

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

DATE: December 18, 2017

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

Chairman McCaffrey led the Flag Salute.

Chairman McCaffrey read the 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 outside the Planning and Zoning Office 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.

MEMBERS IN ATTENDANCE

Filus, Lefkus, Lewis, Matsen, McCaffrey, Olsen, Roberts, Stevens

MEMBER ABSENT

Yager

PROFESSIONALS/STAFF IN ATTENDANCE

- 1) Jonathan Drill, Esq., of Stickel, Koenig, Sullivan and Drill, Board Attorney
- 2) Andrea Malcolm, PP, AICP of Clarke Caton Hintz, Board Planning Expert
- 3) Lucille Grozinski, Stenographer
- 4) Denise Filardo, Board Secretary

VOUCHERS

A motion was made by Mr. McCaffrey and seconded by Mr. Matsen to approve the vouchers for payment. The vote record follows.

Roll Call: Payment of Vouchers						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus			X			

Lewis			X			
Matsen		X	X			
McCaffrey	X		X			
Olsen (Alt. 2)					X	
Roberts			X			
Stevens			X			
Yager (Alt. 1)					X	X

MEETING MINUTES

MEETING MINUTES OF OCTOBER 23, 2017

Eligible Members: Lefkus, Matsen, McCaffrey, Olsen

A motion was made by Mr. Olsen and seconded by Mr. Matsen to approve the Meeting Minutes of October 23, 2017. The vote record follows.

Roll Call: Minutes 10/23/17						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus			X			
Lewis					X	
Matsen		X	X			
McCaffrey	X		X			
Olsen (Alt. 2)			X			
Roberts					X	
Stevens					X	
Yager (Alt. 1)					X	X

RESOLUTION

JOSEPH AND PEGGY KATZENBERGER

Block 16, Lot 48

Application No. BOA-2014-03

Resolution No. BOA-2017-10

Modification of condition #8 of Resolution No. 2014-08 to extend the time within which the applicants must obtain a certificate of occupancy from July 8, 2017 to July 8, 2018

Eligible Members: Filus, Lefkus, Lewis, Matsen, McCaffrey, Roberts & Stevens.

A motion was made by Ms. Stevens and seconded by Mr. Filus to adopt Resolution No. 2017-10. The vote record follows.

Roll Call: Resolution No. 2017-10 – Katzenberger, Blk 16, Lot 48						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus		X				

Lefkus			X			
Lewis						
Matsen			X			
McCaffrey			X			
Olsen (Alt. 2)			X		X	
Roberts						
Stevens	X					
Yager (Alt. 1)					X	X

DISMISSAL OF APPLICATION DUE TO LACK OF BOARD JURISDICTION

EZENERGY NJ, LLC

Ground Mounted Solar Application at Hunterdon Wellness Center

1738 Route 31 North

Block 70, Lot 13

Applicant is seeking a “D(3)” Variance to install a Ground Mounted Solar System in excess of 400 square feet.

The Board determined that it did not have subject matter jurisdiction over the application for development because no “D” type variance is required, and the application for development that is required involves minor site plan and a “C” variance, which relief is within the exclusive jurisdiction of the Planning Board.

A motion was made by Ms. Stevens and seconded by Mr. Lefkus to dismiss the application without prejudice. The vote record follows.

<i>Roll Call: EZenergy, Blk 70, Lot 13 – Dismissal of Application Without Prejudice</i>						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus		X	X			
Lewis			X			
Matsen			X			
McCaffrey			X			
Olsen (Alt. 2)					X	
Roberts			X			
Stevens	X		X			
Yager (Alt. 1)					X	X

A. PUBLIC HEARING

Ms. Stevens exited the meeting at 7:45 as she recused from the Herr Application.

MARILY RHYNE HERR

Block 16, Lot 73

182 Stanton Mountain Road

Application No. 2017-04

The applicant has applied for a “D(1)” Use Variance to permit use of the improved garage apartment as a secondary dwelling unit.

