

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT PUBLIC MEETING

FEBRUARY 26, 2001

PRESENT: Ira Breines; Mark Ciarlariello; Antje Doyle; John Matsen; Virginia Monsul-Barnes(late); Frank Senske; Sharon Stevens(late); William Honachefsky, Jr.; Jonathan E. Drill, Attorney; Melanie H. Reese, Engineer; Michael P. Bolan, Planner, Peter Fernandez, Landscape Architect; Alice E. Oldford, Secretary.

ABSENT: Joe Arancio

CALL TO ORDER

Mr. Matsen called the meeting to order at 7:30 p.m.

PUBLIC NOTICE

Mr. Matsen said this meeting is held in conformance with the Open Public Meeting Act.

MINUTES

The minutes from the meeting of 1/2/01 were approved.

PUBLIC HEARINGS

1. ROBERT and CAROLYN HELLER, Block 51, Lot 5, 28 Maple Ave. (R-5)

Applicant proposes to build a 1484 square foot home in the Village of Annandale and therefore seeks a C-1 variance for relief from the maximum building coverage in the R-5 zone.

In addition, applicant proposes to alter the location of the existing driveway and seeks relief from the requirement for a minimum distance of 10 feet from the driveway and the adjacent property line.

Having paid the requisite application and escrow fees and jurisdiction having been established, Howard Apgar, Esq., introduced himself on behalf of the applicant.

Mr. Apgar said he would call witnesses, Carolyn Neighbor, Carolyn Heller, and Robert Heller who were sworn.

William Honachefsky, Jr., recused himself.

Mr. Apgar said this is a vacant lot in Annandale with an existing stone garage. Applicant seeks to build a single-family home for their residence. The home is proposed to be 1484 square foot.

Mr. Apgar called Mrs. Neighbor.

Marianne D'Andrade, owner of 32 Maple Avenue (Lot 6, Block 51), the property adjacent to the applicant's property, asked about Carolyn Neighbor's qualifications. Mr. Drill explained the process, the Board having experts and the applicant providing witnesses to make its case. Applicant must qualify its expert witnesses. Ms. Neighbor is a professional planner with Schoor, DePalma. The Board accepted her credentials.

Mr. Apgar called Mrs. Neighbor. She introduced photos, which were marked A-1 through A-4. Mrs. Neighbor said this is one of the few vacant lots although there is a 2-bay stone garage on the property. She said the lot is conforming. The proposal does not comply with the maximum building coverage because of the existing garage. According to Mrs. Neighbor, the lot is actually larger than many of the lots in the Village. Architectural plans were marked as A-5. Applicant proposes to build a home to retire. The proposal is to live on the first level and reserve the second level for guests. The building is consistent with the neighborhood, which Ms. Neighbor described.

Mrs. Neighbor said applicant requests a C2 variance for building coverage. Further, she contended the benefits outweigh the detriments. Mrs. Neighbor explained that the garage has been used for storage historically. She noted that constructing the house maintains the residential character and makes the garage properly an accessory structure. The garage is a stone building, which has been well maintained.

Mrs. Neighbor testified that reducing the footprint to conform to the ordinance would mandate a two-story house, which would be incompatible with the rest of the neighborhood. Public sewer and water serve the property. Ms. Neighbor contends there is no detriment, and the plan eliminates the potential for a non-conforming use related to the garage. Further, there is no harm to the zone plan. She said it is consistent and appropriate for the location.

Applicant requested permission to violate the driveway ordinance by constructing the driveway less than 10' from the property line. Mrs. Neighbor cited other driveways in the neighborhood that are less than 10' from the property line. Mrs. Neighbor testified that there is no detriment. The neighbor's property is impacted on its garage and driveway side.

The driveway ordinance is not a land use ordinance. Mr. Drill said he did not believe this is within the Board's jurisdiction. Ordinance 675-98 of Section 13.2 of the Township Code

is the “driveway ordinance.” Section 13.2 (4) d references 10’ minimum to the property line. Mr. Drill said this should be addressed by the Council for approval.

Jon Drill contended that item 2 is not a matter of zoning and the zoning officer’s letter of denial should be reversed on that point. Mrs. Neighbor said the zoning officer’s calculation of a 508 square foot difference is incorrect because the deck should not be included.

Mrs. Neighbor disclosed that the use of the garage would be limited to residential purposes.

Mr. Heller said the house would be vinyl sided.

Mrs. D’Andrade asked about the architectural plans. Further, she asked for clarification of the variance requests, which Ms. Neighbor explained. Mrs. D’Andrade further questioned the location of the driveway.

Ms. Reese said 13.2 applies only because applicant is proposing an alteration to the driveway, which would require a permit.

