

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, William Christman, Dr. Robert Kahrman, Dr. Lawrence Mroz & Bruce Strigh. Also present was Board Solicitor, Rebecca Lafferty & Zoning Officer, Hannah Desmond.

Member(s) Absent: Carl Pitale

Announcements: The applicant for item # 9 (Application #2017-19) did not serve owners within 200 ft. of the property & did not publish the ad. This application will be carried until the November meeting or when these items are complete.

Morton & Janice Jefferies; App. #2017-1; Block 1230 Lot 1; located at 1211 Grand Avenue, was present & is seeking a Variance for an accessory structure (ground mount solar array) in the front yard areas of Reega & Grand Avenues.

Mr. Choyce recused himself for this application.

The following were sworn in:
Morton Jefferies-1211 Grand Avenue, Mays Landing, NJ
Ralph Tejada - 254 E. Magnolia Avenue

Solicitor, Rebecca Lafferty, verified the proof package had been executed properly.

Ms. Desmond stated the application is complete.

Mr. Tejada stated they are looking to develop part of the yard with a 66 panel ground mount solar array. The property has 2 front yards (Reega & Grand) & the dimensions will be 62 ft. long x 18 ft. deep. The North East corner of the array will sit 23 ft. from Reega Ave. & the South East corner of the array will sit 98 ft. 6 inches from Grand Avenue. The other distance from the array to Reega is 48 ft. & 91 ft. from lot 1.

Mr. Jefferies testified that the plot plan submitted shows everything on the property. The plan notes the sheds (Reega Ave. frontage) will be relocated. He will place them in the back of the home once the array is installed.

Ms. Desmond asked the applicant to verify where the sheds will be located. As long as they are behind the house there is no need for an additional variance.

The property is for residential use only.

Mr. Strigh asked the applicant to show on the plan where the sheds will be relocated to.

Ms. Valentino asked Mr. De asked if the plans are standard for any solar array. He stated yes & there will be enough room underneath to cut the grass. If a fence is required there will be one installed.

Mr. Jefferies will remove the sheds from the property. If he decides to keep them he may have to appear back at the Board.

Ms. Valentino asked if anyone would like to speak for public comment. Mr. Christman moved, seconded by Dr. Kahrman 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 Dr. Kahrman, App. #2017-1, Block 1230 Lot 1; located at 1211 Grand Avenue to grant a Variance for an accessory structure in the front yard area. This will be a 66 panel solar array which measures 62 ft. long x 18 ft. wide. The closest point to Reega Ave. is 23 ft., the closest point to Grand Ave. is 98 ft. & to the adjoining lot is 91 ft. The solar panel is for residential use only & the applicant will get permits to move the sheds or he will remove the sheds. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY" and NO "ABSTAIN."

ROLL CALL ON THE ABOVE MOTION

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

DR. MROZ-AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CHRISTMAN: Yes.

DR. KAHRMANN: Yes.

DR. MROZ: Yes.

MR. STRIGH: Yes. I see no detriment to the surrounding areas with the addition of the solar array.

MS. VALENTINO: Yes. I visited the property & feel the placement of the array on the unimproved portion of Reega Ave. wouldn't be detrimental to the zone plan or ordinance.

Mr. Choyce rejoined the board at 7:12 pm.

Arnold Sikking; App. #2017-15; Block 492 Lot 2; located at 7024 Harding Highway, was present & is seeking a Certificate of Non-Conformity for 2 existing single family dwellings located on the same lot. Mr. Dean Marcolongo, is representing the applicant.

Solicitor, Rebecca Lafferty, verified the proof package had been executed properly.

Ms. Valentino made note that this application was carried from September & there was no need to serve or publish again.

Mr. Marcolongo stated the applicant is requesting a Certificate of Non-Conformity for the existing single family dwellings. The lot is in the FA-10 zone.

Ms. Desmond noted the application is based upon a Zoning Violation which was issued in March 2017 based upon a complaint by Code Enforcement for an illegal conversion/rental on the site. She noted there are 2 principal uses on the lot which is prohibited.

Mr. Marcolongo asserts the 2 units were existing prior to the adoption of the zoning ordinance. There will be discussion whether the test date of the initial adoption of the zoning ordinance in 1955 will be used or the subsequent ordinance in 1979.

Mr. Sikking has no plans to expand the property, only to continue with the 2 properties which have been there since the 1930s. There will be testimony in regards to that date.

