

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT
JOINT PLANNING BOARD AND BOARD OF ADJUSTMENT
FEBRUARY 19, 2013 MEETING
MINUTES
7:30 PM**

Elaine Niemann, chairperson for the Planning Board, called the meeting to order at 7:30 pm.

PRESENT:

D. Hewitt	L. Frank
M.L.Haring	T. Ciacciarelli
P. Stepanovsky	D. Pierce, Attorney
J. Laudenbach	D. Banisch, Planner
C. McBride	B. Wilson, Secretary
A. Planer, alt	

ABSENT:

None

NOTIFICATION:

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 time, date and place of the meeting was published in the official newspaper by the Planning Board Secretary in accordance with the open public meeting act and filed with the Municipal Clerk.

Planning Board Roll Call.

Board of Adjustment Roll Call.

M.L. Haring thanked the members of the Board of Adjustment for coming tonight to this Special Session of the Joint Boards and feels that it's very important that we're all on the same page with the **New Master Plan** and the **Re-Zoning of the Route 12 corridor** and she is very interested to see what Mr. Banisch has to say. The meeting was turned back over to Elaine Niemann.

NEW BUSINESS:

P. Lubitz, Mayor, gave his opening remarks and stated that he was glad to see everyone and stated that this is really exciting for him and it's a demonstration of participatory democracy and is exciting to see so many people that have an essential role in the kind of town we are and are going to be. He stated that he was thinking a lot of Abraham Lincoln, and what he was thinking

about today from the Gettysburg address is that “people will little note nor long remember” and that speaks of the work that the Boards do. The public doesn't really have a clue as to how much time and preparation you put into this, but without you we wouldn't be the community we are. It's been much too long since we had the opportunity to coordinate the work that the Boards do together. Afterwards there will be some points of discussion and one of them will be if the Boards feel that this should be an annual event. Phil Lubitz turned the microphone over to David Pierce.

David Pierce was asked to start the meeting with just a basic review of the Municipal Land Use Law (MLUL) and how the functions of the Planning and Board of Adjustment inter relate to each other and the MLUL and Master Plan. The initial matter under the MLUL, the Planning Board is charged with the task of developing the Master Plan. The Master Plan is a comprehensive plan for the development and utilization of lands and resources within the Township to meet the needs of the Township and its population and residents, and to satisfy its legal obligations. Mount Laurel housing, affordable housing to be one of the most prominent. The Master Plan must include at a minimum a Statement of Goals and Objectives, a Land Use Plan Element, and an Affordable Housing Plan Element. The Master Plan may also contain supplementary elements such as a Conservation Plan Element, Community Facilities Plan Element, Circulation Plan, Economic Development Plan, Historic Preservation Plan, Housing Plan, Recreation Plan, Recycling Plan and Utilities Plan. We have that, once we have the Master Plan it is the comprehensive planning document that's used to develop the zoning ordinance for the Township, and in order to insure that the Master Plan don't become stale over time, the Township is required to re-examine the Master Plan every ten (10) years. As long as you have a current Master Plan and Re-Examination Report there is a presumption of validity that attaches to the Township Zoning Ordinance and if the Township doesn't conduct or adopt a Re-Examination Report the presumption of validity is lost. It doesn't mean the Zoning Ordinances aren't valid but it's just one less advantage that the Township would have in any challenge to any of the Zoning Ordinances. Once the Master Plan has been developed the Township Committee has the responsibility to adopt the Zoning Ordinance and Development Regulations that support and put into effect the Master Plan. If any Zoning Ordinance or Development Regulations is inconsistent with the Master Plan, the Township Committee can still adopt it but they have to, along with that adoption, provide a specific reason or explanation as to why they are adopting an ordinance that's inconsistent with the Master Plan. Once the Zoning Ordinances and Development Ordinances have been created the Planning Board and Board of Adjustment come into play on development applications and they have additional and different roles to play in administering the Zoning Ordinance and the MLUL. The Planning Board has jurisdiction over applications for subdivision of land and for the development of non residential properties through site plan review. The MLUL recognizes that Zoning Ordinances and Development Ordinances are intended to be general in application and they don't necessarily fit every property that's out there and every instance that could come up, and they recognize that in some instances that come up that strict enforcement of the Ordinance may not be fair or equitable or advance the purposes of the MLUL. The MLUL provides for two (2) types of variances, a “C” variance and a “D” variance. A “C” variance is often referred to as a bulk or hardship variance and generally involve relief from various setbacks or other specific requirements of the Zoning Ordinance such as minimum off street parking and landscaping requirements and things like that. A “C1”

