

**MINUTES**

**CLINTON TOWNSHIP PLANNING BOARD**

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October 17, 2016

7:00PM

PUBLIC SAFETY BUILDING

1370 Route 31N

Annandale, NJ 08801

Chairman Cimei called the meeting to order at 7:00pm.

Chairman Cimei led the Flag Salute.

Chairman Cimei read the Public Notice

This is the October 17, 2016 public meeting of the Planning 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.

**MEMBERS IN ATTENDANCE:**

Cimei, Higgins, Kleinhans, Mardini, McTiernan, Kilduff, Pfeffer

Ms. Butcher arrived at 7:24pm

**MEMBERS ABSENT:**

Scheick

**PROFESSIONALS IN ATTENDANCE:**

Jon Drill, Esq., Board Attorney

Cathy Marcelli, PE, Board Engineering Expert

Kendra Lelie, PP, AICP, Board Planning Expert

Brian Bosenberg, CLA, Board Landscape Expert

Joseph Fischer, Board Geology Expert

Mike Joanne Sekella, Board Stenographer

Denise Filardo, Board Secretary

**MINUTES**

None.

**RESOLUTIONS**

None.

**NEW BUSINESS**

Approval of Vouchers

Ms. Kleinhans motioned and Mr. Higgins seconded a motion to approve payment of the vouchers. The vote record follows.

<b><i>Roll Call: Payment of Vouchers</i></b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Butcher						X
Higgins		X	X			
Kleinhans	X		X			
Mardini			X			
McTiernan			X			
Scheick						X
Cimei			X			
Kilduff (Alt. 1)			X			
Pfeffer (Alt. 2)			X			

**INFORMAL SITE PLAN REVIEW**

ST. CLAIRE REAL ESTATE, LLC  
Application No. CTPB-2016-07  
87 Beaver Avenue (Former TD Bank Location)  
Block 59, Lot 1

William J. Gianos, attorney for the applicant described the nature of this Informal Site Plan review. The prospective applicants, a husband & wife dentist team are proposing to convert the former TB Bank site on Beaver Avenue to a dental office. The original Site Plan approval conditions that were imposed were of concern to us specifically that the psite could only be used as a bank building and that the variances granted at that time would no longer be valid if used for any other purpose.

Wayne Ingram, PP discussed proposed changes to convert the site from a bank to a dental office. Mr. Ingram was not sworn since this was an Informal Concept review.

Proposed changes would include:

- Sign alterations (maintaining the same square footage as the existing signs).
- Dentist would like to park his car in the drive thru area.
- Enclosure of a portion of the overhang canopy to accommodate a 5<sup>th</sup> room with a dentist chair.
- Loading Zone location.
- No changes to lighting or landscaping.

Cathy Marcelli, Board Engineer suggested not utilizing the drive thru area for parking as it will require a variance for increased impervious coverage. Ms. Marcelli suggested decreasing impervious coverage by eliminating the loop drive-thru. Ms. Marcelli noted that the parking requirements at the time of the original Site Plan approval are less than the current requirements.

Chairman Cimei informally polled the Board regarding their view as to whether or not the proposed changes would have an insignificant impact on the existing site. All Board members in attendance were in agreement that the proposed changes would result in an insignificant impact on the existing site which would permit the applicant to apply for a Waiver of Site Plan. There is a possibility that an exception may be needed for the parking.

**REQUEST FOR EXTENSION OF TIME**

CLINBAR, LLC (FORMER OL’ WEST BBQ – LMG CLINTON, LLC)

Block 29, lot 34. Application No. 2006-07

Extension of the time within which to comply with conditions #10 and #12 of Resolution No. 2007-13 relating to obtaining signed plans and completing construction improvements.

Martin Fenik, attorney for the applicant request an additional 180-day extension to April 30<sup>th</sup> 2017 to complete Site Improvements, obtain signed plans and complete construction improvements. We since received a violation from the NJDEP because we did not have a Treatment Works Approval (TWA) program. Additionally, we need approvals from Municipal Council and Sewer Authority.

