



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 February 26, 2007 at 7:30pm in the Municipal Building at 43 Leigh Street Clinton, New Jersey 08809

Chairman Tranquilli 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".

Oaths of Office:

Mr. James Query was sworn in.

Roll Call:

Present: Tranquilli, Gallo, Feldmann, Holt, Query, Trepkau, Berson

Absent: Hendricksen

Attorney Caldwell, Mr. Robert Clerico, Mr. Carl Hintz and Lucille Grozinski, stenographer were present

Approval of Minutes:

A Motion was made by Mr. Holt, seconded by Mrs. Gallo, to approve the minutes of January 22, 2007 with the following change:

Page 6 under board discussion- *insert I after 88-64*

All Ayes. Motion Carried

Voucher Approval:

A Motion was made by Mr. Feldmann, seconded by Mrs. Gallo, to approve the attached voucher list:

All Ayes. Motion Carried.

Ansuya Enterprise LLC Update Report:

Attorney Walter Wilson stated he was here tonight to request an extension through April 2007 to satisfy the remaining outstanding conditions of approval. Attorney Wilson advised the board that his client has received a signed water agreement with the town and the last outstanding item is approval from the NJ DEP for the sewer line extension permit. Due to the piping on the site intervening with the adjacent

property, NJ DEP halted Ansuya's application until Z&F LLC filed their application. Attorney Wilson stated even though the permits are now in process Ansuya has elected to proceed with a different piping route to avoid having to deal with the adjacent property, the revised pipe location will be forwarded to Mr. Clerico for his review and the new permits will be forwarded to NJ DEP for their approval.

A Motion was made by Mrs. Gallo, seconded by Mr. Trepkau, to grant an extension through April 23, 2007 to satisfy the remaining outstanding conditions of approval.

Roll Call Vote:

Ayes: Tranquilli, Gallo, Feldmann, Holt, Querry, Trepkau, Berson

Nays:

All Ayes. Motion Carried.

Use Variance Application for Tomaro- Block 2 Lot 28- 110 West Main Street:

Attorney James Kinneally from Hoagland, Longo, Moran, Dunst & Doukas LLP, Mr. Eric Raes, from Engineering and Land Planning Associates, and Mr. Vincent Tomaro, applicant were present. The following items were submitted into evidence:

- A1 Application Package.
- A2 200- Foot List.
- A3 Certified Mailings.
- A4 Proof of Publication.
- A5 Tax Certification.
- A6 Variance Application Plan prepared by Engineering & Land Planning dated 2/8/07 (2 sheets).
- A7 Proposed Floor Plan Sketch prepared by Engineering & Land Planning dated 2/5/07 (1 sheet).
- A8 Planning Report prepared by Engineering & Land Planning dated 2/8/07.
- A9 Boundary & Topographic Survey prepared by Robert Ent, Jr. dated 2/7/2007
- B1 Planners Report prepared by Clarke, Caton & Hintz dated 2/15/07

Mr. Vincent Tomaro, applicant, was sworn in.

Mr. Vincent advised the board that his current family run business, Gap Haircutters, is located at 23 West Main Street, which has been in operation for 41 years, and he is proposing to move his business to 110 West Main Street. The proposed location is located in the OB-1 zone, which does not permit a haircutting beauty salon use. The new location would allow for more space, which would include three workstations for cutting hair and two works areas for processing and dispensing. The hours of operation will be 8:30am until 6:00pm Tuesday- Friday, 8:00am-3:00pm on Saturdays and closed on Sunday and Monday's. There will be three employees, his wife, daughter and himself.

Mr. Trepkau inquired if the interior changes would include removing a few walls to open up the interior space and Mr. Tomaro responded yes. Mr. Holt inquired if there was a basement and Mr. Tomaro responded no. Mr. Clerico inquired if the clients were by appointment only; Mr. Tomaro stated that he has a mix of walk-ins and appointments. Mr. Holt inquired about parking spaces and Mr. Tomaro responded the site has nine spaces. Mr. Holt inquired about the average number of automobiles that would be on site at one time and Mr. Tomaro responded normally 4 to 5 vehicles at one time.

