TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

April 6, 2011

The Board of Adjustment of the Township of Denville held its regular meeting on Wednesday, April 6, 2011. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:00 P.M. Vice Chair Murphy presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL:
Present: Arthur Korn, Roger Spiess, Frank Passucci, John Murphy, Sally Dankos, Sean Ryan, Tom Dolan
Absent: Kevin Scollans, James Rodimer
Prof. Present: Larry Weiner, Esq., Nick Rosania, PE, William Denzler, PP

MINUTES:
February 16, 2011
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Ryan and unanimously approved by all members able to vote.

March 2, 2011
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Ryan and unanimously approved by all members able to vote.

PURCHASING:
Motion to pay voucher(s) submitted by Larry I. Weiner dated March 15, 2011 subject to the availability of funds, was made by Mbr. Spiess, seconded by Mbr. Passucci and unanimously approved by all Members present.

Motion to pay voucher(s) submitted by William Denzler & Associates dated March 7, 2011 subject to the availability of funds, was made by Mbr. Spiess, seconded by Mbr. Passucci and unanimously approved by all Members present.
CORRESPONDENCE:
Vice Chr. Murphy referenced the League of Municipalities and The Buzak Law Group’s memorandum asking Bill Denzler to comment. Stating the State Supreme Court had invalidated the COAH third round regulations due to inflated projections and faulty analysis. Bill Denzler, Township Planner stated that the court’s invalidation of the third round rules is a step in the right direction.

Larry Wiener, Board Attorney commented that Ed Buzak is one of the counsel that performs work for the League of Municipalities. Larry referenced speaking with Stewart Konig, the co-author with Bill Cox. Stating that it is part of a new economic reality as to the COAH methodology. COAH may not be eliminated but the burdens will hopefully be lessened.

RESOLUTIONS:

BA/PSP/FSPV 10-42: Surgery Center of Northwest Jersey, LLC
21001, Lot 1 & 7
3130 Rt. 10W - Denville Commons
A motion was made to adopt the resolution by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all members able to vote.
Roll Call: Ayes – Korn, Spiess, Dankos, Murphy, Passucci, Ryan

BA/PSP/FSPV 10-39: RMDJ Realty, LLC
Block 50003, Lot 2.12 – Jeffrey Brown Terrace
Block 50003.01, Lots 6.10, 6.12, 6.15 and 6.16 – Old Boonton Road
A motion was made to adopt the resolution by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all members able to vote.
Roll Call: Ayes – Korn, Spiess, Dankos, Murphy, Passucci, Ryan, Dolan

2010 Zoning Board of Adjustment Annual Report
A motion was made to adopt the resolution by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all members able to vote.
Roll Call: Ayes – Korn, Spiess, Dankos, Murphy, Passucci, Ryan, Dolan

PUBLIC HEARINGS:

BA 11-04: Luis A. Samayoa
Block 11201, Lot 2
884 Miller Road
Vice Chr. Murphy announced to members of the public that the applicant was unable to notice and the public hearing for this application would be rescheduled.

BA 11-02: Jason & Sarah Wills
Block 60601, Lot 151
19 Whaleback Waddy
Jason Wills (19 Whaleback Waddy) and Ann R. P. Sears, Architect ANDesign (36 Demarest Road, Sparta) were present and sworn under oath. Mr. Wills explained that his wife was unable to attend but testified to their mutual desire to construct rear and side decks requiring “C” variance relief for side and front yard setbacks.
April 6, 2011

Mr. Wills spoke to the existing decks being built prior to purchasing the home. Safety concerns regarding existing decks. Without permits and unknown if the decks conform to code requirements. Raised ranch built into the ground with the rear deck having no direct access to the ground. Voiced desire for access to the rear of the deck and front of the home for emergency purposes.

- A-1 Photo Front of the home. Main concern of the side deck currently encroaches upon the neighbor’s property.
- A-2 Photo Rear of home. Stairs leading down to the yard but not connecting to the rear deck. Rise and stair tread depth inconsistent.
- A-3 Photo Side of home. Reflects side and rear decks that are not currently connected. Proposed deck to be one level without different levels. Friends and family with small children less risk of tripping. Left hand side of the deck.

Ann Sears was present, sworn in and accepted as a professional witness by the board. Confirmed applicant’s testimony, correct encroachment, flow, safety and building codes.

Larry Weiner, Esq. confirmed that the applicant would be eliminating encroachment, provide increased efficiency, flow, safety and an alternate means of ingress and egress to the property.

Vice Chr. Murphy opened the hearing to the professionals.

