

MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD APRIL 8, 2021 VIA GO TO MEETING and IN PERSON

Open public meeting statement: The meeting was called to Order by the Board Chairman, Glenn Barbagallo, and a statement was made that the meeting was duly advertised and met all of the requirements of the Open Public Meetings Act. Those present were: Richard Innella, Fred Merusi, Jody Case Kennedy, Glen Plotsky, James Ledonne, John Soracco Katherine Snyder, Joseph Cooper, Nina Fradl, Glenn Barbagallo, William Haggerty, the board attorney, and Thomas Knutelsky, the board engineer.

Those absent were: None.

FLAG SALUTE

MINUTES:

There were no minutes to review.

CONCEPT APPLICATIONS:

Montague, LLC/179 Route 206 South LLC – LUB 21-01 – Block 41, Lot 1.01 – 2 Red Hill Road – Concept Application:

Appearing before the board was Mark Utter, the land owner. Mr. Utter indicated that he made a Zoning Application at the above location for a marijuana grow facility for which he was denied. He has asked for an Interpretation of this denial and has not received one. He does have the prospective purchasers of the building if the board needs more information about the operation.

Mr. Haggerty indicated that the township should have more of an idea as to what will be done at this location. There were a few applications submitted. The one application just said storage. This evening the board is just discussing this informally. This is not an application before the board for an interpretation. There is no binding decision to be made this evening. It is just for information only and discussion.

Appearing before the board was Saadia Shapiro, the prospective purchaser of the property. He indicated that he submitted a Zoning Application to the prior Zoning Officer on September 3, 2019. The Zoning Permit indicates that the cultivation of cannabis and dispensary was approved by this board. He does not know why the second zoning application was submitted and it should not have been. He is under contract to buy the property based on the first zoning approval. He submitted to the board his current license in the State of New Jersey to grow Hemp. He also submitted pictures of the operation. He stated it is a very clean operation. The pictures show a technician working on the beds. It is like a modern indoor farm.

Mr. Haggerty indicated that the first zoning permit indicates “see attachment” which is a copy of the township ordinance. He indicated that this is not an approval to operate a business, it is just our ordinances, which everyone has approval for what is permitted in the zone. Mr. Shapiro indicated that he did not submit the original application. Mr. Utter indicated that he submitted that application. He further stated that when he decided to market his building, the first thing people always ask is what is allowed in the zone. So he thought he was doing his due diligence by going to the township and ask what uses were allowed. Mr. Haggerty indicated that he does not disagree with that theory, but you cannot get a blanket zoning permit if you do not indicate what exactly you want to do. He feels they are before the board this evening to poll the board if a cannabis growing facility is permissible in this zone which permits light manufacturing, assembly, storage, warehousing and distribution. It has a list of retail services, which this applicant is not proposing retail at this facility.

CONCEPT APPLICATIONS CONT.:

Montague, LLC/179 Route 206 South LLC – LUB 21-01 – Block 41, Lot 1.01 – 2 Red Hill Road – Concept Application cont.:

Mr. Plotsky questioned if agriculture is allowed in this zone. Mr. Knutelsky cited Section 76-66 of the Montague Township Ordinance, which states:

The following principal buildings and uses are permitted:

- A. Retail Sales and service establishments designed to meet the needs of the nearby community, such as grocery store, delicatessen, meat market, drug store, bakery, luncheonette, barber shop, beauty parlor, laundry, tavern, package goods store, restaurant, storage warehouses, bank, pharmacy, cleaners, service station for sale of gas and oil with minor repairs.
- B. General business and professional offices.
- C. Nursing homes, skilled care facilities, assisted living facilities surgical care, medical facilities and congregate care housing facilities.
- D. Any other use determined by the Land Use Board to be similar to and of the same general character as the specified uses.

Mr. Knutelsky indicated that agricultural is not listed in the uses.

Mr. Haggerty questioned the proposed applicant to explain exactly what they are going to do. Appearing before the board was David Foni, CEO/Director. He indicated that they will grow the marijuana and you break the leaves off of it and dry it. They would be selling the dried product. The entire operation would be in a closed facility with the proper air conditioning and heating and it will have a water system for recycling. They would also package it at the facility which would be putting it in jars when the leaves are dried. At this particular time, they are not looking to have retail sales at the facility, just wholesale. Mr. Plotsky questioned as to when they are selling the product will it be vans or tractor trailer loads. He further stated as long as the product and packing is all inside, he does not have a problem with it.

Mr. Haggerty indicated that they can submit an application to the board to show where the delivery trucks are going to come in, where they are going to load and unload, where and how you are going to dispose of your waste, and how your operation will work.

It was noted that the Township Committee has to make a decision as to what they are going to do with the Cannabis Ordinance and it must be done by sometime in August. The proposed applicant's were told that at this time, they could file an application if they so choose for what they presented this evening.

CARRIED APPLICATIONS:

Ponky, LLC – LUB 20-05 – Block 18.55, Lot 65 – 342 Lake Shore South – “D” Variance:

Ms. Kennedy stepped down from this application and left the meeting.

Appearing before the board was Jason Rittie, the applicant's attorney. He indicated that he is before this board for 2 things. The first item is a Certification of a Pre-Existing Non-Conforming Use under Chapter 68. In the alternative, if the board does not agree to the Pre-Existing Non-Conforming Use, they will apply for a Use Variance. The applicant is also applying for a site plan waiver given the reason that the site is fully developed. The applicant is proposing to use approximately 1,500 square feet of existing office space in the clubhouse building for occupancy by a proposed tenant, real estate agent office, Krumpfer Real Estate LLC. They are requesting site plan waiver. They are proposing to use the existing parking, signage and lighting without any exterior changes or renovations. The property is located 342 Lake Shore South,

CARRIED APPLICATIONS CONT.:

Ponky, LLC – LUB 20-05 – Block 18.55, Lot 65 – 342 Lake Shore South – “D” Variance cont.:

being further known as the High Point County Club, and is located in the R-4 High Density District.

Mr. Rittie further stated the applicant requires the following variances, exceptions, deviations and/or waivers: Section 76-22 which provides for any non-conforming uses or structures existing of the date of adoption of this chapter may be continued upon the lot or in the building so occupied. The office use existing at the time of Article IX of the Zoning Ordinance which was amended from time to time and included specifically at the time Ordinance 2014-01. They also noticed for a Variance from Section 76-55 B which provisions do not permit the proposed office use in this Zone. They also noticed for a Variance from Section 76-61A which requires site plan approval, which they are requesting a waiver since no improvements will be made to the exterior.

Mr. Knutelsky reviewed his letter dated January 8, 2021 as to completeness:

Item 2: The applicant has requested a site plan waiver for this project and has indicated that external building/site modifications are not proposed. Due to the nature of this application and the fact that the site is previously developed, he recommends the site plan waiver be granted. If the requested waiver is entertained by the board and granted, he recommends that this application be found complete and that this matter proceed directly into the public hearing.

A Motion was made by Mr. Plotsky and seconded by Mrs. Snyder to deem the application complete with a Site Plan Waiver. Roll Call: Mr. Plotsky, yes; Mr. Ledonne, yes; Mr. Soracco, yes; Mrs. Snyder, yes; Mr. Cooper, yes; Ms. Fradl, yes; and Mr. Barbagallo, yes. The Motion was carried.

