TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

June 2, 2010

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, June 2, 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, John Murphy
Absent: Frank Passucci
Prof. Present: Larry I. Wiener, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES:

April 28, 2010
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Murphy and unanimously approved by all Members present and able to vote.

May 19, 2010
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Murphy and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay voucher(s) submitted by Larry I. Wiener, Esq. dated May 25, 2010 subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all Members present.

CORRESPONDENCE
Chr. Rodimer referenced two memos that were received from First Energy cautioning relocations.

PROFESSIONAL COMMENTS:
Nick Rosania, Township Engineer had no comments.
William Denzler, Township Planner had no comments.

PUBLIC HEARINGS:

BA 10-09 David & Marta Black
Block 61302, Lot 122
161 Cedar Lake East

Chr. Rodimer announced that the applicant was unable to notice. Larry Wiener announced the tentative reschedule date of July 7, 2010. Applicant will be required to provide legal notice.

BA 10-10 Gene & Dara Blood
Block 61502, Lot 12
107 East Glen Road

For the record, Mbrs. Korn and Murphy recused themselves on this application.

The applicants Gene and Dara Blood were present and sworn in. Mr. Blood testified to that the proposed construction of an addition on the front and side of the home, along with a one car garage. Without a garage or basement and two children leaves little for storage. The proposed addition would require “C” variance relief for front and side yard setbacks. The property is irregular shaped, undersized and development in any direction would require a variance.

Chr. Rodimer opened the hearing to the professionals.
Nick Rosania, Township Engineer spoke to the two hardships existing being the irregular shaped lot and the lot size being undersized at 8,000 sq. ft. where 15,000 sq. ft. is required. Stating that the driveway area of the property is well suited for the proposed addition and the front yard setback is twice the size it’s required to be. Larry Wiener, Esq. suggested making the photograph taken by the engineer part of the record. The photograph was entered as Exhibit B-1. Chr. Rodimer inquired if the height of the garage would be 11’ 6” and the applicant confirmed.

Bill Denzler, Township Planner agreed to the proposed meeting the hardship criteria and spoke to the discrepancy in the garage size between the site plan 13’ x 22’ and the survey 13’ x 21’. For the record 13 x 22’ would require 4’ setback vs. 8’ indicated on the application. The recommendation to the board was to use the 13 x 22’ with a 4’ setback. The denial letter was based upon the assistant zoning officer’s measurement off the survey submitted at the time to construction.

Chr. Rodimer opened the hearing to the board members.

Mbr. Spiess spoke to the irregular shaped lot and its small size, stating that the garage was a reasonable size. Inquired about the applicant’s plans for the existing shed. Applicant stated the shed would be removed.

Mbr. Wilson inquired about the gabled area and if the roofline would be maintained. Mr. Blood stated the area between the gables would have the front door and would be bumped out for a foyer area and the roofline would be maintained. Mbr. Wilson agreed that any addition would be a hardship on this property and that the proposed would be an improvement.

Mbr. Ryan did not have any problems with the application.

Mbr. Dankos agreed with Mbr. Ryan and commented that the neighbor in the house to the right and nearest to the applicant, did not have a problem with the application.

Mbr. Scollans voiced concern with the discrepancy of measurements on the plans vs. the survey as it relates to the setback. Voiced a preference to have more clearance on the back corner of the garage. Larry Wiener, Esq. clarified that there would be 5’ on the rear corner of the garage and 4’ on the front corner. Other than that thought it was a nice plan and did not have a problem with it.

Chr. Rodimer inquired about the large unit on the lawn and inquired about removal of any of the pine trees and if there would be lighting on the garage. Mr. Blood stated that it was a self contained unit for air conditioning and heating and that the pine trees were the neighbors. The applicant indicated there would only be lighting on the driveway and front entrance. Chr. Rodimer had no problems with the application.

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

Conditions of approval to include removal of the shed and exterior residential lighting.

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

Roll Call: Ayes – Spiess, Dankos, Wilson, Scollans, Ryan, 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.