Bill Denzler, Township Planner inquired about the encroachment as it relates to the neighbor. Mr. Wills responded on behalf of his next door neighbor. Indicating that there is no problem. Bill Denzler referenced the building envelope on the applicant’s plans as it relates to an undersized lot. Stating that all development on this property would require variance relief.

Vice Chr. Murphy opened the hearing to the board members.

Mbr. Spiess stated he liked the plan.
Mbr. Dolan had none.
Mbr. Dankos liked the proposed changes and was pleased on elimination of the encroachment.
Mbr. Korn spoke to site visit and inquired about purchasing a portion of the neighbor’s property. Mr. Wills stated that they would be willing but the neighbor is not currently interested in selling a portion of the property.
Mbr. Ryan had none.
Mbr. Passucci inquired about one deck being lower than the other based upon a conversation with Mrs. Wills. Mr. Wills stated that the decks would be the same height and that his wife was incorrect.
Mbr. Murphy had none.

Vice Chr. Murphy opened to the public and seeing none, closed the public portion.

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, Murphy, Passucci, Korn, Ryan, Dolan
BA 11-03:  Barks Bed and Biscuit, LLC
Block 50101, Lot 8
267 Route 46 East

Peter R. Bray, Esq. of Bray and Bray, LLC (100 Misty Lane, Ivy Corporate Park, Parsippany) represented the applicants Jim Latham (34 Cedar Street, Hope) and Rich Dubnoff (5 Rock Lane, Mountain Lakes). Applicant is proposing to construct a fence requiring “C” variance relief for height and front yard. Explaining that the facility provides more than just kennel services and is a permitted use in the zone.

Mr. Bray spoke to the challenges of the location and the need for two variances, one for height and one for a front a yard (along Rt. 46). An attendant is always onsite. The dogs are always with an attendant. Solid fence for a second variance.

Nancy Socci, Architect with Cordasco and Socci (1 Indian Road, Denville) was present, sworn in and accepted as a professional witness. Ms. Socci spoke to the property proximity to Route 46 in the front yard and having a brook in the back yard. Traffic light is at the driveway intersection. Entered Exhibit A-1 Aerial photograph taken from Google Earth reflecting the building, proposed fence and line of sight from the driveway. Right on red from the driveway provides for a 305’ of visibility for sight distance. Required of 305’ as per the NJ Transportation Statistics. Entire fenced area will be grass area. Fence to be 6’ in height vinyl with lattice above. Fence will be set back from the highway approximately 12’ from the curb. Property line approximately 1’ and no sidewalk exists until further up the road.

Vice Chr. Murphy opened the hearing to the professionals.

Bill Denzler, Township Planner, inquired about the 6’ versus solid. Inquired if low growing plantings to improve the aesthetics was considered. Ms. Socci replied that it shouldn’t present a problem but deferred to the owners of the property. Inquired if there is a septic system for the building or sewer. Ms. Socci replied sewer. Mr. Denzler inquired if waste would be removed from the ground. Ms. Socci agreed that the dogs were cleaned up after but that the question should be directed to the owner.

Vice Chr. Murphy opened the hearing to the board members.

Mbr. Korn inquired about the dimensions of the fenced area and requested exact dimensions be provided for inclusion in the resolution. Ms. Socci indicated approximately 30’ x 36’. Mbr. Korn stated he thought it was 30’ x 40’. Inquired about the door to the building as it relates to the fenced area. Ms. Socci indicated that the fence dimensions were listed on the plan but it is not an exact rectangle. James Latham, 50% owner of the LLC (34 Cedar St., Hope) was present, sworn in and testified to an office door with a glass panel, two doors to the kennels. The fence will be directly in front of the dividing panel, straight to the curb, along the parking lot and into the fenced area. There can be no escape if the door is opened and animal gets out the door, they cannot escape and will be in the enclosure. The fence will come straight to the building to the front door to the left of the kennel side of the door. Mbr. Korn referenced the letter dated March 31, 2011, from Richard Dubnoff, CEO of American Financial Resources, Inc. regarding the encroachment of the proposed fence. Mr. Latham stated that Mr. Dubnoff is the owner of record for both the building and the land and partner of the LLC for the business.
Larry Wiener, Esq. verified that the applicant was Barks, Bed and Biscuit which is jointly owned by Mr. Dubnoff and Mr. Latham. The building and the property are owned by Mr. Dubnoff. Mr. Dubnoff signed the application as owner of the building and submitted the letter of his consent for the encroachment. Mr. Weiner pointed out that no easement for perpetual consent existed.

The Board Attorney stated that the board is not consenting to the encroachment of the property owner and suggested an easement be obtained. The Applicant agreed to an easement as a condition of approval. Stating that AFR owns part of the area with the fence and that Mr. Dubnoff has an interest in the business. Mr. Wiener inquired if this was acceptable to the Planner and Mr. Denzler confirmed that the fence would run along the Den Brook would not create additional problems.

