

LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
Tuesday, May 8, 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, William Skene, Councilman Berger Ron Lapcynski, William Wilson, and Henry Hopkins
Absent: Mayor Reino, David Abeles, and James Newman
Also present: Karen M. Romano Administrator/Clerk

MINUTE APPROVAL:

Dr. Uchrin moved, and Mr. Hauck seconded, a motion for the approval of the Minutes of February 2018.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Hauck, Wilson, Skene Berger, Lapcynski, and Hopkins

Absent Reino, Abeles, and Newman

Abstain:

EXPENDITURE

APPROVAL: No

expenditures at this time.

MASTER PLAN RE-EXAMINATION

Katie Razin swore in Darlene Green of Maser Consulting to explain the Master Plan Re-Examination.

MASTER PLAN RE-EXAMINATION Resolution 2018-03

Memorialization

Dr. Uchrin moved, and Mr. Skene seconded, a motion for the approval of Resolution 201803.

**RESOLUTION ADOPTING THE 2018 AMENDMENT TO THE
2016 REEXAMINATION REPORT**

RESOLUTION 2018-03

WHEREAS, N.J.S.A. 40:55D-89 requires that the Borough of Lebanon ("Lebanon") Planning Board (the "Planning Board") reexamine the Lebanon master plan and development regulations at least once every 10 years from the previous reexamination and that the Planning Board prepare and adopt by resolution a report on the findings of such reexamination;

WHEREAS, the Planning Board previously adopted a 2016 Reexamination Report;

WHEREAS, the Planning Board directed its planning expert Darlene Green PP, AICP, to prepare a draft 2018 Amendment to the 2016 Reexamination Report, which draft report was thereafter distributed to all members of the Planning Board and the draft report was thereafter revised and put into final form as the proposed 2018 Amendment to the 2016 Reexamination Report (the "2018 Reexamination Amendment"), and a public hearing was scheduled on the adoption of the 2018 Reexamination Amendment for May 8, 2018;

WHEREAS, a duly noticed hearing public hearing was held by the Planning Board on the 2018 Reexamination Amendment on May 8, 2018, at which time Planning Board planning expert Darlene Green, PP, AICP provided sworn testimony concerning the 2018 Reexamination Amendment and was subject to questions, and the Planning Board also provided the opportunity for the public to speak and be heard as to the 2018 Reexamination Amendment;

WHEREAS, upon completion of the public hearing the Planning Board determined to adopt the 2018 Reexamination Amendment and directed the Planning

Board Secretary to transmit same to the Mayor and Borough Council as well as to the Hunterdon County Planning as required by law;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board, by motion made and seconded on May 8, 2018 that the Planning Board hereby adopts the 2018 Amendment to the 2016 Reexamination Report; and

BE IT FURTHER RESOLVED that a copy of this resolution, and the 2018 Amendment to the 2016 Reexamination Report shall be submitted by the Planning Board Secretary to the Mayor and Borough Council via the Lebanon Clerk, the municipal clerks of each and every adjoining municipality, and the Hunterdon County Planning Board not more than 30 days after the date of the adoption of this resolution.

The above resolution was adopted on May 8, 2018 by the following vote of Board members:

Member	Yes	No	Abstain	Absent
SAHARIC	1			
UCURIN	1			
HOPKINS	1			
ABELES				1
LAPCYNski	1			
HAUCK	1			
WILSON	1			
SKENE	1			
REINO				1
BERGER	1			

ALEXANDER SAHARIC, Chairperson

ATTEST: **KAREN ROMANO**,
Secretary **DATE ADOPTED: May 8,**
2018

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Hauck, Wilson, Skene Lapcynski, Berger, Hopkins and Wilson

Absent Reino, Abeles, and Newman

Abstain

MARDEN REALTY LLC. BLOCK 2 LOT 9 PRELIMINARY/FINAL SITE PLAN

Katie J Razin Esq swore in:

Bob Brightly P.E. Lebanon Borough Engineer

Mark J. Drabich President Metropolitan Seafood & Gourmet

Marden Realty, LLC (the "**applicant**"), is the owner of an approximately 7.779 acre lot in the Borough of Lebanon (the "**Borough**") designated on the Borough tax maps as Block 2, Lot 9 (the "**property**"), having a street address of 1320 Route 22, which property is situated in the Commercial Research Office Manufacturing 200,000 zoning district (the "**COM-ROM zone**"), and the property is presently developed with various site improvements, including a paved parking area, an overflow gravel parking area, and sidewalk and the following two commercial buildings constituting "Cokesbury Plaza": (1) a one and two story masonry building (the "**front building**") occupied by "Metropolitan Seafood Company" by virtue of a "d(1)" use variance granted by the Lebanon Borough Planning Board / Board of Adjustment (the "**Board**") memorialized in Resolution No. 5-2009 adopted on July 8, 2009, and with space for an unidentified future commercial user / tenant either being a permitted use or a restaurant / pizzeria by virtue of a "d(1)" use variance granted by the Board memorialized in Resolution No. 7-2010 adopted on October 13, 2010;, and (2) an "L" shaped one and two story block and frame building to the rear of the main building (the "**L-shaped building**"), which was not approved for any use by any prior approval of the Board and, in fact, the Board ruled when it granted preliminary site plan approval to the front building as memorialized in Resolution No. 8-2012 adopted July 11, 2012 that the L-shaped building cannot be used for any use unless and until an application for further site plan approval and/or "d(1)" use variance with site plan approval is submitted to and approved by the Board.