Chr. Rodimer opened to the public for comments only. Larry Wiener, Esq. clarified that this is the time for the public to provide their comments on this application and for Richard Sweeney, Esq. to cross-examine if he chooses. The period for questions is already over.

Thomas Zoltner (4 King Hill Court) was present and sworn in. Mr. Zoltner spoke to the preservation of the corridor and the integrity of the town. The master plan being in place for a reason.

Irene Wirth (3 Kathay Terrace) was present and sworn in. Ms. Wirth stated being against the mall originally, the poor design of the jughandle and believed the addition of Five Guys would be a detraction to the mall and would increase traffic flow. Irene Wirth commented on the board members being elected. Mbr. Murphy clarified that the board members were volunteers and Mbr. Rodimer added that they were appointed.

Allan McCarthy (10 Birch Run Avenue) was present and sworn in. Mr. McCarthy fist voiced lack of understanding for why the board continues to listen to the application. The Board Attorney interjected stating that the board has a legal obligation to listen to the application. Allan McCarthy stated that the restaurant was fast food, the zone and master plan do not allow fast food and that the residents don’t want it. Asking that the board maintain the integrity of the original zone plan. Richard Sweeney, Esq. asked Mr. McCarthy to clarify what he meant when he referenced maintaining the agreements that were made. Allan McCarthy referenced his assumption that compromises were made but was not referring to specific agreements.
Navjot Singh (33 Mt. Pleasant Tpke) was present and sworn in. Mr. Singh thanked the board for listening to date and spoke to the country’s forefathers. Referenced the planning expert having alluded to businesses closing, pointing out the approval of this application will result in vacant space. Referenced the temporary signage of Red Vanilla being similar to the permanent signage of Janie and Jack. Mr. Singh spoke to grease particles and the applicant’s attorney objected, stating the witness would need to be qualified as an expert. The Board Attorney explained that the witness would be needed to be qualified as an expert in order to give an opinion to maintain a proper record. Navjot Singh went on to discuss parking and provide his closing comments. Mr. Sweeney’s cross examination included questions on whether Mr. Singh would oppose other fast food restaurants such as Friday’s, Bensi and Panera as well as determining what other applications in the area Mr. Singh has opposed.

Ken McGuiness (6 Smith Road) was present and sworn in. Mr. McGuiness talked to inaccurate testimony regarding the exhaust system and believing that there would be smell. Mr. McGuiness referenced billboards in Randolph, liking Mr. Pottschmidt, referenced the removal of his signs and stated he did not want this application to be approved. Mr. Sweeney questioned Mr. McGuiness if he meant to imply the applicant was removing the signs and Ken McGuiness responded no.

Sue Filauro (2 King Hill Court) was present and sworn in. Ms. Filauro inquired how parking would be handled in the future should this application be approved. The Township Planner responded that future applications would have to return to the board for approval. Ms. Filauro spoke to the suitability of a site. Spoke to odor, smoke, fumes and litter being a detriment to the public good. Not having a traffic study. Pedestrians crossing Route 10. Referenced nuisance ordinance and the impact of economics might have in maintaining the filtration system. Sue Filauro read a statement regarding Stanbery Development and the application having parking, traffic, nuisance and quality of life issues. Stating that approval would challenge the townships precedent and would be setting a precedent. In stating that the proposal would be in violation of Master Plan and requested the board to deny the application. The applicant’s attorney cross-examination of Ms. Filauro included a discussion of additional property being either environmentally constrained or open space and having no impact on the shopping center. Mr. Sweeney clarified that Ms. Filauro stated close to thirty variances and one was a height variance. Mr. Sweeney referenced that the performance standards being applicable to all businesses. Cross-examination included litter and Ms. Filauro referenced a case from the Saddlebrook Realty versus Zoning Board application for Grilco II, LLC as it relates to the suitability criteria for fast food.