The 1st picture submitted with the application is an aerial photo of the property. The lot is 16 acre working farm with 5 buildings on the property. All of the buildings have been there since the 1950s.

The 2nd item is the survey which shows the existing conditions.

The 3rd item is a large set of photos of the buildings.

1st photo –building as you come off the street (single family dwelling).

Ms. Valentino asked Mr. Marcolongo to identify the property record cards as to which dwelling is which.

Mr. Arnold Sikking (270 Llewellyn Ave. Richland, NJ) was sworn in.

The property records cards were marked in as Exhibit A-1.

Mr. Sikking stated the front building is identified on the card as being 837 sf & built in 1955. The rear building is identified as 984 sf & built in 1950.

Exhibit A-2 to A-6 are black & white photos showing the structures on the property.

- 1st photo- single family dwelling (1955 property record card)
- 2nd photo-work shed
- 3rd photo-pump house
- 4th photo-barn
- 5th photo-2nd structure (1950 property record card)

The last 2 photos are the inside of the barn which has a beam inside dated 8/36 & the work shed has a date of 9/35. It is believed these dates indicate when those structures were built.

Mr. Christman visited the site & agrees the photo in the property record card does not match what is on the property.

The 984 sf building has 2 bedrooms & a total of 6 rooms. There are currently 2 people living there (24 years). Mr. Sikking purchased it in 2004.

The other property record card shows a building with 837 sf with 2 bedrooms & 4 total rooms. There are 4 people living there (mother & 3 kids).

The package also includes a certification from Mr. Zuckil who was raised across the street. Those buildings were built in the 1930s or 1940s & have been residences for as long as he remembers.

Mr. Marcolongo researched the 1955 ordinance & noted that at that time it was in the AG zone. The zone it is in now didn't exist (FA-10). The AG zone permitted single family dwellings & there was no prohibition for 2 single family dwellings on 1 lot. In 1979 the property is rezoned to FA-10 & at that point the ordinance states that only 1 single family dwelling per lot. The ordinance states the use had to exist prior to the ordinance being adopted which made it invalid. Since there were 2 principle structures on the property prior to 1979 he feels this is the test date which should be used.

Mr. Sikking testified the following information. His address is 270 Llewellyn Ave., he is a carpenter & has lived in Atlantic County since 1980. When he purchased the property all the structures that are on it were there. The lot is a 16 acre working farm with 2 residences, work shed, pump house & barn. There are currently tenants living in each residence. When he purchased the property (2004) he did a lot of work to the rear residence. There was water & electric heat in the residence already. Permits were obtained for some of the work he did. After the revaluation in 2011 his taxes increased & the tax assessor informed him it was due to the 2 principle residences.

Ms. Valentino asked if he did any work which would increase the footprint of the house. Mr. Sikking replied a deck was installed on the house (5th photo shows it).

Mr. Marcolongo commented that he hoped everything that was submitted with the application would be acceptable to the board so a decision could be made. The lot can't be subdivided to a Pinelands regulation. It is currently rented by a local farmer for him to use.

Ms. Lafferty confirmed to the Board that the photos submitted have been marked as A2-A8, A-9 is the certificate of approval & Mr. Zucal's certification is A-10.

Mr. Thomas Alvin Zucal (210 S. Brewster Rd., Buena) was sworn in & testified that his father was born in the house in 1919 (1st structure). He lived in the 1st house which is on the corner of Richland Ave. & Harding Highway at 3 years old (he lived next door until he was 3), moved to that house when he was 3 & then built a house behind that one in 1977 & lived there until 1993 (excluding the 5 years he was at Drexel). Prior to 1955 all of the buildings on the survey, including both of the residences, were on the property. They were used as a house, 2 car garage, barn, utility shed, shed & potato house (2nd house). The potato house had a man living there between the years of 1961-1964 & after he died (1964) he doesn't believe anyone occupied the building.

Mr. Strigh asked when the potato house was occupied. Mr. Zucal replied he can only confirm from 1961-1964. Mr. Sikking confirmed the house was rented from 2004 to present. There is nothing to confirm from 1964 to 2004. Mr. Marcolongo does not believe there was any intent to abandon the property. The property was purchased with the understanding of it having the 2 units & his intention to use as such.

Mr. Marcolongo stated the 1955 ordinance isn't applicable since there was no prohibition on having 2 principle dwellings on a property. That started in 1979 with the ordinance that created the FA-10 zone & had the prohibition stated in it.

