

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

DATE: May 11, 2015

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

Chairman McCaffrey led the Flag Salute.

Chairman McCaffrey read the 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 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.

BOARD MEMBERS IN ATTENDANCE:

Filus, Lefkus, Lewis, Matsen, McCaffrey, Olsen, Roberts

BOARD MEMBERS ABSENT:

Stevens, Yager

BOARD PROFESSIONALS IN ATTENDANCE:

Jon Drill, Board Attorney, Andrea Malcolm, Board Planner, Denise Filardo, Board Secretary

APPROVAL OF VOUCHERS

Mr. Filus moved and Mr. Matsen seconded a motion to approve the vouchers for payment. The Board concurred unanimously.

<i>Roll Call: Payment of Vouchers</i>						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen		X	X			
Filus	X		X			
Lefkus			X			
Lewis			X			
Roberts			X			
Stevens						X
Yager						X
Olsen			X			

REQUEST FOR EXTENSION OF TIME

1) MC DONALD’S, BLOCK 77, LOT 4.01

Application # 2011-11

Modification of Condition #9 of Resolution No. 2012-05 to Extend the Time within which the Applicant must obtain construction permits.

The applicant was represented by Dean Donatelli, Esq.

Due to economic conditions the applicant is not in a financial position to undertake the approved improvements. Attached herewith please find letter from applicant’s attorney, John P. Wyciskala, dated April 9, 2015, requesting an additional two (2) year extension of time. Based on Mr. Wyciskala’s letter, the Board’s common knowledge of current economic conditions, and the Board’s understanding of the Township zoning ordinances and of applicable law, the Board made the following findings and conclusions:

Board Findings and Conclusions

- The Board finds that the continued slow growth of the economy after the recession of 2008 has negatively impacted the financing of the proposed development, causing the applicant to have to once again delay the project. As a result, the applicant has requested the second extension and has requested a further 2-year extension to avoid the having to request a series of shorter extensions and/or to re-apply to the Board for new approvals.
- The Board believes this request to be reasonable and the Board finds that neither the Board nor the public will be harmed or prejudiced by granting the extension of time.
- The Board concludes that the particular circumstances of this case do not warrant terminating the underlying approvals at this time

Relief Granted

Modification of Condition #9 of Resolution No. 2012-05 to Extend the Time within which to Obtain Construction Permits. Condition #9 of Resolution No. 2012-05 will be modified to extend the time within which the applicant must obtain construction permits from April 23, 2013 to April 23, 2015.

Mr. Lefkus moved and Mr. Matsen seconded a motion to grant the extension of time. The vote record follows.

<i>Roll Call: McDonald’s Two (2) Year Extension of Time</i>						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen		X	X			
Filus			X			
Lefkus	X		X			
Lewis			X			
Roberts			X			

Stevens						X
Yager						X
Olsen			X			

PUBLIC HEARINGS

1) HIDDEN MEADOWS, BLOCK 90, LOTS 2.05 TO 2.09

Application # 2015-03

Applicant proposes to relocate easterly landscaping buffer on previously approved subdivision plan. See, Resolution No. 2007-03, adopted on April 23, 2007, Resolution No. 2008-09, adopted on June 23, 2008, and Resolution No. 2013-18, adopted on December 9, 2013.

The applicant was represented by George M. Dilts, Esq. Attorney Dilts described the request. Attorney Dilts stated that the applicant takes no exception to the comments from John Morgan Thomas, the Board’s Landscape Architect.

The following individuals were sworn and testified:

- David Nenna, MD (Principal of applicant),
- Radim Kucera, PE (Applicant’s engineering expert),
- John M. Thomas, LLA (Board landscape architectural expert), and
- Andrea Malcolm, PP, AICP (Board planning expert)

Exhibits Submitted:

- A-1 Landscaping plan as approved as complying with the landscape buffer conditions imposed in the preliminary approvals Resolution No. 2008-09 and the final approval Resolution No. 2013-18, with arrows identified as #1 and #2 pointing towards certain existing vegetation on the property
- A-2 Amended landscaping plan referenced above
- A-3 Photo #1 reflecting existing vegetation identified in Exhibit A-1 by arrow #1
- A-4 Photo #2 reflecting existing vegetation identified in Exhibit A-1 by arrow #2

Mr. Kucera discussed the reason for the request to Modify to the Landscaping. This past winter we discovered we don’t need as many trees planted on the easterly buffer because there are sufficient wooded areas that create enough of a buffer. We would like to slightly thin those two (2) areas and relocate some of the plantings where we feel screening is minimal toward Payne Rd. The end result will be the same number of trees, just redistributed.

There was discussion as to whether or not there should be a berm since the open space was an area not to be disturbed. Attorney Dilts stated that the applicant will do the landscaping with or without the berm.

Board Findings:

- The Board found that the amended landscaping plan will comply with all applicable ordinance regulations and subdivision ordinance requirements.

- The Board also found that amended preliminary and final subdivision approval could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance.
- The Board concludes that Amended Preliminary and Final Subdivision Approval can and should be granted subject to conditions being imposed and complied with.

