

A meeting of the Township of Hamilton Zoning Board of Adjustment was held on the above date with Chairperson, Frank A. Tomasello, presiding. Members present were Wayne Cain, Wayne Choyce, William Christman, Bruce Strigh, Amanda Zimmerman and alternate member, George Samuelsen. Also present was the Board Solicitor, Robert Cooper; Planner, Robert Watkins; and Zoning Officer, Philip Sartorio.

The Statement of Compliance was read.

Announcements: There were none.

Harding Brass, LLC; App. #16-2013; Block 616 Lot(s) 2-4; located at 6760 Harding Highway and owner Timothy Granzow was present along with their attorney, Michael Daily. They are seeking an Interpretation of the Development Ordinance NJSA 40:55D-70.b and are appealing the ruling of the Zoning Official that this premises that cannot be used as it had been previously used up until 2010 (juice bar with adult entertainment).

Solicitor, Robert Cooper verified that the proof package had been executed properly and property taxes are current.

The following witnesses were sworn in:

Richard Cantoni, witness for applicant
Brian Donahue, witness for applicant
Timothy Granzow, witness for applicant
Phil Sartorio, Zoning Officer
Robert Watkins, Planner

Mr. Daly testified there are 2 buildings that are in question regarding the application, the motel and bar (which once served alcohol and then became a juice bar). They are applying to continue a pre existing non conforming use of the premises and are asking the Board for an interpretation. They would like to proceed with obtaining building permits to make repairs to the building but not alter it in any way. They are also asking for a Business Registration License and after the repairs are completed, a Certificate of Occupancy.

Mr. Granzow testified he is a partner in the company, Pole & Pit, LLC and they own property at 6760 Harding Highway, Mays Landing, NJ. He has lived on Ocean Heights Blvd. since 2005 and prior to that in Timberglen Apartments. He was raised in South Egg Harbor in Galloway and is 34 years old. He has ownership in Harding Brass, LLC, in which he is a partner. Pole & Pit purchased the property June 2013 and has leased it to Harding Brass, LLC. Mr. Granzow gave a description of the buildings on the property and the interior of the bar. He also stated he had been in the bar when it was open and the 1st time he went there was 1997 and at that time it was called Sensations (a strip club). Harding Brass intends to open as a strip club with dancing girls. The girls will be partially covered and it will not be a sexually oriented business. Mr. Granzow did not look into developing this building into anything else. He is aware that it is in a residential zone.

The following exhibits were introduced by Mr. Daily:

Exhibit A1:	Business Registration Application
Exhibit A2:	OPRA request dated 8/6/13
Exhibit A3:	CCO for Volcanic Eruptions
Exhibit A4:	Resolution regarding liquor licenses dated 6/20/83

Mr. Granzow stated Mr. Sartorio could not approve Exhibit A1 due to a CCO not being on file. It was always operated as a juice bar with adult entertainment. Mr. Granzow reviewed the Townships response to the OPRA request regarding licenses and they were for adult entertainment/juice bar.

When the bar was known as Woods East, Mr. Granzow noted it had a liquor license but lost it in 1986 or 1987. Volcanic Eruptions had a similar issue (losing liquor license but continuing as a juice bar) and he obtained a copy of their CCO. The township noted this was not a change in use. Woods East had a liquor license renewal issued from 7/1/83 to 6/30/84. Mr. Granzow did not know if in 1982 there was adult entertainment in the form of dancing girls.

Applications have been made for building permits but haven't been granted due to zoning because the premises can't be used as a juice bar with adult entertainment. They requested construction permits to bring it up to code (fire alarms, wiring, bathrooms, egress). There is a pink awning above the door which says "girls girls girls" and sign that said "Sensations".

Mr. Choyce asked if the building included a kitchen and Mr. Granzow stated no.

Mr. Strigh asked if the building could be renovated and Mr. Granzow stated it has always been used as a strip club and the inside is as such.

Mr. Cain asked if building permits were obtained and Mr. Granzow stated the building was being cleaned and they were asked to stop working. No building permits have been issued due to zoning.

Ms. Zimmerman asked about the ownership history. Mr. Granzow recalled it had been owned by Sam Weed and in 1987 was transferred to Nancy Weed. She transferred it to Michael Morris in 1996 or 1997. Pole & Pit bought it in 2013. The business ceased to operate in 2010. The business has been adult entertainment since 1980s. The liquor license was lost in 1987 and was never renewed.

Mr. Watkins asked when it was Woods East what was it then and Mr. Granzow replied a strip club. The Board needs to determine when the ordinance came into effect in 1983 when it changed from a bar to adult entertainment. Evidence needs to be presented to prove this.

Mr. Strigh asked about the 6 unit motel and how it fits into the business plan. Mr. Granzow replied they would like to reopen it as a motel. There will be an office and separate parking. This is not part of the application and Mr. Watkins advised that they will have to make an application for this use.

Mr. Sartorio asked when the liquor license was last renewed and Mr. Granzow stated 1986-1987. Mr. Daily requested that information from the ABC and was told they didn't have record of when it was lost. Mr. Daily stated that by the Township giving the business licenses they determined the premises were in conformance with the zoning. Mr. Cooper countered that proper procedure may not have been followed to see if this was a proper use.

