

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

July 28, 2014

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

PROFESSIONALS: Jay Bohn, Attorney, Andrea Malcolm, Planner, Cathleen Marcelli, Engineer, Jim Mazzucco, Landscape Architect and Rebecca D'Alleinne, Administrator.

ABSENT: John Matsen.

CALL TO ORDER

Chairman McCaffrey called the meeting to order at 7:00PM.

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 Sharol Lewis seconded a motion to approve the vouchers for payment. The Board concurred unanimously, with Dave Roberts abstaining.

Chairman McCaffrey moved and Sharon Stevens seconded a motion to appoint Andrea Malcolm of Clark Caton Hintz as the Board of Adjustment's planner. The Board concurred unanimously.

MINUTES

Sharon Stevens moved and Wayne Filus seconded a motion to approve the minutes of May 27, 2014, as corrected. The Board concurred unanimously with Dave Roberts abstaining.

RESOLUTIONS

EUSILIO DI PACE, Block 3.01, Lot 7

Resolution #2014-05, Application #2013-12

Chairman McCaffrey reported that the applicant had withdrawn the application. Sharon Stevens moved and Wayne Filus seconded a motion to dismiss the application without prejudice. Members in favor: McCaffrey, Stevens, Lewis, Filus, Lefkus and Roberts.

ENGINEERING & LAND PLANNING, Block 66, Lot 2

Resolution #2014-06, Application #20213-09

Chairman McCaffrey stated that Version 2 was under consideration. Sharon Stevens moved and Wayne Filus seconded a motion to approve the resolution. Members in favor: Stevens, Lewis, Filus, Lefkus and Roberts.

Chairman McCaffrey recused himself from the following application due to a conflict of interest.

EXTENSION OF TIME

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

Resolution #2013-16C, Application #2012-07

James Knox, Esq. introduced himself on behalf of the applicant. He explained that the applicant had exceeded the deadline within which to file the deeds. He went through the timeline for the actions that had transpired in the 190-day time limit designated by MLUL. Mr. Knox indicated that there were two statutes governing deadlines and extensions, and noted that the NJSA40:55D-21 tolling statute was the basis for their extension request. He commented that litigation was one of the factors listed in the statute that would qualify for a reasonable extension of time. He discussed the merits of the pending lawsuit and the applicant's decision-making process concerning it. Mr. Knox stated that the statute set forth what kind of litigation it must be to trigger the tolling and expressed the opinion that the action against his client did fit the criteria. There were no questions from the public or the Board members. The new deadline would be September 17, 2014.

Chairman Pro Tempore Sharon Stevens moved and John Lefkus seconded a motion to extend the time for an additional 90 days within which the applicant must file the deeds, with conditions as discussed. Members in favor: Stevens, Lewis, Filus and Roberts.

Chairman McCaffrey returned to the meeting. He called a recess at 7:20PM. The meeting was called to order at 7:30PM.

PUBLIC HEARINGS

KATZENBERGER, Block 16, Lot 48

Joseph Katzenberger introduced himself and his wife, Peggy, who were duly sworn. He displayed a site plan of his property and explained that he wanted to add an extension onto his house that would encroach into the rear yard setback. He noted that the existing house already encroached into the setback, commenting that the dining room, kitchen and bedroom were very small. Mr. Katzenberger stated that he had found the currently required setback in the ordinance. The house currently encroaches 19 feet into the setback. He indicated that the house was built in 1972 and was compliant at the time that they purchased it in 1978, making it a pre-existing, non-conforming residence. He described the sizes of the neighboring houses.

John Lefkus asked what was behind the house, and Mr. Katzenberger stated that it backed up to the Round Valley reservoir. Chairman McCaffrey commented that if the house were to be rebuilt today, it could fit in the envelope. He expressed the opinion that the applicant had an unusual situation and a hardship, noting that the house was in line with all of the other houses on the street. The other lots were smaller with a 50 ft. setback, but his was just over the total lot square footage of 40,000 sq. ft., which then required a deeper setback. John Lefkus stated that the location was consistent with the other houses.

There were no questions from the public. Mr. Katzenberg stated that the house would be the same height. Sharon Stevens asked about siding and Mr. Katzenberg stated that he would replace all of the siding. Chairman McCaffrey stated that the applicant would have one year to pull building permits and one year to pull the CO. The resulting setback would be 50 feet. Wayne Filus moved and Sharon Stevens seconded a motion to approve the "c1" variance as discussed. Members in favor: McCaffrey, Stevens, Lewis, Filus, Lefkus and Roberts.

Sharon Stevens recused herself from the remainder of the meeting due to a conflict of interest.

