The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, March 17, 2010. 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: James Rodimer, Kevin Scollans, Roger Spiess, Mark Wilson, Arthur Korn, Sean Ryan, Sally Dankos, Frank Passucci, John Murphy
Prof. Present: Larry I. Wiener, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES:
March 3, 2010
Motion to adopt the minutes as amended was made by Mbr. Murphy, seconded by Mbr. Scollans and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay voucher(s) submitted by Larry I. Wiener, Esq. dated February 23, 2010 subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all Members present.

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

PROFESSIONAL COMMENTS:
Nick Rosania, Township Engineer and William Denzler, Township Planner both stated they had no comments at this time.

PUBLIC HEARINGS:
BA 09-24  The Shoppes at Union Hill, LLC
Block 21203, Lot 1
Route 10 West

For the record, Mbr. Wilson recused himself on this application.

Richard T. Sweeney, Esq. of Laddey, Clark & Ryan, LLP (76 Broadway, Suite 100) represented the applicant, The Shoppes at Union Hill, LLC. This is the second public hearing on this application, after being carried from March 3, 2010. Richard A. Stein, Esq. of Laddey, Clark & Ryan, LLP was present at the first hearing in Mr. Sweeney’s absence.

Mr. Sweeney indicated that three witnesses were ready to testify; Mr. Olsen proposed Operator of Five Guys, to speak to exhaust and filtration systems, Mr. John Osso, Owner and Operator of Bensi Restaurants was present to speak to the suitability of the site, and Mr. John McDonough, Professional Planner with Pennoni Associates to speak to relief sought and reasons for granting.

Having finished traffic testimony at the last meeting, Mr. Sweeney, Esq. stated that this hearing would begin with questions of Mr. Desario by the public and board. Larry Weiner, Board Attorney concurred with Mr. Sweeney’s understanding of the status of proceedings and opened the application for questions from the professionals. Seeing none, Chr. Rodimer opened the hearing to questions from board members and there were none. Larry Wiener, Esq. reminded Mr. Desario that he remained under oath.

Chr. Rodimer opened to the public for questions of Mr. Dan Desario’s traffic engineering testimony. William Rohrbach (2 Brodziak Road) questioned Mr. Desario. Spoke to the document and number of parking spaces. Mr. Desario confirmed that currently 5 spaces per 1,000 sq. ft. versus 4 per 1,000. Mr. Rohrbach entered a document (Exhibit O-1) he stated he obtained from the Five Guys website listing the franchisee requirements for parking.
Alan McCarthy (10 Birch Run Avenue) inquired about knowledge of an accident at this location and traffic incidents. Mr. Desario had no knowledge of either. Mr. McCarthy inquired if Mr. Desario had ever witnessed cars from shopping center egress continuing along the shoulder. Mr. Desario stated yes.

Sue Schmidt (12 Birch Run Avenue) inquired if maps would be available. Mr. Desario responded that the Planner would be showing an aerial of the site. Ms. Schmidt inquired about witnessing the functions held at the shopping center and traffic back-ups. Mr. Desario indicated that he had not. Ms. Schmidt inquired about an increase in delivery and garbage trucks. Mr. Desario deferred to the franchisee but stated that deliveries typically take place during off peak hours. Ms. Schmidt inquired about volume and use of the entrances. Mr. Desario responded that the site has sufficient access and circulation.

Mary McGuiness (6 Smith Road) inquired about police and corresponding traffic or accident reports. Mr. Desario indicated that it was not his testimony but that there were no concerns from the police. Ms. McGuiness inquired about the jurisdiction of the jug handle activity. Mr. Desario testified that the NJDOT had jurisdiction but that this application did not require NJDOT approval because it is a re-occupancy of vacant space at the mall. Mr. Desario stated that the change in traffic to the site will be a change in traffic from the current conditions because the space is currently vacant but that if the site was occupied the traffic increase would be very little.

Sue Resnick (18 Cooper Road) inquired why the stop signs had been changed. Mr. Desario indicated he was not aware regarding the signage. Mr. Resnick inquired about the control of the car flow for soccer. Mr. Desario indicated that this is not an engineering design question but that of a regulatory issue to be addressed by mall management or police.

Tom Huber (46 Old Mill Drive) inquired about the time of day and day of the week Dan Desario visited the site. Mr. Desario responded to having a prep meeting prior to the last hearing at Bensi and parking was available. Mr. Huber inquired about measuring parking spaces at this site. Mr. Desario indicated that the spaces do not need to be measured for this application and the spaces are not of a substandard size. Mr. Huber asked how many people were expected daily. Mr. Salvatore responded that 200-300 patrons per day but this would not be the actual number of extra visitors to the mall as some would be existing.

