LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES

Tuesday, February 13, 2018

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:	Alexander Saharic, Dr. Christopher Uchrin, Joseph Hauck, Councilman Berger David Abeles, Ron Lapcynski, and Henry Hopkins
Absent:	William Wilson, Mayor Reino, and James Newman
Also present:	Karen M. Romano Administrator/Clerk

MINUTE APPROVAL:

Mr. Skene moved, and Mr. Hauck seconded, a motion for the approval of the Minutes of January 2018.

The motion passed with the following roll call vote:
Ayes: Saharic, Uchrin, Hauck, Skene, Berger, Abeles, Lapcynski, and Hopkins
Absent Reino, Wilson, Skene and Newman
Abstain:

EXPENDITURE APPROVAL:

No expenditures at this time.

DOLL HOUSE Block 13.02 Lot 48 Memorialization

Dr. Uchrin moved, and Mr. Hauck seconded, a motion for the approval of Resolution 2018-01.

LEBANON BOROUGH PLANNING BOARD/BOARD OF ADJUSTMENT

CHARLES RAND AND WILLIAM MURPHY
BLOCK 13.02, LOT 48
157 MAIN STREET

APPLICATION NO. 2017-02

RESOLUTION MEMORIALIZING GRANT OF "D(1)" USE VARIANCE AND "C(2)" BULK VARIANCE TO ALLOW CONVERSION OF AN EXISTING MIXED USE COMMERCIAL AND RESIDENTIAL USE BUILDING KNOWN AS THE DOLL HOUSE FACILITY TO A TWO-FAMILY DWELLING

RESOLUTION NO. 2018-01

WHEREAS, Charles Rand and William Murphy (collectively the "**applicant**") own a 12,147 square foot lot (an approximately .28-acre lot) situated in the One-Family Residential – Professional zoning district ("**R-1-15P zone**") having a street address of 157 Main Street, and designated on the Lebanon Borough tax maps as Block 13.02, Lot 48 (the "**property**"), which property is presently developed with a two story building utilized as a mixed use commercial and residential building (the "**existing building**"), with a former dollhouse manufacturing and retail sales facility (the "**doll house facility**") on the ground floor and a residential apartment (the "**residential unit**") on the upper floor, along with associated parking for the mixed commercial and residential uses;

WHEREAS, the applicant made application (the "**application**") to the Lebanon Borough Planning Board and Board of Adjustment (the "**Board**") for a "d(1)" use variance and a "c" bulk variance to allow conversion of the existing building from mixed commercial and residential use to a two family dwelling along with related improvements (the improvements together are referred to herein as the "**proposed development**"), with the "d(1)" use variance being required because: (1) the R-1-15P zone allows as principally permitted uses mixed professional and residential use as well as single-family dwellings, neither of which are proposed; (2) two-family dwellings are prohibited in the R-1-15P zone and that is what is being proposed; and (3) the existing mixed use commercial and residential use was permitted by a prior variance, which prior variance does not permit conversion to a non-permitted use without a "d(1)" use variance;

WHEREAS, the "d(1)" use variance confers exclusive subject matter jurisdiction over the application with the Board in its capacity as a zoning board of adjustment pursuant to N.J.S.A. 40:55D-70, -25c and -20; [1]

WHEREAS, the application was deemed to be complete;

WHEREAS, the following documents were submitted with regard to the application, are on file with the Board, and are part of the record in this matter:

1. Application form dated November 2, 2017 with accompanying supporting documents,

2. Copy of survey of property prepared by Richard G. Titus, PLS dated January 17, 2002,

3. Minutes of the August 21, 1973 former Board of Adjustment hearing on the Robert Dankanic's application for a "c" variance which should have been a "d" use variance to allow conversion of the then existing single family dwelling to a mixed commercial and residential use building, with a dollhouse manufacturing and retail sales facility on the ground floor and a residential apartment on the upper floor (the "**1973 variance**"),

4. Minutes of the April 7, 1975 former Board of Adjustment hearing on Robert Dankanics' application for side yard and rear yard "c" bulk variances to expand the then existing building (the "**1975 variance**"),

---

1 The Board is a planning board which has the authority to exercise all powers of a zoning board of adjustment pursuant to N.J.S.A. 40:55D-25c. Because of the "d" variance, the Board in this application acts in its capacity as a zoning board of adjustment pursuant to N.J.S.A. 40:55D-70d. As such, the Class I and III members of the Board did not participate in consideration of the application in accordance with N.J.S.A. 40:55D-25c.

