

BYRAM TOWNSHIP PLANNING BOARD AGENDA
For Thursday, October 3 2024, at 7:30 P.M.
Meeting Held at: 10 Mansfield Drive, Byram Township NJ

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **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.
4. **FLAG SALUTE**
5. **MEETING MINUTES-** September 5, 2024
6. **RESOLUTIONS**
 - Z13-2024 Shawn Steffens, 99 Lake Drive, Block 249 Lot 89.02, R5 Zone
Application for second story addition and garage addition
 - 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
 - SP6-2024 Highland Avenue Properties, Block 212 Lot 1, NC Zone
Application for proposed use of a landscape and irrigation contractor business
 - 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
7. **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
****CARRIED TO 11/07****
 - Z14-2024 Rupesh Patel (Kyosis LLC), 1 Catalina Drive, Block 337 Lot 9.14, R2 Zone
Application for new home construction
****CARRIED TO 10/17****
 - Z01-2024 Tom Chamberlin, 2 Briar Lane, Block 365.02 Lot 1, R-3 Zone
Application for driveway expansion for a second driveway
8. **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
 - 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
9. **DISCUSSION ITEM:** Basic Accessory Structures / AC Condenser Units
10. **DISCUSSION ITEM:** Hampton Township Resolution Regarding Home-Based Businesses

11. **BILLS:** Harold Pellow and Associates (19): \$5,746.63 / Maraziti and Falcon (14): \$5,889.23

12. **REPORTS FROM COMMITTEES**

Architectural Review Committee

Environmental Commission

Open Space

Township Council

13. **OPEN TO THE PUBLIC**

14. **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.

MEETING MINTUES OF THE BYRAM TOWNSHIP PLANNING BOARD: September 5 2024

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

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

Members Absent: Mr. Walsh

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

Chairman Shivas noted resolutions were moved to the next meeting.

SUBCOMMITTEE

WOSP-5-2024 Vito Lombardo, 10 Route 206, Block 42 Lot 112, VB Zone

Application to change uses in retail space and update sign

Ms. Raffay said they discussed this with the applicant and their attorney at the Subcommittee meeting, and they have chosen to withdraw their waiver of site plan application. Ms. Hubbard said they will file for an amended site plan application.

MINUTES: August 15, 2024. Mr. McElroy motioned to approve the minutes, seconded by Ms. Raffay.

Ayes: Ms. Raffay, Mayor Rubenstein, Messrs. McElroy, Smith, Chairman Shivas

Abstaining: Messrs. Proctor, Morytko, Serrilli

Absent: Messrs. Proctor, Morytko, Serrilli

None opposed. Motion carried.

NEW 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

Mayor Rubenstein motioned to carry the application to 10/03, seconded by Mr. Serrilli.

Ayes: Ms. Raffay, Mayor Rubenstein, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Chairman Shivas

Absent: Mr. Walsh

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

Mayor Rubenstein motioned to carry the application to 10/03, seconded by Mr. Serrilli.

Ayes: Ms. Raffay, Mayor Rubenstein, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Chairman Shivas

Absent: Mr. Walsh

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

Richard Valenti appeared on behalf of the applicant. Jason Dunn was sworn in as the Planner at 11 Lawrence Road in Newton, and was deemed an expert. John Eigner was sworn in as the property owner. Mr. Valenti said this is a business adjacent to the Fire company's property. They were in front of the Board in 2022 for site plan approval. Mr. Eigner needed to make changes since then to help with his business. There were a handful of changes including landscaping and buffering. This is being done in cooperation with the Fire Company, who has been added to and signed the application, and provided permission for the fence to be on their property.

