

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT**

**April 9, 2014
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
C. McBride
C. Ostergaard, alt

L. Frank
D. Pierce, atty
J. Laudенbach
T. Ciacciarelli
T. Decker, eng

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:

The April 9, 2014 minutes was approved with a motion by D. Hewitt, seconded by J. Laudенbach. On roll call to vote.

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

Abstain: None

Absent: L. Frank

The January 8, 2014, minutes was approved with a motion by D. Hewitt, seconded by L. Frank. On roll call to vote.

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

Abstain: None

Absent: None

RESOLUTION:

Annual Report of Variance Applications: approved with a motion by C. McBride, seconded by T. Ciacciarelli. On roll to vote.

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

Abstain: None

Absent: None

D. Pierce stated that he would need to change the date on the Resolution.

NEW BUSINESS:

Appeal/Interpretation:

Perini Properties, L.L.C. - Block 15, Lot 8.01 - Gaetano DeSapio is the attorney representing the applicant. The property is located in the Kingwood Business Park Zone and is the former Lutz property. His applicant applied for a zoning permit in April 2012 to conduct his base operation there for a trucking and rigging business and storage of equipment and warehousing of customers' goods awaiting delivery; welding and fabrication of rigging equipment to be used on rigging jobs. Mr. Barczyk, zoning officer, issued a zoning permit stating that the **“Use is permitted by owner/business without the need to obtain site plan approval.”**

Mr. Sargenti who is the principal of Central Jersey Trucking & Rigging, Inc., is here to testify and is a Kingwood Township resident. He proposes to lease 30,000 square feet of that space to a business that's substantially similar and will have testimony from that tenant on how the business is similar.

They put together a statement that was included in the application and felt it was important to come in and present the information by way of testimony. Mr. Sargenti will testify on how he stores very large equipment for customers who are selling that equipment in the United States. The equipment is brought here, stored in the building, some assembly done, sometimes it has to be disassembled before it can be delivered.

Penn Jersey sells heavy duty excavating equipment and will be using a portion of the building in the same way that Mr. Sargenti uses it currently. There is no retail sales and there is no retail sales facility there. Customers are approached by salesman in the field because the equipment is too big to have a showroom. The customer will place an order and it will be shipped in, either from overseas or Shippensburg, Pa. The assembly will be limited to the initial shakedown of the equipment and then the delivery to the contractor/customer. Only limited service is done in the building – the equipment is too big to be serviced there. There are 5 full time service people who service the equipment in the field. The proposed sublet of the 30,000 square feet use is permitted in the ordinance. There is no change to the building facility. The only change is the installation of a small sign. It shouldn't be required to get a site plan for a permitted use every time you change a tenant as long as you're not changing the general nature of the operation.

Dennis Sargenti, sworn in, informed the Board that he resides on 1245 County Road 519 and purchased the farm in 2001. The property was put in Farmland Preservation in 2003-2004. He is the principal owner of Perini Properties, L.L.C. and Central Jersey Trucking & Rigging, Inc. and purchased the property located on Block 15, Lot 8.01 approximately 1 yr. and 4 months ago. He informed the Board that they have several customers that sell machinery and do some machine tools for use in manufacturing and the machines are initially built in Korea, Japan, Switzerland and Germany and that's the bulk of what they do there. It comes into port in Newark in either pier containers or bigger ones in a huge crate (12' high-12' wide- 20' long-big metal and wooden crates) and the machinery is in that and what they do for the different dealers they maintain an inventory on the east coast of that machinery and inventory on the west coast but for them they store on the east coast and they house, like a car dealership, different models of their machinery and then when a buyer comes along, if someone sold it, they would install an option for them, uncrate it, make an inspection to make sure it's okay before they deliver it. They will also disassemble a machine and make it fit into a building when it gets delivered and reassemble it for them. There are 30 to 40 machines in storage, from very small machine tools up to some machines that are quite large. They keep a few trucks and trailers there and maintain some of their own equipment – limited to the warehouse. Examples of what the equipment is used for are: plastic injecting molding, metal stamping, machine centers-people want to turn metal down, pharmaceuticals, packaging of machinery. They use cranes and fork trucks to move equipment at the facility and the customers site. They also have an assortment of trailers that can move up to 150,000 lbs. What they do is pick up the machinery at the port, charge a monthly storage, deliver it or the customer sends their own rigger to pick it up.

Mr. Sargenti explained to the Board that his rigging business is the moving of equipment in and out of the facility and transporting it.

When he bought the building it had office space, 2,000 square feet, which hasn't changed and two (2) modular offices in the plant.

