

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT**

**MINUTES
May 11, 2016
7:30 PM**

CALL TO ORDER

The meeting was called to order by M.L. Haring at 7:31 PM.

PRESENT: T. Ciacciarelli
L. Frank
M.L. Haring
J. Laudenbach
P. Stepanovsky
D. Hewitt
C. Ostergaard
D. Pierce, Attorney
T. Decker, Engineer

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.

Notification of the date, time and place of this meeting has been published in the Hunterdon County Democrat, Courier News and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk. The Board of Adjustment proceedings close at 10:30 pm.

NEW BUSINESS

M.L. Haring – Confirmed April Meeting Minutes will be provided at June 8, 2016 meeting.

M.L. Haring – Bartels Block, 6, Lot 41, Variance Application Hearing.

D. Pierce – I have reviewed the Proof of Service and Affidavit of Publication, the Applicant has satisfied the notice requirements. The Board may open the exercise jurisdiction and open the hearing.

Mr. John Gallina - Announced he is here tonight with Engineer, Candice Davis representing Mr. Bartels in this bulk variance application. Proceeded by calling Mr. Bartels as a first witness.

Mr. Andrew Bartels was sworn in by David Pierce, Board Attorney.

Mr. Bartels stated his full name as Andrew George Bartels for the record.

Mr. John Gallina – Asked Mr. Bartels where he lives.

Mr. Bartels – Stated 1127 County Road 519.

Mr. John Gallina - How long have you lived there.

Mr. Bartels - 10 years this August.

Mr. John Gallina - Ask for confirmation of a single family home on the property.

Mr. Bartels – Confirmed, yes.

Mr. John Gallina – Asked for a brief description of the current home as it exists now.

Mr. Bartels – Replied, currently its basically the rectangle as shown, upper left is a bathroom, 3 three bedrooms, 2 baths currently. To the left would be the addition, which is going to be a Master Suite Addition with a living space and bathroom.

Mr. John Gallina - According to the application the addition is going to be 114 square feet.

Mr. Bartels – Responded, correct.

Mr. John Gallina - Together with this will also be a deck extension.

Mr. Bartels – Responded, correct. At the bottom is an existing deck platform that wraps around the front area. The deck extension would extend from the middle all the way to the left.

Mr. John Gallina – What is the current area of the property.

Mr. Bartels – Confirmed 2.96.

Mr. John Gallina – As of now, for the zone the lot is undersized.

Mr. Bartels – Answered, Correct.

Mr. John Gallina – Confirmed that it was understood that certain variance are needed for rear yard set back, also for the slope of the property and also for the Riparian zone.

Mr. Bartels – Replied, correct.

Mr. John Gallina – Presented photographs of the property. Exhibit A1, 4 photographs in total showing various views of the property of the various vantage points.

Mr. Bartels – Explained the 1st picture is of the back of the lot. The 2nd pictures faces SE. The 3rd is of the NE view of the proposed addition and the last is of a view from Route 519.

Mr. John Gallina – Questioned if any neighboring residents are visible from the house.

Mr. Bartels – Responded, not as of yesterday with all the foliage.

Mr. John Gallina – Submitted the photographs to the Board to view and asked for questions.

J. Laudenbach – Asked for clarification of number of bedroom.

M.L. Haring – Clarified it is remaining a three bedroom.

Mr. Bartels – Confirmed, yes.

Ms. Candice Davis was sworn in by David Pierce, Board Attorney.

Candice Davis stated her full name as Candice Davis for the record. Representing the client, Mr. Bartels.

Mr. John Gallina – Asked Ms. Davis to briefly give an overview of the project before we go into the variances.

Ms. Davis – Explained the project is on an existing single family residential lot, it has an existing home, single story, Ranch style home as seen in the plans. The front setback for the existing home is conforming at 224.5 feet frontline, the one side yard is 38.5 feet from the side line, which is an existing conforming condition in that zone. In the rear, there is an existing 42.5 feet set back for deck steps area, 59.4 existing rear setback from the actual building and a 33.1 rear setback for a deck area. The property is severely encumbered by environmental constraints. There are existing streams that run through the property, they are considered unnamed tributary to the creek, which is a category 1 waterway per the DEP regulations. Due to the new Flood Hazards rules it is in the Riparian Zone.

