April 15, 2009

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, April 15, 2009. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:00 P.M. Chairperson James Rodimer presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL: Present: James Rodimer, Roger Spiess, Mark Wilson, Arthur Korn, Kevin Scollans, Sally Dankos, Frank Passucci, John Murphy

Absent: Nick Saccamano

Prof. Present: Larry Weiner, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES:

March 18, 2009

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

PURCHASING:

Motion to pay voucher(s) submitted by Township of Denville dated April 7, 2009, subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all Members present.

PUBLIC HEARINGS:

BA 08-34: Robert & Paula Cassidy
Block 20602, Lot 11
55 Mt. Pleasant Turnpike

Chr. Rodimer announced to the public that the public hearing has been adjourned at the applicant's request. The public hearing for this application was carried from January 21, 2009 and has been carried without further notice to July 15, 2009.

BA 06-15: Briar Rose Group, Inc. (Carried from February 18, 2009)
Block 40815, Lot 1700.02
101 Highland Trail

Allen Hantman, Esq. (168 East Main Street, Denville) represented the applicant and was previously sworn in. The applicant is proposing to construct a new dwelling seeking “C” variance relief for disturbance of regulated steep slopes, retaining wall height and front yard setback. Mr. Hantman provided an overview of three open items from the last meeting. The engineer and architect would be testifying to these items; MCSCD certification, fire department comments and soil log results.

Alfred A. Stewart, Jr., LS, PE was previously sworn in and remains under oath. Mr. Stewart provided testimony regarding the March 25, 2009 MCSCD approval. The MCSCD certification form, dated April 15, 2009 with a September 25, 2012 expiration, was entered as Exhibit A-1. Mr. Testimony continued to address the suitability of the drainage system and it’s location by providing soil log results. The results up to 10’ were consistent with previous soil logs performed on the site with a K4 soil type. Mr. Stewart stated that a meeting was held approximately two weeks ago with a member of the fire department to discuss emergency access to the rear yard. As a result of the meeting a series of landings and steps were proposed to the satisfaction of the fire department. The proposed stairs would be located on the westerly side of the dwelling leading from the front covered porch area to under the rear deck. The closest dwelling would be 150’ from the dwelling.

Chr. Rodimer opened the hearing to professionals for comment.

Nick Rosania, Township Engineer addressed Mr. Stewart regarding the details of the meeting with fire personnel. Mr. Stewart responded that the meeting took place approximately two weeks ago with Ed Sinewsky. Mr. Stewart confirmed that no written confirmation of the results of the meeting existed from either party. Mr. Rosania went on to question the origin of the soil log results. Albert Klore, an employee of Fred Stewart, performed the soil logs. Mr. Klore is a professional engineer and land surveyor. Mr. Rosania pointed out that only a fax copy of the data sheets was provided and that a signed and sealed soil log was not provided to the township. Mr. Stewart confirmed to Larry Weiner, Esq. that the soil logs were dated April 7, 2009. Mr. Rosania went on to question the drainage plan and the 1” orifice. Mr. Stewart began to respond regarding
the emergency overflow on the top of the unit. At this point in the questioning, the applicant’s attorney objected to the line of questioning. Allen Hantman, Esq. stated that the issues being raised by the Township Engineer were under the MCSCD jurisdiction and already approved. The board attorney did not uphold the objection stating that the engineer’s questioning was acceptable. Larry Weiner, Esq. stated that although MCSCD has approved the system the board can still discuss its functionality and size. Nick Rosania, PE voiced concerns about the possible clogging of the 1” orifice, how the homeowner will know if it’s clogged and what is required to unclog. The Township Engineer inquired if the system was workable and if it clogged would it just pour over the top. Fred Stewart provided summary and referenced the Amended Grading and Drainage Plan dated April 1, 2009 to address NR’s concerns regarding concerns that the 1” orifice is sufficient and will not clog. Mr. Stewart testified that the roof run-off is directed to the seepage pits then to the first storage tank followed by the second storage tank and then the overflow to the dry wells. The storage ability within the tanks and not the dry wells is the requirement of the MCSCD. The risers to grade (i.e. manhole covers) allows the visual inspection to ensure proper drainage. The surge outlet at the house the downsputs would indicate a drainage problem. The 3’x3’ opening at the bottom of the tanks prevents stagnant water if it was to become clogged. Mr. Stewart stated there are no regulations on the sizing of the pits or tanks but they are sized for 100 year storm event. Mr. Rosania inquired what the compulsion would be for a homeowner to maintain. Mr. Stewart responded that it would be similar to maintaining a gutter. The Board Attorney inquired if it’s clogged what would have to be done. Mr. Stewart doesn’t believe it would be clogged and indicated that the homeowner would open manhole cover and clear the orifice cover using a long handled instrument. There was much discussion regarding the likelihood of a clog, feasibility of entering the tank and using a tool to clear the orifice took place. The discussion included possible suggestions that there be a valve system in the office or installation of a baffle.” In closing, Mr. Stewart indicated that he also had a concern regarding the 1” orifice but that the MCSCD wanted the rate of runoff within the storage tanks be released through the dry wells. Mr. Stewart testified that the proposed meets MCSCD’s recommendations. The applicant testified as to the challenge of meeting both Township and MCSCD recommendations and believes the MCSCD has jurisdiction since the Township has no regulations. In closing, Mr. Hantman indicated that resubmission to the MCSCD for a revision could be a condition of approval.

