

FINAL

**LEBANON PLANNING BOARD
COUNCIL CHAMBERS, CITY HALL
MONDAY, MAY 13, 2019
6:30 PM**

MEMBERS PRESENT: Keith Davio (Chair), Bruce Garland (Vice Chair), Gregory Schwarz, Sarah Welsch, Kathie Romano, Joan Monroe, Matthew Hall, Laurel Stavis, Karen Zook (Council Representative), and Matthew Cole (Alt.)

MEMBERS ABSENT: Jim Winny (Alt. Council Representative)

STAFF PRESENT: David Brooks (Planning and Development Director), Tim Corwin (Senior Planner), Christina Hall (City Engineer)

1. **CALL TO ORDER:** Chair Davio called the meeting to order at 6:30 PM.

- Mr. Cole was asked to sit in as a regular Board member until Ms. Monroe arrived.

2. **APPROVAL OF MINUTES:** April 8, 2019

Amendments: Page 1, line 25 and Page 4, line 5: Correct spelling of “Schwartz” to “Schwarz”

A MOTION was made by Mr. Hall to approve the April 8, 2019 Minutes as amended. Seconded by Mr. Schwarz.

**The MOTION passed unanimously (9-0).*

3. **NOTICE OF REGIONAL IMPACT:**

The following applications were received by the Planning Department on or before May 13, 2019.

- **SUSAN ACKERMAN & ERIK & ELSA ROTH, 284 & 287 POVERTY LANE (Tax Map 188, Lot 7 & Tax Map 188, Lot 31), zoned RL-1:** Request for Boundary Line Adjustment of lands located at 284 & 287 Poverty Lane. #PB2019-10-BLA
- **PATRICK CASALE & MICHAEL P. & KATHY A. MASON, TRUSTEES, 324 & 330 POVERTY LANE, (Tax Map 188, Lot 49 & Tax Map 188, Lot 1), zoned RL-2 & RL-3:** Request for a Boundary Line Adjustment of lands located at 324 & 330 Poverty Lane. #PB2019-11-BLA

Mr. Hall so MOVED that the applications (above) have no Regional Impact. Seconded by Ms. Stavis.

**The Vote on the MOTION pass unanimously (9-0).*

4. **COMPLETENESS REVIEW OF NEW APPLICATIONS:**

The Planning Department recommends that all of the new business applications (below) as submitted on the agenda are ready to be deemed complete enough to accept jurisdiction and commence review.

- A. **STONECLIFF ANIMAL CLINIC (applicant) & 227 MECHANIC ST PROPERTIES, LLC (property owner), 227 MECHANIC STREET (Tax Map 105, Lot 117), zoned GC:** Applicant requests a Conditional Use Permit per Section 305.2 of the Zoning Ordinance to expand the existing care and treatment of animals use into an adjacent space within the existing building. #PB2019-09-CUP
- B. **CITY OF LEBANON/NEAL MAHUTTE & SOPHIA OUHILAL/ARLENE MACLEOD-** Boundary Line Adjustment of lands for Sunset Rock Road/Hardy Hill Intersection-reconstruction. #PB2018-15-BLA

- C. DANA SEGUIN, 4 SOUTH PARK STREET (Tax Map 92, Lot 8), zoned PB:** Pursuant to Section 4.10 of the Site Plan Review Regulations, applicant requests an extension of the expiration date for an approved Site Plan (#PB015-02-SPA & #PB2018-14-SPA) for the reconstruction of an addition to the rear of the existing building for the creation of 4 additional dwelling units. **#PB2019-08-EXT**

- D. TWIN STATE SAND & GRAVEL CO, INC., C/O WARREN AMES, ELM STREET WEST (Tax Map 116, Lots 2 & 3), zoned IND-RA & R-3:** Request for an extension of time in order to satisfy conditions-precedent and to record the subdivision plan for the Iron Horse development, a phased 13-lot Planned Business Park and Major Subdivision, originally approved on September 24, 2012 (#PB2011-31-FMAJ). **#PB2019-06-EXT**

- E. TWIN STATE SAND & GRAVEL CO. INC., C/O WARREN AMES, ELM STREET WEST (Tax Map 116, Lots 2 & 3), zoned IND-RA & R-3:** Request for an extension of time in order to obtain building permits for the Iron Horse Industrial Planned Unit Development, originally approved on April 22, 2013 (#PB2011-32-SPR), which consists of the ten (10) Industrial Sector lots within the Iron Horse Planned Business Park. **#PB2019-07-EXT**

*Ms. Welsch **MOVED** that the applications listed above are deemed complete enough to accept jurisdiction and commence review. Seconded by Mr. Hall.*

The **MOTION was approved unanimously (9-0)*

Ms. Monroe arrived at 6:35 PM. Mr. Cole returned to the status of alternate Board member.

