



LEBANON BOROUGH  
PLANNING BOARD & BOARD OF ADJUSTMENT  
MINUTES  
Tuesday March 14, 2023

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, Joseph Hauck, RonLapczynski  
Brad Wetzal, Robert Weingart, Mayor Pittinger,

Absent: Councilman Berger and James Newman, and Dr. Uchrin

Also present: Karen M. Romano Planning Board Sec, Jonathan Drill Esq, Attorney,

Abstain:

**MINUTE APPROVAL:**

**Councilman Berger moved, and Mr. Weingart seconded, a motion to approve the Minutes of minutes of February 14, 2023.**

**The motion passed with the following roll call vote:**

**Ayes:** Saharic, Hauck, Weingart, Abeles, Lapacyski, Weingart, Pittinger

**Absent:** Uchrin, and Newman

**Abstain:**

**TOWN CENTER AT LEBANON Block 4 Lot 1.03 and 1.04 Amendment to Resolution 2021-03 Formal**

Town Center Attorney, Henry Kent Smith explained to the Board the Clinton Water request to install Water Cap installation to maintain allocation.

**LEBANON BOROUGH PLANNING BOARD / BOARD OF ADJUSTMENT**

**LTC URBAN RENEWAL, LLC (SUCCESSOR IN INTEREST TO TOWN CENTER AT LEBANON, LLC) AND CODD LIV, LLC (OWNER OF LOTS 1.03 & 1.04 IN BLOCK 4)  
400 AND 500 CORPORATE DRIVE  
BLOCK 4, LOTS 1.03 AND 1.04**

**APPLICATION NO. 2021-03**

**RESOLUTION MODIFYING CONDITIONS #11 AND #12 OF RESOLUTION NO. 2021-03 GOVERNING THE “TOWN CENTER AT LEBANON” FAMILY RENTAL INCLUSIONARY AFFORDABLE HOUSING DEVELOPMENT**

**RESOLUTION NO. 2023-01**

**WHEREAS**, LTC Urban Renewal, LLC is the successor in interest to Town Center at Lebanon, LLC, which obtained from the Lebanon Borough combined Planning Board / Board of Adjustment sitting as a planning board in accordance with N.J.S.A. 40:55D-25c (the “**Board**”) preliminary site plan approval with “c(1)” and “c(2)” variances and exceptions from certain residential site improvement standards (the “**approvals**”) as memorialized in Board Resolution No. 2021-03 adopted on August 24, 2021 (“**Resolution No. 2021-03**”) to allow construction of a family rental inclusionary affordable housing development consisting of four (4) multifamily residential buildings containing a total of two hundred and eighty (280) rental units, of which 20% (56 rental units) will be deed restricted to remain affordable to low and moderate income households, along with related site improvements such as stormwater facilities, street improvements, parking and landscaping (the “**proposed development**”) on an approximately 22.2-acre property consisting of two lots designated on the Borough of Lebanon (the “**Borough**”)

tax maps as Block 4, Lots 1.03 and 1.04, and having post office addresses of 400 and 500 Corporate Drive (both lots together are referred to as the “**Property**”), and CODD LIV, LLC (the current owner of the property) with LTC Urban Renewal, LLC (the “**applicants**”) have jointly applied to modify condition #s 11 & 12 of Resolution No. 2021-03;

**WHEREAS**, condition #s 11 & 12 of Resolution No. 2021-03 provide as follows:

11. **Preliminary Site Plan Approval Only Granted Herein.** The within approval is a preliminary site plan approval only. No construction permits shall issue and no site work shall commence prior to the applicant obtaining final site plan approval from the Board.