Nick Rosania referenced a previously mentioned sight distance issue of backing out of driveway. Mr. Stewart stated responded to the widening of the roadway and that sight distance was not checked. A profile of sight distance was requested by Mr. Rosania.

Bill Denzler, Township Planner asked for a description of the stairway and dimension of the steps down the side of the house. Indicating that an additional variance for side yard would be required if the wooden stairs were attached to the house. Fred Stewart believed the dimension was 3.5’. Bill Denzler indicated there was 2.5’ available by shifting the home over. Mr. Denzler also inquired about the regrading under the steps being different disturbance than the original plans. Mr. Stewart indicated the disturbance stayed within that originally shown.

Chr. Rodimer opened to comments from the board.

Mbr. Spiess shares the concern regarding keeping the 1” orifice clean and unclogged and had no other questions or comments. Allen Hantman interjected that the applicant was willing to do whatever the MCSCD was willing to permit regarding the installation. Mbr. Wilson commented that it seems impractical for a homeowner to be opening manhole covers as discussed and would like to see something done on the 1” orifice. Mbr. Wilson countered Mr. Stewart’s gutter maintenance comparison pointing out that an improperly maintained gutter only impacts the homeowner and not the surrounding properties. Thus, requiring a higher diligence regarding maintenance due to the higher negative impact. Mbr. Korn commented he would like the applicant to agree that they will comply with the Township Engineer provided a violation with MCSCD approval does not exist. Mr. Hantman responded that there would be no problem, any changes would need to be resubmitted to MCSCD and be bound by what they do. Mbr. Korn further stated that even gutter guards do not prevent the 2”x3” gutter from clogging. Mbr. Korn inquired about having in writing the fire department’s satisfaction. The board attorney indicated that they confirmed they are satisfied with the plan and revisions and suggested verifying receipt of all departments’ comments prior to the next meeting. Mbr. Korn then inquired if the applicant would be providing a report on sight distance out of the driveway. Mr. Hantman responded that the applicant’s engineer has indicated that there is no sight distance issue and that the driveway is not a large slope.

Mbr. Murphy appreciated the stairwell to provide access to the rear but questioned how the fire department could successfully fight a fire on both sides of the house. Commenting that it would be a challenge to erect ladder on a 2.5’ wide stairwell. The board attorney agreed that a proper response from the fire department regarding the safety issue be obtained.

Mr. Hantman questioned the letter from Board Secretary requesting additional information. Regarding the February 9, 2009 plan approved by MCSCD indicating that the board had the opportunity to approve the meeting prior to MCSCD’s approval. Mbr. Murphy sought confirmation of the approved plan dated February 9, 2009 indicating there was none bearing this date. Mr. Stewart’s testimony that the plan is dated February 6, 2009 and that they only change to the plan since the MCSCD approval was obtained was the wooden stairs. Mbr. Murphy referenced the 1” orifice and inquired if there were manufacturing
specifications that Morris County was superseding. The water handling system was designed by someone else and inquired if manufacturing specs existed for the 1” orifice. Mr. Stewart indicated that the plan by Morris County was an engineering design. Mbr. Murphy shared the Concern with the board on the maintenance requirements being impractical for a homeowner. Mbr. Murphy also inquired if there was an annual certification for the maintenance of the system. Mbr. Dankos all questions have been answered and voiced concern about a car backing out due to visibility. Mbr. Scollans spoke to many different methods and designs that could be used to control flow. Regardless of the system designed it will not replace a maintenance system. Would like to see a maintenance system. Due to the severity of the slope, runoff in general is a big concern towards the neighbors and Mbr. Scollans inquired about any kind of swale to catch water that comes down the hill. Mr. Stewart responded that there would not be a swale and referenced the drainage report that shows the amount of runoff from the site has been reduced. Mbr. Scollans stressed the importance of a cut-in for safely backing out to prevent backing out into the road. Mbr. Scollans also commented on the maintenance of the proposed stairs. Mr. Hantman stated it’s a single family home and whose obligation it would it be to administer these suggested maintenance programs. Mbr. Scollans argued that unusual conditions required special circumstances to mitigate potential problems and had no further questions.

