

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT
MINUTES
December 13, 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, David Hewitt, John Mathieu, Cynthia Ostergaard, Leslie Bella, David Frank, Paymon Jelvani (Alternate #1).

ABSENT: Jim Laudенbach, Vice-Chairman

OTHERS: Matthew Flynn, Attorney, Crystal Eggers, P.E. for John Hansen, P.E., Frank Floyd, Emergency Management Coordinator

NEW AND PENDING BUSINESS:

The Chairman said this meeting is bittersweet as this is the last BOA Meeting for David Hewitt. He hesitates to say how many years Dave served on this Board. David Hewitt said he started when Jack Haverstick was on the Board. John Mathieu said Dave came on back in 1986. Phil Lubitz said that another long-standing member, Jim Laudенbach, has retired from the Board after 20 plus years on the Board. Jim will be dearly missed as well. He continued and said Paymon Jelvani will be stepping down from the BOA. Starting in January he will be on the governing body and congratulations on his election. Paymon said he will miss the group and he has learned a lot from the BOA.

Determination of Completeness Hearing for the following:

- **Block 4, Lot 7.24 – Jacquelyn Perrson - 1 Manchester Lane** – Use Variance (D3) for an Existing Residential Accessory Building to be Used as an ECHO Housing Unit.

The Chair then continued with the agenda beginning with the Determination of Completeness Hearing. He reminded the Board that tonight they will be strictly ruling on the completeness of the application. He asked Ms. Perrson to briefly describe why she is here tonight.

Ms. Perrson explained she and her husband purchased their property back in June. They both work in public service. There is an existing outbuilding on the property that is accessory residential use permitted and they would like to use it as an ECHO unit for her mother. The County has already approved it as an ECHO unit. They are coming before the Board for a D-3 conditional use variance with waivers for some dimensional standards set forth in the ordinance.

P. Lubitz asked C. Eggers, P.E., to go over the Completeness Review (See Completeness Review at the end of the minutes).

C. Eggers said they do not object to the application being deemed complete. There were several waiver requests from the Checklist items as follows:

- Item 5 – no objection to plans being signed and sealed by NJ licensed professional given the scope of the application.
- Item 16 - no objection to contours of the property given the proposed ECHO unit is existing.
- Item 17 – no objections to existing and proposed drainage facilities given the scope of the application.
- Item 22 – no objection to indicate the location of all existing and proposed structures as no site improvements or modifications are proposed.
- Item 34 - no objection to a waiver for completeness only. This item has been identified as “Waiver/Not Applicable” however a copy of the property deed should be provided. Providing copies of those should be a condition if approved but the Board can continue at this time without them.
- Item 44 – no objection to waiver request for the certification of the D&R Canal Review Zone or that the property is exempt.

P. Lubitz asked J. Persson if she already has the permits to make changes to this structure or does she have to apply for additional permits?

J. Persson said it was her understanding after speaking to a couple of professionals that after the Public Hearing if it was approved and variances granted then she would apply for the building permits. Many of the changes are minimal. Everything that is finished in the unit are already permitted by the town and the copies are there. Also, she did provide a copy of the deed (item 34) to John Hansen and the BOA Secretary, and the signed/sealed plans (item 5) have been submitted to the BOA Secretary in a white binder.

The Chairman asked the BOA Secretary to verify that we do have those items. The BOA Secretary confirmed she has the white binder, and the items were submitted.

P. Lubitz asked the Board if they had any questions dealing with Completeness only.

D. Frank asked if the unit was a modular unit that slides into the existing building or is it a stick-built building?

J. Persson said it is an existing building. We would have to make minor interior changes to make it fit into an elderly cottage. It would be done within the existing building.

D. Frank said OK so that answers the questions about the barrier free bathroom. Now what is remediated water?

J. Persson said that when they bought the house, they had to have the water tested. They have a well and they had to remediate the water to make it safe for drinking. They got approval from the County that the water is safe. The water is already connected to the outbuilding from the house.

P. Lubitz said that is one thing she is seeking relief for. Our ordinance calls for a modular to be brought on site and removed later.

