



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
REORGANIZATION MINUTES
Tuesday, January 8, 2019

The Reorganization and Regular meeting of the Lebanon Borough Planning Board/Board of Adjustment was called to order by Jonathan Drill Esq. 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.

OATH OF OFFICE

The Oath of Office was administered by Jonathan Drill Esq.

Alexander Saharic	CLASS IV	Term Expires (4 yr 12/31/22)
Henry Hopkins	CLASS IV	(4yr 12/31/22)
David Abeles	CLASS IV	(4yr 12/31/22)
William Abeles	CLASS IV	(4yr 12/31/22)
Jim Pittinger, Mayor	CLASS I	(4yr 12/31/22)
Sam Berger, Councilman	CLASS II	(3 yr 12/31/21)
Joseph Hauck	ENV/CLASS III ZONING OFFICER	(1yr- 12/31/2019)
William Wilson	ALTERNATE #1	(1yr- 12/31/2019)
James Newman	ALTERNATE #2	(1yr- 12/31/2019)

ROLL CALL:

Members Present: Alexander Saharic, Joseph Hauck, Henry Hopkins, David Abeles, Mayor James J. Pittinger, Councilman Sam Berger, Dr. Chris Uchrin, and Ron Lapcynski
Absent: William Abeles, James Newman, and William Wilson
Also present : Karen M Romano, Secretary, Jonathan Drill Esq., Darlene Green, Planner

NOMINATION OF CHAIRMAN:

Mr. Drill requested a nomination for Chairman. **Dr. Uchrin nominated Lex Saharic. Mr. Hopkins seconded the nomination motion. Mr. Hauck moved that nominations be closed.**

Mr. Hauck moved and Mr. Abeles seconded a motion nominating Alexander Saharic as Chairman for the year 2019.

The motion passed with the following roll call vote:

Ayes: Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapcynski

Nays: None

Absent: Abeles, Newman, and Wilson

Chairman Saharic thanked the Board. Mr. Drill handed the meeting over to Chairman Saharic.

NOMINATION VICE CHAIRMAN:

Chairman Saharic requested a nomination for Vice Chairman. Mr. Abeles nominated Dr. Uchrin. **Mr. Hauck moved that nominations be closed. Mr. Lapcynski seconded the motion.** Nominations were closed.

Mr. Hauck moved, and Mr. Hopkins seconded, a motion nominating Dr. Christopher Uchrin, Vice-Chairperson for the year 2019

The motion passed with the following roll call vote:

Ayes: Saharic, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapcynski

Nays: None

Absent: Abeles, Newman, and Wilson

APPOINTMENTS:

Chairman Saharic requested a nomination for Secretary. Mr. Hauck nominated Karen Romano. **Mr. Hauck moved that nominations be closed. Mr. Lapcynski seconded the motion.** Nominations were closed.

Mr. Hauck moved, and Mr. Lapcynski seconded, a motion appointing Karen Romano, Secretary for the year 2019.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapcynski

Nays: None

Absent: Abeles, Newman, and Wilson

Chairman Saharic requested a nomination for Planning Board/BOA Attorney. Mr. Hauck nominated Jonathan Drill Esq. **Mr. Hopkins moved the nominations be closed and Mr. Lapcynski seconded the motion.**

Mr. Hauck moved, and Mr. Abeles seconded a motion appointing Jonathan Drill Esq. for the year 2019.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapcynski

Nays: None

Absent: Abeles, Newman, and Wilson

Chairman Saharic requested a nomination for Planning Board/BOA Engineer. Mr. Hauck nominated Ferriero Engineering Inc. **Mr. Abeles moved the nominations be closed and Mr. Lapcynski seconded the motion.**

Mr. Hauck moved, and Mr. seconded a motion appointing Ferriero Engineering, Inc. for the year 2019. The requested Robert Brightly PE continues to represent Lebanon Borough.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapcynski

Nays: None

Absent: Abeles, Newman, and Wilson

Chairman Saharic requested a nomination for Planner. Mr. Hauck nominated Darlene Green with Maser Consulting Inc. **Mr. Abeles moved the nominations be closed and Mr. Lapcynski seconded the motion.**

