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

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL: Present: Kevin Scollans, Mark Wilson, Arthur Korn, Sally Dankos, John Murphy, Frank Passucci
Absent: James Rodimer, Roger Spiess, Nick Saccamano
Prof. Present: George Johnson, Esq., Larry Weiner, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES:
June 3, 2009
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Wilson and unanimously approved by all Members present and able to vote.

June 17, 2009
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay voucher(s) submitted by Denzler & Associates dated June 24, 2009, subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Dankos and unanimously approved by all Members present.

Motion to pay voucher(s) submitted by Larry I. Wiener, Esq. dated June 23, 2009, subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Dankos and unanimously approved by all Members present.

Motion to pay voucher(s) submitted by Fred Semrau, Esq. dated June 5, 2009, subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Wilson and unanimously approved by all Members present.

CORRESPONDENCE:
Vice Chr. Scollans referenced correspondence was received regarding the Briar Rose Group, Inc. application. Mbr. Wilson suggested obtaining the board attorney's comments on the correspondence under Business at the end of the meeting.

RESOLUTIONS:
BA 09-01: Robin L. Stryker/Michael E. Gulow Block 70401, Lot 20 29 Freeman Lane
Motion to adopt the memorializing resolution for the above property was made by Mbr. Dankos and seconded by Mbr. Scollans and unanimously approved by all Members present and able to vote.
Roll Call: Ayes – Dankos, Scollans

BA 09-09: Walter H. Cramp 56 Indian Spring Road Block 40903, Lot 750
Motion to adopt the memorializing resolution for the above property was made by Mbr. Dankos and seconded by Mbr. Wilson and unanimously approved by all Members present and able to vote.
Roll Call: Ayes – Dankos, Wilson, Korn, Murphy, Scollans

BA 06-15: Briar Rose Group, Inc. Block 40815, Lot 1700.02 101 Highland Trail
Motion to adopt the memorializing resolution for the above property was made by Mbr. Wilson, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.
Roll Call: Ayes – Wilson, Dankos, Murphy, Scollans

PUBLIC HEARINGS:
Vice Chr. Scollans also announced that at the board attorney’s request, the applications would be heard in a different sequence than the agenda indicated.

BA 08-34: Robert Cassidy
Block 20602, Lot 11
55 Mt. Pleasant Turnpike
Vice Chr. Scollans announced to the public that this application was withdrawn by the applicant and would not be heard.

BA/SP/SS 09-10: Eric J. Burnstein
Block 61005, Lot 47
104 Cedar Lake West
Morris Leo Greb, Esq. (141 West Main Street, Rockaway) represented the applicant and provided a brief summary. Eric J. Burnstein (104 Cedar Lake West) was present and sworn in. Applicant is proposing to construct a new dwelling to replace the existing log cabin home, requiring “C” variance relief for steep slopes and retaining wall height along with front, rear and side yard setbacks.

Vice Chr. Scollans was present and sworn in. The applicant testified that he has been a Denville resident all his life. The existing home is a summer bungalow that was constructed in 1923.

Stephen Ira Smith, Principal of Jaman Engineering & Associates (320 Route 10 West, Randolph). Mr. Smith provided a summary of his qualifications and was accepted as an expert witness. Mr. Smith indicated that he would be providing testimony as a professional planner and land surveyor and provided a summary of six Exhibits (A-1 through A-6).

- Exhibit A-1 - Key Sheet
- Exhibit A-2 - Existing Conditions and Demolition Plan
- Exhibit A-3 - Grading Plan
- Exhibit A-4 - Soil Erosion and Sediment Control Plan
- Exhibit A-5 - Steep Slopes
- Exhibit A-6 - Details

Mr. Smith testified that the applicant was for reconstruction of a new dwelling. The property lies on the easterly side of West Cedar Lake Road and backs up to Cedar Lake. Using the Plot Plan Mr. Smith reviewed the coloring that reflected the dwelling in blue, property in pink, framed garage outlined in blue, dashed pink. Mr. Smith referenced an error in survey reflecting a 6’ to 7’ shortage northerly to southerly on the original 1907 map. Mr. Smith stated that Mr. Zimmerman shows a difference for Lot 46, with an overlay due to an existing error in the original survey. Encroachment of the garage on the property in an existing overlay zone of 5’10” in the front and 52” in the rear. Stating that the physical location does not match the survey points. The encroachments include the retaining wall, garage, the front of the dwelling is clear by 5.5”, the rear of the dwelling by 7” with the rear of the deck back on the property line. The patio on Lot 46 encroaches on the applicant’s property and the shed and portions of the applicant’s dwelling encroach on Lot 48.

There was brief discussion regarding the survey, property line discrepancies and easements being a matter for a court to determine and not in the prevue of the zoning board. The outcome was that it was decided that the board proceed with hearing the application.

Mr. Smith’s testimony resumed using architectural exhibits. The existing dwelling is 30’8” and the proposed is 25’ wide dwelling is located on a 50’ lot with 12.5’ side yard setbacks where 17’ is required. Variance sought on easterly side for 8.5’ due to the elevated walkway on the northeasterly side of the dwelling but the home will be at 12.5’ side yard setback. Mr. Smith also spoke to the design of the architectural plans. Using the existing conditions exhibit Mr. Smith spoke to the driveway, proposed parking area and garage. Construction is proposed to occur in two phases. Garage elevation of 571’ equal to the 2nd floor and down to the first and basement levels. The proposed garage elevation will be within 1’ of the existing garage elevation. Variance sought for the 18’ front yard setback of the garage where 35’ is required. This setback exceeds garage setbacks in the neighborhood. The deck is required is access the middle floor of the home requiring a rear yard setback of 46.2’ to the deck where 50’ is required. The proposed deck of 46.62’ is close to the existing at 48.51’. A small portion of the walkway to have a covered area. The existing grade to remain unchanged beneath the deck. On the southwesterly side of the dwelling there will be smoothing only but not regraded.

Architectural Exhibits:
- A0 – Basement Plan
- A1 – First Floor Plan
- A2 – Second Floor Plan
- A5 – Roof Plan
- A7 – Elevations
- A6 – Building Sections
Mr. Smith’s testimony continued regarding steep slopes. The slopes in the 15-20% range are highlighted in yellow, 20-25% range in orange, 25-30% range in green and 30% or greater in pink. There is 2,280 sq. ft. in the range of 30% or greater on a lot size totaling 7,666 sq. ft. equating to approximately one third of the total property.

The closest home is on Lot 46 and there is no proposed regarding in this area. Basement floor is at elevation of 551, 547.5 at southwesterly and 550.5 at southeasterly giving a range of 6” to 3’6” above existing grade. Deck will be approximately 7’ above the existing grade. Top of the retaining wall will remain at the existing grade. Two retaining walls, one at top of existing grade and two semi flat areas or benches coming up from the lake.

Mr. Smith spoke to the existing conditions of the property. Indicating that today’s design criteria did not exist at the time the property was developed. The property requires variances for steep slopes, front, rear and side yard setbacks and 7’ wall height. Stating that the pre-existing non-conformance would not comply under current criteria. Hardship exists from it’s exceptional narrowness and topographic conditions that uniquely affect this property. The neighborhood does not comply with the ordinance as it is comprised of 50’ wide lots in a zone that requires 100’ lots. An exhibit of twenty photographs was reviewed. The three photos of Lot 45, five photos of Lot 46, five photos of Lot 47, six photos of Lot 48 and one photo marked Exhibit A-11.

The Township Planner’s report dated May 21, 2009 was referenced. NJDEP requirements regarding the flood hazard requirements does not apply for flooding but does apply at it relates the Riparian Buffer. A 300’ Riparian Zone exists on this site. The board attorney indicated that should the board act favorably on this application, it would be subject to the NJDEP approval. An application was made to Morris County Planning Board and in response, an exemption was received. The applicant agreed to comply with the Police Departments comments regarding traffic and construction equipment in the roadway.

In order to the Environmental Commission’s comments regarding the steep slopes, Mr. Smith stated that the outcome is actually better than what currently exists. A silt fence will be installed, to prevent runoff on the adjacent properties or into the lake. Based upon the existing conditions, slopes, tiered retaining walls and lot width, Mr. Smith stated that there is no negative impact and being an improvement, the proposed application should be approved.

Mr. Greb, Esq. stated that letters with response forms were distributed to adjacent property owners to solicit interest in buying or selling. There was no interest from any of the neighbors in buying from or selling to the applicant.

Soil Movement and Tree Removal were referenced by Mr. Greb, Esq. Mr. Smith stated that the net cut of 260 cubic yards of soil was to be removed totaling approximately 15 truck loads of soil. Tree removal is reflected on the Steep Slopes Plan showing what will be removed in order to construct the home.

