



TOWN OF CLINTON

INCORPORATED APRIL 5, 1865

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Land Use Board Minutes

Minutes of the Town of Clinton Land Use Board meeting held on September 1, 2015 at 7:00pm in the Municipal Building at 43 Leigh Street Clinton, New Jersey 08809

Secretary Witt called the meeting to order at 7:00pm and read the “Administrative Statement” and the “Statement of Adequate Notice”:

“Adequate notice of this meeting has been provided indicating the time and place of the meeting with the proposed agenda, which notice was posted, made available to the newspapers and filed with the clerk of the Town of Clinton in accordance with Section 3(d) of the Public Laws of 1975”.

“Meetings are held on the first Tuesday of each month. Applications must be filed at least 21 days prior to the meeting date. In order to ensure that all applications receive complete and thorough consideration of the board, all meetings will adjourn no later than 10:00pm with all items not concluded to be carried over to next month’s agenda”.

Attorney William Caldwell, Mr. Robert Clerico were present.

ROLL CALL:

Present: Blanco, Mayor Kovach, Carberry, Feldmann, Hetzel, Schaumburg, Smith

Absent: Sailer, Maher, Mellick, Perez

A Motion was made by Mr. Carberry, seconded by Mr. Hetzel, to nominate Mr. Smith as temporary Chairman to run tonight’s meeting:

All Ayes. Motion Carried

Mr. Smith proceeded to run the meeting.

Approval of Minutes:

A Motion was made by Mr. Hetzel, seconded by Mr. Carberry, to approve the July 7, 2015 minutes:

All Ayes. Motion Carried

Abstain: Mayor Kovach, Carberry, Blanco

Waiver from Site Plan request for Block 10 Lot 14- Thomas Peake:

Mr. Thomas Peake and Michelle Castro were present. Mr. Peake advised the board he is looking to open up a children’s hair salon at 16 Leigh Street in tenant space 1A, which was formally a frame shop. The Salon will have 7 stations and two entrances with the main entrance facing the municipal parking lot. The salon will be open Tuesday through Sunday and closed on Mondays, hours of operation will vary, the earliest opening will be at 9:00am and the latest closing will be 7:00pm. The employees will range from 2-3 during the week to 6 on the weekends, Mr. Peake testified that he will encourage his employees to park in the Municipal lot at 43 Leigh Street or the Water Street lot.

A Motion was made by Mr. Hetzel, seconded by Mr. Carberry, to approve the change of use and the waiver of site plan conditioned upon:

Applicant to receive all necessary change of use permits and approvals through the construction office and the approval is subject to standards conditions relating to the application including but necessarily

limited to sign permit approvals, Board of Health approvals, payment of all outstanding fees, escrow and permits and any other outside agency approvals that may be necessary.

All Ayes. Motion passed.

Resolution approval for Use Variance, Preliminary & Final Site Plan- 82 West Clinton LLC- Block 6 Lot 1.01:

A Motion was made by Mr. Hetzel, seconded by Mr. Blanco, to approve the Resolution for 82 West Clinton LLC:

Ayes: Blanco, Hetzel, Smith

Nays:

All Ayes Motion Passed.

Resolution approval for Minor Site Plan – H. Craig Stem- Block 6 Lot 1:

A Motion was made by Mr. Hetzel, seconded by Mr. Blanco, to approve the Resolution for H. Craig Stem:

Ayes: Blanco, Hetzel, Smith

Nays:

All Ayes. Motion Passed.

Mayor Kovach & Mr. Carberry were unable to participate in the rest of the meeting and recused themselves from the meeting.

Preliminary Site Plan Approval for Eastern Hill LLC- Block 16 Lot 22.02

Attorney Howard Apgar, Mr. Dennis Loh, Geo Tech Engineer, Mr. James Chimelak Planner, and Mr. Kenneth Pizzo, Jr. were present.

The following items were marked into evidence

A16 Transcript dated January 28, 2013 page 67 and page 71.