Mr. Hauck moved, and Dr. Uchrin seconded a motion appointing Darlene Green with Maser Consulting Inc. for the year 2019.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapcynski

Nays: None

Absent: Abeles, Newman, and Wilson

ANNUAL FEES:

Annual Fees were set: Minutes: \$60.00, Land Use Laws \$45.00, by motion made by Mr. Abeles with a second by Mr. Lapczynski.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapczynski

Nays: None

Absent: Abeles, Newman, and Wilson

MEETING DATE & TIMES:

Mr. Hauck moved, and Mr. Abeles seconded, a motion that Regular Meeting time for meetings would be 7:00 p.m. and that the dates of each month be set as the 2nd Tuesday of each month.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapczynski

Nays: None

Absent: Skene, Newman, and Wilson

SUB COMMITTEES

Chairman Saharic called for approval of the sub committees as listed.

**Borough of Lebanon
Office of the Planning Board
PLANNING BOARD/BOARD OF ADJUSTMENT COMMITTEE'S
2019**

• **Sub Committee: Application Review**

- | | |
|-----------------|----------------------------|
| 1. Joseph Hauck | 2. William Wilson |
| 3. David Abeles | 4. James Newman, Alternate |

• **Master Plan/Cross-Acceptance/ Highlands:**

- | | |
|--------------------|-----------------------------|
| 1. Lex Saharic | 2. Henry Hopkins |
| 3. Chris Uchrin | 4. Joe Hauck |
| 5. James Pittinger | 6. David Abeles - Alternate |

- **Community Recognition – Awards:**

1. **Alex Saharic**
2. Ron Lapczynski
3. James Newman

- **Landmark/Historical:**

1. **Joe Hauck**
2. William Wilson

- **Ordinance Review:**

1. **Henry Hopkins**
2. Joe Hauck
3. Sam Berger
4. William Wilson

- **Storm Water and Waste Management/:**

1. **Chris Uchrin**
2. Henry Hopkins
3. Bill Skene

***Chairs denoted by bold print.**

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapczynski

Nays: None

Absent: Skene, Newman, and Wilson

MINUTE APPROVAL:

Mr. Hauck moved, and Mr. Abeles seconded, a motion that Regular Minutes of December 2018.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Pittinger, Hauck, Hopkins, Berger, Abeles, Lapczynski

Nays: None

Absent: Skene, Newman, and Wilson

OPEN PUBLIC SESSION

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

Chairman Saharic stated the AINR Study has been postpone until the February meeting.

DONLON BREW WORKS

Block 2 Lot 9

FORMAL

Donlon Brew Works, LCC (the “**applicant**”) is the lessee of a certain portion of property owned by Marden Realty, LLC (the “**owner**”) approximately 7.779 acres in size in the Borough of Lebanon (the “**Borough**”) designated on the Borough tax maps as Block 2, Lot 9 and having a street address of 1320 Route 22 (the “**property**”), which property is situated in the Commercial Research Office Manufacturing 200,000 zoning district (the “**COMM-ROM zone**”), and the property is presently developed with various site improvements, including a paved parking area, an overflow gravel parking area, a sidewalk and the following two commercial buildings constituting “Cokesbury Plaza”: (1) a one and two story masonry building (the “**front building**”) partially occupied by “Metropolitan Seafood Company” and (2) an “L” shaped one and two story block and frame building to the rear of the main building (the “**L-shaped building**”) (the front building, L-shaped building and the existing site improvements are together referred to as the “**existing development**”);

The property has been subject to several prior development approvals granted by the Lebanon Borough Planning Board / Board of Adjustment (the “**Board**”) resulting in the existing development, including as follows,

