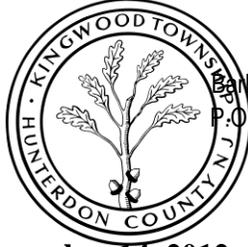


TOWNSHIP OF KINGWOOD

Available to meet by
Appointment
Corner of Rt. 519 & Oak Grove Rd.
Fax: (908) 996-7753
Phone: (908) 996-4825



Board of Adjustment
Barbara Wilson, Secretary
P.O. Box 199
Baptistown, NJ 08803

November 14, 2012
MINUTES

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

PRESENT:

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

ABSENT:

L. Frank

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.

MINUTES:

October 10, 2012 minutes was approved with a motion by D. Hewitt, seconded by J. Laudenbach. On roll call to vote.

Aye: J. Laudenbach, D. Hewitt, P. Stepanovsky, M.L. Haring
Absent: L. Frank
Abstain: C. McBride, T. Ciacciarelli, A. Planer

RESOLUTIONS:

None

NEW BUSINESS:

David Pierce has reviewed the notice published and served and both have satisfied the notice requirements. The Board may proceed and open the hearing.

Guy DeSapio, attorney for the applicant James and Susan Watson. The Watsons are the owners of **Block 9, Lot 4** located on 12 Lower Oak Grove Road. They purchased the property in October 2002 and for 10 years have conducted a wood working business without incident until this year. The property consists of a house and a detached two garage, in which he conducts his woodworking business, that's approximately 26 feet away from the house. He has no employees and this is his full time occupation which primarily consists of cabinet making.. No customers come to his home. He advertises, they contact him and he goes to their residence. Any materials he purchases he transports to his property with his van. He has done this for 40 years, has no outside storage of materials or equipment. There has been no reports of concerns until this year. The Zoning Officer issued a letter indicating that he believed the property was in the AR-2 Zone and that cabinet making was a customary home occupation in that zone and home occupations were permitted but the ordinance says that the home occupation must be conducted within the residence- they need a variance to do it out of the garage. They applied and the Boards professionals determined that the property is not in the AR-2 Zone but is in the VC-1 Zone in which both the residence and the woodworking business are not permitted. Tonight they are applying for a use variance to permit the home occupation there- the house and the cabinet making shop in the garage. They feel this gives the municipality, if the Board grants it, more control over the future of this site rather than asking for a variance for commercial uses and a variance for the woodworking business as a commercial use on the property.

James Robert Watson was sworn in and informed the Board that he resides at 12 Lower Oak Grove Road and has lived there since 2002. He does custom woodworking for 40 years, 10 years in Kingwood. For 30 years prior in Oklahoma and Central New Jersey (around the Bridgewater area). Woodworking has been in his family and he uses his grandfathers table saw and band saw in his shop which is located east of his house- approximately 30 feet.

Exhibit A-1- Board consisting of the 5 pictures as follows:

#1 Back Yard looking at the back of the shop.

#2 Part of the driveway where he parks his van.

#3 View of front of the shop from the street.

#4 Correlation of the 2 buildings.

#5 Shop in summertime-west wall that faces the house and showing side entrance door for the shop.

James Watson informed the Board that when he was looking for property in Kingwood he informed the realtor that he was looking for property in his price range and he needed a shop. The realtor from Caldwell Banker knew that was his objective.

Exhibit A-2 - Faxed Zoning Code dated April 24, 2002 (top of sheet) Pages 1 and 4 show highlighted items.

Mr. Watson believed the property was in the AR-2 and that home occupations are permitted so he could have his shop. He didn't apply for zoning approval after he purchased the property because he didn't think he had to.

Exhibit A-3 - Plan of Survey for John Buffa by Stanley Norkevich, dated 10/8/96

James Watson stated that John Buffa was the owner that they bought the property from. The building in the darker brown is the house and the building in the lighter brown is the detached garage. The dimensions for the garage are 23' x 26' and it's different then the shape that they originally submitted to the Board. He informed the Board that inside the shop he has various tools, a table saw, band saw, cut off saw, joiner and planer. He has no employees and advertises in the Hunterdon Observer and word of mouth. He generally gets a phone call, finds their address and goes to them in person which has always been his practice and this works better for him because he has to take measurements and it also helps him with doing his bid for the job. He has no people walking into his shop. In the 10 years that he's been there maybe three times tops has a customer come to his shop and that was to check on the progress of a job. He does everything from kitchens, entertainment centers, custom doors, windows, moldings anything in wood. He goes to the customers house and discusses the project they want to do, see the space and helps with the design.

