

A meeting of the Township of Hamilton Zoning Board of Adjustment was held on the above date with Chairperson, Elaine Valentino, presiding. Members present were Wayne Choyce, Wayne Cain, George Samuelsen, Bruce Strigh, Amanda Zimmerman and alternate member, Debra Kraus. Also present was the Board Solicitor, Robert Cooper and Zoning Officer, Philip Sartorio.

The Statement of Compliance was read.

**Oath of Service** – Robert Cooper administered the Oath of Service to the following: Joseph Leyenaar, Jr. appointed as Alternate #1 Zoning Board Member.

**Announcements:** Item #6, Township of Hamilton, Site Plan Approval in conjunction with the Use Variance approval will be carried to March 24, 2014. It is the applicant's responsibility to service notice.

Item #9, Denise Thomas, with a variance to construct a deck on 2<sup>nd</sup> Avenue, will also be carried to March 24, 2014 with the requirement to serve notice.

**William Paul Brown; App. # 1-2014; Block 869 Lot 4;** located at 6265 Holly Street was present and is seeking a variance to install an accessory structure (solar panel array) in the front yard area of his property.

Solicitor, Robert Cooper verified that the proof package had been executed properly.

Mr. Cain visited the property and asked how many panels will be on the property.

Mr. Gerald Davis, representing the solar company, was sworn in and testified the array will be 1 unit, have 96 panels and will be 10' high. There will be a total of 4 trees removed.

Mr. Sartorio was sworn in and testified the rear & east sides of the applicant's property abut the Atlantic City Expressway maintenance area and right of way area.

Ms. Valentino asked how large the total size of the proposed array will be.

Mr. Davis answered 81'; from front to back 18.5' and the highest point 3'.

Mr. Brown testified the solar arrays are for personal use and no business will be conducted on the property.

Mr. Choyce asked what side yard setbacks for accessory structures are in that zone are. Mr. Sartorio replied 10' side & rear.

Ms. Valentino asked what the distance would be from the closest point of the array to the property line. Mr. Davis replied 10' and it will be placed on an angle.

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

Ms. Zimmerman moved, seconded by Mr. Strigh on App. #1-14, Block 869 Lot 4 located at 6265 Holly Street to grant a variance for solar array panels with a setback of 10' in a lot that has 3 front yard areas which is to be positioned no closer than 10' from the property line in the north east corner.

SAID MOTION CARRIED WITH SEVEN (7) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY," and "NO ABSTAIN."

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN- AYE

MR. CHOYCE-AYE

MR. SAMUELSEN-AYE

MR. STRIGH -AYE

MS. ZIMMERMAN-AYE

MR. LEYENAAR -AYE

MS. VALENTINO-AYE

Township of Hamilton Zoning Board Meeting

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SAID MOTION CARRIED.

**NOTE:** The following Board Members made comments

**MR. CAIN:** After visiting the applicant's property and seeing the 3 front yard areas, the location of the solar array will be in the back. It will be unseen from the back and side roads. I don't see any detriment to the applicant. I vote yes.

**MR. CHOYCE:** These types of solar arrays are deemed necessary by state statute and the front yards in question for this application are undeveloped public streets which are accessed for the Atlantic City Expressway and are adjacent to the maintenance yard/toll plaza. I see no detriment to the Master Plan or zoning for the area. It is located to the rear of the property and is not a detriment. I vote yes.

**MR. SAMUELSEN:** Based on my site visit and comments made by my colleagues, I vote yes.

**MR. STRIGH:** Yes for the previously stated reasons.

**MS. ZIMMERMAN:** Yes for the previously stated reasons.

**MR. LEYENAAR:** Yes for the previously stated reasons.

**MS. VALENTINO:** Yes. I also visited the site and vote yes for the previously stated reasons.

**Harding Brass, LLC; App. #2-2014; Block 616 Lot(s) 2-4;** located at 6760 Harding Highway. 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.

