

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

www.township.clinton.nj.us

PUBLIC MEETING

October 28, 2013

PRESENT: Tom McCaffrey, John Matsen, Sharon Stevens, John Lefkus, Wayne Filus, and Dave Roberts.

PROFESSIONALS: Kendra Lelie, Planner, Jon Drill, Attorney, and Rebecca D'Alleinne, Administrator.

ABSENT: Ira Breines, Amy Switlyk and Sharol Lewis.

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 outside the Planning and Zoning Office on the 1st Floor of the 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 Sharon Stevens seconded a motion to approve the vouchers for payment. The Board concurred unanimously.

MINUTES

John Lefkus moved and Wayne Filus seconded a motion to approve the minutes of August 26, 2013 as written. The Board concurred unanimously, with abstentions from McCaffrey, Matsen, Stevens and Roberts.

Dave Roberts moved and John Lefkus seconded a motion to approve the minutes of October 7, 2013 as written. The Board concurred unanimously, with an abstention by Stevens.

RESOLUTIONS

ZINN REALTY, Block, 74, Lots 16, 18 & 19

Resolution #2013-16, Application #2013-07

Jon Drill stated that there were several corrections to Version #2 and read them into the record. John Lefkus moved and Sharon Stevens seconded a motion to approve the resolution as corrected. Members in favor: Stevens, Filus and Lefkus.

VILLAGE GREEN/MEURER DEVELOPMENT, Block 49, Lot 25

Resolution #2013-17, Application #2011-07

Jon Drill stated that there were no comments for Version #1 but had several corrections which he read into the record. John Matsen moved and Dave Roberts seconded a motion to approve the resolution as corrected. Members in favor: McCaffrey, Matsen, Filus, Lefkus and Roberts.

Sharon Stevens recused herself from the following hearing.

PUBLIC HEARING

HIDDEN MEADOWS, Block 90, Lot 2

Tony Koester, Esq. introduced himself on behalf of the applicant. He noted that there had been letters from the Board Engineer and Planner. David Nenna, Principal, Radim Kucera, Engineer, and Kendra Lelie, Board Planner were sworn. Mr. Koester stated that the original resolution was #2008-09 and that the applicant was seeking Final Subdivision approval. Radim Kucera stated that they had no issues with any of the comments, except for item #1 in the October 21, 2013 letter from Cathy Marcelli, in which she asked them to re-number the lots. It was determined that the applicant would contact the tax assessor and agree to whatever decision he would make. Mr. Kucera indicated that the applicant would comply with all other comments.

Discussion ensued concerning a survey of grassland birds. Mr. Kucera reported that Board Environmental Expert Jeff Keller had stated that no birds were present in an email. He indicated that there would be a wooded buffer between the commercial lot and the residential lots. Jon Drill discussed the condition in Resolution #2008-09 to install a buffer. It was determined to make it a condition which Cathy Marcelli and Jeff Keller would need to review and approve. The planner's report concerning conservation easements was discussed and Mr. Kucera stated that a document would be submitted for review. The Board's standard conditions will apply. Dave Roberts moved and John Matsen seconded a motion to approve the Final Subdivision with conditions as discussed. Members in favor: McCaffrey, Matsen, Filus, Lefkus and Roberts.

Dr. Nenna asked whether the tennis center could put courts on the dogleg area of his lot. Jon Drill suggested that he send the question to the Board professionals to determine whether the use was permitted.

Sharon Stevens returned to the meeting.

COMPLETENESS WAIVERS HEARING

SMALL, Block 2, Lot 2

Karen Small and Mark Binkley introduced themselves as the applicants. Chairman McCaffrey discussed the engineer's report, and listed the waiver requests. John Matsen moved and Sharon Stevens seconded a motion to approve the waiver requests as requested. Members in favor: McCaffrey, Matsen, Stevens, Filus, Lefkus and Roberts.

PUBLIC HEARING

SMALL, Block 2, Lot 2

Karen Small and Mark Binkley introduced themselves and were sworn. Mr. Binkley stated that Ms. Small's deceased husband had built a deck, and in 1984, the Township zoning official told them not to worry about it. Then when she was in the process of selling the house, it was found that there was no building permit or variance approval for the deck, which encroached into the side yard setback. He stated that they needed an after-the-fact building permit and variance. He explained that the side yard setback was 30 feet, even though the deck was in the rear of the house, which was situated sideways on the lot. Mr. Binkley discussed the aerial view and noted that there was a narrow piece of property next door that provided a buffer. John Matsen asked whether it was a buildable lot, and Ms. Small stated that it was too narrow and was attached to a larger lot in Tewksbury. Chairman McCaffrey commented on how the house was situated on the lot. He discussed the shape of the property and commented that it would benefit the neighbors to have the deck in the back of the house. If they were to have put it in the front in order to conform, that it would not be beneficial for the neighbors.

