



**LEBANON CONSERVATION COMMISSION
JANUARY 27, 2025 - 5:30 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: 339 930 174#). If you have trouble accessing this meeting, please [email mark.goodwin@lebanonnh.gov](mailto:mark.goodwin@lebanonnh.gov)

2. Study Items

- A. **Proposed Zoning Amendment Concise Statement for City Ballot:** Recovery House as a Permitted Use
- B. **Proposed Zoning Amendment Concise Statement for City Ballot:** Alice Peck Day - R-3 to MC-2 Zoning District Change
- C. **Proposed Zoning Amendment Concise Statement for City Ballot:** Pattern Zone Overlay District
- D. **Review and Comment to the City Council on proposed Zoning Ordinance Amendments** (45 mins) *Continued from December 12, 2024*
- E. **Discussion and Endorsement Re:** Zoning Amendments Ballot Statement

3. Adjournment

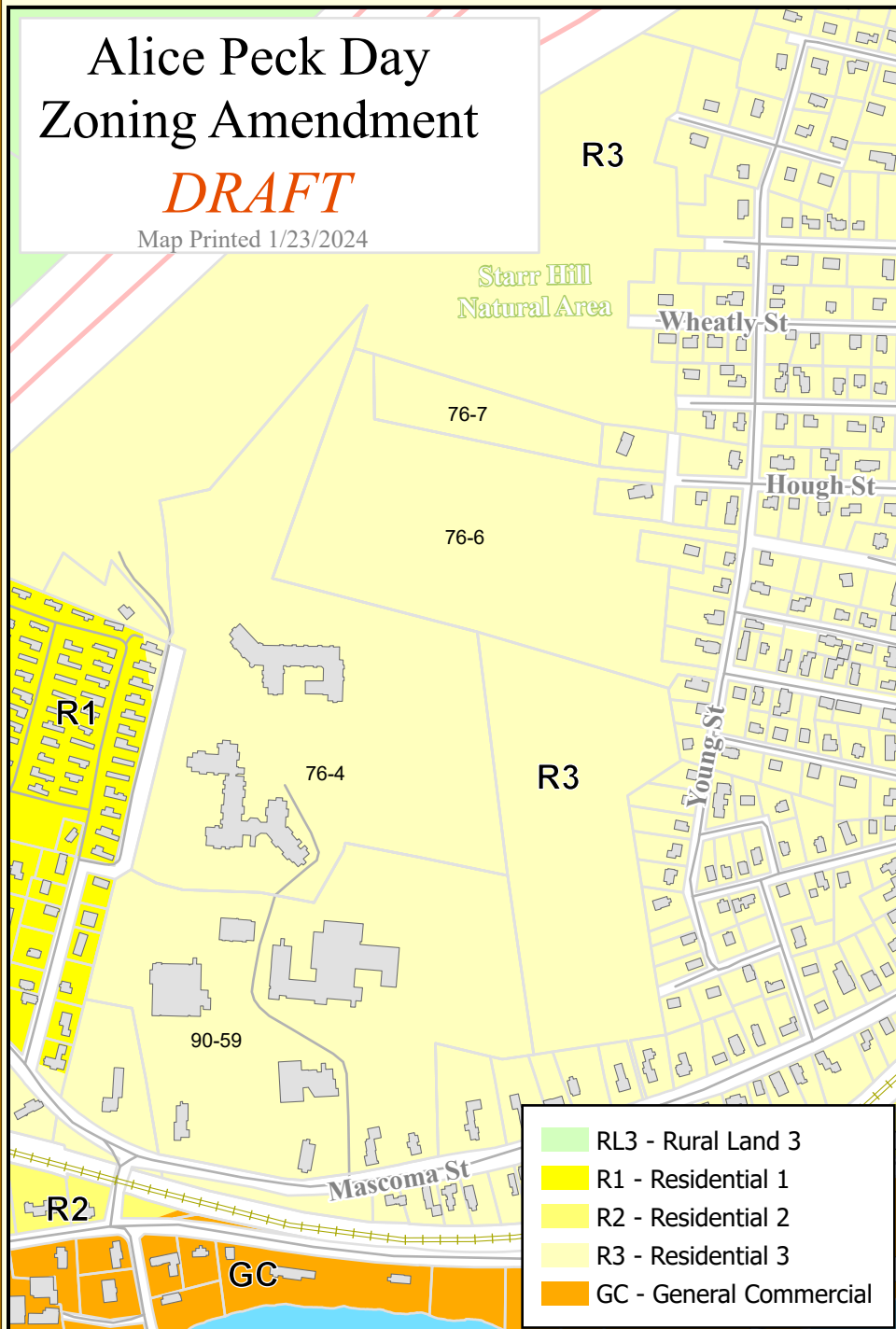
The order of agenda items is subject to change.

