

**MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT**

[www.clintontwpnj.com](http://www.clintontwpnj.com)

**PUBLIC MEETING**

DATE: April 22, 2019

Chairman McCaffrey called the meeting to order at 7:07pm.

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**

Lewis, Matsen, McCaffrey, Pfeffer, Roberts, Stevens, Yager

**MEMBERS ABSENT**

Filus, McTiernan

**PROFESSIONALS/STAFF IN ATTENDANCE**

- 1) Jonathan E. Drill, Board Attorney
- 2) Denise Filardo, Board Secretary

**APPROVAL OF VOUCHERS**

A motion was made by Mr. McCaffrey and seconded by Ms. Stevens to approve the vouchers for payment. All were all in favor.

**MEETING MINUTES**

None.

## RESOLUTIONS

None.

## REQUEST FOR EXTENSION OF TIME

### 1) ZINN REALTY

Block 74, Lots 16, 18 and 19

1 Gray Rock Road

Application No. 2012-07

Applicant is requesting a further Modification of Condition No. 10 of Resolution No. 2013-16C to obtain an additional one-year Extension of Time within which to obtain Construction Permits, Commence and Complete Construction and Obtain Certificates of Occupancy to construct a new two (2) story office building with related site improvements which would include medical offices.

Board Attorney Drill discussed Board Member recusals from this application. Although Mr. McCaffrey and Mr. Matsen previously recused from the application, they are no longer in a recusal situation. Board Member Yager performed work on the applicant's Land Survey, which is the basis for the application, so he remains recused. Board Member Pfeffer has a conflict and must recuse as well.

Mr. Pfeffer and Mr. Yager recused and left the room.

Tara St. Angelo the attorney for the applicant reviewed the history of the application including Board Approvals and the associated lawsuit brought upon by a neighboring property owner which made its way up to the appellate division whereby the appellate division affirmed the Board's decision.

Attorney Drill explained that the Board re-established the life of the Final Site Plan Approval and related "C" Variances and Exceptions, the Final Site Plan Approval protection period, and the time the applicant had to obtain construction permits by virtue of the tolling of the applicable time periods pursuant to N.J.S.A. 40:55D-21 as a result of the Law Division appeal and the Appellate Division appeal challenging the underlying approvals, all as memorialized in Resolution No. 2016-02 with the date by which the applicant had to obtain construction permits being re-established as August 21, 2017 and the life of the Final Site Plan Approval and related "C" Variances and Exceptions as well as the Final Site Plan protection period being re-established as August 21, 2018.

The applicant thereafter applied for, and the Board granted, a first extension of the applicable time periods, extending the date by which the applicant had to obtain construction permits to August 21, 2018, and extending the date of the Final Site Plan Approval and related "C" Variances and Exceptions as well as the Final Site Plan protection period to August 21, 2019, as memorialized in Resolution No. 2017-04. The applicant thereafter applied for, and the Board granted, a second extension of the applicable time periods, extending the date by which the applicant had to obtain construction permits to August 21, 2019, and extending the Final Site Plan Approval and

related “C” Variances and Exceptions as well as the Final Site Plan protection to August 21, 2020, as memorialized in Resolution No. 2018-05.

Attorney Drill read from the letter from the applicant’s attorney dated April 17, 2019 for a third extension of the applicable time periods, seeking to extend the date by which the applicant has to obtain construction permits to August 21, 2020, and extending the life of the Final Site Plan Approval and related “C” Variances and Exceptions, as well as the Final Site Plan protection period, to August 21, 2021.

Attorney St. Angelo stated that the applicant has begun site work only, no construction permits have been pulled.

Randy Klein, MD (one of the applicant’s principals) was sworn and testified under oath and was subject to cross examination.

Dr. Klein testified that site work has been done thus far. A builder has been selected and there is a conflict with the builder and the lender regarding contingencies. Dr. Klein stated that they are now in the process of getting the builder and the lender together to resolve the conflict. Although it’s possible that we may resolve this conflict by August of 2019, we prefer to request an extension of time since we are approaching a time of year that many people vacation and we don’t want to find ourselves in a last-minute time constraint.

