TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

April 21, 2010

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, April 21, 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:
April 7, 2010
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.

PURCHASING:
Motion to pay voucher(s) submitted by Larry I. Wiener, Esq. dated April 5, 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 William Denzler & Associates, dated April 13, 2010 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 stated that there will be a monthly report moving forward for the board to reference.
William Denzler, Township Planner had no comments.

RESOLUTIONS:

2009 Zoning Board of Adjustment Annual Report
Motion to adopt the memorializing resolution as submitted for the 2009 annual report was made by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all Members present and able to vote.

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

BA/SP/FSP/ 07-41 Special Additions
Motion to adopt the memorializing resolution as submitted for the above property was made by Mbr. Scollans, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

Roll Call: Ayes – Scollans, Dankos, Korn, Murphy, Ryan

ABA 09-23 Ciottariello Group Holdings Family LLP
Motion to adopt the memorializing resolution as submitted for the above property was made by Mbr. Scollans, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

Roll Call: Ayes – Scollans, Dankos, Korn, Murphy, Ryan

BA 10-03 Wendy & Mitchell Kowalski
Motion to adopt the memorializing resolution as submitted for the above property was made by Mbr. Scollans, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

Roll Call: Ayes – Scollans, Dankos, Korn, Murphy, Ryan
Roll Call:  Ayes – Scollans, Dankos, Korn, Murphy, Ryan

BA 10-04  Raymond Greene
Block 41302, Lot 20.01
10 Mendes Street
Motion to adopt the memorializing resolution as submitted for the above property was made by Mbr. Scollans, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

Roll Call:  Ayes – Scollans, Dankos, Korn, Murphy, Ryan

PUBLIC HEARINGS:

BA 10-05  Joseph & Agatha Ryerson
Block 61005, Lot 60
130 Cedar Lake West
The applicants, Joseph & Agatha Ryerson (130 Cedar Lake West) were present and sworn in. Joseph Ryerson reviewed their proposal to build an uncovered deck in the rear of their home requiring “C” variance relief for rear and side yard setbacks. The lot is an irregular shaped lot and not visible by other properties. The property is heavily wooded and has a right of way that provides an extra buffer between the neighboring properties. Proposed deck would be the length of the dwelling with approximate dimensions of 50’ by 12’ for the majority of the deck. Two sections will be 14’ deep as indicated by the diagram provided to the board. The proposed rear yard setback setback would be 39’ where 50’ is required. One side yard setback would be 15’ and the other side yard setback would be 2’ instead of the required 17’. The proposed would continue with the line of the dwelling. Mr. Denzler indicated that the side yard setback should be adjusted to 0’ for the record, as it is on the property line. Mr. Rosania indicated that the northerly line is the property line. Mr. Rosania did not see a problem from an engineering perspective with no drainage issues. Mr. Denzler inquired about the height of the deck. Applicant testified that the deck height could be 12’ or 13’ with 6” x 6” support columns instead of the standard 4” x 4” columns. Mr. Denzler inquired about impervious coverage below the deck. The applicant responded that there would be no solid surface beneath the deck.

Chr. Rodimer opened the hearing to the board.

Mbr. Murphy inquired about the ROW being property of town. The Township Engineer responded that the ROW was private with rights to the lake community residents. Mbr. Murphy inquired about written survey, the property line and boarded upper slider doors. The applicant stated the line of sight was consistent with the dwelling and confirmed there were no applications pending for an upper deck.

Mbr. Passucci inquired about the existing deck, ladders and stairs. Applicant responded that the platform had been removed due to damage.

Mbr. Dankos had no questions.

Mbr. Scollans thought it made good sense and had no questions.

Mbr. Spiess had no problem with the application.

Mbr. Wilson indicated that his questions were asked and answered and that the proposal wouldn’t cause further exacerbation.

Mbr. Ryan had no comments or questions.

Mbr. Korn asked the Township Engineer about a railing and the ROW property. Nick Rosania, PE responded that railing regulations were determined by height and would be addressed by the building department. The ROW being on the lot next door and all on private property but not the townships property. Mbr. Korn thought the proposed was nice had no problems with the applications.

Chr. Rodimer had no questions or comments.

