

BYRAM TOWNSHIP PLANNING BOARD AGENDA
For Thursday, October 17 2024, at 7:30 P.M.
Meeting Held at: 10 Mansfield Drive, Byram Township NJ

1. **CALL TO ORDER**
2. **OATH OF OFFICE:** Anneliese DeMagistris
3. **ROLL CALL**
4. **OPENING STATEMENT:** Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.
5. **FLAG SALUTE**
6. **MEETING MINUTES-** October 3, 2024
7. **RESOLUTIONS**

Z01-2024 Tom Chamberlin, 2 Briar Lane, Block 365.02 Lot 1, R-3 Zone

Application for driveway expansion for a second driveway

SP1-2024 Byram Waterloo LLC (Starbucks of Byram), 33 Route 206, Block 36 Lot 40, VB Zone

Application for pylon sign, related to site improvements

SP9-2024 Byram Auto, 242 US 206 North, Block 219 Lot 10, NC Zone

Application for certification of pre-existing non-conforming use

Z31-2024 Kathy Dobrich, 560 East Shore Trail, Block 293 Lot 5, R3 Zone

Application for accessory structures, addition to a single family home, and disturbance of critical areas

8. **NEW BUSINESS**

Z16-2024 Oluwasijibomi Oluwalanke, 5 Crescent Drive North, Block 283 Lot 242, R5 Zone

Application for retaining wall in front yard

9. **OLD BUSINESS**

Z14-2024 Rupesh Patel (Kyosis LLC), 1 Catalina Drive, Block 337 Lot 9.14, R2 Zone

Application for new home construction

10. **DISCUSSION ITEM:** Basic Accessory Structures / AC Condenser Units

11. **DISCUSSION ITEM:** Hampton Township Resolution Regarding Home-Based Businesses

12. **BILLS:** Harold Pellow (4): \$1,093.50 / Maraziti and Falcon (11): \$4,812.50

13. **REPORTS FROM COMMITTEES**

Architectural Review Committee

Environmental Commission

Open Space

Township Council

Zoning Report

14. **OPEN TO THE PUBLIC**

15. **ADJOURNMENT**

The Board Engineer and Planner are sworn in at the beginning of each year and are deemed to be under oath on a continuing basis.

CALL TO ORDER: Chairman Shivas called the meeting to order at 7:30 p.m.

OATH OF OFFICE: Jeanine Colligan was sworn in as a new Board member.

ROLL CALL: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas, Ms. Colligan
Members Absent: Ms. Raffay, Mayor Rubenstein

Also Present: Engineer Cory Stoner, Attorney Alyse Hubbard; Planner Paul Gleitz, Secretary Caitlin Phillips

OPENING STATEMENT: Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.

FLAG SALUTE: led by Chairman Shivas

MINUTES: September 5, 2024. Mr. Proctor motioned to approve the minutes, seconded by Mr. McElroy.

Ayes: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

Abstaining: Mr. Walsh, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

None opposed. Motion carried.

RESOLUTIONS

Z13-2024 Shawn Steffens, 99 Lake Drive, Block 249 Lot 89.02, R5 Zone

Application for second story addition and garage addition

Mr. Walsh motioned to approve the resolution, seconded by Mr. McElroy.

Ayes: Messrs. McElroy, Smith, Walsh, Chairman Shivas

Abstaining: Messrs. Proctor, Morytko, Serrilli, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

None opposed. Motion carried.

SP8-2024 North Shore Water Association, 28 Allamuchy Trail, Block 148 Lot 168, R5 Zone

Application for new sanitary system for PFAS treatment, including lot subdivision and preliminary and final site plan

Mr. Walsh motioned to approve the resolution, seconded by Mr. McElroy.

Ayes: Messrs. McElroy, Smith, Walsh, Chairman Shivas

Abstaining: Messrs. Proctor, Morytko, Serrilli, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

None opposed. Motion carried.

SP6-2024 Highland Avenue Properties, Block 212 Lot 1, NC Zone

Application for proposed use of a landscape and irrigation contractor business

Mr. Proctor motioned to approve the resolution, seconded by Mr. Morytko.

Ayes: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Chairman Shivas

Abstaining: Mr. Walsh

Absent: Ms. Raffay, Mayor Rubenstein

None opposed. Motion carried.

Z12-2023 Daven Baez, 201 Lake Drive, Block 255 Lot 184-186, R5 Zone

Extension of approval for an above-ground pool, deck, and existing shed

Mr. Morytko motioned to approve the resolution, seconded by Mr. Walsh.

Ayes: Messrs. McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

Abstaining: Mr. Proctor, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein
None opposed. Motion carried.

OLD BUSINESS

Z08-2024 Diane and William Carkhuff, 82 South Shore Road, Block 189 Lot 1, R-5 Zone

Application for construction of a new single-family dwelling

Mr. McElroy motioned to carry the application to 11/07, seconded by Mr. Walsh.

Ayes: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

None opposed. Motion carried.

Z14-2024 Rupesh Patel (Kyosis LLC), 1 Catalina Drive, Block 337 Lot 9.14, R2 Zone

Application for new home construction

Mr. Proctor motioned to carry the application to 10/17, seconded by Mr. Serrilli.

Ayes: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

None opposed. Motion carried.

Z01-2024 Tom Chamberlin, 2 Briar Lane, Block 365.02 Lot 1, R-3 Zone

Application for driveway expansion for a second driveway

Mr. Chamberlin remains under oath. The drawings have been updated per the suggested change in parking path of the Chairman at the last hearing. He will put rocks in front of the existing path. Chairman Shivas asked about landscaping. Mr. Chamberlin said the utilities are in that area, so he doesn't want to dig in that area. Chairman Shivas noted they need to block that area so that it can't be used again. Mr. Walsh confirmed he will use boulders. Chairman Shivas confirmed Mr. Chamberlin would rather the driveway access be grass; there should be a line of some kind so there is a route, to avoid making the area dirt. Mr. Chamberlin said when it's all grass, there will be no issues with tire marks. Chairman Shivas noted there may be issues when it rains. Mr. Chamberlin said they'd move the trailers before that. He noted putting stones down would be an eyesore for the neighbors and him. They don't use the trailers often, so there's no reason for a stone driveway. Mr. Stoner said the code says a driveway should have a stone base. This started with the area being worn down from a lot of movement. If it's not gravel, a variance is needed. Mr. Chamberlin noted if something happens with the grass he will take care of it. He let it go because he was doing the wall, and now he will have the lawn redone. Chairman Shivas doesn't want the whole side of the yard to be a driveway. Everyone will back up a trailer differently, so it needs to be outlined on a certain path. Mr. Chamberlin said there's a wooded area that acts as a path. Mr. Gleitz confirmed they're looking for a delineation of the grass area. He mentioned a product that has a reflective strip—if the applicant puts a few of them along the way, it will show the route. Mr. Walsh asked if this could be done through landscaping. Mr. Stoner said Mr. Chamberlin has a wall on the left and a line of trees and landscaping on the other. Mr. Morytko said if the zoning officer goes on site, he'd like to make sure they know what's approved. Mr. Stoner said the plan can be updated to show the trees and blockage near the entrance. The tree line and shrubs should remain and should be shown on the plan. Mr. Chamberlin said the utility companies are constantly in that area. Mr. Stoner noted there should be a delineation so this doesn't become another driveway in the future. Mr. Smith noted boulders can move and trees can be cut down, but if there is a delineation on the plan, it shows an approved path.

Mr. Morytko asked about the other paved area, and confirmed it's not a driveway because it doesn't have its own opening. Mr. Stoner noted that area is for the recreational cars. Mr. Walsh confirmed the slope of that area doesn't allow for parking vehicles. Mr. Stoner noted it is gravel and should not be enlarged. Mr. Walsh noted his concern for having another owner think this area is a driveway. Mr. Gleitz asked about

the recreational vehicles and their connection with the Motor Vehicle Commission. It could be stated that area can't be used for motor vehicles per the MVC, only for off-road recreational vehicles.

Chairman Shivas opened to the public. Jack Moran remains under oath from the last hearing. He asked if the trailer parking area will have screening. Mr. Chamberlin said the trailers have been there—it will be the same as it was. Mr. Moran confirmed he won't be moving the recreational vehicles along the wooded trail area. Chairman Shivas closed to the public.

Mr. Stoner said the driveway should not be dirt. Mr. Chamberlin said it will kept up. Mr. Stoner reviewed the variances. Mr. McElroy asked about the accessory buildings and confirmed it's not a variance. The Board discussed the square footage for the structures. Mr. Morytko noted conditions including landscaping or hardscaping to close the gap, marking the driveway, and having the survey delineated. Mr. Gleitz noted prohibiting motor vehicles in the paved area. Ms. Hubbard noted if any structures are less than 6 feet apart then they would be moved. Mr. Walsh motioned to approve the application with the discussed conditions and variances, seconded by Mr. Morytko.

Ayes: Messrs. Proctor, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

Abstaining: Mr. McElroy, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

Motion carried. Ms. Hubbard discussed the appeal period. Mr. Stoner said he should make sure zoning permits are obtained for the structures.

NEW BUSINESS

SP1-2024 Byram Waterloo LLC (Starbucks of Byram), 33 Route 206, Block 36 Lot 40, VB Zone

Application for pylon sign, related to site improvements

Steve Polhamus represented the applicant. He submitted **Exhibit A1**, a packet detailing photos and historical information regarding the sign. Mr. Polhamus noted they're looking for a certificate of nonconformity to prove the sign has been on site prior to the current sign ordinance. From the records it looks like the sign has been there since the late 1970s, and is there today. He reviewed item 1 in the packet, of images of the sign, along with item 2, a site plan from 1993. There have since been other approvals, along with some re-branding for the businesses on site. Mr. Gleitz asked if variances were needed in 1993 for the sign. Mr. Polhamus said a variance wasn't granted for the sign then, but it was there around the time of the approval. He reviewed item 7, a 2008 approval including road widening. The waiver of site plan application was to have the sign moved to accommodate the road. There are a series of letters proving the sign location. Ms. Hubbard confirmed the zoning ordinance changed in 2015. Mr. Polhamus noted they are also here for a variance for the use of the wording "drive through," as a content variance. Chairman Shivas said he's been on the Board more than 40 years and that sign has been there. Mr. Morytko said there seems to be differences in the size of the sign. Mr. Polhamus believes there was an engineering error in the documents. The current dimensions are in item 14 of the exhibit. Mr. McElroy confirmed the sign hasn't changed since 2008 based on the evidence. Mr. Walsh noted regardless of the inconsistencies of the sizes in the documents, the sign is there today and that's what they're reviewing. Mr. Proctor doesn't have an issue with the sign, but found an item in the code from 2018 about non-conforming signs. Mr. Walsh said the sign has not been modified since then; Mr. McElroy confirmed they don't plan to modify it. He confirmed the illumination will be the same. Mr. Polhamus noted the technology has changed since the past approval but they will make it consistent. Mr. McElroy asked if the votes are separate for the nonconformity and the content. Ms. Hubbard said they can vote on the application itself or separately.

