



**LEBANON BOROUGH  
LAND USE BOARD  
MINUTES  
Tuesday, September 9, 2025**

The Regular meeting of the Lebanon Borough Land Use Board was called to order by Chairman Lex Saharic. 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, David Abeles, Jim Fordham, Jim Newman, Joe Hauck, Ron Lapczynski, Marianne Mathewson, and Councilman Berger  
Absent: Mayor James J. Pittinger, Rob Weingart  
Also present: Karen M Romano, Secretary, Jonathan Drill Esq, and Bob Brightly PE

**OPEN PUBLIC SESSION**

Chairman Saharic opened the floor for public questions.

There being no comment on the floor was closed.

**MINUTE APPROVAL:**

**Mr. Abeles moved, and Mr. Lapczynski seconded, a motion that Minutes of July 8, 2025.**

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

**Ayes: Saharic, Abeles, Fordham, Newman, Hauck, Lapczynski, Matheson, Berger**

Nay:  
Absent: Pittinger, Weingart  
Abstain:

**MEMORIALIZATION OF RESOLUTION 2025-03:**

**Mr. Hauck made a moved, and Mr. Lapczynski seconded the motion to Memorialize Resolution 2025-03.**

**LEBANON BOROUGH LAND USE BOARD**

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

**APPLICATION NO. 2021-03**

**RESOLUTION MODIFYING CONDITIONS #1 AND #12 OF RESOLUTION NO.  
2021-03 GOVERNING THE “TOWN CENTER AT LEBANON” FAMILY RENTAL  
INCLUSIONARY AFFORDABLE HOUSING DEVELOPMENT**

**RESOLUTION NO. 2025-03**

**WHEREAS**, LTC Urban Renewal, LLC (the “**applicant**” or “**LTC**”) is the successor in interest to Town Center at Lebanon, LLC, which obtained from the Lebanon Borough Land Use Board (the “**Board**”) (previously known as the “Lebanon Borough Planning Board / Board of Adjustment”), sitting as a planning board in accordance with N.J.S.A. 40:55D-25c, 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 inclusionary 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**”);

**WHEREAS**, with the consent of the then now owner of the property, CODD LIV, LLC (the “**owner**” or “**CODD**”), LTC applied for and obtained from the Board the following relief: (1) Modification of condition #11 of Resolution No. 2021-03 (prohibiting all construction

prior to obtaining final site plan approval) to allow water connections and meters and associated service lines to be installed, and (2) Modification of condition #12 of Resolution No. 2021-03 (requiring the applicant to obtain final site plan approval by August 24, 2023) to extend the time within which the applicant must obtain final site plan approval to August 24, 2024, which relief is memorialized in Resolution No. 2023-01 (“**Resolution No. 2023-01**”) adopted by the Board on Marh 14, 2023;

**WHEREAS**, the applicant next applied for and obtained from the Board the following additional relief: (1) Modification of condition #1 of Resolution No. 2021-03 (requiring that revisions be made to the preliminary site plans, preliminary architectural plans, and stormwater management report, with all revisions to the documents being made by, and the preliminary site plan being signed by, February 24, 2022) to extend the date by which the revisions have to be made and the preliminary site plans have to be signed to February 24, 2025; and (2) Further modification of condition #12 of Resolution No. 2021-03 (requiring the applicant to obtain final site plan approval by August 24, 2023) to extend the time within which the applicant must obtain final site plan approval to August 24, 2025, which relief is memorialized in Resolution No. 2024-01 (“**Resolution No. 2024-01**”) adopted by the Board on April 9, 2024;

**WHEREAS**, the applicant has now applied by letter from its attorney, Craig M. Gianetti, Esq. (of Day Pitney, LLP) dated June 23, 2025 for the following condition modification relief (the “**modification application**”): (1) Further modification of condition #1 of Resolution No. 2021-03 to extend the date by which revisions have to be made to the preliminary site plans and the preliminary site plans have to be signed from February 24, 2025 to February 25, 2026; (2) Further modification of condition #11 of Resolution No. 2021-03 to allow the applicant to install soil erosion and sediment control measures, install headwall and outflow measures adjoining the stream, and to start clearing and land disturbance (the “**proposed site work**”) for the purpose of vesting the NJDEP Flood Hazard Activity Permit (Permit #1018-05-0004.LUP2100001) it obtained which will otherwise expire in April, 2026; and (3) Further modification of condition #12 of Resolution No. 2021-03 to extend the time within which the applicant must obtain final site plan approval from August 24, 2025 to August 24, 2026;

**WHEREAS**, the Board scheduled the modification application for a hearing at its regularly scheduled July 8, 2025 meeting;<sup>1</sup>

**WHEREAS**, the applicant by letter from Craig M. Gianetti, Esq. dated July 8, 2025 requested that the modification application be bifurcated and that the Board hear only the requested

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<sup>1</sup>While the meeting was noticed pursuant to the Open Public Meetings Act (“OPMA”), the hearing was not noticed under the MLUL because 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” and the Board believes that the conditions at issue here are important conditions but are not “significant” in terms of the MLUL so that public notice of the hearing is not required. The Board notes that if the applicants had requested that any of the conditions at issue be eliminated, or had the Board granted the applicant’s request to extend the time deadline established in condition #12 for a cumulative total of 5 years (bringing 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 the requested condition modification to be significant, thereby requiring MLUL notice.

modifications of conditions #1 and #12 during the July 8, 2025 meeting, and that the request for modification of condition #11 be carried to the Board's regularly scheduled August 12, 2025 meeting;

**WHEREAS**, the Board held a hearing on the modification application on July 8, 2025, during which hearing the Board considered only the requests to modify conditions #1 and #12 of Resolution No. 2021-03, and during which hearing the applicant was represented by Amanda Curley, Esq.(of Day Pitney LLP) and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS, AFTER CONSIDERING THE MODIFICATION APPLICATION AS TO CONDITIONS #1 AND #12, 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 MODIFICATION APPLICATION AS TO CONDITIONS #1 AND #12 SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**A. FACTUAL FINDINGS**

1. **The Property, Zoning, Existing Features, and Surrounding Uses.** The property consists of two adjacent lots (Lots 1.03 and 1.04 in Block 4) under common ownership which, together, total approximately 22.2-acres. The property is in the AH-4 zone (Affordable Housing – 4 zoning district) (formerly the R-MF-12 zone), with a street address of 400 and 500 Corporate Drive, which is a private road located on the property which connects 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 allow affordable housing as part of an inclusionary residential multifamily development 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 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 but vacant office building situated on Block 4, lot 1.05 with a street address of 600 Corporate Drive, to the west by an existing hotel, and to the south by Corporate Drive and existing office buildings 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.