Robert Schottenfeld (42 Old Mill Drive) inquired about the number of cars that come to the site daily as well as the number of projected vehicles when the center was proposed. Mr. Desario did not know the answer.

Navjot Singh (33 Mt. Pleasant Turnpike) inquired about the parking requirement for stand alone restaurants and if Mr. Desario was familiar with parking per seat. Mr. Desario stated parking for stand alone restaurants would be 14 per 1,000 and that the parking per seat ratio would be 1 per 3 seats. Mr. Singh inquired about seat quantity. Mr. Salvatore indicated 80 seats. Mr. Singh asked about the increase to 20% from 15% occupancy. The applicant's attorney, responded that the ratio has been withdrawn and the increase is only to 18% from 15%.

John Backus (42 Smith Road) inquired if one way traffic for the site was investigated. Mr. Desario responded that one-way traffic was not considered. Mr. Sweeney, Esq. objected to the questioning. Mr. Wiener, Esq. provided an explanation to Mr. Backus. Mr. Sweeney clarified that Mr. Backus wanted to know if one entrance could be eliminated by making it an exit only. Mr. Desario indicated that this would not be an option as it would decrease the amount of onsite circulation to the site, reducing access and generating more traffic within the lanes. Mr. Backus inquired about Mr. Desario’s visits to the site. Mr. Desario stated he had visited the site approximately 50 times at various times of the day.

Ed Banagan (38 Old Mill Drive) spoke to the availability of spaces on the site and asked if Mr. Desario had visited the site in better economic times. Mr. Desario responded yes.

Deborah Wilson (11 Cedar Gate Road) inquired about what the projected 200-300 patrons. Mr. Salvatore responded the projected is determined by other restaurants. Mr. Desario (35 Mt. Pleasant Turnpike) questioned Mr. Salvatore's testimony from the last meeting as being 300-400 patrons versus tonight's 200-300 patrons. Mr. Salvatore indicated that the number of percentages of patrons cannot be an assumption. Ms. Andrews then inquired about increased foot traffic. Larry Wiener, Esq. interjected that the foot traffic from last hearing was not Mr. Salvatore's testimony. Ms. Andrews then questioned prior testimony regarding the type of clientele. Mr. Salvatore stated that the demographics of clientele are not kept but that the response was in regard to individuals crossing Route 10. Mr. Salvatore responded to additional questions from Ms. Andrews regarding the crowds and average time patron's visit. Mr. Desario added that the lunch and dinner hours are more than a one hour period during the hours of operation. Mr. Salvatore indicated that it’s not an exact science but on average one parking space could be used by three patrons during a one hour period. Mr. Sweeney, Esq. explained to Ms. Andrews the change in the originally requested variance and the withdrawal of the percentage for the application as it relates to the ordinances. Adding that the shopping center is a Life Style Center.

Ed Banagan inquired if there was a written report generated during the 50 site visits. Mr. Desario responded that there were no written reports.

Deborah Wilson inquired about the number of seats the restaurant would have. Mr. Salvatore responded 80 seats. Not being in attendance at the first hearing. Ms. Wilson inquired about the differences between a fast food and quick serve restaurant. Mr. Salvatore repeated his testimony from the first hearing and provided a Price Comparison document entered as Exhibit A-1 to reflect that as much as a fast food restaurant.

Donna Ragaglia (888 Miller Road) inquired about the number of employees. Mr. Salvatore repeated testimony from the last hearing that there would be 5-8 employees.

Mary McGuiness (6 Smith Road) inquired about the size of the parking spaces. Mr. Sweeney, Esq. objected to the relevance. Larry Wiener, Esq. indicated that the original plans were...
approved by the NJDOT for parking at this existing shopping center. Mary inquired about prior approvals and prior variances. The Board Attorney indicated that the focus is on this application and requested variance and not prior approvals or variances granted. Ms. McGuiness inquired about if vehicle types were evaluated during the traffic study or if Mr. Desario visited the shopping center during the last snowstorm. Mr. Desario responded no to both questions.

Mel Epstein (26 Henning Terrace) inquired about the percentages of customers that eat-in the restaurant. Mr. Salvatore repeated his testimony from the last hearing with 65%. Mr. Epstein inquired if there were designated parking spaces for take-out orders to which Mr. Salvatore responded no.

Bunny Riker (11 Magnolia Avenue) stated she was a copious note taker and inquired about the numbers from prior testimony differing from tonight’s testimony. Mr. Salvatore clarified that the 70 seats referenced at the last meeting was approximate and the available floor plan shows 80 seats. Also mentioned that 200-300 patrons are anticipated but 300-400 is possible. Mr. Sweeney, Esq. indicated that the line of questioning was inappropriate.

Ed Banagan referenced a prior citizen’s question at a prior hearing. The Board Attorney stated that Mr. Banagan would have an opportunity to provide his opinion at a later point.

