

**BOARD OF ADJUSTMENT  
OF  
TOWNSHIP OF KINGWOOD**



Address Reply To:

Secretary  
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**March 11, 2009  
MINUTES**

M.L. Haring, chairwoman called the meeting to order at 7:30 pm.

**PRESENT:**

B. Grossman	D. Stryker
M. L.Haring	J. Laudenschach
P. Stepanovsky	D. Hewitt
B. Wilson, sec	D. Pierce, atty
T. Decker, eng	C. McBride

**ABSENT:**

None

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

The 48 hour requirements of the Sunshine Law have been met. Notice of this hearing has been advertised in the Democrat. Copies of this notice were posted in the Kingwood Township Municipal Building and filed with the Municipal Clerk.

**MINUTES:**

The January 14, 2009 minutes were approved with a motion by J. Laudenschach, seconded by D. Hewitt. On roll call to vote.

**Aye: D. Hewitt, M.L.Haring, B. Grossman, D. Stryker,  
P. Stepanovsky, J. Laudenschach**

**Abstain: C. McBride**

**Absent: None**

**RESOLUTIONS:**

Kingwood Township B.O.A.-Report and Resolution on variance Applications 2008 and Resolution. D. Stryker noted the date needs to be changed to 3/11/09.

B. Grossman moved to approve with the above noted change, seconded by P. Stepanovsky. On roll call to vote.

**Aye: D. Hewitt, M.L. Haring, B. Grossman, D. Stryker,**

**J. Laudensch, P. Stepanovsky**  
**Abstain: C. McBride**  
**Absent: None**

**Determination of Completeness:**

Hunterdon Land Trust Alliance, an appeal for a variance from the terms of Articles and Sections 132-30 of the Kingwood Township Zoning Ordinance so as to permit the existing residential units to remain on the 17 acre subdivided portion of the property. The zoning requires 7 acres per residence, these dwellings pre-exist that ordinance, are clustered leaving much of the 17 acres open, and are associated with the remaining 55 acres to be preserved and restricted from future development. The owners of the property Jeanette and William Clark, Block 33, Lot 14. The property is located on Byram Kingwood Road, in the AR-2 Zone.

M. Haring recused herself.

Lee Roth, attorney for the Clark's, was not present so the Board decided to table this application until the Clark's or their attorney appears.

Next, the Board addressed a letter in regards to the **Arc of Hunterdon County**, Block 17, Lot 16.02 asking for a waiver of fees because they are a non profit. Mark Davis, director of day programs, was present. He informed the Board that they are asking to build a greenhouse to teach job skills and give employment to twelve (12) people, in the local community, who have developmental disabilities. P. Stepanovsky feels the Board should not be the one to make that decision and that it should be up to the Township Committee. He gave two (2) examples of non-profit churches that came before the Board that fees weren't waived (Our lady of Victories Church and the Unitarian Church). B. Grossman is between a rock and a hard place. D. Stryker agrees with P. Stepanovsky and feels we (the Board) would be setting a precedent and also feels that it wouldn't be fair to put that burden on the taxpayers. J. Laudensch would have no problem with the fees being waived but does with escrow which pays the professionals. C. McBride feels we would be setting a precedent and how would it affect the budget. D. Hewitt feels it should be the townships call. M.L. Haring agrees that this should be up to the township. P. Stepanovsky moved to **deny** the Arc of **Hunterdon County** request for a waiver, seconded by B. Grossman. On roll call to vote.

**Aye: D. Hewitt, M.L. Haring, B. Grossman, D. Stryker, P. Stepanovsky**  
**C. McBride, J. Laudensch**

**Abstain: None**  
**Absent: None**

**Hunterdon Land Trust Alliance, Block 33, Lot 14-Jeanette & William Clark, owners.**

Lee Roth, attorney, informed the Board that the application has been submitted and that the Land Trust Alliance are taking a substantial part of the Clark property and putting it in preservation. The Clark's are retaining a part of the property that has the small buildings, that have been there, but because there are more existing buildings than the zoning will allow if they needed the 7 acres per building that the zoning now calls for, so they appearing before the Board for a variance to allow that density. Lee Roth asks the Board to determine this application complete and set a hearing date.

