

BOARD OF ADJUSTMENT  
OF  
TOWNSHIP OF KINGWOOD



Address Reply To:

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

October 12, 2011  
MINUTES

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

**PRESENT:**

C. Newcomb, pl      L. Frank      D. Hewitt  
D. Pierce, atty      P. Stepanovsky  
B. Wilson, sec      J. Laudenbach  
T. Decker, eng      T. Ciacciarelli  
M.L. Haring      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. The Board of Adjustment proceedings close at 10:30 pm.

**RESOLUTIONS:**

None

**MINUTES:**

August 10, 2011 minutes. P. Stepanovsky asked that the August 10, 2011 minutes be held over until next month, seconded by D. Hewitt. On roll call to vote.

**Aye: C. McBride, J. Laudenbach, D. Hewitt, P. Stepanovsky, T. Ciacciarelli,  
M. L. Haring**

**Abstain: L. Frank**

**Absent: None**

The September 14, 2011 minutes were approved with a motion by P. Stepanovsky, seconded by D. Hewitt. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, P. Stepanovsky, D. Hewitt,  
T. Ciacciarelli, M. L. Haring**

**Abstain: None**

**Absent: None**

**NEW BUSINESS:**

**Hearing:**

**Mark Blecher, BL 12, L 24** - a variance so as to permit the conversion of an existing barn into a workshop/garage on the first floor and an office on the second floor. There is no expansion of the building footprint or the height. The applicant is seeking a (C1) Non Use Variance (hardship) and a (D3) Variance -- deviation from a specification or standard pursuant to Section 54 P.L 1975, c.291 (C.40:55D-67) pertaining solely to a conditional use; and a bulk variance since the accessory structure lies within the front yard setback. The property is located on 71 Horseshoe Bend Road, in the AR-2 Zone.

D. Pierce noted that the Affidavit of Proof of Notice and Notice Served satisfy the notice requirements. The Board may proceed and open the hearing.

Ralph Finelli, architect and Mark Blecher, applicant were both sworn in.

Mark Blecher informed the Board that what they are proposing is to take the old tractor barn which is presently used for storage and upgrade it with a concrete floor and also to improve the upstairs. Currently they are just weekenders, have been here 21 years but are hoping to retire in Kingwood someday.

Photo #1 and Photo #2 were submitted to the Board.

Ralph Finelli explained to the Board that the C variance is required because the existing building is in the front yard set back. They are not expanding. All improvements will be to the interior of the barn. There will be no exterior expansion -- the footprint will remain the same. The architectural drawings show the ground floor - garage/workshop; upstairs will be a home office, bath and utility room (HVAC space). On the outside the windows will be replaced, the existing metal roof will remain and there will be new wood siding on the outside of the barn. All of the outside dimensions will remain the same.

Ralph Finelli stated the reason for the use variance is that the ordinance does allow home office but it must be in the principal dwelling and as testified the dwelling is nice but very small.

M.L. Haring stated that last month she had mentioned, on the upper floor plan, what looked like a closet and was told it was a utility room for water heater etc. Ralph Finelli stated that was changed to utility room but M.L. Haring noted that on the drawings it shows a little cut out and Ralph Finelli and Mark Blecher both stated that it was a bench that will be used for storage.

P. Stepanovsky asked what was the little thing in front (upstairs) and was told that it was an interior window which would provide some light into the office.

P. Stepanovsky asked about the outside and was told that the building is currently from the 1940's (former Kohler property) with bead board on the outside, which is rotting. They plan to replace it with cyprus and paint it the same color as it is now.

P. Stepanovsky asked about the downstairs sliding doors and was informed that they will be replaced with a garage door and in the back will be a work access door for the tractor etc.

P. Stepanovsky asked where is the stone barn and was told that the stone bank barn is at the farm driveway to the upper acreage and is built into the hillside.

P. Stepanovsky asked where does the gravel driveway go and was told that it goes to the farm field up above.

P. Stepanovsky asked the dimension of the office and was told 16 x 14 including the bathroom space and approximately 16 x 10 / 16 x 8 without the bathroom space.

L. Frank asked about the septic and was told they would have gravity directly from the building to the existing tank or to a holding tank and pumped to the existing tank.

D. Hewitt questioned the distance from the well (10') to the existing primary residence and was told yes.

No questions from the Board.

No questions from property owners within 200 feet or the audience.

P. Stepanovsky moved that the hearing be closed, seconded by D. Hewitt. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt,**

**P. Stepanovsky, T. Ciacciarelli, M.L. Haring**

**Absent: None**

**Abstain: None**

C. McBride, T. Ciacciarelli, L. Frank, D. Hewitt, J. Laudenschach all stated that it looks good and have no issues.

P. Stepanovsky is all for it but feels there should be a stipulation in the resolution that the office cannot be used as an apartment.

M.L. Haring agrees with the Board and with Peter about the above stipulation.

P. Stepanovsky moved to approve with the stipulation that the office cannot be used as an apartment, seconded by C. McBride. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt, P. Stepanovsky,**

**T. Ciacciarelli, M.L. Haring**

**Absent: None**

**Abstain: None**

**Christopher Wildgen/Chris' Citgo – BL 9, L 2.01 - C1, C2, D1, & D2 variances.** The property is located on 963 State Route 12, in the VC-1 District.

M.L. Haring informed Gaetano DeSapio, attorney for the applicant, that because we have another hearing to follow we will need to adjourn this hearing at 9:20 pm.