Mr. Watson informed the Board that he gets his wood from Ottsville, Pa. and Southern New Jersey. The wood fits in his van. After he has completed the cabinets he delivers it to the customer and generally makes it modular and assembles it on site. Sometimes he has to get a trailer but that's very seldom.

Mr. Watson described the nature of the lot and stated that with the doors closed you can't tell there is a business there. He has no outside storage of wood but he does have a sign on the front of the garage which is cut out in wood that says Watson Woodwork. He has had no one come on the property because they read the sign. If granted this variance there will be no change in his operation.

Guy DeSapio – in the Kingwood Township Ordinance they talk about conditions for a home occupation 132-102 G (1) states the following: ***“The home occupation shall be accessory to a single- family residence and carried on wholly indoors and within the principal dwelling. It shall be clearly incidental and subordinate to its use for residential purposes by its occupants.”***

Mr. Watson stated that he doesn't think his wife Susan would like the dust so it wouldn't be very practical.

Exhibit A-3 shows the garage as being 23' x26' which is approximately 598 square feet. Mr. Watson stated that he has no display windows.

The Kingwood Township Zoning Officer visited the site noting that concerns were expressed about Mr. Watsons operation - the noise. The zoning officer came with a noise testing device and conducted a series of tests.

Exhibit A-4 – Letter addressed to Guy DeSapio, dated September 18, 2012. Re: Watson Woodworks. The third paragraph reads as follows: ***“ It is my observation that if Mr. Watson was to keep the garage doors and windows closed during normal operation I do not believe he would exceed the 65dB level allowed per our current Noise Ordinance.”*** It's Mr. Watsons understanding that he does not violate the Kingwood Noise Ordinance.

Mr. Watson informed the Board that his neighbor Mr. King who lives across the street voiced some concerns about the operation and after discussions Mr. Watson agreed not to run the radio so loud when the garage doors were up and keep the garage doors down when the equipment would be running. Mr. King would be in agreement to that and would have no objection to the Board granting this variance.

Exhibit A-1-photo #3- shows an area in front of the garage, on the left is the driveway the way he purchased it, he parks on the left and straight down the driveway, to the right of the building, his wife parks her car. It's only those two vehicles that are on the property. There's no practical reason for fixed or additional parking spaces, there's no area that's paved currently and Mr. Watson feels that marking parking spaces would change the residential feel of the property and a cost he would like to avoid.

M.L. Haring – Any questions from the Board.

A. Planer – The garage doors are they metal, are they insulated?

James Watson – Yes, they are metal and I believe they're insulated.

A. Planer – In the letter from the zoning officer is states that only one machine was in operation at a time. I suppose you didn't rip a piece of plywood for the test.

James Watson – No, he was requested to run wood in the machines so he ripped a piece of 2x4 and cut off a piece of 2x4. It's only him so he can't run more than one machine at a time.

A. Planer – The ripping is probably the loudest.

James Watson – No, actually the loudest machines is the planer and shaper.

A. Planer – Did you run wood through them for the test?

James Watson – Yes, he did.

M.L. Haring – Any property owners within 200 feet have any questions for Mr. Watson.

M.L. Haring – Any questions from the audience?

P. Stepanovsky asked what's the radio that everyone's talking about.

James Watson – I'm hard of hearing and I plead guilty of turning the radio up too loud. Since the incident he doesn't play it (radio) like he used to and keeps it well under of what can be heard.

Tamara Lee, planner, was sworn in by David Pierce. Tamara Lee has testified before this Board. The Board accepted her as an expert witness.

