

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

DATE: November 27, 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, Yager

MEMBER ABSENT

None.

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) Mike Lombardozzi, 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	

MINUTES

1) MEETING MINUTES OF MAY 22, 2017

A motion was made by Mr. Matsen and seconded by Dr. Lewis to adopt the Meeting Minutes of May 22, 2017 with corrections. The vote record follows.

Roll Call: May 22, 2017 Meeting Minutes						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus			X			
Lewis		X	X			
Matsen	X		X			
McCaffrey			X			
Olsen (Alt. 2)			X			
Roberts					X	
Stevens					X	
Yager (Alt. 1)			X			

1) MEETING MINUTES OF AUGUST 28, 2017

A motion was made by Ms. Stevens and seconded by Mr. Roberts to adopt the Meeting Minutes of August 28, 2017 with corrections. The vote record follows.

Roll Call: August 28, 2017 Meeting Minutes						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus			X			
Lewis			X			
Matsen			X			
McCaffrey			X			
Olsen (Alt. 2)					X	
Roberts		X	X			
Stevens	X		X			
Yager (Alt. 1)					X	

RESOLUTIONS

1) ZINN REALTY, LLC

Block 74, Lots 16, 18 and 19

Application No. BOA-2012-07

Resolution No. BOA-2017-04

Extension of Time Within Which to Obtain Construction Permits, Expiration Dates of Final Site Plan Approval and Related “C” Variances and Exceptions, and Expiration of Final Site Plan Extension Period.

Eligible Members: Lefkus, Matsen, Olsen, Stevens

A motion was made by Mr. Matsen and seconded by Ms. Stevens to adopt Resolution No. 2017-04 with minor corrections. The vote record follows.

Roll Call: Resolution No. 2017-04 - Zinn Realty Blk 74, Lots 16, 18, 19						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus			X			
Lewis					X	
Matsen	X		X			
McCaffrey					X	
Olsen (Alt. 2)			X			
Roberts					X	
Stevens		X	X			
Yager (Alt. 1)					X	

2) EPISCOPAL CHURCH OF THE HOLY SPIRIT

Block 13, Lot 23.01

3 Haytown Road

Application No. BOA-2017-01

Resolution No. BOA-2017-05

Resolution memorializing Final Major Site Plan Approval and Site Plan Ordinance Exception for Church Building Expansion and Church Site Improvements.

Eligible Members: Filus, Lefkus, Matsen, McCaffrey, Roberts, Stevens

A motion was made by Ms. Stevens and seconded by Mr. Matsen to adopt Resolution No. 2017-05 with minor revisions. The vote record follows.

Roll Call: Resolution No. 2017-05 – Church of the Holy Spirit, Blk 13, Lot 23.01						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			

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

3) EPISCOPAL CHURCH OF THE HOLY SPIRIT

Block 13, Lot 23.01

3 Haytown Road

Application No. BOA-2017-01

Resolution No. BOA-2017-06

Resolution memorializing Waiver of Site Plan Approval to allow 800 square foot addition and Renovations to Parish House.

Eligible Members: *Filus, Lefkus, Matsen, McCaffrey, Roberts, Stevens*

A motion was made by Ms. Stevens and seconded by Mr. Roberts to adopt Resolution No. 2017-06. The vote record follows.

Roll Call: Resolution No. 2017-06 – Church of the Holy Spirit, Blk 13, Lot 23.01						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus			X			
Lewis					X	
Matsen			X			
McCaffrey			X			
Olsen (Alt. 2)					X	
Roberts		X	X			
Stevens	X		X			
Yager (Alt. 1)					X	

4) PLATYPUS ENTERPRISES, LLC

Block 13.01, Lot 3

1460 Route 22 West

Application No. BOA-2015-09

Resolution No. BOA-2017-07

Resolution memorializing modification of Conditions #1 and #2 of Resolution No. 2015-15 to Extend the Time within which to Revise the Documents and Obtain Signatures on the Site Plans.

Eligible Members: *Filus, Lefkus, Lewis, Matsen, McCaffrey, Robert, Stevens*

A motion was made by Mr. Filus and seconded by Mr. Matsen to adopt Resolution No. 2017-07. The vote record follows.

