

**BOARD OF ADJUSTMENT
OF
TOWNSHIP OF KINGWOOD**



Address Reply To:

*Secretary
P.O. Box 199
Baptistown, New Jersey 08803-0199*

**November 9, 2011
MINUTES**

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

PRESENT:

D. Banish, pl	L. Frank
D. Pierce, atty	P. Stepanovsky
B. Wilson, sec	J. Laudenschach
T. Decker, eng	T. Ciacciarelli
M.L. Haring	C. McBride
D. Hewitt	

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 pm.

RESOLUTIONS:

Mark Blecher-BL 12 L 24. D. Hewitt made a motion to approve, seconded by C. McBride. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M.L. Haring**

Abstain: None

Absent: None

MINUTES:

J. Laudenschach noted a typo on page 6.

The August 10, 2011 minutes was approved with a motion by J. Laudenschach, seconded by T. Ciacciarelli. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudенbach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M.L. Haring**
Abstain: None
Absent: None

NEW BUSINESS:

Nextel of New York, Inc. - BL 37 L 4 – a use variance so as to permit the co-location of a wireless communication facility on property located on 146 Byram Kingwood Road, Stockton, N.J., in the AR-2 Zone.

David Soloway is the attorney representing the above applicant. He noted that he has received a copy of Tom Deckers' report.

Tom Decker stated that this is a co-location on an existing tower, they will use the existing access and compound.

D. Hewitt asked if the club is aware of this co-location.

M.L. Haring asked if there was a representative from the Clover Rod & Gun Club present.

David Soloway stated that they don't notify for a Determination of Completeness meeting.

The following waivers were granted: (Tom Deckers' letter dated November 4, 2011)

Site Plan Checklist Items-Plan Requirements: #4, 16, 17, 19, 22, 35, 40, 47

Variance Checklist Items: #16, 17, 21, 32, 37

Site Plan Checklist Items-Administrative: #12, 13, 14, 15

Site Plan Checklist Items- Plan Requirements: #6, 15

P. Stepanovsky moved to deem the application conditionally complete and grant the above waivers, seconded by C. McBride. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudенbach, D. Hewitt,
P. Stepanovsky, T. Ciacciarelli, M.L. Haring**
Abstain: None
Absent: None

The next meeting is scheduled for December 14, 2011.

Nextel of New York, Inc. & JCP&L – BL 26 L 24

David Soloway, attorney for the applicant, informed the Board that they have received notification from the NJDEP that the proposed area of disturbance is located in an area of emerging wetlands. David Soloway stated that they will need to find another location, on this property, for the proposed facility and submit revised plans. They asked the Board to adjourn this hearing until January 11, 2012. D. Hewitt moved to carry this hearing to January 11, 2012, seconded by J. Laudенbach. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudенbach, D. Hewitt,
P. Stepanovsky, T. Ciacciarelli, M.L. Haring**
Abstain: None
Absent: None

M.L. Haring announced that the Nextel hearing has been adjourned and carried over to January 12, 2012.

A gentleman from the audience asked the Board what is the benefit to the land owners monetarily.

David Pierce, attorney, informed him that the Board cannot address his question because the hearing has been adjourned until January 11, 2012.

Christopher Wildgen/Chris' Citgo – BL 9, L 2.01 - C1, C2, D1, & D2 variances. The property is located on 963 State Route 12, in the VC-1 District. Gaetano DeSapio stated that they are present this evening to continue the application that adjourned last month (October).

Guy DeSapio stated that his Planning expert, Tamara Lee, had finished her testimony but he couldn't remember if the Board had asked her any questions.

David Pierce reminded Ms. Lee that she is still under oath.

The Board asked Ms. Tamara Lee if she could re cap her testimony from the October meeting.

Ms. Tamara Lee summarized her testimony given in October reviewing the following: difference from a D1 and D2 variance, negative criteria, aesthetics, parking cars inside the fencing, impact on the zone plan, waivers-need a waiver for the parking and closing the area which will be used by the employees only - no public use.

D. Pierce stated that in his notes that Ms. Tamara Lee testified that the side yard setbacks are a non issue in this case because everything will be hidden behind the fence.

Ms. Tamara Lee stated that the side yard for accessory building is, she believes, two feet and they are going to move the accessory structures two feet. They don't have the depth for landscape buffering.

