



**LEBANON PLANNING BOARD
NOVEMBER 25, 2024 - 6:30 PM
MEETING ROOM 1, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

1. Call to Order

- A. To participate in this meeting, please [join live via Microsoft Teams](#) or call 929-229-5356 (access code: 484 640 778#). If you have trouble accessing this meeting, please [email tim.corwin@lebanonnh.gov](mailto:tim.corwin@lebanonnh.gov).

2. Study Items

- A. Review of Proposed Amendments to the Zoning Ordinance and Zoning Map
- B. Review of Proposed Amendments to Site Plan Review Regulations re: Minor Site Plan Committee and Conceptual Review
- C. Discussion of potential amendments to the Site Plan Review Regulations re: Article IV procedural requirements, Article V application submission requirements, and Article VII waiver requirements
- D. Review of Request for Zoning Map Amendment: ICV of NH, LLC - 67 Etna Road, Tax Map 26, Lot 2

3. Committee Reports

- A. Minor Site Plan Committee
- B. **City Council Subcommittees:**
--Class VI Roads Advisory Committee
--Lebanon Energy Advisory Committee
- C. **Other Subcommittees:**
--City Council Representative
--Heritage Commission
--Pedestrian & Bicyclist Advisory Committee
--Upper Valley Lake Sunapee Regional Planning Commission
--UV Subcommittee of the Connecticut River Joint Commissions
--Upper Valley Transportation Management Association
--Mascoma River Local Advisory Committee
--West Lebanon Revitalization Advisory Committee
--Planning & Development Department – Task Status

4. Other Business

- A. Review and Adoption of Proposed Planning Board Rules of Procedure
- B. Planning Board process improvement/implementation of Rules of Procedure
- C. Review of 2025 Planning Board Meeting calendar
- D. Master Plan Update Status Report

5. Approval of Minutes

- A. October 14, 2024
- B. October 28, 2024

6. Adjournment

The order of agenda items is subject to change.

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



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon Planning Board

FROM: Planning and Development Department Staff

RE: 2024-2025 Proposed Zoning Amendments

DATE: November 18, 2024

Planning Board Members,

On October 23, 2024, Planning and Development Department staff presented to the City Council a set of proposed Zoning Ordinance and Zoning Map amendments for initial consideration. Following the presentation, the City Council agreed to move the proposed amendments forward for further review pursuant to the amendment process outlined in Section 1000 of the Zoning Ordinance. Section 1000.3.C requires review and comment by the Planning Board regarding any proposed zoning amendment:

All proposed [zoning] amendments shall be forwarded to the Planning Board and Conservation Commission. Planning Board and Conservation Commission shall place the proposed amendment on their agenda for discussion and comment at least thirty (30) days prior to the City Council public hearing. The Planning Board and Conservation Commission shall forward their comments and recommendations to the City Council at least seven (7) days prior to City Council public hearing.

The current set of proposed amendments are attached along with an opinion from the City's legal counsel. The drafts included in this packet include the edits and changes recommended by legal counsel.

Given the complexity of the amendments, the Planning staff intends to schedule several public meetings in December dedicated to public education and engagement. Events will be held at the City Hall, DHMC, and Kilton Library.

Once review by the Planning Board and other land use boards is complete, the amendments will be scheduled for a public hearing before the City Council in January 2025.

The proposed amendments originate from four sources:

1. The Pattern Zones Study.
2. The Route 120 / Northern Lebanon Neighborhood Plan.
3. Staff proposed technical amendments.
4. A private zoning change petition.

OVERVIEW OF AMENDMENTS

A. Pattern Zones Study

The Pattern Zones Study which utilized InvestNH Planning Grant funding was commissioned to analyze the possibility of architecturally designed, pre-approved, infill housing development within downtown West Lebanon and Lebanon. Study includes three primary areas of focus:

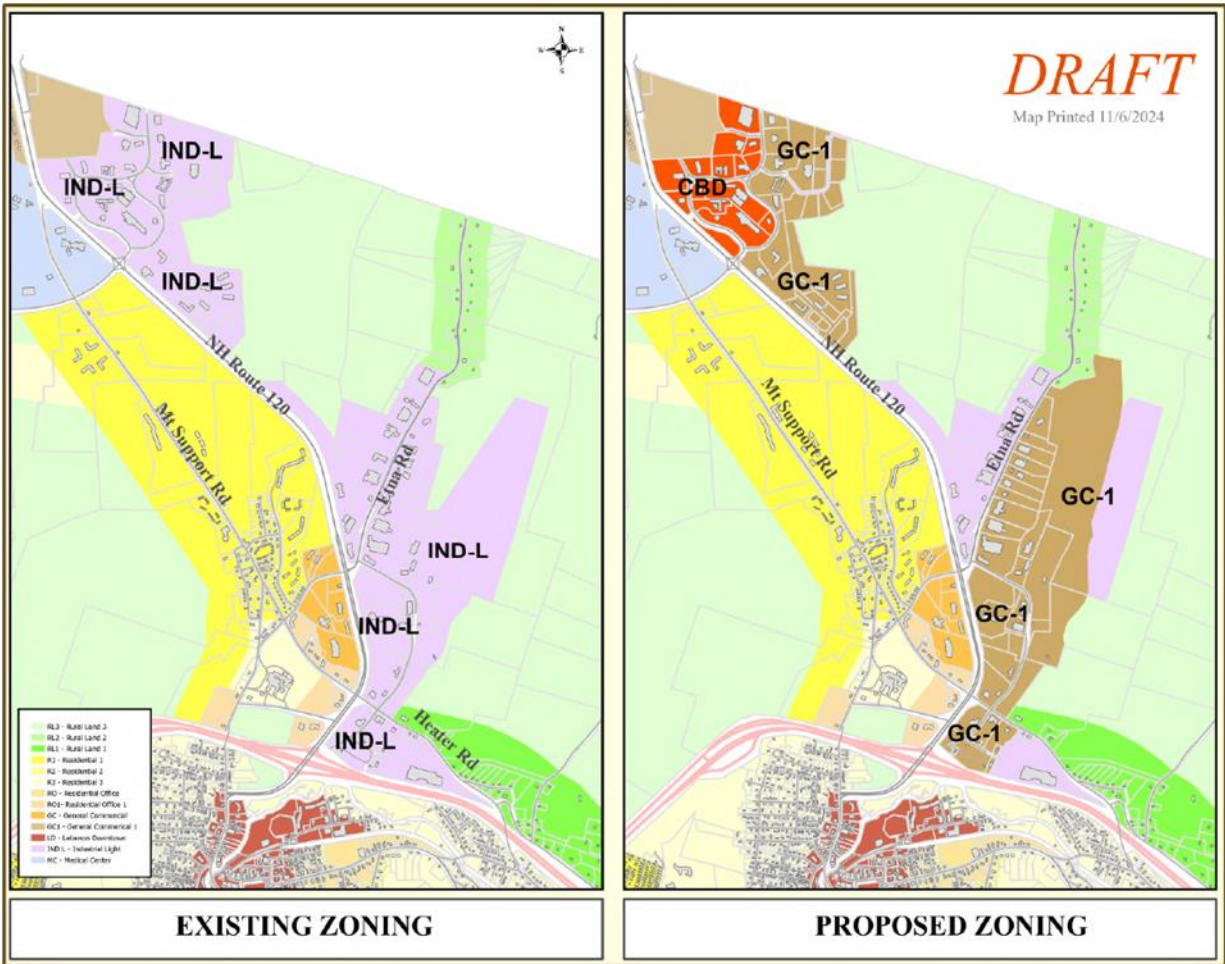
1. Creation of a Pattern Zones Overlay District to promote infill housing development within the study area.
2. A Preapproved Architecturally Designed Pattern Book, consisting of 15-25 house designs that can be accessed free of charge to those seeking to build a new house in the study area. The Pattern Book will be contracted for three years with Pattern Zones Co. and would be accessible online.
3. A sensitivity analysis, provided at the City Council meeting in September, analyzed housing market trends, zoning codes and the current neighborhood configuration to match housing opportunity with regulatory structure. The zoning recommendations are based upon the sensitivity analysis.

B. 120 – North Lebanon Study

The 120 North Lebanon Study was initiated in January 2024 and concluded with a presentation to City Council in September 2024. The study included substantial public engagement with the people that live and work in the Northern Lebanon neighborhood. The study makes a series of recommendations within three categories: Conservation, Zoning, and City amenities including transportation improvements. Specific recommendations include the creation of a wildlife crossing and land use-based protections for the crossing, and the re-zoning of the area to maximize development in line with the current and future needs of the neighborhood.

1. Zoning Map changes.
 - a. The areas around Centerra business park are to be rezoned to Central Business (CB).
 - b. The Altaria developments and surrounding areas are to be rezoned as General Commercial One (GC-1).
 - c. The areas along Etna Road, Labombard Road, Heater Road and Little Heater Road are also to be rezoned GC-1.

Proposed Zoning Map:



2. The Conservation Wildlife Corridor recommendations are being referred to the Conservation Commission for further work. The necessary details to create the recommended overlay, its buffers and design requirements need to be further refined. The 120 Study - Conservation recommendations will be shared with the Conservation Commission at their October meeting and further discussion will be had at the November meeting. It is expected that a path forward for the recommendations will be discussed at the November meeting. Ultimately the Conservation Commission will work to make a series of recommendations to the City Council on the topic.
3. Small changes also need to be made to Sections 501 and 508 to allow developments that were approved as Planned Unit Development (PUD) or Planned Business Park (PBP) to take advantage of the additional uses that the rezoning will permit, if the owner chooses to do so.

C. Staff Technical Amendments

1. Recovery Houses

- Lebanon currently lacks a use code and definition for a recovery house. Staff is working with Lynn Goodwin – Lebanon Human Services Director, the [New Hampshire Coalition of Recovery Houses](#), and Leigh Hays – Chief Building Official and Health Officer to cooperatively regulate the use. Creating the recovery house definition and use code will help protect the City and its

neighborhoods and allow a much-needed service to be established under appropriate regulation.

- The State Legislature along with the State Fire Marshal, NHCORR and NH Building Officials have established a process to define a recovery house within the State Fire and Building Codes. The same definition from state law is proposed to be used as the definition for the Lebanon Zoning Ordinance. By employing the state definition, we synchronize with the state permitting requirements.
- There have been incidents of illicit non-accredited and unpermitted “sober house” or “recovery house” operations adversely impacting neighborhoods and putting people at risk. Cities that do not define a recovery house use have been the subject of litigation, with false claims about discrimination leading to damages. The City of Lebanon currently does not have a definition, nor a use code. Thus, the City is vulnerable to unfounded litigation and disrupted neighborhoods at the hands of unscrupulous operators preying on those in need of recovery and support.

2. Medical Center Two (MC2)

- It is proposed to create a Medical Center 2 (MC2) zoning district and corresponding map amendment including the following properties:
 - Tax Map 90 Lot 59 – 10 Alice Peck Day Drive
 - Tax Map 76 Lot 4 – 23 Alice Peck Day Drive
 - Tax Map 76 Lot 6 - 0 Young Street
 - Tax Map 76 Lot 7 – 0 Hough Street
- The campus of Alice Peck Day Memorial Hospital is currently zoned Residential Three (R-3). The R-3 zoning district greatly limits the ability for the campus to maintain a thriving modern day medical campus with all the amenities and services needed to serve the Lebanon community.
- Like the Medical Center (MC) zoning district that covers the DHMC neighborhood, it is recommended that the Medical Center 2 (MC2) zoning district be created, and the zoning map changed to rezone the APD campus. Establishing the proposed zoning district will allow for an orderly development of the campus that better serves the needs of the community.
- Currently, a housing project on campus that will serve APD employees is being contemplated. Establishing the MC2 district will streamline APD’s permitting process as they potentially develop much needed housing on campus to serve their employees.

3. Miscellaneous minor amendments:

- **Section 201 (“Yard Requirements”)** – to allow stairs and stairwells in additional to architectural details to project up to 2 ft. into minimum required yards.
- **Section 212 (“Anti-Nuisance Standards”)** – in connection with the development of a proposed nuisance ordinance to be proposed to the City Council at a later date, remove anti-nuisance standards from the Zoning Ordinance which, historically, have been challenging to enforce.

- **Section 213 (“Impact Fees”)** – to clarify procedures for requesting a waiver of impact fees from the Planning Board.
- **Section 215 (“Location of Accessory Use”)** - to (a) require applicants for a shared driveway to produce an easement with maintenance provisions and (b) allow off-site utility improvements by conditional use permit.
- **Section 507 (“Density Bonuses”)** - to allow density bonuses for multi-family developments in the R-1 and R-2 Districts that provide for workforce housing, are energy efficient, and/or incorporate renewable energy systems.
- **Section 509 (“Cottage Developments”)** - to clarify that building sites of no less than 1,500 sq. ft. shall be provided for both attached and detached cottages and a related amendment to the Section 607.1 minimum off-street parking requirements to require one (1) off-street parking spaces per cottage.
- **Section 604 (“Group Day Care Facilities”) & Appendix A (“Definitions”)** - pursuant to the recently enacted HB 1567, clarify that family day care homes and family group day care homes are allowed as an accessory use to any primary residential use.
- **Section 607.1 (“Minimum Off-Street Parking Requirements”)** - pursuant to the recently enacted HB 1400, permit Planning Board to authorize alternative parking solutions for residential uses.
- **Section 607.8 (“Electric Vehicles”)** - to clarify that the minimum percentage of EVSE-installed, EV-ready, and EV-capable spaces for multi-family dwelling and non-residential uses.
- **Section 608 (“Signs”)** - to add new section permitting freestanding non-static signs (i.e. digital message boards) on certain streets within the GC District, and related changes to the sign illumination standards and the sign enforcement provisions.
- **Section 801 (“Powers and Duties”) & Appendix A (“Definitions”)** - pursuant to the recently enacted HB 1359, clarify who has standing to appeal an administrative decision to the Zoning Board of Adjustment, and who has standing to request a rehearing, and to clarify that the term “abutter” shall have the same meaning as provided by statute (i.e. NH RSA 672:3).

4. Map Amendments

- **Re-zone 31 Romano Circle**

- It is proposed to rezone 31 Romano Circle, Tax Map 101, Lot 20, to Residential Office (RO), changing from Residential Two (R-2).
- The 31 Romano Circle complex has been under the jurisdiction of the Lebanon Housing Authority since its inception in the mid 1970’s. The property is currently zoned R-2. The current use as a multi-family housing complex predates its current zoning and is therefore deemed pre-existing legal non-conforming.
- Over the history of the property several expansions have occurred. The most recent project currently in front of the Planning Board seeks approval for a new accessory office building use. During the summer of 2024, a Variance to allow the proposed office building was narrowly approved by the Zoning Board by a vote of 3-2. Unfortunately, the legal requirements of a Variance greatly challenge the LHA’s ability to nimbly permit even the most basic change.

- With this rezoning, LHA can utilize a Special Exception use code for: Residential - Multi-family dwelling (5 dwelling units or more) per Section 601 with a density calculation of 3,000 square feet per unit. Upon utilization of the Special Exception code possible changes are approved by the Zoning Board under a much simpler criterion. Without the change even minor changes to the plans, like the addition of a maintenance building, require a Variance. The difference between a Special Exception and a Variance is a major improvement in the LHA's ability to continue providing services to Lebanon's affordable housing market.
- **Re-zone Northern Lebanon pursuant to the proposed 120 study area recommendations. (see 120 – North Lebanon Study above)**
- **Private Zoning Change Petition – Map Amendment**
 - A private zoning change petition was received from Dan Nash, PE, representing Oakes Storage, LLC to rezone 92 Riverside Drive (Tax Map 111, Lot 16) from RL-1 to GC.

November 13, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Proposed Zoning Amendment
Pattern Zones Overlay District
Section 411 and Map Amendment**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a proposed amendment to create a new Section 411 ("Pattern Zones Overlay District"). The proposed amendment would establish a new overlay zoning district including much of the downtown areas in Lebanon and West Lebanon to preserve the historic downtown characteristics of these areas and increase density and housing choices in those locations to promote infill housing development..

I have reviewed the following documents in connection with this opinion:

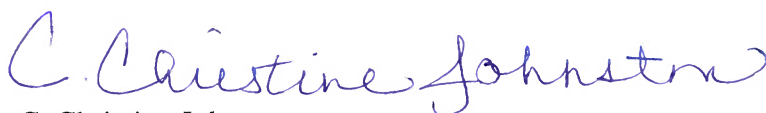
- Proposed amendment language dated November 7, 2024 and November 13, 2024
- Staff Memo to City Council dated October 15, 2024 and provided to me on November 7, 2024 regarding the requested amendment

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

My answer to the three questions in Section 1000.2.B(2) is "yes" and I discern no legal or administrative issues of concern with that request.

Please do not hesitate to contact me about any aspect of this.

Sincerely,



C. Christine Johnston

Section 411 Pattern Zones Overlay District

Section 411.1 - Purpose

The purpose of the Pattern Zone Overlay District is to create additional housing that fits the character of the existing neighborhood in Downtown Lebanon and Downtown West Lebanon, to establish and preserve the characteristics of the historical downtown areas of Lebanon and West Lebanon, and to increase density and housing choices in the district.

Section 411.2 - Description of Pattern Zones Overlay District

The areas and boundaries of the Pattern Zone Overlay District are shown on the Pattern Zone Overlay District Map of the City of Lebanon and made a part of this Ordinance and the Official Zoning Map of the City of Lebanon. The Pattern Zone Overlay District Map is attached hereto as Appendix D.

Note: staff proposes to update to the overlay district map to also include properties along Prospect Street to the Reservoir Road intersection including 50, 58, 60, 62, 64, 59 and 75 Prospect Street.

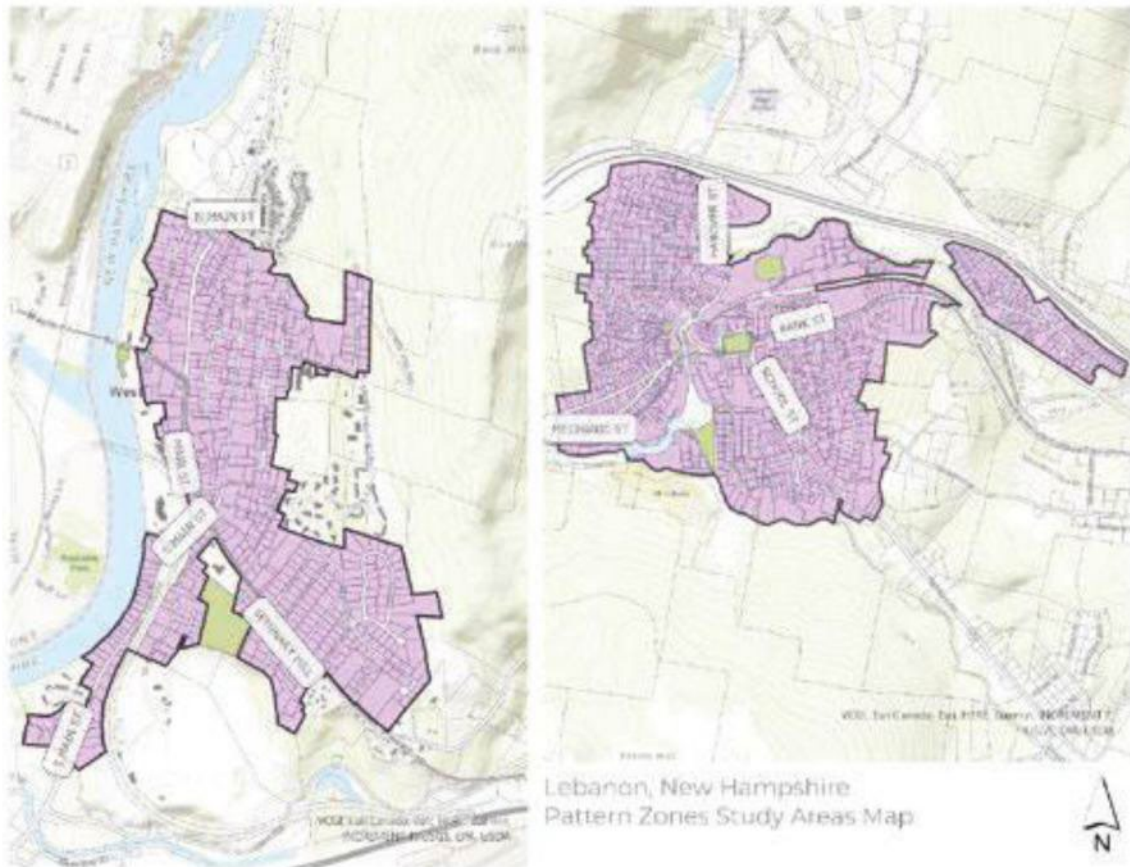


Figure 2: Pre-Approved Plans Program Study Areas Map.

Section 411.3 Permitted Uses

The Overlay District regulations are intended to only be used for uses allowed within the Pattern Zone Overlay District Table of Uses Table of Uses. Any nonresidential uses shall adhere to regulations set forth in Article III based on the underlying zoning district.

Pattern Zone Overlay District Table of Uses

Permitted Uses	Special Exception
Residential: 1. One-Family Dwelling 2. Two-Family Dwelling 3. Accessory Dwelling Unit per Section 610 4. Cottage Development per Section 509 with a minimum 20,000 sq. ft. lot Commercial/Non-Residential 1. Any listed in the Base Zoning District pursuant to Article III.	Residential: 1. Tri-Plex (3 units) 2. Quad-plex (4 units) 3. Townhouses / Rowhomes up to 4 units Commercial/Non-Residential: 1. Any listed in the Base Zoning District pursuant to Article III.

Section 411.4 Table of Areas, Dimensions, and Coverage

Minimum Lot Requirements					Maximum Limitations	
Area	Frontage	Front Yard	Side Yard	Rear Yard	Lot Coverage % of impervious cover	Height
4,000 sq. ft.	40' on lot that abuts a street* 15' on a flag shaped lot* 0' if on rear split lot* *Pursuant to 411.6	10' OR pursuant to 411.9 Front Yard	5'	10'	60% by right 60% - 80% by Special Exception pursuant to 411.8	45'

Section 411.5 - Parking

A minimum of one on-site parking space per dwelling unit is required.

Section 411.6 - Creating New Lots in the Overlay District

- A. Notwithstanding underlying zoning districts, new lots within the overlay may be created utilizing the overlay lot dimensional requirements.
- B. Creating a **flag lot** split shall provide 15' of frontage and meet the minimum lot area requirements.
 1. Front yard setback requirements shall begin at the point where the lot widens.
- C. The creation of a rear lot without the street frontage required by RSA 674:41 may only be approved if all of the following conditions are met:
 1. A perpetual deeded easement in favor of the rear lot to use a driveway across a lot which does have legally-sufficient frontage, acceptable to an attorney for the

City, shall be submitted with the application for approval by the Planning Board. If the subdivision is approved, the execution and recording of the easement in the registry of deeds shall be a condition of approval.

2. The driveway shall be shown on the subdivision plan.
3. The Planning Board shall determine that the driveway is sufficient for access to the rear lot.

Section 411.7 Shading and Buffers

- A. Preservation of a property's existing trees is encouraged to maintain a natural shade canopy upon the property.
- B. Properties shall be landscaped to achieve a minimum of 30% shade coverage.
- C. New houses located with the minimum 5' side yard setback from a property line must have a vegetative buffer.

Section 411.8 Impervious Cover

- A. Within the overlay district, impervious cover shall be limited as follows:
 1. The maximum impervious cover shall be up to 60% by right.
 2. Maximum impervious cover up to 80% may be permitted by Special Exception pursuant to Section 801.3.
 3. For purposes of this overlay district impervious cover shall be defined as: A structure or land surface with a low capacity for infiltration, including but not limited to pavement, roofs, roadways, and compacted soils, that has a Curve Number of 98 or greater.
 4. Impervious cover determinations when in question shall be made by the City Engineer.
- B. An applicant for a Special Exception to allow impervious cover up to 80% shall meet the criteria of Section 801.3 in addition to the following:
 1. A stormwater management plan shall be provided to the Board. The plan must demonstrate that all stormwater is managed and treated onsite with a preference for low impact development stormwater management methods. Applicants may tie into the City's stormwater drain system as may be permitted by the City Code.

Section 411.9 Snow, Garbage, Fuel Tanks

- A. A snow storage plan shall be submitted with the application and, if approved, shall be a condition of the approval.
- B. Garbage/recycling receptacle storage plan shall be submitted with the application and, if approved, shall be a condition of approval.
 1. Garbage/recycling shall not be stored in the front yard of the property.
 2. Applicable screening shall be provided.
 3. If a dumpster is used then it shall be enclosed, stored on a hard surface and meet screening requirements. A dumpster shall meet setback requirements, not interfere with parking, be located in the rear or side yard and beyond the front line of the structure and meet the setback requirements.

- C. Exterior fuel storage within the overlay shall:
1. Meet all zoning setback requirements.
 2. Fuel storage tanks shall be located within the rear yard.
 3. Underground fuel storage may be located in the front, side or rear yard provided they meet the required yard setbacks.

*** Options for Section 411.10 ***

Option A

Section 411.10 Pattern Book Requirements

The architectural plan for a building within the overlay pursuant to these requirements shall be selected from the Pattern Zones Book (a catalog of preapproved house plans available through the Lebanon Planning and Development Department from 2025-2028).

Option B

Section 411.10 Architecturally Designed Plans

The architectural plan for a building within the overlay pursuant to these requirements shall be designed by a licensed Architect.

Option C

Section 411.10 Design Guidelines

The following design guidelines shall apply to any design that is not preapproved within the Pattern Zones Book, a catalog of preapproved house plans available through the Lebanon Planning and Development Department from 2025-2028:

- A. A majority of these requirements shall be employed in the building's design: a. Front porch, Wood appearing siding or brick exterior, a peaked roof, street facing entry, street facing windows, garage located behind the front building line, chimney, non-split-level design.
- B. All designs shall demonstrate that the proposed design fits the architectural characteristics of the street block in which it will be located.

