TOPICS FOR DISCUSSION:  Variance #2012-03  
C. Marlin Buxton III  
719 North 5th Street  

The following members were present: Chair Sue Smith, Bill Frankenfield, John Trangmoe, Clayton Dethlefsen, Chris Cluff and Darwin Ernst  

Staff Present: Land Hansen, Zoning Administrator and Kim Charlton, Secretary  

Also present: Marcus Grauman, C. Marlin Buxton III, Bob and Cindy Nicholls, Nancy Joy Valk, Russ Neufeld, Greg C., Pat Herhold and Mayor Jerry Steele  

Vivian Yang was absent  

Chair, Sue Smith opened the Zoning Board of Adjustment meeting at 5:39 P.M.  

PUBLIC COMMENTS IN GENERAL:  
None  

Chair Smith opened the public hearing at 5:40 P.M.  

NEW BUSINESS:  

Variance #2012-03  
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Correspondence had been received from the following neighbors and property owners:  

A. Karen Segall, 714 North 6th Street  
B. Michael Vieyra, 800 North 6th Street  
C. Shane Erickson, property owner for 510 Franklin Avenue  
D. William J. and Bertha Williamson, 716 North 5th Street
C. M. Buxton III gave an overview of his request for a variance to replace two trailers in the Fullerton Trailer Park located at 719 North 5th Street. He read aloud the letter that he wrote on July 19th, 2012 which he submitted along with this variance application.

To Whom It May Concern "Regarding my request to maintain the Fullerton Trailer Court as a trailer court to the future",

My sister and I have tried to upgrade the Fullerton Trailer Court, since the relatively recent passing of both our mother and father who owned the court before us. Since then we have removed from the court two worn out/eye sore trailers at the cost of about $2000.00, we have had new gravel brought in for the drive way, we've had two new roofs put on two of the existing trailers which cost almost $3000.00, we had the entire court with new lawn sod put in, new flower boxes put in along with a number of other additions to help try an upgrade the court's character as a very nice, clean, small, family owned trailer court near the heart of downtown Hamilton. All these things simply to try to help maintain and preserve some of the dignity in the court that my sister and I were always familiar with in our youth. The variance in question won't let us bring new trailers in to our court, we aren't getting any new revenue, it doesn't allow us to invest in our court, quite frankly it's putting us out of business from no fault of our own. Furthermore, it will force my sister and I to put the property up for sale not as an income producing entity (trailer park) with positive cash flow but as bare ground/LOTS located within the city limits of Hamilton, which according to my research there was not one vacant city lot that sold inside the city limits ALL OF LAST YEAR. Basically, it will not only force us to close the trailer park but it will cost my sister and I 10's of thousands of dollars in loss revenue from having to sell the property as simply bare ground, and not it's highest and best use as a trailer park which it's been since about 1960.

Now, I understand money alone should not be a reason for a variance but a municipality should not purposely prohibit mobile homes/parks from simply trying to grow, just because they are trailer home/parks, it should be important to always keep in mind that although there are indeed several different methods of regulating mobile home/parks, a municipality should not purposely prohibit in "entirety" mobile homes/parks from evolving. A zoning ordinance which absolutely excludes growth of a mobile home park within its boundaries might actually be unconstitutional because of the unreasonableness of the restrictions imposed. Any ordinance which expressly prohibits growth of a mobile home park as a use is very likely invalid, since it was enacted for an illegitimate end. The concept of "regulation" implies the administration of reasonable rules, not outright prohibition. An attempt to completely prohibit any new growth in a mobile home park is unreasonable, and thus very likely unconstitutional and invalid.

