TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

December 1, 2010

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, December 1, 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, Arthur Korn, Sally Dankos, John Murphy, Mark Wilson, Frank Passucci
Absent: Sean Ryan
Prof. Present: Rich Saunders, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES:
October 20, 2010
Motion to adopt the minutes as submitted was made by Mbr. Scollans, seconded by Mbr. Korn and unanimously approved by all Members present and able to vote.

November 3, 2010
Motion to adopt the minutes as submitted was made by Mbr. Scollans, seconded by Mbr. Korn and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay voucher(s) submitted by William Denzler & Associates, dated November 4, 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 Larry I. Wiener, (dated October 26, 2010 and November 9, 2010) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Murphy and unanimously approved by all Members present.

CORRESPONDENCE
Mbr. Korn inquired about a solar farm application. Mr. Denzler replied that a solar farm application was submitted but that it has not been deemed complete and will not be heard in the near future.
Chr. Rodimer spoke to the League of Municipalities and an affordable housing seminar on COAH. Stating that there is a reduction to 10% proposed from the current 25%.

RESOLUTIONS:
BA 10-36 Daniel J. Nappi
8 Brookview Road
Block 61501, Lot 21
A motion was made to adopt the resolution for the approval of the above application by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all members able to vote.
Roll Call: Ayes – Korn, Scollans, Spiess, Dankos, Rodimer

BA 10-37 John C. Diaz
87 West Shore Road
Block 40514, Lot 200
A motion was made to adopt the resolution of approval for the above application by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all members able to vote.
Roll Call: Ayes – Korn, Scollans, Spiess, Dankos, Murphy, Rodimer

BA 10-38 Frank & Catherine Caprio
5 King Hill Court
Block 21201, Lot 3
A motion was made to adopt the resolution of denial for the above application by Mbr. Korn, seconded by Mbr. Scollans and unanimously approved by all members able to vote.
Roll Call: Ayes – Korn, Scollans, Spiess, Dankos, Murphy, Rodimer
The applicants, Frank and Suzanne Giacobbe, were present and sworn under oath. Rich Saunders, the Board Attorney stated that an error had been made by the Assistant Zoning Officer in the letter of denial as it relates to the ROW measurement reducing the square footage of the property. As well as an oversight of an additional variance being required for coverage in the relocation of the existing shed. Mr. Saunders explained that the legal notice was sufficient for the setbacks of the proposed shed of 20' x 28' but not adequate to address the existing shed of 10' x 16'. The applicant had agreed to proceed with tonight's hearing by removing the existing shed from the property. Removing the shed will reduce the square footage coverage without requiring variance relief. Applicant agreed to understanding that in order to bring the existing shed back onto the property, they would be required to reapply for a variance.

Chr. Rodimer opened the hearing to the professionals for comments.

Nick Rosania, Township Engineer commented on visiting the site. No engineering aspects of the application, only a zoning issue.

Bill Denzler, Township Planner stated that accessory structures over 500 sq. ft. must meet setbacks of 30' side and 50' rear instead of the 15' x 15' indicated in the denial letter. Applicant confirmed that the shed was not for commercial use.

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

Chr. Rodimer opened the hearing to the board members.

Mbr. Spiess spoke to the bulk of the shed more concerned with the overall height than the footprint. Stating he was undecided at this point.

Mbr. Wilson spoke to having similar concerns regarding the size. The Township Engineer spoke to the shed being more of a garage than a shed. Lot is small but not on top of the neighboring properties.

Mbr. Korn spoke to the size of the lot. The Township Planner responded that the ROW 2,600 sq. ft. from the 13,300 = 10,500 sq. ft. lot. Inquired about electrical and water. Mr. Giacobbe responded that there would be electric but no water. Mbr. Korn spoke to the distance from the property line as it relates to maintenance of the structure. Applicant agreed to a 5' setback instead of the 3' as a condition of approval.