411.11 Front Yard

The required front yard may be reduced to the average front yard of the existing buildings on the same side of the street in the same block and located within 300 feet of the subject lot, provided that there are at least 2 such buildings. This reduction shall not be allowed for lots fronting on a state highway.

Appendix A - new definition

Flag lot - A lot that has access to a street by means of a narrow strip of land.

November 14, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Proposed Zoning Amendment
Recovery Houses – Section 614**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a proposed amendment to create a new Section 614 to address recovery houses. The proposed amendment would define “recovery houses,” add them as a use permitted by special exception in several zoning districts, and establish the criteria for approval and operation.

I have reviewed the following documents in connection with this opinion:

- Proposed amendment language dated November 7, 2024 and November 13, 2024
- Staff Memo to City Council dated October 15, 2024 and provided to me on November 7, 2024 regarding the requested amendment

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

My answer to the three questions in Section 1000.2.B(2) is “yes” and I discern no legal or administrative issues of concern with that request.

Please do not hesitate to contact me about any aspect of this.

Sincerely,



C. Christine Johnston

ATTACHMENTS:

Recovery House

Recovery House Definition, Use Code Additions, and Text:

Proposed Definition for Appendix A:

Recovery House: As defined in RSA 153:10-d, II, as the same may be amended: A residence that provides a safe, healthy, family-like, substance free living environment that supports individuals in recovery from addiction and is centered on peer support and a connection to services that promote long-term recovery; provided that "recovery housing" shall not include a halfway house or any other facility requiring a license pursuant to RSA 151.

Proposed Article III Table of Use Amendments for City Council approval:

Allow "recovery house" by Special Exception per Section 614 in the following zoning districts:

- CB - Central Business
- LD - Lebanon Downtown
- GC - General Commercial
- RO- Residential Office
- MC- Medical Center
- MC2- Medical Center Two
- IND-L- Industrial Light

Proposed Article III Table of Use Amendments for voter approval:

Allow "recovery house" by Special Exception per Section 614 in the following zoning districts:

- R-1- Residential One
- R-2- Residential Two

Proposed amendment to Article VI of the Zoning Ordinance - new Section 614:

Section 614 Recovery Houses.

614.1 Purpose.

The purpose of this section is to institute reasonable regulations for the establishment of recovery houses in accordance with RSA 153:10-d Exemption for Recovery Houses and to protect the health, safety, and welfare of the patrons of such operations, and of the citizens of Lebanon, and to prevent the deleterious siting of recovery houses within the City.

614.2 Certification Required.

To establish and operate a recovery house, the following standards shall be met:

A. The recovery house shall be certified and maintain certification by the New Hampshire Coalition of Recovery Residences at all times while in operation. Documentation of this certification and recertification shall be provided immediately to the Zoning Official, Fire Chief, Police Chief, and the City Clerk.

1. A letter from the New Hampshire Coalition of Recovery Residences (NHCORR) confirming the recovery house certification process has commenced shall accompany all City permit applications for the establishment of a new recovery house.

2. Upon final New Hampshire Partnership of Recovery Residences (NHPRR) certification of a new recovery house the certification shall immediately be communicated to the Zoning Official, Fire Chief, Police Chief and City Clerk. The recovery house may not begin operation under

any City approval until certification has been received and transmitted to the City as required by this section.

- B. A 24-hour emergency contact person with contact information and the approved building occupant load shall be posted in the common area of the building, so it is readily visible to residents and emergency responders. A 24-hour emergency contact person with contact information shall be provided, kept updated and remain on file with the Police Chief and Fire Chief.

614.3 Special Exception Application Requirements.

An application for a Special Exception shall include the following documentation:

- A. A location map demonstrating adherence to the 1320 ft. (1/4 mile) bus stop radius requirement set forth in Section 614.3.
- B. A site plan and floor plan demonstrating adherence to the requirements of RSA 153:10-d Exemption for Recovery Houses.
- C. A letter from the New Hampshire Coalition of Recovery Residences (NHCORR) confirming the recovery house certification process has begun.
- D. A proposed site plan depicting the following:
 - 1. A garbage management plan with locations of exterior garbage receptacles and compliance with the applicable criteria set forth in Section 614.3. If a garbage dumpster is being used, the plan shall demonstrate compliance with the applicable location and screening requirements as set forth in the Site Plan Review Regulations.
 - 2. A proposed smoking compliance plan that meets the standards of 153:10-d Exemption for Recovery Houses and the applicable criteria set forth in Section 614.4.
 - 3. A parking plan sufficient to demonstrate that the recovery house has sufficient parking to meet the needs of its residents.

614.4 Special Exception Criteria.

In addition to the general Special Exception criteria set forth in Section 801.3 and the certification requirements set forth in Section 614.2, an applicant for a Special Exception shall demonstrate compliance with the following criteria:

- A. The recovery house will be operated in a manner harmonious to the neighborhood and shall maintain a residential home appearance from the street view.
- B. The recovery house shall have walkable and bikeable access to and be located within $\frac{1}{4}$ mile (1320 ft.) of a bus stop.
- C. Smoking areas are not permitted in the front yard of a recovery house.
- D. A designated smoking area shall meet applicable setback for the zoning district and if abutting a residential use screening shall be provided.
- E. All garbage receptacles shall be stored in a location on the side or rear of the house.

November 13, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Proposed Zoning Amendment
Medical Center Two (MC-2) District
Section 31X and Map Amendment**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning a proposed amendment to create a new zoning district (Medical Center Two, MC-2) to include four lots that are currently part of the R-3 district. The proposed amendment would establish this new district to facilitate the continued development of this area for inpatient and outpatient health care and other related and complimentary uses, including but not limited to housing for employees.

I have reviewed the following documents in connection with this opinion:

- Proposed amendment language dated November 7, 2024 and November 13, 2024
- Staff Memo to City Council dated October 15, 2024 and provided to me on November 7, 2024 regarding the requested amendment

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

Other than as explained below, my answer to the three questions in Section 1000.2.B(2) is “yes” and I discern no legal or administrative issues of concern with that request.

All zoning map amendments should be analyzed to determine whether they would constitute “spot zoning,” which is not a permissible exercise of the power to divide land into different zoning districts. It is, of course, within the City’s legal authority to amend its zoning map. Planning goals, the division of the City into zoning districts, and the uses to be permitted within each district are a policy matter entirely within the purview of the City; they are not appropriate for me to comment on as part of a legal review. However, zoning map amendments must comply with the “rational basis” level of Due Process analysis to be constitutional. This means map amendments must not be arbitrary and they must be in reasonable furtherance of some valid public land use regulatory purpose.

November 13, 2024

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Spot zoning isn't determined automatically by the size of the land being rezoned or the number of parcels affected. An area is spot zoned when it is singled out for treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals or general welfare of the community, and which is not in accordance with a comprehensive plan. E.g., Miller v. Town of Tilton, 139 N.H. 429, 432 (1995). The mere fact that an area is small, or that it is rezoned at the request of a single owner, or that it is of greater benefit to that owner than to others, would not necessarily make it spot zoning so long as there is a public need for it or a compelling public reason for it. Id.

In considering whether rezoning constitutes spot zoning, courts may consider whether the change is made in response to some public need. See Shadlick v. Concord, 108 N.H. 319 (1967) (zoning change was made in response to growing need for multi-family housing which already existed in proximity to the rezoned area, and thus was part of a comprehensive plan rather than spot zoning). Also relevant is whether there are sufficient opportunities for the targeted use elsewhere in the community, particularly if those other areas aren't being used. See Bosse v. Portsmouth, 107 N.H. 523 (1967) (rezoning of one parcel for industrial use when it was surrounded by residential uses was spot zoning because many other areas in the city were available for industrial use but weren't being used that way). The common thread in the case law is that a court will consider whether there is a reason or combination of reasons for the change that is in the public interest and consistent with the community's development goals.

This amendment would create a new MC-2 district comprised of four contiguous lots which are currently occupied by a large hospital campus. They are all currently in the R-3 district, which is not a good fit for the existing use. While there are only four lots involved, they total just over 59 acres. The change is proposed to facilitate the continued development of a medical campus that serves the City's needs, including but not limited to the development of housing for the employees who work there.

This proposed change appears to further the City's comprehensive development plan and serve the public interest. However, I do recommend that the documentation of the City's consideration of this proposed change include specific and additional information about the ways in which it fits into the City's development goals, as well as what the community planning interest, public interest, and public benefit would be.

Please do not hesitate to contact me about any aspect of this.

Sincerely,



C. Christine Johnston

ATTACHMENTS:
Medical Center

SECTION 31X MEDICAL CENTER TWO DISTRICT (MC-2).

31X.1 Purpose.

The purpose of the Medical Center Two District is to provide for the provision of inpatient and outpatient health care and other related and complimentary uses, including but not limited to housing for employees and staff.

31X.2 Permitted Uses.

MC-2 DISTRICT

Permitted Uses	Conditional Use Permit (see Section 302.4)
1. Hospital 2. Hospice 3. Medical office 4. Nursing home 5. Senior housing complex 6. Essential service 7. Renewable energy system per Section 612	1. Group day care facility 2. Group residence 3. Parking facility 4. Multi-family dwelling

31X.3 Table of Area, Dimensions and Coverage.

MC-2 DISTRICT

Minimum Lot Requirements					Maximum Limitations	
Lot Area	Lot Frontage	Front Yard	Side Yard	Rear Yard	Height	Building Coverage
30,000 sq.ft.	100'	20'	15'	20'	60' (See Section 31X.4)	40%

31X.4 Special Height Restriction.

On parcels adjacent to residential districts, the height limitation of the adjacent residential district shall apply; provided, however, that 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 setback line(s) on sides of the lot adjacent to the residential district, but shall in no case exceed 60 feet.

31x.5 Dwelling Unit Density.

Density determinations for multi-family dwellings shall be made by the Planning Board during the course of site plan 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.

November 14, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

**RE: Proposed Zoning Amendment
Staff Technical Amendments**

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning the set of staff technical amendments. The proposed amendments are those listed in the "Miscellaneous Minor Amendments" section of the Staff Memo provided to the City Council dated October 15, 2024.

I have reviewed the following documents in connection with this opinion:

- Proposed amendment language dated November 7, 2024 and revised dated November 11, 2024
- Staff Memo to City Council dated October 15, 2024 and provided to me on November 7, 2024 regarding the requested amendments

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

My answer to the three questions in Section 1000.2.B(2) is "yes" and I discern no legal or administrative issues of concern with these proposed amendments.

Please do not hesitate to contact me about any aspect of this.

Sincerely,



C. Christine Johnston

DRAFT MISCELLANEOUS MINOR AMENDMENTS TO THE CITY OF LEBANON ZONING ORDINANCE

[...]

ARTICLE II GENERAL PROVISIONS

[...]

SECTION 201 YARD REQUIREMENTS.

Except as otherwise provided herein, no **building** or **structure** other than accessory structures and buildings of 130 sq. ft. or less per Section 201.8 below shall occupy any part of any yard required by ARTICLE III, except that **architectural details** may extend not more than two (2) feet into any required yard and stairs and stairwells may extend not more than six (6) feet into any required yard.

[...]

SECTION 212 ANTI-NUISANCE STANDARDS(reserved).

212.1—General.

~~No use shall emit noise, odors, dust and smoke that is obnoxious, harmful or a nuisance to abutting properties or the neighborhood. Noise, odors and dust emitted by farming uses, including the keeping of livestock and poultry, that were existent as of the date of enactment of this Ordinance are exempt from this provision.~~

212.2—Noxious Gases.

~~No use shall emit any noxious gases which endanger the health, comfort, safety or welfare of any person, or which may have a tendency to cause injury or damage property, business or vegetation.~~

212.3—Vibration.

~~No use shall cause, as a result of normal operations, a vibration which creates displacement of 0.002 of one inch.~~

212.4—Vision Impairment.

~~No use shall have lighting or signs which create glare which would impair or obstruct the vision of a driver of any motor vehicle.~~

212.5—Fire, Explosion or Safety Hazard.

~~No use shall be such so as to potentially cause a fire, explosion or safety hazard.~~

SECTION 213 IMPACT FEES.

[...]

213.8 Waivers.

[...]

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. 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.
2. The Planning Board may waive an impact fee, in whole or in part where, in the opinion of the Board, [in consultation with the Board's legal counsel](#), 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.

[A waiver request made pursuant to this subsection shall be considered at a public meeting of the Planning Board but shall not require a public hearing or notice to abutters. Notwithstanding the foregoing, notice of the Board's consideration of the waiver request shall be posted in at least two \(2\) public places and shall be published in a newspaper of general circulation in Lebanon not less than ten \(10\) nor more than thirty \(30\) days before the date of the meeting at which the request will be considered.](#)

[...]

SECTION 215 LOCATION OF ACCESSORY USE.

215.1 General.

[An accessory use shall be permitted only upon the same lot where its respective primary use lawfully exists. In the case of lots in two or more zoning districts, an accessory use](#)

shall be permitted only on that portion of the **lot** where its respective primary use is permitted.

215.2 Exceptions.

Notwithstanding Section 215.1:

- A. ~~An **accessory use** shall be permitted only upon the same **lot** where its respective primary use lawfully exists, except that (i) a **driveway** may cross over an adjacent **lot** provided that the use the **driveway** serves is a permitted use on the **lot** over which the **driveway** crosses, and provided the affected property owners jointly apply for a zoning permit. In the case of a driveway providing sole access to the lot, the zoning permit application shall include a copy of an easement securing the perpetual right to utilize the driveway and identifying maintenance responsibilities. and (ii) a~~
- B. ~~A common **driveway** serving not more than two adjacent **lots** is also permissible provided that the use(s) the common **driveway** serves is (are) permitted use(s) on the **lot(s)** over which the common **driveway** crosses, and provided the affected property owners jointly apply for a zoning permit, the application for which shall include a copy of an easement securing the perpetual right to utilize the driveway and identifying maintenance responsibilities. In the case of lots in two or more zoning districts, an **accessory use** shall be permitted only on that portion of the **lot** where its respective primary use is permitted.~~
- C. Utility improvements including but not limited to stormwater management facilities located on an abutting lot may be approved by **conditional use permit** provided that, in addition to the findings required by Section 302.4.D, the Planning Board finds that (a) a lot line adjustment between the two properties is impractical and (b) such arrangements are formalized in a draft legal instrument acceptable to an attorney representing the City and submitted with the Conditional Use Permit application for approval by the Planning Board. The execution of such instrument as approved by the City shall be a condition on any approval under this section.

[...]

ARTICLE V SUBDIVISIONS AND PLANNED DEVELOPMENTS

[...]

SECTION 507 DENSITY BONUSES ~~FOR CERTAIN PLANNED DEVELOPMENT.~~

PURD's, PRecs, and ~~manufactured housing parks~~ **PURDs**, and multi-family developments in the R-1 District and R-2 District may receive an increased density bonus pursuant to Table 507.1 and the provisions of this section.

507.1 Increased Density Bonuses.

Maximum Amount of Bonus Available

<u>Type of Development</u>	<u>For Use of Technique</u>	<u>For Workforce Housing</u>	<u>For Energy Efficient Design</u>	<u>For Renewable Energy Systems</u>
PURD or PRec	12%	10%	10%	10%
Manufactured housing PURD	12%	----	10%	10%
<u>Multi-family development in the R-1 and R-2</u>	<u>----</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>

507.2 Criteria for Award of Bonus.

The Planning Board may allow a gross density of development greater than allowed under Article III of this Ordinance for PURDs, PRecs, **manufactured housing PURDs**, ~~or and~~ multi-family developments in the R-1 District and R-2 District ~~PRec's~~ up to a maximum bonus allowed by Table 507.1. The Planning Board may approve a density bonus for any one or more of the categories identified in Section 507.1. Density bonuses granted pursuant to this section shall be cumulative. The following guidelines shall be used in determining whether a bonus shall be awarded.

[...]

SECTION 509 COTTAGE DEVELOPMENTS.

[...]

509.6 Design Standards. The following design standards are intended to define design parameters to create a small community of cottages oriented around open space and to achieve compatibility with adjacent uses.

- A. Individual Cottage Spaces. ~~For each detached cottage, the~~ The site plan approved by the Planning Board shall delineate a regularly-shaped building site for each ~~detached cottage~~ of no less than 1,500 sq. ft. Each such building site shall be usable and may not include wetlands and/or steep slopes.

[...]

- I. Site Plan Review. Cottage developments shall demonstrate compliance with all applicable design requirements of the Site Plan Review Regulations. Consequently, applicants are required to apply for Site Plan Review contemporaneously with applying for a Conditional Use Permit.

[...]

ARTICLE VI ADDITIONAL STANDARDS FOR SPECIFIC USES

[...]

SECTION 604 GROUP DAY CARE FACILITIES.

[...]

604.3 ~~Family Day~~Home-Based Care Home.

Home-based care (*family day care home* and *family group day care home*) ~~The care in the home of six (6) or fewer children (inclusive of children under 6 years old who live in the home)~~ is allowed as an accessory use to any primary residential use permitted in any residential use district as long as all requirements for such programs adopted in rules of the New Hampshire Department of Health and Human Services (He-C 4002) are met, and no zoning permit is required, provided that persons living off the premises are not employed. If persons living off the premises are employed, such child care is a home business subject to the requirements of Section 600 (home business permits).

The care in the home of more than six (6) children (inclusive of any children under 6 years old who live in the home) is a ***group day care facility*** under this Ordinance.

[...]

SECTION 607 PARKING.

607.1 ~~Table of~~ Minimum Off-Street Parking Requirements.

[...]

D. For residential uses as defined in RSA 676:16-a, I, an alternative parking solution as that term is defined in RSA 676:16-a, I, may be authorized by the Planning Board notwithstanding the requirements of the Table of Minimum Off-Street Parking Requirements pursuant to RSA 676:16-a ("On-Site Parking Requirements).

TABLE OF MINIMUM OFF-STREET PARKING REQUIREMENTS
(Rounded down to the nearest whole - See Section 607.2)

<u>TYPE OF USE</u>	<u>UNITS OF MEASUREMENT</u>	<u>PARKING SPACES PER UNIT (I.E. RATIO)</u>
RESIDENTIAL		
<i>Dwelling, One-family/Two-family</i> detached and attached	<i>Dwelling units</i>	2.0

<u>TYPE OF USE</u>	<u>UNITS OF MEASUREMENT</u>	<u>PARKING SPACES PER UNIT (I.E. RATIO)</u>
Dwelling , Studio Apartment	Dwelling units	1.0
Dwelling , Apartment, One-bedroom and up	Dwelling units	1.5
Senior Housing	Dwelling units	1.0
Group residence	Residents	0.33
Lodging house	Rental units	2.0 base + 1.0/bed
<u>Cottage development</u>	<u>Cottage</u>	<u>1.0</u>

[...]

607.8 Electric Vehicles.

[...]

C. EV Infrastructure Requirements / Off-Street EV Parking Requirements. **EVSE-installed spaces**, **EV-ready spaces**, and **EV-capable spaces** shall be provided as follows:

1. One- and Two-Family Dwellings. All new **one-** and **two-family dwellings** shall provide at least one (1) **EV-ready** space per **dwelling unit**.
2. Multi-Family Dwellings. Parking for **multi-family dwellings and senior housing complexes** shall include a minimum of 65% of EVSE-installed, EV-ready, and EV-capable spaces as follows:
 - a. **EVSE-installed spaces** for a minimum of 5% of proposed **off-street parking spaces**.
 - b. **EV-ready spaces** for a minimum of 20% of proposed **off-street parking spaces**.
 - c. **EV-capable spaces** for a minimum of ~~65~~40% of proposed **off-street parking spaces**.
3. Non-Residential Uses. Parking for uses requiring or proposing to provide 30 or more **off-street parking spaces** shall include a minimum of 50% of EVSE-installed, EV-ready, and EV-capable spaces as follows:
 - a. **EVSE-installed spaces** for a minimum of 2% of proposed **off-street parking spaces**, with a minimum of two **EVSE-installed spaces**.
 - b. **EV-ready spaces** for a minimum of 10% of proposed **off-street parking spaces**.
 - c. **EV-capable spaces** for a minimum of ~~50~~38% of proposed **off-street parking spaces**.

[...]

SECTION 608 SIGNS.

[...]

608.2 General Provisions.

[...]

- C. Enforcement. Any **sign** displayed or erected which is not authorized by this Section and/or is not in compliance with all applicable regulations set forth herein shall be removed, and shall be subject to all available enforcement options pursuant to NH RSA Chapter 676.

In the course of investigating a brightness or luminance complaint, the Planning and Development Department may request a certification of the brightness or luminance by an independent contractor. If the investigation and certification indicate that the sign exceeds any applicable brightness or luminance levels specified in Section 608, the owner of the sign shall turn off the sign within twenty-four (24) hours of a request to do so by the City, and the sign shall remain off until the brightness or luminance of the sign is brought into compliance-~~within twenty-four (24) hours of a request.~~

[...]

608.3 Prohibited Signs.

The following are prohibited:

[...]

- C. **Non-static signs**, except **digital signs** as may permitted according to Section 608.2.H.3 and Section 608.4.A.7 ("Freestanding Digital Signs").

[...]

608.4 Non-Residential Uses.

- A. Non-Residential Uses in Commercial and Industrial Districts. Signage for non-residential uses in the **commercial** and **industrial districts** shall be subject to the following requirements:

[...]

4. Freestanding Signs. A **lot** in the **commercial** and **industrial districts** may display one **freestanding sign** subject to the following regulations:

a. Sign Area and Height Regulations.

- i. **Freestanding signs** must comply with the dimensions set forth in the following table:

	Zoning District					
Maximum	GC & GC-1	CB	LD	IND-L	IND-RA	IND-H
height	25 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.
sign area	64 sq. ft.	32 sq. ft.	24 sq. ft.	64 sq. ft.	64 sq. ft.	64 sq. ft.

- ii. Strip Plazas and Multi-Tenant Buildings. A **freestanding sign** for a property improved with a **strip plaza** or **multi-tenant building** may exceed the maximum **sign area** set forth in Section 608.4.A.4.a.i by up to 50 percent, except in the CB and LD Districts.
- iii. Height. For purposes of measuring the height of a **freestanding sign**, height shall mean the vertical distance measured from grade at the edge of the adjacent right-of-way to the highest point of the **sign** structure.
- iv. The size of a **freestanding sign** may exceed the maximum **sign area** set forth in Section 608.4.A.4.a.i by up to 15 percent in order to accommodate numerals identifying the property address or building address, or for a **freestanding sign** on a property improved with a **strip plaza** or **multi-tenant building**, by up to 15 percent in addition to the increase in **sign area** allowed per Section 608.4.A.a.ii.

[...]

e. Freestanding Digital Signs. **Freestanding signs** may incorporate a **digital sign** subject to the following:

- v. **Freestanding digital signs** are only allowed in the General Commercial (GC) on properties with frontage on the following streets:
- vi. No more than one (1) display per hour shall be allowed.
- vii. Displays shall contain static messages only.
- viii. **Freestanding digital signs** shall be programmed to automatically freeze in a single display in the event of a malfunction or computer/system error.
- ix. The Planning and Development Department shall be provided with an on-call contact person and phone number for each **freestanding digital sign**. The contact person must have the ability and authority to make immediate modifications to the displays and lighting levels should the need arise.
- x. The **digital sign** portion of a **freestanding digital sign** may be no larger than 50% of the **sign area** of the **freestanding digital sign**.

xi. No **freestanding digital sign** may be located within one hundred (100) feet of a residential dwelling.

xii. **Freestanding digital signs** shall operate with no more than 0.3 foot candles at the property line.

xiii. If a **freestanding digital sign** is located in the line of sight of a residential dwelling, such sign shall not operate at brightness levels of more than one-tenth (0.1) foot candles above ambient light levels (at measurement conditions) as measured to the nearest property line of the residential dwelling from the electronic sign.

[...]

6. Illumination. **Signs** may have either **external illumination** or **internal illumination**, subject to the following:

[...]

- d. Maximum Luminance. ~~Luminance~~ An illuminated sign shall ~~measure~~ operate with no more than 0.3 fc ~~above ambient light conditions~~ at the property line.

[...]

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.

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 ~~made-taken~~ by the applicant, an abutter as defined by RSA 672:3, ~~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.

[...]

802.5 Rehearings and Appeals.

As provided by NH RSA 677:2, as amended, within 30 days after any order or decision of the Board, any party to the action or proceeding or any abutter as defined by RSA 672:3 ~~person directly affected by it~~ may apply for a rehearing.

[...]

APPENDIX A DEFINITIONS

[...]

ABUTTER: This term shall have the meaning as set forth in RSA 672:3, as amended. ~~Abutter means the owner of record of a lot located in New Hampshire and which adjoins or is within two hundred (200) feet (including across the street or waterway) of the subject lot. In the case of an abutting lot being under a condominium or other collective form of ownership, the term "ABUTTER" means the officers of the collective or association, as defined in RSA 356-B: 3, XXIII. Additionally, the individual owners of condominium units which are located on a parcel within two hundred (200) feet of the subject lot shall be notified only by first class mail. any person whose property is located in New Hampshire and adjoins or is directly across the street or streams from the land under construction.~~

[...]

FAMILY DAY CARE HOME: This term shall have the meaning as set forth in RSA 170-E:2, IV(a), as amended

FAMILY GROUP DAY CARE HOME: This term shall have the meaning as set forth in RSA 170-E:2, IV(b), as amended

[...]

SIGN, DIGITAL: A *non-static sign* or portion of a *sign* that changes appearance by any electronic process or remote control.

[...]

SIGN, FREESTANDING DIGITAL: A *freestanding sign* that incorporates a *digital sign*.

November 14, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766

RE: Proposed Zoning Amendments – Map Amendments

Mr. Reichert:

This is a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance concerning three proposed amendments to the zoning map. Please note that the legal opinion regarding the proposed map amendment to create a new Medical Center Two zoning district has been provided separately.