Mr. Daily testified the issue involves the premises on Harding Highway that for years had adult dancing. For 10 years it received business licenses stating it was for a juice bar with adult entertainment. The ordinance states if you are not conforming with the zoning ordinance the business license can be revoked. In 2010 the owner passed away, the premises stopped operation and was sold to the applicant. The use was not abandoned between 2009 to present. The issue, raised by the planner, is there is no record the premise received a Certificate of Continued Occupancy. This premise was operating before the zoning ordinance went into effect. It had adult entertainment & continued from the early 1980s until 2009-2010. Dancers were scantily clothed and served beverages. Witnesses will testify about the nature of the use over the past 30+ years. Prior business licenses or any other records were tried to be obtained but there is nothing before 1999. The planner noted in 1986 or 1987 an application for a CCO for a motel was applied for. Approval was granted for a sign & a fence was also obtained & there was no problem with zoning.

The first witness was called to testify. Ms. Theresa Triola was sworn in and testified she has doctorate in education and is currently a yoga instructor. She is a retired principal from the Department of Family and Children Regional School and from Clearview Regional High School in Mullica Hill. She lives Hammonton, NJ & lived in Mays Landing 1993-1998 when she was married. She caught her ex husband in Sensations. She is familiar with Woods East & Sensations from traveling up and down Route 40. The outside advertisements stated it was a gentlemen's club. She doesn't remember it ever being anything other than a gentlemen's club. She printed a document from the computer regarding Sensations and gave testimony about what it said.

Ms. Zimmerman asked her if she ever visited it in 1981 through 1985 and she stated no. She was in there during 1997.

Mr. Daily asked if she drove by there in the early 1980s and Ms. Triola answered yes and the advertising was for a gentlemen's club.

She has no direct relationship with the applicant or the owners of Harding Brass. She is aware of the applicant through a friend of a friend.

Mr. Timothy Granzow was the next witness to be sworn in and give testimony regarding the application. He has resided at 4457 Ocean Heights Avenue since December 2005 and prior to that in Galloway since 1979. He is the applicant and the property was purchased June 2013 by Pole & Pit, LLC. There is a lease agreement between Harding Brass & Pole & Pit, LLC. Sensations was not operating when it was purchased & was closed for about 2 years. He has been familiar with Sensations since 1997/1998 and had been inside with girls being topless. Research was completed through The Press achieves and in 1995. He gave testimony regarding what those articles stated.

Mr. Granzow tried to get in contact with witnesses he did not have any prior relationships with. He advertised with Craigs List & received about 100 responses of people.

Ms. Valentino asked if he knew when the business opened. It was sold by Lees Tavern in the late 1970s. He found out that Woods East had a renewal liquor license in 1983-1984 & no evidence that it had one after that date. In 1985 there was no evidence that Woods East was a bar serving alcohol.

Mr. Cain commented the liquor license was lost in 1983/984. The go go dancing was an accessory use when it had the liquor license. Once that license was lost no one filed a variance for it to become a Continued Use. The establishment is in a different zone than Volcanic Eruptions & Hot Spot. Mr. Cain stated he didn't do due diligence to find out it that was an allowable use in that zone to continue.

Discussion ensued regarding the liquor license.

Mr. Richard Cantoni was the next witness to be sworn in and knows Mr. Granzow. He would not testify falsely. He has owned Babes Tavern in Minotola for the past 30 years. In 1981 or 1982 he was interested in buying Woods East and the business was a dance club with alcohol. He had been there in the 1980s & 1990s, including after they lost the liquor license.

Mr. Strigh asked when he went back after the license had been lost. Mr. Cantoni was back there 8 years ago. He does not know the year the license was lost.

Ms. Kraus asked if they did research through the ABC or NJ Division of Taxation regarding the liquor license. Mr. Daily answered he tried and was unsuccessful.

Ms. Lisa Finizio-Janisheck was the next witness to be sworn in. She has a 49% interest Harding Brass. She was an employed at Sensations as an entertainer from 1992 -1994 and has worked at Silkys. She always remembers it as being adult dancing. Her DOB is 6/18/61. She has lived in NJ since she was 25.

Ms. Valentino asked her to describe what Sensations was like from 1992-1994 since it wasn't a bar. Ms. Finizio-Janisheck stated it was a juice bar/go go bar.

Mr. Cain asked Mr. Granzow regarding when the liquor license was lost. Mr. Daily stated there is no definitive date as to that.

