Township of Hillsborough – BOARD OF ADJUSTMENT
APPROVED - Meeting Minutes

September 6, 2023 – 7:00 pm

Chairman Herbert called the September 6, 2023, Board of Adjustment meeting to order and led the flag salute.

NOTICE OF MEETING

Chairman Herbert announced the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law"). Notice of the 2023 Annual Meeting Schedule and additional meeting dates have been provided to the officially designated newspapers, the Township Clerk, posted on the Township's website and available at the Hillsborough Township Municipal Complex.

Application documents have been made available on the Township's website https://hillsboroughnj.civicclerk.com/ .
Complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

ROLL CALL

Frank Herbert, *Chairman* -	Present	Jim Wohlmacher, *Vice Chairman* -	Present
John Stamler -	Present	Frank Valcheck -	Present
Helen Haines -	*Absent*	Tom Ramsey *(Alt#1)*-	Absent
Jarrett Dewelde -	Present	VACANT *(Alt#2)* -	
Catherin Payne -	Present		

Also in attendance: Marcella McLaughlin, *Zoning Officer/Board Secretary*; Mark Anderson Esq., *Board Attorney (Woolson Anderson Peach, P.C.)*; Mark Mayhew, PE, CME, *Board Engineer (Pennoni Associates)*; Christina Restuccia, CCR, *Covering Board Court Reporter.*

CONSIDERATION OF MEETING MINUTES

- **June 21, 2023** - special meeting for Midwest Storage Developers – BA-23-01
  - Mr. Stamler motions to approve the minutes as written, seconded by Ms. Payne. All were in favor, none opposed, motion carries.

- **July 19, 2023** – regular meeting
  - Mr. Stamler motions to approve the minutes as written, seconded by Ms. Payne. All were in favor, none opposed, motion carries.

CONSIDERATION OF RESOLUTIONS

- **None**

BOARD OF ADJUSTMENT BUSINESS

"Review for action on applications that have been in "incomplete" status greater than one year, in violation of Board Bylaw requirement: Section 6:6 Notice of Incompleteness. If any application remains incomplete for more than one year from the date of the notification, the application shall be deemed to be withdrawn. Thereafter, any attempt to renew the application shall be treated as a new application.

- **Amwell Nursery and Landscape Supply, LLC - BA-20-15** – incomplete since 11/9/2020

Roll Call:

Yes - Mr. Stamler

Yes - Mr. Valcheck

Yes	- Mr. Dewelde	Yes	- Vice Chairman Wohlmacher
Yes	- Ms. Payne	Yes	- Chairman Herbert

Motion carries

- **<u>Peggy Berry – BA-21-09</u>** – Incomplete since 4/13/2021

Roll Call:

Yes	- Mr. Stamler	Yes	- Mr. Valcheck
Yes	- Mr. Dewelde	Yes	- Vice Chairman Wohlmacher
Yes	- Ms. Payne	Yes	- Chairman Herbert

Motion carries

- **Proposal to Disallow Operation of Business out of a Residence.**
  Chairman Herbert states he received a request for the Board to resubmit their proposal to the Township Committee. The proposal, originally drafted a few years ago and not accepted, is to disallow businesses operated from a residence. Since the request came in after the agenda was drafted, Chairman Herbert asks the Board members to review the proposal for discussion at the next meeting.

<u>BUSINESS FROM THE FLOOR -</u> *(Open to public comment for matters not on the agenda)*
None

<u>PUBLIC HEARING - APPLICATIONS</u>

- **<u>Alan and Judy Katz – BA-22-08</u>** – (TOD – 10/27/23) Block 175,01, Lot 2 – 821 Atkinson Circle, Hillsborough Township. Applicant seeking one "c" variance for relief from impervious coverage where 15% is permitted and 15.9% exists, to keep the existing 401 square foot walkway which was supposed to be removed per Zoning Permit issued for inground pool on property located in the R/Residential Zone.

