

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 Cain, Wayne Choyce, William Christman & Bruce Strigh. Also present was Board Solicitor, Rebecca Lafferty & Zoning Officer, Hannah Desmond.

The Statement of Compliance was read.

Oath of Service – Ms. Lafferty administered the Oath of Service to the following: Dr. Robert Kahrman as a Regular Zoning Board Member (term ending 12/31/18).

Members Absent: Michael Angelo & Carl Pitale

Announcements: Application # 45-2016 (Fred Bohren) will be heard first.

Fred Bohren; App. #45-2016; Block 809 Lot 16; located at 5717 Second Street was present & is seeking a Time Extension for a lot frontage variance for the future construction of a single family dwelling for variance #20-2015 dated 5/23/16. Mr. Nehmad is representing the applicant tonight.

Mr. Nehmad stated the applicant is back before the board for a request of an extension of a lot frontage variance which was granted on 4/22/16 & memorialized 5/23/16 so his client can build a single family home on a lot which is located on the terminus of 2nd Street & Babcock Creek. Since that time there has been discussion with Fred Akers (Administrator of the Great Egg Harbor Watershed Association). Mr. Akers believes this property is best suited to be acquired by a government agency or environmental coalition. NJ Supreme Court has ruled that condemnation for open space is a legitimate public purpose. Mr. Bohren doesn't want to go through the cost & expense of preparing drawings for a building permit then to find a government agency would like to acquire the property.

They would like to make the necessary applications but those procedures take time. They applied to DEP under the Blue Waters program pursuant to a recommendation by Mr. Akers & were told this was inappropriate & to try other governmental agencies. Therefore a 1 year extension is being requested. Variances generally run with the land & this is a residence so it is exempt from site plan review. The duration of the Variance is 1 year from the date of the memorialization of the Resolution until building permits are obtained.

The 1 year extension request would give them enough time to know if it will or will not be acquired by a government agency. After the extension, Mr. Bohren will know if he will be able to occupy the property without fear of it being acquired consensually or eminent domain.

Ms. Valentino asked if the option the applicant is pursuing didn't materialize, would he move forward with the Variance as approved (same terms & conditions)? Mr. Nehmad stated yes.

Ms. Valentino asked if anyone would like to speak for public comment 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."

Mr. Christman moved, seconded by Mr. Choyce on App. #45-16, Block 809 Lot 16; located at 5717 Second Street to grant the Time Extension for 1 year. SAID MOTION CARRIED WITH SEVEN (7) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY" and NO "ABSTAIN."

Dr. Kahrman will NOT be able to vote due to him not hearing the original application.

ROLL CALL ON THE ABOVE MOTION

MR. CAIN-AYE	MR. CHOYCE-AYE	MR. CHRISTMAN-AYE
MR. STRIGH-AYE	MR. PITALE-AYE	
MS. VALENTINO-AYE		

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CAIN: Yes.

MR. CHOYCE: I vote yes. With the comments I made when we voted for the original request for the Variance, I think what the applicant is pursuing is most fitting for the property.

MR. CHRISTMAN: Yes. I agree with what Mr. Choyce said & thank you for your movement in this direction

MR. STRIGH: Yes, I agree. I hope Mr. Bohren is successful in having a government agency purchase the property.

MR. PITALE: Since I was late I am going to abstain

MS. VALENTINO: I am going to vote yes. I think the options you are pursuing are in keeping with the location of the property & hopefully it will develop as you seeking it to develop. If not, the variance will stand as it did when it was approved in May.

Mr. Nehmad thanked the Board members for their approval.

Ms. Lafferty stated that Mr. Pitale has joined the meeting & is now eligible to vote.

Dr. Kahrman is eligible to vote on the Kelin application due to listening to the copy of the meeting which was made available to him.

Natalie Kelin; App. #42-2016; Block 988 Lots 2; located at 5616 Atlantic Avenue was present & is seeking a Certificate of Non-Conformity to continue the use as a four (4) unit dwelling which existed before the adoption of the current ordinance and any other variance(s) found to be necessary. *This is a continuation from September 26, 2016.*

Ms. Kelin was sworn in.

Mr. Choyce asked if the applicant has to provide proofs that the dwelling in question was a multi-living unit prior to 1955. Ms. Lafferty & Ms. Desmond confirmed this. Mr. Choyce recalled other applications which were asking for Certificate of Non-Conformities were asked to provide proofs from later years. For example, the gentlemen's club on Rt. 40 had to use a year of 1985.

Ms. Desmond answered that each zone in the township had been adopted at different times & this area, where the application is located, was established in 1955. She said there is no specific date.

The townships records show the specific dates in which Township Committee adopted the resolution.

