

TOWNSHIP OF KINGWOOD

Available to meet by
Appointment
Corner of Rt. 519 & Oak Grove Rd.
Fax: (908) 996-7753



Board of Adjustment
Barbara Wilson, Secretary
P.O. Box 199
Baptistown, NJ 08803
Phone: (908) 996-4825

Board of Adjustment October 10, 2012 MINUTES

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

PRESENT:

L. Frank	P. Stepanovsky
M.L.Haring	D. Pierce, atty
J. Laudenbach	B. Wilson, sec
C. McBride	T. Ciacciarelli
D. Hewitt	T. Decker, eng

ABSENT:

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.

M.L. Haring presented to Barbara Wilson for **40** dedicated years of service to the Kingwood Township Board of Adjustment in recognition this picture on behalf of the Township of Kingwood and the Zoning Board of Adjustment and community. We thank you very much for your service.

MINUTES:

September 12, 2012 minutes was approved with a motion by D. Hewitt, seconded by J. Laudenbach. On roll call to vote.

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

RESOLUTIONS:

None

NEW BUSINESS:

James R. Watson – BL 9, L 4 – bulk and use variance so as to permit a wood working business out of a detached garage. The property is located on 12 Lower Oak Grove Road, in the AR-2 Zone.

Guy DeSapio, attorney for the applicant, informed the Board that Mr. Watson has owned the property for ten (10) years and has conducted his cabinet making business out of the two (2) car detached garage. He purchased the property from the Buffas who used that same garage for their staging area for their electrical business. When Mr. Watson purchased the property the realtor gave him a copy of Kingwoods Ordinance and highlighted a provision that said cabinet making was a permitted conditional use in the zone, so he didn't consult an attorney and didn't realize that he had to get any approvals so he has been conducting this business for ten (10) years. The Township Zoning Officer received a complaint and issued a cease and desist order to Mr. Watson and said that the property was in the AR-2 Zone and he would need to obtain a bulk variance because cabinet making is a conditional use in the AR-2 Zone provided it's conducted within the house and since he conducts it in the two (2) car detached garage they filed a bulk variance application with the Board to continue the use. What has happened since they filed the application is that our professionals have identified the property as being in the VC Zone and in that zone residences are not a permitted use and there is no mention of cabinet making as a commercial use which is permitted there. It looks like they need to ask the Board to do a completeness hearing tonight and they would be filing an amended application next month for a use variance to permit the continued use of the residence and a cabinet making shop in the two (2) car garage.

T. Decker, engineer, stated that Guy summed it up pretty well. The Zoning Officer identified the property as being in the AR-2 Zone and the property actually falls in the VC-1 Zone which does not permit residences and cabinet making. There are several other zones in town that permit it as a conditional use or permitted use but the VC-1 Zone is not one of them. It would require the use variance and as far as the completeness there is a lot of info that doesn't need to be provided for this type of an application. The checklist items are more applicable for a commercial use so he will be looking for some guidance from the Board as to how we want to look at this because it is a residence, it's an occupation and for all intent and purposes a home occupation for that house but it's also within the commercial district – do we review it as a home occupation use variance under those design criteria or a use variance for a non permitted commercial facility. Maybe David Pierce could shed some light as well.

David Pierce stated that at this point based on the information that Mr. DeSapio has provided that the property was used as a residence by the Buffas and the garage for staging their electrical business. At this point based on the information that we have he recommends that the Board treat this as an application for the residence with the home occupation because he would expect that one of the arguments that Mr. DeSapio would make is that the house and the occupational use is a pre-existing non conforming and existed before it was prohibited in that zone. He would recommend that Tom Decker and the Board look at it from that point of view. If the applicant wants to change the application to permit the residential use in connection with a commercial operation than that would be something completely different.

Guy DeSapio – we just want to find a solution to him continuing the business the way it is now. They don't want to turn this property into a commercial property and change the context of it, he's talking about appearance wise, it looks like a residence, it looks like a garage and when he has the doors closed you don't even know what's going on in that building. They do not want to come in and talk up this site to be a commercial site, so they would still ask for all the waivers and make a presentation and if at the end of the hearing the Board determines that there's some limited site plan required they could come back for a site plan review, if necessary, but he hopes it's not necessary because the other thing you'll hear in the testimony is that customers don't come there. They would like to come back next month because he's abiding by the zoning officers cease and desist order and can't do anything until this is resolved, which is an extreme hardship.

P. Stepanovsky asked Mr. Decker which lot it is, on the key map, shown in Mr. Deckers letter.

L. Frank asked if it was the house that had the blue tarp on the roof and was told no.

Tom Decker explained that when you're coming down Lower Oak Grove Road you have the house on the corner, Chris's and then you have this property (on the right).

M.L. Haring asked if his entrance is from Lower Oak Grove Road and was told yes - he doesn't have any frontage on Route 12.