5. Minutes from the March 9, 1979 former Board of Adjustment hearing on the Robert Dankanics' application for a rear yard "c" bulk variance to construct a one-story addition to the then existing building (the "**1979 variance**"), and

6. Former Board of Adjustment Resolution No. 2-79 adopted on April 19, 1979 memorializing the grant of the 1979 variance;

WHEREAS, a duly noticed public hearing were held on the application, commencing on November 28, 2017 and continuing to and concluding on January 9, 2018, with proofs of service and publication of the notices being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant appeared pro se and the Board was represented by Jonathan E. Drill, Esq.;

WHEREAS, the following individuals testified during the hearings and were subject to cross examination, which testimony is part of the record in this matter:

1. Charles Rand (co-owner/applicant),

2. William Murphy (co-owner/applicant),

3. Susan Odenthal (real estate agent appearing on behalf of the applicant),

4. Barbara Bozzane (real estate agent appearing on behalf of the applicant),

5. Larry Srebrenick (potential purchaser of the property),

6. Dan Ruhland (potential purchaser of the property),

7. Decyama Solouk (owner and occupant of neighboring residence located at 165 Main Street), and

8. Robert C. Brightly, PE, PP, CME (Board's engineering expert);

WHEREAS, the following exhibits were entered into evidence during the hearing, are on file with the Board, and are part of the record in this matter:

A-1 Marked up survey of the property to show the existing building's location on the property, the location of existing accessory structures on the property, and the proposed construction of a driveway with dimensions of the driveway and curb cut hand drawn, and

A-2 Rendering of the front elevation of the proposed converted building (while

a driveway and walkway are also shown on the exhibit, the Board entered the exhibit into evidence to show the front elevation of the proposed converted building it is expecting to see constructed; the Board did not enter the exhibit into evidence for purposes of showing the locations of the driveway and walkway, which will be subject to conditions as set forth below);

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS 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 <u>N.J.S.A.</u> 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. <u>FACTUAL FINDINGS AND LEGAL CONCLUSIONS</u>

1. **<u>The Property, Zoning, Prior Approvals and Existing Building and Use.</u>** As set forth above, the property is a 12,147 square foot lot (an approximately .28-acre lot) located in the R-1-15P zone and has a street address of 157 Main Street. The lot is 54.73-feet wide where it fronts on Main Street and 81-feet wide along its rear property line. The property's easterly side is 171.9-feet long and its westerly side is 205.5-feet long. Among the uses permitted in the R-1-15P zone pursuant to ordinance section 10.01 are: (a) "detached one-family dwellings," (b) accessory uses as permitted in [ordinance] section 9.05, which lists "a private garage," "off-street parking," "signs," and "a fence not over six (6) feet in height"; and (c) "the office of a doctor of medicine, dentist, osteopath, chiropractor, optometrist, podiatrist, or any other similar or recognized professional person as approved by the Planning Board," subject to a number of conditions limiting the intensity of the professional office use. In accordance with ordinance section 10.03, "all other uses" not listed as permitted under ordinance section 10.01 or 10.02 (which permits churches and swimming pools as conditionally permitted uses) are prohibited in the R-1-15P zone. Prior to 1973, a permitted one-family dwelling existed on the property. The 1973 variance allowed conversion of the then existing permitted single-family dwelling to a non-permitted mixed commercial and residential use building, with the doll house facility on the ground floor and the residential unit on the upper floor. The 1975 variance and the 1979 variance allowed the expansion of the building via "c" bulk variances from the side yard and rear yard setback regulations. The existing building on the property is a two-story masonry and frame structure with the former dollhouse facility on the ground floor and the residential unit on the upper floor, along with associated parking for the mixed commercial and residential uses. The existing parking area consists of a large unsightly gravel parking area in the front yard of the property. As explained by the applicants during the hearing, the doll house manufacturing and retail sales business closed because of the Internet, as the vast majority of people purchasing doll houses now do so on-line, with manufacturing taking place in low labor

cost areas of the world. The existing building stands vacant and the applicant has not been able to find a buyer interested in using it for a permitted single-family dwelling use, a permitted residential – professional office use, or the use permitted by the 1973 variance – a mixed commercial and residential use. The applicant has been able to find buyers interested in purchasing the property for a two-family dwelling (with those buyers willing to incur the costs of converting the existing mixed-use building into a two-family dwelling). However, two-family dwelling use of the existing building is prohibited in the R-1-15P zone.