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

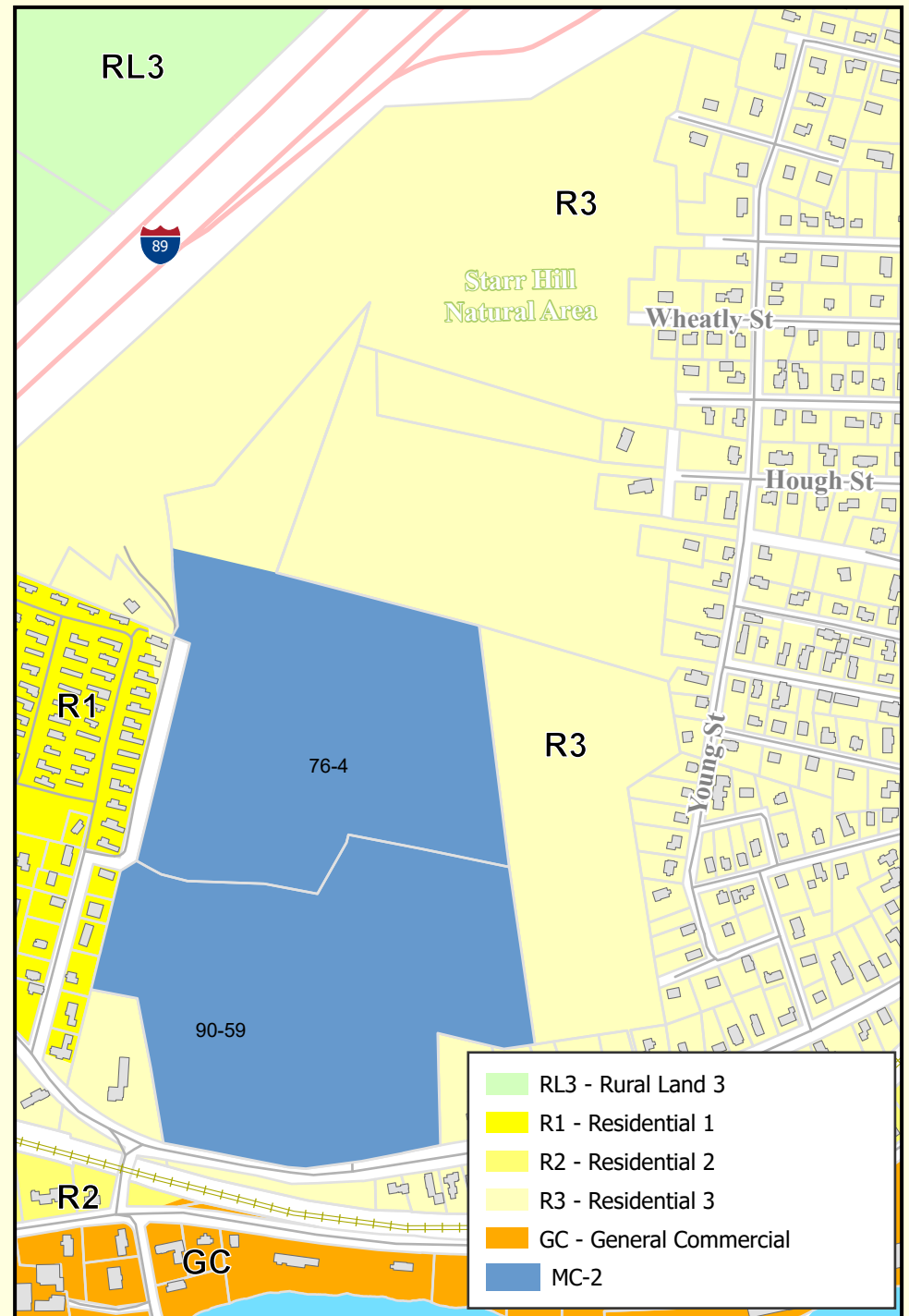
Alice Peck Day Zoning Amendment

DRAFT

Map Printed 1/23/2024



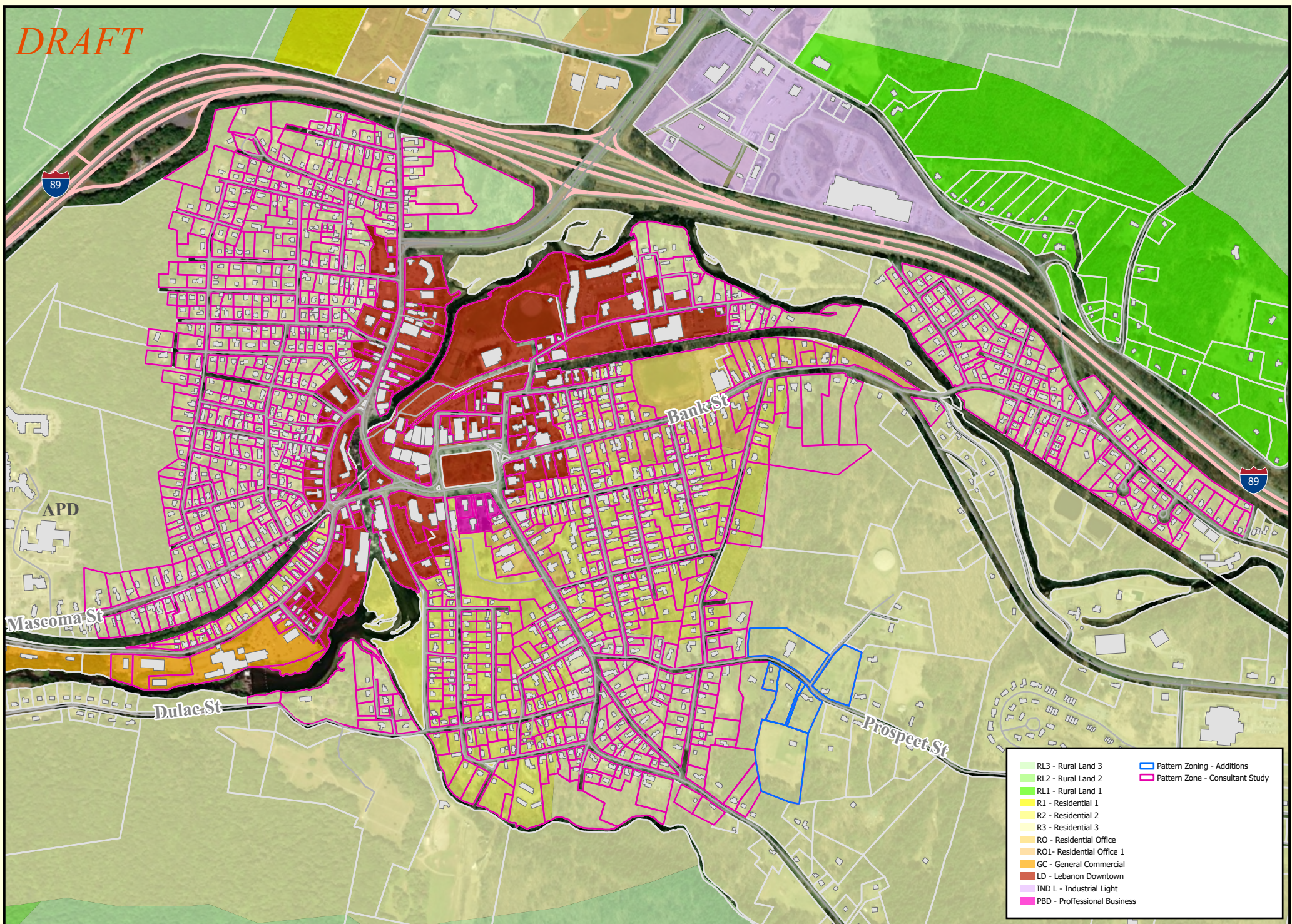
EXISTING ZONING



PROPOSED ZONING



DRAFT



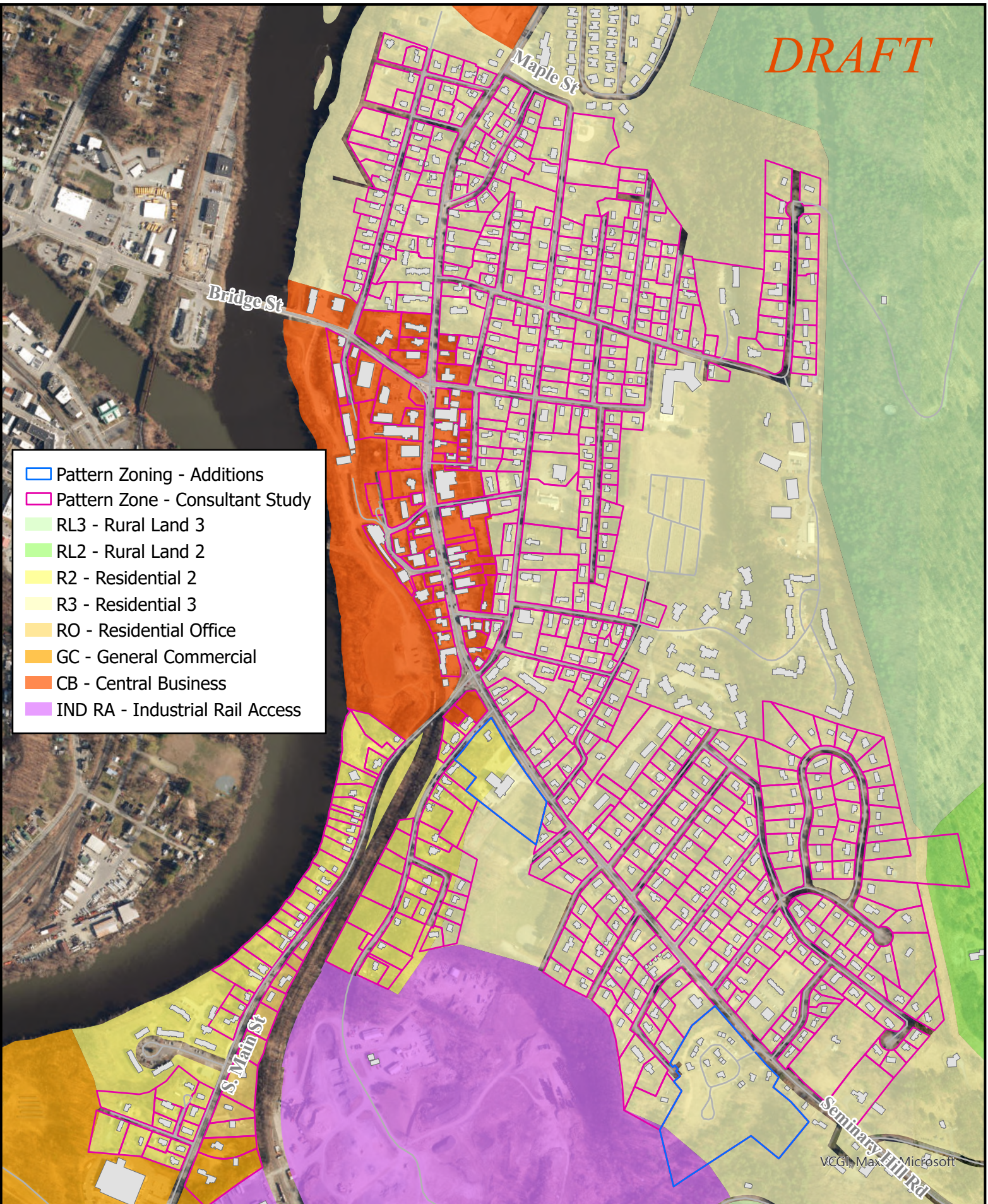
- RL3 - Rural Land 3
- RL2 - Rural Land 2
- RL1 - Rural Land 1
- R1 - Residential 1
- R2 - Residential 2
- R3 - Residential 3
- RO - Residential Office
- RO1 - Residential Office 1
- GC - General Commercial
- LD - Lebanon Downtown
- IND L - Industrial Light
- PBD - Professional Business
- Pattern Zoning - Additions
- Pattern Zone - Consultant Study



Map Printed
12/05/2024

Pattern Zone Overlay District Zoning Amendment

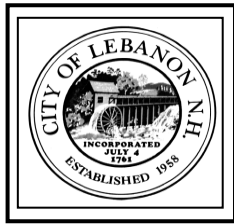
DRAFT



Map Printed
12/05/2024

Pattern Zone Overlay District Zoning Amendment

West Lebanon
Page 4 of 67



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Planning and Development Department Staff

RE: 2024-2025 Proposed Zoning Amendments for Council Approval

DATE: January 9, 2025

As a result of Council and Land Use Boards reviews of 2024-2025 Proposed Zoning Amendments, three amendments are being sent to the residents of Lebanon to be voted on at the March Municipal Election. The remaining 18 amendments will be sent to City Council for their adoption following a public hearing. The amendments are listed below:

Amendment #4 – To rezone the properties within the Centerra Planned Business Park from IND-L to CB, except for Tax Map/Lots 10-11-1200, 10-13, 10-11-1300, 10-11-1302, 10-11-3100, 10-11-3200, 10-11-3400, 10-11-3600, and 10-11-3800, which are proposed to be rezoned from IND-L to GC-1; to rezone the +/-15.72 acre Altaria Planned Unit Development from IND-L to GC-1; to rezone the +/-50.1 acre former Altaria Planned Business Park from IND-L to GC-1; and to rezone to GC-1 all properties currently zoned IND-L located to the east of Etna Road, and east and west of Labombard Road, excluding Tax Map/Lot 51-12, which is proposed to be rezoned entirely RL-3; and all properties currently zoned IND-L located to the east of Route 120 between Heater Road and I-89 Exit 18, excluding Tax Map/Lots 78-41, 78-42, and 78-43. The City Council may also consider rezoning to GC-1 all properties currently zoned IND-L located to the west of Etna Road. **(Zoning Map Amendment)**

Amendment #5 – To amend the GC-1 and CB District Tables of Uses to allow “industrial planned unit development” and “planned business park” by Conditional Use Permit. **(Zoning Ordinance Sections 305A, 306 and 508.2)**

Amendment #6 – To amend the Commercial PUD and Industrial PUD regulations relative to tract size and calculating permitted residential dwelling unit density, and to amend the Planned Business Park regulations relative to allowed uses and calculating permitted residential dwelling unit density. **(Zoning Ordinance Sections 501.4, 508.2, and 508.4)**

Amendment #7 – To ADD Section 614 (“Recovery Houses”) and to amend the IND-L, GC, CB, LD, R-O, MC, and MC-2 Districts to allow “recovery house” by Special Exception. **(Zoning Ordinance Sections 303.2, 305.2, 306.2, 307.2, 311.2, 315.2, 315A.2, and Appendix A, and ADD Section 614)**

Amendment #8 – To create a “Medical Center Two (MC-2)” zoning district. **(ADD Zoning Ordinance Section 315A)**

Amendment #9 – To rezone the property located at 31 Romano Circle (Tax Map/Lot 101-20) from R-2 to R-O. **(Zoning Map Amendment)**

Amendment #10 – To allow stairs and stairwells to project up to 2 ft. into minimum required yards. **(Zoning Ordinance Section 201)**

Amendment #11 – To clarify procedures for requesting a waiver of impact fees from the Planning Board. **(Zoning Ordinance Section 213)**

Amendment #12 – To amend the requirements for shared driveways and to allow off-site utility improvements by Conditional Use Permit. **(Zoning Ordinance Section 215)**

Amendment #13–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. **(Zoning Ordinance Section 507)**

Amendment #14–To amend the cottage development regulations by clarifying the minimum building site and off-street parking requirements. **(Zoning Ordinance Section 509 and the Table of Minimum Off-Street Parking Requirements)**

Amendment #15–To clarify that family day care homes and family group day care homes are allowed as an accessory use to any primary residential use. **(Zoning Ordinance Section 604 and Appendix A)**

Amendment #16–To permit the Planning Board to authorize alternative parking solutions for residential uses as required by state statute. **(Zoning Ordinance Section 607.1)**

Amendment #17–To clarify the minimum percentage of EVSE-installed, EV-ready, and EV-capable parking spaces for multi-family dwelling and non-residential uses. **(Zoning Ordinance Section 607.8)**

Amendment #18–To amend the sign regulations to allow freestanding digital signs on certain streets within the GC District with related changes to the sign illumination standards and the sign enforcement provisions. **(Zoning Ordinance Section 608.2, 608.3, 608.4, and Appendix A)**

Amendment #19–To 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 state statute. **(Zoning Ordinance Section 801.1, 802.5 and Appendix A)**

Amendment #20–To rezone the property located at 92 Riverside Drive (M/L 111-16) from RL-1 to GC. **(Zoning Map Amendment)**

Amendment #21–To rezone the property located at 67-69 Etna Road (M/L 26-2) from IND-Land RL-3 to GC-1. **(Zoning Map Amendment)**

Recommendation

As drafted, the proposed Council Amendments will not alter the zoning district designations or alter the Table of Uses or the Table of Area, Dimensions, and Coverage for a Residential or Rural Lands zoning districts within the City. As a result, no referendum vote is required for the proposed Council Amendments pursuant to Section 1000.4.A

Adoption of the proposed Council Amendments is recommended at this time in accordance with the procedures outlined in Section 1000.4.B as follows:

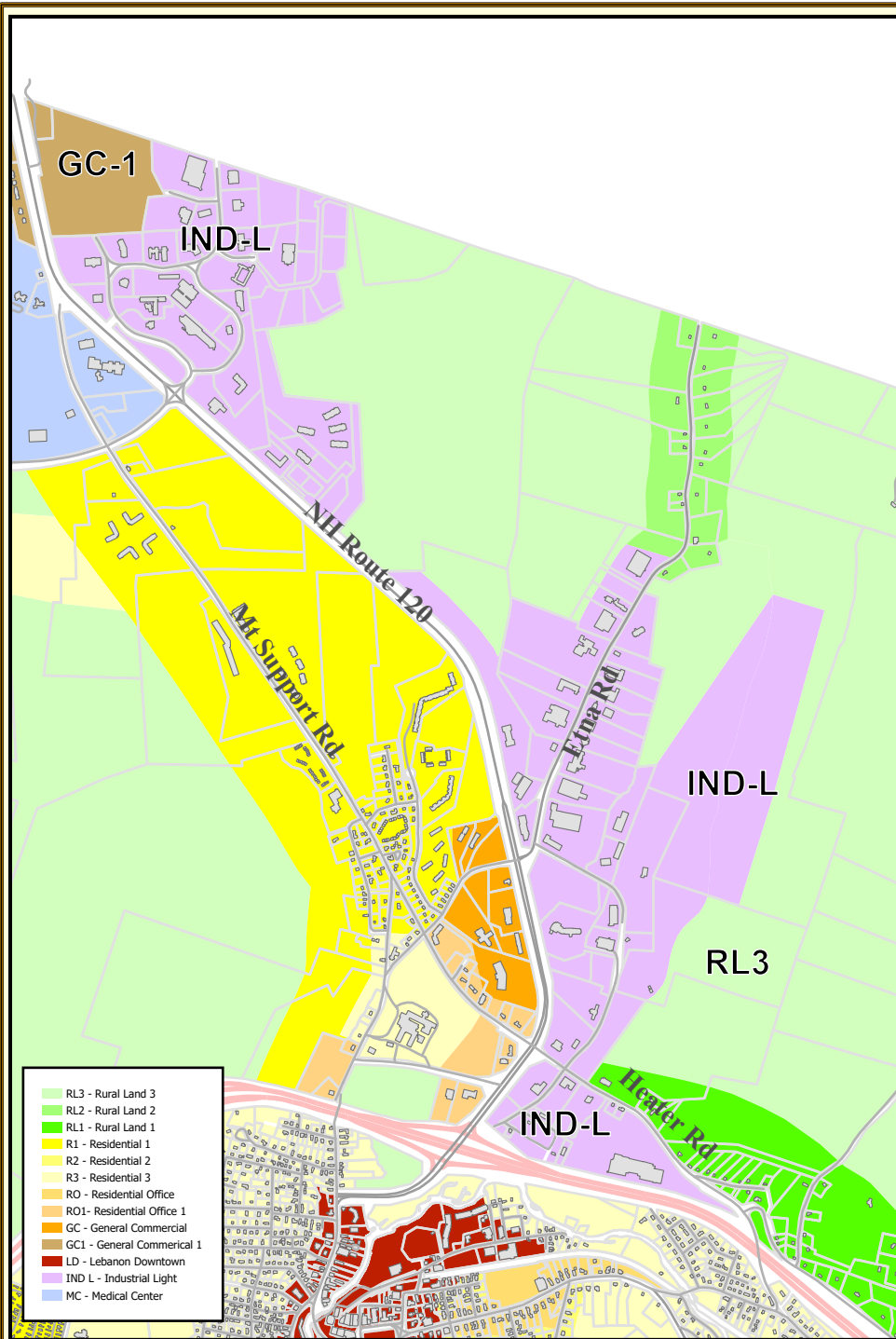
Article X, 1000.4 Action Upon Proposed Zoning Amendments.