5. PUBLIC HEARINGS- Continued from 4/8/19

- A. XYZ DAIRY, LLC-** Amendment to previous Subdivision and Site Plan Approvals for the River Park phased development project located at 167-197 North Main Street, Tax Map 44, Lots 3,7, and 21-30, and Tax Map 58, Lots 27, and 89-99, West Lebanon, NH, in the R3, IND-L and CBD zones. **#PB2018-34-SPA**

Materials related to this application, including a memo from David Clem of XYZ Dairy, LLC, can be found in the May 13, 2019 Planning Board agenda packet on the City's website.

Mr. Clem first asked who the voting members of the Board were and Chair Davio stated it was everyone minus Mr. Cole, who returned to alternate member status when Ms. Monroe arrived.

Mr. Clem asked what the policy was regarding abutters in terms of recusal, noting that Ms. Romano is an abutter by being President of The Falls Homeowner's Association. Ms. Stavis said she would also be an abutter as Vice President of the Association. Chair Davio asked Ms. Romano if Mr. Clem's statement was true and she said she did not feel being called an abutter was totally accurate because her property does not actually border the land being developed, noting that they (she and Ms. Stavis) live across the street from the River Park Development. There was some discussion between Mr. Clem and Mr. Brooks as to who is deemed an abutter, with Mr. Brooks stating the term 'abutter' is mainly for the purpose of sending out notifications for a Public Hearing and if there were still questions, he would consult legal counsel.

Mr. Brooks said that notice was given back on January 11, 2019 noting that a letter was sent to the Homeowners at The Falls and was returned to sender, unable to forward, using the address provided to the City by the applicant or applicant's representatives. Mr. Clem stated he has no malice against either representative but this issue was raised by his attorney in terms of having a hearing that would not be challenged and had no problem continuing with the hearing as long as he reserved his rights.

Mr. Clem said he did not have any opening comments but would address issues raised in the Staff Comments.

Mr. Corwin said staff prepared a draft motion for the Board's review and noted that it incorporates all prior decisions relating to the River Park site plan approval in order to provide a single point of reference. The draft motion is substantially the same as what the Board originally approved in 2011 and in 2015 for the development of Lot #1. Staff is comfortable with this draft motion with a few exceptions: clarification is needed for the resetting of the development dates to know what they are going forward; and more information is needed about the proposed temporary parking lots. The draft motion also addresses traffic mitigation conditions and making sure that those are aligned with the appropriate phases; and the traffic mitigation amount (based on the applicant's share of what the impacts were estimated to be at the intersection, along with the estimated costs of improvements to those intersections and bringing those costs up to align with 2019 standards).

Chair Davio asked Mr. Clem what the temporary parking lot will look like and asked if there was a specific proposal for the design and construction of the temporary parking lot.

Mr. Clem said there was no specific proposal as explained in his letter, which provides for a gravel parking lot that did not have to meet permanent standards. He wanted to know what the City's standards are for temporary parking and noted he did not think this was the appropriate forum to get into engineering details for a temporary parking lot that could be addressed under the Page 6, Section 7 portion of Conditions. He requested the Planning Board to provide some type of language to communicate to the Staff a distinction between a permanent and a temporary parking facility.

Mr. Clem's response to Chair Davio's question regarding Section 7 under Conditions (page 7 of agenda packet) was that this is still a general condition adjusted to the new phasing schedule. Mr. Clem stated again that he felt it was not his position to come up with temporary parking engineering standards for the Board to approve and was attempting to get from the Board some differentiation between permanent parking standards and temporary parking (such as gravel, lighting, drainage). If there is a standard, he would meet it, if not, he did not feel one should be invented for the purpose of the River Park Development. He explained the processes he has been through to date and expressed his concern about making payments in advance without any reasonable guarantee of getting approval.

