

A meeting of the Township of Hamilton Zoning Board of Adjustment was held on the above date with Chairperson, Frank Tomasello, presiding. Members present were Wayne Choyce, Eduardo Freire, Werner Raff, Bruce Strigh, and Elaine Valentino. Zoning Officer, Steven Maimon was present, in addition to Board Solicitor, Robert Cooper. Also present were Zoning Board Professionals Robert Watkins, Planner, Kevin Dixon, Engineer, and Chris Carey, Landscape Architect.

The Statement of Compliance was read.

Milton and Kristie Johnson- Mr. Cooper verified that the proof package has been executed properly and property taxes are current.

At this time, Mr. Freire recused himself from the hearing, stating that he has a business relationship with this applicant.

Kristie Johnson, App. #18-10 of 7315 Woodbury Road located on Block 205, Lot 4 was present and seeking a variance to allow an accessory structure (solar panels) to exist in the front yard area of her single family home. Her home is situated on a corner lot, technically deeming her with two front yards. She stated that her husband, Milton, is also seeking this variance, but could not be present for the hearing.

Mr. Tomasello asked Mrs. Johnson where she was in the process of obtaining these solar panels. Mrs. Johnson informed the Board that she received an approval for grant funding from a State program which made it possible for her to purchase the panels. She said the materials are currently being stored in a warehouse and they are pending the decision of the Zoning Board before any of the installation can begin.

Mr. Tomasello asked if these solar panels will only be used for her family's personal use. Mrs. Johnson agreed and stated that this was correct. She clarified by noting that the electric company will only allow her to receive 80% of her consumed electricity with these proposed panels, so they will certainly not be making any money or going into business from the use of these solar panels. She also pointed out that the utilization of these solar panels will cut her electric bill by at least 40%.

Mrs. Johnson also explained that Mercury Solar Systems is responsible for the installation and upkeep of the panels. She said it is virtually of no cost to her and her family; it is just economically friendly and will reduce their electric bill.

Mr. Tomasello asked Mrs. Johnson to clarify that she will not be selling the electricity back to the grid. Mrs. Johnson agreed.

Mrs. Johnson also asked to point out that due to the technicality of her having two front yards, she is required to seek this variance. She requested to show the Board through some photos that this backyard area is buffered and truly looks like a backyard even though it is considered a front.

Mrs. Johnson provided the Board with several photos of her property. They were labeled as follows:

- Exhibit A-1: view of the backyard
- Exhibit A-2: view of the proposed location
- Exhibit A-3: view of the proposed location
- Exhibit A-4: view of the proposed location
- Exhibit A-5: view of tree buffer line
- Exhibit A-6: view of tree buffer line
- Exhibit A-7: view of front of property
- Exhibit A-8: view of tree line (mandatory by Pinelands)

Mr. Tomasello asked Mrs. Johnson to clarify how her home is situated on the property. Mrs. Johnson described the front of her house as Woodbury Road where the tree line of cedar trees is depicted in the photos and on the property survey which she gave the Board. She said she considers her backyard to run along First Avenue.

Mr. Choyce asked Mrs. Johnson if she intends to remove any trees from her property for this project. Mrs. Johnson answered that she will not be removing any trees.

Mr. Choyce reported that he did have the opportunity to inspect the property from both First Avenue and Woodbury Road and made reference that photos A-1 & A-6 which Mrs. Johnson provided, show the array will face in a southerly direction. He then asked what the proposed distance is from her property line along First Avenue to this solar array. Mrs. Johnson answered that she believes it will be 30 feet. Mr. Maimon pointed out that the minimum required setback is only 20 feet.

Mr. Choyce asked Mr. Cooper if renewable energy, such as solar, is considered an inherently beneficial use under State Statute. Mr. Cooper noted that it is.

Mr. Choyce then stated that upon his inspection he did see the tree buffer which is delineated on the survey and in the photo labeled A-1; however, he commented that it is not a very thick buffer so neighbors will easily see the array through it. With that, he feels the applicant should be held responsible for adding more trees so the buffer is denser, making it less visible for the neighbor's view across the street.

Mr. Cooper asked Mrs. Johnson if she would agree to this as a condition and she answered in the affirmative.

