

**Town of Hamilton**  
**Zoning Board of Appeals Meeting**  
**PUBLIC HEARING**

Tuesday, July 21, 2020 at 7:00pm  
VIA ZOOM

**Present:** Harvey Kliman, Jeff Schindler, Lydia Slater, Bill Nolan, Deputy Clerk Elisa Robertson, Code Enforcement Officer Mark Miller, Town Clerk Sue Reymers

**Absent:**

**Audience:** Mark Curtis, Paul Curtin, Esq., Regina Silvestri, Gair and Susan Meres, Lori Godshalk,

The Chairman confirms that the Board is in attendance and asks everyone to identify themselves on their individual devices.

Meeting is called to order at 7:02 pm

Chairman Hoff reviews the rules regarding Zoom meetings for the public. He confirms that this is a continuation of the hearing that was started on June 30, 2020 regarding the Curtis application for a variance.

**Paul Curtin, Esq./Mark Curtis; Area Variance, Spring Hill Street, Hamilton, Tax Map # 154.-1-7.2-- CONTINUANCE**

Since the last meeting, the Zoning Board has collected some information from various sources and has received two letters from the public. One from the Meres, and one from Ms. Silvestri. The whole Board has received these letters and has read them; they will be entered into the record.

Since the last meeting, the Town has received some information from the County, their attorney and from the applicant's attorney, all of which pertain to this application moving forward. After those are addressed the public can make comment. Then the board will discuss the five standards for making a decision.

The first piece of information is from the County Clerks Office. On July 1,2020 the Deputy Clerk sent an email to the Board informing them that she had asked the Assessor to check the file on the Curtis property to see when the subdivision of 7.2 took place. The Assessor pulled the file and told her; though the property was purchased in 1986 the subdivision was not recorded until 2014. The Deputy Clerk wanted to double check this information; she then contacted the Real Property Office where this information was confirmed. This split was probably done without any knowledge of the Town because at the time there was a two-lot subdivision waiver; a law which has since been repealed.

Second, Mr. Curtin sent a letter on July 10, 2020 that relates to this as well. In this letter Mr. Curtin goes through a similar history of this parcel and when it was transferred. Most important, which is the bottom paragraph, where he states that the Board cannot rely on this being a preexisting lot, as the dates do not seem to match up. Therefore, the previous sections cannot be relied on. However, Mr. Curtis will still need a variance if he wishes to use this as a building lot. The Board will use the five standards that have been set forth to decide whether a variance can be awarded.

Chairman Hoff discussed this matter with the Town Attorney because he had questions about the standards, self-created hardship, and if it makes a difference if the applicant owns neighboring parcels.

Her response was that any applicant is obliged not to have any self-created hardship and that there is no obligation to grant relief if the applicant can solve their own issue; and since this applicant can solve their own issue (they own the neighboring parcel) then the board is not required to grant relief. The variance must always grant the least amount of relief possible.

He invites the Board to discuss the application among themselves with public comment later.

Discussion ensues including topics of: the five standards, the time of the recording of the plot, the receipt of the county conveyance, the deed, the Zoning law as of 1975 and its amended version in 1989, and that the lot met the standards of the Zoning at the time. The Board has determined that they cannot rely on Section 203 so they must move forward as a variance using the current Zoning Law.

The Board consults a map of the neighborhood to assess the character of the community. They draw comparisons between the houses and lots in the area with the lot in question. The Board will review the five criteria, one by one after the public comment. The Chairman opens the discussion up to the public for comment.

Some community members sent letters to the Board with their thoughts and comments. Each Board member received those letters well before the time of this meeting and they will be entered into the record as part of the minutes.

Ms. Regina Silvestri makes the comment that she wishes to hear the Board's commentary on the five conditions. However, it was her understanding that this parcel was never meant to be built on.

That issue is addressed by Mr. Curtin. The deed states that there is to be no structure built closer to the road than the log cabin on the neighboring property. It had a restriction of setback and setback only. It is not stated in the deed that this plot shall remain ever green.

Board member Schindler makes the comment after inquiring about the status of the Wilcox family. The restriction states that “as long as the Wilcox are living in the cabin”; considering that they are both deceased therefore the setbacks revert to the Town Code.

Mr. Curtin refers to the plot plan the Board was given which meets today's setbacks.

Mark Curtis makes the comment that he is confused by the 2014 date because he has been paying separate taxes on that parcel for years.

Mr. Gair Meres speaks to the fact that there may be complications with subdividing another lot if this variance is approved. He is looking farther into the future as to not solve one problem now but create more issues down the road.

The Board consults the tax map of the parcel. There is discussion about road frontage of the surrounding parcels. And the possible subdivision of Parcel 7.1 because there are two residences on it; that would be a serious problem for the applicant.

It is important to mention that the Town of Hamilton is in the process of revising its Subdivision and Zoning laws so things can change regarding subdivisions and possibly be more favorable to smaller parcels. There is some speculation if the applicant were to ever want to subdivide the larger adjoining parcel. This Board cannot act on what may happen in the future; only the laws that are in effect today.

