

BOARD OF ADJUSTMENT  
OF  
TOWNSHIP OF KINGWOOD



*Address Reply To:*

*Secretary  
P.O. Box 199  
Baptistown, New Jersey 08803-0199*

**April 8, 2009  
MINUTES**

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

**PRESENT:**

B. Grossman  
M. L.Haring  
B. Wilson, sec  
T. Decker, eng  
P. Stepanovsky

D. Stryker  
J. Laudenbach  
D. Pierce, atty  
C. McBride

**ABSENT:**

D. Hewitt

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:**

P.Stepanovsky moved to put off the March 11, 2009 minutes until the next meeting, seconded by B. Grossman. On roll call to vote.

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

**Abstain:** None

**Absent:** D. Hewitt, D. Stryker

**RESOLUTIONS:**

Rt 12 (Block 12, Lot 16) and Our Lady of Victories (Block 12, Lot 58) extension-Boundary Line Adjustment with Use Variance

J. Laudenbach moved to approve, seconded by C. McBride. On roll call to vote.

**Aye:** B. Grossman, J. Laudenbach

**Abstain:** C. McBride, M.L. Haring, P. Stepanovsky

**Absent:** D. Stryker

**Determination of Completeness:**

Phillip Vocke, Block 8, Lot 29-bulk variance so as to permit the construction of a garage on the back of the property. The proposed accessory detached garage is larger than the 2% maximum building coverage permitted in the VR-1 District.

Phillip Vocke informed the Board that what he is proposing to do is take down the existing garage, because it's deteriorating, and construct a new one increasing the amount of space inside to approximately 3 to 3 1/2 % and the zoning only permits 2% of the property. Presently, because the driveway is narrow, they have to back out onto Route 519. He explained to the Board that by moving the garage back he could expand the driveway making it possible to pull out onto Route 519, rather than back out onto Route 519 which is not safe. He also explained that his insurance company is requesting that he makes improvements to the existing garage, which Mr. Vocke feels is already deteriorating and would be a waste of money. He also mentioned that in Mr. Decker's letter he mentioned that he needed copies of the real survey and some height elevations. (submitted)

Tom Decker noted that the Board right now is reviewing for completeness and not technical merits.

B. Grossman asked Tom Decker what the side line setback is and was told that it's 10'.

M.L. Haring asked what the size is of the existing garage and was informed it's 16' x 16' (256 sq ft.)

P. Stepanovsky questioned that there is no Key Map and was informed by Tom Decker that it's not required with a variance application but it is required for a site plan or subdivision application.

B. Grossman moved that the application be deemed complete, seconded by J. Laudenschach. On roll call to vote.

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

**Abstain: None**

**Absent: D. Hewitt**

**The hearing be scheduled for 5/13/2009 @ 7:30 pm.**

**Arc of Hunterdon, Block 17, Lot 16.02** - use variance/bulk variance so as to permit the construction of an accessory greenhouse with an attached shed on the property. The greenhouse is not a permitted accessory use in the PO/R Zone.

A letter, dated April 7, 2009, was received from the law firm of Norris, McLaughlin & Marcus, P.A. Requesting that their Determination of Completeness hearing be carried over until next month.

**Hearings:**

**Tony Vacca, Block 6, Lot 24, proposed Lot 24.01-preliminary/final site plan.**

B. Grossman recused himself.

Shana Taylor, attorney, representing the applicant. Shana informed the Board that their engineer (Rick Nesser from Stires & Assoc) is here tonight and will be able to answer a lot of questions that was noted in Mr. Deckers letter dated 4/7/09.

**Page 2-#132-102C Automobile Service Stations , #2** - Mr. Vacca stated that he doesn't do any body work and has no intention of doing body work. The insurance claims he gets are purely mechanical claims.

#3 – Landcaping - Robert Nesser, engineer, sworn in, noted that a landscape plan was included in the Boards packet addressing items noted by Mr. Decker.

**Exhibit A-1- Landscape Plan.**

#4- **Display and Parking of Motor Vehicles** - Vacca would like the vehicles visible from the street ,so he would park them at the edge of the parking lot, approximately 2-3 vehicles-it's the Boards discretion.

#5- **Height of Building** - Applicant is requesting a height of 24.86 feet ( 20 feet allowed by zoning) reason being he needs the additional height for the lifts for the vehicles. The zoning allows 40 feet, for other uses, and Mr. Decker agrees with Vacca's assessment for the need of the additional height.