Mr. Clem described the project, presented the history of the concept for temporary parking, and his reasons for providing temporary parking until a parking garage could be built.

Mr. Brooks said there are no standards in the Site Plan Review Regulations that provide for temporary parking and the best way to resolve this issue would be for the Board to obtain a design from the applicant for what he wants to build, approve it, and that would become the clear design for which those parking spaces need to be built. Other than that, the City does not know if the temporary parking will be grass, gravel, or everything except the top layer of finished pavement, or if there will be curbing or drainage or lighting. Staff has none of that information.

The Board continued a lengthy discussion regarding what Mr. Clem's proposal should be for temporary parking standards and what happens if temporary becomes permanent parking because the parking garage cannot be built. Some Board members felt it was not un-reasonable for Mr. Clem to submit a proposal for temporary parking from his engineer for the Board to approve. The Board also discussed the definition of "temporary" parking.

Chair Davio reviewed Section 7 in the proposed Motion and felt that the wording was sufficient enough to move forward while a solution was developed. More discussion ensued about the wording in Sections 7.a, 7.b, and 7.c.

Mr. Brooks explained what could be done at the building permit stage and what could not be resolved at this stage, which was the issue of the duration of temporary parking - until we hear from the applicant as to what his anticipated schedule is. He also reviewed Article VI of the regulations with the Board.

Mr. Corwin said that Section 7 in the proposed Motion calls for two plans to be prepared for each temporary parking lot:

- Plan 1 is 7.a: addresses the temporary parking facility plan which will be agreed upon by the applicant and staff.
- Plan 2 is 7.b: addresses a permanent temporary parking lot that demonstrates compliance with Article VI of the Site Plan Regulations to ensure that, should the temporary parking lot become permanent and the rest of the development is not completed, a parking garage will be constructed with the cost secured by a Performance Security (under 7.c).

Mr. Clem questioned if, in the event of a default, he would be posting a security bond, or letter of credit, that the City would use to step in and do the work itself, even though this is a private contract between a landowner and a prospective tenant. Mr. Corwin said this was the idea in order to avoid a permanent temporary parking facility. Mr. Clem felt there are numerous ways to avoid a temporary parking facility from becoming permanent without assessing another layer of assessments, in advance, by posting bonds that the City could control.

Chair Davio asked about the security bond. Mr. Brooks said that if the project is completed the way that Mr. Clem is proposing, the temporary parking will only last until Lot #3 in that phase is completed. The idea of restricting subsequent building permits or CO's is an option, but if the economy or something else happens to prevent the parking garage being built, the applicant would not be pulling those permits anyway and whatever leverage the City would have had is gone. If the Board is concerned about something being built for an extended period of time, the strongest way to be able to address this issue is to have a bond that will pay for that if it becomes necessary.

Mr. Clem objected to the idea of the City being in the business of requiring developers to post bonds for private buildings, as opposed to bonds for public infrastructure. He said there is nothing in the City's ordinances that requires a developer to post a bond for a building unit and if a builder starts a project and it defaults, it's between the builder, the bank and the owner. He said the appropriate way to deal with this is through Conditions, Occupancy Permits or Building Permits. Mr. Brooks made it clear that the City does take Performance Securities for private properties and private improvements. Further discussion took place regarding the differences and uses for Performance Securities and bonds and how they might be used in the event the developer did not complete a project.

Mr. Clem discussed his viewpoints on the traffic mitigation and is not willing to change the amounts or timing of payments until traffic produced by River Park is actually having an impact. He also objected to paying a percentage (22%) of the costs versus the \$200K that was originally proposed. Chair Davio said he did not understand why the number needs to change at this point because the Board still has to honor what point in time these conditions were put in place.

Ms. Welsch summarized what the Board was to be looking at during this meeting as follows:

- Sequence of the project phasing.
- Increase the number of residential dwellings in Phase I.A from 80 to 125.
- Adjust the location of the proposed sewer line from Crafts Ave. extension across Lot #2.
- Allow the construction of a temporary parking lot on Lot #3 as part of proposed Phase I.A.

