

**BOARD OF ADJUSTMENT
OF
TOWNSHIP OF KINGWOOD**



Address Reply To:

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**December, 9, 2009
MINUTES**

M.L. Haring, chairwoman, called the meeting to order, at 7:30 pm.

PRESENT:

B. Grossman
M.L.Haring
P. Stepanovsky (7:35)
M. Przystup
D. Stryker
T. Decker,eng

B. Wilson,sec
D. Pierce, atty
J. Laudenschach
D. Hewitt
C. McBride

ABSENT:

None

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.

The 48 hour requirements of the Sunshine Law have been met. Notice of this hearing has been advertised in the Democrat. Copies of this notice were posted in the Kingwood Township Municipal Building and filed with the Municipal Clerk. The Board of Adjustment proceedings close at 10:30 p.m.

MINUTES:

November 11, 2009 minutes not available.

RESOLUTIONS:

Carriage House Kennels, LLC-Block 25, Lot 1.01-Extension Request

B. Grossman made a motion to approve, seconded by D. Hewitt. On roll to vote.

Aye: B. Grossman, M.L. Haring, C. McBride, J. Laudenschach, D. Hewitt

Abstain: P. Stepanovsky, D. Stryker, M. Przystup

Absent: None

NEW BUSINESS:

Determination of Completeness

Arc of Hunterdon, Block 38, Lot 7-has been moved to the Planning Board.

Hearings:

Tony Vacca, Block 6, Lot 24 \$24,01- Request for a 6 month Extension. His attorney has submitted a request to the Board, dated November 13th, 2009 asking for a 6 month extension to satisfy the conditions of approval and also submit copies of the DOT approvals. D. Hewitt moved to grant Vacca a 6 month extension, seconded by J. Laudenbach. On roll call to vote.

**Aye: B. Grossman, M.L. Haring, C. McBride, J. Laudenbach, D. Hewitt,
P. Stepanovsky, D. Stryker, M. Przystup**

Abstain: None

Absent: None

Robert S. Maurer, Block 51, Lot 45 - a variance from the Terms of Articles & Sections 132-50 (f) of the Zoning Ordinance of Kingwood Township so as to permit the installation of a 45' steel monopole supporting a wind generator. The property is located on 165 Byram Lane, Stockton, N.J. 08559, in the AR-2 Zone.

This hearing was tabled from the November meeting.

D. Pierce, attorney, explained that this was continued to allow Mr. Zdrodowski, property owner within 200 ft., an opportunity to present information since he was unable to attend last month (November).

Joseph Zdrodowski, Block 51, Lot 46, 167 Byram Lane, Kingwood Township, was sworn in by David Pierce.

Mr. Zdrodowski was surprised to hear that his neighbor, Mr. Maurer, was going to put a wind device on his property since the company "SKYSTREAM" suggests communicating with neighbors as a courtesy, about plans to install a wind generator. Mr. Z went on to say that the objection to this project is that this wind mill is 100 feet from his bedroom window.

The following were submitted by Joseph Zdrodowski:

EXHIBIT Z-1 - Photo, taken in the summer, from his bedroom window, of the property in question.

EXHIBIT Z-2 - Photo, with a superimposed rendering of the proposed wind, in relationship to his bedroom window.

EXHIBIT Z-3 - Photo, taken last week, showing a superimposed rendering of the wind mill.

EXHIBIT Z-4 - Sample letter from "SKYSTREAM" suggesting neighbors be notified.

Mr. Zdrodowski noted that the proposed location, for this wind mill, is in the flood way and he's not sure if you're allowed to construct anything in a flood way. Also, the river has been designated, Federally, as a scenic river. He has looked at the data and has statistics that he has recorded from his own anemometer. This has been submitted as **EXHIBIT Z-5 - Anemometer statistics**. The anemometer lists the wind speeds in the area and the wind speed is peak and not continuous so he's displayed the daily readings for approximately the past three (3) months and calculated the average which is at margin where the generator would produce any output. His concern is having something like that outside his window. He would be considering retiring and selling the property and is not sure that he would be able to convince the new owners that this is an effective scenic view of the river.

P. Stepanovsky asked what months he had taken the statistics with the anemometer and was told from mid September to mid December. (3 months)

P. Stepanovsky asked if there is a difference in the summer and Joseph Zdrodowski stated that he did go to a website that "SKYSTREAM" provided and they gave a link that stated for the longitude and latitude the average

wind speed for that area would be 9.9 MPH. Mr. Z's readings were actually higher, 11.2 MPH. According to the "SKYSTREAM" data chart they start producing power at 9 MPH and the optimum is 12 MPH.