Gaetano DeSapio, Frenchtown, N.J., attorney for the applicant Christopher Wildgen informed the Board that at the last hearing they requested a zoning interpretation on the provisions of the zoning ordinance that set minimums and not maximums on parking and the Board disagreed with his presentation. The Board also

determined that they need a D variance but didn't stipulate which types. They received a copy of a report from the planner that indicated that they need a D2 variance for the expansion of a non-conforming use. They are prepared to make a presentation but they don't feel they need a D variance-they don't feel they need a D2 variance since they are not expanding the building, or the bays, or the number of employees they employ or altering the operation in any way. They are proposing to changes to the use to the area in the back of the building to accommodate the need of the existing operation.

Christopher Wildgen, sworn in, stated that he is the applicant and has owned the property since October 1998. Prior to this business he was a transportation supervisor for an electric company. He is the owner and runs the garage and repairs. This is his first time in this business. He explained what he does such as: major and minor repairs, gasoline, diesel and propane dispensing and auto repair from A to Z. The prior owner basically did the same thing. At some point in time there was a deli but it was not in operation when he purchased the property. He had to do some upgrading as of December 1998 for the DEP, pertaining to the gas tanks, pumps and lines. Prior to doing that work he submitted an application to the Planning Board for Site Plan approval for that purpose. Joseph Schuyler was the prior owner and he also parked vehicles in the rear of the property. The improvements on the property cost Mr. Wildgen \$80,000.00. In addition to the requirements set forth by the KTPB he planted shrubbery along the driveway, in the front, along Oak Grove Road and the westerly side of the property. He erected a board on board fence to keep the site of his property from the neighbors and make it look nicer. He's opened 7 days a week and he's there 7 days anywhere from 16 to 18 hours a day. He has a (1) full time mechanic and many high school students that work p/t dispensing gas. He has 2 bays and does not plan to increase them or the number of employees. The deli has been closed for 4 to 5 years and is now his office. The reason he closed the deli is that it got to be too much - he's a mechanic not a cook. He has the only service station in the township that dispenses gas. His petroleum products are stored in tanks in the ground, everything else is stored in containers and are within the DEP requirements. 80% of his patrons live in the township. Times are getting tougher-people feel more comfortable and drop off their vehicles. He's established a reputation in the community and his customers consider him to be trustworthy, an asset, they can rely on him and he's always there. Because they trust him more sometimes they drop their vehicles off, at night, with a note on the front seat, sometimes the key is on the floor or thru the door. He never knows what to expect when he gets there in the morning and he never knows where they're going to park their vehicles. When Chris mentioned that times are getting tougher and the reason for that is that people are asking for estimates now, and it sometimes takes a few days before he gets a response and that changes the number of days that a car is there. The existing site plan has a condition as to how long he can have a vehicle there waiting for repair. Chris would like to change that due to the reasons mentioned above. He doesn't ask for something on account before he does the repairs. He does repairs on a lot of older cars that people are trying to keep running for financial reasons. He works on a multitude of different vehicles and the ordering of parts for every repair takes longer. People sometimes don't pick up their vehicles for 2 to 3 days because of the payment but he does give cars out on plans of payment. Chris has had cars there for sometimes a year because of non-payment, (they are drive-able). He presently has approval for 14 parking spaces and would like more parking spaces, #29, the parking would be in the back behind the fence and his property is  $\frac{3}{4}$  fenced in now. He would like to complete it along the side yard to the building and to the deli and put a sliding gate and board on board fence. He intends to install two (2) fences-one along either side of the building. The existing gate along Lower Oak Grove Road which is chain link and he proposes to put slats in them and the other chain link gates also will have slats in them. The fence is for security and no one will be able to go back there with the exception of himself and his employees. He will have no junk cars or cars for sale in the back. The only change he intends to do, from the previous approval, is the parking. In the Township Engineers Report he referenced the area where there are some tires stored in an enclosed fenced area with a red metal roof on top. Prior to that there was no roof but Chris received a letter from the Board of Health stating for mosquito control they (tires) must be in a facility with a roof to deter the rain water from getting in the tires. He didn't think of going before the KTPB to ask permission to do that. Lighting on the site was approved in 2001 and he proposes no lighting in the back parking area-feels it's not needed and doesn't want to bother the neighbors since only himself and his employees will go back there. Customers do not carry their propane tanks to be filled, -the employees do that

The original approval allowed parking by the propane tank but some community leaders informed him that there should be no parking near the propane tank. The present plan eliminates that parking space. The Fire Chief from the KTFD visited his site, reviewed his proposal and indicated that he had no problem with it.

C. McBride asked over the course of the last 12 years - how many high school kids has he employed? Chris replied - "80".

C. McBride asked in the last few years has the relationship with his customers changed drastically because of the times being tough with gas prices going up? Chris replied - yes.

C. McBride asked if it ever come to pass where someone came in on empty and asked for \$10 worth of gas- Chris stated that he'd front people more than that.

Charles Newcomb, Planner/Banisch and Associates, mentioned that his father owned a gas station and had spaces for 8 or 9 cars. He just can't fathom the amount of spaces Chris is asking for.

Christopher Wildgen stated that they work on many vehicles, a lot of electronic repairs which can take 5 to 6 hours to diagnose, oil changes-they're just busy and he's there from 6 am in the morning until 10 pm at night-7 days a week. Cars are getting harder to repair and sometimes it takes 2 to 3 days to get parts. He employs 4 gas jockeys-1 during the day and from 2 to 3 on weekends-different shifts.

P. Stepanovsky asked how long does it take to get a transmission out and was told by Chris usually 4 days- an engine takes a week.

J. Laudenbach asked how many does he repair a day and was told by Chris 8 cars a day on average. He tries to do anywhere from 6 to 8 to 10 cars a day.

C. McBride stated that Chris mentioned before the number of gas jockeys he has and 1 full time mechanic. Do the gas jockeys help out in the bays also? Chris said, yes, they do. C. McBride stated, so they get on the job training.

Chris Wildgen stated that he has female employees that can turn wrenches and wouldn't even get their hands dirty. It's no benefit to him to have cars sitting- no money in his pocket.