Chr. Rodimer opened the application to the public and seeing none, closed the public portion of the hearing.

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

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

BA 09-24  The Shoppes at Union Hill, LLC
Block 21203, Lot 1
Route 10 West
For the public record, Mbr. Wilson recused himself on this application.


Mr. Sweeney referenced the original site plan adopted by the board pursuant to the original “D” variance, dated December 17, 2001 was entered as Exhibit A-6.

Mr. Sweeney referenced three resolutions previously adopted by the board in 2007 and 2009 as Exhibit A-7. Mr. Wiener confirmed that the board can take notice of the three prior resolutions for part of the public record.
John McDonough, Professional Planner for Pennoni Associates (210 Malapardis Road, Cedar Knolls) was present, sworn in and accepted as an expert witness. Reviewed Preliminary Major Site Plan, an aerial photograph taken on the afternoon of December 19, 2009. Testimony included photograph details such as open space, detention basin, erosion, paved driveway (service area behind the building) and wall of varying height along the driveway. Mr. McDonough pointed out the jughandles, site, driveway, woodland and farm areas. Copies of the February 12, 2010 planning report from Pennoni Associates, Inc. were entered as Exhibit A-8. The only change in the report being that the 25% restaurant use is no longer being sought.

Pennoni Planning Exhibits for Five Guys, Shoppes at Union Hill, dated March 17, 2010 with seven subparts (excluding cover sheet) was entered as Exhibit A-9:

- Page 1 - Aerial photograph from New Jersey Geographic Information Network
- Page 2 - Aerial photograph with open parking spaces in the northwestern end of the parking lot depicted in a circle. Approximately 1” = 300’ but not true to scale.
- Page 3 - Two parking lot photographs, one evening, one rain
- Page 4 - Two façade photographs, one of Red Vanilla, one of Five Guys with awnings.
- Page 5 - Floor plan, number of seats will be reduced and consistent with prior testimony.
- Page 6 - Property Tax Assessment Information for 2009 and Final Tax Bill for 2009. Final Tax Bill no longer relevant as it related to submission of the withdrawn 25% restaurant use request.
- Page 7 - National Restaurant Association Pocket Factbook and Restaurant Industry Information

John McDonough, PP continued testimony to include positive and negative criteria. Stating that the requested parking variance could be granted without substantial detriment to the public good or substantial impairment of the zone plan, ordinance or surrounding areas. Testifying that the site is suited for the proposed use as it coexists with many similar lifestyle centers and that the use will appear and function as a permitted use. The overall synergy of a lifestyle center favors reduced parking supply.

The site is currently “built-out” and has accommodated the uses without detriment. Proposed variance would allow for tenanting leasable space and support a viable and stable shopping center. The excess parking spaces at the northwesterly portion of the parking lot are currently underutilized and the parking deficiency would not cause a substantial detriment in terms of functional impact.

A letter from Levin Management Corporation to Stanbery Development dated April 8, 2010 regarding rubbish removal was entered as Exhibit A-10. With the exception of the recycling, the garbage dumpsters are emptied Monday through Saturday between 6 and 10 a.m. and are emptied whether they are full or not. Afternoon pick-up's can be scheduled. The recycling is collected at least once weekly by Morris County Municipal Utilities Authority.

Mr. McDonough, referenced the definition of Fast Food Restaurants from The Latest Illustrated Book of Development Definitions (Moskowitz and Lindbloom) summarizing that the distinction between fast-food and other types of restaurants are rapidly becoming blurred as Exhibit A-11.

In closing, Mr. McDonough testified that the site is suited to the proposed use and justifies granting the requested variance. Referenced the 1977 amendment to the zoning ordinance and explained that although by ordinance definition the Five Guys is fast food, the restaurant is more in line with a traditional restaurant than that of a McDonalds or Burger King. Mr. McDonough referenced establishments already exist on the site, such as Panera and Qdoba. The operations of which, are similar to the restaurant proposed.

Chr. Rodimer announced a ten minute break. During which, it was determined that the meeting could not continue due to audio trouble.

Chr. Rodimer announced that the public hearing for this application would be carried to special meeting on April 28, 2010 at 6 p.m.

Motion to Adjourn.

___________________________________ __________________
Denean Probasco, Board Secretary Date Approved