JOB LOT/ARROWMILL PLAZA, Block 70, Lot 3

Kevin Benbrook, Esq. introduced himself on behalf of the applicant. He explained that the applicant had appeared before the Planning Board for a waiver of site plan, which had been approved and noted that interior fit-out had already begun. He noted that originally they were going to proceed before the Planning Board for a Preliminary and Final Site Plan approval, but the 1993 building did not conform to the current FAR requirement, which the Board attorney opined would require a use variance. Mr. Benbrook stated that there was very little case law to look at. He noted that he disagreed with Mr. Drill's interpretation of the time of decision rule, but that the application had been moved to the BOA. He disagreed with the decision.

Chairman McCaffrey read the list of requested completeness waivers into the record and it was decided to have the Board reconfirm the completeness waivers that the Planning Board had granted as a part of the site plan application. Dave Roberts moved

and John Lefkus seconded a motion to grant the completeness waivers as requested. Members in favor: McCaffrey, Lewis, Filus, Lefkus and Roberts. The application was deemed complete.

Kevin Smith, Engineer & Planner, Dawson Bloom, Engineer, John Barbato, OCJL representative, Jim Mazzucco, Board Landscape Architect, Andrea Malcolm, Board Planner and Cathy Marcelli, Board Engineer were sworn. Mr. Smith and Mr. Bloom presented their credentials, which were accepted by the Board. Mr. Barbato stated that Ocean City Job Lot had purchased the property to be one of three proposed stores in New Jersey. He described the other stores throughout the northeast. He noted that the property was currently an eyesore and they had hired local professionals. Mr. Barbato indicated that they wished to make the property a credit to the community. He discussed the kind of merchandise that would be for sale. Dave Roberts asked about the customer base and Mr. Barbato noted that they were mostly homeowners and that contractors would occasionally utilize the store.

Bill Buriak, 39 River Bend Road, asked when the operating hours would be. Mr. Barbato responded that the store would be open from 8AM to 9PM, 7 days a week. Deliveries would arrive during those hours before 9PM. He stated that nearly all of the deliveries would come from the corporate distribution center.

Dawson Bloom discussed the existing conditions on the site. He commented on the layout of the site, pointing out the driveways and the intersection. He stated that the current landscaping was not in good condition. Mr. Bloom discussed the site lighting, noting that the existing poles were 16 feet high. He explained that he had tried to achieve the 60% goal of screening along the frontage of the property, but noted that his plan did not comply with landscaping requirements. He stated that he had attempted to balance the need to be seen with the ordinance standards. Mr. Bloom indicated that they were using the existing light poles, but that they planned to use a lower wattage LED bulb. He reported that there had been no change to the parking configuration or circulation.

Mr. Bloom discussed the landscape plan (Sheet 5 of 8), noting that they would be asking for a variance. He explained that he had met with the Board landscape architect and tried to balance the retailer's need for visibility with the ordinance requirements. He discussed the berm and indicated that they wanted to make it run parallel to Route 31. He listed the kinds of trees to be planted on the berm, noting that deciduous trees had been added to the islands. He indicated that wildflowers would be planted over the septic system.

Exhibit A-1 (Existing Site Driveway Conditions) and Exhibit A-2 (Rendering of Proposed Driveway Conditions) were marked into evidence. Mr. Bloom discussed the size of the trees and a two-foot reduction in the height of the berm. Cathy Marcelli asked how long the trees would take to reach the height depicted in the exhibit. Mr. Bloom did not know the initial height of the trees as planted. John Lefkus expressed the opinion that it would take at least ten years of growth. Kevin Benbrook stated that the applicant was looking for a waiver in the quantity of trees to be planted, not the caliper size. Jim Mazzucco discussed the shade tree requirement for Route 31 and stated that the applicant could achieve the same result with shade trees and lower plantings, which would hide the cars, not the building. He used the Rutland Plaza and TD Bank landscaping as examples. Discussion ensued concerning the date of landscaping plan and the location of the monument sign.

Kevin Benbrook reviewed the Bosenberg report and listed the items with which they would comply, noting that they would be conditions of approval. He stated that they did not plan to change the existing sign, except for adding architectural treatments around the posts. He noted that a variance would be needed for the sign height. A recommended reduction of the visibility gap from 100 to 70 feet was discussed and the applicant agreed. Mr. Barbato stated that the property needed serious enhancement and that they had used their best efforts to comply with the township guidelines and was under the impression that the plan was compliant. He expressed the opinion that Job Lot was investing a great deal of money and wanted the property to look good.

Chairman McCaffrey stated that the Board appreciated that the applicant wanted to invest in the property and that it would no longer be vacant. He indicated that the Board would weigh the guidelines and determine whether to grant waivers. He expressed the opinion that the Board was not inflexible. John Lefkus discussed the general procedure, commenting that the Board had to be consistent in granting waivers. Andrea Malcolm discussed continuity along the Rt. 31 corridor, noting that the property to the south had similar landscape issues and had addressed them.

