



TOWN OF CLINTON

INCORPORATED APRIL 5, 1865

43 Leigh St., P.O. Box 5194

Clinton, N.J. 08809-5194

(908) 735-8616 FAX (908) 735-8082

Board of Adjustment

Minutes of the Town of Clinton Board of Adjustment meeting held on October 29, 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".

Roll Call:

Present: Berson, Bohnel, Gallo, Holt, Querry, Trepkau, Tranquilli

Absent: Feldmann, Hendricksen

Attorney William Caldwell , Robert Clerico, P.E. and Carl Hintz, P.P. were present.

Approval of Minutes:

A Motion was made by Mr. Querry, seconded by Mrs. Gallo, to approve the minutes of September 24, 2007 as submitted:

All Ayes. Motion Carried

Voucher Approval:

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

All Ayes. Motion Carried.

Extension Request for D&D Enterprise Block 1 Lot 33:

Mr. Trepkau and Mrs. Gallo excused themselves, as they are an interested party as defined in the MLUL.

Attorney Bill Robertson was present, on behalf of Attorney Walter Wilson. Mr. Robertson advised the board that he is here tonight to request a 6-month extension to satisfy the conditions of approval. Mr. Robertson testified that his client had some issues with his prior architect and is now working with a new architect and also the COAH units have to be worked out with the formalization of the Town's affordable plan, which is awaiting approval from COAH.

A Motion was made by Mr. Query, seconded by Mr. Berson, to approve the extension request to satisfy the outstanding conditions of approval until April 28, 2008.

Roll Call Vote:

Ayes: Berson, Bohnel, Holt, Query, Tranquilli

Nays:

All Ayes. Motion Carried.

Mr. Trepkau and Mrs. Gallo rejoined the board.

The Clinton House- Block 6 Lot 27 & 28:

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

Attorney Bob Benbrook, Mr. David Fantina, Engineer, and Mr. Peter Gialias, applicant were present.

The following items were submitted into evidence:

- A1- Application Package
- A2- 200 Foot List
- A3- Certified Mailings
- A4- Public Notice
- A5- Tax Certification
- A6- Zoning Map last revision date of 5/22/98
- A7- Prior Site Plan Approval revised 8/9/04
- A8- Minor Subdivision Map dated 11/15/2006 prepared by James Mantz
- A9- Landscaping Plan dated April 25, 2007 prepared by David Fantina
- B1- Special Meeting Night Notice
- B2- May 21, 2007 letter prepared by Carl Hintz
- B3- October 19, 2006 letter prepared by Robert Clerico

Attorney Benbrook advised the board that he was here tonight to seek approval for the construction of a retaining wall that was not build per the original site plan approval. The wall was built in error by the contractor while Mr. Gialias was out of the country, the wall that was approved prior was supposed to be built on Lot 27, however, the wall as exists now encroaches onto Lot 28, which is also owned by Mr. Gialias.

Attorney Benbrook stated that Mr. Holt, a member of the board, cannot personally participate as an objector but he does agree that Mr. Holt does not give up his rights as a citizen and has the right to object through an attorney.

Attorney William Robertson stated he was present on behalf of Mr. Holt and his wife tonight.

Attorney Benbrook let the board know that he objects to the letter submitted by Attorney Wilson on September 24, 2007 and he expressed his concern with some of the board members reading the letter.

Chairman Tranquilli advised Mr. Benbrook that the letter was handed out the night of the meeting and only three members skimmed the letter, that no one actually read the letter. Attorney Caldwell added that the letter is not factual evidence that only sworn testimony under oath is the only thing the board should rely on and he asked Attorney Benbrook if he wanted to disqualify the three members that skimmed the letter. Attorney Benbrook stated that at this time he did not wish to disqualify anyone. Chairman Tranquilli asked the three members, Mr. Bohnel, Mr. Trepkau, and Mrs. Gallo, that skimmed the letter if they had a problem going forward with the Clinton House hearing all members replied no.

Mr. Peter Gialias, applicant was sworn in. Mr. Gialias stated that he was a joint owner of Lot 27 which is

the site of the Clinton House Restaurant, Lot 28 is solely owned by Mr. Gialias and Lot 29 the adjoining lot is owned by Mr. Holt. When he bought the property the front portion of Lot 28 and Lot 29 was zoned commercial; approximately four years ago the property on Lot 28 and Lot 29 was rezoned to residential. Mr. Gialias testified that his excavator removed an existing wall and some large tree trunks and when the retaining wall contractor came on site he built the wall where the dirt was dug out in error. Mr. Gialias stated he was out of the country and only realized the wall was built in the wrong location after he returned. Mr. Gialias stated that after seeing the wall in the different location he believes that it is actually a better location and better serves Lot 27 in its current location. Mr. Gialias testified that the additional area enhances Lot 27, and it is his observation that since delivery trucks can unload in this area instead of on the street it creates a safer environment.

