

**KINGWOOD TOWNSHIP  
BOARD OF ADJUSTMENT  
MINUTES  
May 10, 2023  
7:00 PM**

**CALL TO ORDER**

A regular meeting of the Kingwood Township Board of Adjustment (BOA) was called to order at 7:00 pm by the Chairman, Phil Lubitz.

**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. 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 and Courier News on December 22, 2022. Copies of the notice were also posted in the Kingwood Township Municipal Building on December 22, 2022. The Board of Adjustment proceedings close at 10:30 pm.

**ROLL CALL:**

PRESENT: Phil Lubitz – Chairman, James Laudenbach – Vice Chairman, David Hewitt, John Mathieu, Cynthia Ostergaard, Leslie Bella, David Frank, Paymon Jelvani (Alternate #1).

ABSENT: None

OTHERS: Matthew Flynn, Attorney

**NEW AND PENDING BUSINESS:**

Resolution Hearings for:

- **Block 28, Lot 24 - Shana Taylor – 2756 Daniel Bray Highway** – C1 Non-Use Variance, Setbacks

M. Flynn reviewed the typos in both Resolutions that C. Ostergaard noted prior to this hearing. The Board reviewed both Revised Resolutions with the corrections. (See the Resolutions at the end of the Meeting Minutes).

The Chairman asked for a motion on the Resolution. The motion was made by J. Mathieu to approve the Resolution. It was seconded by D. Frank. All members present voted **AYE** in a roll call vote. The Alternate # 1, P. Jelvani did not vote as there was a full quorum of regular Board members.

- **Block 6, Lot 41 – Andrew Bartels – 1127 Rt. 519** – Bulk Variance for Rear Yard Setback & Relief from Ordinance 99-4 Riparian Zone.

The Chairman asked for a motion on the Resolution. The motion was made by J. Laudenbach to approve the Resolution. It was seconded by L. Bella. All members present voted **AYE** in a roll call vote. The Alternate # 1, P. Jelvani did not vote as there was a full quorum of regular Board members.

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Next was the Determination of Completeness Hearing for the following:

- **Block 24, Lot 1.01- Marinelli Brother Acquisitions, LLC** – Preliminary & Final Site Plan, C1 Non-Use Variance (Hardship) & C2 Non-Use Variance (Benefits vs. Detriments)

P. Lubitz announced that John Hansen, Engineer for the Township, will not be in attendance this evening and he had no one to cover for him. We had his recommendations and the applicant's responses to the recommendations. (See J. Hansen's email comments at the end of the Minutes). We have the question of who has jurisdiction on this application – the Board of Adjustment or the Planning Board for the Site Plan Review.

He asked Mr. Robert Martucci, P.E. if he was here for this application. R. Martucci said yes, he was here for the Completeness Engineering comments from Mr. Hansen but not for the jurisdiction question. The applicant's attorney, Kara Kaczynski, is at another meeting now but will join this meeting later. He is here to discuss the response to J. Hansen's comments and consider the application to be deemed complete or not.

P. Lubitz turned the meeting over to M. Flynn to discuss which Board will have jurisdiction over this.

M. Flynn said he will address the Completeness issue. Regardless of what Board it is in front of they submitted the application to the Board Secretary and this Board (BOA). In his opinion the BOA is in a position to make a completeness decision tonight to deem it complete or incomplete. The reason the Board has to make a decision one way, or another is because Municipal Land Use Law requires a completeness determination to be made 35 days after submission of the application. The application was made on April 21, 2023, to the BOA and if you do the math the 35 days from there to deem it complete if it were carried to the June meeting, it would be out of time and the application would automatically be deemed complete. One way or another the Board must make a motion tonight to deem it complete or incomplete, so the optionality does not expire because we are not able to get to it before it expires in June.