variance is permitted when exceptional and undue hardship or peculiar and practical difficulties to development arise because of something specific to the property, some condition specifically effecting that property, its narrowness, shallowness, its irregular shape, unique or exceptional topographic condition or some other unique or physical feature can exist. A "C2" variance is permitted when with respect to a specific and particular piece of property one or more purposes of the MLUL can be found to be advanced by granting that variance rather than strictly enforcing the ordinance. The Planning Board can act on "C" variance requests when they are presented in conjunction with a sub-division or site plan application. A "D" variance can only be heard by the Board of Adjustment. A "D" variance may be any one of the following: "D1" is when an applicant seeks an approval for a use or a principal structure on their property where that use or principal structure is prohibited or restricted under the Zoning Ordinance; "D2" variance where an applicant seeks to have an expansion of a non conforming use; "D3" variance when one of the zoning mechanisms that the Township can use instead of just simply permitted uses and accessory uses there's a conditional use and the way that's used is that the town says you know what this use might be appropriate in this particular zone but only if all of these conditions are met; "D4" variance is when a variance allows or seeks an increase in the maximum permitted square footage of a structure that's generally applicable to non residential structures- talk about commercial floor area ratio; "D5" is a variance allowing the increase in permitted density, more dwelling units per acre; and "D6" is a variance that would allow an applicant to have a principal structure that exceeds the maximum height limitation in the Zoning Ordinance by 10 feet or 10%. Use variances are not favored under the MLUL. Both the law and the courts have imposed a substantial burden on any applicant seeking a use variance and the applicant must demonstrate special reasons under the law justifying the grant of that variance and the applicant must demonstrate that granting the variance would advance one or more purposes of the MLUL. One of the purposes is promoting the general welfare; good for the community, it provides a service or a business that's needed in the area. The applicant also has to show that the site is particularly suited for that proposed use from the public point of view, not the applicants. For both "C" and "D" variances the applicant must show that the benefits outweigh the detriments and show that there is no substantial detriment to the public good and must also show that the variance can be granted without substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance of the Township. Because the Board of Adjustment is required to evaluate each variance request in light of the intent and purpose of the Master Plan; this type of joint meeting and discussion of the purpose and recent changes to the Master Plan is really critical and it's important that the Board of Adjustment have information made available to it regarding the reasoning behind the adoption of the various portions of the Master Plan and recent changes to that. Meeting turned over to David Banish.

D. Banisch stated that there is an enhanced burden of proof that falls upon the applicant and that's where the applicant actually has to reconcile the omission of the proposed use in the Master Plan or Zoning Ordinance. The applicant has to put proofs on the record reconciling its omission from the Zoning Ordinance and what the Master Plan calls for. The Planners usually have a lot of work to do before they come before the Board of Adjustment and frequently they put you guys to sleep with their testimony because they usually come to the end of the testimony and sometimes not all those proofs are fully developed on the record and if not the applicant doesn't effectively prove their case and that would be grounds for denial or for the Board to require the applicant go out and develop their case a little more sufficiently.

David Banisch stated that the Planning Board spent a great deal of time developing Ordinance 17-15-2012 and Ordinance 17-16-2012. They go directly to the community character and that's the face issue that we all see. Route 12 is the most heavily traveled section of road in the Township and has had a sprawling non residential Zone Plan which really didn't have much focus on where things should occur and how they should occur. The Scenic Corridor Overlay Ordinance (SCO) 17-15-12, protects the quality of Route 12. The SCO is viewed in two (2) segments, east of town and west of town. West of town long distance view sheds become evident. The secondary purpose was to provide reasonable opportunities for economically viable development along Route 12. David Banisch reviewed Ordinance No. 17-15-2012 - that everyone received a copy of. An application before either of the two (2) Boards should really seek to achieve conformity with the new standards to the extent that that's possible.

David Banisch moved on to the Eastern Gateway Village Center Overlay Ordinance (EGVCO) 17-16-2012 which is located at the very easterly end of the Township and occupies lands that are currently Zoned BP- Business Park and POR. The Planning here is to really change the way development occurs and to focus development in a much more concentrated way. This ordinance fully anticipates and permits different types of development on the same lot with certain design standards but seeks to maintain realistic opportunities for economic development in the town which the Route 12 Zoning has always sought to encourage but unfortunately has never played out that way. David Banisch reviewed Ordinance No. 17-16-2012 – that everyone received a copy of. There is a rigorous set of design standards in this Ordinance and this Ordinance is very descriptive. This Ordinance is mindful of the fact that this municipality is characterized by these historic that have occurred at crossroads or village settings of one (1) form or another and they should be recognized and protected from change that might occur and that idea is to give visual consideration to the kind of impact that new development can have on historic development that exists in the town. It's geared toward protecting community character.

Elaine Niemann asked if there were any questions from the members present.

