

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

November 30, 2015

Chairman McCaffrey called the meeting to order at 7:37pm.

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, Matsen, McCaffrey, Olsen

BOARD MEMBERS ABSENT:

Lewis, Roberts, Stevens, Yager

BOARD PROFESSIONALS IN ATTENDANCE:

Jon Drill, Esq., Board Attorney, Trishka Cecil, Esq., Township Attorney, Andrea Malcolm, PP, AICP, Board Planner, Erica Charters, substituting as Board Secretary, Michael Wright, Township Construction Code Official, and Tom Silvia, Township Zoning Officer

NOTE:

The recording of this meeting was inaudible and the motions were not recorded.

APPROVAL OF VOUCHERS

The vote record follows.

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

Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)			X			

RESOLUTION MEMORIALIZATIONS

1. WINGFIELD, Block 12, Lot 13

Application No. 2015-08, Resolution No. 2015-11

Grant of C-2 Variance with Interpretation

Eligible Members: Filus, Lefkus, McCaffrey, Matsen, Olsen, Yager

Roll Call: Wingfield Resolution No. 2015-11						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus			X			
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)			X			

2. KRATZENBERGER, Block 16, Lot 48

Application No. 2014-03 Resolution No. 2015-12

Grant a One Year Extension of the time within which to satisfy Condition No. 8 of Resolution No. 2014-08

Eligible Members: Filus, Lefkus, Lewis, McCaffrey, Matsen, Stevens, Yager

Roll Call: Kratzenberger Resolution No. 2015-12						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus			X			
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)					Not Eligible	

3. AAA WORLDWIDE TRANSPORTATION, Block 59, Lot 3

Application No. , Resolution No. 2015-13

Grant of Site Plan Waiver for generator

Eligible Members: *Filus, Lefkus, Lewis, McCaffrey, Matsen, Stevens, Yager*

Roll Call: AAA Worldwide Transportation Resolution No. 2015-13						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus			X			
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)					Not Eligible	

4. PLUMERI, Block 16, Lot 51.08

Application No. 2015-05, Resolution No. 2015-14
C-2 Variance for new Garage.

Eligible Members: *Matsen, McCaffrey, Olsen, Roberts, Yager*

Roll Call: Plumeri Resolution No. 2015-14						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus					Not Eligible	
Lefkus					Not Eligible	
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)			X			

INTERPRETATION

1. TOWNSHIP OF CLINTON, INTERPRETATION REQUEST

Subject Property, Serrani, Block 16, Lot 70

Application # 2015-13

The Zoning Officer seeks an interpretation of the regulations applicable to the RC Zoning district to determine whether Round Valley Ranch/Round Valley Trail Rides is a prohibited commercial use requiring a use variance, or whether it is a permitted agricultural use.

The Board is consolidating the interpretation application with the appeal application for purposes of the hearing on the two applications but will vote separately on each of the applications.

The Zoning Officer is represented by Township Attorney Trishka Cecil, Esq.
Mr. Serrani – the owner of the property is represented by Anthony “Tony” Sposaro, Esq.
Ms. Herr – the neighboring interested party – is represented by Steven P. Goodell, Esq.
The Board is represented by Jonathan E. Drill, Esq.

SWORN WITNESSES

1. Tom Silvia (Township Zoning Officer),
2. Joseph Serrani (property owner),
3. Marilyn Herr (neighboring interested party),
4. Michael Wright (Township Construction Code Official), and
5. Andrea Malcolm, PP, AICP (Board planning expert);

EXHIBITS

The following exhibits were submitted into evidence during the hearing, are on file with the Board, and are part of the record in this matter (the “H” exhibits were submitted by neighboring interested party Herr):

- H-1 Forms FA-1 and FA-1GS filed by Serrani for 2013, 2014 and 2015, hand written receipts 727114 dated 1/18/15, 727117 dated 4/22/15, and 727119 dated 7/12/15, and Schedule F from IRS Form 1040 for 2014, all of which were attached by Serrani to the Commercial Farm Certification and Request for Site Specific Agricultural Management Practice Application Serrani submitted to the Hunterdon County Agricultural Development Board (“**HCADB**”) by letter from his attorney dated October 22, 2015
- H-2 Paper copy of “Round Valley Trail Rides” homepage found at www.rideroundvalley.com advertising “Guided Scenic Horseback Adventure Tours,” as well as paper copies of various webpages from the website found by clicking on various links from the website
- H-3 Photo of Herr’s house taken during the summer of 2015
- H-4 Photo of a portion of the driveway over Herr’s lot where it passes by Herr’s house;

THE APPLICATION

The subject property is owned by Serrani and consists of three lots (Block 18, Lots 70, 71 & 72). The property has a combined size of approximately 71.43-acres but has no frontage on any public road. The property’s access to a public road is to Stanton Mountain Road via a stone driveway located within a driveway easement running from Stanton Mountain Road, through neighboring Lot 73 in Block 16 owned by Herr, to Lot 70 in Block 16, the largest of the three lots owned by Serrani. The genesis of both of the applications at issue here stems from friction generated by Serrani’s use of the driveway

over Herr's lot for activities he is conducting on the property. As set forth above, the property is situated in the RC zone. Herr's lot is also situated in the RC zone. Among the principal permitted uses in the RC zone are single family dwellings and agricultural uses (excluding commercial greenhouses). There is a principally permitted single family dwelling located on Herr's lot, and Herr resides in that single family dwelling and uses her lot for single family residential purposes. At present, there are three (3) single family dwellings located on the Serrani property. A new single family dwelling is under construction for residency by Serrani, there is an existing single family dwelling resided in by tenants, and Serrani is residing in a trailer constituting the third single family dwelling. Serrani is engaged in certain agricultural uses on the property, which he claims includes horse breeding and woodland management (cutting and selling trees and planting trees). Serrani is also engaged in an activity on the property that is the root cause of the dispute between Serrani and Herr – a horseback trail riding operation. The automobile traffic associated with that operation crosses Herr's property and proceeds right by the front of her house. As can be seen in Exhibit H-4, the stone driveway runs just a few feet from Herr's house. Traffic to and from Serrani's property generates noise, light and dust which disrupts Herr's peaceful enjoyment of the otherwise quiet environment. Herr contends that the horseback trail riding operation is not permitted on the property while Serrani contends that it is a permitted form of agriculture.

