

Township Committee Minutes

March 10, 2020

A Special Meeting of the Kingwood Township Committee was called to order at 7:00P.M. with Mayor Ciacciarelli presiding.

Also present at the meeting were Deputy Mayor Dodds, Committeewoman Syrnick, Attorney Katrina Campbell, and Deputy Clerk Michele Tipton Walters. Absent was Cynthia Keller, Clerk. Mayor Ciacciarelli called the meeting to order and following the salute to the flag, read aloud the following:

NOTICE REQUIREMENTS

Adequate notice of this meeting was provided in accordance with the Open Public Meetings Act by publication of the notice in the Hunterdon Democrat and Courier News on January 9, 2020 and by telefaxing a copy of the notice to the Express Times on January 3, 2020. Copies of the notice were also posted in the Kingwood Township Municipal Building and Baptistown Post Office on January 3, 2020.

In order to ensure full public participation in this meeting, all members of this Committee, and also 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.

Hearing regarding Appeal of Resolution No. 2019 -07 Kingwood Township Board of Adjustment – Block 51, Lot 16 Grant of a D-2 Variance

Mr. Larry Wohl Esq. legal representation for Heather Haberle, Andrea Motyka and Robert Jefferson Babbitt, residents of Byram Colony, addressed the Committee regarding his client's appeal of Resolution No. 2019-07 Block 51, Lot 16 Grant of a De-2 Variance.

Mr. Wohl made note of areas of insufficiency of Ms. Kelly's initial application and that her plans have been submitted as incomplete. He stated that a D Variance for non-conforming use is applicable, and was surprised when that was changed to a C Variance. He presented an argument for why this application should be remanded back to the Board of Adjustment to proceed with application for a D Variance.

Ms. Heidi Kelley, Applicant, addressed the Committee stating that plans for her home were shared with her neighbors to show them what the house could look like without being required to do so. The new home will allow more space between her home and neighbor, Ms. Haberle's home. The impervious coverage is actually less since the garage will be taken down and the home will be built on stilts.

She stated that she will be replacing an old cesspool with a new septic system. Ms. Kelly chose a house plan that is only one story specifically in consideration for her neighbors.

Mr. David Pierce, Esq., Legal representation for the Kingwood Township Board of Adjustment reviewed the initial concept of a D2 Variance for this application, which was submitted to the Board of Adjustment for a D2 Variance for expansion of nonconforming use. The Board did not receive a planner's report and Attorney Pierce did not conduct an independent review prior to the hearing to determine to see if a D2 Variance was required or not. He stated that it is quite clear, based on precedent, that when an application is for a permitted use, but the expansion of a non-conforming structure for permitted use, then the appropriate variance for relief is a C Variance.

The applicant did submit a plat plan from Jensen Design Group, which showed the proposed location of the structure as fully conforming. To the extent that there may be other C Variances required, the Committee can remand this application back to the Board of Adjustment for those Variances.

Attorney Pierce expressed that the complaints against the application are primarily about the appearance of the structure. If this was a conforming lot, there would not be a need for an application and Ms. Kelly would be able to build whatever she chose providing she comply with height and setback requirements. There would be no requirement for public input.

Ms. Katrina Campbell, Esq., Legal representation for Kingwood Township addressed the Committee stating that they need to determine if a D Variance is required or necessary. Ms. Kelly's new home is neither an expansion of use or of structure since she is abolishing the previous structure entirely. She is also not requesting a change of use as residential. The concerns of Mr. Wohl would be addressed on a C variance as well as a D variance. Her opinion is that it does not fit the criteria for a D variance.

If the Committee agrees she suggested they remand it back to the Board of Adjustment to amend original Resolution No. 2019-07 to remove the reference to a D variance, but also so the appealing group can address other issues of concern and determine if further C Variances are required.

Mr. Michael Calandrino, Applicant's partner stated that after purchasing the house they consulted with a structural engineer, who stated that the house could not be renovated. This is why they decided to abolish the house and put in a modular home.

Ms. Heather Haberle, Resident of Byram Coloney and Neighbor of Ms. Kelly, Applicant addressed the Committee with her concern for remanding this issue back to the Board of Adjustment. She does not believe the applicant, neighbors or the Byram Colony would be served by doing that. She believes the Board is biased about the Byram Colony. She is concerned about how this project would affect the protection of the Community and asked that the Committee take these things into consideration when making their decision.

Mr. Pierce wanted to record that no additional or new evidence was to be presented at this meeting, and that Ms. Haberle is not permitted to speak to the Committee directly since she has hired legal representation to do so for her.

Mr. Wohl stated that if this is remanded to the Board that the C Variance requirements would still require the findings of the positive/negative criteria. Attorney K. Campbell reminded Mr. Wohl that this Committee has no jurisdiction to decide variances. Those concerns would need to be raised to the Board of the Adjustment and that Attorney D. Pierce is here representing that Board.

Ms. Kelly made comments stating that she has spent the last year trying to build a very modest house and this process has been trying. She has a daughter that is ready to enter school and is hoping this process will not take another year before she can proceed.

The Township Committee requested time to review all information presented and would make their decision by Resolution at the April 2, 2020 Regular Township Committee Meeting.

Adjournment

It was moved by Mr. Dodds and seconded by Miss Syrnick to adjourn the meeting at 7:50PM.
All Voted Aye on Roll Call.

Respectfully submitted,

**Michele Tipton Walters
Deputy Clerk**