Ms. Stavis said she did not understand the complexities and differences of opinions between Mr. Clem and Planning Staff to make an informed decision regarding traffic mitigation. Mr. Brooks said that the Planning Board, in 2011, took the applicant's percentage of traffic (22%) and applied that 22% to the

estimated cost of the improvements specified for the intersection to accommodate the project (estimated by Public Works at \$1million plus) and arrived at the \$274K. This applied to all three intersections. His interpretation of this was it was clearly meant to be a percentage and while it was based on the percentage of traffic that same 22% was used to develop a percentage of the cost of the project. For example: if it turns out that the project costs \$2.5 million, then the applicant, paying \$274K, is going to be paying only 10-11% of the cost of the project, so it was Staff's opinion to maintain the percentage rather than the fixed dollar amount. He understands Mr. Clem's view because it has the potential to save him a lot money, but will not do much for the rest of the taxpayers who would foot the rest of the bill.

Ms. Stavis asked Mr. Clem about his opening statement regarding the members of The Fall's Homeowner's Association Board of Directors, noting she felt uneasy about expressing comments or views on this matter given what he brought up and what was read from the Statute. She wanted to clear this up with the Chair before she personally does anything to express an opinion or take any vote that may not be appropriate. She said she, and Ms. Romano, never received notifications and requested, even if they are recused, that the notifications be properly addressed in the future. Chair Davio said this point will be brought up at the next Planning Board Work Session.

Chair Davio Moved that this hearing be continued to the May 28, 2019, 6:30 PM, in Council Chambers. Seconded by Ms. Welsch.

****The Motion was approved unanimously (9-0).***

6. PUBLIC HEARINGS- New

- A. STONECLIFF ANIMAL CLINIC (applicant) & 227 MECHANIC ST PROPERTIES, LLC (property owner), 227 MECHANIC STREET (Tax Map 105, Lot 117), zoned GC:** Applicant requests a Conditional Use Permit per Section 305.2 of the Zoning Ordinance to expand the "existing care and treatment of animals" use into an adjacent space within the existing building.

Mr. Hall, Mr. Cole and Ms. Stavis were recused.

Mr. Brian Clews (Project Manager, O'Hara & Gerke Inc.) and Mr. Dan Kelly (Stonecliff Animal Clinic) represented the above request.

Mr. Kelly gave a brief update on what this project would entail as presented in the Planning Board agenda packet for May 13, 2019.

Mr. Corwin explained the changes and the process of granting a Conditional Use Permit, noting that there is enhanced performance under Section 302.4. D. of the Zoning Ordinance that the Planning Board has to determine that the application meets in order to grant the Conditional Use Permit. What the Board needs to do in this case is to recite the Findings of Facts and Conclusions of Law.

Board Comments:

The Board discussed grandfathering; overnight boarding; the impact that increased water/sewer would have on the City; concerns regarding animal feces polluting the River; why this project did not go to the Conservation Commission and/or the local Mascoma River Commission as per State RSA dealing with rivers for their review; and the possibility of the river flooding buildings downstream and causing pollution downstream.

Staff Comments:

- The parking requirement for the "care and treatment of animals" use is less than the requirement for retail space, so there should be no need for additional parking on the property to accommodate the proposed use and no additional parking spaces are required to meet the minimum requirements of §607 of the Zoning Ordinance.

- Based on the materials submitted, the proposal appears to be consistent with the applicable criteria set forth in §302.4.D.
- If the Board moves to approve the application, staff recommends that the following condition of the 2014 Special Exception approval be incorporated into the Conditional Use Permit approval: "Animals will not be housed overnight and no overnight boarding services will be provided at the facility."

Chair Davio opened the Public Hearing. Hearing no comments from the public the hearing was closed.