C. Newcomb, planner, asked about the adjacent property-the cafe and was informed by Chris Wildgen that it's part of the building.

T. Decker, engineer, asked if all of the repairs are done in the bays and was told by Chris that they try to do everything in the bays.

M.L. Haring asked how many people would he let come in that would need a transmission or engine repair and was told by Chris that he would have to schedule those.

M.L. Haring noted that he mentioned that he has had some cars there because of lack of payment- are there no other options to get the vehicle out. Chris stated not without payment.

C. McBride said he wouldn't put a mechanic lien on the work with clients and Chris said that he wouldn't go to that extreme.

L. Frank asked about the septic and parking on top of the field. This will be addressed under the technical.

Gaetano DeSapio also noted that they plan to eliminate that space.

Questions from property owners within 200 feet.

Anyone else that has questions of the applicant.

Tony Vacca stated that he has a similar operation and he has cars dropped by via tow truck that are not even scheduled and might take a couple of days before he could check them out – so how can you say that you can get a car out in 2 to 3 days? Chris stated that he didn't even think of that.

Tony Vacca also stated that you also have people that go on vacation for a couple of weeks so what do you do with this car? Chris replied that you hang on to it.

Tony Vacca also noted other circumstances that would delay a car being worked on, such as being mechanically damaged in an auto accident which would cause delay due to paperwork and insurance company.

Charles Newcomb, planner, asked if he has a contract with the State Police and was told no.

John M. Cirigliano, Sr., lives in Kingwood, asked Chris Wildgen if there has ever been an occasion when a person leaves a vehicle and the owner comes back and Chris floats the repair so to speak. How frequently does this occur? Chris Wildgen stated a couple of times-he has never denied anyone.

Tamara Lee, sworn in, informed the Board that she is a licensed NJ professional planner for 28 years and was hired by Chris Wildgen. She is here this evening because this application needs a number of variances and of waivers since it's an undersized lot, is a pre-existing use and pre-dates the VC1 Zoning District. The main question is-is this use permitted, it is, the use is there but with the improvements he proposes, he needs approval. The improvements he proposes is to add new parking spaces and re-configure the existing, changing a constraint of the number of cars permitted to be parked outdoors, adding fencing and adding impervious cover. Most of the improvements were approved in 2001 by the Planning Board. The question is what kind of approvals do they need. The suggestion was that they need a D1 variance, but a D1 variance is for a brand new use that never existed before, not permitted in the ordinance - this is a pre-existing use and not a new use. Another suggestion was a D2 variance, which is for an expansion of a pre-existing non-conforming use - they don't need that because they are not expanding anything. Counsel prepared a letter dated 2-14-11 which stated that when you intensify a use on a site it's equivalent to the expansion of that use. What's happened here is that Chris is trying to respond to a business that has become more successful. Although she doesn't feel they need a D2 variance but she is prepared to testify and provide proofs for a D2 variance. At the last meeting there was a determination that they need a parking variance and that the parking in the ordinance represents a maximum - she doesn't agree with that and feels it's not accurate. She feels they need approval related to parking but not a variance. Tamara feels that the planners letter is accurate, in that they stated that the conditions related to conditional uses for auto service stations doesn't apply here because it's not a conditional use within the VC1 Zone so the parking requirements under those conditional uses don't apply. Tamara cited **Section 132-33 H (12)-Minimum off street parking which reads as follows: "Automobile service stations, transmission repair, tire sales, lubricating specialists, battery sales and similar uses shall provide four spaces per bay or work area, plus one space per 250 square feet of gross floor area devoted to retail store area."** Her concern about considering the other section of the ordinance-conditional use section, as maximum, is that you're setting yourself up that you have 2 sections of the ordinance that have identical quantification's for the parking requirement, and by calling one maximum and one minimum they're going to contradict and when ordinances contradict each other it invalidates that ordinance.

D. Pierce asked Tamara if it was her contention that the VC1 and VC2 apply to this use because this is not a permitted use in the VC1 Zone.

Tamara Lee stated that there are sections in the VC1 and VC2 Zone that talk about parking standards. She feels that the parking standards that apply here are from the 2001 approval from the PB so because the standards don't apply there's a couple of ways that you can look at this since it's not a conditional use - can't suggest a parking variance is required but feels there is approval required for the parking. The PB approved 14 parking spaces and 8 of those for overnight parking. What they need is an amendment to that prior approval and eliminate that condition and restriction. The proofs required to amend a prior condition are different than the proofs required for a variance. This is the parking issue. They also need a couple of C variances for accessory structures and impervious cover. There also are a number of waivers most have to do with buffering or parking. The parking standard in the ordinance are designed to make parking lots safe and parking lots are used by the public. Even though there are a lot of cars parked in the rear portion of the property it will not function as a parking lot since it's not used by the public or customers. It's up to Chris to make sure that the configuration works and is safe for his employees. This project did get approval in 2001 from the Planning Board and within that Resolution they noted that Chris (her client) has made the operation of the facility a success and provides a needed and valued service to the residents, that was 10 years ago. It has just gotten more successful and is still a valuable asset to the community.

Next Tamara Lee will go over proofs required for a D2 variance. With a D2 variance it's not incumbent upon her (Tamara) to demonstrate that this use is appropriate to the same degree as if it were a brand new use, but she does need to provide special reasons and address the negative criteria.

Tamara Lee mentioned a Case with Mine Hill Township (1990 Case) also for a body shop and similar to this case in which the court wrote that the improvements that were being made and that if hiding the operation from the view of the public helps to harmonize the use with the surroundings and it created more safeguards for the general welfare, then those kind of improvements did constitute special reasons. Based on those standards she feels that they have satisfied the special reasons. As Chris has explained he plans to add, in addition to the existing fence, and complete the fencing, puts slats on the chain link gates and on the eastern side add fencing (60' stretch) to shield those neighbors and help to harmonize the use with the surrounding uses and create safeguards for the general welfare.