Much discussion ensued regarding the type and height of the trees which should be used. Mr. Choyce recommended that the applicant begin enhancing the buffer starting in the center line of the solar array using trees that mature to at least 8 ft. in height. He suggested going out each direction from this center line 10 ft. He added that this would provide a 20 ft. buffer for the neighbor across the street. Mr. Strigh and Mr. Raff agreed that thickening this buffer would be in the best interest of the neighbors in the surrounding homes.

Mr. Tomasello opened this portion of the hearing for public comment and Mr. John Pucci of 828 Harrison Avenue asked to speak. He asked the members of the Zoning Board what the negative criteria was for this application. Mr. Choyce stated that based on his observation, he noticed that the neighbor to this applicant would be able to see the entire solar array from their home, which is why he feels the thickening of this buffer is so important to this application.

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

Mr. Choyce moved, seconded by Mr. Raff on App. #18-10 for Kristie and Milton Johnson of Block 205, Lot 4 on 7315 Woodbury Road to grant a variance to allow an accessory structure (solar panel array) in the front yard area of their single family home with the condition that a buffer be installed along First Avenue where the vegetation currently exists. This buffer must begin in the center of the array and extend 10 ft. to the North and also 10 ft. to the South from this centerline and contain vegetation that reaches at least 6 ft. in height when mature.

ROLL CALL ON THE ABOVE MOTION:

MR. CHOYCE – AYE      MR. RAFF – AYE      MR. STRIGH – AYE  
MS. VALENTINO – AYE      MR. TOMASELLO – AYE

SAID MOTION CARRIED.

**NOTE:** The following Board Members made the following comments regarding the above motion:

Mr. Choyce: Yes.

Mr. Raff: Yes.

Mr. Strigh: Yes.

Ms. Valentino: Yes.

Mr. Tomasello: Again, we have a situation where an applicant is faced with having what is considered two front yards and is proposing to place an accessory structure in one of those front yards. Typically, this Board has looked upon this type of situation as a hardship to the property owner and looked somewhat favorably on the applicant in this circumstance. In addition to this, there is also a State Statute that favors renewable energy, such as what is being proposed here. I am satisfied that the positive criterion for this application has been met. In addition, the negative criterion was discussed at length, and a satisfactory compromise has been worked out, so I vote yes.

South Jersey Gas Co., L.L.C. – Solicitor Robert Cooper verified that the proof package has been executed properly, and property taxes are current.

Thomas C. Roesch, Engineer and Nicholas Talvacchia, Esquire, were present and representing South Jersey Gas, Co., L.L.C., App. #17-10, to acquire preliminary and final site plan approval on Block 1301, Lot 2 located at 215 Cates Road.

At this time, Mr. Choyce recused himself from the hearing. Also at this time, Mr. Freire returned to the dais.

Mr. Talvacchia opened by stating that South Jersey Gas, Co., L.L.C. was previously in front of the Board and successful in obtaining a Use Variance for this location. He expressed that they are here this evening to acquire the necessary site plan approvals for this project. He pointed out that the site is spread out over two municipalities. He noted that Egg Harbor Township approved the site plan on their side for the solar arrays last week. He also reminded the Board that the Liquid Natural Gas Facility is on the Hamilton Township side of the layout which they are looking to update with new materials since it is almost 25 years old. Lastly, he stated that the 14 acres of solar panels on this facility combined will go back to the grid and have the ability to power approximately 300 homes.

Mr. Roesch began his presentation at this time by orienting the Board with the aerial view of the site. This was labeled appropriately as:

Exhibit A-1: aerial view of the entire site

Mr. Roesch showed the Board approximately where the border is between the two townships on the plat and explained that it is almost directly down the center. He said the entire area on the Hamilton Township side is 20.86 acres. He also pointed out that toward the North, South and West of the facility it is heavily wooded with only one single family home that is within approximately 300 ft. of the facility. To the South of the site is a 300 ft. wetlands buffer. In addition, he informed the Board that the entire perimeter of the site is all cleared and gated with an 8' chain-linked fence.

Mr. Roesch said that they are proposing to remove an existing building that contains an existing vaporizer as well as other equipment and replace it with a new vaporizer to exist directly adjacent to the old vaporizer which will be on a concrete slab and in open air. There will also be a 2,200 sq. ft. addition to the boiler building which will be holding additional equipment which will be needed for the vaporizer facility.