M.L. Haring – so all the homes in the VC-1 are not permitted.

Tom Decker – his suggestion is and he reviewed the completeness as if it was a home occupation, so his suggestion would be, except for those items he noted that are not recommended for waivers – the building dimensions and some administrative items, he would recommend granting temporary waivers from those other completeness items so as to allow them to proceed to a public hearing so the Board can hear a little bit more about the operation and then make a determination and then if during that determination the Board decides that this is more than a home occupation, then it needs to be reviewed as a commercial use within this district, and it's a non permitted use, then the Board still reserves the right to ask for additional information. He feels working along the process would be the better route. If the Board determines that it's not a home occupation it would be a longer process.

L. Frank asked Guy DeSapio if that's the route they are taking and Guy DeSapio responded that, yes that is acceptable to the applicant.

L. Frank noted so all we need to do is make a motion to waive 1 to 42, except for 12, 21 and 42.

D. Pierce noted another condition is that the applicant provide the additional application and escrow fees required for a use variance because what was submitted was for a bulk variance.

D. Pierce noted that the Board would make a motion to grant those waivers (1 to 42) and deem the application conditionally complete subject to provision of checklist items, those waivers for completeness purposes only and conditionally complete subject to provision of checklist items 12, 21, and 42 and satisfaction of the application and escrow fees.

L. Frank made the motion as stated by attorney David Pierce, seconded by D. Hewitt.

P. Stepanovsky – use variance is for what?

D. Pierce – for the continued use and possible expansion of the residence by allowing the home occupation as part of that residential use.

P. Stepanovsky – is the use variance for permitting that house too.

D. Pierce- it may be. We don't know what the applicants proofs and testimony will provide. If the applicant is not able to show or demonstrate that the residential use pre-existed the zoning from the VC-1 Zone which prohibited residential use then it would be the use variance for the residence as well, if the testimony demonstrates the residence existed prior to that change in zoning and permitted uses, than the use variance would be for the expansion of a pre-existing non-conforming use by allowing the home occupation as part of its residence.

M.L.Haring – does everyone understand that! Lee, do you still want to stay with your motion?

L. Frank – yes.

Roll call to vote.

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

Next months meeting will be November 14, 2012 and the secretary will need everything by October 23, 2012

COMMUNICATIONS/REPORTS:

Franklin Township – Comprehensive Farmland Preservation Plan.

Borough of Frenchtown – Ordinance #719 - “Minimum Riparian Zone Ordinance.”

Borough of Frenchtown – Ordinance #718 - “An Ordinance Amending Steep Slope Regulations in The Land Use Ordinance of The Borough of Frenchtown.”

Delaware Township – Adoption of 2012 Re-Examination Report.

OPEN TO PUBLIC:

Bill King started to say something regarding the Watson application.

D.Pierce informed him that this is not the time to present objections to the application this was a completeness determination. Next month (11/14/12), would be the appropriate time to provide testimony to the Board.

D. Pierce stated that he did receive a copy of a letter from Gaetano DeSapio to John Barczyk with respect to a projected timetable for completion of the Chris' Citgo project. Mr. Barczyk would like to know if the Board is agreeable to the schedule. D. Pierce read from page two (2) – A,B,C, and D.

L. Frank – is that normal two (2) years.

D. Pierce- the resolution says he has two (2) years to initiate the site improvements.

After discussion - C. McBride moved that we accept the time frame, seconded by L. Frank. All in favor. None opposed. The secretary will submit a letter to John Barczyk informing him of the Boards decision.

C. McBride asked why would the zoning officer order a cease and desist for a wood shed where there were numerous complaints and the township was going after Chris' Citgo and not issue a cease and desist in that matter and can we override the cease and desist order for the woodwork shop.

D. Pierce- no, we cannot.

C. McBride – we have asked at least on a dozen occasions to get reports from the zoning officer so that we can see these types of things going on and we still haven't seen anything. Who hires the zoning officer and permits him to continue to run?

L. Frank – the Township Committee.

C. McBride moved that we send a message to the Township Committee that we have fluid conversation with the zoning officer and reports on a monthly basis, we haven't seen anything for the better part of a year, seconded by L. Frank. All in favor. None opposed.

D. Hewitt asked if that could be put in a written request.

Guy DeSapio clarified what caused Mr. Wildgens delay in proceeding and that was partly due to Board of Health approval pertaining to parking spaces above the septic lateral. They received final approval in September.

Anthony Planer was sworn in.

M.L. Haring informed the Board regarding the death of Todd Kratzer and directed Barbara Wilson to send a Sympathy Card on behalf of the Board.

ADJOURNMENT:

L. Frank moved to adjourn, seconded by D. Hewitt . All in favor. Meeting adjourned at 8:20 pm.

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