Chairman Tranquilli inquired if any interested party wished to cross-examine Mr. Gialias. Mr. Robertson, attorney for Mr. Holt inquired who was the deed owner for Lot 27 and Lot 28. Mr. Gialias stated that Lot 27 is owned by Sindirounda LLC, which is owned by himself and three other partners, Lot 28 is owned solely by him. Mr. Robertson asked Mr. Gialias to give a background of this application. Mr. Gialias stated that in 2004 he came to the board seeking an amended site plan to allow the installation of a larger propane tank on site and he received approval from the board to install a 1,500 gallon underground propane tank. Part of the approval was to install a retaining wall on Lot 27, add fencing and to landscape the portion of Lot 28 that borders Lot 29. Mr. Robertson inquired if the retaining wall fits on Lot 27 and asked if anything prevented him from building the wall on Lot 27, Mr. Gialias replied that yes the wall would have fit on Lot 27 but the contractor built the wall on lot 28 by mistake. Mr. Robertson inquired what the width of Lot 28 was and how much he was looking to subdivide, Mr. Gialias stated he was not sure of the width but he was looking for approval to subdivide approximately half of the property.

Mr. Clerico inquired if the applicant thinks the new location of the wall is superior to the approved location then why did he not ask to put the wall in this location at the prior hearing. Mr. Gialias stated that it was not until the wall was built that he realized the benefit.

Mr. Bohnel inquired if there was a surveyor line that the contractor should have followed when building the wall, Mr. Gialias responded no, the contractor just followed the soil line by mistake.

Chairman Tranquilli inquired if Mr. Gialias was informed by the Town that they were changing the zoning of lot 28. Mr. Gialias stated that he received an informal letter that the town was looking at changing the zoning but it was his understanding he would be notified if this was going to take place and he would be given a chance to testify at a hearing, but he was not formally given notice of a hearing date regarding the zone change. Chairman Tranquilli stated the site plan approval in 2004 called for a fence to be installed, Mr. Gialias stated that they still have intentions to install the fence and the landscaping however, he was given a stop work order by the town until the matter of the wall was resolved.

Mr. David Fantina, NJ Licensed Engineer, was sworn in.

Mr. Fantina testified that because of the steep slope conditions on the frontage of Lot 28, the only way to access Lot 28 is by the driveway, which is on Lot 29 by way of an easement. Mr. Fantina testified that the bulk of the wall ranges from 8 to 12 feet further back from the Clinton House and that a portion of the wall by West Main Street is approximately 22 feet.

Mr. Fantina stated the subdivision would convey 1,630 SF from Lot 27 to Lot 28. The subdivision would also require a variance approval on Lot 28 to change the conforming front lot of 57.6' to a non-conforming frontage, which would be reduced to 10'. Mr. Fantina testified that the frontage of Lot 28 has no practical use due to the topography, the house is located in the rear of the property and has over 400' of use and the driveway access is from Lot 29. If the subdivision were granted it would not be a detriment to Lot 28 since the frontage has no practical use and it would be more of a benefit to Lot 27. Mr. Fantina stated the dumpsters will be placed in the same location, the fencing and the gate will be installed, the

landscaping will have to be shifted over by the wall but it will provide the same visual barrier as what was approved prior.

Attorney Robertson inquired if Mr. Fantina was involved in the prior approval, Mr. Fantina responded no. Attorney Robertson asked Mr. Fantina to clarify why one part of the wall encroaches on Lot 28 by 8' and the other side encroaches by 22', Mr. Fantina stated that a small radius hook was put on a small portion of the wall which makes that portion by West Main Street extend 22'. Attorney Thompson inquired what the purpose of the hook was, Mr. Fantina stated that the only reason he could think of would be to help assist the delivery trucks when exiting the site. Attorney Robertson inquired if any new storm water calculations were done on the increased impervious coverage, Mr. Fantina stated that the increased impervious coverage is so small that it did not warrant any additional storm water calculations.

Mr. Clerico inquired what utilities service Lot 28 and where they were located on the site, Mr. Fantina advised the site has cable, phone and there was a well on the site but he was not sure about sewer, the utilities come in from old Hwy 22 and if any new utilities lines were needed they would still be able to access from the 10' frontage. Mr. Clerico questioned why the new plan shows a landscape easement on Lot 29, Attorney Benbrook responded that if the new plan shows an easement on Lot 29 it is an error and they have no intention to have a landscape easement on Lot 29. Attorney Benbrook stated that the landscape easement on Lot 29 will be removed from the plan.