The larger plot currently has two residences on it, and they are both occupied by members of the Curtis family. There could be issues in the future in finding independent values for those residences. This may affect Mr. Curtis' opinion about what he wishes to do with these parcels in the future.

The Curtis' earlier in the year “cleaned up” a lot line between two other parcels that they own. That earlier action has nothing to do with this application and it was approved.

The Board consults an aerial view of the property using Pictometry to clarify where all the buildings are and the boundary lines. This helps the Board see the accessory buildings and if the property line can be moved without issue or not. There is discussion about the scale of the image. The Board continues to discuss the accessory structures and their purposes, possibilities of moving lot lines to solve the problem, and setbacks to try and satisfy one or more of the three variances. Mr. Curtin states that this lot is not of their own making that it was sold to the Curtis family and deeded to them through the applicant's parents. The Board is very aware and concerned about granting this variance and creating a future problem for the other parcel. The Town is considering conservation subdivision in their new Zoning Law so subdivisions may look very different in the future.

It is noted by the Board that there are similar sized lots near this parcel and across the street. This size lot is not out of character with the size of lots in the surrounding area. Chairman Hoff states that he is ready to start reviewing the standards.

The three variances in question are: road frontage, total area, and lot width. The Board will address each of the variances as they address each of the standards

The standards are as follows:

**Standard #1: Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties?** Road Frontage - the requirement is 150 feet; this lot has 107 feet.

The Board notes that there are numerous properties across the street that do not have 150 feet of road frontage. Some of the letters that were sent in address open space and conservation. However, that is not what this variance is about. This is about whether they can put a residence on this lot. There is some discussion about setbacks and the size of a potential residence. The applicant has a plot plan that shows the ability to meet the setbacks; and can accommodate a septic system. These requirements would be dealt with through the Code Enforcement Officer at the time of construction. Each Board member is asked if they agree that a variance for the road frontage would not change the character of the community. They are all in agreement that it will not change or cause detriment to the nearby properties.

**Standard #2: Can the benefit sought by the Applicant be achieved by a feasible alternative to the area variance?**

While going through these criteria the Board recognizes that it is a balancing act to do what is right for the applicant and what is going to impact the community. Board member Kliman states that he feels that it is imposing a hardship on the owners to move the lot line between the properties and if the lot to the North were owned by someone else that it would not even be a part of the discussion. The fact that this lot has public water and that there is no need to dig a well has some impact on the discussion. All Board members agree that there is no equitable feasible alternative.

**Standard #3: Is the requested variance substantial?**

Numerically it is substantial however, compared to the character of the community, it fits in. The Board is in agreement.

**Standard #4: Will the variance have an adverse impact on the physical or environmental conditions in the neighborhood?**

The only adverse impact that the board sees is that there may be a few more cars on Spring street.

**Standard #5: Is the difficulty self-created?**

This is a relevant question but may not preclude the granting of a variance. The current owners of the property did not create this lot.

The Chairman asks if any Board member has any different opinion about the variance for lot width. He recaps what they discussed regarding the lot width. Board member Jeff Schindler states that even if they move the lot line it is not going to change anything. Board member Lydia Slater states that she understands why the neighbors in the area may not want to see another house go up there since they are used to that being green space for a long period of time. Board member Kliman notes that if this lot were to go onto the open market anyone could purchase it; and keep just as it is.

The Board moves on to discuss the issue of acreage. This lot is .72 acres and one full acre is needed according to our zoning. Chairman Hoff reads the preamble to the variance standards again for the board:

**In making its determination the ZBA shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriments of the health, safety, and welfare of the neighborhood or community of such grant.**

The Board is here in order to interpret the law to pursue the development of the Community, as long as it's within the character and healthy. The Board refers to the color-coded area map of the properties in the neighborhood which shows that: 14 of the parcels have less than 150 feet of road frontage; 7 parcels are of less than one acre in area, and 9+ properties have an area of less than one half acre. The applicant's attorney contends that in the context of this neighborhood this lot is more conforming than not. The law states that what is important is the character of the community today. Chairman Hoff explains the decision-making form to the Board and that they will discuss each of the criteria for each variance sought. He continues to ask the Board if his interpretation of their discussion is correct, as he goes through each point. The Board is in unanimous agreement about standards 1, 3, 4. There is some debate among Standards 2 (applicant's ability to solve their own problem) and 5 (self-created) however, the majority rules.

The Board decides to vote on the variances collectively. Chairman Hoff gives some instruction. A member of the public wishes to speak.

Ms. Regina Silvestri comments that she strongly disagrees with the Board's assessment that the character of the neighborhood is decided by the lot size of the parcels. She refers to the map and states that there are large lots there as well; and that most of the small lots are with houses that were built 150 years ago. "In addition, that northern end of Spring Street shows an

extreme historical sense of character, which I think a new building on a tiny lot. Especially a new building, which was stated in the diagram to be 2400 square feet, which may indeed be a common and good size for a new house does not reflect the character of northern Spring Street, which has for a majority, very small, historical houses. For the Board to just be saying the character of the neighborhood, looking at a plot of land, you do not know this neighborhood. And I think that would be supported by other people from the neighborhood who are at this meeting if they wish to speak.”