Any proposed zoning amendment shall be acted upon and adopted or rejected as follows:

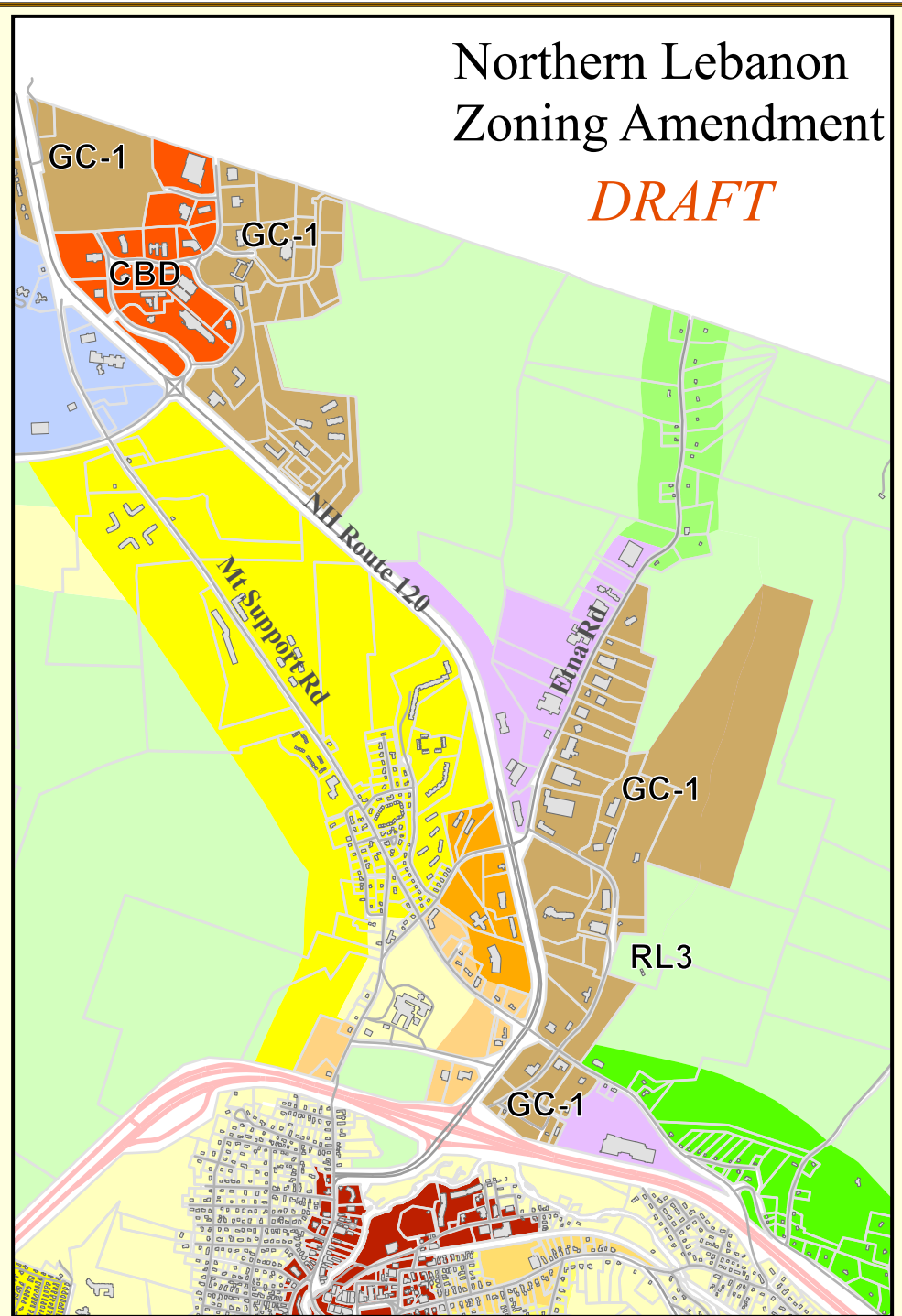
B. Action by the Council: The Council shall act on any proposed Zoning amendment not requiring a referendum vote in which case adoption of the Zoning Amendment shall require a majority vote of five members of the City Council: or alternatively, the Council may decide that such an amendment shall be submitted to the voters at the annual City election, even though such a referendum is not required.

Attachments

1. Map showing North 120 Study Rezoning Amendment
2. Amended General Commercial - 1 Use Table – Section 305A.
3. Amended Central Business District Use Table - Section 306
4. Amended Section 508.2 “General Requirement” and Section 508.4 “Sectors, Allowed Uses”
5. Amended Section 501.4(C) “PUD Tract Size”
6. Definition of “Recovery Houses” and New Section 614: Recovery Houses Text
7. Recovery Houses Use Tables
8. Recovery Houses Legal Option Letter
9. New Section 315A: Text Medical Center 2 District
10. Medical Center 2 Legal Opinion Letter
11. Map showing Lot 101-20 Rezoning Amendment (Romano Circle)
12. Combined Staff Technical Amendments for Items #10-19
13. Technical Amendments Legal Opinion Letter
14. Application for rezoning of 92 Riverside Drive - Owner Initiated Map Amendments
15. 92 Riverside Drive, North 120, and Romano Circle – Legal Option Letter
16. Application for rezoning of 67-69 Etna Road and Maps - Owner Initiated Map Amendments



EXISTING ZONING



PROPOSED ZONING

Map Printed
12/05/2024

305A General Commercial One District

305A.2 Table of Uses.

<u>Permitted Uses</u>	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
<u>Residential</u> 1. Multi-family dwelling (see Section 305A.4) <u>Commercial/Non-Residential</u> 2. Dwelling unit(s) above first floor 3. Essential service 4. Financial institution 5. Group day care facility per Section 604 6. Office 7. Personal service 8. Renewable energy system per Section 612 9. Bus Terminal 10. Health Club 11. Local Government Use 12. Outdoor Storage 13. Plumbing, electrical or carpentry shop 14. Publishing or Printing 15. Trucking Terminal 16. Warehouse 17. Equipment & Machinery Sales & Service 18. Outdoor Storage (less than 70%)	<u>Commercial/Non-Residential</u> 1. Alternative treatment center per Section 613 2. Drycleaning pick-up station 3. Educational facility, college/university 4. Inpatient rehabilitation facility 5. Light industry 6. Research laboratory 7. Restaurant , sandwich shop 8. Retail store 9. Outdoor storage (more than 70%) 10. Car Wash 11. Vehicular Sales <u>Planned Developments</u> 1. Commercial PUD per Section 501 2. Manufactured Housing PURD per Section 504 3. Cottage Development 4. Industrial PUD per Section 501 5. Planned Business Park per Section 508 <u>Special Exception</u> (see Section 801.3) 1. Care and Treatment of Animals

Section 306 Central Business District

306.2 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 305A.4) 3. Senior Housing Complex <u>Commercial/Non-Residential</u> 4. Amusement (indoor) 5. Community Center 6. Drycleaning Pickup Station 7. Financial Institution 8. Group Daycare Facility 9. Funeral Home 10. Health Club 11. Hotel 12. House of Worship 13. Laundromat 14. Library 15. Local Government Use 16. Membership Club 17. Motel 18. Museum 19. Office 20. Personal Service	<u>Commercial/Non-Residential</u> 1. Craftsman's Shop 2. Drive Through Facility 3. Educational Facility, college/university <u>Uses by Conditional Use Permit</u> (See section 302.4) <u>Commercial/Non-Residential</u> 1. Essential Service 2. Other uses per Section 306.4 3. Parking Facility 4. Publishing/Printing 5. Recreational Facility, indoor 6. Recreational Facility, outdoor <u>Planned Developments</u> 7. Commercial <u>or Industrial</u> PUD per Section 501 7-8. <u>Planned Business Park</u>

SECTION 508 PLANNED BUSINESS PARKS.

[...]

508.2 General Requirement. A **planned business park** is **allowed** as a Conditional Use in the Light Industrial District, General Commercial One District, Central Business District and the Industrial Rail Access District.

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; any use allowed in the Central Business (CB) District; 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;~~ any use allowed in the Central Business (CB) District.
- 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.

[...]

SECTION 501 PLANNED UNIT DEVELOPMENT (PUD).

[...]

501.4 Commercial or Industrial Planned Unit Developments.

C. Tract Size: All Commercial or Industrial PUDs shall have a minimum tract size of 10 acres.

<u>District</u>	<u>Minium Tract Size</u>
<u>Industrial</u>	<u>10 acres</u>
<u>CB</u>	<u>10 Acres</u>
<u>GC</u>	<u>10 Acres</u>
<u>GC-1</u>	<u>10 Acres</u>

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, tThe 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.

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
- R-3- Residential Three

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~~ New Hampshire Partnership of Recovery Residences (NHPRR) 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 Partnership of Recovery Residences (NHPRR) 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 Partnership of Recovery Residences (NHPRR)** 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.

Use Tables for Recovery Houses Council Items:

Section 303: Light Industrial District – IND-L

303.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
<u>Commercial/Non-Residential</u> 1. Airport 2. Bus terminal 3. Essential service 4. Equipment and machinery sales, rental and service 5. Group day care facility per Section 604 6. Health club 7. Light industry 8. Local government use 9. Outdoor storage per Section 303.4 (less than 20%) 10. Plumbing, electrical or carpentry shop 11. Publishing/printing 12. Research laboratory 13. Renewable energy system per Section 612 14. Retail product pickup 15. Retail showroom per Section 303.5 (less than 10%) 16. Trucking terminal 17. Warehouse	<u>Commercial/Non-Residential</u> 1. Care and treatment of animals 2. Contractor's yard 3. Educational facility, college/university 4. Educational facility, vocational school 5. Recovery Houses
	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
<u>Planned Developments</u> 18. Industrial PUD per Section 501 19. Planned business park per Section 508	<u>Commercial/Non-Residential</u> 1. Car wash 2. Inpatient rehabilitation facility 3. Office 4. Outdoor storage per Section 303.4 (more than 20%) 5. Retail showroom per Section 303.5 (between 10-20%) 6. Vehicular sales

305.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
<u>Residential</u> Dwelling unit(s) above first floor Multi-family dwelling (see Section 305.5)	<u>Commercial/Non-Residential</u> Alternative treatment center per Section 613 Bus terminal Educational facility, college/university Essential service Truck terminal Recovery Houses
<u>Commercial/Non-Residential</u> Amusements (indoor) - Car wash Community center Drive-in restaurant, refreshment stand Drive-through facility - Drycleaning pick-up station Financial institution - Funeral home Group day care facility per Section 604 Health club Hotel - House of worship - Laundromat Local government use Membership club Motel - Movie theater Office Personal service - Publishing/printing - Radio or TV studio Recreational facility, indoor Renewable energy system per Section 612 Restaurant, sandwich shop Retail product pickup Retail store Service station Vehicular repair Vehicular sales	<u>Uses by Conditional Use Permit</u> (see Section 302.4) <u>Commercial/Non-Residential</u> Care and treatment of animals Contractor's yard Craftsman's shop - Plumbing, electrical or carpentry shop Produce stand Recreational facility, outdoor Warehouse - Wholesale sales <u>Planned Developments</u> - Commercial PUD per Section 501