Appearing before the board was James Golden, who is the Owner and General Manager of Ponky, LLC. Mr. Golden was sworn in by the board attorney. Mr. Golden indicated that he is the owner of the subject property which he acquired in 2011. The property consists of 6 lots which include an 18 Hole Golf Course, the Swimming pool, tennis courts and a club house which is 19,000 square feet and built in 1967. The parking is located in front of the clubhouse building, to the right of the building, across the street is another lot and by the tennis courts. There is a sign in the front of the entrance for the golf course. Mr. Golden further indicated back in 1985 Judge Stanton put together the foundation as to how it would operate at that time. Between 1985 and 2000 he learned that there was litigation between the Community Corporation and the Golf Course. In 2000 Judge Stanton wrote a letter to CCHP encouraging them for the consideration of the sale of the Club House to the Golf Course because it was not viable for the Community to try and run it. At that time, it was losing up to \$100,000 a year of community members money. In 2001 a vote was taken and the Club House was sold to the Golf Course. In 2009, the Golf Course owner filed for Bankruptcy which lasted 2 years. When he purchased it, he purchased a golf course and club house that had basically been abandoned and he had to rebuild and revive both. He indicated with a 19,000 square foot building it has hard to keep it viable. As a businessman he looks at the different sections of the building and tries to make each part of the building useful to the viability of the building. One of the spaces was the office space which overlooks the lake. It was listed in the deed as office space. This is how he met Mr. Krumpfer looking for a tenant to rent that space to try and generate some income for this building. This has turned out to be a process for the next 4 ½ years. In 2012 CCHP filed a lawsuit against Ponky, LLC. In 2014 that suit was settled. Part of that settlement was that a real estate management company could occupy the club house for a tradeoff of \$19,000 owed to CCHP. In 2014, that company occupied the office space in the clubhouse. Not the office space that is the discussion today. In 2017, Mr. Krumpfer met with the Zoning Officer and he indicated that he does not see it as an allowed use in that zone. Mr. Golden then went to see the Zoning Officer and told him he is not sure about ordinances, but that space has

CARRIED APPLICATIONS CONT.:

Ponky, LLC – LUB 20-05 – Block 18.55, Lot 65 – 342 Lake Shore South – “D” Variance cont.:

always been an office and it is listed as an office space on the deed. The Zoning Officer reviewed the information and called Mr. Golden that evening and found out it had been, in fact, office space in that location and it was okay to start renovations so it was suitable for Mr. Krumpfper’s office space. Mr. Krumpfper did start the renovations and building permits were issued for that work. Mr. Rittie indicated that the permits are listed as Exhibit “G” on the Exhibit list. Mr. Krumpfper spent a lot of money renovating this area which had not been updated since 1967. At this point, the Community Corporation went to the township and indicated that he needed their permission before they could go any further. This turned out to be 3 years of litigation. After 3 years of litigation they were awarded \$300,000 from the Community Corporation and given the permission to operate without their permission.

Mr. Rittie referred to the Deed Mr. Golden mentioned, which is Exhibit “E” on the Exhibit list. He asked Mr. Golden to explain the significance of that deed and the language in it. Mr. Golden indicated that Section D of the Deed talks about the office space and talks about the Community Corp. having the right of first refusal to it. There is an exhibit on the deed which depicts the office space that is the subject of this evenings hearing. Mr. Rittie referred to Exhibit “B” on the Exhibit list which is a Floor Plan Schematic” which shows the real estate office section of the building. He also referred to Exhibit “F” which is a Lease Agreement between Ponky, LLC and Community Corp. of Highpoint dated September 4, 2014. The CCHP leased the portion that has the pro shop on it. They leased half of the pro shop for real estate management company. It is a 10-year lease. Mr. Rittie questioned as to his knowledge how long has this space been office space. Mr. Golden indicated that in talking with people it has always been office space at least since 1985. He indicated from 1985 to 2000 he believes it was office space for the Community Corp. In 2001 they moved out. He indicated that it was commercial office space in 2001 for someone else. In 2011 he used it as office space, which was much larger then he needed. Mr. Rittie indicated that the various Court Orders do not limit the use solely to the Community Corporation. Mr. Golden agreed.

Mr. Rittie indicated that as this board is acting in a quasi-judicial role, the board does have the ability to take judicial notice. There are certain statements made in all those Court Orders from 1985 through 2020 you will see collectively that office use has been there.

Mr. Haggerty indicated for Certification of Pre-Existing Non-Conforming Use status, the applicant has to establish the use existed at the time of the Ordinance, which was really, effectively through Judge Stanton’s Order. He indicated based on testimony there has been no change in the subject space in the building with the exception of some upgrades to the space, but no physical changes. He thinks that at the time when Judge Stanton’s Order was enacted he does not know if he contemplated any outside use of the office other than the Community Corp.

Mrs. Snyder questioned Mr. Haggerty if they approve this as a Pre-Existing Use, then anyone in the R-4 Zone can apply for a Pre-Existing Office space. Mr. Haggerty indicated that they would have to prove that an office existing in their particular building before that could be approved.

