



TOWN OF CLINTON

INCORPORATED APRIL 5, 1865

43 Leigh St., P.O. Box 5194

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Board of Adjustment

Minutes of the Town of Clinton Board of Adjustment reorganization meeting and regular meeting held on January 28, 2013 at 7:30pm in the Municipal Building at 43 Leigh Street Clinton, New Jersey 08809

Attorney Caldwell called the Reorganization 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".

Oaths of Office:

Mr. Cohen & Mr. Blanco were previously sworn in.

ROLL CALL:

Present: Berson, Blanco, Cohen, Feldmann, Recame, Sailer, Smith, Wetherill

Absent: Layding

Election of Chairman:

A Motion was made by Mr. Berson, seconded by Mr. Feldmann, to nominate Craig Sailer as Chairman:

All Ayes. Motion Carried.

Chairman Sailer proceeded to run the meeting.

Election of Vice Chairman:

A Motion was made by Mr. Berson, seconded by Mr. Recame, to nominate Whitney Wetherill as Vice-Chairman:

All Ayes. Motion Carried.

Appointment of Board Attorney:

A Motion was made by Mr. Berson, seconded by Ms. Wetherill, to appoint Mr. William Caldwell as the Board's Attorney for the 2013 calendar year

All Ayes. Motion Carried

Be it Resolved that William Caldwell, Esq. from Carter, Van Rensselaer & Caldwell is hereby appointed to serve as the Board of Adjustment Attorney for the Town of Clinton and;

Whereas there exists a need for the performance of the statutory legal services for the year 2013 for the Town of Clinton Board of Adjustment and;

Whereas funds are or will be made available for this purpose to be certified by the local finance officer and;

Whereas the contract for Professional Services was awarded pursuant to the Fair and Open Process.

Now Therefore, Be Resolved by the Town of Clinton Board of Adjustment as follows:

The Mayor and Council are hereby authorized and directed to execute an agreement with William Caldwell, Attorney for 2013

Notice of this action shall be printed once in the Hunterdon Review.

A Motion was made by Mr. Berson, seconded by Mr. Smith, to adopt the Board of Adjustment Professional Resolution for William Caldwell:

All Ayes. Motion Carried.

Appointment of Board Engineer:

A Motion was made by Ms. Wetherill, seconded by Mr. Smith, to appoint Robert Clerico, from Van Cleef Engineering as the Board Engineer for the 2013 Calendar Year:

All Ayes. Motion Carried.

Be it Resolved that Robert Clerico is hereby appointed to serve as the Board of Adjustment Engineer for the Town of Clinton and;

Whereas there exists a need for the performance of the statutory Engineer services for the year 2013 for the Town of Clinton Board of Adjustment and;

Whereas funds are or will be made available for this purpose to be certified by the local finance officer and;

Whereas the contract for Professional Services was awarded pursuant to the Fair and Open Process.

Now Therefore, Be resolved by the Town of Clinton Board of Adjustment as follows:

The Mayor and Council are hereby authorized and directed to execute an agreement with Robert Clerico, Engineer for 2013.

Notice of this action shall be printed once in the Hunterdon Review.

A Motion was made by Ms. Wetherill, seconded by Mr. Recame to adopt the Board of Adjustment Professional Resolution for Robert Clerico:

All Ayes Motion Carried.

Appointment of Board Planner:

A Motion was made by Ms. Wetherill, seconded by Mr. Berson, to appoint Carl Hintz from Clarke, Caton, Hintz as the Board Planners for the 2013 Calendar Year:

All Ayes. Motion Carried.

Be it Resolved that Carl Hintz is hereby appointed to serve as the Board of Adjustment Planner for the Town of Clinton and;

Whereas there exists a need for the performance of the statutory Planner services for the year 2013 for the Town of Clinton Board of Adjustment and;

Whereas funds are or will be made available for this purpose to be certified by the local finance officer and;

Whereas the contract for Professional Services was awarded pursuant to the Fair and Open Process.