Page 3-#7- **Buffer** - It's approximately 500 feet before you get to residences in the back and there is some scattered evergreens existing in the back, so they felt it wasn't necessary to provide a buffer and there is 10 feet of elevation difference.

**Parking Spaces for Lot 24** - Loading area in back is not frequently used and the parking in the back is basically for Mark Siegel's tenant . They usually don't get any deliveries when the tenants are there and this is an existing condition.

#132-53 I **Minimum Off Street Loading** - same issue as above.

**Technical Review: Exhibit A-1-Kingwood Auto Repair Proposed Building Repair Shop**

#1. Board engineer suggests flipping the building but Vacca noted reasons not to, such as: icing, noise, sunlight, heat and for aesthetics.

#132-54 (A) **Buffers** – Same thing 500 foot buffer-the garage is away from the residences for the noise and aesthetics of it. If the building was reversed then a buffer would be appropriate.

#15 – **Sign**- Not proposing any lighting on the sign and the mounting will be shown.

#14 – Working with NJDOT

#20 – They feel the downspouts are adequate, with the small size of the building. They will comply.

#22 – Will provide additional test in the basin area.

#25 – Has been resubmitted..

#27 – Will provide that.

#29 - Existing-owner will comply.

#30 – Have letter-submitted to Board.

#31 – Applicant has chemicals to pick up spills. (with larger spills would have to contact authorities to clean it up)

#32 – Mark Siegel, sworn in, has certified letter from DEP...needs to provide copy for the Board.

#33 – Will provide that upon approval of stormwater management design.

#35 - . Didn't feel that it's necessary since it's a shallow basin. (2-1/2 feet)

#39 - They will include that on the plan.

### **Storm water Management Report**

Items noted are minor and they can certainly accommodate them.

### **Administrative**

Would be subject to a condition.

### **Questions from the Board.**

P. Stepanovsky asked about how many trailers he (Tony Vacca) had by his old location ,and was told he had none, that they belonged to his father in law next door. He intends to have 1 trailer to show, with a sign indicating the different sizes that he can get or stock.

P. Stepanovsky asked how many used cars did he (Tony Vacca) have at the old location and was told 2, on the house side. He doesn't intend to have more than 2 or 3 vehicles at his new location.

P. Stepanovsky asked why they have blacktop around the 2 sides of the building and was told by the engineer (Rick Nesser) that it was for circulation around the building. P. Stepanovsky noted that it looks like all the blacktop is within the setbacks. T. Decker noted that the set back pertains to buildings and structures.

P. Stepanovsky mentioned that Vacca stated that he keeps his doors open-what about the noise. Vacca said that any noise would go across the highway. P. Stepanovsky asked what's across the street and Vacca informed him that it's an auto body shop. P. Stepanovsky asked if there was residential there, Vacca was not sure but comments were that there is a residence right next door to the auto body. Vacca noted that if the residence isn't bothered with the auto body, then they wouldn't be upset with his business since they're closer than he is. (Lot 9) (Sheet 7)

P. Stepanovsky asked why they wouldn't move the building and Vacca stated that they tried and from an engineering standpoint it wouldn't be wise because of the septic and basins.

T. Decker noted that for the 2 or 3 vehicles and trailer it should be shown on the map area of display.

P. Stepanovsky asked Mark Siegel about the parking lot in the back - P. Stepanovsky noted that he thought when they came before the Board for the subdivision that Mark said there would be no deliveries. Mark stated he didn't say that, he said there would be deliveries occasionally. When P. Stepanovsky asked about the 2 car garage and trailer Mark informed him that the trailer is going (Tony Vacca's) and that he would like to keep the garage for storage. Peter also mentioned that the driveway was supposed to be cut off to the west and it hasn't been done. Mark Siegel stated that it will be done after all the approvals are granted.

M.L.Haring asked if that driveway will be used for the apartment and was told yes by Mark Siegel.. (it's in the easement language) and that's why they're putting the berm across. The deliveries is also in the easement language with a time frame noted.

D. Stryker stated that basically the center driveway will be a shared driveway. Mark Siegel agreed.

No other questions from Board members C. McBride, J. Laudenschach and D. Stryker.

P. Stepanovsky asked Tom Decker if the # of parking spots are adequate and was told that on the proposed they're adequate (21), and on the existing they're proposing to re-stripe the parking lot with 9 parking spaces being banked should the need arise. (area would be reserved)

M.L.Haring asked what is the required # of parking spaces and was told by T. Decker - 22 (existing lot). They will have 13 and would like to bank 9, as mentioned above.

P. Stepanovsky asked about the lighting and was informed by T. Decker that the plan was reviewed and it complies with the ordinance.

