A), pursuant to which, and subject to the exceptions set forth therein, no individual lots, sites or units within the above-described premises may be sold or transferred until such time as adequate performance security has been posted for the infrastructure required therefor as required by the Notice of Action of the Lebanon Planning Board dated October 24, 2011, as may be duly modified, and until a full or partial release of the above restrictions, executed by the City Manager, has accordingly been recorded in the Grafton County Registry of Deeds.

The Notice of Restriction was provided in lieu of the requirements of Section 7.11 and Section 7.12 of the Lebanon Subdivision Regulations which provide in relevant part as follows:

7.11 Recording of Final Plat

When the required improvements have been completed in accordance with the Notice of Action, or upon acceptance of security for the construction and installation of such required improvements (see Section 14), the Applicant shall present the Final Plat for signature by the Chairperson of the Planning Board and recording in the Grafton County Registry of Deeds.

7.12 Time to Record Plat and Extensions

A. No sale or transfer of any lots, plats, sites, or other divisions of land within the subdivision may be entered into until the approved subdivision Plat has been recorded in the Grafton County Registry of Deeds.

STANDARD OF REVIEW

Request #1

The Board interprets the applicant's request as a request to amend the definition of "substantial completion" in Section 14.1.B.2 of the Subdivision Regulations and Section 8.4.B.1 of the Site Plan Regulations, both of which provide that the Planning Board can modify the point at which substantial

completion is deemed to have occurred. The standard of review is the same standard that the Board would use to decide this question in the first instance.

Request #2

The Board interprets the applicant's request as a request to waive the requirements of Section 7.11 of the Subdivision Regulations, referenced above. As such, the Board's standard of review is set forth in Section 7.15 ("Waiver of Regulations") which provides that the Board may only grant a waiver or modification of these Regulations if the Board finds, by majority vote, that:

- A. Strict conformity would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulations; or
- B. Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

FINDINGS & CONCLUSIONS

Request #1

- Ordinarily, for a project to "vest" per RSA 674:39, I, "substantial and active development" must be achieved with two (2) years and substantial completion must be achieved within five (5) years. Pursuant to RSA 674:39, III, these terms are defined in Section 14.1.B of the Subdivision Regulations and Section 8.4 of the Site Plan Review Regulations.
- Rather than applying the "substantial and active development" and "substantial completion" thresholds to each of the 7 phases, the Planning Board's 2011 approvals provide that upon substantial completion of just the Phase 1 infrastructure improvements, the entire River Park development will vest. The 2011 approvals also omit any mention of the "active and substantial development" threshold which presumably means that the River Park development is not subject to the "active and substantial development" threshold. By contrast, all other phased developments in Lebanon vest on a phase-by-phase basis and are subject to both the "substantial and active development" and "substantial completion" thresholds required by state statute and the Subdivision Regulations.
- The applicant now requests that the Board deem the entire project vested based on just a portion of the required Phase 1 improvements. In order to further relax the standards for vesting, the applicant must demonstrate that there is a need and explain why the River Park development should be treated more favorably than other developments in Lebanon, even more favorably than it already is pursuant to the relaxed vesting requirements the River Park development is already subject to.
- The applicant provided extensive testimony about River Park, its history, and its attributes, much of which is undeniably unique to River Park. Nevertheless, no testimony or evidence was provided as to why the River Park development is uniquely burdened by the vesting threshold established per the 2011 approval which is already more favorable than the vesting thresholds that apply to every other development.
- The applicant testified during the course of the public hearing that their request was based on the need for "certainty". In the applicant's letter to the Board dated June 6, 2023, the applicant states:

Continuation of investment in municipal infrastructure by XYZ Dairy, LLC under the present approvals, and in light of the aforementioned facts, would be practically and economically unfeasible, as it would entail substantial investment of resources and efforts without assurances that the City of Lebanon would not revoke the River Park approvals despite delays incurred, the evolution of subdivision regulations since, and the realities of present economic conditions.

- The Board notes that the applicant already has the “certainty” that it seeks. Pursuant to RSA 674:39, III, and the Planning Board’s approvals, the project is currently temporarily vested against any changes to the land use regulations, so long as construction proceeds within the timeframes outlined in the approvals. And once the Phase 1 infrastructure improvements are made the project will permanently vest per RSA 674:39, II.
- Pursuant to an extension granted by the Planning Board on October 12, 2021, the applicant has seven (7) years from the date of the final subdivision approval (January 2, 2018) to complete the Phase 1 infrastructure. That the applicant has been given 7 years to complete the phase 1 infrastructure (in addition to multiple prior extensions granted since 2011) is considerably higher than the two (2) years that every other development in Lebanon is subject to. If even more time is needed, the applicant has the option of applying for an extension, as they have done previously on multiple occasions. Pursuant to the River Park approvals, there is no limit on the number of extensions the applicant can apply for. The Board notes that River Park’s ability to apply for unlimited extensions is unique – all other developments are limited to a single extension request after which the only option would be to submit a brand-new application subject to the current land use regulations.