12. **Subject to Final Site Plan Review and Approval.** The approvals granted herein are subject to the applicant applying for and obtaining final site plan approval by August 24, 2022 (which is within one (1) year of the date of the adoption of the within resolution memorializing the grant of preliminary site plan approval on August 24, 2022). If final site plan approval is not obtained within said one (1) year period, or extension thereof as granted by the Board, the within preliminary approval with all related relief granted herein shall automatically expire and become null and void. (While there is no express provision in the MLUL authorizing such a limitation on the “life” of an approval, the New Jersey Supreme Court held in D.L. Real Estate Holdings v. Point Pleasant Beach Planning Board, 176 N.J. 126, 133-36 (2003), that it is permissible for municipalities to impose a “life” on an approval. The Court recognized the difference between the “life” of the approval and the period of protection against ordinance changes that are conferred on preliminary and final approvals and held that permitting a municipality to provide for the expiration of approvals “further the municipality’s ability to plan effectively. It prevents the possibility that a future tentative potential development, based on an earlier ... approval, would forever affect planning decisions concerning development in other areas.” Id. at 136);

**WHEREAS**, the applicants have been advised by the Town of Clinton that in order to vest the water allocation for the proposed development that was obtained from the Town of Clinton water service laterals must be installed and tapped (connected) into the existing water main located in Corporate Drive and then run into the property (where the lines will be capped) by April 24, 2023, and the applicants correctly note that, in order to install said water lines, condition #11 of Resolution No. 2021-03 must be modified to allow this site work prior to the grant of final site plan approval;

**WHEREAS**, while the applicants submitted an application to the Board for final site plan approval on April 8, 2022, prior to the August 24, 2022 date by which the applicants had to obtain final site plan approval, that application was deemed to be incomplete by letters from Board engineering expert, Robert Brightly dated May 5, 2022 and May 26, 2022, and the application has remained incomplete ever since, and a hearing has not commenced on the final site plan application, and the applicants correctly note that condition #12 of Resolution No. 2021-03 must be modified to extend the time within which final site plan approval must be obtained beyond the August 24, 2022 deadline or the preliminary site plan approval previously granted will become

null and void;

**WHEREAS**, the applicants through a February 24, 2023 letter to the Board from their attorney, Henry Kent-Smith, Esq. (of Fox Rothschild, LLP), applied to modify conditions #11 and #12 of Resolution No. 2021-03 (the “**application**”), specifically, to (1) modify condition #11 to add an exception to the end of the sentence as follows: “with the sole exception being that water lines may be installed by the applicants prior to final site approval but subject to review and approval by the Borough Engineer as well as any review and approval required by the Town of Clinton”, and (2) modify condition #12 to extend the date by which final site plan approval must be obtained from August 24, 2022 to August 24, 2023;

**WHEREAS**, the Board held a non-noticed public hearing on the application on March 14, 2023,<sup>1</sup> during which hearing the applicant was represented by Henry Kent-Smith, Esq. (of Fox Rothschild, LLP) and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS, AFTER CONSIDERING THE APPLICATION, AND ALL DOCUMENTS IN THE RECORD, 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 Features, and Surrounding Uses.** As set forth above, the property is an approximately 22.2-acre lot situated in the R-MF-12 zone that fronts on 400 and 500 Corporate Drive, a private road located on the property connecting Cokesbury Road and Route 22. The property is irregular in shape and includes some area on the south side of Corporate Drive between Corporate Drive and Route 22. The property was rezoned to the R-MF-12 (Residential Multifamily Housing Zone 12) by Borough Ordinance 2020-08 which was adopted on October 21, 2020 as part of the Borough’s compliance with its Third Round Mount Laurel affordable housing obligations, in compliance with a settlement agreement entered into between the Borough and Fair Share Housing Center (“FSHC”) (the “Settlement Agreement”) as

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<sup>1</sup> N.J.S.A. 40:55D-12a requires that public notice be given for a hearing on a request to modify “significant” conditions “in any situation wherein the application for development for which the memorializing resolution [at issue] required public notice.” The Board believes that both conditions at issue here are important conditions but does not believe that modification of the conditions for the purpose of obtaining the vesting of a water allocation and/or an extension of the time period to obtain preliminary site approval are “significant” in terms of the statute so that public notice is not required. The Board notes that if the applicants had requested that condition #11 be eliminated or had the applicant requested that the time deadline established in condition #12 be extended for four years (bring the time within which to obtain final site plan approval beyond the total 5-years of statutory protection against zoning changes provided by N.J.S.A. 40:55D-12a), the Board would have found those condition modification requests to be significant, thereby requiring notice.