Ms. Valentino stated that they are looking for the use that existed prior to the adoption of the ordinance. It is protected as long as it remains that use. If the use changes or expands in any way, the owner has to come to the Zoning Board for relief. She would like the sequence of events prior to the adoption of the ordinance and how it is today and if there are any gaps or abandonment by intent and if the use has changed in any way.

Mr. Daily stated the use became more limited and at some point in time the operation lost alcoholic beverages. Their position is the license was lost after the zoning ordinance had past and the use (adult entertainment and the service of beverages) continued until one of the previous owners died.

Mr. Brad Fisher was the next witness to be sworn in. He is 50 years old and lives in Magnolia, NJ. He is familiar the premises due to working security there from 1988-1989 and alcohol was not served. He doesn't know when the liquor license was lost. He has not been back there since then. He answered an ad through Craigs List to be contacted as a witness. It has always been a place for adult entertainment.

Mr. Joseph Erace was the next witness to be sworn in. He lives in Buena Gardens and is 83 years old. He has lived there since 2000 and prior to that Atlantic City. The last time he was in Sensations was in 2000 and the dancers were semi-nude. He doesn't know anyone involved with Harding Brass. Mr. Cantoni & John asked him to be a witness.

Mr. Dave Miletta was the next witness to be sworn in. He testified that his is 53 and lives in Buena. He visited Woods East in the early 1980s and was of drinking age and it was a bar. It stopped being a bar in mid 1980s. He went there when it was Sensations in the late 1980s/1990s. The last time he was there was about 10 years ago. He is a patron of Babes & had heard about the hearing. He doesn't know any of the owners.

Mr. Daniel Robbins was the next witness to be sworn in. He testified that he is 49 and has lived in Mays Landing for the past 6 years and prior to that Vineland for 5 years. He visited Woods East in 1986 and the entertainment was go go girls. He doesn't remember if they served alcohol. He went back there since then and it has always been go go girls. He was asked by Mr. Nappi to be a witness; they reside in the same residence.

Mr. Valentino asked if he remembers there being a kitchen and he replied no.

Mr. Andrew Bond was the next witness to be sworn in. He testified he is 61 and had visited Woods East in the 1970s and stopped going when he got married in the 1980. He remembers it having adult entertainment. In the 1970s it was a bar serving alcohol.

Mr. Brian Donahue was the next witness to be sworn in. He testified he is 50 had visited Woods East in 1982 during the fall or late summer. It was a bar at that time. It was always a bar. He went in the 1990s and there were semi nude dancing performers. He knows Mr. Granzow from the bar and wouldn't falsify anything.

Ms. Valentino asked when he visited in 1982 was it a bar that served liquor and had dancers and he replied yes.

Mr. Daily stated that he had over 100 declarations to submit and Mr. Cooper replied that the Board cannot take testimony unless they are physically present. It is notated that these declarations have been collected.

Ms. Valentino recessed the meeting starting at 8:30 pm.

The meeting reconvened at 8:45 pm with the same members present.

Mr. Daily has no more witnesses to testify but would like Mr. Granzow to provide more information regarding this application.

Mr. Granzow testified that the primary use in this type of this business is adult entertainment. He stated the use in these types of businesses is priceless. He went to Sensations in 2010 and inquired about purchasing it and adding a liquor license. He noted the place is an eyesore & it will be cleaned up and very nice.

Ms. Valentino asked if it was in operation from 2004 to 2010 and Mr. Granzow replied yes. There is no kitchen and food had been brought in when they advertised for buffets. Sensations did have a Facebook page in October of 2010. The last post was 9/14/2012 by Eva Morris stating the place was for closed and for sale.

Ms. Valentino asked if it was closed or abandoned in 2012. Mr. Granzow stated it was on the market and no intent to abandon. The property would have a continuation of the juice bar and adult entertainment. When asked about the motel Mr. Granzow replied a CCO was issued by Mr. Sartorio. The motel has 7 units with the middle one being the office/boiler room. The motel has been on the premises all along & has never had a name or been a separate entity. The log entry shows a CCO was issued.