D. Pierce - Questioned if the entire site is encumbered by the Riparian Zone.

Ms. Davis – Confirmed the entire site is encumbered by the DEP regulated Riparian Zone.

Mr. John Gallina – We will need subject setback variance for the proposed addition, as you see it does not meet the 40 feet setback. Also needed is a steep slope variance.

Ms. Davis – Answered, yes, that is correct. The site is apparently encumbered by a steep slope, category 7 or greater than 20%. Per the Township Ordinance, there is no disturbance permitted

in those areas, which will require a variance in the steep slope areas for disturbance due to construction as well for access in those locations. That is all part of the application.

Mr. John Gallina – Asked Ms. Davis if it was feasible from an engineering stand point to place this proposed addition in any other vantage points so that it could be conforming.

Ms. Davis – Responded the addition was proposed in the flattest area most adjacent to the existing home. Referencing the steep slope sheet toolbar of the site plan, you can see that the double hatching or crosshatching is in the severely encumber areas. Those are the steep slope areas that are over the 20% and per the ordinance there is no disturbance or construction permitted in those areas. Within that regard, the Applicant and Architect located the addition directly adjacent to the existing home in the flattest area that could be found. This also made the side variance as minimal as possible. There is some disturbance in the steep slope area but that is the most appropriate place for an addition to this existing home.

Mr. John Gallina – Asked Ms. Davis what is the slope of the area of where the addition is proposed.

Ms. Davis - Answered the steep slope is in partial 0 to 15% but most is in over 20%. That was also part of the application for the variance.

Mr. John Gallina – Questioned Ms. Davis if any permits will be require from the DEP for this project.

Ms. Davis - Explained because the site is encumbered by DEP regulated areas, there is a permit required for the construction of this addition. This type of permit is an option that DEP can grant to homeowners with minimal disturbance. It's a Permit By Rule. In this regard we are only disturbing in the Riparian Zone, which is a vegetated buffer area off the streams. We are permitted to ask for the permit, it's a 14 day written notice to the DEP prior to any construction. Allowing the DEP to get back to us if there is any problem with our submittal to the DEP prior to any construction starting.

D. Hewitt – Asked if there are any wetlands on this property.

Ms. Davis – Stated that according to the Environmental Consultant that the Applicant hired, it was determined that there were no wetlands on this site despite the DEP mapping.

Mr. John Gallina – Confirmed with Ms. Davis that the Environmental Consultants report was given the Board Engineer.

Ms. Davis – Answered yes. Adding that the other environmental constraint on this property is flood plain, which is a secondary DEP regulated area. Which is when floodwaters come through the streams and they begin to fill up and go over banks. I did a calculation based on DEP methods, its approximate categorization for a flood plain because this site was not previously mapped for flood plain. The calculation determined that approximately 8feet above the streambed is where the mapped flood plains would be shown. That was also shown on our plans.

Most of our construction will be done outside of that flood plain area. There aren't any DEP permits require for that area.

Mr. John Gallina – Asked Ms. Davis to describe the character of the neighboring area.

Ms. Davis – Explained it's a rural area, heavily wooded with lots of underbrush. It's a steep slope area due to the streams, the grades of the site are actually the lowest along the stream lines. They then go up toward the road on one side and toward the proposed addition on the other side where the existing home is.

Mr. John Gallina – Question Ms. Davis if it was possible to tell how close the nearest residents are on adjacent properties to this home based on this map.

Ms. Davis – Responded that plotted the area is shown on sheet 1. It shows the approximated neighbors. If you are standing where the proposed addition is, you cannot see any neighbors due to the foliage and the steep slope.

Mr. John Gallina – Questioned Ms. Davis, what is the distance between Lot 40.01 to the south and Mr. Bartels property.

Ms. Davis – Referenced sheets 4 & 5. From the proposed new addition it is approximately 180-190 feet. However, this adjacent home is approximately 10 feet below grade where the first floor of Mr. Bartels home would be. There is a large bank from this house up to where Mr. Bartels home sits. The viewpoint is not cutting through due to the grade and heavily vegetation.

D. Pierce - Asked Ms. Davis to present here professional qualifications.

Ms. Davis – Responded, I'm a professional Engineer licensed in the state of New Jersey since 2002. I have appeared before approximately 10 Boards to give testimony. I attended Rutgers University.

Mr. John Gallina – Apologized to the Board for not addressing Ms. Davis's qualifications earlier and asked the Board to accept Ms. Davis's testimony as an expert as a Professional Engineer.