MOTION TO APPROVE THE APPLICATION:

Date: May 13, 2019

***Vice-Chair Bruce Garland* moved that the Lebanon Planning Board *APPROVE* the application of **STONECLIFF ANIMAL CLINIC (applicant) & 227 MECHANIC ST PROPERTIES, LLC (property owner)** for a Conditional Use Permit per Section 305.2 of the Zoning Ordinance to expand the existing care and treatment of animals use at 227 MECHANIC STREET (Tax Map 105, Lot 117), zoned GC, into an adjacent space within the building occupied by the existing care and treatment of animals use (currently, the Stonecliff Animal Clinic), #PB2019-09-CUP, including any and all submissions and testimony provided for and during the public hearing:**

I. FINDINGS OF FACT

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

- 1. The subject property is a 4.7-acre parcel located in the General Commercial (GC) zoning district. The property is currently developed with multiple buildings for the Stonecliff Animal Clinic, retail, restaurant, office, car wash, and self-storage uses along with accessory improvements.**
- 2. In 2014, the applicant was granted a Special Exception from the Zoning Board of Adjustment pursuant to §305.2 of the Zoning Ordinance to allow a “care and treatment of animals” use (veterinary services) at the subject property. The Stonecliff Animal Clinic currently occupies one of the multi-tenant buildings located on the subject property.**
- 3. In January 2018, the Zoning Ordinance was amended to adopt “Enhanced Performance Standards” for certain uses in the non-residential zoning districts. “Care and treatment of animals” in the GC District was among the uses formerly allowed by Special Exception from the Zoning Board and now allowed instead by Conditional Use Permit from the Planning Board.**
- 4. The applicant is seeking a Conditional Use Permit pursuant to Section 305.2 of the Zoning Ordinance to expand the “existing care and treatment of animals” use (veterinary services) within the building it already occupies. The Stonecliff Animal Clinic will expand into an adjacent space, which was last occupied by a retail business.**
- 5. The expansion is interior to the building only; no site changes are proposed.**
- 6. The “care and treatment of animals” is defined in Appendix A of the Zoning Ordinance as including “[a] veterinary establishment, riding school or kennels,” and is allowed in the GC District by Conditional Use Permit pursuant to §305.2.**

7. Per §302.4.B of the Zoning Ordinance, the Planning Board may grant a Conditional Use Permit if it finds that the proposal meets the Enhanced Performance Standards set forth in §302.4.D.
8. Although the existing animal clinic use received Special Exception approval, in order to expand the use into portions of the building not currently occupied by the clinic, a Conditional Use Permit is required (formerly a new Special Exception would have been required for the proposed expansion).

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Planning Board concludes the following with respect to the Enhanced Performance Standards set forth in §302.4.D of the Zoning Ordinance:

1. The site IS suitable for the proposal. (§302.4.D.1)
2. The external impacts of the proposed use on abutting properties and the neighborhood IS commensurate with the impacts of adjacent existing uses or other uses permitted in the zoning district. (§302.4.D.2)
3. The location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use DOES NOT have an adverse effect on the surrounding environment and DOES NOT discourage the appropriate and orderly development and use of land and buildings in the neighborhood. (§302.4.D.2)
4. The remaining requirements of §302.4.D.2 are not applicable.
5. §302.4.D.3 is not applicable.
6. §302.4.D.4 is not applicable.
7. §302.4.D.5 is not applicable.

III. DECISION

Now therefore be it resolved, the Planning Board, on this 13th day of May, 2019, hereby GRANTS the request of Stonecliff Animal Clinic (Applicant) & 227 Mechanic St Properties, LLC (Property Owner) for a Conditional Use Permit per Article III, §302.4 and §305.2 of the Zoning Ordinance to expand the existing care and treatment of animals use at 227 Mechanic Street (Tax Map 105, Lot 117), zoned GC, into an adjacent space within the building occupied by the existing care and treatment of animals use (currently, the Stonecliff Animal Clinic), #PB2019-09-CUP, as set forth above and per testimony, plans, and materials submitted, and per the following condition:

1. Animals will not be housed overnight and no overnight boarding services will be provided at the facility.

The MOTION was seconded by Joan Monroe.

**The MOTION was approved (5-1). Mr. Hall, Mr. Cole, and Ms. Stavis recused themselves.*

Mr. Hall, Mr. Cole, and Ms. Stavis returned as regular members.

**B. CITY OF LEBANON/NEAL MAHUTTE & SOPHIA OUHILAL/ARLENE MACLEOD-
Boundary Line Adjustment of lands for Sunset Rock Road/Hardy Hill Intersection-
reconstruction. #PB2018-15-BLA**

Mr. Brooks presented a brief history of this project noting that the proposed boundary line adjustment relates to a public highway intersection that has already been relocated. As a result of the annexations the properties, as presented in the agenda packet, would be affected. What the Board would be doing is just approving a road layout so that the City Council can then approve it with a simple majority.