Jon Drill discussed the "C1" vs. "C2" variance requirements. Mr. Binkley commented that deck does not visually appear to encroach on the setback. The positive criterion was that the location was aesthetically more appealing than a compliant location. The negative criterion was that it didn't appear to encroach and it couldn't be seen from the road. John Matsen asked about the discussions with Mr. Pittman, who viewed the deck after it was built and said the deck was fine. John Lefkus asked about the construction drawings. The construction permit will follow the zoning approval. There were no questions from the public and the hearing was closed.

Chairman McCaffrey discussed whether to hear it as a "C1" or "C2" and Jon Drill recommended a "C2" variance. John Lefkus agreed. Dave Roberts moved and Sharon Stevens seconded a motion to approve the application as discussed. Members in favor: McCaffrey, Matsen, Stevens, Filus, Lefkus and Roberts.

APPEAL OF ZONING OFFICER'S OPINION

VALLEY BROOK FARM, Block 7, Lot 2

Guy DeSapio, Esq. introduced himself on behalf of Louis Ercolano. He stated that his applicant had been operating a plant sale business since 1985 on Lot 3 and since 1988 on the adjoining Lot 2. He indicated that they were appealing the zoning officer's decision and seeking an interpretation of the ordinance, as the zoning officer thought that the applicant needed a site plan approval. Mr. DeSapio stated that Mr. Ercolano had been conducting the business since 1988 and had not changed the business, so therefore was not seeking a site plan approval. He noted that there were ten people in the audience to testify that the operation had been in business for that length of time.

Walter Wilson, Esq. introduced himself on behalf of Clinton Agricultural Associates, with a potential of three to testify. Louis Ercolano, Jr., Chris Potenza, Patricia Rigby, Joni Nodes, Stephanie Ercolano, Tom Roll, Carolyn Neighbor, David Apgar, Catherine Apgar, Richard Pfauth, Christopher Nusser, Harold Wilbert, Nancy Wilbert and Kendra Lelie, Board Planner were sworn. Chairman McCaffrey recused himself from the hearing. John Matsen took the gavel.

Mr. DeSapio stated that Mr. Ercolano started the plant sale business in 1985 on the Block 7, Lot 3. He subsequently leased Lot 2 also and began to use that as a part of the operation. In 2012, he lost his lease on the larger parcel and continued the operation on Lot 2 and made no changes to the structures.

Mr. Ercolano, 1001 Route 22, indicated that he was the owner of the Valley Brook Farm. He reported that the sale of plants, trees, flowers, mulch and shrubs were conducted on the lot. He indicated that there were also seasonal sales of pumpkins and Christmas trees. Mr. Ercolano stated that it was a part of a larger operation which began in November 1985 on the adjoining Lot 3. He noted that the business had operated continuously and indicated that Lot 3 was leased from the owner at that time. He reported that he began to also operate on Lot 2 in 1988 and leased the property from Richard Pfauth. From 1988 on, the two parcels were used in conjunction with each other. Mr. Ercolano discussed the Lot 2 frontage on Route 22, pointing out the parking area on the plan and noted that the area marked "shrub storage" was a display area. He discussed the building on the property and reported that it was not an office, but a vacant house. He stated that someone had lived there who rented the house from Mr. Pfauth, noting that it had been empty since approximately 2010. Mr. Ercolano stated that his operation on Block 3 was terminated because the property had been sold. He did not have a lease with the previous owner, but did not want to have a month to month without a lease with the current owner. He indicated that the operation did not cease. Jon Drill asked where the transactions were conducted and he responded that transactions were now conducted outdoors in a tent.

Exhibit A-1(Aerial Photo of Lots 2 & 3, 1997) was marked into evidence. It was determined that the applicant was to bring a color copy to the Board office. Mr. Ercolano stated that the pictures were accurate representations of the conditions on the lots. Kendra Lelie asked what was on Lot 2 and Mr. Ercolano discussed the layout of the property. She asked what the use on Lot 2 was in 1997, and Mr. Ercolano stated that it was mostly used for parking and bag materials. He estimated that the size of the tent now

used to conduct business was 12' x 12'. Sharon Stevens asked for information about what products were on Lot 2 and Lot 3 and asked for him to point out the location of the property lines on the photo. He pointed out what was on each lot, noting that they had used Lot 2 for some products. John Lefkus discussed the fence along Route 22 and Mr. Ercolano stated was decorative. He indicated that they had used Lot 2 for parking. John Matsen asked about the size of Lot 2 and how many of the acres did he use. Mr. Ercolano responded that it was 4.44 acres. He stated that he had used 3 to 4 acres of the 126 acres on Lot 3. John Lefkus asked whether the entire Lot 3 was available and Mr. Ercolano stated that it was available. John Matsen asked who built the sales building and Mr. Ercolano commented that he had not, noting that it was used by the previous owner for a similar use. He stated that there wasn't much parking on Lot 3, so he had rented space from the owner of Lot 2. Vice Chairman Matsen asked whether a site plan was ever done for either lot and Mr. Ercolano stated that he did not know. John Lefkus asked whether he had ever filed a site plan, and Mr. Ercolano responded that he had not. He stated that he had gone to municipal court in 1985 and a witness had testified on his behalf that the business had been continuous. Jon Drill asked whether he had a copy of the violation, and he did not. He was charged with conducting an operation that wasn't permitted under the ordinance by Zoning Officer Frank Bucheye.

