

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

DATE: August 23, 2021

7:00PM

IN-PERSON PUBLIC MEETING AT:

The Clinton Township Public Safety Building
1370 Route 31 North – 3rd Floor Council Chambers
Annandale, NJ 08801

Chairman McCaffrey called the meeting to order at 7:00pm.

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 Township website, on the bulletin board mounted to the front of the Municipal Building, the door of the Public Safety Building 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, McCaffrey, McTiernan, Rohrbach, Stevens, Yager

Ms. Lyte arrived at 7:07pm and was sworn in as Alternate 1.

MEMBERS ABSENT

None.

PROFESSIONALS/STAFF IN ATTENDANCE

Jonathan E Drill, Esq., Board Attorney

Larry Plevier, PE, Board Engineer

Ed Snieckus, PP, AICP, Board Planner

Jackie Klapp, Board Professional Court Reporter/Stenographer

Denise Filardo, Board Secretary

MEETING MINUTES

- 1) Meeting Minutes – April 26, 2021

Adoption of these Minutes was postponed to a future meeting.

RESOLUTIONS

None.

NULLIFICATION OF WAIVER OF SITE PLAN APPROVAL

BEAVER AVENUE DEVELOPMENT

Block 59, Lot 3

79 Beaver Avenue

Application No. 2021-05

Applicant sought a Waiver of Site Plan Review to relocate an existing automatic standby generator located on the premises and to replace the existing back stairs on the two-story office building with new steel stairs.

On July 19, 2021, the Board granted Waiver of Site Plan Approval to install a second automatic standby generator on the premises and to replace the existing back stairs on the two-story office building with new steel stairs. The aforementioned approval was conditioned upon the Zoning Officer's inspection of the site to verify if the existing site conditions are in compliance with the previously approved Site Plan granted in 1997. The Zoning Officer's site inspection on August 2, 2021 revealed that the existing conditions are not compliant with the previously approved Site Plan and in fact numerous zoning violations were discovered.

The applicant's attorney, Anthony Koester requested this matter be carried to the September 27, 2021 meeting. The Board agreed to carry the application to the September 27, 2021 meeting with new notice.

REQUEST TO WITHDRAW APPLICATION

JOSEPH SERRANI

186 Stanton Mountain Road

Block 16, Lots 70, 71, 72

Application No. 2020-05

Applicant sought a D(1) Use Variance to permit an existing smaller vacant building, currently classified as an accessory structure, to be used for the housing of equine-related farm employee(s) on the premises.

Ms. Rohrbach and Mr. Yager recused from both the Serrani and Herr applications and exited the room.

There were no members of the public in attendance with interest in this application.

The applicant through its new attorney, Howard D. Cohen, Esq., submitted a letter to the Board dated August 11, 2021 advising that the application was being withdrawn without prejudice so that the applicant could pursue an application he had filed with the Hunterdon County Agricultural Development Board (CADB) for a determination of Site-Specific Agricultural Management Practice (SSAMP) for the equine farm operation on the property.

In connection with this application, the Township Zoning Officer performed a site visit at the request of neighboring objector Marilyn Herr (at the request of Ms. Herr’s adult children – Julie Herr Smith, Esq. and Daniel Herr, Esq. – who are attorneys and were representing Ms. Herr in opposition to the Serrani application and the Zoning Officer issued a memo to the Board on May 6, 2021, followed by an addendum to that memo on May 10, 2021.

Ms. Herr, through her two attorneys, filed a timely appeal with the Board on May 26, 2021 from the decisions, determinations, actions and/or inactions of the Zoning Officer set forth in the Zoning Officer’s memos issued May 6, 2021 and May 10, 2021.

Mr. Gruenberg submitted a letter on behalf of the Estate of Marilyn Herr (the “Herr Estate”) (Ms. Herr passed away on July 22, 2021) arguing that Serrani does not have the right to unilaterally withdraw his application because the hearing commenced and noting that Board Rule 2:4-7 provides that, after the commencement of a hearing, a voluntary dismissal may be taken only with the approval of the Board, in which case the Board shall dismiss the action with or without prejudice depending on the circumstances of the particular case, and further taking the position that, “should the Board decide to dismiss Serrani’s application without prejudice, such dismissal should be conditioned upon the payment of Herr’s legal fees and expenses and the Board’s professionals’ fees and expenses”

FINDINGS AND CONCLUSIONS

After hearing arguments from both Attorney Cohen and Attorney Gruenberg and weighing the facts, the Board decided to dismiss the application without prejudice subject to a condition requiring reimbursement of attorney fees and expenses.

A motion was made by Mr. Pfeffer and seconded by Ms. Stevens to dismiss the application without prejudice subject to conditions. The vote record follows.

Roll Call: Dismissal of Serrani Application No. BOA-2020-05 Without Prejudice subject to conditions.						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Lewis			X			
Lyte (Alt. 1)					X	
McCaffrey (Chair)			X			
McTiernan			X			
Pfeffer (Vice Chair)	X		X			
Rohrbach					Recused	
Stevens		X	X			
Yager					Recused	

PUBLIC HEARING 1

MARILYN RHYNE HERR
 186 Stanton Mountain Road
 Block 16, Lots 70, 71, 72
 Application No. BOA-2021-03

Applicant has submitted an application to Appeal the Zoning Officer’s decisions and determinations in connection with the on-site inspection of the Serrani property located at 186 Stanton Mountain Road, which decisions and determinations were made in connection with the D(1) Variance application submitted by Serrani which is referenced above.

There were no members of the public in attendance with interest in this application.