Michael Pessolano was sworn in as a professional planner at 140 Elmwood Avenue in Pagoda NJ. He has worked in Bridgewater, Raritan, Flemington, Lafayette, and Jefferson; his license is in good standing and

he was deemed an expert. He noted the sign has always been an accessory structure. He submitted **Exhibit A2**, aerial photos of the site from April. He noted other signs in the area also say “Drive Through,” so there is no negative impact. They’re proposing the logo and these words, which are two elements of content where three are allowed. Having clear signage will help drivers navigate more safely. Mr. Morytko asked if they considered the size, as it is much larger than their standards, as is the wording of “Drive Through.” Mr. Polhamus said the sign has been there for over 40 years, and they think there is a value in it having existed. The design is similar to the Dunkin’ Donuts nearby. They are following the design from the Starbucks standards. They determined the siren logo is recognizable rather than wording. Mr. Smith noted in other signs nearby, the “Drive Through” is smaller, and secondary to the name of the business. If you don’t know what Starbucks is, it can be confusing—they’re counting on people recognizing their branding. Mr. Morytko noted this is in the center of town; he wants to hear why this has equal value for the company name. Mr. Polhamus said this design is from the Starbucks national office, so any information he provides would be speculation. Mr. Morytko noted no one from Starbucks is here to elaborate. This is about aesthetics and functionality, and what the ordinance says. Chairman Shivas noted if the wording was smaller it wouldn’t look as good because it balances the sign the way that it’s proposed. Mr. McElroy said the applicant is constrained by the sign that they have. Ms. Hubbard said they could have a conforming sign. Mr. McElroy said the way other Starbucks signs are, the logo is separate; they’re trying to do their marketing without needing additional variances. Mr. Morytko said the restrictions are self-imposed—they decided to use this sign rather than put in a conforming sign. Chairman Shivas confirmed this a double-sided sign. Mr. Walsh noted if they’re okay with the dimensions, he’s okay deferring to Starbucks to determine if this is a functional and pleasing sign to their customer base. Mr. Morytko noted marketing objectives are different than design standards. Mr. McElroy said the township tries to help businesses market their businesses to be successful. There is a community benefit to allowing, within reason, businesses to market themselves. Mr. Proctor noted the sign is pretty simple, with minimal colors and elements.

Chairman Shivas opened to the public. Patricia Moschella was sworn in. She looked at Starbucks signs and this doesn’t seem out of the ordinary. The issue is that as the signs change, you may run into problems with businesses trying to present themselves as a Starbucks. She doesn’t have a problem with the sign. Chairman Shivas closed to the public.

Mr. McElroy motioned to approve the certificate of nonconformity and variance for the sign as submitted, seconded by Mr. Walsh.

Ayes: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

Motion carried.

SP9-2024 Byram Auto, 242 US 206 North, Block 219 Lot 10, NC Zone

Application for certification of pre-existing non-conforming use

Robert LaRusso was sworn in as the applicant. He has been the owner since 1986; he is planning to sell the property. It’s been an auto-repair shop since 1947, and was a gas station for a time in between him buying it. Ms. Hubbard noted he has to prove the use existed and was permitted before the zone change. She confirmed that Mr. LaRusso is the sole owner of the LLC and the property; Mr. Gleitz confirmed he doesn’t need an attorney present. Mr. LaRusso submitted **Exhibit A1**, construction permits including a pylon sign. He confirmed the sign in the permit is what’s existing today, and has been there since 2003. The site plan in 1997 was for the original sign, for a 6’ fence behind the shop, and landscaping. Chairman Shivas noted this was also for parking vehicles overnight. Mr. Stoner noted there is a history of the site being used as a repair shop or gas station. The site is not being used according to the 1997 plan, but the application is not for this discussion. Ms. Hubbard said it would be good to have the site plan approved

while here since he's planning to sell the property. Ms. Hubbard confirmed he is also the owner of Byram Holdings. Mr. Stoner said there is a sign that hangs below the one he received approval for. Mr. LaRusso said it reads "I accept most extended warranties." Mr. Stoner noted the sign can be removed to be in conformance. Ms. Hubbard asked about the parking. Mr. LaRusso said there was never parking in the back. He came for a fence variance, and he can't park cars behind there; there is also grass. Mr. Walsh noted the issue is that the site plan was proposed by the applicant and was approved, but they weren't done. Mr. Gleitz said the resolution should explain the history of the site in the approval. Mr. Proctor confirmed the request is for continuing the use of an auto repair shop

Chairman Shivas opened to the public. Douglas Krentz was sworn in at 151 Black River Road in Long Valley; he is Mr. LaRusso's real estate agent. He asked if Mr. LaRusso striped the area and took the sign down if that makes him conforming. Mr. Stoner noted it states outdoor storage. Mr. LaRusso said there is a community well on the other side of the property; a neighbor said he was concerned that if cars were parked there gas would get into the well, so he put up the fence. Mr. Krentz said he's hoping to avoid Mr. LaRusso needing a site plan. Ms. Hubbard said if he does what's on the plan to the site then it's okay, but if he doesn't bring the site into conformance he needs a site plan. Mr. Serrilli asked if he can sell the property without the approval. Mr. Stoner noted a buyer will look into the status of the site and see that it's not in conformance. Mr. Smith noted a future buyer may want to update the site in their own way. If the applicant remains the owner he may run into an enforcement issue. A new buyer may request this work be done before they purchase it, or want to do their own plan. The Board is not involved other than making him aware. Mr. McElroy said the resolution should say the applicant was advised of this, to that people don't assume the Board was okay with the site as it is today. They should state the Board recognizes the site is non-conforming. Chairman Shivas closed to the public.

Mr. Walsh motioned to approve the certification of nonconforming use as an auto-repair facility, with the acknowledgement that the current operation does not comply with the previously approved site plan from 1993, seconded by Mr. Morytko.

Chairman Shivas opened to the public. Anthony LaRusso was sworn in. He noted they should be specific to what regard the site is not compliant. It's a red flag to a buyer and isn't fair to the applicant. Mr. Gleitz said it shouldn't be dispositive since they didn't do a formal review. Mr. Walsh said this application is not about the site. It should be a notification to buyers, who would do their due diligence. It's not appropriate to be specific because there could be more things they find in a formal review.

Mr. Walsh reiterated his motioned to approve the certification of nonconforming use as an auto-repair facility, with the acknowledgement that the site is not conforming to the approved site plan. Ms. Hubbard said they can state the Board takes no position, since the Board hasn't reviewed the site plan. Mr. Walsh amended his motion to state this, seconded by Mr. Morytko.

Ayes: Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas, Ms. Colligan

Absent: Ms. Raffay, Mayor Rubenstein

Motion carried. Ms. Hubbard explained the appeal period.

Z31-2024 Kathy Dobrich, 560 East Shore Trail, Block 293 Lot 5, R3 Zone

Application for accessory structures, addition to a single family home, and disturbance of critical areas

Kathy and Dan Dobrich were sworn in. Mr. Dobrich said they already removed the honeycomb structure for firewood storage. They had a violation notice for mucking the pond and disturbing the soil. They had DEP site visits and a soil inspector. There are two accessory structures on the property, one being a kiln to dry wood. They are removing the kitchen addition from the plan. The other accessory structure is a shed, and another honeycomb shelf. Ms. Dobrich said Lake Mohawk said this needed to be removed. Mr.

Dobrich said they had site visits with the DEP and that was all taken care of. Ms. Hubbard said they had to dredge the pond. Mr. Dobrich said the DEP gave them a permit, and said the only issue was not calling them first. The wood storage that was honeycomb shaped was removed. The existing structure is the kiln, which has plexiglass. Mr. Stoner reviewed his report and the variances. Chairman Shivas explained how to find the front yard, noting that the structures are in the front yard. Mr. Dobrich noted they then have four acres of front yard. He added that he owns the neighboring property.

Mr. Dobrich said they put the structure there to allow for the sun to come in. Ms. Dobrich said the more it's moved in, the more it's visible because the road goes up. Mr. Dobrich said the Lake Mohawk Club said to put bushes around it. Mr. Serrilli said it's very visible from the road. If they move it in, it gets moved down. He likes the wood storage. Mr. Dobrich noted the Board is a government agency and he had to go to a private club for an approval. Ms. Hubbard noted they bought the home in the Lake Mohawk community. Chairman Shivas said when the town was built there was a reservation, and that's what the Lake Mohawk area is, and it's mentioned in the deed. So even if the Board is okay with the work, the Lake Mohawk group also needs to approve it. Ms. Hubbard noted the Board doesn't have jurisdiction to remove that requirement.

Mr. McElroy asked the purpose of the kiln. Mr. Dobrich said the home is old, and they were proposing a kitchen addition. They were going to make their own panels and beams, which need to dry. Now, they are using it for firewood. Mr. McElroy asked now that the firewood storage is removed, where is it placed. Mr. Dobrich said it's covered on the side. Mr. McElroy asked if it's used for the home, why is it so far from the home? He asked if they have plans to sell the wood or have a commercial aspect. Mr. Dobrich said they wanted to but were told it's not allowed. When they bought the property it was neglected, so they did the maintenance themselves. Mr. McElroy confirmed they have no plans for selling the wood. Chairman Shivas asked about the Lake Mohawk determination. Mr. Dobrich said they want it moved 10 feet if possible, whatever the Board says, and they want it covered with bushes. Chairman Shivas said the bushes can't be too high, otherwise they can't dry anything. Mr. Stoner asked if the determination from Lake Mohawk was in writing. Mr. Dobrich said there's meeting minutes. Mr. Smith asked if there is another spot for this structure on the property. Mr. Dobrich said he could go anywhere, but if it's in the middle of the lawn it would look bad. He wants to keep it on that end because of the woods. Mr. Smith confirmed it's not hard to move. Mr. Dobrich said they like that spot because it's the most hidden while also getting sun. Mr. Serrilli said he goes down that road and can see it from there. It sticks up through the trees. Mr. Smith said it has to be moved out of the right-of-way and be screened. Chairman Shivas suggested moving it back and in 10 feet. Mr. Morytko noted other applicants with smaller properties ask for similar items and the Board asks them to do more than that. Chairman Shivas said there are trees around the property. Mr. Gleitz noted they'd want to maintain the southern exposure for the sun. He suggested an alternate location. Ms. Dobrich noted there is a pool nearby and they'd be able to see the structure from there. Mr. Stoner noted the pool is not close to that area. Mr. McElroy said he doesn't see anything about the lot that makes it a hardship for having it in the front yard. Ms. Dobrich said the back yard is stone. Mr. Smith asked about the elevation in the front yard, confirming the road is the high point. Mr. Dobrich said the structure is not finished—he plans to put siding on it, but stopped because of the violation. The siding will be natural wood planks; Mr. Serrilli confirmed they mean like a live-edge design. Mr. Proctor said looking at the photos, it doesn't look that bad, and because of the slope, if it's moved back, you see more of it. Mr. Morytko said they should move it way further back because they have a lot of room. Mr. Smith noted the applicant needs to propose something. Chairman Shivas suggested along the road planting tall bushes. Mr. Stoner noted they need to meet the Club's requirements as well. Chairman Shivas suggested moving it more than 10 feet, because they need to make sure the minimum is met. Mr. Gleitz noted its current spot is the furthest from the applicant's home and closest to the road. Ms. Dobrich said this was the best access to dry the wood. Mr. Dobrich said the

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neighbors aren't impacted. Chairman Shivas said there's no one here to complain about this. They have three acres of front yard, so anywhere in the front yard would need to come to the Board. Mr. Dobrich said he can go 15 feet back and 10 feet in.

