



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 November 3, 2015 at 7:00pm in the Municipal Building at 43 Leigh Street Clinton, New Jersey 08809

Chairman Sailer 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".

ROLL CALL:

Present: Sailer, Mayor Kovach, Blanco, Carberry, Feldmann, Hetzel, Maher, Mellick, Schaumburg, Smith,

Approval of Minutes:

A Motion was made by Mr. Hetzel seconded by Mr. Carberry, to approve the October 6, 2015 minutes:

All Ayes. Motion Carried
Abstain: Blanco

Executive Session

Executive Session - Personnel Issues:

A Motion was made by Mr. Maher, seconded by Mr. Hetzel, to enter into Executive Session at 7:05pm to discuss personnel matters, no action to be taken:

All Ayes. Motion Carried.

RESOLUTION # 15-02

RESOLUTION AUTHORIZING EXECUTIVE SESSION

WHEREAS, the Open Public Meetings Act; *N.J.S.A. 10:4-6 et seq.*, declares it to be the public policy of the State to insure the right of citizens to have adequate advance notice of and the right to attend meetings of public bodies at which business affecting the public is discussed or acted upon; and

WHEREAS, the Open Public Meetings Act also recognizes exceptions to the right of the public to attend portions of such meetings; and

WHEREAS, the Land Use Board find it necessary to conduct an executive session closed to the public as permitted by the *N.J.S.A. 40:4-12*; and

WHEREAS, the Land Use Board will reconvene in public session at the conclusion of the executive session;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Town of Clinton, County of Hunterdon, State of New Jersey that they will conduct an executive session to discuss the following topic(s) as permitted by *N.J.S.A. 40:4-12*:

A matter which Federal Law, State Statute or Rule of Court requires be kept confidential or excluded from discussion in public (Provision relied upon: _____);

_____A matter where the release of information would impair a right to receive funds from the federal government;

_____A matter whose disclosure would constitute an unwarranted invasion of individual privacy;

_____A collective bargaining agreement, or the terms and conditions thereof (Specify contract:

_____A matter involving the purpose, lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed;

_____Tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection;

_____Investigations of violations or possible violations of the law;

_____Pending or anticipated litigation or contract negotiation in which the public body is or may become a party; (the general nature of the litigation or contract negotiations is:

_____ OR _____ the public disclosure of such information at this time would have a potentially negative impact on the municipality's position in the litigation or negotiation; therefore this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists.)

_____Matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his or her ethical duties as a lawyer; (The general nature of the matter is: _____

OR _____ the public disclosure of such information at this time would have a potentially negative impact on the municipality's position with respect to the matter being discussed; therefore this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists);

Matters involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective or current public officer or employee of the public body, where all individual employees or appointees whose rights could be adversely affected have not requested in writing that the matter(s) be discussed at a public meeting; (The employee(s) and/or general nature of discussion is Board Professionals OR the public disclosure of such information at this time would violate the employee(s) privacy rights; therefore this information will be withheld until such time as the matter is concluded or the threat to privacy rights no longer exists.;

_____ Deliberation occurring after a public hearing that may result in the imposition of a specific civil penalty or loss of a license or permit;

BE IT FURTHER RESOLVED that the Land use Board hereby declare that their discussion of the subject(s) identified above may be made public at a time when the Town Attorney advises them that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Town or any other entity with respect to said discussion. That time is currently estimated to be: _____ (estimated length of time) OR upon the occurrence of _____

BE IT FURTHER RESOLVED that the Land Use Board, for the reasons set forth above, hereby declare that the public is excluded from the portion of the meeting during which the above discussion shall take place.

Dated: 11-3-2015

The Board reconvened the regular meeting at 7:15 pm.

Per the MLUL Mr. Blanco & Mr. Maher recused themselves from the Sign Variance application.

Sign Variance- Block 9 Lot 1 Hunterdon Art Museum:

Marjorie Nathanson, applicant was present. Ms. Nathanson stated tonight she was here to seek approval from the board to install three double sided projecting signs on three onsite lamp posts. The height of the sign would be 6 feet tall and 2 ½ feet wide. The colored vinyl signs would have the word art on top and the bottom would advertise special events.

