

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, Kathi Lentz and Elaine Valentino. Also present were Solicitor, Robert Cooper; Zoning Officer, Philip Sartorio; Planner, Robert Watkins and Engineer Consultant, Kevin Dixon.

The Statement of Compliance was read.

Announcements – **Tracey Hessert-Application # 16-12**; Block 1132.18 Lot 89 will be heard on August 27, 2012 due to the applicant having a problem with publication of the notice. They will have to publish the notice prior to the meeting.

Robert Kahrmann– Application #13-12; Block 997 Lot1 located at 1 Lewis Drive was present and is seeking a variance for the construction of an attached deck (15' x 25') which will partially located in a mapped drainage easement and a variance to allow a 10' rear yard setback where 25' is required along with any other variance(s) found to be necessary.

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

Mr. Kahrmann would like to amend his original application and install a patio that will be made of stamped concrete on the rear of his home instead of the deck that was originally applied for. It will not be where the easements run and the size will remain 15' x 25'. He stated that the HOA wanted him to get approval from the township before they gave him approval. It will be for recreational use only and will not be covered.

Mr. Philip Sartorio, Zoning Officer, was sworn in and stated that a rear yard variance is required. There are 2 easements on the applicant's property (1 along the rear and 1 that comes in on an angle from offsite). The easement area is approximately 5 feet off the rear of the house.

Mr. Cooper stated the easement runs with the land and whoever owns it is responsible. The Board cannot give a variance for the easement.

Mr. Robert Watkins, Planner with Mott Associates, was sworn in and stated the subdivision has a HOA and the drainage system may be owned by them.

Discussion ensued in regards to the easement and building within the confines of the easement.

Mr. Cooper advised Mr. Kahrmann to do a title search to find out who owns the Deed of Easement. The Board has the authority to grant a rear yard variance and can condition that the entity who owns the easement can give the right to build on it.

Mr. Choyce asked if a stamped concrete patio is considered a structure and if a setback would be required. Mr. Watkins stated this is considered a structure.

Mr. Cain asked if the small concrete patio which is currently on the property will be removed and Mr. Kahrmann stated yes.

Ms. Valentino asked if anyone else along that portion of Lewis Drive has patios and Mr. Kahrmann replied yes with of exception of the house to the right of his property.

Mr. Kahrmann stated the patio will be poured stamped concrete. Mr. Cooper said this is considered a structure and he will need a rear yard setback variance due to it being placed 15 feet within the setback instead of 25 feet.

Mr. Tomasello opened this part of the hearing for public comment and there was no response. Ms. Lentz 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."

Ms. Valentino moved, seconded by Ms. Lentz, on App. #13-12, Block 997 Lot 1 located at 1 Lewis Drive for a variance as amended to construct a 15' x 25' concrete patio with a rear yard setback of

10'. The Board will vote on this contingent upon the applicant obtaining permission from whatever entity owns the easement.

SAID MOTION CARRIED WITH FIVE (5) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY," and "NO ABSTAIN."

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE
MS. VALENTINO –AYE

MR. CHOYCE-AYE
MR. TOMASELLO – AYE

MS. LENTZ-AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CAIN: Upon on visiting the property I understand that the house sits on a corner and there is limited access to the backyard. Based on the professionals, what I see and you finding out who has the easement rights to allow you to do this I vote yes.

MR. CHOYCE: The fact that the applicant is putting a patio in and not covering it or expanding the dwelling. Other homes in the development have similar construction and what the applicant is proposing is not going to take away from the appearance or change the character of the neighborhood. I vote yes.

MS. LENTZ: Yes for the previously mentioned reasons.

MS. VALENTINO: Yes for the previously mentioned reasons and I also visited the property.

MR. TOMASELLO: I vote yes as well and incorporate the findings of the other Board Members. This property has 2 front yards but that did not come in to play with this application. Because of this the applicant is limited what he can do to his property. The positive criteria have been met. The negative criteria are that this will be concrete, not visible and not a detriment to the area or zone plan.

Fred and Nancy Kneble - Application #12-12; Block 979 Lot 5; 5473 Mays Landing Somers Point Road was present along with their attorney, Christopher Baylinson. A Use Variance is being sought to permit used car spaces (11) and any other variance(s) found to be necessary.