Carol Spencer (86 Woodstone Road) was present and sworn in. Ms. Spencer spoke to the process of master plans and zoning ordinances, previous variance requests and to the economic decisions versus planning decisions. Stating that the area was zoned OB-4 until rezoning was necessary for the purchase of the Ayers Knuth Farm and provided history of the purchase. Carol Spencer suggested that if Five Guys is interested in Denville they should go downtown where it is a permitted use. Stating that approval of this application would be zoning incrementalism and that a ‘no’ vote would be warranted. Richard Sweeney, Esq. pointed out that the rezoning that was signed by Ms. Spencer as Mayor was contract zoning. To which Ms. Spencer replied ‘no’, it was published and duly adopted by the council.

Ed Banagan (38 Old Mill Drive) was present and sworn in. Mr. Banagan stated that it’s a great mall but is against this application and the addition of a fast food restaurant. Sue Schmidt (12 Birch Run Avenue) was present and sworn in. Ms. Schmidt stated that a courtesy should have been given to notice the Ayers Knuth Farm. Referencing litter, Adopt A Highway signs and commending Shoppes for being a good neighbor. Spoke to the open space and historic preservation surrounding this site, white pines being the only buffer, narrow driveway that required a variance and bear concerns. A picture of the home on Ayers Knuth Farm was shown by Ms. Schmidt as she spoke to anticipated corrosive grease that would damage the residence. During cross-examination, Mr. McGuiness asked if Ms. Schmidt knew that corrosive grease would have a greater affect on the historic farm than the thousands of cars on Route 10, to which she responded ‘yes’. Richard Sweeney, Esq. then inquired about a comment in one of the articles Ms. Schmidt had written to the paper. Ms. Schmidt replied ‘no’ to Mr. Sweeney when he inquired if she had meant to mislead the public by suggesting that the board was creating these variances. Mr. Sweeney pointed out a false statement regarding a second fast food restaurant at the mall to which Sue indicated that she thought that was in testimony. Mbr. Dankos then pointed out a statement in the newspaper that she believed to be inaccurate and requested a retraction for being misquoted. Ms. Schmidt apologized for misquoting Mbr. Dankos.

Chr. Rodimer announced a short break and the hearing resumed after a ten minute break.

Mary McGuiness (6 Smith Road) was present and sworn in. Ms. McGuiness provided her observations of the exhibits and testimony, stating that when the economy improves the parking and traffic will change. Spoke to the photographs, dates taken, available spaces and those with snow. Talked to the suitability of the location and described the neighbors of the Five Guys in the Troy Hills shopping center. Ms. McGuiness clearly opposed the application stating that the 500 lb. gorilla cannot be ignored and the board should not go against the Master Plan. Referenced a case of WaWa versus Oak Ridge Board of Adjustment.

Jeanette Botti (73 Mt. Pleasant Tpke) was present and sworn in. Ms. Botti requested that the exhaust system be specified in detail as a condition of approval. Jeanette Botti stated that the testimony did not include substantiating data such as the testimony by Bensi’s owner, the applicant’s taxes and the donation of land to the town. Testimony did not include times and dates or substantiated with a traffic study. Ms. Botti provided dates and times of her observations.
regarding stacked cars on Route 10 and parking almost at capacity. Ms. Botti’s opinion was that board’s approval would compromise the towns’ ability to defend itself against other fast food applications on the Route 10 corridor. In closing, Ms. Botti stated that her objection to this application had nothing to do with liking the Shoppes or frequenting the mall.

Charles Botti (73 Mt. Pleasant Tpke) was present and sworn in. Mr. Botti spoke to the traffic, parking and snow. Mr. Botti spoke to the economics, taxes, Medici law and the applicant’s inability to support the requested waiver. Voiced concerns for future variance applications and the future impact of variances running with the land.

John Skoufis (31 Cedar Lake East) was present and sworn in. Mr. Skoufis indicated that the many remarks on parking, traffic and ventilation are secondary to the real issues. In the opinion of Mr. Skoufis the primary issues are that the applicant is fast food and is prohibited by ordinance and the applicant wants a variance from the zoning restriction. John Skoufis stated that granting the variance would result in a gradual loss of what is intended in the master plan as we become another Route 46 or Route 10 in East Hanover.