- “D(1)” use variance to permit the preparation of food on the premises in a leased portion of the front building and interior modifications to the front building to allow the Metropolitan Seafood Company operation as memorialized in Resolution No. 5-2009 adopted on July 8, 2009 (the “**2009 approval**”),
- “D(1)” use variance to allow an additional (multiple) commercial tenant to operate in the front building, so long as such additional tenant/use was a “restaurant/pizzeria use”, “c” bulk variances to allow a minimum front yard setback deviation for the front building, parking setback deviation and freestanding sign setback deviations, along with allowance to demolish three residential buildings and the L-shaped building as memorialized in Resolution No. 7-2010 adopted on October 13, 2010 (the “**2010 approvals**”),
- Preliminary site plan approval for the front building as memorialized in Resolution No. 8-2012 adopted July 11, 2012, which approval also allowed the L-shaped building to remain on the property (the “**2012 approvals**”), but the 2012 approvals specified that the L-shaped building could not 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;
- Amended preliminary site plan approval and final site plan approval to allow modification to the previously approved site plan for the front building and reconstruction of the L-shaped building, with such changes to include six angled parking spaces along the east side of the front building, removal of a concrete sidewalk, curbing along Route 22 and wall signage, and with reconstruction of the L-shaped building to occur within the same footprint as the existing L-shaped building

and with a similar façade to the front building, but with the L-shaped 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 memorialized in Resolution No. 2018-04 (the “**2018 approvals**”) ((with all of the prior approvals referred together as the “**prior approvals**”));

The applicant submitted an application dated December 12, 2018 the “**application**”) to the Board seeking: (1) “d(1)” use variances from ordinance section 14.01 to allow use of a portion of the front building as a microbrewery where certain aspects of that use are not allowed in the COMM-ROM zone, with the microbrewery use consisting of brewing beer, selling brewed product for consumption in a tasting room (restaurants and on-site consumption of food and drink are not permitted in the zone), the option for on-site consumption of food not prepared on premises (on-site consumption of food and drink is not permitted in the zone), and limited distribution of the brewed product) (together referred to as the “**proposed microbrewery uses**”), some of which proposed microbrewery uses are not only not permitted in the COMM-ROM zone but more than one (1) commercial use is also not permitted on the property under the ordinance and the proposed microbrewery uses are contrary to the condition of the 2010 approvals which limits the second tenancy/use of the front building to a restaurant/pizzeria; (2) amended preliminary and final site plan approval to allow the proposed microbrewery uses; and (3) a “c(2)” variance for a 5 parking space deficiency resulting from a change to the parking allocation on the property 1;

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-46, 50 and 76b (as to the application for amended preliminary and final site plan approval), N.J.S.A. 40:55D-70c(2) (as to the application for a “c(2)” variances), and N.J.S.A. 40:55D-70d(1) (as to the application for the use variances) 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);

The following documents were submitted regarding the application, are on file in the Board office, and are part of the record in this matter:

1. Application forms dated December 13, 2018 with attachments,
2. Plan set titled “Site Plan - Cokesbury Plaza”, prepared by Stephen E. Parker, PE of Parker Engineering & Surveying, PC, dated May 16, 2012, last revised November 2, 2018, consisting of nine sheets (the “**site plans**”),

¹ The application was amended during the hearing to add the request for the “c(2)” parking space deficiency variance. While no physical changes to the parking area are proposed as part of the proposed development, the number of required parking spaces increased as a result of the introduction of the proposed microbrewery uses to the property.

3. Architectural plan titled “Proposed Interior Fit Out for Donlon Brew Works”, prepared by Robert Grimaldi, AIA, dated November 18, 2018 (“**architectural plan**”),

4. Memo to the Board from Robert Brightly, PE, PP (Board engineering expert), dated January 3, 2019,

5. Memo to the Board from Darlene Green, PP, AICP (Board planning expert), dated January 4, 2019, and

6. Memo to the applicant from the Lebanon Borough Sewerage Authority, dated December 6, 2018;

The Board held a duly noticed public hearing on the application on January 8, 2019, with proof 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 Keith McDonald, 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:

1. Erica Amon (applicant’s consultant),
2. Robert Grimaldi, AIA (applicant’s architectural expert),
3. Steve Parker, PE (applicant’s engineering expert),
4. John Leoncavalli, PP (applicant’s professional planning expert),
5. Jeff Donlon (applicant’s principal),
6. Robert Brightly, PE (Board’s engineering expert),
7. Darlene Green, PP, AICP (Board’s planning expert), and
8. Ben Valliere (neighboring resident);