M. Flynn continued. The second thing is which board has jurisdiction. It is his understanding that if an application comes in purporting to meet all the conditions of the ordinance for a conditional use that application goes to the Planning Board. In this application they submitted a rider by their counsel, Kara Kaczynski which says they recognize that the restaurant use is a conditional use, but they meet all the criteria in the ordinance for the conditions that Kingwood places on restaurants in the VR2 zone. Normally if they meet all the criteria, then they go to the Planning Board. If they don't meet all the criteria, then they need a variance and must come before the BOA. He said he has reached out to Ms. Kaczynski but has not been able to get in touch with her. She may have been on vacation, and she is at another meeting tonight. He has not been able to hash out which board should be reviewing this application. They are put in a position where a board that should not be hearing the application should pass first upon completeness, so the 35-day clock doesn't expire. He suggests that the BOA go through J. Hansen's email comments outlining the outstanding items from the ordinance. There is no prejudice to the applicant if it has to go to the Planning Board because he is the PB attorney, and he will bring it up at the PB meeting to make sure it is appropriately separated.

P. Lubitz asked the Board if there were any questions.

J. Mathieu said it is a conditional use and what they are looking to do they would not have to come before the BOA unless they are expanding that would require a D variance. Is that what we are looking at here?

M. Flynn responded he wouldn't put it in terms of expansion. An expansion of a use that is non-conforming is different. In this case the restaurant is conforming to the zone. It is just a conditional use meaning the township puts some conditions for restaurants. There are six conditions that the ordinance places on restaurants to continue as permitted. He is not prepared to say whether or not they need it or not. The applicant said they do need to go before the BOA.

P. Lubitz said it doesn't seem to change any existing use so he feels it should go before the Planning Board.

P. Lubitz asked for any other comments. None noted. He then said they would move on to the Determination of Completeness issue. He then asked the Board members if they had a chance to read Ms. Kaczynski's letter. All said yes, they have except for C. Ostergaard who said she is recusing herself from the review of the application. The Chairman turned over the meeting to the applicant's engineer, R. Martucci to address J. Hansen's comments.

R. Martucci began with the **Site Plan Checklist items 5, 6 & 7** - identified by the applicant as not applicable (N/A) but they are applicable unless a waiver is requested and granted. The applicant is silent on that. **Item 5** relates to the water supply. Currently the water is supplied by a well. At this time no new restaurant seats are proposed. We are proposing to increase the existing footprint for storage and vestibule and ADA improvements and a roof over the existing patio. We are asking for a permanent waiver for Item 5.

**Item 6** – Stormwater Management plan. There is limited disturbance, which is less than 1-acre, impervious coverage is less than 1/4 acre and so new impervious coverage less than 1/4 acre. We are asking for a permanent waiver on Item 6.

**Item 7** – Altering of the existing well. We are not expanding the restaurant with any new seats so we are asking for a permanent waiver for item 7.

**Item 11** – Certification of Paid Taxes. A letter from the tax collector was included with the letter to the Board.

**Item 17** – Written request for checklist waivers not provided. We are asking this correspondence as a written request for the waivers.

#### **Plan Checklist:**

**Item 6** – Survey not provided. Did not see a reference to a survey. This was a typo, and they will revise the plan to show that Tony Hajar, PE completed the survey in May 2022. This can be revised by a temporary waiver on that.

**Item 13** – Dimensions of county road right of way to be provided. We do note a 40 foot right of way dedication to Hunterdon County Planning Board and they need to review this application, but a 40 ft. dedication is noted on the plan.

**Item 16** – Checked as complete but contours are shown only on a portion of the plan. They concur with Mr. Hansen request for a temporary waiver additional contours and elevations will be provided prior to approval.

**Item 17** – A partial waiver should be requested. Existing/proposed drainage facilities on tract within 200'. We ask for a temporary waiver.

**Item 18** – All utilities should be shown. Additional utility information will be provided as a condition of any approval and ask for a temporary waiver.

**Item 20** – Septic design flow appears to be over 2,000 gpd. Mr. Hansen said this could be waived for completeness only. We agree. We don't call for additional seats, but we can make sure the restaurant complies with the permit for that property.

**Item 29** – Loading and unloading. It was noted as N/A. It should be addressed for commercial use. We agree with that and ask for a temporary waiver and will provide for that as well on revised plans.

**Item 35** – Landscaping and screening. We ask for a waiver for this for completeness but would like to discuss this with the Board at the hearing and provide whatever buffer they can within that site.