M.L. Haring asked if the office space that they have now the same as the Lutz building.

Mr. Sargenti – the only thing that changed is the curtains. His wife is planning on planting trees to change the way it looks from the road and try and clean it up.

No questions from the Board.

James Fehr, sworn in, informed the Board that he's the Vice President of Penn Jersey Machinery, L.L.C. and has entered into a contract with Perini Properties to lease a portion of space on Route 12. They are a heavy construction equipment company that sells large construction equipment to contractors in New Jersey and Pa. They bring them in from a manufacturing facility based at Shippensburg, Pa. They bring them in and they do minor assemblies for them, the same basic setup. The customer comes in and picks them up. There is no retail showroom. They have salesman in the field that have certain territory that they cover. The customer places an order with the salesman and they would order the equipment and have it shipped to the facility on Route 12. The type and size of equipment is comparable to Caterpillar – very large heavy construction equipment that has to be trucked in. This operation sometimes calls for a special modification change control over and put a bucket on it. Sometimes there is a pre-delivery inspection. Most of his service work is done out in the field and if they can't fix it out in the field it comes back. They have five (5) service people in the field that are 95% of the time on the road. The only parts they stock are for machines that they have to modify. There are no retail customers that come to the building.

The average turn around for equipment delivered to the site is anywhere from 4 to 5 days- 10 days tops. They would have outside storage in the back. The present landlord uses that yard in the back.

D. Hewitt asked what the size of the yard out back is and was informed by Mr. Sargenti that it's 3 acres at best. (page 2 of map- area to the north)

Tom Decker, engineer, asked if there are any flammable materials stored there and was told none.

Mr. Sargenti stated that he stores trailer parts, steel I-beams and steel plates in the back.

No questions from the Board.

Gaetano DeSapio summarized by saying that what the tenant is proposing is essentially similar to the present operation which is large scale equipment that's moved into the building by Mr. Sargenti on behalf of people who are selling it in the United States. It's stored there and when it's sold, it's moved out. The proposed operation of the tenant is essentially the same, except we're talking about earth moving equipment. It's not there very long and there's no showroom. The equipment gets ordered, moved to the building, prepped for delivery and it goes. They do have parts, maintenance stock and maintenance is done in the field. Only in a major situation would they bring the equipment back to work on it there – it's not a repair facility. It's a warehousing business turnaround, which is what Mr. Sargenti uses it for and the tenant proposes to use it for.

It's there position that you shouldn't have to get a new site plan because you have a new tenant if the proposed use of the tenant doesn't change the building or site in any way, except for a sign on the gate and in this case they are asking for a ruling that a site plan isn't required.

L. Frank – Tom, you submitted a letter to the Board.

Tom Decker – This was originally before the Planning Board and he had done a letter at that time. The question he had was as far as site plan, typically from changing the use he wanted to know is there adequate parking, how much office space he will need and number of employees and so forth. He took a look at Google Earth and there's a couple of photos with date stamps and it showed a couple of additions since 1995. The most recent is the section that extends to the east and that, as far as he could tell, was after 2002. The question that he would have is if there were site plans granted for those improvements and if there were any conditions associated with those site plans as far as parking and how the parking was determined. The ordinance requires, just for warehousing, one space for every 1,000 square feet, they have a 90,000 square foot building and that's 90 parking spaces, they have 39. He would think that somewhere in the site plan approval process maybe relief was granted for that.

M.L.Haring understands his point but with them having such large equipment they need a large building and it's only a few employees. Mr. Lutz had the same thing with very large equipment.

D. Pierce remembers one application that John had in 1995 or 1998, but really the purpose of the proceeding tonight is not necessarily to review the history of the site. This is an appeal from the zoning officers determination that the proposed Penn Jersey Machinery operation represents a change in use, and therefore requires site plan approval. The purpose of the hearing tonight is to review that decision, based upon the testimony and ordinance, and determine whether the zoning officers determination was correct or if it was in error; if the Board determines that zoning officer ruling was correct then the applicant would have to go to the Planning Board for site plan approval. If the Board determines that the zoning officers ruling was in error, then it's a permitted use and he didn't rule that it's not a permitted use – he ruled that it's required to obtain site plan approval because it represents a change in use. The Board should focus on whether the Penn Jersey operation represents a change in use. The statute or ordinance that Tom Decker referenced in his letter provides for site plan approval “for all non-residential development proposals or modifications to an existing nonresidential use or to the property of an existing nonresidential use.” For site plan approval to be required it's not necessary that the property itself be changing, all that's requiring is that the use be changing. If there's a change in the use the ordinance requires site plan approval – nonresidential use and that's really what the Board's analysis and decision should focus on.

