



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
Tuesday, July 14, 2020

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, William Skene, David Abeles, Joseph Hauck, Henry Hopkins, Mayor Pittinger and Councilman Berger
Absent: William Wilson, Ron Lapcynski and James Newman
Also present: Karen M. Romano Planning Board Sec., Jon Drill Esq, Darlene Green, Planner

EXPENDITURE APPROVAL:

No Expenditure

MINUTE APPROVAL:

Mr. Ableles moved, and Councilman Berger seconded, a motion for the approval of the

Minutes of May 2020.

The motion passed with the following roll call vote:

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

Absent Wilson, Lapcynski, and Newman

Abstain:

CERTIFICATION OF INTERPRETATION: 5 Alpaugh Lane

Living within 200 feet of the property being heard, Chairman Saharic recused himself and handed the meeting over to Mr. Abeles. Joe Hauck also recused himself being a witness for the applicant.

Joseph Hauck of 74 Brunswick Ave was sworn in as a witness by Board Attorney Jon Drill Esq. Joe stated that the Planning Board Secretary and he discovered in Board minutes 1954 and again in 1968 5 Alpaugh Lane was a 3 family dwelling.

5 Alpaugh Lane, LLC (the “**applicant**”) is the owner of certain property in the Borough of Lebanon (the “**Borough**”) designated on the Borough tax maps as Block 6, Lot 18.01, having a street address of 5 Alpaugh Lane (the “**property**”), and the applicant applied to the Borough Planning Board / Board of Adjustment (the “**Board**”) for an interpretation pursuant to N.J.S.A. 40:55D-70b and/or a certification pursuant to N.J.S.A. 40:55D-68 that the building (the “**existing building**”) on the property and the three (3) dwelling units (the “**three dwelling units**”) located in the existing building are lawfully created preexisting nonconforming uses so are entitled to continue on the property (the “**application**”);

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 in accordance with N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:55D-70b which provides that the Board is authorized to “hear and decide requests for interpretation of the zoning . . . ordinance or for decisions upon other special questions upon which such board is authorized to pass . . .”, and N.J.S.A. 40:55D-68 which provides that the Board may issue a “certification certifying that a use or structure existed before the adoption of an ordinance which rendered the use or structure nonconforming”;

The Board held a duly noticed public hearing on the application on July 14, 2020, with proof of publication and service of the notices of the hearing being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, and during which hearing the applicant was represented by John Carrino, Esq. and the Board was represented by Jonathan E. Drill, Esq;

The following individual testified during the hearing, were subject to cross-examination, and the testimony is part of the record in this matter:

1. Joe Hauck (Borough Zoning Officer), and
2. Karen Romano (Borough Clerk and Board Secretary);

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

A. FACTUAL FINDINGS AND CONCLUSIONS OF LAW

1. **The Property, Improvements and Zoning.** As set forth above, the existing building is located on the property and contains three (3) dwelling units. The property is situated in the COM-ROM 100,000 zoning district (the “COM-ROM 100,000 zone”) which permits commercial and research / office / manufacturing uses and does not permit residential dwellings whether single family detached dwellings, attached dwellings or multi-family dwellings.

2. **The Application.** As set forth above, the application is for an interpretation and/or a certification that the existing building and the three dwelling units located in the existing building are lawfully created preexisting nonconforming uses so are entitled to continue on the property. The key issue that must be decided in the application in order for the Board to be able to issue the requested interpretation and/or certification is whether the three dwelling units contained in the existing building were lawfully created prior to the adoption by the Borough of the ordinance which first prohibited multi-family dwellings on the property because the applicant is unable to prove that the three dwelling units in the existing building on the property were ever permitted under any of the Borough zoning ordinances that have applied to the property since the very first ordinance was adopted in 1968.