Marianne D’Andrade described the history of her ownership of the adjacent property. She noted that she understood that the ordinance required 10’ from the driveway to the property line. She pointed out that she found errors on the map based upon her own measurement. She said the location of her driveway had been erroneously depicted. Further, Ms. D’Andrade said the proposed driveway would be within 5’ of her property. Ms. D’Andrade introduced photos marked O-1 – O-4.

Mrs. Heller explained there are 2 sets of stakes. Mrs. D’Andrade said she believed the 10’ setback should be maintained from the driveway to the property line. Mrs. D’Andrade confirmed that she seeks privacy for her property. Further, she asked about being heard on the Council agenda.

No one else appearing to speak in favor or against the application, the public hearing was closed.

The Board questioned why the house could not be reduced in size to make the driveway conforming.

Motion was made by Frank Senske and seconded by Mark Ciarlariello to approve this application with conditions.

Members in favor: Mark Ciarlariello, Antje Doyle, John Matsen, Virginia Monsul-Barnes, Frank Senske, Sharon Stevens

Members opposed: Ira Breines

2. **HAROLD and CHERYL NAGEL**, Block 82.07, Lot 28, 6 Dartmouth Rd. (R-3)

Applicant seeks a C-1 variance for rear yard setback. The existing home, including the chimney, air conditioner and deck are located 34' from the rear line whereas 50' are required.

Having paid the requisite application and escrow fees and jurisdiction having been established, Mr. and Mrs. Nagel were called and sworn and asked to present their case.

Mr. Nagel said they purchased the home in 1983 without the deck. The applicants built the deck in 1984. At the time of construction the setback was 50', and currently the required setback is 40'. The Nagels obtained a construction permit, marked A-1. The deck was constructed in conformance with the building permit.

Attorney Drill suggested the application be converted to an interpretation that the deck was built in compliance with the building permit and the existing dwelling and all of its components may remain in their existing locations on the property.

Motion was made by Ira Breines and seconded by Antje Doyle to approve.
Members in favor: Frank Senske, Ira Breines, Mark Ciarlariello, Antje Doyle, Bill Honachefsky, Jr., Virginia Monsul-Barnes, John Matsen

3. **CLINTON HONDA**, Block 32, Lots 3 and 2 (C-2)

Applicant seeks D2 use variances to permit the expansion of a non-conforming, pre-existing use on the existing lot and D1 use variance for Lot 2 on which currently exists a house, which is to be demolished, and a garage. In addition, applicant seeks preliminary and final site plan approval to expand an automobile dealership.

Applicant further seeks a C variance to permit the pre-existing garage to remain in its current location, which garage has an existing front yard setback of 99.5' whereas 101' are required and an existing side yard setback of 1.9' whereas 75' are required.

Having paid the requisite application and escrow fees and jurisdiction having been established, George Dilts, Esq., introduced himself on behalf of the applicant.

Mr. Dilts said he would call Jeff Osborne, Manager of the Dealership, and Elizabeth McKenzie, Traffic Engineer. The witnesses were duly sworn.

Applicant presented a colored rendering of page 1 of the maps. Applicant explained it is proposed that the covered walkway be enclosed to enlarge the showroom. Expansion of the parking and inventory is also proposed. This is a pre-existing, non-conforming use per Ordinance # 739-01.

Robert Alexander, Esq., representing neighboring property owners, asked about completeness. Mr. Drill explained that this application is administratively complete. Re-submissions by the applicant had been made, and the application has been deemed complete. Mr. Alexander said he disagreed with this status of the application.

Mr. Alexander asked that the Board consider checklist item #30 relating to the neighboring (Block 32, Lot 1) property's well and septic.

Mr. Dilts confirmed applicant's awareness of its obligation to preserve the integrity of the well and septic of the Croots. Mr. Alexander noted applicant should locate the utilities according to item #30. The Board concurred that the application is complete.

Since Mr. Alexander represents Dr. Monsul-Barnes, she is recusing herself. Mr. Alexander said he is withdrawing from the matter after this evening.

Mr. Dilts called planner, Elizabeth McKenzie, P.P., 9 Main Street, Flemington, and Jeffrey Osborne, president of Clinton Honda. Outline of McKenzie's testimony was marked A-1.

The Board accepted Ms. McKenzie's credentials. Existing Land Use Rendered Map was marked Exhibit A-2. Ms. McKenzie described the map. In addition, she introduced a rendered site plan, marked as Exhibit A-3.

Ms. McKenzie testified that the property is 5+ acres. Applicant proposes merging Lots 2 and 3 and the demolition of the dwelling on Lot 2. Ms. McKenzie described the proposed expansions, i.e., expansion of showroom + additional parking and storage. The purpose of the expansion is to meet the requirements of Honda to up-grade the facility.