David Pierce asked if she was referring to them as buffering and Ms. Tamara Lee agreed.

D. Pierce asked if the only purpose of the landscape buffer is to block the view and Ms. Tamara Lee noted that it is to minimize conflicts between adjoining uses whatever they might be. She stated that the fence would be as effective if not more effective than a landscape buffer.

David Pierce asked if it would provide an aesthetically pleasing appearance as a landscape buffer. Ms. Tamara Lee stated that, that is a judgment call but to add a twenty five foot buffer around three sides of this pre-existing non conforming use will put an undue hardship on the business and the Master Plan heavily weighs towards businesses on Route 12 as opposed to residential uses.

D. Pierce asked if there is a requirement for a buffer and Tamara Lee stated that she can't answer that and that she's not certain but if you put two commercial businesses along side of each other there is less of a conflict than if you have residential and commercial businesses.

T. Decker believes that the buffer is still required.

D. Banisch, planner, agrees the ordinance clearly speaks-132-53 A (3).

Ms. Tamara Lee feels that the fence creates a visual screen.

T. Decker mentioned that with regards to the parking there are a few items that needs relief. It was mentioned that all the parking will be behind the fenced in area - where does the public park? Tamara Lee stated that the plan shows one space now and there was discussion about putting a second space for the handicap also in front. Tamara Lee stated that the second space, which is also in front, would be for the public. The customers will drop their cars off and the employees will drive the vehicle into the fenced in area and that would minimize the number of cars visible from the street.

Tom Decker noted that he heard testimony regarding people dropping off their vehicles off hours.

Tamara Lee stated that the engineer will address those issues, but she believes that there will be one or two parking spaces to the west and also a drop off area to the east of the building for cars or tow trucks.

D. Pierce read ordinance 132-54 A - Section -132-54. **“Buffers. Buffer areas required along lot and street lines of all nonresidential lots where said property lines or the center line of adjacent streets abut residential uses or residential zoning district lines. Each permitted use shall provide and maintain attractively landscaped grounds and suitable screening in order to safeguard the character of adjacent nonresidential districts. Unless otherwise indicated in this chapter, the width of the buffer area shall be a minimum of 25 feet in the VC-1 and PO/R Districts and 50 feet in all other nonresidential districts.”**

D. Banisch stated that Section 132-54 A (2)-clearly speaks and elaborates on the purpose of buffering.

Lee Frank, board member, asked when they came out with that ordinance and was told 7-26-1993

David Pierce read from Section 132-54 A (1) - **“ Buffer areas shall be measured horizontally and be either perpendicular to straight lot and street lines or radial to curved lot and street lines. Buffer areas shall be maintained and kept clear of debris, rubbish, weeds and tall grass. No structure, activity, storage of materials or parking of vehicles shall be permitted in the buffer area, and all buffer areas shall be planted and maintained with grass or ground cover, together with a dense screen of trees, shrubs or other plant materials meeting the following requirements.”**

Lee Frank, board member, asked if that ordinance was there before the gas station was there and was told by David Pierce that the last revision was on 7-26-1993. The gas station has been there.

D. Banisch, planner, asked aren't there adjoining residential uses? Tamara Lee stated that there is at the rear of the property and that they are not parking within the twenty five foot buffer.

Guy DeSapio noted that some of these questions were already determined in the 2001 Planning Board approval.

D. Pierce questioned parking spaces and Tamara Lee stated that parking spaces #8 and #9 are within the twenty five feet.

D. Pierce asked Tamara Lee if she was aware that in the prior approval, of the parking space design, by the PB that parking space #9 was to be relocated? Tamara Lee that she didn't recall that.

D. Banisch stated that we're talking about conditions that might have been approved at another time, but now it's an entirely different situation- intensify the parking, it's like comparing apples and oranges-back then conditions were imposed but here it's clearly a request to intensify the use of this area.

J. Laudenbach asked if the conditions were imposed by the Board or requested by the applicant. D. Banisch didn't know.

C. McBride respectfully disagrees with David Banisch and feels he is overstepping by saying that the applicant is intensifying the use. C. McBride thinks he (the applicant) is readjusting the use for a time period ten, eleven, twelve thirteen years later where a business is trying to serve a community and feels he (David Banisch) is leaving that out. He's not sure what his role is but feels he (David Banisch) is putting this in the wrong perspective.