The applicant submitted an application dated March 23, 2018 to the Board seeking amended preliminary site plan approval, final site plan approval, and "c(2)" bulk variances (all relief referred to as the "**application**") to allow: (1) changes to the previously approved preliminary site plan related to the front building housing the Metropolitan Seafood business use as to wall signage and modification of site improvements, including modifications to the parking area to allow six angled spaces abutting the east side of the front building where an area of parallel parking had been

previously approved, removal of a concrete sidewalk along Cokesbury Road, and the construction of curbing within the right of way along Route 22; and (2) reconstruction of the L-shaped building located on the property in the identical location within the same footprint,

but with the building not to be utilized unless and until an application for further site plan approval and/or "d(1)" use variance with site plan approval is submitted to and approved by the Board;

As part of the application, the applicant stipulated to utilization of the front building by a maximum of two users, one being the Metropolitan Seafood tenant, and the other being either a permitted use or a restaurant / pizzeria by virtue of a "d(1)" use variance granted by the Board memorialized in Resolution No. 7-2010 adopted on October 13, 2010, and during the course of the Board's review of the application, it was also determined that a "c(2)" variance for the number of wall signs on the front building was required (all site improvements referenced above, including the proposed signage referred to herein, is referred to as the "**proposed development**");

The Board, sitting as a zoning board of adjustment pursuant to N.J.S.A. 40:55D-25c, has exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-76b (as to the application for amended preliminary site plan approval and the application for final site plan approval), N.J.S.A. 40:55D-46 (as to application for amended preliminary site plan approval), N.J.S.A. 40:55D-50 (as to the application for final site plan approval), N.J.S.A. 40:55D-70c(2) (as to the application for "c(2)" variances, and N.J.S.A. 40:55D-70d(4) (as to the application for the FAR variance) by virtue of N.J.S.A. 40:55D-20 and Puleo v. North Brunswick Board of Adj., 375 N.J. Super. 613, 621-623 (App. Div. 2005), certif. denied, 184 N.J. 212 (2005), which ruled that zoning board of adjustment jurisdiction over site plan applications pursuant to N.J.S.A. 40:55D-76b not only applies to expressly bifurcated applications but also applies to all subsequently submitted site plan applications where a prior application was granted which included a "d" variance; ¹ the following documents were submitted regarding the application, are on file in the Board office, and are part of the record in this matter:

Application form dated March 23, 2018 with attachments,

Plan set titled "Site Plan - Cokesbury Plaza", prepared by Stephen E. Parker, PE of Parker Engineering & Surveying, PC, dated May 16, 2012, last revised February 8, 2018, consisting of eight sheets (the "**Site Plans**"), and

¹ To be clear, the following "d" variances were previously granted by the Board sitting as a zoning board of adjustment: (1) "d(1)" use variance approval to allow Metropolitan Seafood to prepare food as part of its business located in the front building, as memorialized in Resolution No. 5-2009 adopted July 8, 2009; and (2) "d(1)" use variance to allow multiple retail tenants in the front building, specifically, Metropolitan Seafood and a restaurant / pizzeria, as memorialized by Resolution No. 7-2010 adopted on October 13, 2010. The Board sitting as a zoning board of adjustment also previously granted subsequent bifurcated preliminary site plan approval to allow improvements to be made to the front building as well to allow and required site improvements as to the front building to be made, as memorialized in Resolution No. 8-2012, adopted July 11, 2012. The Board, sitting as a zoning board of adjustment, has jurisdiction over the present application by virtue of the fact that it is for a further bifurcated amended preliminary site plan approval, and bifurcated final site plan approval.

