



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
Wednesday, September 8, 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.

MOMENT OF SILENCE

Chairman Saharic called for a moment of silence for our fallen soldiers.

ROLL CALL:

Members Present: Alexander Saharic, Dr. Christopher Uchrin, Councilman Berger, Henry Hopkins, David Abeles, William Skene, and Joseph Hauck,
Absent: Mayor Pittinger, William Wilson, Ron Lapcynski and James Newman
Also present: Karen M. Romano Planning Board Sec., Katie Esq,
Darlene Green, Planner

MINUTE APPROVAL:

Mr. Ableles moved, and Councilman Berger seconded, a motion for the approval of the Minutes of July 14th and July 22, 2020.

The motion passed with the following roll call vote:

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

Absent Pittinger, Wilson, Lapcynski, and Newman

Abstain:

EXPENDITURE APPROVAL:

No Expenditure

MEMORIALIZATION 5 ALPAUGH LANE

Mr. Hauck moved, and Mr. Hopkins seconded, a motion Memorializing Resolution 2020-07 Alpaugh Lane.

LEBANON BOROUGH PLANNING BOARD / BOARD OF ADJUSTMENT

5 ALPAUGH LANE, LLC

BLOCK 6, LOT 18.01

5 ALPAUGH LANE

APPLICATION NO. 2020-01

**RESOLUTION MEMORIALIZING INTERPRETATION AND CERTIFICATION
OF THE 3-FAMILY DWELLING ON THE PROPERTY AS A LAWFULLY
CREATED PREEXISTING NONCONFORMING USE ENTITLED TO CONTINUE**

RESOLUTION NO. 2020-07

WHEREAS, 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**”);

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 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”;

WHEREAS, 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;

WHEREAS, 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);

WHEREAS, 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.

NOW, THEREFORE, 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.

VOTE ON MOTION DULY MADE AND SECONDED ON JULY 14, 2020:

THOSE IN FAVOR: SKENE, HAUCK, UCHRIN, HOPKINS, ABELES, PITTINGER & BERGER.

THOSE OPPOSED: NONE.

The within resolution memorializing the Board action in granting the approval set forth above was adopted on September 8, 2020 by the following vote of eligible Board members:

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

KAREN ROMANO, Board Secretary

Dr. Christopher Uchrin, Vice Chairman

The motion passed with the following roll call vote:

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

Absent: Pittinger, Wilson, Lapcynski, and Newman

Abstain: Saharic

Planner Darlene Green explained Ordinance 2020-08 the New Multi Family Zoning Ordinance to the Board.

Ordinance 2020-08 Multi-Family Ordinance

On July 8, 2015 the Borough of Lebanon filed a Declaratory Judgment Action seeking court approval of its affordable housing plan. Thereafter, the Borough entered into a Settlement Agreement with Fair Share Housing Center, executed on September 19, 2019. Included in the Settlement Agreement are Block 4, Lots 1.03 and 1.04, which will provide for a total of 280 units, of which 56 will be affordable units. The Settlement Agreement provides the Borough the option to rezone the parcels or adopt a Redevelopment Plan. On December 3, 2019 Judge Miller issued an Order approving the Settlement Agreement and directing the Borough to draft and adopt the required compliance documents. On May 12, 2020 the Planning Board held a hearing and adopted the 2020 "Housing Element & Fair Share Plan" ("HEFSP"). The HEFSP includes Block 4, Lots 1.03 and 1.04 as a site addressing the Borough's affordable housing obligation. The document states that the Borough will rezone the site or adopt a redevelopment plan to permit the inclusionary development as-of-right.

On July 14, 2020 the Planning Board adopted the "2020 Master Plan & Development Regulations Reexamination" report. Chapter V of the report makes certain recommendations for the Master Plan and/or development regulations. Page 14 of the report recommends a new zone or redevelopment plan for the two lots, which would permit inclusionary multi-family development at a density of 12.6-13 units per acre, capped at a total of 280 units.

Proposed Ordinance 2020-08 is consistent with both the 2020 HEFSP and 2020 Reexamination report as it implements the recommendation to adopt a new zone to permit the construction of the inclusionary development.

The Board agreed to send the Ordinance to Council for adoption with the review of Engineer Robert Brightly.