2. **The Application, Proposed Development and Required Variance Relief.** As set forth above, the application is for a "d(1)" use variance and a "c" bulk variance to allow conversion of the existing building from mixed commercial and residential use to the proposed development, which is a two family dwelling along with related improvements. The related improvements are a driveway and landscaping. The specific variance relief required is as follows. First, a "d(1)" use variance is required from ordinance section 10.03 which prohibits the proposed two-family dwelling. Because the proposed two-family dwelling is not allowed under the prior 1973 variance which allowed the mixed commercial and residential use, a variance is required to allow such use. And, because the mixed commercial and residential use was allowed by the equivalent of a "d(1)" use variance, such use is not a lawfully created pre-existing nonconforming use, so a "d(2)" expansion of lawfully created pre-existing nonconforming use variance is not the relief that is required. A "d(1)" use variance is required to create the new proposed prohibited use. Second, a "c" bulk variance is required from ordinance section 10.07-3 which provides that curb cuts "shall not exceed twenty percent (20%) of the lot width." The lot width of the property is 54.73-feet so ordinance section 10.07-3 limits the curb cut for the property (which is the width of the driveway where the driveway abuts the street), to 10.9-feet. The applicant currently has a driveway which is greater than 20-feet at the street and, while willing to decrease the width of the driveway, the applicant requires a "c" variance as it wants the driveway to be wider than 10.9-feet.

3. **Standards for Considering the "D(1)" Use Variance.** The standards that the Board must consider in deciding whether or not to grant a "d(1)" use variance have been described as the "positive" and the "negative" criteria and are as follows:

a. **Positive Criteria Standard for a "D(1)" Use Variance.** The Board has the power to grant "d(1)" variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." [2] Medici v. BPR Co., 107 N.J. 1, 18 (1987). Our courts have held

2 While the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons," the Medici court held that "economic inutility" can also constitute a special reason under the statute. 107 N.J. at 17, footnote 9. The applicant has not argued economic inutility in this application, and the Board finds on the basis of the testimony presented by the real estate agents that the applicant cannot prove economic inutility because the applicant can sell the existing building for $240,000 for mixed commercial / residential use as is permitted by the 1973 variance which, while substantially less than the $400,000 the applicant paid for the property in 2002, is not a sufficient diminution in value to constitute economic inutility.

that certain uses are deemed "inherently beneficial" which essentially means that, by definition, the use per se promotes the general welfare. Id. The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed. Id. Thus, in a typical non-inherently beneficial use application – as is the case here with the proposed two-family dwelling – the standard the Board must employ to determine whether special reasons have been proven is whether the proposed use will promote the general welfare and whether the development of the property is particularly suited for the very use proposed. Our courts held that proof that a site is particularly suited for a proposed use does not require proof that the property be the only possible location for the proposed project. Price v. Himeji, 214 N.J. 263, 290-293 (2013). The question that the Board must ask and answer is "whether the property is particularly well-suited for the use, in spite of the fact that the use is not permitted in the zone." Id.

b. **Negative Criteria Standard for a "D(1)" Use Variance.** The Board may not exercise its power to grant a "d(1)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Specifically, the last unlettered paragraph of N.J.S.A. 40:55D-70 provides: "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 the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987). As to the master plan and zoning ordinance, the Medici Court held that the applicant must prove and the Board must find by an "enhanced quality or proof" that there will be no substantial impairment. Id. The applicant must "reconcile" the use proposed with the ordinance's omission of the use from those permitted in the zone. Id. The so-called "first prong" of the negative criteria is a showing that the variance can be granted without substantial detriment to the public good. The so-called "second prong" of the negative criteria is a showing that the variance can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance.