3. **The Conditions at Issue.** The conditions at issue here are #1 and #12 of Resolution No. 2021-03, and they provide as follows:

a. “1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the [] comments emanating in the [] letters and/or memos prepared by the [] Board professionals and/or as discussed by the Board on the record during the hearing 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 and Borough Planner, with the revisions being made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2022 (which is six (6) months from the date the within resolution is adopted on August 24, 2021), and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution 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 site 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 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 Borough Engineer and

Borough Planner.”

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).”

4. **The Prior Modifications.** As set forth above, conditions #1 and #12 of Resolution No. 2021-03 were modified as memorialized in Resolution No. 2024-01 adopted on April 9, 2024, and currently provide as follows:

“1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the [] comments emanating in the [] letters and/or memos prepared by the [] Board professionals and/or as discussed by the Board on the record during the hearing 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 and Borough Planner, with the revisions being made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2025, and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution 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 site 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 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 Borough Engineer and Borough Planner.”

“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, 2025. 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).”

5. **The Application.** As set forth above, the modification application seeks to modify the following conditions of Resolution No. 2021-03 in the following particulars: (1) further modification of condition #1 to extend the date by which revisions have to be made to the preliminary site plans and the preliminary site plans have to be signed from February 24, 2025 to February 25, 2026; (2) further modification of condition #11 to allow the applicant to install proposed site work but which modification request has been carried to the Board’s August 12, 2025 meeting for hearing; (3) further modification of condition #12 to extend the time within which the applicant must obtain final site plan approval from August 24, 2025 to August 24, 2026;

6. **Standards for Considering the Request for Modification 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.*

7. **Applicants’ Reasons for Modifying Conditions #1 and #12.** Sam Gershwin, the applicants’ managing member, testified that the reasons the applicants seek modification of conditions #1 and #12 of Resolution No. 2021-03 are as follows. First, he explained that the proposed development suffered from economic issues resulting from the aftermath of the COVID-19 pandemic which caused lenders to pull back on lending, which delayed the proposed development from progressing forward. Second, Mr. Gershwin testified that this has now changed, in as much as he has secured two construction funding loan commitments, one for each of the two lots, which will be developed in phases (Phase 1 for Lot 1.03 and Phase 2 for Lot 1.04). Third, Mr. Gershwin testified that he has entered into an agreement with Lexus Lofts Urban Renewal, LLC (“Lexus”) which will purchase the property from the current owner after the applicant obtains final site plan approval for both phases of the proposed development, with Mr. Gershwin becoming a partner of Lexus. Finally, Mr. Gershwin testified that he needs the two conditions at issue modified to extend the time within which to revise the plans and documents and to extend the time within which to obtain final site plan approval from August 24, 2025 to August 24, 2026 to allow the above to occur in to move the proposed development forward.

8. **Good Cause Exists to Modify Conditions #1 and #12.** The Board finds that good cause exists to warrant modification of conditions #1 and #12 of Resolution No. 2021-03 for the following reasons. First, the Board notes that if it does not modify the conditions #1 and #12 to provide the applicants with more time to both make the required revisions to the site plans and other documents and to obtain final site plan approval, the preliminary approval will expire and become null and void which will cause the applicants 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 conditions #1 and #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 conditions which was to encourage the timely creation of the affordable units that will be produced by construction of the proposed development and the applicants are not sitting on their hands doing nothing. Fourth, the Board finds that the proposed inclusionary

development is a large-scale development with many moving parts and the applicants have suffered economic issues resulting from the aftermath of the COVID-19 pandemic which delayed the development from progressing forward. Fifth, the Board finds that modifying the conditions at issue to extend the time periods within which to revise the site plans and other documents and to obtain final site plan approval is consistent with the Board's intents and purposes of imposing the conditions in the first instance provided, however, that the conditions set forth below are imposed and complied with. Finally, the Board notes it will modify conditions #1 and #12 to grant extensions of the time period within which the applicant must revise and obtain sign-off on the preliminary site plans and within which the applicant must obtain final site plan approval to August 23, 2025, one (1) day shy of a cumulative total of five (5) years from the date Resolution 2021-03 (which memorialized the grant of preliminary site plan approval) was adopted on August 24, 2021. The Board notes that any further request(s) to modify conditions #1 and/or #12 will require notice.<sup>2</sup>

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON JULY 8, 2025 THAT THE MODIFICATION APPLICATION IS GRANTED SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**B. RELIEF GRANTED**

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

2. **Modification of Condition #12 of Resolution 2021-03, as Modified in Resolution No. 2023-01.** Subject to the conditions set forth below, condition #12 of Resolution No. 2021-03, as modified in Resolution No. 2023-01, is further modified as set forth below.

**C. CONDITIONS**

1. **Conditions of Resolution No. 2021-03 Remain in Full Force and Effect Except for Conditions #1 and #12.** All conditions set forth in Resolution No. 2021-03, as modified by Resolution No. 2023-01, remain in full force and effect except for conditions #1, #11 and #12 which are modified as set forth below.

2. **Condition #1 as Further Modified.** Condition #1 of Resolution No. 2021-03, as modified by Resolution No. 2024-01, is hereby further modified to provide as follows:

“1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the [] comments emanating in the [] letters and/or memos prepared by the [] Board professionals and/or as discussed by the Board on the record during the hearing on the Application, and to the

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<sup>2</sup> See N.J.S.A. 40:55D-12a and the text of footnote 1 above

satisfaction of the Board expert(s) who filed the report or testified, as well as to the satisfaction of the Borough Engineer and Borough Planner, with the revisions being made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2026, and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution 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 site 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 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 Borough Engineer and Borough Planner.”

3. **Condition #12 as Further Modified.** Condition #12 of Resolution No. 2021-03, as modified by Resolution No. 2024-01, is hereby further 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 23, 2026. 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 XXXXXX:**

**THOSE IN FAVOR: ABELES, BERGER, HAUCK, LAPCZYSKI, NEWMAN,**

**WEINGART & MATHEWSON.**

**THOSE OPPOSED: NONE.**

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The within memorializing resolution was adopted on August 12, 2025 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
<b>ABELES</b>	X			
<b>BERGER</b>	X			
<b>HAUCK</b>	X			
<b>LAPCZYSKI</b>	X			
<b>NEWMAN</b>				X
<b>WEINGART</b>	X			
<b>MATHEWSON</b>	X			
<b>FORDHAM</b>				X