Mr. Barbato expressed concern that reducing the gap in the landscaping would not be safe for drivers. Kevin Smith discussed Exhibit A-1, pointing out that the development was a large retail project and that visibility was important. He expressed the opinion that in relation to the overall project size, it was not a large sign. He indicated that they were not proposing to change the location or basic structure of the sign, but noted that the decorative treatment would increase the overall size. The necessary variances for the sign would be for height and size. Mr. Smith stated that the existing sign was 20 feet high and would increase to approximately 24 feet. The overall size would be increased from 145 sq. feet to approximately 200 sq. feet. He noted that the sign would remain internally illuminated. Mr. Barbato stated that the proposed sign would reflect the proposed architectural elements of the building. John Lefkus commented that other existing nearby businesses had oversized signs. Kevin Smith stated that there were many reasons why businesses needed large signs and that many along that corridor had oversized signs. He stated that their preference would be to leave the opening at 100 feet so that motorists could see the sign. He noted that if the sign were moved back, then the applicant would have to move the landscaping back, too. Mr. Smith did not feel that there would be a detrimental effect on the surrounding properties, noting that there were already existing signs that exceeded 25 square feet. He pointed out that the property was the largest commercial site along Route 31 and an oversized sign would be in scale with the large size of the project. He expressed the opinion that the additional size would not be a substantial detriment to the other commercial properties on the Route 31 corridor. Mr. Smith stated that, due to the geometry of the highway, the requested relief was specific to the needs of the site.

Chairman McCaffrey suggested that the Board conduct a straw poll. He expressed the opinion that he was not in favor of increasing the size of the sign. John Lefkus commented that the enhancements made a better statement. Sharol Lewis agreed. Dave Roberts indicated that the sign could be moved south to make it easier to enter the parking lot. Mr. Benbrook stated that the applicant would withdraw the request for the larger sign.

Bill Buriak, 39 River Bend Road, asked about the landscaping behind the building that would be visible to the residential area. Mr. Smith expressed the opinion that it was already heavily buffered and discussed the trees behind the building. Mr. Bloom stated that the applicant was not proposing additional trees in the back. Kevin Benbrook stated that there would not be additional planting and that they were not proposing new lighting. He noted that the applicant already met the rear yard buffering requirement. Mr. Bloom stated that the lighting would not be on 24 hours a day.

The applicant agreed to reduce the landscape buffering to 70 feet, due to the fact that the sign would not change. Mr. Bloom stated that the applicant would need a design waiver for specific landscaping items, and noted that much of the original landscaping had died. Kevin Smith pointed out that the approved landscaping on the adjoining property was more linear and less intensive. He indicated that they preferred to have low plantings with similar visibility, such as TD Bank. Jim Mazzucco asked whether they would agree to arrange the trees in a more linear layout. Kevin Benbrook agreed to realign the trees and make whatever species substitutions that were required by the Board Landscape Architect.

Rob Schnatter, 37 River Bend Road, discussed buffering for the rear façade of the building. Chairman McCaffrey pointed out that because the applicant was in compliance with the landscape requirements, the Board couldn't ask for more buffering.

Mr. Smith marked Exhibit A-3 (Colorized Version of Sheet 6) into evidence, noting that there was no increase or decrease in the amount of impervious cover. He indicated that impervious coverage was currently 75%. The ordinance standard is 40%. Kevin Smith stated that the parking lot was an existing nonconformity that legally existed. He indicated that there was sufficient parking for 55,000 sq. ft. of building area. He noted that 220 spaces were required and that currently there were an existing 275 spaces. He pointed out specific parking spaces that they were willing to remove toward the back of the site. Mr. Smith stated that they would remove the asphalt in the area marked in yellow on Exhibit A-3. He noted that there would be an incremental decrease in water runoff to the river. John Lefkus discussed the steep slopes at the rear of the property and recharge. Mr. Smith noted that the township also required a stream corridor buffer and indicated that the calculations may be conservative. Chairman McCaffrey called a recess at 10:11PM. The meeting was called to order at 10:20PM.

Kevin Benbrook stated that the development would require a "d4" variance for F.A.R. where 15% was required, and 19% exists. He indicated that the maximum impervious coverage standard would require a "c2" variance. He noted that the project was an existing development that had been approved in the past. Mr. Benbrook expressed the opinion that Job Lot had worked good faith to remove parking and address the issues in the planner's and the landscape architect's reports.