Attorney Drill noted that since the last time the applicant was here the plan revisions were made, the plans were signed and construction started.

The applicant requested a 180-day extension of time.

Mr. Pfeffer motioned and Mr. McTiernan seconded a motion to grant an extension of time until April, 30, 2017. The vote record follows.

<b><i>Roll Call: Clinbar Time Extension of conditions #10 &amp; #12 Resolution No. CTPB-2016-02 to April 30, 2017.</i></b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Butcher			X			
Higgins			X			
Kleinhans			X			
Mardini					Recused	
McTiernan		X	X			
Scheick						X
Cimei			X			
Kilduff (Alt. 1)			X			
Pfeffer (Alt. 2)	X		X			

**PUBLIC HEARING**

**EXXONMOBIL RESEARCH AND ENGINEERING COMPANY**

***Hearing continued from August 1, 2016 and September 19, 2016***

Application No. CTPB-2016-05

1545 US Highway 22 East, Annandale

Block 30, Lots 17, 30, 31, 41

Block 31, Lot 1

Block 30.02, Lot 1

Applicant is seeking Preliminary and Final Site Plan Approval with Bulk Variance relief to expand its existing office/research facility.

Thomas Malman, attorney for the applicant announced that Russ Giglio will explain in detail why fuel amount is needed, Ron Kennedy will provide testimony on sight view and lighting and Bob Schwankert will address Geotechnical details.

The following individuals were sworn and testified during the August 1<sup>st</sup> hearing and remain under oath:

- 1) Russell Giglio, Business Advisor to the Research and Development Operations at the Research Facility (Applicant's representative)
- 2) Thomas Kikolski, Health and Safety Expert (Applicant's representative)
- 3) Ronald Kennedy, PE (Applicant's civil engineering expert)
- 4) Gary Dean, PTOE (Applicant's traffic engineering expert) (Testimony not heard until this hearing)
- 5) Paul Phillips, PP (Applicant's planning expert)
- 6) Cathleen Marcelli, PE (Board's civil and traffic engineering expert)
- 7) John Olivo, LLA (Board's landscape architectural expert)
- 8) Joseph Fischer, PE (Board's geotechnical engineering expert)
- 9) Kendra Lelie, PP (Board's planning expert)

The following individuals were sworn and testified during the September 19<sup>th</sup> hearing and remain under oath:

- 1) Brian Bosenberg, CLA (Board's landscape architectural expert)
- 2) Norman Dotti, PE (Applicant's acoustical engineering expert)

Robert E. Schwankert, PE (Applicant's geotechnical engineering expert) was sworn during tonight's hearing.

**EXHIBIT**

- A-7 PowerPoint Presentation titled "ExxonMobil" entered into evidence during tonight's hearing session.

Russel Giglio provided testimony utilizing Exhibit A-7. Mr. Giglio's testimony included the following:

- Tanks are never filled in excess of 80% of maximum capacity.

- Lubricants are being tested, not fuels.
- Fuels are needed to test the lubricants.
- Phasing of the project if approved.

The following members of the public asked questions relating to Mr. Giglio's testimony:

1. Richard Shaw of 2 Pine Tree Drive
2. Phillip Rizzolo of 50 Sand Hill Road
3. Craig Naylor of 45 Sand Hill Road
4. Mike Adornetto of 45 Sand Hill Road

Question topics included:

- Timing of the tank containment construction
- Noise

Ron Kennedy's testimony included the following:

- Views from Sand Hill Road - 3 residences will be affected by the filtered view.
- 30 to 40-foot slope going up from Sand Hill Road
- Deciduous tree plantings will get larger over five to seven years and will further buffer the already filtered view.
- Lighting Exception requests

The following member of the public asked questions relating to Mr. Kennedy's testimony:

- Diane Wanko of 29 Sand Hill Road.  
Ms. Wanko asked if the applicant would consider a site visit to the residences after installation of the proposed improvements.

Robert Schwankert was sworn during tonight's hearing by Joanne Sekella.

Mr. Schwankert's qualifications were accepted by the board Geotechnical Engineering expert.

