

**MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT**

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**PUBLIC MEETING**

DATE: March 25, 2019

Chairman McCaffrey called the meeting to order at 7:03pm.

Chairman McCaffrey led the Flag Salute.

Chairman McCaffrey read the Public Notice.

This is a public meeting of the Zoning Board of the Township of Clinton, County of Hunterdon and State of New Jersey. Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that an Annual Notice was published in the Hunterdon County Democrat and the notice of and agenda for this meeting was posted on the bulletin boards in the Municipal Building and outside the Planning and Zoning Office and faxed to the Hunterdon County Democrat, the Express Times, the Courier News, the Hunterdon Review, and the Star Ledger, no later than the Friday prior to the meeting.

**MEMBERS IN ATTENDANCE**

Lewis, Matsen, McCaffrey, McTiernan, Pfeffer, Stevens, Yager

**MEMBERS ABSENT**

Filus, Roberts

**PROFESSIONALS/STAFF IN ATTENDANCE**

- 1) Jonathan E. Drill, Board Attorney (via telephone)
- 2) Denise Filardo, Board Secretary

**APPROVAL OF VOUCHERS**

A motion was made by Mr. McCaffrey and seconded by Mr. Yager to approve the vouchers for payment. All were all in favor.

**MEETING MINUTES**

- 1) February 25, 2019

A motion was made by Mr. Pfeffer and seconded by Mr. Matsen to adopt the February 25, 2019 Meeting Minutes. The vote record follows.

<b>Roll Call: Meeting Minutes, February 25, 2019</b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Not Eligible</b>	<b>Absent</b>
Filus					X	X
Lewis					X	
Matsen		X	X			
McCaffrey			X			
McTiernan (Alt. 2)			X			
Pfeffer (Alt. 1)	X		X			
Roberts						X
Stevens					X	
Yager					Abstained	

**RESOLUTIONS**

1. IPPSOLAR INTEGRATION, LLC  
 Block 13, Lot 11.01  
 111 Cokesbury Road  
 Application No. BOA-2019-01  
 Resolution No. BOA-2019-02  
 Grant of Minor Site Plan Approval to install Roof-mounted Solar panels on existing Safavieh Building Roof.

A motion was made by Mr. Yager and seconded by Mr. McTiernan to adopt Resolution No. 2019-02. The vote record follows.

<b>Roll Call: IPPsolar Integration Blk 13, Lot 11.01 Reso. No. 2019-02</b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Not Eligible</b>	<b>Absent</b>
Filus					X	X
Lewis					X	
Matsen			X			
McCaffrey			X			
McTiernan (Alt. 2)		X	X			
Pfeffer (Alt. 1)			X			
Roberts						X
Stevens					X	
Yager	X		X			

2. 9 MAIN STREET, LLC

Block 49, Lot 25

9 Main Street

Application No. 2011-07

Resolution No. BOA-2019-03

Grant of Extension of Time within which to obtain a permanent Certificate of Occupancy.

A motion was made by Mr. Matsen and seconded by Mr. Pfeffer to adopt Resolution No. 2019-03. The vote record follows.

<b>Roll Call: 9 Main Street, LLC Blk 49, Lot 25 Reso. No. 2019-03</b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Not Eligible</b>	<b>Absent</b>
Filus					X	X
Lewis					X	
Matsen	X		X			
McCaffrey			X			
McTiernan (Alt. 2)			X			
Pfeffer (Alt. 1)		X	X			
Roberts						X
Stevens					X	
Yager					Abstained	

**PUBLIC HEARINGS**

1) OLD 75, LLC

Block 4.03, Lots 34.01, 35

1110 Route 22 (Lot 35) and 1120 Route 22 (Lot 34.01)

Application No. BOA-2018-06

Applicant is seeking a “D(1)” Use Variance to receive, visually inspect and photograph automobiles typically coming off a three-year lease to then sell via the internet, at auction or at another retail location. If the “D(1)” Variance is granted, there would be no change in the use or existing conditions on the property until such time a Site Plan application was made and approved on the property.

The applicant was represented by George Dilts, Esq. Attorney Dilts explained that the applicant is requesting a “D(1)” Use Variance to continue its post-lease auto inspection use in a portion of the building on Lot 34.01 and utilizing a portion of the site for vehicle storage. No site improvements are proposed at this time. The house on Lot 35 and the former Bait Shop formerly operated by the Mataka’s are not part of this application. If the applicant decides to utilize this part of the property, they will submit a Site Plan application to the Board. The initial application proposed sales and service, which the applicant is no longer seeking with this application.

The following individuals were sworn and testified:

1. Frank Klapinski, P.L.S, (Applicant's Surveyor)
2. Phil Miller, Director of Sales at Novak Motors (Representing Old 75, LLC)
3. Elizabeth McManus, PP, AICP (Applicant's Planner)
4. Thomas Behrens, Jr. PP, AICP (Board Planner)

It was noted that there was no one in the public with interest in this application.

