

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

November 24, 2014

PRESENT: Tom McCaffrey John Matsen, Sharon Stevens, Wayne Filus (7:32PM), Sharol Lewis (7:36PM), Dave Roberts and John Lefkus.

PROFESSIONALS: John Drill, Attorney, Beth McManus, Planner, Cathy Marcelli, Engineer and Rebecca D'Alleinne, Administrator.

ABSENT: None.

CALL TO ORDER

Chairman McCaffrey called the meeting to order at 7:30PM.

PUBLIC NOTICE

This is a public meeting of the Zoning Board of the Township of Clinton, County of Hunterdon and State of New Jersey. Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that an Annual Notice was published in the Hunterdon County Democrat and the notice of and agenda for this meeting was posted on the bulletin boards in the Municipal Building and faxed to the Hunterdon County Democrat, the Express Times, the Courier News, the Hunterdon Review, and the Star Ledger, no later than the Friday prior to the meeting.

NEW BUSINESS

Vouchers

Chairman McCaffrey moved and Vice Chairman Matsen seconded a motion to approve the vouchers for payment. The Board concurred unanimously.

MINUTES

John Matsen moved and Sharon Stevens seconded a motion to approve the minutes of October 27, 2014, as written. The Board concurred unanimously.

RESOLUTIONS

**TOWN OF CLINTON/WATER DEPT., Block 79.01, Lot 28**

Resolution #2014-10, Application #2013-06

Jon Drill read two additional corrections into the record, noting that Version 2 of the resolution was under consideration. John Matsen moved and Dave Roberts seconded a motion to approve the resolution as corrected. Members in favor: Matsen, Stevens, Filus, Lefkus and Roberts.

**KULLMAN ASSOCIATES, Block 7, Lot 33**

Resolution #2014-11, Application #2014-04

Jon Drill reported that Version #4 was under consideration. Sharon Stevens offered an additional correction. Sharon Stevens moved and Wayne Filus seconded a motion to approve the resolution as corrected. Members in favor: McCaffrey, Stevens, Lewis and Filus.

EXTENSION OF TIME

**SHARMA, Block 80, Lot 6**

Praveen Sharma introduced himself. He indicated that he had conducted a number of conversations with general contractors, that he was having difficulty finding one to construct the addition on his house and was asking for a one year extension. Mr. Drill pointed out that the extension would be from January 2014, not 2015. Mr. Sharma amended his request for an extension to 2016 and all other time sensitive deadlines to be pushed forward also. Dave Roberts moved and Sharol Lewis moved to extend the deadline to obtain a building permit to January 23, 2016. Members in favor: McCaffrey, Matsen, Stevens, Lewis, Filus, Lefkus and Roberts.

APPEAL OF ZONING OFFICER'S DECISION

**LEMAD, Block 68, Lot 6**

Kevin Benbrook, Esq. introduced himself on behalf of the applicant. Charles Urban, President of LeMad and Beth McManus, Board Planner were sworn. Mr. Benbrook expressed that the Judge Buchsbaum's legal decision during prior litigation had validated the existing two-family household use on the property. He indicated that the property was in the RC zone and that his client had made an application for a 21,000 square foot barn. Mr. Urban corrected the figure to 10,875 square feet, and noted that it would be a single story barn. Kevin Benbrook indicated that the zoning officer had made an error concerning the house. He stated that his goal for the evening was to determine whether his client could build the barn for agricultural use with the pre-existing nonconforming two-family residential use on the property. Jon Drill discussed the zoning permit and pointed out that the barn was shown on the plan submitted to the Zoning Officer as a two story structure and that the zoning permit application identified the house as a one-family residence. The zoning permit issued by the Zoning Officer also lists the house is a one-family residence. Mr. Drill indicated that if the Board determined that the residential use was lawfully created, then a D2 variance would be needed to allow the barn as the barn would intensify the two-family nonconforming use of the property. On the other hand, if the two-family house was not lawfully created, a D1 variance would be required. He further noted that if all of the people in the house worked on the farm, then the township ordinance would consider the house a part of the agricultural use. But, if none of the people living in the house worked on the farm as has been indicated by the applicant, the D1 variance for the house is required. He suggested that the applicant change the application from an appeal to an interpretation because the

Zoning Officer appears to be technically correct in his ruling based on what was presented to him by the applicant and what the applicant is presenting now appears to be different than what was presented to the Zoning Officer.

