

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

DATE: October 24, 2016

Chairman McCaffrey called the meeting to order at 7:30pm.

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.

MEMBERS IN ATTENDANCE

Filus, Lefkus, Matsen, McCaffrey, Olsen, Yager

MEMBERS ABSENT

Lewis, Roberts and Stevens

PROFESSIONALS/STAFF IN ATTENDANCE:

- 1) Jonathan Drill, Esq., of Stickel, Koenig, Sullivan and Drill, Board Attorney
- 2) Andrea Malcolm, PP, AICP, of Clarke, Caton Hintz, Board Planner
- 3) Joanne Sekella, Stenographer
- 4) Denise Filardo, Board Secretary

VOUCHERS

A motion was made by Chairman McCaffrey and seconded by Mr. Filus to approve the vouchers for payment. The vote record follows.

Roll Call: Payment of Vouchers						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus		X	X			
Lefkus			X			
Lewis						X
Matsen			X			
McCaffrey	X		X			
Olsen			X			

Roberts						X
Stevens						X
Yager			X			

MINUTES

1) Meeting Minutes of July 25, 2016

A motion was made by Mr. Matsen and seconded by Mr. Lefkus to approve the Minutes of 7/25/16. The vote record follows.

Roll Call: Meeting Minutes 7/25/16						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus		X	X			
Lewis						X
Matsen	X		X			
McCaffrey			X			
Olsen			X			
Roberts						X
Stevens						X
Yager			X			

2) Meeting Minutes of August 24, 2015

A motion was made by Mr. Matsen and seconded by Mr. Lefkus to approve the Minutes of 8/24/15. The vote record follows.

Roll Call: Meeting Minutes 8/24/15						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus		X	X			
Lewis						X
Matsen	X		X			
McCaffrey			X			
Olsen			X			
Roberts						X
Stevens						X
Yager			X			

RESOLUTIONS

- 1) **APM MANAGEMENT/VALERO** Waiver of site plan for generator
 Block 68, Lot 11
 Application No. 2015-05
 Waiver of Site Plan for generator
Resolution No. CTBOA-2016-03
Eligible Members: Lefkus, Matsen, McCaffrey, Olsen, Stevens, Yager

A motion was made by Mr. Lefkus and seconded by Mr. Yager to approve the adopt Resolution No. 2016-03. The vote record follows.

Roll Call: APM Management – Resolution No. CTBOA-2016-03						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus	X		X			
Lewis						X
Matsen			X			
McCaffrey			X			
Olsen			X			
Roberts						X
Stevens						X
Yager		X	X			

- 2) **AAA WORLDWIDE TRANSPORTATION**

Block 59, Lot 3
 Application No. 2015-10
 Waiver of site plan for generator
Resolution No. CTBOA-2015-17
Eligible Members: Filus, Lefkus, Lewis, Matsen, McCaffrey, Olsen, Stevens

A motion was made by Mr. Lefkus and seconded by Chairman McCaffrey to approve the adopt Resolution No. 2015-17. The vote record follows.

Roll Call: AAA Worldwide Transportation – Resolution No. CTBOA-2015-17						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus			X			
Lefkus	X		X			
Lewis						X
Matsen			X			
McCaffrey		X	X			
Olsen			X			
Roberts						X
Stevens						X
Yager			X			

3) **PLUMERI, JOHN**

Block 16, Lot 51.08
 Application No. 2015-05
 C variance for garage

Resolution No. CTBOA-2015-18

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

A motion was made by Mr. Lefkus and seconded by Chairman McCaffrey to approve the adopt Resolution No. 2015-18. The vote record follows.

Roll Call: Plumeri – Resolution No. CTBOA-2015-18						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus					X	
Lefkus	X		X			
Lewis						X
Matsen			X			
McCaffrey		X	X			
Olsen			X			
Roberts						X
Stevens						X
Yager			X			

PUBLIC HEARINGS

1) **PODESTA**

Application No. BOA-2016-05
 Block 82.13, Lot 62 Applicant seeks variances to construct attached garage to residence.

This hearing was cancelled for this meeting due to deficient notice. The applicant will re-notice.

2) **RBC FIT, LLC D/B/A PLANET FITNESS**

Application No. BOA-2016-07
 Block 70, Lot 3
 Applicant seeks Waiver of Site Plan and “C(2)” Variances for Signage

Guliet D. Hirsh, Esq., attorney for the applicant described the application.

RBS Fit, LLC is a tenant with a zoning permit issued April 18, 2016 allowing it to use and occupy a portion of an existing shopping center building as a “Planet Fitness” health and fitness center. The building is situated on an approximately 8 acre lot designated on the Clinton Township tax maps as Block 70, Lot 3 and is located on State Route 31 in the C-1 Commercial zoning district. The property is owned by OSJ of Clinton NJ, LLC, and on which property a shopping center known as “Arrow Mill Plaza” is operated as a principally permitted retail sales and retail service establishment in accordance with Township ordinance section 165-156.A, and which shopping center is the subject of a

number of prior approvals, the most recent of which approvals were granted by the Clinton Township Board of Adjustment in 2014.