Kevin Stackhouse (Kathay Terrace) inquired about the square footage of the space. The Board Attorney responded just less than 2,500 sq. ft.

Eileen Wirth (3 Kathay Terrace) referenced the concept of a life style center and inquired why we would want the clientele of a single man stopping in to buy a burger opposed to the clientele of having families. Mr. Desario deferred to the shopping center owner. Mr. Mark Pottschmidt responded that no one is excluded from the shopping center. Mr. Pottschmidt testified that the original approval in 2001 was for 60% fashion, 20% food and 20% home goods and that the collection of tenants is the anchor. Current request is for 18% food. The Board Attorney reminded Ms. Wirth that she would have an opportunity to comment later and indicated that the questions had been asked and answered. Ms. Wirth referenced accidents and provided comment. The applicant’s attorney objected. The Board Attorney reminded members of the public that questions should be asked in a manner without editorializing and that rules exist that must be followed. Ms. Wirth asked about accident study reports. Mr. Desario indicated that none had been or intended to be performed.

Deborah Wilson inquired what percentage of the initial 20% was targeted as fast food. Mr. Pottschmidt answered there was no specific target but that the tenants are chosen based upon compatibility.

Chr. Rodimer announced that there would be a ten minute break.

Richard Sweeney, Esq. had John Salvatore explain the similarities of the other restaurants as it related to their locations, uses, age and size of shopping center. Mr. Sweeney, Esq. referred to a letter (Exhibit A-2) to Mark Pottschmidt from the Township of Denville Police Department. Jeff Tucker dated January 9, 2006 regarding Title 39, motor vehicle code. Mr. Desario confirmed that Title 39 extends controls to private property and that required changes to the site regarding regulatory signage for compliancy. Approval from the NJDOT has been obtained and that any violation of the motor vehicle law on this site can be prosecuted.

John Osso, President of Bensi Restaurant Group (707 Alexander Court, Riverdale, NJ 07675) was present and sworn in. Mr. Osso testified to day to day parking and observations at this shopping center. Testifying that parking has not been a problem even during the best of economic times. Parking demands are peak during dinner and weekends. Although lunch is good, it is not peak. Retail shops peak at different times. Mr. Osso testified to diminished traffic due to the economy. Bensi does not have dedicated parking spaces. Approximately 10% is parked/stopped activity not necessarily attributed to the vacancy in Bombay. Mr. Osso spoke to restaurants being a brand issue and may be good for Bensi business and increase business. Testifying to support Stanbery Development as good management and to keep the center strong. Mr. Osso voiced that empty space doesn’t benefit anyone.

Chr. Rodimer opened to the professionals for comments and questions.

Nick Rosania, Township Engineer inquired about snow removal. Mr. Osso stated that in foul weather people do not come out but that the spaces are regained quickly.

Bill Denzler, Township Planner had no questions at this time.

Chr. Rodimer opened to the board for questions.

Mbr. Murphy inquired about Mr. Osso’s position, number of stores he oversees and their locations. Mr. Osso indicated he is the President of Bensi Group, overseeing 23 stores, 2 in PA, and one in VA. Visiting the Denville location once monthly.

Mbr. Passucci inquired if based upon his testimony, Mr. Osso believes the Five Guys and Bensi can coexist. Mr. Osso replied yes.

Mbr. Dankos stated that Bensi does have burgers and would not compete with Five Guys. Mr. Osso indicated that the focus is on full-serve. In Tenafly location pizza is served by the slice as it draws different clientele.

Mbr. Scollans thought it was good Mr. Osso is not concerned about the competition and inquired if Mr. Osso was not concerned about the parking. Mr. Osso indicated that parking is good at this center and has never been an issue. Mr. Osso’s nephew supervises the location, stating that parking is a non-issue despite his personal observations.
Mbr. Spiess acknowledged Mr. Osso’s attendance on behalf of the applicant and if Mr. Osso believes Bensi will thrive on a day to day basis. Mr. Osso stated that generating additional traffic and keeping the stores full with good viable operators will allow them to thrive. From a management perspective vacancy creates a downside. The differences are in the experience you’re seeking, type of food, service, liquor, etc. Stating that a healthy center will serve everyone well.

Mbr. Ryan had no questions.

Mbr. Korn inquired about noise pollution, hours of operation and garbage collection. Mr. Osso stated that the hours of operation 11 a.m. to 11 p.m., 12 p.m. closing on Friday and Saturday. The garbage collection was joint for the center with the exact time of collection unknown. With deliveries typically around 10 a.m. from main distributors.

Chr. Rodimer inquired if Mr. Osso or any members of his restaurant had a financial interest in Five Guys Restaurant. Mr. Osso responded, no.

