

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

Tuesday, June 30, 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:** Bill Nolan joins at 7:30 Pm due to technical issues.

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

The Chairman confirms that the Board is in attendance and asks everyone to identify themselves on their individual devices. The Deputy Clerk is tasked with calling Mr. Nolan to get him up and running. She eventually passes this task off to the Town Clerk so that she can attend the meeting and take the minutes.

The Chairman explains the protocol for the Town of Hamilton's ZOOM meetings.

Meeting called to order at 7:14 pm.

There are four Board members in attendance, so the meeting may proceed. Town Clerk Sue Reymers puts the last meeting minutes on the screen for the audience to view.

**Resolution 2020-1: Motion to Approve the Minutes from the July 2, 2019 meeting.**

Motion: Harvey Kliman

Second: Jeff Schindler

Vote: Aye – 4 Nay – 0

ADOPTED

Clerk Reymers reviews the Rules for a Zoom Meeting regarding inappropriate behavior or incidents that would be cause for removal. Board member Kliman explains to the audience how to digitally raise their hand and use the chat box for other messages.

**Paul Curtin Esq., Area Variance, Property located on Spring Street owned by Mark Curtis, Hamilton, Tax Map # 154.-1-7.2**

The applicant is requesting area variances regarding a piece of property on Spring Street that is currently a vacant lot. The applicant is the attorney for Mr. Mark Curtis who is a resident and owns the neighboring property. They are asking for three variances, Lot size, lot width and a minimum road frontage.

According to our current Zoning Law a full acre of land is needed for a building lot in a residential area and this plot has about  $\frac{3}{4}$  of an acre. They also are required to have 150 feet of lot width and road frontage and this lot has 107 feet of each. Chairman Hoff asks the applicant (Mr. Curtin) to explain the project.

Mr. Curtin introduces himself and begins to speak to the application. The audio is a bit in and out during his presentation. He thanks the Town for putting this ZOOM Public Hearing together.

He starts with describing the current ownership of the property and others nearby and that these properties were owned by Mr. Curtis' parents before him. He states that it could be well deemed to be a prior existing non-conforming lot that met the requirements of the Town Zoning Law from 1975 to 1989. He references Section 203, subsection B, as it was existing already in 1979 that code would be the code that applies. The code in 1979 calls for community water and or sewer, one half a lot area, and smaller bordering yards were permitted. It allowed for 100 feet of road frontage, 150 feet of depth, front yard setback of 30 feet, side yard setback of 20 feet each, and rear yard setback of 50 feet.

The code was updated on June 5, 1975 and further amended in 1980, 1987, 1988, and 89, and more recently in 2009. (His audio breaks) He then refers to the current Zoning Law Section 3.5 which states:

**SECTION 3.5. Use of existing nonconforming lots of record.**

*If a lot of record duly existed prior to the adoption of this Zoning Law, or any applicable amendment thereto, fails to meet applicable density, set back or lot size standards as set forth herein, the lot may be developed with any compatible use listed for the zoning district in which such nonconforming lot is located provided that such lot has sufficient width, depth, and area to undertake development that will meet the minimum yard setbacks and other dimensional requirements that were effective at the time when the lot of record was created and that all other provisions of this Zoning Law or other laws or regulations, which may be applicable, are met.*

He contends that this is a prior existing lot and that the previous code should be used regarding this application. He asks the Board to refer to the sketch plan that has been provided by surveyor Mike McCully. The sketch plan is shown that meets and exceeds all the setbacks for a house to be put on the property, especially if this is considered a pre-existing lot of record. He contends that many of the homes in the area are on small lots that do not conform to today's code regarding lot size and road frontage.

Mr. Curtin and the board refer to a color-coded map of the neighborhood. Mr. Curtin discusses the character of the neighborhood, and that he will discuss the five standards in which the

board must apply when considering a variance. Mr. Curtin notes that the ZBA is a Quasi-judicial board of relief from the absolute application of the law.

Chairman Hoff asks Attorney Curtin to clarify what their argument is...

1. They do not need a variance because of Section 3.5 of the current Zoning Law  
or
2. A variance is reasonable to grant

Mr. Curtin believes that this should fall under section 3.5 but the Codes Officer felt that there is some question therefore they made this application.

