

A meeting of the Township of Hamilton Planning Board was held on the above date with Chairman Gordon Dahl presiding. Members present were Jack Carson, Richard Cheek, William Christman, Wayne Choyce, Nelson Gaskill, Charles Pritchard and David Wigglesworth. Alternate member present was Henry Dorsey. Also present were Kevin Dixon, Engineer Consultant and Landscape Consultant; Charles Endicott, representing Vincent Polistina, Planner Consultant; and John Rosenberger, Solicitor.

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes – Mr. Christman moved, seconded by Mr. Wigglesworth, to approve the minutes of the meeting of November 19, 2009, as published. SAID MOTION CARRIED WITH SEVEN MEMBERS VOTING “AYE”, NO “NAY”, TWO “ABSTAIN”.

Harding Highway, LLC – Mr. Choyce moved, seconded by Mr. Pritchard, to adopt the resolution prepared by the Solicitor for Harding Highway, LLC, Woods Edge, Block 1134, Lot 1, Application No. 2009-10.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Cheek – Aye	Mr. Gaskill; - Aye
Mr. Christman – Aye	Mr. Pritchard- Aye
Mr. Choyce – Aye	Mr. Wigglesworth – Aye
	Mr. Dahl – Aye

SAID MOTION CARRIED.

MetroPCS Pennsylvania – Mr. Dorsey moved, seconded by Mr. Cheek, to adopt the resolution prepared by the Solicitor for MetroPCS Pennsylvania, Application 2009-11, Block 207, Lot 43.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Cheek – Aye	Mr. Pritchard - Aye
Mr. Christman – Aye	Mr. Wigglesworth - Aye
Mr. Dorsey – Aye	Mr. Dahl – Aye

SAID MOTION CARRIED.

MetroPCS Pennsylvania – Mr. Wigglesworth moved, seconded by Mr. Pritchard, to adopt the resolution prepared by the Solicitor for MetroPCS Pennsylvania, Application No. 2009—13, Block 494, Lot 9/

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Cheek – Aye	Mr. Pritchard - Aye
Mr. Christman – Aye	Mr. Wigglesworth - Aye
Mr. Dorsey – Aye	Mr. Dahl – Aye

SAID MOTION CARRIED.

Barbara I. Aiken (Minor Subdivision Hearing) – Barbara Aiken and Eric Aiken were present.

Ms. Aiken stated that she was seeking minor subdivision approval to reconfigure two lots in a manner that would remove the area of Lot 2 that presently fronts on Cape May Avenue, resulting in all of proposed Lot 2 having frontage on 5th Street only.

Mr. Endicott and Mr. Dixon referred to their reports and noted what items were deficient.

Mr. Dixon expressed no objection to the Board granting certain waivers, as no development was being proposed as part of the application.

Mr. Gaskill moved, seconded by Mr. Carson, to deem complete for review Application No. 2009-015, submitted by Barbara Aiken, conditioned upon compliance with the recommendations contained within the reports of Kevin Dixon, dated December 10, 2009, and Vincent Polistina, dated December 7, 2009. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Mr. Endicott advised that the Applicant was proposing to increase the area of Lot 1, which was entirely located within the General Commercial Zone, and to decrease the area of Lot 2, which was partially located within the General Commercial District and partially within the R-9 zone. He pointed out that both lots would exceed the minimum lot area requirements, but proposed Lot 1 would not meet the required lot frontage requirement on Cape May Avenue. Mr. Endicott noted that the proposed reconfiguration would result in Lot 1 coming closer to meeting Ordinance requirements than that which presently exists.

In response to Mr. Endicott's question regarding reference to a proposed dwelling in the Pinelands Certificate of Filing, Ms. Aiken stated that there was no dwelling proposed for Lot 1, that the lot is presently vacant, and that the lot would remain vacant for the present time.

Mr. Endicott pointed to potential problems associated with development of proposed Lot 1, and he cautioned Ms. Aiken that a more detailed plan would be required if Lot 1 is developed.

Mr. Dixon referred to his report and pointed out that the Board had an opportunity to require construction of sidewalk if it chooses to do so.

Mr. Dahl advised the Applicant that the Board would be considering waiving the requirement for installation of sidewalk for the subdivision application only, and that construction of sidewalk would still be a consideration when the lot is developed.

Mr. Choyce pointed out that there is no sidewalk presently existing on either side of Route 50 in the location of the subject property.

Mr. Dahl opened the hearing to public comment and there was no response.