David Banisch informed C. McBride that he is an adviser to the Board.

David Banisch and David Pierce both discussed cases that Tamara Lee compared to this application.

Guy DeSapio argued about technicalities of the law and stated he would like to stick to factual testimony and proceed on that basis.

David Pierce understands his concerns but feels it's appropriate.

Guy DeSapio-buffer issues-all issues have been addressed and if this Board imposes the buffer on this lot, which the Planning Board didn't impose, it reduces the usable space of this lot. He suggests that the Board should not go backwards if they do, we know where this application is going.

D. Banisch feels that some effort can be made to provide a buffer -a six foot high fence doesn't grow and he believes this is a visual impact.

D. Pierce noted that it's not fair for Guy DeSapio to characterize and make a statement as to "where this application is going", which would suggest that the Board has already made up their mind

Guy DeSapio gave his apology.

Guy DeSapio spoke about the parking (call it valet Parking) but he would prefer to talk about the factual on ground and concentrate on the layout.

D. Pierce stated that in 2001 it wasn't an application for approval of a service station and this Board needs to address the merits of this application which intensifies a non conforming use.

M.L.Haring asked Chris Wildgen where the deli was in operation there was three parking spaces. Chris Wildgen stated that now there is one if vehicles come in they would put it there. If someone comes in to make an appointment for an oil change etc. M.L. Haring asked where would they park and Chris Wildgen stated they would park between the bushes and dispensers which has room for two cars.

M.L. Haring asked what is in the other two spaces, to the west, that she mentioned above and Chris Wildgen stated a trailer and equipment they're presently working on.

M.L. Haring stated so that could be customer parking and Chris Wildgen replied yes.

Tom Decker asked as far as the vehicles-does he have any vehicles that are higher than six feet in height and how high. Chris stated maybe eight feet-some of the kids (employees) have high trucks (lifted).

J. Laudenschmidt asked how many employee spots and Chris stated four or five at a time not including his and that number could go up to twelve.

M.L. Haring stated so the five spaces on the plat could be designated for employee parking.

J. Laudenbach believes that what they're looking at is on Sheet 3 of 3 and they are the spaces in front of the shed.

Chris Wildgen would prefer to have his employees park in the back because it's hard to physically push cars that far if you're waiting for transmissions, engines or whatever.

D. Pierce stated that he was incorrect with the statement he made earlier with regard to parking space #9 being removed. The space he was referring to was at the rear of the property.

M.L.Haring asked if there was anyone from the public that had questions for Tamara Lee and/or Chris Wildgen.

Bill Marcus and Andy Russano both came up individually and were told questions only by M.L. Haring and that they would have the opportunity to give testimony later.

Guy DeSapio called Mr. Edward B. Martin, applicants' engineer, to testify and address the technical details.

Mr. Martin was sworn in and gave his background.

Mr. Martin informed the Board that the entire lot consists of 28,947 square feet, Sheet 2 of 3, and if the twenty five foot buffer was enforced on all sides, it would leave 12,379.88 square feet of usable area. They are proposing to put a gate and continue the fence along the westerly side of the building facing Route 12 and on the easterly side (no fence now) they plan to extend the fence from the rear of Lot 4 along the edge of pavement to the front of the building in line with the wooden shed and place a gate across the easterly side of the wooden shed to the edge of the pavement. The entire area in the back of the building would be fenced in. Because of the fence, from Route 12 you wouldn't be able to see any of the operation behind the building. The one space shown on the westerly side of the building would be dedicated for handicap. There was concern that they would need a variance in the back of the building because there is an existing shed thirteen feet from the property line. They are proposing to shift that enclosure with a corrugated roof to the west and the shed encroaching on the east side to the west meeting requirements for a fifteen foot set back.