Mr. Benbrook stated that they would withdraw the appeal and change the application to an interpretation. Chuck Urban reported that the barn will be related to woodland management and as the woodland was cleared, he would transfer the use to animal management. He stated that he did not want to link the house use to the barn use, and couldn't promise that the tenants would work on the farm. Kevin Benbrook noted that the issue was that if the residence was a single family farmhouse, the barn would then be considered as an accessory use. He pointed out that there had been litigation on the property. The applicant's position was that farming was a permitted use in any zone. He expressed the opinion that any number of farming activities would be permitted and that a 10,000 sq. ft. barn was not unusual.

Beth McManus stated that agriculture was permitted in all zones, but that the barn would be a second principal building on the property. She noted that the discussion should not be about the "right to farm", but instead whether the applicant has the right to erect the barn, which would create a second principal building. She noted that the house was a two-family home where only single-family homes were permitted. The planner's assumption was that the house was pre-existing and non-conforming, and that it was lawfully created, but that there was no record. John Lefkus asked about a structure on an aerial photo and Mr. Urban stated that it was the foundation of a barn that had burned down. Mr. Benbrook discussed what constituted generally accepted farming practices. Mr. Drill commented that adding the barn would intensify the pre-existing nonconforming two-family residential use of the property. He expressed the opinion that the applicant would need two D variances; one to intensify the use and one for a second principal structure.

John Lefkus commented on the difference between personal use garages versus a principal use. Beth McManus discussed the fact that constructing an accessory structure, would intensify a nonconforming use. She noted that the difference was that this application involved two principal uses. Jon Drill stated that agriculture was permitted, but adding a structure would increase intensity and that the ordinance didn't allow two principal uses. Mr. Urban discussed best practices in agriculture. Chairman McCaffrey discussed the township farm ordinance and whether it discussed structures. Mr. Urban stated that general farming practices would indicate that one must have a structure for the animals. Kevin Benbrook discussed farm structures as a part of farming activities. Beth McManus discussed whether the township had the ability to restrict uses.

Chairman McCaffrey asked hypothetically whether the applicant could add additional uses if he had built the barn first. Kevin Benbrook commented that farming was a hybrid activity. John Matsen stated that the Right to Farm ordinance was put in place to eliminate nuisance complaints and didn't address all of the issues that the state right to farm legislation considered. There was no mention of structures. He noted that the township wasn't giving up its right to control buildings. Beth McManus read the definition of "farming" and "agricultural land" into the record. Chairman McCaffrey discussed the two principal buildings. John Lefkus discussed retail activities on farms, noting that the applicant would only need to apply for the variance.

Kevin Benbrook stated that the applicant felt that farming activity included structures. Discussion ensued concerning intensifying a non-conforming use. Mr. Benbrook expressed the opinion that barn was not related to the non-conforming use, so the nonconforming use was not being intensified. John Lefkus noted that the structure could be used for another use than farming in the future. John Matsen commented that the case was dealing with the MLUL and asked whether there was other case law that referred to this issue. Mr. Benbrook didn't have any cases to reference. Sharon Stevens expressed the opinion that the property had two definite uses and structures, a rental property and an agricultural barn and would need a variance. The Board deliberated and determined that the construction of the barn was not permitted, as it was currently presented. John Matsen moved and Sharon Stevens seconded a motion that the barn was not a permitted use and would need a "D" variance. Members in favor: McCaffrey, Matsen, Stevens, Lewis, Filus, Lefkus and Roberts.

Sharon Stevens and Beth McManus left the meeting.

#### INTERPRETATION (AMENDED DURING THE HEARING TO AMENDED FINAL SITE PLAN APPROVAL TO ALLOW PHASING)

#### **OCEAN STATE JOB LOT, Block 70, Lot 3**

Kevin Benbrook, Esq. introduced himself on behalf of the applicant. Dawson Bloom, applicant's engineer, Mark Shovlin, OSJL Director of Property Management, and Cathy Marcelli, Board Engineer were sworn. Kevin Benbrook indicated that his client was close to stocking the shelves and getting a TCO for the building. He discussed the approval resolution condition concerning the refurbishing of the parking lot. He noted that the applicant did not feel that they could finish the parking lot to Ms. Marcelli's specifications which he felt would be expensive and couldn't be finished in a timely manner.