**ATTEST:**

KAREN ROMANO  
**Board Secretary**

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

**Ayes: Saharic, Ableles, Fordham, Newman, Hauck, Lapczynski, Matheson, Berger**

**Nay:**

**Absent: Pittinger, Weingart**

**Abstain:**

**TOWN CENTER MODIFICATION OF CONDITIONS 1 AND 12 OF RESOLUTION 2021-03:**

LTC Urban Renewal, LLC (the “**applicant**” or “**LTC**”) is the successor in interest to Town Center at Lebanon, LLC, which obtained from the Lebanon Borough Land Use Board (the “**Board**”) (previously known as the “Lebanon Borough Planning Board / Board of Adjustment”), sitting as a planning board in accordance with N.J.S.A. 40:55D-25c, 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**

**inclusionary 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**");

CODD LIV, LLC (the "**owner**" or "**CODD**"), LTC applied for and obtained from the Board the following relief: (1) Modification of condition #11 of Resolution No. 2021-03 (prohibiting all construction prior to obtaining final site plan approval) to allow water connections and meters and associated service lines to be installed, and (2) Modification of condition #12 of Resolution No. 2021-03 (requiring the applicant to obtain final site plan approval by August 24, 2023) to extend the time within which the applicant must obtain final site plan approval to August 24, 2024, which relief is memorialized in Resolution No. 2023-01 ("**Resolution No. 2023-01**") adopted by the Board on Marh 14, 2023;

The applicant next applied for and obtained from the Board the following additional relief: (1) Modification of condition #1 of Resolution No. 2021-03 (requiring that revisions be made to the preliminary site plans, preliminary architectural plans, and stormwater management report, with all revisions to the documents being made by, and the preliminary site plan being signed by, February 24, 2022) to extend the date by which the revisions have to be made and the preliminary site plans have to be signed to February 24, 2025; and (2) Further modification of condition #12 of Resolution No. 2021-03 (requiring the applicant to obtain final site plan approval by August 24, 2023) to extend the time within which the applicant must obtain final site plan approval to August 24, 2025, which relief is memorialized in Resolution No. 2024-01 ("**Resolution No. 2024-01**") adopted by the Board on April 9, 2024;

**The** applicant has now applied by letter from its attorney, Craig M. Gianetti, Esq. (of Day Pitney, LLP) dated June 23, 2025 for the following condition modification relief (the "**modification application**"): (1) Further modification of condition #1 of Resolution No. 2021-03 to extend the date by which revisions have to be made to the preliminary site plans and the preliminary site plans have to be signed from February 24, 2025 to February 25, 2026; (2) Further modification of condition #11 of Resolution No. 2021-03 to allow the applicant to install soil erosion and sediment control measures, install headwall and outflow measures adjoining the stream, and to start clearing and land disturbance (the "**proposed site work**") for the purpose of vesting the NJDEP Flood Hazard Activity Permit (Permit #1018-05-0004.LUP2100001) it obtained which will otherwise expire in April, 2026; and (3) Further modification of condition #12 of Resolution No. 2021-03 to extend the time within which the applicant must obtain final site plan approval from August 24, 2025 to August 24, 2026;

The Board scheduled the modification application for a hearing at its regularly scheduled July 8, 2025 meeting;<sup>3</sup>

The applicant by letter from Craig M. Gianetti, Esq. dated July 8, 2025 requested that the modification application be bifurcated and that the Board hear only the requested modifications of

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conditions #1 and #12 during the July 8, 2025 meeting, and that the request for modification of condition #11 be carried to the Board's regularly scheduled August 12, 2025 meeting;

The Board held a hearing on the modification application on July 8, 2025, during which hearing the Board considered only the requests to modify conditions #1 and #12 of Resolution No. 2021-03, and during which hearing the applicant was represented by Amanda Curley, Esq.(of Day Pitney LLP) and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**AFTER CONSIDERING THE MODIFICATION APPLICATION AS TO CONDITIONS #1 AND #12, 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 MODIFICATION APPLICATION AS TO CONDITIONS #1 AND #12 SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**A. FACTUAL FINDINGS**

1. **The Property, Zoning, Existing Features, and Surrounding Uses.** The property consists of two adjacent lots (Lots 1.03 and 1.04 in Block 4) under common ownership which, together, total approximately 22.2-acres. The property is in the AH-4 zone (Affordable Housing – 4 zoning district) (formerly the R-MF-12 zone), with a street address of 400 and 500 Corporate Drive, which is a private road located on the property which connects 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 allow affordable housing as part of an inclusionary residential multifamily development 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 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 but vacant office building situated on Block 4, lot 1.05 with a street address of 600 Corporate Drive, to the west by an existing hotel, and to the

south by Corporate Drive and existing office buildings 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.

3. **The Conditions at Issue.** The conditions at issue here are #1 and #12 of Resolution No. 2021-03, and they provide as follows:

a. “1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the [] comments emanating in the [] letters and/or memos prepared by the [] Board professionals and/or as discussed by the Board on the record during the hearing 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 and Borough Planner, with the revisions being made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2022 (which is six (6) months from the date the within resolution is adopted on August 24, 2021), and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution 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 site 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 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 Borough Engineer and Borough Planner.”

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).”

4. **The Prior Modifications.** As set forth above, conditions #1 and #12 of Resolution No. 2021-03 were modified as memorialized in Resolution No. 2024-01 adopted on April 9, 2024, and currently provide as follows:

“1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the [] comments emanating in the [] letters and/or memos prepared by the [] Board professionals and/or as discussed by the Board on the record during the hearing 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 and Borough Planner, with the revisions being made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2025, and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution 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 site 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 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 Borough Engineer and Borough Planner.”

“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, 2025. 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).”

5. **The Application.** As set forth above, the modification application seeks to modify the following conditions of Resolution No. 2021-03 in the following particulars: (1) further modification of condition #1 to extend the date by which revisions have to be made to the preliminary site plans and the preliminary site plans have to be signed from February 24, 2025 to February 25, 2026; (2) further modification of condition #11 to allow the applicant to install proposed site work but which modification request has been carried to the Board’s August 12, 2025 meeting for hearing; (3) further modification of condition #12 to extend the time within which the applicant must obtain final site plan approval from August 24, 2025 to August 24, 2026;

6. **Standards for Considering the Request for Modification 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.

7. **Applicants’ Reasons for Modifying Conditions #1 and #12.** Sam Gershwin, the applicants’ managing member, testified that the reasons the applicants seek modification of conditions #1 and #12 of Resolution No. 2021-03 are as follows. First, he explained that the proposed development suffered from economic issues resulting from the aftermath of the COVID-19 pandemic which caused lenders to pull back on lending, which delayed the proposed development from progressing forward. Second, Mr. Gershwin testified that this has now changed, in as much as he has secured two construction funding loan commitments, one for each of the two lots, which will be developed in phases (Phase 1 for Lot 1.03 and Phase 2 for Lot 1.04). Third, Mr. Gershwin testified that he has entered into an agreement with Lexus Lofts Urban Renewal, LLC (“**Lexus**”) which will purchase the property from the current owner after the applicant obtains final site plan approval for both phases of the proposed development, with Mr. Gershwin becoming a partner of Lexus. Finally, Mr. Gershwin testified that he needs the two conditions at issue modified to extend the time within which to revise the plans and documents and to extend the time within which to obtain final site plan approval from August 24, 2025 to August 24, 2026 to allow the above to occur in to move the proposed development forward.