C. Ostergaard asked for clarification of an ECHO Housing unit.

P. Lubitz answered that we are talking about completeness only. John Hansen gave a good description of what an ECHO Housing is in the Completeness Review Letter. We will be talking about what an ECHO Unit is when we go to the Public Hearing. Basically, an ECHO Unit is a portable unit around 700 sf brought to the site and sits on a cinder block foundation and removed when it is no longer needed. It serves as housing for a relative over 60 years old who needs nursing care.

P. Jelvani asked, for clarity we don't get into the details of what is legitimate or not based on the ECHO Ordinance. All we are doing tonight is whether the application is complete.

P. Lubitz said that is correct.

J. Mathieu asked did they get County Health Board approval; meaning is it able to be tied into the existing septic system or do they already have a sewer line running out to the building?

J. Persson answered what we submitted to the township we submitted to the County, so they have approved the exiting septic system as is for the ECHO unit if the Board were to approve our variances and waivers.

J. Mathieu said that was fine with him.

P. Lubitz said we are ready to have a motion to deem the application either complete or incomplete. We have requests for waivers for items 16, 17, 22 & 44.

J. Mathieu made the motion to deem the application conditionally complete with the waivers for the listed items.
C. Ostergaard made a second motion.

P. Lubitz asked for any further comments or questions. None noted so he asked for a Roll-Call vote.

Roll Call Vote:

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

The application was deemed Conditionally Complete, and we will see the applicant next month for the Public Hearing.

APPROVAL OF MINUTES:

P. Lubitz asked if there were any questions or comments, additions or corrections to the November 8, 2023 BOA Meeting Minutes. There were some comments about typos and/or missing words. The Chairman asked for a motion to approve the Meeting Minutes with corrections. It was moved by D. Hewitt seconded by L. Bella to approve the Meeting Minutes of November 8, 2023 with all the corrections made. P. Lubitz asked for a Roll-Call Vote:

Roll Call Vote:

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

2024 SCHEDULE OF RE-ORG MEETING

P. Lubitz stated that the date of the Re-Org. Meeting would fall on January 10, 2024, and we will keep it at 7:00pm with the 10:30pm ending. It will be a Zoom Meeting. No comments or objections from the Board.

CORRESPONDENCE/REPORTS:

P. Lubitz said next on the Agenda was the Zoning Reports but we do not have any Zoning Reports.

He said we have the Planning Board Agendas and Planning Board Minutes. It looks like a lot of time was spent on ordinances about events on a farm and farm stands. Event ordinances have been bounced around in number of committees but there has not been a final version of an ordinance even if there will be an ordinance.

C. Ostergaard asked if there was an ordinance on farm stands?

J. Mathieu stated there was a move to increase the amount of produce on a farm stand to 75% that comes from the farm property or within the borders of Kingwood Township from 50%. He believes that it was kept at 50%. That was the largest issue with the farm stands. What is the percentage of the produce or items that are being sold at the farm stand that comes from the farm or other vendors within the township.

C. Ostergaard asked if this was for preserved farms.

P. Lubitz said no it was for someone selling eggs at the end of the driveway. It is not an extensive operation.

C. Ostergaard asked if this was for all residents and not just farms.

P. Lubitz said all residents can have a farm stand. He believes that you can raise chickens on a 2 acres lot.

J. Mathieu said you could raise horses on a 2-acre lot.

P. Lubitz said he sits on the Open Space Committee as well and it looks like it landed on 51%.

J. Mathieu said he thinks that is right. That was an advisory group. 75% was too high and 51% was correct.

P. Lubitz said they went with what the state recommended.

C. Ostergaard said she has seen so many stands, more than ever now. She is concerned that the regulation may hinder some people from selling flowers at the end of their driveway.

P. Lubitz said people are selling thing like flowers, eggs, and honey.

C. Ostergaard asked if there were any issues about selling wood at the end of the driveway.

P. Lubitz said he doesn't know anyone who doesn't have any dead ash trees. He asked for any other comments about the PB Minutes or Agendas. None noted.

PRIVILEGE OF THE FLOOR

He thanked Paymon Jelvani, David Hewitt and Jim Laudenbach for their service to the Board and Township. He appreciates their dedication. He thanked everyone and appreciated the work that we've done. He wishes everyone a joyous holiday and holiday season.

He thanked Crystal Eggers for filling in for John Hansen.