well as a memorandum of settlement entered into between the Borough and Lebanon Town Center, LLC (the “MOS”), both of which were approved by the Superior Court of New Jersey, Law Division in an order entered on December 3, 2019 in litigation titled In re: Borough of Lebanon Compliance with Mount Laurel Third Round Affordable Housing Obligation, Docket No. HNT-L-321-15, after which a final judgement of compliance and repose was entered by the court in that litigation on May 20, 2021. (The Board takes “quasi-judicial” notice of the Settlement Agreement and the MOS as well as the court order and judgment.) The property is currently a farm field with a stream and associated stream corridor that bisects the property and forms the common boundary between lots 1.03 and 1.04 on the property. The property slopes towards the stream corridor on both lots 1.03 and 1.04. The slope is significant and requires a substantial amount of grading to accommodate the proposed development. The property is bounded to the north by I-78, to the east by an existing office, to the west by an existing hotel and to the south by Corporate Drive and existing offices also fronting on the opposite side of Corporate Drive.

2. **The Preliminary Site Plan Approval and Conditions at Issue.** As set forth above, LTC Urban Renewal, LLC is the successor in interest to Town Center at Lebanon, LLC, which obtained from the Board the approvals, consisting of preliminary site plan approval with “c(1)” and “c(2)” variances and exceptions from certain residential site improvement standards, as memorialized in Board Resolution No. 2021-03 adopted on August 24, 2021 to allow construction of the proposed development which is a family rental inclusionary affordable housing development consisting of four (4) multifamily residential buildings containing a total of two hundred and eighty (280) rental units, of which 20% (56 rental units) will be deed restricted to remain affordable to low and moderate income households, along with related site improvements such as stormwater facilities, street improvements, parking and landscaping the approximately 22.2-acre property. As set forth above, condition #s 11 & 12 of Resolution No. 2021-03 provide as follows:

a. “11. **Preliminary Site Plan Approval Only Granted Herein.** The within approval is a preliminary site plan approval only. No construction permits shall issue and no site work shall commence prior to the applicant obtaining final site plan approval from the Board. “

b. “12. **Subject to Final Site Plan Review and Approval.** The approvals granted herein are subject to the applicant applying for and obtaining final site plan approval by August 24, 2022 (which is within one (1) year of the date of the adoption of the within resolution memorializing the grant of preliminary site plan approval on August 24, 2022). If final site plan approval is not obtained within said one (1) year period, or extension thereof as granted by the Board, the within preliminary approval with all related relief granted herein shall automatically expire and become null and void. (While there is no express provision in the MLUL authorizing such a limitation on the “life” of an approval, the New Jersey Supreme Court held in D.L. Real Estate Holdings v. Point Pleasant Beach Planning Board, 176 N.J. 126, 133-36 (2003), that it is permissible for municipalities to impose a “life” on an approval. The Court recognized the difference between the “life” of

the approval and the period of protection against ordinance changes that are conferred on preliminary and final approvals and held that permitting a municipality to provide for the expiration of approvals “furthers the municipality’s ability to plan effectively. It prevents the possibility that a future tentative potential development, based on an earlier ... approval, would forever affect planning decisions concerning development in other areas.” Id. at 136).”

3. **The Application.** As set forth above, the applicants (CODD LIV, LLC – the current owner of the property – and LTC Urban Renewal, LLC – the successor in interest to Town Center at Lebanon, LLC) submitted the application to modify conditions #11 and #12 of Resolution No. 2021-03 in the following particulars: (1) modify condition #11 to add an exception to the end of the sentence as follows: “with the sole exception being that water lines may be installed by the applicants prior to final site approval but subject to review and approval by the Borough Engineer as well as any review and approval required by the Town of Clinton”, and (2) modify condition #12 to extend the date by which final site plan approval must be obtained from August 24, 2022 to August 24, 2023.

