

CLARK BOARD OF ADJUSTMENT

MINUTES FROM THE PUBLIC MEETING

MONDAY, MARCH 26, 2012

A public meeting of the Clark Board of Adjustment was called to order at 8:07 p.m. by Chairman Steve Kaminsky. He asked all present to participate in a flag salute and moment of silence. He stated that meeting was being held under and pursuant to the Rules and Regulations of the Sunshine Law of the State of New Jersey.

This meeting is in compliance with the "Open Public Meetings Act" as adequate notice of this meeting has been provided by mailing the Annual Schedule of meetings to the Union County Local Source, Clark Patriot and Star Ledger, by posting such Annual Meeting Schedule on the bulletin board in Town Hall reserved for such announcements and the filing of said Notice with the Township Clerk of Clark. Formal action may be taken at this meeting.

ROLL CALL

Members Present: Edward Ruth, Douglas Krok, Thomas Meade, John Tierney and Steve Kaminsky

Board Members Absent: John Passuth, Patrick Campione and John Caliguire

Also Present: Board Attorney Howard D. Spialter and Board Secretary; Janet Gentry

OLD BUSINESS

Minutes from the January 23, 2012 public meeting were reviewed. Edward Ruth brought a motion to accept the minutes. Motion was seconded by Thomas Meade and carried unanimously by voice vote.

CORRESPONDENCE

Correspondence contained a letter from Business Administrator Mr. John Laezza regarding the escrow deficiency in the T-Mobile account.

NEW BUSINESS

Mr. Spialter discussed cancellation of the meeting in February. Mr. Spialter also stated that mailings are in order for Calendar 3-12.

Calendar #3-12, Steve Pelardis, 13 Lupine Way. Mr. Pelardis stated that he lives at 41 Largo Lane in Clark and recently purchased the house at 13 Lupine to renovate it and construct a one-car garage. He would also like to add a second floor and rear addition. Spialter: In reading your letter of February 9, 2012 is it fair to understand that you did not buy this house with the intention of residing in it yourself? Mr. Pelardis: correct. Spialter: you bought it as an investment? Pelardis: yes. Spialter: is it fair to say you are at this board tonight because your contract to purchase did not have a contingency in it to seek zoning board approval, is that correct? Pelardis: right. Spialter: you bought it knowing that whether or not you got the zoning board approval you were buying the property and you would deal with it; in whatever life would dictate. Pelardis: I was under the impression that

when I bought the house it was in an R-60 Zone, not R-75. Spialter: Did you check the zoning before you purchased the property or did your attorney check the zoning before you bought the property? Pelardis: no. Kaminsky: did you purchase the property with intentions of expanding it? Pelardis: yes, I'm a contractor and have done several homes in Clark. I bought with the intentions to do the best I can to make it possible for another family to move in. *Mr. Pelardis described the existing house and stated it was a small ranch style home. Marked as Exhibit A-1 were eight pictures of the existing home. Several questions were asked of Mr. Pelardis.* Spialter: you raised the concept of not getting approvals from this board, what would happen in regard to this house if you didn't get the approvals? Pelardis: I would have to renovate it the way it is. Kaminsky: is there any way to change your plans so you wouldn't have only 12' between houses? Pelardis: I would love to but the garage would be too small, you wouldn't be able to open the door. *Side yards and total side yards were discussed.* Spialter: you shorted yourself .08' and would it be fair to say that your application is 12.86' in total side yards, not 12.78'. Pelardis: the architect made a mistake. *Front yard setback was discussed for the covered front porch, permitted is 3' applicant proposes 4'. Mr. Tierney discussed the undersize lot ordinance regarding the total side yards.*

Spialter: John Tierney raised a question as to whether there is a lesser requirement that Mr. Pelardis would get for 6" per each foot because of the smaller lot being 58' vs. 75' and that might be applicable if Mr. Pelardis were seeking to build within the confines of the 40% floor area ratio as mandated by ordinance 34-10.3b3. But since he is seeking additional floor area ratio above and beyond that, I would have to suggest to Mr. Tierney that while his reading was accurate but when you put the whole paragraph together the benefit that's to flow to the applicant there does not necessarily flow because he is seeking a double benefit. He is seeking the benefit of the lesser side yard and more floor area ratio. In reading it in totality it seems that the concept of giving Mr. Pelardis the benefit of that would be true if he wasn't seeking the additional floor area and because he is; he doesn't get the benefit of that. That's how the ordinance seems to read. I would suggest that Mr. Pelardis does not get the benefit of the reduced requirement of the 6" per foot because he is seeking to build a bigger structure. Your application suggest that you are seeking 43.79% where 40% is permitted, if you were to knock down your F.A.R. by 3.79% then you could get the benefit of the ordinance with the reduced requirement. We are not telling you one way or the other but if you want to take everything you're hearing tonight and possibly rework this and come back with a more workable plan in a month that may make sense. Kaminsky: On your application and all the variances you are seeking 15' is required between principal structures, with the addition 12.78' is proposed. If you put the garage there by ordinance; you will really need 15' between the edge of the garage and the house next to you, you are short on that also. Pelardis: that's why I'm asking for variances. Kaminsky: You're asking for variances on allot of things and normally we ask for variances for hardship reasons. Pelardis: I could bring it down and work with the second floor. I really don't want to come back, we can say subject to. Chairman Kaminsky: if you want to change what you presented to the board then in my opinion is that you need to make the changes on paper. If you want to go through with the plans you have now and see if the board will approve it, that's fine, you can do that. If you want to roll the dice and go for that you can.

