

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

May 29, 2007

PRESENT: John Matsen, Sharon Stevens, Dan Fennell, Peter Geiger, Tom McCaffrey, Wayne Filus, Bill Honachefsky, Jr., Ira Breines and Dave Roberts.

PROFESSIONALS: Jon Drill, Attorney, Cathleen Marcelli, Engineer, Mike Bolan, Planner and Rebecca D'Alleinne, Administrator.

ABSENT: None.

CALL TO ORDER

Chairman Matsen called the meeting to order at 7:35PM.

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 on January 18, 2007 and the notice of and agenda for this meeting was posted on the bulletin boards in the vestibule of the Municipal Building and outside the Planning and Zoning Office on the 2<sup>nd</sup> Floor of the building and faxed to the Hunterdon County Democrat, the Express Times, the Courier News, the Hunterdon Review, the Star Ledger and the North County Branch of the Hunterdon County Library the Friday prior to the meeting.

MINUTES

Bill Honachefsky moved and Sharon Stevens seconded a motion to approve the minutes of April 23, 2007. The Board concurred unanimously.

RESOLUTIONS

**ACORN MONTESSORI, Block 24, Lot 6**

Resolution #2007-04, Application #2006-04

Jon Drill discussed the resolution. Sharon Stevens moved and Tom McCaffrey seconded a motion to approve the resolution as written. Members in favor: Matsen, Stevens, Fennell, McCaffrey, Geiger, Roberts and Filus.

**HONDA, Block 32, Lot 1**

Resolution #2007-05, Application #2007-02

Jon Drill discussed the changes that had been made concerning the number of signs and the reduction in the square footage of the signage. Tom McCaffrey moved and Sharon Stevens seconded a motion to approve the resolution as discussed. Members in favor: Matsen, Stevens, Fennell McCaffrey, Geiger, Roberts and Filus.

**JULIAN, Block 80, Lot 21**

Resolution #2007-06, Application #2007-01

Dave Roberts moved and Dan Fennell seconded a motion to approve the resolution as written. Members in favor: Matsen, Stevens, Fennell McCaffrey, Geiger, Roberts and Filus.

**PUBLIC HEARINGS**

**JULIAN, Block 80, Lot 21**

Application #2007-01

Thomas and Deborah Julian introduced themselves and were sworn, along with the Board Engineer, Cathy Marcelli. Mr. Julian discussed the proposal, which would include a family room addition. He noted that there was a large oak tree that they wished to save and that the lot had an odd configuration. Exhibit A-1 (Eight Color Photographs) was marked into evidence. He pointed out the location of the tree and discussed the rationale for pushing the addition back away from the front of the house. Color Computer-generated Exhibits A-2(front), A-3 (side), A-4 (interior) and A-5(interior) were marked into evidence. Chairman Matsen noted that the addition would extend 9 feet into the rear yard setback. Mr. Julian indicated that there were trees and a fence in the back yard. He said that he wanted the house to look as if it would fit in to the neighborhood. Mrs. Julian discussed the angle of the rear property line, which caused the building envelope to be an unusual shape. Tom McCaffrey asked about moving the addition forward and protecting the tree. Mr. Julian noted that the porch would have footings, not a slab. He discussed the windows and the loss of light and expressed the opinion it was aesthetically pleasing. Chairman Matsen discussed the size and age of the tree.

The public hearing was closed. Dave Roberts commented that the proposal would be pleasing and noted that the house is already out of the envelope. He noted that the neighbor on that side is far away. Peter Geiger commented that it was good to try to save the tree and that the design was in keeping with the neighborhood. Tom McCaffrey indicated that he had nothing to add. Sharon Stevens discussed the windows. Cathy Marcelli discussed a "c2" variance and that it makes sense to do it that way. Jon Drill discussed the negative criteria. Bill Honachefsky commented that the addition sounds like an attractive proposal. Dan Fennell discussed which variance it should be. Ira Breines stated that it was a positive application and that he was happy to save the tree. Wayne Filus stated that he was glad that they had tried several alternative solutions. Sharon Stevens moved and Bill Honachefsky seconded a motion to approve the

application as discussed. Members in favor: Matsen, Stevens, Breines, McCaffrey, Honachefsky, and Geiger. Members opposed: Fennell. Chairman Matsen called a recess at 8:18PM.

The meeting was called to order at 8:28PM.