I have reviewed the following documents in connection with this opinion:

- Staff Memo to City Council dated October 15, 2024 and provided to me on November 7, 2024 regarding the requested amendment

The Ordinance requires this legal review to cover: (a) whether such amendments are within the authority delegated to the City under State law; (b) whether the form is appropriate; and (c) whether, from an administrative point of view, the amendments can be administered and enforced.

Other than as explained below, my answer to the three questions in Section 1000.2.B(2) is “yes” and I discern no legal or administrative issues of concern with that request.

All zoning map amendments should be analyzed to determine whether they would constitute “spot zoning,” which is not a permissible exercise of the power to divide land into different zoning districts. It is, of course, within the City’s legal authority to amend its zoning map. Planning goals, the division of the City into zoning districts, and the uses to be permitted within each district are policy matters within the purview of the City. However, zoning map amendments must comply with the “rational basis” level of Due Process analysis to be constitutional. This means map amendments must not be arbitrary and they must be in reasonable furtherance of some valid public land use regulatory purpose.

Spot zoning isn’t determined automatically by the size of the land being rezoned or the number of parcels affected. An area is spot zoned when it is singled out for treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals or general welfare of the community, and which is not in accordance with a comprehensive plan. E.g., Miller v. Town of Tilton, 139 N.H. 429, 432 (1995). The mere fact that an area is small, or that it is rezoned at the request of a single owner, or that it is of greater benefit to that owner than

to others, would not necessarily make it spot zoning so long as there is a public need or a compelling public reason for the change. Id.

In considering whether rezoning constitutes spot zoning, courts may consider whether the change is made in response to some public need. See Shadlick v. Concord, 108 N.H. 319 (1967) (zoning change was made in response to growing need for multi-family housing which already existed in proximity to the rezoned area, and thus was part of a comprehensive plan rather than spot zoning). Also relevant is whether there are sufficient opportunities for the targeted use elsewhere in the community, particularly if those other areas aren't being used. See Bosse v. Portsmouth, 107 N.H. 523 (1967) (rezoning of one parcel for industrial use when it was surrounded by residential uses was spot zoning because many other areas in the city were available for industrial use but weren't being used that way). The common thread in the case law is that a court will consider whether there is a reason or combination of reasons for the change that is in the public interest and consistent with the community's development goals.

A. Petitioned Map Amendment Request: Parcel 111-16

This involves one relatively small parcel (2.94 acres) which the owner is requesting to have changed from RL-1 to GC. There are no GC lots directly abutting this parcel but there appear to be four GC lots across the street from it. The request does not identify any public good that would result from the change other than tax revenue. All of the justifications are related specifically to the burdens on the business currently operating on this lot and the owner's desire to make "warehouse" a permitted or CUP use for this property (which it is in GC but not RL-1) to eliminate the need to obtain a variance when making changes to the property.

Benefits which would be specific to the owner aren't relevant to the public good/compelling need analysis. It is fine if there are benefits to the owner, but to change the zoning designation of one lot there must be some public good or need that is consistent with the City's land use goals and comprehensive development plan. The materials I have reviewed do not identify the public benefit to be gained or how this change would be consistent with the City's planning goals.

What would be relevant is if there were legitimate planning-focused reasons for the change. Would it be consistent with the City's planning goals to change this lot to GC so that certain uses can be allowed/encouraged there? Does this line up with the City's anticipated future uses of this area? Are there specific reasons that uses permitted in the RL-1 district don't make sense anymore? These are the kinds of questions that can be answered by looking at the future use map, master plan, topography, street configuration, traffic issues, etc.

Without such a planning or public benefit justification, I believe this amendment would likely constitute spot zoning and would not be legally proper.

B. 31 Romano Circle

This proposal involves one parcel (7.88 acres) which is under the jurisdiction of the Lebanon Housing Authority and has been used as a multi-family affordable housing complex for some time. The existing multi-family complex on this lot pre-dates the current R-1 zoning designation

November 14, 2024

Page 3

(in which it is not a permitted use), which means it is a legally pre-existing nonconforming use. As a result, every change to the property to expand, reconfigure, or alter the multi-family development or its accessory uses require a variance. The proposal is to change this parcel from R-2 to RO. The parcels immediately surrounding this one are also R-2 (although there are only abutting properties on either side; the lot backs up onto the Connecticut River). Although this is one lot, it would not create an "island" of RO because there are 9 other RO lots directly across the street.

Because the proposal is to rezone only one parcel, we must consider whether it would constitute spot zoning. Such changes are permissible so long as they meet a public need or serve a comprehensive planning goal. In this case, the reason for the map amendment as I understand it is to remove barriers to the continued development of affordable housing on this property. It is already part of the neighborhood. The City is currently engaged in an across-the-board effort to increase its housing stock at all levels and this proposal (to facilitate the continued provision of moderate income housing) would seem to serve that community goal and fit in with the other changes being made to encourage housing development.

As a result, I believe that this map amendment should be permissible and would not constitute spot zoning. However, I recommend that the documentation for this change go a bit further in spelling out the community planning goals and public interest that would be served by this change. That might happen as part of the public hearing on the amendment (and be captured in the minutes) and/or in the staff memo.

C. Northern Lebanon Rezoning

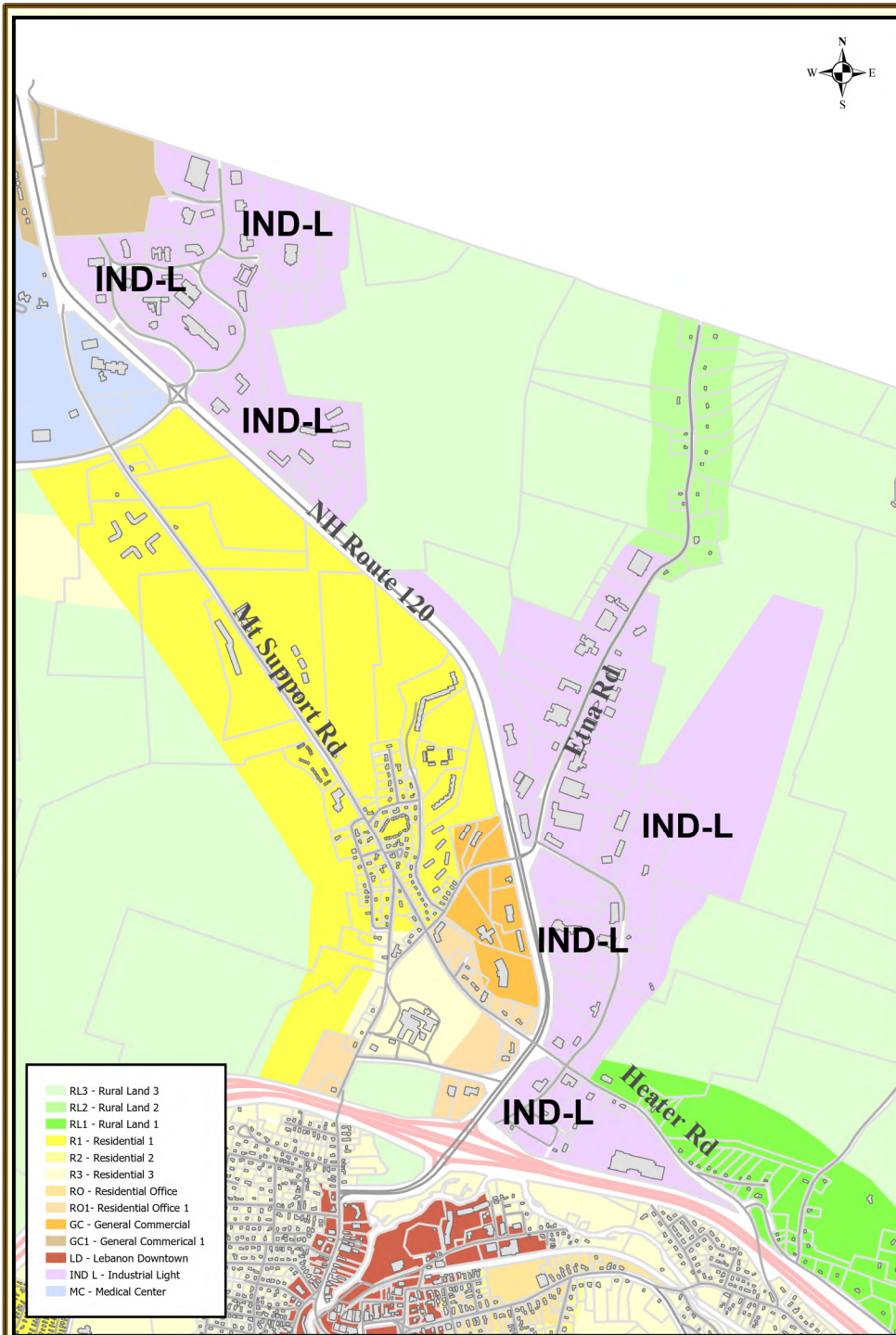
This proposal involves a large-scale rezoning of several dozen lots in the Northern Lebanon area around Centerra Business Park, the Altaria developments, and Etna Road, Labombard Road, Heater Road and Little Heater Road. It follows a 9-month study undertaken by the City with substantial public engagement to consider the future of this area regarding conservation, zoning, and City services including transportation. Specific recommendations came from this study to rezone this area to maximize development in line with the current and future needs of the neighborhood. I see no spot zoning issues with this proposal as it is clearly driven by and in service to a comprehensive planning effort for that area.

Please do not hesitate to contact me about any aspect of this.

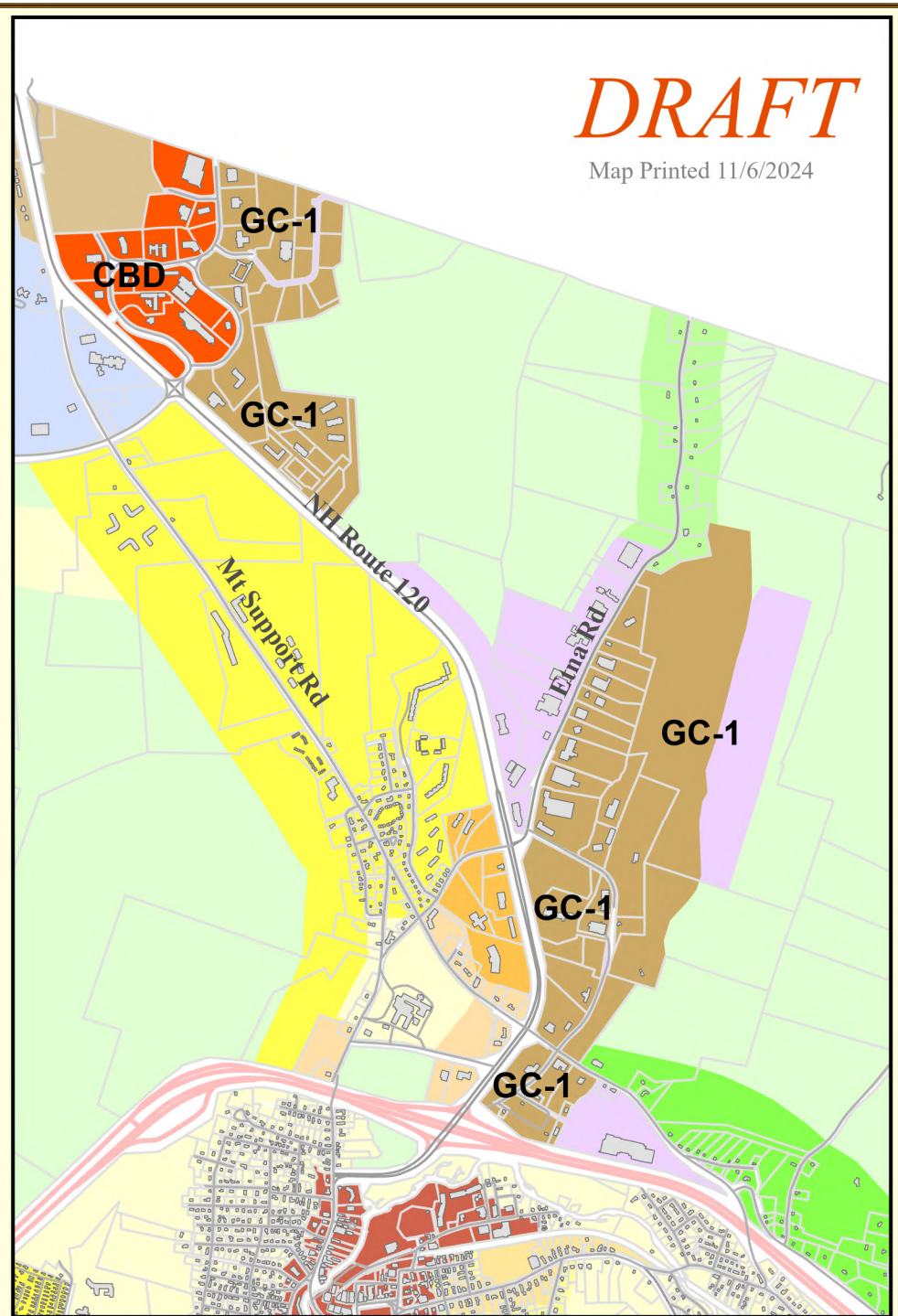
Sincerely,



C. Christine Johnston



EXISTING ZONING



PROPOSED ZONING

DRAFT

Map Printed 11/6/2024

SECTION 501 PLANNED UNIT DEVELOPMENT (PUD).

[...]

501.4 Commercial or Industrial Planned Unit Developments.

[...]

- D. Uses Allowed in a Commercial or Industrial PUD. Any non-residential use permitted or allowed by ***special exception*** or ***conditional use*** in the IND-L, CB, GC, or GC-1 Districts is allowed in a Commercial PUD. Such uses allowed by ***special exception*** or ***conditional use*** shall be considered permitted uses when included as part of a proposed Commercial PUD and shall not require separate ***special exception*** or ***conditional use*** approval.

Any non-residential use permitted or allowed by ***special exception*** or ***conditional use*** permit in the IND-L and IND-RA Districts is allowed in an Industrial PUD. Such uses allowed by ***special exception*** or ***conditional use*** shall be considered permitted uses when included as part of a proposed Industrial PUD and shall not require separate ***special exception*** or ***conditional use*** approval. Additionally, no more than 25 percent of the ***gross floor area*** in an Industrial PUD may be allocated to ***hotels, restaurants, personal services*** and retail sales necessary to serve the needs of the other businesses in the PUD (or of their employees).

Dwelling units in ***one-family, two-family*** and ***multi-family dwellings*** or appropriate mixes thereof may be allowed in Commercial or Industrial PUDs, at the discretion of the Planning Board, provided that the Board determines that such residential uses are compatible within the proposed PUD. For PUDs or portions thereof in the IND-L or IND-RA Districts, the density of residential uses allowed pursuant to this section shall be determined based on a maximum of 25% of the net land area of the PUD not planned for open space, roads, or utilities and calculated at a density of 13 ***dwelling units*** per acre. For PUDs or portions thereof located in the GC, GC-1, or CB Districts, the density of residential uses allowed pursuant to this section shall be determined by the Planning Board pursuant to Sections 305.5, 305A.4, and 306.5, respectively. Where allowed, such ***dwelling units*** may be clustered together and/or distributed within the Commercial or Industrial PUD in ***mixed use buildings*** at the discretion of the Planning Board.

[...]

SECTION 508 PLANNED BUSINESS PARKS.

[...]

508.4 Sectors, Allowed Uses.

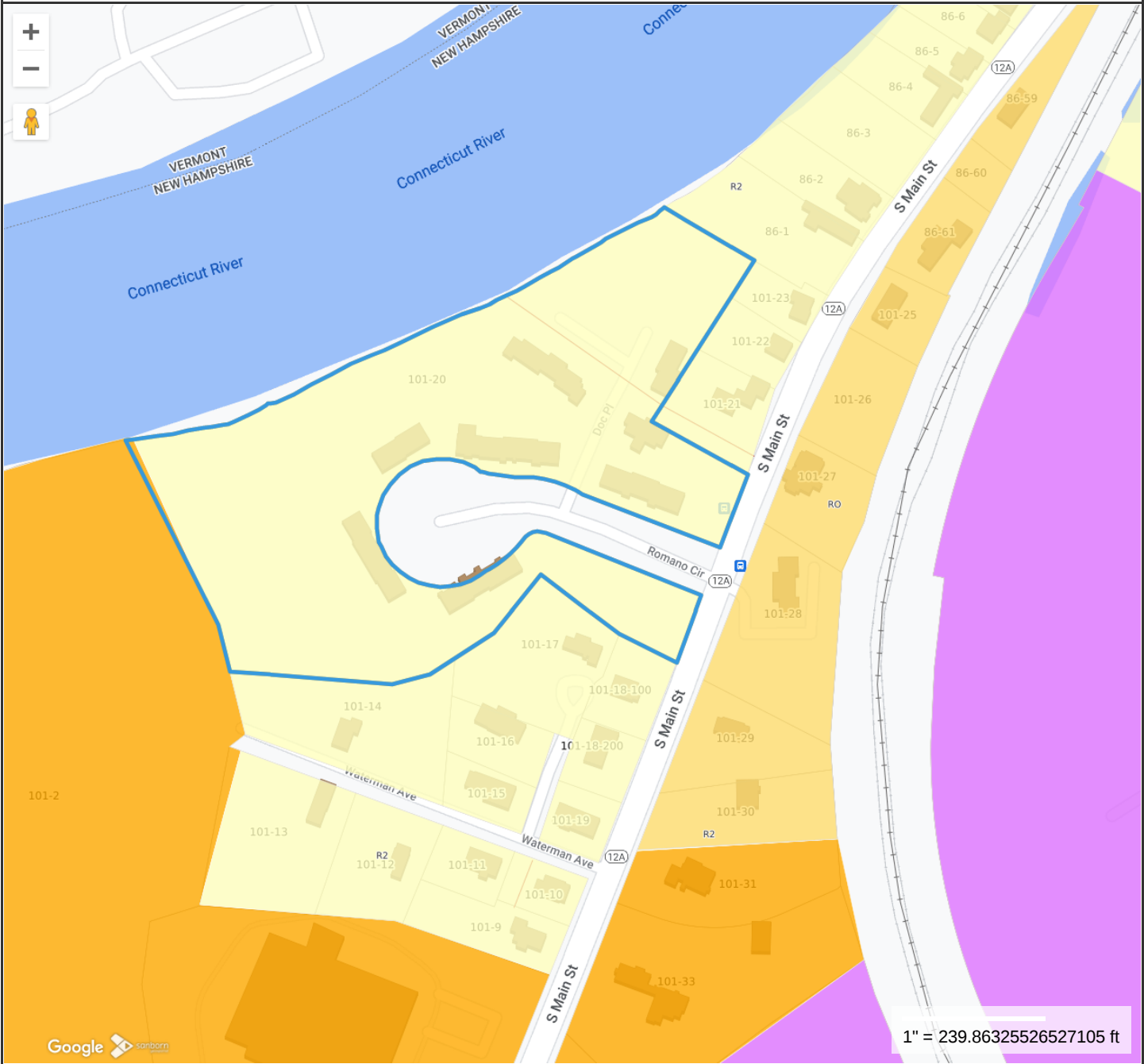
- A. The ***planned business park*** shall be shown on an approved Subdivision Plan and Use Allocation Plan. The Subdivision Plan and Use Allocation Plan approved by

the Planning Board shall designate the allocation of the Industrial/ Office, Commercial and Residential Uses within the Park.

- B. No more than 20% of the net land area not planned for open space, roads, or utilities shall be used for the Commercial Sector.
- C. Unless limited by the Planning Board at the time of subdivision approval, the following uses shall be permitted.
 - 1. The following uses shall be permitted by right for any **planned business park** Industrial/Office Sector: **light industry**; **warehouse**; trucking terminal; publishing/printing; plumbing, electrical or carpentry shop; research laboratory; local government use; **essential service**; outdoor storage per Section 303.4 (less than 20%); **group day care facility** per Section 604; general business offices, research facilities, medical office buildings; **health clubs**, Educational Facility, College/University; Educational Facility, Vocational School; and **accessory uses** to a permitted use. Retail showrooms per Sections 303.5 and 303A.5 shall be allowed by **conditional use** permit.
 - 2. The following uses shall be permitted by right for any **planned business park** Commercial Sector: **retail store(s)** up to a cumulative maximum of 20,000 sq. ft. of **gross floor area**; **personal service**; bank, branch bank; **restaurant**, sandwich shop/deli; refreshment stand; **office**; **motel**; **hotel**; movie theater; **membership club**; **amusements (indoor)**; printing (i.e. retail copy store); radio or TV studio; **group day care facility** per Section 604; local government use; and **health clubs**.
- D. **Dwelling units** in **one-family**, **two-family** and **multi-family dwellings** or appropriate mixes thereof at the discretion of the Planning Board, shall be provided for in all **planned business parks**. The maximum number of **dwelling units** allowed pursuant to this section shall be based on a minimum of 15% and a maximum of 25% of the net land area of the park not planned for open space, roads, or utilities and calculated at a density of 13 **dwelling units** per acre. Such **dwelling units** may be clustered together and/or distributed within the Park at the discretion of the Planning Board. For **planned business parks** in the GC-1 and CB District or portions thereof, the density of residential uses allowed pursuant to this section shall be determined by the Planning Board pursuant to Sections 305A.4 and 306.5, respectively.

[...]

Lot 101-20: Romano Circle Rezoning



Property Information

Property ID 101-20
Location 31 ROMANO CIR
Owner LEBANON HOUSING AUTHORITY



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 07/15/2024
Data updated 11/18/2018

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

Map Theme Legends

Zoning District

- RL3 - RURAL LAND 3
- RL2 - RURAL LAND 2
- RL1 - RURAL LAND 1
- R1 - RESIDENTIAL 1
- R2 - RESIDENTIAL 2
- R3 - RESIDENTIAL 3
- RO - RESIDENTIAL OFFICE
- RO1 - RESIDENTIAL OFFICE 1
- GC- GENERAL COMMERCIAL
- GC-1 - GENERAL COMMERCIAL 1
- CB - CENTRAL BUSINESS
- IND-L - INDUSTRIAL LIGHT
- IND-RA - INDUSTRIAL RAIL ACCESS
- IND-H - INDUSTRIAL HEAVY
- MC - MEDICAL CENTER
- PB - PROFESSIONAL BUSINESS
- LD - LEBANON DOWNTOWN



27 September 2024

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

Re: Request for Zoning Change

Dear Mayor and Councilors:

On behalf of Oakes Storage, LLC and Oakes Real Estate SPE, LLC, this letter is being written to request a zoning change to be part of the city's annual zoning review.

Request #1. Rezone parcel 111-16 on Riverside Drive to GC (see attached "92 Riverside Drive").

Parcel 111-16 is a self storage facility. The existing operation maxes out the usable property. As can be seen on the site plan, the parcel is an odd shape and has been fully developed for storage. There is little risk of this change promoting a project that has harmful impacts, as it is essentially fully developed. The need is to change the use of this land to a use allowed as a "Conditional Use". The current RL-1 zoning places an unnecessary burden on the landowner to obtain either a zoning special exception or a variance to make any changes to the property. This property will be a responsible, quiet, and productive business for the city. The property will generate roughly \$30,000 of tax revenue each year.

The two parcels across the street are zoned GC. Making this change fits with those properties.

Establishing this proper zoning to this parcel would be just, appropriate, and not cause the potential for harmful impacts from development.

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

Sincerely,

Daniel A. Nash, PE
Principal



City Council
Request for Zoning Changes
27Sep2024

Attachments:

-92 Riverside Drive

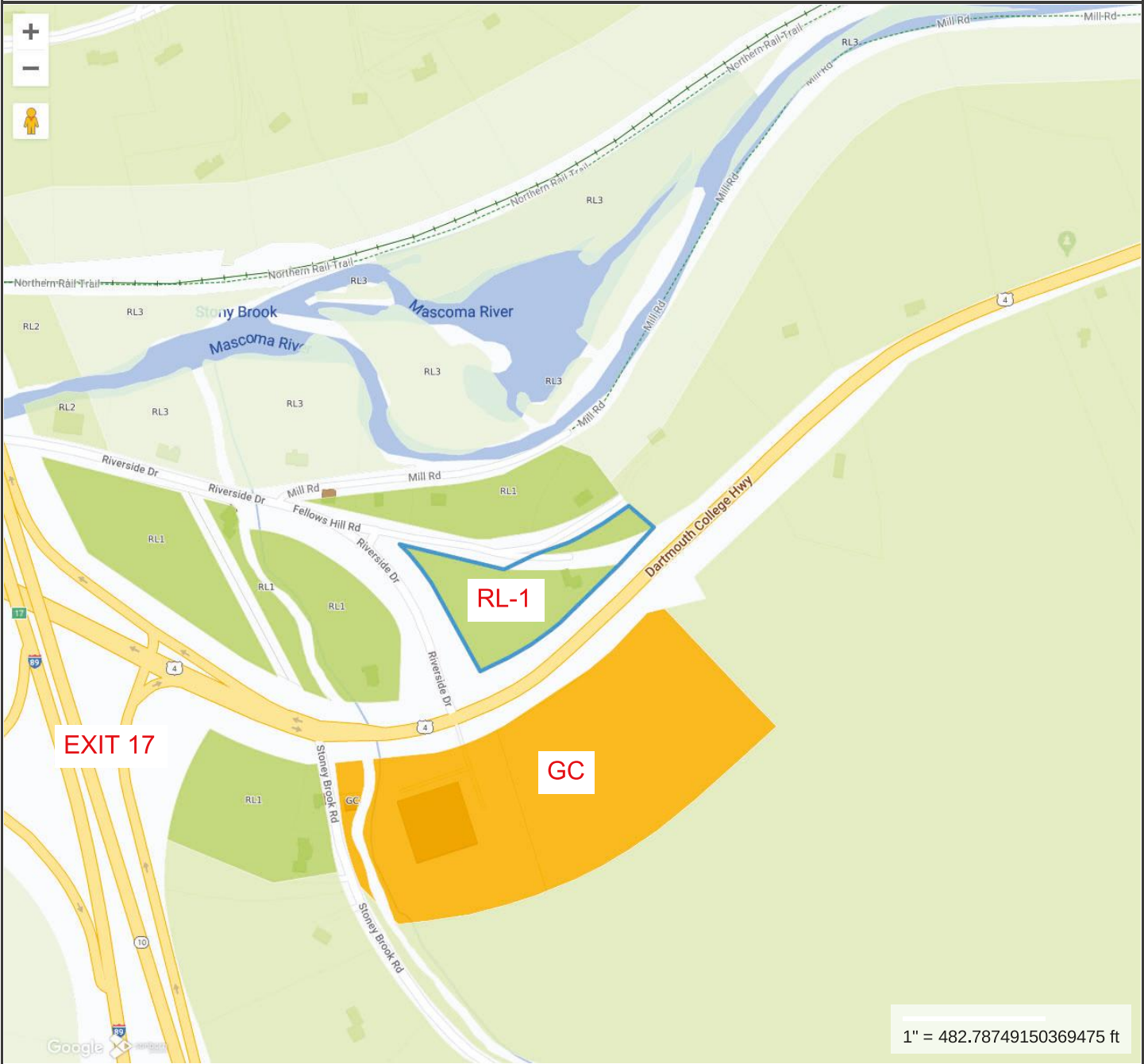
-GC

-Site Plan, Oakes Storage

CC: Robert Oakes

M:\2020_projects\20-001\zoning\zone_change_sep24\letter_col_27Sep2024.docx

92 RIVERSIDE DRIVE



Property Information

Property ID 111-16
Location 92 RIVERSIDE DR
Owner OAKES STORAGE LLC +



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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Geometry updated 07/15/2024
Data updated 11/18/2018

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

Map Theme Legends

Zoning District

- RL3 - RURAL LAND 3
- RL2 - RURAL LAND 2
- RL1 - RURAL LAND 1
- R1 - RESIDENTIAL 1
- R2 - RESIDENTIAL 2
- R3 - RESIDENTIAL 3
- RO - RESIDENTIAL OFFICE
- RO1 - RESIDENTIAL OFFICE 1
- GC- GENERAL COMMERCIAL
- GC-1 - GENERAL COMMERCIAL 1
- CB - CENTRAL BUSINESS
- IND-L - INDUSTRIAL LIGHT
- IND-RA - INDUSTRIAL RAIL ACCESS
- IND-H - INDUSTRIAL HEAVY
- MC - MEDICAL CENTER
- PB - PROFESSIONAL BUSINESS
- LD - LEBANON DOWNTOWN

SECTION 305 GENERAL COMMERCIAL DISTRICT (GC).