Mr. Roesch then pointed out the solar facilities along the northerly, westerly, and southerly perimeters which cover approximately 7 acres on the Hamilton Township side. He also reminded the Board that using these solar panels to collect renewable energy from the sun is a very passive process which is going to provide power back to the grid.

Mr. Roesch began going over the professionals request for testimony on a few issues. His first area of discussion was on the circulation of vehicles. He stated that all vehicles, small and large enter and exit from the northerly gate on Cates Road onto a bituminous drive which leads to a circulatory path and has a very good flow around the facility. There is also an earth road which goes around a stone covered earth dike along with the LNG plant. There is also a security dirt road which goes around the interior perimeter of the fence.

The next issue that Mr. Roesch was asked to discuss was air quality at the site. He explained that currently, the facility has State permits for the emissions that are released at the site. He stressed that the new facility will have even cleaner air due to more updated, state of the art equipment. Also, they will be getting new State permits for this new equipment.

The final piece of testimony that was requested from the professionals was regarding the buffers around the site. Mr. Roesch described the site as being cleared and around since the 1960's. He also pointed out that the area surrounding the site is completely wooded with the exception of one single family home which is approximately 300 ft. away from the site. He stated that Cherry Avenue which borders the site along the west is an unimproved street which has lots of vegetation. He explained that they are planning to keep the cleared areas open for security purposes. He stated that he cannot go into great detail about the security measures taken by South Jersey Gas, Co., L.L.C., but it is imperative for these areas to remain open in order for the security system in place to be effective.

Mr. Freire asked if the lots depicted on the site were ever allowed to be developed or if they were all wetlands. Mr. Roesch replied that there are wetlands to the south, in addition, there is a lot with an existing single family home on it to the west. He said there are no other wetlands bordering the site.

Mr. Freire asked if there was anything at all buffering the site besides the chain-linked fence. He expressed that his concern is that if someone were looking to develop the empty lots around the site that there would be almost nothing blocking the view of the LNG facility and large solar arrays. Mr. Roesch explained that there are no buffers due to the nature of the type of security systems installed at the site. He stressed that natural gas facilities are a target for crime and it is a priority to take the appropriate security measures.

Mr. Raff asked if placing slats in the fence would be an option. Mr. Talvacchia said they would not be since they feel it is imperative to be able to see any potential threats on the outside of the fence.

Mr. Tomasello asked how far one might see from the fence to the nearest facility within the site when standing on the westerly side looking in. Mr. Roesch informed that the fence is 10 ft. in from the property line and the closest solar panel from that point is about 80 ft. away. He said it would be another 400 ft. to the next closest facility.

Mr. Dixon began going over his report and said that as far as completeness is concerned, the applicant has obtained a trash dumpster, as required, with pick-up on an as-needed basis which was not demonstrated before. In addition, the applicant has clarified that there will not be any additional signage or lighting added to the plan and everything that has been delineated on the site plan is all that is intended to be on the site. He concurred with the applicant in stating that this is a very low intensity use.

Mr. Dixon also stated that he has received the Certificate of Filing from the Pinelands Commission and has no objections to the Board deeming this application complete.

Mr. Dixon stated that he had a few comments regarding their technical review. He stated that he asked the applicant to provide the amount of energy that will be generated from the site and they did provide this information to his office. In addition, he stated that the applicant has supplied a parking analysis of the site, which Mr. Dixon also requested. He said 39 parking spaces are required and 44 have been provided on the site by the applicant.

Mr. Dixon reported that the applicant has provided site access and circulatory testimony which satisfied what they were looking for. In short, he noted, the site circulation is suitable for the vehicles that are anticipated to be accessing the site both for the construction of this facility, in addition to its maintenance.

Mr. Dixon discussed the applicant's stormwater management report and stated that what is being proposed has a diminimus affect on stormwater. He stated that solar panels, by regulation, do not increase impervious lot coverage. The posts are considered impervious lot coverage, but are such a small footprint that they do not increase it by a significant amount.