306.2 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 306.5) 3. Senior housing complex	<u>Commercial/Non-Residential</u> 1. Craftsman’s shop 2. Drive-through facility 3. Educational facility, college/university 4. Recovery Houses
<u>Commercial/Non-Residential</u> 4. Amusements (indoor) 5. Community center 6. Drycleaning pick-up station 7. Financial institution 8. Group day care facility per Section 604 9. Funeral home 10. Health club 11. Hotel 12. House of worship 13. Laundromat 14. Library 15. Local government use 16. Membership club 17. Motel 18. Museum 19. Office 20. Personal service 21. Radio or TV studio 22. Renewable energy system per Section 612 23. Restaurant, sandwich shop 24. Retail store 25. Social service center 26. Theater, concert hall, movie theater	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
	<u>Commercial/Non-Residential</u> 1. Essential service 2. Other uses per Section 306.4 3. Parking facility 4. Publishing/printing 5. Recreational facility, indoor 6. Recreational facility, outdoor <u>Planned Developments</u> 7. Commercial PUD per Section 501

307.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
	1. Recovery Houses
	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
<u>Residential</u> Multi-family dwelling (see Section 307.5) Dwelling unit(s) above or below the street level story	<u>Commercial/Non-Residential</u> Craftsman's shop, art studio - Dry cleaning pick up station Educational facility, college/university Essential service - Laundromat - Other uses per Section 307.4 Parking facility - Publishing/printing Recreational facility, indoor Recreational facility, outdoor
<u>Commercial/Non-Residential</u> Amusements (indoor) Community center Financial institution Group day care facility per Section 604 Health club Hotel - House of worship - Library Local government use Membership club - Museum Office Personal service - Radio or TV studio Renewable energy system per Section 612 Restaurant, sandwich shop Retail store Senior housing complex Social service center - Theater, concert hall, movie theater	

311.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
<u>Residential</u> One-family dwelling Two-family dwelling Multi-family dwelling (4 dwelling units or less) per Section 601 Accessory dwelling unit (ADU) per Section 610 <u>Commercial/Non-Residential</u> Community center - Conversion of a dwelling to office use per Section 601 Group day care facility per Section 604 Home business per Section 600 - House of worship Personal service Renewable energy system per Section 612 <u>Planned Developments</u> - PURD per Section 501	<u>Residential</u> Multi-family dwelling (5 dwelling units or more) per Section 601 Senior housing complex <u>Commercial/Non-Residential</u> - Cemetery Educational facility, college/university Educational facility, primary/secondary Essential service - Funeral home Group residence Health club Hospice - Library or museum conversion per Section 601 Lodging house Public safety facility Recreational facility, indoor Recreational facility, outdoor - Theater, concert hall, movie theater conversion per Section 601 Tourist home (or bed and breakfast facility) Recovery Houses
	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
	<u>Residential</u> Cottage development per Section 509

315.2 Table of Uses.

<u>Permitted Uses</u>	<u>Special Exception Uses</u> (see Section 801.3)
	1. Recovery Houses
	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
<u>Commercial/Non-Residential</u> Essential service Group day care facility per Section 604 Health club Hospice Medical center complex per Section 506 - Medical office building Medical research facility Renewable energy system per Section 612 Retail product pickup	<u>Commercial/Non-Residential</u> Drive-through facility Financial institution Inpatient rehabilitation facility Motel Hotel Office Parking facility Personal service Restaurant Retail store <u>Planned Developments</u> - Commercial PUD per Section 501

December 30, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766
nathan.reichert@lebanonnh.gov

RE: Proposed Zoning Amendment – Recovery Houses

Mr. Reichert:

In a letter dated November 14, 2024, my colleague Christine Johnston, Esq., provided a preliminary legal opinion concerning proposed amendments to the Lebanon Zoning Ordinance to regulate “Recovery Houses”. Following review and comment upon the proposed amendments by the ZBA, Planning Board, and Conservation Commission, I am now providing a final legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance.

The proposed amendments are as shown in a “Recovery House” document dated as of November 13, 2024, which provides a proposed definition for “Recovery House” for ZO Appendix A, a list of proposed Article III Table of Use amendments to allow recovery houses by Special Exception in various zoning districts, and a new Section 614 setting forth specific regulations for the establishment and operation of recovery houses.

ZO Section 1000.3(B) 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 these three questions is “yes”, and I discern no legal or administrative issues of concern with these proposed amendments.

Please do not hesitate to contact me with any questions or concerns about this opinion.

Sincerely,



Matthew C. Decker

ATTACHMENTS:
Medical Center

SECTION 315A MEDICAL CENTER TWO DISTRICT (MC-2).

315A.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.

315A.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. <u>Multi-family dwelling</u>

315A.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%

315A.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.

315A.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.

December 30, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766
nathan.reichert@lebanonnh.gov

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

Mr. Reichert:

In a letter dated November 13, 2024, my colleague Christine Johnston, Esq., provided a preliminary legal opinion concerning proposed amendments to the Lebanon Zoning Ordinance to create a new Medical Center Two (MC-2) zoning district. Following review and comment upon the proposed amendments by the ZBA, Planning Board, and Conservation Commission, I am now providing a final legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance.

The proposed amendments are as shown in a draft of a “Section 31X – Medical Center Two District (MC-2)” document dated as of November 13, 2024, and in a proposed zoning map amendment which shows four large lots in the vicinity of the Alice Peck Day Hospital which would be re-zoned from R-3 to MC-2. I understand that the proposed amendments would establish a new MC-2 zoning district to facilitate the continued development of the selected lots for inpatient and outpatient health care and other related and complimentary uses, including but not limited to housing for employees.

ZO Section 1000.3(B) 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 these three questions is “yes”, and I discern no legal or administrative issues of concern with these proposed amendments.

Attorney Johnston’s preliminary letter of November 13 provided a discussion of “spot zoning” and cautioned that zoning map amendments must comply with a “rational basis” level of Due Process analysis to be constitutional, meaning that map amendments must not be arbitrary and they must be in reasonable furtherance of some valid public land use regulatory purpose. I refer you to this prior discussion, which I will not repeat in full here.

The re-zoning of four contiguous lots comprising ~59 acres from R-3 to MC-2, with an apparent purpose of facilitating the continued development of a medical campus that serves the City’s

December 30, 2024

Page 2

needs, does appear to advance the City's comprehensive development plans and serve the public interest. At the time of the public hearing of this proposed amendment, I recommend that the City Council's deliberations should include additional specific discussion of (i) the ways in which this amendment fits into the City's development goals, and (ii) the community planning interest, public interest, and public benefit of this amendment.

Please do not hesitate to contact me with any questions or concerns about this opinion.

Sincerely,

A handwritten signature in blue ink that reads "Matthew C. Decker". The signature is written in a cursive, flowing style.