Request #2

- Prior to the signing of a subdivision plat by the Planning Board Chair (which is required in order to record the plat), Section 7.11 of the Subdivision Regulations requires that either the infrastructure improvements are constructed or security for those improvements is provided. There is no third option in the Subdivision Regulations and there is no third option identified in state statute. Per Section 7.12.A of the Subdivision Regulations, lots within the subdivision may not be sold or transferred until the plat is recorded.
- Reflecting the requirements of Sections 7.11 and 7.12, Condition #5 of the 2011 River Park subdivision approval provides that: “Prior to the signing and recording of the mylar, the applicant shall enter into a Performance Security Agreement pursuant to Section 14.6 of the Subdivision Regulations, for all required improvements intended to serve the entire subdivision, both on- and off-site, including, but not limited to: roadways and sidewalks, sewer and water utilities within the development and the sewer main within Crafts Avenue, storm drainage systems for the development roadways, erosion control, and landscaping and street lights located within the proposed rights-of-way in an amount considered adequate by the Department of Public Works, and in a form satisfactory to the City Attorney. The Performance Security Agreement shall be secured by a surety bond, a letter of credit, or an escrow account for the full anticipated cost of such improvements.”
- Ultimately, instead of requiring security for the entire development as required by Condition of Approval #5, the plat for the River Park phased development was recorded in 2018 together with the afore-mentioned Notice of Restriction. Although the River Park Subdivision plat was recorded without completion of the required improvements and without security for those improvements, the Notice of Restriction requires that those improvements are so constructed or secured prior to the sale or transfer of individual lots within the River Park development. The effect of the Notice of Restriction, therefore, is

consistent with the requirements of condition of approval #5 from the 2011 Subdivision approval as well as the requirements of Sections 7.11 and 7.12 of the Subdivision Regulations cited above.

- The applicant now requests removal of the lot transfer restriction set forth in the Notice of Restriction but does so without acknowledging that they agreed to the Notice of Restriction in order to permit the recording of the subdivision plat in lieu of providing security for the infrastructure improvements as required by Section 7.11.

- The reason for the applicant's request to remove the Notice of Restriction is described in their letter to the Board dated May 8, 2023:

Restriction on Lot Transfer: None of the River Park lots can be subdivided until the Route 10 and Roads are done. That prevents us from structuring deals for each phase and arranging financing/joint-venture partners for each phase, effectively requiring substantial upfront investment before anything can be built

The applicant elaborated on this concern in further correspondence to Board dated June 5, 2023, as well as in testimony given during the public hearing.

- If the Notice of Restriction is preventing the development from proceeding as the applicant has claimed, then a simple remedy is available: the applicant can provide security for the required infrastructure improvements as they agreed to do pursuant to the Notice of Restriction, as is required by Condition of Approval #5 in the 2011 Notice of Action, and as required by Section 7.11 of the Subdivision Regulations. Like every other subdivision approved in the City of Lebanon, once security for the infrastructure improvements is provided, the individual lots within the subdivision can be sold or transferred.

- Notably, the applicant provided no explanation in their application materials or during the public hearing (which was held over the course of multiple meetings) as to why security cannot be provided, nor did the applicant proffer any evidence as to what the cost of providing security would be. As such, the Board concludes that a remedy for the applicant's stated problem is already available, and that the applicant provided no evidence nor any explanation as to why they cannot avail themselves of such a remedy. Moreover, the applicant provided no explanation as to why their development is uniquely burdened by the requirements to provide security that would justify eliminating this requirement and treating the River Park development more favorably than all other subdivisions within the City of Lebanon.

- For the reasons set forth above, the Board finds that the applicant has not satisfied either standard set forth in Section 7.15 for the granting of a waiver of Section 7.11.

- The Board notes that the performance security amount can be reduced as portions of the infrastructure are completed, inspected, and approved. Moreover, if the applicant is unable to provide security for the entire development, another option would be to post security on a phase-by-phase basis which will at least allow the individual lots associated with the phase for which security has been posted to be sold. Finally, the applicant stated that they there is a specific buyer/investor for Lot 2 of the development and that the Notice of Restriction was preventing that transaction from moving forward. However, the applicant dismissed a Board member's suggestion that the applicant propose an alternative request designed to facilitate the transfer of Lot 2.

The motion was seconded by Andrew Faunce.

Mr. Garland noted that a final date should be stated for completion of Phase 1.

****The MOTION was approved (5-0).***

Ms. Romano, Ms. Stavis, and Mr. Burley returned to the Board.

5. Other Business

6. Approval of Minutes

A. September 11, 2023

A MOTION by Kathie Romano to approve the Planning Board Minutes of September 11, 2023, as presented.

The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

7. Adjournment

A MOTION by Bruce Garland to adjourn the meeting.

The motion was seconded by Andrew Faunce.

Roll Call Vote:

Voting in Favor – Ms. Romano, Mr. Garland, Mr. Kennelly, Mr. Hall, Ms. Zook, Mr. Faunce, Mr. Burley, Ms. Stavis

Voting Against – None

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

The meeting was adjourned at 9:18 PM.

Respectfully submitted,

Holly Howes
Recording Secretary