Mr. Dixon ended his discussion on his review by stating that this applicant is proposing very little impact on a very low-intensity development. Mr. Cooper asked if he felt there should be any conditions imposed on this application from an engineer's point of view. Mr. Dixon responded that the testimony that was provided satisfied all open concerns, so there is no need to place any conditions on the application. Mr. Cooper also asked whether Mr. Dixon felt the waivers that are being requested by the applicant should be granted in his opinion. Mr. Dixon said he has no problem with the granting of the waivers that are being requested.

At this time, Mr. Watkins began to go over his report for the application. He stated that based on the testimony given, he feels the waiver for signage and lighting can and should be granted since there will be nothing added to the site.

He then proceeded to discuss the buffer requirements that exist between an industrial and residential use as per the Township Ordinance. He stated the required total buffer separation is 200 ft. He also stated that the minimum buffer allowed would be 100 ft. He noted that there has been a lot of discussion regarding Cherry Avenue and the possibility for surrounding lots to be developed in that area. Mr. Watkins clarified that the majority of the lots depicted on the map would not be developable. He estimated that maybe a quarter of them would be buildable after the lots were consolidated to meet the minimum lot size in that zone.

Mr. Watkins raised the issue that once the paper streets are improved, sewer and water are installed, and lots consolidated and ready for development that they can add a screen into their site plan rather than have the applicant incorporate the buffer now. This way, the developer who is proposing to subdivide will be well aware of South Jersey Gas Co.'s site including how open it is and create a buffer as they see fit at that time.

Much discussion ensued.

Mr. Cooper asked if Mr. Watkins to confirm that he feels it appropriate for the applicant to be waived from having to install the buffer and Mr. Watkins answered in the affirmative.

Mr. Watkins briefly touched on the emissions issue being addressed and stated he is satisfied with the testimony given.

Mr. Watkins also briefly stated that he supports the request for a waiver for the installation of the curb and sidewalk along Cherry Avenue for the entire frontage. He also stated that the ordinance does not have an 'in lieu of' contribution; therefore the Board must either grant the waiver or have the curb and sidewalk installed in a wooded area.

Mr. Watkins ended the review of his report by stating that the applicant is still waiting on a report from the Fire Official and he is agreeable to making this report a condition upon approving this site plan.

At this time, Mr. Carey began going over his report stating that he is satisfied with most areas that have been touched upon in the testimony given. He stated he is also satisfied within the architectural plans.

Mr. Carey stated that the site does not appear to front Grand Avenue; however, there is a section that does which is actually Third Avenue. He described Third Avenue as a paper street which has some significance to the application which he asked Mr. Roesch and Mr. Talvacchia to inform the Board about.

Mr. Roesch stated that there are some major gas transmission lines that run from Grand Avenue into the facility via Third Avenue. He stated that it is not the property of South Jersey Gas, Co.; however, it is their right to use the public right of way for this purpose. Mr. Carey verbalized that there are some white pines screening the road frontage along Grand Avenue which could be thickened. Mr. Talvacchia said he would have no problem thickening that buffer if the Board feels it should be.

Mr. Carey stated that he did have the opportunity to view the entire site with a representative from the company. He pointed out that he was not able to tour the site alone due to the extensive measures taken for security. That said, he advised the Board that it is their right to require buffering the way they see fit; however, after his experience on site, he stressed how difficult it would be for the security system to function effectively with added buffering. Mr. Talvacchia pointed out that it is stated in the ordinance that the Board can waive the requirement for buffering if a unique condition is found on the site. He expressed that he feels this unique security system should count as a unique condition.

Mr. Carey also pointed out that, in the interest of buffering, that this is an existing site which pre-dates 1970 and does not have a stitch of vegetation on it since it is an industrial use. Also, he stated, there is a pretty large wooded buffer from the existing home on Lot 1, which was pointed out earlier by Mr. Roesch.

Mr. Cooper asked the Board Professionals to clarify that they are all in favor of waiving the requirement for buffering with the exception of the discussed buffer that is to be thickened along Grand Avenue. The Board Professionals answered Mr. Cooper in the affirmative.

Mr. Tomasello opened this portion of the hearing for public comment at this time and Wayne Choyce, owner of Block 1291, Lot 1 asked to say a few things regarding this application.