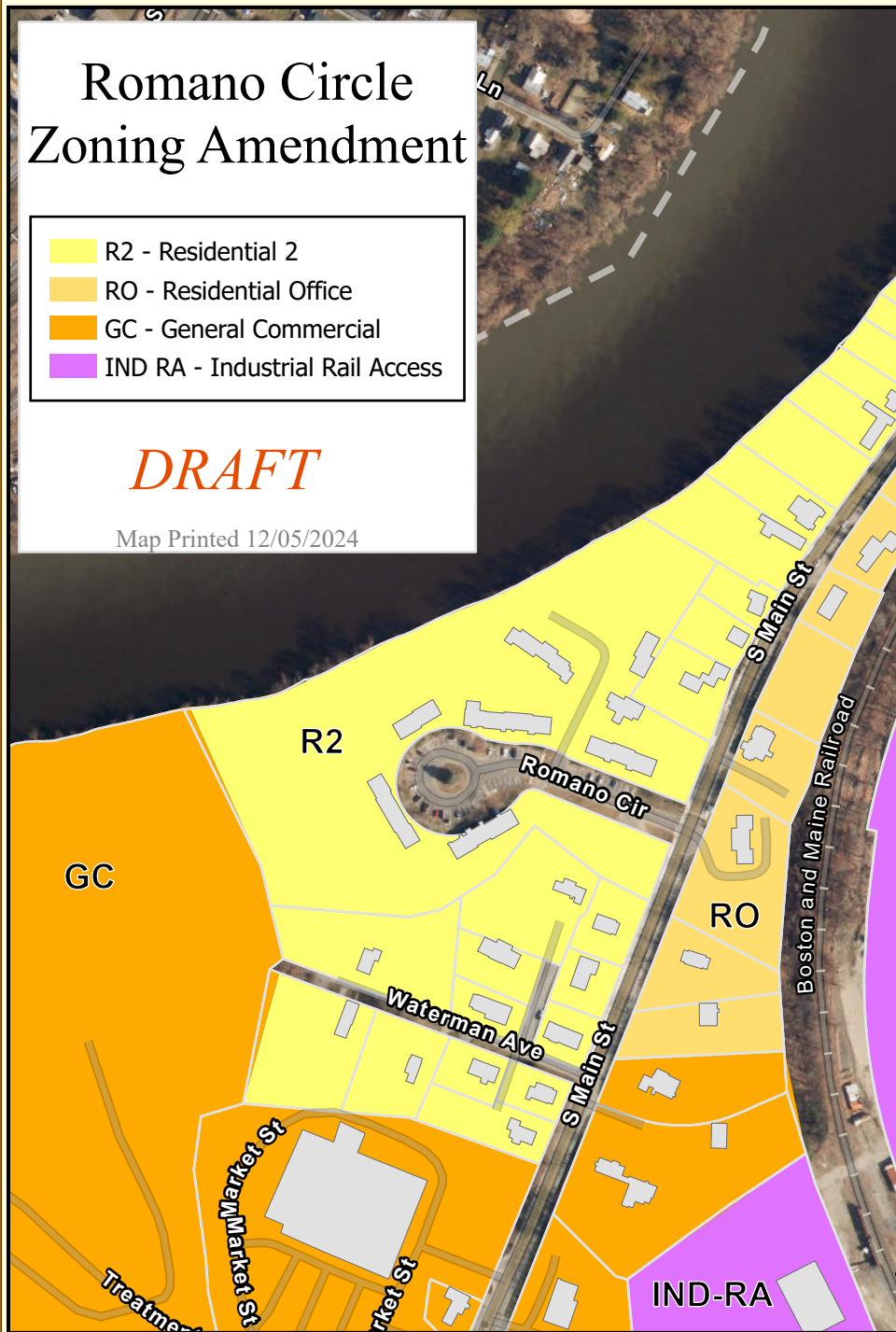
Matthew C. Decker

Romano Circle Zoning Amendment

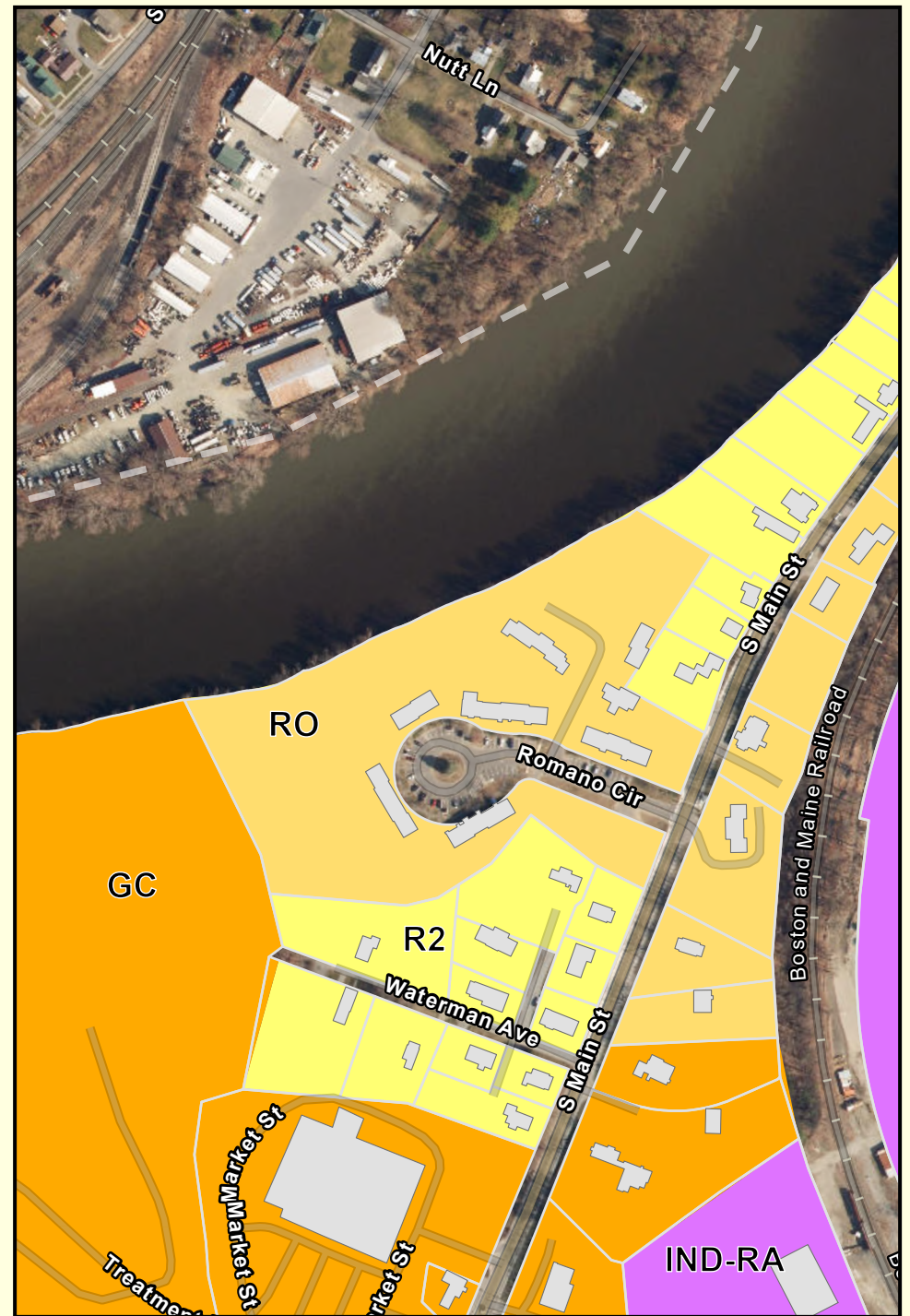
- R2 - Residential 2
- RO - Residential Office
- GC - General Commercial
- IND RA - Industrial Rail Access

DRAFT

Map Printed 12/05/2024



EXISTING ZONING



PROPOSED ZONING

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 "Nuisance Ordinance" has been tabled pending the completion of a proposed "Nuisance Ordinance" to be placed in City Code.

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 require a public hearing before the Planning Board but shall not require notice to abutters. Notice of the public hearing 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

Type of Development	For Use of Technique	For Workforce Housing	For Energy Efficient Design	For Renewable Energy Systems
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
<i>Dwelling</i> , Studio Apartment	<i>Dwelling units</i>	1.0

TYPE OF USE	UNITS OF MEASUREMENT	PARKING SPACES PER UNIT (I.E. RATIO)
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.

[...]

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					
<u>Maximum</u>	<u>GC & GC-1</u>	<u>CB</u>	<u>LD</u>	<u>IND-L</u>	<u>IND-RA</u>	<u>IND-H</u>
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:

- i. **Freestanding digital signs** are only allowed in the General Commercial (GC) on properties with frontage on the following streets:
 - Mechanic Street
 - Miracle Mile
 - Plainfield Road
 - South Main Street
- ii. No more than one (1) display per hour shall be allowed.
- iii. Displays shall contain static messages only.
- iv. **Freestanding digital signs** shall be programmed to automatically freeze in a single display in the event of a malfunction or computer/system error.
- v. 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.

- vi. The **digital sign** portion of a **freestanding digital sign** may be no larger than 50% of the **sign area** of the **freestanding digital sign**.
- vii. No **freestanding digital sign** may be located within one hundred (100) feet of a residential dwelling.
- viii. **Freestanding digital signs** shall operate with no more than 0.3 foot candles at the property line.
- ix. 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*.

December 30, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766
nathan.reichert@lebanonnh.gov

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

Mr. Reichert:

In a letter dated November 14, 2024, my colleague Christine Johnston, Esq., provided a preliminary legal opinion concerning miscellaneous minor amendments (staff technical amendments) to the Lebanon Zoning Ordinance. Following review and comment upon the proposed amendments by the ZBA, Planning Board, and Conservation Commission, I am now providing a final legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance.

The proposed amendments are those listed in the “Draft Miscellaneous Minor Amendments to the City of Lebanon Zoning Ordinance” redline document with a last revised date of November 11, 2024.

ZO Section 1000.3(B) 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 these three questions is “yes”, and I discern no legal or administrative issues of concern with these proposed amendments.

Please do not hesitate to contact me with any questions or concerns about this opinion.

Sincerely,



Matthew C. Decker



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

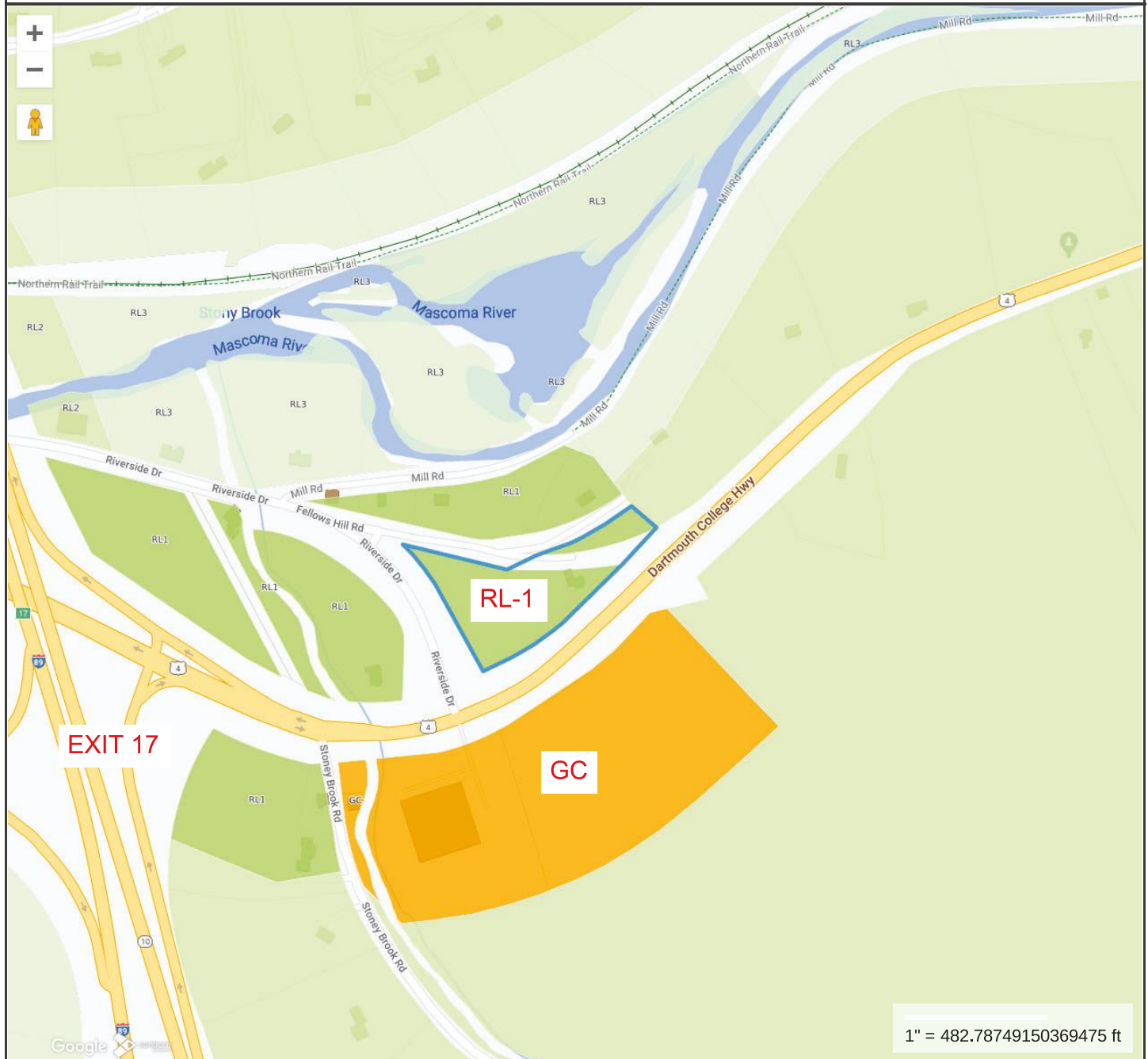
-GC

-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

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

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> Dwelling unit(s) above first floor Multi-family dwelling (see Section 305.5)	<u>Commercial/Non-Residential</u> Alternative treatment center per Section 613 Bus terminal Educational facility, college/university Essential service Truck terminal
<u>Commercial/Non-Residential</u> Amusements (indoor) - Car wash Community center Drive-in restaurant, refreshment stand Drive-through facility - Drycleaning pick-up station Financial institution - Funeral home Group day care facility per Section 604 Health club Hotel - House of worship - Laundromat Local government use Membership club Motel - Movie theater Office Personal service - Publishing/printing - Radio or TV studio Recreational facility, indoor	<u>Uses by Conditional Use Permit</u> (see Section 302.4)
	<u>Commercial/Non-Residential</u> Care and treatment of animals Contractor's yard Craftsman's shop - Plumbing, electrical or carpentry shop Produce stand Recreational facility, outdoor Warehouse - Wholesale sales <u>Planned Developments</u> - 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.

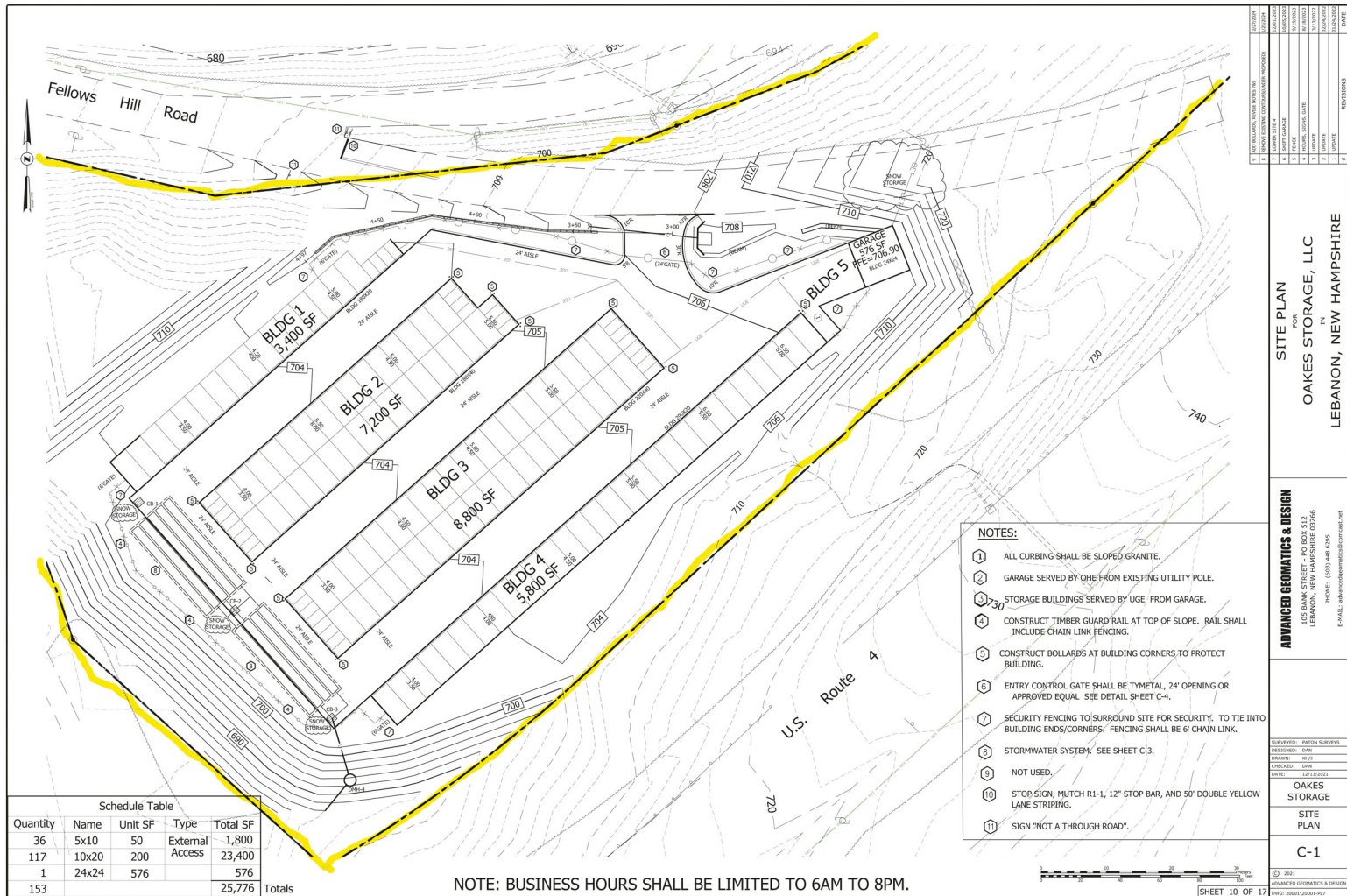
Minimum Lot Requirements					Maximum Limitations	
Area	Frontage	Front Yard	Side Yard	Rear Yard	Building Coverage	Height
50,000 square feet	150'	40'	20'	20'	30%	45' See Section 305.4

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.