  ***Participants**: Alan and Judy Katz*

  1) Alan Katz is sworn in.
  2) Mr. Katz explains he left the patio when adding the pool because he would like to keep his patio. Then he heard about a variance.
  3) **Mr. Stamler?** states he sees no problem with the impervious surface, the yard is capable, and the pool looks great. It has no great impact.
  4) Ms. McLaughlin states the lot is undersized for the Zone, that Zoning trusts applicants will remove any agreed upon items and moving forward they would like to see residents remediating the impervious on their property.
  5) Ms. Payne asks if there is anywhere else, he can remediate from.
  6) Mr. Katz explains the slope of the property and landscaping, pointing out a Willow Tree he planted with the understanding it will help soak up water.
  7) Ms. Payne offers some small suggestions other residents use.
  8) Chairman Herbert opens to public comment.
  9) There are no comments from the public.
  10) Chairman Herbert closes public comment.
  11) Mr. Stamler motions to approve, seconded by Vice Chairman Wohlmacher.

Roll Call:

Yes	- Mr. Stamler	Yes	- Mr. Valcheck
Yes	- Mr. Dewelde	Yes	- Vice Chairman Wohlmacher
Yes	- Ms. Payne	Yes	- Chairman Herbert

Motion carries

- **Japun and Meghavi Bhavsar – BA-23-04** (TOD – 10/19/23) – Block 174.01, Lot 3 – 204 Daval Road, Hillsborough Township. Applicants are seeking **two** 'c' bulk variances: the first for a rear yard setback for the existing / proposed deck, where **35.8'** is required, utilizing the rear yard reduction allowed in the zoning application process, and 30'2" is proposed; and the second variance is for the shed located in a front yard. The principal structure addition does not require a variance as the expansion is permitted per **188-66**: where a principal structure can be expanded along the same plane as the existing non-conformity as long as it does not expand on that non-conforming setback. The property is located in the R/ Residential Zone.

Participants*: Japun and Meghavi Bhavsar*

1) **Japun and Meghavi Bhavsar** are sworn in.
2) **Dan Fortunato**, their architect, is sworn in.
3) Ms. Bhavsar explains the layout of the house, that the couple has elderly parents, and they would like to build a fourth bedroom.
4) Mr. Fortunato states part of the house already violates the rear yard setback as well as the existing deck. He states they would like to replace the poorly built existing deck thus rebuilding a deck in-kind as well as adding the additional bedroom on to the house.
5) Chairman Herbert asks how many feet from the rear yard property line.
6) Ms. Payne answers 30 feet.
7) Ms. Bhavsar states currently 35 feet is allowed, and it will stay as is.
8) Mr. Stamler states there is evidence of a hardship with the two front yards. He states after the site visit, he had no issue with what they want to do.
9) Mr. Stamler states he spoke with neighbors, and no one had complaints.
10) Ms. Payne asks for clarification if they are making the deck level with the fireplace and exit on that wall and if they are keeping the deck on that side.
11) Ms. Bhavsar states no, the deck would end where the chimney area is.
12) There are no further questions from the Board or Township professionals.
13) Chairman Herbert opens to public comment.
14) There are no comments from the public.
15) Chairman Herbert closes public comment.
16) Mr. Stamler motions to approve, seconded by Ms. Payne.

Roll Call:

Yes	- Mr. Stamler	Yes	- Mr. Valcheck
Yes	- Mr. Dewelde	Yes	- Vice Chairman Wohlmacher
Yes	- Ms. Payne	Yes	- Chairman Herbert

Motion carries

Chairman Herbert calls for an Executive Session before continuing with next application.

EXECUTIVE SESSION TO DISCUSS ATTORNY-CLIENT MATTERS

- Mr. Stamler motioned to go to executive session, seconded by Ms. Payne. Motion carries.
- 7:23 pm into executive session

RETURN TO REGULAR SESSION

- 7:33 pm board returns from executive session.

PUBLIC HEARING – APPLICATIONS CONTINUED

- **Pilgrim River dba The Avalon at Hillsborough – BA-22-12** (TOD – 09/30/23) – Block 199, Lot 44.01 (1 Bayara Court), Lot 45 (381 Amwell Road), and Lot 47.01 (393 Amwell Road). Applicant seeking minor subdivision approval; preliminary and final major site plan approval; 'd use variance; 'c' bulk variances, waivers; and submission waivers, to demolish three existing dwellings on Lots 44.01, 45, and 46 to consolidate and subdivide approximately 17.5 acres from Lots 44.01, 45, 46 and 47.01 into three lots: proposed reconfigured Lot 47.01 to contain the existing assisted living building and associated parking and driveways; to construct two new 6,228 SF on-staff housing apartment buildings with associated parking and site improvement on Proposed Lot 47.02; and to contain the existing stormwater management basin on Proposed Lot 47.03, on Property in the GA Gateway 'A' Zoning District. ***Adjourned from July 19, 2023 agenda without further notice.***