**Item 37** – Architectural plans for the building addition for storage, affordable housing unit or pavilion. The Board will need to see those plans. Their response is the plans were previously provided as stated in the letter. There is no change to the upstairs to be utilized as the affordable housing unit, but they will provide those plans for approval.

**Exhibit C** – There is a discrepancy in the dimensions. The “pergola” dimensions are stated 50 ft. x 50 ft. but the plan shows a proposed “pavilion” with dimensions of 40 ft. x 40 ft. The patio is 40 x 40, and the pavilion will be constructed above the patio. Same item, different connotation.

P. Lubitz asked if anyone saw an elevation of the pergola. No one saw it. The Board Secretary said she did not see the drawing of the pavilion. She had received numerous plans and asked the applicant’s attorney if the second set of plans that came in were revised. The answer was no, they were the original plans for both boards.

M. Flynn said in the attorney’s cover letter in the original submission there were two separate bulleted points for different architectural plans but when he opened his file for the submission there was only one plan and no pavilion plan.

The Board Secretary held up the plan to the camera for the Board to see the second set of plans that was submitted, and it did not contain the pavilion plan.

P. Lubitz asked Mr. Martucci if he knew the height of the pergola. R. Martucci was checking the plans for the height of the pergola.

P. Lubitz noted that the applicant’s attorney, Kara Kaczynski has joined the meeting at 7:30pm. She apologized for being late. She asked R. Martucci where they were at in the meeting. He replied that the Chairman has asked for the height of the pavilion.

K. Kaczynski looked in her files and found the height to be 15’-10” high.

M. Flynn said he spoke to J. Hansen prior to the hearing. They went through each item. Any item that requests a permanent waiver and he agrees with applicant’s counsel about that. He recommends for completeness tonight and allow Ms. Kaczynski’s office and his office to discuss the jurisdiction. If the Public Hearing would happen after the Board deeming the application complete tonight, it would be an entire month away whether it was the BOA or PB there would be enough time for the applicant to do their notice and get everything ready for the Public Hearing. He said it is not inappropriate to deem the application complete, and there is enough information to entertain that motion tonight to get the applicant on the next calendar for either the BOA or PB. In his earlier email to the BOA Secretary, he stated that the BOA doesn’t have to vote to pass it to the PB, it can be done administratively, and he would send out a memo that the PB would hear it this month and that is sufficient. Completion has to be acted on to beat the 45-day time limit.

P. Lubitz asked for questions or comments.

D. Frank had some comments and questions. On Exhibit C, third paragraph, it is stated that the vestibule is 7’-6” x 7’-6” next to the ADA ramp. Then it shows a pergola measurement of approximately 50’ x 50’ for a size of 1,000s.f. and utilized as additional seating for the Tavern. 50 x 50 is 2,500 sf. It also says it is utilized as additional seating. That triggered Checklist Item #5 and #20 about additional seating.

P. Lubitz said they had made clear the pergola/pavilion will be covering existing seating.

D. Frank asked if the square footage was calculated incorrectly or did he misunderstand it. K. Kaczynski said no he did not misunderstand the sf. The pergola is as noted on the architectural plan which is 40’ x 40’ and will control the dimensions. They will send in the architectural plan with the pergola on it.

D. Frank also stated that the paving extends out into the roadway and goes across Barbertown-Point Breeze Rd. There is a storm surround in the road but without contours, it looks like it would be a storm water issue on the easterly side of the paving.

R. Martucci replied we would have to enlarge that area and grade it as J. Hansen had commented about contours.

K. Kaczynski said that they will have their engineer sit with Mr. Hansen to go over the items so when they come before the Board, they will be able to answer the Board's questions that may be open.

D. Frank asked if there were going to be any utilities such as heating, lighting or water in the pergola.

K. Kaczynski said no but there may be some temporary heaters in the colder months, and she will have the applicant testify to that at the hearing. It is an existing patio, and it is basically for weathering purposes for inclement weather.

D. Frank said that the attorney clarified the dimensions of the pergola to be 40' x 40' and it looks like it is 6' or 9' from the building. He was going to ask if there were sprinklers, but it is a moot point at this time. He continued to say that he had to look up the definition of a pergola and they appear not to have sides and a pavilion could have sides. Does this have sides or just the roof?