Some of our history, it was before WW11 that my Grandmother Ivy Fullerton, on my mother's side of the family, traded her ranch (the ranch which she was about to loose not long after my Grandfather left her, for another woman, to raise 5-kids all by herself) the ranch was up near Blodgett Canyon on the west side of Hamilton in the Bitterroot Valley. Just before foreclosure she had a chance to trade the ranch for a piece of property and a home in town on North 5th Street, which we generally know today as the Fullerton Trailer Court. The property itself has been owned by my family since before WW11 and it has been operated as a trailer court since about 1960. My uncle lived in the trailer court early on, later in life my aunt lived in a trailer on the court, and if life heads me in that direction, I hope to retire there myself, I'm 59 years old, born in Hamilton at Marcus Daily Hospital in 1953.
"I" would attend the meetings (if necessary) personally so you will all know me, that I am not some rich guy from out of state (now nothing against new people moving in but you know what I am trying to say), "I" have always cared about my birthplace of the Bitterroot Valley. What reason would work for the variance if not this one. Would a good reason be, the fact that the trailer court is well kept and not an eye sore, it is not a huge eye sore but actually quite intimate and private, it is a good place for some people in Hamilton to find a place to live at an affordable price and at the same time help bring in extra tax revenue to the City of Hamilton where there is none right now, and it has been a part (grandfathered in) of the City of Hamilton (as a trailer court) for nearly 60 years?

Finally, I want to thank you for your time in this matter, I hope you all rule in my favor and let my family live out my Grandmother's dream of some 60 years ago. Maintaining and upgrading what we always been proud of, Fullerton Trailer Court with possible new life stories beginnings.

Mr. Buxton stated that his research yielded 23% of the property owners on the 300 foot mailing list do not reside in the area. He also noted there are ten trailer courts in the vicinity of the Fullerton trailer court. Mr. Buxton stated the photos seem very close up and that he viewed the property today and it did not seem to be as bad as it appeared in the photos.

Mr. Buxton stated that his mother, who owned the court, suffered with Alzheimer's and ultimately passed away. He stated that his father tried to manage the court during his mother's illness as best he could until he passed away.

Mr. Buxton noted that a few of the letters sited no-on site management as a problem. He stated he had recently hired someone to perform on-site management for the trailer park. He addressed the fact that they previously had a few bad tenants and explained how difficult and expensive it was to get them out.

Mr. Buxton apologized to Mr. Nicholls and to the public for the previous issues and told them his plan is to clean the park up. He said he will be very strict in the future with renters and stated he tried to get the police department more active with some of the previous issues. Mr. Buxton stated his hope is that the people support him in this endeavor. He thanked all of the neighbors who attended the meeting and also thanked the board for their time.

Mr. Dethlefsen asked Mr. Buxton if his property required a business permit from the state to operate a trailer park. Mr. Buxton deferred to his sister who was not in attendance. Mr. Buxton clarified that he is only renting lots and noted that the trailers are owned by the tenants. Mr. Dethlefsen noted there are currently two vacancies in the park and asked if he is requesting the variance for the two lots only. Mr. Dethlefsen stated currently there are four trailers on the lot due the way they are parked some are overlapping onto other lots. Mr. Buxton stated yes, that is correct because two trailers were larger than the others so we had to make them fit on the property.

Mr. Dethlefsen asked if Mr. Buxton and his sister have clear title for this property. Mr. Buxton stated the estate is still in probate. Mr. Dethlefsen noted the long history of legal issues per the submitted police reports and also noted that the park attracted a number of people who did not have any care for the surrounding neighbors. Mr. Buxton stated his father had passed away just
eight months ago. Mr. Dethlefsen noted for clarification, Mr. Buxton stated the trailer park was not as bad as the pictures made it look. Mr. Dethlefsen stated he also viewed the property today and confirmed that the pictures submitted to this board for review were indeed accurate. Mr. Dethlefsen asked Mr. Buxton exactly what his plans were to get this park cleaned up. Mr. Buxton stated the tenant on the West corner of the property, with the debris and dead vehicles surrounding his trailer is on his way out.

Mr. Cluff noted that Mr. Buxton’s comments sounded as though he owned the trailers. Mr. Buxton clarified that his family owns two of the four trailers. Mr. Cluff asked with regards to the two trailers you do not own, if the owner was to sell their trailer would you have any rights. Mr. Buxton stated if either of the two trailers were sold by their owners, it would have to be removed from the court. Mr. Buxton also stated that he has no control over a sale. However, he does not have to rent the space to the new owner.

Mr. Dethlefsen asked Mr. Buxton if he had lease agreements with all of his tenants. Mr. Buxton stated yes, he does have lease agreements. Mr. Dethlefsen asked if the lease agreements allowed sublets. Mr. Buxton stated no, subletting is not allowed. Mr. Buxton also noted this has been an issue in the past. Mr. Dethlefsen asked if there was a mortgage on this property. Mr. Buxton stated there is no mortgage on this property.