Chr. Rodimer asked for other members of the public. Seeing none, closed the public portion of the meeting and asked for closing arguments.

Richard Sweeney, Esq. stated that the quasi judicial law abides. That it is the zoning officer’s responsibility to uphold the ordinance laws and not that of the board. The responsibility of the board is to judge applications from the strict application of the zoning ordinance. Stating that a variance is a reasonable way to seek reasonable exceptions. Spoke to a successful shopping center and that the issue is the parking. Emphasizing the significance of the Bensi testimony as an individual running a business during business hours as opposed to someone making site visits at various times. Agreed that economic hardship is not a basis for a variance but stated that the utility and productivity of real estate is. Mr. Sweeney referenced a Fairlawn case. Proof of a hardship on an adjoining property requires a qualified professional. Public failed to provide a qualified professional and uncorroborated data cannot negate expert opinions and testimony. Basis to deny an application is not because they request a variance but for lack of proof of the special reasons and negative criteria. Spoke to the limitations of restaurants beyond the infamous “Maggie Moos” line.

Chr. Rodimer opened to the professionals for comments.

Nick Rosania, Township Engineer had none.

Bill Denzler, Township Planner had no further comments.

Chr. Rodimer opened to the board members.

Mbr. Spiess spoke to valuing the opinions of the members of the public and stating that the board is charged with voting in the best interest of the taxpayers despite occasionally having to make unfavorable decisions. Believed that the concerns of the public have been addressed to his satisfaction and is in favor of the application.

Mbr. Ryan had no further comments.

Mbr. Korn was understanding of the public concerns and voiced concern for further exacerbation of the parking situation and fast food restaurants along Route 10.

Mbr. Murphy thanked the public. Spoke to hearing a great deal of performance issues raised from the public as it relates to litter, traffic, garbage, etc. that can be remedied by the township officials. Leaving the two issues parking and use. Mbr. Murphy agreed with the applicant that there is adequate space however, there is no wiggle room and must have the ‘Maggie Moo’ line be a condition of approval in order to be in favor of the application. Cannot move any of the restaurants. Appreciates the applicant’s reduction in the percentage of the use. Analyzing a 34 year old zoning ordinance as it relates to the automotive and fast food restaurant argument being problematic. Believes Ordinance and Master Plan relating fast foods to a restaurant intended as a stand alone with a drive-through. In favor of the application with the conditions and limitations of the Maggie Moo line and limitation of the 18%.

Mbr. Dankos agreed with Mbr. Murphy. Mbr. Dankos was pleased to see the restaurant stay in that area as there is more parking and believes the case was well presented. Would support the application if the Maggie Moo line and 18% is kept. Mbr. Scollans also thanked everyone for their research and testimony. Greatest concern was the increase of the restaurants to 25% and was pleased to see it reduced to 18%. Agrees that the definition of fast food should be updated. Would not like the remaining 1,500 sq. ft. to be used for fast food. In favor of the application abiding that they comply. Chr. Rodimer also agreed to educational process of this application. Thanked Mayor Spencer for adding this mall. In favor of the application with the discussed conditions of approval.

Mark Pottschmidt provided clarification of the Maggie Moo line as no restaurants from the west of Maggie Moo can relocate to the east of Maggie Moo. Restaurants to the east of Maggie Moo can relocate to the west of Maggie Moo provided they are within the 18%.

Larry Wiener, Esq. stated that there would be a 18% cap on restaurant use, existing restaurants can remain, any new restaurants or changes would take place west of the Maggie moo line within the 18% cap. Nothing further east of the Maggie Moo line, proposed exhaust system, signage, trash receptacle out front and dumpster schedule.
A motion to approve this application with conditions was made by Mbr. Spiess, seconded by Mbr. Ryan and approved by the majority of members eligible to vote.

Roll Call:  
Ayes – Spiess, Ryan, Scollans, Dankos, Murphy, Rodimer  
Nays - Korn

Motion to Adjourn.

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Denean Probasco, Board Secretary Date Approved