M.L. Haring – Accepted.

T. Decker – Stated a review letter was prepared on May 5th. The letter identified the variances that have been testified too. With regards to my technical comment, most have to do with the permitting. My question is if the Permit By Rule applies to this proposal. Both Ms. Davis and I separately contacted the DEP and received the same answers independently, that the Permit By Rule for the addition does apply. As testified, that does not require a submission and approval by DEP ahead of time, its simply a 14 Day Notice that you are going to do this work within the parameters within the Permit By Rule giving the DEP the opportunity to respond if they have a different opinion. There are 2 Permit By Rules that will be applied, 1 is for the addition because it is in a previously disturbed area. The 2nd involves the crossing of the driveway within the Flood Hazard area. It is an existing gravel drive way, the proposal is to pave it. Provided that the

pavement surface is at or below existing grade today then the Permit By Rule applies. One question for Ms. Davis is to confirm for the record that the driveway once it is paved, will the surface be at or below the existing grade?

Ms. Davis - Stated as discussed, the details of the plans will be revised to reflect that.

T. Decker - Explained that if the gravel is removed, the grade lowered and then paved to existing grade, the Permit By Rule will then apply.

D. Hewitt – Questioned Ms. Davis if there is a culvert present.

Ms. Davis – Yes, there is pipes coming through and stone walls. The pipe is the cross pipe for the stream to cut through. Stabilization of the drive way is planned because it is steep.

T. Decker - Announced calculations were also submitted with regards to the 100 year flood elevation. The most conservative method was used. What is actually shown on the plans is likely higher in elevation than what the flood plain actually is. My suggestion would be for items 2 & 3 of my review letter, should the Board grant approval of the application I would recommend a condition be that when the Applicant submits the 14 Day Notice to the DEP, concurrent with that they provide the Township with a copy of the 14 Day Notice as well. Item #1 on page #3 is in regard to the freshwater wetlands. A report was provided from their Environmental Consultant essentially identifying that there are no wetlands affecting the property. I agree with that letter and their findings however, it is not for us to determine what the DEP's regulations are. The Township does not require them to get a determination. Therefore, if the Board feels comfortable with the report provided, they would not have to proceed. If the Board is not comfortable with it, they could get a jurisdiction determination or an absence determination.

Additionally, I have a question about the 20% variance. There is a little over 2000 square foot of disturbance. Does that include the additions, construction access and staging area? There is a large existing gravel area. Is there a reason why the staging area couldn't be within the existing gravel area rather than disturbing the steep slopes?

Ms. Davis – Explained that the construction staging is that area due to the incline and construction on the other side of house. It is a concern for any lift or larger material being brought in to continue around to the other side or around back. They would have to travel up and down the slopes. This area was also the quickest way to deliver the building supplies. It is very steep.

T. Decker - Asked about the restoration of the construction access and staging area.

Ms. Davis - Confirmed that these areas will be completely resorted to the current conditions. These are only temporary work areas.

T. Decker – Asked if there are plans to remove any trees.

Ms. Davis – Confirmed 2 trees will need to be removed due to the location of the trees adjacent to the addition.

T. Decker – Asked if those trees are in the staging area.

Ms. Davis – Replied no.

L. Frank – Questioned T. Decker if any septic alternation will be necessary due to the 3 bedroom 3 bathroom home.

T. Decker – Responded no alterations would be necessary. The septic sizing is based off the number of bedrooms.

J. Laudenschlager – Questioned T. Decker if the dry well was necessary since it is disturbing additional land.

T. Decker – Responded theoretically they are below the ¼ acre and they do not need Storm Water Management by way of a dry well per the Township Ordinance since they're not a major. I don't believe the dry well is required because the addition is not over a ¼ acre and the home existed pre the 2004 Storm Water Management regulation.

M.L. Haring - Asked the Board for any other questions.