4. **Findings as to the Requested "D(1)" Use Variance.** The Board's factual findings as to the positive and negative criteria of the requested "d(1)" use variance are as follows:

a. **Positive Criteria of the "D(1)" Use Variance.** As to the positive criteria of the "d(1)" variance, the Board finds that the conversion of the ground floor of the existing building from a doll house facility to a second residential unit, and the corresponding improvements to the exterior of the existing building and conversion of the large gravel parking area that occupies most of the front yard of the property into a residential looking front yard with landscaping, will promote the general welfare purposes of the Municipal Land Use Law (the "**MLUL**") as enunciated in N.J.S.A. 40:55D-2a (providing for the appropriate use and development of land in a manner that will promote the general welfare). The Board finds that the property is particularly suited for the proposed development because there exists a prohibited mixed use on the property which was allowed by the prior 1973 variance and the Board finds

that granting a use variance to allow a prohibited two-family dwelling to replace and eliminate the prohibited mixed use is a better zoning alternative for the neighborhood in terms of aesthetics and the impact on neighboring lots, but if and only if the conditions set forth below are imposed and complied with. Without repeating each and every condition set forth below, the Board notes the conditions which provide that: (1) the prior 1973 variance shall become null and void as a condition of the granting of the within "d(1)" use variance and (2) the mixed commercial and residential use of the property shall no longer be allowed. (The 1975 and 1979 variances shall remain in full force and effect as they were "c" bulk setback variances to permit additions to the building, and those variances allow the existing building to remain with its current footprint encroaching into the side yard and rear yard setback areas.)

b. **Negative Criteria of the "D(1)" Use Variance.** As to the two prongs of the negative criteria of the "d(1)" variance, the Board finds as follows.

(1) **First Prong of the Negative Criteria.** Provided that the conditions set forth below are imposed and complied with, the Board finds that the "d(1)" use variance can be granted without substantial detriment to the public good in terms of aesthetic impact and impact on neighboring lots' property values. Included in the conditions in this regard are the requirements that: (1) the driveway as constructed be substantially similar to that reflected on Exhibit A-1 referenced above, a copy of which is attached to this resolution, with the driveway width at the street being no greater than 16-feet, the driveway width at its southerly terminus being no greater than 20-feet so that two vehicles can park under the existing car port which shall be required to remain, and the driveway including a "hammerhead" area as reflected in Exhibit A-1 no greater than 20-feet deep and 20-feet wide so that two additional vehicles can park in the "hammerhead" area; and (2) the building after conversion shall look substantially similar to that reflected in Exhibit A-2 referenced above, a reduced copy of this is attached to this resolution. Additionally, without repeating each and every condition set forth below, the Board also notes the landscaping conditions set forth below, namely, that: (3) landscaping shall be provided in the front and side yards substantially similar to that reflected on Exhibit A-2, subject to review and approval of the Borough of Lebanon Shade Tree Commission; (4) landscaping shall be added to the front of the property abutting Main Street, subject to review and approval of the Shade Tree Commission; and (5) the Shade Tree Commission shall have authority to: reject proposed plantings if substantially different than reflected on Exhibit A-2, select shade trees for the front of the property abutting Main Street, and reject proposed species of plantings and trees if they are invasive species.

(2) **Second Prong of the Negative Criteria.** Provided that the conditions set forth below are imposed and complied with, the Board finds that the "d(1)" use variance can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance for the following reasons. First, granting a "d(1)" variance to allow conversion of the commercial looking existing building to that reflected on Exhibit A-2 referenced above will result in a one-family looking residential building even though the use will be a two-family dwelling. This is consistent with the first goal of the Master Plan which is to maintain and improve the unique and desirable residential character of Lebanon Borough.

Second, granting a "d(1)" variance to allow a two-family dwelling subject to the conditions set forth below will result in a less intensive use than is allowed by virtue of the 1973 variance, which will have less of a negative impact on the intent and purpose of the R-1-15P zone than the currently permitted mixed commercial and residential use allowed by virtue of the 1973 variance, and a condition of the granting of the "d(1)" use variance will be the voiding of the 1973 variance. This is consistent with the second goal of the Master Plan which is to control and direct changes so as to better utilize land for residential and commercial purposes.

5. **Ultimate Finding and Conclusion as to the "D(1)" Use Variance.** Based on the conclusions and findings set forth above as to the "d(1)" use variance, the Board's ultimate finding and conclusion is that it can and should grant the "d(1)" use variance subject to the conditions set forth below being imposed and complied with.