Guy DeSapio went through Tom Deckers letter, dated May 5, 2011, page 3-**Zoning Review** as follows:

1.
 - a.) existing condition
 - b.) meeting requirements of D2 variance
 - c.) existing condition
 - d.) Chris Wildgen testified to that
- page #4
- e.) not factual-essence of application 29 parking spaces
2. Chris Wildgen testified-no longer in existence
 3. East doesn't meet set back, will remain, bulk variance required
 4. Minimum Side Yard - Had extensive discussion-bulk variance required

Page #5

Minimum Distance between Buildings – intends to move (2) sheds- other shed per HCHD for tires layout in back pretty tight to move the tires is not physically possible

Maximum Lot Coverage – variance needed to maintain that. Exceeds minimum lot coverage 2.6% and by increasing the parking it increases to 7.9%-2301 square feet - primarily will be used for parking, and the ground will be covered with stone rather than paving. Previous approval granted for stone by PB so they decided to follow with the same approach. No members from the public will be walking on the stone.

- a.) revised to 119.9
- b.) testified to being moved

- c.) tire area discussed
- d.) testified to Maximum Lot Coverage

Site Plan Review

- 1. No lighting proposed-waiver requested.
- 2. Isn't room on site for additional parking and no room to move elsewhere
- 3. Waiver requested

Page #6

- 4. Presently 52.9% of lot - propose to increase to 60.8% (increase of 7.9%)
waiver or variance requested
- 5. Discussed
- 6. Would disappear on stone – waiver requested
- 7. Out front (handicap parking)
- 8. Public won't be parking in back – proposing 16 foot wide aisle
- 9. Provides storage for vehicles to be serviced
- 10. In 2001 waived by PB
- 11. Asking for a condition-doesn't have any approval from HCHD
- 12. Discussed
- 13. Proposed-needs a variance
- 14. Moving junipers and replacing some dead trees (none along westerly fence-parking proposed)
- 15. Doesn't own any adjoining property

Page #7

- 16. No change proposed.
- 17. Will provide -if approved
- 18. Fire Dept visited the site and voiced no objection

D. Pierce asked Mr. Martin about the wooden shed (10 x 10) to the east and was informed that it would be shifted to the west to eliminate the need for a variance. The two sheds up by the building were added after the 2001 PB Site Plan approval. Mr. Martin doesn't know if approval was granted for those.

P. Stepanovsky asked if letters could be put on the sheds so the Board knows what they're talking about.

- 1. #8 on plat-A (wooden shed - added after 2001 PB approval))
- 2. #6 & 7 – B (tire storage)
- 3. #5 – C (wooden shed not being moved)
- 4. Wooden frame parts storage – D (added after 2001 PB site plan approval)
- 5. East of building (right side of garage) – E (parts storage- added after PB approval 2001)

Chris Wildgen stated that the sheds marked “D & E” (wood frame storage against the building) are used for tools, parts, air filters, stock and tools that you don't use everyday and he is asking that he be allowed to continue to maintain that. When they extend the fence and gate on the east side of the building the sheds will not be visible to people outside the fence.

D. Pierce stated that Mr. Martin had testified earlier that sheds marked A, D & E were added after the PB site plan approval.

Chris Wildgen agreed -no site plan approval.

David Pierce reminded the Board that if they grant approval tonight they should also include buildings A, D & E as part of the variance. (increase the size and density)

Chris Wildgen informed the Board that shed A is used for equipment that you don't want to put outside.

M.L. Haring asked if Sheds A & C are pre-fab and was told they are.

Tom Decker asked how tall they are and Chris Wildgen stated eight feet in height.

J. Laudenbach stated like a garden shed.

D. Pierce asked Mr. Martin if the fence and gate on the east side would be behind structure E. Mr. Martin said yes.

Mr. Martin corrected himself and stated that it would run from shed E to the edge of the pavement and that's because the applicant wanted to leave whatever plantings that were there.

Tom Decker stated that the variance would go with the land and a new owner would be able to operate. He stated that they talked about the buffering and any thought or sketch done to try to configure the parking in the back or to re-locate or re-configure the parking layout. Mr. Martin stated that he looked at it and the least impact is what they've proposed on the plan.

Tom Decker mentioned the sixteen foot drive and his concern is for the employees that work there.

Tom Decker went with the gravel and is it possible to utilize less space which could translate to more vehicles, so nine spaces would become ten spaces. (not striped-all gravel)

L. Frank stated that they're right on top of the septic lateral.

Mr. Martin stated that the lateral is next to the fence.

Guy DeSapio stated that it's a single lateral and not a series of laterals.