Petition for Zoning Change to Lot 111-16, vicinity Exit 17

(92 Riverside Drive)

27 September 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 27Sep24

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

[illegible]

December 30, 2024

Nathan Reichert, Director of Planning & Development
City of Lebanon
51 S. Park Street
Lebanon, NH 03766
nathan.reichert@lebanonnh.gov

**RE: Proposed Zoning Amendment –
Various Map Amendments**

Mr. Reichert:

In a letter dated November 14, 2024, my colleague Christine Johnston, Esq., provided a preliminary legal opinion concerning three proposed amendments to the City's zoning map. Following review and comment upon the proposed amendments by the ZBA, Planning Board, and Conservation Commission, I am now providing a final legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance.

The proposed map amendments are:

1. Re-zone 92 Riverside Drive (Lot 111-16) from RL-1 to GC.
2. Re-zone 31 Romano Circle (Lot 101-20) from R-2 to R-O.
3. Re-zone a number of lots along the northern NH Route 120 corridor from IND-L to CBD and GC-1.
 - a. Note: In connection the re-zoning of lots along the NH Route 120 corridor, various textual amendments to the ZO are also proposed, including changes to the CBD and GC-1 tables of uses, to prevent existing lot uses from becoming non-conforming as a result of zoning district change.

ZO Section 1000.3(B) 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 these three questions is “yes”, and I discern no legal or administrative issues of concern with these proposed amendments.

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 is not 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. 92 Riverside Drive (Lot 111-16)

This proposed map amendment involves one relatively small parcel (2.94 acres) which the owner asks 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 from this lot on the south side of Route 4. The landowner's petition (a September 27, 2024 letter from Advanced Geomatics & Design) does not appear to identify any public good that would result from the change other than tax revenue. Rather, the stated justifications for the amendment seem to be 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 in RL-1) to eliminate the need to obtain a variance when making changes to the property.

Benefits which would be specific to the owner are not 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 also 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.

If the Council wishes to approve this map amendment, it must identify legitimate planning-focused reasons for the change. For example, 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 for this lot anymore? These kinds of questions

should be answered with reference to the future use map, master plan, topography, street configuration, traffic issues, etc.

If the Council is unable to identify a planning or public benefit justification, then this map amendment would likely constitute “spot zoning” and would not be legally proper.

B. 31 Romano Circle (Lot 101-20)

This proposed map amendment 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-2 zoning designation (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 R-O. The lots immediately surrounding this one on the west side of South Main Street are also R-2. Although this is one lot, it would not create an “island” of R-O because there are nine other R-O lots directly across the street.

Because the proposal is to re-zone only one parcel, it raises a concern about 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 is to remove barriers to the continued development of affordable housing on this single lot which has been a part of the neighborhood for many years. 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 proposed zoning changes to encourage housing development.

As a result, this map amendment appears to be permissible and would not constitute spot zoning. However, at the time of the public hearing of this proposed amendment, I recommend that the City Council’s deliberations should include additional specific discussion of (i) the ways in which this amendment fits in the City’s developmental goals, and (ii) the community planning interest, public interest, and public benefit of this amendment.

C. Northern Lebanon Route 120 Corridor 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 from IND-L to CBD and GC-1. 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. Accordingly, the community planning interest, public interest, and public benefit to this map amendment is clear, as it is driven by and in service to a comprehensive planning effort for that area. The public interest is further aided by the complementary textual amendments to the zoning ordinance which prevent the creation of new nonconforming lots.

December 30, 2024
Page 4

Please do not hesitate to contact me with any questions or concerns about this opinion.

Sincerely,

A handwritten signature in blue ink that reads "Matthew C. Decker". The signature is written in a cursive, flowing style.

Matthew C. Decker



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

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

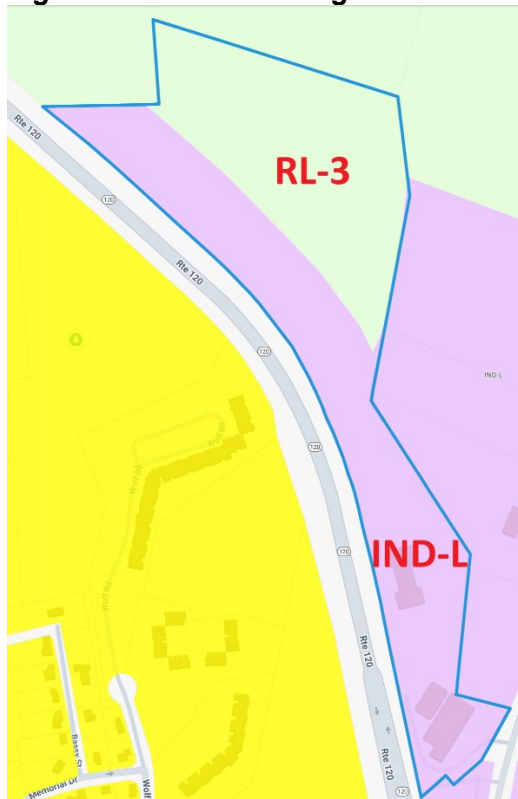
FROM: Planning and Development Department Staff

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

DATE: December 30, 2024

As set forth in the attached letter dated October 30, 2024, from Dan Nash of Advanced Geomatics & Design (AGD), AGD's client, ICV of NH, LLC (ICV), requests an amendment to the Zoning Map to rezone ICV's property at 67 Etna Road (Tax Map 26, Lot 2) from Industrial Light (IND-L) and Rural Lands Three (RL-3) to General Commercial-One (GC-1). Following the City Council's decision on November 20, 2024 to move the proposal through the process outlined in Section 1000 of the Zoning Ordinance, the amendment has been reviewed by the City's legal counsel, the Planning Board, and the Conservation Commission. The opinion of the City's legal counsel and excerpts of the Planning Board and Conservation Commission draft meeting minutes are attached.

Figure 1. Current Zoning of 67 Etna Road



As reflected in the attached excerpt of the draft November 25, 2024 Planning Board meeting minutes, the Board expressed support for rezoning all of the properties along the west side of Etna Road from IND-L to GC-1 (as opposed to rezoning only the subject property). Also, recognizing that 67 Etna Road is currently split-zoned IND-L and RL-3, the Board discussed rezoning only that portion of the property currently zoned IND-L to GC-1 and retaining the existing RL-3 zoning for the remainder of the property. In response, AGD suggested that if only the IND-L portion of the property were to be rezoned that the proposed GC-1 zoning extend 100 ft. into what is currently the RL-3 District portion of the property (as illustrated in the attached Zoning Amendment Sketch submitted by AGD following the Planning Board's discussion). It is staff's understanding that AGD's proposal to extend the requested GC-1 zoning into the RL-3 portion of the property is based on AGD's interpretation of the Section 204 of the Zoning Ordinance which provides as follows:

SECTION 204 LOTS IN TWO ZONING DISTRICTS.

Where a district boundary line divides a **lot of record** at the time such district boundary line is established, the regulations for either district of such **lot** may extend up to thirty feet (one hundred feet in rural lands districts) into the other district, provided the **lot** has **frontage** on a street in the district which is being extended, and provided that the **lot** has not been altered by subdivision, merger, or lot line adjustment subsequent to the establishment of the district boundary.

ATTACHMENTS

- Rezoning request letter dated October 30, 2024 from Dan Nash, of Advanced Geomatics, on behalf of ICV of NH, LLC, including attachments (5 pages)
- Planning Staff memo to the City Council dated November 12, 2024 (2 pages)
- Legal opinion from Matthew Decker, Esq., dated November 25, 2024 (2 pages)
- Excerpt of draft Planning Board meeting minutes from November 25, 2024 (3 pages)
- Zoning Amendment Sketch, submitted by Advanced Geomatics & Design on November 25, 2024 (1 page)
- Excerpt of draft Conservation Commission meeting minutes from December 12, 2024 (1 page)



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.

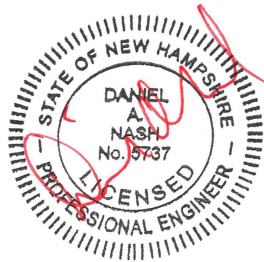
This parcel is in between the other parcels being considered for change to GC-1. It has the same characteristics as those parcels and could provide similar benefit to the city. Making this change fits with those properties. I believe this parcel was overlooked in the study process and should be included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



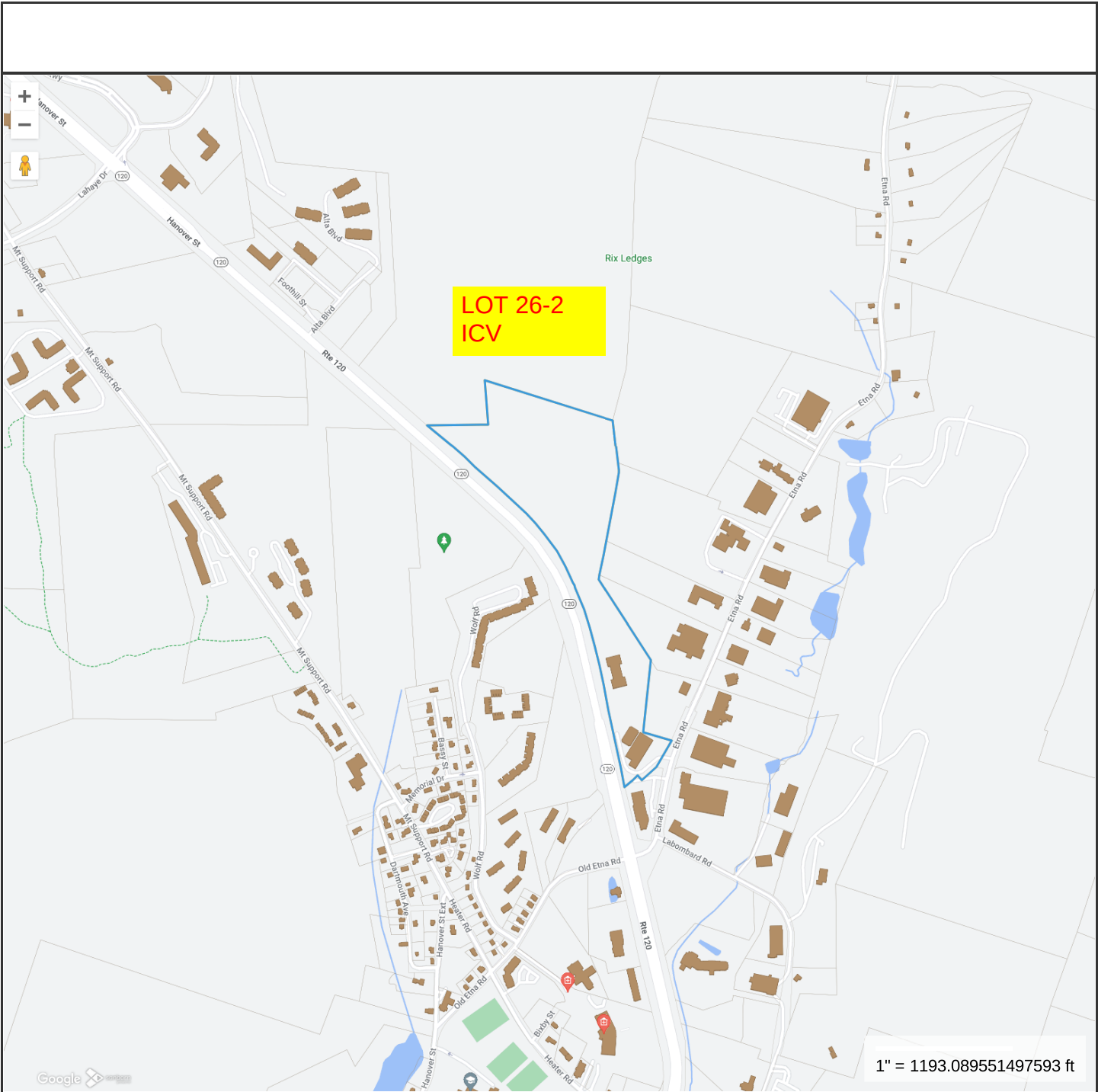
City Council
Request for Zoning Change
30Oct2024

Attachments:

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

CC: Robert Sprayregen, ICV

M:\2024_projects\24-016\zone_change_2024\letter_col_30Oct2024.docx



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.