Mr. Tranquilli opened the meeting to the public for any questions for Mr. Tomaro and there being no questions, the meeting was closed to the public.

Mr. Eric Raes, from Engineering and Land Planning was sworn in. Mr. Raes advised the board that the applicant has a long standing business of 41 years which he would like to relocate from his current location at 23 West Main Street to 110 West Main Street which is in the OB-1 zone therefore, the

applicant is seeking relief for a "D" Use Variance. The properties prior use was a medical / chiropractic office building, which is currently vacant. In 1978 the property received site plan approval, which included parking / landscaping and an addition to the building and after review of the property it appears the parking and landscaping improvements were completed but the addition to the building was not done. Hair salons are not a permitted use within the OB-1 zone however it is a permitted use in the C-3 zone, which adjoins the property boundary line to the East. Mr. Raes stated the applicant is proposing 10 parking stalls and the interior of the building will be ADA compliant. Mr. Raes testified the proposed use would be less intensive than some of the uses that are permitted in regards to traffic. For example the trip count intensity of traffic for the proposed use is 23 trips per day whereas, a daycare center or medical use, which are both permitted uses in the OB-1 zone, would estimate between 40 to 100 trips per day. The site will have an ingress driveway from Lingert Avenue and an egress driveway to Route 173. Mr. Raes stated the applicant will comply with Mr. Hintz's request to add additional landscaping around the base of the sign and to add landscaping to shield the headlights from Lingert Avenue.

Mr. Raes advised the board that in addition to seeking a Use Variance there are several administrative variance that are being requested:

- 1). **Minimum depth of measurement.** The existing depth is 170ft where 150ft is permitted.
- 2). **Minimum driveway off set to property line.** The existing setback from the westerly property line is 3.9 feet where 10 feet is required.
- 3). **Sign Setback.** The existing sign is located 5.8 ft from the property line where 15 ft is required.

Mr. Raes stated that he does not see any negative criteria associated with the proposed use. The property is well suited for the proposed use, it is a less intensive use and it adjoins the C-3 zone in where this use is permitted. Mr. Raes stated the use will not impair the intent of the master plan and will not cause substantial detriment to the public good. Mr. Raes stated if the relief is granted the use will encourage economic development, will benefit the community, it follows the objectives of the master plan by encouraging the reuse of existing developed land, when compared to permitted uses within the OB-1 zone, the proposed use is considered less intensive from a traffic perspective. Mr. Raes stated that it was his belief the positive benefits outweigh any negative impacts associated with the proposed use.

Mr. Holt inquired if the entranceway from Lingert will be one way and Mr. Raes responded yes. Mr. Trepkau inquired about the parking lot and whether it was going to remain partially paved and stone, Mr. Raes responded yes. Mrs. Gallo inquired why the sign had only a 5 ft setback and Mr. Raes responded that is the location of the existing site sign and if they were to consider moving the sign to the East it would interfere with the site triangle by the Lingert Avenue driveway. Mrs. Gallo inquired if the sign would be ground lit, Attorney Kinneally responded yes.

Mr. Clerico advised the board that the applicant has requested a waiver from site plan, which the board would have to decide. Mr. Clerico added that he would like to establish a site easement at the corner of the property so any improvements that were added on the site would not interfere with the site easement. Mr. Clerico stated that the applicant may want to relook at the zoning in regard to the minimum depth of measurement and felt that the ordinance refers to a maximum depth of measurement and if so the variance would not be needed.

Mr. Feldmann inquired if any site lighting would be added and Mr. Raes stated no the building currently has a spotlight on the East and West corner of the building, that there is lighting along Route 173 and the proposed use operates mostly during daytime hours.

Chairman Tranquilli asked the public if they had any questions for Mr. Raes and there being no questions, Chairman Tranquilli closed the meeting to the public.