The following exhibits were submitted into the record during the hearing on the application:

A-1 Floor Plan Area Breakdown with Parking Calculations, and

A-2 Revised Floor Plan (architectural plan) last revised January 7, 2019;

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 N.J.S.A. 40:55D-10g(2) 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 COMM-ROM zone, and is developed with the existing development which includes various site improvements, such as a paved parking area, an overflow gravel parking area, sidewalk and the following two commercial buildings constituting “Cokesbury Plaza”: (1) the front building, a portion of which is occupied by Metropolitan Seafood Company by virtue of a the 2009 approvals consisting of a “d(1)” use variance, and space for a second future commercial user / tenant either being a permitted use or a restaurant / pizzeria by virtue of the 2010 approvals, consisting of a further “d(1)” use variance to allow multiple tenants / uses in the front building; and (2) the L-shaped building, which was not approved for any use by any of the prior approvals and, in fact, the Board ruled when it granted the 2012 approvals 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 most recent of the prior approvals is the 2018 approvals which was for amended preliminary site plan and final site plan approval to allow reconstruction of the L-shaped building to occur within the same footprint as the existing L-shaped building and with a similar façade to the front building, with additional site changes to include six angled parking spaces along the east side of the front building, removal of a concrete sidewalk, curbing along Route 22 and wall signage. The 2018 approvals repeat that the L-shaped building cannot 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 COMM-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.

2. **The Proposed Development and Requested Relief.** As set forth above, the applicant seeks the following relief to allow proposed development consisting of the following: (a) “d(1)” use variances from ordinance section 14.01 to allow the proposed microbrewery uses which, according to exhibit A-2 referenced above, consist of use of a 2,960 square foot portion of the front building for a microbrewery, certain aspects of which are not permitted in the COMM-ROM zone, with the proposed microbrewery uses consisting of brewing beer, selling brewed product for consumption in a tasting room (restaurants and on-site consumption of food and drink are not permitted in the zone), the option for on-site consumption of food not prepared on premises (on-site consumption of food and drink is not permitted in the zone), and limited distribution of the brewed product), with certain of the proposed microbrewery uses not only not permitted in the COMM-ROM zone but more than one (1) commercial use is also not permitted on the property under the ordinance and is also contrary to the condition of the 2010 approvals which limits the second tenancy/use of the front building to a restaurant/pizzeria; (b) amended preliminary and final site plan approval to allow the proposed uses; and (c) a “c(2)” variance to allow a five (5) parking space

deficiency resulting from a change to the parking allocation on the property. The reason the “d(1)” use variances are required is because, while brewing beer is considered a principal permitted manufacturing, treatment or conversion of product use and the limited distribution of product which has been proposed is considered a permitted accessory use to a manufacturing facility, more than one (1) principal use is not allowed on COMM-ROM zoned lots. Further, the ordinance does not permit the consumption of food or drink product on COMM-ROM zoned lots. Moreover, although the prior approvals allowed for the front building to be occupied by a second commercial use, such use was limited to a pizzeria/restaurant. As to the request for a “c(2)” parking space variance, same is required from the schedule set forth in ordinance section 6.03-1.01 to allow a five (5) parking space deficiency resulting from the proposed microbrewery use. Specifically, there are currently 61 parking stalls on the property and, pursuant to the prior approvals and previously approved site plans, 25 spaces are required and are thus allotted for the Metropolitan Seafood use in the front building, 15 spaces were required and were thus allotted for a second tenant / use in the front building, and 13 spaces are required and are thus allotted for the L-shaped building, leaving 8 spaces available over and above the required allotments. Based on Exhibit A-1 referenced above, the proposed microbrewery uses require 28 parking spaces, thereby necessitating a total of 66 parking spaces on the property (25 spaces required for Metropolitan Seafood in the front building, 28 parking spaces required for the proposed microbrewery uses in the front building, and 13 parking spaces required for the “L-shaped” building) where 61 parking spaces currently exist on the property. As such, a “c” variance is required for the five (5) parking space deficiency.