D.Pierce noted that there are a couple of issues. One being a clarification of the nature of the application. The Clark's are selling the proposed subdivided lot outright to the Land Trust-Lee Roth agreed; and is there going to be a residential dwelling opportunity or an exceptional associated with these lands-Lee Roth stated no and informed the Board that the representatives from the Land Trust are present this evening. D. Pierce noted that a lot of the ordinary issues dealing with a subdivision such as wetlands delineation and things like that, can be dispensed with. The application is to create a non- develop able lot and one that would be restricted against subdivision. The next item to address is that the applicant has requested a waiver of fees. Lee Roth stated that the Land Trust, in the contract, requires the sellers (Clark's) to pay up to \$5,000 of the cost in relation to the application, and the excess or remainder would be the burden of the Land Trust.

D.Pierce stated that the Board handles each case separately and on its own merits.

B. Grossman asked if the township is providing some of the money for this Land Trust? Kate Buttolph, from the Hunterdon Land Trust, informed the Board that the township is participating in the acquisition of the 55 acre portion of this property which will be subject to a conservation restriction, open for public passive recreation with no development or buildings on the property.

D. Stryker mentioned the two (2) letters submitted to the Board members-both conflicting with each other. She feels it's up to the township to waive fees and that it's not fair to throw it to the taxpayers especially in this economy.

D. Hewitt has the same concerns and feels it should be the townships call for waiving fees.

C. McBride repeated what Lee Roth had said that the sellers will pay up to \$5,000 at the closing and the rest would be paid by the purchaser which is in part Kingwood Township, so we would be paying ourselves: so it sounds like there is no fee involved at all after the \$5,000, unless his (Charles McBride's) logic is off!!

D. Pierce explained how he understands it, - the township has a separate budget item for Open Space purchases and it can draw from the Open Space or grant monies from the DEP so it doesn't come out of the general revenues of the township and the application fees that are charged and are established with the purpose of providing reimbursement to the township for the expected costs incurred by the township in dealing with development applications-the township runs the municipal building for hearings, it has personnel, it incurs notice expenses, that's the purpose of the fees. The MLUL does allow the township to create exemptions, from the fees, in it's ordinance; the township has not done that. Just because the township may have to contribute less, it's only contributing a portion of the purchase price (30%) and the reduction of that is not going to result in a corresponding decrease of expenditures from the general revenues of the town.

C. McBride needed to understand and feels the same principal applies as was talked about before.

J. Laudenschmidt is in agreement with B. Grossman and D. Stryker and also wonders why the Environmental Commission wrote the letter, and what concerns they may have.

D. Pierce noted that perhaps they felt it was appropriate to comment on it.

P. Stepanovsky feels his opinion is the same and feels the township is the only one that can waive the fees.

J. Laudenschmidt moved to deny waiving the fees, seconded by D. Stryker. On roll call to vote.

**Aye: D.Hewitt, D. Stryker, B. Grossman, P. Stepanovsky,  
J. Laudenschmidt, C. McBride**

**Abstain: M.L. Haring**

**Absent: None**

Lee Roth noted that some fees have been paid because his clients have advanced some money.

D. Pierce stated the next item is the application itself. Tom Decker noted that the application doesn't provide such items as wetlands delineation and such, however, the nature of the application and the lot that's being created, preserved and can't be built upon- it's in his opinion that the plans are good enough for the Board to review and because the lot that the structures are on hasn't changed. Tom Decker recommends that the Board deem the application complete.

B. Grossman asked if there's wetlands on the property- can it be used for recreation?

Tom Decker stated that it depends on what type. Active-**no**. D. Pierce noted that there are permits available for limited activities.

P. Stepanovsky asked the secretary about the fees and was informed that fees for the variance and escrow have been paid. No subdivision fees paid.

D. Pierce noted that since this is going to be preserved, underdeveloped land, the lot that's being created is in essence an agricultural subdivision, and they wouldn't have to appear before any Board in the township and the real reason they are appearing before this Board is that they're changing the lot size of a non conforming lot and that requires a use variance, so D. Pierce doesn't feel it's necessary to have an actual subdivision application and subdivision application fee.

P. Stepanovsky, so if the Board determines this is an agricultural subdivision they don't have to file a subdivision application or pay the fee.

D. Pierce stated that basically, in order to do that, the Board would have to determine that the division of the land is for agricultural purposes and over 5 acres or larger in size.

Lee Roth, attorney, noted that both pieces are larger than 5 acres and whatever agriculture is going on there now can continue.