David Pierce asked Mr. Martin the size of buildings A, D & E.

Building A= 10x10

Building D= 260 square feet

Building E= 240 square feet

D. Pierce verified with Mr. Martin that the sheds cover 500 square feet of impervious coverage. Mr. Martin stated no-sheds D & E are on top of pavement.

Brief five minute break.

C. McBride – when they were talking about the parking lot coverage, currently 52.9%, does that include or exclude parking space #10. Mr. Martin stated that the 52.9% includes aisles and parking and they're putting stone on there so it doesn't make a difference.

D. Banisch stated that they initially talked about the entire lot area being 28,947 square feet and gave the calculation of 12,379 square feet after the twenty five foot buffer all around- is that on every-side. Mr. Martin answered - every-side. David Banisch asked if he had any idea how that number would change looking at a buffer and after Mr. Martin calculated it, he stated that it would change by 1,000 square feet. D. Banisch asked if the lot consists of 152 feet of frontage and was told yes by Mr. Martin. D. Banisch also asked if the fire lane is required and was told that it is, by Mr. Martin. David Banisch asked Mr. Martin if the fire lane is clear tonight and Mr. Martins response was that he didn't know. Mr. Martin stated that it wasn't a requirement on the original approval and doesn't have to exist at this point but it's something that has come up recently that

the Fire Company has requested.

David Banisch stated that they commented on the location of the fence on the east side of the lot and does that fence extend to parking space #9 all the way down to and across and up to the right of way line to Route 12.

Mr. Martin stated that the fence would go from the existing end of the fence by Lot 4 down along the pavement in line with shed E and then a gate would go across from the edge of the pavement to shed E.

David Banisch – the landscape strip on the applicants property will that remain and be landscaped. Mr. Martin stated that it is landscaped and is outside the fence. David Banisch asked Mr. Martin if he had a chance to see what the planting requirements are in the ordinance. Mr. Martin stated that the applicant is not proposing any changes in that strip and the 25 foot buffer plantings across the rear was approved in 2001 and they are only replacing the ones that are gone. The plantings already are there along the buffer (Lower Oak Grove Road) and comply. David Banisch asked if they don't would the applicant agree to meet the requirements and Banisch suggested plantings on both sides of the driveway within the 25 feet from Lower Oak Grove Road in a southerly direction.

D. Banisch commenting on his report had suggested that the Board may require some measure of buffer whether it's 25 feet across the back or the property line- his (D. Banisch) recommendation is to move the fence back into the interior of the site and establish plantings outside of the fence-aesthetic improvement and it identifies the area shown on the plan for parking. The question to the applicant now is across Lower Oak Grove Road is it possible for the applicant to do that.

C. McBride asked a question of M.L. Haring that the planner is asking questions that the Board hasn't considered at this point. M.L. Haring informed C. McBride that he's just asking questions and we may not require them to do it but the planner is asking if the applicant is willing to do it.

Guy DeSapio stated what they need to do is take a break to talk about that and perhaps understand what the whole package is so they're not answering a question in a vacuum.

D. Banisch agrees with that but if the Board is of a mind to require some enhanced level of buffer he is making a suggestion and is open for questions.

J. Laudenbach asked how close is the fence now and D. Banisch answered now pretty close maybe four to five feet.

Chris Wildgen stated that there is grass that grows between the fence and roadway and there's plenty of room for shrubbery.

P. Stepanovsky – his question is - why is the fence so far back, close to Lower Oak Grove Road because you're saying on the south-side of the fence you have grass - why is the fence out so far - parking. In the back you have the board fence going across Lower Oak Grove Road with grass on the outside, also on the map you say juniper and lawn on the south-side of the fence – pros and cons you're not supposed to be parking cars there.

Chris Wildgen stated that he's not parking cars there.

P. Stepanovsky stated that what the planner suggests is bringing the board fence further in on the property and between the property and Lower Oak Grove Road you plant trees and buffer your neighbors across the street. The other issue is on the eastern side is there a buffer going down from the road to #9 parking spot or how far does that buffer go. From the road to #9 parking space is asphalt, except the area that Mr. Martin testified to earlier that has plantings between the two lots (little island-12" maple to highway is plantings), from #9 to

Lower Oak Grove Road is grass. P. Stepanovsky stated that there is a buffer there at the present time.