Mr. Choyce stated for this application all they have is a year to go by but if specifics are needed they may have to be obtained.

Ms. Kelin testified when she was here last month, members suggested she find a living person who can confirm that the house was converted to a 2 apartment house prior to 1955. She couldn't find any living person to confirm this. She also contacted the Hamilton Township Historical Society. Dottie Kinsey dug up the history of the house, going back to 1865. Ms. Kelin submitted the history of the house to the Secretary & she gave it to the Board Members. Ms. Kinsey stated to Ms. Kelin the house was split into 2 apartments in 1940. It has been this way since then.

There was discussion about the split & the numbers on the paper.

Mr. Choyce commented in order to issue a Certificate of Non-Conformity there would have to be proof prior to 1955 that it has always been a duplex & never a single family dwelling.

Ms. Desmond clarified that the ordinance does state a date but the year is 1955.

Ms. Valentino stated the Board needs more clarity than what was provided. It is just a roster of names & amounts with nothing saying what transpired. There is nothing that the Board reviewed to indicate this was always a 4 unit dwelling. Paperwork that was submitted doesn't say how many units are on the property.

Ms. Kelin explained that the bungalow in the back was always there. The 4th unit was a storage unit used by the owner. It was suggested to her to make it a living space so it was made into a living room, bedroom, shower & kitchenette. Mr. Cain explained even though she made it into a living space the Board has no justification in making it a rental unit without knowing it was established prior to 1955. She explained no has ever lived there-it is there for her just in case.

It was suggested she obtain copies of deeds that show the split in 1940 into 2 units.

Mr. Christman commented that some records in the township were destroyed due to a flood & a fire. There were other situations similar to this in the 1960s.

Ms. Lafferty stated the law says the applicant has to show this has been a continuing use, not abandoned, since prior to the change in zoning or the entering of the original introduction of the zoning ordinance. She also commented, based on the testimony given it can be established that the 4th unit didn't exist prior to 1955.

Mr. Choyce commented that based on the documents from last month & this month he would feel comfortable acting on this if the applicant came back for a Use Variance. The Use Variance requires the positive & negative criteria of the application. She wouldn't have to prove it existed before a certain date & she can ask for the 4th unit.

Mr. Choyce stated there is not enough proof to support the legal requirements that it was always a continuous multiple use since 1955.

The permits & the work that was done on the house isn't an approval.

When applications come before the Board that are changing the number of dwellings, parking is an issue also. None of the proofs submitted lends itself in any way to support it has always been 4 units.

Discussion ensued regarding the proofs that were submitted.

Ms. Lafferty explained that Ms. Kelin would need to obtain an attorney to go forward with a Use Variance.

Ms. Valentino suggested to Ms. Kelin to obtain copies of the deeds or a photo showing it was a multiple unit.

Mr. Cain moved, seconded by Mr. Strigh on App. #42-16, Block 988 Lot 2; located at 5616 Atlantic Avenue to Dismiss the Application without Prejudice. SAID MOTION CARRIED WITH SEVEN (7) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY" and NO "ABSTAIN."

Barbara & Edwin Bauman, Jr.; App. #43-2016; Block 725 Lot 25; located at 1024 Morningside Drive were present & are seeking a variance to install a 30 ft. x 40 ft. pole barn in the front yard area of Frenlich Lane & any other variance(s) found to be necessary.

Solicitor, Rebecca Lafferty, verified that the proof package had been executed properly & taxes are current.

Mr. & Mrs. Bauman were sworn in. Ms. Bauman explained they live on a corner property & would like to add a 30 x 40 detached garage to the side of their house but they have 2 front yard areas. If it was attached a variance would not be required.

Ms. Valentino asked about the survey which is dated 10/5/98 which shows a 1 story framed dwelling along with a structure to the right side of the dwelling which abuts lot 24 that is not on the survey. She asked what the building is for. Ms. Bauman stated it is a detached shed which they added last summer. They do not have a basement due to the water problems. That shed did not require a variance because of its location & they got the proper permits. The distance from the edge of the property line to the shed is 6 ft. at the closest point.

Mr. Choyce asked about the utilities in the shed & Ms. Bauman answered heating, air conditioning & plumbing. Mr. Bauman answered it is his "man cave".

Ms. Valentino asked Ms. Desmond if 6 ft. meets the side yard setback requirements & she answered yes.

Mr. Cain asked what the proposed pole barn will be used for & Mr. Bauman answered for their vehicles with no living quarters but it will have electric.

Ms. Desmond stated that if an accessory structure exceeds 50% or more of the house the applicant would have to go before the Board.