“I just wanted to say that before you went ahead with your vote. Based on something that was not at all taken to consideration. I'm extremely concerned about a 2400 square foot modern house placed right in the center of the historic area of this neighborhood.”

Another community member Mr. Gair Meres speaks, “I understand the comparative dynamic that is applied here, where we're making comparisons to these smaller lots and so forth. But in a way, I have to ask myself this question, and ask this Board the question: If any of these smaller plot houses that are currently in existence came upon the Board and ask for permission to be built on these small lots; given current standards, you would say no. Correct? I mean, if these were empty lots, you would say no.”

“If these were just empty lots these small little lots and people want to build on them, you would probably say no, they're too small, is that the feeling that I'm getting that. There, there's a very small lots with houses built on them and they're not up to standards of compliance. So, if we're comparing to that. Why then are we doing it in a very contrarian way where we should be comparing to the existing and saying, we wouldn't allow it. Therefore, I just don't understand that the dynamics and the logic here; were these houses hundred or hundred and fifty year old houses. Yes. And they were built on very small lots and they probably wouldn't be allowed in that way to be built on those small lots today, but we're using that as a as the logic to say it's all right to build. The logic seems skewed, but maybe I just don't understand the ZBA's mission here and comparison.”

Board member Kliman refers to Google Street View to look at the surrounding houses and notes that there are some newer more modern houses nearby. The comment is made that if someone buys that lot and wishes to build, what style they choose to build in cannot be regulated.

Chairman Hoff reminds the Board and the audience that they are required to follow Town Law, and that Town Law does not address history or aesthetics.

“Town Law doesn't talk about aesthetics. But Town Law, doesn't ask us was the neighboring house built in 1820 or 1995; that's not what the Town Law asks us to consider. Now, I think I hear you saying, but the word character encompasses those things. But we have to weigh all these factors. And I think the way I see it, and I try not to speak for the Board too much; and they can speak for themselves. But there are a few dozen houses on the street; some are old, and some are new, some are on small lots, some are on large lots, and that's where we keep returning to the phrase the health, safety, welfare and character of the Community. There are

multiple factors. And I think you can tell by how serious we take this and have deliberative we've been we're trying to take all those factors into account.”

Ms. Silvestri makes comment again that the houses that are across the street from her and are newer are built on larger lots. The houses that are on smaller lots are over a hundred years old and would not be allowed under today’s code.

The Board quickly discusses if adding another house to this street will affect the character of the neighborhood, they feel that it does not.

**Resolution 2020-5 Motion to approve three variances for lot size, lot width, and road frontage for property owned by Mark Curtis; tax map # 154-1-7.2**

Harmon Hoff— Approve

Bill Nolan – Approve

Lydia Slater – Approve

Harvey Kliman – Approve

Jeff Schindler – Approve

Each Board member makes comment on their thought process and the reasons for their vote. Chairman Hoff thanks the Board for their thoughtful deliberation, the Community for their participation, the Applicant and his attorney for their straightforwardness, and the Clerks for preparing the materials.

The Hamilton Zoning Law has a sunset provision for the decision that was made tonight on this variance of six months. Normally, area variances run with the lot. The applicant’s attorney requests that the sunset provision be waived. The Board discusses the option of the sunset provision. There may be new zoning law coming that may impact this decision.

Mr. Curtis interjects to inform the Board that he does not have any immediate plans to do anything with this lot. For him this was a financial decision considering his age and the current pandemic, he was looking to make this process as simple as possible if something were to happen to him. There is nothing in the works at this time.

There is discussion about whether to waive or put a cap on this provision to be renewed every number of years. This is section 10.4 in the current code. It begins by stating “unless specified by the ZBA...” Chairman Hoff asks the Board if they wish to entertain any timeframe or if they want to consider any other barriers.

The Board agrees that this variance should run with the land. It does not make sense to the Board or to the Applicant that there be a 6 month Sunset Provision as the applicant will just have to come back to the Board and make the same application. It is determined that this would be a waste of everyone’s time and money. The Applicant can put the lot up for sale knowing that the appropriate variances are in place for it to be built on.

**Resolution 2020-6 Motion to waive the sunset provision Section 10.4 of the Zoning Law on lands owned by Mark Curtis; tax map # 154.-1-7.2**

Motion: Harvey Kliman

Second: Jeff Schindler

Vote: Aye - 5                Nay-0

APPROVED

The Applicant's attorney's thanks the Board for their deliberations and all the work that they have put into coming to this decision. He recognizes that there were various obstacles and issues that needed to be addressed.

There is some discussion about the Comprehensive Plan, conservation subdivision, and the need for housing in the area, among the Board and the involved parties.

Chairman Hoff thanks Mark Miller, the Codes Officer and the Clerks Sue Reymers and Elisa Robertson for their work on this application.

**Resolution 2020-7 Motion to adjourn the meeting**

Motion: Jeff Schindler

Second: Lydia Slater

Vote: Aye - 5                Nay-0

APPROVED

Respectfully submitted by:

Elisa E. Robertson

Deputy Clerk