Mr. Shovlin commented on the increasing costs and what they felt that they should repave. He didn't agree with the Board Engineer's assessment that a specific area of the parking lot needed to be repaved. He stated that they wished to repave the lot in phases. Chairman McCaffrey asked the applicant to clarify what relief they were seeking: an interpretation of the resolution condition or a new site plan. Mr. Benbrook stated that the applicant might need to come back in the future for some site plan changes, but for that night they needed an interpretation of what had been approved, specifically concerning the limits of paving. He noted that there was more milling contemplated by the township engineer.

Jon Drill stated that the Board could grant amended final for phasing if that is what the applicant wanted. Mr. Shovlin commented that they were trying to open the store. John Lefkus asked what criteria the CO would use for a TCO. Mr. Benbrook responded that he would consider building code concerns. Mr. Lefkus noted that he would also consider life safety concerns and if they were in place, he would probably issue the TCO. Discussion ensued concerning whether the Construction Official would issue the TCO. Mr. Benbrook expressed the opinion that his client could work together with the Board professionals more efficiently if they could have phases. Dave Roberts expressed the opinion that the Construction Official couldn't grant the TCO if the resolution conditions were not satisfied. Mr. Benbrook stated that his client would like to

phase the parking lot plan in order to finish what was needed in order to open. John Lefkus discussed the discretion of the construction official to grant a decision. Dave Roberts asked whether the parking lot would create a legal issue for the township, and Mr. Drill responded that the township would have approval immunity under the New Jersey Tort Claims Act.

Mr. Benbrook indicated that he was seeking an amended final site approval for phasing.

Exhibit A-1 (Phase One Site Plan) was marked into evidence. Dawson Bloom reviewed the overall approved plan and pointed out all of the areas that required resurfacing. He discussed the additional site lighting, indicating that would like to phase the paving and improvements to the sign. The landscaping would be planted later as it was now out of the planting season. The handicapped ramp would be done in Phase One, but they would not do the sidewalk at that point. Phase One was marked by gray areas on the exhibit. He described the location of the paving, pointing out which areas would be milled and resurfaced. Mr. Bloom noted that all of the site lighting improvements and site directional signage would be included in Phase One. He stated that Phase One would include in a limited tree removal (as agreed to by Brian Bosenberg), in addition to the resetting and repairs of the inlet castings. The permanent striping would be done for the Phase One pavement and with the understanding that the the second phase would need to be restriped when it was repaved. A contractor had been found to install the pavement. Cathy Marcelli discussed the length of time that it would take to pave the lot. Mr. Bloom estimated that it would take a week. Ms. Marcelli discussed crack seal and whether it could be cut and replaced. She asked for the total project timing, and Mr. Benbrook stated it would be finished no later than May 1, 2015.

Mr. Bloom discussed the inlet replacement and pointed out the sidewalk and loading dock that would be removed. Mr. Shovlin discussed the loading dock and Mr. Bloom listed the parts to be removed and what would remain. He stated that the fence in the back around the dumpster would be a part of Phase One. MS stated that he would like to get it open by the middle of December. Cathy Marcelli commented that there were some large cracks, noting that there were concerns in Joe Fischer's memo. Mr. Bloom stated that their firm had a geotech on staff. Mr. Matsen asked about the timing for the resolution and Mr. Drill commented that if the Administrator were to contact the Building Official and tell him that all of the resolution conditions would be written up first and forwarded to him. Chairman McCaffrey asked for questions or comments from the public.

Tom Yager, Clinton Township, stated that he would be glad to see the store open.

Dave Roberts moved and Wayne Filus seconded a motion for amended final site plan to allow phasing. Members in favor: McCaffrey, Lewis, Filus, Lefkus and Roberts.

#### ADJOURNMENT

Wayne Filus moved and Dave Roberts seconded a motion to adjourn, and the motion passed unanimously. The meeting was adjourned at 9:50PM.

These minutes were approved on February 23, 2015.

Rebecca E. D'Alleinne, Administrator