4. **Standards for Considering the Request for Modification or Elimination of Conditions.** Our courts have held that a board has the power to modify and/or eliminate prior approval conditions upon a “proper showing of changed circumstances”, or upon “other good cause” warranting modification and/or amendment, or if “enforcement of the restrictions would frustrate an appropriate purpose.” Cohen v. Fair Lawn, 85 N.J. Super. 234, 237 (App. Div. 1964); Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), certif. denied, 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990). N.J.S.A. 40:55D-12a recognizes the authority of a board to modify previously imposed conditions by requiring that public notice be given “for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice.” The court in Cohen, 85 N.J. Super. at 237-238, noted that even if a condition is agreed to by an applicant, it can be later modified or eliminated if its modification or elimination will not have an adverse effect on public health or safety. This is especially so where the underlying use serves the general welfare only, meaning that the condition was imposed to advance the general welfare but is not critical for the survival of the underlying approval. Id. As to changed circumstances, our courts have held that a board should consider whether there have been changes in the neighborhood and, if so, the effect of those changes in terms of the condition under consideration. Russell v. Tenafly Board of Adj., 31 N.J. 58, 66 (1959). The Board believes that changed circumstances can also be a change in the law. Regarding “good cause”, our courts have held that a board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or eliminate the condition is consistent with or contrary to that intent. Sherman, 242 N.J. Super. at 430. In this regard, our courts have held that a board is not limited to the four corners of the resolution to determine intent and can consider Board minutes of the underlying hearing, transcripts if available, and/or expert reports filed with the application. The object is to determine how significant the condition was to the Board at the time

it was imposed and whether the proposal to modify or eliminate it is consistent or contrary to that intent. Id.

**5. Good Cause Exists to Modify Condition #11.**

The Board finds that good cause exists to warrant modification of condition #11 of Resolution No. 2021-03 for the following reasons. First, the Board finds that its prior grant of preliminary site plan approval for the proposed development is consistent with the R-MF-12 zoning of the property as well as the Settlement Agreement and the MOS. Second, the Board notes and stresses that if the applicants cannot obtain vesting of the water allocation for the proposed development that was obtained from the Town of Clinton, one of the essential elements of the development will be lost (potable water) and the Board would then be unable to grant final approval to the proposed development under Field v. Franklin Twp., 190 N.J. Super. 326, 332-333 (App. Div.), certif. denied, 95 N.J. 183 (1983) and Morris County Fair Housing Council v. Boonton Twp., 228 N.J. Super. 635 (Law Div. 1988), both of which cases involved affordable housing applications where the courts held that a land use board cannot grant preliminary approval to an application unless the four essential elements of a development are feasible (potable water supply, adequate sewage disposal, sufficient stormwater management and safe traffic circulation). Third, and most importantly, the Board finds that its intent in imposing the condition in the first instance was to ensure all conditions of preliminary approval are complied with prior to any construction or site work taking place on the property and prohibiting construction and site work until after final approval is the best way to ensure that. Fourth, the Board finds that the proposal to modify condition #11 will be consistent with that intent provided that the conditions set forth below are imposed and complied with. In this regard, the Board notes that the requested modification of condition #11 is minor in nature as it will allow only water line installation prior to final site plan approval and will not allow any other construction or site work. Further, the Board notes that one of the conditions that will be imposed on the modification of condition #11 will be compliance with all remaining conditions of Resolution No. 2021-03 (which will include condition #12 as modified below), will ensure compliance with all conditions of preliminary approval prior to the grant of final approval.

6. Good Cause Exists to Modify Condition #12.

The Board finds that good cause exists to warrant modification of condition #12 of Resolution No. 2021-03 for the following reasons. First, the Board notes that if it does not modify the condition #12 to provide the applicants with more time to obtain final site plan approval, the preliminary approval will expire and become null and void which will cause the applicants to lose their water allocation from the Town of Clinton and to have to start the approval process from scratch, which is to no one's benefit and to everyone's detriment. Second, the Board notes that one of its intents in imposing condition #12 is set forth in condition #12 itself and is to "further[] the municipality's ability to plan effectively. It prevents the possibility that a future tentative potential development, based on an earlier ... approval, would forever affect planning decisions concerning development in other areas." Third, the Board finds that a further intent in imposing the condition which required the obtaining final site plan approval within one year of the adoption of Resolution No. 2021-03 memorialized the grant of preliminary approval was to encourage the timely creation of the affordable units that will be produced by construction of the proposed development. Fourth, while the Board does not believe that the applicants have done everything they could have done to proceed with the application for final site plan approval that was submitted on April 8, 2022, and the Board further notes that the application that was submitted on April 8, 2022 also seeks amended preliminary approval and it is not at all clear that the Board will be willing to grant amended preliminary approval, the Board finds that modifying the condition to extend by one-year the time period within which final site plan approval must be obtained is consistent with the Board's intents and purposes of imposing the condition in the first instance provided, however, that the conditions set forth below are imposed and complied with. In this regard, the Board notes that one of the conditions that will be imposed on the modification of condition #12 will be compliance with all remaining conditions of Resolution No. 2021-03 which will ensue compliance with all conditions of preliminary approval prior to the grant of final approval.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON MARCH 14, 2023 THAT THE APPLICATION IS GRANTED SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