Chairman Shivas opened to the public. Robert Moschella was sworn in. He noted a previous applicant was allowed multiple accessory structures and driveways, and this applicant wants one shed on a large property. Mr. Stoner said the site is different and it goes by the code. Mr. Dobrich asked about changing the zoning. Mr. McElroy said the zoning board doesn't decide the code—the Council decides the ordinances; people then make applications to the Board when there are variations from that, and the Board analyzes whether or not to allow that, but the Board doesn't make the laws. Mr. Stoner reviewed the variances. He noted their violations and which ones have been addressed. The resolution should note that a variance would have been required for steep slope disturbance, but it was resolved with the DEP.

Mr. McElroy motioned to approve the application with the conditions discussed, including it's approved by Lake Mohawk, there is no commercial use for the firewood; Chairman Shivas added that the shed should be finished with siding, and bushes should be added. Mr. Smith said it should comply with the side yard setback and be a minimum 30 feet from the right-of-way. Mr. Stoner recommended a minimum of 30 feet or what is required by Lake Mohawk. Mr. Walsh noted whichever is great. The motion was seconded by Mr. Walsh.

Ayes: Messrs. Proctor, McElroy, Serrilli, Smith, Walsh, Chairman Shivas, Ms. Colligan

Nays: Mr. Morytko

Absent: Ms. Raffay, Mayor Rubenstein

Motion carried. Ms. Hubbard explained the appeal period. Mr. Stoner reminded them to apply for zoning permits.

DISCUSSION ITEM: Basic Accessory Structures / AC Condenser Units

Mr. Gleitz explained his memo. There have been issues with people looking to have AC units and needing to come to the Board. They're looking to make it easier for people to add AC units, with three options laid out in the memo. Mr. Smith said this sounds great when replacing something that's already there, but wants to maintain control when it's something new being added. He doesn't want people to put an air conditioner anywhere. Ms. Phillips noted AC units usually need to be close to a house by default. Mr. McElroy said he doesn't remember denying an application for this, and doesn't want to have other people need to come in for this. It's a hardship to have residents come in here because they're trying to anticipate an issue. Mr. Walsh noted his concern about having to consider other items not limited to AC units. Mr. Stoner noted Mr. Gleitz's suggested screening it in the front yard. Chairman Shivas noted an issue with a resident where it was in the rear yard and additional permits were needed. He noted the air conditioner is part of the house, and doesn't have an issue with the unit being in the front yard. Mr. Gleitz noted this is about items that service the building. Mr. McElroy asked the professionals what other towns do. Mr. Stoner said they don't let them in the front yard. Ms. Hubbard doesn't know another town that has a basic accessory definition. Mr. Serrilli noted if you put an AC unit in an inconvenient spot away from things, it reduces the system's efficiency. Some older houses make it hard to find a spot to fit them.. Ms. Phillips noted a lot of places in town have more than one front yard, so it's hard to find a place that meets the code. Mr. Smith noted if they're making exemptions for one thing, they should consider other items. Mr. Proctor noted to consider lot lines where properties are close together, as well as considering how many zoning permits are filed for AC units. They'd like to see it as an extension of the house. Mr. Morytko noted how many people go through this now, and how many people would this affect if it was changed. Mr. Gleitz noted this was in the zoning report to the Council. Chairman Shivas said this needs to be discussed further at another meeting.

DISCUSSION ITEM: Hampton Township Resolution Regarding Home-Based Businesses

Chairman Shivas said this needs to be discussed at a later meeting. Mr. Gleitz provided a review memo for this. Ms. Hubbard noted if this statute is enacted, they lose control of home occupation, and people get certifications of pre-existing non-conforming uses. Chairman Shivas said a lot of people work from home. There's a law that regulates it, but this is whether or not you can have people in and out of your house. Mr. Stoner said this is about a home-base office.

BILLS:

Harold Pellow and Associates (19): \$5,746.63. A motion to approve the bill was made by Mr. Walsh, seconded by Mr. Morytko. All were in favor. Motion carried.

Maraziti and Falcon (14): \$5,889.23 A motion to approve the bill was made by Mr. Walsh, seconded by Mr. Morytko. All were in favor. Motion carried.

REPORTS FROM COMMITTEES

Architectural Review Committee: Ms. Phillips confirmed the Council hasn't discussed this.

Environmental Commission: Mr. McElroy said they reviewed applications.

Open Space: Mr. Morytko said there's a meeting Monday.

Township Council: Mr. Proctor said they awarded the bid for the C.O Johnson project. They appointed an architect for the police station project. They are likely to receive a grant to rehabilitate the police station into the courtroom. They had a resolution for moth control, and a second reading for capital expenditure for fire-fighting apparatuses. They introduced a resolution to vacate a street into a driveway and amending the flood damage prevention ordinance.

Mr. McElroy said for Board of Health, they will have a special meeting to amend an ordinance. This was passed in 1997. There is a requirement for 100 feet between wells and disposal fields in the state code, but provides for an exemption of 50 feet if a person has water-tight casing on a well. Permits can't be issued if the well or septic is within the 100 feet, and they're looking to remove that restriction to match the state code.

OPEN TO THE PUBLIC

Chairman Shivas opened to the public and no one spoke so he closed to the public.

ADJOURNMENT

A motion to adjourn the meeting was made at 11:30pm by Mr. Walsh, seconded by Mr. Proctor. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted by Caitlin Phillips

Resolutions Approved at Previous Meeting

In the matter of Shawn and Jill Steffens
Case No. Z13-2024
MF#5000.116

BYRAM TOWNSHIP
PLANNING BOARD
RESOLUTION OF MEMORIALIZATION

RELIEF GRANTED: **Front Yard Setback**
 Side Yard Setback
 Minimum Setback from the Lake
 Maximum Building Coverage

WHEREAS, Shawn and Jill Steffens have applied to the Planning Board of the Township of Byram seeking approval to construct an addition on the premises located at 99 Lake Drive, and known as Block 249, Lot 89.02 on the Tax Map of the Township of Byram which premises are in a “R-5” Residential Zone;

WHEREAS, by ordinance adopted by the Township Council of the Township of Byram under statutory authority, the Planning Board and Zoning Board of Adjustment were combined into one Board which Board possesses and may exercise all powers granted to the Planning Board and Zoning Board of Adjustment pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., said single Board being known as the Planning Board of the Township of Byram; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

1. The Applicants are the owners and occupants of the subject property. The Applicants are proposing to renovate and construct an addition on the existing

{382000.DOC.2}1

dwelling, requiring relief, pursuant to N.J.S.A. 40:55D-70c from the following Sections of the Township's Zoning Ordinance:

- a. Section 240-14 - Minimum Front Yard Setback: 38.5 feet required, 26 feet proposed.
 - b. Section 240-55C(3) – Minimum Side Yard Setback: 15 feet required, 0 feet and 10.58 feet proposed.
 - c. Section 240-55C(7) – Maximum Building Height: 25 feet permitted, 27.83 feet proposed.
 - d. Section 240-55C(9) – Minimum Setback from the Lake: 50 feet required, 35.42 feet proposed.
 - e. Section 240-50.1A(9) – Maximum Building Coverage: 1,246 square feet permitted, 2,333 square feet proposed.
2. The Applicant submitted the following documents along with the Application for a Variance:
- a. Proposed Alterations Plans, prepared by PVA Architecture, LLC, dated June 4, 2024, consisting of five (5) sheets.
 - b. Proposed Alterations Plans, prepared by PVA Architecture, LLC, dated June 4, 2024, Sheet A-3, revised July 30, 2024.
 - c. Map of Property, prepared by Stewart Surveying and Engineering, LLC, dated April 10, 2023.
 - d. System Review of Individual Subsurface Sewage Disposal, submitted to the Sussex County Department of Health and Human Services, received August 5, 2024, Hold dated August 14, 2024.

{382000.DOC.2}2

- e. Pictures of the Home, four (4) total.
 - f. Project details, pages 3 and 4, two versions.
3. The Board received a memorandum from Cory L. Stoner, P.E., P.P., the Planning Board Engineer, dated July 24, 2024.
 4. The following were marked for identification:
 - a. A-1- Sheet A1 dated 6/04/24 with shading to depict proposed addition.
 - b. A-2 – Email from Candice Morgan, Senior REHS, Sussex County Health Department
 - c. A-3 - Proposed Alterations Plans, prepared by PVA Architecture, LLC, dated June 4, 2024, Sheet A-1, grass area indicated along Lake Drive.
 - d. A-4 – Septic System As-Built, prepared by Careaga Engineering, Inc., dated August 24, 2010.
 5. A duly noticed public hearing was conducted on August 15, 2024, at which time Paul Ashworth, AIA and Shawn Steffens, presented sworn testimony in support of the Application.
 6. The Applicant presented the testimony of Shawn Steffens, who testified about the proposal to add a second story and to have indoor storage to avoid storing things outside.
 7. Mr. Steffens testified that the County denied his request to increase the property to a three-bedroom home because the leach field is too small.
 8. He further testified that there will not be a full garage door, just an entrance and a vehicle will not be able to enter.