K. Kaczynski said it is just the roof and they specifically show the 40' x 40' floor plan and it shows the elevation titled "open pavilion" and the height of the pavilion. She will forward the plans of the pergola.

D. Frank said he saw an underground propane tank near the old pool, and he wanted to know if it was to heat the swimming pool or for the building. Mr. M. Marinelli stated it was to heat the building. D. Frank said in the addition he saw a set of stairs – are these new stairs on the westerly side of the addition? Are these stairs for the second floor?

R. Martucci said that is an architectural comment and the architect will have to testify how to get to the second floor. Mr. Mike Marinelli said the stairs that you see there are existing to be removed. The stairs to the left will go to the second floor. D. Frank said that is all the questions he has. K. Kaczynski said she will have the architect testify. She will get additional copies of the pergola to everyone.

P. Lubitz asked if any other Board members had questions.

J. Mathieu said he has no issues with deeming it complete, but does it stay here or go to the Planning Board?

P. Lubitz said they are going to do site completeness first and then take up that issue.

M. Flynn said the Board doesn't have to make a decision on jurisdiction tonight. The Board can just do completeness and will hash out the jurisdictional issue between K. Kaczynski and himself. It doesn't require a motion from the Board. The only thing in front of the Board tonight is Completeness because this is the Board in which the application was filed.

P. Lubitz asked the Board for their thoughts on the Completeness issue. John let's start with you.

J. Mathieu said he thinks they are well on their way to completeness, and he has no problem if they voted in favor of it.

J. Laudenbach said he agrees with John, there are no big issues, just a few issues and if they can be put together and given to us, he has no problem with it.

C. Ostergaard said she will recuse herself.

D. Hewitt said yes, he agrees and will go along with it.

L. Bella said she concurs with the Board.

P. Jelvani said he agrees although there are some discrepancies in communication and the documents that they have provided, but they can continue with this.

P. Lubitz said there seems to be a consensus of the Board members and asked Matthew, can you read back the conditions to be voted on?

M. Flynn said it is a very simple motion to deem the application conditionally complete in line with the testimony presented and the comments in reply to the review letter.

The Chairman asked for someone to make a motion.

D. Hewitt made the first motion, seconded by J. Mathieu to deem the application conditionally complete in line with the testimony presented and the comments in reply to the review letter. The Chairmans asked for a Roll-Call Vote.

**Roll Call Vote:**

P. Lubitz	<b>Yes</b>
J. Laudenbach	<b>Yes</b>
D. Hewitt	<b>Yes</b>
J. Mathieu	<b>Yes</b>
C. Ostergaard	<b>Recused</b>
L. Bella	<b>Yes</b>
D. Frank	<b>Yes</b>
P. Jelvani	<b>Yes (he votes tonight to make the quorum.)</b>

P. Lubitz said we've been looking forward to Paymon's vote for a long time. Sounds like the motion passes. One thing he is interested in is whether it comes before our Board or the Planning Board, but he is interested in the agreements that will be signed for the dedicated affordable housing apartment and how it will be marketed.

K. Kaczynski said she will make sure she will have the testimony and will comply with the state's requirement for the 30-year deed restriction. She doesn't know how the township manages the affordable housing apartments if there is a affordable housing manager or an outside company that does that but they will have the testimony ready for that.

P. Lubitz said to M. Flynn that he may want to touch base with David Banisch, Township Planner about that.

M. Flynn said he would and then asked Ms. Kaczynski to reach out to him this week to work out the jurisdictional question. She said she would as she has some thoughts on it as well.

The Chairman then thanked Ms. Kaczynski and she apologized for the delay.

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**APPROVAL OF MINUTES:**

P. Lubitz asked if there were any questions or comments, additions or corrections to the April 12, 2023 BOA Meeting Minutes. None noted. The Chairman asked for a motion to approve the Meeting Minutes with the

correction. It was moved by D. Frank seconded by C. Ostergaard to approve the Meeting Minutes of April 12, 2023.