EXHIBITS:

- A-1 Color rendering of Plan of Survey with a last revision date of 2/25/19
- A-2 Photograph Exhibit of existing site conditions

Mr. Klapinski's qualifications as a Land Surveyor were accepted by the Board.

Mr. Klapinski's testimony included and was not limited to the following:

- An orientation of the property referencing Exhibit A-1. The property is East of Harley Davidson and West of Novak Motors.
- Lot 34.01, comprised of asphalt millings is the proposed staging area for vehicles.
- Lot 35 is shown on exhibit but is not part of this application.
- Location of two gates and their distance from Route 22.
- Trucks will conduct a turn maneuver in the parking area and will not utilize the loop.
- No new sign, lighting or landscaping are proposed.

There were no questions for Mr. Klapinski.

Mr. Miller's testimony included and was not limited to the following:

- Novak Motors three locations are Farmingdale, NY, Bedford, TX and Lebanon, NJ. Farmingdale is the primary marshalling yard.
- Vehicles coming off lease with an average term of 36 months, are returned to one of Novak Motor's three (3) marshalling yards, this being one of them.
- Vehicles are received, inspected, photographed and then a condition report is prepared. Vehicles are then staged for pick-up and leave the site. Any needed repairs are done at Novak Motors.
- No sales or service or auto-body work will be conducted at this site. No customers will come to the site.
- Two (2) full-time employees work during hours of operation which are 9:00am – 5:00pm. One (1) or two (2) additional workers on site are employed by AIM a National inspection company.
- Former Raceweld business equipment is being liquidated and sold. There is a trailer belonging to the property owners which is currently use for storage.
- Maximum number of vehicles on the site is 125 and the average is 100.
- Vehicles are sometimes delivered to the site via tractor trailer car carriers which on average carry eight (8) cars.

- The applicant has an interest in purchasing the property which may be pursued once the estate of the owners is settled.

Beth McManus' qualifications were accepted by the Board.

Ms. McManus provided testimony which included and was not limited to the following:

#### Positive Criteria

This site is particularly suited for the proposed use of receiving, inspecting and photographing used vehicles. This proposed use is part of the existing character of the immediate area and its decades of historic automotive use. There will be no generation of hazardous materials, it is not similar to car dealership, no customers on site, no significant lighting. All activity takes place inside the building, the outside area is short term storage of vehicles. The site is also particularly suited because the use is similar to prior use and surrounding area. As such, the proposed use supports the following three (3) purposes of the MLUL:

Purpose a: to encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals and general welfare;

Purpose g: to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all NJ citizens;

Purpose m: to encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land.

#### Negative Criteria

- Referencing the photographs in Exhibit A-2, Ms. McManus reviewed the characteristics of the site.
- There is no detriment to public good, no visual impact as the site is quite screened, resulting in very limited view of vehicles to Route 22 motorists;
- The applicant is not proposing to change the character of site or area;
- There is no significant traffic impact as site is not open to the public, possessing attributes more like an industry processing facility;
- No changes proposed to existing sign;
- Will not have effect of undermining the basis of the C-2 zone district. Reference 2 master plan goals in tom B Report;
- Bring additional productivity without adding significant traffic to Route 22. Maintaining the existing character of roadway;
- Adding additional life to an existing developed property.

Board Attorney Drill added the following as his suggestion regarding how the Board should view the Positive Criteria:

Regarding the standard for the "D(1)" Use Variance Positive criteria, in the Medici Case the Supreme court said that in a non-inherently beneficial use case, the standard

benefit to the general welfare derived from a non-inherently beneficial use, the benefit derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed. As such, although the applicant suggests that some purposes of zoning are being advanced, they do not have to. In a non-inherently beneficial use, the standard the Board must employ to determine is whether special reasons have been proven is whether the proposed use will promote the general welfare by having the site particularly suited for the use.

**BOARD FINDINGS AND CONCLUSIONS**

- The Board found that the property is particularly suited for the proposed use of automobile, receiving, inspecting and photography, provided that the Board imposed conditions are complied with.
- The Board found that the “D(1)” variance can be granted in this particular case without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance provided that the Board imposed conditions are complied with.
- The Board concluded that the requested “D(1)” Variance can and should be granted subject to the conditions set forth below.

**RELIEF GRANTED**

“D(1)” Use Variance to Allow the receiving, inspection and photography of post-lease automobiles. Subject to the applicant’s compliance with the imposed conditions, a “D(1)” Use Variance is granted from ordinance section 165-93, which does not permit automotive uses in the C2 Zone because such usage is not listed as a principal, conditional or accessory use under ordinance sections 165-160, 165-161 and 165-162.

A motion was made by Mr. Pfeffer and seconded by Mr. Yager to grant the requested Use Variance. The vote record follows.

