TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

March 21, 2012

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, March 21, 2012. The meeting was held in the Municipal Building, 1 St. Mary’s Place and commenced at 7:00 P.M. Chairperson Murphy presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL: Present: John Murphy, Roger Spiess, Sean Ryan, Sally Dankos, Frank Passucci, Arthur Korn, Susan Richter
Absent: Tom Dolan, James Rodimer
Prof. Present: Larry I. Wiener, Esq., William Denzler, PP, John Ruschke, PE

PURCHASING:
Motion to pay voucher(s) submitted by William Denzler & Associates, (dated March 1, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all Members present.

Motion to pay vouchers submitted by Larry I. Weiner, (dated February 29, 2012 and March 13, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald, (dated January 27, 2012 and March 2, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by The Buzak Law Group, (dated March 6, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all Members present and able to vote.

RESOLUTIONS:
BA 11-26: Carol Ventures, Inc. (Crisp Restaurant) Block 31501, Lot 3 Route 10 West
A motion to approve this resolution was made by Mbr. Dankos, seconded by Mbr. Passucci and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Dankos, Passucci, Ryan, Korn, Spiess, Richter, Murphy

PUBLIC HEARINGS:
MSV 12-03: RMDJ Realty, LLC Block 50003.01, Lot 6.10 57 Old Boonton Road
Chr. Murphy announced to the board and members of the public that this application would not be heard tonight. The applicant had requested adjournment and the public hearing had been carried without further notice to May 16, 2012.

BA/PSP/FSPV 12-02: Route 10 Property, LLC Block 20201, Lot 19.01 3163 Route 10
Remo A. Caputo, Esq. (One Broadway, Suite 201) represented the applicant. Route 10 Property, LLC is proposing preliminary and final site plan approval with use and bulk variance relief to occupy a block structure for retail use. Improvements include outdoor display/storage, parking lot and freestanding sign.
If tree removal does not take place by April 1, 2012, the work cannot be performed until October due to the breeding cycle of the Indiana bat species. Removal of six trees is necessary for the completion of the driveway installation.

Ken Hegarty (556 Openaki Road) was present and sworn under oath. Mr. Hegarty confirmed that there were two proposed uses on the site and spoke to proposed small equipment sale business such as golf carts and quads.

Exhibit Summary:
- Exhibit A-2 – One page photograph of GEM E825 Golf Cart
- Exhibit A-3 – One page photograph of a Polaris 2x4 TrailBlazer
- Exhibit A-4 – One page with three photographs of small construction equipment, one each of Bobcat Frontloader, BobCat Tracko and Clark Forklift
- Exhibit A-5 – Photograph of a white four seat Golf Cart with roof
- Exhibit A-6 – Three page packet from Ledgewood Sign-A-Rama. Page one rendering of the proposed monument sign near Rte. 10, Page two sign construction detail and Page three electrical detail
- