

CLINTON TOWNSHIP BOARD OF APPEALS

REPORT OF MEETING
WEDNESDAY, JULY 27TH, 2016

PRESENT: Francis Marella, Chairperson
James D'Angelo, Vice-Chairperson
Robert M. Campbell, Secretary
David Edgar
Kenneth Pearl
Denise C. Trombley

ABSENT: Ernest Hornung (Excused)

STAFF: Carlo Santia, Director
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

The meeting was called to order at 6:30 p.m.

Mr. Marella explained the parameters under which this Board can act and how the public hearing will be conducted. He further explained that, as stipulated in the Township Ordinances, all variances granted by the Board of Appeals are subject to several standard conditions as follows: 1) The petitioner must comply with all applicable requirements of Township ordinances; 2) The project work requiring the variance must be completed within two years of the date that the variance was granted; 3) The project work must be completed substantially in accordance with the plans submitted to the Board of Appeals; and 4) The variance is valid only for the useful life of any structure(s) on the property for which variance is granted.

APPROVAL OF AGENDA

Motion by Mr. Pearl, supported by Mr. D'Angelo, to approve the revised agenda as presented. Motion carried.

**0.90 ACRE OF VACANT LAND FRONTING THE NORTH LINE OF 19 MILE ROAD,
EAST OF HAYES (SECTION 6)**

- **REF: APPEAL: POPEYE’S LOUISIANA KITCHEN**
FILE #15-6656: PETITIONED BY MR. PHILIP P. RUGGERI,
V & R OF CLINTON, LLC
 - **REQUEST FROM CIRCUIT COURT REGARDING CLARIFICATION OF**
ACTION TAKEN BY THE BOARD OF APPEALS ON 2/17/2016
-

Mr. Campbell explained this is a request from Circuit Court for this Board to clarify action they took on this particular case at their meeting held on February 17th, 2016. He read Judge Biernat’s order remanding this case back to the Zoning Board of Appeals.

Mr. Ronald Reynolds, 31780 Telegraph Road, Bingham Farms, Michigan 48025, stated he is here to represent McDonald’s.

Mr. Timothy Tomlinson, Township Attorney, stated that, pursuant to the Court’s order, there is not to be any evidence brought forth tonight other than reviewing only the record that was previously before this Board and the motion based on that previous record. He noted that no further evidence or argument is allowed from anyone, including the attorney from McDonald’s, the Township or the petitioner, so he requested that the Board take action on the record as it is.

Mr. Pearl explained that he had originally made the motion at the February meeting, and after reviewing the facts of the case last week, he stated he would like to outline some stipulations for the record. He also included the approvals on the record:

Motion by Mr. Pearl, supported by Mr. D’Angelo, with reference to File #15-6656 an application from Mr. Philip P. Ruggeri, V & R of Clinton LLC, 43231 Schoenherr, Sterling Heights, Michigan 48313, for variance to Clinton Township Planning and Zoning Code, Chapter 1298.2-(a)-(24)-D, Supplementary Regulations, Uses Requiring Special Approval, Procedure, Fast-Food Restaurants; Chapter 1296.02-(a)-(1), Off-Street Parking and Loading, Space Layout Standards, Construction and Maintenance, Maneuvering Lane Width; Chapter 1296.01-(k)-(3)-H, Off-Street Parking and Loading, Space Requirements, Minimum Number of Parking Spaces, Business and Commercial, Drive-in/Fast-Food Restaurants; and Chapter 1292.01-m, Land Use Regulations, Schedule of Regulations Limiting Height, Bulk, Density and Area, Footnotes to Schedule of Regulations Chart, concerning 0.90 acre of vacant land fronting the north line of 19 Mile Road, east of Hayes Road (Section 6), that variance be granted to permit construction of a fast-food restaurant with a drive-thru window in the B-3 General Business District (Popeye’s Louisiana Kitchen):

- 1) Being located closer than 500 feet from two (2) existing fast-food restaurants with drive-thru windows, which is not allowed;
- 2) Having maneuvering lane width of 22 feet, being 2 feet less than the minimum required 24-foot width;

- 3) Having 11 parking spaces, being 41 parking spaces less than the minimum required 52 parking spaces; and
- 4) Having 5 frontage trees on 19 Mile Road, being 3 frontage trees less than the minimum required 8 trees; further, these variances are granted with the condition that the petitioner is to prepare and execute a cross-access agreement with the abutting property owners to the west of this site; further, these variances are contingent upon compliance with all other requirements of Township ordinances.

Mr. Pearl stated that was the original motion, and he inquired as to whether Mr. Santia agreed that is an accurate statement of the motion.