Mr. Hauck moved, and Mr. Abeles seconded, a motion to send Ordinance 2020-08 to Council for adoption.

The motion passed with the following roll call vote:

Ayes: Saharic, Skene, Hauck, Uchrin, , Abeles, Hopkins, Berger ,
Absent: Pittinger, Wilson, Lapcynski, and Newman
Abstain:

Planner Darlene Green explained Ordinance 2020-09 the Stormwater Management Ordinance to the Board.

Ordinance 2020-09 Stormwater Management

Proposed Ordinance 2020-09 is based on a template document provided to the Borough from the Highlands Council. The drafting of Ordinance 2020-09 has been funded by the Highlands Council as it is a requirement of Plan Conformance. On July 14, 2020 the Planning Board adopted the "2020 Master Plan & Development Regulations Reexamination" report. Chapter V of the report makes certain recommendations for the Master Plan and/or development regulations. Page 14 of the report notes that the Highlands Council is requiring the Borough to adopt a Highlands Region Stormwater Ordinance, which would replace Lebanon's existing Stormwater Management Ordinance. The text describes the sections of the ordinance and also indicates that the new ordinance may also address prime groundwater recharge areas and/or municipally-important groundwater recharge areas.

Proposed Ordinance 2020-09 is consistent with the 2020 Reexamination report and implements its recommendation to adopt a Highlands Region Stormwater Ordinance.

Mr. Hauck moved, and Mr. Abeles seconded, a motion to send Ordinance 2020-09 to Council for adoption.

The motion passed with the following roll call vote:

Ayes: Saharic, Skene, Hauck, Uchrin, , Abeles, Hopkins, Berger ,
Absent: Pittinger, Wilson, Lapcynski, and Newman
Abstain:

Mr. Hauck moved, and Mr. Ableles seconded, a motion approving Resolution 2020-08 Hiring a Traffic Engineer.

LEBANON BOROUGH PLANNING BOARD / BOARD OF ADJUSTMENT

**RESOLUTION RETAINING
HAROLD K. MALTZ P.E.P.P. AS BOARD TRAFFIC ENGINEER EXPERT TO
REVIEW APPLICATIONS WITH TRAFFIC ELEMENTS**

RESOLUTION NO. 2020-08

WHEREAS, the Lebanon Borough Planning Board/ Board of Adjustment (“the Board”) that there is a need to retain a traffic expert to review applications with traffic elements; and

WHEREAS, the Board has determined to retain Harold K. Maltz, P.E.P.P. of Hamal Associates of 19 Porter Road West Orange, New Jersey 07052 as Board traffic engineering expert; and

WHEREAS, the Board has determined that Harold K Maltz P.E.P.P. has the requisite experience with such specialized services required by the Board; and

WHEREAS, the Board has elected to enter into a professional services agreement pursuant N.J.S.A. 40A:11-1 et seq. and shall enter into such contract on a non-affair and open contract basis pursuant to the provisions of N.J.S.A. 19:44A-20.5.

NOW, THEREFORE, BE IT RESOLVED by the Board:

1. Harold K. Maltz P.E.P.P. of Hamal Associates, Inc. is hereby retained as traffic engineer expert for the Board for the remainder of 2020.
2. A professional services contract with the Borough of Lebanon on the condition that legally required forms and certifications are provided, including but not limited to a Business Entity Disclosure Certification.
3. This resolution authorizes a contract to be awarded without competitive bidding with such contract to be prepared and finally approved by the Borough Attorney.
4. A notice of this action shall be published in the legal newspaper of the Borough.

* * *

The above resolution was adopted on September 8, 2020, by the following vote of Board members:

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

LAPCYNski	x
NEWMAN	x

ALEX SAHARIC, Chairperson

ATTEST: KAREN ROMANO, Secretary

DATE ADOPTED: September 8, 2020

The motion passed with the following roll call vote:

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

Absent: Pittinger, Wilson, Lapcynski, and Newman

Abstain:

PUBLIC COMMENT:

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

MISCELLANEOUS:

ADJOURN

Mr. Skene moved, Mr. Hopkins 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 8:30 p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

LBPB
5-10-16
14

LBPB
5-10-16
17

LBPB
5-10-16
20

LBPB
5-10-16
21

LBPB
PAGE 24
6-10-15