P. Stepanovsky asked Tom Decker if Chris is required to have a handicap spot and he was told by Tom Decker- actually van accessible spot and that it's a Federal Law.

P. Stepanovsky asked about the bathroom and Tom Decker stated that's a building code issue.

M.L. Haring-on the easterly side between the wood frame storage that butts up against the east side of the garage and where the juniper stands - how much space is in between. Mr. Martin stated twelve feet.

M.L. Haring looking at Page 2 of 7 (Tom Deckers letter) -looking from Route 12- north view (photographs) is that a thruway-is it gated, fenced and can you get from the front to the rear (between the storage shed and junipers). Chris Wildgen stated that you can but he is proposing a gate- so you won't be able to. M.L. Haring said, so you won't be parking cars there as shown in the picture. Chris agreed. M.L. Haring said so by adding those parking spaces to the rear will eliminate that parking. Chris agreed.

M.L. Haring with reference to the lighting will you have lighting on the back of the garage of the building that works with a switch or timer for the employees to get to their cars in the dark so it's not a safety issue. Chris Wildgen replied no there is no lighting back there.

P. Stepanovsky asked Tom Decker if it's possible to make #1 in front as handicap. Mr. Martin commented that the handicap would take up sixteen feet of north and would leave enough space for another parking spot along the fence.

J. Laudenschmidt said the whole idea is to get as many cars in the back as you can.

Tom Decker asked if those spaces would obscure the gate and Mr. Martin said that they were changing the gate from swinging to a sliding gate so you could actually park there. Mr. Martin informed Tom Decker that the gate would open about half the width, ten feet opening.

P. Stepanovsky asked if the fire lane could be smaller or is it required to be sixteen feet wide. Mr. Martin said it could go down to 10-12 feet but if you go down to 12 feet it would be difficult to get cars out. P. Stepanovsky asked about parking on a slant and Mr. Martin stated that he has looked at alternatives and you're not gaining anything by doing that (parking on a slant).

Tom Decker stated that it seems that a lot of parking revolves around the storage tanks-can they be relocated.

Chris Wildgen has contacted the state and they have to be where they are-state required.

P. Stepanovsky asked about where the gas tanks are located and Chris Wildgen stated right by parking space #1.

P. Stepanovsky asked how often does he get a delivery and Chris Wildgen answered every four days.

M.L. Haring- any other questions of Mr. Martin?

M.L. Haring asked if there are any questions from property owners within 200 feet.

M.L. Haring asked if there are any questions from anyone in the audience.

Tom Decker asked if the Hot Rod sign will be removed and Chris Wildgen stated no because the Chris's Citgo sign is on it and it's incorporated into one.

Mr. Bill Marcus, Featherbed Lane, asked Chris Wildgen in the past ten years -how often has he had a car there to be repaired and he's pulled in with his kids car? Chris responded by saying quite a few times. He voiced support for what Chris is proposing to do.

Andy Russano, Milltown Road, was sworn in and stated that he has known Chris for ten years. We all have cars and problems. He had a problem with the brakes on his truck and Chris took care of him right away-no money-pay him later. He's too honest and he's there for the people and never refuses anybody. You can't find a person better than him. The landscaping – are we gonna do with everybody on Route 12. This man is trying to make an honest buck. Give him a break-he's there for us.

Petra Sullivan, sworn in, has been a Kingwood Township resident for 30 years, married for 28 years. Her husband left her with no car, nothing and she's a caregiver for the elderly. Chris gave her a car to get to work and oil to heat her house. She's in to him for about \$1800 and thanks to him she's gotten ahead. She has letters from Kingwood township residents in support.

David Pierce, for the record, informed Ms. Sullivan that we can accept the letters and place them in the Boards file but because the individuals are not here to testify it would be inappropriate for the Board to consider them.

Donna Whitehead, sworn in, stated that she moved to Kingwood four years ago and her son works for Chris. She receives comments about her son. Chris teaches the kids and her son has learned how to do oil changes, change tires etc. It's not only the boys-he teaches, but the girls too that works there. She feels it's time to cut him a break.

