

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

April 22, 2013

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

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

ABSENT: Ira Breines and Amy Switlyk.

CALL TO ORDER

Chairman McCaffrey called the meeting to order at 7:31PM.

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, the Star Ledger and the North County Branch of the Hunterdon County Library, no later than the Friday prior to the meeting.

NEW BUSINESS

Vouchers

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

MINUTES

Dave Roberts moved and Sharon Stevens seconded a motion to approve the minutes of February 25, 2013 as written. The Board concurred unanimously.

PUBLIC HEARING

WATERS' EDGE HOMEOWNERS' ASS'N., Block 68, Lot 9.04
Application #2012-15

Chairman McCaffrey reported that the application would be carried to May 28, 2013 for the Public Hearing without need for further notice.

ZINN REALTY, Block 74, Lots 18, 19 & 16
Application #2012-07

Chairman McCaffrey reported that the application would be carried to May 28, 2013 for the Public Hearing, without need for further notice.

HUDNETT, Block 19, Lot 14
Application #2013-03

Jon Drill reported that the public notice was defective, due to an inadequate description of the proposed construction, which he felt could be challenged by an objector. He explained to the applicant that the notice should indicate that it was the outbuilding that was the object of the application. He discussed whether it was an accessory use or needed a use variance for a business. Mr. Drill indicated that he would proofread the notice for the applicant. The application will be re-scheduled.

EXTENSION OF TIME

MCDONALD'S, Block 77, Lot 4.01
Resolution #2012-05, Application #2011-11

John Wyciscala, Esq. introduced himself on behalf of the applicant. He noted that Mr. Khoury was out of town. He stated that the application for Preliminary and Final Site Plan had been approved a year ago and that the applicant was not able to obtain permits in a timely manner, due to economic issues. He asked for an extension of two years for Condition #9 of the resolution. John Matsen stated that there had been no change in the zoning. Planner Kendra Lelie agreed. Mr. Matsen indicated that he saw no problem with granting the extension. Dave Roberts moved and John Lefkus seconded a motion to approve the extension as discussed. Members in favor: McCaffrey, Matsen, Stevens, Filus, Lefkus, Roberts and Lewis.

PUBLIC HEARING

WOODMONT INDUSTRIAL PARTNERS, Block 13, Lot 11.01
Resolution #2011-17, Application #2011-09

Larry Cali, Esq. introduced himself on behalf of the applicant. He stated that the applicant was seeking an amended Final Site Plan approval. Richard Burrow, applicant's engineer and Cathleen Marcelli, Board Engineer, were sworn. He presented his

credentials, which were accepted by the Board. Exhibit A-1 (Aerial Photo) was marked into evidence and he pointed out the location of a fence gate on the photo. He noted that the applicant only wished to not construct the fence gate on the west side. Mr. Burrow explained that the previous applicant had previously desired to have several tenants, but that the current owner had no need for the gate at the current time. He noted that they could have built the fence and left the gate open.

Chairman McCaffrey asked whether or not the change would affect traffic flow. Mr. Burrow discussed the gate on the north side of the property, noting that the flow would not change. Sharol Lewis asked about the reason for the western gate and he explained that the previous applicant had wanted two secure truck courts. Cathy Marcelli stated that she was satisfied with the proposal. John Matsen commented that having one tenant was easier. Dave Roberts expressed concern that it would not limit late night traffic on the northern end. Mr. Barrow indicated that all of the other improvements had been finished and Jon Drill explained that Cathy Marcelli had not felt comfortable making a field change determination and that he had recommended they apply for an amended final site plan. He explained that performance guarantee would not be released until the gate was either built or the Board determined that it would grant the request. He further noted that there would be no amended resolution written.

Dave Roberts discussed the traffic behind the building, expressing concern that the trucks would not be able to get out and Cathy Marcelli responded that it would not happen often. Jon Drill read the resolution conditions into the record and noted that nothing had changed. The applicant agreed to put a sign at the gate that the northern gate was locked at night. It was noted that there was no traffic restriction on the west side.

John Lefkus commented that the proposed change didn't change the site condition, and that the Board shouldn't put further restrictions on the applicant. He pointed out that nothing had been improved or expanded and expressed the opinion that he was uncomfortable putting additional restrictions on the applicant. Chairman McCaffrey noted that the Board could ask the applicant to put up a sign that was consistent with the original approval. Cathy Marcelli suggested two signs and stated that she would exercise her discretion as to placement.

John Lefkus moved and Wayne Filus seconded a motion for an amended final site plan approval to eliminate the fence and gate, as discussed. Members in favor: McCaffrey, Matsen, Stevens, Filus, Lefkus, Roberts and Lewis. Cathy Marcelli will recommend to the Council that the bond be released. It was noted that new revised site plans would need to be signed.

97 SPENCER LANE, Block 13, Lot 3
Application #2013-04

George Dilts, Esq. introduced himself on behalf of the applicant. He indicated that the site was 44 acres, that the building was 36,000 sq. feet and had been built in the 1970's by the telephone company. In 2010, half of the building was vacated by the telephone company and moved to another site leaving part of their operation in one quarter of the building. He explained that the applicant had appeared before the Planning Board on behalf of the Learning Center to relocate in approximately 18,000 square feet of the building. The Planning Board felt that the other two tenants were non-conforming,

and approved the application with the condition that the other tenants vacate to eliminate the nonconformity. Mr. Dilts indicated that one tenant would leave, but that the phone company did not wish to leave. He stated that he had found out that the tenant was a totally separate operation of the telephone company's cable division and that they believed they were a conforming use. Jon Drill noted that if BOA interpretation was that the CenturyLink use was a permitted use, then the hearing would be over. Megan Ward, Esq. was representing CenturyLink and Mr. Dilts noted that he was representing the property owner and the school. Jon Drill instructed the Board that they must interpret whether or not the telephone company use was conforming or permitted. He noted that CenturyLink's argument was that they are either a permitted use, or a lawfully created, non-conforming use. Mr. Dilts indicated that he would like to present the interpretation first.