Walter Wilson, Esq. asked whether the submitted plan was done for Soil Conservation due to the fact that he had disturbed more than 5,000 sq. ft. to grade the display area. Mr. Ercolano stated that it was for grading and filling. Mr. Wilson asked whether he had brought any fill, and Mr. Ercolano stated that he had used fill that was on Lot 3 and moved to Lot 2 for grading around the "office". He indicated that he had prepared the plan because a stop work order had been issued by the township. Mr. Wilson asked whether he had DOT approval for driveway entrance and Mr. Ercolano stated that he did not. He noted that there had been no tenants in the house for the last 3 years. Mr. Wilson pointed out that the property was taxed as residential, not farmland. Mr. Ercolano thought that one of his employees may have filed the paperwork for Lot 3's farmland assessment during the time that he was renting it. Mr. Wilson discussed signage on the property, and Mr. Ercolano stated that a small, movable banner was installed in 2013. He noted that since 1988 there was a structural sign for Mr. Pfauth's excavating business. He asked whether Lot 2 had been used for the excavating business and Mr. Ercolano stated that he was not sure, but that he had equipment on the property. Mr. Ercolano pointed out the equipment on the photo. Mr. Wilson asked about the parking lot material in the photo, and Mr. Ercolano stated that it was a gravel area. Mr. Wilson asked whether he grew any of the products on the property and Mr. Ercolano stated that he did not. He stated that he had not sublet the barns and did not receive rental income. He reported that he had not been offered a lease in 2012, but the option of monthly payments. He stated that his business records were moved to a different location at the end of each day and that his operation was designated as Valley Brook Nursery, LLC. Mr. Ercolano stated that Mr. Pfauth did not use the property, even though his sign remained. He reported that he had four employees and a landscaping business also, which was based on both properties. None of the employees had lived in the house. He stated that nothing was built on Lot 2, but that he had taken down trees and spread gravel. Mr. Ercolano commented that he had started using Lot 2 for parking in 1988 and for

material in 1991. He indicated that the use had changed dramatically this year, and had been used continuously.

Mr. DeSapio discussed the applicant's request for an interpretation of Ordinance Section 165-36 as to when a site plan was required. Mr. Drill read from the violation notice and the ordinance. He discussed the definition of "development" and stated that the Board should consider whether grading was considered development. Mr. Drill pointed out that the applicant didn't need a construction permit or CO. The violation did not cite whether it was a permitted use. John Lefkus agreed that the property had been used for many years and discussed the changes that happened this year.

Mr. Wilson noted that the violation stated that the use on Lot 2 was a prohibited use because he had no site plan approval. Mr. DeSapio noted that they were seeking relief for the site plan approval issue only. Discussion ensued concerning whether a construction permit or a CO was required for grading. Ms. Lelie discussed her planning report suggestions. She recommended that the ordinance be revised to say that issuing a zoning permit would trigger the requirement of a site plan. Mr. Wilson discussed the ordinance and discussion ensued as to whether anyone was using the house. Mr. Wilson stated that their point was that there had been a change of use. Mr. Drill indicated that the violation notice did not specify that and that he should ask Mr. Carter to issue a different zoning violation. Walter Wilson expressed the opinion that it would have been helpful if the zoning officer had appeared to answer questions. Mr. Drill noted that the Board needed to make a threshold determination. There were no questions from the public and Vice Chairman Matsen closed the hearing.

John Lefkus noted that the violation notice may be a defective complaint by the officer and Dave Roberts indicated that it would have been helpful if zoning officer had cited the ordinance. It was discussed that the issue should be mentioned in the year end report. Sharon Stevens expressed the opinion that it had been a good, thoughtful and factual discussion. Mr. Matsen stated that he thought that the application would hinge on different things. Sharon Stevens moved and John Matsen seconded a motion to reverse the zoning officer's decision, based on the fact that site plan approval was not required by ordinance. Members in favor: Matsen, Stevens, Filus, Lefkus and Roberts. Mr. DeSapio thanked the Board and agreed to send both a hard and digital copy of Exhibit A-1 to the administrator.

ADJOURNMENT

John Lefkus moved and Sharon Stevens seconded a motion to adjourn, and the motion passed unanimously. The meeting was adjourned at 9:47PM.

These minutes were approved on December 9, 2013.

Rebecca E. D'Alleinne, Administrator