Mr. Daily called his next witness, Brian Donahue, age 49 of Galloway Township. Mr. Donahue stated he had been to Wood East at the end of the summer in 1982 after graduating craps class. Alcohol was served and the entertainment consisted of girls dancing while wearing g-strings and bikini tops. He did go back when alcohol was no longer served and the entertainment was the same during the 1980s and 1990s. He does not recall the last time he was there.

Discussion ensued regarding the legal drinking age during that time period.

Mr. Tomasello confirmed with Mr. Donahue that from 1979 to 1985 he lived in Brigantine and to celebrate he came all the way out to Woods East. Mr. Tomasello asked how he knew the applicant and Mr. Donahue said he became friendly with him at the bar he works at. Mr. Granzow discussed with him during the past month about his Zoning Board Application and Mr. Donahue replied how he visited Woods East during the 1980s. He doesn't recall the last time he was there.

Mr. Watkins asked if any of the girls were topless and Mr. Donahue doesn't recall.

Mr. Daily asked who recommended that they go there and Mr. Donahue replied a classmate from the craps class.

Mr. Daily called his next witness Mr. Cantoni of Buena. He has been a resident there for 26 years and has lived in South Jersey his entire life. He owns a bar (Babes Village Inn, Minotola, NJ) and has been in that business for 31 years. He wanted to purchase Woods East in 1981 but bought a different bar instead. He visited there and remembers the girls having small coverings. He went there after alcohol stopped being served and the entertainment was dancing girls. Mr. Cantoni is friends with John & he asked him to testify. Mr. Cantoni believes he had been to Woods East about 10 times and the last time he was there was 3-4 years ago (no liquor was served).

Mr. Tomasello asked if anyone would like to speak during this portion of the hearing for public comment and Mr. Edward O'Flynn, 6757 Harding Highway, was present and sworn in by Mr. Cooper. He testified that he has lived across the street from Sensations since 7/5/05 and has never had a problem. The place is a mess and renovations have been done without permits & a cease work sticker had been placed on the building. A friend of his had been in there and stated the girls are "skanky & totally nude".

Jeanne O'Flynn, 6757 Harding Highway was present and sworn in by Mr. Cooper. She testified that her friend told her the dancing girls are nude. She also stated not many cars were parked there when it was open.

Ms. Zimmerman asked where they lived prior and Mrs. O'Flynn replied they traveled with her husband's work all over the United States.

Mr. Tomasello asked if anyone else would like to speak during this portion of the hearing for public comment and there was no response. Mr. Strigh moved, seconded by Mr. Cain to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE," NO "NAY," NO "ABSTAIN."

Mr. Sartorio stated zoning became effective July 1985 which is critical to this application. Prior to that date the zone was HC (Highway Commercial) and then it was changed to FA-10 (Forest Area 10). Any commercial establishment existing as a permitted use prior to that date became non conforming. A Certificate of Continued Occupancy (CCO) should have been applied for to the Zoning Officer at that time or after a year applied for a Certificate of Non Conformity and that never took place. When the liquor license was lost in 1986 it ceased to be a bar and any use of that structure should have been back for approval. The only record found was from 1987 in an old ledger which gave the motel portion a CCO. This information was provided to the applicant. There was nothing for the bar or dance club operation. The ordinance defines a bar as "an establishment that sells alcohol" and when the license was lost it ceased to be a bar. Mr. Dailey also made reference to the CCO for Volcanic Eruptions. The difference is Volcanic Eruptions is in a Commercial District and bars are a permitted use. Our ordinance defines bar and sexually oriented businesses. An adult establishment, which the applicant applied for, is a gray area in our definitions.

The governing body amended the ordinance in 2010 to require the fire officials to review business registrations in order to verify if there were any outstanding issues. At that time it was decided these registrations should be reviewed by all offices (fire, construction, zoning) involved.

Mr. Tomasello asked if a bar loses their liquor license today what would happen. Mr. Sartorio replied a Cease and Desist would be issued and the bar would be closed down and that is what should have taken place. Non conforming uses sometimes continue without clarification for extended periods of time.

Discussion ensued regarding the ledger entry and if it referred to the motel or bar.

Mr. Sartorio stated that other parties made inquiries regarding CCO's for this property and were told that they would have to come before the Board for decisions and no record is on file for the change from bar to juice bar.

Ms. Zimmerman asked if the ledger would be evidence if a CCO was not on record and Mr. Sartorio replied yes.

Mr. Cooper verified if there is a change in use or the use is sporadic, the use is not considered continuous.

Discussion ensued regarding the change in use and the determination that the Board has to make.

Mr. Watkins testified the applicant is looking to continue the adult entertainment use. The owner is responsible to apply for the CCO if it is not a permitted use within the 1 year and this use is not permitted in that zone. All state (Pinelands) regulations have to be abided by.

Discussion ensued regarding the handwritten journal entry.