Bernie Cryan, Manager of Cable Construction, Nancy Weaver-Smith, CenturyLink Planner, Bob Mireski, Vice President Hampshire Companies, Toby Loyd, Executive Director Hunterdon Learning Center, Michael Costello, Engineer, Kendra Lelie, Board Planner and Cathy Marcelli, Board Engineer were sworn. Exhibit A-1 (Colorized Site Plan, Sheet 3 of 11) was marked into evidence. The school was proposed to occupy 18,392 square feet, previous tenant Valverde was 6,319 square feet and the existing Century Link space was 11,429 square feet.

Megan Ward, Esq. introduced herself on behalf of the applicant. She stated that the applicant was seeking a determination that CenturyLink was a permitted use or, in the alternative, that it was a pre-existing, non-conforming use. She indicated that the building had been constructed in 1974 for the telephone company, noting that the business had changed from land lines to the internet. Mr. Cryan stated that he handled all cable installation and maintenance and that the building also had an office use. He noted that the technicians worked from 7:00AM-3:30PM for maintenance and were mostly out on the road. He reported that the technicians also process requests for installation and maintenance and that the facility was their only office. The vehicles on site are used for the cable division, primarily bucket trucks. Mr. Cryan thought that the facility opened in 1975 and that the technicians for residential installation and repair group moved to a different location on Center Street. He noted that vehicle mechanics were also in the building and had been there all along. He stated that the outside storage would be depleted as they switched over to a vendor that would supply poles, cable, etc., noting that they did not stock cable switches.

Chairman McCaffrey asked the applicant to establish what was permitted in the zone. Ms. Ward stated that the property was in the ROM-2 zone, and that any principle use that was permitted in ROM-1 zone was also permitted in the ROM-2 zone. She stated that an office use was permitted. Sharon Stevens asked whether there was a stockpile, and whether items were ordered for specific installations. Mr. Cryan stated that there were digital switching cards, digital switching shelves, fiber optic patch panels, pigtailed, reels of fiber, and noted that most assembly was done on the installation site. Mr. Cryan stated that he would have mobile generators and bucket trucks outside. Anything stored indoors will be used by the repair people. Jon Drill noted that assembly was allowed in the zone and read from the ordinance. He indicated that the applicant's argument was that the cable installation facility was a business office. John Lefkus commented that the determination was whether the use was an office or a warehouse. He

asked whether there were visitors. Mr. Cryan responded that there were not, and indicated that six people were employed there. He indicated that the mechanics worked on trucks from both Center Street and their own site, noting that there were more residential repair trucks. Jon Drill discussed whether the mechanics were a separate or an accessory use. Chairman McCaffrey asked how many square feet each were the office and storage areas. Mr. Cryan pointed out in which area the mechanics worked and where the storage areas were located. He estimated that inside the facility was about 25% storage. Sharon Stevens commented that most of the materials appeared to be for a specific use and not general storage. Sharol Lewis asked about traffic and Mr. Cryan stated that he was alone in the office most of the day and that in the evenings or on the weekend there was no activity unless there was a storm or major outage. John Lefkus commented that he hadn't known the building was there.

John Lefkus noted that the Board's goal was to determine whether the operation was a business running a service center or a warehouse distribution operation. He expressed the opinion that it was not a warehouse situation, noting that the parts that they received were specific for that location and they were not distributing them to other locations. He also noted that the mechanics were maintaining only a specific company's vehicles, not for a third party. Jon Drill discussed permitted accessory uses, incidental to that site. John Lefkus stated that the mechanic's work was related to the company and no other. Kendra Lelie expressed the opinion that there was nothing in the ordinance to prohibit it. Discussion ensued as to what warehousing was. John Lefkus commented that the quantity and duration of material storage was just in time to deliver services. The Board determined that the facility was not a warehouse, and Chairman McCaffrey asked whether it was anything else that was not permitted.

Jon Drill indicated that the Board should determine whether the telephone facility was a permitted office use. He posited that the storage and vehicle uses were accessory uses. Sharon Stevens expressed the opinion that it was both an office and assembly. John Lefkus discussed industrial parks. Board members agreed it was both uses. Jon Drill noted that a condition could be imposed on the interpretation so that the mechanics could only service the vehicles from the two company locations. Mr. Cryan stated that his facility covers northwest NJ and that there was another location in Lafayette. Chairman McCaffrey expressed concern that the applicant might increase the facility in size. The Board determined that the facility was not a warehouse, that it was an office and assembly use and that the mechanics were accessory to the principal use. Sharol Lewis was concerned about the school in the building, but Jon Drill explained that she should not take it into consideration as that issue was under the Planning Board's jurisdiction. John Lefkus moved and Sharon Stevens moved to interpret that the use was office and assembly, and that they be limited to servicing the Center Street and Spencer Lane vehicles. Members in favor: McCaffrey, Matsen, Stevens, Filus, Lefkus, Roberts and Lewis.

ADJOURNMENT

Sharon Stevens moved and John Matsen seconded a motion to adjourn, and the motion passed unanimously. The meeting was adjourned at 9:30PM.

These minutes were approved on May 28, 2013.

Rebecca E. D'Alleinne, Administrator