

**KINGWOOD TOWNSHIP  
BOARD OF ADJUSTMENT  
MINUTES  
May 12, 2021  
7:30 PM**

**CALL TO ORDER**

A regular meeting of the Kingwood Township Board of Adjustment (BOA) was called to order at 7:30 pm by Phillip Lubitz, Chairman.

**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.

Adequate notice of this meeting was provided in accordance with the Open Public Meetings Act by publication of the notice in the Hunterdon County Democrat on January 21, 2021 and Courier News on January 21, 2021. Copies of the notice were also posted in the Kingwood Township Municipal Building on January 21, 2021. The Board of Adjustment proceedings close at 10:30 pm.

**ROLL CALL:**

PRESENT: Phillip Lubitz – Chairman, James Laudenbach – Vice Chairman, Mary Lou Haring, David Hewitt, John Mathieu, Cynthia Ostergaard, Leslie Bella (Alternate #1)

ABSENT: Andrew Russano, Chris Kascik

OTHER: David Pierce, Attorney

**NEW AND PENDING BUSINESS:**

1. **Resolution Hearing for Block 51, Lot 4 – Phillip & Marian Griffiths – 67 River Road – Non-Use Variance (hardship).**
2. **Resolution Hearing for Block 51, Lot 43 – Carl & Milena Decicco – 161 Byram Lane – Appeal of Zoning Officer's Decision**

**Block 51, Lot 4 – Phillip & Marian Griffiths**

The Chairman asked the Board if there were any comments or questions. None noted so the Chairman asked for a motion on the following Resolution. D. Hewitt made the first motion, seconded by M. Haring to approve the Resolution.

**RESOLUTION 2021-04  
MEMORIALIZING RESOLUTION  
FOR  
KINGWOOD TOWNSHIP BOARD OF ADJUSTMENT  
PHILLIP AND MARIAN GRIFFITHS  
BULK VARIANCES  
BLOCK 51, LOT 4**

**WHEREAS**, Phillip and Marian Griffiths, (the “Applicant”), owner of Block 51, Lot 4 in Kingwood Township (the “Property”) filed an application with the Kingwood Township Board of Adjustment (the “Board”) for bulk variances to allow the constructions of an addition to the existing dwelling on the Property pursuant to sections 115 and 132 of the Township Code; and

**WHEREAS**, the Applicant presented the Board with an Affidavit of Publication and other proofs demonstrating compliance with all statutory requirements as to the notice required to be given, as well as all notice requirements of the zoning ordinance of Kingwood Township; and

**WHEREAS**, the application was declared to be complete; and

**WHEREAS**, the following documents were submitted with regard to the application, are on file with the board, and are part of the record in this matter:

1. Variance Application Form, dated January 26, 2021;
2. Application for Zoning Permit, denied February 9, 2021;
3. Checklist for Variance Applications, dated January 26, 2021;
4. Affidavit of Ownership, dated January 26, 2021;
5. Proof of payment of real property taxes;
6. Draft Notice of Public Hearing;
7. Letter from Michael Burns, architect, to D&R Canal Commission, dated February 3, 2021;
8. Letter from Michael Burns, architect, to Karen Radcliffe, dated February 15, 2021;
9. Letter from Wayne Ingram, P.E. of Engineering & Land Planning to Karen Radcliffe, dated February 22, 2021;

10. Letter from Michael Burns, architect, to Karen Radcliffe, dated March 3, 2021;

11. Elevation Certificate dated November 15, 2017;

12. Letter from Wayne Ingram, P.E. of Engineering & Land Planning to Karen Radcliffe, dated April 8, 2021; and

13. Plans entitled “New Addition & Renovations 67 River Road, prepared by Michael Burns, architect, consisting of 7 sheets as follows:

Sheet 1 of 7 Exist. Site Plan, dated February 3, 2021,  
with a last revision date of February 24, 2021;

Sheet 2 of 7 Exist. Floor Plan, dated February 3, 2021,  
with a last revision date of February 24, 2021;

Sheet 3 of 7 Exist. West Elevation, dated February 3, 2021,  
with a last revision date of February 24, 2021;

Sheet 4 of 7 Exist. North Elevation, dated February 3, 2021,  
with a last revision date of February 24, 2021;

Sheet 5 of 7 Proposed 2<sup>nd</sup> Floor Plan, dated February 3, 2021,  
with a last revision date of February 24, 2021;