Next Tamara Lee noted that they need to address the negative criteria-look at detriments and substantial improvements to the zone plan. The Planning Board in 2001 identified those problems and concerns related to Lower Oak Grove Road, more residential, and deserves more protection than that of Route 12. Another detriment noted by the Planning Board was access from the site on to Lower Oak Grove Road and their solution was to install speed bumps but Chris has installed a solid fence and gate which is only opened by employees and no thru traffic is allowed. There was concern for parking in the front so by adding the 14 parking spaces would satisfy the parking problem at that time but the business has gotten more successful and they need more parking. The front parking will go to the back so no one will see it and the front will basically be a service station. Tamara walked the site and noted another detriment that would be to the east, and Chris would continue the fencing to shield those neighbors. Tamara feels that the above are detriments that they can identify, and she can address all of them and mitigate them. Tamara feels that there will be any other detriments associated with this application.

Tamara discussed the Master Plan and noted that in the Master Plan they are planning to relocate all auto related uses to the VR-2 and VC-2 Zone. In the township there are three (3) auto related uses and none of them are in the VC-2 Zone. The Master Plan makes it clear that Route 12 is where the commercial properties should be. There is an impact between the neighboring uses and there are residential/commercial uses on either side of Route 12 and this site that are pre-existing and non conforming uses not permitted in the VC-1 Zone. Tamara read one section of the Master Plan which makes it clear as to how the land use pattern should develop on Route 12. "Kingwood will need appropriate areas for reasonable non-residential development to meet the current and future retail service and employment needs and provide an adequate tax base for current and future municipal tax service."

Tamara Lee stated that there are sections in the VC1 and VC2 Zone that talk about parking standards. She feels that the parking standards that apply here are from the 2001 approval from the PB so because the standards don't apply there's a couple of ways that you can look at this since it's not a conditional use - can't suggest a parking variance is required but feels there is approval required for the parking. The PB approved 14 parking spaces and 8 of those for overnight parking. What they need is an amendment to that prior approval and eliminate that condition and restriction. The proofs required to amend a prior condition are different than the proofs required for a variance. This is the parking issue. They also need a couple of C variances for accessory structures and impervious cover. There also are a number of waivers most have to do with buffering or parking. The parking standard in the ordinance are designed to make parking lots safe and parking lots are used by the public. Even though there are a lot of cars parked in the rear portion of the property it will not function as a parking lot since it's not used by the public or customers. It's up to Chris to make sure that the configuration works and is safe for his employees. This project did get approval in 2001 from the Planning Board and within that Resolution they noted that Chris (her client) has made the operation of the facility a success and provides a needed and valued service to the residents, that was 10 years ago. It has just gotten more successful and is still a valuable asset to the community.

Next Tamara Lee will go over proofs required for a D2 variance. With a D2 variance it's not incumbent upon her (Tamara) to demonstrate that this use is appropriate to the same degree as if it were a brand new use, but she does need to provide special reasons and address the negative criteria.

Tamara Lee mentioned a Case with Mine Hill Township (1990 Case) also for a body shop and similar to this case in which the court wrote that the improvements that were being made and that if hiding the operation from the view of the public helps to harmonize the use with the surroundings and it created more safeguards for the general welfare, then those kind of improvements did constitute special reasons. Based on those standards she feels that they have satisfied the special reasons. As Chris has explained he plans to add, in addition to the existing fence, and complete the fencing, puts slats on the chain link gates and on the eastern side add fencing (60' stretch) to shield those neighbors and help to harmonize the use with the surrounding uses and create safeguards for the general welfare.

Next Tamara Lee noted that they need to address the negative criteria-look at detriments and substantial improvements to the zone plan. The Planning Board in 2001 identified those problems and concerns related to Lower Oak Grove Road, more residential, and deserves more protection than that of Route 12. Another detriment noted by the Planning Board was access from the site on to Lower Oak Grove Road and their solution was to install speed bumps but Chris has installed a solid fence and gate which is only opened by employees and no thru traffic is allowed. There was concern for parking in the front so by adding the 14 parking spaces would satisfy the parking problem at that time but the business has gotten more successful and they need more parking. The front parking will go to the back so no one will see it and the front will basically be a service station. Tamara walked the site and noted another detriment that would be to the east, and Chris would continue the fencing to shield those neighbors. Tamara feels that the above are detriments that they can identify, and she can address all of them and mitigate them. Tamara feels that there will be any other detriments associated with this application.

Tamara noted that the next thing she looked at was the potential impairment to the Zone Plan and noted that in the Master Plan they are clearly making an attempt to relocate all auto related uses to the VR-2 and VC-2 Zone. In the township there are three (3) auto related uses and none of them are in the VC-2 Zone, there in the VC-1 Zone. The Master Plan makes it clear that Route 12 is where the commercial properties should be. There is an impact between the neighboring uses and there are residential/commercial uses on either side of Route 12 and this site that are pre-existing and non conforming uses not permitted in the VC-1 Zone. Tamara read one section of the Master Plan which makes it clear as to how the land use pattern should develop on Route 12. "Kingwood will need appropriate areas for reasonable non-residential development to meet the current and future retail service and employment needs and provide an adequate tax base for current and future municipal tax service."



Chris' establishment provides a valuable service to this community and the more successful it is the more highly valued that tract is. The Route 12 corridor is most appropriate for development of this use and for commercial uses and as passenger and truck traffic increases this corridor will become less desirable for residential use. If residential uses are permitted to spread along this corridor it will be difficult to reclaim the area for non residential uses as future needs develop. If they can mitigate the conflict between these two non conforming uses it would be better to have this commercial use on Route 12 than to have it disappear. If we require the 25 foot buffer around the perimeter of this site, there would not be enough usable area on this site, it's an existing undersized lot, to make it profitable and this business would close. The Zone Plan says commercial uses should be there and the needs of residential uses should not influence the land use planning to the point where commercial uses can't be developed here. In conclusion this project is not a substantial impairment to the Zone Plan-the detriments can be mitigated and the special reasons have been satisfied and a D-2 variance can be justified.

Next Tamara addressed the parking and is requesting an amendment to the previous condition (PB) and the reason is because of the concerns that the PB had with traffic to and from Lower Oak Grove Road and view of the operation from Lower Oak Grove Road which have both been addressed through the fencing and the gate.

Next Tamara noted that need some variances- C variances for accessory structures. Those structures will be completely hidden behind the fence and no one will see them. One of those became a structure when they were asked to put a roof on it (health concern). Another is a structure close to the property line which is a non issue because they are proposing to hide that behind the fence. They also need a impervious cover variance and there will be no run off or drainage issues. They are proposing to use gravel whenever possible which is more porous. They also noted a number of properties close by that seem to have a similar amount of impervious coverage.(Kingwood Auto, R&R Auto Sales, Sunset Market)

Next are the waivers from the required 25' landscape buffer around the property which will be fenced all around so landscaping will not be visible, design waivers for parking-not a parking lot-only used by employees and not the public. She feels those waivers can be justified and the application is consistent with the Master Plan and will not impair the Zone Plan and is an asset to the community.

P. Stepanovsky made a motion to continue this hearing to November 9<sup>th</sup>, seconded by T. Ciacciarelli. On roll call to vote.

**Aye: L. Frank, J. Laudenschick, D. Hewitt, P. Stepanovsky,  
T. Ciacciarelli, M.L. Haring**  
**Abstain: None**  
**Absent: None**  
**Nay: C. McBride**

M.L. Haring announced that this meeting for Chris' Citgo has been adjourned to November 9, 2011 without further notification.

**Nextel of New York, Inc. & JCP&L Co. - BL 26, L 24- Use variance.** The property is located on 68 Featherbed Lane, Stockton, N.J. 08559 in the AR-2 Zone.

David Soloway is the attorney representing the applicant and informed the Board that he believes that at the last meeting we stopped with Glenn Pierson.

David Pierce noted, for the record, that Lee Frank was not present at the August hearing but has certified that he has read the transcript, which is on file with the Board.

David Pierce reminded Glenn Pierson that he is still under oath.

Lee Frank stated that he has read the transcript and understands the deal between Nextel and JCP&L and understands how it's going to help the truck drivers and the entire network, but he doesn't see anything mentioned about the public. Is he to understand that JCP&L is the only one to benefit from this and not the Nextel customers? Glenn Pierson informed him that it will service everybody.

Glenn Pierson has completed his testimony and is now prepared to answer questions.

M.L. Haring asked about the proposed towers that were indicated on the map, four to be exact, and on the overlay it showed dots of proposed future towers. Glenn Pierson explained that it's on there because the ordinance asks for their master plan-other facilities in the future. The couple on the RF report is one in the Barbartown area and a couple along the Delaware to fill remaining gaps.

David Soloway mentioned that they have sent an application for co-location on the Byram Kingwood Road site.

David Pierce asked if there is any antennae or equipment that would be particularly applicable only to JCP&L use and was informed by Glenn Pierson that there won't be anything specifically for JCP&L's use.

Glenn Pierson explained that there isn't going to be any particular antennas or cabinets and that they're operating on the Nextel system. Regular customers can access that radio and use those antennas or if somebody hits the push to talk switch it could be First Energy accessing it, so it's not separated or dedicated to either one.

David Pierce, in other words they're using the same Nextel network that any other Nextel customer would use. Glenn Pierson replied "Yes".

M.L.Haring stated that at the last hearing, the Pinkerton property was mentioned as a possible co-location, and she wondered if they had looked into that. Glenn Pierson wasn't sure if it was ever built and M.L. Haring explained that it was at the bottom of Fairview Road and Route 29. Glenn Pierson couldn't recall where Fairview was.

J. Laudenbach stated that it's up towards Fre nchtown.

Glenn Pierson stated that he didn't know it was built. He stated that there's another one that T-Mobile is on north of Route 12 and east of the small gap that they show on the Route 12 area. There's actually three facilities, water tank, monopole and another monopole (?) that's north of Route 12. None of these affect their application because they're in a different portion of the township.

M.L.Haring asked if they looked into possible co-location.

Glenn Pierson stated that it wouldn't affect any of their gap area that they're concerned with and the coverage gain from that wouldn't affect the gaps along 519 that this project is addressing.

C. McBride asked if they could refresh them on the effective area that's covered by one of these and the radius again?

Glenn Pierson stated that it's about three miles between the Kingwood site and Featherbed Lane site by 17,000 feet so each one is getting about two miles and some may only get a mile and a half depending on the terrain.

C. McBride asked if Glenn could explain why the terrain is important with the frequency that they're using?

Glenn Pierson explained that radio signals don't bend well over or around hills. It's almost a line of sight technology and the frequency band for the Nextel network is in the 800 megahertz band-similar to the cell carriers. A signal will go straight and if it sees a hill it won't go over or through it and if the elevation drops the signal isn't going to bend to get down to the lower areas. It keeps going straight. You've got to get the right location to maximize your coverage.

C. McBride asked what is the effective wattage of this tower going to be approximately?

Glenn Pierson stated that the radios put out about 10 watts and there's four or five of them.

C. McBride asked Glenn Pierson to explain why they can't use a higher wattage because ten watts doesn't seem like a lot when you're talking about radio power. Why can't you use a hundred or two hundred watts in this case?

Glenn Pierson explained that the system is limited by the subscriber unit (hand held phone) and the FCC limits the output power of that. More power out of the cell site doesn't help the handset to talk back and it doesn't make sense to power up to 50 or 100 watts on a radio if it still isn't going to hear the 6 watt hand held unit that's going to be talking back to it.

Glenn Pierson explained that the wattage is set up so it's balanced and when the signal starts to fade, it will fade the signal to both the handset up to the cell site, and will pretty much fade at the same time.

M.L. Haring stated that on page 20 of the Radio Frequency Report, it indicates the proposed site on Featherbed and then one on Byram Kingwood-is that an existing site? That's the site that David Soloway mentioned earlier about a co-location.

M.L. Haring asked about the future sites marked with a star one, two and three and was told by Glenn Pierson that these are places, as per ordinance, for future sites to finish off coverage in the entire township, such as the gap up Route 12 and T-Mobile's on a site that's in the gap or the other site that Verizon is on that's closer to Route 29 and the river.

M.L. Haring asked if they are looking for future sites for co-location and was told yes.

Glenn Pierson noted that the area west of Barbertown would most likely be a new structure. The other ones are along the Delaware trying to provide better coverage and that could wind up on either side of the river depending on what's available or accessible. All they're doing is identifying coverage gaps in the township.

No questions from the Board members at this time.

M.L. Haring asked if there are any questions from property owners within 200 feet.

Tim Cahalin, 125 Kingwood Locktown Road, Stockton, N.J., asked Glenn Pierson about a site that was brought up that's on Hewitt Road and if he has a propagation map for what that coverage would look like?

Glenn Pierson stated, yes and placed A-1 overlay - the blue coverage that's overlaid shows the coverage that would be possible with a 10 foot extension on Hewitt Roads existing AT&T monopole.

Tim Cahalin stated the zoning for that is 160 feet and asked if Glenn Pierson has a propagation map for that site at 150, at 160 feet? Glenn Pierson stated he doesn't.

Tim Cahalin asked usually when you go up with a tower, does the coverage expand? Glenn Pierson replied

that it can, but it depends on where it's located and the shifts in the terrain. This particular one happens to be in a hole and it's at 420 feet and they're at 540 feet so basically the coverage would stop at this site and it doesn't cover the remaining areas to the north and is too far away from the river valley between Kingwood and Locktown to cover the area through there – it doesn't meet the objectives.

Tim Cahalin, at 130 feet?

Glenn Pierson stated it wouldn't at 130, 140 or 150 feet.

Tim Cahalin asked if they have maps to show what it will look like at that height?

Glenn Pierson stated that he didn't but if you think about the heights and where you are you're not clearing the hill and way too far away from the river valley to get down into it.

Tim Cahalin, stated that he wanted to see actual proof that it didn't work.

Annie Marter, 125 Kingwood Locktown Road, Stockton, N.J. asked how many Sprint/Nextel customers are actually going to benefit from this? How many are in the area that's going to be provided with this coverage?

Glenn Pierson stated that he didn't know how many subscribers are in this particular area, but Sprint has approximately 30 million customers and the other carriers have about 20%, so 15% to 20% of the people who travel through, but that's not relevant based on the federal governments desire to have seamless coverage everywhere.

Annie Marter, so there's no way of knowing how many people in the community are actually going to benefit from this?

Glenn Pierson stated from a radio frequency standpoint it's not relevant.

Annie Marter stated that she's just interested in how many it benefits in the community.

M.L. Haring asked if there are any other questions.

P. Stepanovsky-actually this application is not so much Sprint/Nextel customers as much as JCP&L's ability to communicate in this area.

Glenn Pierson stated that the driving force is JCP&L, it's there service area and they want to be able to use this network and get rid of their privately owned network which is outdated and only works in New Jersey, they do have all kinds of properties all the way out to Ohio. The idea is when they have a crisis they can send their trucks to that crisis area and the people will be able to communicate with each other.

C. McBride asked David Pierce if JCP&L is going to testify and David Pierce stated that he didn't know.

C. McBride asked if it was appropriate since it seems like that's the question here, if they're co-sponsoring this.

David Soloway stated that they're not planning to bring anybody from JCP&L here..

M. L. Haring asked if there were any other questions.

Frank Colasurdo, sworn in, works at 33 Woodport Road, Sparta, New Jersey and is a licensed architect in the State of N.J.

Frank Colasurdo gave his background and was accepted by the Board as an expert.