8. **Good Cause Exists to Modify Conditions #1 and #12.** The Board finds that good cause exists to warrant modification of conditions #1 and #12 of Resolution No. 2021-03 for the following reasons. First, the Board notes that if it does not modify the conditions #1 and #12 to provide the applicants with more time to both make the required revisions to the site plans and other documents and to obtain final site plan approval, the preliminary approval will expire and become null and void which will cause the applicants 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 conditions #1 and #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 conditions which was to encourage the timely creation of the affordable units that will be produced by construction of the proposed development and the applicants are not sitting on their hands doing nothing. Fourth, the Board finds that the proposed inclusionary development is a large-scale development with many moving parts and the applicants have suffered economic issues resulting from the aftermath of the COVID-19 pandemic which delayed

the development from progressing forward. Fifth, the Board finds that modifying the conditions at issue to extend the time periods within which to revise the site plans and other documents and to obtain final site plan approval is consistent with the Board's intents and purposes of imposing the conditions in the first instance provided, however, that the conditions set forth below are imposed and complied with. Finally, the Board notes it will modify conditions #1 and #12 to grant extensions of the time period within which the applicant must revise and obtain sign-off on the preliminary site plans and within which the applicant must obtain final site plan approval to August 23, 2025, one (1) day shy of a cumulative total of five (5) years from the date Resolution 2021-03 (which memorialized the grant of preliminary site plan approval) was adopted on August 24, 2021. The Board notes that any further request(s) to modify conditions #1 and/or #12 will require notice.<sup>4</sup>

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON JULY 8, 2025 THAT THE MODIFICATION APPLICATION IS GRANTED SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**B. RELIEF GRANTED**

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

2. **Modification of Condition #12 of Resolution 2021-03, as Modified in Resolution No. 2023-01.** Subject to the conditions set forth below, condition #12 of Resolution No. 2021-03, as modified in Resolution No. 2023-01, is further modified as set forth below.

**C. CONDITIONS**

1. **Conditions of Resolution No. 2021-03 Remain in Full Force and Effect Except for Conditions #1 and #12.** All conditions set forth in Resolution No. 2021-03, as modified by Resolution No. 2023-01, remain in full force and effect except for conditions #1, #11 and #12 which are modified as set forth below.

2. **Condition #1 as Further Modified.** Condition #1 of Resolution No. 2021-03, as modified by Resolution No. 2024-01, is hereby further modified to provide as follows:

“1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the [] comments emanating in the [] letters and/or memos prepared by the [] Board professionals and/or as discussed by the Board on the record during the hearing 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 and Borough Planner, with the revisions being

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<sup>4</sup> See N.J.S.A. 40:55D-12a and the text of footnote 1 above

made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2026, and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution 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 site 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 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 Borough Engineer and Borough Planner.”

3. **Condition #12 as Further Modified.** Condition #12 of Resolution No. 2021-03, as modified by Resolution No. 2024-01, is hereby further 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 23, 2026. 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).”

**Mr. Hauck made a motion to approve the modification of conditions 1 and 12 as stated. With a seconded from Mr. Lapczynski.**

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

**Ayes: Saharic, Ableles, Fordham, Newman, Hauck, Lapczynski, Matheson, Berger**

**Nay:**

**Absent: Pittinger, Weingart**

**Abstain:**

**SUPERIOR TOWING AND TRANSPORT, LLC**

**MODIFYING CONDITION #9 OF RESOLUTION NO. 2023-02 TO ALLOW FOR AN EXTENSION OF TIME WITHIN WHICH TO OBTAIN CONSTRUCTION PERMITS**

Superior Towing and Transport, LLC (the “**applicant**”) obtained from the Lebanon Borough Land Use Board (as the successor to the Lebanon Borough Planning Board / Board of Adjustment) sitting as a zoning board of adjustment in accordance with N.J.S.A. 40:55D-25c (the “**Board**”) the following relief: preliminary and final site plan approval with “d(1)” use and “c(1)” bulk variances (the “**prior approval**”) as memorialized in Board Resolution No. 2023-02 adopted on June 13, 2023 (“**Resolution No. 2023-02**”), which prior approval allowed construction and use on an approximately 0.724-acre property consisting of two lots designated on the Borough of Lebanon (the “**Borough**”) tax maps as Block 5, Lots 31 and 32, and having post office addresses of 1239 Highway Route 22 (both lots together are referred to as the “**property**”) of a towing and auto mechanical and body repair facility, along with related site improvements including parking and blacktop asphalt driveway areas, landscaping and lighting improvements (the “**proposed development**”), where the property is located in the Commercial-Research, Office and Manufacturing 100,000 zoning district (the “**Com-Rom 100,000 Zone**”);

Condition #9 of Resolution No. 2023-02 provides as follows:

9. **Time Within Which to Obtain Permits, Complete Construction, and Obtain Permanent Certificate of Occupancy and/or Use.** The applicant shall obtain zoning and construction permits for the proposed development by June 13, 2025 (which is two (2) years from the adoption of the within resolution). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a zoning and/or construction permit, the within approval and all relief granted herein shall automatically expire and become null and void. The applicant shall also have two (2) years from the date of issuance of the first construction permit to commence construction and obtain a permanent certificate of occupancy or use for the proposed development. If during said one (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy or use is not obtained, the within approval and all relief granted herein, 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;

The applicant applied (the “**application**”) to the Board by letter dated June 9, 2025 from its managing member, Michael Girgis, for a modification of condition #9 of Resolution No. 2023-02 to grant an extension of the time within which to obtain a construction permit by two (2) years, from June 13, 2025 to June 13, 2027, thereby also extending the life of the prior approvals (the “**modification and extension request**”);

The Board held a non-noticed public hearing on the application on June 10, 2025,<sup>5</sup> during which hearing the applicant was not represented by counsel and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**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, and Surrounding Uses.** As set forth above, the property consists of two lots located in the ROM-COM 100,000 Zone. Lot 32 is a 0.724 acre (31,572 square feet) corner lot located at the northwest corner of Route 22 and Clark Road. Lot 31 is a 0.1864 acre (8,121 square feet) lot that is contiguous to the southerly line of Lot 32, with frontage on Clark Road. Lot consolidation / merger, which does not need Board approval, is proposed as part of the development of the property and the resulting property will be a 0.9112 acre (39,693.4 square feet) corner lot. A variety of commercial properties within the ROM-COM 100,000 Zone surround the property. Adjacent to the east of the property is an existing, single-family, two-story residential dwelling located on lot 34. To the south of the property is an existing, multi-family residential apartment complex located on lot 35.