305.1 Purpose.

The purpose of the GC District is to provide ample land with good highway access for the location of commercial development serving the regional and local markets.

305.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
<u>Residential</u> 1. Dwelling unit(s) above first floor 2. Multi-family dwelling (see Section 305.5)	<u>Commercial/Non-Residential</u> 1. Alternative treatment center per Section 613 2. Bus terminal 3. Educational facility, college/university 4. Essential service 5. Truck terminal
<u>Commercial/Non-Residential</u> 3. Amusements (indoor) 4. Car wash 5. Community center 6. Drive-in restaurant, refreshment stand 7. Drive-through facility 8. Drycleaning pick-up station 9. Financial institution 10. Funeral home 11. Group day care facility per Section 604 12. Health club 13. Hotel 14. House of worship 15. Laundromat 16. Local government use 17. Membership club 18. Motel 19. Movie theater 20. Office 21. Personal service 22. Publishing/printing 23. Radio or TV studio 24. Recreational facility, indoor	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
	<u>Commercial/Non-Residential</u> 1. Care and treatment of animals 2. Contractor's yard 3. Craftsman's shop 4. Plumbing, electrical or carpentry shop 5. Produce stand 6. Recreational facility, outdoor 7. Warehouse 8. Wholesale sales <u>Planned Developments</u> 9. Commercial PUD per Section 501

<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	

305.3 Table of Area, Dimension and Coverage.

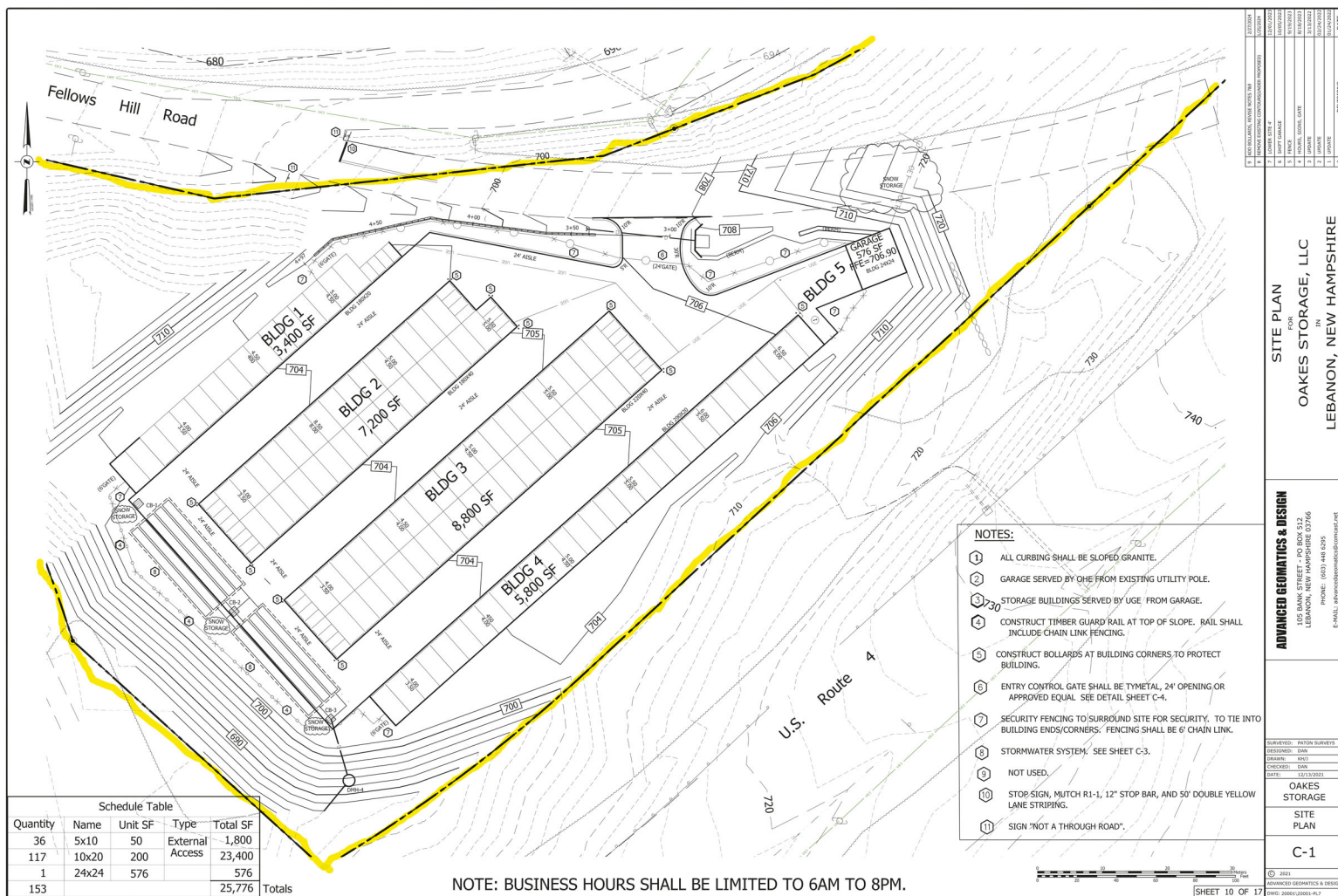
Minimum Lot Requirements					Maximum Limitations	
Area	Frontage	Front Yard	Side Yard	Rear Yard	Building Coverage	Height
50,000 square feet	150'	40'	20'	20'	30%	45' See Section 305.4

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.



27 September 2024

We, the voters, call on the City of Lebanon to make these changes to establish fair and just zoning for this property.

[illegible]

SITE PLAN REVIEW REGULATIONS
MINOR SITE PLAN & CONCEPTUAL REVIEW
DRAFT AMENDMENTS

ARTICLE III – ADMINISTRATION

[...]

Section 3.2 – Minor Site Plan Review

A. MINOR SITE PLAN COMMITTEE

1. **Establishment.** A Minor Site Plan Committee is established in accordance with RSA 674:43, III, and the resolution passed by the City Council on September 1, 2021, for the purpose of reviewing minor site plan applications per Section 3.1.C.
2. **Membership.** The Minor Site Plan Committee consists of the [Director of Planning and Development](#), the [Chief Building Official](#), the [Director of Public Works](#), the [Fire Chief](#), and the [Police Chief](#) ~~Planning and Development Department's Senior Planner and Associate Planner, and a representative from each of the following City departments: Fire, Police, and Public Works.~~ The [Director of Planning and Development](#) ~~Senior Planner~~ shall serve as chair and may use ~~his or her~~ [their](#) reasonable discretion in coordinating the activity of the ~~C~~ommittee in an efficient and effective manner. ~~The Deputy Director of Planning and Development or designee shall serve as staff for the Committee.~~ The ~~Director of Planning and Development~~ [members of the Committee](#) may, at ~~his or her~~ [their](#) discretion, ~~appoint a~~ substitute representative from their respective departments to the Committee ~~for the Senior Planner or Associate Planner and may, at his or her discretion, serve as chair while substituting.~~ A majority of the [Committee](#) members shall constitute ~~the~~ [a](#) quorum necessary to transact business.

[...]

ARTICLE IV – PROCEDURE

[...]

Section 4.3 – Conceptual Review

- A. [Purpose.](#) Conceptual review pursuant to RSA 676:4, II(a) is recommended for all [land development](#) that requires Planning Board review pursuant to Section 3.1.D in order to help identify and resolve issues at an early stage and save the applicant the time and cost of changes at a later date. Conceptual review also allows the Board and applicant to identify available and qualified expertise within the City's boards and committees to help inform the variety and scope of studies or other activities that inform the project design and, in turn, the technical review of the submitted application.

B. Conceptual Review Required. Conceptual review shall be required for any *land development* that requires Planning Board review pursuant to Section 3.1.D and which involves any one or more of the following:

1. [redacted] or more new or additional dwelling units;
2. More than **one (1)** principal building; and/or
3. Any new building of [redacted] sq. ft. or more.

C. Conceptual Review Optional. For any *site land development* other than those identified in Section 4.3.B., conceptual review shall be optional.

~~the Applicant may request an informal discussion with the Board, to be conducted in general terms, of the basic concept of the proposed development. The Applicant may end the conceptual discussion at any time.~~

D. Notice. Conceptual reviews shall only take place at a formal meeting of the Board. Public notice of a required ~~the conceptual discussion~~ review shall be provided pursuant to Section 4.8 and shall also be provided to the following:

1. Conservation Commission
2. Pedestrian & Bicyclist Advisory Committee
3. Tree Advisory Board
4. Heritage Commission (if located within the Historic District)

~~Public notice is not required for optional conceptual reviews. is not required, but such discussions shall only take place at a formal meeting of the Board. For~~

~~Such conceptual consultation shall not bind either the applicant or the Board in any manner, and statements made by Board members shall not be the basis for disqualifying said members or invalidating any action taken.~~

~~While a Conceptual Review is optional, it is strongly recommended, particularly for larger developments, as it can help identify and resolve issues at an early stage and save the applicant the time and cost of changes at a later date.~~

EB. Submission Requirements. ~~Not less than two weeks before the date of the scheduled conceptual review, the~~The Applicant shall provide a project description, a written statement addressing how the concept conforms with the Master Plan, and a sketch plan of sufficient accuracy and quality, based on a United States Geological Survey map or similar map, showing the following:

1. Existing property lines of the parcel(s) under review;
2. General topography, to include highlight of slopes in excess of 25%;
3. Prominent natural features of the site, including but not limited to: tree lines, watercourses, flood plains, wetlands, and ledge outcrops;
4. The approximate location and size of existing and proposed buildings, parking areas, roadways, and other improvements.

5. When conceptual review is required:

- a. A properly completed and signed application form.
- b. The appropriate fees as established by the Board's fee schedule.
- c. A list of the name(s) and address(es) of all persons to be notified by certified mail in accordance with RSA 676:4, I(d), including the following:
 - i. The Applicant(s):
 - ii. The Owner(s) of record of the site:
 - iii. The Owners of abutting properties:
 - iv. Every surveyor, engineer, architect, soil scientist, or wetlands scientist whose professional seal appears on any plan or document submitted to the Board;
 - v. All persons holding conservation, preservation, or agricultural preservation restrictions (as defined under RSA 477:45) on the subject property. (NOTE: When there are no such restrictions on the subject property, the applicant shall provide a definitive statement to that effect.);
 - vi. The holders of any easements, rights-of-way, or other restrictions on or over the subject property. (NOTE: When there are no such easements, rights-of-way, or other restrictions on the subject property, the applicant shall provide a definitive statement to that effect.).

FC. Procedures. Conceptual review shall be an informal discussion with the Board, conducted in general terms, of the basic concept of the proposed development. ~~The conceptual review shall be limited to a discussion of the concept in general terms,~~ for the purpose of familiarizing the Board with the location and type of development, and familiarizing the Applicant with the issues and concerns of the Board. The Board shall consider whether the proposed development is an allowed use in the Zoning Ordinance and in accordance with the Master Plan. The Board shall determine whether the development is compatible with any plans for existing or future roads, utilities, and services. The Board shall focus on the characteristics of the site and its relationship to the surrounding area to determine how well the proposed development fits into the natural environment and the cultural landscape, including historical resources.

Discussions held during any conceptual review shall not bind either the applicant or the Board in any manner, and statements made by Board members shall not be the basis for disqualifying said members or invalidating any action taken.

Information From:

Agenda

Lebanon City Council

November 20, 2024

10. New Business:

10.B – Request for Zoning Map Amendment – ICV of NH, LLC, 67-69 Etna Road, Tax Map 26, Lot 2, Lebanon, NH

Background

On October 30, 2024, Dan Nash, of Advanced Geomatics & Design, requested a zoning map amendment on behalf of his client, ICV of NH, LLC, for a property located at 67-69 Etna Road, Tax Map 26, Lot 2, Lebanon, NH. The property is currently zoned Light Industrial (IND-L) and is improved with a mixed-tenant building at 67 Etna Road and a 75-unit residential condominium building at 69 Etna Road.

Mr. Nash requests to have the ICV property rezoned from IND-L to General Commercial-One (GC-1) in conjunction with other rezoning proposals derived from the Route 120 / Northern Lebanon Community Plan (NLCP), which was presented to the City Council in September 2024. Mr. Nash has suggested that the ICV property was overlooked in the study process and should be included for consideration for a zone change.

The Planning and Development Department has prepared a brief memo clarifying that the ICV property was not “overlooked” in the study. Rather, no zoning change was recommended for that property in light of the other findings and recommendations of the NLCP study.

Nevertheless, if the Council elects to move the zoning request forward for consideration, Mr. Nash has requested that it be allowed to catch up with same review timeline as the staff-initiated zoning amendments, which were “kicked off” on October 23, 2024. It is noted that as a map-only zoning amendment, the Zoning Board of Adjustment is not required to review the request.

Action

If the Council decides to move forward with the proposed amendment request, the following motion is offered for consideration:

MOVED, that the Lebanon City Council, in accordance with the City of Lebanon Zoning Ordinance, Article X, Section 1000.3, Amendment Procedures, submits the proposed Zoning Map amendment as described in the October 30, 2024 letter from Dan Nash of Advanced Geomatics & Design, to the Planning Board and Conservation Commission for their review and comment. The City Council hereby sets the following tentative review schedule:

Legal Review – by November 25, 2024

Planning Board – November 25, 2024

Conservation Commission – December 12, 2024

City Council Work Session Review – January 8, 2025

City Council Public Hearing – January 22, 2025

Included In This Section:

1. October 30, 2024 letter from Dan Nash, of Advanced Geomatics & Design, including attachments.
2. Planning & Development Department memorandum, dated November 13, 2024



30 October 2024

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

Re: Request for Zoning Change

Dear Mayor and Councilors:

On behalf of ICV of NH, LLC, this letter is being written to request a zoning change to be part of the city's annual zoning review.

Request #1. Rezone parcel 26-2 on Etna Road to GC-1 (see attached "Lot 26-2").

Parcel 26-2 is a large, mixed use industrial parcel. It currently has an office building and an a multi-family building on it. The parcel is unsuitable for typical industrial building as it is steep and boulder. The land could support one or two more multi-family structures, if re-zoned.

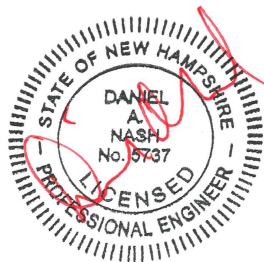
This parcel is in between the other parcels being considered for change to GC-1. It has the same characteristics as those parcels and could provide similar benefit to the city. Making this change fits with those properties. I believe this parcel was overlooked in the study process and should be included for consideration for a zone change.

Establishing this proper zoning to this parcel would be just, appropriate, and not cause the potential for harmful impacts from development.

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

Sincerely,

Daniel A. Nash, PE
Principal



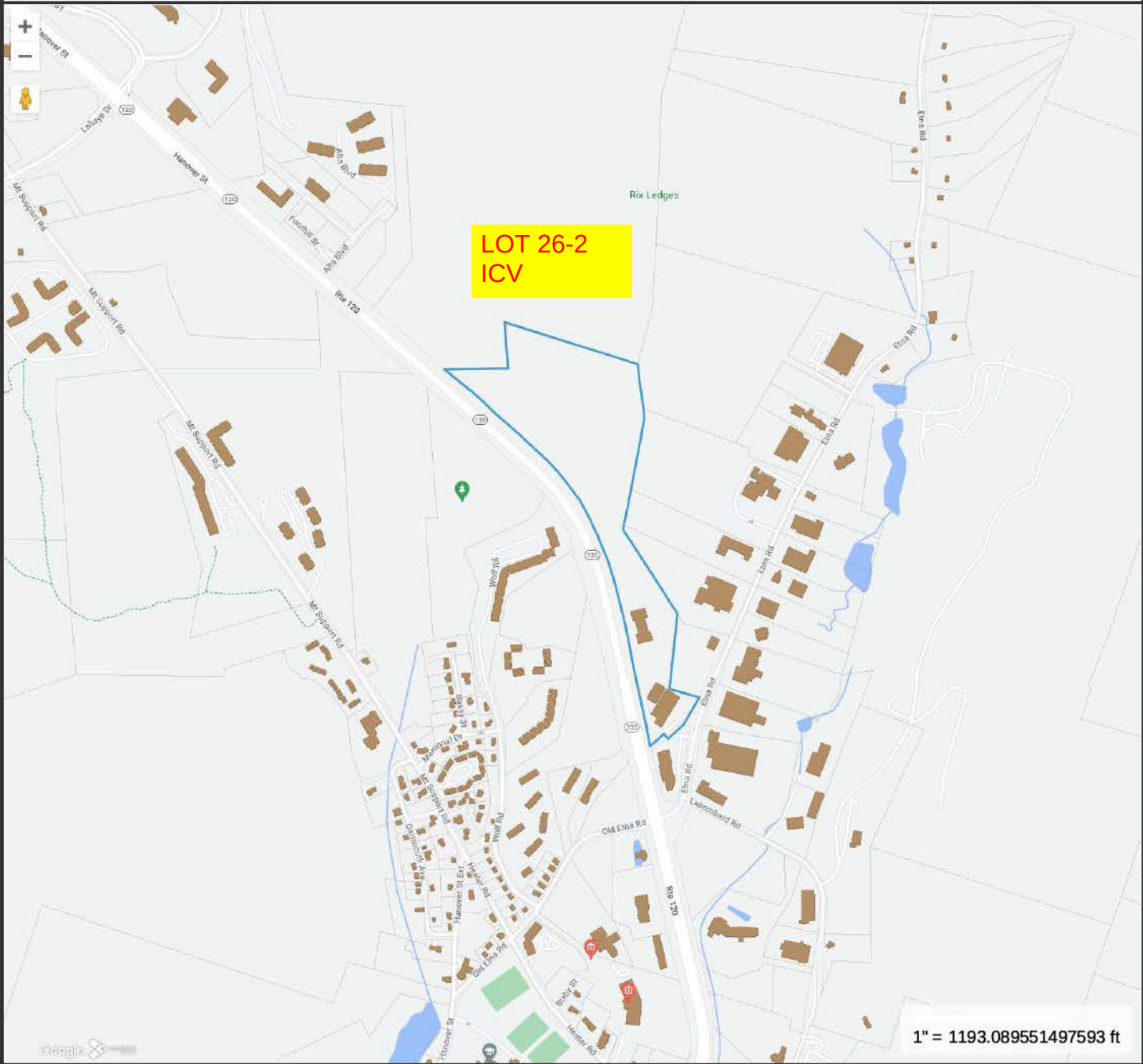
City Council
Request for Zoning Change
30Oct2024

Attachments:

- Lot 26-2
- North Lebanon zone change map
- signed petition

CC: Robert Sprayregen, ICV

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Property Information

Property ID 26-2
Location 67 ETNA RD
Owner ICV HOLDINGS OF NH 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 07/15/2024
Data updated 11/18/2018

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

The Pattern Zones Study includes three primary areas of focus:

1. Creation of a Pattern Zones Overlay District to promote infill housing development within the study area.
2. A Preapproved Architecturally Designed Pattern Book, consisting of 15-25 house designs that can be accessed free of charge to those seeking to build a new house in the study area. The Pattern Book will be contracted for three years with Pattern Zones Co. and will be accessible online. The final stages of its approval are currently under development.
3. A sensitivity analysis, provided at the City Council meeting in September, analyzed housing market trends, zoning codes and the current neighborhood configuration to match housing opportunity with regulatory structure. The Zoning recommendations are based upon the sensitivity analysis.

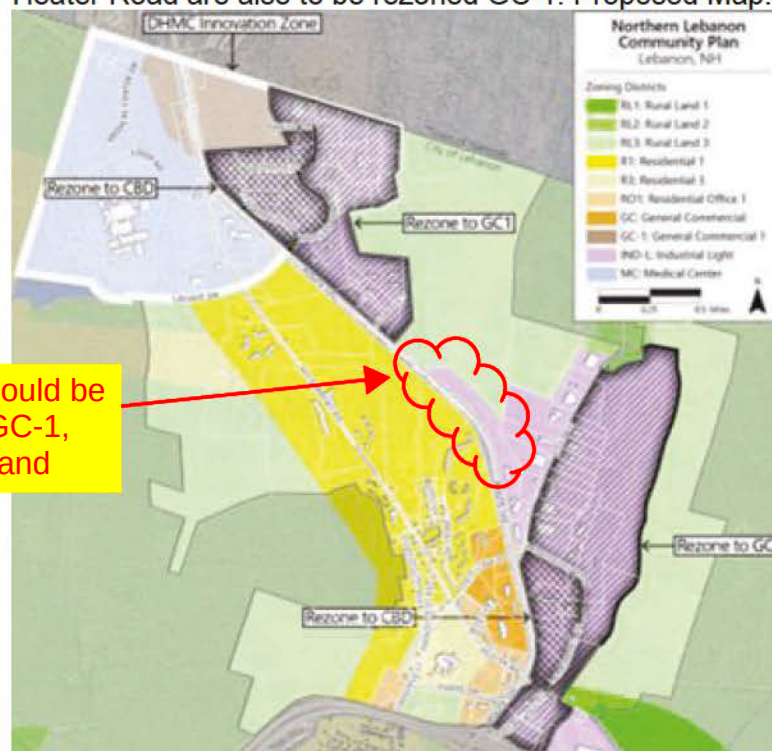
B. 120 – North Lebanon Study

The 120 North Lebanon Study was initiated in January 2024 and concluded with a presentation to City Council in September 2024. The study included substantial public engagement with the people that live and work in the Northern Lebanon neighborhood. The study makes a series of recommendations within three categories: Conservation, Zoning, and City amenities including transportation improvements. Specific recommendations include the creation of a wildlife crossing and land use-based protections for the crossing, and the re-zoning of the area to maximize development in line with the current and future needs of the neighborhood.

1. Zoning Map changes.

- a. The changes proposed within the study area are to rezone the areas around Centerra business park to Central Business District (CBD).
- b. The Altaria developments and surrounding areas are to be rezoned as General Commercial One (GC-1).
- c. The areas along Etna Road, Labombard Road, Heater Road and Little Heater Road are also to be rezoned GC-1. Proposed Map:

ICV land that should be considered for GC-1, as other IND-L land



Petition for Zoning Change to LD zone

(Mechanic Street)

21 October 2024

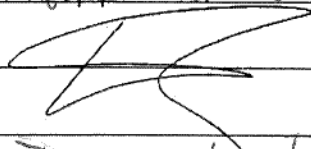
Members of the Lebanon City Council,

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 21Oct24

We, the voters, call on the City of Lebanon to make these changes to establish fair and just zoning for this property.