Mr. John Gallina – In summary this is a Bulk Variance Application. The property is somewhat constrained, it is an undersized lot, there's an existing nonconforming house. There is no other alternative to put the addition other than the proposed location. We will need a variance for the side yard setback. Also, with regard to the variance needed for the Riparian Zone, the entire property is in the Riparian Zone and constrained with steep slopes. Generally there are 2 types of variances that can be granted, one is called a C1 Variance, which is a Hardship Variance. Where there are constrained by the topography of the property that affects the structures existing there on, the hardship was not created by the property owner, the Board could grant that it could be rectified. Also, with regard to the Bulk Variance there is a C2 Variance. This is where a particular piece of property, that granted areas would confirm the intentions and objects of the Municipal Land Use Law. Furthermore, under the steep slope ordinance, it is very similar to the C1 criteria that states disturbances in the steep slope area is permitted and necessary to protect public health, safety and welfare or to prevent extraordinary hardship on the property proving that the extraordinary hardship was not created by the owner. Again, with regard to the Riparian Zone it is very similar to the steep slope language. This is a single family home, there is no other alternative where to locate the addition, since the entire property is in the Riparian Zone. The property is constrained by the steep slope. We can state that we are entitled to relief under the ordinance and also under Municipal Land Use Law, again it is a Hardship Variance under a C1. With regard to the C2, we will submit the granting of C2 relief will also prove the objectives of the Municipal Land Law. We would submit under objectives 4055P-2, A C, G & I. This is a proposed improvement to a single family residential home, it will improve the appearance of the home. There will be no detriment to the neighbor as they are not even visible as to the photographs, it is a heavily wooded lot. The nearest resident is down hill and not visible. There is

no substantial detriment to the public good or neighborhood since it is rural and the improvement is keeping with the appearance. We submit that there is no substantial detriment to the public good per the zoning ordinance. We submit that the applicant is entitled to relief under C1 Hardship Variance basis and also under the C2 Planning Variance basis. We respectfully submit that the requested variances be granted.

M.L. Haring – Thank you. If there are no other questions the hearing is closed. For the record there is no one here to be further heard.

M.L. Haring – Stated that the addition appears to be a very nice improvement to the home with very little disturbance to the area. We will need a motion with the conditions #2 & #3 incorporated.

D. Pierce – Questioned the Board before a motion is made, how they feel about requiring the applicant to obtain a letter of interpretation on the wetlands from the DEP.

M.L. Haring - Questioned if it should be a condition of the approval.

T. Decker – Explained whether or not you are satisfied with the report by their professional that there is no wetlands on the site.

M.L. Haring – Asked the Board if they were satisfied with the report. Either way they need to ask for a 14 day letter giving the DEP an opportunity say “no” which would make the resolution mute at that point. We should have a copy of the 14 day letter forwarded to us as part of the application but I don’t believe the decision should be based on this.

T. Deck – Stated that based on the report and the topography and what I know of the area, I have no issue with the Environmental Consultants report.

D. Pierce - Questioned T. Decker about the determination of the Flood Hazard area.

T. Decker – That comment was in question #2. As long as they are putting the pavement at or below grade, it would qualify for a Permit By Rule. I would recommend the same 14 Day Notice.

D. Pierce – Suggested in addition to the normal conditions, the applicant should submit to the Board the 14 Day Notice to the DEP for the applicability of the determination of the Flood Hazard area and for the Riparian Zone Permit By Rule application. Also, that the applicant must submit to Board all responses received from the DEP on those notifications. Submission of a revised plan to note the finished grade of the pavement detail to be at or below grade would be subject to receiving county planning Board approval. I would suggest that we also require the plan be revised as a condition as well to note that the temporary staging and construction access area will be removed and restored to the existing conditions after the completion of the construction. I would make that a condition of the issuance of a CO for the addition.

M.L. Haring - Asked if the Board would like further clarification on the proposed conditions.

No further question or comments were made.

It was moved by D. Hewitt, seconded by C. Ostergaard and carried to grant approval with the conditions proposed by our Legal Council.

Abstain:

Aye: T. Ciacciarelli, L. Frank, D. Hewitt, J. Laudenschach, P. Stepanovsky,
M.L. Haring, C. Ostergaard

Mr. John Gallina – Thanked the Board.

OPEN TO THE PUBLIC

M.L. Haring - Called for comments from the public. *No members of the public in attendance.*

COMMUNICATIONS/REPORTS

M.L. Haring – Announced The Kingwood Township Committee Meeting Minutes for March 3rd & 14th 2016 if anyone would like to review.

ADJOURNMENT:

The meeting was adjourned with a motion by L. Frank, seconded and carried by D. Hewitt. **All in favor.** The meeting adjourned at 8:10pm.

Respectfully submitted,

Kris Boxwell, Secretary