D. Pierce stated that one can expect that one of the uses that could be made on the preserved land is grassland for the birds, a pasture crop to attract birds.

D. Pierce noted that there's enough information for the Board to make that determination.

The Board members were all polled and had no objections.

D. Hewitt moved to determine the sub division agricultural, seconded by B. Grossman. On roll call to vote.

**Aye: B. Grossman, C. McBride, J. Laudenschach, D. Hewitt,**

**P. Stepanovsky, D. Stryker**

**Abstain: M.L. Haring**

**Absent: None**

B. Grossman moved to determine this application complete, seconded by J. Laudenschach. On roll call to vote.

**Aye: B. Grossman, C. McBride, D. Hewitt, P. Stepanovsky,**

**J. Laudenschach, D. Stryker**

**Abstain: M.L. Haring**

**Absent: None**

**The Boards next meeting date will be 4-8-09 at 7:30 pm.**

**Hearing:**

**Tony Vacca, preliminary/final site plan, Block 6, Lot 24, proposed Lot 24.01.** The property is located on State Highway 12, Frenchtown, N.J. 08825

Guy DeSapio is the attorney for Tony Vacca.

D. Pierce reviewed the proof of publication and proof service and found the applicant has satisfied the notice requirements.

Tony Vacca was sworn in by the Boards' attorney, David Pierce.

Guy DeSapio informed the Board that he would like to give a little background and make a suggestion and request. There here tonight to start the hearing to obtain site plan approval for Block 6, Lot 24.01 which is tentatively approved as sub divided from Block 6, Lot 24 the adjoining property in a resolution going back to June 14, 2006. The Board approved the sub division of Lot 24 into two equal parcels contingent on Vacca satisfying some conditions-one of which is obtaining this site plan approval. There are existing uses

Lot 24, which the Board reviewed in 2006 when the sub division approval was granted and Tony Vacca proposes to move his existing business to Lot 24.01, which is an automobile dealership and auto repair facility. They received a review letter from Mr. Decker noting a number of points- 40 technical comments towards the back of the letter and 8 other comments, in the beginning of the letter, and 3 of which raise issues, which they would like to address this evening. Most the items that he raised they can address. They would like to hold off beginning the actual review and hearing of all aspects of the site plan until next month when they can review each of those 40 items, in detail, and save us all time. If that's acceptable they would like to ask for that, and if not they are prepared to start and go through everything tonight but what he would like is to get a ruling or read from the Board as to what they have to do to address 3 up front issues which are: Page #3 under Zoning Review-132-34 Highway Commercial District and Page #3 - the last paragraph -132-102C Automobile Service Stations and Page #6 -Memorializing Resolution.

Looking at the Resolution itself while it's not specific as to what was being determined, paragraph #17 mentions it and paragraph #22 mentions that the Board had concern about safety issues involved in having 2 potential service stations dispensing fuel right next to each other, and everybody agreed that fuel dispensing was going to be prohibited, and then the Board went on to grant the subdivision with some conditions, and to grant, on Page #9 of the Resolution the following D & C variances. What Guy did because he remembers having a discussion regarding the above-he went through his notes and found that under the HC ordinance, automobile dealerships were a permitted use and there was discussion at the meeting that dealerships had repair facilities. Mr. Vacca testified that he had a dealership license which is mentioned in the Resolution. The combination of all those and the fact that they're here 2 years later still thinking about this when that information was presented to the Board and he thinks how that was resolved is the Board understood and they understood that he was going to proceed on the basis that he was going to use his license to create an automobile dealership and build this building to do the auto repairs. They need to have some preliminary indication and hopefully tonight, because if there is an issue about a variance, and they hope that there isn't - they need to know that because they didn't come prepared this evening. They came prepared this evening to address site plan approval.

Tom Decker stated that he did raise those comments in his letter because obviously he doesn't have history of this project and he doesn't know what was discussed, so he looked at the application based on the Resolution and the ordinance. If there were things discussed regarding the subdivision, than some of the comments would go away.

Guy DeSapio stated that that would also resolve there second issue pertaining to it being too close to Koches Repairs or the next to it on the same lot.