Sheet 6 of 7 Proposed Elevation, dated February 3, 2021,  
with a last revision date of February 24, 2021;

Sheet 7 of 7 Proposed Elevation, dated February 3, 2021,  
with a last revision date of February 24, 2021  
(collectively referred to as the “Plat”); and

**WHEREAS**, a duly noticed public hearing on the application was held on April 14, 2021; and

**WHEREAS**, following individuals testified during the hearing, which testimony is part of the record in this matter:

Michael Burns, Applicant's architect; and

**WHEREAS**, from the testimony and proofs presented, the Board makes the following findings of fact:

1. The Property is located in the Agricultural Residential zoning district ("AR-2 zone") and fronts on River Road.
2. The Property is approximately 0.35 acres in size and a minimum of 2 acres is required.
3. The Property is currently improved with a two-story single-family dwelling.
4. The Property is very small and shallow with a depth of only 73.5 feet instead of the 200 feet required and a width of 214 feet instead of the required 250 feet.
5. The existing structure is a non-conforming structure in that it encroaches into the front and rear yard setbacks by 68.3 feet, 21.7 feet respectively. In fact, the property is so shallow that the front and rear yard setback lines overlap.
6. In addition, the existing impervious coverage on the Property is 15.5% while only 13% impervious coverage is allowed.

7. All of the non-conformities set forth in paragraphs 2 through 6 above are presently existing at the Property and are not being exacerbated by the proposed development.
8. The Applicant proposes to reconfigure an existing attic by expanding an existing bedroom/studio area into that attic and reconfigure and eliminate two risers to make it easier for the owners to navigate the upstairs of the dwelling.
9. The proposed development is contained entirely within the footprint of the existing dwelling.
10. The Property is a unique property and due to its unique size and dimensions, a strict enforcement of the zoning ordinance would prohibit the Applicant from modifying the existing dwelling in any manner. If the zoning ordinance were strictly enforced, no structure could be built on the Property. This would create undue hardship to the Applicant with respect to the non-conforming structure and create an inability to modernize the existing structure.
11. Since the proposed expansion does not increase the existing footprint of the dwelling and does not increase any of the encroachments of the structure, there are no detriments associated with the proposed variance.
12. Similarly, because the proposed expansion does not increase the existing footprint of the dwelling and does not increase any of the encroachments by the structure, the relief requested can be granted without substantial detriment to the zone plan and zoning ordinance.

13. The benefit associated with the proposed variances is providing a variety of housing opportunities by removing barriers and making the existing structure conducive to senior citizen occupancy.
14. The benefits associated with the requested variances outweigh the detriments (no detriments were identified).

**WHEREAS**, the Board voted, after due deliberation, on a motion properly made and seconded to approve the grant of bulk variances from the lot size requirement, lot depth and lot width requirements and the front and rear yard setback requirements to permit the construction of an addition and other renovations to the second floor of the existing dwelling, subject to the conditions set forth below (if any), by a vote of 7 to 0: it is

**THEREFORE RESOLVED** on this 14<sup>th</sup> day of April, 2021, that the foregoing application for bulk variances from the lot size requirement, lot depth and lot width requirements and the front and rear yard setback requirements to permit the construction of an addition and other renovations to the second floor of the existing dwelling is hereby granted subject to the following conditions:

1. Submission of a Plat revised to show the correct actual impervious coverage.
2. And submission of permits from the New Jersey Department of Environmental Protection or proof of exemption from permitting requirements.
3. The Township of Kingwood is dedicated to providing affordable housing and has established an affordable housing program with supporting land use ordinances and a housing trust fund based on the

Fair Housing Act of 1998. If the Applicant is required to pay a development fee to the Kingwood Township Affordable Housing Trust Fund, the Applicant shall pay fifty percent (50%) of the estimated developer's fee to the Kingwood Township prior to the issuance of building permits based on the Tax Assessor's estimated assessed value and his determination of the appropriate developer's fee. Building plans and as-built building plans for each development subject to payment of the developer's fee must be provided to the Tax Assessor and the remaining portion of the developer's fee shall be paid at the time of issuance of a Certificate of Occupancy for the new development. This paragraph does not constitute any determination by the Board as to whether the Applicant is required to pay a developer's fee.