Frank Colasurdo stated that he is familiar with the application, his office prepared the plans and he reviewed and signed them. He went on to say that he is familiar with the township ordinance. He placed on the easel the latest revised drawings dated 8/12/2011 and has added some color to them to help with his testimony. **EXHIBIT -A-2 (Sheet Z-3A) color overall site plan.** The top of the page is north, bottom is south, right side is east and left side is west. This property is known as 68 Featherbed Road, BL 26, L 24 and consists of 62 acres, is mostly undeveloped and has multiple structures in the first 200 feet of Featherbed Road and the rest is vacant. The wooded area is highlighted in darker green. He also highlighted the property lines from north to south. The westerly property line measures 2,500, a little over 2,500 linear feet. The frontage along Featherbed Road is 1,036.07 feet. There is an existing gravel drive that goes back some 600 feet into a field used for farming up until approximately two years ago. This property sits 400 feet from Featherbed Road making it an ideal site for a wireless telecommunications facility. It has a natural buffer between their proposed facility and the public right of way helps them site this facility in such a way that the closest to any property line is over 405 feet, 405.11 feet from the west, 575 feet from Featherbed Lane. The monopole is slightly farther. Sheet Z-3 is an enlarged plan showing the existing structures, outhouses, existing residents, some barns, some coops, rubble piles and remnants of a silo, all of which have been colored in a brown. The existing gravel driveway that runs all the way back to the proposed compound is colored gray. The tree line buffer is colored dark green, property line is yellow and grass area is a lighter green. Sheet Z-3A is marked **EXHIBIT - A-3.** From the front property line it's 570 feet to the proposed edge of the 60 x 60 foot compound fenced in for the proposed equipment shelter, that's also fenced in and measures 616 feet 8 inches and to the monopole it's 604 feet 5 inches. From the west to the compound it's 405 feet 11 inches, to the proposed monopole 432 feet 10 inches and to the proposed equipment shelter 435 feet 7 inches. From the east it's 575 feet 11 inches to the proposed shelter, 572 feet 8 inches to the compound and 599 feet 8 inches to the monopole. The compound is a fenced secured area, 60 x 60 area, surrounded by an 8 foot high chain link fence with two 6 foot chain link access gates secured with a padlock. The compound is gravel on the inside. Inside the compound they are proposing a 12 x 20 foot long equipment shelter, a 150 foot monopole with 12 antennas. There's a coaxial bridge and some landscaping. They have a landscape plan. The equipment shelter is prefabricated, made off site, pre-inspected by the State of New Jersey and meets all applicable building codes. It's 12 foot wide, 10 feet 9 inches high and 20 feet long. The dimension to the top of the shelter above grade is 11 feet 3 inches.

D. Hewitt – on the rendering you gave us the last time was there lighting on the structure? It was determined that this was from another application.

D. Hewitt stated it's a rendering of a prefab structure, is my point.

Frank Colasurdo stated that it looks similar but theirs has a stone aggregate finish and the photo he was shown looks like it has a metal exterior. It does have a light above the entrance door to the shelter (42 watt light bulb) and is shielded and points directly down in front of the door and is on a motion sensor and photocell.

Frank Colasurdo went to **Sheet Z-5** to talk about the antennas. The antennas are secured to the monopole with prefabricated brackets, lower right hand corner shows what they will look like. There's stand off arms that are approximately 7 feet and stand off on the monopole and extend horizontally. There is also a series of pipes that are placed at the bottom of that, one about 14 foot 6 (horizontal) and the four pipes that are 60 inches vertical and these are what the antennas get attached to. The antennas come with a bracket on the back and clamps right to the round pipe.

Frank Colasurdo went to **Sheet Z-6** to look at the right hand side-details of that coaxial tray that starts at the equipment shelter and extends to the monopole and is 10 feet high to the top of it. It's a series of three angles with a coaxial cable that runs horizontally across and is secured with co-ax brackets. The coaxial cable is inside the monopole and not seen

Frank Colasurdo also noted on **Sheet Z-6** is the manufacturers specifications for the light fixture (in the middle), it shows the shield on top which directs the light straight down, 42 watt compact fluorescent, measures 7 inches wide, 5 inches deep, 11 inches high and is on a photocell and motion sensor. On the right hand side you will see the only signage tht they are proposing and that will identify the site with a phone number that anybody can call if they see something they don't like and that will be 7 inches high and 18 inches long.

Frank Colasurdo went to **Sheet Z-7** which is the landscape plan they are proposing with a total of 25 shrubs around the compound on the west, south and east side with none on the north because there is a buffer existing of natural forest existing. What they're proposing is a combination of Norway Spruce and White Pines-7 foot 6 on center pattern-8 feet at time of planting.

Frank Colasurdo discussed the monopole. It rises 150 feet above grade, 12 antennas mounted to the monopole. 154 feet above grade and a half inch lightning rod on top-156 feet. The monopole is a galvanized dull steel, multiple sided.

Frank Colasurdo went to **Sheet Z-5** which shows on the lower left hand corner the GPS units that are about the size of a smoke detector, it's a receive only unit and is mounted to the equipment shelter roof. Their purpose is to synchronize itself with other sites that are on the air. The facility is unmanned, doesn't require potable water and doesn't produce any sewage. The traffic is limited to routine maintenance with a visit once every four to six weeks by a tech. They drive a Ford Explorer type vehicle, test the equipment, look to see that everything is okay and working fine. This use doesn't produce any solid waste, has no employees, is monitored 24 hours a day, 7 days a week through a series of silent alarms. They will know if they lose power, equipment malfunctions, if the shelter gets hot, if there's smoke. They need a 200 amp service and telephone line to run this facility. The equipment doesn't produce any odor, smoke, glare or noise that would exceed the NJDEP noise standards. Any noise would originate from the wall hung air conditioning unit. The distance from the shelter to the property line is 400 feet and they have no problem with meeting the 65 decibel levels required for daytime and 50 to 55 decibels at nighttime, for adjacent residential properties.

M.L.Haring any questions from the Board.

T. Ciacciarelli asked if there 's a strobe light on the top of the unit? Is it required because you're not actually that above grade, since it's in a hole? Do you need it?

Frank Colasurdo replied no-they had a surveyor perform a FAA 2C Survey and that information is sent to the FAA who will tell them if they need a beacon on it and they don't.

T. Ciacciarelli asked when do they have to have a beacon?

Frank Colasurdo stated that it depends on the height of the structure.

T. Ciacciarelli asked - where it's located?

Frank Colasurdo stated the proximity to a public flight path.

J. Laudenbach asked what kind of footing is there for the pole?

Frank Colasurdo said it's generally a caisson, concrete anywhere from 7 to 8 feet in diameter. It goes down 20 to 30 feet dependng on the soil types and the foot of that is what's above grade.

C. McBride stated with the facility they're showing possible expansion for other providers in the future. Would they exist inside the same housing or would they need to put another set of housing on the site?