Tamara Lee, referring to **Exhibit A-3**, stated that she visited the site, reviewed the Ordinance, looked at the current Master Plan and the draft Master Plan. This is the site plan with one modification- the garage is more square on this exhibit and is the correct size and to scale. Other than that, this is the same site plan that was submitted. The site is located on the south side of Lower Oak Grove Road, very close to where Lower Oak Grove Road intersects with Route 12. It is within the VC-1 Zone, but the VC-1 Zone is only on the south side of Lower Oak Grove Road and across the street it's AR-2 Zone. This area of the VC-1 Zone is sort of a triangular shaped district bound by Lower Oak Grove Road and Route 12 and three properties to the east there's the zone lines. Within the VC-1 Zone there are eight lots and six of those eight lots have frontage on Route 12. The VC-1 Zone is designed to promote commercial development along the Route 12 corridor. Only two of those eight lots have frontage and only frontage on Lower Oak Grove Road and this is one of those two lots. Because this lot has confined access to Lower Oak Grove Road functionally it's more a part of the neighborhood of Lower Oak Grove Road than Route 12. This road is a less intense traffic road, it's a much more residential road and certainly not part of the commercial corridor of Route 12. She feels that the character of the use on this lot is more consistent with the neighborhood that this lot is really part of. There are two ways that they could have gone about pursuing a variance for this – one would be (3) three D1 variances, a D-1 variance for the house because it's not permitted in the VC-1 Zone, a D-1 for the cabinetry business and a D-1 for two principal uses on the lot. They preferred to ask for a D-1 variance for a home occupation because that ties the occupation to the home and a lower intense use. She needs to provide the proofs - the positive and the negatives. For the positive criteria she needs to demonstrate that this advances the purpose of the Municipal Land Use Law, under 40:55D-2; it advances the goals and objectives of the Master Plan; need to show that this site is particularly well suited for the use. The negative criteria she needs to show that there is no detriment to the public good or impairment to the zoning plan and give some explanation. She is also going to look at the conditions of the conditional use because in most of our zones home occupations are a conditional use.

Tamara Lee noted the following positive criteria: **Municipal Land Use Law-40:55D-2 – Purpose of the act.**

- a. This is an appropriate use for this site because it's a lower intensity use and has a residential component to it and therefore is appropriate, it's a lower intensity road and neighborhood than the commercial Route 12 corridor.
- c. To provide adequate light, air and open space- under the VC-1 Zone they are permitted to have a building coverage and FAR of 20% or .2, they have a .024, very low building coverage and impervious cover. This building is less than 600 sq. ft. and the house is about 713 sq. ft. Both of these buildings are small and you can see there's a lot of open space and very residential in character.
- e. This is a low intensity use and by thinking this as a home occupation and tying it to the residential use could continue to be a low intensity use. The VC-1 Zone permitted uses such as banks, retail stores and restaurants all of which would be much more intense.

Tamara Lee – this application promotes a number of the purposes of the Municipal Land Use Law; it advances both the goals and objectives of the Master Plan as well as planning principals. This site is well suited for this use because it has this garage that could function as his shop. She feels this application satisfies the positive criteria.

Tamara Lee – with respect to the negative criteria there is no detriment to the public good or impairment to the zone plan, no employees, very little traffic, operation enclosed in garage and meets the noise requirements, complies with all conditions for a home occupation except for one and that is that the shop is not part of the house and Mr. Watson gave a practical reason for that. This business is occurring in a very residential looking building-it looks like a two car garage. They don't need any parking and don't need anything like that and if they were to add that it would make the lot look much less residential. No advantage to adding more parking. She feels the application satisfies both the positive and negative criteria and hopes the Board would see fit to grant this use variance.

M.L. Haring- Any Board members have questions for Ms. Lee.

C. McBride – In this area-this triangle between Route 12 and Lower Oak Grove Road you said there's eight lots- how many are really commercial lots.

Tamara Lee – She believes a couple residential and a couple commercial but keep in mind that all residential are not permitted in the VC-1 Zone, they're non conforming.

C. McBride – An alternative to what Mr. Watson is doing here is he could construct his furniture someplace else and put a showroom there as an antique store and have commercial traffic coming in off the road and creating a traffic problem and that would be a permitted use

Tamara Lee – He could do that.

M.L. Haring – Any questions from the Board?- Property Owners within 200 feet?-Audience?

Guy DeSapio – Prior to the presentation beginning he was approached by a property owner within 200 ft. - Mr. Bill King who had some concerns with this application and the fact that Mr. Barczyk's letter refers to Mr. King. Mr. King indicated that he didn't want to create problems for Mr. Watson but he had a couple of concerns and if they could be addressed he would not object to this application. The applicant is willing to have them incorporated in the Board's determination should they grant the variance. They are as follows: The radio in the shop would not be played with the garage doors open and the other is that the power equipment not be operated with the garage doors open.

Bill King, sworn in, resides at 11 Lower Oak Grove Road across the street from Mr. Watson. He has no objection if Mr. Watson agrees to the two items mentioned if this application is approved.

Guy DeSapio – We have no other witnesses.

M.L. Haring – Does the Board have any questions?

P. Stepanovsky- Mr. King what seems to be the problem with Mr. Watson.

Bill King – I work nights and sleep during the day and when he runs the saws with the doors open and the radio loud he loses sleep. He went over and asked him a couple of times and it got heated between them.

