



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
May 9, 2017

The Regular meeting of the Lebanon Borough Planning Board/Board of Adjustment was called to order by Chairman at 7:00 P.M.

The meeting was convened in compliance with the Open Public Meetings Act of 1975. Three local newspapers were notified and a notice is posted at Borough Hall.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all.

ROLL CALL:

Members Present: Dr. Christopher Uchrin, Joseph Hauck, Ron Lapcynski, William Skene, David Abeles, Henry Hopkins, and Councilman Berger
Absent: Alexander Saharic, William Wilson, Mayor Reino, and James Newman
Also present: Karen M. Romano Administrator/Clerk, and Planning Board Attorney Jonathan Drill Esq.

MINUTE APPROVAL:

Mr. Abeles moved, and Mr. Hauck seconded, a motion for the approval of the Minutes of April 11, 2017.

The motion passed with the following roll call vote:

Ayes: Uchrin, Hauck, Skene, Lapcynski, Abeles, Berger, Hopkins and Wilson
Absent Saharic, Reino, Wilson and Newman
Abstain:

EXPENDITURE APPROVAL:

No expenditures at this time.

SHED PROPOSAL Block 8 Lot 21.02:

Mr. Skene moved, and Mr. Hauck seconded, a motion for the approval of Resolution 2017-01.

LEBANON BOROUGH PLANNING BOARD/BOARD OF ADJUSTMENT

**GREG MOLOCHNICK
BLOCK 8, LOT 21.02**

APPLICATION NO. 2017-01

**“C” VARIANCE TO ALLOW A SECOND SHED FOR STORAGE INCIDENTAL AND
ACCESSORY TO RESIDENTIAL USE OF THE LOT**

RESOLUTION NO. 2017-01

WHEREAS, Greg Molochnick (the “**applicant**”) owns property having a street address of 12 Myrtle Avenue, Lebanon, New Jersey which is designated on the Borough of Lebanon (the “**Borough**”) tax map as Block 8, Lot 21.02 (the “**property**”), and the property contains approximately 22,409 square feet or .514 acres situated in the R-1-15 single family residential zoning district (the “**R-1-15 zone**”) and contains a permitted single family residential dwelling;

WHEREAS, the applicant submitted an application (the “**application**”) to the Lebanon Borough Planning Board/Board of Adjustment (the “**Board**”) for a variance to allow construction of an 8 foot by 12 foot shed (the “**proposed shed**”) to be used for storage incidental and accessory to the residential use of the property, and the proposed shed requires a “c” variance because only one shed is permitted on the property and one already exists and a “d” variance is not required because the second shed is an accessory building not a principal structure;

WHEREAS, the Board is a planning board with the powers of a zoning board of adjustment pursuant to N.J.S.A. 40:55D-25c and, in this case, sat on the application as a Zoning Board of Adjustment because site plan approval and subdivision approval were not required so that subject

matter jurisdiction over the application is with the Zoning Board of Adjustment in accordance with N.J.S.A. 40:55D-70c;

WHEREAS, the Board held a duly noticed public hearing on the application on April 11, 2017, with affidavits of publication and service of proper notices of the hearing being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the application with the Board in accordance with N.J.S.A. 40:55D-11 and -12, during which hearing the applicant represented himself, pro se, and the Board was represented by Michael D. Sullivan, Esq.;

WHEREAS, Greg Molochnick (applicant) testified during the hearing and was subject to cross examination, which testimony is part of the record in this matter;

WHEREAS, the following exhibits were entered into evidence: Exhibit A-1 titled “Plot Plan” consisting of one sheet prepared by Stephen E. Parker, PE dated March 19, 2002 revised through April 2, 2002; containing a note “approved for construction” signed by Paul Ferriero, PE, (Borough Engineer) dated April 12, 2002, Exhibit A-2 colored photograph of existing shed and Exhibit A-3 colored photograph depicting a new pad for proposed shed.

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS AND TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION:

A. FACTUAL FINDINGS AND CONCLUSIONS

1. As set forth above, the property consists of approximately 22,409 square feet or .514 acres situated in the R-1-15 zone, contains a permitted single family dwelling, and the applicant proposes to install a 8 foot by 12 foot shed not to exceed 8 feet in height to be used for storage incidental and accessory to the residential use of the property. The shed requires a variance pursuant to N.J.S.A. 40:55D-70c as it constitutes the second shed on the property where only one shed is permitted pursuant to Section 18.04.

2. The Board finds and concludes that a “d(1)” use variance is not required to allow the proposed second shed because it is an accessory building, not a principal building. N.J.S.A. 40:55D-70d(1) provides that a “d(1)” variance is required for “a use or principal structure in a district restricted against such use or principal structure.” Where a non-permitted accessory building is at issue, a “c” variance is required.