Mr. Dunn reviewed the previous approval. Mr. Eigner made changes that were not part of this, including removing trees along the property line near the firehouse and other areas, removing topsoil, and putting in crushed stone. There is a 6–8-foot drop from the fire property to Northern Rain. They were aiming to stabilize the slopes and maintain some trees that were not in good health. They're proposing evergreen trees at the top of the slope, on the firehouse property. Between the trees and property line is a six-foot black chain-link fence, proposed to keep people from coming from the firehouse onto the Northern Rain property. Near the building there are two loading areas. The western-most garage door was a sunken loading area, which was filled in. The catch basin drain was brought up, and now it's a flush entrance. To the west of the building they placed a steel container on gravel, as well as a rock wall that's about 3 feet tall, to retain the slope. There is concrete block in a storage area covered with a plastic roof. The storage area was approved, but the location and size are different. The advantage of having it closer to the fire property is the visibility. It's behind a hill, so you can barely see the top of the roof, which is 16 feet tall. There was a rock outcrop; the stone used for the slope came from this. The gravel area was expanded to some lawn areas. Mr. Eigner re-seeded and re-vegetated those areas as they were before. This doesn't affect the site circulation or parking. Mayor Rubenstein confirmed the heavy, dashed line is their interpretation of the transition area. Mr. Dunn said there are wetlands there; it's not based on an LOI, rather on physical observation in the field. Ms. Raffay confirmed the riprap swale that goes through the area was added after the approval. She asked about protecting parking lot runoff for the transition area. Mr. Dunn said the condition is what it was, except for rocks in the swale. Mr. Eigner said water comes off 206 onto the property, to the corner. He kept the riprap to slow the water down so it's stabilized. Mr. Dunn said they could either get the area permitted or do a vegetated swale. Mr. Eigner said there was stone there when he bought the property, but not riprap. Chairman Shivas confirmed the pitch of the slope was not changed. He asked why the wall was installed. Mr. Dunn commented on the topography; Mr. Valenti said it screens the building from view.

Mr. Stoner asked about the buffer area. Mr. Dunn said they can remove the gravel and put back grass and topsoil. There's piping for irrigation, so workers can walk up to the area and not drive there. They'd like to leave the container there. Mr. Stoner asked if it can be raised above the ground. Mr. Eigner said it is on gravel. Mr. Dunn said this would be an application from the DEP. Mr. Stoner confirmed the white vinyl fence was not part of the last approval. The Board reviewed the fencing that is existing and proposed. The proposed fence is partially on the Fire Department's property. Mr. Dunn said this is because that's at the top of the slope. Mr. Stoner noted the existing fence should be pulled into this application. He asked about the EV spot. Mr. Eigner has an EV-ready spot with a pole with a panel on it. Mr. Stoner said the plan should show where it will be. He asked why the loading dock was filled in. Mr. Eigner doesn't have tractor trailers coming in. Ms. Hubbard reviewed the previous resolution regarding screening. She noted the Fire Department is a co-applicant. The Board discussed outdoor storage.

Mr. Valenti asked if they can't get the DEP approval, can they ask for an alternate location for the container so they don't need to come to another hearing. Mr. Gleitz suggested near the salt bin. Mr. Eigner said it's too far away for his daily use. The Board reviewed the plan changes for the relocation. Mr. Valenti said they'd like to try getting DEP approval. Mayor Rubenstein asked why they did this work without checking with the town. Mr. Eigner said a tree fell on one of his trucks. Mayor Rubenstein said there was other work done. If there are site changes, commercial properties need to speak to the town. Ms. Raffay asked about fence maintenance, since there are co-applicants involved. Mr. Gleitz said the commercial property needs the screening, so they should maintain it. Ms. Hubbard said they should get a maintenance access agreement. Mr. Gleitz noted a landscape easement. Mr. McElroy asked about timeframes for the DEP permit, so that this doesn't become inactive. Mr. Dunn said the permit could take a year to get. Mayor Rubenstein suggested obligating them to decide within a timeframe to tell them if they're going to the DEP or will move the container. The Board clarified they're talking about all work in

the transition area. Mr. Proctor asked if the storage restrictions comply. Mayor Rubenstein said it's a state issue, so the applicant should make sure they comply.

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

Mr. Stoner said he wants updated plans to memorialized what's on site. He asked for them to be submitted within 60 days. He added it should be 60 days for the plans and notification. Ms. Raffay motioned to approve the application with the discussed conditions, seconded by Mr. Proctor.

Ayes: Ms. Raffay, Mayor Rubenstein, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Chairman Shivas

Absent: Mr. Walsh

Motion carried. Mr. Valenti asked if the fence can be put up before notifying the town about the DEP permit. Ms. Hubbard said anything done is at their own risk. They should note they will waive receipt of the resolution. Mr. Stoner recommended they submit a written description for an easement. Ms. Hubbard noted they can do it as a site plan attachment.