P. Stepanovsky recalls having discussion regarding this.

D. Pierce stated that he is looking through his notes and recalls the Board having very specific discussion of the proposed use and it was his understanding that the Board was treating the proposed use as a service station. He has notes and comments from Board member Ron Hoeck, talks about being a service station and Eric Siano, member, concerns about if Mr. Siegel sells his business and it becomes a full fledge service station, D. Hewitt had comments if it's truly parts sales and Vacca's proposed use was a service station. There was also specific mention that there was no fuel dispensing, the distance restriction was not an issue because there would be no gasoline dispensing.

D.Pierce believes that the Board felt that the true use was a service station and even if the approval of that service station use is not set forth in the Resolution as a use variance granted at that time, D. Pierce feels it's implicit in the Boards finding and approval of the sub division that, that was the use they were approving and it did have the five (5) votes necessary to carry a use variance.

Guy DeSapio stated that it sounds like they don't need to apply for a variance for the use.

D.Pierce informed the Board that what they could do was make a motion that the use was approved as a service station.

The Board had no problem with that.

P. Stepanovsky made a motion that the Board approved the use as a service station which included auto repair, used car and trailer dealership, seconded by D. Hewitt. On roll call to vote.

**Aye: M.L. Haring, J. Laudenbach, D. Hewitt,  
P. Stepanovsky, D. Stryker  
Abstain: B. Grossman, C. McBride  
Absent: None**

Guy DeSapio noted that the last thing in Mr. Deckers' letter was on Page #6-the size of the lot under the Memorializing Resolution. Quoted from Resolution 6/14/06. Tom Decker stated mathematically can't get the dimensions that are in the Resolution of approval, so it's really a minimum dimension and Tom doesn't have any problem with it but because the original Resolution called out specific dimensions he had to flag it in the report.

D. Pierce noted that there may be an explanation for that because the original plans show a total area of 6.1886 acres.

P. Stepanovsky asked if they need a Resolution and D. Pierce stated that we shouldn't take formal action on it tonight, it would be an amendment to the prior sub division approval-the Board and the applicant both have a sense of the issue so it's not necessary for the Board to take specific action on this one issue tonight, but it would be something that could be dealt with, with the rest of the application.

D. Pierce stated that if a site plan approval is granted, it would also include an amendment to the sub division approval.

Guy DeSapio stated what he would like to do is take all the remaining items and come back next month and go through the things that are in question.

There have been letters between the agreement with the neighbor and it also would give them time to see what those issues are and work them out.

Guy asked for an extension.

D. Pierce noted that the Board would need to make a motion to adjourn until 4/8/09, at 7:30 pm subject to the proviso that if in discussion with Mr. Decker it's determined that they do require some variance from the design standards for height variance or any other variance from the conditions applicable to the proposed use they would have to follow variance application and re-notice.

P. Stepanovsky made a motion to adjourn the meeting until April 8<sup>th</sup>, 2009 at 7:30 pm, seconded by J. Laudenbach. On roll call to vote.

**Aye: M.L. Haring, C. McBride, J. Laudenbach,  
D. Hewitt, P. Stepanovsky, D. Stryker  
Abstain: B. Grossman  
Absent: None**

**COMMUNICATIONS/REPORTS:**

New Jersey Planner-December 2008/January 2009, Vol.69, No6  
Township Minutes for 12/02/08, 12/09/08, 12/30/08, 1/6/09, 1/6/09 (Re-Org), 1/15/09.  
Rutgers-Courses in "Zoning Administration & Enforcement"  
Rutgers-Courses in "Planning & Zoning Administration"  
New Jersey Planning Officials-Mandatory Training Programs.  
The 13<sup>th</sup> Annual Land Conservation Rally.  
Letter from Albert E. Cruz, atty-Re: Vacca  
Borough of Frenchtown-Resolution #2008-79

P. Stepanovsky asked Jim Burke, in the audience, if the township will be waiving the fees (Hunterdon Land Trust and the Arc of Hunterdon) and was told the township **will not be waiving fees.**

It was suggested that copies of the tapes for Vacca be made for T. Decker and Charles McBride.

The Board members asked if they could get new zoning books.

David Hewitt will be taking a sabbatical to make his journey down the Appalachian Trail and will be away anywhere from 6-8 months.

**OPEN TO PUBLIC:**

**ADJOURNMENT:**

**D. Hewitt moved to adjourn, seconded by B. Grossman. The meeting adjourned at 9:55 pm. All in favor.**



**Barbara Wilson  
Secretary  
Board of Adjustment  
Kingwood Township**