6. **Standards for Considering the "C" Variance.** The Board has the power to grant "c(1)" or so-called "hardship" variances and "c(2)" or so-called "benefits v. burdens" variances under two different standards. Those standards are as follows:

a. **Standards for Considering a "C(1)" Variance.** The Board has the power to grant "c(1)" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(1) where "(a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property." The "hardship" that the applicant must prove is not inutility, meaning that without the variance the property would be zoned into inutility. Inutility caused by a zoning regulation would require a variance to avoid an unconstitutional taking of the property. The Board may – but is not required to – grant a "c(1)" variance where the hardship at issue is not confiscatory but, rather, inhibits "the extent" to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). It must be noted that a hardship variance is not available for intentionally created situations as constituting "self-created" hardship. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979), and/or for mistakes. Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956). Neither is a hardship variance available to relieve "personal hardship" of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). Finally, the Board may not exercise its power to grant a "c(1)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. 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 the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Standards for Considering a "C(2)" Variance.** The Board has the power to grant "c(2)" 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." The zoning benefits resulting from permitting the deviation 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). And, while "c(1)" or so-called hardship variances are not available for self-created hardship situations and/or for mistakes, our courts have held that an intentionally created situation or a mistake do not serve to bar a "c(2)" variance because the focus of a "c(2)" variance is not on hardship but, rather, on advancing the purposes of zoning. Ketcherick v. Mountain Lakes Board of Adj., 256 N.J. Super. 647, 656-657 (App. Div. 1992); Green Meadows v. Montville Planning Board, 329 N.J. Super. 12, 22 (App. Div. 2000). Finally, the Board may not exercise its power to grant any variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. 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." As set forth above, the phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

6. **Findings as to Requested "C" Variance.** The Board's findings as to the requested "c" variance are as follows. The Board finds that a variance from the curb cut regulation cannot be granted under the "c(1)" rubric. The reason for this is because any hardship in complying with the 10.9-foot wide driveway limitation is self-created due to the applicant's desire to use the property as a two-family dwelling. The Board finds that a 10.9-foot wide driveway would be sufficient for use of the property as a one-family dwelling. That said, the Board finds that a variance from the curb cut regulation can be granted under the "c(2)" rubric for the same reasons the Board found warranted the grant of the "d(1)" use variance to allow the two-family dwelling use of the property. The Board will repeat these findings but under the "c(2)" rubric. First, as set forth above, provided that the conditions set forth below are imposed and complied with, the Board finds that the conversion of the ground floor of the existing building from a doll house facility to a second residential unit, and the corresponding improvements to the exterior of the existing building and conversion of the large gravel parking area that occupies most of the front yard of the property into a residential looking front yard with landscaping, will advance the general welfare purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (providing for the appropriate use and development of land in a manner that will promote the general welfare). Second, the Board finds that the resulting zoning benefit is not simply for the applicant but will be for the community in terms of improved zoning and planning that will benefit the community. As set forth above, there exists a prohibited mixed use on the property which was allowed by the prior 1973 variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that granting a use variance to allow a prohibited two-family dwelling to replace and eliminate the prohibited mixed use is a better

zoning alternative for the neighborhood in terms of aesthetics and the impact on neighboring lots. The Board notes and finds that to facilitate the conversion of the existing building to a two-family dwelling the driveway must be wider than 10.9-feet to accommodate the vehicular traffic expected from two residential units. The Board finds that the driveway width should be no less than 16-feet to so accommodate the two-family dwelling usage. The Board further finds that allowing the driveway width to be wider than 16-feet would take away from the residential look of the property. Further, the Board finds that the zoning benefit resulting from granting the variance to allow the deviation from the zoning ordinance requirement at issue will substantially outweigh any detriment if and only if the driveway is no wider than 16-feet at the street and the other conditions set forth below relating to the driveway are imposed and complied with. Finally, the Board finds that the "c(2)" variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance for the same reasons set forth above as relates to the "d(1)" use variance and subject to the imposition of and compliance with the same conditions as relates to the "d(1)" use variance.

7. **Ultimate Finding and Conclusion as to the "C(2)" Variance.** Based on the conclusions and findings set forth above as to the "c(2)" variance, the Board's ultimate finding and conclusion is that it can and should grant the "c(2)" variance subject to the conditions set forth below being imposed and complied with.