**RENDA, Block 3, Lot 28**

Application #2006-10

Lloyd Tubman introduced herself on behalf of the applicant, and noted that the Board had asked to hear testimony from the planner, Peter Steck, who had been previously sworn. Ms. Tubman indicated that an advance copy of his report had been supplied. Mr. Steck provided his credentials, which were accepted by the Board. Exhibit A-18 (Enlargement of Land Use Map) was marked into evidence. Mr. Steck's report was dated May 7, 2007. Exhibit A-19 (Reduced Version of A-18 and Color Aerial of Lot and Surrounding Properties) and Exhibit A-20 (Six Color Photos) were marked into evidence. Mr. Steck described the property and discussed the existing conditions. He described the proposed building and the architectural design. The height limit was discussed. Mr. Steck reported that the FAR would be 28%. Parking and signage was discussed. He described the NY Life campus and the surrounding properties, including the KB Toys building. He pointed out that an adjoining lot in Lebanon Borough would be a four-story Mount Laurel project and was under construction.

Mr. Steck discussed the zoning of the area and noted that self storage was not a use listed in the ordinance, necessitating a "d" variance. He discussed the variance needed for a height of 38 feet, and signage which exceeded the size limit. He discussed the proposed parking, which included a large reduction from the requirement of 73 spaces to 12. The amount of impervious coverage was discussed. Mr. Steck expressed the opinion that there were special reasons for granting the variance, noting that the property was particularly suited for the proposed use. He expressed the opinion that self storage was a unique use because of the kind of users, who were not businesses and that the storage units would be small. Mr. Steck commented that the building would be a low traffic generator, noting that it was unlike a warehouse because it had very few employees. He stated that it would have normal hours of operation during the daytime. Mr. Steck said that even if the use is not listed in the ordinance, that does not mean that it should be considered as automatically excluded. He noted that the use doesn't fit as a warehouse or a business category. He commented that the high burden of proof may not apply as it could be considered a new use. He expressed the opinion that the proposal met the statutory proofs.

As a special reason in favor of the project, Mr. Steck stated that it would encourage the most appropriate use of the land and expressed the opinion that the property is not well suited to residential use. He commented that the adjoining Lebanon Borough use would not be single family units. He indicated that the property was close to an interstate interchange and that businesses would use the facility as well as residential users. He noted that the architectural rendering displays residential features. Mr. Steck stated that the project would promote compatibility with adjoining towns and that it was a compromise use blending dissimilar zoning. He discussed the proportional impact of the traffic. He remarked that the proposed signage would promote safety. Mr.

Steck observed that it would be a hardship to require parking that would not be used and that would create more stormwater runoff. He also expressed the opinion that it would be a hardship to require curbing, and that it would be beneficial for the water to be able to run off and recharge.

Mr. Steck discussed the negative criteria. He stated that the architecture would be compatible with the area as the existing architecture was very different already. He stated that the proposal would have the lightest land use impact. Mr. Steck discussed the recent zoning change and pointed out the small area of the RR4 zone. He noted that the development was situated far away from environmentally sensitive areas.

Sharon Stevens asked how the recommendation for 12 parking spaces had been reached. The rationale was explained. He discussed the possibility that the size of the units could change. Mr. Steck commented that the storage facility could serve as a resource for the storage of boats and antique cars. It was noted that the parking area by the office is different from the loading areas. Ted Rica referred to Exhibit A-9 and indicated that there were 450 units proposed. Ira Breines asked how many cars a day would be expected on the site. It was noted that the parking spaces by the office would not be used by established customers and that there would be approximately 2-3 a day. It was pointed out on Exhibit A-11 that three vehicles could park in the basement and 8 in the cutout area for loading or unloading. There would be 6 exterior doors on the basement level in the rear, and 15 on the side. It was explained that 425 of the units must be accessed from the interior. Mr. Rica noted that each unit was 100 sq ft. Ira Breines discussed the parking on a competitor's facilities.

Tom McCaffrey asked about the land use impact as compared to the size of the facility. Mr. Steck discussed the fact that the building interiors are flexible. He noted that traffic generation and effluent would be low. Tom McCaffrey asked for a comparison of a warehouse versus a permitted use and the resulting impact. Mr. Steck commented that the current zoning of the property is inappropriate. Jon Drill asked whether he was suggesting that it was a valid basis for the grant of a use variance. Mr. Steck responded that the current zoning does not permit reasonable use of the property. He discussed hardship and commented that the property was located in a pocket of zoning, but that it could not be considered as a basis for granting a variance. Tom McCaffrey commented that the Board should compare the proposed use of the property versus the permitted use. He asked for the disturbed area versus the amount for a house. It was noted that it would be 17 times larger than a house. Mr. Steck said that a house could have some runoff, and would have no substantial impact. It was noted that there were no residential lighting standards, but that there were standards for commercial uses. There will be more light and traffic from this business than a single family house. Mr. McCaffrey asked about the benefit for 2 ½ versus 3 stories, and Mr. Steck stated that he was making the point that it was a efficient use of resources, which would benefit the users and the applicant and that an efficient design of the building would make it more competitive.