Name of Resident	Signature of Resident	Address and Phone	Date Signed
Daynel Parri's	Daynel Parri's	200 Maccoma St 603-898-6543	10/30
Jennifer Labrie	Jennifer Labrie	8 Forster Street 603-252-5149	10/30
Brenna Labrie	Brenna Labrie	603-790-3165	10/30
	Robert Oakes	603-443-0492	10/30
Daniel Nash	Daniel Nash	603-448-6023	30 Oct 24



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

CC: Shaun Mulholland, City Manager
David Brooks, Deputy City Manager

FROM: Planning and Development Department Staff

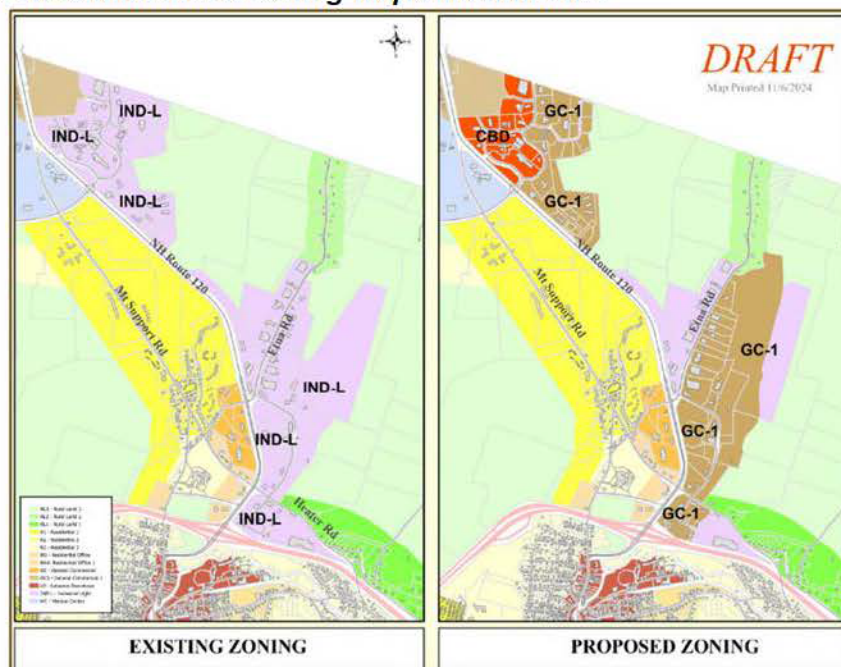
RE: Request by ICV of NH, LLC, to Rezone Tax Map 26, Lot 2 from IND-L to GC-1

DATE: November 13, 2024

On October 30, 2024, the City received a request from Dan Nash, of Advanced Geomatics and Design, on behalf of ICV of NH, LLC, pursuant to Section 1000.2.C of the Zoning Ordinance, to rezone 67 Etna Road (Tax Map 26, Lot 2) from Industrial Light (IND-L) to General Commercial-One (GC-1). ICV of NH, LLC's proposed zoning map amendment is set forth in the attached letter dated October 30, 2024, from Dan Nash, PE. Regarding the recently finalized "Northern Lebanon Community Plan" ("NLCP"), Mr. Nash's letter states that the subject parcel "was overlooked in the study process and should be included for consideration for a zone change."

The subject property was included within the study area for the NLCP which extended from I-89 Exit 18 to the Hanover town line along Route 120, Etna Road, and Mount Support Road. The NLCP does not include any rezoning recommendations relative to 67 Etna Road. By contrast, several other NLCP-recommended zoning map amendments are currently under review by the City's land use board following a "kick off" by the City Council in October. Those map amendments, as depicted in Figure 1, will return to the City Council for a public hearing in January.

Figure 1. NLCP-Recommended Zoning Map Amendments



NLCP Strategy 1 calls for the protection of the existing conservation areas, wildlife corridors, steep slopes and ecosystems, all of which are prominent features of the subject parcel, as well as the other parcels within the study area located between Route 120 and Etna Road and south of the Altaria development. Additional study is underway on how best to implement the recommendations of the NLCP including but not limited to locating and creating a wildlife corridor overlay district, conservation area buffers, and/or expansion of the steep slopes district. Given the prevalence of the sensitive natural features on the subject property and the NLCP's recommendation to explore further regulatory protections for these areas and features, no change in the underlying zoning for the property was proposed in the study.

RECOMMENDATION:

Should the City Council elect to proceed with consideration of the proposed zoning map amendment, the Planning and Development Department recommends that the Council establish a tentative schedule for review, as is required pursuant to Section 1000.3.A of the Zoning Ordinance. Staff offers the following tentative schedule for review and comment, which will allow this proposal to proceed on the same timeline as the zoning amendments that the Council "kicked off" in October:

City Council decision to proceed:	November 20, 2024
Legal review:	by November 25, 2024
Planning Board:	November 25, 2024
Conservation Commission:	December 12, 2024
City Council setting public hearing:	January 8, 2025
City Council public hearing:	January 22, 2025

=====

Supporting Materials:

- October 30, 2024 rezoning request letter from Dan Nash, of Advanced Geomatics, on behalf of ICV of NH, LLC, including attachments

NEW PLANNING BOARD RULES OF PROCEDURE
FOR ADOPTION AT NOVEMBER 25, 2024 WORK SESSION
with proposed edits by City of Lebanon Legal Counsel

RULES OF PROCEDURE
FOR THE PLANNING BOARD
CITY OF LEBANON, NEW HAMPSHIRE

ARTICLE I **GOVERNING RULES**

- 1.1 GOVERNANCE.** The Planning Board of the City of Lebanon shall be governed by the provisions of all applicable State statutes, City regulations, the Site Plan Review Regulations and Subdivision Regulations, and these Rules of Procedure adopted under the authority of RSA 676:1.
- 1.2 DEFINITION OF BOARD.** As used in these rules, the term "Board" shall mean the Planning Board duly appointed by the legislative body of the City of Lebanon under the authority of RSA 673.
- 1.3 DEFINITION OF STAFF.** Staff shall mean the Director and/or Deputy Director of the City of Lebanon Planning and Development Department.
- 1.4 DEFINITION OF MEETING.** As used in these rules, the term "meeting" shall have the meaning as set forth in RSA 91-A:2.
- 1.5 RULES OF DECORUM.** Meetings of the Planning Board shall be conducted in the spirit of the "Lebanon Boards, Committees, and Commissions Rules of Decorum and Commitment to Civil Behavior," which is appended hereto and made a part of these Rules of Procedure, and all Board members shall endeavor to adhere to the principles set forth therein.

ARTICLE II **MEMBERS AND ALTERNATES**

- 2.1 REGULAR MEMBERS.** The Planning Board shall consist of nine (9) regular members, namely eight persons who shall be appointed by the City Council, by majority vote, upon nomination by the City Manager, and one member of the City Council who shall be selected by it as a member ex-officio with voting privileges.
- 2.2 ALTERNATE MEMBERS.** Alternate members of the Board shall be appointed by the City Council, by majority vote, upon nomination by the City Manager. Alternate members shall join the regular members in all presentations, public hearings, and discussions except that such alternates may not vote on any proposal or motion before the Board unless so directed by the Chair and shall not participate in the Board's deliberations once the public hearing has closed. In the absence or recusal of any regular member, except the ex-officio member of the City Council, the Chair shall appoint an alternate member to fill such vacancy. Said alternate shall then act as a regular member for the matter(s) for which they are filling the vacancy. In the absence or recusal of the ex-officio member, the ex-officio alternate shall be seated in their place.

2.3 All members of the Planning Board shall be residents of the City of Lebanon and shall be sworn in and take an oath of office as required by RSA 42:1.

2.4 ATTENDANCE. A Board member may be excused for non-attendance at a meeting for valid reasons if he or she notifies the Chair and Staff at least 24 hours prior to the meeting. After three (3) unexcused absences within a given member's term, the Chair shall notify the City Council.

Any Board member may leave the Board chambers for pressing business while in regular session after notice to the Chair.

A Board member who needs to participate remotely per Section 2.5 shall provide the Chair and Staff with as much notice as possible.

A Board member who has a conflict of interest or needs to recuse themselves from hearing an application scheduled for a public hearing shall provide the Chair and Staff with as much notice as possible and in any case no less than 24 hours' notice.

2.5 REMOTE ATTENDANCE. At the discretion of the Chair, a Board member may participate remotely, if: it is technologically feasible and reasonable to do so when the member's attendance is not reasonably practical; the reason for absence is stated in the minutes; the remote member states where they are physically located, and states who is present in that location with them. The Chair shall ask if any other Board member has a concern or objection regarding the absent member's virtual attendance. All participants, including the public, must be able to [contemporaneously](#) hear, read and discern the meeting discussion. Members participating remotely may vote, but shall not count toward quorum. All votes must be taken by roll call. The Chair shall be physically present at the meeting location specified in the meeting notice.

2.6 TRAINING. All newly-appointed Board members shall attend one (1) orientation meeting with the Planning and Development Director, prior to sitting as a member of the Board, unless waived or extended by the Chair at the request of the Planning and Development Director.

2.7 REMOVAL OF MEMBERS. A Board member may be removed from the Board by the City Council, after a public hearing on the matter, upon written findings of inefficiency, neglect of duty, or malfeasance in office, in accordance with RSA 673:13.

ARTICLE III **OFFICERS AND DUTIES**

3.1 ELECTION OF OFFICERS. At the annual meeting, the Board shall elect a Chair and a Vice-Chair from the regular members and such other officers as it may deem necessary; but in case of failure to elect at the time specified, the election shall take place at the next meeting. The Chair and the Vice-Chair shall hold their respective offices until the next annual meeting after election or until their successors are elected and qualified. They shall perform such duties as the Board may prescribe. The office of Chair and Vice-Chair shall be held by an individual for no more than three consecutive terms per office unless waived by the Board. [The office of Chair may not be held by the ex-officio member.](#)

3.2 DUTIES OF THE CHAIR. The Chair shall call the meeting together, preside over all meetings and hearings of the Board, put all questions to a vote, maintain order, decide all questions of order and procedure, subject to these rules, and shall appoint any committees found necessary to carry out the business of the Board.

The Chair may present to the Board such matters as in the Chair's judgment require attention.

At the request of any Board member, the Chair shall direct that the yeas and nays be taken and entered on the record on any question before the Board.

When the Board has no established rule of parliamentary practice, the Chair may seek guidance from Robert's Rules of Order as may be appropriate and helpful. Robert's Rules of Order shall be used as a reference only and shall not bind the Chair or the Board in any manner.

The Chair shall exercise general supervision over the business of the Board and shall execute all formal documents on behalf of the Board.

3.3 DUTIES OF THE VICE-CHAIR. The Vice-Chair shall assume the duties and powers of the Chair in the Chair's absence and aid the Chair as necessary in the performance of their duties.

3.4 DUTIES OF STAFF. Staff shall be in attendance at every meeting of the Planning Board as defined by Article IV of these Rules and shall arrange for the City Engineer to be present at the Board's regular meetings and as needed. Subject to these Rules and at the direction of the Board, Staff shall act to support the Board. This support shall take such forms as necessary to ensure that the Board's actions and decisions are made in an educated and well-informed manner, including but not limited to: preparing reports and other duties as directed by the Chair; preparing forms as necessary for the Board's functions; compiling relevant information, maps, and records for the Board's review; sending such notices as required by law; keeping the minutes of all Board actions and proceedings; and keeping records of its examinations and other official actions.

Staff shall take such steps as necessary for the recording of meetings and the creation of complete and accurate minutes, including the provision of a recording secretary. Minutes shall, at a minimum: comply with the minimum requirements of NH RSA 91-A; show the vote of each regular member upon every question, or if absent, disqualified, or failing to vote so indicate; include the names of all participants; and include a summary of the facts on which a decision is based, as well as the decision rendered. A draft of the meeting's minutes will be submitted to the Board for review and approval at the next regular meeting and/or planning session of the Board.

Staff, in consultation with the Chair, shall prepare the agenda for each meeting, provide all supportive documentation, and deliver said materials to each Board member no later than the Wednesday preceding any scheduled Monday meeting. Staff shall also make public notice of the agenda of each meeting in accordance with the appropriate regulations. Any Board member may request and have placed on the agenda any item for discussion with the approval of the Chair.

Requests for assistance from Staff in matters before the Board shall be made by the Board either by consensus or motion duly passed. Requests for information may be made to Staff by any Board member.

Staff shall perform other duties as directed by the Chair.

3.5 VACANCIES. Any vacancy among the officers of the Board shall be filled by a regular member by election, for the unexpired term, at the next regular meeting of the Board. Staff

shall take such reasonable steps as necessary to make the City Council aware of vacancies on the Planning Board in a timely fashion.

- 3.6 OTHER CITY STAFF SUPPORT.** The Chair may request, through Staff, the attendance of any employee of the City to confer with the Board.

ARTICLE IV **MEETINGS**

- 4.1 ANNUAL MEETINGS.** The annual meeting of the Board shall be the second Monday in the month of January each year, or if there is no meeting due to a lack of business, then the first public meeting held thereafter. Subject to the requirements of Sections 4.2 and 4.3, Staff shall prepare a draft annual meeting calendar for presentation to and approval by the Board at the annual meeting.
- 4.2 REGULAR MEETINGS.** Regular meetings shall normally be conducted by the Board at which applications for development shall be reviewed and acted upon. Regular meetings of the Board shall be held on the second Monday of the month except that when a regular meeting date falls on a holiday, the Board shall conduct the meeting on the next business day or at the next reasonable opportunity. Staff shall give each Board member timely notice of the cancellation of such meeting and shall post a notice in at least one public place by the time of the regularly scheduled commencement. Regular meetings shall normally start at 6:30 p.m. and shall normally end by 9:30 p.m. [The Board shall hold at least one meeting per month as required by RSA 673:10, II.](#)
- 4.3 PLANNING SESSIONS.** Planning sessions shall be conducted by the Board at which study items and planning issues are analyzed. Said sessions shall normally be held on the fourth Monday of the month unless there is no business to transact, in which case no meeting shall be held. When a planning session meeting date falls on a holiday, the Board shall determine whether to reschedule the meeting to the next reasonable opportunity or cancel the meeting. Staff shall give each Board member timely notice of the cancellation of such meeting and shall post a notice in at least one public place by the time of the scheduled commencement. Planning sessions shall normally start at 6:30 p.m. and shall normally end by 9:30 p.m.
- 4.4 SPECIAL MEETINGS.** Special meetings of the Board may be called by the Chair provided that at least 48 hours' notice shall be given to each Board member of the time, place, and business of such meeting. Staff shall ensure the provision of adequate public notice of such special meetings as required by law and City policy.
- 4.5 PLACE OF MEETING.** Meetings of the Board shall normally be held at City Hall, in the City of Lebanon, or at some other public place in the City of Lebanon, or, pursuant to Section 4.6, at the site of a proposed project for the express purpose of inspecting said site as part of the review for a proposed project.
- 4.6 SITE WALKS.** Site Walks scheduled pursuant to the procedures set forth in the Site Plan Review Regulations and Subdivision Regulations shall constitute meetings as defined by Article 1.4 of these rules, and shall therefore be posted and conducted according to these rules, including the taking of minutes. No decisions shall be made concerning an application during a Site Walk. Members of the public may ask questions during a site walk only at the discretion of the Chair.
- 4.7 OPEN MEETINGS.** All meetings of the Board and its committees shall be open to the public except as stipulated by NH RSA 91-A.

ARTICLE V **CONDUCT OF BUSINESS**

5.1 CALL TO ORDER. Meetings shall be called to order by the Chair, or in the Chair's absence, by the Vice-Chair. In case of absence of both the Chair and the Vice-Chair, if a quorum is determined to be present, the Board shall proceed to elect a Board member, by majority vote of those present, as Temporary Chair of the meeting until the Chair or Vice Chair appears.

5.2 QUORUM. As a public body subject to RSA 91-A, the Board shall only conduct a meeting and transact business when a quorum is physically present, unless that meeting constitutes an "emergency" as defined by and subject to RSA 91-A:2, III. A quorum shall consist of a minimum of five (5) members of the Board including ex-officio members and alternate members sitting in place of regular members.

5.3 ORDER OF BUSINESS. For each regular meeting the order of business, unless otherwise ordered by the Chair, shall be as follows, and shall be so presented on the agenda:

1. Call to Order
2. Notice of Regional Impact
3. Public Hearing Items
4. Other Business
5. Approval of Minutes
6. Adjournment

For each planning session, the order of business shall be so presented on the agenda:

1. Call to Order
2. Study Items
3. Committee Reports
4. Other Business
5. Approval of Minutes
6. Adjournment

5.4 PUBLIC HEARINGS. Public hearings shall normally be held in accordance with the following general procedures:

A. INITIAL PRESENTATIONS. Prior to the opening of a Public Hearing, the Chair may invite Staff to briefly describe the proposed hearing item to the Board. The Chair shall then open the Public Hearing and invite the Applicant for the proposed hearing item to give a presentation to the Board, which shall provide sufficient detail and description so as to inform all community stakeholders, abutters, and members of the public alike as to the nature of the proposed item, including existing conditions and proposed changes, in order that they may comment on it.

B. STAFF AND BOARD QUESTIONS. After the presentation of the item, the Chair shall invite Staff to raise to the Applicant any outstanding questions that the Staff still have concerning the item, which the Applicant shall answer. Once the Staff questions have been answered, the Chair shall invite members of the Board to ask questions concerning the item, and invite the Applicant to respond.

C. PUBLIC COMMENT. After the Applicant has had an opportunity to address all of the Staff and Board questions and comments, the Chair shall invite members of the public, in person or attending remotely, to speak on the item. All comments

and questions shall be addressed to the Chair, who will then invite the Applicant to address any such comments and questions if necessary. A time limit of three minutes for each commenter shall normally be in effect, and the Chair shall ensure that the commenter and Applicant do not engage in back-and-forth commentary or argument. After a given commenter has finished speaking, the Chair may invite the Applicant to respond, at the Chair's discretion. The Chair will also grant the Applicant a chance to respond to any comments at the end of the Public Comment period.

D. FINAL BOARD QUESTIONS, WAIVERS, AND CLOSING THE HEARING. After the Public Comment period, the Chair shall invite the members of the Board to ask any other questions they may have for the Applicant, Staff, or other participants in the hearing. The Board shall normally consider and vote on waiver requests at this time. Waivers shall normally be voted on separately but may be voted on collectively at the discretion of the Chair. The Chair shall then ask the Board if it has all the information it needs to make a decision on the application and, if so, shall close the public hearing and enter into deliberation to discuss the item pursuant to Article VII.

5.5 PERMISSION REQUIRED TO ADDRESS THE BOARD. Persons other than members of the Board shall not be permitted to address the Board except by consent of the Chair. At the Chair's discretion, a time limit for each speaker may be imposed. The speaker shall not enter into any debate or initiate or engage in any direct conversation with anyone present, shall speak only to the subject matter indicated, and shall direct all questions to the Chair.

5.6 MINUTES. The minutes of previous meetings shall be submitted for approval at the next regular meeting or planning session. The Chair shall call for any corrections to the minutes. Following the discussion of corrections, if any, the minutes shall be approved by motion duly passed by majority vote of the members present. All members may vote on the minutes and it shall be presumed that any member who was absent at the meeting that is the subject of the draft minutes under consideration by the Board has - unless the member states otherwise - adequately familiarized themselves with the conduct and content of the meeting by reviewing the meeting materials and the recording of the meeting.

5.7 RECESS OF THE MEETING. The Chair may order a temporary halt to the proceedings of the meeting. Said recess should normally not exceed 30 minutes. Upon ordering the recess, the Chair shall state the time and place for reconvening.

5.8 ADJOURNMENT OF MEETING. The Board shall adjourn each meeting to its next scheduled meeting or to a special meeting specifying time, date, and place. If the order of business has not been concluded by 9:30 PM, the Chair shall poll the attending Board members to determine if the Board should continue beyond 9:30 PM or continue the matters on the agenda to the next appropriate meeting, or continue to a special meeting specifying time, date, and place. The Chair shall then put the proposed determination to a vote.

ARTICLE VI **APPLICATIONS**

6.1 POSTPONEMENTS. The Board may postpone a completeness determination if requested by the Applicant in writing. The Board may grant only one such postponement unless the Applicant demonstrates sufficient cause to allow for a second postponement. No additional postponement shall be permitted.

- 6.2 CONTINUANCES.** The Board may continue a hearing if a decision cannot be reached [at that meeting](#). The Board may request a continuance beyond the 65-day period (or 95-day period for applications found to have regional impact in accordance with the Site Plan Review Regulations [or Subdivision Regulations, as applicable](#). Requests for continuances by the Applicant beyond the 65- or 95-day period shall only be granted upon demonstration of extenuating circumstances that the Board agrees warrant such a continuance. If the reason for the continuance is that there is insufficient information to make an appropriately informed decision, the Board shall instead consider disapproving the application “without prejudice,” allowing the Applicant to reapply with the same or a substantially similar application. In the case of a continuance, no further public notice [or special notice to any party](#) shall be necessary provided that the date, time, and place of the continued hearing shall be announced before adjournment.
- 6.3 SUBMISSIONS.** Application materials shall be submitted by the Applicant in accordance with the Site Plan Review Regulations [or Subdivision Regulations, as applicable](#). Submissions after the agenda packet has been posted are not permitted unless authorized by the Chair upon demonstration of extenuating circumstances that the Chair agrees warrant such a submission. Such late submissions shall not be distributed to the Planning Board members, but shall instead be presented to the Planning Board at the meeting at which the Public Hearing is to take place.
- 6.4 AMENDMENTS.** In the case of applications to amend ~~site plans previously approved~~ [alsed](#) by the Board, discussions shall normally be limited to the substance of the requested amendment(s), subject to the discretion of the Chair.

ARTICLE VII **VOTING & DELIBERATION**

- 7.1 MOTIONS.** Motions to approve or deny an application shall normally be considered during deliberation following the close of the public hearing. If proposed motions are to be written or amended, this should be done during this deliberative period. The Chair may also assign a motion to be written by a member and may continue the deliberation to a future meeting pursuant to Section 7.2.

Motions should be clearly presented to those attending the meeting and shall be accurately rendered in the public record. If a [draft](#) motion is included in the Staff Memo portion of the posted, publicly available packet, reference to said packet shall be considered sufficient to these purposes, and only newly-proposed amendments must be read into the public record [at a meeting](#). If the text of the motion is not publicly available prior to the start of the meeting, then the entire motion must be read into the public record.

A motion may not be withdrawn or amended by the mover without the consent of the second.

Once the motion has been read and seconded, the Chair shall invite the members of the Board to discuss the motion, including proposed amendments or alternatives. The Chair shall then, at their discretion, conduct a vote on the motion which shall normally be held by roll call.

- 7.2 CONTINUATION OF DELIBERATION.** If deemed necessary by the Chair to continue deliberation to a future meeting, the Board may do so without the consent of the Applicant only if such an extension would not push a given application past the 65- (or 95-) day deadline for action by the Board. If such an extension would require the Board to make a decision past the 65- (or 95-) day deadline for action by the Board, the Board shall consider

other alternatives, such as disapproving the application “without prejudice” (see Section 6.2 of these Rules).

- 7.3 MAJORITY VOTE REQUIRED.** Determinations on any motion before the Board shall require the concurrence of a majority of the regular members present, including alternate members serving in the capacity of a regular member, as well as regular members attending remotely as may be permitted pursuant to RSA 91-A.
- 7.4 TIE VOTE OR DECISION BY LESS THAN A MAJORITY.** A tie vote or an approval or denial by less than a majority of the regular members present constitutes no action. If the Board is unable to obtain concurrence of a majority of regular members present on a request because of the absence of one or more Board members from the vote, it shall continue the discussion or may continue the matter to a subsequent meeting pursuant to Section 6.2 above.
- 7.5 CONFLICT OF INTEREST or PREJUDGEMENT.** In accordance with RSA 673:14, no Board member shall participate in deciding or shall sit upon the hearing of any question if that member has a direct personal or pecuniary interest in the outcome which differs from the interests of other citizens, or 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 disqualification include, but are not limited to, when a Board member:

- A. Is an abutter;
- B. Is related to the Applicant or any abutter;
- C. Has assisted or advised the Applicant or any abutter; or,
- D. Is biased or prejudiced in any manner or to any degree which would, in the eyes of a reasonable and prudent person, prevent the member from acting impartially with respect to the application before the Board.

Reasons for disqualification also include prejudgment which occurs when a Board member has directly or indirectly taken a position, formed a conclusion, or has prejudged the application to be decided by the Board. Prejudgment includes, but is not limited to, a position taken either for or against an application expressed at a public meeting, by letter, by ex parte communication, or by comment made in some public forum. Prejudgment does not include questions or statements made by Board members in response to the details of the application expressed during the public hearing held on that application or during the Board's deliberations.

When an uncertainty arises as to whether a Board member is disqualified in particular circumstances, the Board shall, at the request of that member or another Board member, vote on the question of his/her disqualification, but such vote shall be advisory and non-binding. Any person with a direct interest in the outcome may voice an objection to a Board member's participation, setting forth specific reasons, and may also request such a vote, but such a request shall be non-binding. Any such request or objection shall be made either prior to or at the commencement of the public hearing, or at such later time as the facts claimed to warrant disqualification first become known. No such vote shall be taken if the Board member involved steps down voluntarily.

A Board member who is disqualified shall remove himself/herself from the Board and shall sit with the public until such time as the Board has completed its consideration of the application at that meeting. The member may then return to the Board. If, as a result of disqualification, the Board loses its quorum, then there shall be an adjournment or recess of consideration of the matter until there is a quorum at either the same meeting or the next available meeting.

- 7.6 VOTE OF ABSENT MEMBERS.** Unless a Board member has attended the meetings on an application or has stated publicly that he or she has examined the record and become familiar with the evidence presented from a transcript of the proceedings, he or she shall not cast a vote on any matter directly related to the application.

ARTICLE VIII **COMMITTEES**

- 8.1 AUTHORIZATION.** The Chair is authorized to appoint Committees to study and to report upon such matters as directed by the Chair which are germane to the purpose of the Board.
- 8.2 DEFINITION OF COMMITTEE.** A group of Board members delegated by the Chair to perform a function.
- 8.3 MEMBERSHIP.** All Committees shall consist of not more than four (4) Board members.
- 8.4 DUTIES.** The duties of any Committee shall be defined by the Board at a regular meeting.
- 8.5 COMMITTEE CHAIR.** The Chair of the Committee shall be determined at the discretion of the Chair of the Planning Board.
- 8.6 MEETINGS.** The Chair of a Committee shall call a meeting at such time and place as he or she may deem proper whenever there is any business requiring the attention of the Committee.
- 8.7 INVESTIGATIONS.** If necessary for the proper consideration of any matter referred to the Committee, the Committee is authorized to make investigations and call upon the City staff for such surveys, plans, estimates, and recommendations as may be deemed necessary.
- 8.8 RSA 91-A.** All committees shall comply with the provisions of RSA 91-A including but not limited to notice, open meetings, minutes, and governmental records requirements.