Mr. Curtin makes his arguments for the 5 criteria that the board must consider.

1. ***Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:*** The proposed project would fit in with current residential characteristics of the neighborhood and not affect other properties because it is for the same use.
2. ***Whether benefit sought by applicant can be achieved by a feasible alternative to the area variance:*** The Curtis' own the property immediately to the north; they have already made improvements on that parcel that would be negatively impacted if they were to move the property line. This is not a practical or feasible option.
3. ***Whether the requested variance is substantial:*** One could argue that it is substantial but if you look at the balance of properties in the area it is in keeping with many of the existing parcels.
4. ***Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood:*** No, the use would be consistent with what is already there.
5. ***Whether the alleged difficulty was self-created:*** No, because it was acquired by the applicant's parents as an existing lot. They just never did anything with it. The property was transferred to Mark Curtis in 2014 in its existing confirmation. The applicant did not create the lot; it was existing when his parents acquired it.

Mr. Curtin states that they are asking for a 25% variance IN THE OVERALL AREA. When you look at the other lots; this lot is consistent with what is already developed in the area. He submits that this is a compelling argument, for the Board and for the benefit of his clients and he asks the Board to consider the relief that they are requesting.

Chairman Hoff asks the other Board members if they have questions.

The following topics are covered extensively: the setbacks when this parcel came to be; when this property was actually subdivided (not acquired but subdivided); and if it was subdivided at a different time. Discussion continues about the property that was divided in the deed; when it was sold to the Curtis'; in what year; and what codes will apply to that property.

Chairman Hoff asserts that it is very important to the board to know when that property was subdivided and asks for some documentation of that.

Chairman Hoff states that he Board really has two issues before it. The first is that there may be no need at all for a variance because of section 3.5 of the current code. Secondly, that if the current code does apply and variance is needed does it meet the 5 standards for a variance?

Chairman Hoff asks the members of the Board if they are familiar and comfortable with their understanding of the five criteria. Considering the applicant already read them aloud he will not repeat them.

The Board determines that this property is not out of character for the neighborhood and does not impact the health, safety, and welfare of the community.

The Chairman opens the hearing up for the public at this time.

**Resolution 2020-2: Motion to open the Public Hearing regarding the Curtis property.**

Motion: Harvey Kliman

Second: Lydia Slater

Vote: Aye – 5 Nay – 0

ADOPTED

Mark Curtis speaks about how the property was acquired in the 1980's. Lori Godshalk comments that her parents were the ones who sold the property to the Curtis family; she has a copy of the deed and confirms that it was acquired in 1986. She believes that is when it was divided out. Clerk Reymers states that can be confirmed by the Assessor.

Chairman Hoff recognized Suzie and Gair Meres. Mr. Meres addresses the issue of water and sewer. He knows that there is no sewer available on Spring Street because of pumping issues. Water is certainly up there but not sewer; how does that factor in?

Chairman Hoff mentions that the dimension table (current code) does not mention water and sewer in a residential zone. However, Board member Kliman states that water is supplied by the village, but that sewer would be addressed by the county health department if building were to take place. Mr. Meres asks if there is a history of sewer problems in that area. Board member Kliman makes mention of another resident who lives in that area and may be able to address that.

Regina Silvestri makes the comment that the meeting has been difficult for her to follow due to connection problems. She continues to state that everyone on her block seems to have already established waste systems. Many of the houses on these smaller than acceptable lots have been here for more than 100 years. However, other properties that have not been developed yet have been having PERC problems.

Chairman Hoff states that if this property were to be built on it would have to go through the proper testing and meet all requirements required by the Codes Enforcement Officer.

Ms. Silvestri has a question regarding the map that she was given from the Clerk's office. She would like to know which of the other properties on the map are also owned by Mr. Curtis. There is some confusion about which map to use.

Board member Kliman puts up a copy of his tax map for all to see; and the different parcels are discussed as to who the owners are. Ms. Silvestri wishes to clarify that the only way Mr. Curtis could fix the issue would be to take from his other property to the North, however, it would be impinging on other improvements that have already been made.