DISCUSSION ITEM: Affordable Housing Information

Mr. Gleitz reviewed his memo, previously reviewed with the Council. COAH no longer exists, and this is a new program run through the DCA. They will publish new calculations, and then the towns need to accept them or propose their own numbers. There are allocations for each municipality that are based on anticipated growth and need in the next 10 years. They are meant to get numbers by December; by the end of January, they need to adopt an ordinance about the numbers. There are appeal and challenge periods, and a housing element needs to be adopted by June 30th. They've updated information about senior housing and bonus credits, and they recognize Highlands in this process. Highlands needs to send their list to the DCA of participating towns. The intent is to use the planning and preservation areas in their allocations. They will also consider if the numbers are static. Mr. Gleitz anticipates having low allocations, and is hoping they'll get pre-adjusted numbers that consider the Highlands. Ms. Raffay confirmed this is just to have a plan in place, not to start immediately developing. Mr. Gleitz said the intent is to provide adequate opportunity for the provision of our regional share of affordable housing. This has been done through retention of sewer allocations and compatible zoning. The Village Center helps with this. Chairman Shivas noted they're early in the process.

DISCUSSION ITEM: Revised Application and Checklist

Ms. Phillips said they're looking to make it easier for applicants to read through the variance packet, to better understand what is needed, how the presentation works, what kinds of permits are needed, and how to go through completeness and conditions. This is also to make sure the Board has more complete applications and enough information during the meeting. Ms. Hubbard noted there are two separate applications, so this is a way for everything to be together, and provide a residential checklist. They have received drawings that were not to scale, and have struggled through a few meetings, so this helps Mr. Stoner by providing more of a reference. Ms. Phillips said there are guides in the packet for things like completing the noticing, which has been one of the larger issues. There is also information in the packet on how to continue with the process after the Board. This may be a little more work at the beginning, but they're anticipating that it'll make things easier once people are at the meeting, to make the application more comprehensive. Ms. Phillips noted they're looking for the Board's thoughts, and once it's finalized, the next step would be sending it to the Council. Ms. Hubbard noted the Council handles the checklist and updated fees. She said the fees are extremely low from what she's seen-- \$250 is the lowest she's seen compared to Byram. Residential applications are also sometimes charged by the variance. If the escrow is too low, you run into the problem of needing to get it replenished.

Ms. Phillips said they are considering what kind of survey to ask for, because there are some people who have an older survey but nothing on their property has changed. There becomes the question of if the survey is accurate, and if it needs to be updated ahead of a Board meeting. They should also consider the type of application, to see if a new survey is as important for something like a fence as compared to a new addition. Mr. Stoner thinks they need a residential site plan checklist. He suggested having Mr. Gleitz and himself review this and prepare something for the checklist. He noted the Board has struggled with some applications, mainly when the survey is not accurate. Chairman Shivas said they can't ask for a "current" survey because sometimes nothing changes on the survey. Ms. Hubbard suggested asking for an "accurate" survey. Mr. Gleitz noted if there's a survey from when they bought the property, he sometimes accepts that and get a signed letter from the engineer that says they've been to the property and there are no material changes that would affect the findings. He suggested if the survey is more than five years old, they have something signed that says the survey is accurate to the conditions on the property today. Ms. Hubbard said when a property is sold an affidavit of no change is submitted. Ms. Phillips noted another question about surveys is when to ask for a topographic survey. It comes up less frequently, but because those are a lot more expensive, it'd be good to know if they're requiring applicants to get them ahead of the meeting as opposed to coming to the meeting and finding out they need to get one. Mr. Stoner noted if it's a new building they need a topographic survey. He suggested having it on the checklist and then they can ask for a waiver. He noted they also need to determine when hand-drawn markups are acceptable. Ms. Phillips noted the drafted checklist is a pre-check before they're allowed to come to a hearing. Right now there's not a lot of items on the list, so it's easier for people to come in with sketches or things that are not to scale, and there's not as much of a mechanism to tell them they have to fix these items before they present. This revised checklist adds items that would be helpful to ask for and helps back up the request for additional information.