P. Stepanovsky – The problem is that he does his cabinet making during the day when you have to sleep.

Bill King – Yes.

P. Stepanovsky – So you're asking for Mr. Watson to cooperate and keep the noise level down.

Bill King – Yes.

C. McBride – asked Bill King how long has he lived there and Bill King replied since he was born in 1970.

C. McBride – Were there previous businesses in that garage

Bill King – No. John Buffa worked for PM Electric and he had his Corvettes, dirt bikes and trailers parked in there.

C. McBride – Did any of those Corvettes make noise in excess of 65dB during the day?

Bill King – No. He would started it up and leave. The most noise he would hear is when John Buffa would blow his leaves out.

C. McBride – Did you make a complaint against him?

Bill King – No.

C. McBride – Why would you target one neighbor who is conforming with the decibel limits?

D. Pierce – Charles, if I may I don't think that's an accurate characterization of Mr. Barczyk's letter it indicates that when the doors of the garage are closed he would comply with the Noise Ordinance and if the doors of the garage are not closed he would be exceeding the Noise Ordinance.

C. McBride – Because Mr. Barczyk is not here to cross examine him - he don't read it that way, he reads it in another manner. In the control test it says it's below 65dB.

D. Pierce - OK

C. McBride – He's just concerned that we're putting an artificial decibel limit on this piece of property, that's going to go with this property forever and ever and the reason for it is that it may disappear next week if Mr. King gets a job that's normal prime shift hours.

A. Planer – Doesn't think it's an artificial sound limit for this property, it's a sound limit for properties period.

C. McBride – Which Mr. Barczyk said he complied with.

A. Planer – With the doors closed.

C. McBride – Sorry, I don't see that and we can't cross examine Mr. Barczyk.

A. Planer asked Bill King if he was agreeing to certain conditions and he replied that he could still hear it with the doors down but can still get some sleep.

Guy DeSapio asked Bill King that if those things mentioned earlier were incorporated into the approval he would have no objection. Bill King agreed.

M.L. Haring – Is there anyone in the audience that has any questions of the Board or witnesses?

M.L. Haring – Does anyone have any testimony?

Guy DeSapio – The applicant doesn't have anything further.

M.L. Haring – Mr. DeSapio if you would like to give your summary.

Guy DeSapio gave his summation and stated that he feels lets apply common sense and see if it fits into the law - he hopes that this is one of those maybe rarer cases where common sense does fit into the law. Mr. Watson has been doing this there for 10 years without any concerns until earlier this year and he's prepared to move forward but what he'd like to do is continue the present uses on the property. When you look at the property the present uses creates a problem for no one especially and they're willing to incorporate those two conditions. No electrical machinery work without the doors being down and no radio with the doors open. The parcel looks like a residential lot and it functions as a residential lot, no high intensity traffic, the garage looks like a garage, no outside storage of finished product or materials. He thinks that the Board should grant this use variance based on a home occupation on this lot. That would allow the continuation of the house and cabinet making and would not be creating a highly intensive use on the property. As far as the neighbors go driving down the street, it's gonna be the same. There's enough space to park especially since nobody goes there except he and his wife and maybe an occasional guest. There's no need to create some parking area that's not going to be used from a logical point of view and might change it's residential appearance. He thinks they have met the conditions and satisfied the negative and positive criteria of the law and respectfully ask the Board to grant this variance.

P. Stepanovsky asked Mr. Decker that since this property faces residential, can any shrubbery be planted out front to take down the noise?

Tom Decker – Vegetation doesn't serve as a very good sound barrier. The landscaping wouldn't produce any appreciable difference.

C. McBride had a question for David Pierce- If the building, the garage was used not as a business but a hobby center, would this discussion be the same?

D. Pierce – Yes. It still would be subject to the noise ordinance

C. McBride – So, if it conformed to the noise ordinance and there wasn't an issue with that, we wouldn't be having this discussion right now - Correct?

D. Pierce – No, you would still be having a discussion about the use.

C. McBride – So, if the garage was used as a hobby center as opposed to a business which is because of the commercial aspect of the area and it was there and pre-existing there would be no need for a variance. Correct?

D. Pierce – Correct.

C. McBride – So at some point in time if that turned into a hobby center as opposed to a business, does now another variance need to be obtained?

D. Pierce – When you say a hobby center are you talking about the property owners personal use?

C. McBride – Correct.

D. Pierce – Any change in use of that garage to a residential accessory use would encompass within any use variance that would allow that residence to continue as a residence and would not require them to come back to this Board.