The applicant is seeking a Site Plan Waiver for the proposed replacement of a gable roof and proposed installation of façade signs at an existing shopping center. The proposed 29.5'-high gable roof would be located on the southwest front façade and would be taller than the existing 23.9'-high gable roof in this location, but slightly below the 29.6' height of the gable over the Ocean State Job Lots (OSJL) store entrance. A 198sf façade sign is proposed below the new gable roof. A second façade sign, with an estimated area of 171sf¹, is proposed on the building's the northwest side façade. The plans also depict new windows on the northwest side of the building, and a round "gear" shaped trim board around the center window, which appears to qualify as a façade sign.

The building is "J" shaped with two (2) of its sides (its two westerly sides) facing State Route 31, so both of these sides of the building constitute the front façade of the building. The larger southerly portion of the "j" shaped building has been leased by the owner to an entity related to it, which operates as the anchor tenant in the shopping center as a store known as "Ocean State Job Lot" ("OSJL").

The following individuals were sworn and testified during the hearing:

1. Randall Vey (applicant's managing member),
2. Frank Bourke (owner's manager of construction),
3. Timothy Olsen (vice president of operations for Forman Signs, applicant's sign expert), and
4. Andrea Malcolm, PP, AICP (Board's planning expert);

EXHIBITS

- A-1 Sheet A-0.0 of the architectural plans marked-up by Andrea Malcolm, PP to show the west and southwest facades of the building,
- A-2 Display board mounted with partial building elevation, photograph of existing OSJL sign on the building, and photograph of existing pylon sign on property,
- A-3 Two-page exhibit showing Planet Fitness signs permitted to be used by franchisees, one with purple letters and one with yellow letters, and one with linear lettering and one with stacked lettering,

HANDOUT PHOTO PACKETS

- PP-1 Photo packet #1, with photos of property taken from Route 31 North,
- PP-2 Photo packet #2, with photos of property taken from Route 31 South, and
- PP-3 Photo packet #3, with photos of no right turn sign at the second entrance to the property and reflecting that the Planet Fitness sign cannot be seen from the highway;

The proposed development consists of:

- increasing the height of the existing gable roof over the entry to the southerly portion of the smaller northerly portion of the building leased to the applicant;
- installing wall signage within the new and increased height of the wall area under the proposed new gable roof on the southerly side of the smaller northerly portion of the building;
- installing wall signage on the westerly side of the smaller northerly portion of the building. The height of the existing gable roof is about 23.9-feet at its peak, and the height of the proposed gable roof is about 29.5-feet at its peak, less than the 35-foot maximum height permitted in the C-1 zone.

The proposed signage requires the following “C” variances, which the applicant requested:

- 1) Variance from ordinance section 165-109.N(2)(a) which permits a maximum of two wall signs per principal building façade that faces a street to allow the following three wall signs:
 - a. the existing “OSJL” wall sign on the westerly front side of the larger southerly portion of the building,
 - b. the proposed “Planet Fitness” wall sign on the westerly front side of the smaller northerly portion of the building, and
 - c. a proposed Planet Fitness “gear” logo sign around a window proposed on the westerly front side of the smaller northerly portion of the building;
- 2) Variance from ordinance section 165-109.N(2)(b) which limits the total area of wall signage on a front façade of a principal building to no more than 10% of the area of the façade or 200 square feet, whichever is less, to allow the total aggregate size of wall signage on the front façade to be 399 square feet (138 sf for the existing “OSJL” wall sign, 171 sf for the proposed “Planet Fitness” wall sign,” and 90 sf for the proposed Planet Fitness “gear” logo sign). Because the proposed development does not meet any of the three criteria for a waiver of site plan review and approval established in ordinance section 165-36.1, the applicant amended the application to eliminate its request for the waiver and request in its place Minor Site Plan approval.

Due to discussion related to the “Gear” logo sign during the hearing, the applicant also withdrew its request to install that sign. This lessened the extent of the deviation related to the remaining signage variance.

Because the Planet Fitness center will be open 24 hours per day the applicant proposes that the two proposed “Planet Fitness” wall signs (one on the westerly front façade and the other on the southerly side façade) be illuminated. Based on the plans, testimony of the applicant’s sign expert, and documents submitted in support of the application, the Board finds that the proposed signage lighting will be low voltage LED internally illuminated, and will not be backlit or so-called “halo” lighting, let alone externally illuminated. If necessary to comply with the lighting ordinance regulations, the applicant shall be required to revise the proposed signage lighting to the satisfaction of the Board lighting expert.

Mr. Vey testified that he expected the side and front of the “gear” portion of the logo aspect of the proposed signage shall be black in color, the side of the letters on the proposed signage to be purple, and the front of the letters on the proposed signage to be yellow, so that the sign letters appear purple during the day and yellow when lit at night. The applicant’s managing member also requested flexibility to have the front and sides of the letters be purple and thus appear purple day and night. The Board indicated that purple and/or yellow lettering was aesthetically acceptable and that linear or stacked lettering was also aesthetically acceptable.