Mr. Pritchard moved, seconded by Mr. Dorsey, to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Mr. Cheek moved, seconded by Mr. Dorsey, to grant minor subdivision approval to Barbara I. Aiken, Block 804, Lots 1 and 2, Application No. 2009-015, with a waiver granted from the requirement for providing sidewalk along all street frontages, and a variance granted from the requirement for lot frontage for proposed Lot 1, conditioned upon compliance with the recommendations contained within the reports of Vincent Polistina, dated December 7, 2009, and Kevin Dixon, dated December 10, 2009.

Mr. Carson commented on the requirement for sidewalk, and expressed the opinion that the Board should give consideration to sidewalk along Cape May Avenue, as people frequently walk there.

Mr. Gaskill stated that the lot on Cape May Avenue is vacant and the purpose of the subdivision is just to straighten out lot lines.

Mr. Carson responded that he would be concerned and in favor of requiring sidewalk if development were being proposed.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Carson – Aye
Mr. Cheek – Aye
Mr. Christman – Aye

Mr. Dorsey - Aye
Mr. Gaskill - Aye
Mr. Pritchard - Aye

Mr. Choyce - Aye

Mr. Wigglesworth – Aye

Mr. Dahl – Aye

SAID MOTION CARRIED.

Annika Bruggeworth (Minor Subdivision Hearing) – Thomas Darcy, Attorney, Annika Bruggeworth and Barbara Allen Woolley-Dillon, P.P., were present.

Mr. Dahl recused himself and Mr. Wigglesworth replaced him as chairman during the subdivision hearing.

Mr. Darcy informed those present that Annika Bruggeworth was proposing to reconfigure two lots such that an existing accessory structure located on existing Lot 31 would become a principal structure on proposed Lot 29.

Mr. Endicott and Mr. Dixon referred to their reports, noting certain deficiencies in the submission.

Mr. Choyce questioned the use of a single septic system for both lots. He was advised that the issue was addressed with regard to review for completeness, but further clarification would be necessary with regard to acceptance by the County of Atlantic Board of Health.

In response to additional questions of Board members related to the existing septic system, Mr. Darcy stated that the Applicant would comply with whatever was required by the County Health Department.

Mr. Choyce moved, seconded by Mr. Carson, to deem complete for review Application No.2009-16, submitted by Annika Bruggeworth, conditioned upon compliance with the comments contained within the reports of Vince Polistina, dated December 9, 2009, and Kevin Dixon, dated December 10, 2009.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Carson – Aye

Mr. Dorsey - Aye

Mr. Cheek – Aye

Mr. Gaskill - Aye

Mr. Christman – Aye

Mr. Pritchard - Aye

Mr. Choyce – Aye

Mr. Wigglesworth – Aye

Mr. Dahl – Recused

SAID MOTION CARRIED.

Mr. Darcy described existing conditions, existing non-conformities, an existing access easement and past property configuration, and referred to a previous subdivision involving the lots.

Mr. Darcy stated that Ms. Bruggeworth had received a variance from the Zoning Board of Adjustment to construct a stable on the lot upon which her dwelling was located, which was larger than the dwelling. He explained that Ms. Bruggeworth owned show horses and trained the horses inside the stable.

Mr. Darcy further explained that Ms. Bruggeworth hired an architect to prepare plans, and a builder, to construct living quarters within the barn so there would be a caretaker on site twenty four hours a day, seven days a week, but did not apply for zoning or construction permits to do the construction. He stated that, when the Township found out about the second dwelling, Ms. Bruggeworth was fined and the second dwelling was vacated.

Mr. Darcy stated that a decision was made to reconfigure two of the lots owned by Ms. Bruggeworth in a manner that would result in the barn with the dwelling becoming a principal structure on one of the lots, rather than continuing with the use variance application before the Zoning Board.

Mr. Darcy pointed out that the intent of the subdivision application in 2003 was to create two lots for the purpose of constructing two dwellings, and only one had been constructed; that the proposed reconfiguration would not increase the number of dwellings that could be

constructed; that the proposed lot area exceeds the minimum lot area required by Ordinance; that there would be the potential for a third dwelling unit if a use variance were granted to permit two dwellings on one lot; and that the proposed lot upon which the barn/dwelling would be located would be serviced by an existing thirty foot wide easement as previously approved.

Mr. Darcy stated that a variance would be necessary for impermeable coverage for proposed Lot 31, as the lot area is being reduced and the paved driveway that services both lots would be located entirely on proposed Lot 31. He advised that the Ordinance permits no more than twenty percent impermeable coverage, and there would be twenty-four percent coverage on proposed Lot 31. Mr. Darcy proposed to deed restrict proposed Lot 29 to permit no more than fifteen percent impermeable coverage, which would result in the overall coverage for both lots meeting the Ordinance requirement.