Gaetano DeSapio – The ordinance says change in use-it doesn't say change in user. An example-he doesn't know what kind of zoning approval or site plan approval the business park next door has, but he's sure that a common sense application doesn't require every rental or space in that building to come back with a completely new site plan every time there's a change in user. That's what's happening here - it's a change in user, not a change in use and no change proposed to the building. It would not be reasonable to have an interpretation every time there's a different user you need a new site plan. It's not a practical way for zoning or the business world to run.

David Pierce- In response -The first is that the Route 12 Business Park is flex space, warehousing and flex space and it's listed as a conditional use under business park zoning and for each new leaser they are required to come before the Planning Board as a conditional use. They don't present a full site plan for the entire site but information about that new user. Mr. DeSapio is correct that the ordinance doesn't specify upon a change in user - it's a modification to an existing nonresidential use.

Tom Decker – In comparing the change in use, they compared the new proposed use to the use that was approved by the zoning officer in 2012, not Lutz's use.

Mr. Sargenti – Correct.

M.L. Haring – At this time we need to poll the Board.

M.L. Haring – Based upon the testimony given this evening she sees the two businesses both doing the same thing but with different of the same, as Mr. DeSapio pointed out. The business park district would be defeating it's purpose if we require a site plan every time a user does change. She doesn't see the need for a site plan.

J. Laudenbach – He has a question for David. Any differences in the area-pictures that Tom was talking about have any bearing on this now?

David Pierce – He would say no, this is strictly limited to a review of the zoning officers determination.

Tom Decker – The concern he had was if there were any additions or previous variance approvals that we would abide by or any future user and what Davids saying it's still irrelevant

David Pierce – It's not irrelevant when they're using the building, but it's not relevant to the Boards decision tonight.

J. Laudenbach – He agrees with M.L. Haring.

P. Stepanovsky - The two different companies have two different types of equipment but basically the same.. The problem he has is that now there's two different companies on the same property – does that change anything, David?

David Pierce – No, that doesn't affect the zoning officers determination.

P. Stepanovsky – He still don't have an opinion.

T. Ciacciarelli – His only problem is what there doing now is that nobody remembers what the previous occurred and by having a site plan review you're making sure that everything is up to the ordinances and the application is upgraded so everybody knows what changes occurred on the property- things that should not be in existence or should have been decided by a site plan or clarified by due process. He's in favor of the site plan review, it allows the Planning Board to update the applications when they come in and make sure that they're in conformance.

C. McBride – A couple of concerns that he has are with the document that was submitted by the zoning officer – it says change of use and that could mean a whole bunch of things. It could mean - lets take a fictional restaurant that's was a steak house and is now a fish n chips place – what is change of use and absent the zoning officer being here to be inquired, he's inclined to say that this is the same use and there's no difference and should be allowed to go without site plan.

T. Ciacciarelli – He feels that this is something to be considered for future meetings that the zoning officer should be here. Members all agreed.

C. Ostergaard – She agrees that the zoning officer should be present to answer any questions. What she sees with the two applications is the difference in the wording. The last application dated 1/16/2014 says equipment sales as opposed to the application dated 4/24/2012, there's no mention of sales. The only difference is the wording.

L. Frank – He doesn't think they need one (site plan). He feels it's basically the same.

D. Hewitt – He feels the critical part of it was the zoning officer. He don't see a change in use, the building is staying the same. The two businesses are so similar. He has no problem with them.

C. McBride made a motion to reverse the zoning officers determination and not require site plan review, seconded by D. Hewitt. On roll call to vote.

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

Abstain: None

Absent: None

Nay: T. Ciacciarelli

OPEN TO PUBLIC:

D. Pierce informed the Board that the Township Committee is adopting an ordinance that would require a site plan review when there's change in user.

C. McBride – That is utterly ridiculous and putting an unfair burden on the businesses in our community.

It was suggested as individuals you should go to the Planning Board meeting and voice your objection.

The Board directed the Secretary to draw up a letter to the zoning officer requesting his attendance at future Appeals/Interpretation meetings that come before the Board.

M.L. Haring noted that everyone received a copy of a letter from Diamond Communications and asked that everyone read it.

COMMUNICATIONS/REPORTS:

Board of Adjustment – 2014 Listing

ADJOURNMENT:

D. Hewitt moved to adjourn, seconded by C. McBride. All in favor. Meeting adjourned at 8:23 PM.

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