Attorney Apgar advised the board this was a continuation of the public hearing in which the applicant appeared before this board in June and July of this year. Mr. Stires the Project Engineer, Mr. Victor Barr Architect and Mr. Dennis Loh Geo-Tech Engineer have all testified in regard to site, limestone and architectural design. Tonight Mr. Loh is back to answer some concerns regarding the stability of the existing footings and Mr. James Chimelak will give some Planning testimony

Mr. Apgar stated there are some outstanding issues that will be addressed tonight.

The first issue is in regards to the COAH units, in the Resolution of Approval for the Use Variance the project set aside 8 affordable units, the number 8 was based on the original proposal that the applicant will have thirty-seven units. The applicant heard the concerns of the board at the Use hearing and eliminated the basement units which brought the total unit count to 35 and the applicant is now offering the industry standard of 20%, which equals 7 affordable units.

The second issue still open is the building height, the applicant proposes two different architectural choices, one with a height compliant building of 40 feet or a non-height compliant building of 44 feet. The applicant has left it up to the board to decide their preference.

The third issue is whether the existing footings are adequate for the new building being proposed, Mr. Loh will address this issue tonight.

Mr. Dennis Loh, Geo Tech Engineer from GTA Associates stated after hearing concerns of the board regarding the usability of the existing footings, further investigation was conducted and it is his opinion

the existing footings can support the proposed building design layout and loads. The footings can support three tons per square foot, Mr. Loh testified the foundation will be adequately supported. Mr. Clerico added the architect will show the footing design based on the new building on the plan which would be subject to review by the construction office. Mr. Schaumburg stated if the testimony tonight is the existing footings are suitable and the foundation can support the loads then he is satisfied with the Geo-Tech testimony.

Mr. James Chimelak, Planner from Kentor Resources was sworn in. Mr. Chimelak was the Planner that was involved with the Use Variance approval. Mr. Chimelak advised the board he has reviewed Van Cleef's Planning report dated April 28, 2015 and offers the following comments.

1. Lighting & Landscaping the applicant will comply with the recommendations.
2. The height of the building is left open for the board to decide.
3. Sign Variance- applicant is seeking a sign variance to permit a 6 foot high by a 6 foot wide ground sign in where the ordinance permits a maximum ground sign height of 4 feet by 4 feet wide. The applicant has complied with the 10 foot setback. Mr. Chimelak stated the sign is out of the site triangle and the applicant is asking for a minor deviation from the sign ordinance.
4. Bulk variances requested are Minimum Lot area of 67,200 square feet; Minimum Lot width at the street proposed is 346.73 feet, and Minimum lot width at the building line of 334.86 feet. Mr. Chimelak stated the bulk variances being sought are due to the layout of the property which qualifies for a C-1 Hardship Variance.

Mr. Schaumburg inquired why the applicant cannot comply with the sign ordinance, Mr. Chimelak stated they are requesting a minor deviation, the 4 x 4 sign is less than appropriate for an entryway sign there will be 2 feet of landscaping under the sign so the sign will only extend four feet above the landscaping. Mr. Pizzo added he feels it is important to see the sign and feels the sign is appropriate however if the board wishes he will conform to the sign ordinance. Mr. Schaumburg stated the Town worked hard on creating the sign ordinance and inquired if it wasn't a make or break issue would you go with a smaller sign, Mr. Pizzo responded yes.

Mr. Chimelak stated in regard to the height of the building he felt the 44' height building is more aesthetically pleasing it has a nicer roofline and it would require a D Variance. Mr. Feldmann commented that there were prior discussions that the applicant show us the height of the proposed building in relation to the library building. Attorney Apgar stated he recalled the discussion was that some members went and looked at the building and found the clock tower on the library was significantly higher, the board stated they did not recall that conversation nor did any of the members present go to visit the site. Attorney Apgar advised the board there was no exhibit to show the building in comparison with the library building. The board reviewed the two height renderings and agreed the higher building was more aesthetically pleasing.

