



TOWN OF CLINTON

INCORPORATED APRIL 5, 1865

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Board of Adjustment

Minutes of the Town of Clinton Board of Adjustment meeting held on November 26, 2012 at 7:30pm in the Municipal Building at 43 Leigh Street Clinton, New Jersey 08809

Chairman Sailer called the meeting to order at 7:30pm and read the “Administrative Statement” and the “Statement of Adequate Notice”:

“Meetings are held on the fourth Monday of each month when an application is pending before the board. The application must be filed at least 21 days prior to the meeting date. Meetings begin at 7:30pm and are adjourned no later than 10:30pm. Fees are charged on a per meeting basis”.

“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”.

ROLL CALL:

Present: Berson, Carberry, Layding, Recame, Sailer, Smith, Wetherill

Absent: Feldmann

Attorney William Caldwell, Mr. Robert Clerico, & Mr. Carl Hintz were present.

Approval of Minutes:

A Motion was made by Mr. Carberry, seconded by Mr. Berson to approve the minutes of October 22, 2012:

All Ayes. Motion Carried

Voucher Approval:

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

All Ayes. Motion Carried

Public Hearing for Use Variance application- Block 16 Lot 22.02- Eastern Hill LLC

Attorney Walter Wilson, Mr. James Chmielak, PP from Kensho Resources LLC, Mr. Kenneth Pizzo Jr, and Mr. John Kerwin were present; also in attendance was Court Stenographer Jackie Klapp

The following items were submitted into evidence:

A14 Building Site Exhibit dated November 26, 2012

A15 Southern elevation of proposed building

Attorney Wilson stated the testimony in regard to the positive criteria was concluded at the last meeting and tonight’s testimony will be focused on why the variance relief can be granted without substantial damage or detriment to the public good and will not impair the ordinance plan or master plan.

Mr. Chmielak testified that the variance relief granted will not result in a substantial detriment to the public Good for the following reasons:

1. The unique location of the site. The location has a synergistic location to compatible uses and has pedestrian access to downtown but is still on the periphery of town.
2. The proposed building is compatible with the adjacent library building.
3. The building is located a significant distance from the single family residential homes so the building will not impact the residential area.
4. The proposed project will have a decrease in traffic demand and a reduction in traffic intensity and a reduced need for onsite parking.
- 5). The project is geared towards dual income young professionals and empty nesters which will result in a low amount of school age children.
- 6). In terms of nuisance noise there will be no negative impact.

Mr. Chmielak stated in terms of consistency with the Master Plan the proposed project will not result in a detriment or impair the Master Plan for the following reasons:

1. The 2008 Master Plan reflects the OB-2 zone in an office district with a minimum of 3 acres, in this case we have 2 acres which is a pre-existing non-conforming condition we feel we have identified that this site with the proposed use can handle the use and the site improvements.
2. The objective under the Master Plan goal is to achieve a proper balance in the distribution and spatial relationships among the various land uses to provide a varied and healthful environment and still retain the character of the community; this property achieves the balance does not alter the small town character of the community.
3. The objective in the Master Plan is to discourage converting residential to non-residential uses, this proposal does not conflict with the Master Plan we are meeting the goal which is to encourage housing and promote the residential character of the town.
4. The objective of the housing goal is to maintain the character of the neighborhood and to encourage suitable housing for all income, ages and lifestyles, this project is a different type of housing that will serve various household types and the building styles are compatible with the architectural styles in the area.
5. The streetscape elements are consistent with the streetscape along Halstead Street and the library property.
6. The building setback and building mass is consistent with the adjacent library structure.
7. The proposed building will use a wide variety of green technology, the LED lighting fixtures will significantly reduce energy consumption.

Mr. Chmielak stated that upon review of the guidelines of the Master Plan the proposed residential building is consistent with the Master Plan.

Ms. Wetherill commented that she is concerned with the isolation of the site in terms of police and security. Mr. Chmielak responded from a safety standpoint the site is a close distance to the library, community center and ball fields which all house a lot of activity. Mr. Pizzo added that the building will be

secured a key card will be required to enter the building, each apartment will be equipped with air phones so any

visitors entering can be seen by camera, the building will have 24/7 surveillance which is taped and has a thirty- day memory. Mr. Pizzo added we take security on our properties very seriously and security is also a big selling point.

Mr. Layding inquired if the recent announcement of Merck closing will have any impact on occupancy, Mr. Kerwin stated it has had no impact on our Lebanon project, the demographics is a dual income couple and empty nesters.