<b>Roll Call: OLD 75, LLC Blk 4.03, Lots 34.01 &amp; 35 - Use Variance</b>						
<b>Member</b>	<b>Motion</b>	<b>2nd</b>	<b>Yes</b>	<b>No</b>	<b>Not Eligible</b>	<b>Absent</b>
Filus						X
Lewis			X			
Matsen				X	X	
McCaffrey			X			
McTiernan (Alt. 2)			X			
Pfeffer (Alt. 1)			X			
Roberts						X
Stevens				X		
Yager			X			

The Board took a brief Recess at 8:57pm and resumed the meeting at 9:00pm.

2) DESAPIO REAL ESTATE DEVELOPMENT, LLC

Block 70, Lot 12

1734 Route 31 North

Application No. BOA-2018-05

The applicant has submitted a bifurcated application seeking to obtain a “D(1)” Use Variance to permit Tire Repair and Minor Automobile Repairs. If the “D(1)” Variance is granted, the applicant will then apply for Preliminary and Final Site Plan Approval.

*This hearing was continued from March 25, 2019*

Alan Y. Lowcher, attorney for the applicant provided a brief description of the application. The applicant has submitted a bifurcated application and is first requesting a “D(1)” Use Variance to develop a new one-story office building and a separate one-story auto service building with associated improvements. The two-story office building currently on the site will remain.

The following individuals were sworn:

- 1) Jess Symonds, PE (Applicant’s Engineering Expert);
- 2) Gary Dean, PE, PP, (Applicant’s Traffic Expert);
- 3) Marcus Rosenau, Registered Architect (Applicant’s Architectural Expert);
- 4) Antonio DeSapio (Applicant);
- 5) Elizabeth McManus, (Applicant’s Planning Expert);
- 6) Thomas Behrens, Jr., PP, AICP (Board Planner).

The following individuals testified during this hearing:

- 1) Jess Symonds, PE (Applicant’s Engineering Expert);
- 2) Marcus Rosenau, Registered Architect (Applicant’s Architectural Expert);
- 3) Gary Dean, PE, PP, (Applicant’s Traffic Expert);

It was noted that everyone in public is somehow connected with the applicant.

EXHIBITS

Exhibit A-1 1<sup>st</sup> Sheet of Site Plan

Exhibit A-2 Color rendered version of Sheet 2 with septic location added.

Mr. Symonds’ qualifications were accepted by the Board.

Mr. Symond’s testimony included and was not limited to the following:

- An orientation of the site referencing Exhibit A-1
- Impervious coverage
- Location and size of septic, noting perc tests have not been conducted. The applicant is making an assumption that it will perc.

- Brief description of lite auto repair facility servicing approximately five (5) cars per seven (7) bays per day. Six (6) bay to be used for repairs and one (1) bay to be used for alignments.
- The applicant does not have a tenant for the office space.
- Parking and tractor trailer deliveries.
- Location of tire storage.

The applicant agreed to comply with all of the comments contained in the Township Fire Marshal's letter if there is an approval.

Mr. Rosenau's qualifications as an architect were accepted by the Board.

Referencing Exhibits A-1 and A-2, Mr. Rosenau's testimony included and was not limited to the following:

- Proposed 19-foot height of Office Building and 23-foot height of proposed Auto Repair building.
- Due to the line of sight and landscaping, the applicant is of the opinion that the Office Building will sufficiently screen the Auto Repair building and the garage bays will be seen from Route 31.

Mr. Dean's qualifications as a traffic expert and a Civil Engineer were accepted by the Board.

Referencing his Traffic Report dated November 29, 2018, enclosed herewith, Mr. Dean's testimony included and was not limited to the following:

- Promoting a Land Use that generates the least amount of traffic as compared to other uses advances the purposes of zoning.
- The proposed use will generate less traffic than the permitted uses in the zone.
- Parking as it relates to the Township Ordinance.
- The existing driveway would be shared with all three uses, including the existing office building.
- Standard delivery trucks for tire stores are box trucks. The site is designed to accommodate tractor trailer trucks if necessary.

At 10:20pm Attorney Lowcher stated he felt a good time to stop for tonight.

Attorney Drill noted that the application will be carried to April 22nd with no need for further notice.

The Board asked that the applicant provide the following information prior to the next hearing:

- Current occupancy of existing Office Building
- What is the percentage of vacant Office space in the Route 31 corridor?
- Can you provide a compliant Design?



- List of Variance and/or Design Waivers to be requested with Site Plan Application, should the Use Variance be granted.
- Provide upper limits and constraints on the non-permitted Use.
- Reproduce Exhibit A-2 with details and submit to the Board Engineer, Board Attorney and Board Planner prior to the next hearing.
- Provide the number of automotive related businesses within a 2-mile radius of this site.
- Provide details on the proposed septic system.

The Board suggested that the applicant may want to do perc tests since the site is in a limestone area.

### **ADJOURNMENT**

A motion was made by Ms. Stevens and seconded by Mr. Pfeffer. All members were in favor and the meeting was adjourned at 10:26pm.

Respectfully Submitted,

*Denise Filardo*

Planning and Zoning Board Secretary

These minutes were approved on June 24, 2019.