A. Planer if Mr. Watson retires, sells and moves he would not have to come to the Board for that.

D. Pierce – new owners would have to come before the Planning Board for site approval but would not have to come before this Board for a variance.

C. McBride - What he's concerned about is that somebody else comes in and wants to do the same business as Mr. Watson, except do it non commercially, personal, are they subject to the same conditions?

D. Pierce - They would not be subject to the same conditions of the variance because the variance would not apply to personal hobby use. This applies to a home occupation woodworking business.

M.L. Haring – Any other question? The hearing is closed.

M.L. Haring – First of all she thinks it's a charming little homestead and looks like it's part of the neighborhood and it's not fronted on Route 12 and doesn't look like a commercial business like the old meat market and old appliance store and all that, that used to be there forty some years ago. It looks like a home. When she was reading the ordinance books the purpose of VC-1 and VC-2 **is to provide the opportunity to develop appropriate commercial services of a convenience nature and to provide for the development of commercial goods and services in and around the Village of Baptistown.** She believes that is what Mr. Watson is doing. It's his own business, he doesn't have any traffic coming in, he's making a commercial good and taking it out to the people so we don't have a traffic issue. The way that the grounds are kept, they're neat and clean looks like a home, as long as the noise is kept down to within the legal limits for our ordinance she doesn't see why we shouldn't grant this. It's a home, it's been a home and to say it can't be a home just wouldn't be fair. She has no problem with granting this. Maybe you should look into getting some headphones.

J. Laudenbach - He agrees with Mary Lou and would like to see the variance granted and he thinks it's a great business you don't even know it's there, it's too bad the neighbors didn't get along with the noise and would like to see it continue.

P. Stepanovsky – He agrees. The only trouble he sees is that the Board needs to put a few controls- when you run the machinery the doors have to be closed and the radio has to be kept down; he's the only employee of this business and there's no stipulation that all of a sudden you have three other employees down there, just one person in the business, it's a home occupation. The property is perfect for that because it fits in, no problems with residential across the street and fits in right with them, it's not facing Route 12 and the other stipulation he would like to fit in is there are no customers coming there.

A. Planer – His brother is a cabinet maker so he's very familiar with all of those machines, it's very noisy and it has harmed his brother's ears over the years. He is supportive of this but would rather see it in the AR-2 Zone with a variance for his business.

C. McBride – He thinks the way it's set up is totally appropriate for the area. He feels if they put restrictions on this to a point where Mr. Watson can't do business or can't bring another person in to help him or might want to give the business to his son, grandson or great grandson down the line, daughter, granddaughter, great granddaughter. We need to be careful with the restrictions that we place on here and as long as Mr. Watson is within the Sound Ordinance. 65DB during the day is what it is at this point, but he also understands that across the street is a different zone, that's a concern also but the alternative could be very much worse for the entire neighborhood if Mr. Watson is forced to move to another area and sells it to somebody who wants to exploit the property in the true sense of the VC-2 area, it would be very much a detriment to the entire neighborhood if that were to happen.

T. Ciacciarelli – Agrees with what has been said.

D. Hewitt – Agrees- should be approved and sees no problem with the business.

David Pierce went over the conditions for the Board as follows:

1. No operation of power equipment unless the garage doors are closed.
2. No operation of the radio unless the garage doors are closed.
3. No employees. (Discussion followed) One (1) employee is permitted for a home occupation.
4. No display or showroom.

5. Compliance with the Noise Ordinance.

P. Stepanovsky made a motion to approve with the five (5) conditions mentioned above, seconded by D. Hewitt. On roll call to vote.

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

COMMUNICATIONS/REPORTS:

Alexandria Township – 2012 Periodic Reexamination and Amendment to the Land Use Plan.

Borough of Frenchtown – Ordinance #719 - “Minimum Riparian Zone Ordinance.” (Passed 10/3/12)

Borough of Frenchtown – Ordinance #718 - “An Ordinance Amending Steep Slope Regulations in The Land Use Ordinance of The Borough of Frenchtown.” (Passed 1-3/12)

Kingwood Township minutes for: 8/2/2012, 9/6/2012. **

Alexandria Township-2012 Periodic Reexamination Report and Amendment to the Master Plan. (Approved 10/8/12)

Kingwood Township 2013 Budget Request - carried over until next month.

OPEN TO PUBLIC:

No comments.

ADJOURNMENT:

C. McBride moved to adjourn, seconded by D. Hewitt . All in favor. Meeting adjourned at 9:15 pm.

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