3. The applicant testified that the proposed second shed shall be set back a minimum of 10 to 12 feet from the property lines and will not exceed 8 feet in height at the eaves and will not exceed 100 square feet and is in compliance with all bulk requirements.

4. Based on the applicant’s testimony, the Board finds that the applicant needs a second shed to store children’s toys. The applicant’s existing shed is used to store lawn equipment with their accompanying oil and gasoline. The property is steeply sloped with a narrow building envelope at the front of the dwelling, and the existing 2-car garage is narrow at 19 feet wide, leaving little room for children’s toys and sports equipment. The Board finds that granting a “c(2)” variance to allow the second shed is a better zoning alternative for the property than allowing a single, larger shed for the children’s toys since more grading and disturbance would be necessary for a larger structure which would not be aesthetically pleasing for the neighborhood. The Board also found it significant that the property was oversized consisting of 22,409 square feet where a minimum of 15,000 square feet is required in the R-1-15 zone. The board determined approval of this application advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a) and promotes a desirable visual environment (-2i). Provided that the conditions set forth below are imposed and complied with, the Board also finds that the aforementioned public benefits that will result from the grant of the “c(2)” variance will substantially outweigh any zoning detriment and the “c(2)” variance to allow the proposed second shed can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance.

5. The Board Engineer noted that the applicant has imported a substantial amount of fill in an attempt to level the rear yard. Based on field observation, the fill has been placed over an existing drainage easement. The adjacent properties on both side of the property have also imported fill for similar reasons. The applicant testified that his landscaper imported the fill consisting of approximately 850 cubic yards.

6. The basis for the Board granting the “c(2)” variance is N.J.S.A. 40:55D-70c(2).

Specifically, the Board has the power to grant “c(2)” or so-called “benefits v. burdens” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(2) where, “in an application or appeal relating to a specific piece of property, the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.” This is the so-called “positive criteria” of a “c(2)” variance. The zoning benefits resulting from permitting the deviation(s) must be for the community (“improved zoning and planning that will benefit the community”) and not merely for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). That said, the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). The Board may not exercise its power to grant a “c(2)” variance otherwise warranted, however, unless the so-called negative criteria has been satisfied. Specifically, pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted . . . without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1,4,21 (1987). Based on the factual findings set forth in paragraph 5 above, the Board concludes that a “c(2)” variance to allow the proposed accessory building can and should be granted, subject to the conditions set forth below being imposed and complied with.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON APRIL 11, 2017, THAT THE FOLLOWING RELIEF IS HEREBY GRANTED, SUBJECT TO THE CONDITIONS SET FORTH BELOW:

B. RELIEF GRANTED

1. **“C(2)” Variance to Allow a Second Shed.** Subject to the conditions set forth below, a “c(2)” variance from ordinance section 18.04 is granted to allow the proposed second shed as a non-permitted accessory structure to be used for storage incidental and accessory to the residential use of the property.

C. CONDITIONS

1. The proposed second shed shall be located in such a manner that it will not violate any of the setback requirements applicable to the R-1-15 zone.
2. The proposed second shed shall not exceed 8 feet in height.
3. The proposed second shed shall have no utilities – including no lighting.
4. The proposed second shed shall be designed and constructed as an attractive structure appropriate for a residentially zoned and used property.
5. The proposed second shed shall be limited to storage of items incidental and accessory to the residential use of the property.
6. The applicant shall comply with all conditions imposed by the Construction Official. If any conditions imposed by the Construction Official require further variance relief, the applicant shall be required to apply to the Board for such relief.
7. An as-built grading plan shall be submitted to ensure that there will be no adverse drainage impacts as a result of the land disturbance. The actual location of the sheds shall be indicated on the survey.
8. The Zoning Officer shall confirm that the structure meets the definition of a shed and complies with the setback requirements.
9. The applicant shall obtain approval from the Governing Body for fill placed over the drainage easement and that no adverse drainage impacts have resulted and for such other approvals that may be required as a result of the additional fill.
10. The applicant shall have a continuing duty to replenish all necessary escrow funds upon written notification. Neither the Board nor its employees will perform any services in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant shall have a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid.

ALEX SAHARIC, Chairperson

ATTEST: KAREN ROMANO, Secretary
DATE MEMORIALIZED: 5-9-17

The motion passed with the following roll call vote:

Ayes: Uchrin, Hauck, Skene, Lapczynski, Abeles, Berger, Hopkins and Wilson

Absent Saharic, Reino, Wilson and Newman

Abstain

OPEN PUBLIC SESSION

Vice Chairman Uchrin opened the floor for public questions. There being no comment the floor was closed.

MISCELLANEOUS:

None

ADJOURN

Mr. Skene moved, Councilman Berger seconded a motion to adjourn, there being no further business to come before the Board. The motion was passed by unanimous vote. The meeting was adjourned at 7:35p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

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