2. **The Prior Approval and Conditions at Issue.** As set forth above, the applicant obtained from the Board the prior approval, consisting of preliminary and final site plan approval with “d(1)” use and “c(1)” bulk variances, as memorialized in Board Resolution No. 2023-02 adopted on June 13, 2023 to allow construction and use of a towing and auto mechanical and body repair facility, along with related site improvements including parking and blacktop asphalt driveway areas, landscaping and lighting improvements. As set forth above, condition #9 of Resolution No. 2023-02 provides as follows:

9. **Time Within Which to Obtain Permits, Complete Construction, and Obtain Permanent Certificate of Occupancy and/or Use.** The applicant shall obtain zoning and construction permits for the proposed development by June 13, 2025 (which is two (2) years from the adoption of the within resolution). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a zoning and/or construction permit, the within approval and all relief granted herein shall automatically expire and become null and void. The applicant shall also have two (2) years from the date of issuance of the first

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<sup>5</sup> The hearing was not noticed because there is no requirement for notice of a hearing on a request to extend the time within which to obtain construction permits. See, N.J.S.A. 40:55D-12a.

construction permit to commence construction and obtain a permanent certificate of occupancy or use for the proposed development. If during said one (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy or use is not obtained, the within approval and all relief granted herein, 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.

3. **The Application.** As set forth above, the applicant submitted the application to modify condition #9 of Resolution No. 2023-02 to grant an extension of the time within which to obtain a construction permit by two (2) years, from June 13, 2025 to June 13, 2027, thereby also extending the life of the prior approvals.

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 #9.** The Board finds that good cause exists to warrant modification of condition #9 of Resolution No. 2023-02 for the following

reasons. First, the intent of the time limitation condition at issue is to foster the timely construction and completion of the proposed development in conformance with the approved plans. The Board finds that modifying the condition at issue is consistent with that intent because the applicant has been working diligently to satisfy all of the conditions imposed in the prior approval and has experienced delays beyond its control due to hardships stemming from high construction and material costs. The Board further finds that granting the modification and extension request is more efficient than having the prior approval expire and requiring the applicant to proceed anew at this juncture. Finally, the Board finds that there are no factors that weigh against granting the modification and extension request, such as but not limited to no adoption of any health and safety ordinance amendments that would not have to be complied with in the event of the grant of the modification and extension request. Having considered the factors that weigh in favor of granting the modification and extension request and finding that there are no factors that weigh against granting the modification and extension request, the Board finds and concludes that it should modify condition #9 of Resolution No. 2023-02 and grant the modification and extension request, thereby extending the deadline for the applicant to obtain zoning and construction permits to June 13, 2027. The Board finds that modifying the condition to extend by two years the time period within which zoning and construction permits 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 #9 will be compliance with all remaining conditions of Resolution No. 2023-02 which will ensure compliance with all conditions of the prior approval.

**THE BOARD BY MOTION DULY MADE AND SECONDED ON JUNE 10, 2025 THAT THE APPLICATION IS GRANTED SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**B. RELIEF GRANTED**

1. **Modification of Condition #9 of Resolution 2023-02.** Subject to the conditions set forth below, condition #9 of Resolution No. 2023-02 is modified as set forth below.

**C. CONDITIONS**

1. **Conditions of Resolution No. 2023-02 Remain in Full Force and Effect Except for Condition #9.** All conditions set forth in Resolution No. 2023-02 remain in full force and effect except for condition #9 which is modified as set forth below.

2. **Condition #9 as Modified.** Condition #9 of Resolution No. 2023-02 is hereby modified to provide as follows:

“9. **Time Within Which to Obtain Permits, Complete Construction, and Obtain Permanent Certificate of Occupancy and/or Use.**

The applicant shall obtain zoning and construction permits for the proposed development by June 13, 2027. If by June 13, 2027, or extension thereof as granted by the Board, the applicant fails to obtain a zoning and/or construction permit, the within approval and all relief granted herein shall automatically expire and become null and void. The applicant shall also have two (2) years from the date of issuance of the first construction permit to commence construction and obtain a permanent certificate of occupancy or use for the proposed development. If during said two (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy or use is not obtained, the within approval and all relief granted herein, 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.”

**Mr. Hauck made a motion to approve the Superior Towing Extension as stated. With a seconded from Mr. Abeles.**

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

**Ayes: Saharic, Ableles, Newman, Hauck, Lapczynski, Matheson,**

**Nay:**

**Absent: Pittinger, Weingart,**

**Abstain: Berger and Fordham**

### **CONTOUR METAL SHAPING INC**

#### **MINOR SITE PLAN, FRONT YARD SETBACK VARIANCE, LOT COVERAGE VARIANCE, FRONT YARD LOT COVERAGE VARIANCE, PARKING SETBACK FROM THE EXISTING STRUCTURE, PARKING IN THE FRONT YARD**

**Contour Metal Shaping Inc.(the “owner”) owns a 3.86-acre tract of property designated on the Lebanon Borough tax maps as Block 5, Lot 24 (the “property”), which property has a street address of 1281 Route 22 and is situated in the C-ROM-1 Commercial - Research, Office and Manufacturing District (100,000) (the “C-ROM-1 Zone”), and which property is developed with a vacant structure (the “existing structure”) and associated site improvements (the “existing site improvements”), including an asphalt pavement area (the “existing pavement area”), and gravel areas (the “existing gravel areas”);**

**WHEREAS, with the consent of the owner, Contour Metal Shaping, Inc. (the “applicant”) made application to the Lebanon Borough Land Use Board (the “Board”) seeking “c” variances, exceptions, and minor site plan approval to allow a change in use of the existing structure from its former auto part sales business to metal fabrication and sales (the “proposed use”) as well as the refurbishing of the existing pavement area to create a parking area (the “proposed parking area”) (the “proposed development”);**

**WHEREAS, the Board, sitting as a planning board, has exclusive subject matter**

jurisdiction over the application in accordance with N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-46.1 and -70c because the proposed use of the property is a principally permitted use in the C-ROM-1 Zone and the application does not require any “d” type variance relief;

WHEREAS, a number of documents were submitted with regard to the initial application by the applicant, the Board's professionals, and various Township departments and professionals, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the site plans for which the applicant sought Board approval in the initial application, which site plans have been on file and available for public inspection for at least ten (10) days prior to the hearing in accordance with N.J.S.A. 40:55D-10b:

1. Minor site plan entitled, “Site Plan for 1281 Route 22 Lot 24 Block 5” prepared by Robert E. Korkuch of Act Engineers, Inc., dated July 29, 2025, consisting of two (2) sheets (the “site plans”), and

2. Boundary and Topographic Survey prepared by EKA Associates, PA, dated December 9, 2022;

WHEREAS, the application was deemed to be complete;

WHEREAS, the Board held a duly noticed public hearing on the application on September 9, 2025, during which hearing the applicant was represented by Ryan P. Kennedy, Esq. and the Board was represented by Michael D. Sullivan, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

WHEREAS, the following individuals testified during the hearing, were subject to cross examination and questioning, and the testimony is part of the record in this matter:

1. Tommy Carrus (principal of applicant),
2. Robert Korkuch (applicant’s engineering expert), and
3. Candice Davis, PE (Board’s engineering expert);

No exhibits were entered into evidence during the hearing, and no interested parties or other members of the public appeared at the hearing to ask questions, testify or otherwise submit evidence;

**AFTER CONSIDERING THE APPLICATION, DOCUMENTS, 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 SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS**

1. **The Property, Zoning and Proposed Development.** The property is a 3.86-acre lot situated in the Township's C-ROM-1 Zone with frontage on Route 22 to the north. The property, which is generally neglected and run down, is developed with the existing structure, with asphalt pavement in front and gravel areas along the sides and rear. Access to the property is from Route 22. The property contains the following lawfully created pre-existing conditions: (1) a front yard setback of 55.1 feet where 75 feet is required, (2) a lot coverage of 74.6% where a maximum of 40% is permitted, and (3) a front yard lot coverage of 74.6% where a maximum of 20% is permitted. The existing structure was previously used as an auto parts business and is now vacant. The applicant proposes to use the property for its metal fabrication business, which is a permitted use in the C-ROM-1 Zone pursuant to ordinance section 165-152.A, and to convert the existing pavement area to the proposed parking area.

2. **The Application and Required and Requested Relief.** As set forth above, the applicant is seeking minor site plan approval to allow a change in use on the property from an auto parts sales business to a metal fabrication business. Specifically, the metal fabrication business serves the aerospace industry and there will be no on-site retail sales. The hours of operation will be Monday through Friday from 7 am to 5 pm and Saturday from 8 am to 12 noon. The business will be closed on Sunday. All fabrication work as well as painting will be done indoors with the windows and doors closed. In addition to minor site plan approval to allow the change in use and rehabilitation of existing pavement area to create the proposed parking area, the applicant applied for three "c" variances to permit the lawfully created pre-existing conditions on the property to remain. Finally, the applicant applied for two design exceptions related to the location of the proposed parking area. The specific relief sought is as follows:

a. A "c(2)" variance from ordinance section 165-152.E and the requirements of the C-ROM-2 Zone as set forth in the Schedule of Zoning Requirements (the "Schedule"), which is incorporated by reference and into ordinance section 165-86, to allow a front yard setback of 55.1 feet where the minimum front yard setback required is 75 feet,

b. A "c(2)" variance from the Schedule to allow a lot coverage of 74.6% where the maximum lot coverage permitted is 40%,

c. A "c(2)" variance from footnote h to the Schedule to allow a front yard lot coverage of 74.6% where the maximum front yard lot coverage permitted is 20%,

d. An exception from ordinance section 165-71.A(7) to allow the proposed parking area to be located five (5) feet from the front of the existing structure

where parking is required to be a minimum of 12 feet from a building,

e. An exception from ordinance section 165-71.A(7) to allow the proposed parking area to be located in the front yard where parking areas are not permitted within a front yard, and

f. Minor site plan approval.

3. **Standards for Considering the Requested “C” Variances.** The Board has the power to grant “c” variances under two sets of criteria: the “c(1)” or so-called “hardship” criteria and/or “c(2)” or so-called “benefits v. burdens” criteria. While the applicant seeks “c(2)” variances as described above, the Board will address the standards for Board consideration both types of “c” variances, which are as follows:

a. **Standards for Consideration of “C(1)” Variances.** The Board has the power to grant “c(1)” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(1) where: (1) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (2) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (3) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, “the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.” This is the so-called “positive criteria” of a “c(1)” variance. Significantly, the hardship that the applicant must prove is not inutility – that without the variance the property would be zoned into inutility. While inutility caused by a zoning regulation would require a variance to avoid an unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit “the extent” to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available for intentionally created situations as constituting “self-created” hardship. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979). Neither is a hardship variance available to accommodate mistakes. Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956). Neither is a hardship variance available to relieve “personal hardship” of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). Finally, the Board may not exercise its power to grant a “c(1)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Standards for Consideration of “C(2) Variances.** The Board has the

power to grant “c(2)” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(2) where “in an application or appeal relating to a specific piece of property the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.” This is the so-called “positive criteria” of a “c(2)” variance. The zoning benefits resulting from permitting the deviation(s) must be for the community (“improved zoning and planning that will benefit the community”) and not merely for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The Appellate Division has held that the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Starv Dom v. Mauro, 216 N.J. 16, 32-33 (2013). Finally, the Board may not exercise its power to grant a “c(2)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” Again, the phrase “zone plan” as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1,4,21 (1987).

4. Findings as to the “C(2)” Variances to Allow the Pre-Existing Deviations to Remain. As set forth above, the applicant has requested the following three (3) “c(2)” variances: (1) a “c(2)” variance from the Schedule to allow a front yard setback of 55.1 feet where the minimum front yard setback required is 75 feet, (2) a “c(2)” variance from the Schedule to allow a lot coverage of 74.6% where the maximum lot coverage permitted is 40%, and (3) a “c(2)” variance from footnote h to the Schedule to allow a front yard lot coverage of 74.6% where the maximum front yard lot coverage permitted is 20%. The Board finds that each of these conditions are pre-existing conditions on the property and, in order to comply with the ordinance regulations, the applicant would have to demolish portions of the existing building or the existing pavement area. The Board finds that “c(2)” variances are warranted with regard to these pre-existing conditions. The Board’s findings and conclusions as to the positive and negative criteria of the requested “c(2)” pre-existing variances are as follows:

a. Positive Criteria of the Variances to Allow the Pre-Existing Deviations to Remain. The Board finds that the positive criteria of the “c(2)” pre-existing variances have been proven for the following reasons. First, the Board finds that the property has been developed with the existing structure and pavement area for many years. Requiring the applicant to strictly comply with the ordinance regulations described above would necessitate the demolition of portions of the existing structure and existing pavement area, leading to negative environmental impacts such as unnecessary waste and unnecessary

energy consumption. The Board finds that preserving and repurposing the existing structure and pavement area is a far more favorable zoning alternative than demolishing and removing them and constructing an entirely new development and will promote the general welfare purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a by providing a permitted use to the public and putting underused commercial land back into productive economical use, -2g by developing a permitted commercial use in an appropriate location, -2i by promoting a desirable visual environment by allowing renovation and an aesthetic improvement to the property and -2m by promoting the efficient use of land by reusing the existing structure rather than demolishing it and building something new. Second, the Board finds that the zoning benefits to the Township and the surrounding region that the applicant's proposed development will provide are community wide public benefits and not simply a private benefit to the applicant. Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that the aforesaid zoning benefits will substantially outweigh any detriments. For all of the foregoing reasons, the Board finds that the applicant has proven the positive criteria of the requested "c(2)" variances to allow the pre-existing deviations to remain on the property.