Mr. Cooper stated that although Mr. Choyce is a member of the Zoning Board, he is speaking on this application as a resident and what he says should have no extra weight just because he is a member of the Board.

Mr. Choyce stated that he owns Block 1291, Lot 1 which is located in between Third Street, Fourth Street, Grand Avenue and South Jersey Gas, Co.'s property. He informed the Board that construction of a single family home will begin within the next two or three weeks on this lot.

He stated that several years ago, South Jersey Gas, Co. came to the Planning Board to install the high pressured pipeline and one of the terms and conditions from this Board was for buffers to be installed along the western side of the facility. He said that initially, it was supposed to be vegetation and then it was going to be slats in the fence. At the time, he stated, this was all agreed upon and the Resolution was approved. He informed the Board that once construction commenced, the buffer was never installed. Mr. Choyce explained that the Planning Board was satisfied without a buffer after receiving letters and documentation from National and Homeland Security. This documentation stated the 'best practices' for security measures for this type of facility which stressed that the security at this site would be hindered if this buffer were to be installed.

Mr. Choyce informed the Board that he is not speaking out against this application, but only trying to educate this Board on the history of it because it initially went to the Planning Board, not the Zoning Board.

Mr. Tomasello asked if anyone else cared to speak on this application and there was no response. Mr. Raff moved, seconded by Mr. Freire to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE," NO "NAY," NO "ABSTAIN."

Mr. Freire moved, seconded by Mr. Raff to grant final site approval for App. #17-10, South Jersey Gas, Co., L.L.C. located at 215 Cates Road on Block 1301, Lot 2. The conditions that must be met pertaining to this approval include the improvement or thickening of a buffer that was already installed along Grand Avenue, the letter of approval from the Fire Chief, in addition to compliance with all other State, County, and local agencies that have jurisdiction.

The waivers that were granted for this application include the following: the drawn or reproduced plan at a scale of not less than one inch equals 50 ft., the lighting and signage plan, relief from the installation of curbs and sidewalks, in addition to relief from having a key map showing the subdivision and its relation to surrounding areas within 1,000 ft.

ROLL CALL ON THE ABOVE MOTION:

MR. FREIRE – AYE            MR. RAFF – AYE            MR. STRIGH – AYE  
MS. VALENTINO – AYE    MR. TOMASELLO – AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made the following comments on the above motion:

MR. FREIRE: I vote yes.

MR. RAFF: I vote yes.

MR. STRIGH: I vote yes.

MS. VALENTINO: I vote yes.

MR. TOMASELLO: I vote yes.

At this time, Mr. Choyce returned to the dais.

Public Comment – Mr. Tomasello opened the hearing to public comment and Mr. John Pucci of 828 Harrison Avenue asked to speak.

Mr. Pucci stated that he had the opportunity to read the draft Decision and Resolution from his site plan application last month and he has some questions about it. He stated that he addressed some of these concerns to Jeanne Parkinson earlier today so she referred them to the Board Solicitor, and a few changes were made. However, he stated, there are some outstanding issues that he would like to address to the Board for clarification.

He stated that the first issue is that there was a lot of discussion at the site plan hearing concerning the ability to farm on his property and how it relates to either being a principle use or an auxiliary use. He said he feels this is significant because it was questioned by the public and he feels that this application was a highly contested application. Mr. Tomasello responded that it was contested, but wouldn't agree that it was highly contested.

Mr. Pucci continued by stating that due to the length of the discussion, he felt that the issue regarding farming being allowed as an auxiliary use to the residence, which the Board gave its approval as being correct, should be stated in the Decision and Resolution for his protection. He said he is only asking for indulgence of this from the Board so he will not have to seek out his eighth attorney.

Mr. Tomasello said that he is going to defer to the Board Solicitor on this issue although it is his understanding that there is a Right to Farm Act. Mr. Cooper concurred and stated that this is the reason he felt it not necessary to even add it in the Resolution. He added that nobody would have the right to object to him using a portion of his property to farm and confirmed that it is his right to do just that. He also stated that some side discussion took place regarding farm equipment in addition to differentiating where he was already utilizing his farm area in relation to his business. Mr. Cooper pointed out that Mr. Pucci has already been using his land to farm, so, he stated, it really goes without saying that Mr. Pucci is allowed to farm on his property.