P. Stepanovsky asked about the present warehousing.

David Banisch stated that warehousing will not be permitted in the BP Zone and that it's not typically a high valuable ratable and doesn't generate much employment, although that site does have employment, and a fairly consumptive land use. The buildings are big and the parking and driveway circulation are all big and there is not a lot of bang for your buck.

Phil Lubitz stated that he wasn't involved when that project was approved but it's not a warehousing use but a commercial use.

David Banisch stated that the other warehousing uses are struggling in the Township. Some are doing okay but not fully occupied. By providing this range of mixed uses and different types of opportunities- the idea is that higher value opportunities will develop and services that the community will need will emerge within those areas more so than warehousing uses. The non-conforming uses are permitted to continue. This is just introducing a new planning direction and creating new opportunities for different types of development currently that aren't permitted

L. Frank stated that what he is concerned with is the Board of Adjustment and especially since we have to sit there and look people we know in the eye and tell them that they are denied so we have a more personal contact with the owners. He sees that as very impersonal and just looking at that everyone is pre-existing and non-conforming.

David Banisch stated that the law is encouraging the Board to do what it can and to make the best out of a bad situation. This Ordinance will provide direction for the Board to work with the local applicants.

Charles McBride is also concerned noting applicants stating that it costs more for the variance than the cost to put up a building.

David Banisch, when there non-conforming uses (D variance) they will come before the Board of Adjustment. He has to acknowledge that there are a great number of non-conforming conditions within the corridor.

Charles McBride voiced concern to what looks like a number of buildings that are being abandoned.

P. Lubitz stated that what the Ordinance is trying to do is move the potential for a strip development to an area that is easier to develop. What this Ordinance is trying to do is maintain the visual character of one section and encourage denser development in another. The solar facilities are permitted in the zones that they were constructed on Route 12 and the Township Ordinance allows them as a conditional use in other Zones.

David Banish stated that the Zoning standards that existed haven't really produced the kind of development that was hoped for on Route 12. He stated that conventional housing is permitted as well as multi-family and townhouses. The Ordinance permits attached housing in the BP Zone and was basically to a direct response to the Affordable Housing requirement of 78 units. There is another side to this by focused higher density development and would relieve pressure on the countryside area. With people comes the need for law enforcement and everyone tries to avoid that. In the EGVCO there has been a substantial lot approved for solar development. Solar development is regulated by the State and permitted in any Industrial Zone within the Township.

John Mathieu is not suggesting this is a good plan but the Master Plan is an ever changing Plan and the Master Plan will rise and fall on its own merits. He remembers when Route 12 was residential and then back to commercial.

M.L.Haring asked if someone wants to put something in here and it's not in the Master Plan-are our hands tied now that we can't make an adjustment?

David Banisch stated that you would put them through the paces that you normally put them through..

M.L. Haring asked about the solar proposed on the Keller Farm and was told that it was permitted by State law, not our Township Ordinance.

M. L. Haring asked questions regarding setbacks and buffering.

E. Niemann stated that for many years the Township hasn't seen much development going on along Route 12. We've had the Zoning there and have been through one of the most robust building periods in the last fifteen (15) years that we've ever had.. We have a lot of property along Route 12 and very little has gone on with it. What their hoping to accomplish here and we cannot make this happen but only set the table for it, set the stage so that a developer can come into Kingwood Township and see an opportunity in the sense that the Township is welcoming a certain type of development in a certain area and as they work on this to get opportunities to get grant monies that would help us to further study the areas and cut some stats for the developers to go through with waste water. Waste and well water are unknown to us now and the very critical work hasn't been done and once studies have been done it would be more appealing to developers. This would also help the Township meet their Affordable Housing obligations and bring in some ratables. The residential ratables don't help us out very much as a rule. It's a huge step to take and they're hoping it will work out and if it doesn't we'll be back to the drawing board. The Pinelands are under pressure to develop their areas.

R. Dodds stated that we all have heard about the term “builder's remedy” you don't have a place allocated for your high density building in your Township. This would allow a builder to come in and say that you didn't provide for high density and then sue the Township to obtain approval. The Ordinance provides an area for high density . Comments from a survey taken two (2) years ago were that Route 12 needs improvement.

Comments were made by some Board members that people are satisfied with shopping in Flemington and Raritan and don't want to go all the way to Route 12 to shop. Young people today want to live in places where there are things going on.

P. Lubitz stated the importance for the Boards to meet jointly and share issues rather than the issuance of bulk variances and many variance applications. The Board of Adjustment plays a very valuable role in the Township.

ADJOURNMENT:

Planning Board moved to adjourn.

Board of Adjustment moved to adjourn. **ALL IN FAVOR.**

C. McBride moved to have a joint meeting yearly, seconded by D. Hewitt. .

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

Abstain: None

Absent: None

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