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

Mr. Baylinson stated the property is located in the GA-L zone. The application is for an additional service at the existing business. The application is being amended from 11 spaces to 5 spaces for the sale of used cars. Customers often ask them to sell their cars or to find them a car. This will enable the Kneble's to apply to the state for this license. The state will not issue this license unless they have a site for that license. There will not be any signage change or on site advertising.

Mr. Kneble testified he has been in the township for 31 years with this business. The site where the business is located is the 3rd site and he gave the history of his previous locations. Mr. Kneble stated he has been asked by customers to sell their cars that they do not want. With a used car license he can take that car, repair it (if needed) and sell it. Without a license he would have to register it under his name instead of the business. The proper way to do this would be to have a license to sell used cars from the state. These cars would be located on the side or back of the building. He does not want to be an active used car salesman. The business hours will remain the same (closed at 6pm and closed on Sundays).

Discussion ensued in reference to used car sales and how title is held for these cars.

Mr. Choyce asked about signage on the property and Mr. Kneble confirmed that there would not be any visible advertising on the property for the sale of used cars. He would agree to limit the number of cars for sale at any one time to 5.

Ms. Valentino asked if Mr. Kneble if he ever sold cars, currently or in the past, from the property and he replied yes. He currently has 8 employees. If a customer has a car in for repair that may take a week or so rental cars are available. If this application is approved the staff will remain the same. The used car sales will be at the current building. The cars that are parked on the side of the fence closest to Atlantic Avenue are not his.

Discussion ensued in regards to this applicant being an expansion of a non conforming use or a new use. It was concluded this would be a new use.

Mr. Tomasello questioned how these 5 spaces would be monitored. Mr. Baylinson answered this would be a zoning enforcement issue.

Ms. Valentino asked if the point of origin would be from a client who came to the shop or from auctions. He replied it would be both.

Mr. Jon Barnhart, licensed professional engineer, was sworn in. He testified the property received approval from the Zoning Board approximately 10 – 11 years ago and has been operating at that site for about 9 years. He presented the following to the Board:

Exhibit A1 – Site Plan (May 14, 2012).

This structure is a 1 story service facility and 1.5 stories of offices. There are a total of 8 service bays (4 in the front and 4 in the rear). Between the 1st floor and the partial 2nd floor there is 3,200 sf of office space. There are 48 parking spaces and 22 are stacked spaces. In the rear of the site is a loading and trash area along with an accessory structure (shed).

The size of the property is large compared to what was developed .This was due to environmental constraints with regard to the location of wetlands. The 5 spaces that have been chosen are located to the side of the building. There total amount of land on this property is 3.183 acres and 810 sf would be used for these 5 spaces. All of the site elements (lights, landscape and storm water maintenance) would remain the same.

The positive criteria have been met by promoting the general welfare and by adding an additional service for his existing cliental. Since there will be no change to the site there will be no change in traffic, trash or noise and therefore no negative criteria. The Zoning Board had deemed this site to be well suited and the additional services that are proposed carry forth with this application and there is no additional impairment to the zone plan or zoning ordinance.

Ms. Valentino asked if there are limits on how many licenses that can be obtained. Mr. Kneble stated 3 or 5. Mr. Cain confirmed that 5 tags can be obtained but that does not limit the amount of used cars that can be stored on the lot. The license will hang in the office area.

Ms. Valentino asked if Mr. Kneble was aware of any other used car dealers with in township and he replied maybe Admiral (located on Route 50) and that zone is residential.

Mr. Kneble stated he is involved in the community and would like to provide this additional service to the community.

Mr. Tomasello asked about signage for the used cars and Mr. Kneble stated he would like to have “For Sale” signs on the cars.

Mr. Watkins stated the applicant is asking for 5 used car spaces in a residential zone and does not feel this additional service would not be impairment to the zoning plan since a commercial use exists. The surrounding neighborhood has commercial businesses. The necessary criteria have been provided for this use. There are 22 spaces in the back of the building. No new signage, lighting or landscaping is proposed. No streamers or banners will be utilized and he does not feel that signs on a car are against sign ordinances.

Ms. Valentino asked if a site plan review is needed and Mr. Watkins feels that would not be necessary since there are no new improvements being made.

Mr. Choyce asked if there is anywhere else in the township where this would be an allowable combined use. Mr. Watkins stated both of these uses are allowed in that zone.