Herr's Complaints

Herr's primary complaint about Serrani's use of the property is not limited to the horseback trail riding operation. Herr lodged the following five (5) complaints about Serrani's use of the property:

- 1) Serrani's use of the narrow driveway over Herr's lot (Lot 73) for access to a commercial operation on the property violates the ordinance section which requires commercial driveway widths to be designed to accommodate commercial vehicles
- 2) Serrani's horseback trail riding operation is a commercial use which is not permitted in the RC zone
- 3) The three single family dwellings on the property, specifically Lot 70, violate the ordinance section which prohibits residential uses from having more than one principal building on a lot
- 4) Serrani's horseback trail riding operation includes the offer of "lodging" and lodging is not permitted in the RC zone
- 5) no zoning permit should have issued for the new dwelling under construction on Lot 70 without Serrani first applying for and obtaining a "statutory variance"

BOARD FINDINGS & CONCLUSIONS REGARDING THE APPEAL

The Board finds and concludes that the appeal application must be dismissed without

prejudice for the following reasons:

- The appeal was filed out of time
- The Board has no jurisdiction to review Herr's complaint No. (1) listed above
- The appeal of Herr's complaint No. (2) is a moot point by reason of the Zoning Officer taking action by filing the application for an interpretation by the Board.
- The appeal of Herr's complaint No. (3) should be dismissed because the Zoning Officer did in fact issue a notice of violation.
- The appeal of Herr's complaint No. (4) is a moot point by reason of the Zoning Officer taking action by filing the application for an interpretation by the Board.
- The appeal of Herr's complaint No. (5) should be dismissed because Mr. Serrani cannot be said to be in violation of a Zoning Ordinance if he was issued a permit to construct the new dwelling, even if the permit was issued in error.

BOARD FINDINGS & CONCLUSIONS REGARDING THE INTERPRETATION

- The horseback trail riding operation is a primary use of the property and horse breeding is an accessory use which supports the horseback trail riding operation.
- The horseback trail riding operation is not related to the woodland management use.
- The Board rejects that claim and specifically finds that Serrani does not breed horses for sale on the property and finds that Serrani breeds horses on the property for the purpose of supplying horses for his horseback trail riding business which is the principal horse related business on the property
- The Board finds and concludes that: (1) the horseback trail riding operation is a primary use of the property; (2) horse breeding is an accessory use which supports the horseback trail riding operation; and (3) Serrani does not operate a horse breeding for sale business on the property.
- The Board concludes that riding academies and riding stables and, therefore, Serrani's horseback trail riding operation, is a prohibited use in the RC zone
- The Board finds that the horseback trail riding operation is a commercial activity because Serrani charges money for the rides.
- The Board also finds that the horseback trail riding operation is not related to the woodlands management use on the property and, therefore, concludes that the horseback trail riding operation is not an accessory use to the woodlands management use.

It was noted that the issue for interpretation by the Board is whether the horseback trail riding operation is permitted under the Township zoning ordinance. The Board's jurisdiction over the interpretation application derives from the MLUL. Under the MLUL the Board is confined to interpret the provisions of the zoning ordinance, not the Right to Farm Act. The Board recognizes that ordinance section 165-123.A provides that the right to farm is hereby recognized to exist in the Township and is hereby declared to be a permitted use in all zones of the Township. The Board finds that the recreational use referenced in the ordinance are uses where the farm owner grants permission to a third party to conduct the recreational use, such as hunting, and not where the farm owner himself operates the recreational use as part of the business on the farm.

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The Board finally concludes that offering “lodging” is prohibited on the property. The Board is not making any finding as to whether or not Serrani has offered “lodging” but is making it clear that the offering of “lodging” on the property is prohibited.

Note: Disposition of Appeal and Issuance of Interpretation Has No Bearing on Serrani’s Pending Application to the HCADB.

The Board’s final Interpretation is that Township Ordinances prohibit trail riding operations on Block 16, Lots 70, 71 and 72 and Dismissal with prejudice of the Herr Appeal. The vote records follow.

Roll Call: Interpretation Block 16, Lots 70, 71, 72						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus			X			
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)					Opposed	

Roll Call: Dismissal of Herr Appeal Block 16, Lot 73						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus			X			
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)			X			

ADJOURNMENT

The meeting was adjourned at 11:40pm.

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Roll Call: Adjournment						
Member	Motion	2nd	Yes	No	Abstain	Absent
McCaffrey			X			
Matsen			X			
Filus			X			
Lefkus			X			
Lewis						X
Roberts						X
Stevens						X
Yager (Alt 1)						X
Olsen (Alt 2)			X			

Respectfully Submitted,

Denise Filardo,
Board Secretary

These Minutes were approved on February 27, 2017

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