Roll Call: Resolution No. 2017-07 – Platypus, Blk 13.01, Lot 3						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus	X		X			
Lefkus			X			
Lewis			X			
Matsen		X	X			
McCaffrey			X			
Olsen (Alt. 2)					X	
Roberts			X			
Stevens			X			
Yager (Alt. 1)					X	

5) AMERICAN BAPTIST CHURCHES OF NEW JERSEY
BAPTIST CAMP AND CONFERENCE CENTER

Block 3, Lot 13 and Block 4, Lot 21

79 Blossom Hill Road

Application No. BOA-2016-01

Resolution No. BOA-2017-08

Resolution memorializing Modification of Conditions #1 And #9 Of Resolution No. 2016-04 to Extend the Time within which to Revise and Obtain Signatures on the Site Plans and to Obtain Construction Permits.

Eligible Members: Lefkus, Matsen, McCaffrey, Olsen, Stevens

A motion was made by Ms. Stevens and seconded by Mr. McCaffrey to adopt Resolution No. 2017-08. The vote record follows.

Roll Call: Resolution No. 2017-08 – Baptist Church, Blk 3, Lot 13 and Blk 4, Lot 21						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus			X			
Lewis					X	
Matsen			X			
McCaffrey		X	X			
Olsen (Alt. 2)			X			
Roberts					X	
Stevens	X		X			
Yager (Alt. 1)					X	

6) JEANNINE PODESTA
Block 82.13, Lot 62

520 River Road

Application No. BOA-2016-05

Resolution No. BOA-2017-09

Resolution memorializing Modification of Condition #3 of Resolution No. 2016-10 Governing Utilities Allowed in Garage.

Eligible Members: *Lefkus, Matsen, McCaffrey, Olsen, Stevens*

A motion was made by Ms. Stevens and seconded by Mr. Matsen to adopt Resolution No. 2017-09 with a correction. The vote record follows.

Roll Call: Resolution No. 2017-09 – Jeannine Podesta, Blk 3, Lot 13 and Blk 4, Lot 21						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus			X			
Lewis					X	
Matsen		X	X			
McCaffrey			X			
Olsen (Alt. 2)			X			
Roberts					X	
Stevens	X		X			
Yager (Alt. 1)					X	

REQUEST FOR EXTENSION OF TIME

1) **KATZENBERGER**

Block 16, Lot 48

8 Old Mountain Road

Application No. 2014-03

Resolution No. 2014-08 and 2015-12

Applicant requests a further Extension of the Time within which to comply with Condition # 8 of Resolution No. 2014-08 pertaining to Obtaining Zoning and Construction Permits. This Condition was previously modified through the memorialization of Resolution No. 2015-12 on November 30, 2015.

Joseph Katzenberger, the applicant was sworn by Board Attorney Drill.

Mr. Katzenberger testified that he needs additional time to obtain a certificate of occupancy because, while all construction has been completed and inspected, he lost track of time and is out of time to obtain the certificate of occupancy. As such he has submitted this COO extension request to avoid the necessity of having to re-apply to the Board for a new variance.

A motion was made by Ms. Stevens and seconded by Mr. Matsen to grant a one (1) year extension of time through July 8, 2018. The vote record follows.

Roll Call: Extension of Time - Katzenberger, Blk 16, Lot 48						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus			X			
Lewis					X	
Matsen		X	X			
McCaffrey			X			
Olsen (Alt. 2)			X			
Roberts					X	
Stevens	X		X			
Yager (Alt. 1)					X	

Ms. Stevens and Mr. Yager exited the meeting at 7:50pm as they recused from the Herr Application.

PUBLIC HEARING

MARILY RHYNE HERR

Block 16, Lot 73

182 Stanton Mountain Road

Application No. 2017-04

The applicant has applied for Certification of a Pre-existing Non-Conforming Use and has additionally applied for a “D(1)” Use Variance to permit use of the improved garage apartment as a secondary dwelling unit.

The applicant was represented by Nicole Voigt, Esq. and Julia Herr, Esq.