{382000.DOC.2}3

9. The Applicant presented the testimony of Paul Ashworth, AIA who testified as to his credentials and was accepted as an expert in the field of architecture.
10. Mr. Ashworth testified that the existing residence is constructed partially over the property line, and there is an easement to maintain the building.
11. Mr. Ashworth testified as to the required setbacks and requested variances.
12. Mr. Ashworth further testified as to the floorplans for the first and second floors as well as the planned façade.
13. In response to questions from the Board Members, the Applicant amended the Application to remove the request for a height variance and agreed that the height of the building will not be over 25 feet.
14. Mr. Ashworth testified that the proposed addition is similar in size and scale to several other homes in the neighborhood, with several on the street built to the property lines with garages and similar setbacks.
15. Mr. Ashworth further testified that the Application will be reducing the size of the driveway.
16. He testified as to Exhibit A-3, a colorized version of sheet A-1 showing where the septic has been approved. There will be grass in the location where there is currently driveway/stone.
17. He testified that there will not be a functioning garage door because the Applicant cannot drive over the septic system.
18. Mr. Ashworth testified that the justification for the requested variances is the shape of the lot. The lot is not a four-side square, which is the reason for several of the setback variance requests.

{382000.DOC.2}4

19. He further testified that the location of the existing home straddling the property line is another reason for the need for the variances.
20. The Applicant consented to the condition to provide a four-foot strip of landscaping on approximately 70% of the waterline, to be reviewed and approved by the Board Engineer.
21. The Applicant consented to the condition that it make attempts to negotiate several more feet in width of the building maintenance easement and to have it extend the length of the entire building.
22. The Applicant consented to the condition that it obtain a construction easement from the neighbor.
23. The Applicant stated that it will utilize the existing foundation and that if a new foundation is required, the Applicant must return to the Board for approval.
24. The Applicant consented to the condition that the plans be amended to include use and location of construction fencing.
25. There was no one from the public present for this application.

WHEREAS, the Board has determined that the relief requested by the Applicant, as amended, can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Byram for the following reasons:

1. The Board found the witness testimony to be competent and credible. The Board determined that relief can be granted pursuant to N.J.S.A. 40:55D-70c from the following Sections of the municipal zoning ordinance.

{382000.DOC.2}5

- a. Section 240-14 - Minimum Front Yard Setback: 38.5 feet required, 26 feet approved.
 - b. Section 240-55C(3) – Minimum Side Yard Setback: 15 feet required, 0 feet and 10.58 feet approved.
 - c. Section 240-55C(9) – Minimum Setback from the Lake: 50 feet required, 35.42 feet approved.
 - d. Section 240-50.1A(9) – Maximum Building Coverage: 1,246 square feet permitted, 2,333 square feet approved.
2. N.J.S.A. 40:55D-70c(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property.
 3. The Board finds and determines that the irregular shape of the lot and the location of the existing structure straddling the property line create a hardship and are the reasons for the variance and satisfy the criteria of N.J.S.A. 40:55D-70c(1).

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Byram on the 19th day of September, 2024, that the approval of the within application, as amended, be granted subject, however, to the following conditions:

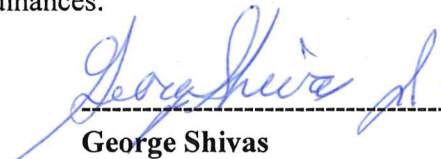
1. The Applicant shall comply with all the conditions and standards set forth in Section 240 of the Township’s Ordinances. The Applicant shall be subject to all other applicable rules, regulations, ordinances and statutes of the Township of Byram, County of Sussex, State of New Jersey, or any other jurisdiction.

{382000.DOC.2}6

2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, and its professionals, at the public hearing. The representations are incorporated herein and were relied upon by this Board in granting the approval set forth herein and shall be enforceable as if those representations were made conditions of this approval.
3. The Applicant will amend the plans to include a four-foot-wide strip of landscaping on approximately 70% of the waterline, subject to the review and written approval of the Board Engineer.
4. The Applicant will seek to increase the size of the building maintenance easement with the neighboring property owner to be several feet wider and to extend the entire length of the building, and provide the Board Engineer with copies of all correspondence related to this condition, including a summary of any oral communications.
5. The Applicant shall obtain a construction easement from the adjacent property owner, with same to be reviewed and approved by the Board Engineer.
6. The Applicant will use the existing foundation, and if it is determined that a new foundation must be constructed, the Applicant will need to return to the Planning Board to reaffirm the variances prior to the construction of any new foundation.
7. Applicant shall amend the plans to include the use and location of construction fencing.
8. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

{382000.DOC.2}7

9. Applicant shall submit a Certificate that taxes are paid to date of approval to the Board Secretary.
10. An inspection of all improvements shall be subject to the review of the Board Engineer prior to the issuance of a Certificate of Occupancy and/or the closure of zoning or construction permits.
11. Prior to occupancy, the owner/tenant shall first obtain a Certificate of Occupancy from the Township of Byram Construction Department.
12. The Applicant shall secure any and all approvals required from the Sussex County Health Department any other public agency or governmental body that may have jurisdiction, whether specified herein or not, prior to seeking construction or zoning permits.
13. If determined applicable, the Applicant shall pay a fee of 1.5% of the equalized assessed value of the approved residential dwelling unit, as determined by the Township's Tax Assessor, pursuant to Chapter 215, Article XIII of the Township's Ordinances.


George Shivas

On motion of: Mr. Walsh

Seconded by: Mr. McElroy

The vote on the Resolution was as follows:

AYES: Four (4): Mr. McElroy, Mr. Smith, Mr. Walsh, Chairman Shivas

NAYS: Zero (0)

{382000.DOC.2}8

ABSTAINING: Four (4): Mr. Proctor, Mr. Morytko, Mr. Serrilli, Ms. Colligan

ABSENT: Two (2): Mayor Rubenstein, Ms. Raffay

I certify that the above Resolution is a true copy of a Resolution adopted by the Planning Board on September 4, 2024.

Caitlin Phillips

**Caitlin Phillips, Planning Board
Secretary**

Dated: 10/04/2024

Prepared by: Andrew Brewer, Esq.

{382000.DOC.2}9

In the matter of North Shore Water Association
Case No. SP8-2024
MF#5000.104

BYRAM TOWNSHIP
PLANNING BOARD
RESOLUTION OF MEMORIALIZATION

RELIEF GRANTED: **Use Variance**
 Minor Subdivision
 Preliminary and Final Site Plan
 Front Yard Setback
 Side Yard Setback

WHEREAS, North Shore Water Association has applied to the Planning Board of the Township of Byram seeking approval to construct a new water treatment facility for premises located at 28 Allamuchy Trail, and known as Block 148, Lots 168 and 169.01 on the Tax Map of the Township of Byram which premises are in a “R-5” Residential Zone;

WHEREAS, by ordinance adopted by the Township Council of the Township of Byram under statutory authority, the Planning Board and Zoning Board of Adjustment were combined into one Board which Board possesses and may exercise all powers granted to the Planning Board and Zoning Board of Adjustment pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., said single Board being known as the Planning Board of the Township of Byram; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

1. The Applicant is a public utility with an existing well on the subject property.

Timothy Bianculli and Amy Bowe are the owners of the subject property and consent to the application.

{382037.DOCX.4}1

2. The Applicant is proposing to upgrade the existing water system to accommodate new PFAS treatment equipment. The proposal includes the demolition of the existing building and construct a new 192 square foot water treatment facility requiring preliminary and final site plan approval, a minor subdivision and use variance relief pursuant to N.J.S.A. 40:55D-70d(1) from Section 240-15 of the Township's Zoning Ordinance to permit a second principal structure on a residential lot. Additional variance relief, pursuant to N.J.S.A. 40:55D-70c, is required from the following Sections of the Township's Zoning Ordinance:
 - a. Section 240-14 – Minimum Front Yard Setback: 42.5 feet is required and 5.11 feet is proposed to the treatment building.
 - b. Section 240-55C(3) – Minimum Side Yard Setback: 15 feet is required and 3.12 feet is proposed to the treatment building.
3. The Applicant submitted the following documents along with the Application for a Variance and Land Development Application:
 - a. Proposed Water System Upgrades, prepared by Suburban Consulting Engineers, Inc. dated April 15, 2024 (Cover Sheet Dated April 15, 2021), revised through July 30, 2024, consisting of Seventeen (17) Sheets.
 - b. Boundary and Topographic Survey, prepared by Suburban Consulting Engineers, Inc. dated February 16, 2023.
 - c. Proposed Lot Line Adjustment, prepared by Suburban Consulting Engineers, Inc. dated February 1, 2024.
 - d. Letter from Suburban Consulting Engineers, Inc., in response to Mr. Stoner's July 24, 2024 letter, dated August 1, 2024.

{382037.DOCX.4}2

- e. Application for Subdivision and Site Plan Approval filed with the Sussex County Planning Board dated June 17, 2024.
 - f. Administrative Disapproval from the Sussex County Planning Board, dated July 1, 2024.
 - g. Description of Proposed Utility Easement, prepared by Suburban Consulting Engineers, Inc., dated February 1, 2024.
 - h. Description of Proposed Tax Lot 168, Block 148, prepared by Suburban Consulting Engineers, Inc., dated February 1, 2024.
 - i. Deed of Easement for Well and Water, from Stephen R. Warburton-Pitt to North Shore Water Association, dated March 23, 2015, recorded in the Sussex County Clerk's Office on March 24, 2015, in Deed Book 3357, Page 224.
 - j. Pictures of the existing structure, prepared by Suburban Consulting Engineers, Inc., dated June, 2024, four (4) total.
 - k. Tax Map, prepared by Harold E. Pellow, PE, PLS, dated June 2006, Sheet 3.02.
4. The Board received the following memorandum:
- a. Cory L. Stoner, P.E., P.P., the Planning Board Engineer, dated July 24, 2024, Engineering Review.
 - b. Cory L. Stoner, P.E., P.P., the Planning Board Engineer, dated June 11, 2024, Highlands Exemption Determination.
5. A duly notice public hearing was conducted on August 15, 2024, at which time

{382037.DOCX.4}3

Michael K. McAloon, P.E. and Alexander Handel, P.P., presented sworn testimony in support of the Application.

6. Mr. McAloon testified as to his credentials and was accepted as an expert in the field of civil engineering.
7. Mr. McAloon testified as to the existing conditions on the site, the condition of the water facilities and the need to undertake the development to comply with the Administrative Consent Order (“ACO”).
8. He testified that no wetlands delineation or flood hazard approval is required.
9. He testified that the facility serves 35 water connections and approximately 105 people and has exceeded the maximum concentration of PFAS since 2021.
10. Pursuant to the ACO issued by the NJDEP, the Applicant is legally obligated to upgrade the facilities as set forth in the Application.
11. Mr. McAloon testified as to Exhibit A-1, an updated set of plans revised through 7/30/24.
12. He further testified that the equipment to treat PFAS cannot be located in the existing facility, so it will be built on grade in the new building.
13. He testified about the floor plan of the new facility and where the various components will be located. The material and chemicals needed for treatment will be brought on site by individuals in small containers.
14. He testified the facility will have vinyl siding and an asphalt shingle roof.
15. This will be an unmanned facility, visited daily and there will be no on-site parking, similar to how it has functioned in the past.