Now Therefore, Be resolved by the Town of Clinton Board of Adjustment as follows:

The Mayor and Council are hereby authorized and directed to execute an agreement with Carl Hintz Planner for 2013.

Notice of this action shall be printed once in the Hunterdon Review.

A Motion was made by Mr. Berson, seconded by Mr. Smith, to adopt the Board of Adjustment Professional Resolution for Carl Hintz:

All Ayes. Motion Carried.

Designation of Meeting Nights:

A Motion was made by Mr. Berson, seconded by Mr. Smith, to adopt the 2013 annual schedule: (Schedule attached)

All Ayes. Motion Carried.

Meeting Notice Policy:

The board will meet in the Municipal Building at 43 Leigh Street Clinton NJ. The board secretary shall notify the board members of the meeting dates and will post the notice of the meetings on the bulletin board and notify one of the official newspapers of any scheduled meeting. The Chairman of the board can schedule a special meeting at any time he or she wishes and it shall be advertised.

A Motion was made by Mr. Smith, seconded by Mr. Cohen, to adopt the meeting notification policy.

All Ayes. Motion Carried.

Designation of the Official Newspaper:

A Motion was made by Ms. Wetherill, seconded by Mr. Smith, to designate the Hunterdon Review, the Hunterdon Democrat, and the Courier News as the official newspapers:

All Ayes. Motion Carried.

Time Change for Board of Adjustment Meeting

A Motion was made by Ms. Wetherill, seconded by Mr. Berson, to change the starting time for meetings to 7:00pm and adjourn no later than 10:00pm.

All Ayes. Motion Carried.

Administrative Policy Statement:

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 7:00pm and are adjourned no later than 10:00pm. Fees are charged on a per meeting basis. If the meeting must be canceled by the applicant after Friday noon for a Monday meeting and or less then 72 hours before a special meeting, the applicant will forfeit the application fee.

A Motion was made by Mr. Wetherill, seconded by Mr. Berson, to adopt the Administrative Policy Statement:

All Ayes. Motion Carried.

Public Meeting Resolution:

A Motion was made by Ms. Wetherill, seconded by Mr. Cohen, to adopt the 2013 Public Meeting Resolution (resolution attached):

All Ayes. Motion Carried.

A Motion was made by Ms. Wetherill, seconded by Mr. Berson, to adjourn the reorganization meeting at 7:40pm:

All Ayes. Motion Carried.

Regular Meeting:

Chairman Sailer called the meeting to order at 7:40pm 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 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 7:00pm and are adjourned by 10:00pm. Fees are charged on a per meeting basis.

ROLL CALL:

Present: Berson, Blanco, Cohen, Feldmann, Recame, Sailer, Smith, Wetherill

Absent: Layding

Attorney William Caldwell, Mr. Robert Clerico and Ms. Beth McManus were present.

Approval of Minutes:

A Motion was made by Mr. Smith, seconded by Mr. Berson, to approve the minutes of November 26, 2012:

All Ayes. Motion Carried
Abstain: Feldmann, Cohen, Blanco

Voucher Approval:

A Motion was made by Ms. Wetherill, seconded by Mr. Berson to approve the vouchers (list attached):

All Ayes. Motion carried

Per the MLUL regulations, Mr. Feldmann recused himself from the Completeness Hearing for Block 6 Lot 1.01

Completeness Review for Block 6 Lot 1.01- 82 West Clinton LLC:

Attorney Eileen Welsh from K&L Gates and Mr. James Henry, PE from Dynamic Engineering were present.

Mr. Clerico advised the board he issued a completeness letter dated January 23, 2013, the applicant is seeking a design waiver from providing a loading area and a temporary waiver for gas service if the board grants the waivers the application can be considered complete.