  Participants: *Michael P. O'Grodnick, Esq. – Applicant's Attorney; Don Pelligrino – Applicant; Michael Ford – Applicant's Civil Engineer; Douglas Coleman – Applicant's Architect; Jay Troutman – Traffic Engineer; Frank Banish – Applicant's Planner.*

  1) **Michael O'Grodnick** introduces himself and summarizes their hearing during the May 21, 2023, Planning Board meeting stating the Board heard from their Civil Engineer, Traffic Engineer, the Architect and the Applicant.
  2) Mr. O'Grodnick explains they discussed Mr. Anderson's request for a Deed Restriction limiting the units to employees only, no family/spouses/children.
  3) Mr. O'Grodnick states he submitted a memo dated August 10, 2023, which included an attached exhibit which proposed Declaration of Deed Restriction that the residents would be sole occupied by employees of Ridgeway Avalon, or subsidiaries restricting spouses/partners/children with a 20% set-aside for COA Age-Restricted housing, consistent with 188-113-I1C should they be returned to market-rate units. He states he included similar cases that have upheld staff housing which allow the owner to restrict the residents to employees of the company.
  4) Mr. O'Grodnick states they had communications with Fair Share House which their Planner, Frank Banish, with discuss.
  5) **Frank Banish** is sworn in and is asked to briefly state his qualifications.
  6) Mr. Banish states he is a Licensed Professional Planner in the state of New Jersey and a member of the American Institute of Certified Planners, is a consulting planner to municipalities and to the superior court in the capacity of Court-Appointed Master and prepared Hillsborough's Farmland Preservation Plan and the rezoning of the mountain and valley portion of the township many years ago.
  7) Chairman Herbert accepts his qualifications.

8) Mr. Banish speaks to the shortage of healthcare workers in the United States to support his point that adding staff housing near to lifecare facilities is highly beneficial.
9) Mr. Stamler asks why put a clause that housing is strictly staff housing for now.
10) Mr. Banish explains it is the answer to the problem the Board mentioned which was what if this shortage ends.
11) Chairman Herbert points out their long-term plan does show some senior units in the future.
12) Mr. Banish states it is part of the intention that the campus will have a full continuum of care over time.
13) Mr. Banish states these units will work very well as staff housing for a very long time.
14) Mr. Banish states he would like to speak as to why he believes the Board should grant the use variance and the associated bulk variances; he believes the fact it the use is related to public health and safety is a supportive piece to consider. He asks the Board to consider how it advances several purposes of the Land Use Law sufficiently to warrant this relief.
15) Mr. Banish states the purposes and why he believes they apply,
    (1) 'Guiding appropriate use and development of all land in a manner that will promote public health, safety, morals and general welfare.'
    (2) *'Promote the establishment of appropriate population densities and concentrations contributing to the well being of persons, neighborhoods, communities and regions.'* Mr. Banish states the proposed density is appropriate and not out of character with the existing neighboring developments.
16) Mr. Stamler interjects to ask what to define part-time/full-time employee.
17) Mr. Banish states the owner is not going to subsidize housing for anyone who is not a full-time employee, the purpose is to ensure employees are onsite.
18) Mr. Stamler states the proposal included part-time.
19) There is a brief discussion about what is stated in the proposal and making note to find out from the applicant about the type of employee and if part-time what qualifies as part-time.
20) Mr. Stamler asks about the reference to the '3-night guests.
21) Mr. O'Grodnick states he added that.
22) Mr. Banish explains this is so it would not be illegal if someone where to have relative visiting.
23) Mr. Anderson asks where guests would stay in a two-bedroom unit.
24) Chairman Herbert states to strike the mention of guests.
25) Mr. Stamler asks who is going to enforce the restrictions settled on.
26) Mr. Banish states the enforcement can be put on the applicant to provide the Township with routine monitoring information that documents the fact the people living in the units are the people working for them. It may be quarterly.
27) Mr. Anderson states he does not see anything that will be imposed on the applicant to enforce. He explains how the Township will be able to go to the applicant to enforce.
28) Ms. Payne asks if the building, while dorm-like so each unit's front door locks, will have secure exterior doors as well.
29) Mr. Banish states he does not know.
30) There is a brief discussion between Board members and Mr. Anderson about enforcement.