Memo to the Board from Robert Brightly, PE, PP (Board engineering expert) dated April 2, 2018;

The Board held a duly noticed public hearing on the application on May 8, 2018, with certifications / affidavits of service of notice and publication of notice being submitted to and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Kara Kaczynski, Esq. and the Board was represented by Kathryn J. Razin, Esq.;

The following individuals testified during the hearing on the application, were subject to cross examination, with Board members and Board professionals asking questions, and the testimony is part of the record in this matter:

Mark Drabich (applicant's representative), and
Robert Brightly, PE (Board's engineering expert);

No exhibits were submitted into the record during the hearing on the application, and no members of the public or interested parties appeared to cross examine witnesses, testify or otherwise submit evidence;

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-1002) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS

1. The Property, Existing Improvements, Prior Approvals, and Zoning:

As set forth above, the property is approximately 7.78-acres in size, is located in the COM-ROM zone, and is developed various site improvements, including a paved parking area, an overflow gravel parking area, and sidewalk and the following two commercial buildings constituting "Cokesbury Plaza": (1) the front building (a one and two story masonry building) occupied by "Metropolitan Seafood Company" by virtue of a "d(1)" use variance granted by the Board, as memorialized in Resolution No. 5-2009 adopted on July 8, 2009, and with space for an unidentified future commercial user / tenant either being a permitted use or a restaurant / pizzeria by virtue of a "d(1)" use variance granted by the Board, as memorialized in Resolution No. 7-2010 adopted on October 13, 2010; and (2) the L-shaped building (a one and two story block and frame building to the rear of the main building), which was not approved for any use by any prior approval of the Board and, in fact, the Board ruled when it granted preliminary site plan approval to the front

building as memorialized in Resolution No. 8-2012 adopted July 11, 2012 that the L-shaped building cannot be used for any use unless and until an application for further site plan approval and/or "d(1)" use variance with site plan approval is submitted to and approved by the Board. The COM-ROM zone permits professional or businesses offices, research offices, research laboratories, manufacturing uses, industrial and commercial warehouses and wholesale distribution centers, retail stores, theaters and accessory uses customarily incidental to the foregoing permitted uses.

The Proposed Development. As set forth above, the application seeks approval for: (1) changes to the previously approved preliminary site plan related to the front building housing the Metropolitan Seafood business use as to wall signage and modification of site improvements, including modifications to the parking area to allow six angled spaces abutting the east side of the front building where an area of parallel parking had been previously approved, removal of a concrete sidewalk along Cokesbury Road, construction of curbing within the right of way along Route 22, and proposed new signage to include three wall signs along the façade of the front building, including one sign reading "Cokesbury Plaza" in the center to identify the site, and two tenant/user identification signs, one located on either side of the "Cokesbury Plaza" sign; and (2) reconstruction of the L-shaped building located on the property in the identical location within the same footprint, but with the building not to be utilized unless and until an application for further site plan approval and/or "d(1)" use variance with site plan approval is submitted to and approved by the Board. In addition to the changes to the previously approved preliminary site plan, the applicant proposes to demolish the L-shaped building and then construct a new L-shaped building (the "**proposed new L-shaped building**") in the identical location within the same footprint to be used for commercial purposes, with the specific use to be determined at a later date and with the building not to be utilized unless and until an application for further site plan approval and/or "d(1)" use variance with site plan approval is submitted to and approved by the Board. The proposed new L-shaped building will have a new façade to correlate in aesthetic style with the front building.

The Specific Relief Requested. In addition to the amended preliminary site plan approval and final site plan approval which are sought, the following specific "c(2)" variance relief is required so has been requested: First, a "c(2)" variance from ordinance section 14.04-6 to allow the front yard setback of the proposed new L-shaped building to be 88.1 feet, where the minimum required front yard setback is 150 feet. Second, a "c(2)" variance from ordinance section 14.04-4 to allow the proposed new L-shaped building to have floor area of 20,516 square feet where a minimum floor area of 25,000 square feet is required. Third, a "c(2)" variance from ordinance section 6.04-12 to allow a parking aisle width of 12 feet where 16 feet is required where 60 degree angled parking is proposed. Fourth, a "c(2)" variance from ordinance section 7.17-1.01 to allow three wall signs on the front building (in addition to the previously approved freestanding sign), consisting of one identification sign for "Metropolitan Seafood", one identification sign for the yet unknown tenant, and one identification sign for "Cokesbury Plaza," where a maximum of one sign per use and street frontage is permitted.

4. **Findings as to the "C(2)" Variance from the Front Yard Setback**

Regulation. Ordinance section 14.04-6 requires a minimum front yard setback of 150 feet for all COM-ROM zoned lots and, as set forth above, the proposed new L-shaped building will be setback 88.1-feet from the property line. The applicant has not applied for a "c(1)" variance out of recognition that the setback regulation can be complied with so a self-created hardship situation barring the granting of a "c(1)" variance exists. As set forth in the conclusions set forth below, however, self-created hardship does not prevent the granting of a "c(2)" variance. The Board's findings as to the positive and negative criteria of the "c(2)" front yard setback variance are as follows:

Findings as to the Positive Criteria of the "C(2)" Front Yard Setback Variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "c(2)" variance for front yard setback can be granted based on the fact that zoning benefits inuring to the public will result. Specifically, the Board finds that granting the application will improve the aesthetics of the property and upgrade the site. The Board finds and notes that the condition of the existing L-shaped building is nearly dilapidated and construction of the proposed new L-shaped building, rather than repairing the existing L-shaped building, along with the associated site improvements, will allow the site to operate in a more functional manner while visually enhancing the property in a more uniform and cohesive manner, by reason of the proposed new L-shaped building being designed to aesthetically coordinate in design with the front building. As such, the Board finds that granting a variance to allow the front yard setback deviation is a better zoning alternative for the property because it will allow for use of the nearly identical building space in a manner that enhances the site overall which constitutes a betterment to the neighborhood at large, thus promoting the general welfare purposes of the Municipal Land Use Law ("MLUL"), as enunciated in N.J.S.A. 40:55D-2a. The Board finds that these zoning benefits are community wide benefits and not simply a private benefit to the applicant. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the zoning benefits resulting from the grant of the front yard setback variance will substantially outweigh any detriment.

Findings as to the Negative Criteria of the "C(2)" Front Yard Setback Variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "c(2)" variance 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 for the following reasons. First, as set forth above, although remaining noncompliant as to front yard setback, the proposed new L-shaped building nonetheless constitutes an improvement from existing conditions in light of the aesthetic benefits that will result. In light of the fact that the same building footprint and size are proposed, the design of the proposed development will not appear as, or result in, overdevelopment of the site. The Board further finds that, since the setback to the front building is also nonconforming (a nonconformity which was previously subject to a "c" variance granted by the Board) and at a reduced front yard setback, there is no negative visual impact by the nonconforming setback as

to the proposed new L-shaped building. Further, the Board is satisfied that issues such as drainage, parking and circulation for the site have been adequately addressed, such that there do not exist negative usage impacts

resulting from the reconstruction of the building to the surrounding areas from a public welfare, safety or quality of life perspective. Finally, the Board finds that the front yard setback variance will not impair the intent or purpose of the master plan and zoning ordinance, particularly in light of the fact that it results in a more aesthetically pleasing design and upgrade without change to the existing setback conditions on the property.

5.

Findings as to the "C(2)" Variance from the Minimum Floor Area

Requirement. Ordinance section 14.04-4 requires a minimum floor area of 25,000 square feet for buildings on COM-ROM zoned lots and, as set forth above, the proposed new L-shaped building will have a floor area of 20,516 square feet. The Board's findings as to the positive and negative criteria of the "c(2)" floor area variance are as follows:

Findings as to the Positive Criteria of the "C(2)" Floor Area

Variance. Provided that the conditions set forth below are imposed, the Board finds that a "c(2)" variance from the minimum floor area regulation can be granted based on the fact that zoning benefits inuring to the public will result for the following reasons. First, the Board finds and notes that the proposed new L-shaped building is the exact same size as the existing L-shaped building and the existing 20,516 square foot size has not resulted in any problems. Second, the Board finds and notes that the proposed new L-shaped building will be an improvement in term of aesthetics from the existing L-shaped building and, as such, the property and neighborhood will be improved, despite not meeting the minimum floor area requirement. As such, the Board finds that granting a variance to allow the minimum floor area deviation is a better zoning alternative for the property because it will allow for use of the nearly identical building space in a manner that enhances the site overall which constitutes a betterment to the neighborhood at large, thus promoting the general welfare and purposes of the Municipal Land Use Law ("MLUL"), as enunciated in N.J.S.A. 40:55D-2a. The Board further finds that these zoning benefits are community wide benefits and not simply a private benefit to the applicant. Provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the "c(2)" variance will substantially outweigh any detriment.

Findings as to the Negative Criteria of the "C(2)" Minimum

Floor Area Variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "c(2)" variance 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 for the following reasons. First, although the proposed new L-shaped building is nonconforming as to floor area, the Board finds that the construction of the proposed new L-

shaped building will upgrade and enhance the aesthetics of the property and neighborhood and, provided that the conditions set forth below are imposed and complied with, will not result in any negative impacts. Second, since the proposed new L-shaped building will be constructed in the identical location and within the same footprint as the existing L-shaped building, the Board finds that there will be no negative impacts resulting from the fact that it is substandard as to minimum floor area. Finally, for the same reasons set forth above as to the front yard setback variance, the Board finds that there will be no other negative impacts created as a result of the proposed

development as to drainage, parking, circulation or otherwise, and no negative impacts as to the surrounding areas from a public welfare, safety or quality of life perspective. Finally, the Board finds that granting the floor area variance will not impair the intent or purpose of the master plan and zoning ordinance, particularly in light of the fact that it results in an upgrade in building design without change to the current footprint of the existing building.