Chair Davio opened the Public Hearing. The following came before the Board to speak:

1. *Mary Davidson* had concerns and disagreed that the road (Sunset Rock Road) is safer. There is a lot of traffic and speed is also an issue.
2. *Lawrence MacLeod* also noted that Sunset Rock Road is no safer and stated his opinions.

Hearing no further comments from the public, the Public Hearing was closed.

MOTION TO APPROVE THE APPLICATION:

Date: May 13, 2019

Vice-Chair Bruce Garland **MOVED** that the Lebanon Planning Board **APPROVE** the application of **CITY OF LEBANON/NEAL MAHUTTE & SOPHIA OUHILAL/ARLENE MACLEOD** for a **Boundary Line Adjustment** of lands at **15 Sunset Rock Road, Tax Map 52, Lot 12, and 91 Hardy Hill Road, Tax Map 80, Lot 20, and the City's Sunset Rock Road right-of-way, located in Lebanon, NH in the RL-2 zone, #PB2018-15-BLA, as shown on a plan titled "Public Highway Relocation Plan for Neal G. Mahutte & Sophia G. Ouhilal, Arlene E. MacLeod, and City of Lebanon", prepared by Pathways Consulting, LLC, dated June 24, 2016, last revised June 21, 2018, Proj. No. 11292-01, including any and all submissions and testimony provided for and during the public hearing. The Planning Board notes the following:**

1. **The application was noticed as a boundary line adjustment; however, it is not technically a boundary line adjustment because the former triangular area between the two legs of Sunset Rock Road was never legally a separate lot, notwithstanding the City's tax records.**
2. **The subject plan is approved, but the sole purpose and effect of this action is to approve the relocation of the street for purposes of RSA 674:40.**

The MOTION was seconded by Mr. Hall.

**The MOTION was approved unanimously (9-0).*

AUTHORIZATION FOR PLAT SIGNING:

Date: May 13, 2019

Vice-Chair Bruce Garland **MOVED** that the Lebanon Planning Board authorizes the Chair to sign, if necessary, the plat for **CITY OF LEBANON/NEAL MAHUTTE & SOPHIA OUHILAL/ARLENE MACLEOD, #PB2018-15-BLA.**

The MOTION was seconded by Mr. Hall.

**The MOTION was approved unanimously (9-0).*

- C. **DANA SEGUIN, 4 SOUTH PARK STREET (Tax Map 92, Lot 8), zoned PB:** Pursuant to Section 4.10 of the Site Plan Review Regulations, applicant requests an extension of the expiration date for an approved Site Plan (#PB015-02-SPA & #PB2018-14-SPA) for the

reconstruction of an addition to the rear of the existing building for the creation of 4 additional dwelling units. **#PB2019-08-EXT**

Mr. Dana Sequin (Owner/Developer) came before the Board representing the above request. He presented the Board with a history of the 4 South Park Street development (the full application overview can be found in the agenda packet). The applicant said he completed the work for the 5 units located in the main house but due to cost constraints, he was unable to complete Phase II, which is for additional apartments. He spent the better part of last year trying to get a decent proposal from a contractor to come in and complete Phase II, but was unable to get the costs down enough to do the project, so he abandoned the idea to get a building permit by March/April of 2019. He is now asking for one more extension to try to get the costs down and is hoping that with construction costs and financing stabilizing, he will be able to complete the project.

Staff Comments:

Mr. Corwin informed the Board about Section 4.10.A and Section 4.10.C of the Site Plan Review Regulations and explained the City's legal counsel determination pursuant to Section 4.10.C of the Site Plan Regulations. (Complete details can be found in the May 13, 2019 agenda packet under item 6C.)

Chair Davio asked Mr. Sequin what he would try to do differently to make sure the project is completed within the next two years so he does not have to ask for another extension. Mr. Sequin said he certainly hopes the project would be completed, and while circumstances may come up again, it is his intent to complete Phase II of the project.

Chair Davio opened the Public Hearing. Hearing no comments from the public, the Public Portion of the hearing was closed.