Mr. Cluff stated this does not address Mr. Buxton's request. Mr. Cluff stated that the 700 block of 5th Street is zoned RS Single Family Residential. Mr. Cluff stated the ordinance is cut and dry. Mr. Cluff asked Mr. Hansen to re-read the ordinance. Mr. Hansen also noted that the city does not spot zone. The intent is to bring them into conformity for the area in which they are in. Mr. Cluff stated this board does not have the power to change the zoning on a property. However, you do have the option to make a request to the Zoning Commission and City Council to ask for a zoning change.

Mr. Cluff stated for the record there is no demonstrated hardship. Mr. Buxton explained if he is not allowed to replace the empty spaces with trailer homes that would create a serious financial hardship for his family. Mr. Cluff stated per title 17 of the Hamilton Municipal code, specifically 17.124.050, a financial hardship is not allowed. Mr. Buxton stated the fact that they cannot upgrade the property is a clear hardship in his opinion. Mr. Buxton stated he feels as though his hands are tied, and noted it's not the money, we want to be proud of the trailer park. Mr. Cluff stated you can beautify property and the neighbors would appreciate that.

Mr. Dethlefsen stated Mr. Buxton has two trailers with no control over them and two of which you only have control over the lot not the trailers. The renter is the possessor and has control of who comes on and off the property. Mr. Dethlefsen stated Mr. Buxton and his sister are the representatives of the estate and do not have clear title to this property and therefore we cannot render a decision until we have clear title. Mr. Dethlefsen explained the meaning of the duties of an executor. Mr. Buxton states that the probate process is 90% complete at this time.

Mr. Cluff stated maybe we could postpone until after probate is complete. Mr. Dethlefsen stated that we are overseen by district court and we cannot change the ordinance, we do not have the
authority. Mr. Cluff stated we cannot render a decision because there’s no clear title. However, if we were to vote today, my vote would have to be no.

Mr. Marcus Grauman is a friend of Mr. Buxton. His question is regarding the grandfather clause and he stated it is putting his friend out of business. He asked if the city attorney has reviewed this to see if the ordinance is legal.

Mr. Buxton stated there is the possibility that the trailers will look worse if he is not allowed to upgrade.

Mr. Hansen stated Mr. Buxton is requesting a variance to section 17.112.040 (C) of Chapter 17.112 Nonconforming Sites, Structures and Uses. This section particularly deals expressly with non conforming mobile homes and states “a mobile home shall not be moved on the lot unless it is being removed. Upon removal, it must be replaced with a conforming structure”. Mr. Buxton removed one of the mobile homes and is wishing to replace it with a new mobile home.

Ms. Smith stated to Mr. Buxton, until you can provide such ownership I would like to postpone this meeting.

Clayton Dethlefsen moved to postpone Variance #2012-03 until such time that the applicant can provide additional information to this board for consideration.

Seconded by Chris Cluff

Sue Smith, aye
John Trangmoe, aye
Clayton Dethlefsen, aye
Chris Cluff, aye
Bill Frankenfield, aye
Darwin Ernst, aye

Mr. Dethlefsen amended his motion and moved to postpone Variance #2012-03 until such time where the applicant can provide all documentation pertaining to this request specifically any lease agreements, stop order agreements, proof of ownership, and any other type of records that will help this board to understand the business side of this request. The applicant shall receive a letter detailing the requested information within this motion.

Seconded by Chris Cluff

Sue Smith, aye
John Trangmoe, aye
Clayton Dethlefsen, aye
Chris Cluff, aye
Bill Frankenfield, aye
Darwin Ernst, aye
Motion carried

Mayor Steele authorized the secretary to mail out a second set of notifications to the surrounding neighbors when the meeting will be continued.

Chair Smith closed the public hearing at 6:45 P.M.

John Trangmoe moved to approved the May 21, 2012 minutes, as written
Seconded by Darwin Ernst
All voted aye
Minutes approved, as written

OPEN DISCUSSION – BOARD MEMBERS AND STAFF:

Board continued discussion regarding mobile homes versus manufactured homes.
Board discussed zoning in the RS district and non conforming uses.

Meeting adjourned at 7:00 P.M.

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Kim Charlton               Sue Smith
Clerk                     Chairperson