b. Negative Criteria of the Variances to Allow the Pre-Existing Deviations to Remain. As to the negative criteria of the "c(2)" variances to allow the pre-existing deviations to remain, the Board finds that allowing the existing deviations to remain will not have a substantial negative impact on the property or on the surrounding lots because the property has been developed with the existing structure and pavement area for many years without any negative impact to the surrounding community. The Board further finds that, provided the conditions set forth below are imposed and complied with, the requested "c(2)" variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds that the applicant has proven the negative criteria of the requested "c(2)" variances.

c. Conclusion to Grant All of the Requested "C" Variances. For all of the foregoing reasons set forth above as to the requested "c(2)" variances, the Board concludes that it can and should grant the requested "c(2)" variances provided that the conditions set forth below are imposed and complied with.

5. Standards for Considering the Exceptions. N.J.S.A. 40:55D-51b provides that the Board, "when acting upon applications for . . . site plan approval, shall have the power to grant such exceptions from the requirements for . . . site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval . . . if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." While neither "impracticable" nor "hardship" is defined in the MLUL, "hardship" has been defined in numerous land use and zoning cases in New Jersey. As established in New Jersey case law, the "hardship" necessary to warrant the grant of a "c(1)" variance does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, our courts have held

that “hardship” to warrant a “c(1)” variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board thus concludes that the hardship necessary to warrant the grant of an exception does not have to rise to the level of confiscation. If the ordinance provisions at issue “inhibit . . . the extent” to which the property can be used, such “hardship” is sufficient to warrant the grant of an exception. Unlike “hardship,” however, “impracticable” has not been defined in any land use or zoning case of which the Board is aware. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), the Board concludes that “impracticability” is derived from the root word “impractical,” which is defined as “not wise to put into or keep in practice or effect”; an inability to deal “sensibly or prudently with practical matters.” See Merriam-Webster’s Collegiate Dictionary (11th Ed. 2004). The Board thus concludes that impracticability to warrant the grant of an exception includes situations where requiring literal enforcement of the ordinance requirements at issue would be imprudent and/or not sensible.

6. Findings as to the Parking Exceptions. As set forth above, the applicant is requesting two (2) exceptions from the site plan ordinance regarding parking as follows: (1) an exception from ordinance section 165-71.A(7) to allow the proposed parking area to be located five (5) feet from the front of the existing structure where parking is required to be a minimum of 12 feet from a building, and (2) an exception from ordinance section 165-71.A(7) to allow the proposed parking area to be located in the front yard where parking areas are not permitted within a front yard. The Board’s findings as to the parking exceptions are as follows. First, the Board restates its finding with regard to the “c” variances that the property has been developed with the existing structure and pavement area for many years. Requiring the applicant to demolish the existing pavement area and relocate the proposed parking area would lead to negative environmental impacts such as unnecessary waste and unnecessary energy consumption. The Board finds that preserving and repurposing the existing pavement area is a far more favorable zoning alternative than demolishing and removing it. As such, the Board finds that it is not prudent to literally enforce the site plan ordinance requirements at issue. Second, the Board finds that granting the parking exceptions is reasonable. Third, the Board finds that granting the requested parking exceptions is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with.

7. Conclusions to Grant the Parking Exceptions. As set forth above, the Board found that it is reasonable and within the intent and purpose of the site plan ordinance provisions to grant the exceptions from the site plan ordinance requirements at issue, subject to the conditions set forth below being imposed and complied with. As also set forth above, the Board found that it is not prudent to literally enforce the site plan ordinance requirements at issue. As such, the Board concludes that it can and should grant the exceptions at issue subject to the conditions set forth below.

8. Standards for Minor Site Plan Review. N.J.S.A. 40:55D-46.1 is the starting

point for consideration of a minor site plan application and provides that “minor site plan approval shall be deemed to be final approval of the site plan.” N.J.S.A. 40:55D-50a is thus the focal point for consideration of the minor site plan as it 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 and the conditions of preliminary approval. As such, if the application complies with all ordinance requirements, the Board must grant approval. Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. However, there are two exceptions:

a. The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions or the deviation at issue is “grandfathered” as a lawfully created pre-existing nonconforming condition. The Board must review the application against all remaining applicable ordinance requirements and grant approval if the application complies with all such remaining requirements.

b. The second exception is where the application does not comply with all ordinance requirements, but a condition can be imposed requiring a change that will satisfy the ordinance requirement. The Board can either grant approval on the condition that the application be revised prior to signing the plan to comply with the ordinance requirement or the Board can adjourn the hearing to permit the applicant the opportunity to revise the prior to the Board granting approval.

9. Findings and Conclusions as to Minor Site Plan Review. Except for the “c(2)” variances and the site plan exceptions set forth above which the Board has found and concluded should be granted, and provided that the conditions set forth below are imposed and complied with, the Board finds that the site plans will comply with all remaining applicable zoning ordinance regulations and all remaining applicable site plan ordinance requirements. Further, provided that the conditions set forth below are imposed and complied with, the Board finds that minor site plan approval can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the master plan and zoning ordinance.

10. 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). 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). 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). 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 2024), 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 conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON SEPTEMBER 9, 2025 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE CONDITIONS SET FORTH BELOW:

**B. RELIEF GRANTED**

1. Grant of “C(2)” Front Yard Setback Variance. Subject to the conditions set forth below, a “c(2)” variance from the Schedule is hereby granted to allow a front yard setback of 55.1 feet where the minimum front yard setback required is 75 feet.
2. Grant of “C(2)” Lot Coverage Variance. Subject to the conditions set forth below, a “c(2)” variance from the Schedule is hereby granted to allow a lot coverage of 74.6% where the maximum lot coverage permitted is 40%.

3. **Grant of “C(2)” Front Yard Lot Coverage Variance.** Subject to the conditions set forth below, a “c(2)” variance from the Schedule is hereby granted to allow a front yard lot coverage of 74.6% where the maximum front yard lot coverage permitted is 20%.