Ms. Valentino stated that another point which she felt was significant to add, regarding this topic, is that the notice for this application did not specify this issue as what was being addressed at the hearing. Mr. Cooper agreed and added that he would feel very uncomfortable adding something like this to a Resolution because this was not what the application was built around. The application was built around the site plan approval. Mr. Cooper also clarified that the farming aspect is an accessory use to the residence and not the basis of his commercial business.

Mr. Pucci then stated that the Land Use and Development Ordinance states that one cannot have three uses on a property. He stated that he spoke with Nancy Rainbow, and Steve Maimon can verify, that she informed that this can be construed as having a third primary use and would not be permitted as per Township Ordinance.

Mr. Cooper responded that it was confirmed that the business is not a primary use. It was clearly described at the last meeting as an accessory use which is the reason it was not required for a "D" variance to be obtained for site plan approval. Therefore, he stated, if the farming were ever to even be considered a primary use, it would still only leave Mr. Pucci with two uses on his property.

Mr. Cooper continued that it was clear that it was agreed upon at the previous hearing that the pole barn was an accessory structure being utilized as an accessory use to the residence. Mr. Pucci asked Mr. Cooper if this was stated in the Resolution. Mr. Cooper stated that it was. Mr. Pucci asked Mr. Cooper where it was stated in the Resolution. Mr. Cooper said it is in the interpretation part and began to go over the different parts of the Resolution where this can be found. Mr. Choyce stated that in paragraph four of the Decision and Resolution, it states that “the applicant has shown evidence that the pole barn is truly used as an accessory building when looking at his business plan as a whole.”

Mr. Pucci stated that he sees where this is stated and asked if the additional wording can be added so it specifically states that the pole barn is an accessory structure and the business is an accessory use. Mr. Tomasello cited that the Resolution states that “the applicant explains the reasons that the pole barn is considered an accessory use.” Mr. Choyce then added that as stated in the Resolution, “the Board then determined after hearing this information from the applicant and reviewing the previous Resolutions and the report provided by Mr. Endicott that, in fact, the pole barn is an accessory structure and conforms to the standards of the zoning regulation making it unnecessary for the applicant to seek a “C” variance or a “D” variance.” Mr. Cooper stated that he feels this is clear. Mr. Tomasello agreed and added that if it were considered a primary use Mr. Pucci would have had to seek the “D” variance.

Mr. Freire then stated that the use of the pole barn would have been stated and discussed in the previous Decision and Resolution three or four years ago. He stressed that as being a separate document. Mr. Tomasello agreed that we are not reaffirming this, but are only acknowledging that it was addressed and resolved three years ago. Mr. Tomasello also raised the issue that if they were to conclude this in this Resolution, that it would then be open to appeal on this issue. Mr. Cooper agreed that it would potentially open him up to appeal and emphasized that he would recommend Mr. Pucci not to touch this issue.

Mr. Pucci then stated that he thought the business was considered a primary use upon receiving his “D” variance for the property to become commercial. He also stated that the business was at that point considered a primary use, not an accessory use. Mr. Cooper stated that this Board has determined the business as accessory use to the residence here last month, based on the testimony provided by Mr. Darcy. The conditions that were imposed such as the owner being required to live on site, in addition to the owner of the house having to own the business were all due to this being an accessory use to the residence on site. Mr. Cooper again addressed that the only primary use on Mr. Pucci’s property is the residence. All other uses on the property, including the business and farming are accessory uses to the primary use. Mr. Cooper stated that as long as Mr. Pucci is farming for personal reasons such as harvesting crops for himself and his family, it is considered an accessory use.

Mr. Cooper asked Mr. Pucci to address the Board with the last issue he had with the Resolution. Mr. Pucci stated that the condition placed on him in the original Decision and Resolution was the same condition that he stated he agreed to at the site plan hearing which was to be the same, word for word, at the Board’s request. Mr. Pucci stated that this condition reads: “To control operators not as conscientious as the Applicants, in the event that the new Applicants sell their business, this use variance shall lapse unless the new business operator continues to reside on site.” Mr. Cooper clarified that the term “continues” means that there had to have been an original occupancy on the site, so Mr. Pucci is obviously pulled in under that requirement to live on the site in order to operate the business. Mr. Cooper added that this was part of the presentation provided by Mr. Darcy in explaining why this is an accessory because the condition is that Mr. Pucci must live in the house and operate the pole barn; therefore, one is accessory to the other.