4. Neither the Board nor its employees or professionals will perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The Applicant shall be under a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid. This memorializing resolution shall not be released to the Applicant unless all outstanding escrow fees have been paid and the Applicant's escrow account contains sufficient funds to cover anticipated unbilled expenses.
5. Approval of this application by the Board of Adjustment shall not and is not to be considered as an approval of any other requirements or approvals of permits as may be necessary to allow construction.

6. The within approval, and the use of all property subject to the within approval, are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all Municipal, County, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approvals(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon property application.
7. The Kingwood Township Board of Adjustment reserves the right to revoke and withdraw any approval hereby granted in the event that there is any deviation from, or alterations of, the plan hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Board of Adjustment. Minor deviations and field changes may be authorized in writing by the Township Engineer.
8. All improvements shall conform to building standards and other regulations as set forth in Federal, State, County and Municipal Statutes, Regulations, Codes and Ordinances, at the time of



installation of the said improvement.

9. The acceptance by the Applicant of this approval and reliance thereon by the Applicant for the purpose of commencement of construction of improvements within the project in accordance with the approval, shall operate as an acknowledgment and agreement by the application, its successors and assigns, that it accepts the official action herewith memorialized as being subject to the terms and conditions as contained herein, and agrees to fully comply with and be bound thereby.

<b>MOVED:</b>	<b>HARING</b>
<b>SECONDED:</b>	<b>HEWITT</b>
<b>THOSE IN FAVOR:</b>	<b>HARING, HEWITT, LAUDENBACH, LUBITZ, OSTERGAARD, RUSSANO AND BELLA</b>
<b>THOSE OPPOSED:</b>	<b>NONE</b>
<b>ABSTAINED:</b>	<b>NONE</b>
<b>INELLIGIBLE:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>MATHIEU, KACSIK;</b>

The within memorializing resolution was adopted on the 12<sup>th</sup> day of May, 2021, by the following vote of those Board members who voted in favor of the approval:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>	<u>Ineligible</u>
HARING	X				
HEWITT	X				
LAUDENBACH	X				
LUBITZ	X				
MATHIEU					X
OSTERGAARD	X				
RUSSANO			X		
BELLA	X				
KASCIK					X

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**Block 51, Lot 43 – Carl & Milena Decicco**

The Chairman asked the Board if there were any comments or questions. None noted so the Chairman asked for a motion on the following Resolution. M. Haring made the first motion, seconded by C. Ostergaard to approve the Resolution.

**MEMORIALIZING RESOLUTION 2021-05**

**FOR**

**KINGWOOD TOWNSHIP BOARD OF ADJUSTMENT**

**MR. & MRS. CARL DECICCO**

**APPEAL OF ZONING OFFICER’S DETERMINATION**

**BLOCK 51 LOT 43**

**WHEREAS**, Mr. & Mrs. Carl DeCicco (the “Applicant”), owner of Block 51, Lot 43 in Kingwood Township (the “Property”) submitted an appeal of the Zoning Officer’s determination that no building permit could be issued without a variance approval from the Board of Adjustment because the Property did not front on a public street; and

**WHEREAS**, the application was declared to be complete; and

**WHEREAS**, the following documents were submitted with regard to the application, are on file with the board, and are part of the record in this matter:

are on file with the board, and are part of the record in this matter:

1. Application Form, dated March 23, 2021;
2. Affidavit of Ownership, dated March 23, 2021;
3. Email from Gregory Bonin, zoning officer to Carl Decicco, dated March 16, 2021;
4. Checklist for Variance Applications, dated March 24, 2021;
5. Letter from Wayne ingram, P.E. of Engineering & Land Planning to Karen Radcliffe, dated April 5, 2021; and
6. Plans entitled “Proposed Addition & Alteration for the Decicco Residence” Consisting of three sheets and Gary R. O’Connor, architect, dated February 24, 2021 (the “Plat”); and

**WHEREAS**, a public hearing on the application was held on April 14, 2021; and

**WHEREAS**, the Applicant was represented at the public hearing by Richard Mongelli, Esq.; and

**WHEREAS**, from the testimony and proofs presented, the Board makes the

following findings of fact:

1. The Property fronts on Byram Lane a private road located in the Byram Colony.
2. The Property is currently improved with an existing two story dwelling.
3. The Applicant proposes to add a third story, a covered porch and an elevator/stairway combination and replace an existing deck.
4. In denying the issuance of a zoning permit the zoning officer relied upon N.J.S.A. 40:55D-35 which provides:

“[n]o permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure.”
5. N.J.S.A. 40:55D-36 allows the Board of Adjustment to grant a variance and direct the issuance of a permit despite N.J.S.A. 40:55D-35 where the Board determines that adequate access will be provided for firefighting equipment, ambulances and other emergency vehicles.
6. The Board finds, as a matter of law, that N.J.S.A. 40:55D-35 only applies to the proposed construction or erection of new buildings or structures and does not apply when an applicant proposes to construct an addition to an existing structure even if the property in question does not front on a public street.
7. Because the Applicant’s Property is already improved with a two story dwelling and because they are only proposing to construct

additions to the existing dwelling and no new structures or buildings,  
the Board finds that the zoning officer's determination was in error.

**WHEREAS**, the Board voted, after due deliberation, on a motion properly made and seconded to reverse the Zoning Officer's decision and to determine that a permit should be issued for the additions proposed by the Applicant for Block 51, lot 43 without the need for a variance pursuant to N.J.S.A. 40:55D-36, by a vote of 7 to 0; it is.

**THEREFORE, RESOLVED** on this 12<sup>th</sup> day of May, 2021, that the Zoning Officer's decision that a that a permit cannot be issued for the additions proposed by the Applicant for Block 51, lot 43 without the grant of a variance pursuant to N.J.S.A. 40:55D-36 is hereby reversed and that the Zoning Officer is directed to issue a zoning permit for the additions proposed as set forth in the Plat.

<b>MOVED:</b>	<b>HARING</b>
<b>SECONDED:</b>	<b>HEWITT</b>
<b>THOSE IN FAVOR:</b>	<b>HARING, HEWITT, LAUDENBACH, LUBITZ, OSTERGAARD, RUSSANO, BELLA</b>
<b>THOSE OPPOSED:</b>	<b>NONE</b>
<b>ABSTAINED:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>MATHIEU, KASCIK</b>
<b>INELIGIBLE:</b>	<b>NONE</b>

The within memorializing resolution was adopted on the 12<sup>th</sup> day of May, 2021, by the following vote of those Board members who voted in favor of the approval:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>	<u>Ineligible</u>
<b>HARING</b>	<b>X</b>				
<b>HEWITT</b>	<b>X</b>				
<b>LAUDENBACH</b>	<b>X</b>				
<b>LUBITZ</b>	<b>X</b>				
<b>MATHIEU</b>					<b>X</b>
<b>OSTERGAARD</b>	<b>X</b>				
<b>RUSSANO</b>				<b>X</b>	
<b>KASCIK</b>					<b>X</b>
<b>BELLA</b>	<b>X</b>				

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#### **APPROVAL OF MINUTES:**

P. Lubitz asked if there were any additions or corrections to the April 14, 2021 Meeting Minutes. None noted. It was moved by J. Laudenbach, seconded by D. Hewitt to approve the Meeting Minutes of March 10, 2021.

P. Lubitz asked for a Roll-Call Vote:

P. Lubitz: **Yes**  
J. Laudenbach: **Yes**  
M. Haring: **Yes**  
D. Hewitt: **Yes**  
J. Mathieu: **Abstain**  
C. Ostergaard **Yes**  
L. Bella: **Yes**

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#### **CORRESPONDENCE**

Zoning Reports – The Chairman asked if there were any comments or questions about the Zoning Reports. There were no comments or questions about the April Zoning Reports.

BOA Fee Schedule – At last month’s meeting D. Pierce had a suggestion to group the BOA Escrow fees by variances. The Chairman asked David Pierce to explain the suggestion.

D. Pierce explained that it is based on the amount of work the professionals put into the variance.

- Bulk Variance – a lot less contentious, a lot less stringent proofs, more engineering than legal in terms of distances and how they relate to the property.

- Use Variance - much more stringent review and approval standard. Expect testimony from applicant's engineer, planner or architect. There will be a lot more involved in the review and items in the review letter and more preparation in the resolution. A good example of a use variance would be the Siano application which went on for months whereas a bulk variance could be done at one meeting.

