



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
Tuesday, November 12, 2019

The Regular meeting of the Lebanon Borough Planning Board/Board of Adjustment was called to order by Chairman at 7:30 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, David Abeles, Joseph Hauck, Henry Hopkins and Ron Lapcynski

Absent: William Skene, Mayor Pittinger, Councilman Berger William Wilson, , and James Newman

Also present : Karen M. Romano Planning Board Sec.

EXPENDITURE APPROVAL:

No Expenditure

MINUTE APPROVAL:

Mr. Hopkins moved, and Dr. Uchrin seconded, a motion for the approval of the Minutes of September 10, 2019.

The motion passed with the following roll call vote:

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

Absent Skene, Pittinger, Berger, Wilson, and Newman

Abstain:

RESOLUTIONS:

**Mr. Abeles moved, and Mr. Hopkins seconded, a motion to Memorialize
Resolution 2019-08 Clinton Auto Body.**

LEBANON BOROUGH PLANNING BOARD / BOARD OF ADJUSTMENT

**KJM AUTOBODY, LLC D/B/A
CLINTON AUTO BODY**

**BLOCK 4, LOT 8
1262 ROUTE 22**

APPLICATION NO. 2019-08

**RESOLUTION MEMORIALIZING GRANT OF AMENDED PRELIMINARY AND
FINAL SITE PLAN APPROVAL TO ALLOW INTERIOR MODIFICATIONS TO AN
EXISTING BUILDING TO ALLOW CONSTRUCTION OF A PAINT SPRAY BOOTH
TO BE USED AS PART OF AN EXISTING AUTOBODY USE**

RESOLUTION NO. 2019-09

WHEREAS, KJM Autobody, LLC (the “**applicant**”) is the lessee of certain property owned by Joseph Pelosi (the “**owner**”) in the Borough of Lebanon (the “**Borough**”) designated on the Borough tax maps as Block 4, Lot 8, having a street address of 1262 Route 22 West (the “**property**”), which property is approximately .65 acres in size and situated in the Commercial Research Office Manufacturing 200,000 zoning district (the “**COMM-ROM 200,000 zone**”), and the property is presently developed with an autobody use comprised of two structures, a two story structure centrally located on the property which contains an office for the autobody use (the “**two-story building**”) and a one story structure located in the rear, northeast corner of the property (the “**one-story building**”) (the two story building, one story building and related site improvements are referred to together as the “**existing development**”);

WHEREAS, the property has been subject to several prior development approvals resulting in the existing development, including the following,

1. A use variance to allow the auto body use on the property as memorialized in Resolution adopted July 13, 1972,

2. A use variance to allow sale of up to six used cars (subject to site plan approval) as memorialized in resolution adopted March 20, 1979,

3. Site plan approval to allow the used car sales as memorialized in Resolution No. 1979-3 adopted April 19, 1979, and

4. A use variance to allow installation of a larger shed for use in connection with the autobody use as memorialized in Resolution No. 1989-1 adopted April 3, 1989, (all four approvals collectively referred to as the “**prior approvals**”);

WHEREAS, with the consent of the owner, the applicant submitted an application dated August 27, 2019 to the Lebanon Borough Planning Board (the “**Board**”) for amended site plan approval to allow interior modifications to the one-story building to create an interior paint spray booth (the “**paint spray booth**” and/or “**proposed improvements**”) for use in connection with the autobody use (the “**application**”);

WHEREAS, 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-20, 46, 50 and 76b and in accordance with 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;

WHEREAS, 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 form dated August 27, 2019 with attachments,

2. Plan sheet titled “Clinton Auto Body Site Plan”, prepared by Stephen E. Parker, PE of Parker Engineering & Surveying, PC, dated August 21, 2019, last revised August 30, 2019 (the “**site plan**”), and

3. Memo to the Board from Robert Brightly, PE, PP (Board engineering expert) dated September 9, 2019;

WHEREAS, the Board held a duly noticed public hearing on the application on September 10, 2019, 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 Tony Koester, Esq. and the Board was represented by Jonathan E. Drill, Esq.;

WHEREAS, the following individuals testified during the hearing, 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. Steven Parker, PE (applicant's engineering expert),
2. Joseph Pelosi, (managing member of LLC), and
3. Robert Brightly, PE (Board's engineering expert);

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

- A-1 Depiction of paint spray booth (the "**paint spray booth exhibit**");

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH 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, Zoning, Existing Improvements, and Prior Approvals.**