Mr. Santia agreed that is the motion that was made by this Board on February 17th, 2016.

Mr. Pearl stated he would like to outline the finding facts that support this motion:

- 1) The approval will not be harmful to the health, safety and general welfare of the community because:
 - a) The parcel is located with access to two major thoroughfares which are intended and designed to accommodate intense commercial zoning districts;
 - b) Right turn deceleration lanes have been installed on both 19 Mile and Hayes by the petitioner at their sole expense in order to improve traffic flow to the benefit of surrounding parcels, including McDonald's to the north; and
 - c) The cross-access agreement approved as a condition of the motion will allow the sharing of parking spaces to substantially reduce the impact of the parking variance.
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantial and adverse manner because:
 - a) Other fast-food restaurants in the Township are within 500 feet from others and have operated with no known complaints or problems; and
 - b) The similar zoning and land use patterns that have already been established on the abutting parcels promotes consistency and substantial justice being done to the petitioner; and
 - c) By their nature, fast-food restaurants overwhelmingly utilize drive-thru service for over 70% of their sales.
- 3) The strict application of the terms of the Zoning Ordinance will result in a practical difficulty in the use of the property because:
 - a) The size of the parcel would provide developmental difficulty regardless of the intended use of the land; and
 - b) The adjacent fast-food restaurants have operated and functioned with its previously granted variances with no negative impacts, further preserving the spirit and intent of the Zoning Ordinance; and

- c) The petitioner has indicated that data has shown over 70% of customers utilize the drive-thru window, further reducing the need for permanent parking spaces.

Mr. D'Angelo confirmed his support of the motion with the supporting facts as stated by Mr. Pearl.

Mr. Campbell explained that he had voted in opposition to the variance in February, so he felt he should abstain on this vote rather than voting on a motion to clarify the decision that was previously reached by the Board.

Mr. Tomlinson replied to inquiry that abstention would not be the proper methodology, and if he continues to be against the variance, he can vote no on this one as well. He reiterated that abstention would not be appropriate in this case.

Roll Call Vote: Ayes – Pearl, D'Angelo, Edgar, Marella, Trombley. Nays – Campbell. Absent – Hornung. Motion carried.

0.67 ACRE OF LAND FRONTING THE SOUTH LINE OF WM. P. ROSSO HIGHWAY (AKA HALL ROAD, M-59), EAST OF GRATIOT AVENUE, ADDRESSED AS 24798 ROSSO HIGHWAY (SECTION 1)

-- **APPEAL: STARBUCKS COFFEE SHOP @ KCC EAST – PHASE II
RETAIL**
**FILE #16-6708: PETITIONED BY MR. PATRICK STIEBER,
ALLIED SIGNS**

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 11 owners and/or occupants of property located within 300 feet of the land in question, with 1 of those returned as undeliverable. There were no written responses received in reply to the mailing.

Mr. Patrick Stieber, 33650 Giftos Drive, Clinton Township, Michigan 48035, stated they are requesting a variance with regard to the number of signs. They are proposing to add an additional wall sign on the west elevation and would like to position the sign over their entrance on that side of the building. He noted that all of the traffic flow will be traveling in an eastbound or westbound direction on Hall Road, and having the additional sign on the west elevation will provide for better visibility. They feel there is a lack of identification, and he pointed out that, even with the additional sign, they will not be in excess of the total square footage allowed. He stressed the sign is rather small and fits in well with the architecture of the building. Mr. Stieber pointed out that everyone on Hall Road is traveling at a high rate of speed so this additional sign will provide the identification they need for motorists to see their location before they get to the driveway. He indicated this is a unique property, and he does not feel there will be

any detrimental effects to neighboring properties as a result of this variance. He stated the sign is tasteful, and he respectfully requested the Board's approval for this sign.

Mr. Campbell stated they have granted similar variances for others requesting additional signage when the combined square footage of the signs does not exceed what would be permitted for the one sign. He felt directional signs should not count against the maximum size sign allowed. He further felt it is appropriate to approve this in the interest of the safety of the public that is travelling at a high rate of speed on this road.

Mr. Pearl agreed with Mr. Campbell.