Mbr. Murphy spoke to the electrical outlets proposed for the upstairs and inquired if it was truly storage if outlets were required. The applicant spoke to decreasing the overall size of 18' x 26'. Mbr. Murphy stated he would be more comfortable with a reduction in the originally proposed size.

Mbr. Passucci spoke to his concerns being voiced already. Too close and too big. Inquired about sound studio. Mr. Giacobbe explained that the prefab shed would be delivered in two pieces.

Mbr. Dankos inquired about bath, mother-in-law, sinks, etc. Mr. Giacobbe confirmed that there would be none.

Mbr. Scollans spoke to the building being imposing. Applicant stated there would be one small window in the dormer. Shed to be placed on crushed stone.

After further discussion, the applicant proposed a reduction of the shed to 18' x 22' with a 5' setback.

Chr. Rodimer commented to the size of a standard two car garage being 20' x 20'. No problem with the application and pleased that the applicant is willing to work with the board.

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

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

The applicants’, Jose and Lumi Burdier, were present and sworn under oath. Applicant proposes parking an existing boat on their premises in their driveway requiring “C” variance relief for front yard setback. The existing boat is 23' with an 8’ beam, requiring an additional 3’ to meet the front setback requirements. Rich Saunders, Board Attorney explained that the distance is measured from the right of way. Ms. Burdier explained that there was just under 26’ from end of the boat to the end of the driveway for a 28.3’ setback. Rich Saunders, Esq. spoke to the sidewalk being in the front of the property.

Chr. Rodimer opened the hearing to the professionals for comments.

Nick Rosania, Township Engineer commented on 10’ behind the setback being typical. Mr. Rosania stated that a letter from the neighbor had been received regarding sight distance concerns.
Bill Denzler, Township Planner confirmed that the ordinance allows for one boat, on a trailer, in the front yard, under 30’ if it meets the 25’ setback requirement. Mbr. Wilson received clarification on the requested relief being 4.7’ instead of 3.3’. Rich Saunders, Esq. inquired about two boats referenced in the violation letter. Lumi Burdier testified that there were two boats but that only one boat remains.

Applicant entered Exhibit A-1 of photographs to reflect that sight distance is not an issue as the neighbor suggests. Mbr. Murphy provided a brief description of the three photographs. Bill Denzler, Township Planner spoke to the variance and improvements running with the property. Stating that a hardship variance is where no alternatives exist. Commenting that the side yard or a boat storage facility would be possible alternatives. Potential sight issues.

Chr. Rodimer opened the hearing to the public.

Mr. D’Souza (8 Parks Road) inquired if the applicant considered putting the boat on the side of the house. Mr. Saunders, Board Attorney inquired if a driveway was allowed. Nick Rosania, Township Engineer responded yes, stone. Ms. Burdier indicated that she was not advised by Sal Poli that the side yard was an option.

Lisa Bock (16 Iroquois Trail) was present and was not a notified resident. Ms. Bock stated she was afraid of the affects of the variance being approved, liability for the township and setting a precedent.

Bina Ruja was present and spoke to safety concerns when backing out of the driveway. Commented that it is hazardous and compounded by busy street, railroad and holiday yard inflatables. Applicant entered Exhibit A4 and A5 to reflect that the sight distance issue when backing out is created by the neighbor’s bushes and not their boat. Stating that the boat isn’t moved back and forth.

Tanya D’Souza (8 Parks Road) was present and entered the following exhibits:
Exhibit O-1 – Aerial photograph of MC Tax department showing driveway at an intersection.
Exhibit O-2 – Aerial photograph from a different angle, showing more of Foodtown shopping center and RR crossing.
Exhibit O-3 – Photograph from neighbor’s vehicle interior showing sight distance issue when backing out of their driveway.
Exhibit O-4 – Photograph showing house, boat and SUV at applicant’s property to reflect visibility issues.
Exhibit O-5 - Photograph showing space to the right of the house.
Exhibit O-6 - Tax map.
Ms. D’Souza testified that the variance should not be granted, that the applicant’s testimony did not substantiate undue hardship and spoke to their quality of life and safety and welfare of their children.