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16. The Applicant is proposing a diesel generator so there will be occasional fuel deliveries. The generator is needed in order to comply with the DEP regulations, and the sound-attenuating aluminum enclosure is the best available and will result in a maximum db of 65 at 20 feet. The generator will be run once a month in the daytime.
17. The Applicant presented testimony from Alexander Handel, P.P, P.E., who testified as to his credentials and was accepted as an expert in the fields of civil engineering and planning.
18. Mr. Handel testified as to the requested use and bulk variances.
19. He testified that the proposed structure will blend in well with the area and is being constructed with the minimum possible earthwork.
20. He testified that the upgrades are legally required in order to comply with the ACO issued by the NJDEP. The upgrades serve the public good and general welfare by making safe drinking water and are considered an inherently beneficial use.
21. He further testified that because of the existing geology and location of the well, the upgrades must be constructed in the proposed location. The existence of the infrastructure and building have functioned well in those location for many years.
22. Mr. Handel testified that one enumerated goal of the Master Plan is to utilize existing utility infrastructure, which this Application will accomplish.
23. The Application furthers several purposes of the Municipal Land Use Law, including purpose (a) by promoting public health and safety; and purpose (i) by providing a desirable visual environment by replacing a deteriorating older structure.

{382037.DOCX.4}5

24. He further testified that the Application is without any substantial detriment to the public good in that there has been a similar facility there for many years.

25. He testified because of the existing infrastructure and location of the water underground this is the only viable location, thus creating a hardship. Further, existing building is inadequate to serve this public need.

26. In response to questions from the Board Engineer, the Applicant agreed that the landscaping will not be required to be maintained forever because a subsequent owner might not want the same landscaping.

27. The Applicant consented to provide copies of all Deeds and easements for review and approval by the Board Engineer and Board Attorney prior to filing.

28. The Applicant consented to the condition that all Deeds and easements will be filed with the County prior to issuance of a Certificate of Occupancy being issued.

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Byram for the following reasons:

1. The Board found the witness testimony to be competent and credible. The Board determined that relief could be granted pursuant to N.J.S.A. 40:55D-70d(1) from Section 240-15 of the Township's Zoning Ordinance to permit a second principal structure on the subject lot.
2. The Board finds that the Application promotes several purposes of the MLUL and would also qualify as an inherently beneficial use by providing safe drinking water to the public.

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3. The Board finds that the Application will not result in any substantial detriment to the public good in that a similar structure has already existed in the vicinity of the proposed structure for many years and will not substantially impair the intent and purpose of the zone plan and zoning ordinance for the same reasons.
4. The Board further determined that relief can be granted pursuant to N.J.S.A. 40:55D-70c from the following Sections of the municipal zoning ordinance.
 - a. Section 240-14 – Minimum Front Yard Setback: 42.5 feet is required and 5.11 feet is approved to the treatment building.
 - b. Section 240-55C(3) – Minimum Side Yard Setback: 15 feet is required and 3.12 feet is approved to the treatment building.
5. N.J.S.A. 40:55D-70c(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property.
6. The bulk variances sought by the Applicant arise due to the existing geology, a topographical condition, and the location of the existing water infrastructure, causing a hardship if the upgrade was to be located in a location not requiring any variances.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Byram on the 19th day of September 2024 that the approval of the within application be granted subject, however, to the following conditions:

1. The Applicant shall comply with all the conditions and standards set forth in Section 240 of the Township’s Ordinances. The Applicant shall be subject to all

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other applicable rules, regulations, ordinances and statutes of the Township of Byram, County of Sussex, State of New Jersey, or any other jurisdiction.

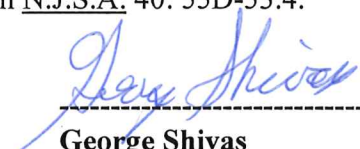
2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, and its professionals, at the public hearing. The representations are incorporated herein and were relied upon by this Board in granting the approval set forth herein and shall be enforceable as if those representations were made conditions of this approval.
3. Applicant shall provide a copy of all Deeds and Easements for review and approval by the Board Engineer and Board Attorney prior to filing with the County.
4. Applicant shall file all required Deeds and Easements prior to issuance of a Certificate of Occupancy.
5. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
6. Applicant shall submit a Certificate that taxes are paid to date of approval to the Board Secretary.
7. An inspection of all improvements shall be subject to the review of the Board Engineer prior to the issuance of a Certificate of Occupancy and/or the closure of zoning or construction permits.
8. Prior to occupancy, the Applicant shall first obtain a Certificate of Occupancy from the Township of Byram Construction Department.
9. The Applicant shall secure any and all approvals required from any other public agency or governmental body that may have jurisdiction, whether specified herein or not, prior to seeking construction or zoning permits. Outside agency approvals

{382037.DOCX.4}8

include, but are not limited to the New Jersey Department of Environmental Protection.

10. All terms and conditions set forth by the Planning Board shall be shown on the Preliminary and Final Major Site Plans within 30 days of the adoption date of this resolution. Any changes requested by outside agencies shall be incorporated into the plans prior to a preconstruction meeting that shall be held with the Township Engineer.

11. Prior to construction, including site work activity, a preconstruction meeting shall be required to include the Town's representatives, the Applicant and its engineers and contractors. Prior to said meeting, the Applicant shall have posted inspections fees in the amount of five (5) percent of the estimated cost of improvements, as prepared by the Developer's Engineer and approved by the Township Engineer and in accordance with N.J.S.A. 40: 55D-53.4.



George Shivas

On motion of: Mr. Walsh

Seconded by: Mr. McElroy

The vote on the Resolution was as follows:

AYES: Four (4): Mr. McElroy, Mr. Smith, Mr. Walsh, Chairman Shivas

NAYS: Zero (0)

ABSTAINING: Four (4): Mr. Proctor, Mr. Morytko, Mr. Serrilli, Ms. Colligan

ABSENT: Two (2): Mayor Rubenstein, Ms. Raffay

{382037.DOCX.4}9

I certify that the above Resolution is a true copy of a Resolution adopted by the Planning Board on September 19, 2024.

Caitlin Phillips

**Caitlin Phillips, Planning Board
Secretary**

Dated: 10/04/2024

Prepared by: Alyse Landano Hubbard, Esq.

In the matter of Highland Ave Properties, LLC
Case No. SP6-2024
MF#5000.013

BYRAM TOWNSHIP

PLANNING BOARD

RESOLUTION OF MEMORIALIZATION

**RELIEF GRANTED: Amended Site Plan
 Critical Slopes Disturbance**

WHEREAS, Highland Ave Properties, LLC has applied to the Planning Board, of the Township of Byram seeking Amended Site Plan Approval to address site improvements for premises located at 227 Route 206, and known as Block 212, Lot 1 on the Tax Map of the Township of Byram which premises are in a “NC” Neighborhood Commercial Zone, along with the Byram Township Fire Department, located at 224Route 206, and known as Block 212, Lot 7 of the Tax Map of the Township of Byram;

WHEREAS, by ordinance adopted by the Township Council of the Township of Byram under statutory authority, the Planning Board and Zoning Board of Adjustment were combined into one Board which Board possesses and may exercise all powers granted to the Planning Board and Zoning Board of Adjustment pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., said single Board being known as the Planning Board of the Township of Byram; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

{383218.DOC.1}1

1. The Applicant was represented by Richard Valenti, Esq, of Morris, Downing, Sherred, LLP.
2. The Applicant is the owner and operator of the subject property. The Applicant operates an irrigation and landscape maintenance company on the subject property and received a Conditional Use Permit, along with Preliminary and Final Site Plan, with related bulk variances on May 19, 2022. The Applicant has since made improvements to the site that are inconsistent with the approved Site Plan and is seeking approval for Amended Site Plan, requiring relief from Section 240-29.2D-Tract Disturbance shall not include critical areas: 2,192 square feet of critical slopes disturbed (Pursuant to Section 240-7C, Critical Slopes are defined as slopes in excess of 25%) of the Township's Zoning Ordinance.
3. The Applicant submitted the following documents along with the Land Development Application:
 - a. Conditional Use Amended Site Plan, prepared by Dykstra Associates, dated June 25, 2024 and revised August 2, 2024, consisting of three (3) sheets.
 - b. Notice of Violation, issued by Nick Cutrone, Zoning and Code Enforcement Officer, dated February 12, 2024.
 - c. Letter from Casey Margo, President of Bryan Township Fire Department, undated, seeking approval for the proposed fence, along with a portion of a survey, dated March 21, 1967, preparer unknown, and three (3) pictures of a proposed fence, all undated, preparer unknown.
4. The Board received the following:

{383218.DOC.1}2

- a. Engineering Review from Cory L. Stoner, P.E., P.P., the Planning Board Engineer, dated August 30, 2024.
 - b. Completeness Review from Cory L. Stoner, P.E., P.P., the Planning Board Engineer, dated June 14, 2024.
 - c. Letter from Dykstra Associates, PC, dated May 17, 2024
5. A duly noticed public hearing was conducted on September 5, 2024, at which time Jonathan Eigner, Managing Member of Highland Ave Properties, LLC, and Jason Dunn, PP, LLA, of Dykstra Associates, PC, who was accepted as an expert, presented sworn testimony in support of the application.
6. The subject property is a 13.33-acre irregularly shaped parcel located on the western side of Route 206 in the NC, Neighborhood Commercial Zone. The property was previously developed with a 6,000 square foot office/warehouse building, with a paved/gravel parking area. The remainder of the lot is wooded and surrounding by wooded property and commercial uses on Route 206. There is a portion of the lot that has frontage on Route 206, where the driveway is located, and a majority of the property is located behind the adjacent lots. The Applicant has been operating on the site and has made some changes that are inconsistent with the approved Site Plan. As stated in the Notice of Violation:
- a. Removal of rock outcrop and enlargement of gravel parking area.
 - b. Removal of vegetation between (the) property and the firehouse property and replacement with new landscaping and slope armoring.
 - c. Place of storage structure may not match area approved by the board.

{383218.DOC.1}3

- d. Removal of sunken loading area and leveling of gravel area to provide an at grade loading area.
- e. Placement of a box container along the west side of building.
- f. A fence constructed along front of the property adjacent to new evergreen trees.
- g. Disturbance of Steep Slopes.