3. **Findings as to the “D(1)” Variances to Allow the Microbrewery Uses.**

As set forth above, while brewing beer is considered a principal permitted manufacturing, treatment or conversion of product use and the limited distribution of product which has been proposed is considered a permitted accessory use to a manufacturing facility, more than one (1) principal use is not allowed on COMM-ROM zoned lots. Further, the ordinance does not permit the consumption of food or drink product on COMM-ROM zoned lots. Moreover, although the prior approvals allowed for the front building to be occupied by a second commercial use, such use was limited to a pizzeria/restaurant. As such, the applicant requires and requested three “d(1)” use variances to allow: (a) the proposed microbrewery uses in the front building as a second principal use on the property; (b) the consumption of brewed product in the front building; and (c) the consumption of food in the front building (but prepared off-site). The Board’s findings as to the positive and negative criteria of the “d(1)” use variances are as follows.

a. **Positive Criteria of the “D(1)” Variances.** As to the positive criteria of the “d(1)” variances, provided that the conditions set forth below are imposed and complied with, the Board finds that the proposed use of the remaining 2,960 square foot portion of the front building for the proposed microbrewery uses is particularly suited for the property for the following reasons. First, the Board finds and stresses that the underlying brewery use aspect of the proposed development is in fact a principal permitted use and the limited distribution aspect of the proposed development is a permitted accessory use. Second, the Board finds and notes that it previously approved the front building for a second use, finding that the property was particularly suited for a second use due to its size, location and ability to handle

more than one commercial use. Third, the Board notes and finds that pursuant the prior approvals the property was deemed suitable for certain limited consumption of food and drink via the 2010 approvals for the prior restaurant/pizzeria use. For these reasons, the Board finds that the property and the front building specifically are particularly suitable for limited consumption of food and drink. Notably, the Board finds that the aspects of the proposed microbrewery uses which require the “d(1)” use variances are likewise limited in scope as there will be no additional cooking of food on the premises and, while the proposed second use of the front building is similar to the pizza type restaurant approved in 2010. Further, in that regard, the Board finds that the proposed microbrewery uses are also particularly suited in light of the location within the front building coexistent with the existing and previously approved Metropolitan Seafood use which would allow patrons to bring food from that use to the microbrewery use. The Board finds that, based on the testimony provided, the interrelationship of the two uses in terms of hours of operation and scope of uses further demonstrates the particular suitability of the proposed uses to the property. Finally, the Board also finds that the proposed microbrewery uses promote the purposes of the Municipal Land Use Law (MLUL), in particular, N.J.S.A. 40:55D-2a, which is to encourage municipal action to guide the appropriate use or development in a manner which will promote the public health, safety, morals, and general welfare by virtue of providing a microbrewery use to the Borough and this part of the County where no such use is currently provided. For all of the foregoing reasons, the Board finds that the property is particularly suited for the proposed microbrewery uses and the proposed microbrewery uses will promote the purposes of the MLUL provided, however, that the conditions set forth below are imposed and complied with.

b. **Negative Criteria of the “D(1)”Variances.** As to the negative criteria, provided that the conditions set forth below are imposed and complied with, the Board finds that the “d(1)” use variances to allow the proposed microbrewery uses within the front building can be granted without substantial detriment to the public good in terms of aesthetics, traffic circulation, and safety The Board notes and finds in these regards as follows. First, there will be no change to the exterior of the existing front building which the Board finds is aesthetically pleasing and will remain aesthetically pleasing. Further, while the proposed development requires a parking variance to allow a five (5) parking space deficiency, the Board finds that the applicant has improved the grading and parking area as part of the prior approvals, there will be no significant negative impacts resulting from the proposed five (5) parking space deficiency. Finally, in light of the nature of the surrounding properties and uses, and in particular the adjoining Metropolitan Seafood use, which use blends well with the proposed development both in terms of shared customer usage and in terms of hours of use, the proposed development will not create significant negative impact to neighboring properties. Rather, to the contrary, the Board finds that the proposed development could serve as a catalyst for revitalizing other existing buildings and uses in the area. As to the second prong of the negative criteria, the Board finds that the “d(1)” use variances can be granted without substantially impairing the intent and purpose of the zone and zone plan, since the proposed development enables an adaptive reuse of the remainder of the front building which will maintain the vitality of the area, provides a compatible use with the existing Metropolitan Seafood use, and does not alter the

existing building but for improvements to the site on the whole.

