



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
Tuesday March 8, 2022

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, David Abeles, Councilman Berger, Henry Hopkins, Mayor Pittinger, Joseph Hauck, Robert Weingart, and James Newman,

Absent: Dr. Christopher Uchrin, William Skene and William Wilson

Also present: Karen M. Romano Planning Board Sec., Jonathan Drill Esq., Bob Brightly
PE,

Stan Slachetka PP

Abstain:

MINUTE APPROVAL:

Mr. Hauck moved, and Mr. Abeles seconded, a motion to approve the Minutes of Reorganization minutes of February 8, 2022.

The motion passed with the following roll call vote:

Ayes: Saharic, Hauck, Newman, Abeles, Pittinger, Weingart, Hopkins, Berger, Pittinger,

Absent: Uchrin, Skene, and Wilson

Abstain:

**PRESIDENTIAL PLACE REALTY LLC BLOCK 3, LOT 1 SOLAR PANELS
FORMAL:**

The Applicant proposes to install a total of 427 solar panels on the roof surface of the Existing Apartment Buildings, with each Building to receive between 64 and 76 solar panels.

The “c” variance request confers subject matter jurisdiction over the Application with the Board in its capacity as a planning board, pursuant to N.J.S.A. 40:55D-20 by reason of N.J.S.A. 40:55D-60a and 40:55D-70c;1

The Application was deemed to be complete by the Sub-committee.

Presidential Place Realty LLC (the “**Applicant**”) owns an approximately 7.76-acre lot designated on the Lebanon Borough tax maps as Block 3, Lot 1 (the “**Property**”), which Property has a street address of 710 Presidential Place, is situated in the R-MF-AH2 Residential-Multifamily-Affordable Housing 2 zoning district (the “**R-MF-AH2 zone**”) and is located east of Cokesbury Road (Hunterdon County Route No. 639) and to the north of exit ramp from the westbound lanes of Interstate 78 at Exit 20B;

The Property is presently developed with six (6) multifamily residential buildings containing a combined total of 150 apartments, with each building containing 25 apartments (the “**Existing Apartment Buildings**”), along with existing site improvements on the Property, including a clubhouse, inground swimming pool, cabana, drainage basin and related facilities, as well as parking and landscaped areas (the “**Existing Site Improvements**”);

WHEREAS, the Applicant proposes to install accessory solar photovoltaic energy facilities on the Property, consisting of a total of 427 solar panels on the roof surface of

the Existing Apartment Buildings (with each Building to receive between 64 and 76 solar panels on its roof) as well as related accessory structures and equipment inside the Existing Apartment Buildings, to provide the Existing Apartment Buildings with solar generated electricity (the “**Proposed Development**”), , and all Existing Site Improvements on the Property would remain without change, and the Applicant made an application (the “**Application**”) to the Lebanon Borough Planning Board / Board of Adjustment (the “**Board**”) in its capacity as a planning board 1 for minor site plan and a “c” variance to allow construction of the Proposed Development;

Because the Application seeks minor site plan approval to allow construction of a permitted accessory use and permitted accessory structures and does not require a “d” type variance, the Board in its capacity as a planning board has subject matter jurisdiction over the Application pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-46.1, and the Board also has ancillary jurisdiction over any “c” variances that may be needed by application of N.J.S.A. 40:55D-60a and -70c; 2

The Application was deemed to be complete;

The following documents were submitted with regard to the Application, are on file with the Board, and are part of the record in this matter:

1. Application form dated January 28, 2022, with accompanying Application documents,
2. Technical Drawings prepared by Synergic Design dated September 7, 2021, consisting of 11 Sheets: (PV-1 Title Sheet; PV-2 Solar Panel Layout; PV-2.1 Solar Panel Layout Building 1; PV-2.2 Solar Panel Layout Building 2; PV-2.3 Solar Panel Layout Building 3; PV-2.4 Solar Panel Layout Building 4; PV-2.5 Solar Panel Layout Building 5; PV-2.6 Solar Panel Layout Building 6; PV-4 Equipment Specifications; PV-4.2 Site Elevation; PV-4.3 Property Survey) (together referred to as the “**Site Plans**”),
3. Application review letter from Board engineering expert Robert Brightly, PE, PP, CME (of Ferriero Engineering, Inc.) , dated March 4, 2022, and

1 The Board is a planning board which has the authority to exercise the powers of a zoning board of adjustment pursuant to N.J.S.A. 40:55D-25c.