Joseph Zdrodowski stated that sometimes during the day the wind came up and other times there was no wind at all.

C. McBride noted that the data that he presented (Mr. Z) is only for a single point of time and may not be statistically correct.

Joseph Zdrodowski stated that his data is higher than what is provided by the website and the average is taking the high and the low with no statistics on constant velocity.

J. Laudenbach asked if he is recording the wind from the same height and was told yes by Mr. Z.

P. Stepanovsky asked David Pierce about what the township has said about wind generators and solar.

David Pierce stated that the township has no ordinance relating to solar but the ordinance pertaining to wind generators are a permitted use (132-50 (d), as an accessory structure, in all zones, with no height restrictions. The issue that brings this before the Board is that the zoning ordinance makes reference that it must meet the setback requirements. The problem is that subsection (d) does not specify any setback requirements. The setback requirements for that zone and it's being built in the front yard (facing the Delaware River), doesn't comply with the front yard setback requirements, and so it needs a variance - the rear yard would be okay.

D. Hewitt stated that at the last meeting there was a letter from the D&R Canal Commission that they were suggesting that an application be filed. The Board has not seen anything but Mr. Maurer could be asked.

P. Stepanovsky stated that this whole area is in the flood hazard area so doesn't this have to go to the DEP.

Tom Decker, engineer, stated he would need to make application with the DEP.

P. Stepanovsky noted that if it's in the rear yard he wouldn't have to be before this Board at all, but he would still have to go to the DEP and D&R Canal Commission.

The testimony last month indicated that it could be placed in the rear but he would have to remove some large trees.

D. Stryker asked the weight of the wind generator and was told it's 970 lbs.

Tom Decker, engineer, brought up about the soil testing to support it.

P. Stepanovsky feels the Boards issue would be the aesthetic value- in the front yard causes site problems but if it's put in the rear he would not have as many problems but would still have to take a soil log. The figures that have been given were from over the years compacted.

D. Pierce noted that if the Board determines not to grant the variance and he decides to put it in the rear yard the Board would have no further involvement. This is a C variance and the standard whether or not this can be granted is a variance which is in the discretion of the Board. The Board can grant the variance because it would cause denying the variance would create a hardship or granting the variance would advance the purpose of the MLUL but before you can grant this variance you need to make a determination that there is no detriment to the public good and also that the benefits outweigh any detriments.

P. Stepanovsky asked so we would need to determine how much electric is given back to the public. D. Pierce stated not necessarily- you wouldn't need to get into that.

D. Pierce noted two (2) detriments such being that Mr. Zdrodowski would have to look at the wind generator and the other would be the general public, D&R Canal Commission visual impact. The question is does the benefits of that outweigh the detriments when the structure can be located to the rear of the property in a manner that should be

functional and the Board could always, if it grants the variance, impose conditions that are intended to lessen those detriments.

The Board had no more questions for Mr. Zdrodowski.

Mr. Maurer was reminded that he was sworn in at the last meeting.

Mr. Maurer informed the Board that he had called the D&R Canal Commission and the fee for the process would be \$250.00 so he has decided to wait and see what happens .

M. Przystup asked if he located the monopole in the rear of the property would it work for him and he was told that it would have to be a larger monopole which would cost more and not as effective. The one (1) tree is over 100 feet tall. He would need to go higher than the trees.

Mr. Maurer did state that he looked into trimming some of the limbs but the tree surgeon stated that when you cut limbs that large you can introduce disease to the rest of the tree.

J. Laudenschick asked if the windmill works only from wind in one direction and was told that it pivots.

M.L. Haring asked what was in the rear of his property and was told the trees that he would need to get over. He would need to get above the tree line or take the trees down.

Mr. Maurer stated that he could put it in the side yard and feels it could go there and be approved. He read from the ordinance. He disagrees with the lawyer who stated last month that the code doesn't take care of every situation.

M. Przystup asked if he put it in the rear, say 120', is that reasonable.

D. Pierce stated that there are no height restrictions.

D. Stryker noted when or if it came down-the houses are so close together.

Mr. Maurer also informed the Board that he planted an autumn glory maple and is trying to center the structure right in the middle of that so you would see the wind generator only at the top of it.