The applicant’s attorney, Nicole Voigt, Esq. informed the Board that Mr. Schomp, the contractor who worked on the garage is available as needed during this hearing. Additionally, Ms. Suzanne Reese, the applicant’s former secretary, is available via Skype if needed.

The following individuals were sworn and testified during the November 27, 2017 hearing and remain under oath:

- 1) Marilyn Herr, Esq. (applicant)
- 2) Julia Herr, Esq. (applicant’s daughter)
- 3) Robert Schomp (applicant’s fact witness)
- 4) Andrea Malcolm, PP, AICP (Board planning expert)

James Kyle, PP, AICP the applicant’s planning expert was sworn and provided testimony during the hearing. Mr. Kyle’s qualifications were accepted by the Board.

EXHIBIT

A-10 2015 Aerial Photo of the property and Tax Parcel Base map prepared 12-18-17 by Jim Kyle.

Mr. Kyle began by disclosing to the Board that he has reviewed all of the application materials and correspondence, the transcript from the prior hearing and Andrea Malcolm’s (the Board’s planning expert) report. Mr. Kyle also reviewed the pertinent ordinance, the Township Master Plan and he visited the property.

Mr. Kyle discussed both the positive and negative criteria in support of the “D(1)” Use Variance to permit use of the apartment above the existing garage.

- The apartment is fairly isolated and suitable for living space
- It fits comfortably within the density limitations (if the property were subdivided four (4) dwelling units could be permitted at 9 acres each), however this is a much more efficient use of the property, while preserving its rural nature
- The apartment will be inhabited by the caretaker of the property
- There is no proposed sewer, septic, no clearing, no disturbance and no change to the property
- Existing structure comfortably meets all setbacks for the RC zoning district
- Significant buffering is in place - hedgerows, wooded areas, the isolated nature of the site lessens the impact and hides the activity on the property.
- This will not disturb what The Master Plan sought to protect
- The garage is existing structure, there are no proposed improvements aside from interior. No visibility, no increase in traffic.

Mr. Schomp's testimony included the following:

- The wagon house foundation was not expanded upon when converted to the existing garage
- The roof was raised on the garage.
- The wagon house was 1½ stories with an estimated height to peak of fifteen (15) feet
- The existing garage is 2 stories with an estimated height to peak of eighteen

Judge Herr testified that over course of seventeen (17) years she set a basic nominal rent and the implication was that caretaker paid off the rent by working on the property.

Parking for the tenant is behind the garage. There will also now be enough room in the garage for him to park.

BOARD FINDINGS AND CONCLUSIONS

The Board's findings and conclusions at to the requested Interpretation and Certification are as follows:

- The applicant did not meet its burden of proving that the letter to the Zoning Officer dated September 13, 1989 refers to the applicant being allowed to rent a room to a boarder in the garage apartment. The Board finds that the letter is ambiguous and could reasonably have been interpreted as referring to a boarder living in the dwelling (main house).
- The apartment here was and is not located in the dwelling on the property. It is located in the detached accessory garage.
- The dwelling is the principal building on the property and the garage is an accessory building on the property.
- Had the Zoning Officer interpreted the ordinance as allowing a boarder to rent the apartment despite the fact that it was located in an accessory building, such an interpretation would have been in error and would not have constituted the lawful approval of the nonconforming rental use.
- No boarders or roomers were permitted to occupy the apartment in 1989 so the rental use of the apartment established by the applicant in 1989 was not a lawfully created use at that time.
- The Board cannot interpret the 1989 ordinances as allowing the rental of the apartment to a boarder and cannot certify that the apartment was a lawfully created pre-existing nonconforming second dwelling or rental apartment entitled to continue.
- The apartment was lawfully created in or after 1981 for use by a family member of the occupant of the principal dwelling. The Board interprets the ordinance in effect from the period 1981 to 1989 as allowing an apartment over an accessory garage to be used by a family member of the occupant of the principal dwelling on the property and this use may continue. And, the Board certifies that occupancy of the apartment by a family member of the occupant of the principal dwelling is a lawfully created pre-existing nonconforming use which is entitled to continue.

