

Lebanon Township Board of Adjustment

August 26, 2020

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RESOLUTIONS: Cont'd

Motion by Mr. Kozlowski and seconded by Ms. Guevara to adopt the Resolution for Bulk Variances with conditions.

ROLL CALL	Yes: Mr. Abuchowski Mr. Kozlowski Mr. Eberle	Mr. Locker Ms. Guevara	Absent: Mr. Terzuolo Mr. MacQueen Mr. Maurizio Mr. Sachs
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NEW BUSINESS:

M Rivers Properties, LLC 199 Pottersville Road Chester, N.J. 07930	Block #69 Lot #42 Musconetcong River Road R1.5 & RC zones
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PUBLIC HEARING d Use Variance and Bulk Variances

Attorney Howard Apgar was present and made a presentation to the board. Attorney Gallina had the following items marked into evidence at this time: **A1**-Certification of Service, **A2**-Notice of Hearing in Newspaper, **A3**-Certied List of Property Owners & Utilities, **A4**-Certified Mailing Slips, **A5**-Affidavit of Newspaper Publication.

Attorney Apgar stated that the property in question consists of 5.55 acres. The front portion of the property is in the R1.5 zone and the rear portion is in the RC zone. There is a 2 story dwelling unit in the front portion of the property with 4 single bedroom units. Attorney Apgar had Architect William Bryne sworn in to give testimony at this time. Mr. Bryne stated the back portion of the property consisted of 4 unit apartments, the applicant is purposing to replace the 4 units with a new 4 unit residential structure. Multiple residential dwelling units are not permitted in any zone in the Township. The structure had existed for nearly 75 years which predates the Township Zoning Ordinances. The following item was marked into evidence: **A6**-Correspondence from Attorney Howard dated April 22, 2020. At the conclusion of Mr. Bryne testimony, the board had several questions of Mr. Bryne. The next person to be sworn in was Construction Official Ralph Price. Mr. Price testified that October 2019 permits for total reconstruction were issued. Mr. Price stated that the permit was conditioned upon Board of Health, Soil Conservation and Zoning Approval. Unfortunately, these conditions were an oversight and the permit was issued without those conditions being met. Mr. Price said he then issued a stop work order. He spoke to Mr. Flemming the Zoning Officer and Mr. Flemming visited the site and informed the applicant he could continue with the demolition of the building. Attorney Gallina noted that for the board to consider the application for certification of nonconforming use, the burden is on the applicant to prove

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the existence of the prior nonconforming use. There was no testimony or documents submitted to prove that the multi-family dwelling existed prior to when the zoning ordinance was adopted. Since the non-conforming structure has been demolished down to the foundation, it terminates the rights of the structure. Attorney Gallina referred to Cox, N.J. Zoning & Land Use Admin Section 11-4. Attorney Gallina also referred to Hawrylo vs Board of Adjustment 249 NJ Superior Court 568, 580 – Appellate Div. 1991. Attorney Gallina noted the Courts in New Jersey have upheld that a nonconforming structure that was totally destroyed didn't give the owner the right to rebuild. The board had many questions regarding the rebuilding of a non-conforming structure/use. At the conclusion of the board's questions, Wayne Ingram, PE & PP was sworn in to give testimony. The following was marked into evidence: **A7-** Variance Plan prepared by Planner Wayne Ingram dated 1/27/2020, revised 4/30/2020. Planner Ingram stated the applicant seeks a variance to rebuild the 4 family residential units located at the rear of the property and to bring the improvements up to code. The applicant will use the same foundation and the building will not be enlarged. Planner Ingram said the variance requested is Ordinance 400-8.b (5) since there will be more than one principal structure on the property. Planner Ingram referred to the parking lot stating there are 17 parking spaces which only 16 are required. Also, both structures are serviced by the same well and septic system along with all utilities remaining the same. Planner Ingram stated the County Planning Board is requiring a grant of 33' ROW and certain driveway conditions. The applicant will also need to comply with Hunterdon County Soil Conservation District. Attorney Apgar noted that since there is no disturbance of soil since the structure will be on the same foundation H.C. Soil doesn't apply. Also, since this is a variance application and not a Site Plan or Subdivision, the County Planning Board doesn't have jurisdiction. Attorney Apgar said they are currently in discussion with the County Planning Board on this subject. Planner Ingram said that security lighting is proposed for the front doors for each dwelling unit. Trash disposal will stay the same with the dumpsters on the property.