M.L. Haring had a question on the sheet that indicates the acoustics-visual impact etc., it states the acoustics are from 40 to 60 decibels which is quieter than the background noise in a home or office-she's clueless with decibels would you be talking like when a ventilation system comes on in an office? Mr. Maurer explained that decibels are just the loudness and 50 decibels is approximately the conversation they are having right now.

M. Przystup noted the problem with determining what the decibels would be like is the variable distance away from it.

Mr. Maurer stated that the exact machine is setting at the Smithsonian in Washington and is a quiet machine. (right outside the capital)

D. Stryker stated that no one is sleeping outside the Capital.

D. Stryker has watched shows on PBS and it may be 50 decibels but it's a constant vibrating, rotating sound.

B. Grossman asked the diameter and was told that it's 12', from one tip of one blade to the other tip.

No questions from the Board.

The hearing is closed.

The Board deliberated as follows:

M.L. Haring there isn't the approval and there is a visual impact on the canal park and there hasn't been approval for that, nothing from the DEP, still not clear on the 40 to 65 decibels, doesn't see a direct benefit to the public unless the excess energy was going to be distributed to his neighbors as opposed to selling it back to the power company then the only benefit is to the applicant, relocating it to the back of the property would solve a lot of problems and the only impact would be to one of his trees.

B. Grossman feels the problem would be the noise to the neighbors. The benefit to the neighbors has nothing to do with this.

D. Stryker thinks she would rather see it in the backyard away from the river, the main flood area and also the neighbors house this way it would be in the center of his property if you have to take a tree down, that's the trade off and if you want the alternative energy that would have to be trade off that would have to be taken and feels it would be less of a detriment to the neighbors property and less of a hazard. Would have no problem if it was in the back of the property.

M.Przystup concurs with D. Stryker and B. Grossman.

C. McBride feels the Board should not be debating the back of the property, that's not what the applicant is asking for, he's asking to put it in a certain spot and if we deny it he can go ahead and do that as an alternative. He feels this is a good carbon reduction footprint. He feels the pleasing to the eye is negligible, it also can be a positive to the community as self sufficient and it reduces the per unit cost of the electricity for the entire community and to put it in the back will create more issues and to cut the trees would be more of an impact to the environment and more of an impact to the desirability of the views. He doesn't think he will get approval from the D&R or the DEP.

J. Laudенbach feels the Board should not grant a variance if there is another option or alternatives.

D. Hewitt what the applicant has come before the Board to decide and if the Board decides to deny it he could look at the other options and he would want to see something from D&R and DEP. He feels that wind energy is something that should be explored.

P. Stepanovsky feels the energy is fine but where the applicant is locating it is a detriment to the view from the river and also to look at. The applicant has alternatives for this. He still will need to apply to the D&R and DEP which he feels either one will allow where he's proposing this. His decision is that he doesn't like where it's and what it looks like.

C. McBride made a motion to approve the application conditioned that he receives approval from the D&R Canal Commission and the DEP before construction seconded by - no second.

P. Stepanovsky made a motion to deny this application because the benefits do not outweigh the detriments and there is not a demonstration of a lack of substantial detriment, seconded by J. Laudенbach. On roll call to vote.

Aye: B. Grossman, M.L. Haring, J. Laudенbach, P. Stepanovsky, D. Stryker

Nay: C. McBride, D. Hewitt, M. Przystup

Abstain: None

Absent: None

VARIANCE DENIED!!

Robert Maurer asked if he could request a copy of the record of the meeting and was told that he could.

COMMUNICATIONS/REPORTS:

The New Jersey Planner -- November 2009

Listing of BOA -- Members/Professionals

Delaware Township-Adoption of 10/20/09 Master Plan Amendment

Motion to retain the services of David Pierce from the law firm of Lindabury, McCormick, Estabrook & Cooper for the year 2010. P. Stepanovsky moved to retain the services, seconded by B. Grossman. On roll call to vote.

**Aye: B. Grossman, M.L. Haring, C. McBride, J. Laudenschach, D. Hewitt,
P. Stepanovsky, D. Stryker, M. Przystup**

Absent: None

Abstain: None

OPEN TO PUBLIC:

Elaine Nieman thanked everyone for volunteering their time and also that after the next meeting she asked that we reserve at least 20 to 30 minutes for a municipal orientation.

ADJOURNMENT:

B. Grossman moved to adjourn, seconded by D. Hewitt.. The meeting adjourned at 8:40 pm. All in favor.



Barbara Wilson

Secretary

Board of Adjustment

Kingwood Township