4. **Findings as to the “C(2)” Parking Space Variance.** The schedule set forth in ordinance section 6.03-1.01 provides the required number of parking spaces per use. As set forth above, there are currently 61 parking stalls on the property and, pursuant to the prior approvals and previously approved site plans, 25 spaces are required and thus allotted for the Metropolitan Seafood use in the front building, 15 spaces were required and thus were allotted for a second tenant / use in the front building, and 13 spaces are required and thus allotted for the L-shaped building. However, based on Exhibit A-1 referenced above, the proposed microbrewery uses require 28 parking spaces, thereby necessitating a total of 66 parking spaces on the property where only 61 parking spaces currently exist. As such, a “c” variance for a five (5) parking space deficiency is required. The applicant applied for a “c(2)” parking space variance. The Board’s findings as to the positive and negative criteria of the “c(2)” parking space variance are as follows:

a. **Findings as to the Positive Criteria of the “C(2)” Parking Space Variance.** Provided that the conditions set forth below are imposed and complied with, the Board finds that a “c(2)” variance for number of parking spaces 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 allow the proposed development and brewery to open and operate and continue to provide for an upgrade to the site. The Board finds and recognizes that the adaptive use of the front building as proposed will be in a manner that intertwines in a productive means with the existing Metropolitan Seafood use and that the hours of operation for both uses are limited in nature such that the uses will be able to coincide successfully from a traffic and parking standpoint. As such, the Board finds that granting a variance to allow the parking deviation is a better zoning alternative for the property because it will allow for use of the front building in a manner that will coexist with the existing use, provide a new and adaptive use of the existing building in a manner that enhances the site, constituting a betterment to the neighborhood at large, thus promoting the general welfare purposes of the 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 parking space variance will substantially outweigh any detriment.

b. **Findings as to the Negative Criteria of the “C(2)” Parking Space 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 creating a deviation based on what is proposed and the allotment of uses within the microbrewery as proposed, the proposed development constitutes an improvement from existing conditions. In light of the fact that the same building footprint is proposed, the design and use of the proposed development will not appear as, or result in, overdevelopment of the site. Based on the testimony provided by the applicant as to the operation of the proposed microbrewery uses, including as to hours of operation and employee shift times, the Board finds that there will be limited interaction and overlap with the existing Metropolitan Seafood

use, such that there will be sufficient parking spaces for both uses on the site without creation of any significant negative impacts. Finally, the Board finds that the parking space variance will not impair the intent or purpose of the master plan and zoning ordinance, particularly in light of the fact that the proposed development results in adaptive reuse of the remainder of the space of the front building without change to the existing conditions on the property.

5. **Findings as to Amended Preliminary and Final Site Plan Review.** The Board's findings as to amended preliminary and final site plan review and final site plan review are as follows:

a. **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).

b. **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.

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

B. LEGAL CONCLUSIONS

1. **The "D(1)" Use Variances to Allow the Proposed Uses.** The Board's conclusions as to the "d(1)" use variances are as follows:

a. **Standards for Considering the "D(1)" Use Variances.** 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." Medici v. BPR Co., 107 N.J. 1 (1987). Our courts have held 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 – and the application here is a typical non-inherently beneficial use application – the standard the Board must employ to determine whether special reasons have been proven is whether the property is particularly suited for the very use proposed. *Id.* Our courts held that proof that a site is particularly suited for a proposed use does not require a demonstration that there are no other viable locations for the project. Price v. Himeji, 214 N.J. 263, 292-293 (2013). 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. 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). As to the zone plan (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. The applicant must “reconcile” the use proposed with the ordinance’s omission of the use from those permitted in the zone. *Id.*

b. **Grant of the “D(1)” Variances.** As set forth in the factual findings above, the Board found that the property is particularly suited for the proposed development provided that the conditions set forth below are imposed and complied with. As also set forth in the factual findings above, the Board found that the “d(1)” variances can be granted in this particular case without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that the requested “d(1)” variances can and should be granted subject to the conditions set forth below.