Mr. Smith proposed removing 7 spaces from the dead-end parking aisle and to eliminate the dead end to improve circulation. A total of 38 spaces would be removed to reduce the nonconformity. He opined that there would be no negative impact to the zone plan or adjoining properties. Mr. Benbrook noted that the new parking layout would be subject to the review and approval of engineer and landscape architect. Cathy Marcelli asked why the applicant hadn't removed the row of parking as recommended, which would have improved sign visibility, whereas their proposal would adversely affect the storm drainage and infrastructure. She discussed the storm drainage. John Barbato stated

that the Board professionals' proposed recommendations were considered and that Job Lot responded in a good faith effort to comply with the regulations as best as possible. Cathy Marcelli suggested that one space adjacent to the treatment facility be provided for the operator. Andrea Malcolm commented that her office had been looking to increase the buffer and if the applicant could not take out the fourth row of parking, she suggested parking islands. John Barbato commented that the choice was a practical business decision, and expressed the opinion that the back spaces were not used as often. Dave Roberts asked about the barrier-free parking, and the applicant agreed to conform to the Building Official's report.

Kevin Benbrook reiterated that the existing sign would need variance, as a pre-existing, non-conforming structure. The FAR standard was 15% and as 19.6% existed; the applicant would need a "d4" variance based on 55,000 square feet of floor area. Kevin Smith indicated that they had received a revised number from architect. He stated that they were not increasing the size of the building and that, other than removing part of the building, the FAR cannot be changed. Mr. Smith noted that the amount of parking had historically supported the size of the building. He commented that the signage on the building would be limited to 10% of the building façade, not to exceed 200 sq. ft. The proposed sign will be 96 sq. ft. for Job Lot. Tenants would need individual signs, the total remaining amount not to exceed 104 sq. feet. Kevin Smith stated that they would need a variance for the number of signs, but will cap the total at 200 sq. ft. Mr. Barbato stated that they would clean up trash on the river banks and put 15-20 pines along the back of the property.

Dawson Bloom pointed out the excessive number of shoebox luminaires on the northern boundary of the site and discussed light trespass. He indicated that they would replace the bulbs with lower wattage LED lights. He discussed Brian Clemson's lighting report, stating that they would comply with his recommendations. Lighting around the handicapped parking was discussed and he noted that they would adjust it. Mr. Bloom commented on the ordinance requirements for the achieved initial level versus the maintained level of lighting. He stated that their design was slightly below the requirement, noting that LED bulbs were more efficient and would not lose so much intensity over time. He noted that they were trying to reuse what was already there, and discussed uniformity of lighting over the whole site. Cathy Marcelli asked about safety issues and he responded that there would be no safety concerns. Mr. Bloom stated that lights would go on at sundown and would not be on all night. Mr. Benbrook reported that the AC rooftop units would be removed, and that the asphalt would be resealed and restriped. Cathy Marcelli commented that there were potholes and broken pavement and asked for a paving plan for her review. Mr. Benbrook agreed to submit a plan as a condition of approval.

Mr. Benbrook discussed the parking lot pedestrian walkway and expressed concern about potential liability. Mr. Smith indicated that during the Bourbon Street application that an access easement for the steps had been a part of the approval. John Lefkus discussed pedestrian safety and expressed the opinion that the stairs should not be a condition of approval. Chairman McCaffrey agreed.

Ms. Marcelli discussed the need for an amendment to the DEP permit for the treatment plant, but Mr. Benbrook indicated that he would not apply for an amended

permit. Ms. Marcelli asked for a letter from the DEP stating that Job Lot did not need an amended permit.

Chairman McCaffrey listed the required variances and exceptions. Mr. Benbrook asked for conditional approval based on the list in the planner's report. Andrea Malcolm asked about flexibility in the parking spaces to be removed. She discussed four spaces near the front of the building. Mr. Barbato stated that he had no permission from his management to delete them. John Lefkus expressed the opinion that they would be practical spaces to remove. Mr. Barbato agreed.

Bill Buriak, 39 River Bend Road, commented that removal of the parking spaces in the back was important to the condition of the river.

Ms. Malcolm listed all of the relief that was required from her report into the record. Discussion ensued concerning the unimproved concrete side of the building and the applicant agreed to install a brick-colored stucco finish. Kevin Benbrook indicated that he would contact the adjoining property owner to discuss removal of the stairway. John Lefkus moved and Wayne Filus seconded a motion for Preliminary and Final Site Plan approval with the grant of variances and exceptions as discussed. Members in favor: McCaffrey, Lewis, Filus, Lefkus and Roberts.

ADJOURNMENT

Dave Roberts moved and John Lefkus seconded a motion to adjourn, and the motion passed unanimously. The meeting was adjourned at 11:42PM.

These minutes were approved on August 25, 2014.

Rebecca E. D'Alleinne, Administrator