T. Decker mentioned that the Board may want to discuss the landscaping buffer in the rear.

Questions from property owners within 200 feet.

Robert Scanlon questioned his driveway that's being used now by Marks tenants and who would police it. There has been 5 cars parked in the rear of the property at times and only 3 parking spaces.

Mark stated that he rents the apartment to 2 brothers and that he supposes that once in awhile there girlfriends may stay over. The tenants have been informed of this.

P. Stepanovsky asked Robert Scanlon where he lives and was told approximately 1000 feet off the highway. Peter also asked about a buffer and after Robert Scanlon viewed the drawings he had no problem with what's there now.

Charles McBride asked D. Pierce, attorney, to explain the right of way.

No questions or testimony from the audience.

Hearing is closed.

D. Stryker has no problem with most of it, but noted that there does seem to be a problem with the tenants parking. She suggested maybe a barrier clearly indicating 3 spaces. Mark will tell his tenants that if they have company they are to park in the front.

Charles McBride had no comments.

J. Laudenbach had no problem, other than the 2 car garage -getting a permit and/or removing it.

P. Stepanovsky noted the following:

1. A buffer in the back to block the view of cars.
2. Drainage will be underground.
3. Siegel's 2 car garage has to be removed or obtain permission to keep it there. He most likely will need to go to the Planning Board. The trailer needs to be removed.

M.L. Haring noted that she really didn't have anything more to add other than a buffer on the north side to break-up the view of cars.

J. Laudenbach made a motion to approve, seconded by D. Stryker with the following conditions:

1. Revised plat to show diversion of roof drainage to the basin.
2. Soil testing for storm water basin.
3. Revise basin detail as per Tom Deckers letter.
4. Confirm re-submission of the plans to the County Health Board.
5. Remove trailer from Lot 24.
6. Enclosure of the dumpster on Lot 24 and revision of those plans to show that enclosure.
7. Submission of letter from the Fire Co.
8. Copy of certification for the underground storage tank on Lot 24.
9. Approval by Tom of the basin maintenance manual.
10. Revision of the plans to show the location of used cars and trailers for sale on putting depressed curbing or other access as approved by Board engineer.
11. Limitation of no more than 3 used cars. And 1 landscape trailer outside for sale.
12. Revision of the plan to show striping detail.
13. Revision of the plan to show striping detail for the loading area on Lot 24.

14. Compliance with the storm water management issued raised on page 6 of Tom Decker's letter.
15. Removal of the 2 car garage on Lot 24 or receipt of approval to maintain that garage within 6 mo.
16. Subject to NJDOT, Hunterdon County Board of Health, Kingwood Township Board of Health approvals.
17. Revision of the plans to show mounting detail.
18. Right of way agreement with Mr. Scanlon.
19. Review and approval by the Board professionals of an access agreement.
20. Installation of no parking signs subject to Boards engineer approval.
21. Lot 24 number of parking spaces in the rear are limited to 3 unless he receives approval for the banked spaces.
22. 190 day Extension of Time to record the deeds.

On roll call to vote:

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

**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. The application is for a minor subdivision with a use variance.

M.L. Haring recused herself.

David Pierce reviewed the Proof of Notice and publication submitted are found them to be adequate and have satisfied the notice requirements. The Board may open the hearing.

Lee Roth informed the Board that he has a map prepared by Heritage Consulting Engineers, titled Minor Subdivision for Hunterdon Land Trust Alliance, Block 33, Lot 14, dated 1/19/09. D. Pierce noted that it doesn't need to be marked as an exhibit since it's part of the application. Kate Buttolph with the Hunterdon Land Trust Alliance, and Mrs. Clark, owner, are both present this evening.

Lee Roth noted that from the application the Clarks have 72 acres of land, have a great old house which is vacant now and four (4) other housing units that they rent for less than \$1,000 a month and they plan to leave those rental units in place; if they hadn't done that it would be sold to a builder/developer who would most likely put ten (10) mac mansions on the property; this application will prevent that possibility. The proposal is that 55 acres of the property be conveyed to and preserved by the Hunterdon Land Trust Alliance and they intend to dedicate that land and restrict it to passive recreational uses. The 17 acres would be retained and would contain the housing units that exist. This application is not for anything other than to draw a line and put 55 acres in to preservation. No application to build additional units or build anything different or additional or anything outside of what the zoning requires. Technically, because the 17 acres, which a few years ago the zoning was 3 acres per unit - under those conditions they wouldn't be before this Board, they would be in front of the Planning Board just drawing a line and dividing the land away that's going to be preserved but because the zoning now talks about 7 acres they are before this Board, because the 17 acres are used in a more dense fashion than the zoning presently allows. They are asking for a variance for special reasons to increase the permitted density and that would require, with the number of members on the Board, that they (Board members) all agree since one member has disqualified herself from this application. The burden is to tell the Board and help them understand that what they are seeking to do is promote the general welfare in the community and presumably that has been already determined by the governing body of Kingwood because they are participating with the Land Trust Alliance in preserving the 55 acres. What they are required to do -this is not like a use variance, it's not