Chairman McCaffrey asked if there was anyone from the public with interest in this application. There was no one.

Relief Granted:

- Modification of Landscape Buffer Conditions of Prior Approvals to allow the Amended Landscaping Plan, subject to conditions.
 - Amended Preliminary and Final Subdivision Approval, subject to conditions.
- Mr. Roberts moved and Mr. Matsen seconded a motion to approve amendment of the landscape plan. The vote record follows.

<i>Roll Call: Hidden Meadows Amendment of Landscape Plan</i>						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen		X	X			
Filus			X			
Lefkus			X			
Lewis			X			
Roberts	X		X			
Stevens						X
Yager						X
Olsen			X			

Attorney Drill stated a procedural matter before the Smits case was called. Dr. Lewis & Mr. Roberts live within 200 feet of the subject property are in notice range, however the road at issue is about 500 feet away and they do not know the applicant.

2) SMITS, BLOCK 28, LOT 31.05

Application # 2015-02

Applicant appeals from a Zoning Officer decision and, alternatively, requests an interpretation of the ordinance as to a home office. See, Resolution No. 2013-21 adopted on January 27, 2014.

The applicant was represented by John Thatcher, Esq.

The applicant is seeking the following relief:

- a) appeal of the Zoning Officer's issuance of five (5) zoning ordinance violations for having a home law office over 500 square feet in size contrary to zoning ordinance section 165-135.H, ¹ and
- b) interpretation of zoning ordinance section 165-135.H to the effect that the applicant's law office, which is located on the upper level of the garage on the residentially zoned and use property, is less than 500 square feet in size.

The following individuals were sworn and testified:

- Patricia Garity Smits (applicant),
- H. Volker Fuertges, AIA (applicant's architectural expert),
- Thomas Thatcher, PP (applicant's planning expert), and 2
- Andrea Malcolm, PP, AICP (Board planning expert);
- Michael Wright, Township Construction Code Official

Exhibits

- A-1 Copy of survey of the property prepared by George Riehman, PLS dated June 11, 1998
- A-2 Architectural drawing of the upper level of the garage on the property titled "Home Office Plan" prepared by Volker Architects dated September 22, 2014, signed by H. Volker Fuertges, AIA
- A-3 to A-27 Twenty five (25) photos taken by the applicant on May 10th and May 11th of 2015 of various areas of her home office and upper level of the garage
- A-28 Document containing the following three (3) sheets:
 1. Memo on the applicant's letterhead, undated, with color coding for the office, walkway and personal use spaces of the upper level of the garage on the property,
 2. Color drawing prepared by the applicant of the upper level of the garage, with pink reflecting the office areas, green reflecting the walkways, and blue reflecting the personal use areas (mixed uses are marked with diagonal lines), and
 3. "To-scale" sketch of the upper level of the garage

Mr. Thomas Thatcher, applicant's planning expert opined that the ordinance provisions here are out of date and out of sync with the modern office of a professional, which he claimed is an office without walls and rooms.

Interpretation:

The Board rejects the applicant's requested interpretation that only those areas of the upper level of the garage which are shaded on Exhibit A-2 constitute office areas. The Board interprets ordinance section 165-135.H and the definition sections of the ordinance as requiring the following areas to be added to the gross floor area of the office, which results in the office exceeding the maximum 500 square feet required for a permitted accessory home office:

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- the floor area of the “T” shaped area on Exhibit A-2 which is identified as a “personal”
- the entrance area in the southwest corner of the room
- the storage room on the lower level of the garage

The Board concluded that the applicant’s home office exceeds the maximum required 500 square feet of floor area. As a result the office use of the garage is not a permitted accessory use but, rather, a prohibited use.

Appeal:

The Board denies the applicant’s appeal of, and affirms the Zoning Officer’s issuance of, the five (5) zoning ordinance violations based on Exhibit A-28 for having a home law office over the 500 square feet requirement for a permitted accessory home office.

A motion was made by Mr. McCaffrey and seconded by Mr. Lefkus affirming the Zoning Officer’s decision. The vote record follows.

Roll Call: Affirming the Zoning Officer’s Decision						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey	X		X			
Matsen			X			
Filus			X			
Lefkus		X	X			
Lewis			X			
Roberts			X			
Stevens						X
Yager						X
Olsen			X			

A motion was made by Mr. McCaffrey and seconded by Mr. Matsen to deny and rule that the home law office is greater than 500 sq. feet. The vote record follows.

Roll Call: Denial of Applicant’s Appeal						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey	X		X			
Matsen		X	X			
Filus			X			
Lefkus			X			
Lewis			X			
Roberts				X		
Stevens						X
Yager						X
Olsen			X			

ADJOURNMENT

A motion was made by Mr. Roberts and seconded by Mr. Filus to adjourn. The Board concurred unanimously and the meeting was adjourned at 11:18pm.

<i>Roll Call: Adjourn</i>						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus	X		X			
Lewis						X
Roberts						X
Stevens						X
Yager		X	X			
Olsen			X			

Respectfully submitted,

Denise Filardo
Planning and Zoning Board Secretary

These minutes were approved on November 28, 2016.