Ms. Lafferty asked Ms. Desmond regarding the 1955 ordinance & she commented that ordinance deferred to the Zoning Board if a use was prohibited. If a use is a special exception (tenant house) the Zoning Board would need to approve it. Additionally, if a use is not stated in the ordinance as being permitted that use in question is prohibited.

Mr. Marcolongo commented the 1955 ordinance states single family dwellings are permitted & there is no prohibition against more than 1. The 1979 ordinance was revised to state 2 single family dwellings are not permitted. Since the new ordinance specifically used that verbiage the governing body must have understood there would be a lot of people who had multiple dwellings on 1 lot.

Ms. Lafferty stated to the Board that this is a gray area & it would be prudent to the Board to take a vote based upon the testimony given regarding which test year to use before voting.

There are no prior approvals for the structures on the property to look back upon either. The burden of proof is on the applicant & Mr. Marcolongo's argument is the test year for this application is 1979 due to the specific language of the ordinance prohibiting multiple dwellings.

There is testimony that after 1955 the potato house became a residence in 1961 & that is before the 1979 ordinance.

Ms. Valentino referred the Board back to the property record cards which specifies dates & descriptions of the buildings. The card that is dated 1955 indicates the basement & attic as living area. The only exception Mr. Marcolongo states is the date of construction.

Mr. Christman made comment that this was an old farm & the potato house had a basement where the potatoes were stored. He also feels this was used as a farm labor dwelling & many farms had the same.

There was discussion about the dates on the property record card.

Ms. Valentino asked if anyone would like to speak for public comment. Mr. Strigh moved, seconded by Dr. Kahrman 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 Dr. Kahrman, App. #2017-15, Block 492 Lot 2; located at 7024 Harding to use the 1979 as the focal year to begin for this application. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY" and NO "ABSTAIN."

ROLL CALL ON THE ABOVE MOTION

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CHOYCE: Yes.

MR. CHRISTMAN: Yes.

DR. KAHRMANN: Yes.

DR. MROZ: Yes.

MR. STRIGH: Yes.

MS. VALENTINO: Yes.

Ms. Valentino asked the benefits of the Certificate of Non-Conformity for this application. Mr. Marcolongo stated the applicant intends to do nothing more than what is there now. This is before the Board due to a Zoning Violation issued by the Zoning Officer. The certificate will maintain the current status. If the applicant does any improvements to any of the buildings he is required to obtain construction

& zoning permits. If any changes are made to the size of any of the structures the applicant would have to come back to the board.

The Board has no further questions.

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

Mr. Christman moved, seconded by Dr. Mroz, App. #2017-15, Block 492 Lot 2; located at 7024 Harding to grant a Variance for a Certificate of Non-Conformity. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING "AYE", NO MEMBERS VOTING "NAY" and NO "ABSTAIN."

ROLL CALL ON THE ABOVE MOTION

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CHOYCE: I vote yes. I think the basic age of the properties & buildings it is fair to say that the property & surrounding properties have been used as farming land since the early 1900s. The applicant is fortunate to provide testimony regarding this property. There is no detriment to the surrounding area or zoning plan.

MR. CHRISTMAN: Yes. I agree with Mr. Choyce. This was a farming area & he feels similar applications will be heard in the future.

DR. KAHRMANN: Yes.

DR. MROZ: Yes.

MR. STRIGH: Yes for the previously stated reasons.

MS. VALENTINO: Yes for the previously stated reasons & I also visited the property.

Mr. Marcolongo thanked the Zoning Officer & Zoning Board Secretary for their help.

Michael & Megan Pihs; App. #2017-17; Block 519 Lot 11; located at 7163 First Avenue, was present & is seeking a Variance for an accessory structure (ground mount solar array) in the front yard area of Jackson & First Avenues & any other variance(s) found to be necessary.

Solicitor, Rebecca Lafferty, verified the proof package had been executed properly.

Ms. Desmond, Zoning Officer, has deemed the application complete.

The following witnesses were sworn in:

Michael Pihs, 7163 1st Avenue, Mays Landing

Caitlin Capaldi, 7342 Smith Ave., Mays Landing (solar representative Sun Up/Zero

Down).

Ms. Capaldi stated the Solar Company is proposing to install a ground mount solar array.

58 panels

52 ft. long

20 ft. wide

10 ft. high

The property has 2 front yard areas & the road behind his property is a dirt road (Jackson Rd.) His yard is at the end of a dead end street.

The setbacks are as follows:

1st Ave-130 ft.

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Jackson – 325 ft.
Lot 10-150 ft.
Lot 12-318 ft.