A Motion was made by Mayor Kovach seconded by Mr. Hetzel, to approve the sign variance as presented to the board and as shown on the application:

All Ayes. Motion carried

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

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

A Motion was made by Mr. Hetzel seconded by Mr. Blanco, to adopt the Resolution for Eastern Hill LLC:

Roll Call Vote:

Ayes: Blanco, Feldmann, Hetzel, Smith

Nays:

4-0 Motion carried

Attorney Guy Wilson on behalf of Attorney William Caldwell and Mr. Clerico were present.

Use Variance Application- D. Tomaro- Block 22 Lot 18.02:

Attorney Bill Shurts, Mr. Frank Bell Architect and Planner and Mr. Dominic Tomaro, applicant were present. The following items were presented into evidence:

- A1 Application
- A2 Tax Certification dated June 22, 2015
- A3 Drawing Sheet 1 "Final Site Plan "prepared by Thomas L. Yager & Associates dated March 1986 revised August 29, 1986
- A4 Architectural Plan second floor sheet A-1 prepared by Frank J. Bell dated April 27, 2015.

- A5 Architectural plan First Floor, Sheet 1 prepared by W. Wayne Batten dated December 2007 revised May 28, 2008 & June 9, 2008
- A6 Letter to Town of Clinton Water Department-Aug 14, 2015
- A7 Letter to Town of Clinton Sewer department- Aug 14, 2015
- A8 Photograph of front view of building
- A9 Photograph of rear view of building
- A10 Photograph of rear view of building
- A11 Photograph of rear of building access door to 2nd floor
- A12 Photograph of rear parking lot
- A13 Revised Architectural Plans dated April 27, 2015 prepared by Frank Bell
- B1 Van Cleef Engineering Report dated July 27, 2015

Attorney Shurts advised the board his client was here tonight to seek approval to change the second floor of his building to permit four apartments. The property is located on Old Highway 22 in the C-4 zone. Mr. Tomaro the building owner has owned the property for over 40 years and due to social and economic changes it has been impossible to rent out the second floor for office use. Attorney Shurts stated Mr. Tomaro has chosen to bifurcate the application and if the Use is granted then it would be conditioned upon site plan approval.

Mr. Dominic Tomaro was sworn in and testified that when he bought the lot in 1973 it was an empty lot, he appeared before the planning board and was granted approval to build a one story building to permit a pizza shop, barbershop and beauty salon. In the mid 1980's the Planning Board approved a second story addition for office space and due to the demand for small office and the economy he has been unable to rent the second floor which has remained vacant for the last six years.

Mr. Tomaro gave the board a brief description of the site, the entrance to the second floor is at the back of the building, the paved lot has 31 parking spaces there is an easement agreement between Mr. Dahme the adjacent building owner and Mr. Tomaro that the access way to the back parking lot will remain open between the two buildings which spans 149 feet in length and approximately 20 feet in width.

Mr. Tomaro testified that he was advised by local realtors that there is no demand for office space and has not received any calls in the last 2 ½ years regarding office rentals but has received calls for residential space. Mr. Tomaro stated the uses in the C-4 zone for the space on the second floor of his building are unrealistic and he is requesting the board grant him approval to convert the second floor to 4 apartments and to keep one existing space for the barber shop office. Mr. Schaumburg inquired if any study had been done in regard to opening up the space and combining the spaces to make them more modern, Mr. Tomaro stated if he had received any calls he would of accommodated the request.

Attorney Shurts stated that under the MLUL there are special reasons to justify granting a use variance and he believes one criteria of this application falls under exceptional and undue hardship upon the owner because the property cannot be rented for any permitted uses in the ordinance and the owner is seeking a way to use his property.

Mr. Schaumburg inquired if the other office spaces in the C-4 were rented, Mr. Tomaro responded there are a lot of empty spaces and a lot of "for rent" signs in the area. Mr. Maher inquired if the space has been marketed and advertised for other permitted uses other than office use, Mr. Tomaro responded yes but the configuration of the building with the stairs located in the back is not suitable for other types of retail uses. Mr. Smith inquired if the applicant has investigated the market for rentals apartments this small, Attorney Shurts stated the architect will address.