Ms Zimmerman verified that there wasn't a CCO issued but that doesn't have an impact on this matter. Obtaining one protects an applicant for continuous operation of a business. A CCO should be filed when there is a change in ownership.

There was discussion regarding if the establishment always had adult entertainment.

Mr. Strigh moved, seconded by Ms. Zimmerman, on App. #16-13, Block 616 Lot(s) 2-4 located at 6760 Harding Highway to interpret it has **not** been a continuous use since 1985 and therefore would require a “D” Variance in order to be permitted in that location.

SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE”, NO MEMBERS VOTING “NAY,” and “ONE (1) ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE	MR. CHOYCE-AYE	MR. CHRISTMAN-ABSTAIN
MR. STRIGH -AYE	MS. ZIMMERMAN- AYE	MR. SAMUELSEN-AYE
MR. TOMASELLO- AYE		

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CAIN: The burden of proof is on the applicant and there is nothing from the applicant that there was a break from the continuous use. Without the burden of proof, I can’t see any different interpretation than what the Zoning Officer has provided us. I vote yes.

MR. CHOYCE: There was no testimony stating there was not a continuous use at all. There is testimony of sporadic use during the 1980s but from 1985 to 2010 is a long time span & I do not see a lot of tangible evidence that says there wasn’t a break, change or a bar that didn’t have entertainment. I don’t have enough concrete information that there has been a continuous use. I vote yes.

MR. CHRISTMAN: Abstain. I don’t disagree with what has been said but what is being weighed out is if the applicant is offering enough proof or has the Township made a mistake. I feel there is a lot of information missing and neither side is weighing out more than the other.

MR. STRIGH: I agree with Mr. Choyce, Mr. Cain and to a degree Mr. Christman. The burden of proof is on the applicant and the answer has to be yes. I have listened to all the evidence and proof of continuous use has not been there. I vote yes.

MS. ZIMMERMAN: This is a complicated case. In light of what was said earlier from one of my colleagues, 1985 to 1999 there are specific records. The evidence which was presented is oral testimony based upon human memory. Whether that is concrete or fallible is our decision to weigh. I don’t feel with the limited evidence I could justly vote in favor of the applicant. Based on the comments from Mr. Cain, Mr. Choyce and Mr. Strigh, I vote yes.

MR. SAMUELSEN: Based on the information that was provided to us, the testimony and not having concrete timeline is a determining factor in this application and for those reasons I vote yes.

MR. TOMASELLO: This is one of the more difficult applications I have ever seen. I have to echo the comments of my colleagues in that I don’t feel the witnesses are disingenuous or truthful but we are talking about a long time frame. Based partially on my memory I can remember a pool table and a possible jukebox as the only entertainment. I do believe that in order to challenge the Zoning Officer valid proof had to be introduced. Had there been any documentation (newspaper article or flyer) I would have ruled in favor of the applicant and overlooked my own memory, but we didn’t have that. The fact this continued under the radar for the previous owner was for his benefit. I vote yes.

Approval of Minutes – Mr. Cain moved, seconded by Ms. Zimmerman to approve the minutes from the August 26, 2013 meeting. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and ONE (1) ABSTAIN.”

Memorialization of Resolution – Ms. Zimmerman moved, seconded by Mr. Cain to adopt the resolution for Christopher Caffrey & Nadina Knisch-App. #13-2013; Block 1125 Lot 41.02. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE	MR. CHRISTMAN-AYE	MR. STRIGH-AYE
MS. ZIMMERMAN-AYE	MR. SAMUELSEN-AYE	MR. TOMASELLO- AYE

SAID MOTION CARRIED.

Memorialization of Resolution – Mr. Cain moved, seconded by Mr. Samuelsen to adopt the resolution for Anthony Sacco & Nicole Kraus-App. #14-2013; Block 5 Lot 12. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE	MR. CHRISTMAN-AYE	MR. STRIGH-AYE
MS. ZIMMERMAN-AYE	MR. SAMUELSEN-AYE	MR. TOMASELLO- AYE

SAID MOTION CARRIED.

Memorialization of Resolution – Ms. Zimmerman moved, seconded by Mr. Cain to adopt the resolution for Michelle Upton-App #15-2013; Block 431 Lots 1 & 2. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE	MR. CHRISTMAN-AYE	MR. STRIGH-AYE
MS. ZIMMERMAN-AYE	MR. SAMUELSEN-AYE	MR. TOMASELLO- AYE

SAID MOTION CARRIED.

Public Comment- Mr. Tomasello opened this part of the hearing for public comment and there was none. Ms. Zimmerman moved, seconded by Mr. Cain to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

Executive Session- Mr. Tomasello opened this part of the hearing for Executive Session. Mr. Choyce moved, seconded by Mr. Cain to enter into Executive Session regarding possible litigation at 9:12 pm.

Mr. Choyce moved seconded by Mr. Cain to end Executive Session at 9:17 pm. and reconvene the regular meeting.

Adjournment – Mr. Cain moved, seconded by Mr. Choyce to adjourn the Zoning Board of Adjustment meeting at 9:18 p.m. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

Respectfully submitted,

Deborah Ohnemuller, Secretary
Zoning Board of Adjustment