Chr. Rodimer opened to questions to the public after a short break.

Larry Wiener, Esq. reiterated that the public is limited to questions of Mr. Stewart’s testimony. James Pryor, Esq. represented Laurie Campbell Toth (11 Chestnut Hill Drive, Lot 1733). Mr. Pryor questioned the technology as being previously designed, new design or excessive in nature. Mr. Stewart testified to being a typical storage design but unusual for a single family home and was designed as a combined effort for storage and infiltration. Mr. Pryor wanted to know if MCSCD dictated this design or provided alternatives. Mr. Hantman objected to the line of questioning. Mr. Stewart responded that it was not an exclusive design but a combined effort from their meeting to use a modified septic tank. Mr. Pryor asked if sight standards existed. Fred Stewart responded that ASHTO standards exist for pulling out of a side street but not for pulling out of residential homes. Mr. Stewart’s educated guess was based upon measurements taken during a field survey.

George Allaman (15 Chestnut Hill Drive East) was present and remained under oath and questioned the integrity of the roadway during excavation. Mr. Stewart responded that they would be excavating 12’ approximately 39’ from the existing roadway. Mr. Allaman went on to inquire about the slope of the property being in excess of 30’. Mr. Stewart indicated that the difference between the elevation of roadway and the bottom of the excavated footings would be 27”. Mr. Allaman questioned the quantity of fill. Mr. Stewart’s testified the fill calculations include excavation of the foundation, backfilling of the walls, meeting grade and filling onsite.

Mr. Allaman inquired about diverting run-off to the side of the gully and inquired about preventing erosion. Mr. Stewart testified to the improved drainage of the site and gentler slope by the creation of retaining walls. Mr. Allaman’s last question was whether 53 trees were still going to be removed. Mr. Stewart confirmed that this was accurate.

Stephen Toth (11 Chestnut Hill Drive East) was present and remained under oath. Mr. Toth inquired about previous plan submission with serpentine driveway and the reasons for changing the plan. Fred Stewart responded that it was to create fewer disturbances of steep slopes. Mr. Toth inquired if the run-off from Highland to the driveway was calculated. Mr. Stewart answered no, since this was protected by the 2’ curb reveal. Mr. Toth indicated that runoff of melting snow exceeded his curb reveal and inquired if there was a possibility of run-off exceeding the curb. Fred Stewart replied that there was not and that this was typical drop curbing. Mr. Stewart indicated that he was not concerned about Long View Trail run-off creating a problem due to two catch basins. Even in the event that the catch basins were to overflow the water would continue down Highland Trail. Mr. Toth inquired about the perforated drain and stone at the base of the retaining wall. Mr. Stewart responded that there would be aggregate behind the wall which is typical to relieve any hydrostatic pressure on the wall itself. Mr. Hantman answered Mr. Toth’s question informing him that there is no specific regulations regarding the maintenance of a retaining wall. Mr. Toth referenced the State of NJ’s Best Practices Manual and made inquiries regarding the dry well system. Larry Weiner, Esq. stated that the board could require the applicant to develop a maintenance plan for the property if deemed appropriate.

Tracey Longo (67 South Wynde Drive) wanted to know what a 100 year storm was. Mr. Hantman responded that it’s not a measurement of time but how much water falls. Mr. Stewart indicated last was Hurricane Floyd. Ms. Longo inquired if the applicant was the owner of the property. Mr. Weiner responded that the applicant was the equitable owner of the property but not the legal owner of the property. Ms. Longo inquired if this was a routine construction. Mr. Stewart responded that construction will take place from the bottom up and that he considers this a routine construction.

Chr. Rodimer closed the public portion of the meeting.
Louis Barbieri (123 East Main Street) was present and sworn in. Based upon his qualifications, Mr. Barbieri was accepted as a professional witness by the board. Mr. Barbieri reviewed the February 9, 2009 drawings redesigning the home. The home is a one story ranch. It’s considered upside down because you enter from the street with the LR, DR and KITCHN upstairs and the BR’s downstairs. Louis testified that a visual survey of the neighborhood within 600-800 linear feet in the neighborhood and that the height was consistent with new construction in Indian Lake. The proposed dwelling without the basement is 3,566 sq. ft. The survey results were 6 homes within 600 linear ft. of the same size and that this lot is 3.5 times the size of the minimum lot requirement.

Mr. Barbieri read the properties for the record, homes at 102 Highland estimated at 2,900 sq. ft., 28 Chestnut Hill East living area and garage estimated at 4,800 sq. ft., 88 Highland Trail living area and garage estimated at 3,300 sq. ft., 86 Highland Trail approximately 4,300 sq. ft. 4 Hilltop Trail approximately 3,700 sq. ft., 4 Long View Trail approximately 4,200 sq. ft. All estimated to be within 100-200 sq. ft.