4. **Grant of Exception With Regard to Parking Setback From the Existing Structure.** Subject to the conditions set forth below, an exception from ordinance section 165-71.A(7) is hereby granted to allow the proposed parking area to be 5 feet from the front of the existing structure where parking is required to be a minimum of 12 feet from a building.

5. **Grant of Exception With Regard to Parking in the Front Yard.** Subject to the conditions set forth below, an exception from ordinance section 165-71.A(7) is hereby granted to allow the proposed parking area to be located in the front yard where parking areas are not permitted within a front yard.

6. **Grant of Minor Site Plan Approval.** Subject to the conditions set forth below, minor site plan approval is hereby granted to the site plans referenced above, to allow the proposed metal fabrication use of the existing building and the proposed development.

### C. **CONDITIONS**

1. **Revisions to the Site Plans.** The applicant shall revise the site plans referenced above by drawings and/or notes to the satisfaction of the Board engineer and Board planner to incorporate the following comments emanating in the memos and/or letters from the following Board experts, as modified and/or supplemented by the Board members during the hearing on the application, and the applicant shall have until July 13, 2026 (within 6 months from the date the within resolution is adopted) to revise the site plans and obtain sign off on the plans from the Township Engineer. In the event that the applicant fails to revise the site plans within said time period, or extension thereof as granted by the Board, the within approval 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 amended application for no more than a six month period to provide the applicant with the opportunity to revise the site plans 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 amended application.) The required revisions to the site plans referenced above are as follows:

a. **Comments Emanating in the Memo to the Board from Robert C. Brightly, PE, PP, CME (Board engineering expert) dated August 28, 2025:** (only those numbered items that require revisions to the plans are set forth below)

### B. Plan Review

2. The table of zoning requirements on sheet 1 shall include a line item for the combined width of both side yards, where a combined width of 25% of the lot width measured at the front setback line is required.

3. The side yard setback lines, while shown correctly, shall be labeled as 30 feet rather than 20 feet.

4. The plan includes reference Note 5 that indicates the freshwater wetland line shown was located by Environmental Technology Inc., on September 26, 2022. Clarification shall be provided to confirm whether or not the freshwater wetland line was located by survey or shown as an approximation of the ETI delineation. Also, the plan indicates a 50-foot wetlands buffer line, which seems unusual for a wetland area adjacent to a Category I (CI) stream. A letter shall be submitted from the freshwater wetlands expert to verify the classification of the freshwater wetlands and the width of the buffer.

5. The following comments pertain to the parking area proposed along the front of the building:

a. The plan indicates that pavement markings will be installed for 7 parking spaces. Based on the dimensions shown, it appears that two ADA parking spaces are proposed, but these are not labeled. Revise the plans to identify the two ADA parking spaces.

b. The ADA parking signs (detail on sheet 2), shall be shown on the site plan drawing.

c. The site plan shall be revised to show the existing curb stops along the front of the building if they are to remain.

d. The pavement along the front of the property is in various levels of disrepair, including large potholes at the driveway entrances and in the areas of the proposed ADA parking spaces. The application package indicates that visitors to the site are anticipated. The parking area shall be reconstructed.

8. The boundary and topographic survey, as well as the site plan drawing show a flood hazard area line and include notes regarding the FHA line shown. While no site improvements are proposed, the plan and notes shall be revised to address the following:

a. The date of the FEMA study in Note 8 on the survey and Note 4 on the site plan shall be updated to the most current; Preliminary April 2, 2021. The elevations do not appear to be affected.

b. Note 8 on the survey indicates that Method 3 was utilized to

determine the flood hazard area design elevation. However, based on the last rule amendment dated July 17, 2023, under Method 3, the flood hazard area design elevation shall be equal to three feet above the FEMA 100-year flood elevation, while the plans indicate an elevation of I-foot above the FEMA 100-year elevation was plotted. Revise the plan.

c. Note 8 on the survey also provides a single flood hazard area design elevation while elevation varies across the site due to the steep decline of the stream. A range from property line crossing to property line crossing shall be provided.

d. The flood hazard area line shall be shown based on the topography of the site rather than digitally from the FIRM mapping.

10. The entire property is located within the Tier 1 Well Head Protection Area (WHPA) of the Borough. The plans show an existing septic system, which would be considered a minor potential contaminant source. Documentation shall be provided to confirm that the proposed change in use does not involve an increase in capacity to the potential contaminant source.

b. **Comments Emanating from the Board Members During the Hearing on the Amended Application:**

1. The plans shall be revised to show the fenced in storage area in the right rear portion of the property.

2. **Signage.** Any and all signage shall comply with all Borough ordinance regulations and requirements.

3. **Hours of Operation and Prohibition on Outdoor Operations.** The hours of operation shall be Monday through Friday from 7 am to 5 pm and Saturday from 8 am to 12 noon. The business shall be closed on Sunday. All fabrication work as well as painting shall be done indoors with the windows and doors closed. There shall be no outdoor operations with the exception that materials and products can be loaded and unloaded onto and off of vehicles.

4. **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 a resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, 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 relief granted, as well as any and all underlying relief for the property, automatically terminating and becoming null and void.

5. **Time to Obtain Construction Permits and Commence and Complete Construction.** The applicant shall apply for and obtain zoning and construction permit by January 13, 2027 (which is within one (1) year of the adoption of the within resolution). If during said one (1) year period, or extension thereof as granted by the Board, the applicant fails to obtain all zoning and construction permits, the within approval 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 and complete construction and obtain a permanent certificate of occupancy, acceptance or approval (as the case may be). If during said one (1) year period, or extension thereof as granted by the Board, work is not commenced and completed and a permanent certificate of occupancy is not obtained, the within approval shall automatically expire and become null and void.

6. **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 (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

- a. New Jersey Department of Transportation letter of no interest for the proposed change in use,
- b. Hunterdon County Soil Conservation District,
- c. Hunterdon County Planning Board approval of any aspect of the proposed development within its jurisdiction, and
- d. Hunterdon County Department of Health approval of any aspect of the development within its jurisdiction.

7. **Subject to Other Laws, Regulations and Approvals.** The within approval and the use of all property subject to the within approval 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 all property subject to the within approval 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 condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

Mr. Hauck made a motion to approve the Minor Site Plan and conditions as stated. With a seconded from Mrs. Mathewson.

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

**Ayes: Saharic, Ableles, Fordham, Newman, Hauck, Lapczynski, Matheson, Berger**

**Nay:**

**Absent: Pittinger, Weingart**

**Abstain:**

**MISCELLANEOUS:**

**ADJOURN**

**Mr. Hauck moved, Mrs. Mathewson seconded a motion to adjourn, there being no further business to come before the Board.** The motion was passed by a unanimous vote. The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

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Karen Romano  
Land Use Board Secretary