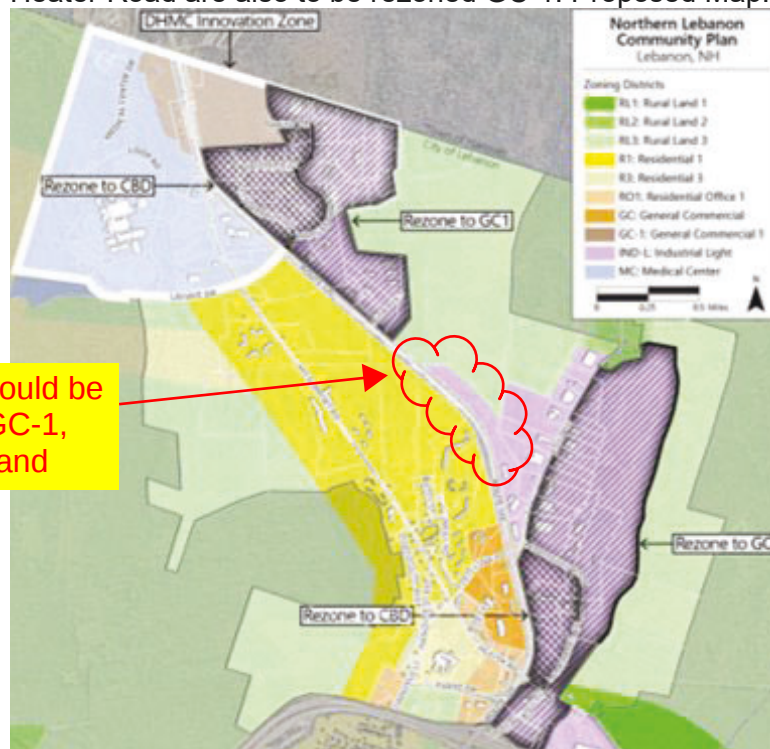
B. 120 – North Lebanon Study

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

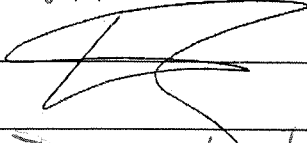
Members of the Lebanon City Council,

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 603-878-6543	10/30
Jennifer Labrie	Jennifer Labrie	8 Forster Street 603-252-5149	10/30
Brenna Labbie	Brenna Labbie	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

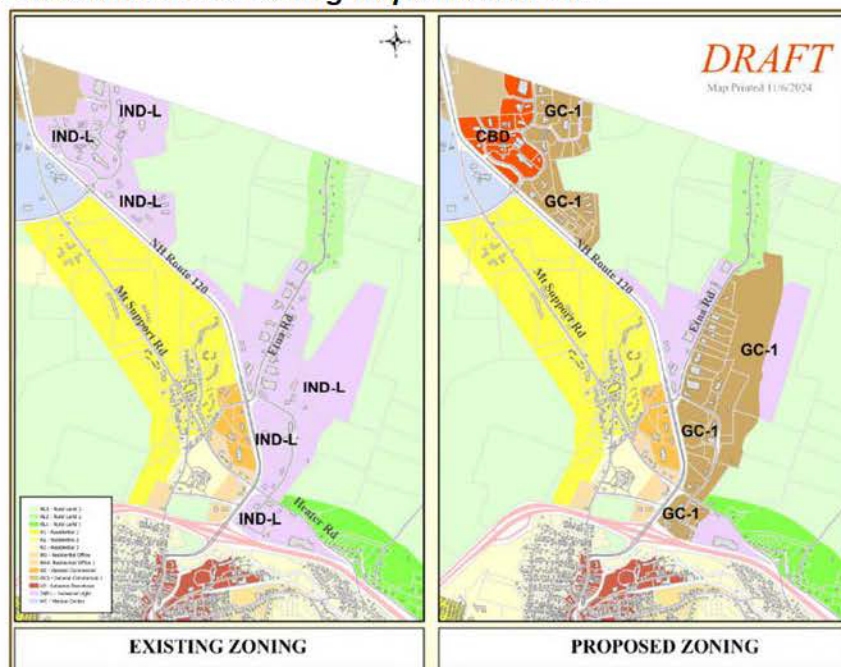
RE: Request by ICV of NH, LLC, to Rezone Tax Map 26, Lot 2 from IND-L to GC-1

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

November 25, 2024

Via E-mail Only

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

**RE: Proposed Zoning Amendment – Map Amendment
for 67-69 Etna Road, Tax map 26, Lot 2**

Mr. Reichert:

My firm (by Attorney Christine Johnston) previously provided a legal opinion letter dated as of November 14, 2024 concerning certain proposed zoning map amendments, including the Northern Lebanon Rezoning proposal. I am now providing you a preliminary legal opinion as required by Section 1000.3(B)(2) of the Lebanon Zoning Ordinance (“ZO”) concerning a follow-on map amendment proposal in relation to the Northern Lebanon Rezoning proposal – that 67-69 Etna Road, a/k/a Tax Map 26, Lot 2 (“Lot 26-2”), be rezoned from IND-L to GC-1.

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

- October 30, 2024 Letter from Advanced Geomatics & Design (“AGD”), Daniel A. Nash, PE, Principal, requesting to rezone parcel 26-2 on Etna Road from IND-L to GC-1, with the following attachments:
 - City of Lebanon GIS Map of Lot 26-2
 - Extract from October 23, 2024 “Staff Memorandum – Proposed Zoning Amendments”, Page 3 of 15, with annotations showing Lot 26-2 in relation to other proposed North Lebanon/Route 120 Corridor zoning map amendments
 - A citizen petition pursuant to ZO Section 1000.2(C) bearing the signatures of five purported Lebanon residents and requesting a change to the zoning ordinance¹

¹ Note: ZO Section 1000.2(C) provides that zoning amendments may be proposed “[b]y petition of any number of voters”. It is not abundantly clear from the face of the petition attached to AGD’s letter that it is intended to refer to the re-zoning of Lot 26-2. The heading of the petition refers to a “Zoning Change to LD Zone (Mechanic Street)” and references a letter to the City Council dated October 21, 2024 as the source of the requested zoning change. AGD’s cover letter by itself cannot be deemed the voter petition required by ZO Section 1000.2(C), because the letter is written “[o]n behalf of ICV of NH, LLC”, the owner of Lot 26-2, a corporation that is not a “voter” of Lebanon. To the extent there is doubt whether the proposed zoning amendment has been sufficiently petitioned, I note that the petition signatures are dated October 30, 2024 (the same date as AGD’s cover letter), the author of AGD’s letter, Mr. Nash, is also a signatory of the petition, and Mr. Nash may be presumed to be a voter of Lebanon. His attachment of the petition bearing his signature to his cover letter proposing the zoning amendment to Lot 26-2 supports a conclusion that Mr. Nash is the required “voter” who is petitioning this amendment.

November 25, 2024

Page 2

- November 13, 2024 Staff Memo to City Council re: ICV of NH, LLC Proposed Zoning Map Amendment
- November 20, 2024 Lebanon City Council Agenda Packet, Item 10.B
- November 20, 2024 Video of Lebanon City Council Meeting concerning Agenda Item 10.B

The ZO requires this legal review to address: (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 1000.3.B(2) is “yes” and I discern no legal or administrative issues of concern with AGD’s request.

AGD’s proposal is that Lot 26-9 should also be rezoned from IND-L to GC-1, to the extent that other IND-L zoned lots to the north and south along the east side of Route 120 are also under consideration for re-zoning from IND-L to GC-1 under the Northern Lebanon Rezoning proposal.

The Northern Lebanon Rezoning 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. Specific recommendations came from a Northern Lebanon Community Plan study (“NLCP”) to rezone this area to maximize development in line with the current and future needs of the neighborhood. Per the November 20 Staff Memo, I understand that Lot 26-2 was not included in the NLCP’s recommendations for re-zoning due to the prevalence of sensitive natural features on the lot and NLCP’s recommendation to explore further regulatory protection for the lot’s natural features. However, this does not mean that the City would not have the general authority to include this lot in the Northern Lebanon Rezoning plan, if it so chose.

With respect to the issue of spot zoning, I respectfully refer you to the full discussion provided by Attorney Johnston in her November 14 opinion letter. I see no spot zoning issue with AGD’s proposal, as it is requesting that Lot 26-2 be re-zoned along with other nearby lots and, as Mr. Nash asserted to the City Council, a public need for the change may be found (e.g. Mr. Nash explained that the rezoning of Lot 26-2 from IND-L to GC-1 would enable additional housing units to be developed on the lot, and Lebanon is in great need of additional housing).

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

Sincerely,



Matthew C. Decker

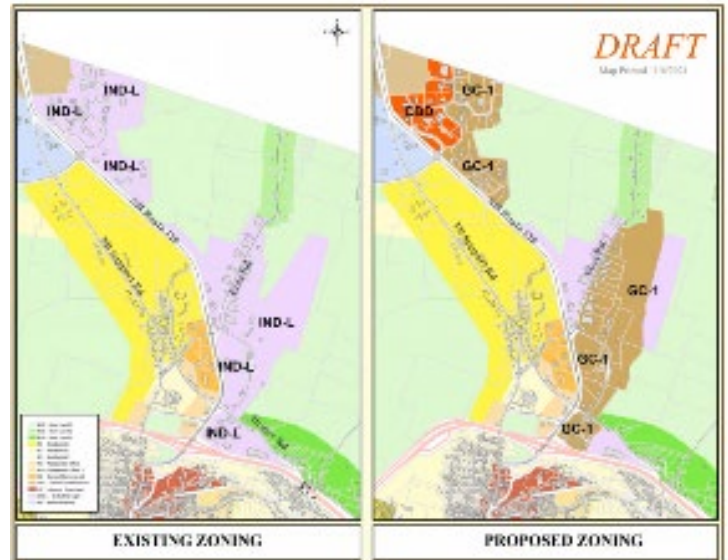
D. Review of Request for Zoning Map Amendment: ICV of NH, LLC - 67 Etna Road, Tax Map 26, Lot 2

Mr. Dan Nash was present on behalf of the applicant making the zoning amendment. Mr. Jay Campion also participated in the discussion.

Mr. Nash said the owner of the property has built a building with 75 units and was interested in building more buildings with residential units, but it has been limited by the regulations of an Industrial PUD that requires 25% of the calculated density (13 units per acre). He said the owner is asking that the percentage be increased or for the area to be rezoned GC1, like other areas in the vicinity and on the other side of Route 120.