Mr. Darcy stated that a variance would be necessary for front yard setback for the existing structure on proposed Lot 29. He pointed out that the side yard setback requirement for accessory structures was met when the building was constructed on Lot 31, but the proposed reconfiguration would result in the side lot line becoming a front lot line and the structure becoming the principal structure, necessitating a front yard setback variance.

Mr. Darcy stated he had reviewed the Board's consultants' reports, and the Applicant would comply with the comments contained therein. He noted that the subdivision would be filed by deed.

Ms. Allen Wooley-Dillon addressed the variance requests, and described a case that she felt was on point. Ms. Allen Wooley-Dillon pointed out that it would be difficult to relocate the structure to conform to the front yard setback requirement; that the structure met the required setbacks when it was constructed as an accessory structure; that the lots are an unusual configuration; that both lots are over sized; that existing conditions result in the need for the impermeable coverage variance for proposed Lot 31; that there is adequate light, air and open space; that the proposal establishes appropriate population density; that the proposal is in keeping with the pattern of the surrounding neighborhood; that there would be a desirable visual impact; and that the benefits derived by granting the variances would outweigh any detriment and would not impair the intent of the zoning plan or the ordinance.

Mr. Darcy emphasized that the Applicant would not be conducting a commercial operation on site; that there would be no retail or wholesale sales; that there would be no boarding of other persons' horses; and that the Applicant did not lease her horses.

Mr. Endicott referred to his report and noted the variances that would be necessary to accommodate the subdivision. He explained why the side lot line became a front lot line, and pointed out that the Applicant was proposing to minimize the impact of impermeable coverage by reducing the permitted coverage on the rear lot. Mr. Endicott requested that the Applicant provide a letter from the Atlantic County Board of Health certifying that the existing septic system had the capacity to service both houses and the stable, and he explained the importance of the issue.

Mr. Endicott responded to questions of Board members related to the variances.

Mr. Dixon referred to his report, and expressed the opinion that no sidewalk would be required because the lots exceed one acre in area. He recommended that the deeds contain the appropriate language with regard to impermeable coverage and the septic system, and noted that the Applicant had agreed to comply with the comments contained within his report.

Board members asked questions related to the septic system, impermeable coverage, water and electric to the stable, and commercial use. Responses were provided.

Ms. Bruggeworth stated that the stable use is definitely private and will remain private, and that she is already investigating the possibility of getting a separate septic system for the barn.

Mr. Wigglesworth opened the hearing to public comment.

Linda Aumack Spendiff, residing at 349 Clarkstown Road, stated that she had never experienced a problem with the horses and barn. She, also, stated that she supported the application because she would like someone to be on site at night and that she would have no problem with the Board granting approval once the septic system issue has been addressed.

George Sanders, residing at 465 Franklin Drive, stated he supported the application; that it did not appear the Applicant was conducting a commercial operation; that the barn was the most beautiful he had ever seen; and that a house could have been constructed on the lot anyway.

Judith Matsunovu, residing at 347 Clarkstown Road, stated she did not object to the application, but she was concerned about the septic system; that she was concerned about the number of horses, because the Applicant had told the Zoning Board there would be only three to six and now there were sixteen; and that she was concerned that the site may be operated commercially.

In response to a question how the Applicant handled the horse manure, Ms. Bruggeworth described the process.

Mr. Pritchard moved, seconded by Mr. Choyce, to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Mr. Choyce advised of his impression when he visited the site as a Zoning Board member, and he expressed the opinion that the architecture was compatible with the neighborhood.

Mr. Carson moved, seconded by Mr. Choyce, to grant minor subdivision approval to Annika Bruggeworth, Block 983, Lots 29 and 31, Application #2009-016, with variances granted from the requirement for front yard setback and impermeable coverage, conditioned upon compliance with the comments contained within the reports of Vincent Polistina, dated December 9, 2009, and Kevin Dixon, dated December 10, 2009; providing language within the deed for proposed Lot 29, restricting impermeable coverage to no more than fifteen percent, to the satisfaction of the Board’s Solicitor; providing language within the deeds that provides for the septic system on Lot 31 to, also, service Lot 29 if a separate septic system is not constructed on Lot 29; providing certification from the County of Atlantic Health Department that the septic system located on proposed Lot 31 can, also, be used to service the barn and dwelling on proposed Lot 29, if a separate septic system is not constructed on proposed Lot 29

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Carson – Aye	Mr. Dorsey - Aye
Mr. Cheek – Aye	Mr. Gaskill - Aye
Mr. Christman – Aye	Mr. Pritchard - Aye
Mr. Choyce – Aye	Mr. Wigglesworth – Aye
	Mr. Dahl – Recused

SAID MOTION CARRIED..