ARTICLE IX **E-MAIL AND OTHER COMMUNICATIONS BETWEEN MEETINGS**

- 9.1 PURPOSE.** The purpose of this Article is to ensure compliance with the letter and spirit of the Right-to-Know Law, RSA 91-A, and with the Due Process rights of parties appearing before the Board.
- 9.2 DEFINITIONS.** In this Article:
- A. **Communication** means a transfer of information, objective or subjective, from one person to another. It includes face-to-face or phone conversations, letters, memos, E-mails, web sites, or any other medium, regardless of the location or ownership of any device or equipment used.
 - B. **Distribution** is a one-way communication between meetings involving more than one Board member where no between-meeting response (except acknowledgment of receipt) occurs or is expected.
 - C. **Exchange** is a communication between meetings, or series of communications, involving more than one Board member which includes a between-meeting response, or expectation of a response.
 - D. **Ex Parte Communication** is communication, other than at a legally noticed meeting, between a Board member and a person with an interest in, or affected by, a pending or future case.

9.3 ACTIVITIES BETWEEN MEETINGS OF INDIVIDUAL MEMBERS. Individual Board members may, between meetings, prepare drafts of motions or other potential Board actions, and may meet or communicate with Staff with questions regarding any pending application before the Board. If a Board member discovers or is made aware of facts or information outside of a public meeting that is pertinent to the member's decision-making on an application pending before the Board, the Board member shall, at the public hearing, report all such facts or information to the Board, and parties to the case shall be given a meaningful opportunity to respond.

9.4 DISTRIBUTIONS. A Distribution may be made to any number of Board members by Staff, so long as it does not become an Exchange. Distributions by individual Board members are not permitted, but a Board member may ask Staff to make a Distribution. Staff shall normally make a Distribution as requested, but may decline to do so for good cause and upon consultation with the Chair.

If a Board member inadvertently or mistakenly makes a Distribution concerning a pending or future case and it involves a quorum of the Board (counting all senders and recipients):

- A. A copy shall be forwarded to Staff who shall determine, under RSA 91-A or other applicable law, whether the Distribution is subject to public disclosure and shall place the copy in the appropriate file;
- B. The Board member making the Distribution shall report on it, and its contents, at the public hearing on the case unless the information is exempt from disclosure under RSA 91-A; and,
- C. If subject to public disclosure, Staff shall provide a copy of the Distribution to the Applicant and all parties to the case who shall be given a meaningful opportunity to respond to the information in the Distribution at the public hearing.

9.5 EXCHANGES.

- A. Exchanges involving a quorum or more of the Board or of any Planning Board Committee are prohibited. Such Exchanges shall be considered deliberations and shall occur only at meetings noticed in accordance with RSA 91-A.
- B. Exchanges relating to an application pending before the Board that involves less than a quorum are also prohibited except that the Chair and Vice Chair may meet with Staff to discuss procedural matters related to pending applications.
- C. An Exchange pertaining to:
 - (i) policy matters that do not directly impact any application currently pending before the Board where the number of Board or Committee members involved is less than a quorum or
 - (ii) the drafting of motions pursuant to Section 8.3 involving not more than two (2) Board membersis permitted; however:
 - 1. Each Board member involved shall be responsible for preventing the number of members involved from reaching a quorum;
 - 2. Information discussed in, or generated by, an Exchange between Board members shall not be subject to further Distribution; and
 - 3. No Exchange shall include any vote or straw vote, or any Ex Parte Communication.

9.6 EX PARTE COMMUNICATIONS. Board members shall not initiate Ex Parte Communications. If an Ex Parte Communication is initiated by another person, the Board member contacted shall:

- A. Refrain from discussing the substance or merits of a case;
- B. Inform the person, if necessary, that such a discussion could lead to disqualification;

- C. Refer the person to the Department of Planning & Development or to a Board meeting, as appropriate; and
- D. Report on the conversation to the Board at a public meeting.

9.7 SCHEDULING AND AGENDA. Notwithstanding Subsections 9.4, 9.5, and 9.6, nothing in this policy prevents any Distributions, Exchanges, or Ex Parte Communications which pertain solely to:

- A. Scheduling of meetings or hearings;
- B. The determination or ordering of agenda items or topics to be taken up at meetings or hearings; or
- C. General procedural requirements pertaining to such scheduling and agenda matters.

9.8. PLANNING BOARD COMMITTEES. A Planning Board Committee shall be considered a public body, and all provisions of RSA 91-A and this Article, applicable to a quorum of the Board, shall also apply to a quorum of a Committee.

ARTICLE X **ADMINISTRATION**

10.1 ADOPTION. Upon adoption, Staff shall file a copy of these Rules and all amendments with the City Clerk as a public record and shall post the amended Rules on the City's website.

10.2 AMENDMENTS. These rules may be amended at any regular meeting by a majority vote of a quorum of the Board provided that such amendment has been presented in writing to each member of the Board at least 15 days preceding the meeting at which the vote is taken.

These Rules of Procedure were adopted by the Planning Board on November ~~21, 1989~~25, 2024 ~~and~~ ~~and amended on:~~

~~December 9, 1996 — Section 5.6 — MINUTES~~
~~January 11, 1999 — Section 5.3 — ORDER OF BUSINESS~~
~~September 11, 2000 — Section 4.1 — ANNUAL MEETINGS~~
~~September 11, 2000 — Section 4.2 — REGULAR MEETINGS~~
~~January 28, 2002 — Section 5.3 — ORDER OF BUSINESS~~
~~May 7, 2003 — Section 2.7 (new) — ASSISTANCE BY THE CITY PLANNER & PLANNING OFFICE~~
~~May 7, 2003 — Section 6.5 — CONFLICT OF INTEREST OR PREJUDGMENT~~
~~May 7, 2003 — Article VII (new) — E-MAIL AND OTHER COMMUNICATIONS BETWEEN MEETINGS.~~
~~December 13, 2010 — Section 4.2 — REGULAR MEETINGS~~
~~December 13, 2010 — Section 4.3 — PLANNING SESSIONS~~
~~July 11, 2016 — Article II (new) — MEMBERS AND ALTERNATES;~~
~~July 11, 2016 — Section 5.9 — ADJOURNMENT OF MEETING;~~
~~July 11, 2016 — General updates and reformatting;~~
~~January 28, 2019 — Section 5.6 — MINUTES, General updates~~
~~August 26, 2019 — Section 5.3 — ORDER OF BUSINESS~~
~~June 28, 2021 — Section 1.4 — RULES OF DECORUM and Addendum~~

~~These Rules of Procedure~~ supersede all other previously adopted Rules and By-Laws.

ADDENDUM

LEBANON BOARDS, COMMITTEES, AND COMMISSIONS

RULES OF DECORUM AND COMMITMENT TO CIVIL BEHAVIOR

It is acknowledged that:

1. Civil, respectful, and courteous discourse and behavior are conducive to the democratic and harmonious airing of concerns and decision making.
2. Uncivil discourse and/or discourteous and inappropriate behavior have a negative impact on the character and productivity of the decision-making process.
3. Anger, rudeness, ridicule, obscene or profane language, impatience, and lack of respect for others and personal attacks are not acceptable behavior.
4. Demonstrations in support or opposition to a speaker or idea are not permitted by members of the Board. The Chairman is responsible for maintaining order. Failure to abide by this requirement may result in the forfeiture of the speaker's right to speak.

To maintain a cohesive, productive working environment, the members of the Lebanon Boards, Committees, and Commissions commit to:

1. Supporting the Board's mission.
2. Showing respect to each other as appointed members and staff representatives to the Board.
3. Promoting civility during Board meetings and tolerating nothing less.
4. Demonstrating reflective listening and not displaying negative body language (for example eye rolling, pencil tapping, shrugging of one's shoulders, hand gestures, etc.)
5. Allowing uninterrupted speech by those recognized as "having the floor" and refraining from speaking until recognized by the Chair.
6. Bringing appropriate committee-related concerns, issues, and conflicts to the Board for discussion.
7. Offering alternative solution(s) when addressing a problem or issue.
8. Maintaining the confidentiality of material discussed during closed Board meetings.

PLEDGE OF CIVILITY

The manner in which we govern ourselves is often as important as the positions we take. The City's collective decisions will be better and truer to our mission when differing views have had the opportunity to be fully vetted and considered. All those who appear before the City's boards, committees, and commissions have the right to be treated with respect, courtesy, and openness. We value all input.

Accordingly, we commit to conduct ourselves at all times with civility and courtesy, to both those with whom the Board interacts and to each other. We also pledge to endeavor to correct ourselves, should our conduct fall below this standard.

LEBANON PLANNING BOARD 2025 MEETING & REVIEW SCHEDULE A

*for applications not requiring an escrow for engineering review fees
(see reverse side for more information)*

MEETING DATE* <i>(completeness review & commencement of public hearing)</i>	APPLICATION DEADLINE*	STAFF REVIEW*
JANUARY 13, 2025	DECEMBER 9, 2024	DECEMBER 16, 2024
FEBRUARY 10, 2025	JANUARY 13, 2025	JANUARY 21, 2025* (Tuesday)
MARCH 17, 2025**	FEBRUARY 10, 2025	FEBRUARY 18, 2025* (Tuesday)
APRIL 14, 2025	MARCH 10, 2025	MARCH 17, 2025
MAY 12, 2025	APRIL 14, 2025	APRIL 21, 2025
JUNE 9, 2025	MAY 12, 2025	MAY 19, 2025
JULY 14, 2025	JUNE 9, 2025	JUNE 16, 2025
AUGUST 11, 2025	JULY 14, 2025	JULY 21, 2025
SEPTEMBER 8, 2025	AUGUST 11, 2025	AUGUST 18, 2025
OCTOBER 13, 2025***	SEPTEMBER 8, 2025	SEPTEMBER 15, 2025
NOVEMBER 10, 2025	OCTOBER 13, 2025	OCTOBER 20, 2025
DECEMBER 8, 2025	NOVEMBER 10, 2025	NOVEMBER 17, 2025

*All dates are Mondays except where otherwise noted

**March 10th meeting room conflict for Election Day/meeting moved to March 17th

***Columbus Day – City Hall Open

Site Plan Review Regulations Section 4.7 & Subdivision Regulations Section 7.7

Upon submission of an application, the Planning Director will determine whether the application requires engineering review, and whether the fees shall be paid in advance and placed in an escrow account.

SCHEDULE A applies to (i) applications that do not require engineering review, and (ii) applications that require engineering review and will be billed. Schedule A applications will typically include:

- boundary line adjustments,
- minor subdivisions,
- small-scale site plans, and
- conditional use permits.

SCHEDULE B applies to applications that require engineering review and that require engineering review fees to be paid in advance and placed in escrow. Schedule B applications will typically include:

- preliminary major subdivisions,
- final major subdivisions, and
- large-scale site plans.

The Planning Department will endeavor to notify the applicant as to which Schedule applies and whether engineer fees will be billed or paid in advance by no later than the Friday following the application submission deadline. If applicable, staff will also notify the applicant at that time the amount required for engineering review fees to be placed in escrow.

PLANNING WORK SESSIONS

JANUARY 27, 2025	APRIL 28, 2025	JULY 28, 2025	OCTOBER 27, 2025
FEBRUARY 24, 2025	*MAY 27, 2025 (Tuesday)	*AUGUST 18, 2025 (3 rd Monday of the month)	NOVEMBER 24, 2025
MARCH 24, 2025	JUNE 23, 2025	SEPTEMBER 22, 2025	DECEMBER (Cancelled)

ALL MEETINGS BEGIN AT 6:30PM UNLESS OTHERWISE NOTED ON THE AGENDA

Planning Sessions are the 4th Monday of each month, unless a Monday holiday or other conflict * (see notes above)

DRAFT

**LEBANON PLANNING BOARD
COMMUNITY ROOM, KILTON LIBRARY OR
REMOTE VIA MICROSOFT TEAMS
LEBANONNH.GOV/LIVE
MONDAY, OCTOBER 14, 2024 6:30 PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Kathie Romano, Patrick Kennelly, Karen Zook (City Council Rep), Jeremy Rutter, Eric Stacey

MEMBERS ABSENT: Brandon Hill, Kellan Appleton

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

OTHERS PRESENT: Christine Johnston, Esq. (Legal Counsel for the Planning Board)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:32pm.

Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. NOTICE OF REGIONAL IMPACT

The following applications were received by the Planning and Development Department on or before October 14, 2024:

- **Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2: Request for a site plan review to construct a +/- 2,235 sq ft. two story office building, together with associated site improvements, including relocating a basketball court and 12 new parking spaces. PB2024-41-SPR**

Mr. Corwin said Staff recommends the application does not have the potential for regional impact.

A MOTION was made by Kathie Romano that the application of the Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2 does not have the potential for regional impact. The motion was seconded by Richard Ford Burley.

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

Chair Faunce introduced Mr. Eric Stacey as Lebanon Planning Board a new member.

Chair Faunce said the agenda for the Public Hearing Items would be in the order of 3A., 3B, 3D, and then 3C., which is out of the order of the agenda for this meeting.

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

A MOTION was made by Jeremy Rutter that the application of Lebanon Housing Authority, 31 Romano Circle (Tax Map 101, Lot 20), zoned R-2 is complete enough for the Planning Board to accept jurisdiction and commence review. The motion was seconded by Richard Ford Burley.

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

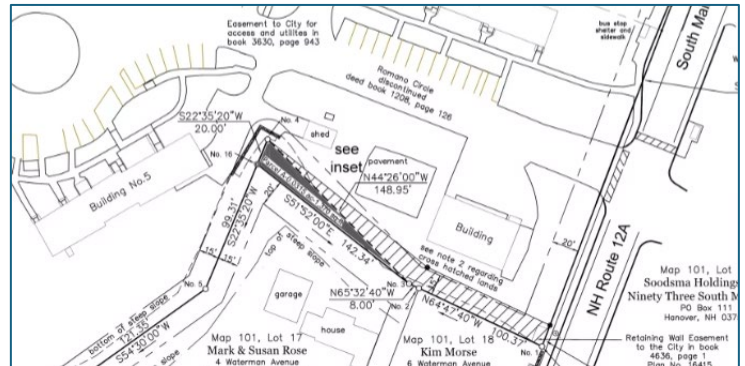
3. PUBLIC HEARING ITEMS

A. Mark & Susan Rose, Sr. and Lebanon Housing Authority, Mark & Susan Rose Sr. and Lebanon Housing Authority, 4 Waterman Avenue & 31 Romano Circle (Tax Map 101, Lot 17, and Tax Map 101, Lot 20, zoned R-2: Request for approval of a Boundary Line Adjustment. PB2024-39-BLA

Mr. Corwin said there is one suggested Condition of Approval, which is that the Discontinuance of Romano Circle be finalized before the plat is finalized.

Mr. Tim Rockwood (land surveyor) gave an overview of the project. He said the application is for a boundary line adjustment for a triangular piece of property.

Ms. Dida Alonso (Director of Lebanon Housing Authority) said the piece of property is unbuildable, but it will help LHA achieve another proposed project for a new office building at Romano Circle. She said the proposed boundary line adjustment will allow flexibility with the positioning of the building related to setbacks.



She explained that the City Council had approved that LHA become owner of the entry driveway to Romano Circle, which is a cul-de-sac, but the road will continue to be called Romano Circle. She said all the residents that live there are residents under LHA.

Chair Faunce opened the public comment portion of the hearing.
Chair Faunce closed the public comment portion of the hearing.

A MOTION was made by Richard Ford Burley that the Lebanon Planning Board approves the application of Mark & Susan Rose Sr. and Lebanon Housing Authority, for a proposed boundary line adjustment between 4 Waterman Avenue & 31 Romano Circle (Tax Map 101, Lot 17 and Tax Map 101, Lot 20), PB2024-39-BLA, as shown on a plat titled "Minor Lot Line Adjustment – Lebanon Housing Authority – Mark & Susan Rose," prepared by Rockwood Land

Services, LLC, dated September 4, 2024, last revised October 7, 2024, Project No. 1424-1, including any and all supplemental submissions and testimony provided during the public hearing, subject to the conditions as presented in the packet for this meeting with the additional condition that the discontinuance of Romano Circle shall be finalized.

The Motion was seconded by Kathie Romano.

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

B. Brickyard One Nominee Trust, 174 Hanover Street (Tax Map 48, Lot 4), 0 Hanover Street (Tax Map 48, Lot 2), 0 Hanover Street (Tax Map 48, Lot 1), and 238 Hanover Street (Tax Map 63, Lot 1), zoned R-1, R-O-1, R-3 & RL-3: Request for Site Plan Review and a Conditional Use Permit pursuant to Sections 308.2, 310.2, 311A.2, and 501.2 of the Zoning Ordinance for a proposed 474-unit multi-family Planned Unit Residential Development (PURD) totaling +/- 731,600 sq. ft. in size, consisting of 11 buildings together with parking, utilities, landscaping, access, and other related site improvements. Applicant also requests a Conditional Use Permit pursuant to Section 308.4 of the Zoning Ordinance to allow an increase in the maximum permitted building height from 45 ft. to 55 ft. PB2024-22-CUPSPR - Continued from September 9, 2024

Mr. Corwin said the applicant has heard the comments made by the Board and by the public in previous meetings and has redesigned the layout of the project. He said the purpose of the discussion at this meeting is for the Board to familiarize itself with the proposed design changes.

Mr. Dave Fenstermacher (VHB), Mr. Rich Whitehouse (VHB), and Mr. Gil Aleixo (Brickyard One Nominee Trust) were present on behalf of the applicant.

Overview of comments/concerns

Mr. Fenstermacher gave an overview of the concerns and comments that have been made, as well as some information from the Route 120 Corridor Study that he said impacted the changes that have been proposed. He noted the following feedback about the project:

- Provide more housing in a cohesive, sustainable way.
- Need for better, safer pedestrian connections
- Rezone existing light industrial to residential, highlighting the need for residential higher bedroom counts in the multifamily developments
- Incorporate climate resiliency measures and new development
- Preserve the historic features of the former Brickyard site
- Incorporate community use and retail and commercial
- Preserve and expand existing quality of life values such as green space
- New development should be a combination of mixed-use as an adaptive reuse

Overview of proposed redesign

He said the proposed redesign includes the following:

- Mixture of studio, one-bedroom, and townhome options
- Focused massing to the south side of the site toward I-89
- Replaced half of the larger multifamily buildings with smaller-scale townhouses
- Pond west bank enhancements
- Reduced total disturbance areas and total impervious areas (reduced building heights)
- Reduced amount of parking
- Reduced water & sewer demands by proposing fewer bedrooms
- Greatly reduced required earthwork and blasting needed for construction
- Increased area of green/community spaces to provide recreation opportunities

Design Change - Quantities

	Original Design	Revised Design
Number of Multifamily Buildings	10 Buildings	5 Buildings
Number of Units in Multifamily Buildings	473 Units	422 Units
Number of Townhomes	0 Townhomes	51 Townhomes
Number of Parking Spaces for Multifamily Units (Total Covered)	787 spaces (502 covered spaces)	541 spaces (237 covered spaces)
Reduction in Proposed Impervious Area	N/A	+/- 85,380 SF (1.96 AC)

He shared the revised site layout, which includes five buildings and parking with 541 spaces. He confirmed that the current design includes all rental properties, but he said there may be consideration for ownership in the future.

Revised Site Layout



He said they are working with the City to develop defined crosswalks and additional sidewalks on Hanover Street. He said they also met with Advance Transit to discuss the nearby pedestrian bridge and potential new bus stops that may be needed for the area.

He said they plan to present their technical review, which would include a fiscal impact analysis, engineered sites plans, a traffic report, stormwater management plans, and wetlands review and at a November Planning Board meeting.

Mr. Fenstermacher said there will be a barrier between the backyards for the units and the pond. He noted the additional gathering spaces make it feel less crowded. He also confirmed EV chargers would be located in the parking lots. He said handicapped parking spaces could be shaded or located under the buildings. Mr. Kennelly asked if the height variances were for two of the buildings and Mr. Fenstermacher confirmed they were for Buildings 4 and 5. He said Buildings 1, 2, and 3 are under 45 feet high.

Mr. Aleixo confirmed the townhomes will be 3-bedroom homes and the rest would be one-bedroom and studio units. Mr. Corwin confirmed that one parking space is required for studio units and 1.5 spaces are required for one- or more bedroom units per the zoning ordinance. Mr. Stacey asked who the proposed tenants would be, and Mr. Aleixo said professionals who work at the hospital and Dartmouth College. He confirmed that the expansion of the number of one-bedroom units matches the demographics of the area.

1 Chair Faunce said several other City boards and committees have provided either questions or
2 comments about this project and will attend a future Planning Board meeting to discuss them.

3
4 Mr. Rutter said there are many depressions on the ground and other elements that may be
5 remnants of buildings or other structures in SV1 and SV3 areas. He asked whether an archeologist
6 will survey the site and provide a report of what is there, including impervious surfaces on the site.
7 He said petroleum was used on that site so it would be good to know what is under the ground as
8 well because it is a brownfield site.

9
10 Ms. Romano asked about plans to extend a sidewalk on the property side of Hanover Street from
11 the northern entrance down to the entrance into the parking lot of the school. Mr. Fenstermacher
12 said that another survey will be done for the north side of Hanover Street to determine the
13 wetlands in that area.

14
15 Mr. Ford Burley asked if red bricks could be used in the construction of the buildings, given that it
16 is located at a former brickyard. He noted that Buildings 3 and 4 do not have the same access to
17 the greenspace as other buildings on the site and asked if benches could be added to encourage
18 congregation. He suggested an additional park/playground could be added near the townhouses.

19
20 Mr. Rutter asked if consideration has been given to changing the nature of the pedestrian bridge
21 over I-89 (from pedestrian to vehicle). Mr. Fenstermacher said the plans for the project will not
22 interfere with historical plans for the future redesign the bridge. The group discussed past and
23 current plans related to the pedestrian bridge, and the importance of it to the connectivity of the
24 new residential project and downtown Lebanon (for recreation and emergency vehicle
25 accessibility).

26
27 Mr. Fenstermacher said the northern entrance of the site will include parking spaces that can be
28 used by trail walkers/hikers who want to access the trails behind the proposed buildings and to the
29 network of trails near and around Boston Lot.

30
31 Mr. Rutter noted that none of the plans include the quarries at the very top of the site and
32 underneath where the townhouses would be located. He said the quarries deserve some kind of
33 mention in the project.

34 35 **Public comment portion**

36 Chair Faunce opened the public comment portion of the public hearing.

37
38 Ms. Nicole Ford Burley (City Historian, Chair of the Lebanon Heritage Commission) said the
39 Heritage Commission had submitted questions about this project a few months ago and received a
40 response from the applicant. She said the Commission's recommendations based on those
41 responses are included in the agenda packet for this meeting. She said the Commission has
42 requested the following:

- 43 1. Historical survey and Archeological survey
- 44 • Study of the Brickyard
 - 45 • Study of the Chandler cabins (northeast side of site)
 - 46 • Study of the quarries (earliest ones date from the first half of 19th century)

2. Preserve / rehabilitate the beehive kilns (not just allowed to stand)
3. Provide public access to the kilns
4. Make the site accessible to the public and add interpretive signage
5. Enact recommendations that come from preservation professionals

Ms. Mary Davis (Ward 2) said she lives in Renihan Meadows condominium development, which is part of the Densmore Brickyard. She said she and other residents have had flooding problems for years until a basement dewatering system was installed in 2004 at a cost of \$250,000. She said the cost for clean up and repairs after flooding events cost the condo board about \$40,000 per year. She said the ground in the Brickyard does not absorb water. Chair Faunce noted that the Conservation Commission is looking at the hydrological properties of the soils that will be disturbed for the project.

Mr. Tony Palazzo (Ward 3) said there are no retention basins for stormwater runoff and said there may be real problems if the pond becomes polluted. He said it would probably stay that way for a very long time.

Mr. Bill Lamb (Ward 3) read the objectives of a PURD and said he's concerned that this project does not fulfill the objectives of a PURD. He said he did not believe the Planning Board has the legal right to approve this project as a PURD.

Ms. Jeanette Hutchins (Ward 1) said she read the project statement of the Upper Valley chapter of the GSOP (Granite State Organizing Project) at a September Planning Board meeting. She said one focus of the GSOP is on affordable and workforce housing. She said the ideal tenants for the units were said to be professionals from the hospital and college. She said not all people that work at the college and hospital are professionals. She asked that ancillary staff (maintenance, housekeeping) be included as ideal tenants. She also said she would encourage the use of red brick in the buildings on the site.

Dr. David Kroner (Ward 2) said he lives across the pond from the site. He thanked all the Lebanon residents for their input on this project and Mr. Corwin for always responding promptly to his emails and requests. He said he's lived near the pond for 39 years and has always had a problem with flooding due to beaver dams. He said beavers are dangerous and carry disease.

He said he did have to call the current owners of the property recently because the level of the pond was rising and said within 48 hours, they had the pond draining. He said he believes they have been listening to the concerns of the public and commended them on that. He said the area does need more affordable housing. He also asked if they would consider the nearby houses' basements and plaster that will fracture during any blasting that might go on at the site.

Ms. Romano said when the Kimball Street water lines were redone this summer, the City offered to inspect the structural integrity of the homes in the area before the blasting so any damage could be documented.

1 **Ms. Jenny Lamb (Ward 3)** asked if the project was not a PURD and was under the standard
2 zoning, how many units would be allowed. Mr. Fenstermacher said he could calculate that and
3 provide the information. She also asked if the pedestrian bridge were to be redesigned, would
4 taxpayers pay for the project or would that be part of the Brickyard residential project.

5
6 Chair Faunce said if there were interest amongst the City to redesign the bridge, it might make
7 sense to explore whether there are Co funding opportunities to do so. Ms. Lamb said perhaps
8 rather than build a bridge and invite traffic to come, limit development and utilize the traffic
9 access and egress that's available now.

