

**KINGWOOD TOWNSHIP  
BOARD OF ADJUSTMENT**

**DECEMBER 12, 2012  
MINUTES  
7:30 PM**

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

**PRESENT:**

D. Hewitt  
M.L.Haring  
P. Stepanovsky  
B. Wilson, sec  
T. Decker, eng  
A. Planer, alt

L. Frank  
D. Pierce, atty  
J. Laudenbach  
T. Ciacciarelli  
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.**

**MINUTES:**

November 14, 2012 minutes was approved (corrected typo's on page 8, paragraph 4) with a motion by D. Hewitt, seconded by C. McBride. On roll call to vote.

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

**Abstain: L. Frank**

**Absent: None**

**RESOLUTION:**

**James R. Watson/Watson Woodworking - BL 9, L 4**

Corrections noted for Page 3 - #4, #6; Page 4-item #15 and Page 9 -1<sup>st</sup> and third sentence wording changed. J. Laudenbach moved to approve with changes, seconded by D. Hewitt. On roll call to vote.

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

**Abstain: L. Frank**

**Absent: None**

**NEW BUSINESS:**

**Tony Vacca-BL 6, L 24** – Request for Amendment to Site Plan approval granted.

Tony Vacca informed the Board that he's before this Board to finalize a very long project. Last month makes it 8 years and in that period of time he has paid to the Board over \$35,000 (escrow fees, permits etc.) and personal cost \$85,000 (engineer and legal fees). Now we're complaining about the size of the trees that are planted on the premises.

Tony Vacca explained to the Board that the front of the building which faces the south side is State Highway 12 and across the highway is Ken's Auto Body, a commercial business; west side is Discount Auto Parts, a commercial business; rear is an open farm and to the east is a personal residence which is the purpose of the screening and buffer. He has planted approximately 25 trees on that side, plus in the middle of all that there are sassafras trees. (21 ft x 11 ft). These are in addition to what was planted and they are naturally there. Fifteen (15) trees meet the 7 foot height that are on the print, four (4) or five (5) are four (4) to four and a half (4.5) in height. He checked with three (3) nurseries and it was explained to him that when you order seven (7) foot trees they can range from six (6) to eight (8) foot in height. The majority of his trees meet that description and being that he has a few more trees than the print calls for, he would be willing to waive the other trees that are too small. He spoke with his engineer and asked about the height and was told that there is no ordinance for that it was just a good number to be fair for the residence along side of him. He explained that these trees have a 24" ball that are 6" below the surface and the landscaper could have just as well put the ball closer to the surface and mulched it up. He lost no trees in the hurricane that we just had so he's glad that he didn't do that. He knows that there is sufficient screening between the residence and his building. He has at least 85 scrubs planted around the building.

Tony Vacca submitted a letter from Reverend Dalrymple, dated 12/10/2012 stating no objection to the landscaping. M.L. Haring read the letter into the minutes which reads as follows:

***“To: Tony Vacca and Kingwood Township Boards,***

***I, Rev. William Dalrymple, am the resident and owner of the house at 1095 Route 12, Frenchtown, New Jersey 08825***

***I am the neighbor just east of Vac's Auto Service.***

***I am satisfied with the landscaping done between our properties.***

***Thank You,***

***Rev. William Dalrymple “***

M.L. Haring asked Tony Vacca so what brings him here tonight and was told that Mr. Decker is doing his job and is following the exact print and there is not enough trees that exceed the 7 foot mark.

M.L. Haring, so we're talking height.

Tony Vacca said that Mr. Decker stated that as long as the Board can change the height to accept the trees that are smaller than 7 foot he has no problem approving it. Tony stated that the nursery said that they grow approximately 3 inches a year.

M.L.Haring so we need to make an amendment to accept.

David Pierce stated that the Board needs to ask Tom Decker what he has observed and how it deviates from the approval.

Tom Decker referred to the Kingwood Township Ordinance-Section 132-54 A, which addresses Buffers. ***Under item number (1) it states that all buffer areas shall be planted and maintained with grass or ground cover, together with a dense screen of trees, shrubs or other plant materials meeting the following requirements. (2) Buffer areas shall be graded and planted to visually screen commercial operations from adjoining residential property by dense plantings of conifers, deciduous trees and shrubbery consisting of a minimum of two rows of plant material, staggered and grouped to meet the intended purposes. Conifers shall be planted no more than 15 feet apart and be at least six feet tall when planted etc.***

Tom Decker stated that what's shown on the plan are what's called Green Giants (Arborvitae) - 8 to 10 feet. He went out today and took some photos so the Board could see what's there. His concern is not so much of the Douglas Firs that are out there, it's the arborvitae and they did approve the substitution of the cedars which were put in and are shown in the photos but several of the cedars are 3 to 4 foot high. The sassafras are deciduous trees so in the winter months there is no visual barrier.

Tom Decker explained that as part of the enforcement, Mark Fornaciari, building construction official, went out last April and issued a violation for operating without a CO because there are still some outstanding issues. They have tried to work with Tony for the last three (3) months to resolve things. The site improvements have been done for the most part except for the plantings which were put in at the end of October.

Tony Vacca stated that no one has a problem with the height of these trees other than the print.

Tom Decker mentioned that relief was granted for the buffer for the rear of the property.

C. McBride asked when the variance was granted was there a provision for the maintenance of this buffer.

Tom Decker stated that the Ordinance – Section 132-54 A- (3) states that : ***“Buffer areas shall be permanently maintained and plant material which does not live well shall be replaced within one year or one growing season.”***

Tony Vacca stated the property has been maintained and he has a landscaper taking care of the grass.