Ms. Wetherill inquired about the height of a fire truck, Attorney Wilson stated that he was not sure but the trucks service the Holiday Inn building which is higher than the proposed building.

Mr. Carberry stated he was concerned with the height and commented at the last meeting they talked about different roof lines, Mr. Pizzo responded aesthetically changing the roof line would be detrimental and would not be in keeping with the architecture of Clinton and if we lowered the building we would lose some units which would not be economically viable. Mr. Kerwin stated that originally the proposal included a four story building, however after receiving feedback from the Planning Board Committee they reduced the building to three stories. Mr. Kerwin suggested at site plan we can show different elevations with different roof lines.

Mr. Chmielak went over Exhibit A-14 showing the building roof line in comparison to the surrounding properties and stated there is a 140' separation between the library and the proposed building. Mr. Clerico inquired about the length of the building compared to the Library, Mr. Chmielak testified the Library building is 140' long and the proposed building is 180' long.

Attorney Caldwell inquired how many units would be lost in order to comply with the FAR, Attorney Wilson responded approximately 12 units would have to be removed. Mr. Chmielak stated the FAR standard is based on the office use, that there is no FAR standard for residential use. The FAR standard based on office use is relatively low at 20% which would not make this a feasible project and in terms of the overall viability the site is particular suited for this use. Attorney Wilson acknowledged that economic viability is not a reason to grant a variance but the basis for approval in regard to the FAR is the site can handle the higher FAR. Mr. Chmielak added the site can accommodate parking, traffic, buffering and setbacks, the proposal complies with the impervious coverage requirements in spite of the FAR deviation the site can accommodate the conditions without substantial impact.

Ms. Wetherill inquired what the FAR requirements are in a multi-family zone, Mr. Hintz stated that FAR standard is applied to commercial uses and that the density standard is applied to residential uses. The reason they are applying for an FAR variance is because this is in the commercial zone.

Mr. Chmielak testified using the PRD Zone district the net density is 10 dwelling units per acre, this site has 2 acres and based on that calculation would be 20 units. The proposal includes 29 market units and 8 affordable for a total 37 units

Mr. Layding commented that the Master Plan has this area zoned for commercial use and the town has actively chosen not to zone as a multifamily use, outside economic reasons what makes this site suitable. Mr. Chmielak responded that at the time of zoning there may have been a need for office use.

Attorney Wilson stated at this time they are willing to reserve acting on the height variance until the time of site plan proceedings which would give the applicant time to adjust the elevations if needed at the time of site plan.

Mr. Hintz clarified that in a PRD Zone under the Town of Clinton Design standards that a building shall

not contain more than 24 units and should not exceed a length of 200 feet. Attorney Wilson stated the proposal exceeds the number of units but does conform to length.

Mr. Hintz inquired if the applicant has quantified the reduction in traffic, parking demand and the number of school age children. Mr. Chmeilak responded yes that traffic trips have been quantified by ITE standards, the reduction of the parking on site will be reduced from 106 spaces to 87 spaces, and based on a Rutgers study by Richard Reading approximately 7 school age children will be generated to attend Clinton Public and 5 High School children will be generated. Mr. Smith inquired given the number what is the second bedroom used for, Mr. Kerwin responded mainly for office and guest.

Attorney Caldwell inquired if the applicant had approached the Town Council to change the zone, Mr. Kerwin stated they had presented the plan to Council, the Planning Board and the Master Plan Committee and were referred to the Board of Adjustment. Attorney Caldwell stated the Governing Body and the Master Plan Committee rejected this proposal what weight should the board rely on. Mr. Chmeilak stated we do not know the rationale we have nothing in writing from the Master Plan or Governing Body. Mr. Pizzo commented that for lack of a better term he believes they punted the ball to the Board of Adjustment, Attorney Wilson stated the Council did not say it was inappropriate to change, the typical response in the past has been to refer back to the Board of Adjustment.

Mr. Smith asked Mr. Hintz if he has the reasoning or logic on why the council zoned it for office use, Mr. Hintz responded this was zoned for office use back in the 1990's and when the Master Plan was completed they left the zone as office use.

Chairman Sailer opened the meeting to the public:

Mr. Baka, 21 Water Street, who has served on the Planning Board and was involved with the Master Plan Committee has several concerns in regard to the tax rate going up if the school is impacted, concerns with the street scape, and the architectural style, and asked the board to keep in mind that this is the one of the last pieces of property left in town. Mr. Pizzo stated the he feels this proposal fulfills a need for the town that the project will generate mostly young professionals and empty nesters and will be a good ratable for the town.