Mr. Carl Hintz inquired if it was necessary for the impervious coverage to remain by the radius wall; Mr. Fantina responded that area is used to access the dumpsters. Mr. Hintz inquired if the 10' frontage on Lot 28 has trees on it, Mr. Fantina replied that it has some trees but they can provide additional landscaping.

Mr. Clerico inquired what the resulting width is in the new delivery area and what takes place in that area. Mr. Fantina stated the area is between 30 and 50' and the increased area allows delivery trucks to pull in and off load instead of parking and off loading in the street.

Mr. Trepkau questioned if the hook portion of the wall was necessary and if the hook was removed and the wall straightened out, it could make the non-conforming situation on the frontage of Lot 28 better. Mr. Benbrook stated that he would not object to eliminating the hook and make the frontage of Lot 28 larger and he would accept this as a condition of approval if the board felt this was necessary.

Attorney Robertson commented that the applicant has not presented sufficient testimony for the board to grant the Use Variance and Subdivision approval. The town amended its zoning plan to place Lot 28 in a residential zone and there is no basis on why the board should deviate from the zoning ordinance and the master plan of the town and he felt the board had no jurisdiction to grant the variance relief.

Attorney Benbrook stated that under the MLUL 40:55D 70 the applicant is required to substantiate the positive and negative burden of proof and tonight the testimony clearly demonstrates the positive and negative criteria. Attorney Benbrook stated that if the board feels more comfortable the applicant will eliminate the hook of the wall so as to increase the 10' frontage on Lot 28.

There being no further testimony, a Motion was made by Mr. Query, seconded by Mr. Tranquilli, to grant approval to allow the Use Variance conditioned upon the applicant obtaining a subdivision and an amended site plan approval:

Mr. Query commented that after hearing the testimony he believes the new enlarged space that was created by the relocation of the retaining wall creates a safer and more useable area and due to the topography of the site the frontage of Lot 28 is not a useable area. Mr. Query stated that he did not think anything would be gained by having the applicant rip out the wall. Mr. Trepaku commented that it seemed like the location of the wall was an honest mistake and he was not sure it would benefit anyone to tear the wall down. Mr. Tranquilli stated there is no greater impact if the wall is allowed to remain as is.

Roll Call Vote to grant the Use Variance:

Ayes: Berson, Bohnel, Gallo, Querry, Tranquilli, Trepkau

Nays:

All Ayes. Motion Carried.

A Motion was made by Mr. Querry, seconded by Mrs. Gallo, to grant subdivision approval of Lot 28 of 1,630 SF and to grant the variance relief requested to allow the frontage of Lot 28 to be reduced from 57.8 ‘ to 10’:

Mr. Trepkau commented that he feels the board has an opportunity to increase the frontage on lot 28 so that the non-conforming frontage can be made better and he would like to amend the motion.

An amended Motion was made by Mr. Trepkau, seconded by Mr. Berson, to amend the frontage variance on Lot 28 by offsetting the property line 1’ from the northern part of the retaining wall to 1’ from the southern part of the retaining wall and then striking a line between the two points to the road.

Roll Call Vote to amend the frontage variance of the property line of Lot 28:

Ayes: Berson, Bohnel, Gallo, Querry, Tranquilli, Trepkau

Nays:

All Ayes. Motion Carried.

Roll Call Vote on Subdivision and Variance Relief:

Ayes: Berson, Bohnel, Gallo, Querry, Tranquilli, Trepkau

Nays:

All Ayes. Motion Carried.

Mrs. Gallo stated she was concerned with the aesthetics of the fencing, Mr. Tranquilli agreed and thought the fence should be lowered. Mr. Berson stated that he would like to see all the previous conditions of approval reflected on the updated site plan. Mr. Clerico suggested that the site plan should be updated to reflect the old conditions, and the new loading area. Attorney Caldwell suggested that the board defer voting on the Amended Site Plan until the new plan has been presented showing all the improvements.

A Motion was made by Mr. Berson, seconded by Mr. Bohnel, that the application for the Amended Site Plan of Lot 27 be carried until November 26, 2007.

Roll Call Vote to carry the Amended Site Plan Application for Lot 27:

Ayes: Berson, Bohnel, Gallo, Querry, Tranquilli, Trepkau

Nays:

All Ayes. Motion Carried.

Public Comment:

Mr. Frank Gallagher commented that the Master Plan and Zoning is reviewed by the Master Plan Committee, the Planning Board and Council and the board should take that into consideration when an applicant deviates from an approved plan.

There being no further business a Motion was made by Mr. Trepkau, seconded by Mr. Berson, to adjourn the meeting at 11:10pm.

Respectfully submitted,

Allison McGinley
Land Use Administrator.