C. Ostergaard asked Dave Hewitt about the Christmas Tree. She did not see it lit. Was there a problem?
D. Hewitt said it was lit but there was a problem with the receptacle. He will ask Michael with the Road Department to look at it. He thanked Phil for his kind words, but he did want to let people know that Santa Claus will be coming to Kingwood this weekend from the fire truck. It is a nice event. He will be waving – oops – he means Santa will be waving.

D. Frank asked about the recycling center. Is anything going on with them?

P. Lubitz said he heard the Environmental Committee is to be making a site visit there and will be making a recommendation.

D. Frank also added that he reached out to Frank Floyd about the fire lane construction and the extra pickup trucks. Are they parked in the back on the fire lane?

P. Lubitz said that the fire lane is in the back of the building and the pickups will be parked in the parking lot spaces.

ADJOURNMENT

P. Lubitz asked for a motion to adjourn. D. Frank made a motion, seconded by D. Hewitt, to adjourn the meeting. All members present voted **AYE**. The meeting ended at 7:43pm.

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.

David Hewitt said it has been a pleasure working with you guys. Paymon Jelvani also thanked the Board and enjoyed working with you in the past couple of years and looks forward to working with you in a different capacity. Merry Christmas and Happy Holidays!

Respectfully submitted,

Karen Radcliffe
BOA Secretary

CIVIL ENGINEERING
WATER RESOURCES
ENVIRONMENTAL
SURVEYING
LANDSCAPE ARCHITECTURE

December 3, 2023

Ms. Karen Radcliffe, Secretary
Kingwood Township Board of Adjustment
599 Oak Grove Road
Frenchtown, NJ 08825

RE: d(3) Variance Application-ECHO unit
Block 4, Lot 7.24
1 Manchester Lane
E&LP Project #KT 23003-08

Dear Ms. Radcliffe:

The above referenced property consists of approximately 5 acres and is developed with a single-family home and outbuilding. The property is served by a private well and septic system. The entire lot is located in the AR-2 Zone and has driveway access from Manchester Lane.

The applicant is requesting a d(3) variance in connection with the conversion of the existing outbuilding to an ECHO unit for a relative. The application states that the existing outbuilding is approximately 20 years old and that the proposed renovation of a portion of the structure will consist of 1 bedroom, 1 full bath, kitchen and living area. There are no changes proposed to the footprint of the outbuilding structure and no land disturbance is proposed in connection with this application. The outbuilding structure is currently connected to the existing septic system and the existing well.

The Kingwood Township Land Use Code defines an ECHO Unit as follows:

"An Elder Cottage Housing Opportunity (ECHO) unit is a small removable modular cottage on a lot with a single residential dwelling. The ECHO unit shall be a separate living quarters, accessory to a primary residence on the premises, not exceeding 720 square feet of gross floor area for the use of and occupancy by not more than two persons who are related by blood, marriage or adoption to the lot owner, who must occupy the primary residence on the premises, and one primary care giver. One of the ECHO unit occupants shall be 60 years of age or older."

The purpose of the Elder Cottage Housing Opportunity unit is to provide extended family housing as a residential accessory structure on a lot with a principal residential structure. ECHO housing shall provide an alternative to nursing home and boarding home care so that immediate elderly relatives may live nearby but not in the same housing unit as younger immediate relatives. This housing is provided so that it may be installed in a financial and efficient manner and removed easily and economically at a later date when it is no longer needed. It is the intent of ECHO housing to provide for



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the continuing need for mutual support within the family while maintaining individual independence and financial security.

The following information has been provided in connection with the application

- Application prepared by Jacquelyn Pearson, dated 11/6/2023.
- Transmittal letter from Jacquelyn Pearson, dated 11/6/2023.
- Survey, prepared by Brunswick West, Inc., dated 5/30/2023.
- Survey, prepared by E&LP, dated 8/12/2015.
- Proposed ECHO Unit Septic Sketch, prepared by Kurt Hoffman, dated 8/21/2023.
- Floor Plan of the proposed ECHO unit (Exhibit B).
- Approval from the Hunterdon County Health Department, dated 9/14/2023.
- Copy of the Construction Permit for the existing structure, dated 4/26/2016.
- Copy of the Township Zoning Map with the property location identified.
- List of Property Owners within 200 feet.
- Copy of the Township Tax Map with the subject property clearly identified.
- Letter of No Interest from the Hunterdon County Soil Conservation District, dated 11/6/2023.
- Copy of Tax Payment history for the subject property.
- Copy of application and escrow checks.
- Completed Escrow Agreement, dated 11/6/2023.
- Eight (8) color photographs of the interior and exterior of the subject accessory structure.
- Checklist for Variance Applications, prepared by Jacquelyn Pearson, dated 11/6/2023.

