

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

December 9, 2013

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

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

ABSENT: Ira Breines, John Lefkus, Amy Switlyk and Sharol Lewis.

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, and the Star Ledger, 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

John Matsen moved and Wayne Filus seconded a motion to approve the minutes of October 28, 2013 as corrected. The Board concurred unanimously.

RESOLUTIONS

HIDDEN MEADOWS, Block 90, Lot 2

Resolution #2013-18, application #2013-07

Jon Drill stated that the resolution under consideration was Version #2. Dave Roberts moved and Wayne Filus seconded a motion to approve the resolution as written. Members in favor: McCaffrey, Matsen, Filus and Roberts.

SMALL, Block 2, Lot 2

Resolution #2013-19, Application #2013-10

Mr. Drill reported that Version #1 was under consideration. Sharon Stevens moved and Dave Roberts seconded a motion to approve the resolution as written. Members in favor: McCaffrey, Matsen, Stevens, Filus and Roberts.

VALLEY BROOK FARM, Block 7, Lot 2

Resolution #2013-20, Application #2013-09

Jon Drill stated that the draft was Version #3 with minor corrections, which he read into the record. Sharon Stevens moved and John Matsen seconded a motion to approve the resolution as corrected. Members in favor: Matsen, Stevens, Filus and Roberts.

Jon Drill discussed the previous case and whether the applicant would be appealing the second violation from the zoning officer as to whether the use was pre-existing and nonconforming. John Matsen discussed whether the use was legal on the five acre parcel.

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

Resolution #2013-16C, Application #2013-07

Jon Drill recommended that the Board wait until the end of the meeting for a closed session and to address the resolution. The members determined to do so.

INTERPRETATION OF ORDINANCE

SMITS, Block 28, Lot 31.05

John Thatcher, Esq. introduced himself on behalf of Mr. and Mrs. Smits, the applicants. He stated that the applicants had lived on the property since 1988 and that they had built a three-car garage with 1200 square feet of space on the first floor, a second floor with 1200 square feet and an additional loft. He explained that the house and the garage had been connected with a deck in order to obtain a permit.

Patricia Garity Smits, applicant, Mike Wright, Construction Official and Kendra Lelie, Board Planner were sworn. Exhibit A-1 (As-Built of Construction Photo) was marked into evidence. Mrs. Smits explained that they had built an accessory building but weren't allowed by township code to build an accessory structure between the house and

the road. She said that they were told at the time that if they connected the structure to the house, it would be allowed. She was unsure who the Building Official was at the time. Michael Wright thought that it was Neal Lambert. Mrs. Smits stated that they had received a building permit from the township. She thought that they had all permits and that the space was to be partially used as an office. She stated that the garage was on a hill and that her office was on the second floor. Jon Drill asked about whether the deck was enclosed on the plans. Ms. Smits said that the first architect had designed the deck to be enclosed and the construction permit was issued on the first set of plans. There was no final inspection. She stated that the changes had all been made, that the plans had been submitted. She indicated that they had no idea that they did not have final permits. It was noted that the Board Planner's report had agreed that the house and garage were one building. Mr. Thatcher stated that his client had appeared a number of times before the Hunterdon County Board of Appeals. Ms. Smits stated that she had done everything that that Mr. Wright had requested. Mr. Thatcher discussed the letter from Mr. Wright and noted that that they were previously unaware of that particular concern.

Jon Drill commented that the Uniform Construction Code's perspective was different from the zoning standpoint. He discussed that under the Marsh application, the Board had interpreted that the potting shed was an attached structure, so that the height requirement of a dwelling would apply. He discussed the total size limit of square footage that might require a sprinkler under the construction code. Chairman McCaffrey asked the applicant to clarify what they were requesting the Board to interpret. Mr. Thatcher stated that his client had been operating an office in the structure for a long time and that Ordinance 165-135H set forth the criteria for the professional office. The use was permitted for a lawyer who resided on the property. Ms. Smits noted that there was one part-time employee, who didn't reside in the building. The last criterion was whether the office was more than 500 sq. ft. Jon Drill stated that the office couldn't have more than 500 square feet. Ms. Smits stated that the room was more than 500 sq. ft., but the office use didn't include the mini kitchen and bathroom. Mr. Drill indicated that if the garage was considered as attached, they could have 500 square feet, if not attached they would be limited to 400 square feet for the office. He discussed the number of square feet that Mike Wright reported having seen during the inspection that were being used as office space.