Planner Ingram referred to the special reasons for the variance and stated the site is suited for the use and the use has existed for a number of years with the building being shown on an aerial photo dating back to 1953. The new building will promote safety, public health and general welfare. In the original building the ceiling height was 6' and not up to code, the new building will provide a safer and habitable housing for the tenants. The new building will provide a positive complement to the neighborhood and there will be no negative impact and no new disturbance of land. Planner Ingram went on to say there is no negative criteria and will have no detrimental effect on the surrounding neighborhood. The following items were marked into evidence: **A8-** Architectural renderings, **A9-** Photograph of prior building. At the conclusion of Planner Ingram's testimony, the board and professionals had several questions of Planner Ingram. When open to the public for questions there were none. When open to the public for statements and comments there were none.

Vice Chairman Abuchowski announced the public hearing is now closed. Attorney Apgar made his summation at this time.

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The board deliberated at this time, at the conclusion of the board’s deliberation, motion by Mr. Kozlowski and seconded by Mr. Eberle to grant the d Variance, Bulk Variance. Application for certification of the four family dwelling to be reconstructed as pre-existing nonconforming use is hereby denied. That the application for a d variance to reconstruct the 4 family dwelling unit, pursuant to N.J.S.A. 40:55D-70d.1` and granting relief from the provisions of Ordinance 400-8(B)(5) which prohibit 2 principal structures on the same lot, is hereby granted, subject to conditions and the application for bulk variance relief from the front yard setback from Musconetcong River Road Ord. section 400-7 Schedule 1 for the existing building and the required front yard from the Zone boundary between the R5 & RC Zones is hereby granted subject to conditions. The approval of the application for a d Variance relief and Bulk Variance relief are subject to the following conditions:

- a. The applicant shall obtain all other necessary approvals from any outside agencies having jurisdiction, including but not limited to obtaining the necessary Highlands’s exemption.
- b. The applicant will pay the necessary fees and escrows payable in connection with the application. The applicant shall be under a continuing duty to maintain a positive escrow account balance until all conditions have been satisfied and all charges paid.
- c. The Variance Plan will be amended to show the setbacks of the existing buildings located at the front of the lot on the proposed new building from the zone boundary line.
- d. The applicant will furnish proof of a Sanitary Subsurface Disposal (“11”) general permit from the NJDEP for the septic system.
- e. The proposed new building will be constructed as shown on the Variance Plan submitted and the new building will comply with the height requirements for the RC zone.
- f. Any necessary permits shall be obtained with eighteen (18) months of the date of the adoption of the Resolution. (The applicant is advised that pursuant to Ordinance Section 45-20, if an extension of this time period is needed, the request must be made In writing prior to the expiration of the 18 month period).

ROLL CALL	Yes: Mr. Abuchowski	Mr. Locker	Absent: Mr. Terzuolo
	Mr. Kozlowski	Ms. Guevara	Mr. MacQueen
	Mr. Eberle		Mr. Maurizio
			Mr. Sachs

Attorney Gallina will prepare the Resolution to be on the next Agenda of September 23, 2020.

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PRESENTATION OF BILLS:

a. Court Stenographer \$250.00

Motion by Mr. Kozlowski and seconded by Mr. Locker to approve the bill as presented. Unanimously approved.

Being no further business to come before the board, nor comments from the public, motion by Mr. Eberle and seconded by Ms. Guevara to adjourn the meeting at 9:31 p.m. Unanimously approved.

VICE CHAIRMAN ABE ABUCHOWSKI

GAIL W. GLASHOFF, BOARD SECRETARY
Minutes prepared by Ms. Glashoff