Motion by Mr. Campbell, supported by Mr. Pearl, with reference to File #16-6708 and application from Mr. Patrick Stieber, Allied Signs, Inc., 33650 Giftos, Clinton Township, Michigan 48035, for variance to Clinton Township Building and Housing Code, Chapter 1488.02-(E)-(3)-C, Signs, Definitions and Restrictions, concerning 0.67 acre of land fronting the south line of Wm. P. Rosso Highway (aka Hall Road, M-59), east of Gratiot (Section 1), addressed as 24798 Rosso Highway, that variance be granted to permit two (2) wall signs for a new business in the B-3 General Business District, being one (1) wall sign in excess of the one (1) wall sign permitted; further, this variance is granted with the condition that the total square footage of the two signs is equal to or less than what is authorized for a single business sign at this establishment, and this variance is in effect only as long as this is a "Starbucks"; further, this grant of variance is based on claimed hardship that the additional sign aids in the safety of the public in determining where to turn in off of Hall Road; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Ayes – Campbell, Pearl, Trombley, D'Angelo, Edgar, Marella. Nays – None. Absent – Hornung. Motion carried.

10.04 ACRES OF VACANT LAND FRONTING THE WEST LINE OF GROESBECK HIGHWAY, SOUTH OF HILLCREST (SECTION 15) (PARCEL #16-11-15-176-018)

-- **APPEAL: HILLCREST SENIOR CENTER**
FILE #16-6710: PETITIONED BY MR. JOHN A. VITALE AIA, NCARB,
STUCKY VITALE ARCHITECTS

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 41 owners and/or occupants of property located within 300 feet of the land in question, with 2 of those returned as undeliverable. There were no written responses received in reply to the mailing.

Mr. Bob Smith, 42850 Garfield, Clinton Township, Michigan 48038, here on behalf of the Mr. David Gad, MMG Properties, stated that Mr. John Vitale, architect, is also present tonight to answer questions. He explained they are requesting a variance for the height of the building, which will be a senior living facility, offering everything from

independent living through assisted living, including memory care and other services. The maximum height permitted is 35 feet, but the proposed building will be an average of 48 feet in height. He pointed out that the fourth story is built into the roofline, which gives it the appearance of a three-story building. He added that it is also situated a couple hundred feet back from Groesbeck, and is at a much lower elevation than the buildings that are closer to Groesbeck. Because of the distance from the road, the lower elevation and the fact that the fourth story is built into the roofline will actually make it look like a two-story building from Groesbeck. Mr. Smith pointed out the closest condominium from the abutting condominium complex will be 66 feet away from this building, and there will be a heavily treed berm. He added that there is a different elevation between the condominiums and the proposed structure and the condominiums are at a slightly higher grade. He felt the spirit and intent of the ordinance is observed through the difference in elevation, the screening and the fourth floor being built into the roofline. The limited size and shape of the property render another practical difficulty, and the creek on the west side limits the building envelope. He felt this is an excellent location for a senior center, for which there is a much-needed demand in this area, and he added it is within walking distance to Meijer and many of the other local stores along Groesbeck. Mr. Smith stressed there is nothing in this area that serves the senior citizen population. He stated that the extra floor is needed to offset the small property area. He indicated he provided copies of the site plan, floor plan and elevations, and pointed out that the view of the building is the same in the front, back and sides, unlike the other buildings such as Meijers, which has a very different appearance from the front of the building compared to the rear elevation. He stated the Planning Commission recommended approval of this as a Conditional Zoning, but they need to obtain the height variance before it can go to the Township Board. Mr. Smith offered to answer any further questions the Board may have.

Mr. John Herthel, 40462 Juniper Court, Clinton Township, Michigan 48036, a co-owner of one of the units in Hillcrest in the Park, explained his condominium unit sits closest to the Meijer fence line. He stated he is not opposed to a senior living facility, but the condominium owners facing the proposed development have “everything to lose”. He commented that the little view they have, which includes the sunset each day, will be gone and will lower their property values. He was concerned that precedence will be set and another four-story building could go up in that area in another couple of years. He felt height limits are in place for a reason, and added that although he has not seen the plans, and although the pictures look like it will be a beautiful site, the neighbors in the area have nothing to gain.

Mr. Jeff Hern, 40695 Azalia Drive, Clinton Township, Michigan 48036, stated he is a member of the Board of their homeowner’s association, and indicated he has talked with many of the condominium owners. He stated they do not have a concern about a senior living center being constructed but they all felt the height limits should be enforced. He felt the proposed height will be a detriment to their community, and as they are struggling to complete their development, he felt it will have a negative impact on people who would want to live in their condominiums. Mr. Hern felt it would appear as a much higher structure because Meijer is only one story. He was also concerned

about ingress and egress from Groesbeck because there is only one traffic light. During construction there will be a lot of construction traffic coming in and out, and once it is completed, there will be traffic from the occupants, visitors, employees, contractors and delivery vehicles that will be coming and going, adding to the traffic. He stressed Groesbeck is very busy so it is a safety concern. He replied to an earlier comment that he has heard the expression “Buyer Beware”; however, he pointed out that there are ordinances to be followed, and when those are allowed to be exceeded, it becomes a problem for others in the area.