8. **Imposition of Conditions**. Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2017), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition approval on review and approval of changes to the plans by Board's experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to

approve the application." The Board concludes that the conditions set forth below are warranted and should be imposed on all of the above-mentioned bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON JANUARY 9, 2018, AS FOLLOWS:

B. RELIEF GRANTED

1. **"D(1)" Use Variance to Allow Conversion of the Existing Building to the Proposed Two-Family Dwelling.** Subject to the conditions set forth below, a "d(1)" variance is granted from ordinance section 10.03 to allow the existing building to be converted to the proposed two-family dwelling.

2. **"C(2)" Variance to Allow the Proposed 16-Foot Wide Driveway at the Street.** Subject to the conditions set forth below, a "c(2)" variance is granted from ordinance section 10.07-3, which provides that curb cuts "shall not exceed twenty percent (20%) of the lot width," to allow the proposed 16-foot driveway at the street.

3. **Prior 1975 and 1979 "C" Variances to Allow Side Yard and Rear Yard Setback Deviations Remain in Full Force and Effect.** The prior 1975 and 1979 "c" variances from the side yard and rear yard setback regulations remain in full force and effect to allow the building to remain in its current footprint.

C. CONDITIONS

1. **Extinguishment of Prior 1973 Variance.** The prior 1973 variance is hereby extinguished and shall become automatically null and void. The mixed use commercial and residential use of the property shall no longer be allowed.

2. **Driveway Aesthetics.** The driveway as constructed shall be substantially similar to that reflected on Exhibit A-1 referenced above, a copy of which is attached to this resolution. The driveway width at the street shall be no greater than 16-feet. The driveway width at its southerly terminus shall be no greater than 20-feet so that two vehicles can park under the existing car port which shall be required to remain. The driveway shall include a "hammerhead" area as reflected in Exhibit A-1 no greater than 20-feet deep and 20-feet wide so that two additional vehicles can park in the "hammerhead" area. All of the existing gravel areas outside these limits shall be removed to its full depth and replaced with topsoil and grass seeding and/or landscape plantings, with all landscape plantings subject to the conditions set forth in condition #4 below.

3. **Building Aesthetics.** The building after conversion to the proposed two-family dwelling shall look substantially similar to that reflected in Exhibit A-2 referenced above, a reduced copy of this is attached to this resolution.

4. **Landscaping.** Landscaping shall be provided in the front and side yards of the property substantially similar to that reflected on Exhibit A-2 referenced above, a reduced copy of which is attached to this resolution, subject to review and approval of the Borough of Lebanon Shade Tree Commission. Landscaping shall be added to the front of the property abutting Main Street, subject to review and approval of the Shade Tree Commission. The Shade Tree Commission shall have authority to: (a) reject proposed plantings if substantially different than reflected on Exhibit A-2, (2) select shade trees for the front of the property abutting Main Street, and (3) reject proposed species of plantings and trees if they are invasive species. No landscaping shall be placed in the site triangles on either side of the driveway.

5. **Lighting.** Because no lighting was proposed as part of the application but it is anticipated that lighting will be provided, the Board retains jurisdiction over lighting for a period of one (1) year from the issuance of a certificate of occupancy for the building. During this period, the Borough Zoning Officer shall inspect the property at night to observe the lights and if he reports a problem, the applicant shall be required to fix the problem. If any neighbors complain about the lights, the Zoning Officer shall inspect the property at night to observe the lights and if he reports a problem, the applicant shall be required to fix the problem. If the applicant disagrees with what the Zoning Officer has directed, the applicant can return to the Board on letter application for Board review of the Zoning Officer's direction.

6. **Signed and Sealed Engineered Drawing Required as a Condition Precedent to the Issuance of Construction Permits.** As a condition precedent to the issuance of construction permits, the applicant shall submit a signed and sealed engineered drawing consistent with Exhibit A-1.

7. **As-Built Survey Required as a Condition Precedent to the Issuance of a Certificate of Occupancy.** As a condition precedent to the issuance of a certificate of occupancy for the building, the applicant shall submit a signed and sealed survey of the property showing all structures located on the property, all setbacks from property lines to all structures on the property, and showing the driveway and landscaping improvements to be substantially similar to that reflected on Exhibit A-1.