Attorney Apgar stated the significant issue that needs to be resolved is the amount of affordable units. The initial proposal included 37 units and if you multiple that by 20% it comes out to 7.4 units, so we rounded up to 8 affordable units. The applicant has reduced the total number of units to 35 and 20% of that is 7 units, the applicant is now proposing to offer 7 affordable units. The resolution calls for 8 units, Mr. Chimelak has reviewed the transcripts of the Use Variance hearings and reported to the board that with the new use the FAR will be substantially reduced, the impervious coverage will be decreased, the parking will be reduced by 36 spaces and the traffic will be reduced by 30%. The original application called for 37 seven units the application was bifurcated and after hearing the boards concerns the applicant eliminated the basement unit and reduced the total units to 35. The development was an inclusionary project of which 20% of affordable units would be offered, the board decided this would be a benefit to the town to meet its COAH obligations. Mr. Chimelak testified the transcripts often refer to a ratio and even though the Use Variance Resolution indicates 8 affordable units after reviewing the

testimony and discussion it is my opinion the number was based on 20% and if the number of units were reduced the affordable number would be based on 20% which is consistent with the affordable housing obligation throughout the state.

Attorney Apgar stated at the last meeting Mr. Schaumburg held up a document that stated this proposal was submitted to COAH and would ask that he receive a copy of the document and it be made part of the record, Mr. Schaumburg stated he was not aware of any document.

Mr. Schaumburg stated he has heard Mr. Chimelak's testimony and the quotes provided in the transcripts and he heard that the number of units may be lowered but the board still wanted the 8 units. Attorney Caldwell stated the Use Variance resolution was adopted and the board needs to decide the fundamental issue of the number of affordable units, is it 7 or 8. Attorney Apgar stated logic dictates that the number 8 was derived from 20% of 37 and now we are proposing 35 units of which 20% affordable units are 7.

Mr. Blanco and Mr. Smith both were part of the original hearing and they stated they did not recall setting a specific number and both thought they acted on 20%.

Mr. Chimelak advised the board the amendment to the resolution is a condition of a changed circumstance and is a slight modification which does not undermine the intent of the resolution. Mr. Chimelak stated there is no negative impact if the board grants 7 affordable units. Attorney Caldwell stated it was his opinion that this is an amendment of the Use Variance and required 5 affirmative votes, Attorney Apgar disagreed and stated this is not an amendment to the Use Variance but a condition. Mr. Pizzo advised the board this will not be economically viable if I have to build 8 affordable units. Attorney Apgar stated this change was a condition of the resolution and just needs a simple majority of the vote. The project has a long history, the property has been sitting empty which is generating very little tax revenue. The Use Variance was favorable passed at 6-1, the Use Variance granted will have little impact with the school, traffic will be reduced in comparison to the office building. Attorney Apgar stated this development is an inherently beneficial project that will include affordable housing. Mr. Pizzo has gone over and above consenting to the boards concerns, the Water Authorities concerns and the Fire Officials concerns and has agreed to go above what the code requires, he has reduced the number of units by eliminating the basement units, the project is not viable with a 25% housing ratio and will not be constructed with 8 units. Attorney Apgar added the applicant has gone out of his way to please the board and the outside people I urge that this application be approved.

The board opened the meeting to the public:

Mr. Charles Samson and Mr. Brad Cohen both had concerns with adding school children and the cost to the tax payer, they agreed this type and size of building did not fit in historically with Halstead Street and felt it was not beneficial to the Town.

There being no further comments or question the board closed the meeting to the public.

A Motion was made by Mr. Feldmann, seconded by Mr. Hetzel, to approve the 44 foot height D Variance as shown on Exhibit A7-(3)

Roll Call Vote:

Ayes: Blanco, Feldmann, Hetzel, Schaumburg, Smith

Nays:

All Ayes. Motion Passed.

A Motion was made by Mr. Hetzel, seconded by Mr. Blanco, to approve the following Bulk Variances: Minimum Lot area, Minimum Lot width at the street, Minimum lot width at the building line:

Roll Call Vote:

Ayes: Blanco, Feldmann, Hetzel, Schaumburg, Smith

Nays:

All Ayes. Motion Passed.

A Motion was made by Mr. Schaumburg, seconded by Mr. Smith, to approve the sign variance:

Mr. Schaumburg and Mr. Feldmann discussed that a smaller monument sign would be more appropriate.

