

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT
MINUTES
April 14, 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 Laudenschlager – Vice Chairman, Mary Lou Haring, Andrew Russano, David Hewitt, Cynthia Ostergaard, Leslie Bella (Alternate #1)

ABSENT: John Mathieu, Chris Kascik

OTHER: David Pierce, Attorney, Wayne Ingram, Engineer

NEW AND PENDING BUSINESS:

1. **Public Hearing** for **Block 51, Lot 4 – Phillip & Marian Griffiths – 67 River Road** – Non-Use Variance (hardship).
2. **Appeal Hearing** for **Block 51, Lot 43 – Carl & Milena Decicco – 161 Byram Lane** – Appeal of Zoning Officer’s Decision
3. **Resolution Hearing** for **Block 17, Lot 14.02 – Jileya Cudjoe – 463 Barbertown-Pt. Breeze Rd.** – Expansion of Non-Conforming Use.

Block 51, Lot 4 – Phillip & Marian Griffiths

David Pierce noted the “Proof of Publication” and “Proof of Service” satisfy the notice requirements and the Board may exercise jurisdiction and open the Public Hearing.

The Chairman asked for a motion to open the Public Hearing. The motion was made by Mary Lou Haring and seconded by Andrew Russano to open the Public Hearing. All Board Members in favor voted AYE to open the Public Hearing.

D. Pierce swore in Michael Burns, the Architect who represents the Griffiths.

Michael Burns is here to present their application for 67 River Rd., Block 51, Lot 4. M. Burns began by presenting the Architectural drawings numbered 1 through 7.

- Dwg. 1 – Existing Site Plan showing the property of .35 acres, Zoning Map, Zoning Data which shows an impervious surface of 15.5% which is the correction from a previous plan, FEMA Flood Hazard Map and Base Flood Elevation of 101.5.
- Dwg. 2 – Existing/Demolition Plan showing the renovations to the interior of the second floor of the building.
- Dwg. 3 – Existing/Demolition West Elevation showing the renovation to the exterior of the West side of the building.
- Dwg. 4 – Existing/Demolition North Elevation showing the renovation to the exterior of the North side of the building.
- Dwg. 5 – Proposed Second Floor Plan showing the new layout of the second floor.
- Dwg. 6 – Proposed West Elevation showing the new addition of the second floor on the West side of the building.
- Dwg. 7 – Proposed North Elevation showing the new addition of the second floor on the North side of the building with the new roof line. It also includes the list of property owners within 200 feet of the property.

There are several existing non-conformities that have to do with both the site and structure on the site. The minimum lot size required is 7 acres and existing is .35 acres which they are not changing. The min. lot frontage is 250 ft., and the actual is 207.6 ft. which is not changing. The min. width required is 250 ft. the actual is 214 ft. The depth required is 200 ft. and the actual is 73.5 ft. The minimum side yard required is 40 ft. for each side yard and the existing is 75 ft. The minimum front yard is 75 ft. and the existing 6.7 ft. The minimum rear yard required is 60 ft. and the existing is 38.6'. The maximum building coverage is in compliance with the zoning. The existing house does violate the front and rear yard setback requirements.

Mr. Burns went on to explain the proposed renovation work on the second floor of the existing house.

The variances that they are seeking are all the existing non-conformities that are not being increased by the proposed work and the minimum front yard and minimum rear yard setbacks that are being increased by the expansion of the bedroom into the attic area even though the footprint of the building is not increased. The Engineer indicated in his report that this is a C-1 request and it was in line with the C-1 criteria even though there is no other way to expand the house without violating those setbacks due to the narrow and shallow property.

W. Ingram asked if they had heard back from the DEP? Mr. Burns said he had a conversation with them but they did not receive the hard copy plans that were mailed to the DEP and could not make a decision without the hard copies.

M. Haring asked if he could indicate with the cursor where the septic and well were located. Mr. Burns did indicate as such.

The Chairman asked the public if there were any comments or questions. None noted so the Chairman asked for a motion to close the Public Hearing.

M. Haring made the first motion, it was seconded by C. Ostergaard to close the Public Hearing. All members present voted **AYE** to close the Public Hearing. There were No Nays and No Abstentions.

D. Pierce said a motion to approve or deny the variance. P. Lubitz asked for a motion to approve the variance.

M. Haring made the first motion, it was seconded by D. Hewitt to approve the variance subject to the following conditions:

- Subject to DEP approval;
- Subject to receipt and submission of the approval or proof of exemption from the D&R Canal Commission;
- Subject to receipt and submission plans to show the correct impervious coverage.

P. Lubitz asked for a Roll-Call Vote:

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

Block 51, Lot 43 – Carl & Milena Decicco

Richard Mongelli, Attorney from Lambertville representing the Decicco's. He began by stating it is a dual presentation tonight. First, they are Appealing the Zoning Officer's decision to deny the applicant's request for a zoning permit to renovate their home on Byram Lane. The basis of the Zoning Officer's denial is based on the Municipal Land Use Law (MLUL) Section 40: 55D-35 which prohibits the erection of a dwelling or any other structure unless it abuts a public street. Byram Lane is a private lane which pre-dates the Kingwood zoning ordinance. The reason this ordinance exists is one purpose – the reason they prevent zoning permits for new homes or structures is for safety. If emergency vehicles can't access the property, it is a matter of public safety and they can't build there. The ordinance says you can't build a new home, but they are not constructing a new house but renovating an existing dwelling. On its face, the ordinance doesn't apply.