2 As set forth below, while the Applicant applied for a “c” variance along with minor site approval, the Board determined that no “c” variance was required.

4. Application review letter from Board planning expert Stanley Slachetka, PP, AICP (of T and M Associates), dated March 4, 2022;

A duly noticed public hearing was held on the Application on March 8, 2022, with proofs of service and publication of notices of the hearing on the Application being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the Application with the Board, during which hearing the Applicant was presented by Christopher A. Erd, Esq., from the law firm of Norris McLaughlin, PA, and the Board was represented by Jonathan E. Drill, Esq. from the law firm of Stickel, Koenig, Sullivan & Drill, LLC;

The following witnesses testified during the hearings and were subject to cross examination, which testimony is part of the record in this matter:

1. Lincoln Xia, from Accord Power (Applicant's representative), and
2. Malathi Ananthakrishnan, RA (Applicant's Architect);

The following Exhibits were entered into evidence hearing and are part of the record in this matter:

1. Exhibit A-1: Typical Roof Plan & Elevation dated March 8, 2022, prepared by Synergic Design, and
2. Exhibit A-2: Sample Roof Mounted PV Solar Panel Safety Sign Graphic;

No interested parties or members of the public appeared at the hearing to question witnesses, testify, present witnesses to testify or otherwise submit evidence;

A. **FACTUAL FINDINGS AND LEGAL CONCLUSIONS**

1. **The Property, Zoning, Prior Approvals and Existing Building and Use.** The Property is an approximately 7.76-acre lot situated in the R-MF-AH2 zone, which Property has a street address of 710 Presidential Drive, and is located east of Cokesbury Road (Hunterdon County Route No. 639) and to the north of exit ramp from the westbound lanes of Interstate 78 at Exit 20B. The Property is presently developed with the six (6) multifamily residential buildings containing a combined total of 150 apartments, with each building containing 25 apartments. Pursuant to Ordinance 2006-19, Section 11B in Article 11, Multifamily Zone with Affordable Housing Elements (created by Ordinance 2006-19) (the "**Zone**"), "multifamily units" are the only permitted primary use in the zone. Solar photovoltaic energy facilities are not a specifically designated as permitted in this Zone. In fact, no permitted accessory uses are specified in the ordinance governing the Zone. However, the ordinance does include bulk and yard standards for accessory buildings. And, Borough ordinance section 2.03 defines an "accessory use" as a "use normally incident and subordinate to the principal use" of a property and ordinance section 2.02 defines "accessory structure" as a "subordinate building or

structure on the same lot with a principal building, said subordinate building or structure being devoted exclusively to an accessory use.” In fact, as set forth above, there exists on the Property various Existing Site Improvements and they include the following permitted accessory buildings and structures: a clubhouse, inground swimming pool, cabana, drainage basin and related facilities, as well as parking areas. The Board finds and concludes that accessory uses and structures which are normally incident and subordinate to the principal permitted multi-family residential use on the Property are permitted as accessory uses and structures on the Property pursuant to the Borough ordinance.

