The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, January 21, 2009. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:00 P.M. Chairperson James C. Rodimer presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL:
Present:
Chr. Rodimer, Roger Spiess, Nick Saccamano, Arthur Korn, Kevin Scollans, Sally Dankos, Frank Passucci, John Murphy

Absent:
Mark Wilson

Prof. Present:
Larry Weiner, Nicholas Rosania, William Denzler

Councilman Stecky was also in attendance.

MINUTES:

January 7, 2009
Motion to adopt the minutes as submitted was made by Mbr. Murphy, seconded by Mbr. Scollans and unanimously approved by all Members present and able to vote.

PUBLIC HEARINGS:

BA 08-29: Allen & Lucille Hopler
Block 70101, Lot 17
77 Ford Road
Chr. Rodimer announced that this application was withdrawn at the applicant's request and would be resubmitted as a subdivision to the Planning Board.

BA 08-27: Thomas Carlyon (Carried from January 7, 2009)
Block 60903, Lot 8
17 Hardman Terrace
Michael J. Rowland, Esq. represented the applicant and indicated he had two witnesses. Mr. Paul Tiajoloff of Paul K. Tiajoloff, LLC (360 Hawkins Place, Boonton) and Thomas Carlyon (17 Woodland Road) were both present and sworn in. Larry Wiener, Esq. announced that there was general housekeeping from the last application where applicant proposes to construct a deck and addition requiring “C” variance relief for front and side yard setbacks. A brief discussion took place regarding contiguous lots, mergers and deeds. Michael J. Rowland, Esq. stated that Mr. Henning has granted his interests over to Mr. Carlyon by an unrecorded deed. Applicant also indicated willingness to consent to a merger and perimeter deed for lots 8, 35 and 42 as a condition of board approval. Based upon a slight reconfiguration of the property there was question of legal notice. Approximately three additional lots were believed to be affected (26, 38 and 43) within 200 ft. of the subject property. It was decided that the applicant would be required to re-notice.

Chr. Rodimer announced to the public that this application will be carried to March 18, 2009.

BA 08-34: Robert & Paula Cassidy (Carried from January 7, 2009)
Block 20602, Lot 11
55 Mt. Pleasant Turnpike
Robert M. Cassidy (55 Mount Pleasant Turnpike) was present and sworn in. Applicant is proposing to construct a retaining wall requiring “C” variance relief for steep slopes and wall height. The yard has a steep slope and the proposed retaining wall would provide a level portion of the yard for two small children. Mr. Cassidy indicated that this would be similar to the level yards of neighbors on both sides of his property. Applicant is requesting relief from the 10’ requirement between the retaining wall and the fence to allow the fence on top of the wall. As well as relief from the combined wall/fence height of 9’ where 6’ maximum is permitted.

Exhibits submitted with the application include; two aerial satellite photos from the Morris County Board of Taxation, four color photographs of neighboring properties, four Versa-Lok Retaining Wall Systems Diagrams and a sketch with slope measurements taken by applicant.

Nick Rosania, Township Engineer indicated that although the applicant did a good job in an attempt to calculate the slopes on a sketch it is not an actual topographic survey and additional information would be required. The actual slope diagram shown does not include slopes disturbance analysis and ranges, flood zone, impact of sanitary sewer easement, issue of wall...
and fence combination and soil movement details. A topographic survey would need to be performed by a licensed surveyor along with soil movement details. Once quantity of soil movement is determined it will indicate if it is in the engineer’s jurisdiction or MCSCD jurisdiction (7,000 sq. ft.). The NJDEP riparian buffer issue for building within 300’ of a stream is in addition to these items. Mr. Rosania indicated that a topographic survey and slopes analysis would need to be provided. As well as, a determination of encroachment of the flood zone, if any.

Larry Wiener, Esq. indicated that based upon the Engineer’s comments that this type of application requires an engineer.

Based upon Nick Rosania’s comments, Bill Denzler, Township Planner suggested that the applicant should first submit a request to the NJDEP to determine if there are exemptions. Due to the Highlands research, Category One Streams maps were recently made available to the Township providing new information regarding the applicant’s limited distance to the buffer. Provided the DEP approves or waives jurisdiction, applicant would proceed with the cost of generating additional details from a licensed professional.

Mr. Rosania inquired about the estimated soil movement. Robert Cassidy indicated that his calculations for soil movement were 300 c. y.

Larry Wiener, Esq. voiced the empathy of the board and their concern for the cost of generating this information. It was suggested that the applicant contact a local assemblyman or State Senator to assist in contacting someone at the NJDEP.

Nick Rosania, P.E. further commented that the Township was recently warned by the NJDEP for failing to include “subject to NJDEP approval” as a condition of a recent Cedar Lake property approval.

Chr. Rodimer indicated that failure to comply could result in fines.

Chr. Rodimer opened to the public.

Jennifer Fox (43 Indian Springs Trail) inquired what the applicant’s neighbors did.

Mbr. Korn indicated that new state laws and township ordinances continue to be put in place that didn’t exist at the time.

Larry Wiener suggested the application be carried.

Nick Rosania, P.E. offered to provide more direction when the applicant calls the office.

Chr. Rodimer announced that the hearing would be carried to April 15, 2009 without further notice.

Board Secretary indicated that an extension of time would be required.