Vice Chr. Scollans opened this application to the professionals.

Nick Rosania, Township Engineer spoke to the difficulties of the topography and confirmed that a hardship exists. Mr. Rosania inquired about drainage and Mr. Smith responded that there is no proposed change and that the existing conditions do not divert drainage to the adjacent lots. The applicant agreed to field changes if conditions require improvements. Approval from Morris County Soil Conservation District is a requirement. The retaining walls will be made of link block 4’ - 6’ height in back and a higher wall by the proposed garage.

Vice Chr. Scollans opened the application to the public.

Bob Morello (106 Cedar Lake West) was present and sworn in. Mr. Morello testified that he and his wife Bernadette are residents at Lot 46. Mr. Morello voiced concern with the plans that he recently saw for the applicant’s home. The applicant was reminded that he would have an opportunity for testimony later and was limited to questions at this time. Mr. Morello made inquiries regarding the dimensions of the home and roof height. Mr. Smith stated that the home was not 80’ in length and that there would be a 5’ separation between the dwelling and the garage with one continuous roof. There is a distance of 15’6” to the roof peak and no height variance is requested.

Vice Chr. Scollans asked if there were any other questions from the public. Seeing no one Mbr. Scollans closed the public portion of the meeting.

Vice Chr. Scollans opened to the board members for questions.

Mbr. Wilson inquired about tree removal. Mr. Smith indicated that seven trees would be removed and the large trees will be removed out of necessity not preference.

Mbr. Korn inquired about the rough size of the home. Mr. Smith responded that the middle level is 1,250 sq. ft., the upper level is 600 sq. ft. and the basement totaling 1,850 sq. ft. Applicant
agreed that no accessory structures be built as a condition of approval. Mr. Morello stated that his trepidation was having an 80’ wall of steel along the side of his home.

Mbr. Murphy stated there were six variances requested for steep slopes, four for setbacks and one for retaining walls. Mr. Smith confirmed. The wall height of the two retaining walls 4’ from the lake the wall height is 5’5” at the high end and 3’5” on low side. Inquired of Nick Rosania regarding the NJDEP approval due to Riparian Buffer. Mr. Rosania confirmed that the applicant would be seeking NJDEP approval. Mbr. Murphy inquired about plumbing and electrical for the garage. The applicant stated that only electricity would be required and agreed to this as a condition of approval. Mbr. Murphy voiced empathy for the Morello’s and had the applicant agree to grant easements to the Morello’s should the application is approved.

Mbr Passucci asked one question for the township engineer regarding safety fencing being required on the retaining walls. Nick Rosania indicated that no safety fence would be required.

Mbr. Dankos stated that all her concerns had been addressed and thought it was a good plan.

Mbr. Scollans inquired about dry wells. Mr. Smith indicated that none were proposed and that any drainage would be so minute and if required, rip rap would be addressed in the field. Mbr. Scollans indicated that his other questions had been answered.

Vice Chr. Scollans opened the application to the board members for comments.

Mbr. Wilson stated that the proposed home would be narrower with minimal changes in the rear. Mbr. Wilson stated that the proposed would be an improvement and was in favor of the plan. Mbr. Korn spoke to being in favor of the plan. While he understood concern for overall mass of the home he stated that the increase of parking from the existing one to four was an improvement and the proposed dwelling should increase the neighbor’s property value.

Mbr. Murphy spoke to the applicant being receptive and commented on being in favor of the application.

Mbr. Passucci was in favor of the application.

Mbr. Dankos was in favor of the property and voiced empathy with regard to the neighbors.

Mbr. Wilson reviewed conditions of approval to include no freestanding structures in rear of the property, NJDEP approval, Morris County Soil Conservation District approval, run-off to meet the requirements of the township engineer, electric only in garage, easement to be left off as it will remain legal matter.

A motion to approve this application with conditions was made by Mbr. Wilson, seconded by Mbr. Dankos and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Wilson, Dankos, Korn, Murphy, Passucci, Scollans

BA 09-08: Jim & Carol Ann Veraldi
Block 20601, Lot 20
16 Old Mill Drive

The applicants, Jim and Carol Ann Veraldi (16 Old Mill Drive) were present and sworn in. Mr. Veraldi stated they have been residents since 1995. Applicant proposed to add a two car garage with second floor addition. The old garage will be converted to expand existing family room and to add a home office. The room above the new garage room is to expand the existing bedroom. A variance is required based upon location of the existing home for a 15’ side yard setback where 30’ is required.