Chairman Matsen asked about whether the strict application of the "Medici" standard, which involved an enhanced burden of proof, might not be applicable. Mr. Steck explained that a governing body may determine not to amend an ordinance, even if variances have been granted by the zoning board on numerous occasions. If a new use arises, he indicated that one couldn't conclude that is excluded. Jon Drill discussed the

case. Mr. Steck stated that self storage was a personal service and that the proposal was not a warehouse. Mr. Drill discussed the Medici case further, commenting that the enhanced proofs must be dependent on the circumstances of each case. Peter Steck responded that the full weight of the "Medici" decision, may not apply in with certain types of circumstances. He discussed situations in which there were changed circumstances, and expressed the opinion that an application could be approved without substantial detriment to the zone plan. He noted that the zoning changes in Lebanon Borough were significant. Jon Drill asked whether he agreed that the burden was on his client to produce the proofs. He offered the legal opinion that Mr. Steck's second point was incorrect, saying that the burden is on the applicant to reconcile the proposed use variance with the ordinance's omission of the use from the zone and that enhanced standards apply. Peter Steck stated that he felt that the applicant had met the standard under "Medici", and expressed the opinion that the proofs come to the same point. He made the point that the presumption of a new use doesn't mean that it is necessarily prohibited. Michael Bolan asked about the conclusion in his report.

Chairman Matsen asked whether the change in the Lebanon Borough zoning makes the RR4 zone less viable. Mr. Steck stated that single family homes needed open space and were generally lower buildings. He noted the fact that there would be a large four story building adjoining the property with additional traffic, which would make it less suitable for a single family residence. He expressed the opinion that the land is more suited to business, due to accessibility to the interstate. Chairman Matsen asked about the impact of the change in zoning, and wondered how serious an omission was it that it had not been addressed in the 2006 Master Plan. Mr. Steck stated that the building in Lebanon would be very visible, that the vegetation would be removed on the Lebanon site and that the construction had already started. Michael Bolan commented that when the latest Master Plan was adopted, it was not known that that the Lebanon Borough project would be a multifamily unit. Ira Breines asked about the impact on the neighbors. Sharon Stevens commented on the suitability of the property, noting that the clients would be primarily residential. Mr. Steck indicated that the facility would have a range of users, and would serve both businesses and residential customers.

Chairman Matsen commented on the impact of the proposal on the existing home. Mr. Steck stated that the best use of the property is not for single family residential, noting that when it would be sold in the future that it would probably not be for residential use. He commented that from the point of view of the homeowner, it would be better to have another residence, as opposed to a self storage facility. Jon Drill discussed the planner's report, noting that there was no indication of need for the facility. Mr. Steck responded that the applicant had testified that there was need, and Mr. Drill wondered whether demand was necessary to prove the case. Mr. Steck stated that the applicant has conducted studies and believed that there was a need for the use. Jon Drill asked if Board were to find that there was no demand, could he prove his case. Peter Steck said that, because it is a small isolated zone which allows single family use, he didn't think a test of the negative criteria will produce more runoff traffic or noise. Tom McCaffrey asked about the zoning change in Lebanon Borough. Mr. Steck replied that it would temporarily fix the use of the zone and that, over time something else would go there and that it would not survive as residential area. Mr. Steck stated that the most

appropriate use of the land should be encouraged. Chairman Matsen called a recess at 10:39PM.

The meeting was called to order at 10:44PM.

Steve Gruenberg, NY Life, asked about the permitted uses in the zone. He discussed permitted agricultural uses and the intent of the governing body. He noted that the proposal was a business use. Mr. Steck commented on the uses in Lebanon Borough and discussed environmental concerns, noting that the use would be located away from the sensitive land and that the proposal was adhering to the front yard setback. Mr. Gruenberg discussed the visual impact of the mass of the building. Special reasons were discussed. Mr. Gruenberg asked whether need should be demonstrated, and Mr. Steck responded that the applicant had testified to that fact. Mr. Gruenberg asked if there was no economic inutility, and the applicant had not proven a need for the facility, are there any other reasons sufficient enough to permit the granting of a "d1" variance. Mr. Steck replied no. Mr. Gruenberg discussed the scenic corridor on Cokesbury Road, noting that further north was more scenic. He expressed the opinion that the warehouse would be a dominant feature. The time within which the Board must act was extended to August 27, 2007, and the hearing was continued to August 23, 2007, without need for further notice.

#### NEW BUSINESS

##### 1. Vouchers

John Matsen moved and Sharon Stevens seconded a motion to approve the vouchers for payment. The Board concurred unanimously.

#### ADJOURNMENT

Bill Honachefsky moved and Dan Fennell seconded a motion to adjourn, and the motion passed unanimously. The meeting was adjourned at 11:16PM.

These minutes were approved on June 25, 2007.

Rebecca E. D'Alleinne, Administrator