As set forth above, the property is approximately .65-acres in size and is situated in the COMM-ROM 200,000 zone. Public garages and motor vehicle service stations are permitted conditional uses in the COMM-ROM 200,000 zone and the applicant operates a motor vehicle body shop which is a public garage. Several existing nonconformities exist on the property, including the following: (a) only one permitted building is permitted on a lot whereas the property contains two principal buildings with different uses; (b) minimum required lot area is 200,000 square feet whereas the existing area of the property is 28,314 square feet; (c) minimum required lot width is 300 feet whereas 125 feet exists; (d) maximum impervious coverage is 40% whereas the existing impervious coverage is 53.57%; (e) minimum required floor area is 25,000 square feet whereas the main structure containing the auto repair shop contains 2,598 square feet; minimum required front yard setback is 150 feet whereas the existing front yard setback is 126.7 feet; (f) minimum required side yard setback is 75 feet whereas the existing side yard setbacks are 2.2 feet and 35.3 feet; (g) minimum required rear yard setback is 75 feet whereas the existing rear yard setback is 25 feet; (h) minimum required side yard parking setback is 35 feet whereas the existing side yard parking setback is zero feet; and (i) minimum rear and side yard setbacks for accessory buildings (the shed) is 75 feet whereas the existing rear and side yard setbacks are 7.3 feet side yard and 6.4 feet rear yard. As set forth above, the property contains the existing development which consists of the two-story building located in the rear, northeast corner of the property, and the one-story building, as well as related site improvements, all utilized in connection with an autobody use. The existing development exists on the property by way of the prior approvals as set forth above.

2. **The Proposed Improvements and Required and Requested Relief.** As set forth above, the application seeks approval to allow modifications to the one-story building to allow interior renovations to install a paint spray booth. Amended site plan approval is required to allow installation of the paint spray booth and, in as much as the underlying motor vehicle body shop use was approved by prior use variance (which is not being expanded), the applicant requires only amended site plan approval to allow for the proposed improvements. As set forth above, the Board sitting as a zoning board of adjustment has exclusive subject matter jurisdiction of the application because the amended site plan application is connected to a “d” variance.

3. **Findings as to the 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.** The Board finds that the site plan and paint spray booth exhibit will comply with all 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.

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 improvements.

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. **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.

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.** The Board found that the site plan and paint spray booth exhibit will comply with all 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.

2. **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 2019), 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 Shakoore 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 “as 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 SEPTEMBER 10, 2019 AS FOLLOWS:

C. RELIEF GRANTED

1. **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 plan to allow the proposed improvements.

D. CONDITIONS

1. **Revisions to Site Plan.** To the extent that

revisions have not already been made to the site plan, revisions 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 the site plan being signed no later than May 12, 2020 (which is six (6) months from the adoption of the within resolution on November 12, 2019). In the event that the applicant fails to revise the plan 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 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 regarding the site plan emanating in the memo to the Board from Robert Brightly, PE, PP (Board's engineering expert) dated September 9, 2019:**

- (1) Intentionally omitted as site plan revisions are not necessary.
- (2) Revise the zoning table on the site plan to indicate that the combined side yard requirements are not applicable. The table indicates compliance, however, the 50 foot minimum is superseded by the requirement for a 75 foot setback to the adjacent uses.
- (3) Revise the zoning table to indicate a required rear yard setback of 75 feet.
- (4) – (6) Intentionally omitted as site plan revisions are not necessary.

2. **Conditions of Prior Approvals.** All conditions of the Board's prior approvals remain in full force and effect and shall be complied with.

3. **Permits to be Obtained.** The applicant shall apply for and obtain zoning permits and all required construction permits, including but not limited to electrical.

4. **Design and Construction of Proposed Improvements and Location of Site Improvements.** The applicant shall be required to design and construct the proposed

improvements substantially similar to that reflected on the site plan as revised in accordance with condition #1 above after the site plan have been signed by the Borough Engineer and Board Chair and Secretary.

5. **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.

6. **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.

7. **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 improvements by November 12, 2021 (which is within two (2) years of the date the within resolution was adopted on November 12, 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.

8. **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; and
- c. Hunterdon County Soil Conservation District.

9. **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.

VOTE ON MOTION DULY MADE AND SECONDED ON SEPTEMBER 10, 2019:

THOSE IN FAVOR: SAHARIC, SKENE, UCHRIN, HAUCK, HOPKINS, ABELES & LAPCZYSKI .

THOSE OPPOSED: NONE.

The within resolution memorializing the Board action in granting the approvals set forth above was adopted on November 12, 2019 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
SAHARIC	x			
SKENE				x
UCHRIN	x			
HAUCK	x			
HOPKINS	x			
ABELES	x			
LAPCZYSKI	x			

ALEX SAHARIC, Chairperson

ATTEST: KAREN ROMANO, Secretary
DATE MEMORIALIZED: November 12, 2019

The motion passed with the following roll call vote:

Ayes: Saharic, Hauck, Uchrin, Abeles, Hopkins and Lapcynski,

Absent Skene, Pittinger, Berger, Wilson, and Newman

Abstain:

PUBLIC COMMENT:

Chairman Saharic opened the floor for public comment. There being none the floor was closed.

MISCELLANEOUS:

ADJOURN

Mr. Abeles moved, Dr. Uchrin seconded a motion to adjourn, there being no further business to come before the Board. The motion was passed by unanimous vote. The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

LBPB/BOA

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