Mr. Choyce asked for clarity about the changing of the zoning in 1985. It was previously commercial and then became FA-10, as a result of township ordinance changes. Mr. Sartorio stated the ordinance has a section (203-199) regulating non conforming uses. In order to continue the non conforming use, there is a provision that the purchaser can request a certificate of non conformity that can be issued by the Zoning Officer for up to 1 year. After that they would have to come before the Board to get that certification. It is not required. The responsibility falls to the applicant.

Mr. Choyce asked if the property was to change hands and the same business was to continue to operate is a CCO required. Mr. Sartorio stated a CCO would be required.

Since 1985 the ownership of the property has changed at least 4 times and once from husband to wife. It stayed as Woods East when the people in the mid 80s owned it and changed to Sensations when Morris bought it.

The ordinance states a CCO is required when establishments change occupancy or use.

Mr. Cooper stated if a use is in effect prior to the change in zoning it becomes a vested right in the owner to continue that use. The fact of not getting or getting a CCO may be a violation of the ordinance but does not deprive the owner (same or new owner) of the continuation of the use was in effect prior to the change in zoning.

The CCO is not the focus of this application. The use that was in effect at the time of the zoning ordinance is the focus of the application. If the use was enhanced or enlarged then a Use Variance would be required.

Discussion ensued regarding the focus of the application.

Ms. Valentino brought up prior applications that were before the Board for similar requests.

Mr. Daily stated the primary use was for adult entertainment and that has never changed. This has been a continuation of the adult business use. It is not being expanded. For 30 years this use has been considered by the township as a continuing use. During the 1990s if the township looked upon this as anything else it would have been closed down as a violation of zoning. The argument would have been the use changed & no variance was obtained. The 30 years of history & witnesses brought in tonight proves that this is a continuing use & the current owners want to use it as it always has been used.

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

Ms. Valentino requested discussion of this application with the Board before voting takes place.

Mr. Choyce asked Mr. Cooper if the business licenses issued had any weight on their decision. Mr. Cooper stated there is sufficient evidence for continuity and the discussion & focus should be on the time of the change in zoning; was this permitted; was it lawful; was it a use in effect & did it continue. If the use was in effect & it wasn't enlarged or enhanced; didn't change its nature they have a vested right to continue that use.

Mr. Choyce asked if the issue of adult entertainment in the early 1980s at the time of the zoning change was a violation of any law at the time. Mr. Sartorio replied adult entertainment determination in the application is different than the way our zoning addresses it.

The type of entertainment which was legal prior to the zoning change was a fully enclosed eating and drinking establishments. Entertainment was permitted as part of an establishment.

Discussion ensued regarding entertainment as an accessory use.

Mr. Choyce asked Mr. Daily if in the early 1980s the bar served liquor and non alcoholic beverages and had women entertaining as performers. In 1985, the zoning changed and he cannot verify it was the same. In the late 80s early 90s the place operated & served non alcoholic beverages & female dancers provided adult entertainment. The same business operated from that point until the applicant purchased it and that is the continuous use they would like to maintain. They cannot prove why and when the alcohol service stopped.

Ms. Kraus stated that no one in the audience is here to oppose this application.

The appeal and interpretation of this application are the same.

Mr. Choyce moved, seconded by Mr. Cain on App. #2-14, Block 616 Lot(s) 2- 4 located at 6760 Harding Highway that this motion is in favor of the applicant that this is a prior non conforming use and can continue as long as it is not changed by the applicant. SAID MOTION CARRIED WITH SEVEN (7) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY," and "NO ABSTAIN."

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN- AYE  
MR. STRIGH -AYE  
MS. VALENTINO-AYE

MR. CHOYCE-AYE  
MS. ZIMMERMAN-AYE

MR. SAMUELSEN-AYE  
MR. LEYENAAR -AYE

SAID MOTION CARRIED.

**NOTE:** The following Board Members made comments

MR. CAIN: This application was difficult and based on the testimony & facts it is a continuation of the use. The applicant has met the burden. I vote yes.