Mr. Cooper indicated that there has never been an outside business occupying the office space. It has always been for the Community Corp. Mr. Plotsky indicated he feels that the 2020 Court Case may have addressed that issue, specifically for Mr. Krumpfper.

Mr. Knutelsky indicated that the board could put conditions in the Resolution with the actual dimensions listed for the subject office space so going forward there is not an expansion of that particular use.

CARRIED APPLICATIONS CONT.:

Ponky, LLC – LUB 20-05 – Block 18.55, Lot 65 – 342 Lake Shore South – “D” Variance cont.:

Mr. Golden indicated at one time, the prior owners did rent the kitchen and dining room area to a restaurant, which is just a different part of the building, but it was rented out commercially. The point is there was an outside third party renting this building.

Appearing before the board (virtually) was the applicant’s planner, Greg Rahenkamp. Mr. Rahenkamp was sworn in by the board attorney. Mr. Rahenkamp gave his qualification to the board and was accepted as an expert witness.

Mr. Rahenkamp indicated that going through the deed and prior orders, it was clear that office use was talked about and occurred within this building. It has been a mixed use facility from the beginning. In terms of space, it is clear that the bar and banquet area has been effectively fixed and the community office as well. The area that is left that could have been this office has stayed the same and he does not think there was an issue of it creeping in terms of size. The applicant has shown a clear effort to use it for office over the years. There is clearly no abandonment of office space. The key date is the adoption of the R-4 Ordinance which intended for that to be office. He feels they are well positioned for this to be a pre-existing use relative to that ordinance adoption. He believes the history would be professional offices, certainly not services directly to consumers. His understanding from the historical record is the office space was used by management companies that didn’t necessarily only manage this community but others.

This matter was opened to the public.

Appearing before the board (virtually) was William Askins, who is the attorney for the High Point Community Corp. He wanted to go on the record to confirm that the board of trustees of the County Club fully supports the Pre-Existing Non-Conforming Use Certificate and Mr. Ponky does not need a Use Variance for the rental of this office space to a commercial tenant. He indicated that he came in at the end of the litigation, but part of the settlement agreement was that the High Point County Club would support the application of Ponky LLC either with Certificate of Pre-Existing Non-Conforming Use or a “D” Variance. There are no issues with the By-Laws of the County Club. This Use is permitted by the Country Club.

Appearing before the board was Margot Sawicki, who is a Trustee of the Community Corp. Ms. Sawicki was sworn in by the board attorney. She supports this application. She indicated that the Community Corp. voted to support this application.

Appearing before the board was Edward Zalinski. Mr. Zalinski was sworn in by the board attorney. He indicated he has been here since 1991 and that office space has always been used by the Communities management office. It was never rented out to an outside business.

There being no further public participation, this matter was closed to the public.

A Motion was made by Mr. Plotsky and seconded by Mr. Merusi to Certify that the use is a Pre-Existing Non-Conforming Use including a rendering and subject to building permits, architectural plans attached. Roll Call: Mr. Innella, yes; Mr. Merusi, yes; Mr. Plotsky, yes; Mr. Ledonne, yes; Mr. Soracco, no; Mrs. Snyder, no; Mr. Cooper, yes; Ms. Fradl, no; and Mr. Barbagallo, yes. The Motion was carried.

VOUCHERS

The vouchers were reviewed. A Motion was made by Mrs. Snyder and seconded by Mr. Plotsky to approve the vouchers on the bills list attached hereto and made a part hereof. Roll Call: Mr. Innella, yes; Mr. Merusi, yes; Mr. Plotsky, yes; Mr. Ledonne, yes; Mr. Soracco, yes; Mrs. Snyder, yes; Mr. Cooper, yes; Ms. Fradl, yes; and Mr. Barbagallo, yes. The Motion was carried.

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CORRESPONDENCE

The correspondence was reviewed. No formal action was taken.

PUBLIC PARTICIPATION:

The meeting was opened to the public. There being no further public participation, this meeting was closed to the public.

AJOURN

Having no further business, a Motion was made by Mr. Soracco and seconded by Mr. Merusi to adjourn the meeting. All were in favor. The Meeting was adjourned.

Minutes prepared by:

SHARON M. YAROSZ
Land Use Administrator