Ms. Phillips noted another consideration is directing people to get County Health approval before coming to the Board. Chairman Shivas said they can't require them to do that—they've looked into this before. He noted the other checklist item that can't be required is a letter from Lake Mohawk. They can come to the Board first for approval. The applicant should be told that they will need additional approvals. Ms. Phillips noted this was considered because sometimes people come to the Board and then find they need County approval, and the County may not agree with the same things as the Board, which triggers them to come back and re-present to the Board. Ms. Hubbard noted getting those approvals first is an added expense and a delay in the Board hearing, and if they don't get approval here then they wouldn't go to the County. Mr. Smith suggested having a separate section that says that after Board approval, additional approvals may be required, and list the examples. Mr. McElroy said people may not read the whole packet; they'll read the parts that are most pertinent. Mr. Smith suggested adding a check box to the document that certifies they read the packet. Ms. Phillips noted in the certification to submit the application, there's wording like that, but people may not necessarily read everything. Mr. McElroy said figuring out what goes into the applicant is the applicant's responsibility. Mr. Gleitz noted this is a user-friendly document with a lot of information. Mr. McElroy noted not every eventuality can be covered. Ms. Phillips noted the goal is for the information to be there if people want it, and for people to see what's involved if they're interested in going through the process.

The Board discussed the zoning table section for edits. Ms. Hubbard likes the example for certified mail. She suggested making it a rule that if they're not filled in, they are not accepted. Mayor Rubenstein noted the noticing is the applicant's responsibility. He asked if it's the Board job to verify the noticing. Ms. Hubbard said not be statute, but Boards look at it to make sure the application can

be heard. Ms. Phillips recognizes it's the applicant's responsibility, but if they're scheduled for a meeting and the noticing isn't correct, then they get moved and it fills up the schedule. Ms. Hubbard noted they can have one application, but separate checklists. Ms. Phillips suggested adding examples of the affidavit of service. Ms. Raffay asked what format this will be in. Ms. Phillips said it would be a Word document and pdf, and ideally it would also be fillable. Mayor Rubenstein asked how noticing is provided and said to reject it if not done clearly. Ms. Phillips asked if she's allowed to do that. Ms. Hubbard said they have to prove notice is sufficient. Information should be provided so that it can be reviewed.

REPORTS FROM COMMITTEES

Architectural Review Committee: Mr. Morytko said there's been no meeting. Ms. Phillips confirmed the Council hasn't discussed this.

Environmental Commission: Mr. McElroy said they discussed Board applications.

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

Township Council: Mayor Rubenstein said Mr. Gleitz reviewed his affordable housing memo. They introduced an ordinance allowing members to join the Fire Department who don't live in the municipality, but live in a neighboring municipality, as long as they're in good standing. There was also an update to the stormwater control. Mr. Stoner said there were updates to design standards. This includes higher intensity storm events, and updating the code for if there's a private development project, and they're resurfacing the parking lot, that they have to upgrade their stormwater castings for DEP regulations. They're also changing to eco-heads. Mr. Gleitz mentioned a turtle crossing issue in Monmouth County, regarding a re-opened train track. Ms. Phillips suggested blockades around the tracks, like how parks use to keep salamanders and turtles away from parking areas. Mayor Rubenstein said they are likely to receive a grant from the federal government for \$1.2 million for a new police station. It was part of community project funding. Mr. Proctor said the Council discussed the Planning Board report. They determined that when it comes to carrying applications, it's up to the Board. Mayor Rubenstein noted the length an application is carried is something the Board needs to be cognizant of. They will also be looking at basic accessory structures and cluster zoning. Mr. Gleitz said 20 years ago, before Highlands, there was a mix of properties. The idea was to leave it at the larger lot size, to prevent another 20-30 lots from subdividing. Because of Highlands, the larger lots can't be subdivided. They could make those lots R-4, changing it from the R-3. They could do an amendment, re-zone, or update the code. He can write up a scope of work to progress with these updates.

BILLS: Maraziti and Falcon (13): \$3,622.50. A motion to approve the bill was made by Mr. McElroy, seconded by Mr. Proctor. All were in favor. Motion carried.