Larry Wiener, Esq. advised the applicant that if he didn’t have a response from the NJDEP before April 15, 2009 to call the office as soon as possible for rescheduling.

**BA 08-35:**

**Anthony Dargento**

Block 40609, Lot 100

20 Filbert Trail

Anthony & Alyssa Dargento (20 Filbert Trail) were present and sworn in. The Dargento’s are proposing to construct a 20 x 16’ deck requiring “C” variance relief for rear and side yard setbacks. Applicant proposes an 18’ rear yard setback where 40’ is required and 14’ side yard setback where 15’ is required. Applicant is seeking the variance to increase the living space of their small home and have it more in line with other homes in the neighborhood for future resale.

Nick Rosania, Township Engineer indicated that the side yard would improve with the new deck. The variance for the rear yard setback is not for the entire width of the rear of the property and only for the part of the deck where it bows out. The proposed deck will improve the aesthetic value and the value of the home.

Bill – Ask the applicant any potential impacts to dwellings to the rear of the home. The applicant indicated that there were no negative impacts.

Chr. Rodimer opened the application to comments from the board members.

Mbrs. Spiess and Saccamano had none.

Mbr. Korn commented that the drawings were suitable to the property and inquired about the proximity to the home at the rear of the property. Mr. Dargento responded that there was 25’ from the property line and a bush divider.

Mbr. Murphy inquired if there was any lighting planted that would impact the neighbors to the rear. Mr. Dargento indicated that there would be no flood lights.
Mbr. Passucci commented that he had no concerns and inquired about a set of stairs. Anthony Dargento stated that one set of stairs was actually removed and only the proposed set of stairs to right of the deck would exist.

Mbr. Dankos had no comments.

Mbr. Scollans suggested that due to the height of the applicant’s deck in relation to their neighbors that the applicant consider a shadow type to provide more privacy for everyone.

Chr. Rodimer liked the plan and had no problem with the proposed.

Larry Wiener, Esq. inquired about the dimensions of the deck. Mr. Dargento indicated that the deck would be 20’ long, 16’ deep at longest point with the remainder of the deck 12’ out from the house.

Chr. Rodimer opened to the public and seeing no one, closed the public portion.

A motion to approve this application was made by Mbr. Murphy, seconded by Mbr. Dankos and unanimously approved by all members.

Roll Call: Ayes – Murphy, Dankos, Spiess, Korn, Scollans, Saccamano, Rodimer

OLD BUSINESS:

Secretary Probasco indicated that there was an administrative change to the November 5, 2008 minutes. Language was added to the Resolutions to include the Roll Call that had been omitted.

NEW BUSINESS:

Chr. Rodimer referenced Nick Rosania’s memo dated January 15, 2009. The topic of the memo indicates Marie Goble’s interest in obtaining formal opinions on the potential of creating a Land Use Board. This information is being requested to satisfy Mayor Hussa’s consideration of a possible merger of the existing Planning & Zoning Boards. Discussion ensued.

Nick Rosania, P.E. indicated that no decisions had yet been made. The Mayor was investigating the possibility and gathering opinions before deciding to become a land use board and investigating it further.

Larry Wiener, Esq. indicated that there are different levels of membership and the Planning Board is set up differently. Land Use Boards are more practical with smaller towns of limited populations. Mr. Wiener explained that the Mayor and Council can create one board. The threshold is 15,000 and Denville would need to change the composition of the Planning Board by increasing it to nine members. Once the board size was increased, a referendum would need to be conducted. In closing, he stated that at this point in time we were awaiting comments from Ed Buzak, Esq. and then the board members could discuss in more depth.

Mr. Wiener pointed out that for “D” variances, political members of the Planning Board and the unique members such as the Engineer would be required to recuse themselves. Ultimately, making it unwieldy to have members get up and then going back. He further pointed out the difference between a quasi judicial neutral board such as the ZBOA versus the PB. The top tier municipalities in Morris County have two boards. Based upon these facts, unless there is a compelling reason or savings there is not enough bang for the bucks. The current practice of developing leaders in the community whose experience begins at the ZBOA, go on the PB and then Council would no longer exist.

Discussion between the board members, professionals and Councilman Stecky continued. Concern was voiced for the tax paying citizens that as applicants would need to come before the board multiple times, slowing down the process and making it more difficult and costly to see progress in the town. It was voiced that members would be absent more frequently causing voting difficulties. The importance of both the boards and need for expediting these types of applications was stressed. Consolidating the boards caused concern for doubling the meetings and workload of one board. The board members would be appointed by the Mayor, placing more influence in the hands of fewer people. The legislative body would need to back the decision, create an ordinance requiring a referendum which would be costly. It is commendable that the Mayor is exploring the idea but the reality is that impact within the community is minimal. The shortcoming is with the taxpayer’s money sent to the state and the county. The members are volunteers and the costs of professionals will still remain. Many of the cons cannot be measured in dollars and cents. All present were opposed to the idea and all were in agreement that further research should be done and the facts should be collected before a decision can be made.

Councilman Stecky commented that the Mayor was open to the idea and is seeking feedback. The Township is looking to save money and exploring all possible avenues to do so. Budgetary considerations need to be addressed and difficult decisions need to be made. In closing, Councilman Stecky recommended taking the issue to Trenton through the leadership of the League of Municipalities.

ADJOURNMENT: Motion to adjourn.

Denean Probasco, Board Secretary Date Approved