Vice Chr. Scollans opened to the professionals.
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Nick Rosania, Township Engineer agreed that the applicant has selected the best option and that no engineering concerns existed.

Vice Chr. Scollans opened to the public and seeing no one closed the public portion of the meeting.

Vice Chr. Scollans opened to the board members for comments.

Mbr. Wilson inquired about the bushes between the applicant’s property and the adjacent property. Mr. Veraldi responded that the existing hedges were to remain undisturbed. Mbr. Wilson had no further questions.

Mbr. Korn inquired about the other additions on the property. Mr. Veraldi indicated proposed additions include a patio, tiered deck and partially enclosed porch. That the existing footprint would be used and the additions would not exceed existing dimensions by more than 2-3’.

Mbr. Murphy had no questions.

Mbr. Passucci inquired about the garage and work shop in the rear. Mr. Veraldi indicated that no separation would exist but that a bumper stop with 2’ lip was proposed. Nick Rosania, PE said this would be fine. Mbr. Passucci thought for safety reasons that it was a good idea and had no other questions.

Mbr. Dankos had no questions and commented that the proposed addition would fit nicely in the neighborhood.

Vice Chr. Scollans had no questions and commented that the proposed would be an improvement to the neighborhood.

A motion to approve this application was made by Mbr. Wilson, seconded by Mbr. Korn and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Wilson, Korn, Dankos, Murphy, Passucci, Scollans

**BA 09-13: St. Francis Health Resort, Inc.**

Block 50002, Lot 1.01 & 1.02

122 Diamond Spring Road

John P. Wyciskala, Esq. of Stern & Kilcullen, LLC (75 Livingston Avenue, Roseland) represented the St. Francis. Applicant proposed to construct a freestanding sign requiring “C” variance relief for OB-3 zone and maximum square footage. 30’ vs. 8’ sq. ft. signs if allowed and wasn’t in the OB-3 sign.

For the record, Mbr. Dankos recused herself on this application.

Brad O’Conner, Signs for Today (173 Upper Hibernia Road, Rockaway) was present, sworn in and testified to the signs submitted for the applicant. Brad testified using a sign rendering (Exhibit A-1) and a proposed simulation of the sign. Proposed sign to be solid mahogany or redwood 46” x 92” wide located near the intersection (Exhibit A-2). Sign to be carved in wood with 23 carat gold leaf and finial balls on top also in gold leaf. Signage to be washed with solar lighting but back 20’ so no lighting is near the road.

Vice Chr. Scollans opened the application to the professionals.

Nick Rosania, Township Engineer indicated that there were no engineering or zoning concerns. The property is 16 acres in size and there were no visibility concerns or sight obstruction.

Vice Chr. Scollans opened the application to the public and seeing no one, closed the public portion of the meeting.

Vice Chr. Scollans opened the application to the board members.

Mbr. Wilson inquired about the freestanding sign across the street at the Denville Museum for perspective. Mr. O’Conner responded that the sign across the street is approximately 24’.

Mbr. Korn inquired if lighting was necessary. Mr. O’Conner stated that the drive time is between 5-6 p.m. and in the winter months the light would be needed. Mr. O’Conner commented that the residential lighting was minimal in nature.

Mbr. Murphy inquired how many solar lights. Mr. O’Conner responded that there would be two.

Mbr. Passucci stated he had no questions.

Mbr. Scollans stated that he had no questions and commented the soft lighting was a great idea.

A motion to approve this application was made by Mbr. Wilson, seconded by Mbr. Korn and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Wilson, Korn, Murphy, Passucci, Scollans

**OLD BUSINESS:**

Mbr. Wilson inquired about Briar Rose Group, Inc. to the board attorney. Larry Weiner, Esq. commented that the applicant wants to use his property for some purpose. The applicant is investigating and exploring ways to negotiate an attempt to sell the property, use the property and/or file an appeal.
NEW BUSINESS:
The attendance of Alternate Mbr. Saccamano was referenced. It was suggested that the Chair obtain Mbr. Saccamano's level of interest in maintaining his status on the board.

Motion to Adjourn.

Denean Probasco, Board Secretary  Date Approved