6.

Findings as to the "C(2)" Variance from the Minimum Aisle Width for 60 Degree Angled Parking. Ordinance section 6.04-12 requires an aisle width of 16 feet for 60-degree angled parking and, as set forth above, the applicant proposes a 12-foot aisle width. The Board's findings as to the positive and negative criteria of the "c(2)" minimum aisle width variance are as follows:

Findings as to the Positive Criteria of the "C(2)" Variance from the Minimum Aisle Width Requirement. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "c(2)" variance for deficient aisle width can be granted. The Board's primary finding in this regard is that the proposed development contemplates six angled spaces abutting the east side of the building. The Board finds that this parking design is a better zoning alternative than the previously approved parking design because the angled spaces result in a more efficient and safe design for customers circulating and visiting the site. As such, the Board finds that these zoning benefits inure to the public and not just to the applicant and that they meet and satisfy the general welfare and public safety purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a. Provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the "c(2)" variance will substantially outweigh any detriment.

Findings as to the Negative Criteria of the "C(2)" Variance from the Minimum Aisle Width Requirement. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "c(2)" variance 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 for the following reasons. First, the Board finds that, despite the aisle width deviation, no traffic safety impacts will result on the property. Second, the Board finds that the parking situation on the property will be improved as a result of the

design and proposed development, which eliminates parallel parking and enables angled parking, which the Board finds is a safer and more efficient parking for this area. As such, even with the decreased aisle width, the Board finds that overall, the circulation and parking area is improved and thus that no significant negative impacts will result. The Board further finds that the modification to the parking area is a betterment to the overall circulation and parking design and that there is not significant traffic in the parking area to create concern regarding the deficient width of the aisle. Rather, the angled parking design avoids greater concern from a safety standpoint and avoidance of negative impacts. Moreover, there are also no other negative impacts to surrounding properties or otherwise created from the design proposed. Finally, the Board finds that the aisle width variance will not impair the intent or purpose of the master plan and zoning ordinance, particularly in light of the fact that the parking area modifications result in a more efficiently and safe design

overall, despite the aisle width deviation

7. **Findings as to the "C(2)" Signage Variance.** As set forth above, ordinance section 7.17-1.01 provides regulations as to permitted number of signs. Specifically, only one permanent freestanding or wall sign is permitted for a lot containing a permitted use and the applicant proposes a third wall sign to identify the main building as "Cokesbury Plaza", in addition to two tenant identification wall signs,² one on either side of the "Cokesbury Plaza" wall sign (along with the already-approved ground sign). The applicant agreed and stipulated during the hearing that all other aspects of the wall signage would be in conformance with the Borough's signage ordinance requirements. The Board's findings as to the positive and negative criteria of the "c(2)" signage variance are as follows:

Findings as to the Positive Criteria of the "C(2)" Signage Variance. The Board finds that granting a variance from the signage regulation at issue to allow the requested deviation will result in a more functional and attractive design and allowance for the identification of the building in a more efficient manner. The Board finds that the general welfare will be promoted by the granting of the signage variance because the result will be signage that better identifies the site in a manner that allows for safe and efficient viewing for the traveling public, as well as for pedestrians accessing the site, and which will direct customers to the appropriate locations once located on **the property. Further, the Board finds that the additional** signage is advantageous to allow for travelers to identify the site in time to make safe turning movements, and that the design of the signs will be done in an aesthetically pleasing manner. As such, the Board finds that granting the "c(2)" signage variance will promote both the health and safety purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (guiding the development of land in a manner which will promote health and safety), and the aesthetic purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (guiding the development of land in a manner which will promote the general welfare) and N.J.S.A. 40:55D-2i (promoting a desirable visual environment through good civic design and arrangement). The Board finds that these zoning benefits are community wide benefits and not simply a private benefit to the applicant. Provided that the conditions set forth below are imposed and complied with, the Board

finds that the zoning benefits resulting from the grant of the "c(2)" variance will substantially outweigh any detriment.

Findings as to the Negative Criteria of the "C(2)" Signage

Variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "c(2)" variances 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 for the following reasons. First, the additional signage does not clutter the building, since the proposed signage only adds identification of the building as Cokesbury Plaza in a conforming size. The Board further notes that the applicant only maintains a single freestanding sign which was granted approvals by the Board during a prior application. The Board finds that the building identification sign, constituting a third wall sign, does not create any negative visual impact and

2 As stated above, the applicant stipulated on the record that a maximum of two tenants/users would occupy the front building. A condition to that effect will be imposed below.

rather will enhance the site from an aesthetic standpoint. Moreover, the Boards finds that the additional signage area does not result in any safety or public welfare concerns, as it does not negatively impact visibility or sight lines since it is wall signage. Finally, the Board finds that the proposed signage is in accordance with the goals of the ordinance and master plan to provide signage for commercial uses which safely and efficiently identifies the site, without creating any negative design or related impacts.