MR. CHOYCE: The key issue is what the use was prior to the zoning change and has the use changed since 1985. We have heard testimony that this was a bar with adult entertainment in the early 80s. A bar can serve food, alcohol & non alcohol beverages along with having adult entertainment. We have heard testimony and have evidence that some form of adult entertainment transpired from the 80s until 2010. After listening to the testimony, the fact that alcoholic beverages are not being served at the property is not, in my mind, a change. Non alcohol beverages and adult entertainment has always been there. I vote yes.

MR. SAMUELSEN: Based on the witnesses and the evidence provided there was a timeline established. I am more convinced now it was always and has been adult entertainment and based on the statements of my colleagues, I vote yes.

MR. STRIGH: Yes for the previously stated reasons.

MS. ZIMMERMAN: The difference from the last meeting and this one was if the use of the adult entertainment existing prior to the zoning change was lawful and did it exist prior to the change and just after. There was a significant amount of evidence presented this evening than the prior meeting. There was discussion and clarification of the COs and business licenses; similar comments made by my colleagues, I vote yes.

MR. LEYENAAR: Based on the overwhelming evidence presented tonight I vote yes.

MS. VALENTINO: I did not hear the case last time and am looking at it strictly of the point of view as the rights of a non conforming use and the fact as to whether the use existing prior to the ordinance is identical to the use continue since that time and being proposed by the applicant. I feel that the proofs submitted by testimony & the witnesses due diligence was done by the applicant.. That point to the fact a time line has been established (Lees Inn to Woods East to Sensations) and shows there have been a continuum use. I think also the decision is strengthened by the attorney for the applicant indicating another use where the town determined that the loss of a liquor license does not constitute a change of use. That principle that was applied to a similar establishment, in another zone, can be applied here. It has been a continued use for 30 years. I vote yes.

Mr. Cooper stated the minutes and resolution for App. #22-2013 be amended to reflect 80 parking spaces instead of 68.

**Approval of Minutes** – Mr. Strigh moved, seconded by Mr. Choyce to approve the minutes from the January 27, 2014 meeting. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and ONE (1) “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN- AYE  
MR. STRIGH-AYE  
MS. VALENTINO-AYE

MR. CHOYCE-AYE  
MS. ZIMMERMAN- AYE

MR. SAMUELSEN-AYE  
MR. LEYENAAR-ABSTAIN

SAID MOTION CARRIED.

**Memorialization of Resolution** – Mr. Choyce moved, seconded by Mr. Cain to adopt the resolution for Township of Hamilton -App. #22-2013; Block 785 Lots 2-4 SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE  
MR. STRIGH-AYE

MR. CHOYCE-AYE  
MS. ZIMMERMAN-AYE

MR. SAMUELSEN-AYE  
MS. VALENTINO- AYE

SAID MOTION CARRIED.

**Approval of 2013 Annual Report (Required) 40:55d-70.1** –Ms. Valentino thanked the Secretary for putting together the 2013 annual report. Mr. Strigh moved, seconded by Mr. Cain to approve the 2013 Annual Report 40:55d-70.1. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY”.

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN-AYE  
MR. STRIGH-AYE  
MS. VALENTINO- AYE

MR. CHOYCE-AYE  
MS. ZIMMERMAN-AYE

MR. SAMUELSEN-AYE  
MR. LEYENAAR-AYE

SAID MOTION CARRIED.

Mr. Sartorio asked the Board if they feel any application types or variances they would recommend the Planning Board to look at.

Mr. Choyce suggested multiple front yards. Mr. Cooper replied the Governing Body and Planning Board are to review the report if any changes are needed.

Discussion ensued regarding multiple front yard areas and accessory structures.

**Public Comment**- Ms. Valentino opened this part of the hearing for public comment and there was no response. Mr. Cain moved, seconded by Mr. Strigh to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

**Executive Session**- There were no items to discuss.

Ms. Valentino requested that Application #3-2014 (Thomas) republish & renote.

Ms. Valentino noted that the previous case was interesting and a lot of thought went into questions and comments that were addressed.

**Adjournment** – Mr. Cain moved, seconded by Mr. Choyce to adjourn the Zoning Board of Adjustment meeting at 9:55 p.m. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

Respectfully submitted,

Deborah Ohnemuller, Secretary  
Zoning Board of Adjustment