The group discussed the concerns of the Conservation Commission about the wetlands and the wildlife corridor in that area. Ms. Romano noted that a wildlife crossing bridge or culvert has been planned to help wildlife cross Route 120. She said they would not want to change zoning that may negate the possibility of building that wildlife crossing. The group also discussed how the area includes residential, IND-L, and GC1 zones, and how expanding the GC1 zones would affect the general characteristics of the area. Chair Faunce noted that currently there is not a lot of property that is zoned IND-L in this area.

Mr. Corwin explained the density formula in relation to PUDs in Industrial-zoned districts. He explained that, if the rezoning proposed for the Centerra Planned Business Park and the Alteria PUD is approved, it calls into question how those developments can take advantage of the rezoning (based on their respective Planning Board approval conditions/requirements). He said the City wants to make sure that the approvals can be amended if the property owners want it. He said the Planning Board needs to be allowed to permit unlimited residential density, because without that there is no benefit to rezoning.



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.

The group discussed at length the pros and cons of applying the same zoning that is on one side of Route 120 to an area that is on the other side of the road, versus changing all of the area to zone GC1.

Mr. Kennelly noted the uses that would no longer be allowed if the whole area was zoned GC1:

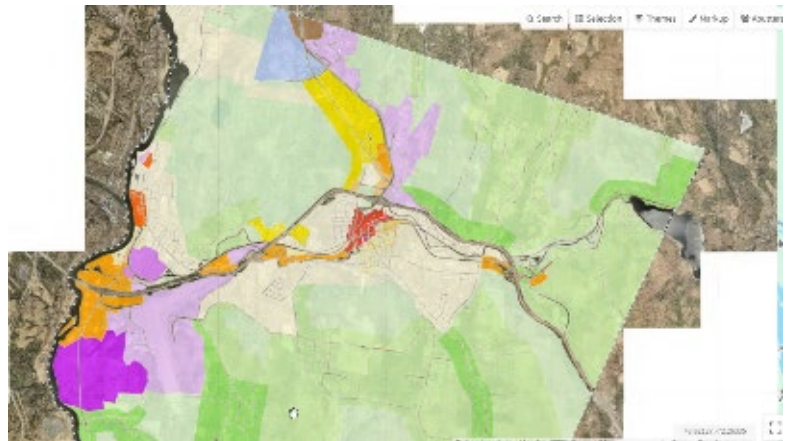
- Bus terminal
- Care and treatment of animals
- Car wash
- Contractor's yard
- Educational facility or vocational school
- Health club
- Industrial PG
- Local government usage

The group reviewed the current zone map and discussed the allowable uses for each (see image at right):

IND-L is light purple

GC is orange

GC-1 is brown



Mr. Kennelly noted the following uses are allowed in IND-L and/or GC and not in GC-1

- Funeral home
- Health club
- Hotel
- House of Worship
- Laundromat
- Membership clubs
- Motel
- Movie theater
- Local government usage
- Retail product pickup
- Retail showroom
- Vehicular sales
- Warehouse
- Publishing & printing

The group discussed the differences between the GC and GC-1 zones.

A MOTION was made by Andrew Faunce that the Lebanon Planning Board endorses the conversion of the remaining set of parcels and the study area on the west side of Route 120, currently zoned IND-L, to GC-1, subject to analysis by the City Council and their agents as to

1 *the remaining sufficiency of IND-L in the City and remedies to any nonconforming uses. The*
2 *Motion was seconded by Jeremy Rutter.*

3
4 **Roll Call Vote:**

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

5 *Voting Against – None*

6
7 **The MOTION was approved (7-0).*

8
9 *A MOTION was made by Andrew Faunce that the Lebanon Planning Board proposes that the*
10 *area south of Heater Road and east of Route 120, currently proposed to be rezoned GC-1, to*
11 *retain the zoning as IND-L. The Motion was seconded by Eric Stacy.*

12
13 **Roll Call Vote:**

Voting For – Ms. Romano, Ms. Appleton, Mr. Kennelly, Mr. Faunce, Mr. Rutter, Mr. Stacy, Mr. Ceglarski

14 *Voting Against – None*

15
16 **The MOTION was approved (7-0).*

17
18 Mr. Campion suggested that an updated map be created that shows the proposed rezoning to
19 prevent confusion.

20
21 **B. Review of Proposed Amendments to**
22 **Site Plan Review Regulations re:**
23 **Minor Site Plan Committee and**
24 **Conceptual Review**

25
26 Mr. Corwin said this amendment is to
27 establish the Planning Director as the Chair of
28 the Minor Site Plan Committee and to add the
29 Chief Building Official as a member. He said
30 he would take the role of Staff for the
31 committee.

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 ~~Committee~~ 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~~

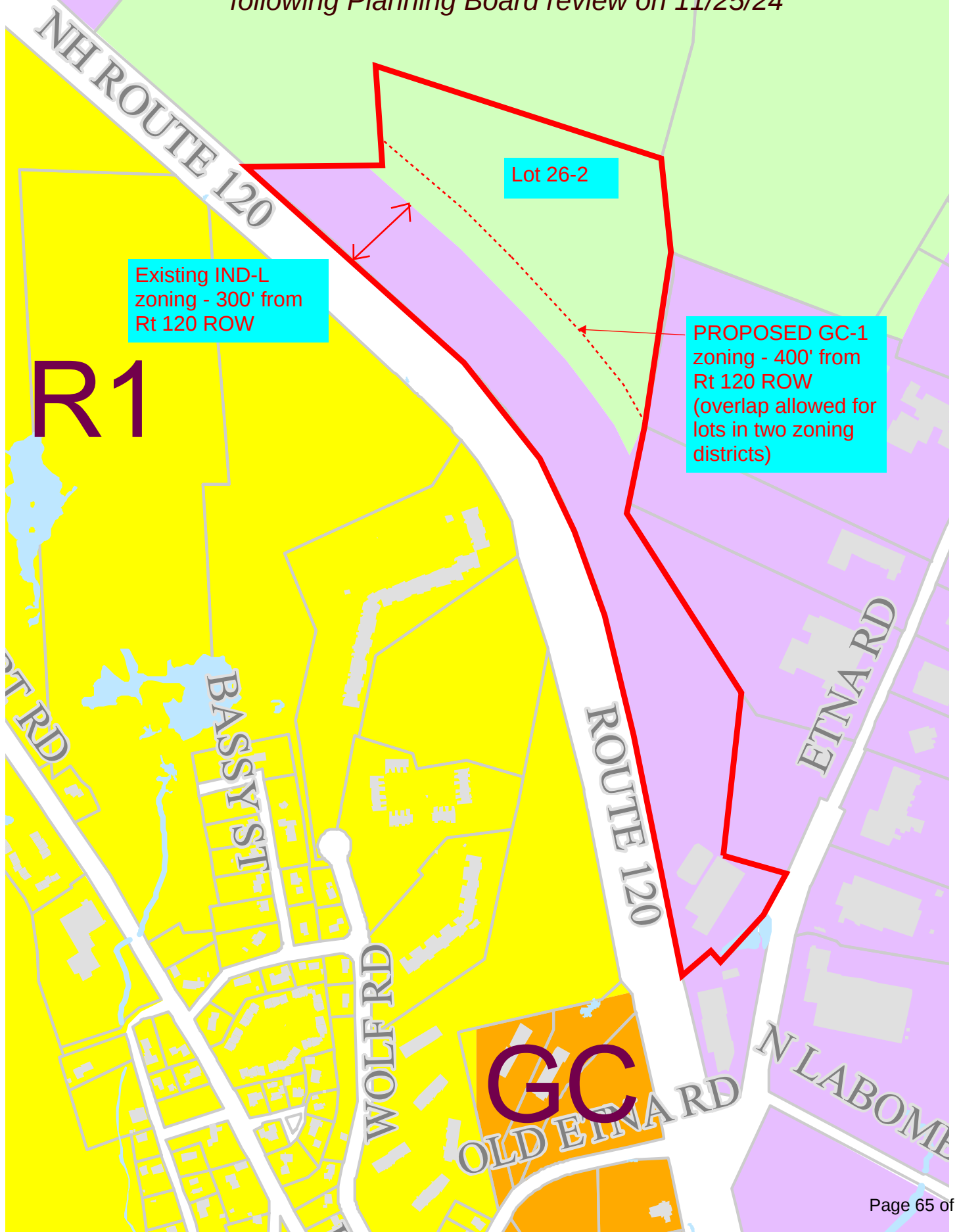
32
33
34
35 **Conceptual Review**

36 The group discussed the effectiveness of conceptual review and whether the conceptual review
37 period should be conducted earlier in the project review timeline. They also discussed whether the
38 conceptual review period should be lengthened (so the actual approval process can possibly be
39 shortened). Mr. Corwin suggested the conceptual review period might be a good time to inform
40 applicants what parts of their developments might undergo peer review.

41
42 Mr. Rutter asked if, during the conceptual review period, a cut-off point be enforced for applicants

Zoning Amendment Sketch

submitted by Advanced Geomatics & Design on 11/26/24
following Planning Board review on 11/25/24



1 * *The Vote on the MOTION was approved (5-0-1, with Mr. Oidtmann abstaining)*

2
3 **B. Review of Request for Zoning Map Amendment: ICV of NH, LLC – 67 Etna**
4 **Road, Tax Map 26, Lot 2**

5
6 Dan Nash presented his zoning amendment proposal.

7
8 Chair Riley explained that the Commission previously discussed how changes to a zone may
9 affect abutting zones. There is a nature preserve to the north of this proposed area. She suggested
10 that the Commission not recommend this item due to the increased intensity of abuse in the
11 adjacent natural area. Some Commissioners noted that there was not enough time to thoroughly
12 review this proposal in order to comment on it. The Commission agreed to defer comment on
13 this item.

14
15 *Ms. Hirai MOVED to make recommendations 1, 2, 3, and 4 to the City Council.*

16 *Seconded by Ms. Almy.*

17
18 * *The Vote on the MOTION was approved (6-0-0)*

19 **C. Status Update & Review - 2024 Con Com Goals – The Commission did not address**
20 *this item at this time.*

21
22 **6. COMMITTEE REPORTS – The Commission did not address this item at this time.**

23 **A. Biodiversity Group (Invasives)**

24 **B. Stewardship**

25 **- Ranger**

26 **- Trail Coordinator**

27 **- Monitors and Stewards**

28 **C. Wild about Lebanon**

29 **D. Amphibian Crossings**

30 **E. LUCT/Current Use**

31 **F. Other Subcommittees**

32
33 **7. OTHER BUSINESS – The Commission did not address this item at this time.**

34 **A. FYIs**

35 **B. Follow Up**

36 **C. Workshops and Educational Opportunities**

37
38 **8. FUTURE AGENDA ITEMS: – The Commission did not address this item at this time.**

39
40 **9. ADJOURNMENT:**

41 *The meeting ended at 9:30pm.*

42 Respectfully submitted,

43 Kristan Patenaude

44 Recording Secretary

Amendment #1 (Pattern Zones Overlay District):

The Lebanon City Council approves of and endorses the creation of a Pattern Zone Overlay District that will allow for greater density of residential units that fit the character of existing neighborhoods in the areas served by City sewer and water as shown in the Study Area Map. This Overlay District will reduce lot size and setback requirements, and allow one- and two-family homes by right, and multi-family structures up to 4 units by Special Exception. Provisions are proposed to maintain tree cover, the proper placement of garbage and fuel containers, and snow storage to maintain the positive attributes of the study area.

Amendment #2 (Recovery Housing):

The Lebanon City Council approves of and endorses the amendment of the Use Tables in the Residential One (R-1), Residential Two (R-2), and Residential Three (R-3) Districts to allow "Recovery Houses" as a use by Special Exception. The purpose of this amendment is to prevent the siting of unregulated recovery houses within the City, and to institute reasonable regulations for the establishment of certified Recovery Houses in accordance with RSA 153:10-d, and to protect the health, safety, and welfare of the residents of such facilities, and of the citizens of Lebanon.

Amendment #3 (Application of Medical Center Two (MC-2) District):

The Lebanon City Council approves of and endorses the rezoning of the Alice Peck Day Hospital campus from Residential Three (R-3) District to Medical Center Two (MC-2) District. This will include the rezonings of Tax Lot 90-59 and the majority of Tax Lot 76-4. The purpose of this amendment is to provide the property owner with enhanced flexibility for continued hospital operations, including the opportunity to provide needed staff housing.