10
11 **Ms. Alice Dansby (Ward 2)** said it doesn't make sense to allow 600+ more cars into an area that
12 is already a traffic problem. She asked what the plan is for Evans Drive regarding additional stop
13 lights that would have to be added. She asked if anyone has estimated what the costs of the traffic
14 alone will be. Chair Faunce said the traffic study will be included in the technical review at the
15 next meeting (second Tuesday of November).

16
17 **Ms. Chris Hadari** said other proposals are increasing parking because of residents' demand but
18 this project is decreasing parking. She said the City is trying to be more walkable and bring eco-
19 friendly things for Lebanon. She said making the bridge accessible to cars is not going to achieve
20 these goals – it is just going to allow more cars in the area. She said the recent perceived trends
21 that people will walk or bike or use public transportation are changing. She said we need to focus
22 on what the vision and plan are for the people of Lebanon who live here now, not on the people
23 who aren't here yet. She said it's important to have housing for the people who are working and
24 want to live here, but the interests of the current taxpayers are also important.

25
26 Ms. Romano commented it seems to be that Lebanon or Hartford that are expected to provide
27 affordable housing and asked why Hanover can't provide some of that housing. Lebanon certainly
28 wants to do its part, but it shouldn't be the sole provider of affordable housing in in this area.

29
30 **Mr. John Weatherly (Ward 3)** said the City has been struggling with large-scale residential
31 development projects for the last 10 years and many have been told the City doesn't have
32 stormwater capacity. He asked why the City now has the capacity for this project. He also noted
33 that residents of this development who need more than 1.5 parking spaces will park on the street
34 and over the bridge (if is accessible to vehicles), which he said is dangerous for school kids who
35 are walking to school. Ms. Romano said the capacity issues were not with stormwater but with
36 sanitary sewer and the connector pipe (that delivered sewage to the plant) has been enlarged.

37
38 Mr. Ford Burley noted that the newly created Housing Task Force are working on solutions for the
39 Upper Valley and encouraged residents to follow its progress.

40
41 Ms. Hutchins noted that she did not mean to imply Lebanon was responsible for providing all
42 workforce housing. She said she just wanted to encourage the owner of this project to include
43 accommodations for pricing that will allow for workforce housing.

44
45 **Ms. Kate Weatherly (Ward 3)** said she's concerned about the entrances/exits of the project site
46 and the traffic that comes off Route 89 onto Route 120 at the same time the children go to school.

1 She said she lived in an area that experienced a lot of effects from blasting from the Prospect
2 Street project. Mr. Ford Burley said the traffic will be discussed at the next meeting during the
3 technical review, but the traffic study is included in the Planning Board agenda for the August 8,
4 2024 meeting (accessible via the City's website). Mr. Fenstermacher said one of the intents of the
5 redesign of this project was to minimize blasting or to eliminate it if possible.
6

7 Ms. Dansby said Vital Communities housing studies stated the number of new rental units the City
8 needed to add 534 rental units by 2030 in order to have healthy, responsible development and do
9 its share of meeting housing needs for the Upper Valley. She said this proposal seeks to add as
10 many as it was said by the data in the studies that we needed to add in 20 years. She said,
11 according to the mission statement of the City of Lebanon, the Board is obligated to say no to any
12 exceptions requested by this development because rental units have been overbuilt in the City.
13 Chair Faunce said the dates of the Housing Task Force meetings are provided on the City's
14 website and encouraged her to review the activities of that committee.
15

16 Chair Faunce closed the public comment portion of the public hearing.
17

18 ***A MOTION was made by Andrew Faunce to continue the public hearing to the November 12,***
19 ***2024 Planning Board meeting at 6:30pm in City Council Chambers in City Hall. The Motion***
20 ***was seconded by Jeremy Rutter.***
21

22 ****The MOTION was approved (6-0).***

23 At 8:14pm, Chair Faunce called for a brief recess.

24 At 8:25pm, the meeting resumed.
25

26
27 **D. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30 & Tax Map 44, Lot 7),**
28 **zoned CBD, IND-L and R-3: Applicant requests a 2-year extension of the River Park**
29 **Subdivision approval (PB2011-01-FMAJ) and Site Plan approval (PB2010-25-SPR),**
30 **as most recently amended on September 9, 2019 (PB2018-34-SPA) and extended on**
31 **October 12, 2021 (PB2021-29-EXT). PB2024-34-EXT**
32

33 Ms. Romano recused herself from the discussion. Chair Faunce said Mr. Stacey will sit with the
34 Board but will not participate in any decisions that may be made for this application.
35

36 Chair Faunce noted that the public hearing had been continued from the September 09, 2024
37 meeting so that the Board could have more time to deliberate over the request for extension. He
38 said some additional information has been generated by staff that has been included in the packet
39 so it seems appropriate to continue with the hearing. He said Mr. Corwin can provide the Board
40 with information regarding the new materials for this evening and the Board can entertain
41 additional testimony from the applicant. He said the Board will then go into deliberative session.
42

43 Mr. Corwin said one new item for consideration is how the Planning Board's Conditions of
44 Approval should be administered and confirmed should the extension request be granted.
45

1 He said there also was some discussion about a stormwater pipe that runs across the Route 10 and
2 the role that that pipe played in the delay of the River Park development. He said the stormwater
3 pipe has been shown on the River Park plan since the very beginning and the approved plans show
4 how that pipe is to be rerouted. He clarified that the developer has been aware of that pipe since
5 the very beginning of the process.

6
7 He said the City Engineer reminded him that he met with the applicant in early May, at which
8 point it was discussed that the proposed temporary stormwater bypass solution would be
9 abandoned and the applicant intended to continue with the approved site plan as is.

10
11 He said the staff memo points out that the building permit is now expired, and he said that
12 decision was upheld by the State Building Code Board of Appeals.

13
14 Mr. Chet Clem (Lyme Properties) and Mr. David Clem (XYZ Dairy) were present on behalf of the
15 applicant. Mr. Chet Clem said he was not aware of what additional information was provided to
16 the Board prior to this evening's meeting and he received no additional staff memo. He said this is
17 the first that he's heard of additional information being provided to the Board.

18
19 He said he is happy to provide any and all previous communications to the City on the
20 characterization of the temporary bypass line versus the previously approved line versus the
21 alternatives that were in discussion between XYZ Dairy and the City in 2022 and 2023 trying to
22 value engineer more affordable solution to these City's stormwater pipe on XYZ's property with
23 no easement, which represents a \$600,000 expense to XYZ.

24 25 **Temporary Bypass Line**

26 He said the temporary bypass line, which has been approved by the state of New Hampshire for
27 the purposes of temporary bypass to allow the project to proceed, is still in consideration and is the
28 jurisdiction of the state. He said Mr. Corn is referencing is that alternative designs for an
29 alternative storm water solution were abandoned by XYZ Dairy in the interest of proceeding due
30 to the tenant that it has been trying to secure and due to the time sensitivity. He said they felt work
31 to get that through the process wasn't worth the effort given that they had to meet the time
32 sensitivity of their tenant.

33
34 He said they were aware of the pipe from the get-go, and it has never been their insinuation that
35 they weren't. He said they called it out in a comprehensive memo to the City Manager well in
36 advance of mobilization that they did not have complete information (elevations, material), but
37 they knew that the pipe was there, which is why we did the exploratory excavation in November
38 of 2022 to answer those questions for themselves and their construction manager.

39
40 He said he objects with Mr. Corwin's classification of the decision of the State Appeal Board. He
41 said the Board did uphold the definition of work and that work must be physical and onsite, which
42 he said is in contrast with the building inspector's own decision. He said the matter was remanded
43 back to the BCBA, to the City's Building Code Board of Appeals. He said the matter is ongoing.

44
45 Chair Faunce asked if the matter was remanded to the City's Zoning Board or to City Staff. Mr.
46 Corwin said the matter is over. He said the applicant is suing the City to reinstate the building

1 permit and they did not appeal the State Building Code Board of Appeals decision. He said they
2 have not communicated with the City at all about this matter other than to file a lawsuit. He said
3 the building permit as of today is expired and that went unappealed. He said if they are successful
4 in their lawsuit, then they're asking the court to reinstate the building permit. He said as of today, it
5 is not valid and there is no building permit.

7 **Timeline from 2020-2024 RE extension of excavation permit**

8 Mr. Ford Burley asked for a clear timeline of events from 2020 to present related to the application
9 an extension for the excavation permit for Route 10, filed with the NHDOT, at the southern
10 entrance of the site. He said the materials in the meeting agenda packet seems to have a gap
11 between the applicant's last correspondence with NHDOT in September of 2020 and June of 2024
12 when there was a communication from the site construction manager and NHDOT.

13
14 Mr. Clem said space in the communications occurred because he said they thought that the matter
15 had been put to bed after the correspondence with NHDOT in 2020. He said it was quite a surprise
16 when it resurfaced after that gap in time, having already had numerous meetings with NHDOT and
17 the matter was not brought up. He said the issue resurfaced on June 5, 2024 when they were not
18 aware that NHDOT was going to seek a third traffic study.

19
20 Mr. Ford Burley said he read that, in 2020, Mr. Chris Turgeon of the NHDOT "highly
21 recommends that they contact NHDOT immediately to get the process the excavation process
22 started so as not to delay construction," in an email included in the agenda packet materials. He
23 said it appears that Mr. Clem corresponded back and forth with the NHDOT a few times and then
24 did not hear back. He asked Mr. Clem why he did not reach back out to Mr. Turgeon. He said if he
25 had sent an email to someone at the state and no one responded to it, he would assume it had
26 gotten lost. He also asked why Mr. Clem did not apply for the excavation permit until June of this
27 year.

28
29 Mr. Clem said in 2020, work was stopped due to the COVID pandemic. He said they had
30 suspended construction on the building, which was due to start prior to the infrastructure project.
31 He said that the construction timeframe for the building is 16 months and the timeframe for the
32 infrastructure work is approximately 3 months. He said that means they need about a year head
33 start in which to proceed on the building.

34
35 He said in 2020, they were informed by the previous Lebanon City Engineer of the scope of
36 paving to be done on Route 10 and they proactively reached out to NHDOT, seeking to coordinate
37 for efficiency. He said they communicated back and forth, including the five years it took to get
38 approval in the first place.

39
40 He said they had supplied substantial information to the NHDOT addressing the fact that they felt
41 that they were in good standing and received no response. He said the matter of filing the
42 excavation permit did not come up until 2024 because they had initiated the construction of the
43 building in November of 2022, then they were stalled until July of 2023, then sought to
44 recommence in August of 2023.

1 He said, in the course of rebidding the project and of making the business decisions of how they
2 would proceed, they sought to do the infrastructure upfront. He said it wasn't their desire, and they
3 sought amendments to avoid that, but they were trying to get it done.

4
5 He said, given the fact that the building permit was revoked on February 1, he said they spent
6 months in the City's appeal process to get the BCBA to reach that decision in May. He said that
7 was when they felt like they had the green light to proceed, never anticipating that the City would,
8 in effect, sue its own board by taking it to the state appeal. He said that's why they filed that then.
9 He said they have provided the information relating to the communication Mr. Turgeon many
10 times before, believing it was the answer to the question posed.

11 12 **Correspondence RE TIF District**

13 Mr. Ford Burley asked about the correspondence in 2021 regarding a TIF district. He said the
14 minutes of a Planning Board meeting for October 12, 2021 when one of the extensions was
15 requested.

16
17 Mr. Clem said the TIF district (or tax increment financing district) was center to a public private
18 partnership proposal. He said XYZ Dairy had done that back in the original permitting process but
19 gotten nowhere with it. He said he returned to the project in 2019 after having worked in the TIF
20 district in Quincy, Massachusetts and seeing the impact of that. He said it was on his radar when
21 the City Manager and the City Fire Chief approached them in 2020, looking to relocate the West
22 Lebanon Fire Station, and they offered a location and offered a 10-point deal structure to try to do
23 that expeditiously. He said included in that deal was the idea of a public private partnership, given
24 the fact that their already approved, already engineered (at their sole dollar) infrastructure (that
25 had already passed through the state, the local and state regulatory bodies), was shovel ready and
26 thus could be a "two birds with one stone" situation. He said those conversations were fruitless.
27 He said, in 2021, as vice chair of the West Lebanon Revitalization Advisory Committee and in the
28 face of the City entertaining a TIF district in downtown Lebanon and a TIF district at the Airport,
29 to facilitate an upfront, taxpayer-subsidized investment in making that pad ready, the West
30 Lebanon Committee unanimously voted for consideration of a TIF district in West Lebanon, along
31 with equal consideration of all their zoning changes that have been done, including height
32 increases, etcetera, to be applied equally to West Lebanon.

33
34 He said, in the course of that, the City Manager came to the next meeting and said that he was not
35 interested in entertaining a TIF district. He said it was not a City Council decision. He said they
36 have gone back and forth for a couple of years to also include the fact that we then found
37 ourselves in competition with the City in response to an RFP for a large life science company and
38 the state BEA asked why a TIF district was not offered to River Park when it was being doing
39 elsewhere in the city. He said it was then, and only then, that the City Manager suggested
40 consideration of a TIF district for River Park River Park, which was not their initial goal.

41
42 He said there were conversations to that effect in 2021 and 2022, until the point that those
43 conversations fell apart in July or August of 2022, when it became clear that the TIF district would
44 be a TIF in name only because the City was requesting the entirety of the property in collateral.
45

1 Mr. Ford Burley asked if he thought the negotiations about the TIF district held up any of the
2 infrastructure work on the site. Mr. Clem said the document that Mr. Ford Burley was referencing
3 is the request for an extension and that was granted so because of the conversations with City
4 Manager Mulholland. He said the City Manager came to that meeting and endorsed the extension
5 because of those more time was needed and because they were still dealing with the impacts of
6 COVID. He said by July of 2022 / August 2022, they were completing the cross-country
7 connector infrastructure.

8
9 He said they internally reached the decision that were barking up the wrong tree to try to reach a
10 mutually beneficial public-private partnership, and so they decided to proceed on their own.

11 12 **Public Comment portion**

13 Chair Faunce opened the public comment portion of the public hearing.

14
15 Ms. Kathie Romano (Ward 1) spoke as a member of the public. She requested that the Board to
16 consider two issues when it makes its decision:

- 17 1. The issue of fairness in terms of how the Board treats every applicant who comes before it.
18 She said this development, which was approved in 2010 still doesn't have a single building
19 built and, because of a number of extensions granted over the last 14 years, they currently
20 have until 2040 to finish the build-out of this development. She said they're asking for a
21 two-year extension to put the first building up. She said if it took 16 years for the first
22 building, how many years is it going to take for the rest of the buildings.
23
- 24 2. The issue of setting a precedent and fairness. She said the issue has something to do with
25 these extensions during the COVID period and even outside of that period. She said
26 occasionally, applicants do come and ask for a two-year extension, and if there's good
27 reason, the Board usually grants it. She said sometimes the board has granted a second
28 two-year extension. She said she could not remember in the last decade any other
29 development that was granted a third two-year extension other than River Park, and they've
30 had a fourth and a fifth two-year extension. She said this may be their 6th request for an
31 extension and there isn't even one building.
32

33 She said does the Board want to say to every applicant that the Board will give them two
34 years, but if they don't make it in two years, come back and we'll give you another two.
35 Come back and we'll give you another two. Come back and we'll give you another two
36 because they're going to say, well, you know, the Board gave it this applicant, why not
37 give it to us?
38

39 She said one of the things that happened in one of those extension periods, either 2019 or
40 2021, this applicant came before the Board with a reordering of the phases of the
41 development. She said because of the cry for residential housing, for the one apartment
42 building in this development, they asked to be able to build it earlier than it was slated to
43 be built within. She said it had originally been approved as an 80-apartment building with
44 about 120 parking spaces. She said it was approved with an increase of over 50% in the
45 number of apartments in the building, but not one single extra parking space.
46

1 She said the reason the applicant gave was that people living there are going to work at the
2 corporations in the development and won't need a car. She said they also said they were
3 going to be building a parking garage. She said but, when they reordered the phases, the
4 parking garage was planned for a phase after the phase where the building may be built.
5 She said the people would have to park in a vacant lot until they get to the basically the
6 fifth phase of the building. She said the City has no financial guarantee that that parking
7 garage will be built. She said if the apartment house is built and people are parking on a
8 vacant lot, and this developer decides not to go any farther, the taxpayers of the City of
9 Lebanon are stuck with what to do with these people that are parking on a vacant lot. She
10 said the taxpayers of the city of Lebanon are not going to want to pay for that parking
11 garage.

12
13 She said a couple weeks ago the Board approved a development and one of the conditions
14 in the approval was this wording: "If active and substantial development is not achieved
15 within five years of Planning Board approval, the development shall be subject to any
16 changes in the City's Land Use Regulations." She said she believed this development is
17 subject to the Land Use Regulations of 2010 and, if they get an extension and build the
18 first phase and finish that by January of 2027, they'll still be subject to the regulations of
19 2010 unless the Board puts additional conditions. She said how can the Board give an
20 applicant permission to use regulations that are more than a generation old

21
22 She said it appears that the Board has three choices:

- 23 1. Approve their request and give them another two years to do something they haven't
24 done in the last 14 years.
- 25 2. Approve their request but put some conditions in with regard to financial security and
26 other stipulations so the City has sufficient financial guarantees that the infrastructure
27 needed will be completed whenever they first build something that requires temporary
28 parking.
- 29 3. Deny the request for the extension and say the Board doesn't want to be in the business
30 of giving people 32 years to build something

31
32 He invited the applicant to share their thoughts on the information that was shared.

33
34 Mr. Clem said it was their desire to build this project long ago and the timeline of events
35 showcases why it is where it is today. He said the insinuation that this is just another extension to
36 "kick the can down the road" doesn't stand up to the analysis of what has transpired.

37
38 He said his last comment is in response to issues outside of their control and delays beyond their
39 control, they filed a request for extension 98 days ago. He said, on top of all the other delays that
40 have been incurred this year and last year, their ongoing efforts to develop River Park for a
41 perspective tenant, who has been patiently watching, waiting, and wondering what's going, have
42 been put on hold while we wait for this extension in the building permit matter to be adjudicated.
43 He said he hoped the Board can reach a decision this evening, so that those efforts can proceed.

44
45 Chair Faunce closed the public comment portion of the meeting and said the Board would move
46 on to the deliberative portion of the public hearing.

Board deliberation

Mr. Ford Burley said he felt the question the Board should focus on is this: Which phase one infrastructure improvements are not yet complete and whether the reason they are complete or not is outside of the control of the applicant. He read the wording of the extension application requirements:

“In determining whether to grant any requested extensions, the Board shall consider the totality of the circumstances, including the extent and complexity of the conditions precedent, and whether the need for more time is attributable to circumstances beyond the control of the applicant, rather than to the applicant’s neglect or failure to proceed with reasonable promptness.”

Mr. Ford Burley itemized the Phase I infrastructure improvements:

- Temporary parking lots on LOT 2 and three
- Roadway-sufficient access Lot 3
- Southern Way development entrance intersection
- Extension of Crafts Ave - complete
- Installation of water and sewer lines necessary for LOT 1 - complete
- Installation of other utilities

Mr. Kennelly said he is looking for the reasons for the delay and the need for the extension. He said the applicant has said the reasons are the building permit expiration, the issues with NHDOT, and maybe issues with the stormwater pipe.

He said the question he had regarding the NHDOT is why the applicant did not fulfill the NHDOT requirement to complete a traffic study. He said the applicant may have felt they did not have to do it. He said if the NHDOT asked him to do something, he would do it.

Mr. Kennelly said it does seem like a reasonable request, but maybe the applicant thought it was taken care of in 2020, or maybe, by 2024 when the issue resurfaced, the applicant felt there was not enough time to get it done - but he said there seems to have been ample time to get it done. He said it seems like the applicant was more focused on the building permit issues and did not pay attention to the traffic study request. He said for a project of this size and scope, he did not know if the applicant can only focus on one issue at a time.

Mr. Ford Burley said, regarding the building permit, which expired on or was invalidated on February 1, 2024, the applicant did have the option of applying for a new building permit. He said the City offered to transfer the money they already put into the first building permit to whatever the updated fee structure would be for the new building permit.

Mr. Ford Burley said he also had a concern from testimony from a previous meeting where the applicant repeatedly mentioned a \$4 million price tag for the infrastructure development and that they did not want to pay into without the guarantee of a building on the other end of it.

Chair Faunce said he had asked the applicant what the priorities were for getting the application. He said the applicant made a fair amount of testimony relating to looking for ways to offset costs.

1 He said the applicant may have been looking for ways to offset costs and perhaps relocate to find
2 some way to justify others contributing to the cost of the infrastructure.

3
4 He said testimony began with some of the work Mr. Clem did as chair of the West Lebanon
5 Revitalization Committee, such as the plan to bring to a West Lebanon Advance Transit hub into
6 River Park, working on trail access, sending a memo and introducing City officials to a public-
7 private Partnership proposal to offset cost for providing access to Road Park Drive, attempting to
8 revitalize the 2020 failed effort to cost share on relocating the City's pipe, and proposing
9 additional ways to offset higher construction costs, including a TIF.

10
11 He said that testimony suggests that the most pressing issue for developer was 'how do I pay for
12 this and how do I get things done as quickly as possible in order to satisfy my obligations for the
13 level of development required to advance the project.' He said it seems that the incredibly
14 important milestone to have an official status of complete did not seem to be the focus at that time.
15 He said he thought things haven't concluded in this because at the last extension efforts were not
16 made more quickly at that time to focus on the doing rather than the financing. Chair Faunce said
17 he knows these are large projects and he understands the importance of it.

18
19 He said all this testimony added to other testimony regarding the costs of infrastructure reads as
20 though the applicant is trying to make this work within a financial space. He said these concerns
21 are real and can be part of this kind of project.

22
23 City Attorney Ms. Christine Johnston, Esq. confirmed that, regardless of what decision the Board
24 may make in this situation, the decision should be vetted by Legal Counsel. Chair Faunce any
25 suggestion of a decision made either by a straw poll for an unbinding informal opinion of the
26 group which will form instructions to Staff with Legal Counsel on how to develop a Motion that is
27 suitable in a legally sustainable manner. Chair Faunce said he would not want to put a decision
28 this significant on the lay persons of the Board. He said the goal of the Board right now is to
29 understand how they feel about the issues up for discussion and to discuss the issues with vigor.

30
31 He suggested the deliberation should be continued into the next meeting so they will have the
32 tools developed by Staff and Counsel to support the decision intimated by a straw poll.

33
34 Mr. Ford Burley said the applicant has done some things, but they all have to be done. He said the
35 southerly entrance roadwork is a big sticking point. Chair Faunce said he felt the applicants are
36 having difficulty with a focus on cost relative to revenues coming in. He said the issue with
37 respect to communication with NHDOT is unsatisfactory and he would not go from 2020 to 2024
38 on the assumption that everything was good. He said the applicant may have been constrained by
39 their finances and maybe that changed their calculations.

40
41 Mr. Ford Burley said he did not think this passes the bar of "beyond the control of the applicant."
42 Mr. Kennelly said they have to consider the reasons that have been offered.

43 44 **Decision discussion**

45 Mr. Rutter said he understands they can deny the extension strictly because the applicant did not
46 meet the levels of what they need to show, but he suggested maybe they take Ms. Romano's

1 suggestion to grant the extension but with conditions that keep the applicant on track to complete
2 the project. The group discussed this idea at length.

3
4 Attorney Johnston confirmed the City cannot legally grant an extension and state it is the “last
5 one” for the applicant. Chair Faunce suggested a Condition of Approval could be that there must
6 be some ongoing (for example, every three or six months) engagement between the developer and
7 the City regarding activity toward the fulfillment of the plans. Mr. Rutter said the fluidity of the
8 communication between the two parties concerned does not have a very good track record and so
9 to improve that communication the Board would need a lot of assistance from Legal Counsel.
10 Attorney Johnston said that the City’s Legal Counsel could help with that.

11
12 Ms. Zook said the challenge with that sort of solution is that it's only enforceable in one direction,
13 and, in a situation where communication between the two parties is monitored, she did not see
14 how the City could help effectively. Attorney Johnston clarified that a Condition of Approval is
15 enforceable against an applicant and what the City would be undertaking to fulfill whatever its
16 obligations might be under that would have no impact on the applicant. She said if a schedule was
17 established, the applicant would be held to their part and would not be punished for anything that
18 the City might do or not do.

19
20 Chair Faunce said more regular face-to-face time between parties gives an opportunity to reset the
21 reality of what is being done. Ms. Zook said she is not sure it’s the nature of the communication
22 between the parties that is necessarily being reflected in what has happened. She said the applicant
23 has an obligation to demonstrate that they have pursued everything that would bring the project to
24 completion, and she said she is not sure that even gets to the root of the problem.

25
26 ***A MOTION was made by Richard Ford Burley to extend the meeting to 9:50pm. The Motion***
27 ***was seconded by Jeremy Rutter.***

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

29 Chair Faunce called for a straw poll of the participating members

30
31 ***Straw Poll Vote***

32 ***Rutter – approve extension***

33 ***Faunce - deny extension***

34 ***Ford-Burley - deny extension***

35 ***Zook - deny extension***

36 ***Kennelly - deny extension***

37 ***(4-1 in favor of denying the extension)***

38
39 Chair Faunce said the Board should direct Staff and Legal Counsel to write a motion that reflects
40 the results of the straw poll.

41
42 ***A MOTION was made by Andrew Faunce to direct City Staff and the City’s Legal Counsel to***
43 ***prepare a draft motion related to the straw poll taken in this meeting. He further moved that the***
44 ***draft motion would be reviewed and decided upon by the Planning Board in one month’s time***
45 ***(at a November Planning Board meeting).***

1
2 ***The motion was seconded by Richard Ford Burley.***

3
4 ****The MOTION was approved (5-0).***

5
6
7 Chair Faunce said Item 3C would be discussed next, if the applicant feels it would be helpful,
8 given that it is impacted by the previous discussion of Item 3D.