2. **Conclusions as to the “C(2)” Parking Space Variance.** The Board’s conclusions as to the “c(2)” variance from the parking space regulations are as follows:

a. **Standards Applicable to Review of the “C(2)” Variance.** 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 Borough 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) Variance.** As set forth in the factual findings above, the Board found that the grant of the “C(2)” variance to allow the deviation from the required number of parking spaces 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 this deviation would substantially outweigh any detriment. Further, the Board found that the deviation 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 this variance 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)” variance at issue subject to the conditions set forth below.

3. **Amended Preliminary and Final Site Plan Review.** The Board’s conclusions as to amended preliminary and final site plan review are as follows:

a. **Standards Applicable to Amended Preliminary 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:

(1) 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.

(2) 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.

(3) 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 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 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 and final site plan approval can and should be granted but subject to the conditions set forth below.

4. **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. Borough 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 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 conditions set forth below have been imposed on all of the foregoing bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON JANUARY 8, 2019 AS FOLLOWS:

C. RELIEF GRANTED

1. **“D(1)” Use Variances to Allow Consumption of Food / Drink Component of Microbrewery Use.** Subject to the conditions set forth below, two “d(1)” use variances are granted from ordinance section 14.01 which does not permit consumption of food and drink in the COMM-ROM zone to allow as part of the microbrewery proposed uses the following: (a) consumption of food on the premises but only if not prepared on premises; and (b) consumption of beer on the premises but only if the beer to be consumed on the premises is brewed on the premises.

2. **“D(1)” Variance to Allow a Second Commercial Use on the Property.**

Subject to the conditions set forth below, a “d(1)” variance is granted from ordinance section 14.01 which does not allow multiple commercial uses on the property to allow the proposed microbrewery uses as a second commercial use on the property (as such use is not a pizzeria/restaurant approved per the prior approvals).

3. **“C(2)” Variance from Parking Space Regulation.** Subject to the conditions set forth below, a “c(2)” parking space variance is granted from the schedule set forth in ordinance section 6.03-1.01 which establishes the required number of parking spaces by use to allow the total number of 61 parking spaces on the property to remain where a total of 66 parking spaces is now required and to provide for the following required parking space allotment for the uses on the property: 25 spaces are required and allotted for the Metropolitan Seafood use in the front building; while 28 spaces are required under the ordinance for the proposed microbrewery uses in the front building, the “c(2)” variance granted requires 25 spaces for the proposed microbrewery uses and thus allots 25 of the 66 parking spaces on the property to the proposed microbrewery uses; and 13 spaces are required and allotted for the L-shaped building. (If and when a further site plan application with or without “d(1)” use variance application is submitted for the redevelopment of the L-shaped building in accordance with the 2018 approvals, the number of parking spaces and traffic circulation for the L-shaped building must be satisfactorily addressed as part of said application and prior to approval of any such application(s).)

5. **Amended Preliminary and Final Site Plan Approval.** Subject to the conditions set forth below, amended preliminary 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, architectural plan 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 by the applicant, the property owner, and the appropriate Borough and/or Board officials no later than July 26, 2019 (which is six (6) months from the adoption of the within resolution on February 26, 2019). 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 January 3, 2019:**

A. General

(1) Intentionally omitted as the comment provides a description of the property.

(2) Intentionally omitted as the comment address the prior approvals.

(3) Intentionally omitted except that relief required has been addressed in application and testimony.

B. Site Plan

(1) Revise the site plans to include reference to the variance granted for the five (5) parking space deficiency, and revise the parking space calculations and required allotments on sheet 3 of the site plans to be consistent with the parking space variance that was granted.

(2) Revise sheet 1 of the site plans to indicate separately the owner, applicant, and applicant's attorney for each of the commercial spaces.

(3) Revise the site plans, if necessary, for any further clarification as to future commercial space.

(4) Intentionally omitted as addressed in other conditions herein.