There are a couple of reasons why they disagree with the statute and should allow the applicant to have his zoning permit:

- They are not building a new dwelling but renovating an existing home.
- The BOA has the power to direct the zoning permit as long as there is access for emergency vehicles. In the past the BOA had approved a zoning permit for Mr. Robert Bitzel who lives a few doors down from the Decicco's on Byram Lane. He lost his home during Superstorm Sandy and wanted to build a new home. In its 2016 approval, the Board found that there was existing and adequate access for emergency vehicles.

The statute does not apply to the Decicco's application as they are renovating an existing dwelling and the BOA can allow this to proceed by direct application to the board or appeal if the requirement to abut a public street is not relevant because there is adequate access for emergency vehicles. Based on the BOA's findings in 2016 and that there is no change to Byram Lane, the Board can conclude that the concerns of the MLUL are addressed and that

there is adequate access for emergency vehicles. We ask that the Board to authorize the Zoning Official to allow the zoning permit by this appeal.

D. Pierce said he has two comments that he agrees with Mr. Mongelli that the statute applies to the erection of a new dwelling and doesn't believe it should be applied to an existing structure. With respect to whether there is adequate access for emergency vehicles is a question for variance application if one is needed.

P. Lubitz for the case you cited in 2016 was there a variance granted for adequate access?

M. Mongelli said there was but he didn't know if it was an application or an appeal but the Board did grant the variance.

P. Lubitz asked if there were any questions for Mr. Mongelli. None noted. P. Lubitz asked for members of the Board who have been on the Board longer than him if they have ever come across this issue.

M. Haring said that they have dealt with this issue many times previously but can't remember any that applied to renovations. It was always if the footprint was enlarged or if they were encroaching on another property. But for a renovation this is something new and I don't agree that the Zoning Officer said no to it.

The Chairman asked for a motion.

M. Haring made a motion, seconded by D. Hewitt to rescind the Zoning Officer's decision on this particular property.

P. Lubitz asked for a Roll-Call Vote:

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

Mr. Mongelli asked D. Pierce will the Board ask the Zoning Officer to issue the Zoning Permit so they may proceed with the building permits. D. Pierce said yes.

Block 17, Lot 14.02 – Jileya Cudjoe

The Chairman said the next is the Resolution for Jileya Cudjoe. There is no discussion for this Resolution so he asked for a motion.

J Laudenbach made the first motion, seconded by M. Haring to approve the Resolution.

P. Lubitz asked for a Roll-Call Vote:

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

APPROVAL OF MINUTES:

P. Lubitz asked if there were any additions or corrections to the March 10, 2021 Meeting Minutes. None noted. It was moved by M. Haring, seconded by J. Laudenbach 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**
A. Russano **Abstain**
D. Hewitt: **Yes**
C. Ostergaard **Abstain**
L. Bella: **Yes**

CORRESPONDENCE

Zoning Reports - There were no comments or questions about the March Zoning Reports.

BOA Fee Schedule – Discussion about the fees for the BOA and how much should an applicant pay for the initial escrow fee to start the escrow account. P. Lubitz asked the Board Secretary to explain the situation with the fees.

K. Radcliffe explained that the way the fees are listed on the fee schedule is not clear. They need to be listed as to what is the Application Fee and what is the Initial Escrow Fee. Also, the amount of escrow to be submitted to start the escrow account should be confirmed. The BOA Escrow amount is not stated in the ordinances. The Secretary thinks that both the Application Fee and the Initial Escrow Fee should be stated on the Fee Schedule to stop the confusion for the applicant.

D. Hewitt said that this must be a recommendation to the Township Committee. D. Pierce said that this is an ordinance that has to be amended by the Township Committee. K. Radcliffe said that it had to be presented to the Board for discussion first.

P. Lubitz said it sounds like it is two things – one is the fee schedule that is showing the charges or fees. The second would be for the escrow. He would like to see some history on the fees, to go back at least two years.

C. Ostergaard suggested a flat fee or percentage. M Haring said she didn't think a flat fee for different use variances would work for especially when there are large projects like Verizon who would require much more escrow vs. someone like we had tonight where they could present their case quickly.

D. Pierce said don't get too complicated, but you should end up with is an initial escrow amount for a bulk variance, a C-variance like we had for the Griffiths tonight and another fee for a use variance because they are much more involved and require more professionals.

The Secretary agreed with D. Pierce that for a Bulk C variance there should be a corresponding fee for the escrow and another corresponding fee for the Use variance.

M. Haring suggested that for the Initial Escrow Fee it could be double the Application Fee.

P. Lubitz said we will reconvene next month to have a discussion on this.

PRIVILEGE OF THE FLOOR:

No public present so no comments from the public.

ADJOURNMENT:

P. Lubitz asked for a motion to adjourn. It was moved by M. Haring, seconded by A. Russano to adjourn the meeting at 8:12pm. 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