#### BOARD FINDINGS AND CONCLUSIONS

- The applicant has started the project by commencing site work. To not grant the extension to allow more time to obtain construction permits for the building after site work has been commenced is to no one’s benefit, not the applicant’s and not the Township’s.
- There have been no ordinance changes that impact the project or the ordinance regulations and requirements otherwise applicable to the project.
- If the extension to allow more time to obtain construction permits is not granted and the applicant does not obtain permits prior to August 21, 2019, the result will be that the applicant will re-apply for the underlying approvals and the Board believes that it is highly likely that it will grant those approvals based on its understanding of the project and the reasons the underlying approvals were granted in the first instance.
- Not granting the extensions is thus to no one’s benefit, not the applicant’s and not the Board’s, as all that would be accomplished is a waste of time and money to re-hear and re-grant the underlying approvals.
- These factors weigh in favor of granting the extension and that, significantly, there are no factors whatsoever that weigh against granting the extension.
- The Board concludes that it can and should grant the third request for extensions, subject to the applicant’s compliance with the Board imposed conditions.

**RELIEF GRANTED**

- Modification of Condition #10 of Resolution No. 2013-16C to extend the time within which the applicant must obtain construction permits from August 21, 2019 to August 21, 2020.
- Extension of the life of the Final Site Plan Approval and related “C” Variances and Exceptions and Extension of the Final Site Plan protection period to August 21, 2021.

A motion was made by Ms. Stevens and seconded by Mr. Roberts to grant the requested Extension of Time. The vote record follows.

<b>Roll Call: Zinn Realty Block 74, Lots 16, 18, 19 – Extension of Time</b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Not Eligible</b>	<b>Absent</b>
Filus						X
Lewis			X			
Matsen			X			
McCaffrey			X			
McTiernan (Alt. 2)						X
Pfeffer (Alt. 1)					Recused	
Roberts		X	X			
Stevens	X		X			X
Yager					Recused	

**PUBLIC HEARINGS**

- 1) DESAPIO REAL ESTATE DEVELOPMENT, LLC  
Block 70, Lot 12  
1734 Route 31 North  
Application No. BOA-2018-05

The applicant has submitted a bifurcated application seeking to obtain a “D(1)” Use Variance to permit Tire Repair and Minor Automobile Repairs. If the “D(1)” Variance is granted, the applicant will then apply for Preliminary and Final Site Plan Approval.

*This hearing was scheduled to be continued from March 25, 2019 however the applicant made a request that the Board carry the application until May 20, 2019 without the need for further notice.*

Board Attorney Drill read letter dated April 17, 2019 from the applicant’s attorney, Alan Y. Lowcher into the record requesting that the Board carry this application to May 20, 2019 without the need for further notice. The applicant also granted the Board an extension of time until July 31, 2019 to act on the application.

The Board decided to carry the application to May 20, 2019.

2) JAMES AND NANCY VALANZOLA

Block 16, Lot 57

274 Stanton Mountain Road

Application No. BOA-2019-03

The applicant is seeking Bulk and Height Variance relief to construct a detached garage as an accessory structure to the existing dwelling.

Chairman McCaffrey explained to the applicants that the Board will be looking for the following information:

- 1) A description of the project,
- 2) What relief you are seeking from Township ordinances and,
- 3) Justification for the relief in either or both of the following two (2) categories:
  - Physical Hardship, whereby the lot has an unusual shape and/or slope
  - Weighing of Public Benefits versus Detriments vs. Public Benefits

James Valanzola and Nancy Valanzola of 274 Stanton Mountain Road, the applicants and property owners were both sworn and testified under oath and were subject to cross examination.

Attorney Drill noted on the record that there were a lot of Notice issues with this application and he read and paraphrased the MLUL 40:55D-12a through Notice of Applications.

Although a Green Return Receipt is not required by the MLUL, most people do the return receipt just in case.

To have a valid white certified mail receipt, the following two things are needed on the receipt:

- 1) The address of the person(s) sending to, and
- 2) Either a hand stamp or computer stamp from the Post Office.

Notice is a statutory requirement and if notice of an application is defective, it would be illegal for the Board to hear the case.

The Notice issues with this case all stemmed from the Post Office neglecting to put the address on the white Certified mail receipts. A combination of the green Return receipts, photos of the undelivered envelopes still at the Post Office, a printed tracking summary from the USPS website and clarification that simple Variance applications do not need to notice utilities per MLUL 40:55D-12h all provided reasonable proof that the applicant mailed the notices.