Mr. Feldmann questioned the number of clients the applicant averages daily and wondered how accurate the 23-trip traffic count was. Mr. Tomaro testified that he has a mix of walk-in and appointment customers, the walk-ins are generally for haircuts which take 20 to 30 minutes and the appointment customers are generally for processing such as color or perms which could take a couple of hours and on the average they see between 23 to 25 customers a day. Mr. Feldmann inquired how the waste would be disposed of, Mr. Tomaro stated he had not really thought about it, presently he uses a dumpster and he would probably use a dumpster in the new location. Attorney Kinneally advised the board that there being no further questions the testimony for the applicant has concluded.

Chairman Tranquilli opened the meeting to the public for testimony and or questions.

Mr. Jack Harrison, 28 Spruce Run Road, stated he was here to speak as a neighbor of the property and he stated he has been a customer of Mr. Tomaro's for over thirty years and he believes this is an ideal use of the property and he cannot conceive any negative impact.

There being no further questions from the public a Motion was made by Mr. Trepkau, seconded by Mr. Feldmann, to close the meeting to the public: **All Ayes. Motion carried.**

Mr. Query stated that based on the testimony that was provided tonight the applicant has provided sufficient proof that there is sufficient positive criteria to allow the use and that there are no negative impacts if the use was allowed.

A Motion was made by Mr. Query, seconded by Mr. Trepkau, to grant relief to allow the use of a barber shop / hair salon to operate in the OB-1 zone at 110 West Main Street:

Roll Call Vote:

Ayes: Tranquilli, Gallo, Feldmann, Holt, Query, Trepkau, Berson

Nays:

All Ayes. Motion Carried.

A Motion was made by Mrs. Gallo, seconded by Mr. Feldmann, to grant a Waiver of Site Plan.

Mr. Clerico suggested since the town has provisions for a minor site plan application that perhaps the items mentioned tonight such as the dumpster, additional landscaping and a recorded site easement at the intersection of the Lingert Avenue driveway should be noted on a plan. Attorney Kineally responded that if the board wishes they will submit a minor site plan application at the next meeting.

A Motion was made by Mr. Feldmann, seconded by Mr. Trepaku, to table the motion to grant a waiver of site plan: **All Ayes. Motion Carried.**

A Motion was made by Mr. Holt, seconded by Mrs. Gallo, to continue the hearing for Vincent Tomaro at the March 26, 2007 meeting:

All Ayes. Motion Carried.

**The Clinton House- Block 6 Lot 27 Block 6 Lot 28:
Use Variance, Minor Subdivision, and amended site plan application:**

Mr. Jack Holt excused himself, as he is an interested party as defined in the MLUL.

Attorney Robert Benbrook from Benbrook & Benbrook, Mr. David Fantina, Engineer, and Mr. Peter Gialias, applicant were present. Mr. David Fantina was sworn in. The following items were submitted into evidence:

- A1 Application Package.
- A2 200- Foot List.
- A3 Certified Mailings.
- A4 Proof of Publication.
- A5 Tax Certification.
- A6 Minor Subdivision map prepared by James Mantz dated 11/15/06 (1 sheet).
- A7 Use Variance Plan prepared by David Fantina, PE dated 7/17/06 (1 sheet).
- B1 Report prepared by Robert Clerico, Van Cleef Engineering dated 10/19/06.
- B2 Report prepared by Robert Clerico, Van Cleef Engineering dated 11/27/06.
- B4 Report prepared by Carl Hintz, Clarke, Caton & Hintz dated 1/11/07.

Attorney Benbrook advised the board that his client was here tonight to seek relief on three separate items. The Use Variance relief pertains to the retaining wall, which is constructed on residential lot 28. Attorney Benbrook stated that a retaining wall is permitted in every zone in town and the reason we are seeking a variance is because the residential lot happens to be accessory to the Clinton House lot and he believes this is a technical issue.