The panels are for residential use only. Trees had to be removed for this project.

The street which is undeveloped is Jackson & 1st Ave. is paved & dead ends beyond the property.

Ms. Valentino visited the property & commented the house in a very rural area.

The survey makes note of Avenue D on the north end of his property but the tax map does not show it. Mr. Pihs replied it is far down from his property & he thinks it is Drake Ave. There is not a 3rd frontage on the North end of his property. The reason for the variance is Jackson Rd.

Ms. Valentino asked if anyone would like to speak for public comment. Mr. Strigh 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.”

Dr. Kahrman moved, seconded by Mr. Christman, App. #2017-171 Block 519 Lot 11; located at 7163 1st Avenue to grant a Variance for an accessory structure (ground mount solar array-52 ft. x 20 ft.) in the front yard area of Jackson Avenues. This is for residential use only. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE”, NO MEMBERS VOTING “NAY” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

NOTE: The following Board Members made comments

MR. CHOYCE: I vote yes. Solar arrays are inherently beneficial & the frontage in the variance is undeveloped & will not ever be so. There is no detriment to the neighborhood & the zoning.

MR. CHRISTMAN: Yes for the same comments.

DR. KAHRMANN: Yes for the same reasons. Solar is the way to go & I always try to support it.

DR. MROZ: Yes I agree with Mr. Choyce.

MR. STRIGH: Yes.

MS. VALENTINO: Yes. I visited the property & due to the rural nature of the property this isn't detrimental to the area. With conversations to the applicant, we are looking at 2 different energy sources. They are also using all the wood from the trees which are being removed & the solar.

Approval of Minutes – Mr. Christman moved, seconded by Dr. Kahrman to approve the minutes from the September 25, 2017 meeting. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

Memorialization of Resolutions- Mr. Strigh moved, seconded by Mr. Christman to adopt the resolution for Curtis Wunder -App. #2017-18; Block 588 Lot 67. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

ROLL CALL ON THE ABOVE MOTION:

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

Mr. Strigh moved, seconded by Dr. Mroz to adopt the resolution for Mays Landing DG, LLC for a Use Variance (retail store)-**App. #2017-16; Block 996 Lot 22**. SAID MOTION CARRIED WITH SIX (6) MEMBERS VOTING “AYE,” NO “NAY,” and NO “ABSTAIN.”

Ms. Lafferty noted that attorney for Dollar General would agree to a prohibition on lottery sales but not tobacco sales. If the tobacco sales increase the traffic that would be addressed during the site plan phase to make sure the traffic pattern is favorable.

Ms. Valentino asked if the Board can prohibit lottery sales. Ms. Lafferty stated they cannot. If the applicant decided to do the lottery, would that increase the scope? Ms. Lafferty stated the applicant would come back to the Board to remove the condition. She also doesn't think this would be considered a 2nd use.

ROLL CALL ON THE ABOVE MOTION:

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

Mr. Choyce reminded members that there will be a workshop & Dollar General will be attending. Mr. Christman will also be there. If any members have concerns, they should forward them to him.

Authorize Secretary for advertising regarding RFP/RFQ for 2018 Board Professionals: Mr. Strigh moved, seconded by Mr. Christman to authorize the Secretary to advertise for 2018 Board Professionals. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN

ROLL CALL ON THE ABOVE MOTION:

MR. CHOYCE-AYE
DR. MROZ-AYE

MR. CHRISTMAN-AYE
MR. STRIGH-AYE

DR. KAHRMANN-AYE
MS. VALENTINO-AYE

SAID MOTION CARRIED.

Public Comment- Ms. Valentino asked if anyone would like to speak for public comment. Mr. Christman 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 & Board members welcomed Ms. Lafferty back.

The next meeting is November 27, 2017.

Mr. Panza asked if he was still going to be heard. Ms. Valentino stated since the public notice was not performed he couldn't be heard. He stated he wasn't informed of this until 8 days before the meeting. The instruction list was given out with the application. The Secretary stated she emailed it on October 3rd. He will attend in November. The Secretary will email everything again.

Mr. Panza also asked about his court date. The Secretary stated he would have to contact the Zoning Officer regarding the court date.

Adjournment – Mr. Christman moved, seconded by Dr. Kahrmann to adjourn the Zoning Board of Adjustment meeting at 8:27 p.m. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE,” NO “NAY,” NO “ABSTAIN.”

Respectfully submitted,

Deborah Ohnemuller, Secretary
Zoning Board of Adjustment