like there in a residential zone and want to build an office building or gas station, this is a density variance and the burden on the applicants is substantially less. What they have to help the Board see is that by granting this variance we will help and serve the intent and purpose of the state statute, that is to promote the general welfare, providing adequate light and open space, 5 less housing units and 55 acres preserved, promoting appropriate population density, concentration in preservation of the environment, it will be contributing to providing space in appropriate locations, there will be some agricultural use with it some things will be planted to benefit the natural environment and make it friendly to some of the animals that are there or will be there.

Kate Buttolph is here to explain the passive recreation of the 55 acres. Kate Buttolph was sworn in by David Pierce, attorney.

Kate informed the Board that there will be passive recreation and there will be trails open from dawn to dusk, bird watching and hiking. There is a small stream on the property that they would like to see preserved. They may do some planting of native plants. The access will be from Barbertown Idell Road and there is no plans for parking but they will put up signs to indicate that it is open to the public.

Lee Roth has nothing further to say.

J. Laudenbach asked if there are two access points and was told that there was.

B. Grossman asked if this property will come off of the tax rolls and was yes.

P. Stepanovsky asked exactly what do they (Hunterdon Land Trust Alliance) propose, is it biking or horse back riding? Kate Buttolph-explained that the property can be used for walking and horse back riding but bicycle riding would be a little difficult.

D. Stryker asked how do they plan to control this, with signage? Kate replied that a sign would be posted.

B. Grossman asked who pays for the liability and was told by Kate Buttolph that it's not needed if owned by a non profit. The hunters will need to provide evidence of insurance. She also informed the Board that no motor vehicles will be permitted on the property with the exception of emergency vehicles. The property will have a conservation easement on it, and that's recorded.

P. Stepanovsky asked about the parking and was told it would be at the end of the flagstone on Barbertown Idell Road. Peter also asked about the number of cars that would park there.

P. Stepanovsky asked how many people and was told not more than 2 or 3 cars at a time.

D. Stryker asked if they could make additional parking if the need arises and was told that they think they could.

C. McBride asked how wide it was between the flag posts and was told approximately 50 feet.

Lee Roth addressed the property being taken of the tax rolls which B. Grossman has a problem with.

P. Stepanovsky asked how they plan to keep the multa flora roses off the property and was told they would take it out by hand and/or spray Roundup on it to eradicate it.

No questions from the Board members.

Questions from property owners within 200 feet.

Nicole Miller, Block 33, Lot 14.01-3135 Kingwood Road voiced concern with walking and hunting.

D. Stryker agreed that it didn't set right with her-one or the other.

The native plants won't live with the deer and so when owned by the HLTA hunting would be more controlled and managed.

Barbara Wilson, 1 Tumble Idell Road asked if there was a problem who would they call and was told that a number would be posted on the sign age.

Mark Mulligan, Block 32, Lot 24-his farm abuts the back, asked if the deer stands on Clark's property would be removed and was told that they would be. He also asked how they would plan to control the hunting times. He asked if the friends and relatives of the Clark's could still hunt on it? Would they be open to hunting restrictions? He has horses and tenants in his buildings on his property.

Kate Buttolph stated that the Board of Trustees would talk about that, but they are a pro-hunting organization.

Mark Mulligan asked if they (HLTA) plan on buying the remaining property from the Clark's and was told that they had no intentions.

Lee Roth noted that the Board could put special restrictions on the property.

Nicole Miller, Block 33, Lot 14.01 had questions on the number of rental units and which ones are they and how does it effect the homes around them.

D. Pierce believes the number of rental units was 5.-the big house and 4 smaller units.

Lee Roth doesn't want it misconstrued as to what he said earlier about low income-he didn't mean COAH but what he meant was it's hard to find any place to rent for \$1,000 or less.

Jeanette Clark, owner, was sworn in and informed the Board that she has been upgrading the property and has a full time manager to oversee the property.

Testimony of property owners within 200 feet.