OPEN TO THE PUBLIC

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

ADJOURNMENT

Mr. McElroy noted from Robert's Rules that a member's absence from the meeting doesn't prevent them from participating in their correction or approval. A motion to adjourn the meeting was made at 9:47 by Mr. McElroy, seconded by Mr. Proctor. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted by Caitlin Phillips



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

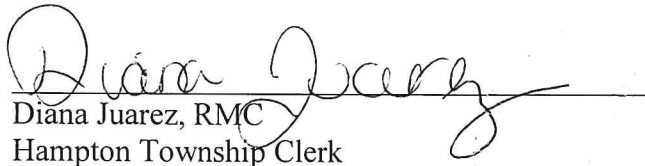
WHEREAS, A-2623 was favorably reported out of the Assembly State and Local Government Committee and the Assembly in June 2024 and would undermine home rule in municipalities across New Jersey; and

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 3 2024

Harold Pellow	Date	Amount
Inv. 80947 Tomahawk Lake: prepare for and attend meeting	2024.10.03	\$284.00
Inv. 80705 Dobrich: plan review	08.15.2024	\$58.00
Inv. 80694 Rudy and Vania: field check, review	08.15.2024	\$469.13
Inv. 80697 Dobrich: plan review	08.15.2024	\$464.00
Inv. 80698 Starbucks: meeting attendance	08.15.2024	\$142.00
Inv. 80699 Baumgarten: meeting attendance	08.15.2024	\$35.50
Inv. 80701 Niec: meeting attendance	08.15.2024	\$142.00
Inv. 80700 CAD: meeting attendance, memos	08.15.2024	\$138.00
Inv. 80703 Highland Avenue Properties: meeting attendance, plan review	08.15.2024	\$503.00
Inv. 80702 Rudy and Vania: meeting attendance, memos, plan review	08.15.2024	\$770.50
Inv. 80968 Chamberlin: meeting attendance	09.09.2024	\$142.00
Inv. North Shore: meeting attendance, plan review	09.09.2024	\$851.00
Inv. 80958 Kyosis/Patel: plan review	09.09.2024	\$615.50
Inv. 80957 Steffans: plan review	09.09.2024	\$528.50
Inv. 80956 Dominach: meeting attendance, plan review	09.09.2024	\$142.00
Inv. 80955 CAD: meeting attendance	09.09.2024	\$71.00
Inv. 80953 Scully: meeting attendance	09.09.2024	\$142.00
Inv. 80952 Cirella: meeting attendance	09.09.2024	\$71.00
Inv. 80951 Dobrich: plan review	09.09.2024	\$177.50
Harold Pellow Total		\$5,746.63
Maraziti and Falcon	Date	Amount
Inv. 57832 Byram Auto: reievew application, ownership status	09.10.2024	\$140.00
Inv. 57817 General: research case law, meeting attendance, review checklist, review sole proprietorships, communications, review agenda and meeting information	09.10.2024	\$1,391.73
Inv. 57818 Highland Avenue: review plans, and memo	09.10.2024	\$70.00
Inv. 57819 Carkhuff: review of need to re-notice	09.10.2024	\$17.50
Inv. 57820 Veolia Mnt. Ave.: draft resolution	09.10.2024	\$910.00
Inv. 57824 On Time Sign: review WOSP application and prior submissions	09.10.2024	\$140.00
Inv. 57825 Patel: review plans, reports, notice; prepare for hearing; review sufficiency of notice; attend hearing	09.10.2024	\$892.50

Inv. 57826 Starbucks: review communications, resolution compliance	09.10.2024	\$52.50
Inv. 57827 North Shore Water: communications, preparation, review plans and reports, attend hearing, draft resolution	09.10.2024	\$525.00
Inv. 57828 Chamberlin: meeting attendance, review testimony and submitted plans, review revised survey	09.10.2024	\$402.50
Inv. 57829 CAD: revise resolution	09.10.2024	\$35.00
Inv. 57830 Scully: meeting attendance, draft resolution, revise resolution	09.10.2024	\$490.00
Inv. 57831 Dominach: review legal status, testimony; draft resolution	09.10.2024	\$332.50
Inv. 57833 Steffans: prepare for hearing, review plans; meeting attendance; draft resolution	09.10.2024	\$490.00
Maraziti Falcon Total		\$ 5,889.23
Grant Total		\$11,635.86