There were no further questions, testimony or comments from the public, therefore the meeting was closed to the public.

A Motion was made by Mr. Carberry, seconded by Mr. Berson to grant the D1 Use Variance and allow multi-family residential use in the office zone and to grant the D4 FAR Variance, which doubles the density allowed in other multi-family zones conditioned upon the D6 Variance being granted at time of site plan application, the approval of any other waivers or variances that may be necessary at the time of site plan, any outside agency approvals:

Mr. Carberry commented that he is in favor of the application, the density is not a problem believe this project will be a great value to the town .

Mr. Smith stated that he was surprised with the lack of marketing and research to find out if there was a need in the area for this type of project, changes to the master plan is a little disturbing and is not sure the positive criteria has been fully met in regard to the need of affordable housing.

Mr. Layding stated this is a significant deviation from the Master Plan, and that the criteria presented existed at the time the Master Plan was put in place and the Town Legislators and the Planning Board decided not to change the zoning. I believe the Town set forth what they wanted.

Ms. Wetherill commented that she is torn she likes the proposal in many ways, however this is for a multi-family development in a single family & public use area, it is not the Board job to come up with economic

viable uses, I am concerned about the two acre lot and the double density and would like to put this back in the hands of the Council.

Mr. Berson while he is in support of the project he has concerns with the burden it will put on the infrastructure such as water and sewer and the burden on the town.

Mr. Recame commented that he is concerned with overruling the Master Plan which was adopted by the Planning Board and elected representatives of the town and is not comfortable judging the area ratio of the project under the standards that are used for a commercial zone.

Mr. Sailer thanked the board for their input and commented that he was concerned that Town Officials did not make a decision and kicked it to the Board of Adjustment. The site zoned as an office building has been sitting for many years and is an eyesore. I feel the structure you want is feasible and would like to see something done with the property.

Attorney Wilson stated there are a few things that are relevant from a legal perspective, the first component is the affordable housing which is considered an inherently beneficial use and therefore under the Appellate Division the special reasons under the positive criteria become presumptively satisfied. In addition to the presumptive satisfaction we also feel we have satisfied the positive criteria under Mr. Chmielak's testimony and this is not a case to send back to the Governing Body it is the function of this board to act on variances when applied for. In regards to the D4 variance the criteria followed is different instead of using the Medici standard which is suitability you would look at the Coventry square standard, which is can the site adequately and appropriately handle the increase of FAR from the ordinance standard. Through the decrease in parking spaces and testimony given the site can in fact handle the increase in FAR for the change of use. Mr. Chmielak has identified goals and objectives within the Master Plan and through testimony has identified that there will be no substantial detriment to the zoning ordinance or zone plan. If the council changed the zoning it would be more akin to spot zoning which we are not asking for spot zoning and for all the reasons above we have satisfied the criteria and are entitled to the relief.

Mr. Layding questioned what the intent of zoning is. Attorney Caldwell stated that the cases Attorney Wilson referred to can be provided to the board to read so the board understands the meaning of the cases. Attorney Wilson stated he can provide the board with a formal memo outlining the cases. The board decided they would like to review the cases before continuing. Mr. Layding asked Mr. Hintz to provide some background on where the Town stands on affordable housing requirements.

A Motion was made by Mr. Smith, seconded by Mr. Carberry to carry the meeting for Eastern Hill LLC until January 28, 2013.

All Ayes. Motion carried.

Amendment to Site Maintenance Plan- Block 1 Lot 33- D&D Enterprise LLC:

Attorney Wilson was advised to file an amended Site Maintenance Plan with request for any variances or waivers that may be necessary. The application will be placed on the January 28, 2013 agenda.

2013 Budget recommendations:

a Motion was made by Ms. Wetherill, seconded by Mr. Carberry to recommend the 2013 budget remain the same as 2012 total budget \$2,250.00

All Ayes. Motion Carried.

2013 RFP Discussions:

The board was in receipt of a breakdown of RFP's received, Mr. Sailer advised the board that he met with CP Engineers and it was his recommendation to the Board that we keep the same professionals.

There being no further business A Motion was made by Mr. Smith, seconded by Mrs. Wetherill to adjourn the meeting at 10:20pm.

Respectfully submitted,

Allison Witt
Land Use Administrator