This appeal application was continued from June 28, 2021.

Based upon the Board’s dismissal of the Serrani application, the Zoning Officer announced that she was withdrawing/rescinding both of her memos issued May 6, 2021 and May 10, 2021 for the following two reasons:

1. Since the Serrani variance application was dismissed and the memos were prepared in connection with that application they no longer serve a purpose in the application process; and
2. The Zoning Officer did not want the memos to be used by either Herr or Serrani in the pending CADB proceedings for purposes of representing that the Township was taking any position on the disputes at issue in as much as her understanding was that the Township would not be taking a position on the pending dispute and the Township’s position on any dispute before the CADB is through the Mayor and Council as conveyed by the Township attorney.

Board attorney Drill advised the Board that since the Zoning Officer has withdrawn the two memos, the Herr Appeal application should be dismissed as moot.

FINDINGS AND CONCLUSIONS

After hearing arguments from both Attorney Cohen and Attorney Gruenberg and based on the rescission by the Zoning Officer of the memos issued May 6, 2021 and May 10, 2021, the Board found that the Herr appeal application has been rendered moot and should thus be dismissed as moot.

A motion was made by Mr. Pfeffer and seconded by Ms. Stevens to dismiss the application without prejudice subject to conditions. The vote record follows.

Roll Call: Dismissal as Moot of Herr Appeal Application No. BOA-2021-03						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Lewis			X			
Lyte (Alt. 1)					X	
McCaffrey (Chair)			X			
McTiernan			X			
Pfeffer (Vice Chair)	X		X			
Rohrbach					Recused	

Stevens		X	X			
Yager					Recused	

VOUCHERS

The Board reviewed the vouchers and there were no comments or questions.

The Board took a brief recess at 8:46pm and resumed the Public Hearings at 8:52pm.

PUBLIC HEARING 2

CLINTON AGRICULTURAL ASSOCIATES

1015 Route 22 East

Block 14, Lots 6 and 7

Application No. 2020-07

Applicant has submitted an application for a bifurcated D(1) Use Variance to permit a proposed 30,000sf flex-space building, five (5) individual self-storage buildings containing a total of 41,000sf of self-storage area and a 1,000sf office building, two (2) 8,000sf each office/retail buildings. Applicant is also seeking a D(6) height Variance and C(1) and C(2) Variances for minimum lot width at building and side yard setback.

This application was continued from March 22, 2021 and April 26, 2021, and carried from June 28, 2021 and carried from July 19, 2021 with the need for new notice.

Mr. McCaffrey recused from this application and exited the meeting.

There were no members of the public in attendance with interest in this application.

The applicant was represented by Anthony E. Koester. Both Mr. Nusser, Mr. Kyle and Mr. Behrens remain under oath as they were sworn when the application commenced.

The following individuals were sworn and testified during the hearing:

1. Mr. Ed Snieckus, PP, AICP (Board Planning Expert)
2. Harold Wilbert (Applicant’s and Owner’s Principal)

Mr. Kyle’s testimony included and was not limited to providing justification to the Board in support of the requested variance relief.

The Board took a brief recess from 9:24pm to 9:28pm.

Mr. Nusser’s testimony included and was not limited to identification of the permitted uses the applicant would like for the Flex Space.

BOARD FINDINGS AND CONCLUSIONS

- The proposed development promotes the general welfare purposes of the MLUL and that the property is particularly suited for the proposed prohibited flex space and self-storage uses, provided that the applicant complies with the Board imposed conditions.
- The D(1) Use Variances 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) use variances can and should be granted subject to the applicant’s compliance with the Board imposed conditions.
- The lot width and setback deviations currently exist on the property which the Board found constitutes an extraordinary and exceptional situation uniquely affecting the property and the structure which is lawfully existing thereon because the existing deviations are lawfully created pre-existing nonconformities that the applicant’s re-purposing of the site will not impact or change.
- Strict application of the ordinance regulations at issue will inhibit the extent to which the property can be used by, in effect, prohibiting the property from being used at all since any further development would require such relief.
- The Board concluded that this constitutes the sort of hardship that N.J.S.A. 40:55D-70C(1) was intended to relieve.
- The C(1) variances could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance provided that the Board imposed conditions are complied with.
- The Board concluded that it can and should grant the D(1) variances subject to the applicant’s compliance with the Board imposed conditions.

RELIEF GRANTED

The following relief was granted subject to the applicant’s compliance with the Board imposed conditions.

- Bifurcated D(1) Use Variance for Flex Space Use.
- Bifurcated D(1) Use Variance for Self-Storage Use.
- Bifurcated C(1) Variances to Allow Existing Non-Conforming Lot Width Conditions to Continue.
- Bifurcated C(1) Variance to Allow Existing Non-Conforming Side Yard Setback to Continue.

A motion was made by Ms. Stevens and seconded by Mr. McTiernan grant the requested “D(1)” and “C(1)” Variances. The vote record follows.

Roll Call: Clinton Agricultural Associates - Application No. BOA-2020-07						
Member	Motion	2nd	Yes	No	Not Eligible	Absent
Lewis			X			
Lyte (Alt. 1)					X	

McCaffrey (Chair)					Recused	
McTiernan		X	X			
Pfeffer (Vice Chair)			X			
Rohrbach				X		
Stevens	X		X			
Yager			X			

ADJOURNMENT

A motion was made by Ms. Stevens and seconded by Mr. Yager to adjourn. The meeting was adjourned at 9:50 pm.

Respectfully Submitted,

Denise Filardo

Planning and Zoning Board Secretary

These minutes were approved on January 24, 2022.