3. **Authority to Certify Lawfully Created Nonconforming Uses and Issue Interpretations, and Key Issue that Must be Decided.** The Board has the power pursuant to N.J.S.A. 40:55D-70b to “decide requests for interpretation of the zoning map or zoning regulations or for decisions upon other special questions upon which the board is authorized to pass.” The Board also has the power pursuant to N.J.S.A. 40:55D-68 to “certify” that a “nonconforming use or structure . . . may be continued upon the lot or in the structure so occupied” if the “use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming.” The question of whether a use is a lawfully created pre-existing nonconforming use entitled to continue is a special question upon which the Board is authorized to answer and is authorized to certify to a prospective purchaser, the owner and/or an applicant. As set forth above, in this application the key issue that must be decided in order for the Board to be able to issue the requested interpretation and/or certification is whether the three dwelling units contained in the existing building were lawfully created prior to the adoption by the Borough of the ordinance which first prohibited multi-family dwellings on the property. The

burden of proving the existence of a lawfully created pre-existing nonconforming use is on the party asserting it. Bonaventure Intern., Inc. v. Borough of Spring Lake, 350 N.J. Super. 420, 432 (App. Div. 2002).

4. **Findings and Conclusions.** The applicant presented no witnesses. However, the Board heard and considered the testimony of two Borough witnesses who made themselves available for testimony during the hearing. The first witness was Karen Romano, Borough Clerk and Board Secretary, and she testified that through her review of Borough records, the Borough's first zoning ordinance was adopted in 1968. The second witness was Joe Hauck, the Borough's Zoning Officer, and he testified that through his review of the Board's records, the property was subdivided in 1954 and the records from that 1954 subdivision reference a 3-family building in existence at that time. The Board found both Ms. Romano's and Mr. Hauck's testimony entirely credible and has no reason to disbelieve it. The Board is thus satisfied that the burden of proving that the three dwelling units contained in the existing building lawfully pre-existed the Borough's first zoning ordinance in 1968 has been satisfied. As such, the Board finds and concludes that, based on the testimony presented by the Borough's witnesses during the hearing, the three dwelling units contained in the existing building are lawfully created preexisting nonconforming uses entitled to continue on the property.

BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON JULY 14, 2020 THAT THE APPLICATION IS GRANTED AS FOLLOWS:

B. RELIEF GRANTED

1. **Issuance of Interpretation and Certification of Lawfully Created Pre-Existing Nonconforming Use Entitled to Continue.** Subject to the conditions set forth below being complied with, the Board hereby interprets and certifies that the three dwelling units contained in the existing building on the property are lawfully created pre-existing nonconforming uses on the property and are entitled to continue.

C. CONDITIONS

1. **Escrow Fees.** Prior to the effective date of the within certification, 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 and/or within 30 days of written notice that a deficiency exists in the escrow account. Failure to abide by this condition shall result in the relief granted automatically terminating and becoming null and void.

2. **Subject to Other Laws and Approvals.** The use of all property subject to the within certification is 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 use of all property subject to the within certification 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 the use of the property.

Mr. Skene moved, and Mr. Abeles seconded, a motion to approve the Certification of Interpretation

The motion passed with the following roll call vote:

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

Absent Wilson, Lapczynski, and Newman

Abstain:

Planer Darlene Green review the 2020 Master Plan and Development Regulations Re-examination with the Board.

PUBLIC HEARING FOR THE RESOLUTION 06-2020 MASTER PLAN AND DEVELOPMENT RE-EXAMINATION

Chairman Saharic opened the floor

Chairman Saharic ask for any questions or comment regarding the 2020 Master Plan and Development Regulations Re-examination

There being no public comment, Chairman Saharic closed the floor

MOTION TO ADOPTED RESOLUTION 06-2020 MASTER PLAN AND DEVELOPMENT RE-EXAMINATION

Mr. Skene moved, and Mr. Abeles seconded, a motion to adopt the 2020 Master Plan and Development Regulations Re-examination

The motion passed with the following roll call vote:

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

Absent Wilson, Lapczynski, 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, 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 8:50 p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

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