I. Completeness Review

The application has been reviewed in comparison to the Checklist for Variance Applications. Items not identified below are considered to be either complete, or not applicable.

Checklist Item #5 Plans signed and sealed by a NJ licensed professional- Sealed documents have not been provided. *We have no objection to the waiver for completeness purposes given the scope of the application.*

Checklist Item #16- Contours of the subject property- This item has not been addressed. *We have no objection to a waiver request for this information given that the subject structure in which the ECHO housing unit is proposed, is existing.*



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Checklist Item #17- Existing and Proposed Drainage Facilities on tract and within 200 feet- This item has not been addressed. *We have no objection to a waiver request for this information given the scope of the application.*

Checklist Item #22- Indicate the location of all existing and proposed structures- The applicant has requested a waiver for this item indicating that no site modifications or improvements are proposed.. *We have no objection to a waiver request.*

Checklist Item #34- Copies of any existing or proposed covenants and deed restrictions- This item has been identified as "Waiver/Not Applicable". *We have no objection to a waiver request for completeness only. A copy of the property deed should be provided as a condition of any approval.*

Checklist Item #44-Certification as to the D&R Canal Review Zone or that property is Exempt- A waiver has been requested for providing this information. *The property is located in Zone B of the D&R Canal Mapping and is not "major" project. Therefore, we have no objection to the waiver request.*

The Board should review the above waiver requests and make a completeness determination prior to hearing the application.

II. Standard For Relief

The Board has the power to grant d(3) conditional use variances pursuant to N.J.S.A. 40:55D-70d(3) "in particular cases for special reasons." The Coventry Square case applies. The applicant must show, and the Board must find, that the positive criteria and negative criteria have been satisfied.

As it pertains to the positive criteria, the Board's focus shall be on whether the site remains appropriate for the conditional use despite the failure to conform to all of the ordinance's conditions. The standard does not require a finding that the site is particularly suitable for the use.

The negative criteria must also be addressed by the applicant. The court held that the strict requirements of the first prong of the negative criteria (whether the variance can be granted without substantial detriment to the public good) does not apply in this case. Instead, the Board shall focus on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial detriment to the public good. The court also held that the strict requirements of the second prong of the negative criteria (whether granting the variance would substantially impair the intent and purpose of the zone plan and zoning ordinance) do not apply in this case. Instead, the Board shall focus on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial impairment of the intent and purpose of the master plan and zoning ordinance.



III. Technical Review

1. The applicant shall provide direct testimony regarding the application and address the positive and negative criteria for the variance relief.
2. Any checklist items waived for completeness only should be provided as a condition of any Board approval.
3. ECHO units are a conditional use in the AR-2 Zone subject to the standards outlined in 132-102(O) of the land use code as follows:

(a) An ECHO unit shall be considered to be an accessory use to an existing residential structure and use. However, the ECHO unit shall meet the side yard and rear yard requirements of a principal structure. *The AR-2 Zone subject application does not comply with the minimum rear yard setback requirements of a principal structure. 60 feet is required, and 50.59 feet exists to the outbuilding.*

(b) Minimum lot area shall be 2.0 acres unless a greater lot area is required by the applicable zoning district. *The subject application complies. The lot area is 5.0 acres.*

(c) Maximum square footage of the unit shall be 720 square feet.
[Amended 12-17-2001 by Ord. No. 11-9-2001] *The subject application complies. The proposed unit area is 696 SF (12' x 58').*

(d) The unit shall be placed within the rear yard and not within the area of the front and side yards. The Planning Board may grant a waiver to permit a unit in the side yard if it can be shown that the placement of the unit will have no impact upon adjacent properties. *The subject structure that will contain the ECHO unit is located in a side yard. Relief is required.*

(e) The unit shall be positioned on the lot in such a way as to minimize its visibility from other nearby abutting lots. Additional buffering may be required by the Planning Board to meet this criteria. *Additional buffering requirements are subject to the Board.*