Elaine Niemann, Deputy Mayor, resides on Barbertown Point Breeze Road, was sworn in, stated that she doesn't think there any disputing Chris's contribution to this community and she has also benefited from Chris's good heart and skills, as well as his people there. The application that we're hearing tonight is a product of a long effort on the townships part, to have that property brought into the fold of where the original site plan had laid out. Just wanted you to have the benefit of this background. Around March of 2009 they began talking to Chris about bringing the property into some level of compliance with the original site plan of 2001. About every month the code enforcement official stopped in on him and asked him for receipts to demonstrate that some effort had been made at cleaning up the property, she added that this effort was commenced on the aftermath of the township having conducted a community survey . They mailed forms to all the Kingwood Township residents and got 340 some back and one of many comments that they got back centered around the concern that Route 12 was really deteriorating and that the appearance of Route 12 was a detriment to Kingwood Township. They had been made aware by other residents, near Chris's, that they were concerned as to how the property was developing and evolving. Every month or so (started March 2009) the code enforcement official would stop by in a non threatening way. By July 2010 they really hadn't been getting anywhere- no threatening letters, no fines were levied and no citations were issued. They invited Chris to come to the office and look at the 2001 site plan and he (Chris) referred them to his attorney, so the township tried their very best to resolve this without any legal involvement and no citations were issued until after he referred them to his attorney, citations were never collected or levied any fines against the business and they ended up in court. At that point the property was cleaned up miraculously and they (township) was so happy but within two to three weeks of time there was another accumulation of vehicles there and they were back to square one and that's what's brought them here tonight. It's been a real effort on their part to try to accommodate a well loved business man here in the township as well as accommodate what has been expressed to the township by many, many residents as a concern about the way the township looks, particularly those residents on Lower Oak Grove Road who have been very concerned about the values of their properties relative to this unsightly parcel.

Elaine Niemann has a question to ask relative to off site parking, in connection with this application, but didn't hear any mention made of that. She knows in an effort to try to reduce the concentration of vehicles on the site he has been parking off site and wondered if he could confirm if there will be additional off site parking, if

this variance is granted would you continue to need to utilize off site parking and where would you do that.

Guy DeSapio replied by saying that if this application is approved they will not need off site parking, and any off site parking that is utilized now is done lawfully.

Elaine Niemann stated that the only other observation she would make is relative to the height of the fence and it's ability to screen the view of the contents of the yard from the people on Oak Grove and elsewhere. The business does service box trucks and commercial vehicles that are high and there's been a camper parked in the back for a long time that's also high and that would support the idea that there ought be additional screening on Oak Grove Road and would like to have for the Board to consider the idea of moving that fence back only because she doesn't know if snowplowing activity and other road work might not just destroy any plantings that will be placed between the existing fence and the roadway. She's not sure about that, it would be the engineers call and it would be something to please think about.

Guy DeSapio addressed David Pierce and stated that he would like to make an application that any reference in Deputy Mayor Niemann's testimony to what other people felt or said or placed in a petition, that the Board be directed not to consider that in the same manner that they are not to consider those letters by people who are not here tonight.

David Banisch heard some reference to off site parking could he (Guy DeSapio) clarify that comment.

Guy DeSapio is not sure how that's relevant to this application except to say that while this application has been pending Chris has been making every effort to try to keep the parking on the site down to the number of vehicles that are approved in the site plan, so occasionally he makes arrangements to move cars that need to be moved right away to someplace else that can be lawfully parked until he can move them back onto the site- it's part of the problem.

David Banisch off site parking is the issue .

Guy DeSapio stated that they don't have any proposal to ask for authorization to do that, so they are not going to make a presentation to do something that they have no intention of doing if this site plan approval is approved.

David Pierce stated that with respect to Guy DeSapio's request regarding statements given by the Deputy Mayor, Elaine Niemann is admissible because it explains the reason why the township and the township committee took action.

Guy DeSapio, for the record, doesn't know how any action that may or may not have been taken is relevant to the consideration as to whether or not this application should be approved.

C. McBride stated that if we're not going to see the survey results - we shouldn't consider it.

L. Frank stated that they were published.

David Pierce stated that it's a very technical legal issue. The Board may give it (Deputy Mayor statements) whatever weight it feels appropriate.

Guy DeSapio stated that his objection is that what the township did or did not do is not relevant to this application.

David Pierce feels that it is relevant.