Additionally, the Applicant failed to secure zoning permits for the fence, accessory storage structure and other components of the planning board approval.

- 7. The Applicant testified the area between the subject property and the firehouse was overgrown with unhealthy vegetation so he cleared vegetation and trees and laid crushed stone to stabilize the slope. There is an 8–10-foot change in elevation from the Fire Department Property to the Subject property. The Applicant is proposing to plant Green Giant Arborvitae on the Fire Department property along a portion of the north and western borders.
- 8. The Applicant does not utilize the bay doors of the existing structure with a tractor trailer, eliminating the need for the sunken loading area. The railroad tie wall was removed and the loading area was filled in to create a zero entrance.
- 9. The property slopes to the east of the existing structure, so the Applicant constructed a rock wall and crushed gravel bed to the east of the building to level the surface. A steel container is located on the gravel bed. There was a discussion regarding the Unofficial Wetland Transition Area, as the building and the gravel bed are within the transition area. After much discussion with

{383218.DOC.1}4

the Board, the Applicant agreed to either seek approval from the New Jersey Department of Environmental Protection (NJDEP) for the location of the steel container or to relocate the container to the approved location from the 2022 Site Plan.

10. The size and location of the approved salt shed was changed, but the stacked concrete block storage bin with the canopy is tucked behind the hill and is less visible. The structure complies with the 16-foot height requirement and is located on a 840 square foot concrete pad.
11. The slope of the property drops to the south as well, where the stormwater flows into the wetlands. The Applicant expanded the top soil area, and constructed a rip-rap swale to direct runoff within the Wetlands Transition Area. The Applicant has restored the topsoil and seeded in the gravel area. The Applicant agreed to either seek approval from the NJDEP for the rip-rap swale or to remove same and restore the area.
12. The Applicant disturbed the steep slopes between the subject property and the Fire Department property and installed rip-rap to maintain the slope. Approximately 721 square feet of slope was disturbed on the Fire Department Property and 471 square feet of slope was disturbed on the subject property. The Applicant is proposing to plant Arborvitae and a 6-foot-high black chain link fence as noted on the plans. The fence will meet with an existing 6-foot-high vinyl fence along the eastern side of the property, with a gate across the driveway, to secure the site.

13. The Board reviewed the conditional use standards set forth in Section 240-64B:

(1) Tract size: a minimum of one acre. **Complies**

(2) Side yards: not less than 30 feet when abutting a right-of-way or residential use. **Complies**

(3) Lot coverage: a maximum of 70% of the property. **Complies**

(4) Outdoor storage such as construction equipment, trucks, chippers, mulch piles and stockpiles of clean materials shall be permitted, provided the equipment and materials are limited to a single area of the site that does not exceed 50% of the lot area, shall not exceed 20 feet in height and shall be completely screened by a ten-foot landscape buffer. The screening shall consist of landscaping and/or fencing to create a complete screen.

Applicant previously testified that only 6% of lot area will be outdoor storage, all outdoor storage will be less than 20' in height, and there will be additional evergreen landscaping to provide the necessary screening. The Board noted that the storage areas have changed from the prior approval, but determined that there was adequate buffering of the storage areas with the installation of the fence and landscaping.

(5) Small engine repair work and equipment maintenance, other than incidental minor repair, shall take place within the building, and all repair or service apparatus shall be located within the building. **Applicant testified that all equipment repairs will take place inside the building, all repair and service apparatus will be stored inside the building.**

{383218.DOC.1}6

(6) Design and build, as well as routine maintenance landscaping services shall be permitted as function of landscaping contractors. **Complies**

(7) All equipment used shall be maintained and operated in such a manner as to eliminate so far as practical noise, vibration, or dust which would injure or annoy persons living in the vicinity. **Applicant testified that the hours of operation are 6am to 6pm, but all work is done off site, but for administerial work in the office.**

(8) Under no circumstances shall any stored material leave the site by natural causes or forces such as wind or water. **Applicant testified that any material, such as topsoil, that is stored on site will be contained in tarps or under roof.**

The Board was satisfied that the Applicant met the conditions set forth in the ordinance and was therefore permitted as a conditional use on the property.

14. The Board reviewed the Notice of Violation and determined that all of the issues were addressed.

15. The Applicant agreed to be responsible for the maintenance of the landscaping on the Fire Department property and would obtain an easement for access to effectuate same.

16. The Applicant was advised that he must comply with Ordinance 16-2023 was enacted and codified as Section 211.27, which regulates the construction and use of Privately-Owned Salt Storage Structures.

17. There was no one from the public in attendance for this hearing.

{383218.DOC.1}7

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Byram for the following reasons:

1. The Board found the witness testimony to be competent and credible. The Board determined that the Amended Site Plan was consistent with the requirements of the Township's Land Development Ordinance. There will be appropriate screening and buffering for the outdoor storage and uses on the site. The Amended Site Plan addresses the violations to the prior site plan and the Applicant agreed to address the encroachments into the Transition Area.
2. The Board determined that relief can be granted pursuant to N.J.S.A. 40:55D-70c from Section 240-29.2D-Tract Disturbance shall not include critical areas: 2,192 square feet of critical slopes disturbed (Pursuant to Section 240-7C, Critical Slopes are defined as slopes in excess of 25%) of the Township's Zoning Ordinance.
3. N.J.S.A. 40:55D-70c(1) indicates that a variance may be granted under its "hardship" provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the c(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set forth in N.J.S.A. 40:55D-2) and where it is further determined that the

benefits of granting the variance outweigh any detriments which might result from it.

4. The Board determined that the relief was appropriate for the critical slopes disturbance to improve the existing conditions on the property. The Applicant mitigated the impact of the disturbance with the installation of rip-rap and the planting of vegetation in the area. The Board further determined that the improved conditions on the site are consistent with the Master Plan and the Zone Scheme and would not have a negative impact on the surrounding area.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Byram on the 5th day of September, 2024 that the approval of the within application be granted subject, however, to the following conditions:

1. The Applicant shall comply with all the conditions and standards set forth in Section 240 of the Township's Ordinances. The Applicant shall be subject to all other applicable rules, regulations, ordinances and statutes of the Township of Byram, County of Sussex, State of New Jersey, or any other jurisdiction.
2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, and its professionals, at the public hearing. The representations are incorporated herein and were relied upon by this Board in granting the approval set forth herein and shall be enforceable as if those representations were made conditions of this approval
3. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

{383218.DOC.1}9

4. Applicant shall submit a Certificate that taxes are paid to date of approval to the Board Secretary.
5. An inspection of all improvements shall be subject to the review of the Board Engineer prior to the conclusion of Resolution Compliance and the signing of the Amended Site Plan.
6. The Applicant shall advise the Board Secretary and Engineer within 60 days of the Subject Approval of the decision to seek NJDEP Permits for the steel container located on the west side of the building and the rip-rap within the Transition Buffer Area.
 - a. The Applicant shall relocate the steel container to the approved location from the 2022 Site Plan and restore the rip-rap to natural vegetation, if applicable.
 - b. The Applicant shall secure any and all approvals required the New Jersey Department of Environmental Protection with regard to the steel container located on the west side of the building and the rip-rap within the Transition Buffer Area, if applicable.
7. Revised Site Plan, reflected the agreed upon conditions, shall be submitted to the Board Secretary and Engineer within 60 days of the Subject Approval for Resolution Compliance.
8. The Electric Vehicle Charging Station shall be depicted on the Site Plan.
9. The Applicant shall be responsible for the maintenance of the landscaping on the Fire Department property.

{383218.DOC.1}10

10. Applicant shall obtain an easement for access for the landscape maintenance, utilizing the approved site plan, which shall be submitted to the Board.
11. The Applicant shall comply with Ordinance 16-2023 was enacted and codified as Section 211.27, which regulates the construction and use of Privately-Owned Salt Storage Structures.
12. The Applicant shall obtain a Zoning Permit for the installation of the fence.



George Shivas

10/3/2024

On motion of: Mr. Proctor

Seconded by: Mr. Morytko

The vote on the Resolution was as follows:

AYES: Six (6): Mr. Proctor, Mr. McElroy, Mr. Morytko, Mr. Serrilli, Mr. Smith, Chairman Shivas

NAYS: Zero (0)

ABSTAINING: Two (2): Mr. Walsh, Ms. Colligan

ABSENT: Two (2): Mayor Rubenstein, Ms. Raffay

I certify that the above Resolution is a true copy of a Resolution adopted by the Planning Board on September 19, 2024.

Caitlin Phillips

**Caitlin Phillips, Planning Board
Secretary**

Dated: 10/04/2024

Prepared by: Alyse Landano Hubbard, Esq.

{383218.DOC.1}12

In the matter of Daven Baez (Extension)
Case No. Z12-2023
MF 5000-072

BYRAM TOWNSHIP
PLANNING BOARD
RESOLUTION OF MEMORIALIZATION

RELIEF GRANTED: Extension of Variance Relief

WHEREAS, Daven Baez applied to the Planning Board of the Township of Byram for permission to construct an above-ground pool and deck requiring bulk variance relief for the premises located at 201 Lake Drive and known as Block 255, Lot 184 on the Tax Map of the Township of Byram which premises are in a “R-5” Residential Zone;

WHEREAS, by ordinance adopted by the Township Council of the Township of Byram under statutory authority, the Planning Board and Zoning Board of Adjustment were combined into one Board which Board possesses and may exercise all powers granted to the Planning Board and Zoning Board of Adjustment pursuant to the Municipal Land Use Law, N.J.S.A. 40:55B-1, et seq., said single Board being known as the Planning Board of the Township of Byram; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing the Subject Application was approved; and

WHEREAS, based on the foregoing, the Board was requested to revisit the subject approval:

{383010.DOC.1}1

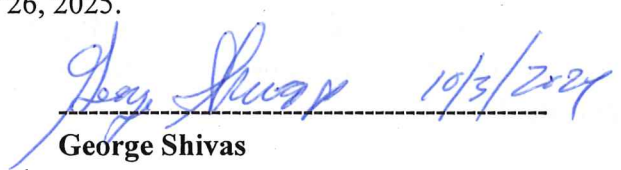
1. The Applicant is the owner and occupant of the subject property. The Applicant received approval to construct an above-ground pool, a deck in the rear of the home and memorialize an existing shed, requiring the following relief from the Township's Zoning Ordinance:
 - a. Section 240-55C.9 – Minimum setback from a lake: 50 feet required, 48.25 feet existing and 47.66 feet approved to the dwelling and 36.25 feet approved to the deck
 - b. Section 240-55C.9 – Minimum setback from a lake: 50 feet required, 15 feet approved for the pool
 - c. Section 240-16A.5 – Minimum front yard setback for an accessory structure: 35 feet required, 31 feet existing and approved for the shed
 - d. Section 240-16B.4 – Minimum side yard setback for an accessory structure: 15 feet required, 8'4" existing and approved for the shed
2. The approval was granted on July 6, 2023, memorialized in a Resolution dated July 20, 2023 and published on July 26, 2023 in the New Jersey Herald.
3. The Applicant submitted a request via email on September 9, 2024, seeking an extension of variance approvals, which explained that the Applicant encountered an unexpected financial hardship and lengthy surgical recovery, and was unable to complete construction.
4. Section 45-23 of the Township's Ordinances provides that any variance granted that permits the creation or alteration of a structure shall expire unless construction has commenced within one year from the date of publication of the resolution.