Roll Call Vote:

Ayes:

Nays: Blanco, Feldmann, Hetzel, Schaumburg, Smith

0-5 Motion Failed.

A Motion was made by Mr. Blanco, seconded by Mr. Hetzel, to accept the project with 7 Affordable Units based on 20% the project will include 28 market units and 7 rental units:

Mr. Schaumburg stated the board needs to decide if they met the criteria to amend the resolution and he doesn't believe they have. Mr. Schaumburg stated it is our duty to stick with the resolution that was approved.

Mr. Blanco stated it was his best recollection the conversation was based on a ratio we have asked the applicant to accommodate fewer units it seems we should consider the seven units.

Mr. Smith stated he didn't remember anyone asking for less than 37 units and had no recollection of a hard number of 8, his recollection was it was based on a 20% ratio.

Mr. Feldmann recalled there was a an extreme amount of pressure to address the affordable housing obligation and he doesn't recall the specific discussion regarding 8 units or a ratio, but he does recall the word ratio was used more than a specific unit number.

Mr. Schaumburg stated as a legal proceeding it is irrelevant it is my opinion that we should vote on 8 and I am opposed to 7.

Mr. Smith stated the site has been hammered over, this proposal generates less traffic than an office building, it's the kind of development that will bring people into town, the placement on the lot is good, it is paired well with the library, it will have minimal impact on the residences and the design is good. Mr. Smith stated that arguing between 8 versus 7 is a mistake.

Mr. Hetzel stated the affordable housing state guidelines is 20%, I would agree with the 20% I would rather see residential than an office building or some other uses such as a methadone clinic.

Mr. Schaumburg stated the hard number of 8 units was the only objective item in the resolution and the planning criteria and Mr. Smith's comments that this was a good project and that we should fear losing was based on subjective criteria, which could be disputed, for example I believe the residential units are a detriment to the town, they will have an impact on the police department, school and architecturally the building does not fit in with the town, I think it will be an eye sore for the town.

Mr. Clerico added when the units were reported to the Court as part of COAH the units were reported with both numbers, Attorney Apgar asked for a copy of the filing and asked that it be made part of the record.

Attorney Apgar restated to the board he felt the number of COAH units in the resolution is a condition of the approval, and it only needs a majority vote to pass, Attorney Caldwell advised the board to vote and he will have to research whether this was part of the use variance and needs five affirmative votes or a condition of the approval and only needs the majority to amend the number of affordable units.

Roll Call Vote:

Ayes: Blanco, Feldmann, Hetzel, Smith

Nays: Schaumburg

4-1 Motion to be determined

Mr. Clerico stated in regards to the site plan he will put together a list of the approved upon items to be attached to the Resolution as part of the Site Plan Approval

A Motion was made by Mr. Hetzel, seconded by Mr. Blanco, to approve the Preliminary Site Plan Approval subject to the applicant addressing and complying with the agreed upon items as expressed at the June and July 2015 meeting, a list to be provided at the time of the resolution:

Roll Call Vote:

Ayes: Blanco, Feldmann, Hetzel, Schaumburg, Smith

Nays:

5-0 Motion Passed.

Attorney Caldwell and Attorney Apgar will research the pending issue and advise the board on the outcome.

Use Variance Application- Block 22 Lot 18.02- D. Tomaro- Carried to October 6, 2015

Smart Growth Presentation:

Mr. Smith advised the board the Smart growth Committee sent out a community survey to get some ideas of what the residents want to see for their Town which could be considered during the planning and decision phase when updating the Master Plan. Mr. Smith handed out a summary of the survey results but advised the board a town meeting is being held on September 21, 2015 at the Fire House to discuss the survey in more detail and he encourages the members of the board to participate. The full survey is available in the Clerk’s office.

Voucher Approval:

A Motion was made by Mr. Hetzel, seconded by Mr. Blanco, to approve the attached voucher list:

All Ayes. Motion Carried.

There being no further business a Motion was made by Mr. Hetzel, seconded by Mr. Blanco to adjourn the meeting at 9:45pm.

Respectfully submitted,

Allison Witt
Land Use Administrator