P. Lubitz asked for a Roll-Call Vote:

**Roll Call Vote:**

P. Lubitz	Yes
J. Laudenbach	Yes
D. Hewitt	Yes
J. Mathieu	Yes
C. Ostergaard	Yes
L. Bella	Yes
D. Frank	Yes
P. Jelvani	Yes

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**CORRESPONDENCE/REPORTS:**

P. Lubitz said we have a new Zoning Officer, J. Fleming. He asked the BOA Secretary what the “J” stood for. The reply was “John.” He then said we made a request of what the permits were for – for example a house, a barn, a solar generator. The Secretary said she had talked to the Zoning Officer last night about adding the description of the permit. The Zoning Officer said that the reports are generated through the website portal so we will see if he can add the description.

Then we have the Planning Board Agenda for April and PB Minutes. He said he sees the discussion of kennels in the township. Reading through the ordinance, it is confusing about kennels. Kennels are not a permitted use. They’re specifically stated that they are not permitted use in Village Commercial 1 & 2 but the other zones if you have a dog license you can have a kennel. There are some questions about the history of that. John Mathieu if you could go over that of how it came to be a non-permitted use.

J. Mathieu said he remembers it was the kennel on Tumble Falls Road. He said it was a noise complaint. People were complaining about kennels making undo disturbances in the evening and different times during the day. They also capped the number of auto body shops in the township. Flower Hill Autobody on Rt. 12 was the last new shop. As far as where we are today, there are no new kennels allowed. He doesn’t remember what year it was but kennels were stricken as well as autobody shops and there are regulations on the number of horses allowed on acreage. Probably somewhere in the 1990’s.

P. Lubitz said that is an issue that the Planning Board will deal with that. Then he saw there was a discussion about requiring EV stations on certain commercial properties and he thinks it is a good idea. J. Mathieu said it is, but he did want to get into that. P. Lubitz said it was to be on commercial properties with 50 or more parking spaces.

J. Mathieu said if you have a property that has 5 units on a property say an apartment building. You are required to have a charging station for residential. The PB was asking to identify commercial areas for them. He has his own ideas on it and he doesn’t think electric cars or gas cars of the future. It will be hydrogen fuel cells. Toyota is already selling them in California.

D. Frank commented he found it interesting looking to adopt the Alexandria ordinances that were drafted in response to the Beneduce Vineyards on a preserved farm. He doesn’t know if Kingwood has an operation like that. It is a big operation on a preserved farm. It did reference one place in Kingwood that might apply. The state must have changed the laws that allow that, and towns have to respond to it, so it doesn’t get out of control.

P. Lubitz said the Agricultural Committee discussed that as well. On the Ag side there are a number of farmers that would like to promote it for the sustainability of farms in the township.

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**PRIVILEGE OF THE FLOOR:**

C. Ostergaard wanted to say something about the Planning Board Minutes about updating the Tax Map with the conservation easements. She did inquire about it, but they decided against it now. Perhaps it is a good idea in the future.

P. Lubitz said it is hard to pull together all the different agencies because the easements are all over the place. There is a movement to have all the easements recorded electronically for a central database.

M. Flynn said it is a budget issue. To pull this all together and record them on a tax map but in a central office of geo mapping. It is a huge endeavor that every township is struggling with now and finding some central organization for land use.

P. Lubitz said there was some discussion about geo mapping and electronic submission for it.

C. Ostergaard asked if anyone was familiar with the project by MEI Corporation on Barbertown – Point Breeze Road. There is a shed building going up and there is an indication on the March Zoning Report about 465 Barbertown-Point Breeze Rd but no indication as to what it is.

J. Mathieu said that the property with the fence is a swamp. He doesn't know what they could build back there.

P. Lubitz said years ago someone wanted to donate the land. J. Mathieu said that the swamp land was that property. The township declined the property because of the DEP fines.

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**ADJOURNMENT:**

P. Lubitz asked for a motion to adjourn. D. Frank made a motion, seconded by J. Laudenbach to adjourn the meeting. All members present voted **AYE**. The meeting ended at 8:06 pm.

All meeting votes were unanimous with a vote of 7:0 with a sustained quorum. There were no controverted issues and there was no conflict of interest for any of the Board members in attendance.

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Respectfully submitted,

Karen Radcliffe  
BOA Secretary