Mr. Barbieri testified as an architect and as a planner and spoke to the safety of the neighbors and maintenance of positive criteria by minimizing the detriment to the neighborhood. This design is the best for all the issues previously referenced. Mr. Barbieri testified to the zone requirements and keeping the home farthest from the property line from a safety standpoint. The variance required is for the safety fence on top of the retaining wall to eliminate the walking space between the wall and fence. The steep slopes is the only negative criteria and the positives outweigh the negatives. In closing, Mr. Barbieri stated that this is the best possible plan for a single family dwelling on this lot.

Nick Rosania questioned Louis Barbieri on the six homes that were larger and what was the total number of homes in the survey. Louis responded there were 14 homes in the neighborhood of a larger size, six were larger than 3,500 sq. ft and a number of homes that were 3,000 sq. ft. 75% of the homes are smaller than the proposed dwelling and 25% are larger. Mr. Barbieri responded that the number of homes in the 600 ft. on steep slopes was unknown but guessed a couple.

Bill Denzler questioned the size of 88 Highland Trail at approximately 3,300 sq. ft. being smaller than 3,500 sq. ft. Mr. Barbieri agreed that his previous testimony was incorrect and that there were only 5 homes on steep slopes. Mr. Denzler inquired about how the small percentage of homes bigger is representative of what is proposed. Mr. Barbieri indicated that the newer homes are much larger. Mr. Denzler wanted to clarify that the analysis used living area and garage whereas the proposed dwelling was without the basement and garage. The Township Planner then pointed out that the tax records reflected great discrepancies in the numbers. Mr. Barbieri confirmed that the proposed was 3,086 sq. ft. without the unfinished basement or garage. Louis further testified that the survey was based upon physical analysis and that he would look at the tax records, they are not always accurate. Mr. Denzler spoke about the visual appearance of the home from the front being one story and revised drawings to include stairs. Mr. Barbieri confirmed the visual from the rear would be three stories and from the sides would be 1.5 to 3 stories. Stairs can be included on the drawings. The reasons for steep slopes ordinances to exist are for erosion, drainage and safety. Mr. Denzler inquired why you would develop a property with 40% slopes and greater and not possible to develop. Mr. Barbieri responded that so long as it’s safe, no lot is unable to be developed.

Chr. Rodimer opened the hearing to board members.

Mbr. Murphy inquired about the dimension to peak of roof and the visual of approximately 74’ from the property line to roof peak. Pointing out that the three stories will appear much greater due to the slope of the property. Mr. Barbieri indicated another 6’ and provided a definition of average height defined as front and back and sides to a gabled roof. The average height was originally measured as an average 27’ but as defined by ordinance, 29.5’ is the actual average height and is 6’ below the requirement. Mr. Barbieri indicated that the height can be redone on the drawings and confirmed the proposed dwelling would be 3,566 sq. ft. with garage and living space. Mbr. Murphy commented on the lower floor plan and the unfinished basement with windows and sliders being living space that would add approximately 1,500 sq. ft. for a total of a 5,000 sq. ft. home.

Mbr. Passucci inquired about the additional stairs and the need to redesign the interior floor plan. Mr. Barbieri testified that he had not seen the stairs plan and that other than one or two windows didn’t anticipate a redesign of the floor plan.

Mbr. Dankos inquired about the height from neighbors below and inquired about outdoor patio lighting. As per Louis none planned other than small incandescent residential lighting shown and that 150’ existed from rear property line and existing trees.

Mbr. Scollans commented that the design was nice and had questions regarding the height from the rear of the home. The total height from back section to the center of the roof is roughly 37’ with an additional 6’ to the peak. The typical floor to ceiling height is 11’ in basement and 9’ on the floors above. The foundation will be determined by the structural engineer and will most likely be poured concrete. The pitch of the roof is 7 on 12 and with less pitch the height would be mitigated. By lowering the roof by 4’ the maximum height would be lowered by 2’ but would not have as nice a look and the higher the pitch the longer the roof will last.
Chr. Rodimer announced that the public hearing would be carried to June 17, 2009 without further notice.

NEW BUSINESS:
Mbr. Korn mentioned the league of municipalities and interest in attending. The four dates are November 16 through November 19th. Chr. Rodimer asked for a show of hands and five members were interested.

The Board Secretary mentioned the annual report and inquired if there were additional comments from the board members. There was none other than those previously provided by email by Mbr. Korn.

ADJOURNMENT: Motion to adjourn.


Denean Probasco, Board Secretary Date Approved