Chairman Hoff states the Board has already considered this option, but it would cause a problem on the other property in which it would then need a variance; for one of the dwellings. Our current zoning only allows for one dwelling per lot. Ms. Silvestri then wonders what the impingement on the improvements is about.

Board member Kliman explains that the applicant's argument is that it does not matter who owns the surrounding properties, that it is irrelevant.

Chairman Hoff explains to the audience that they will frequently talk to an applicant about other solutions to these types of problems before the public hearings to see if they can come up with alternate solutions.

Mr. Gair Meres comments that if we are going to be comparing properties that it would be more logical to compare this property to another that does not have a dwelling on it. He asks if there is a distinction between a lot with an existing dwelling on it and a building lot, and if it is relevant.

Chairman Hoff clarifies that is the precise reason for this hearing to see if it will change or adversely impact the character of the community. He asks if there are any more questions or comments.

Board member Kliman has a question about whether they should rule on it as basically grandfathered, because they don't really have that information yet; or they could just rule based on the fact that it's non-conforming and it can meet the setback requirements.

Chairman Hoff agrees and asks, what is the pleasure of the board?

The Board discusses the virtues of each point and whether or not this variance would be considered substantial or not regarding either the current Zoning or the Zoning in effect in 1986.

It is determined that the date of the subdivision is actually very important as to whether or not to use 3.5 or today's law.

Board member Schindler is torn about which law is to be used.

Board member Kliman feels that a decision could be made using today's law because the size and placement of the lot are not going to change.

Board member Slater feels much like Mr. Kliman, but also, that the old law just muddles things. However, the decision they make may have implications going forward. So, she is also on the fence.

Board member Nolan states that all of the building issues would be covered by code enforcement including setbacks and septic rather than this board. CEO Miller agrees.

Chairman Hoff reminds everyone that the Board only has a drawing and that they can set certain parameters, but that when the owner wishes to build that they may have to make modifications, not to be outside the parameters of this Board's ruling. If in the future, they wish to go beyond the limits of this variance they will have to return to gain another one. For example: they are not asking for a side yard variance, if in future building they wish to use part of land within the side setbacks; they will have to apply for another variance.

There is some discussion about a similar property in Poolville that was granted a variance so that the owner could sell it as a building lot.

Board member Schindler reiterates that whatever parameters are put in place for the granting of this variance that it will still be the Code Enforcement Officer's job to see that they and all other county and state requirements are met.

Board member Kliman makes the comment that the history does not bother him so much because without it they would still be in the same position. However, if the argument is Section 3.5 then it must be researched more.

Chairman Hoff asks if the applicant is desperate for a decision on this tonight.

He replies that he is not.

Mr. Kliman suggests that this meeting be continued for a later date to research the history.

This would also create a precedent for the procedure if cases such as this one come up again in the future.

The Board decides that more information is needed about this property before they can continue.

The applicant has stated that there are no immediate plans for that parcel.

Chairman Hoff also brings to the forefront of the discussion that in our Zoning Law there is a Sunset Provision (Section 10.4) for variances such as these. Which means that the applicant has a limit amount of time to apply for a building permit after a variance is issued. This section can be modified if the Zoning Board of Appeals wishes to do so. Attorney Curtin would like that to be modified because his client has no immediate plans to build on this lot, this is all to make it marketable in the future. Mr. Curtin will help the board by providing as much information as he has access to.

There will be follow up on the part of the applicant's attorney, by the Clerks, and members of the Zoning Board of Appeals. There will be research into the date that this property was filed, obtaining copies of the old code, and sunset provisions. This application has a number of directions in which it can go at this point so more time is needed for the research.

The Board looks to the calendar for possible dates.

**Resolution 2020-3: Motion to continue the public hearing regarding the Curtis property until Tuesday, July 21, 2020 at 7:00 pm.**

Motion: Jeff Schindler

Second: Lydia Slater

Vote: Aye – 5 Nay – 0

ADOPTED

Chairman Hoff asks that the Board come a few minutes early to make sure the technology is working properly. The idea of meeting in person is brought up; but turned down. The meeting is closed and everyone signs off at 8:43pm.

Respectfully submitted by:  
Elisa E. Robertson  
Deputy Clerk