Ms. Simeon (4 Parks Road) was present and stated she was a neutral party. Ms. Simeon resides on the opposite side of the applicant’s home. Ms. Simeon spoke to seeing both the perspective of the applicant, as well as, the neighbor. Confirming that the D’Souza’s sight distance issue was not created by the boat. Stating that Parks Road is a busy street that requires speed bumps and that bushes and trees are more of a visibility factor in the neighborhood. Stating further that the boat is close enough to the house not to create a problem and is not at the end of the driveway. Ms. Simeon stated that relocating the boat on the east side would impact her children playing football in the yard and feared something could be damaged or broken on the boat.

James Scott Hughes (30 Claude Avenue) was a noticed party. Mr. Hughes provided his perspective that the boat has never been an obstruction while driving on the street. Not a danger to the traffic on the street. Empathized with the children’s safety. Between Park and Claude, see the bushes first when making the turn. Bushes more of an obstruction of view more than anything parked in the applicant’s driveway.

Adelma Ramadan (46 Manor Road) was present but not a noticed resident. Ms. Ramadan agreed that the boat is not a problem currently but when the boat moves in the summer it can be. Ms. Ramadan voiced concerns even when parking in the street.

Laura Seltam (25 Claude Avenue) was present and a noticed party. Stated that she is a neighbor that travels the road regularly and that the boat is not a consideration.

Laura Johnson (5 Seminole Trail) was present but was not a noticed resident. Ms. Johnson is an Indian Lake community resident. Voiced concerns of setting a precedent because boats do get moved.

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

Chr. Rodimer opened to the board members.
Mbr. Murphy inquired about the dimension from the right front corner of the home to sidewalk. Ms. Burdier indicated that approximately 25-30’. Mbr. Murphy stated that the applicant has the right to enjoy their boat but that an alternative exists to store the boat on their property while abiding with the land use laws, without requiring a variance. Stated that one bush and one tree may need to be moved.

Mbr. Passucci agreed with Mbr. Murphy and that no hardship exists. Shared the concern with the storage of boats within the township.

Mbr. Dankos spoke to having never noticed the boat before receiving this application. Shared the opinion of Mbr. Murphy that an alternative exists and should be of minimal cost.

Mbr. Scollans spoke to peace in the neighborhood and keeping good neighbors and an alternative existing.

Mbr. Spiess agreed with the comments from the other board members and that no hardship exists due to having an alternative.

Mbr. Wilson agreed to not setting a precedent and parking the boat in the side yard being the best solution.

Mbr. Korn concurred with the other board members and that an alternative exists. Stated that he would not like a boat across from his home and that a marina is another option.

Chr. Rodimer spoke to quality of life issues and that the board takes everything into consideration when reviewing applications.

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

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

Michael Rowland, Esq. (4 Second Avenue) represented the applicant, Short Family Agency and Financial Group, (Franchisee of Allstate Insurance). Mr. Rowland stated that the applicant relocated to 26 Bloomfield Avenue from 32 Broadway. Applicant is appealing zoning denial of business license. Alternatively, applicant is proposing a financial services business requiring “D” variance relief for non-retail use on the first floor.

Mr. Rowland presented two witnesses. The first, Michael Short, owner of Short Family Agency and Financial Group, LLC. The second, Mr. Beccia, land owner of the 32 Broadway and 26 Bloomfield Avenue buildings. Both witnesses were sworn in at the same time.