Richard Sweeney, Esq. asked Mr. Osso about concerns for snow removal and trash on the site. Mr. Osso had none. Mr. Sweeney inquired if Mr. Osso had any financial interest in Stanbery Development to which Mr. Osso also replied, no.

Chr. Rodimer opened to the public for questions of Mr. Osso.

Deborah Wilson asked Mr. Osso who asked him to come and why he came. Mr. Osso indicated that he was made aware of the hearing by Mark Pottschmidt and that he believes a well tenant viable center is good for everyone.

Matt Marin (61 Mt. Pleasant Turnpike) inquired about the similarities of Qdoba grill to Five Guys restaurant. Mr. Osso testified that the two restaurants are different in types of food that are served but similar in quick serve.

Sue Schmidt inquired about the five restaurants in the shopping center. Mr. Osso confirmed that Bensi is the only one with outdoor seating and liquor. Ms. Schmidt inquired about the garbage collection and if citizens had complaints they should direct them to Stanbery. Ms. Schmidt inquired if Mr. Osso knew who owned the vacant property behind the center. Mr. Osso did not.

Mel Epstein inquired about comfort obtained regarding the cleanliness of the center maintained by Stanbery. Mr. Osso stated that the shopping center is high end. When Mr. Epstein inquired about the perception of the quality, Mr. Osso stated that he did not believe it would detract from the quality.

Chr. Rodimer inquired about the garbage issue being addressed. Mr. Pottschmidt confirmed that the garbage was cleaned up and stated that until the last hearing he was unaware concerns about the garbage existed.

Mbr. Korn inquired about regulations or complaints on garbage. Bill Denzler responded not before 6 a.m., deliveries are covered by ordinance, limits on noise exist, no limits on hours of operation.

Deborah Wilson asked Mark Pottschmidt about the current and future garbage loads and frequency of collection. Mr. Pottschmidt was unaware of the schedule and frequency but has had no complaints regarding garbage collection to him or corporate. Mr. Osso spoke to larger containers so that the frequency does not have to be increased. The Board Attorney pointed out that the amount of garbage generated by Bombay is unknown. Mr. Salvatore did not have the actual numbers on the garbage.

Richard Sweeney, Esq. stated that the garbage pick-up for this site had been previously approved and addressed and irrelevant to the matters of this board.

Chip Ohlsson, Vice President of Development of Starwood Hotels (5 Sand Hill Court, Cedar Knolls). Mr. Ohlsson testified to the cut sheet for the proprietary Captive Air System. Three page document, Exhibit A-3 (A3A, A3B and A3C). Mr. Ohlsson explained that a typical system exhausts smoke through a hood dispersed through baffles and out the rooftop. The Captive Air System, is a standard Baffle system, with a Ceramic beaded system behind it and then a contained unit in the restaurant that collects the grease. Removes three times the amount of microns and grease from the air compared to standard systems. Upgrade from the Madison system as the technology was not available at the time. No complaints to date. Mr. Sweeney spoke to the data of the system being available to the public for those interested.

Chr. Rodimer inquired if others in the center have it. Mr. Ohlsson indicated that Qdoba has a Captive Air System but not this upgraded system that was not available until one year ago. The Board Attorney clarified for the record that if this system was to be approved that this captive air system would be used. Mr. Ohlsson confirmed.

Chr. Rodimer opened to the professionals for questions.

Nick Rosania, Township Engineer inquired that this is an upgraded improvement over other restaurants. Mr. Ohlsson replied yes.

Bill Denzler inquired if the upgraded system would generate more noise than the other system. Mr. Ohlsson testified that it would generate less noise.

Chr. Rodimer opened to the board for questions.
Mbrs. Spiess, Ryan and Korn had none. Mbr. Murphy inquired if this would be an upgrade to what was in the Parsippany location. Mr. Ohlsson stated that this system would be three levels above the system in Parsippany. Mbrs. Passucci and Dankos had none. Mbr. Scollans inquired about a HEPA or ceramic filter. Mr. Ohlsson indicated the ceramic system was recommended by Captive Air and that HEPA was not for this use. Mr. Ohlsson stated that he would be glad to look into it. Mbr. Scollans had no further questions.

Chr. Rodimer announced that the public hearing for this application would be carried to April 21, 2010.

Larry Wiener, Esq. indicated that the Applicant’s Attorney would provide specifications for the Captive Air System to the board secretary for interested members of the public.

Mr. Ohlsson spoke provided further comments on the garbage collection and stated that the other locations addressed this by increasing the size of the dumpster.

OLD BUSINESS
Mbr. Korn inquired about the status of the self-storage facility. Nick Rosania, Township Engineer said it was progressing.

Motion to Adjourn.

Denean Probasco, Board Secretary Date Approved: April 7, 2010