Mr. Bourke, of OSJL stated that OSJL has a number “Planet Fitness” in a number of their shopping centers. He discussed the colors of the signs.

Mr. Olsen of Forman Sign Co discussed the lighting details of the signs.

The Board took a brief recess at 8:48pm and the hearing resumed at 8:55pm.

BOARD FINDINGS AND CONCLUSIONS

The Board found that a C(1) Variance is not warranted for this application because any hardship would be self-created.

The Board finds and concludes that a C(2) variance is warranted to allow the proposed signage to allow the proposed signage to bring the total aggregate size of all wall signage on the front façade of the building to 309 square feet, exceeding the maximum size of 200 square feet, provided the imposed conditions are complied with.

RELIEF GRANTED

1) Grant Of “C(2)” Signage Variance *(Subject to conditions)*

A “C(2)” variance is granted which limits the maximum total aggregate size of wall signage on a building’s front façade to 200 square feet, to allow the aggregate wall signage on the western front façade of the building to total 309 square feet (138 sf for the “OSJL” sign and 171 sf for the proposed “Planet Fitness” sign).

2) Grant of Minor Site Plan Approval *(Subject to conditions)*

- a. increasing the height of the existing gable roof over the entry to the southerly portion of the smaller northerly portion of the building leased to the applicant
- b. installing “Planet Fitness” wall signage within the new and increased height of the wall area under the proposed new gable roof on the southerly side of the smaller northerly portion of the building
- c. installing “Planet Fitness” wall signage on the westerly side of the smaller northerly portion of the building.

A motion was made by Mr. Matsen and seconded by Mr. Filus to grant Minor Site Plan Approval and “C(2)” Variances for signage. The vote record follows.

Roll Call: RBC FIT d/b/a Planet Fitness						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Filus		X	X			
Lefkus			X			
Lewis						X
Matsen	X		X			
McCaffrey			X			
Olsen			X			
Roberts						X
Stevens						X
Yager			X			

A. DETERMINATION OF EXPIRATION DATE

1) ZINN REALTY, LLC

Block 74, Lots 16, 18 and 19

Application No. 2012-07

Resolution No. CTBOA-2013-16C

1460 Route 22, Lebanon

Applicant seeks a written resolution confirming that the expiration date of the outstanding approvals, including Final Site Plan approval, related “C” Variances and related exceptions have been granted by virtue of “tolling” in accordance with N.J.S.A. 40:55D-21 by reason of litigation.

Attorney Drill read letter dated September 7, 2016 (attached herewith) from James H. Knox, Esq., the Applicant’s attorney.

APPLICATION HISTORY

Zinn Realty obtained Subdivision Approval and Preliminary Site Plan Approval to allow it to construct a medical office building as memorialized in Resolution No. 2013-16C. Litigation was then commenced by Hensfoot Development Corp. against Zinn and the Board. Zinn and the Board prevailed at the Trial whereupon the plaintiff appealed to the Appellate Division. The Appellate Division decided the appeal in favor of Zinn and the Board on August 1, 2016. The litigation is now complete as Hensfoot did not seek review by the Supreme Court.

The litigation took approximately 920 days and the applicant is now seeking a written resolution confirming that the expiration date of the outstanding approvals, including Final Site Plan approval, related “C” Variances and related exceptions have been granted by virtue of “tolling” in accordance with N.J.S.A. 40:55D-21 by reason of litigation.

Attorney Drill confirmed with the Township Planner that there have since been no zoning changes affecting the property.

RELIEF GRANTED

- Modification of Condition #10 of Resolution No. 2013-16C to Re-Set the Time Within Which to Obtain Construction Permits. Condition #10 of Resolution No. 2013-16C was modified to re-set the time within which the applicant must obtain construction permits to run from August 21, 2016 rather than from October 21, 2013 so that the applicant must obtain the first construction permit by August 21, 2017 with conditions.
- Interpretation of Final Approval Protection Period and Addition of Condition #19 to Resolution No. 2013-16C. The Board hereby interprets the final approval protection period as running from August 21, 2016 rather than from October 21, 2013 and accordingly adds a condition to Resolution No. 2013-16C with conditions.

A motion was made by Mr. Filus and seconded by Mr. Matsen determining the expiration date of Final Site Plan and related approvals as referenced above. The vote record follows.

Roll Call: ZINN Realty Determination of Expiration Date of Final SP Block 74, Lots 16, 18, 19 memorialized in Resolution No. 2016-02						
Member	Motion	2nd	Yes	No	Recused	Absent
Filus	X		X			
Lefkus			X			
Lewis						X
Matsen		X	X			
McCaffrey					X	
Olsen			X			
Roberts						X
Stevens						X
Yager					X	

ADJOURNMENT

A motion was made by Mr. Lefkus and seconded by Mr. Filus to adjourn. The Board concurred unanimously and the meeting was adjourned at 9:31 pm.

Respectfully Submitted,

Denise Filardo

Planning and Zoning Board Secretary

These minutes were approved on **September 25, 2017**.