The Board's findings and conclusions at to the requested "D(1)" Use Variance are as follows:

- The Board finds that the applicant has introduced no evidence showing, let alone proving, that granting a use variance to allow the proposed "second dwelling" use will be more beneficial to the general welfare than leaving the property strictly one-family residential.
- Allowing a "second dwelling" on the property cannot be reconciled with the intent and purpose of the zoning ordinance that only one (1) single family dwelling be allowed per lot in the RC zone.
- It could not grant a use variance to allow a second dwelling without substantially impairing the intent and purpose of the zoning ordinance.
- Allowing the apartment over the garage to be used as an accessory apartment for occupancy by a caretaker of the residential portion of the property, subject to all conditions the applicant has agreed to during this hearing, will advance purposes of the MLUL by providing the applicant with the ability to continue to live on the property into her old age by having an on-site (but not living in her dwelling enabling her to retain her privacy), caretaker available to maintain the residential portion of the property and by providing sufficient space in an appropriate location to offer a housing opportunity to a caretaker who would not otherwise be able to afford to live in the Township.
- A use variance to allow the use of the apartment as an "accessory apartment," subject to the conditions set forth below, can be granted without substantial detriment to the public good in terms of aesthetics, increased demand for municipal services and/or traffic.
- A use variance to allow the use of the apartment as an "accessory apartment," subject to the conditions, can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance for the following reasons.

RELIEF GRANTED AND DENIED

The Board denied the applicant's requests for an interpretation of the 1989 zoning ordinance and map to the effect that the rental use of the apartment was a lawfully created use at its commencement in 1989. The Board also denied the applicant's request to certify that the apartment was a lawfully created pre-existing nonconforming second dwelling or rental apartment entitled to continue. As such, the Board could not issue an interpretation or a certification allowing the apartment to be rented to a boarder.

The Board did interpret the zoning ordinance in effect during the time period 1981 – 1989 as allowing an apartment over an accessory garage to be used by a family member of the occupant of the principal dwelling on the property. As such, the Board certified that occupancy of the apartment, including its kitchen, by a family member of the occupant of the principal dwelling is a lawfully created pre-existing nonconforming use which is entitled to continue.

The Board granted a "D(1)" Use Variance to allow the apartment to be used as an "accessory apartment," subject to the applicant complying with all of the conditions imposed by the Board.

The Board requested that the Board Secretary inform both the Zoning and Construction Officials that the Board is ok if they choose to allow the caretaker to move back in.

A motion was made by Ms. Lewis and seconded by Mr. Roberts to grant a “D(1)” Variance with conditions. The vote record follows.

Roll Call: Marilyn Rhyne Herr, Blk 16, Lot 73 – Grant of “D(1)” Variance with conditions						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus			X			
Lewis	X		X			
Matsen			X			
McCaffrey			X			
Olsen (Alt. 2)			X			
Roberts		X	X			
Stevens					Recused	X
Yager (Alt. 1)					Recused	X

CLOSED SESSION DISCUSSION OF PERSONNEL MATTER(S)

A motion was made by Mr. McCaffrey and seconded by Mr. Matsen to enter Closed Session to discuss personnel matter(s). The vote record follows.

The Board entered Closed Session at 9:08pm.

Roll Call: To enter Closed Session						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus			X			
Lewis			X			
Matsen		X	X			
McCaffrey	X		X			
Olsen (Alt. 2)					X	
Roberts			X			
Stevens			X			
Yager (Alt. 1)						X

The Board resumed the Public meeting at 9:54pm.

ADJOURNMENT

A motion was made by Mr. Lefkus and seconded by Mr. Matsen to adjourn. The Board concurred unanimously and the meeting was adjourned at 9:55pm.

Respectfully Submitted,

Denise Filardo

Planning and Zoning Board Secretary

These minutes were approved on March 26, 2018.