Mr. Pucci stated that he doesn't understand why the condition didn't just state that the applicant must live in the residence and any future owners must live in the residence. He then contended that this is not what it says. Mr. Pucci stated that it says that in the event of the sale this condition applies to the new owner. Mr. Pucci questioned why the condition doesn't just read that: in the event of the sale, the owner must live in the house in order to operate the business.

Mr. Cooper asked Mr. Pucci if what he is stating is that he is somehow excluded from this condition and can operate the business and rent out the home. Mr. Pucci stated that the future owner will have to live in the home to operate the business. Mr. Cooper said that this is not the case and there are three reasons why it does not work this way. He said the first reason is because it stated the phrase, "continue to" in the condition. He stated you can't continue something unless you already are obligated to do it.

Mr. Cooper stated that the second reason this doesn't work is because Mr. Pucci's lawyer argued that the condition that was imposed being, the owner of the house must live in the house and operate the business, was the reason it was an accessory structure. He argued that, Mr. Darcy clearly represented to this Board in our interpretation process, that this is what Mr. Pucci, intended to do.

Mr. Cooper continued that the third reason this does not work is because the Board is allowed to impose conditions at site plan approval. He stressed that one of the conditions that was imposed was so that the owner has to both live in the house and operate the business. So, he stated, even if there was never a prior use variance sought, even if there was never an interpretation, this Board is allowed to impose this condition, which it clearly did at last month's site plan approval hearing. In addition, it was placed on Mr. Pucci because it was one of the conditions that were placed on him four years ago. Mr. Choyce added that it was one of the deciding factors for the Board to consider this an accessory structure. Mr. Cooper stated that this was also included as part of the approval of site plan that this was going to be one of the conditions. Mr. Cooper argued that there is no way that Mr. Pucci can argue that he, as an individual, is exempt from this condition.

Mr. Pucci stated that he just questions why the original Resolution was worded the way it was. Mr. Cooper stated that we are not going by the wording in that document; we are going by the wording that was brought upon us from last month's hearing which was that the owner of the residence must live in the home and operate the business.

Mr. Pucci told the Board that this helps and he also stated that what he feels trumps the original Resolution is that the Board can impose additional conditions at site plan. Mr. Cooper said this is correct that the Board can impose any additional conditions as it sees fit for the approval of site plan and ultimately is trying to create a better site plan in doing this.

Mr. Pucci stated that it was argued at the site plan hearing that the barn and the business were accessory and did not need the 50 yard setback, being it was accessory, so that in itself made the requirement exist where the owner of the house is the same person who lives in that house and operates the business. Mr. Cooper clarified that the home is the principle use on the property and the barn is accessory to the residence.

Mr. Pucci asked for clarification between the owner of the business and the operator of the business. He stated that he could have a silent partner be an owner of the business, but the manager can be the operator who lives in the house. Mr. Tomasello clarified that what Mr. Pucci is asking is if he moves off the property and rents it to someone else who then lives in the house and continues to operate the business is this a violation of the site plan. Mr. Cooper stated that this would violate the site plan

Mr. Freire stated that the Resolution reads, "It shall be a condition for the person living in the house to be the same person who is authorized to run the business." Mr. Freire said that the way he understands it, the owner of the business is the one living in the house. So, he stated, you can be the owner of the business and have someone live in the house to operate the business.

Mr. Choyce asked Mr. Freire to read the next sentence.

Mr. Freire read from the Resolution, "the business cannot be rented out nor the home rented out to someone who does not own the home and operate the business. Mr. Pucci asked where Mr. Freire was reading from. Mr. Freire responded that it was section 8 of the Resolution.

Mr. Freire pointed out that the language should be changed in the Resolution to say, "The person who owns the home is to reside in the home in order to operate the business" rather than "the person living in the house to be the same person who is authorized to run the business." Mr. Cooper agreed to make these changes to clarify the condition better in the Resolution.