8. **Replenishment of Escrow Account.** The applicant shall have a continuing duty to replenish its escrow account upon written notification. Neither the Board nor its employees nor its professionals 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 escrow accounts until all conditions have been satisfied and all charges have been paid.

ALEX SAHARIC, Chairperson

ATTEST: KAREN ROMANO, Secretary
DATE MEMORIALIZED: February 13, 2018

The motion passed with the following roll call vote:
Ayes: Saharic, Uchrin, Hauck, Skene, Lapcynski, Abeles, Berger, Hopkins and Wilson
Absent Reino, Wilson, Skene and Newman
Abstain

<u>Gladstone Equities</u> Block 2 Lot 3 Memorialization

Dr. Uchrin moved, and Mr. Hauck seconded, a motion for the approval of Resolution 2018-02.

<u>LEBANON BOROUGH PLANNING BOARD/BOARD OF ADJUSTMENT</u>

GLADSTONE EQUITIES, LLC
BLOCK 2, LOT 3
1382 ROUTE 22 WEST

APPLICATION NO. 2017-01

RESOLUTION MEMORIALIZING DISMISSAL OF APPLICATION FOR BILLBOARD

RESOLUTION NO. 2018-02

WHEREAS, Gladstone Equities, LLC (the "**applicant**"), with the consent of JMRV Developers, LLC, the owner of an approximately 1.22-acre (approximately 53,161 square feet) lot situated in the COMM-ROMM zoning district and having a street address of 1382 Route 22 West and designated on the Lebanon Borough tax maps as Block 2, Lot 3 (the "**property**"), made application (the "**application**") to the Lebanon Borough Planning Board and Board of Adjustment (the "**Board**") for a waiver of site plan approval or, in the alternative, site plan

approval, along with "c" variances to erect what it termed in the application form as a "community digital display" (the "**sign**") at a height and size larger than permitted in the Borough's sign regulations, but which sign appears to fit the definition of a "billboard" and/or an" intermittent sign" in Borough ordinance article 2 and, because billboards and intermittent signs are expressly prohibited within the Borough pursuant to Borough ordinance sections 7.03-1 and 7.03-24, also requires "d(1)" use variance relief which was not included in the relief requested by the applicant;

WHEREAS, in accordance with N.J.S.A. 40:55D-46, -50, -60, -70, -76, -25c and -20, if no "d" variance relief is required, the application would be within the subject matter jurisdiction of the Board sitting as a planning board, but if "d" variance relief is required, the application would be within the subject matter jurisdiction of the Board sitting as a zoning board of adjustment pursuant so, to be conservative, the Class I and III members of the Board did not participate in the motion to dismiss the application and the adoption of the within resolution memorializing the dismissal of the application; 3

WHEREAS, after the applicant's representatives met with the Board's representatives to discuss the above referenced variance issues and other issues involved with the application, the applicant determined that it was not going to proceed with the application;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON FEBRUARY 13, 2018, THAT THE APPLICATION BE AND IS HEREBY DISMISSED WITHOUT PREJUDICE BY REASON OF LACK OF PROSECUTION.

ALEX SAHARIC, Chairperson

ATTEST: KAREN ROMANO, Secretary
DATE MEMORIALIZED: February 13, 2018

The motion passed with the following roll call vote:
Ayes: Saharic, Uchrin, Hauck, Skene, Lapcynski, Abeles, Berger, Hopkins and Wilson
Absent Reino, Wilson, Skene and Newman
Abstain

3 The Board is a planning board which has the authority to exercise all powers of a zoning board of adjustment pursuant to N.J.S.A. 40:55D-25c. In the event an application involves a "d" variance, the Board acts in its capacity as a zoning board of adjustment pursuant to N.J.S.A. 40:55D-70d. Where the Board acts in its capacity as a zoning board of adjustment, the Class I and III members of the Board cannot participate pursuant to N.J.S.A. 40:55D-25c.

<u>OPEN PUBLIC SESSION</u>
Chairman Saharic opened the floor for public questions.

<u>MISCELLANEOUS:</u>
None

<u>ADJOURN</u>

Dr. Skene moved, Mr. Abeles 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 8:15p.m.

Respectfully submitted,

____
Karen Romano
Planning Board Secretary