Spialter to Pelardis: The obvious is present here; you bought this as an investment. You bought a house and based upon the pictures it clearly shows a house in need of work. You bought this with the expectation; of with your expertise; you can do the work in such a fashion and such a cost that what you paid plus what you're going to do, sell to party #3 and make a profit. That is not what zoning by itself is set to do. This is what you call a self-

created hardship. A self-created hardship in the law is no hardship at all. How you choose to proceed is up to you. But the board is not here to give you an advisory opinion as to what to do. Pelardis: The only thing that you gentlemen are concerned about is the F.A.R. which is 40%? Spialter: I'm not a voting member of the board, I am only the attorney but if you think with all the words that you've heard here so far that that is the only thing you need to be focusing on, you need to expand your focus because you are not listening to all of the words that have been expressed and based upon the questions that have been presented so far. So please do not focus on any one thing and believe that dealing with that you have no further issues that have to be dealt with. Don't misconstrue what you're hearing, because I'm not hearing the same thing that I think that you're expressing what you're hearing. Pelardis: I will change it. Spialter: are you asking for an adjournment? Pelardis: yes.

Questions from the public: Mr. Parlacoski, owner of 8 Lupine Way asked questions regarding the size of driveway and F.A.R. He also asked if there would be a structure over the garage. Mr. Pelardis stated that there would be.

Pelardis: I'm not trying to do anything beyond what anybody did in the neighborhood. I'm just trying to copy what somebody else did in the neighborhood. Kaminsky: we have to go by the zoning regulations. It appears what someone may have done may be within the ordinances. You're not that far out.

*This matter will be carried to April 17<sup>th</sup>.*

Calendar #4-12, Matthew & Jodi Siccardi, 22 Mountainview Road. Both Mr. & Mrs. Siccardi were sworn in. Ms. Siccardi stated that they would like to remove their current driveway that goes into their backyard and construct a new 2-car garage and new driveway. *Ms. Siccardi explained the safety issues with cars/trucks entering their backyard while their children are playing.* I would like to remove the driveway and relocated it to the front yard so my kids could have a safe environment to play in. The reason we are here is to obtain a variance for 3.4' into our front yard. The reason our garage is coming forward is because all our electrical is located on the side of the house. We were advised by the electricians and contractors that it would be a big financial responsibility to move the electrical parts from the house and then part of the home would require rewiring.

Questions from Board Members: Kaminsky: Looking at your plans it appears that the only variance that's new is for the front yard setback, is that correct? Ms. Siccardi: that's correct. Kaminsky: the other variance for a side yard is an existing condition? Correct. Kaminsky: so your actually seeking a variance required at 52.5' to 49.1'. Correct. Tierney: Where is your garage now? Mr. Siccardi: Off the back of the existing driveway. Tierney: You have a single car garage built into the house? Yes. Tierney: so you will give that space to the house? Yes. Kaminsky: Looking at your plans the existing garage is going to be turned into office space, you won't have a business where people come to you? Mr. Siccardi: no, Mr. Siccardi: the vinyl shed in the rear yard requires a variance also. It was there when we bought the house. Mr. Kaminsky: so the shed will not be moved. *No further question from board members.*

Closing Statements: We are requesting the board's approval to construct a two car garage and driveway for a safe environment for our family and a 3' variance for the front yard setback.

Questions or Statements from the Public: none

Thomas Meade brought a motion to approve Calendar #4-12. Motion was seconded by Douglas Krok. Commentary: Tierney: Looks like a nice addition and nice change. This should make your property flow and work better and I seem to be hung up a little on these kids. *Vote: All Ayes.*

Mr. Spialter explained to the applicant the 45-day waiting period and explained the appeal process. Applicant requested the 45-day waiver from the board.

Mr. Edward Ruth brought a motion to waive the 45-day waiting period. Motion was seconded by Thomas Meade. *Vote: All Ayes*

### RESOLUTIONS

Calendar #1-12, Reorganization Meeting. Attorney Spialter read onto the record Resolution 1-R-12. Edward Ruth brought a motion to accept the resolution as read. Motion was seconded by Douglas Krok and carried unanimously by voice vote.