2. **The Proposed Development, Application, and Required and Requested Relief.** As set forth above, the Proposed Development consists of 427 solar panels on the roof surface of the Existing Apartment Buildings, with each building to receive between 64 and 76 solar panels on its roof. The solar panels are proposed to be installed using a flat roof ballasted racking system. Each solar panel will be installed at a 10-degree angle. All solar panels will be installed on the flat sections of the roofs behind the existing 42-foot-high roof parapets. The solar panels will not be seen from the road as they will be completely hidden by the parapet walls. All Other Existing Improvements on the site are proposed to remain without change. As set forth above, the Application seeks minor site plan approval with a “c” variance to allow construction of the Proposed Development. The Board finds and concludes that the Proposed Development, which will produce electricity that will be used on-site through a net metering system, is a permitted accessory use to the permitted principal multi-family residential use of the property and the solar panels and related structures and equipment are permitted accessory structures. The Board bases this finding and conclusion on ordinance section 2.03 which defines an “accessory use” as a “use normally incident and subordinate to the principal use” of a property and ordinance section 2.02 which defines “accessory structure” as a “subordinate. . . structure on the same lot with a principal building, said subordinate . . . structure being devoted exclusively to an accessory use.” The Board finds that the Proposed Development is a roof top mounted solar photovoltaic energy facility which, in the 21st Century, is a customary and normal incidental use to principal residential and commercial uses and that, in this particular application, the roof top mounted solar photovoltaic energy facility is subordinate to the principal Existing Apartment Building use. While the Board concludes that the Proposed Development is also an “inherently beneficial use” as a matter of law pursuant to N.J.S.A. 40:55D-4 as it is a “solar or photovoltaic energy facility or structure” that is irrelevant since the Board found and concluded that the Proposed Development is a permitted accessory use. Further, while the Applicant has applied for a “c” variance, the Board finds and concludes that no such variance is required as there is no Borough ordinance provision from which the Proposed Development deviates.

3. **Findings and Conclusions as to Minor Site Plan Review.** The Board’s findings and conclusions as to minor site plan review are as follows:

a. **Standards for Minor Site Plan Review.** N.J.S.A. 40:55D-46.1 and N.J.S.A. 40:55D-50a govern consideration of a minor site plan application. N.J.S.A. 40:55D-46.1 provides that “minor site plan approval shall be deemed to be final approval of the

site plan.” N.J.S.A. 40:55D-50a provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances. As such, if the application complies with all zoning and site plan 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 two exceptions. The first exception is where an application does not comply with all ordinance provisions 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 provisions and grant approval if the application complies with all such remaining provisions. The second exception is where the application does not comply with all ordinance provisions, 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 and/or site plans be revised prior to signing the site plan to comply with the ordinance provision or the Board can adjourn the hearing to permit the applicant the opportunity to revise the application and/or site plans prior to the Board granting approval.

b. **Minor Site Plan Review and Approval.** The Board finds that the Proposed Development complies with all Borough zoning ordinance provisions and site plan ordinance requirements. As such, the Board concludes that it can and should grant minor site plan approval. That said, the Board finds that such approval must be subject to conditions requiring revisions to the site plans and also subject to some conditions requiring the addition of safety features to the Proposed Development, all of which are set forth below, and all of which were consented to by the Applicant.

4. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval it grants. 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, 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” 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 2022), 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’s 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 Board concludes that it can and should impose the conditions set forth below on all of the above applicable bases.

B. RELIEF GRANTED

1. **Minor Site Plan Approval.** Subject to the conditions set forth below, minor site plan approval is granted to the Site Plans referenced above to allow construction of the Proposed Development.

C. CONDITIONS

1. **Revisions to Plans.** Prior to the issuance of zoning and construction permits, revisions to the Site Plans by drawings and/or notes 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 submitted the report or testified as well as to the satisfaction of the Borough Engineer, with the revisions being made to the site plans no later than November 12, 2022 (which is six (6) months from the adoption of the within resolution on May 12, 2022). Additionally, prior to the issuance of zoning and construction permits, the Applicant shall submit to the Board after all the revisions to the Site Plans have been made the following: Three (3) complete sets of full sized (24” x 36”) the Site Plans; and One (1) full sized (24” x 36”) survey of the Property. In the event that the Applicant fails to revise the Site Plans as required and/or fails to obtain signatures on the Site 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 (6) month period to provide the Applicant with the opportunity to revise the plans and other 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 Township Engineer and Township Planner. The required revisions to the Site Plans are as follows:

a. Section "B" of the letter to the Board from Robert C. Brightly, PE, PP, CME dated March 4, 2022:

- (1) Correct the scale on sheets PBV-2 and PV-2.6
- (2) Revise sheet PV-4 to make it legible
- (3) Revise sheet PV-4.2 to make it legible and to make it to scale.
- (4) Remove sheet PV-4.3 from the Site Plans as it is not legible, and it is a survey that cannot be sealed by an architect.
- (6) Revise the drawings to clarify the location of the solar disconnect, service panel, utility meter and electrical room.