Mr. Frank Bell, Professional NJ licensed architect and planner was sworn in. Mr. Bell advised the board the applicant would like the second floor to consist of four apartments, apartment #1 will be 800 SF, apartment # 2 will be 855 SF, apartment # 3 will be 461 SF, and apartment # 4 will be 467 SF and after talking to realtors the apartments are adequately sized and would be marketable rental units. The

building is a mixed use building the first floor consists of a pizza shop, barber shop and office use the site has 31 parking spaces of which 12 spaces are allocated to the second floor. Mr. Bell advised the board when the second floor was approved by the Planning Board a parking variance was granted to allow for 12 spaces where the ordinance required 14 spaces for the office use, the parking standards for the apartment require 10 spaces so there is more than adequate parking for the proposed use.

Mr. Bell stated this application meets the positive criteria in there is no change to the footprint, there will be no additional square footage, the one bedroom apartments will be limited in size of occupancy to a single or husband and wife, the use of the building is unique, the proposed apartments are better suited for this site and this will be a better use of the site by keeping occupants in town there is a variety of uses and shops that can be used by the occupants. This use is in keeping with the C-1 zone which allows residential uses and has the same 6 out of 9 permitted uses as the C-4 zone. The use is also in keeping with the C-2 zone which allows residential and references that the buildings in the C-2 zone are residential in scale. Per the MLUL section 40:55D-2 the proposal meets the intent of sections (a) *to encourage municipal action to guide the appropriate use or development of all lands in this state in a manner which will promote the public health, safety, morals and general welfare;* (g) *provides sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space both public and private in order to meet he needs of all New Jersey citizens;* (J) *promotes the conservation of historic sites and districts, open space and energy resources and degradation of the environment through improper use of land.* The relief being requested would further enhance these characteristics.

Mr. Bell stated in terms of negative criteria the relief can be granted without negatively impacting the site and zone. The one bedroom apartment will generate less traffic, the C1 zone allows for residential over existing buildings, this use is less intensive and will have little impact on the zone and would complement the permitted uses in the C-4 zone. If the use is granted the building will have a sprinkler system and be brought up to code.

Mr. Mellick commented that when people are coming into the site it doesn't appear to have a clear well defined ingress and egress, Mr. Bell responded it has been that way for forty years and Attorney Shurts stated they can look at that at the time of site plan.

Mr. Hetzel inquired about affordable housing Attorney Shurts responded that since the proposal is under five apartments they would not need to meet an affordable housing obligation.

Mr. Schaumburg inquired about the impact on the Town's sewer capacity Attorney Shurts stated they received notification that the town will be able to accommodate the capacity for sewer. Mr. Schaumburg inquired if it would be a negative impact on the sewer system Mr. Shurts stated he did not have that information.

Mr. Smith questioned if permitting residential was a good idea since no crosswalk, sidewalks or pedestrian access exists, Mr. Bell stated the residents will be mostly using their cars, Mr. Feldmann questioned Mr. Bells testimony and stated his earlier testimony stated that residents could walk to nearby businesses which contradicts what was just said. Mr. Feldmann commented that there is no pedestrian access from the parking lots to the building.

Mr. Clerico questioned the C-2 zone comparison and Mr. Maher stated after looking at the permitted uses in the C-2 zone residential uses were not a permitted use. Mr. Bell stated he was referring to the appearance of the building as compared to the C-2 zone which has small lot sizes and the scale of the building is that of residential in scale. Mr. Clerico added that the C-2 zone is a limited area and basically consist of the lumber yard and the Agway property which abuts the residential zone

Mr. Clerico questioned how this application relates to promoting public health, safety and welfare, Mr. Bell stated the site is suitable for residential uses and it is a benefit to everyone in the area by keeping residential in town, Attorney Shurts added that the uses are comparable to the C-1 zone, Attorney Wilson responded that the C-1 zone is set up differently the C-1 area is totally different in where the area has

sidewalks and the buildings are close together.