Mr. Fantina testified that exhibit A-7 depicts the retaining wall as constructed. The prior site plan approved the wall to be constructed on the property line of Lot 27, however, the wall encroaches 8.5 feet on the northeast side of Lot 28 and 18.7 feet off the property line on the northwest side. The applicant is also seeking a minor subdivision approval to change the boundary line of lot 27 and Lot 28 so the improvements will be entirely on Lot 27. The subdivision will create the conveyance of 1630 SF of land from Lot 28 to Lot 27, shown on exhibit A-6. Mr. Fantina stated the boundary line adjustment will not impact the usable frontage for Lot 28 because it is presently too steep to access from the front and currently Lot 28 has an easement on Lot 29 that allows them to share Lot 29's driveway. Mr. Fantina testified that the existing Lot width of lot 28 is 57.60', if the subdivision were approved the lot width would be reduced to 10'. Mr. Fantina stated that there is still sufficient room to complete the landscaping and the fence and the only change in the approved site plan is were the wall was supposed to go.

Mr. Feldmann inquired if any examination of the master plan had been researched to find out why one lot is commercial and the other lot residential. Attorney Benbrook stated lot 28 was rezoned several years ago and changed from commercial to residential and he was unsure on the rationale why. Mr. Tranquilli inquired what the purpose of the 3' wall was and Mr. Fantina responded that it was to keep the slope back and to allow for a flat area for the dumpster and loading pad.

Mr. Clerico stated the problem with the site work was not so much with the wall but the expanded loading area on the residential lot and the Use Variance deals with the taking of land on a residential zone and using it as a loading dock. Attorney Caldwell inquired if there was any physical reason why the concrete pad and retaining wall cannot be removed and Mr. Fantina responded there are no engineering reasons.

Mr. Clerico stated the zoning in the R-3 zone requires a 40-foot frontage, presently Lot 28 has 57.6 feet and the proposed subdivision will reduce the frontage to 10 feet. The boundary line adjustment would make the lot go from a conforming use to a nonconforming use.

Mr. Hintz commented that the prior site plan approved landscaping on the portion of the lot that faces West Main Street and now the concrete pad has been installed that area cannot be landscaped so the intent to shield West Main Street can no longer be accomplished. Mr. Fantina responded the applicant intends to move the landscaping. Mr. Tranquilli added that part of the prior approval was to install a fence that would block the view of the loading area and Attorney Benbrook responded the fence will not be eliminated the location will be modified. Mr. Tranquilli commented that the board has new members that were not hear for the original approval and if the hearing is going to continue he would like the applicant to provide the board members with copies of the approved site plan so everyone has the facts in front of

them. Attorney Benbrook stated that he is willing to submit the maps and come back for another hearing however, he will be out of the country in March and will not be able to reappear before the board until April. Attorney Caldwell advised Attorney Benbrook to amend his notice to include the relief sought for the reduce of the frontage and to resend out the certified mailings. Mr. Clerico suggested it would be helpful if Mr. Fantina updated his Use Variance Plan (exhibit A-7) to show the original landscaping and the proposed changes to the landscaping based on the loading pad and the retaining wall.

A Motion was made by Mr. Trepkau, seconded by Mr. Feldmann, to carry the public hearing for The Clinton House until April 23, 2007:

All Ayes. Motion Carried.

Mr. Holt rejoined the board.

Public Comment:

Mr. Patrick McGuire, 94 Center Street inquired about the sequence of events on why the Clinton House appeared back before the board. Mr. Clerico responded that on a site inspection it appeared the applicant did not follow the approved site plan and he was notified to either remove the non-approved installations or appear back before the board.

Board Discussion:

Chairman Tranquilli advised the board that the Mayor and Council have received a resignation from Mike Penyak.

Mr. Berson inquired about the sign application for Pioneer Finance and Chairman Tranquilli advised the board that after the role of the sign committee had been clarified Mr. Gallagher was able to appear before the sign committee and receive approval for his sign.

Chairman Tranquilli advised the board that the sign committee will hold a workshop Wednesday February 28 to review the proposed sign ordinance and the next sign committee meeting will be held on March 13 2007.

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

All Ayes. Motion Carried

Respectfully submitted

Allison McGinley
Land Use Administrator