B. **RELIEF GRANTED**

1. **Modification of Condition #11 of Resolution 2021-03.** Subject to the conditions set forth below, condition #11 of Resolution No. 2021-03 is modified as set forth below.
2. **Modification of Condition #12 of Resolution 2021-03.** Subject to the conditions set forth below, condition #12 of Resolution No. 2021-03 is modified as set forth below.

C. **CONDITIONS**

1. **Conditions of Resolution No. 2021-03 Remain in Full Force and Effect Except for Conditions #11 and #12.** All conditions set forth in Resolution No. 2021-03 remain in full force and effect except for conditions #11 and #12 which are modified as set forth below.
2. **Condition #11 as Modified.** Condition #11 of Resolution No. 2021-03 is hereby modified to provide as follows:

“11. **Preliminary Site Plan Approval Only Granted Herein.** The within approval is a preliminary site plan approval only. No construction permits shall issue and no site work shall commence prior to the applicant obtaining final site plan approval from the Board, with the sole exception being that water connections and meters and associated service lines may be installed by the applicants but subject to review and approval by the Borough engineer and subject also to the posting of engineering and inspection escrow and performance guarantees for trench and pavement restoration, all to be reviewed and approved by the Borough Engineer and Borough Attorney. “

3. **Condition #12 as Modified.** Condition #12 of Resolution No. 2021-03 is hereby modified to provide as follows:

“12. **Subject to Final Site Plan Review and Approval.** The approvals granted herein are subject to the applicant applying for and obtaining final site plan approval by August 24, 2023 (which is within two (2) years of the date of the adoption of the within resolution memorializing the grant of preliminary site plan approval on August 24, 2021). If final site plan approval is not obtained within said period, or extension thereof as granted by the Board, the within preliminary approval with all related relief granted in Resolution No. 2021-03 shall automatically expire and become null and void. (While there is no express provision in the MLUL authorizing such a limitation on the “life” of an approval, the New Jersey Supreme Court held in D.L. Real Estate Holdings v. Point Pleasant Beach Planning Board, 176 N.J. 126, 133-36 (2003), that it is permissible for municipalities to impose a “life” on an approval. The Court recognized the

difference between the “life” of the approval and the period of protection against ordinance changes that are conferred on preliminary and final approvals and held that permitting a municipality to provide for the expiration of approvals “furthers the municipality’s ability to plan effectively. It prevents the possibility that a future tentative potential development, based on an earlier ... approval, would forever affect planning decisions concerning development in other areas.” Id. at 136).”

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**VOTE ON MOTION DULY MADE AND SECONDED ON MARCH 14, 2023:**

**THOSE IN FAVOR: ABELES, HAUCK, LAPCZYNSKI, PITTINGER, SAHARIC & WEINGART.**

**THOSE OPPOSED: NONE.**

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The within resolution was adopted on March 14, 2023 by the following vote of Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
ABELES	X			
BERGER				X
HAUCK	X			
LAPCZYNSKI	X			
NEWMAN				X
PITTINGER	X			
SAHARIC	X			
UCHRIN				X
WEINGART				X
WETZEL				X

**ATTEST:** \_\_\_\_\_  
**Karen Romano**  
**Board Secretary**

**Councilman moved, and Mr. Hauck seconded, a motion to approve the Amendment as stated.**

**The motion passed with the following roll call vote:**

**Ayes:** Saharic, Uchrin, Hauck, Weingart, Newman, Abeles, Newman, Lapacyski

**Absent:** Skene, and Wetzel

**Abstain:**

**PUBLIC COMMENT:**

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

**MISCELLANEOUS:**

**ADJOURN**

**Mr.Lapczynskimoved, 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 8:15 p.m.

Respectfully submitted,

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Karen Romano  
Planning Board Secretary





