Keith Beccia (3 Quail Run, Boonton Twp.) was present and sworn under oath. Mr. Beccia is owner of Becrett LLC, a Real Estate Development and Property Management company. Raised building nine steps to meet NJDEP compliance with zero net fill and floodplain requirements. Testifying that the building has frontage on both Bloomfield Avenue and Broadway. Two separate structures are considered one building. Consisting of three units. Property built seven years ago, Allstate is the fourth tenant in 7 years and the other side three tenants in 7 years. Zoned retail but not a retail due to the nine stairs. All others have been 100% occupied. Testifying to the efforts and difficulties of renting space in subject property, including Yarn Café, Sweet Expressions and Allstate. Mr. Beccia spoke to useable parking, with 32 Broadway having higher parking requirements and working better. Allstate insurance will lessen the parking required by a retail use and will keep the tenants in downtown Denville. Downtown rentals are increasingly difficult to keep it flourishing.

Michael Short (89 Pine Hurst Drive, Washington) was present and sworn in. Mr. Short is an Independent Contractor with another office in Long Valley. Two previous owners were pressured by main office in Bridgewater. Approved purchaser having top percentages have imposed conditions by the main office. Corporate standards include branded retail environment, colors and furniture. The prior location would have required many improvements in order to obtain approval from corporate. Whereas, the new location only required paint. Testifying that the applicant had no prior knowledge that a use variance was required. It wasn’t known until a business license was denied upon submitting a sign permit.

Exhibit A-1 was entered of a colorized rendering of downtown Denville business district. The Green reflects the properties with conforming uses. The Blue denotes properties with non-conforming retail uses and the Red representing 17 vacancies at the time of completion, but now totaling 19.

Chr. Rodimer opened the hearing to the professionals for comments.

Nick Rosania, Township Engineer voiced concern towards the growing vacancies in Denville and commented on keeping the vitality of downtown Denville.

Bill Denzler, Township Planner concurred that it is a zoning issue. Insurance offices have been interpreted as not being on the first floor. This section of Bloomfield is problematic and insurance agencies have been considered on a case by case basis. Almost 6’ above the sidewalk is not typical for retail and not conducive to pedestrians.

Chr. Rodimer opened to the public, and seeing none, closed the public portion.
Mr. Lester Kelem (11 Oakwood Terrace, Rockaway) was present and sworn under oath. Mr. Kelem owns the building located at 55 Broadway. Mr. Kelem commented that the success of the Mr. Short’s businesses were not due to the location. Mr. Kelem stated that he was requesting denial of the application. Testified that he too has a retail business with steps above the sidewalk level. Voiced concern for redefining by merchants, talked about the strength of retail businesses in Denville, spoke to the current challenges of the economy and changes in the future. Stressed that we should not weaken to temporary pressures of the economy by making shortsighted decisions that would changes retail for other than retail use.

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

Chr. Rodimer opened the hearing to the board members.

Mbr. Spiess supports the application.
Mbr. Wilson supports the application and commented that there was not enough detriment.
Mbr. Korn agreed with the legal argument presented by the applicant that the town has been inconsistent in granting insurance variances and supports the tenant being in business in the town for thirty years.
Mbr. Murphy inquired of the building across Broadway. Mr. Beccia responded three and three. Stating that Nonas Café moved from the back to the front and upstairs was a marketing office. 80 Broadway has Urban Muse, etc.
Mbr. Passucci inquired about Mr. Short’s clients and if they would continue to service the same clientele. Mr. Short confirmed that Denville is the majority of their clientele with some from Mountain Lakes and Rockaway.
Mbr. Dankos concurred with the application and commented that the three tenants were impacted positively by the changes in tenancy.
Mbr. Scollans spoke to his support of the application and the concerns of the vacancies in Denville.
Chr. Rodimer spoke to his being in favor of the application and sympathetic with the applicant’s hardship.

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

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

BA/SPC 09-18: W&L Associates, LLC
423 Main Street
Block 41307, Lots 2 & 8

Chr. Rodimer announced that the above application would be adjourned to the January 5, 2011 reorganization meeting for rescheduling.

NEW BUSINESS
Based upon tonight’s application, Mbr. Murphy suggested that Nick Rosania, Township Engineer speak with administration to address the retail space zoning within Denville in the Master Plan.

Motion to Adjourn.