Veronica Mitchell resides on Barbertown Idell Road for 40+ years, has raised 2 children, has worked with the hunters and has had no problems and feels Kingwood is trying to maintain some of the rural atmosphere. She has no problem with what is being proposed.

Robert Mitchell, spouse of Veronica Mitchell also resides there for 40+ years and has contact with the hunters and has little or no problems with them, and feels in general, the preservation of this land is a good idea and stated that in the long run putting homes back there would cost the taxpayers more.

Hearing was closed.

David Pierce gave some guidance to the Board as to the appropriate scope of the Boards review of this application, and he understands Bill's concern about taxes and the effect on ratable s but case law states that simply because a project will result in an exemption from local property taxes it is not an appropriate reason to deny a variance request. Secondly, the application in question is for a density variance and its for a use variance to the extent that it's intensifying a pre-existing non-conforming use – more than one dwelling on a lot. Mr. Roth indicated that the Board has the ability to impose appropriate conditions on the approval it might grant. However, those conditions have to be related to and intended to minimize the adverse impact from granting any variance – it just can't be a condition because something one of the neighbors want to see. This property, in its current state and under the current zoning ordinance of the township can be used for all the things proposed to be used by the Land Trust. The current property owners can and will allow hunting on the property. D. Pierce doesn't believe it's within the purview of this Board, to impose conditions relating to whether hunting can or cannot occur or when it can or cannot occur – it's not for any reason effecting or has any adverse impact that would result from granting the variance requested. The Board can and should impose a requirement, if it grants approval, that signs be posted at



both entrances, that will designate when hunting is occurring, so there would be appropriate communication to others who might be interested in walking the property and horse back riding. The Board has to focus on what adverse effects, if any, are there from the proposal to subdivide this lot into two lots-one-55 acres and the other 17 acres. No new structures are being built on the property -no change I use of the property-with the exception that the 55 acres is going to be restricted from future development with no homes being built on that property. The question is whether the benefits outweigh the detriments to the public good, if there are any. Keep in mind it's not a change in the existing condition and those 5 dwelling units currently exist there and have existed there for over 30 years-that's not changing.

Charles McBride asked if this parcel of land was just sitting there and didn't have anything to do with the smaller lot-would we be having a discussion about this at all, at this point? D. Pierce responded with a no.

P. Stepanovsky questioned that the Board is making the density down to 17 acres which doesn't meet the ordinance.

D. Pierce stated that he's correct but if you look at the overall size of the property and density of the property and take all the 72 acres and consider the density on that, the density is far less than the ordinance allows, so what the Board would be doing, if it approves the application, is essentially guaranteeing that the density of the entire 72 acre tract would be less than the density permitted by the ordinance.

P. Stepanovsky questioned the possibility of subdividing the 17 acres and was informed by D. Pierce that the Board can appropriately impose a condition and restriction that the lot not be subdivided in the future.

Charles McBride feels there will be hunting on that property whether it's transferred or not, and believes the HLTA will have a better job of enforcing it and feels it can't be developed the way it is right now.

J. Laudenschick doesn't see the land physically changing creating 2 lots and the 17 acre restriction would be okay with him.

D. Stryker feels the same way. The only she sees is with the hunting and recreation hopefully the Land Trust can do something with that. Has no problem

B. Grossman has no problem.

P. Stepanovsky has no problem in the division going to the HLTA, 17 acres should be restricted, HLTA should have a way to tell the people where the hunters are on the property. Has no problem

Lee Roth noted that the zoning controls how the 17 acres could be used. They can't add additional units unless they came before the Board.

D. Pierce thinks that's appropriate and he thinks the way it could be worded is that there be no more development or subdivision of that lot and any density exceeding the density allowed by the ordinance.

C. McBride moved to accept the application with the following restrictions that signs be posted for the use of the land at both entrances when hunting season is on and on Lot 14 no further developed except within the confines of the ordinance, seconded by B. Grossman. On roll call to vote.

**AYE: B. Grossman, C. McBride, J. Laudenschick, D. Stryker**

**ABSTAIN: M.L. Haring**

**ABSENT: None**

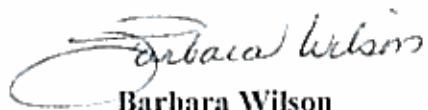
**COMMUNICATIONS/REPORTS:**

New Jersey Planner -March/April 2009  
Annual Awards Banquet-April 24, 2009

**OPEN TO PUBLIC:**

**ADJOURNMENT:**

B. Grossman moved to adjourn, seconded by J. Laudenbach. The meeting adjourned at 10:20 pm.  
All in favor.



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