The following individuals were sworn and testified during this hearing:

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

EXHIBITS

- A-1 Letter to Frank Bachkai from Marilyn Herr dated September 13, 1989
- A-2 Letter to Jonathan Drill and Trishka Cecil from Nicole Voigt dated October 20, 2017, with attachments
- A-3 Zoning map dated November 1983, amended May 14, 1984, amended July 14, 1986
- A-4 Zoning map dated November 1983, amended December 14, 1987
- A-5 Selected zoning ordinance provisions from the Township’s 1989 zoning

ordinance

- A-6 Duplicate of Exhibit A-1
- A-7 Property record and appraisal cards consisting of seven (7) pages
- A-8 Township Zoning Permit issued by the Township Zoning Officer on September 1, 2000
- A-9 Tax records as of 1989 consisting of six (6) pages

Attorney Voigt described the application as follows:

The application includes requests for three (3) items of relief. Initially, the applicant sought an interpretation or certification of a lawfully created pre-existing nonconforming use entitled to continue, namely, use of the apartment above the garage as a second principal dwelling unit on the property. The application has been amended to also seek a “D(1)” use variance to allow the apartment to be used as a second principal dwelling unit on the property, in the event that a favorable interpretation or certification will not be received by the Board.

Marilyn Herr’s testimony included the following:

- The applicant and her then husband purchased the property in 1966. At the time of purchase, the property contained the dwelling, a wagon-house at the same location as the current garage, and the barn.
- The garage, which was subsequently built on the wagon house foundation was lawfully constructed in 1980 or 1981 as an accessory structure to the residential dwelling on the wagon-house foundation as the wagon-house was demolished.
- Shortly thereafter, the applicant constructed an addition to the dwelling to create living space for her growing family, which included eliminating a bedroom to create a study, leaving three (3) bedrooms in the dwelling.
- After that, the applicant lawfully constructed the one (1) bedroom apartment in the garage for living space for her family as she needed the additional bedroom for one of her three (3) children (she has a son and two daughters).
- In or around 1986, her adult son moved into the apartment. After the applicant’s son graduated from college, the applicant advised him that if he wanted to remain in the apartment he would have to assume maintenance obligations such as taking care of the residential portion of the property, including mowing the lawn, etc.
- The applicant’s son moved out of the apartment in or around 1989 so, as of 1989, no one in the applicant’s family was occupying or living in the apartment.
- Once the apartment was empty, the applicant looked to find someone to live there in exchange for providing maintenance on the residential portion of the property.
- The applicant wrote a letter to the then Township Zoning Officer, Frank Bachkai, dated September 13, 1989, confirming a telephone conversation her secretary had with him wherein he advised the secretary that “there are no permits necessary nor any other requirements to rent a room and bath to one boarder in Clinton

Township.” There was no record of any reply from the Township Zoning Officer. The applicant commenced renting out the apartment to a non-family member in 1989.

There was abundant discussion regarding the dwelling inclusive of:

- Distinguishing between an accessory use and an accessory structure.
- Was this room a permitted use at the time it was rented to a non-family member?
- Was the use created prior to an ordinance put into place to prohibit it?
- Are the house and the garage considered dwellings by the current zoning ordinance?
- Differentiation between a lodger paying rent vs. bartering for services.

The Board took a brief recess at 9:26pm and resumed the Public Hearing at 9:37pm.

Attorney Voight agreed to the following for the next hearing:

- Re-review the Township Zoning file to verify if the letter to Frank Bachkai from Marilyn Herr dated September 13, 1989 was obtained from the Township’s Zoning file.
- Submit additional records from the Township Tax Assessor.
- The applicant will consider hiring a Professional Planner and come back to defend the D(1) Use Variance.

The applicant did not have any additional evidence to submit. There were no members of the public in attendance interested in this application.

The Board conducted a Straw Poll regarding their thoughts as to whether this application was a lawfully created pre-existing non-conforming use 1989.

Straw Poll results were as follows:

Mr. Filus - No

Mr. Lefkus - No

Dr. Lewis - No

Mr. Matsen – Did not offer an opinion

Mr. McCaffrey - No

Mr. Olsen - No

Mr. Roberts - No

Ms. Stevens and Mr. Yager recused from this application prior to the commencement of the hearing.

Attorney Voigt requested the hearing be carried without a formal vote.

All Board members were in favor of Not voting tonight.

The matter was continued to the December 18, 2018 meeting with new notice.

ADJOURNMENT

A motion was made by Mr. Lefkus and seconded by Mr. Roberts to adjourn. The Board concurred unanimously and the meeting was adjourned at 10:52pm.

Respectfully Submitted,

Denise Filardo

Planning and Zoning Board Secretary

These minutes were approved on March 26, 2018.