The property is located in the C-2 zone. She further explained that the new Ordinance #739-01 eliminates car dealerships. She noted this was meant to address a variety of uses along Rt. 22, rather than encouraging a proliferation of car dealerships. Therefore, this property is pre-existing, non-conforming.

She referenced the *Burbridge v. Mine Hill* case, which holds that new uses require additional proofs. She contended existing uses have a lesser burden of proof.

The original design of the plan was meant to comply with most of the bulk requirements. Variances stem from allowing the garage to remain on Lot 2, which owner of Lot 1 desired to remain as a buffer. Therefore, variances are required from the setbacks. Removing the garage would eliminate the variances and waiver requests.

The residential use of Lot 2 is currently non-conforming in the zone. This use would be eliminated with the merger. The dealership complies with the bulk requirements of the C- 2 zone.

Ms. McKenzie said she did not believe a modest up-grade would be contrary to the intent of the ordinance. She noted that Lot 2 is not suited to any commercial purpose. Additionally, widening of Bray's Hill Road would be very detrimental to the residential use.

Ms. McKenzie noted this is a physical rather than functional expansion to benefit the public who uses it. Ms. McKenzie said it would eliminate a non-conforming use and structure on Lot 2. She cited the purposes promoted: appropriate use for the zone plan; promoting population densities – eliminating an undersized lot and residential use; variety of uses; desirable visual environment; encourage efficient use of the land Ms. McKenzie said this represented an up-grade of an existing facility. There would be no creation of new uses. Further, there would be no detriment to the zone plan.

Ms. McKenzie said she would prefer demolition of the garage and substitution of other buffering.

Asked how many more cars would be located on the lot, Ms. McKenzie said the question would be addressed to management in the future.

Mr. Bolan asked about applicant's position on variances. Ms. McKenzie contended this is a D2, expansion of a non-conforming use. She explained the merger of the lots make it an expansion. Mr. Drill asked Mr. Dilts to research case law on the issue. The legal issue is whether Medici applies for a D1 variance. As to D2 applicability, it was noted that the Burbridge case Supreme Court decision came subsequent to Medici.

Bob Alexander asked whether applicant's non-conforming property would be required to purchase additional land. Mrs. McKenzie said the lot is conforming in the C-2 zone regardless of the use.

Question was raised where the parking would be located if the garage were to be eliminated. Applicant's planner said the parking would be moved.

This hearing was continued to March 26.

CLOSED SESSION

Closed session resolutions for APM and Clinton Realty litigation were moved by Frank Senske and seconded by Mark Ciarlariello.

Members in favor: Frank Senske, Ira Breines, Mark Ciarlariello, Antje Doyle, Sharon Stevens, Virginia Monsul-Barnes, John Matsen

Members opposed: None

Abstain: Bill Honachefsky

The Board went into closed session at 10:45 p.m.

RETURN TO OPEN SESSION

Motion was made to return to open session by Ira Breines and seconded by Virginia Monsul-Barnes

Members in favor: Frank Senske, Ira Breines, Mark Ciarlariello, Antje Doyle, Sharon Stevens, Virginia Monsul-Barnes, John Matsen

Members opposed: None

Abstain: Bill Honachefsky

The Board returned to public session at 11 p.m.

Mr. Drill requested adoption of a resolution staying the APM resolution.

Motion was made by John Matsen and seconded by Frank Senske.

Members in favor: Frank Senske, Ira Breines, Mark Ciarlariello, Antje Doyle, Sharon Stevens, Virginia Monsul-Barnes, John Matsen

Members opposed: None

Abstain: Bill Honachefsky

OLD BUSINESS

Vouchers approved

NEW BUSINESS

1. *Resolution* to hire Peter Fernandez of Carter Van Dyke Associates as Board Landscape Architect consultant was introduced.
Members concurred unanimously.
2. *Revisions of Board Rules and Regulations for 2001*. According to Frank Senske the Committee has a draft of the rules for distribution and comment. The table of contents will be revised.
3. *Annual report for 2000*. The Chairman has prepared a report for the Board's consideration.
Motion was made by Mark Ciarlariello and seconded by Antje Doyle to adopt and distribute the Annual Report for 2000.

4. *Educational Opportunities.*

- a. Hunterdon County Planning Board is sponsoring a program on Saturday morning, 3/17, 8:30 a.m. – 12 noon.
- b. NJ Planning Officials is sponsoring a program on Thursday evening, 6:30 – 9:00 p.m. at Merck.

Contact Alice to take advantage of either of these opportunities.

ADJOURNMENT

The meeting was adjourned at 11:15 p.m.

These minutes were approved March 26, 2001.

Alice Oldford
Secretary to the Board