J. Laudenbach stated that there were no neighbors within 200 feet making any negative comments.

The Board was polled and it was determined that they would continue and not adjourn to next month.

Guy DeSapio gave his summation.

M.L. Haring closed the hearing at 10:30 pm

P. Stepanovsky thinks what we have is a balance between residential and commercial zone. He feels the fence needs to be at least eight feet high so if he does have a box truck it won't be visible.. Need to redo the back yard facing Lower Oak Grove Road with buffering - fence and shrubbery.

T. Ciacciarelli asked if there isn't a set back requirement for a fence over six feet high - maybe can give a variance too.

J. Laudenbach agrees with Peter with the buffering and move the fence along Oak Grove Road an easy compromise. The height increase is not necessary on the sides. He's okay with everything-maybe landscaping in the back facing Lower Oak Grove Road.

D. Hewitt stated that it would have been nice to see someone from Lower Oak Grove Road that had these concerns and being a survey it was probably over the whole Route 12 corridor and he sees some other facilities out there that need attention as well. He agrees with Peter on the additional buffering along Lower Oak Grove Road and the height increase of the fence. The only other thing is the sign perhaps covering Hot Rod Cafe-it can cause additional traffic coming in who expect a cafe there - that's something to think about.

L. Frank agrees with the fence, scrubs in back along Lower Oak Grove Road and what Elaine said about the compliance thing. He feels the fence should go up first and we should make sure that we get a letter from the Fire Company and Rescue Squad.

T. Ciacciarelli same thing, he thinks as long as we grant the variance for the additional setback for any fence increase in the rear is fair and the sign can be blocked out.

C. McBride thinks that if you look back at when the original site plan was approved they had box trucks back then and the site plan was approved in a configuration where there probably was going to be more traffic than in this configuration-the new site plan is a vast improvement over the old one because it removes the public from moving their cars in and out and it restricts it only to employees, less movement of cars, don't think we need to require that the buffer space be changed, it would be disingenuous of us to change anything that was approved 10 years ago, he doesn't understand why we should be considering this, this should be allowed and the changes be made and should be approved as is with no restrictions.

M.L. Haring she would like to start out with saying that Chris you are an asset to our community. She met with the zoning officials and they are trying to cleanup the Route 12 corridor-there's new signage going up and it's looking neater. With your property with granting this variance it would remove the clutter, for lack of a better word, from the front to the rear and will be hidden. She would agree to move the fence in just because of normal erosion the ditches are getting deeper and need to be moved in with whatever amount the Board decides. It would be more attractive for the property owners on the other side of Lower Oak Grove Road there should something more-trees perhaps. She would like to see one light even if it's on a timer so when the employees are leaving they're not walking in the dark. On the east side of the building if you pull a car out from the bay and put it over to the east and there's no one around to pull it in the back as long as there's no overnight parking in that section that you said you were going to close it off from Route 12 to the rear of the building on the east side-the whole purpose is to get these vehicles in the rear and get in compliance with the zoning. Strict compliance to the twenty nine cars and no more, there shouldn't be a problem.

Charles McBride moved to accept the site plan as is and address the variances and waivers on an individual basis.

David Pierce suggested that the motion should be made to approve it as presented to the Board with an approval of the waivers and variances the applicant has presented.

C. McBride feels that we need to look at the individual waivers on an individual basis.

David Pierce stated that his motion is to approve as is without any conditions.

C. McBride moved to approve the waivers and variances as presented and conditions set forth and noted by David Pierce and to move the fence six feet and plant a row of trees or shrubs on the side facing Lower Oak Grove Road, seconded by J. Laudenschach. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M.L. Haring**

Abstain: None

Absent: None

COMMUNICATIONS/REPORTS:

Borough of French town-Ordinance # 703

Township of Kingwood Ordinance No. 2011-127-"Designation of October 2011 as Community Planning Month"

2012 Budget request- C. McBride made a motion to ask \$7,000, seconded by D. Hewitt. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M.L. Haring**

Abstain: None

Absent: None

OPEN TO PUBLIC:

ADJOURNMENT:

L. Frank moved to adjourn, seconded by D. Hewitt all in favor. Meeting adjourned at 11 PM.



**Barbara Wilson
Secretary
Board of Adjustment
Kingwood Township**