Frank Colasurdo stated that they would have to put their own equipment shelter within the 60 x 60 foot compound.

C. McBride asked if a typical co-location need to draw more power? Would other modifications be necessary when another person wants to or another company wants to put facilities on the monopole?

Frank Colasurdo replied yes this site is what we refer to as a raw land site, a brand new wireless communications facility so if approved they would most likely wind up doing is asking the local utility company to bring them at least 600 amps of three phase service there. If they're designing for co-location they're setting up for co-location.

D. Hewitt asked what the maximum carriers would be on this monopole?

Frank Colasurdo replied that there really is none. What he can do is say that he can design this monopole not only for the antennas he's proposing tonight but three additional sets below them, 12 antennas t 10 foot elevations below them.

M.L. Haring said so presently this is not being designed for co-location?

Frank Colasurdo stated that presently they're designing for 12 antennas.

1. 12 antennas at a center line of approximately 151 feet above grade.
2. 12 antennas at a center line of approximately 141 feet above grade.
3. 12 antennas at a center line of approximately 131 feet above grade.
4. 12 antennas at a center line of approximately 121 feet above grade.

**121, 131, 141 are indicated as three future locations.**

David Soloway said so you're designing it for a total of four and was told that's correct. The compound is also designed to accommodate additional carriers.

C. McBride asked if this is an electric only grid fed power utility? If the power goes out is there any backup facilities?

Frank Colasurdo informed the Board that there's a series of batteries inside the equipment shelter, so if the power goes out the batteries will run anywhere between four to eight hours, depending on the usage. Anything longer than that, the shelter is constructed with a generator plug and all they need to do is wheel a generator in and hook it up and once power is restored the generator goes away.

J. Laudenschlager asked if the electric service is underground from the street in?

Frank Colasurdo stated yes-they designed it to be underground.

Tim Cahalin asked Frank Colasurdo to pull up example A-2, 1 - he believes it was? What was the blowup of that? A-3?

Frank Colasurdo replied yes.

Tim Cahalin asked to see that on the blow up you're calling – this you defined as a residence. Correct? This building, home, residence

Frank Colasurdo noted that Tim had pointed to a black rectangle, 1,387 square foot house.

Tim Cahalin asked Frank Colasurdo if he was familiar with the zoning and the zoning rule that regulates there's no cell phone tower placed on a lot that there is a residence or school or health care facility?

Frank Colasurdo replied yes, and if you look at **EXHIBIT A-3 and A-2**-on the left hand side you'll see bulk charts. We've highlighted what's existing, what's proposed and we've asterisked what variances we need to seek.

Tim Cahalin-that one's on there?

Frank Colasurdo – it's on **EXHIBIT A-2** -wireless telecommunications requirements.

Tim Cahalin stated that he sees max height equipment structure but he doesn't see that on there.

Frank Colasurdo stated it's the first one-132-29, Table 1, page 13258.21 of the zoning regulations. Minimum distance to residential structure, public or private schools, houses of worship are 500 feet.

Tim Cahalin was quoting from the ordinance requirements for permitted wireless communications. This is not permitted and requires a D-1 variance.

There was a discussion between Frank Colasurdo, Tim Cahalin and David Soloway regarding this pre-existing non conforming dwelling that's on this property and the proposed monopole is 604 feet from the property line and the regulations require 500 feet separation between residential structures etc.

David Soloway asked Frank Colasurdo if there is a standard for the height of the equipment shelter and Frank replied that the maximum height is 10 feet and the maximum square footage is 200 square feet. They exceed both of those and their dimensions are 10 feet 9 inches and the footprint is 240 square feet. The reason for that is because the ceilings are at 9 feet, racks for the radios are 7 feet high, one foot above that is a cable tray that takes the coaxial cable from the back of the radios and supports them internally until they get to the portal on the side of the shelter and it exits out and on its way to the monopole. You need to meet building and electric codes which require three feet of clearance..

David Soloway asked Frank Colasurdo if he has ever designed sites that are on properties where there was also a residence. Frank replied that he has.

Tim Cahalin asked if any of those sites mentioned are in Kingwood?

Frank Colasurdo- actually yes and the Board should be getting that one tomorrow for Byram Road which is a co-location.

Tim Cahalin-no new towers?

Frank Colasurdo – No.

Tim Cahalin asked Frank Colasurdo if he had a decibel reading on the size of the generator?

Frank Colasurdo informed Tim Cahalin that it doesn't matter because when a generator is run during an emergency situation it is exempt from New Jersey noise standards.

M.L. Haring asked if there are any more questions.



David Soloway informed the Board that Mr. Masters is present as a witness.

Since it's 10:35 pm, David Soloway suggested that we defer his witness until the next time.

M. L. Haring noted that this hearing will be continued to November 9<sup>th</sup>, 7:30 pm with no further notice.

P. Stepanovsky made a motion that this hearing be continued to next month, November 9, 2022 at 7:30 pm, seconded by Lee Frank. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenbach, D. Hewitt,  
P. Stepanovsky, T. Ciacciarelli, M.L. Haring**

**Abstain: None**

**Absent: None**

David Pierce announced that this hearing is adjourned until November 9<sup>th</sup> at 7:30pm with no further notice.

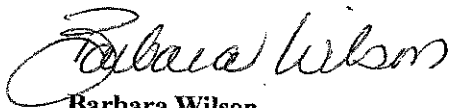
**COMMUNICATIONS/REPORTS:**

Delaware Township-Ordinance #2011-11LU & #2011-12LU  
NBI-Land Use & Zoning Law Litigation  
Kingwood Township minutes for August 4, 2011

**OPEN TO PUBLIC:**

**ADJOURNMENT:**

T. Ciacciarelli moved to adjourn, seconded by J. Laudenbach. All in favor. Meeting adjourned at 10:40 PM.



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