Mr. Schwankert's testimony included the following:

- History of geologic test borings conducted during the 1980's.
- Exxon has been extra cautious and has drilled almost twice as deep as three (3) Geological experts suggested.
- Discussion of substantial and extensive exploration.
- Capability and competency of rock formations.
- New data supports old data from the 1980's.
- New data is better than the previous data which is where the current building is located which is evidence of sustainability.

Attorney Malman read from Joe Fischer's October 13, 2016 report.

The following member of the public asked questions relating to Mr. Schwankert's testimony:

- Philip Rizzolo of 50 Sand Hill Road asked about voids associated with the drilling.

***The Board took a brief recess at 9:29pm and resumed the Public Hearing at 9:41pm.***

The following members of the public were sworn by Joanne Sekella for public comments:

1. Pam Maluski of 6 Pine Tree Drive Lebanon questioned why this amount of fuel storage is permitted if gas stations are not permitted.
2. Steven Rothstein of 52 Sandhill voiced concerns about noise.
3. Marc Saluk of 45 Augusta Drive spoke in favor of the application. Mr. Saluk shared his findings and observations from his site visit to the Paulsboro facility. His observations included the following:
  - The Research & Development facility is distinct and separate from the industrial. Only the R&D is being relocated from Paulsboro to Clinton, not the industrial.
  - The operation of the MADS exhibited exceptional housekeeping practices, it was clean, organized and well maintained.
  - The sound is muted indoors.
  - There were no visible emissions or odors. Primary noise from components would be the MADS.
  - At about 800 feet away the sound was significantly muted. He did not feel it would be anything more than what is already heard from Route 31 or Route 78.
4. Philip Rizzolo of 50 Sand Hill Road asked about NJ Highlands conformance.
5. David Ruppert of 28 Sand Hill Road voiced concerns related to noise and suggested that the Board hire an independent noise expert to be overseen by the public.

There were no additional members of the Public wishing to comment.

Chairman Cimei closed the Public Hearing and the Board began deliberations.

## **BOARD FINDINGS AND CONCLUSIONS**

- The Board found that “C(1)” variances were warranted to allow 10 of the 31 ASTs to be larger than 10,000 gallons in capacity and to allow all of the ASTs to have a maximum aggregate capacity of 305,000 gallons based on hardship due to the large size of the Property compared to other lots in the ROM-1 zone.
- The Property could lawfully support the proposed capacity if it were subdivided into smaller lots but that would result in an exceptional and undue hardship upon the Applicant because subdividing the Property to achieve compliance with the AST capacity regulations would create a host of operational and zoning issues that would have to be addressed for no reason other than ordinance compliance.
- The large size of the Property is an extraordinary and exceptional situation which affects the structures lawfully existing thereon as well as affecting the proposed structures that are permitted as part of a principally permitted research and office facility but exceed the AST capacity regulations because of the Property’s large size.
- The Board concluded that “C(1)” variances are warranted to relieve the hardship but subject to satisfaction of the negative criteria.