The Chairman asked if the spreadsheet amount was the total escrow or the initial amount. The BOA Secretary answered that the amounts shown were the initial amount. The amounts varied by the types of variances but were not consistent for the same type of variances. Most of the use variances had an initial escrow fee of \$1,000 which was the same as the application fee but there were some use variances that were only \$750. There were some that made no sense as to how the amount was calculated (i.e. Jileya Cudjoe's initial escrow fee was \$976.25; Andrew Jubelt submitted \$980.50). The Secretary said that she always reminds the applicant that even if they submit \$1,000 or more, when the variance process is over, any unused escrow will be refunded to the applicant.

The Chairman asked what the application fees are, and the answer was \$1,000 for use variances and \$350 for appeals and bulk variances.

D. Pierce said for the use variance he recommends an escrow of \$2,500 to begin with. As the secretary indicated that whatever escrow is not used, the applicant will get back. But the secretary routinely has to request the applicant to replenish the escrow and for applications like the Siano's they don't replenish enough, or we don't ask them for enough and the cost of creating the resolution or denial never gets paid. That is something you will see in a lot of denial cases; they don't care if they ever pay.

D. Pierce recommends for bulk variances it should be a \$1,000 for the first bulk variance and \$250 for each additional bulk variance because you may have one that comes in with one bulk variance and another that comes in with four bulk variances. There is more involved in the review of that application and the engineer's report. He does not think that it would be reasonable to charge a \$1,000 for each variance. He suggests \$1,000 for the initial variance and \$250 for each additional variance above the first.

The secretary said at the bottom of the current fee schedule under the application fees there is a note that there are no additional fees for additional bulk variances, but they are under all the first variance. D. Pierce continued that the problem is that the fee schedule only lists the application fees for the BOA and there is nothing in the ordinances establishing the escrow deposits for the BOA applications.

The Chairman asked the Board for comments. M. Haring said she agrees with D. Pierce for the \$1,000 for Bulk variances and \$250 for the additional bulk variances. We should review the use variances. L. Bella appreciates the idea of basing the amount on the number of variances and feels it is unconscionable that the applicant doesn't pay what they owe if they get a denial. Getting the money upfront would be better. D. Hewitt goes along with D. Pierce's recommendation.

The Chairman then asked D. Pierce if a change in the ordinance was needed. D. Pierce said the Board would have motion to make a recommendation to the Township Committee to amend the ordinance to include these initial escrow fees.

The Chairman asked for a motion to make this recommendation. M. Haring made the first motion, and it was seconded by D. Hewitt to make a recommendation to the Township Committee.

D. Pierce said the Board's intent would be worded as:

The BOA recommends that the Township Committee amend the ordinance to create initial escrow deposits for BOA applications as follows:

- For Appeals and Interpretations - \$700
- For Bulk Variance - \$1,000 for the first variance and \$250 for each additional variance after the first variance.
- For Use Variance - \$2,500

P. Lubitz asked for a Roll-Call Vote:

P. Lubitz:       **Yes**  
J. Laudenbach: **Yes**  
M. Haring:       **Yes**  
D. Hewitt:       **Yes**  
J. Mathieu:       **Abstain (left the meeting prior to voting )**  
C. Ostergaard **Yes**  
L. Bella:         **Yes**

D. Hewitt asked how long it would take to make that change. D. Pierce said his expectation on the timetable would be the Township Committee would have the request in June and authorize the Township Attorney to draft the ordinance, then the first reading would be in July and the adoption in August.

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**PRIVILEGE OF THE FLOOR:**

No public present so no comments from the public. The Chairman did note the passing of Gregory Crance yesterday from COVID. Anyone who sits on the BOA knows of Mr. Crance. Mr. Crance was the owner/operator of the Delaware River Tubing and was known as the River Hot Dog Man. He was only 56 years old.

D. Hewitt commented on the new playground equipment being installed and it should be done by the end of the week. The township road department was helping and doing a good job.

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**ADJOURNMENT:**

P. Lubitz asked for a motion to adjourn. It was moved by M. Haring, seconded by J. Laudenbach to adjourn the meeting at 7:56 pm. All members present voted **AYE**.

All meeting votes were unanimous with a vote of 5:0 with a sustained quorum. There were no controverted issues and there was no conflict of interest for any of the Board members in attendance.

Respectfully submitted,

*Karen Radcliffe*

Karen Radcliffe  
BOA Secretary