Mr. Pucci pointed out that he owns a home in Brigantine and his wife is retired so they spend half of their time there anyway. He stated that he might like to stay in Brigantine and continue to operate the business and have his son live in the home. Mr. Cooper suggested that he put his home in his son's name, or at least as a partial owner. Mr. Pucci stated that this would be easier said than done for him.

Mr. Pucci stated that he feels the Board placed this condition on him mainly because they feel the property will be better maintained with the owner on site. He stated that he thinks if the operator or whoever has control of the business is the one to oversee this, there wouldn't be a problem with maintaining the property. He stated he has never had a maintenance issue on his property. Mr. Freire disagreed, stating that the intention of the Board was to keep some semblance of a residential area since Mr. Pucci is located within a residential zone. He stated that by keeping the owner living in the home and operating the business, there are less loopholes for the property to get neglected. They feel this was the best way to assure that the property would continue to maintain the residential character of this neighborhood. Mr. Freire stated that this was the Board's primary intent.

Mr. Cooper stated that he is going to revise the Resolution to better answer Mr. Pucci's questions. He stated that it will read, "The applicant shall file a deed of consolidation, consolidating the two lots and shall have a restricted covenant to the deed where by it shall be a condition for the person who owns the house to live in the house and to be the same person who owns and operates the business. The business cannot be rented out, nor the home rented out to someone who does not own or reside in the house and own and operate the business." That way it meets Mr. Pucci's questions and clearly spells out that he has to both own and live in the home and own and operate the business.

Mr. Pucci addressed the Chair, stating that he respectfully disagrees with Mr. Cooper. He stated that the condition that was placed on the deed did not have to be, and that he agreed to it. In the process of agreeing to it, he stated, it was stated at the site plan hearing, that the condition would be added to the new Resolution word for word from the original Resolution. He also stated that his attorney also placed the original wording on the deed with the language from the original Resolution.

Much discussion ensued.

Mr. Freire stated that he believes the Board based their decision on the owner living in the home and owning and operating the business. He stated that if Mr. Pucci

disagrees with this than we will have to re-open the case and re-evaluate the entire application. Mr. Cooper agreed stating that the applicant would have to come back for an interpretation or a modification.

Mr. Pucci stated that he has not had the opportunity to speak with his attorney about the Decision and Resolution yet since he only saw it for the first time today. Mr. Cooper told Mr. Pucci that if his attorney makes a sufficient enough argument they can always pass a modification of a Resolution at a future time. Mr. Pucci asked if this would require an additional application and Mr. Cooper told him it would not. Mr. Cooper stated that if his attorney can convince the Board that they were wrong, than he will modify the Resolution and re-approve it at another time as an amended Resolution.

Mr. Pucci thanked the Board for their time.

Mr. Tomasello asked if there is anyone else from the public who would care to comment and there was no response. Mr. Raff 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."

Approval of Minutes – Mr. Choyce moved, seconded by Mr. Freire to approve the minutes from the September 27, 2010 hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE," NO "NAY," NO "ABSTAIN."

Memorialization of Resolutions –

John & Deborah Pucci – Block 1305, Lots 9.01 & 9.05, App. #15-10 - Mr. Freire moved, seconded by Mr. Choyce to approve the amended Resolution for the said application. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE," NO "NAY," NO "ABSTAIN."

George & Kathleen Sanders – Block 1119, Lot 33, App. #16-10 – Ms. Valentino moved, seconded by Mr. Raff to approve the Resolution for the said application. SAID MOTION CARRIED WITH FOUR MEMBERS VOTING "AYE," NO "NAY," AND TWO "ABSTENTIONS BY MR. STRIGH AND MR. CHOYCE."

Executive Session – Mr. Cooper stated that the Zoning Board is no longer involved in the Janasko vs. DiNatale court case that has been on-going.

The Board also discussed the need for detailed minutes to have access to and denied the Township Administrator's suggestion for shortening the minutes in order to open up more office time.

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

Respectfully Submitted,

Jeanne M. Parkinson, Secretary  
Zoning Board of Adjustment

This entire meeting was recorded. The compact discs are on file in the Zoning Office and may be reviewed by interested persons during regular business hours.