{383010.DOC.1}2

5. The Applicant has requested a one-year extension of said approval.

WHEREAS, the Board determined that, based on the information provided, the Variance Approval expired on July 26, 2024 and the Applicant is entitled to a one-year extension of the subject variance approvals to commence construction.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Byram on the 19th day of September, 2024 that the variance approvals, as stated herein, shall be extended for a period of one year from the date of the publication of the Resolution, to July 26, 2025.


George Shivas

On motion of: Mr. Morytko

Seconded by: Mr. Walsh

The vote on the Resolution was as follows:

AYES: Six (6): Mr. McElroy, Mr. Morytko, Mr. Serrilli, Mr. Smith, Mr. Walsh, Chairman Shivas

NAYS: Zero (0)

ABSTAINING: Two (2): Mr. Proctor, Ms. Colligan

ABSENT: Two (2): Mayor Rubenstein, Ms. Raffay

I certify that the above Resolution is a true copy of a Resolution adopted by the Planning Board on September 19, 2024 and is in effect for one year.

Caitlin Phillips

**Caitlin Phillips, Planning Board
Secretary**

Dated: 10/04/2024

Prepared by: Alyse Landano Hubbard, Esq.

{383010.DOC.1}3



Memo

To: Planning Board
From: Joseph Sabatini
Date: 09/12/2024
Re: Basic Accessory Structures

Per the Planning Board's annual report, the status of Basic Accessory Structures has been reviewed by the Council and administrative office in conjunction with the Town and Board Planner, Paul Gleitz.

AC units have been found to have the biggest impact. There was a code change in 2016 that defined AC Condensers as a basic accessory structure. Prior to this, they did not require zoning. It is our recommendation that the AC Condenser unit definition in the code be updated to specifically indicate they are no longer part of the Basic Accessory Structure definition. They would therefore no longer need to be regulated through a Zoning Permit approval, or need Planning Board review if a variance is needed.

Please review this recommendation and provide any considerations to the Board Secretary. If there are no comments, please provide a recommendation to the Council to take the appropriate action to update the Township code.

Thank you for your time and attention in this matter.

Byram Township Planning Board – Discussion Item #1

Issue:

Too many residents are forced to get zoning variances for replacing/upgrading AC Condensers in the front yard.

Definitions:

ACCESSORY BUILDING OR STRUCTURE

A building or structure, the use of which is customarily incidental and subordinate to that of the principal building located on the same lot, occupied by or devoted exclusively to an accessory use. When an accessory building or structure (i.e., decks, porches, garage, and steps) is attached in a substantial manner, by breezeway, roof, wall or the like, to a principal building or structure, it shall be considered a part of the principal building or structure. Accessory structures shall be construed to include decks and swimming pools, but shall not be construed to include paving or at-grade patios.

[Amended 6-6-2016 by Ord. No. 20-2016]

BASIC ACCESSORIES SERVING A PRINCIPAL BUILDING OR STRUCTURE

Accessory structures or features commonly required for safe, healthy, and comfortable human habitation of a principal building. These include such things as drinking water wells and septic system components, garbage can enclosures, oil tanks, propane tanks, air-conditioning units, and standby generators (including fuel tanks) in the side or rear yard. Basic accessories serving a principal building or structure are permitted to encroach into required setbacks, provided that no encroachment is more than half the total distance of the required setback from the property line. Basic accessories serving a principal building or structure are not subject to the requirement of § 240-16A and are exempt.

[Added 6-6-2016 by Ord. No. 20-2016]

Possible Remedies:

Eliminate air conditioning units from the definition.

Accessory structures or features commonly required for safe, healthy, and comfortable human habitation of a principal building. These include such things as drinking water wells and septic system components, garbage can enclosures, oil tanks, propane tanks, ~~air-conditioning units~~, and standby generators (including fuel tanks) in the side or rear yard. Basic accessories serving a principal building or structure are permitted to encroach into required setbacks, provided that no encroachment is more than half the total distance of the required setback from the property line. Basic accessories serving a principal building or structure are not subject to the requirement of § 240-16A and are exempt.

Or

Specifically exempt air conditioning units

Accessory structures or features commonly required for safe, healthy, and comfortable human habitation of a principal building. These include such things as drinking water wells and septic system components, garbage can enclosures, oil tanks, propane tanks, ~~air-conditioning units~~, and standby generators (including fuel tanks) in the side or rear yard. Basic accessories serving a principal building or structure are permitted to encroach into required setbacks, provided that no encroachment is more than half the total distance of the required setback from the property line. Basic accessories serving a principal building or structure are not subject to the requirement of § 240-16A and are exempt *from those requirements. Residential air-conditioning units are exempt and are permitted in any location.*

Or

Byram Township Planning Board – Discussion Item #2

Issue:

New legislation is proposed regarding Home Occupations. Mayor and Council would like the Planning Board to review and advise.

Byram Definition:

HOME OCCUPATION

The use of a portion of a residential structure not to exceed 25% of the area of one floor for nonresidential purposes. [Amended 7-18-1994 by Ord. No. 5-1994]

Byram Zoning Code:

§ 240-21.1 Home occupations.

[Added 9-7-1993 by Ord. No. 5-1993]

A. Where permitted, home occupations shall comply with the following restrictions:

- (1) No more than two nonresident employees shall occupy the premises at any given time.
- (2) All parking required to support the home occupation must be available on site.
- (3) There shall be no outside storage of materials.
- (4) No more than 1/2 the floor area of one story of the dwelling shall be devoted to such use.
- (5) Permitted home occupations include cottage food operations, the office or studio of a doctor, physician, surgeon, dentist, teacher, artist, lawyer, accountant, photographer, architect, engineer, planner or like professional person residing on the premises or such other business which, in the opinion of the Planning Board, meets the performance standards for home occupation.

[Amended 5-3-2022 by Ord. No. 006-2022]

B. Performance standards. No home occupation shall be conducted in a manner to detract from the residential character of the neighborhood. Specifically, there shall be no:

- (1) Excessive paving required.
- (2) Significant security lighting required.
- (3) Signage beyond one two-square-foot sign affixed to the residence.
- (4) Unusual traffic flows.
- (5) Noise, odor, dust or other nuisance detectable at the property line.

Proposed Legislation:

Definition:

“Home business” means any activity operated for pecuniary gain in, or directed from, a residential dwelling or unit by one or more persons residing within that dwelling or unit.

Standards:

A home business within a residential zone shall be permitted as an accessory use, not requiring a use variance pursuant to section 57 of P.L.1975, c.291 (C.40:55D-70), provided that:

- a. the activity is compatible with the residential use of the property and surrounding residential uses.

**HAMPTON TOWNSHIP
RESOLUTION**

**RESOLUTION IN OPPOSITION TO PROPOSED LEGISLATION BYPASSING LOCAL
ZONING FOR HOME-BASED BUSINESSES**

WHEREAS, A-2623, the "Home Based Jobs Creation Act," would permit a family home business to exist in a residential zone as an accessory use and not require a use variance pursuant to N.J.S.A. 40:55D-70; and

WHEREAS, this bill creates a loophole that allows certain home-based businesses, currently illegal under a municipality's zoning laws, to become legal and protected without municipal approvals; and

WHEREAS, New Jersey's Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1, et seq., gives municipalities the power to zone, and establishes the governmental and legal structure for municipal planning through a Municipal Planning Board and/or a Municipal Zoning Board, a public notice hearing procedure, an application process, and different types of variances for consideration; and

WHEREAS, municipalities give thoughtful consideration to planning and zoning to ensure mobility, safety, accessibility, order, and public good for the land in the community; and

WHEREAS, A-2623 would override any inconsistent local ordinance but then permits a municipality to adopt a later ordinance that could be the same as the original local ordinance that was overridden; and

WHEREAS, if a municipality presently prohibits, by ordinance, certain home occupations and such use is permitted by the legislation, upon readoption of the same ordinance, such use would be protected as a preexisting nonconforming use; and

WHEREAS, municipalities with no specific provision regarding home-based businesses or occupations, there is typically a provision in their ordinances which provides that no uses are permitted unless they are specifically permitted. In these cases, A-2623 would work to permit all home-based businesses or occupations, allowing the municipality to adopt a subsequent ordinance to restrict or prohibit those uses; and

WHEREAS, like the situation above, businesses currently illegal under the existing zoning law but legal according to A-2623 would benefit from preexisting nonconforming use status in the interim. In this situation, a home-based business currently illegal under a municipality's zoning law would, as a result of the loophole created by this bill, become legal, and no subsequent ordinance could change that; and

WHEREAS, Section 4 of A-2623 imposes upon residential use restrictions on the number of invitees or guests that apply to home-based businesses or occupations. The effect of such a

provision would be to restrict social gatherings; Scout meetings; birthday parties; and all sorts of events which presently occur in residential homes if the municipality attempted to limit the number of business invitees or guests which could frequent the business in the residential zone. These normal residential activities should not be bound by the same regulations as business interests. We recommend delaying the implementation date so municipalities can enact ordinances for infrequent gatherings; and

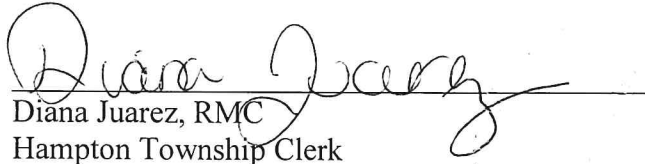
WHEREAS, A-2623 was favorably reported out of the Assembly State and Local Government Committee and the Assembly in June 2024 and would undermine home rule in municipalities across New Jersey; and

NOW, THEREFORE BE IT RESOLVED, that the governing body of the Township of Hampton opposes this bill being advancing in the Senate as it undermines the careful local planning and zoning municipalities engage in; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Senator Parker Space, Assemblywoman Dawn Fantasia, Assemblyman Michael Inganamort, Assembly Speaker Craig Coughlin, Senate President Nicholas Scutari, Governor Phil Murphy, New Jersey State League of Municipalities, and all municipalities of Sussex County.