Mr. Robert Bobowski, 21247 Lilac Lane, Clinton Township, Michigan 48036, stressed he does not have ill will toward this project, but he stated when he opens his back door, he will be looking directly at it. He admitted that there may be a berm or landscaping, but he questioned whether it will hide the view of a 48-foot-tall building. He estimated that he will be only about 48 feet away from the proposed building.

Mr. Chuck Lybeer, 40659 Azalea, Clinton Township, Michigan 48036, agreed with his neighbors. He stated they are trying to develop their community and felt this will have a negative impact on the aesthetics in the area. He referred to comments made that the elevation of the proposed building is lower, but he still felt it would be very tall when they are looking at it from their condominiums.

Mr. Smith clarified that the closest point from the building to the neighboring condominiums is 166 feet.

Mr. John Vitale, Stuckey & Vitale Architects, assured they have taken great care to design this building so that it does not look like a four-story building. He explained the fourth floor is built right into the roofline, and it will have the appearance of a three-story building with dormers. Because of the topography of the area, he noted there is a great difference between the elevations of the condominiums and the proposed building.

Mr. Campbell inquired as to whether this site is located east of the condominiums.

Mr. Smith replied affirmatively, noting it is southeast of the condominiums. Addressing a previous concern that the proposed building will block the condominium owners’ view of the sunsets, he stated that the location might affect their view of sunrises, but not sunsets.

Mr. Marella inquired as to the distance in height in the elevation between the subject parcel and the neighboring condominiums.

Mr. Vitale estimated there is approximately a 10-foot difference in elevation.

Mr. Santia replied to inquiry that, based upon departmental review of the information submitted, the building, when looking at it from the condominiums, will appear to be about 39 feet in height.

Mr. Vitale maintained that the design and the difference in elevation make it look more like a three-story building.

Mr. Campbell inquired as to why they are proposing 350 units.

Mr. Vitale replied that they are trying to build this community and it requires a certain amount of synergy to provide food service, care and housekeeping for the residents. They also provide assisted living and memory care as well as independent living.

Mr. Pearl thought the condominiums were at a higher level when standing in the park looking at the condominiums. He questioned whether Mr. Santia has heard of any problems from the developer of the condominiums.

Mr. Santia replied he has not heard anything from the condominium developer.

Mr. Marella inquired as to whether anyone on Hillcrest has submitted any objections to the variance request.

Mr. Santia replied he has not heard any objections until this evening from the residents who are present and voiced their concerns.

Mr. Pearl felt there is no question that the residents here tonight do not want this, although he stated he has no problem with the concept. He felt the park offers a terrific view for many of the condominium units, although he admitted not everyone will be happy. He felt those who have the view of the park will be thrilled but there are others who face other directions and their views will be changed with future development. He felt if the condominium developer was opposed to this request, he would have been present at tonight's meeting.

Mr. Smith pointed out that they would be permitted to develop a three-story building, and that would still be tall enough to obstruct some views. He commented that there will be some type of building on that site, so it is not an option of either having a four-story building or having no building on that site.

Mr. Pearl appreciated the neighbors' concerns but he felt there could be worse situations for the neighbors. He was certain that something will be developed on that property, and because of the lower elevation and the roofline incorporating the fourth floor, the building does not appear as tall. They are seeking a variance on the height of the building, and that is why they are present this evening.

Mr. Edgar inquired as to whether they will go through with this as a three-story development if the variance is denied.

Mr. Vitale replied he cannot answer that because that would be up to the owner.

Mr. Edgar stated he would love to have this development in the Township, but the ordinances regulating building height have not recently changed and they bought this property knowing those restrictions.

Mr. Vitale explained the owner has invested a lot of time and money into this project, and he cannot answer if a three-story building would fulfill the owner's vision, either for here or in another community. He added the way the plan is designed works for the owner, and Mr. Vitale stated he does not know how Mr. Vitale would feel about a three-story limit.

Mr. Marella inquired as to whether this is a rehab facility.

Mr. Vitale replied this is an assisted living center for senior living.

Mr. Marella inquired as to whether each unit in the building is individually owned.

Mr. Vitale replied these are rental units rather than people owning their own unit.

Mr. Marella inquired as to whether the design of the building would change to something more spread out if they are not permitted to construct four stories.

Mr. Vitale did not feel that would work, although he admitted they have some restrictions on setbacks.