9
10 **C. XYZ Dairy, LLC, River Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot**
11 **7), zoned CB, IND-L and R-3: Appeal of administrative decision made on September**
12 **10, 2024, that conditions 1, 2, 4, 5, 7 and 14-4 of the River Park development Site Plan**
13 **approval as set forth in the Notice of Action dated September 9, 2019, for PB2018-34-**
14 **SPA, have not yet been satisfied and, consequently, that construction of Phase 1 may**
15 **not commence. PB2024-40-AAD**

16
17 Mr. David Clem said the Board has been correct and acknowledging that there is considerable
18 tension between Staff In the planning and building Department and XYZ Dairy. He said they have
19 endeavored to fulfil a project and deal with issues beyond their control in terms of what
20 information is submitted by the City to the state without them seeing it or without our engineers
21 being able to see it even though they stamped original construction drawings. He said this project
22 has had over 84 public hearings and he does not understand why the Staff has not been willing to
23 help. He said they have endeavored diligently to pursue accomplishing work. He said they have
24 facilitated 6+ acres of open space on the river, built four single-family homes on Crafts Ave.,
25 made significant improvements to the infrastructure for West Lebanon. He said he takes exception
26 to the notion that they don't have the economic capacity to complete the project and that that is the
27 reason they're dodging and not fulfilling the conditions. He said that information or that opinion is
28 not based on fact.

29 He said he does not understand why this Board takes the position that they have an endeavor to
30 fulfill the requirements. He said the issue with NHDOT came as a complete shock to them – he
31 said the person who originally asked for additional traffic studies wasn't aware of the traffic
32 studies that they had already done and paid for, and the program hasn't changed, and the
33 assumptions mandated by those traffic studies have not been realized.

34 Chair Faunce asked the applicant if it would be helpful to discuss Agenda Item 3C and Mr. Chet
35 Clem said yes it would.

36
37 ***A MOTION was made by Richard Ford Burley to extend the meeting to 10:00pm. The Motion***
38 ***was seconded by Jeremy Rutter.***

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

40 Mr. Corwin stated that Staff recommends that the application is complete enough for the Planning
41 Board to accept jurisdiction and commence review.
42

1 ***A MOTION was made by Richard Ford Burley that the application of XYZ Dairy, LLC, River***
2 ***Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot 7), zoned CB, IND-L and R-3:***
3 ***Appeal of administrative decision made on September 10, 2024, that conditions 1, 2, 4, 5, 7 and***
4 ***14-4 of the River Park development Site Plan approval as set forth in the Notice of Action dated***
5 ***September 9, 2019, for PB2018-34-SPA, have not yet been satisfied and, consequently, that***
6 ***construction of Phase 1 may not commence. PB2024-40-AAD is complete enough for the***
7 ***Planning Board to accept jurisdiction and commence review. The motion was seconded by***
8 ***Jeremy Rutter.***

9
10 ****The MOTION was approved (5-0).***

11
12 Mr. Corwin said per the September 9, 2019 Notice of Action, which he said technically was a site
13 plan amendment but remains sort a controlling decision for the River Park development, any
14 disagreement about the Conditions of Approval are appealable to the Planning Board. He said he
15 had heard from the City Engineer that the applicant was intending to begin construction on Phase I
16 infrastructure work as of July 1, 2024. He said typically, when a developer is beginning
17 construction, they'll coordinate with Staff to ensure that all Planning Board conditions have been
18 satisfied. He said he did not hear from the applicant, reached out to the applicant and provided the
19 conditions of both the site plan approval and subdivision approval that he needed assistance with
20 in verifying compliance. He said that was not a determination that the conditions haven't been met,
21 but it was a question to the applicant to verify these conditions have been met. He said this is a
22 request that is routinely made to developers. He said typically there is a response as a status update
23 and communication back and forth to work where the process stands.

24 He said he received no response from the applicant, but it was his understanding that the applicant
25 was to begin construction on July 1st. He said he did receive a draft performance bond and
26 security agreement from the applicant's Legal Counsel on or about June 25, 2024. He said that was
27 a condition tied to the subdivision approval and Staff provided comments to those and sent those
28 back on or about July 25.

29
30 He said he did not receive a response, but that's the only communication that Planning Staff
31 specifically has had with the applicant relative to fulfilling conditions of approval. He said at the
32 September 9th public hearing, the applicant seemed to suggest that they have satisfied the site plan
33 conditions of approval and necessary to proceed with construction of a Phase I. He said he made it
34 clear that, having heard no response to the to the routine questions that that staff asked earlier in
35 the summer, that the condition have not been satisfied if no information was provided to
36 substantiate compliance. He said now, a very routine request for an extraordinarily complex
37 project has turned into an appeal, which is very unusual.

38 39 **Conditions and actions by applicant to meet them**

40 Mr. Ford Burley asked the following questions regarding the Conditions:

41 Condition 1 – The applicant shall submit final designs, including construction drawings of all
42 infrastructure features associated with each phase, including proposed on- and off-site roadway
43 and parking areas, sidewalk, water and sewer utilities, and storm drainage systems to the City
44 Engineer for approval, which shall not be unreasonably withheld.

45
46 Mr. Ford Burley said the applicant said they have submitted updated drawings to the DPW and

1 NHDOT on June 7, 2024. City Engineer Brian Vincent said, in June, they did receive an
2 excavation permit application that included two plan sets: one was for off-site construction of
3 Route 10 and the other one was for site development and on the project property itself. He said
4 both were focused on roadway and infrastructure construction.

5
6 Mr. Corwin said it was not conveyed that it was the applicant's intent to satisfy Condition 1 by
7 submitting the plan set as part of their excavation permit application. He said Staff can now review
8 the plan set for conformance and compliance with Condition 1.

9
10 Mr. Chet Clem said Condition 1 makes clear that the materials need to be submitted to the City
11 Engineer for approval, so it's not relevant to the Planning Department. He said the June 7
12 submittal was the fourth time these plans have been submitted to the City. Mr. Ford Burley noted
13 the Planning Department is responsible for ensuring the Planning Board's Conditions of Approval
14 have been met so it needs to know the plans have been submitted. Mr. Clem said the timing of the
15 request overlapped with the process of completing the performance bond security agreement,
16 which became their focus. He said it seemed the requirement had been met because the plans had
17 been submitted three times previously and to the City Engineer in June. Mr. Corwin said it is not
18 clear why the applicant couldn't clarify that point as a matter of courtesy. He said a simple
19 explanation would have avoided the Board and all parties spending time on this.

20
21 Mr. Ford Burley said the discussion may have to be continued to another meeting because time is
22 running out for this meeting. Mr. Clem said they have a tenant for whom they have everything
23 lined up to continue to build for so building is imminent. He said the only thing keeping the
24 building from being built are the issues that they have been dealing with all year. Mr. David Clem
25 said they hope the issues will be resolved in an evidencia hearing in Superior Court on Thursday.

26
27 Mr. Chet Clem asked if there are any conditions that Staff believes have not been met. Mr. Corwin
28 said the purpose of this hearing is for the Board to make a determination as to whether the
29 applicant has complied with the conditions. He said the applicant will not respond to Planning
30 Staff, so they are here now for the Board to make its determination.

31
32 ***A MOTION by Richard Ford Burley that discussion of the application of XYZ Dairy, LLC,***
33 ***River Park Drive (Tax Map 44, Lots 21 - 30, and Tax Map 44, Lot 7), zoned CB, IND-L and R-***
34 ***3: Appeal of administrative decision made on September 10, 2024, that conditions 1, 2, 4, 5, 7***
35 ***and 14-4 of the River Park development Site Plan approval as set forth in the Notice of Action***
36 ***dated September 9, 2019, for PB2018-34-SPA, have not yet been satisfied and, consequently,***
37 ***that construction of Phase 1 may not commence. PB2024-40-AAD be continued until the next***
38 ***Planning Board meeting.***

39
40 ***The motion was seconded by Patrick Kennelly.***

41
42 ****The MOTION was approved (5-0).***

43
44
45
46 Ms. Romano and Mr. Stacey rejoined the meeting as participating members of the Board.

1
2 **1. OTHER BUSINESS**

3 None

4
5 **2. APPROVAL OF MINUTES**

- 6 • September 09, 2024
7 • September 16, 2024
8 • September 23, 2024
9 • September 30, 2024

10
11 Mr. Ford Burley said there was not enough time remaining to review and approve the minutes
12 from the September meetings.

13
14 *A MOTION was made by Richard Ford Burley that the approval of minutes for the September*
15 *09, 2024, September 16, 2024, September 23, 2024, and September 30, 2024 Planning Board*
16 *meetings be considered at the next Planning Board Work Session meeting. The motion was*
17 *seconded by Andrew Faunce.*

18
19 **The MOTION was approved (7-0).*

20 Mr. Corwin provided edits to the minutes to the Board members for review and consideration
21 prior to the next Work Session meeting.

22
23 **3. ADJOURNMENT**

24
25 *A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:57pm. The motion*
26 *was seconded by Andrew Faunce.*

27
28 **The MOTION was approved (7-0).*

29
30 The meeting was adjourned at 9:57pm.

31
32 Respectfully submitted,

33 Paula Roux

34 Recording Secretary

DRAFT

**LEBANON PLANNING BOARD
MEETING ROOM ONE OR
REMOTE VIA MICROSOFT TEAMS
LEBANNONNH.GOV/LIVE
MONDAY, OCTOBER 28, 2024 6:30 PM**

MEMBERS PRESENT: Andrew Faunce (Chair), Richard Ford Burley (Vice Chair), Jeremy Rutter, Patrick Kennelly, Karen Zook (City Council Rep), Kellan Appleton, Brian Ceglarski (alt)

MEMBERS ABSENT: Eric Stacy (alt)

STAFF PRESENT: Tim Corwin (Deputy Planning Director)

1. CALL TO ORDER

Chair Faunce called the meeting to order at 6:30pm.

Mr. Corwin reviewed the City's meeting in-person and REMOTE attendance policies and procedures.

2. STUDY ITEMS

A. Presentation by the WaHG Community Group on the proposed West Lebanon and Hanover Greenway

Ms. Sue Painter, Mr. Tim Cox, and Ms. Jennie Chamberlin presented an overview of the proposed greenway project. Ms. Pinter explained that the WaHG is a community group of volunteers who want to provide a safe passage for people to get along the Route 10 corridor. She said the vision for the project is to connect one of the more populated areas in West Lebanon with Hanover.

She said the current focus of the project is to establish a three-mile stretch from Bridge St. to Sachem. She said the passage would meet a critical need identified by Lebanon's Bike/PED study, the Upper Valley Lake Sunapee Regional Planning Committee, and Lebanon's Master Plan.



Mr. Cox explained that the City Council supported the project when they presented it in May 2023.

[At 6:37pm, Ms. Zook arrived at the meeting.]

Mr. Cox said they've walked the area for the proposed passage, and they have presented the City with a proposal for a scoping study. He said his group is now actively engaged in raising funds for the scoping study. He said they recently received a commitment letter from Dartmouth College for \$25,000.

He said the scoping study is the first step to help them determine their plan going forward. He said once the study is completed, they will work with the City Manager and grant writers to apply for grants that will be appropriate for the project. Ms. Chamberlain said the scoping study will cost around \$66,000.

The group discussed the options that WaHG may have for the proposed route of the passage, particularly where it might cross Route 10. They also discussed the possible surface types that might be used for the passage. They discussed how the scoping study, which is a feasibility study, would break the path into four segments and suggest three options for each segment. The group discussed the idea of working with Advance Transit to provide transportation to users over the most dangerous or problematic portion of the proposed passage and then bring users to the safer parts of the passage to continue on foot or by bike.

Chair Faunce said Mr. Brandon Hill has resigned from the Planning Board. He introduced Mr. Ceglarski, who has joined the Planning Board as an alternate member.

B. Review of Draft Amendments to the Planning Board Rules of Procedure

The group reviewed the latest draft amendments to the Planning Board Rules of Procedure, which was included in the meeting agenda packet. The group discussed edits to the following sections:

2.2 Alternate Members

2.2 ALTERNATE MEMBERS. Alternate members of the Board shall be appointed by the City Council, by majority vote, upon nomination by the City Manager. Alternate members shall join the regular members in all presentations, public hearings, and discussions except that such alternates may not vote on any proposal or motion before the Board unless so directed by the Chair, and shall not participate in the Board's deliberations once the public hearing has closed. In the absence of any regular member, except the ex-officio member of the City Council, the Chair shall appoint an alternate member to fill such vacancy. Said alternate shall then act as a regular member. No members of the Planning Board shall serve as alternate members while there are vacancies open for regular members.

2.5 Remote Attendance

2.5 REMOTE ATTENDANCE. At the discretion of the Chair, a Board member may participate remotely, if: it is technologically feasible and reasonable to do so when the member's attendance is not reasonably practical; the reason for absence is stated in the minutes; the remote member states where they are physically located, and states who is present in that location with them. The Chair shall ask if any other Board member has a concern or objection regarding the absent member's virtual attendance. All participants, including the public, must be able to hear, read and discern the meeting discussion. Members participating remotely may vote, but shall not count toward quorum. All votes must be taken by roll call. The Chair shall be physically present at the meeting location specified in the meeting notice.

3.4 Clerk (edited to Duties of Staff)

3.4 CLERK. ~~With the approval~~ **DUTIES OF STAFF.** Staff shall be in attendance at every meeting of the Planning Board as defined by Article IV of these Rules and shall arrange for the City Manager, Engineer to be present at the Director of Planning & Zoning, through the Department of Planning & Zoning, shall function as the Clerk for the Board. The Clerk shall administer official correspondence, subject to these rules Board's regular meetings and as needed. Subject to these Rules and at the direction of the Board, staff shall issue the proper act to support the Board. This support shall take such forms, compile all as necessary to ensure that the Board's actions and decisions are made in an educated and well-informed manner, including but not limited to: preparing reports and other duties as directed by the Chair; preparing forms as necessary for the Board's functions; compiling relevant information, maps, and records for the Board's Board's review; shall send all sending such notices as required by law; shall keep keeping the minutes of all Board actions and proceedings; shall prepare reports and perform other duties as directed by the Chair; and, shall keep and keeping records of its examinations and other official actions.

~~The Clerk~~ Staff shall direct take such steps as necessary for the recording secretary to take of meetings and the creation of complete and accurate minutes, to tape record all meetings, to prepare in writing the official minutes of all meetings; to including the provision of a recording secretary. Minutes shall, at a minimum: comply with the minimum requirements of NH RSA 91-A; show the vote of each regular member upon every question, or if absent, disqualified, or failing to vote so indicate; to include in the minutes the names and addresses of all witnesses, participants; and include a summary of the facts on which the decision is based and, as well as the decision rendered; and to deliver to the Clerk within 144 hours the completed document for submission. A draft of the meeting's minutes will be submitted to the Board for acceptance review and approval at the next regular meeting or planning session of the Board.

A MOTION was made by Richard Ford Burley to move the edited Planning Board Rules of Procedure to the November Planning Board Work Session for final reading and approval. The motion was seconded by Kathie Romano.

**The MOTION was approved (6-0).*

Mr. Corwin said he would send the final draft of the Rules of Procedure document to Board members via email.

C. Discussion of potential amendments to the Site Plan Review Regulations re: Article IV procedural requirements, Article V application submission requirements, and Article VII waiver procedure

Mr. Corwin said Article V and Article VI are the parts of the Site Plan Review Regulations that are referenced most often. He suggested the group also review Article IV (Procedural Requirements), which describes the Planning Board's procedural requirements that coordinate with the Rules of Procedure that had just been discussed.

He suggested the group review Article 5 very carefully to ensure submission requirements require the information that they want for a complete application for review.

Chair Faunce said, currently, the Board is presented with fairly detailed plans that applicants and Staff have invested a lot of time into, and that doesn't leave a lot of room for the Board to make suggestions that sometimes involve a lot of rescoping. He suggested that the Board have earlier involvement in the plans so applicants and Staff are not doing a lot of work that may get changed after the Board's review. The group discussed the possibility of introducing a conceptual review and/or site visit at an early phase to provide feedback and answer questions from the Planning Board (and other City boards/commissions, if appropriate) before the final plans are submitted.

Mr. Ford Burley said he stressed (with the edits he has suggested to these Articles) that clarity is part of the completeness and, if an application is submitted that the Planning Department doesn't think the Board will understand, Staff must inform the applicant that the application might not pass the Board's completeness review.

The group discussed edits to the following paragraphs in Article IV:

Section 4.7.3b:

b. If the Planning & Development Department finds that the application is not complete, ~~or~~ that one or more of the waiver requests do not meet the standards of Section 7.1, or that the changes to existing conditions are potentially lacking in clarity as per Section 5.1. –the Planning & Development Department shall so advise the Applicant, who can elect to complete the missing submission requirements. Missing submission requirements, including any necessary waiver requests, shall be delivered to the Planning & Development Department by close of business on the fourth Monday of the month (or the following business day if the office is closed) for submission to the Board the following month. Submission of additional or revised materials by this date is necessary to ensure that the Planning & Development Department has

and a new paragraph c:

c. If an application requires multiple rounds of revision, there may be insufficient time for the Planning & Development Department to adequately review an application prior to scheduled review by the Planning Board. If an applicant has attempted to complete missing submission requirements and/or to address any potential clarity issues as advised by the Planning & Development Department, and if the Planning & Development Department determines that the application still has outstanding issues that, in the judgement of the Planning & Development Department, may lead to a potential determination of incompleteness by the Planning Board, the Planning & Development Department will advise the applicant of such in advance of the meeting of the Planning Board at which the application is scheduled to be discussed. At this time the applicant may choose to have their application considered at the following month's regular meeting with no penalty for doing so.

The group discussed creating a form that applicants could use to request to have their application considered at another meeting.

Section 4.8 C Actions of the Board:

The Board shall act to approve, approve with conditions, or disapprove the proposed site plan within 65 calendar days following the completeness finding by the Board, or within 95 calendar days if the plan is found to have regional impact, except that the Board may apply to the City Council for an additional 90 calendar days within which to act upon the application. A waiver of the time period may be agreed to by the Applicant. If the Planning Board feels it does not have enough information to make a decision within the allotted time period, and the Applicant has not agreed to a waiver in writing, then pursuant to RSA 676:4, I(c)1, the Board may, at its discretion, disapprove the proposed site plan "without prejudice," in which case the Applicant may resubmit the same or a substantially similar application. If the Board has not acted within the 65-day period, and the Applicant has not agreed to a waiver, the Applicant may obtain from the City Council an order directing the Board to act within 30 calendar days, then pursuant to RSA 676:4, I(c)1, the City Council will approve the proposed site plan.

The group discussed edits to the following paragraphs in Article IV:

Section 5.1 Drawings and Other Submittals

Applications reviewed by the Planning Board shall contain sufficient information and be of sufficient clarity to enable the City Staff and the Planning Board to evaluate the proposed development for compliance with the Zoning Ordinance, the Planning Board's Regulations, and other applicable City Codes, ~~and for t.~~ Because it is in the best interests of the City of Lebanon and its residents that the Planning Board be able to make an informed decisions, all proposed changes to existing conditions must be reasonably clear to a layperson, as determined by the Planning Board. Applications that are sufficiently lacking in clarity as to inhibit an informed decision by the Planning Board may be deemed incomplete as per Section 4.7 of these Regulations.

Mr. Ford Burley said the Board really needs applicants to provide present conditions and proposed conditions on two separate documents to facilitate its review of their plans.

Section 5.1 E: Site Plan Drawings Shall Include

The group suggested adding "with the exception of legal nonconforming" to this paragraph

Site plan drawings shall include (i) a drawing depicting only the existing conditions on the site at the time of application, (ii) a drawing of the same scale and dimensions depicting only the proposed conditions on the site after the completion of the proposed work, and (iii) such information and plans as requested in E.1 through E.24 below or waiver requests therefor. In the event that the existing conditions are in violation of these Regulations or the Zoning Ordinance, a drawing of the same scale and dimensions depicting only the initial conditions on the site before the violations took place will also be required.

Section 5.1.5

The group discussed the use of the word "current" and what that means. Mr. Corwin said he would do more research on what "current" means in relation to surveys.

5. A current, dated survey certified by and bearing the seal and/or signature of a land surveyor licensed in New Hampshire, depicting the perimeter boundaries of the lot(s) of the proposed site, including compass bearings, distances, and lot areas, and depicting the location of any existing improvements on the property and the width and location of any rights-of-way and/or easements on the property.

Section 5.1.6

The group discussed whether more generic language related to the intervals of contours would be more appropriate.

6. A plan showing the Existing-existing and proposed grades, including topographic contours, with spot elevations. Where the grade is less than 20%, the contours shall be at 2-foot intervals; otherwise they shall be at 5-foot intervals. All contours shall be referenced to USGS or FEMA Flood Insurance Rate Map (FIRM) datums, as appropriate. Existing topographic information shall be prepared by a professional engineer registered in New Hampshire or land surveyor licensed in New Hampshire, and the plan shall bear said engineer's or land surveyor's name and signature.

The group discussed providing applicants with a checklist of items needed for completeness.

Section 5.1.7 – new sentence added to last paragraph (underlined text):

size, height, and location of all proposed structures, including expansions of or additions to existing buildings. Such elevation views shall provide sufficient detail to allow for review by the Board and City staff of the adequacy of proposed access and egress points, walkways, lighting, and other site-related improvements. If the interior layout of an existing structure may have a bearing on proposed exterior changes to the site, for example regarding parking, accessibility, or other considerations, drawings of the interior of existing buildings should be provided, with sufficient detail to allow for informed decision-making by the Board and City staff.

The group discussed edits to the following paragraphs in Article VII:

Section 1 General Requirements
7.1.B added new paragraphs (see underlined text):

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

With regard to item A, higher costs for the Applicant shall not, per se, constitute an unnecessary hardship to the Applicant, though they may factor into a larger justification for the request of the waiver.

All written requests for waiver or modification of these Regulations shall address items A and/or B above, depending on which criteria are being relied upon to justify the request.

In order for the Planning Board to make informed decisions about requested waivers, in the case of waiver requests concerning distance or area measurements (e.g. landscape spacing, parking, etc.), Applicants shall provide a plan that includes the relevant measurements.

For waivers from a submission requirement (Article V), when the Planning Board accepts an application as sufficiently complete to invoke jurisdiction and commence review pursuant to Section 4.7 of these Regulations, the Board, in effect, makes a tentative finding that the above criteria have been met. If, during the course of its review, the Planning Board determines that the waived information is necessary to complete its review then the Applicant shall provide that information

Mr. Ford Burley suggested the Board members review the changes and send any suggestions to Mr. Corwin.

D. Housing Champion Program Application Update

Mr. Corwin said the NH state legislature created a housing champion program that's funded with \$5 million. He said municipalities can apply to the NH BEA / OPD (Office of Planning Development) to obtain Housing Champion designation. He said applications are due by November 15, 2024. He said the City is actively preparing applications to obtain this designation. He said the value to the designation would be that the City would have preferential ranking for certain future funding and grant opportunities as well as to qualify to participate in specific, housing-related programs (as described in RSA 12-O73).

He explained how applications are weighted, based on demonstrated regulations and infrastructure support (and many other qualifiers). He said one of the things the City should demonstrate is Land Use Board training (that each Land Use Board member has had at least two hours of training). He suggested the Board view Planning Board Basics (noted as **Item 2E** in the meeting's agenda).

Mr. Corwin said he would send an email asking the Board members to document any training or conferences they have attended while they've been on the Planning Board.

E. Planning Board Training - Screening of "Planning Board Basics" recorded presentation and discussion with staff

The Board members watched the Planning Board Basics video training.

3. COMMITTEE REPORTS

None

4. OTHER BUSINESS

None

5. APPROVAL OF MINUTES – September 09, 2024

Amendments

Page 4, Line 7: Add hyphen to "post Covid"

Page 4, Line 13 & 38: Add hyphen to "cross country"

Page 4, Line 14: Add "s" to "building"

Page 4, Line 19: Add comma after "bear it"

Page 5, Line 5: Add hyphen to "two year"

Page Line

Page 5, Line 7: Change "\$64M" to "64,000 square-foot"

Page 5, Line 8: Edit to read after "prior" – "to investing in a building that they're trying to lease up" and remove rest of paragraph.

Page 5, Line 12: Add "At the Chair's invitation" before "Mr. Clem recapped actions..."

Page 5, Line 14: Change period after present to a comma to combine sentences

Page 5, Line 15: Add "speculate" after "interjected to"

Page 5, Line 17: Add "project" after "has in the"

Page 7, Line 46: Change “time” to “(deadline)”
 Page 8, Line 7: Delete “asked”
 Page 9, Line 6: Delete “said”
 Page 9, Line 23: Change Stacey to Stacy
 Page 9, Line 25: Change “ECM” to “BCM impact fee”
 Page 9, Line 45: Change “VBH” to “VHB”
 Page 10, Line 22: Change “A resident” to “Mark Farnham”
 Page 10, Line 24: Delete sentence starting with “He asked the Board”
 Page 11, Line 6: Delete “he lives in a Densmore House”
 Page 13, Line 2: Edit to read: “Ms. Romano asked if the elevator has been installed.”
 Page 13, Line 3: Edit to read “Mr. Nash said it has been installed.”
 Page 13, Line 41: Remove entire paragraph “4. The applicant proposes”
 Page 17: Line 16: Remove “is”

A MOTION was made by Richard Ford Burley to extend the meeting by five minutes to 9:35pm. The motion was seconded by Andrew Faunce.

****The MOTION was approved (6-0).***

A MOTION was made by Richard Ford Burley to approve the September 09, 2024 Planning Board meeting minutes as amended. The motion was seconded by Jeremy Rutter.

****The MOTION was approved (6-0).***

6. ADJOURNMENT

A MOTION was made by Richard Ford Burley to adjourn the meeting at 9:30pm. The motion was seconded by Patrick Kennelly.

****The MOTION was approved (6-0).***

The meeting was adjourned at 9:30pm.

Respectfully submitted,
 Paula Roux
 Recording Secretary