Calendar #2-12, Annual Report. Attorney Spialter read onto the record Resolution 2-R-12. Thomas Meade brought a motion to accept the resolution as read. Motion was seconded by Edward Ruth and carried unanimously by voice vote.

### DISCUSSIONS

Mr. Spialter: I have a draft of a resolution that I have prepared in connection with the T-Mobile matter. There is an ongoing issue, a letter that was addressed to Mr. Kaminsky in commencement of tonight proceeding, that there is an escrow that is still outstanding. I called John Edwards, as a courtesy, earlier this afternoon when Janet advised me of the outstanding escrow. I told Mr. Edwards that the Township of Clark is not happy. At least my ears heard Mr. Edwards indicate that he would bring it back to his client and there was nothing indicated on the record as to why the escrow would not be paid before the board rendered its decision back in January. There still an issue that's there. *Discussion took place about memorializing a resolution, in the face of the outstanding escrow.* The longer this board waits, the longer period of time they have in which to decide whether or not to appeal. If the board were not to take action tonight, they could go to court to force the board to have a decision rendered and they can make an application for attorney's fees to be assessed against the municipality, the cost of the application plus attorney fees. If the board is not rendering it's decision because they have not paid the escrow which means that the town has not been able to pay whoever the town supposed to pay and that the town has an obligation or concern about paying, then if they were to go to court and want to be re-reimbursed their costs and the board did not act because they had not paid escrow due, I do not know what the court would do and I'm not sure if that's my call or Mr. Triarsi's call on behalf of the town. I have a resolution drafted and this board has done everything it's supposed to do in a timely fashion and I'm prepared to have this matter go forward tonight. If you have a feeling that T-Mobile is not entitled to have this resolution memorialized because they haven't paid the balance of the escrow that's been sought by the township, then you will direct me and we won't vote on it or I can read it onto the record and chose to not vote on it awaiting, what they have to say. I've never been in this position before. I find it difficult that they would run to court and complain that this board has not done something because the doctrine of unclean hands jumps out there and the only reason the board hasn't done anything is because you haven't paid an escrow that you promised to pay to the township. Apparently this is the third request to T-Mobile. I did speak with John Edwards today. John Edwards said that T-Mobile's attorney is Greg Meese who's one of the partners in the firm of Price Meese and that he would bring the information again to Greg Meese. John said to me that it's his understanding that Greg Meese

has approached T-Mobile on several occasions to remind them of the outstanding escrow. The chain of command of the town to the attorney to T-Mobile according to John Edwards has been fulfilled and that any failure to pay is solely in the hands of T-Mobile. That's my understanding. *Letters sent to T-Mobile and law office of Price, Meese were discussed.*

Spialter: I would like to read the resolution onto the record to reference and prove that it was done and perhaps a member of the board would then be so inclined to make a motion to table voting on the resolution and directing our secretary to communicate with T-Mobile to advise that the resolution has been read into the record but has not been voted upon due to the outstanding issue and the board is in the middle of the municipality and the applicant.

Calendar #4-11, T-Mobile Northeast LLC, 1202 Lake Avenue. Attorney Spialter read onto the record Resolution 3-R-12. Douglas Krok brought a motion to table Resolution 3-R-12. John Tierney seconded the motion. Commentary: Krok: we are tabling this resolution with hopes of getting the escrow resolved and getting a reimbursement from T-Mobile, that's the reason for my motion. *Vote in favor: Krok, Meade, Tierney and Chairman Kaminsky*

#### DISCUSSIONS CONTINUED

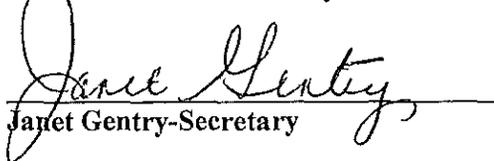
Due to work related assignments, Chairman Kaminsky stated that he will be traveling for the rest of this year. He has not received an itinerary from work yet and does not know how many meetings he will miss. Board members agreed that there should be an alternate member of the board to take over meetings if both the Chair and Vice Chair are absent.

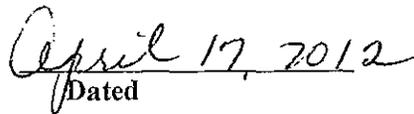
Douglas Krok brought a motion to nominate John Tierney as the alternate Vice Chairman of the Board. Motion was seconded by Steve Kaminsky and carried unanimously by voice vote.

#### ADJOURNMENT

John Tierney brought a motion to adjourn. Motion was seconded by Edward Ruth and carried unanimously by voice vote. Meeting adjourned at 10:05 p.m.

Taken and Transcribed by:

  
Janet Gentry-Secretary

  
Dated