John Matsen noted that the ordinance indicated that the number was based on the dwelling size only. Mike Wright stated that the first floor of the dwelling was 3632 square feet with the addition, according to the architect. Chairman McCaffrey commented that the professional should reside on the premises, but expressed the opinion that the ordinance didn't specify that the office must be in the dwelling. Jon Drill indicated that one third of the floor area would be 1,210 sq. ft. Mr. McCaffrey noted that the limit was 500 square feet and the question was whether she was using more than 500 square feet. Discussion ensued as to whether the Board needed to determine if the garage was attached. Glen Carter's email commented that the ordinance appears to assume that the office was in the dwelling. Chairman McCaffrey reiterated that it didn't matter where on the property the office was located, the applicant must meet the 500 sq. feet limit. Jon Drill reported that the Board decision was binding on Mr. Carter and Mr. Wright. John Thatcher restated the question as to whether the office was permitted above the garage. Chairman McCaffrey noted that Mr. Carter had stated in the email that far in

excess of 500 square feet was being used. Mr. Drill explained why Mr. Carter had submitted the email. Chairman McCaffrey called a recess at 8:22PM. The meeting was called to order at 8:29PM.

Chairman McCaffrey asked the applicant to identify what question they were asking the Board to interpret. Mr. Thatcher indicated that the applicant would like the Board to determine that they were able to use the accessory dwelling for a professional lawyer's office. He noted that it would be up to the applicant to discuss the size of the office with the Zoning Officer. Jon Drill restated the questions as: whether a law office use can be anywhere on the property, including the second floor of the garage, provided that the use is no more than 500 sq feet in area. Discussion ensued concerning the fact that a zoning permit was needed for the CO. Mr. Drill stated that applicant had limited the question to what they wanted to have answered. John Matsen asked about the size of the office as noted by Mr. Carter, and commented that the applicant can come back to the Board if they weren't happy with his determination.

Chairman McCaffrey stated that his interpretation of the ordinance was that a professional residing on the premises could have an office anywhere on the property. He indicated that the use can have one additional person employed there and not more than 500 square feet of space. John Matsen noted that the ordinance was silent as to whether the office was in the dwelling, but expressed the opinion that it didn't make any difference. Kendra Lelie indicated that it was an accessory use and commented that the ordinance was not well written. Mr. Matsen expressed the opinion that it didn't matter for zoning purposes where the office was located. Chairman McCaffrey agreed.

John Matsen moved and Sharon Stevens moved to adopt an interpretation of ordinance and answer the question that the law office can be located anywhere on the property provided that the use was no more than 500 square feet in area. Members in favor: McCaffrey, Matsen, Stevens, Filus and Roberts.

John Matsen and Tom McCaffrey recused themselves from the following application and left the meeting.

ZINN REALTY, Block 74, Lots 16, 18 & 19
Resolution #2013-16C, Application #2013-07

Sharon Stevens accepted the gavel. Jon Drill stated that there had been several errors in the resolution, which he had corrected and expressed the opinion that the applicants should receive copies of the letters that he had received from Kevin Benbrook representing Hensfoot Development Corporation, which were dated 12/5/13. Mr. Drill read the letters into the record. The letters discussed the zoning landscaping requirements between the two properties. He noted that a site plan exception had been granted, not a variance. Mr. Benbrook's client expressed concern that there was no buffer protection for the residential property. Mr. Drill reported that Mr. Benbrook stated in his letter that he would bring suit against the Board.

Mr. Drill stated that he had written a letter back to Mr. Benbrook expressing the opinion that the errors were typographical in nature and that he did not feel a suit would prevail. He indicated that he had included a copy of Brian Bosenberg's report in his letter of the following day. He cited the ordinance sections that Mr. Bosenberg had discussed in his report. Mr. Drill discussed the landscaping reports.

EXECUTIVE SESSION

Jon Drill read a resolution into the record authorizing the Board to go into Executive Session in order to discuss anticipated litigation. Sharon Stevens moved and Dave Roberts seconded a motion to enter closed session. Members in favor: Stevens, Filus and Roberts. The Board entered Executive Session at 9:01PM.

OPEN SESSION

The Board re-entered Open Session at 9:12PM. Mr. Drill stated that he would not recommend any action concerning the lawsuit. He did recommend that the Board readopt a corrected version of Resolution #2013-16C. He noted that the errors were essentially scrivener in nature and read the typos and corrections into the record. Jon Drill read the landscape section of the resolution and noted that the references in the resolution did not match what was in the Bosenberg landscaping reports. He noted that all of the buffers should be listed as 30 feet and the resolution had misstated the depth as 50 feet. He cited all of the ordinance sections that applied. Mr. Drill listed four exceptions that had been granted: a front yard buffer along Center Street, a front yard buffer along Grey Rock Road, a rear yard buffer along the new Lot 16, and the rear yard buffer adjacent to 17.01. He stated that the resolution now was corrected to align with the landscape architect's reports. He indicated that the resolution under consideration was Draft #5. Mr. Drill continued to read corrections into the record. Sharon Stevens moved and Wayne Filus seconded a motion to adopt Resolution #2013-16C. Members in favor: Stevens and Filus.

ADJOURNMENT

Dave Roberts moved and Sharon Stevens seconded a motion to adjourn, and the motion passed unanimously. The meeting was adjourned at 9:29PM.

These minutes were approved on January 27, 2013.

Rebecca E. D'Alleinne, Administrator