CERTIFICATION

I hereby certify the foregoing to be a true and correct copy of the Resolution adopted by motion of the Township Committee of the Township of Hampton, Sussex County, New Jersey, at its regular meeting held on August 27, 2024.


Diana Juarez, RMC
Hampton Township Clerk

ASSEMBLY, No. 2623

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman JAY WEBBER
District 26 (Morris and Passaic)

Co-Sponsored by:

Assemblymen DiMaio, Auth and Assemblywoman Fantasia

SYNOPSIS

“Home Business Jobs Creation Act”; classifies certain home businesses as permitted accessory uses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/24/2024)

1 **AN ACT** concerning municipal land use and supplementing chapter
2 55D of Title 40 of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the “Home-
8 Based Jobs Creation Act.”

9

10 2. The Legislature finds and declares:

11 a. Corporate restructuring and the rise of telecommunications
12 have led to an increase in the number of individuals working out of
13 their homes. According to the Small Business Administration
14 Office of Advocacy, small businesses represent 99.7% of all United
15 States employer firms and roughly 15 million small businesses
16 across the country are operated from people’s homes. Additionally,
17 home businesses make up roughly 50% of all small businesses. In
18 these economically challenging times, the need for home businesses
19 can be expected to increase;

20 b. According to the United States Department of Labor’s
21 Bureau of Labor Statistics, approximately 25% of workers worked
22 at home at least occasionally in 2017-2018, and 15% of wage and
23 salary workers had days they worked only at home during that same
24 period. Additionally, between 2005 and 2015, the number of
25 American employees working remotely at least part of the time
26 increased by 115%. The trend toward increased working from
27 home has been accelerating for years. Furthermore, due to the
28 recent SARS-CoV-2 novel coronavirus (“COVID-19”) pandemic,
29 which has resulted in an increase of office closures across the
30 country, the need for increasing support and access to home
31 businesses by the Legislature has never been more important;

32 c. Many of these home businesses are operating in violation of
33 outmoded local ordinances. Many zoning ordinances permit home
34 businesses of recognized professionals, such as doctors, lawyers,
35 and accountants, but prohibit other for-profit home businesses under
36 certain circumstances;

37 d. Most zoning ordinances enacted in the 1960s and 1970s
38 were based on good intentions and focused on the protection of
39 residential neighborhoods from the negative effects of industry; this
40 occurred at a time when more than 75% of the working public then
41 pursued businesses outside of the home;

42 e. One-third of all men and women who are downsized from
43 their jobs start their own home businesses, which they thereafter
44 work for one, two or more years, or until the economy improves.
45 With the impact that current financial downsizing and COVID-19
46 are having on New Jersey employment, it is important to provide a
47 safe-haven for the temporarily unemployed, to enable them to

1 provide for their own financial stability and to lessen the load on
2 government to provide for them;

3 f. About 25% of newly started home businesses grow to the
4 point where they will become employers and move the business out
5 of the home;

6 g. The nation's changing economic structure and technological
7 development have catalyzed the development of home businesses.
8 According to the Partnership for Work at Home, over 90% of such
9 businesses do not create the traffic, pollution, noise, or the safety
10 problems of other industries. New approaches in zoning are needed
11 to ensure that this very important segment of the economy, which
12 may lay the groundwork for the expansion of companies that later
13 grow to "Fortune 100" or "Fortune 500" levels, and which
14 generates many jobs and increased revenues to the State economy,
15 is provided the opportunity for growth. Such growth cannot occur
16 unless the Legislature ensures that home businesses that fall within
17 certain prescribed criteria are permitted as accessory uses in
18 residential zones of municipalities; and

19 h. This act is intended to establish State guidelines for
20 municipalities to follow in their treatment of home businesses, in
21 order to carefully balance the interests of home businesses with the
22 needs of the residential area in which they operate.

23

24 3. For the purposes of this act:

25 "Home business" means any activity operated for pecuniary gain
26 in, or directed from, a residential dwelling or unit by one or more
27 persons residing within that dwelling or unit.

28 Notwithstanding any municipal ordinance to the contrary, upon
29 the effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill), a home business within a residential zone
31 shall be permitted as an accessory use, not requiring a use variance
32 pursuant to section 57 of P.L.1975, c.291 (C.40:55D-70), provided
33 that:

34 a. the activity is compatible with the residential use of the
35 property and surrounding residential uses;

36 b. the volume of employees, invitees, or guests who visit the
37 home business is not in excess of what is compatible with
38 residential use in the neighborhood;

39 c. there is no outside appearance of a home business including,
40 but not limited to, parking, signs, or lights;

41 d. the volume of deliveries, or truck and other vehicular traffic,
42 or parking, is not in excess of what is normally associated with
43 residential use in the neighborhood;

44 e. the activity uses no equipment or process that creates noise,
45 vibration, glare, fumes, odors, or electrical or electronic
46 interference, including interference with radio or television
47 reception, detectable by any neighbors;

1 f. the activity does not generate any solid waste or sewage
2 discharge, in volume or type, that is not normally associated with
3 residential use in the neighborhood; and

4 g. the activity does not involve any illegal activity.

5 In the case of a dwelling unit that is part of a common interest
6 ownership community, which is a community in which at least
7 some of the property is owned in common by all of the residents,
8 the provisions of this section shall not be deemed to supersede any
9 deed restriction, covenant, agreement, master deed, by-laws, or
10 other documents that prohibit a home business within a dwelling
11 unit.

12 A municipality shall not be required to amend or modify an
13 existing ordinance pertaining to home businesses so long as no
14 portion of the ordinance is in conflict with the provisions of
15 P.L. , c. (C.) (pending before the Legislature as this bill).

16
17 4. In accordance with the purposes of this act, a municipality
18 may establish, pursuant to ordinance:

19 a. standards to apply to home businesses within residential
20 districts concerning the volume of invitees or guests;

21 b. standards for the volume of delivery or truck traffic and
22 parking that will be deemed acceptable for home businesses in
23 residential districts.

24 Any standards established for home businesses pursuant to this
25 section shall apply to all similar home businesses within the district.

26
27 5. The provisions of this act shall not be construed as limiting
28 in any manner the powers of a municipality to protect the health,
29 safety and welfare of its residents, including the investigation and
30 elimination of nuisances.

31
32 6. This act shall take effect on the first day of the sixth month
33 next following enactment.

34
35
36 STATEMENT

37
38 This bill would permit a home business to exist in a residential
39 zone as a permitted accessory use, provided that the following
40 conditions are met:

41 (1) the activity is compatible with the residential use of the
42 property and surrounding residential uses;

43 (2) the volume of invitees or guests who visit the residential
44 dwelling or unit is not in excess of what is customary for residential
45 use in the neighborhood;

46 (3) there is no outside appearance of a home business including,
47 but not limited to, parking, signs or lights;

48 (4) the volume of deliveries or truck and other vehicular traffic is

1 not in excess of what is normally associated with residential use in the
2 neighborhood;

3 (5) the activity uses no equipment or process that creates noise,
4 vibration, glare, fumes, odors, or electrical or electronic interference,
5 including interference with radio or television reception, detectable by
6 any neighbors;

7 (6) the activity does not generate any solid waste or sewage
8 discharge, in volume or type, which is not normally associated with
9 residential use in the neighborhood; and

10 (7) the activity does not involve any illegal activity.

11 The bill would not supersede provisions of the governing
12 documents of a common interest ownership community that prohibit
13 operation of a home business in a dwelling unit within the common
14 interest ownership community.

15 The bill would not require a municipality to amend an existing
16 ordinance pertaining to home businesses provided that the ordinance
17 does not contradict the provisions of the bill.

18 The bill would allow a municipality, by ordinance, to establish
19 standards for the customary volume of invitees or guests within
20 residential districts, and standards for the volume of delivery or truck
21 traffic that are acceptable within residential districts.

22 The bill would not limit the power of a municipality to protect the
23 health, safety and welfare of its residents, including the investigation
24 and elimination of nuisances.

Byram Township Planning Board Bills
October 17 2024

Harold Pellow	Date	Amount
Inv. 81234: Byram Auto: plan review	9/26/2024	\$461.00
Inv. 81216 Kyosis (Rupesh Patel): meeting attendance, review	9/26/2024	\$206.50
Inv. 81215 Shawn Steffens: meeting attendance	9/26/2024	\$142.00
Inv. 81214 Starbucks: meeting attendance	9/26/2024	\$284.00
Harold Pellow Total		\$1,093.50
Maraziti and Falcon	Date	Amount
Inv. 57981 General: communications, prepare for hearing, review affordable housing, review emails, attend meeting, review agenda, revise resolution, meetings,	10/3/2024	\$1,750.00
Inv. 57982 Highland Avenue: review application, attend meeting, prepare resolution, revise resolution	10/3/2024	\$857.50
Inv. 57984 On Time Signs: review application, attend meeting	10/3/2024	\$210.00
Inv. 57985 Baez: review letter, draft resolution	10/3/2024	\$105.00
Inv. 57986 Starbucks: review application, communications, research	10/3/2024	\$245.00
Inv. 57988 North Shore Water: review and revise resolution	10/3/2024	\$385.00
Inv. 57989 Tom Chamberlin: communications, review report	10/3/2024	\$87.50
Inv. 57990 Dominach: communications, review	10/3/2024	\$87.50
Inv. 57991 Dobrich: review noticing and application, communications, review case law	10/3/2024	\$595.00
Inv. 57992 Byram Auto: Review legal notice, report, and application; communications	10/3/2024	\$140.00
Inv. 57993 Shawn Steffens: review notes, draft resolution, revise resolution	10/3/2024	\$350.00
Maraziti Falcon Total		\$4,812.50
Grant Total		\$5,906.00

ZONING REPORT

(October 2024 for activity during September 2024)

Zoning Activity

September

ZP Approved	32 (5 post resolution)
ZP Denied	1
ZP Not Required	1
ZP Var/Site Plan Waiver Compl.	1
ZP Change of Tenant Waiver	0

Investigation of Complaints

September

Property Maint./Zoning Complaints

Complaints Received	7
Open Cases	17
Cases Cleared	3
Summonses Issued	0

Signs removed from roadside

September

33



Nick Cutrone, Zoning and Code Enforcement Officer

PB resolutions approvals include Starbucks, Krassner, Byram General Store/Valley View, Baumgardner, and Meduni. Site plan waiver for Kessler Rehab at 17 Rt. 206).