8. **Findings as to Amended Preliminary and Final Site Plan Review.**

The

Board's findings as to amended preliminary site plan review and final site plan review are as follows:

Compliance with Ordinance Provisions. With the exception of the variances which have been requested, the Board finds that the Site Plans and related documents will comply with all other applicable zoning ordinance regulations and all site plan ordinance requirements, provided that the conditions set forth below are imposed and complied with. The Board finds that approval of these documents, subject to the revisions required below being made, is appropriate in this particular application because the documents, as revised, will then comply with all applicable ordinance regulations and requirements (other than from those ordinance provisions from which variances have been sought).

Compliance with Matters Vital to Public Health. Provided that the conditions set forth below are imposed and complied with, the Board also finds that matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development.

Ultimate Finding. For all of the foregoing reasons, the Board's ultimate finding is that amend preliminary site plan approval and final site plan approval are warranted provided that the conditions set forth below are imposed and complied with.

B. LEGAL CONCLUSIONS

1. **Conclusions as to "C(2)" Variances.** The Board's conclusions as to the "c(2)" variances from the bulk regulations and other zoning ordinance regulations are as follows:

a. **Standards Applicable to Review of the "C(2)" Variances.**

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." 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). The Appellate Division has held that 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). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Stary Dom v. Mauro, 216 N.J. 16, 32-33 (2013). While "c(1)" or so-called hardship variances are not available for self-created situations and/or for mistakes, our courts have held that an intentionally created situation or a mistake does not 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). Significantly, however, a "c(2)" variance can be denied where it does not provide a benefit to the community and would "merely alleviate a hardship to the applicant which he himself created." Wilson v. Brick Twp. Zoning Board, 405 N.J. Super. 189, 199 (App. Div. 2009). Finally, 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. 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.

Conclusions as to Grant of the "C(2) Variances. As set forth in the factual findings above, the Board found that the grant of variances to allow the front yard setback deviation, the minimum floor area deviation, the aisle width deviation, and the signage deviation would advance the purposes of the MLUL. Provided that the conditions set forth below are imposed and complied with, the Board further found that the benefits of these deviations would substantially outweigh any detriment. Further, the Board found that the deviations resulted in benefits to the community, and not solely benefit the applicant. Finally, provided that the conditions set forth below are imposed and complied with, the Board found that the grant of these variances would not result in any substantial detriment to the public good or substantial impairment of the intent or purpose of the master plan or zoning ordinance. As such, the Board concludes that it can and should grant the "c(2)" variances at issue subject to the conditions set forth below.

2.

Amended Preliminary Site Plan Review and Final Site Plan Review.

The Board's conclusions as to amended preliminary site plan review and final site plan review are as follows:

a.

Standards Applicable to Amended Preliminary Site Plan Review and Final Site Plan Review. N.J.S.A. 40:55D-46b and 50a are the focal points for amended preliminary and final site plan review. N.J.S.A. 40:55D-46b provides that if substantial changes are proposed in the layout of improvements previously granted preliminary site plan

approval, an amended preliminary application shall be submitted. The statute further provides that the Board "shall" grant approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. Thus, if the application complies with all ordinance provisions, the Board must grant approval. Conversely, if the application does not comply with all ordinance provisions, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are exceptions:

The first exception is where an application does not comply

with all ordinance regulations and requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance regulations and requirements and grant approval if the application complies with all such remaining regulations and requirements.

The second exception is where the application does not comply with all ordinance regulations and requirements but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application be revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the prior to the Board granting approval.

Finally, the Board cannot grant approval unless matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety are addressed. D'Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). And, if information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. *Id.*

b.

Conclusions as to Grant of Amended Preliminary Site Plan

Approval and Final Site Plan Approval. As set forth in the factual findings above, with the exception of the variances sought by the applicant, which the Board has concluded can and should be granted, the Board found that the Site Plans will comply with all other applicable zoning ordinance regulations and site plan ordinance requirements, provided that the conditions set forth below are imposed and complied with. The Board's ultimate finding was that amended preliminary site plan approval and final site plan approval are warranted but subject to the conditions set forth below being imposed and complied with. As such, the Board now concludes that amended preliminary site plan approval and final site plan approval can and should be granted but subject to the conditions set forth below.

3.

Imposition of Conditions. Boards have inherent authority to impose conditions on any approval they grant. 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). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See also, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that "aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances" and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), *aff'd o.b.*, 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review "typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping" and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). 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 2018), 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 site plan and subdivision approval on review and approval of changes to the plans by board 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 Tr o. 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 conditions set forth below have been imposed on all of the foregoing bases.

BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON MAY 8, 2017 AS FOLLOWS:

C. RELIEF GRANTED

"C(2)" Variance from Front Yard Setback Regulation. Subject to the conditions set forth below, a "c(2)" variance is granted from ordinance section 14.04-6 which establishes a 150 foot front yard setback to allow a front yard setback of 88.1 feet from the property line to the proposed new L-shaped building.

"C(2)" Variance from Minimum Floor Area Regulation. Subject to the conditions set forth below, a "c(2)" variance is granted from ordinance section 14.04-04 which requires a minimum floor area of 25,000 square feet to allow a floor area of 20,516 square feet for the proposed new "-shaped building.

"C(2)" Variance from the Aisle Width Regulation. Subject to the conditions set forth below, a "c(2)" variance is granted from ordinance section 6.04-12, which requires a 16 foot aisle width for 60 degree angled parking to allow the applicant to have a 12 foot aisle width in a portion of the parking area.

"C(2)" Variance from the Signage Regulation. Subject to the conditions set forth below, a "c(2)" variance is granted from zoning ordinance section 7.17-1.01, which permits one permanent freestanding or wall-mounted sign for each street frontage with a lot containing a permitted use to allow the applicant a total of three wall signs on the front building, including a "Cokesbury Plaza" identification wall sign, a "Metropolitan Seafood" identification wall sign, and a wall sign for the second tenant (all in addition to the previously approved ground sign).

Amended Preliminary Site Plan Approval and Final Site Plan Approval. Subject to the conditions set forth below, amended preliminary site plan approval and final site plan approval are granted to the Site Plans to allow the proposed development.

D. CONDITIONS

1. **Revisions to Site Plans and Related Documents.** To the extent that revisions have not already been made to the Site Plans and related documents, revisions to said documents shall be made to incorporate the following comments emanating in the following letters and/or memos prepared by the following Board professionals and/or as discussed by the Board on the record during the hearings on the application, and to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Borough Engineer, with the revisions being made to all of the documents and the Site Plans being signed no later than December 12, 2018 (which is six (6) months from the adoption of the within resolution on June 12, 2018). In the event that the applicant fails to revise the plans as required and/or fails to obtain signatures on the plans as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to

provide the applicant with the opportunity to revise the plat, plans and documents and, failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.) Any dispute(s) concerning satisfaction of any conditions related to the revisions of the site plans and documents may be brought to the Board for resolution by written letter application submitted by the applicant without the necessity for public notice but on written notice to the Borough Engineer. The required revisions are as follows:

a.

Following comments emanating in the memo to the Board from Robert Brightly, PE, PP (Board's engineering expert) dated April 2, 2018:

A. General

Intentionally omitted as the comment provides a description of the property.

Revise the plans to accurately reflect the status/existence of the structures on the property.

Intentionally omitted as addressed by the applicant in the testimony and relief sought.

B. Site Plan

Revise the Site Plans to remove the foot note relative to the 11.6 foot setback.

Revise the Site Plans to indicate the correct address of the property owner.

Revise the Site Plans signature box to read "Planning Board/Board of Adjustment".

Revise the Site Plans to include the accurate number of parking spaces.

Revise the Site Plans to include steel guide rail detail.

Revise the Site Plans to include the dimensions and design for all proposed and existing signage. Freestanding signage shall avoid the hydrant as a drafting point.

Revise the Site Plans to indicate an R5-1 sign (in place of the R6-1 sign) which should be angled to face traffic. Remove the R5-1 sign shown at the north end of the one-way aisle.

Revise the Site Plans to show the inlets and indicate which

inlets will be removed as part of the proposed development.

Revise the Site Plans to show the stone bed located between

the curb line of Cokesbury Road and the one-way parking area removed and replaced with site tolerant landscaping and/or lawn.

Revise the site plans to include the tree and tree planting details on sheet 6.

Add a note to the plans that there shall be no changes in lighting from the previously approved plans and approvals.

Revise the site plans to show 6" bollards along the front of the building.

Add a note to the plans that the second floor dormers and garage doors on the main building will be painted with the same taupe, earth tone color as the rest of the non-brick area in accordance with prior approvals.

Intentionally omitted as addressed in condition 11 below.

Intentionally omitted as addressed in condition 11 below.

Intentionally omitted as addressed in condition 11 below.

Intentionally omitted as no plan changes are required.

Intentionally omitted as no plan changes are required.

Intentionally omitted as addressed in condition 3 below.

b. **Following comments emanating in Board member**

comments

made during the hearing;

Add a note on the Site Plans stating that, except for the grant of variance relief as to number of signs and for the approval for the previously approved freestanding sign, the signage on the property shall comply with all applicable Borough signage ordinance regulations. The note shall also state that the applicant shall submit a plan detailing the final signage design to the Board engineer for review and approval.