Mr. Dahl resumed his place as chairman.

Mr. Carson left the meeting due to a conflict of interest involving the next application.

MetroPCS of Pennsylvania, LLC (Site Plan Hearing) – Kevin Sheehan, Attorney; Shannon Morton, Radiofrequency Engineer; James Miller, P.P., and Cheri Lamphere, P.E., were present.

Mr. Endicott and Mr. Dixon referred to their reports, and advised as to what items were deficient in the submission.

Mr. Pritchard moved, seconded by Mr. Cheek, to deem complete for review Application #2009—015, conditioned upon compliance with the recommendations contained within the reports of Kevin Dixon, dated December 10, 2009, and Vincent Polistina, dated December 11,

2009. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Mr. Sheehan described existing conditions and informed those present that MetroPCS Pennsylvania, LLC, was proposing to increase the height of an existing tower by ten feet, which would allow the placement of six additional antennas. In addition, approval was requested to permit a twelve foot by twenty-five foot expansion of an existing fenced compound at the base of the tower in order to construct a ten foot by sixteen foot concrete pad for the installation of equipment cabinets.

Pointing to various exhibits, Ms. Morton explained why it was necessary for the Applicant to expand the existing facility in the manner proposed to provide reliable coverage. Ms. Morton pointed out that a new tower would have to be constructed to provide the necessary coverage if the application were not approved

Ms. Morton testified that the proposal would comply with FCC requirements.

Ms. Lamphere described existing conditions; the proposed improvements; and how the site would be operated.

Mr. Miller testified that the proposal would advance the purposes of the Ordinance and the Municipal Land Use Law; that the proposal was an appropriate use of land; that the proposal would promote the general health, safety and welfare of the public; that the proposal would preserve open space and promote a desirable visual environment; that the existing facility already violates the existing rear yard setback and the Applicant’s proposal would only minimally increase the non-conformity; that there would be no adverse impact by granting the variance because of the established trees and because the cabinets were not visible unless one is within the compound; that the existing tower is in an isolated area, far removed from neighbors or traffic; and that the Applicant’s proposal to increase the height of the tower is a better alternative than constructing a separate tower.

Mr. Endicott reviewed his report, describing the variances and what the Applicant had proposed to mitigate the impact of the improvements.

Mr. Dixon referred to his report, and expressed the opinion that there was no need for the Applicant to provide a storm water management plan. He made certain recommendations with regard to landscaping.

Mr. Dahl opened the hearing to public comment and there was no response.

Mr. Pritchard moved, seconded by Mr. Choyce, to close the public comment portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Mr. Dorsey moved, seconded by Mr. Choyce, to grant preliminary and final site plan approval to MetroPCS Pennsylvania, LLC, Block 42, Lot 3, Application #2009-017, with variances granted for tower height, tower setback and rear yard setback, conditioned upon providing a landscape plan to the satisfaction of the Board’s Landscape Consultant, and compliance with the comments contained within the reports of Vincent Polistina, dated December 11, 2009, and Kevin Dixon, dated December 10, 2009.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Carson – Recused
Mr. Cheek – Aye
Mr. Christman – Aye
Mr. Choyce – Aye

Mr. Dorsey - Aye
Mr. Gaskill - Aye
Mr. Pritchard - Aye
Mr. Wigglesworth – Aye
Mr. Dahl – Aye

SAID MOTION CARRIED.

William Merlino, III – Mr. Dahl announced that the hearing scheduled for William Merlino, III, had been rescheduled for January 21, 2010, at the Applicant’s request.

Public Comment – Mr. Dahl opened the meeting to public comment and there was no response.

Mr. Pritchard moved, seconded by Mr. Cheek, to close the public portion of the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Wal-Mart Stores, Inc. – Mr. Rosenberger reported that the trial involving Wal-Mart Stores, Inc., had taken place, and the Judge would render her written decision within forty-five days. Mr. Rosenberger commented that the trial went well; that it appeared the Judge fully understood and grasped the issue; and that he believed the Board’s decision would be upheld.

Adjournment – Mr. Dorsey moved, seconded by Mr. Pritchard, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Respectfully submitted,

Nancy Rainbow,
Planning Board Administrator