- “C(2)” variances to allow 10 of the 3 ASTs to be larger than 10,000 gallons in capacity and to allow all of the ASTs to have a maximum aggregate capacity of 305,000 gallons can be granted based on the fact that zoning benefits inuring to the public will result and the zoning benefits substantially outweigh the detriments, but provided that the imposed conditions are complied with.
- The proposed number of tanks are necessary to support the state-of-the-art product research operations and to ensure that the Applicant has sufficient storage space for lubricants, aviation fuel, and gasoline to be able to run full tests during product research operations. However, the Board found that a condition needed to be imposed that the total amount of aviation fuel, gasoline, diesel and lubricant base stocks, will not exceed 80% of the aggregate AST capacity at any one time.
- The ASTs will not be used for manufacturing, commercial sales, or distribution.
- With the imposition conditions, the Board found that granting the “C(2)” variances will promote the general welfare by promoting research and development in the ROM-1 zone, which is consistent with the Master Plan designation of the Property, and providing sufficient space in an appropriate location for research and development operations to meet the needs of the New Jersey citizens because the size of the Property appropriately accommodates this Project.
- The Board concluded that “C(2)” variances are warranted.
- The Board found that “C(1)” and “C(2)” variances to allow 10 of the 31 ASTs to be larger than 10,000 gallons in capacity and to allow all of the ASTs to have a maximum aggregate capacity of 305,000 can and should be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance.
- The Board found that that the steep slope conditions of the property, although manmade anomalies that were created when the existing research facility was constructed, are subject to the steep slope regulations.
- The steep slopes constitute an exceptional topographic condition and physical feature which uniquely affects the Property and the development of the property.
- This exceptional condition and feature inhibits the extent to which the Property can be used and inhibits the development of the property for the Project.
- The strict application of the steep slope regulations in this particular case would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicant. The Board found that this amounts to “hardship” under the MLUL and, as such, the “C(1)” variances were warranted.
- “C(1)” variances to allow the proposed slope disturbance can be granted for the following reasons.
  - a) the Applicant is not proposing to remove any vegetation and the proposed disturbance affects a very small area on the Property that is immediately adjacent to existing improvements.
  - b) allowing the slope disturbances will not cause visual, functional or environmental detriment, so there will be no resulting detriment to the public good.
  - c) allowing the slope disturbances will not impair the intent or purpose of the master plan and zoning ordinance because the slopes here are manmade, not natural and, as set forth above, their disturbance will not result in any detrimental impact.
  - d) The Board concludes that “C(1)” variances can and should be granted to allow

approximately 1,720 square feet of development and regrading in the steep slope areas at issue as proposed by the Applicant.

- The Board found that granting all of the requested exceptions is reasonable and within the general purpose and intent of the site plan ordinance requirements.
- Literal enforcement of the site plan ordinance requirements at issue were either impracticable and/or would exact undue hardship in this particular case.
- The Board concludes that the requested exceptions can and should be granted subject to the conditions set forth below.
- The Board’s ultimate finding was that Preliminary and Final Site Plan Approval is warranted but subject to the imposed conditions being complied with. As such, the Board concludes that preliminary and final site plan approval can and should be granted but subject to the conditions set forth below.

**RELIEF GRANTED**

The following relief was granted subject to conditions:

- 1) “C(1)” and “C(2)” Variances for Zoning Ordinance AST Capacity Regulations.
- 2) “C(1)” Variances from Zoning Ordinance Steep Slope Regulations.
- 3) Exceptions from Site Plan Ordinance Requirements
  - a) Number of Parking Spaces.
  - b) Development in Steep Slopes.
  - c) Ground Floor Area of Buildings.
  - d) Illuminance Levels for Existing Parking Lot Lighting.
  - e) Height for Existing Parking Lot Light Poles.
  - f) Architectural Standards
- 4) Preliminary and Final Site Plan Approval is granted to the Site Plans, ETC and MAD Building Plans, Misc. Building Plans, Stormwater Management Report, Traffic Report, Noise Study, EIS and Geotech Report.
- 5) Extension of Life of Variances, Exceptions and Site Plan Approval. The life of the variances, exceptions and the site plan approval granted herein shall be extended from the one (1) year period provided to eight (8) years.
- 6) Extension of Final Site Plan Protection Period shall be extended from two (2) years to eight (8) years.

Mr. Pfeffer motioned and Mr. Mardini seconded a motion to grant Preliminary and Final Site Plan Approval. The vote record follows.

<b><i>Roll Call: Exxon/Mobil Preliminary &amp; Final Site Plan</i></b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Butcher			X			
Higgins					Recused	
Kleinhans			X			
Mardini		X	X			



McTiernan					Recused	
Scheick						X
Cimei			X			
Kilduff (Alt. 1)			X			
Pfeffer (Alt. 2)	X		X			

**REPORTS**

Reports were held until the next meeting.

**ADJOURNMENT**

Ms. Butcher motioned and Mr. Pfeffer seconded a motion to adjourn. The motion carried unanimously and the meeting was adjourned at 11:10pm.

These minutes were approved on March 19, 2018.

Respectfully Submitted,

*Denise Filardo*

Planning and Zoning Board Secretary