Mr. Kevin Dixon, Engineer with Dixon Associates was sworn in and stated the applicant will not making any changes to the site conditions, no increase to impervious coverage and no impact to storm water runoff from the site therefore a storm water management system is not necessary. There is no issue with the lightening since the used car sales will be closed when the auto repair shop is closed. There is no need for a parking variance since they are in conformance. There are no site improvements proposed and a site plan waiver can be granted.

Ms. Valentino asked what percentage the used car sales would be in relation to the current use. Mr. Kneble replied 1%. Discussion ensued in regards to the turnover of parking spaces with cars being repaired.

Discussion ensued in regards to a possible increase in traffic and the type of advertising that would be allowed. It was agreed that windshield advertising would be the only type allowed.

Mr. Tomasello opened this part of the hearing for public comment and Mr. Jackson of 5615 Atlantic Avenue was present and was sworn in. He objects to this variance and feels it will decrease surrounding property values. It is in a residential zone and historical area. He also has concerns as to how many vehicles will be sold. He has concerns if emergency vehicles need to get through due to the traffic volume during the summer and the lack of shoulder on the road between Route 40 and Sugar Hill Restaurant. Since Mr. Kneble is already selling used cars at the facility how will monitoring be done to ensure that he does not exceed the amount allowed.

Mr. Tomasello answered that without a license approximately 10 cars can be sold per year. The cars that Mr. Kneble has for sale currently are registered to the current owner not Mr. Kneble. Mr. Baylison stated the cars will be situated to the side of the site so there should not be any problems with emergency vehicles proceeding.

Mr. Tomasello asked if anyone else wanted to speak for this portion of public comment and there was no response. Mr. Choyce 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. Choyce moved, seconded by Ms. Lentz on App. #12-12, Block 979 Lot 5 located at 5473 Mays Landing Somers Point Road for a variance to allow 5 spaces to be orientated as shown on the exhibit for the use of used car sales. The hours of operation are to coincide with the existing approved use of the auto repair facility. No additional signage or lighting will be added to the property to accommodate the sales. The only signage permitted will be windshield signs on the cars which will be parked in the 5 designated lots. As indicated by our professionals a site plan waiver can be granted.

SAID MOTION CARRIED WITH FIVE (5) MEMBERS VOTING "AYE", **ONE (1) MEMBER VOTING "NAY"**, and "NO ABSTAIN."

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-NAY
MS. VALENTINO –AYE

MR. CHOYCE-AYE
MR. TOMASELLO – AYE

MS. LENTZ-AYE

SAID MOTION DENIED.

NOTE: The following Board Members made comments

MR. CAIN: I know the applicant well and have so for several years. I am struggling with this after listening to the engineer's reports, the applicant's and his professional testimony. My issues are that I understand what you are trying to do and I have been by your location a number of times. One of my issues is with the parking. My other issue is that you are trying to do this to sell customer cars but by your admission if you wanted to go to the auction to purchase vehicles you would do that also. By approving this we are allowing anyone else to come in and do the same thing in a location where that is all it's going to be. In good faith I can't say yes. I vote no.

MR. CHOYCE: Having heard extensive testimony from the applicant and his professionals as well as the Boards professionals I too struggled with the request. I feel comfortable with the applicant's willingness to minimize the impact of the used car sales. You would not be able to recognize that used cars were going on at the property and very few people would recognize anything different than the way it is operating today. I would vote yes.

MS. LENTZ: I too struggle when people want to put additional uses when something is non conforming. However with the testimony that was presented tonight this appears to be a small addition to what has already been taking place at the property. We haven't heard anything negative as to the business he has been conducting for the past 9 years. It seems it is a needed service where customers want to get rid of their cars rather than have them repaired. I don't feel it is a detriment to the public good based on the testimony that the applicant and the professionals have given. There are not going to be any change to

Mr. Tomasello opened this part of the hearing for public comment. Ms. Aline Dix spoke in reference to utility easements and car dealerships that were located at one time in town.

Mr. Tomasello opened this part of the hearing for public comment. There being none Mr. Cain 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."

Discussion ensued in regards to replying to emails between Board Members and the Zoning Board Secretary.

Adjournment – Mr. Choyce moved, seconded by Mr. Cain to adjourn the Zoning Board of Adjustment meeting at 8:40 pm SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE," NO "NAY," NO "ABSTAIN."

Respectfully submitted,

Deborah Ohnemuller, Secretary
Zoning Board of Adjustment