C. McBride stated that he guesses that he has a warranty on the plantings and Tony Vacca replied yes.

L. Frank – he said he was putting in 8 to 10 feet and that was what was approved.

Tom Decker – Yes, and his job as Township Engineer is to approve what's on the plan. There are some things he can make decisions on out in the field but things like this he wouldn't want any member of the Board to come to him and say how come the buffer is not what was on the original plan. If he wants relief from what's on the plan he has to come before the Board.

L. Frank asked how long ago was it granted and Tom Decker stated that the last revision on the plan was in 2010 and the Resolution was approved in May 2009.

M.L. Haring asked when they were planted and Tony Vacca stated the end of October this year but some were planted earlier because he was deficient at that time so more were planted in October.

J. Laudenschick asked about the growth and Tony Vacca stated that he was told approximately 3 to 4 inches a year. There are only 3 or 4 that are under.

L. Frank asked how far apart are they.

Tom Decker, the way they are shown on the plan they're supposed to be 10 feet apart to create a screen and some are closer than 10 feet and some are further than 10 feet. Most are toward the rear and there are none in front of the sassafras trees.

C. McBride there is nothing that says if a tree dies it has to be replaced-it can become diseased or hit by lightning and a 10 foot tree could become a 6 foot tree and will never grow tall.

Tom Decker is has to be replaced. (Section 132-54 A (3))

L. Frank stated that he wasn't on the Board so he doesn't know what kind of an agreement was reached.

M.L. Haring believes it was because of the concern between the new building and the Dalrymples and this kind of puts that to rest.

Tom Decker believes it was an attempt to satisfy the 50 foot buffer and the Board was trying to get something in there because this doesn't comply with the 50 foot buffer as approved and 25 foot buffer because the plants are more staggered.

C. McBride asked if the number of the plantings meet or exceed the plan.

Tom Decker stated that the number meets or exceeds.

D. Hewitt remembers that Mrs. Dalrymples concern was with the construction being so close to her property.

M.L. Haring it was the only residence involved.

J. Laudenschlager stated that the well water was one of the issues.

L. Frank – so they were worried about water and buffer and now they're not worried about either.

M.L. Haring feels that an amendment is something we should do-the trees are going to grow, he meets or exceeds the quantity and this is like the last step.

Tony Vacca- 8 years.

P. Stepanovsky asked Tom Decker if what is there now satisfies him.

Tom Decker stated as being accurate for the plan.

P. Stepanovsky- no, adequate.

Tom Decker stated that personally he can't really render an opinion it's up to the Board.

A. Planer asked Tom Decker personally what would he recommend..

Tom Decker stated that it's not a determination that he could make. He can only bring to the Boards attention

where the deficiencies are.

Tom Decker explained to the Board each picture that he submitted showing the plantings and their locations.

Jim Laudenschmidt asked if 3 inches is realistic for a tree-they can grow a lot faster than that.

Tom Decker stated that they certainly could grow faster if they are maintained.

C. McBride stated that he did some cutting on unmaintained pine trees and the growth was over a foot.

Tom Decker stated that the only caution that he has is that when he looks at applications and he knows that every application stands on its own merits, but if the Board approves plans with certain landscaping on it and then an applicant can change that later on, the plantings, if there's good reason that's fine. His concern is when they review things.

C. McBride commented that these are plants and are things of nature. They could order 7 foot plants and someone comes in and plants some too deep and they would be out of code. They grow at variable rates. They may not be available at this time period because of storms or they may not be able to plant in an exact spot because they hit a big stone, so does that mean he can't get a CO because he can't plant in that exact spot. He feels that we need to show a bit of flexibility here, especially when we have plants that meet the primary requirement to satisfy the buffer to the neighbor who has said that he's fine with it.

Tom Decker stated that's fine but that's not a decision he could make.

C. McBride made a motion as the amendment to the approval to accept the plantings as shown by Mr. Vacca, seconded by T. Ciacciarelli.

D. Pierce suggested to the Board that this a design waiver of the design standard, and the Ordinance calls for a six (6) foot tree at a minimum, it's not a variance and doesn't require public notice, it's a waiver from the design standard to allow the landscaping as installed rather than what is shown on the site plan – a waiver of the design standard and amendment of the site plan approval.

C. McBride made a motion to waive the design standard and amendment to the site plan approval for the plantings that Mr. Vacca has presented, seconded by T. Ciacciarelli. On roll call to vote

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

#### **Appointment of Board Attorney**

Motion by D. Hewitt, seconded by J. Laudenschmidt to appoint Lindabury, McCormick, Estabrook and Cooper, with David Pierce as the Board's attorney for 2013. **All** members voted **AYE** on roll call to vote.

#### **COMMUNICATIONS/REPORTS:**

Alexandria Township Ordinance - 2012-10-25 - passed 10/10/12

Alexandria Township Ordinance - 2012-10-24 - passed 10/10/12

Kingwood Township Budget Request carried over from the November meeting.

After discussion it was agreed to ask \$7,000 for the OE Budget and a Recommendation/Request for a 5% increase of the Board Secretary salary for 2013. Motion by C. McBride, seconded by L. Frank. **All** members voted **AYE** on roll call to vote.

**OPEN TO PUBLIC:**

M.L. Haring thanked the Board for another year of faithful service.

**ADJOURNMENT:**

T. Ciacciarelli moved to adjourn, seconded by D. Hewitt. All in favor. Meeting adjourned at 8:15 PM.

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