Mr. Choyce what the percentage of the square footage of the primary structure is the accessory structure & is it permitted to be this large. Ms. Desmond answered it proposed garage conforms due to it being smaller than the house. The existing house is 1,436 sf. The existing & proposed structures are under what is allowed for coverage (19% is proposed & 25% is the maximum).

Mr. Choyce asked what the front yard setbacks are in this zone. Ms. Desmond answered 50 ft. for a principal structure. Mr. Choyce commented the proposed setbacks are 70 ft. for Morningside Dr. & 51 ft. for Frendlich Lane.

Ms. Valentino asked how the pole barn would be accessed. Mr. Bauman answered the driveway will be stone. The inside will be concrete & the pole barn will be built up high with a grade into it.

Mr. Bauman explained the current driveway is U shaped on Morningside Dr. & Frendlich Lane. The height of the proposed pole barn will be 15 ft. & it will not be higher than the house. The pole barn will be for personal use only with electric as the only utility. Mr. Bauman will use this for parking of the family cars.

Ms. Valentino asked if anyone would like to speak for public comment. Mr. Glenn Davis, 1035 Mc Geary Place, was sworn in & stated he feels gutters or a French drain for should be installed due to possible water runoff.

Ms. Bauman commented she grew up in the house Mr. Davis lives in & stated there were always water problems in the basement.

Mr. Bauman stated they would put gutters on the pole barn with the water directed & maintained on his property.

Ms. Valentino asked if anyone else would like to speak for public comment. 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."

Mr. Strigh requested some sort of sketch of where the water will end up.

Mr. Bauman will have the drains go toward Frendlich Lane.

The Board recessed at 8:15 pm & reconvened at 8:18 so Mr. Bauman could sketch where the drains will be located.

The drainage will go to the low point on his property.

Exhibit A-1: sketch of the drains.

Ms. Valentino wanted the record to reflect about the neighbor having concerns regarding the drainage onto his property, 1035 Mc Greary Place. While the Board was in recess, he was in the audience & following discussions with the applicant he was satisfied with that his concerns were addressed with the planning & drainage that the applicant proposed which is in Exhibit A-1.

Dr. Kahrman moved, seconded by Mr. Christman on App. #43-16, Block 725 Lot 25; located at 1024 Morningside Drive to grant the Variance for a Pole Barn in the front yard area & will be for residential use only. The peak of the Pole Barn will not exceed the height of the existing principle structure; the applicant will provide gutters & drainage as shown on Exhibit A-2 to maintain the water on the applicant's property & electric will be the only utility serviced. 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. CHRISTMAN-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

MR. STRIGH-AYE

MR. PITALE-AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CAIN: Yes, based on the testimony of the applicant, the public comment & board members. This is a hardship due to the 2 front yard areas. The applicant addressed the concerns of the neighbor's comments of the drainage.

MR. CHOYCE: Yes.

MR. CHRISTMAN: Yes, I agree with the previous comments, feel you have a handle on the situation & are aware of how to do it.

DR. KAHRMANN: Yes.

MR. STRIGH: Yes.

MR. PITALE: Yes.

MS. VALENTINO: Yes. I would also like to indicate that I visited the property & noticed there was a structure to the right which was not noted on the plan. The Board does onsite inspections because many times applicants submit plot plans that do not show everything on the property. If there are any problems, applications can be amended at the time of the hearing.

The resolution will be approved at the next meeting & the appeal period is 45 days from date of publication.

Approval of Minutes – Mr. Christman moved, seconded by Mr. Choyce to approve the minutes from the September 26, 2016 meeting. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

Memorialization of Resolution- Mr. Choyce moved, seconded by Mr. Cain to adopt the resolution for **Keith Boakes & Christine Johnson-Boakes -App. #41 -2016; Block 980 Lot 21 & 22.** 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
MR. PITALE-AYE

MR. CHRISTMAN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

Public Comment- Ms. Valentino asked if anyone would like to speak for public comment. Mr. Fred Akers, spoke regarding the Bohren matter & felt the handling of the application showed Mr. Bohren this was not the best place for a house. Mr. Akers now has to try & come up with public money to buy back the lot. One of the key requirements of the acquisition is that the Township of Hamilton is the owner of the lot. No one would want that lot (county or state). Mr. Akers would like the township to actively pursue the acquisition of this lot. Mr. Cain moved, seconded by Mr. Christman to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

There is no pending litigation at this time

There will be an education session with the professionals & board members as had been done the previous years.

Dr. Kahrman will be able to take the Zoning Board Member training at the NJLM in November & the Secretary will forward him the information when she receives it.

Adjournment – Mr. Choyce moved, seconded by Mr. Strigh to adjourn the Zoning Board of Adjustment meeting at 8:29 p.m. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

Respectfully submitted,

Deborah Ohnemuller, Secretary
Zoning Board of Adjustment