31) Mr. Banish states the negative criteria with regard to the public good portion it would advance and not pose any detriment to the public good.
32) Mr. Banish states regarding the zone plan, in 2017 extended care facilities were added to the zone.
33) Mr. Banish states regarding the bulk variances, the criteria that would justify the grant is sufficient to justify the use of the bulk variances.
34) Mr. Stamler expresses concern about the fact this is a landlocked piece of property, and a common access would need to be established.
35) Mr. Banish states the remainder of the site will be designed in a way that the roadwork works with the existing roadways.
36) Mr. Banish states that is the end of his testimony.
37) Chairman Herbert asks if there are any other questions from the Board. There are not
38) Chairman Herbert asks if there are any questions from the public. There is not.
39) Mr. O'Grodnick states they will agree to the reporting requirements on the rental rules; he suggests submitting them bi-annually.
40) Mr. Anderson suggests there be a permanent acceptance of obligation to report on the applicant.
41) Mr. O'Grodnick states that is acceptable.
42) Mr. Anderson states the reference to subsidiaries or future companies needs to be clarified.
43) Mr. O'Grodnick states onsite there is the skilled nursing facility, assisted living facility and the independent living facility and they would agree to language that they can edit the deed restrictions to reflect it is for those companies.
44) Mr. Anderson expresses concern over the landlocked nature of this property.
45) Mr. O'Grodnick states they would agree to have Mr. Ford provide an easement area for cross-access easement, he suggests that be the parking area, then access to the roadway.
46) Mr. Anderson states he suggests having something explicitly on the record showing the separate ownership.
47) Chairman Herbert asks if it would be shown on the site plan as and easement and recorded on the deed.
48) Mr. O'Grodnick states yes, they would record it with the county clerk, Exhibit A being the easement area by way of site plan and Exhibit B being the legal description of the site area. He states it would not be cross access for the parking, but it would be mutual access for the roadways.
49) Mr. Mayhew states in their original review letter they pointed out the landlock condition of the lot and asked for easements for access and for utilities.
50) Mr. Anderson states the site plans there is degree of infrastructure designed to support these buildings but is not proposed to be on this lot which needs to be addressed.
51) Mr. O'Grodnick states they will include a storm water access easement or drainage easement. He states there is also a generator that services the whole site.
52) Ms. Payne asks if the exterior doors will have some kind of secure lock feature.
53) **Doug Coleman**, architect, acknowledges he knows he is still under oath. He explains every employee enters the current facility with a card swipe, this will be the same with the residence building and there will be a secondary swipe allowing access into an employee's assigned unit. He states there will also be a call station at each door and phone & camera in each apartment with the ability to see who is outside. He states security is very important.

54) Ms. Payne recommends quarterly reports for who is living in the apartments/issued keycards.
55) Mr. Coleman states quarterly is fine and reminds there will also be access granted to maintenance staff.
56) Ms. Payne asks for clarification from Ms. McLaughlin if residency in the apartments is what the Township is concerned with tracking.
57) Ms. McLaughlin confirms.
58) Mr. Anderson asks if these restrictions should be imposed only when this is staff housing.
59) Ms. Payne confirms.
60) Mr. Wohlmacher asks for the timetable on demolition on the current residential houses relative to the construction.
61) Mr. Coleman states they are waiting to receive the CO for the proposed buildings, so they move the applicable residents into them.
62) Chairman Herbert asks if the Township professionals have any questions. There are none.
63) Chairman Herbert asks if there are any questions from the public. There are none.
64) Mr. O'Grodnick makes his closing statement, asking the Board to approve this application, with the conditions set forth on the record, to continue to have this organization provide care for the aging population.
65) Chairman Herbert closes public and opens to Board discussion.
66) Mr. Stamler states he thinks it is a good application if they abide by everything discussed; the restrictions and recording issue still needs to be resolved.
67) Mr. Dewelde motions to approve everything discussed and agreed upon, seconded by Ms. Payne.

Roll Call:

Yes - Mr. Stamler
Yes - Mr. Dewelde
Yes - Ms. Payne
Yes - Mr. Valcheck
Yes - Vice Chairman Wohlmacher
Yes - Chairman Herbert

Motion carries

ADJOURNMENT

A motion to adjourn was made by Mr. Stamler, seconded by Ms. Payne. Motion carries unanimously.

8:37 pm meeting is adjourned.

Submitted by Robyn Bittle-Abramo
Recording Secretary