2. **Safety Conditions.** The Applicant shall comply with the following safety conditions as a condition precedent to the issuance of certificates of approval or completion for the Proposed Development and as a condition precedent to the use of the Proposed Development:

- a. Material Data Safety Sheets ("MSDSs") shall be provided to the Board.
- b. One in-person training session shall be offered by the Applicant to emergency services personnel of the Borough of Lebanon.
- c. All metal parts, unless unavailable, shall be aluminum, not galvanized.
- d. Solar PV Inverters shall be located to the roofs of each of the Existing Apartment Buildings and shall provide for an AC and DC disconnecting means on the roofs for both ordinary maintenance and emergency shut-off of the accessory solar photovoltaic energy facilities.

3. **Design, Construction and Location of Proposed Development and Submission of As-Built Roof Plans.** The Applicant shall be required to design, construct, and locate the Proposed Development to be substantially similar to the plans submitted to the Board. As a condition precedent to the issuance of certificates of approval or completion for each building, the Applicant shall submit to the Board for review and approval by the Borough Engineer as-built roof plans for each building signed and sealed by a New Jersey licensed surveyor or engineer confirming the location of all solar panels and related structures and equipment.

4. **Time to Obtain Construction Permits and Permanent Certificate of Completion.** The Applicant shall apply for and obtain all construction permits no later than May 12, 2023 (within one (1) year of the date the within resolution was adopted). If during said one (1) year period, or extension thereof as granted by the Board, the Applicant fails to obtain 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 permanent certificates of approval for the Proposed Development. If during said one (1) year period, or extension thereof as granted by the Board, work is not commenced and/or permanent certificates of approval are not obtained the within approvals for the Proposed Development shall automatically expire and become null and void. Any and all extension requests made in accordance with the within condition must be made prior to the expiration of the approvals.

5. **Replenishment of Escrow Account.** The Applicant shall have a continuing duty to replenish its escrow account upon written notification. Neither the Board nor its employees will perform any services in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The Applicant shall have a continuing duty to maintain a positive balance in all escrow accounts until all conditions have been satisfied and all charges have been paid.

6. **Subject to Other Laws and Approvals.** The within approvals and the use of all Property subject to the within approvals 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 approvals and the use of all Property subject to the within approvals 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. In the event of any inconsistency(ies) between the terms and/or conditions of the within approvals and any approval(s) required by the above, the terms and conditions of the within approvals shall prevail unless and until changed by the Board upon proper application.

Mr. Hauck moved, and Mr. Abeles seconded, to approve the C2 Variance with stated conditions.

The motion passed with the following roll call vote:

Ayes: Saharic, Abeles, Hauck, Hopkins, Weingart, Newman, Berger and Pittinger

Nays: None

Absent: Uchrin, Skene, and Wilson

SUPERIOR TOWING Block 5 Lot 32 Variance and Site Plan Application

Chairman Saharic requested a motion to Carry the Superior Towing Block 5 Lot 32 Variance and Site Plan Application to April 12, 2022.

Mr. Hauck moved, and Mr. Weingart seconded, to approve Carrying the Superior Towing Application to April 12, 2022.

The motion passed with the following roll call vote:

Ayes: Saharic, Abeles, Hauck, Hopkins, Weingart, Newman, Berger and Pittinger

Nays: None

Absent: Uchrin, Skene, and Wilson

PUBLIC COMMENT:

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

MISCELLANEOUS:

ADJOURN

Mr. Weingart 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 8:45 p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

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