(5) Intentionally omitted as addressed in other conditions herein.

(6) Add a note to the site plans that certification of the sewer capacity from the Lebanon Borough Sewer Authority is required.

(7) Intentionally omitted as addressed in other conditions herein.

(8) Intentionally omitted as addressed in other conditions herein.

b. **Following comments emanating in the memo to the Board from Darlene Greene, PP, AICP (Board's professional planning expert) dated January 4, 2019:**

General

(1) Intentionally omitted as addressed in testimony.

(2) Revise the site plans to indicate the accurate hours of

operation for the proposed use.

(3) Add a note to the site plans as to the location for the storage for the grain waste until it is removed.

(4) Intentionally omitted as addressed in testimony.

Site Plans

(5) Revise the site plans to reflect the accurate number of parking spaces on site and the relief needed for same.

(6) Revise the site plans to reflect the relief needed for number of parking spaces.

Architectural

(7) Revise the architectural plans if not already corrected to reflect the accurate interior square footages.

(8) Intentionally omitted as already addressed in testimony.

(9) Intentionally omitted as addressed in testimony.

Signage

(10) Intentionally omitted as addressed in other conditions herein.

(11) Intentionally omitted as addressed in other conditions herein.

c. **Following comments emanating in Board member comments made during the hearing:**

1. Add a note on the site plans stating that no outdoor tables and/or food trucks shall be provided and/or allowed without further approvals / relief from the Board.

2. Add a note on the site plans stating that use of the interior space shall be limited to, in accordance with the breakdown on exhibit A-1 referenced above, to the following:

(a) 2,030 square feet for the factory brewing area;

(b) 190 square feet for the public serving area; and

- (c) 600 square feet for the public seating / consumption area.
3. Revise the site plans to provide accurate owner / applicant / applicant attorney information.

2. **Conditions of Prior Approvals Remain in Full Force and Effect / Approval of Restaurant – Pizzeria in Front Building Granted by the 2010 Approvals is Rescinded and is Null and Void / Further Approvals for Parking and Traffic Circulation Required for L-Shaped Building.** All conditions of the Board’s prior approvals, including but not limited to as contained in Resolutions No. 5-2009, 7-2010, 8-2012, 2018-04 remain in full force and effect and shall be complied with. That said, the approval for a restaurant / pizzeria in the front building granted by the 2010 approvals is hereby rescinded and is hereby declared null and void as replaced by the within approvals for the proposed microbrewery use in the front building. Finally, if and when a further site plan application with or without “d(1)” use variance application is submitted to allow use of the redeveloped L-shaped building in accordance with the 2018 approvals, the number of parking spaces and traffic circulation for the L-shaped building must be satisfactorily addressed as part of said application and prior to approval of any such application(s.)

3. **Signage.** All future proposed signage shall conform to the ordinance requirements and with the conditions of prior approvals or the applicant shall be required to return to the Board for any necessary additional relief.

4. **Grain Recycling.** The applicant shall track the amount and location of grain waste for recycling purposes and shall provide a report regarding same to the Borough Clerk upon the request of the Borough Clerk.

5. **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.

6. **Landscaping.** (Intentionally omitted)

7. **Lighting.** Because no lighting was proposed as part of the application but it is anticipated that lighting may 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.

8. **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.

9. **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.

10. **As-Built Survey.** Prior to issuance of a certificate of occupancy, the owner and/or applicant shall submit for review and approval a signed and sealed survey of the property showing all structures located on the property, all setbacks to same on the property, as well as all improvements shown on the approved site plan, all to the satisfaction of the Borough Engineer .

11. **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 February 26, 2021 (which is within two (2) years of the date the within resolution was adopted on February 26, 2019). 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.

12. **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

- a. Lebanon Borough Sewer Authority;
- b. Hunterdon County Planning Board (unless the prior approval remains valid); and
- c. Hunterdon County Soil Conservation District (unless the prior approval remains valid).

13. **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.

MISCELLANEOUS:

ADJOURN

Mr. Abeles moved, Mr. Hauck 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 9:40 p.m.

Respectfully submitted,

Karen Romano

Planning Board Secretary