MOTION TO APPROVE THE APPLICATION:

Date: May 13, 2019

Mr. Hall *MOVED* that the Lebanon Planning Board APPROVE the application of DANA SEGUIN for an extension of the expiration date of an approved Site Plan (#PB2015-02-SPA & #PB2018-14-SPA) for the reconstruction of an addition to the rear of the existing building for the creation of 4 additional dwelling units, located at 4 South Park Street, Tax Map 92, Lot 8, in the PB zone, #PB2019-08-EXT, as requested in a letter prepared by Dana Sequin, dated March 29, 2019, including any and all submissions and testimony provided for and during the public hearing, with the following conditions:

- 1. The applicant shall comply with all applicable conditions of the Planning Board's Notices of Action dated August 11, 2014 (#PB2014-29-SPR), March 9, 2015 (#PB2015-02-SPA), and July 9, 2018 (#PB2018-14-SPA).**
- 2. The applicant shall now be required to obtain a Building Permit by April 10, 2021.**

The MOTION was seconded by Ms. Welsh.

****The MOTION was approved unanimously (9-0).***

D. TWIN STATE SAND & GRAVEL CO, INC., C/O WARREN AMES, ELM STREET WEST (Tax Map 116, Lots 2 & 3), zoned IND-RA & R-3: Request for an extension of time in order to satisfy conditions-precedent and to record the subdivision plan for the Iron Horse development, a phased 13-lot Planned Business Park and Major Subdivision, originally approved on September 24, 2012 (#PB2011-31-FMAJ). **#PB2019-06-EXT**

Chair Davio asked Planning Staff if both Twin State Sand & Gravel Co, Inc. extension requests, while two separate items on the agenda, could be treated as one. Mr. Brooks said yes, but when motions are made, or if the Board decides to continue the hearing, these should be treated individually. Testimony for both would essentially be the same, so the Board can accept all testimony as the same for both requests.

Ms. Megan Carrier, Esq. (from Sheehan Phinney, Attorney for the applicant), Mr. Stuart Close (Owner of Blaktop and Twin State Gravel), Seth Ames (Twin State Gravel), Mr. Rod Finley and Peter Goodrich (Pathways Consulting), and Greg Coates (Development Manager for the Project) came before the Board representing the two requests, (Items 6D - #PB2019-06-EXT & 6E - #PB2019-07-EXT) for extensions of time to complete certain conditions in relations to the Iron Horse Park Project.

Ms. Carrier understood from the staff memo this hearing might be continued to the June meeting in order to allow some time for the City's legal counsel to review additional information provided by the applicants. The applicant and their representatives were prepared to present, but were agreeable to continuation in June.

Mr. Finley presented a brief history and description of the project (roughly 92-acres) using a survey map that was not included in the agenda packet. He noted that the development was approved for a 13-lot subdivision/planned business park and described the three sectors: Commercial sector (less than 20% of the net land area); Office sector (maximum of 40% of the planned business park); and 10 lots that are Industrial, noting the planned PUD will include a couple of restaurants, retail buildings and the proposed Iron Horse Road. The Board was also briefed on the history of projects that Mr. Close has been involved with going back into the 1990's as well as the history of approved extension requests (as noted in Mr. Finley's letter to Mr. Brooks dated March 11, 2019 and included in the agenda packet). The request at this meeting is for a 3rd extension request. The applicant has submitted a price break down sheet that needs to be reviewed by the City's legal counsel.

Staff Comments:

Mr. Corwin confirmed that the information the City's legal counsel requested has been submitted and will be forwarded so counsel can make a determination as to whether it meets the threshold in Section 7.12.D which provides that the Board shall grant no more than one extension for any subdivision, unless it determines "based on legal advice, that such extension is required in order to prevent a violation of constitutional rights." The City's legal counsel has reviewed the application materials submitted by the applicant in support of the request, but has asked for a breakdown of the \$7-8 million expenditures claimed by the applicant in connection with the Iron Horse project. The breakdown of expenditures was not submitted in time to finalize counsel's opinion.)

Mr. Brooks said that what Staff was hoping to achieve at this meeting was to give the Board an opportunity to express any questions and identify any other pieces of information that they might like to see so that the applicant can be working on that leading up to the June 10, 2019 hearing.