Mbr. Korn inquired as to the Planner being satisfied regarding runoff of the site, Den Brook, as a condition of approval. Mbr. Korn referenced buffering by providing landscaping. Mr. Weiner stated one foot would not be enough room for shrubs. Mr. Denzler responded that ivy would be an option and was agreed upon by Peter Bray, Esc. Mbr. Korn inquired about the runoff into the Den Brook. Mr. Denzler stated that the health department would follow-up on a regular basis. Mr. Weiner stated this could be added as a condition of approval.

Mbr. Ryan stated that his questions had been answered.

Mbr. Passucci commented on the doorway from the building as it relates to the sidewalk and fence. Understands now that the animals cannot escape. Mbr. Passucci inquired about the rear gate. Mr. Latham stated that the gate will touch the ground at the drop off line of the land towards the ravine.

Mbr. Murphy sought clarification on the fence type. Applicant indicated that the 6’ fence would be 5’ solid with 1’ of lattice at the top.

Mbr. Spiess stated his not being a fan of fences, but understands that this location is a difficult spot and likes the idea of ivy. If the tenancy ends, would like a condition of approval that the fence comes down. Like operation or use ceases. Tenant can change but not use without the fence being removed. Applicant agreed to acceptable condition.

Mbr. Spiess continued to having concerns answered.

Mbr. Dankos spoke to the difficulty of the location and having several past tenants. Agrees that a fence is necessary for the safety of the animals.

Mbr. Murphy spoke to Mr. Latham regarding the attendant always being with the dogs. Mr. Latham agreed that the animals are never left out alone and have an attendant onsite 24 hours per day, 7 days per week. Mbr. Murphy wanted this for the record. Referenced the guide wire off the telephone pole for the enclosure and voiced concern for the safety of the animals. Suggesting the fence be moved to have the pole on the outside of the fence. Mbr. Murphy stated there should be no signs on the fence and liked the idea of vegetation.

Vice Chr. Murphy opened the hearing to the public, seeing none, closed the public portion of the meeting.

Mbr. Spiess made a motion to approve the application with conditions.

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.
BA 11-07: Martin & Karen Hogan
Block 41104, Lot 243
17 Forest Trail

The applicants, Martin Hogan and Karen Hogan (17 Forest Trail) were present and sworn under oath. Applicant is proposing to replace an overhang and construct a rear deck requiring “C” variance relief for rear yard setback.

Karen Hogan spoke to replacing the posts to the overhang which are in a state of disrepair, along with the stairs. A new deck is proposed improvement along with replacing two windows with a set of sliding doors. The doors will provide an additional exit from the home. The dimensions are 10’ out with a length of 22’ along the rear of the dwelling cutting in to the stairs that will be replaced.

Vice Chr. Murphy inquired about the drawing showing 7’ x 10’. Mr. Hogan explained that the existing deck is 7’.

Vice Chr. Murphy opened to the professionals.

Bill Denzler, Township Planner spoke to the jog in the property. Karen Hogan responded that the neighbor’s garage was in the area of the property that jogged.

Vice Chr Murphy opened the hearing to the board members.

Mbr. Spiess spoke to making a site inspection with Mbr. Murphy. Inquired about spot lights. The applicant indicated that only residential lighting would be used.

Mbr. Dolan had no questions or comments.

Mbr. Dankos spoke about the home being nice and thought it was a great plan.

Mbr. Korn commented on the deck being a great improvement and had no other questions.

Mbr. Ryan had no comments or questions.

Mbr. Passucci inquired if the overhang will be replaced. Karen Hogan indicated that the overhang will stay in place and only the posts will be replaced. Confirming that the rest will remain open.

Mbr. Murphy spoke to it being a good addition, back of neighbors garage, not a hardship to anyone else.

Vice Chr. Murphy opened the hearing to the public, seeing none, closed the public portion of the meeting.

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

OLD BUSINESS

Mbr. Korn commented on Nick Rosania’s upcoming retirement. Stating for the record, that Nick will be missed and wishing him luck. Mbr. Murphy added that a resolution will be written thanking Nick for his years of service to the board. The board members concurred.
NEW BUSINESS

Mbr. Murphy indicated that he and Mbr. Korn had completed their review of the By-Laws. Stated that the only changes that were being made were the change in meeting agenda sequence and that an appendix would be added at the end. The Appendix would be a handout for use by the public as a guideline for the more contentious hearings. The document will be provided prior to the May 4th meeting.

Motion to Adjourn.

Denean Probasco, Board Secretary

May 4, 2011