Mr. Henry, applicant’s Engineer advised the board that the applicant was not seeking a waiver for gas service since no service exists on site and there are no plans to add gas service, he will add a small note to the plan to indicate no service.

A Motion was made to grant the temporary waiver from providing a loading area and deem the application complete:

Roll Call Vote:

Ayes: Berson, Blanco, Cohen, Recame, Sailer, Smith, Wetherill

Nays:

All Ayes. Motion Carried.

Public Hearing is scheduled for February 25, 2013.

Mr. Feldmann rejoined the board.

A Motion was made by Ms. Wetherill, seconded by Mr. Cohen to hear agenda item # 5 before # 4:

All Ayes. Motion Carried.

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

Attorney Wilson was present.

Attorney Wilson advised the board there are two areas that were modified from the 2007 Site Maintenance Plan approval granted by this board. The first area is a small triangle piece in the north west corner which was grass and has now been blacktopped. The second area is by the dumpster the new blacktopped area extends a few more feet into the grass, which allows the garbage trucks to back up without going onto the grass area. Attorney Wilson is asking the board to grant the modifications to the Site Maintenance Plan.

A Motion was made by Ms. Wetherill, seconded by Mr. Smith, to grant the amended Site Maintenance Plan:

All Ayes. Motion Carried.

Attorney Caldwell requested the applicant resubmit the deed, and Ms. McManus asked Mr. Wilson to get in touch with her to go over the two affordable rental units. Attorney Wilson agreed and advised the board he will submit a large plan of the revised site maintenance plan for the file.

Public Hearing for Use Variance application- Block 16 lot 22.02- Eastern Hill:

Attorney Walter Wilson, Mr. James Chmielak, PP, 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:

A-16 Walter Wilson case law letter dated January 28, 2013

B-4 Beth McManus affordable housing update dated December 5, 2012.

Attorney Wilson reminded the board a motion is on the table from the November Meeting to approve the D1 Use Variance and the D4 FAR Variance.

The Motion made at the November 26, 2012 is as follows:

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 Height Variance being granted at the time of site plan approval and any other waivers or variances and outside agency approvals that may be necessary at the time of Site Plan Approval:

Mr. Smith asked Beth McManus to comment on the affordable housing aspect of the application. Ms. McManus stated the issue of affordable housing is important, the applicant's position is because the project

contains affordable housing then it becomes inherently beneficial and satisfies all the positive criteria. There is certain criteria the board has to look at in its decision making, most use variances are required to satisfy the positive and negative criteria but those cases that are considered an inherently beneficial use automatically satisfy the positive criteria. This project is an inclusionary project that consists of 80% market units and 20% affordable, under the case law study Homes of Hope and the MLUL projects that consist of 100% affordable units are considered inherently beneficial, in this case there has been no clear definition if an inclusionary project falls under this inherently beneficial criteria. In regard to the town's affordable housing obligation, the town has satisfied its Round I and Round II obligation Round III is still up in the air, the town cannot predict the numbers needed to meet the Round III Affordable housing obligation. As a conclusion, we know that 100% affordable housing units are inherently beneficial it is not clear whether an inclusionary project meets the same criteria it is important for the board to make findings on this case and whether this project is beneficial to the town.

Mr. Feldmann inquired is there are any repercussions on not including the 8 affordable units at this time, Ms. McManus stated no, however from an affordable housing standpoint I fully expect the town will have a continuation of meeting an affordable housing obligation under COAH's third round and I do believe these units will be good in the future in meeting that goal. Beth advised the board if they approved the affordable units then they should meet all of the affordable housing regulations, the vote should be conditioned upon that.

Mr. Recame commented he was concerned with breaking the zoning to allow this type of building.

Ms. Wetherill stated that the Town's Master Plan calls for multi-family housing in this area and it is not a brand new concept. The affordable housing situation is not going away we still have requirements to meet, it is better to have a mixture of market and affordable units rather than being forced to have a project that is 100 % affordable.