However, Attorney Drill noted that if the Board grants an approval and if someone challenges the Board's decision, he is advising the Board they will not go to court to defend, it would be the applicant's responsibility to either defend the case or redo the application.

Mr. Valanzola's testimony included and was not limited to the following:

- The property is an old (created prior to establishment of the RC Zone) and unusual site and the house is situated on the Northeast corner of the property and the land

slopes downward from the Northeast corner to the Southeast corner. The driveway begins at the Southwest corner and rises up to the side of the house.

- The 32 foot by 30 foot (960sf) garage is proposed in a location which is closer to the road than the house. This is a practical location as it is relatively flat and is just off of the existing driveway.
- The height of the proposed garage is approximately 18 feet 11 inches and will not exceed 20 feet.
- Based on the narrow shape and steep slopes of the property we feel we satisfy the hardship criteria.
- The garage doors will face north and an apron will be extended from driveway to garage.
- The existing shed can be moved from its current non-compliant location.

The Board decided to discuss the two requested Variances separately.

All Board Members in attendance are in favor of granting this “C(1) Variance.

Mr. Valanzola’s testimony with regard to the height Variance included and was not limited to the following:

- The purpose of 20-foot maximum height of the proposed two-car garage is to accommodate an automobile lift in one of the two proposed bays.
- The lift would be for personal use only by himself and his son as they share an automobile repair hobby.
- The garage would also be utilized for a wood-working hobby.

The applicant was not able to provide the Board with any positive criteria, demonstrating public good to the community.

The Board conducted a Straw Poll specific to granting the Height Variance which revealed:

- Six (6) of the seven (7) Board Members in attendance were not in support of the height Variance and;
- One Board Member indicated they may possibly be in support.

Based on the results of the Straw Poll, the applicant withdrew their request for the Height Variance and agreed that if the Board grants the bulk Variance, they will comply with the maximum height of sixteen (16) feet as permitted by Township ordinance.

#### BOARD FINDINGS AND CONCLUSIONS AS TO THE BULK VARIANCE

- The proposed garage is located in the front yard of the property with a setback of 135 feet from the road where the existing dwelling has a minimum setback of 230 feet from the road. While the garage complies with the minimum RC Zone front yard setback distance requirement, Ordinance section 165-97B prohibits locating an accessory building closer to the street than the principal building;
- The Board found that the shape and topographic conditions uniquely affect this property and as such, most of the property is not visible from the road;

- The strict application of the bulk regulations at issue in this particular case will result in exceptional and undue hardship in terms of impacting the extent to which the property may be used and that a “C(1)” Variance to allow construction of the garage in the proposed location would relieve the hardship;
- The proposed garage is not out of character with the neighborhood;
- The proposed location is much further back from the road than the RC Zone setback requirement;
- The “C(1)” Variance 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 provided that the Board imposed conditions are complied with.

**RELIEF GRANTED**

- Grant of “C(1)” Variance to allow the proposed garage to be constructed closer to the road than the principal dwelling provided the applicant complies with the Board imposed conditions. The proposed garage is located in the front yard of the property with a setback of 135 feet from the road where the existing dwelling has a minimum setback of 230 feet from the road. While the garage complies with the minimum RC Zone front yard setback distance requirement, Ordinance section 165-97B prohibits locating an accessory building closer to the street than the principal building.

A motion was made by Mr. Pfeffer and seconded by Ms. Stevens to grant the front yard bulk Variance. The vote record follows.

<b>Roll Call: Valanzola - Block 16, Lot 57 “C(1)” Variance</b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Not Eligible</b>	<b>Absent</b>
Filus						X
Lewis			X			
Matsen			X			
McCaffrey			X			
McTiernan (Alt. 2)						X
Pfeffer (Alt. 1)	X		X			
Roberts			X			
Stevens		X	X			
Yager			X			

**NOMINATIONS AND ELECTION FOR VICE CHAIR PRO TEMP**

A motion was made by Mr. Roberts and seconded by Mr. Matsen to nominate Ms. Stevens as Board Vice Chair Pro Temp. There were no other nominations and all members were in favor.

**ADJOURNMENT**

A motion was made by Ms. Stevens and seconded by Mr. Roberts. All members were in favor and the meeting was adjourned at 8:45pm.

Respectfully Submitted,

*Denise Filardo*

Planning and Zoning Board Secretary

These minutes were approved on May 20, 2019.