Mr. Schaumburg inquired in terms of crime and police calls would the residential uses have a bigger impact than office use, Mr. Bell stated he did not have any data to support it. Mr. Smith stated as a planner would you promote and encourage residential uses on in the C-4 zone, Mr. Bell responded that things are changing and feels the board should take a strong look on what is going on in town. The C-1 zone is functioning well but the C-4 zone is void and there is no life. Mr. Maher inquired as a planner do you think adding residential without a pedestrian access way makes sense, Mr. Bell stated we need to start somewhere and looking at the vacant properties and the businesses going out of business we need to look at the area. Mr. Schaumburg inquired about the water usage and whether the residential uses would generate a higher use of water, Attorney Shurts responded we do not have the information at this time but will address at the time of site plan. Mr. Feldmann inquired if the applicant looked at Mr. Clerico's July report, Attorney Shurts stated that most of the items are site plan issues and if the variance was granted it would be a conditional use variance based on site plan approval.

The board opened the meeting to the public:

Mr. Randall Dahme owner of Lot 18 commented that he has been a resident here for over 45 years, he is in favor of the application, he believes the town has to start with changes somewhere. The downtown area is beautiful but the C-4 zone is dead. Mr. Dahme commented that a business with an empty second floor has no income coming in and no tax relief and asked the board to see the other side. The town needs to start joining the pieces together and to keep this area in mind when looking at the future.

Mr. Schaumburg commented that he feels for the applicant and that the board needs to look at this when looking at the Master Plan but does not feel that this application is fitted for the proposed use at this time. Mr. Smith stated the biggest drawback is the site, there is no backyard and no open air and does not feel this site with this use in this zone is the best situation. Mr. Blanco agrees with Mr. Schaumburg we have to judge this application on its merits, and I do understand how the applicant feels, but it seems to be a chicken before the egg situation. Mr. Maher stated in this situation it is not in the best judgement of the town to approve, and agrees we need to look at the zone and take a look at the master plan, but for now this site under these circumstances is not the right time for this use. Mr. Feldmann stated the master plan suggests sidewalks in this area to the rest of town but we are just not there yet. Mr. Hetzel stated that there is a real need for residential apartments but this site is going to have problems. Mr. Sailer stated the infrastructure is not set up for residential and I do not see the proposal as feasible.

Attorney Guy Wilson stated an economic hardship cannot be the deciding factor, some of the office space is being used and you have to consider an economic hardship when the property cannot be used for any permitted uses in the zone which is not the case. There was some testimony that there would be no negative impact I don't feel the applicant has met the burden of proofs in terms of the positive and negative criteria, Attorney Shurts stated they have met their burden of proofs and believes we have a situation to grant the D Variances.

A Motion was made by Mr. Maher, seconded by Mr. Schaumburg, to grant the Use variance to allow 4 residential apartments:

Roll Call Vote:

Ayes

Nays: Sailer, Blanco, Feldmann, Hetzel, Maher, Mellick, Schaumburg, Smith,

0-8 Motion Failed

2016 Budget Recommendation:

A Motion was made by Mr. Blanco, seconded by Mr. Hetzel, to recommend the 2016 budget as follows: Planner-\$500.00; meeting dues-\$1,000.00; Engineering Fees- 250.00; legal fees- \$1,000.00; legal notice-\$100.00; office supplies- \$250.00; postage-\$500.00, zoning map update-\$100.00; Total budget \$3,700.00

All Ayes. Motion carried.

Voucher Approval:

A Motion was made by Mr. Maher, seconded by Mr. Heztel, to approve the vouchers as presented:

All Ayes. Motion carried.

Board Discussion:

The board discussed recommendations of applicants who had submitted Citizen Involvements applications to fill the empty seat on the board. The recommendation will be forwarded to the Mayor and Council for their consideration and appointment.

The Board members expressed their condolences to Mr. Clerico.

There being no further business a Motion was made by Mr. Hetzel, seconded by Mr. Mellick, to adjourn the meeting at 10:00pm

Respectfully submitted,

Allison Witt

Land Use Administrator