Mr. Smith commented that he was taught that land should be brought up to its highest and best use in this case residential seems like a good idea. During the last three meeting there have been no objectors at the meeting, he is concerned with the building size and the lot coverage however the lot borders public land, the reservoir and a grave yard. Mr. Smith added that if FAR is for office and commercial use and density is for residential uses then he is not sure if this is being judged on a FAR basis versus a density issue.

Mr. Feldman inquired if the studies used to quantify traffic and school age children that were discussed at the last meeting were standard methods used. Ms. McManus stated the Rutgers study is a statewide standard and Mr. Clerico added that the ITE study is a fairly standard methodology that is used.

Mr. Clerico stated the proposal is in a zone that has a FAR standard in where a residential zone traditionally establishes a unit density standard. If the board voted on the use they are not necessarily approving the amount of units the board can approve the use based on conditions.

Mr. Feldmann inquired what the average size of the household what be, Ms. McManus stated it varies significantly generally the affordable units will generate more people than a market unit but it also depends if the project is child friendly.

Attorney Wilson stated he disagreed with Ms. McManus earlier testimony to a small degree, and it was his opinion in the Homes of Hope case any project that has affordable housing is considered inherently beneficial. The MLUL uses a variety of criteria in support of satisfying the positive criteria even without the use of affordable housing we have satisfied the positive criteria during testimony. In regard to the density issue it is geared more to the garden style type apartments and townhomes this is a different product and the density is appropriate for this type of building. Attorney Wilson concluded the applicant has satisfied all the positive criteria and the approval will not have any substantial detriment.

Ms. McManus advised the board it is important to remember this is the first property you see coming into town from Route 31 and it is important to consider the site from a geographical standpoint and the impact to the town.

The board expressed concerns with the size of the building, Chairman Sailer asked the applicant if they would consider an alternative plan to reduce the height. Mr. Pizzo indicated that it could be possible to reduce the height of the roof but felt it would make the building unattractive and not in keeping with the character of the town. Attorney Wilson stated we are here tonight to seek the Use Variance and the Far Variance we have heard the board's concerns and will take that into consideration at the time of site plan. The applicant will comply with the affordable housing regulations in regard to the bedroom count and a mixture of low and moderate income rentals, The applicant is seeking approval of up to 37 units which includes 8 affordable units and the square footage FAR relief.

Mr. Feldmann commented that one goal in the Town of Clinton's Master Plan under Land use *is to achieve a proper balance in the distribution and spatial relationships among the various land uses to provide a varied and healthful environment for the town's residents and retain the small town residential and historical character of the community* and one of the objectives under that goal is *to channel commercial uses into existing commercial and office zones and discourage conversion of residential dwellings in residential zones to non-residential commercial and office uses*. Mr. Feldmann inquired if you were to reverse would the same objective be true, Ms. McManus stated the objective refers to converting residential to non-residential so it does not apply to this, the board should consider site specific issues.

Attorney Caldwell advised the board the use is conditioned upon the applicant receiving site plan approval and if the applicant fails to get site plan approval the use fails, Attorney Caldwell suggested a site plan approval deadline of one year otherwise the Use Variance would lapse.

A Motion was made by Ms. Wetherill seconded by Mr. Smith to amend the prior Motion to include a condition that if Site Plan Approval is not pursued and acquired with one year from the date of the Use Variance Resolution approval the Use Variance and FAR Variance would expire, the approval to include up to 37 units which includes 8 affordable units and the FAR not to exceed 68%.

Motion to amend .

All Ayes.

Motion Carried

Roll Call Vote on Use Variance & FAR Variance:

Ayes: Berson, Feldmann, Sailer, Smith, Wetherill

Nays: Recame

5-1 Motion Passed.

There being no further business a Motion was made by Ms. Wetherill, seconded by Mr. Cohen, to adjourn the meeting at 10:10pm.

Respectfully submitted,

Allison Witt
Land Use Administrator.