Vice Chair Garland asked what markers the applicant can provide showing there has been progress on this project, recalling the Planning Board's discussion at the hearing on the prior extension requests. It would be helpful for the Board to evaluate what developments pertinent to this project have happened in the last two years.

Mr. Finley said their cost summary lists specific things that have been done, and associated costs, that work towards the 14 conditions precedent that will need to be addressed in order to record the subdivision mylar. He also noted discussions taking place with the City (since 2015) regarding a TIF District and said the current City Manager seems to be in support of the Iron Horse TIF District, provided that the developer and the City enter into a Memorandum of Understanding to ensure that the TIF District will have no risk to the City.

The Board and Mr. Finley discussed big box stores (e.g., Target, Costco, Walmart) and the potential location for these on Lot 13. Mr. Greg Coates addressed the retail aspects of the Iron Horse Project with the Board, noting that several big box stores have expressed interest in this location.

Mr. Brooks mentioned that Mr. Finley is correct about discussions with Staff regarding the TIF District and read the notes he had taken from the developer's meeting with staff on March 13, 2015, regarding a change in the phasing of the project. However, since that time, Staff have repeatedly asked the applicants for more information and the City Manager has continued to express concern about the potential risks to the City. Information requested was how the Iron Horse TIF District would work and where the developers would come from in order to ensure that if the City floats a bond, the bond would get paid back. The City has never received this information. With respect to the TIF, the City is not holding this up. It is waiting for information that it has been requesting for years.

The Phasing Plan Schedule (as presented in the agenda packet) was discussed. The applicant said this schedule is still the plan, but noted a couple of things still need to come together to make this happen.

The applicant stated they would pay the majority of the taxes that would support the TIF District and addressed the gaps in the schedule, which would leave them some time to sell properties and get their building permits completed. The idea was to have a 20-year build out but if schedules change, the applicant may be back before the Board.

Chair Davio said that it was recommended from the Staff, and applicant has agreed, that this discussion be continued to the next meeting so the City's legal counsel can look at the documents provided.

Ms. Stavis requested, that when this conversation is continued, the applicants touch on how this project relates to the Westboro Rail Yard; if this project is related to the NH Department of Transportation and State-owned property in Westboro; how it is related to reviving Downtown West Lebanon; and what, if any plans, do the developers of Iron Horse have to work with NH DOT to remediate that site.

Chair Davio *MOVED* to continue the Twin State Sand & Gravel Co., Inc. pertaining to the extension of time in order to satisfy condition precedent and to record a subdivision plat to June 10, 2019, at 6:30 PM, City Council Chambers.

Seconded by Vice Chair Garland.

****The MOTION was approved unanimously (9-0).***

- E. TWIN STATE SAND & GRAVEL CO. INC., C/O WARREN AMES, ELM STREET WEST (Tax Map 116, Lots 2 & 3), zoned IND-RA & R-3:** Request for an extension of time in order to obtain building permits for the Iron Horse Industrial Planned Unit Development, originally approved on April 22, 2013 (#PB2011-32-SPR), which consists of the ten (10) Industrial Sector lots within the Iron Horse Planned Business Park. **#PB2019-07-EXT**

This item's testimonies and comments were included in the request above. (See opening request from Chair Davio and Planning Staff response under item 6D above.)

Chair Davio *MOVED* to continue the Twin State Sand & Gravel Co., Inc. pertaining to the extension of time in order to obtain Building Permits to June 10, 2019, at 6:30 PM, City Council Chambers. *Seconded by Vice Chair Garland.*

****The MOTION was approved unanimously (9-0).***

7. STUDY ITEMS: None.

8. OTHER BUSINESS:

Ms. Monroe requested a report be given at the next meeting regarding the Ticknor Road research to see if it is still considered a current road. Mr. Brooks said this would be discussed at the June 28, 2019 meeting.

9. OPEN DISCUSSION: None.

10. ADJOURNMENT:

Mr. Hall MOVED to adjourn the meeting at 9:35 pm. Seconded by Vice Chair Garland.

**The MOTION passed (9-0).*

The meeting was adjourned at 9:35 pm.

Respectfully submitted,
Dona E. Gibson
Recording Secretary