Mr. Marella inquired as to what other type of development could go on this parcel if the proposed senior living facility does not go in.

Mr. Santia replied to inquiry that it could be developed with more shopping areas. He added they could develop three- or four-story or higher multiple-family residential condominiums or apartments. He added that "the sky is the limit" with regard to the heights of other types of uses. He clarified it is an oddity that the Township has a restriction on the maximum height of senior care facilities, which dates back a long time. He stated that the Township's ordinance regarding this issue has not been revised since 1989, but it was put in place to deal with the ability to provide emergency care in case of fire.

Mr. Marella stated he likes the design and would rather see the building "go up rather than out". He stated in this type of facility, all of the action seems to take place in the center of the building, and for people who have a difficult time walking, it makes it difficult to get to the activities if the building is too spread out. He did not feel a height distance of 13 feet will be noticeable when looking from a distance as far away as the condominiums. He felt this will be a good asset to the community, pointing out that the building will be attractive regardless of the angle. He admitted that the elevation provides difficulty for the people in the condominiums.

Mr. D'Angelo looked at the map, and noted that the house on Jupiter would be facing the parking area, but the house is on such an angle that it is not looking directly at the facility but more toward the parking area. He added there are no houses directly behind the proposed development. He pointed out that it is a 13-foot 9-inch variance and if they took the top floor off and put on a roof, the neighbors would still see the roof.

Mr. Vitale stated they are proposing a design that minimizes the visual impact, but if they reduced the height by one floor, there would still be a visible roofline.

Mr. Campbell understood a lot of the points that were made and the basic reason why the ordinance is in place because it applies to the majority of cases, but he felt it is mainly addressing level land. He felt the fact that this building will be at a lower elevation mitigates the effect of the taller building. He understood the justification that they have to be able to construct a building of a certain size in order to justify the amenities they offer. He felt the request makes sense, and as far as traffic volumes, he felt this is one of the best types of developments that could go in that area, especially considering there is only one traffic signal to/from Groesbeck. Mr. Campbell stated he was skeptical at first and drove to the site to look at it. He felt it is a very positive addition for the Township.

Motion by Mr. Campbell, supported by Mr. D'Angelo, with reference to File #16-6710 and application from Mr. John Vitale, Stucky Vitale Architects, 27172 Woodward Avenue, Royal Oak, Michigan 48067, as represented by Mr. Bob Smith, 42850 Garfield, Clinton Township, Michigan 48038, for variance to Clinton Township Planning and Zoning Code, Chapter 1292.01, Schedule of Regulations Limiting Height, Bulk, Density and Area, concerning 10.04 acres of vacant land located west of Groesbeck, south of Hillcrest (Section 15) (Parcel #16-11-15-176-018), that variance be granted to permit construction of a senior living facility as part of a Conditional Zoning Agreement (Hillcrest Senior Center) with four (4) stories and an average height (to the midpoint of the roof) of 48 feet 8 inches, being one (1) story and 13 feet 8 inches in excess of the maximum permitted three (3) stories and 35 feet in height; further, this grant of variance is claimed practical difficulty that the topography of the land makes the appearance of the four-story building equivalent to a three-story building from the surrounding properties, and the surrounding wetlands and other undevelopable areas limit the size of the footprint of the building area; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Ayes – Campbell, D'Angelo, Edgar, Pearl, Trombley, Marella. Nays – None. Absent – Hornung. Motion carried.

REPORT OF MEETING

-- APPROVAL OF JUNE 15TH, 2016 MEETING

Motion by Mr. Campbell, supported by Mr. D'Angelo, to approve the minutes of the June 15th, 2016 Meeting as submitted. Motion carried.

BOARD OF APPEALS MEETING SCHEDULE

**-- CONFIRMATION OF NEXT MEETING'S AGENDA AND ATTENDANCE:
WEDNESDAY, AUGUST 24TH, 2016 AT 6:30 P.M. (FOURTH WEDNESDAY)**

Mr. Santia indicated the August meeting is scheduled for the fourth Wednesday of the month, and there is only one application, which is for a sign variance for the new Starbucks location on Hall Road, east of Gratiot. He added that there are still a couple of days before the deadline to turn in applications for the July meeting.

ADJOURNMENT

Motion by Mr. D'Angelo, supported by Mr. Campbell, to adjourn the meeting. Motion carried. The meeting adjourned at 6:51 p.m.

Respectfully submitted,

Robert M. Campbell

Robert M. Campbell, Secretary
CLINTON TOWNSHIP BOARD OF APPEALS

ces:08/03/16

ces:08/11/16

Approved 08/24/16