(f) The unit shall be located only upon a lot with a single-family detached dwelling. *The subject application complies.*

(g) Only one unit shall be permitted per lot, and it shall contain a bathroom, kitchen, living room and sleeping facilities. There shall be no more than two bedrooms. *The subject application complies.*

(h) The ECHO unit shall be self-contained, barrier free, energy efficient and capable of being moved to another site. The applicant shall be responsible for preparing the site for installation of the ECHO unit. It shall be located on masonry block or wooden piers with adequate tie downs, not on a concrete slab, and shall comply with the definition of



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"dwelling." *The subject application does not comply. The unit is proposed within an existing permanent structure.*

(i) The Planning Board shall have the right to grant a waiver to any of the above dimensional standards and building standards if it can be shown that the granting of the waiver shall not have a negative impact upon adjacent properties. *Waivers are requested. The Applicant shall provide testimony in support of the requested waivers.*

(3) Health Department requirements. Proof of approval by the Hunterdon County Board of Health of the well and septic systems for the ECHO housing unit must be submitted to the Township of Kingwood in order to secure a certificate of occupancy for said unit. The unit shall be connected to an existing public sanitary sewer line or it shall be connected into a septic tank in accordance with the requirements of N.J.A.C. 7:9A-8.2. In addition thereto, the applicant for an ECHO housing unit shall complete the applications required by the Hunterdon County Health Department ECHO Program and the NJDEP Division of Water Quality Permit-by-Rule authorization requirements for an ECHO housing unit. Likewise, the applicant must secure approval of such applications and satisfaction of such requirement prior to the issuance of a certificate of occupancy for said unit. *The applicant has obtained approval from the Hunterdon County Health Department (see correspondence dated 9/14/2023).*

(4) Occupancy.

(a) The ECHO unit is for the use and occupancy by not more than two persons who are related by blood, marriage or adoption to the lot owner, who must occupy the primary residence on the premises, and one professional care giver. One of the ECHO unit related occupants shall be 62 years of age or older. The care giver must vacate the ECHO unit within 60 days of the ECHO unit occupant's vacating the ECHO unit. *This should be a condition of any approval of the Board.*

(b) The ECHO unit shall be removed from the premises upon the death or permanent change of address of the original occupants, and physical removal of the unit shall take place within 90 days of such event. To facilitate this requirement, the unit shall either be part of an ECHO housing unit program sponsored by the Township or other governmental unit or agency or nonprofit program or the municipal agency shall be satisfied that adequate provisions (such as the posting of a bond to ensure the removal of the unit) have been made guaranteeing the removal of the ECHO unit at the end of the term of the subject occupancy. *The proposed ECHO unit will be inside of an existing structure that is proposed to remain. The Board should determine if a bond should be provided by the applicant to ensure the decommissioning of the unit upon death or permanent change of address of the original occupants.*

(c) Within 60 days of the removal of the unit, the lot shall be restored by the owner/occupant of the premises to the status prior to the installation of the unit or bond shall be posted with the Township to ensure the restoration. *This is not applicable in this case since the existing structure will remain after the unit is no longer required.*



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(d) Application and approval for an ECHO unit shall be considered a minor site plan subject to the review and approval of the Planning Board. Upon submission of the application, the applicant shall pay an application fee of \$200 and establish an escrow in the amount of \$1,000 for professional review, subject to the requirements of the Land Use and Development Ordinance of Kingwood Township. Notice of an application for an ECHO unit shall be given in accordance with the provisions of N.J.S.A. 40:55D-12. ***No response required.***

(e) The owner/occupant of the primary dwelling shall obtain an annual permit from the Zoning Officer at an annual fee of \$25, which shall be issued after his on-site inspection of the ECHO unit and satisfaction that the requirements of this subsection continue to be met. This permit shall certify the continuing compliance by the permittee with the conditions of the original permit issuance. ***This shall be a condition of any approval by the Board.***

We trust these comments will be helpful to the Board in its consideration of the application. We will have a representative of our firm at the meeting to answer any questions.

Sincerely,



John Hansen, PE, PP, CME

cc: Jacquelyn Perrson (via email only)
Henry Hinterstein, LLA, PP (via email only)
David Banish, PP, AICP (via email only)
Board Attorney (via email only)