Add a note on the Site Plans that the design of the proposed L-shaped building shall correlate in aesthetic/design style with the front building which currently houses "Metropolitan Seafood".

2.

Restrictions on the Use of the Property; The following restrictions shall apply to the use of the property:

a.

Restrictions on the Use of the Proposed New L-Shaped Building;
The proposed *new* L-shaped building shall not be used by any tenant / user until and unless the

applicant applies to and obtains from the Borough Zoning Officer a zoning permit for such tenant / user of the building. The Zoning Officer shall review each and every tenant / user to determine whether the proposed use is permitted in the COM-ROM zone and, even if permitted, whether the proposed use will have any negative impact(s) the number of parking spaces, traffic circulation and/or loading/unloading issues on the site. If the Zoning Officer determines that a proposed tenant / user will have a negative impact on any of the foregoing issues, the applicant must apply for and obtain amended site plan approval prior to the issuance of a zoning permit. Further, if the tenant / user is not a permitted use, the applicant must apply for and obtain from the Board a "d(1)" use

variance prior to the issuance of a zoning permit.

b.

Restrictions on the Use of the Front Building. There shall be a maximum of two tenants/users occupying the front building, one being the Metropolitan Seafood tenant, and the other being either a permitted use or a restaurant / pizzeria by virtue of a "d(1)" use variance granted by the Board memorialized in Resolution No. 7-2010 adopted on October 13, 2010.

Conditions of Prior Approvals. All conditions of the Board's prior approvals, including but not limited to as contained in Resolutions No. 5-2009, 7-2010 and 8-2012, remain in full force and effect and shall be complied with.

Design and Construction of Proposed Development and Location of Site Improvements. The applicant shall be required to design and construct the proposed development substantially similar to that reflected on the Site Plans as revised in accordance with condition #1 above after the Site Plans have been signed by the Borough Engineer and Board Chair and Secretary.

Landscaping. (Intentionally omitted)

Lighting. Because no lighting was proposed as part of the application but it is anticipated that lighting will be provided or may be modified, the Board retains jurisdiction over lighting for a period of one (1) year from the issuance of a certificate of occupancy for the second tenant in the front building as well as for a period of one (1) year from the issuance of a certificate of occupancy for a tenant in the proposed new L-shaped 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.

Escrow Fees. Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plans, prior to the issuance of a zoning permit, prior to the issuance of construction permits, **and** prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the within approvals automatically expiring and becoming null and void.

Easements, Dedications and Conveyances. Any and all easements, dedications and/or conveyances running to and in favor of the Borough which are proposed on

the site plans and/or required as a condition of the within resolution shall, in addition to being identified on the applicant's plans, maps and/or plats, be contained in separate documents to be prepared by the applicant and approved by the Borough Attorney after the metes and bounds descriptions of the easement, dedication and/or conveyance areas have been reviewed and approved by the Borough Engineer. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Borough Clerk for maintenance with other title documents of the Borough.

9. **As-Built Survey.** As a condition precedent to the issuance of a certificate of occupancy for the second tenant of the front building and for any tenant for the proposed new L-shaped building, the applicant shall submit a signed and sealed survey of the property showing all structures located on the property and all setbacks from property lines to all structures on the property.

10. **Time within which to Obtain Construction Permits and Certificate of Occupancy.** The applicant shall apply for and obtain any and all construction permits for all aspects of the proposed development by June 12, 2020 (which is within two (2) years of the date the within resolution was adopted on June 12, 2018). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain any and all construction permits, the within approvals shall automatically expire and become null and void. The applicant shall also have one (1) year from the date of issuance of the first construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one (1) year period, or extension thereof as granted by the Board,

work is not commenced, and/or a permanent certificate of occupancy is not obtained, the within approvals shall automatically expire and become null and void.

11. **Outside Agency Approvals and Permits.** The within approvals are conditioned upon and subject to the applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments including but limited to

Lebanon Borough Sewer Authority;

Hunterdon County Planning Board; and

Hunterdon County Soil Conservation District.

12. **Subject to Other Approvals and Laws.** The within approvals and the use of the property are conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of the property are also

conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

Mr. Skene moved, and Councilman Berger seconded, a motion for the approval of the Preliminary/Final Site Plan for Block 2 Lot 9.

The motion passed with the following roll call vote:

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

Abstain:

OPEN PUBLIC SESSION

Chairman Saharic opened the floor for public questions.

Ben Valere of 74 Brunswick talked about Chicago and the use of Crossover walkways inference to developing the north side of Route 22.

Joe Cortez of 15 High Street mentioned the transportation importance.

MISCELLANEO

US: None

ADJOURN

Dr. Uchrin 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 9:30p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary
LBPB/BOA

5-15-18
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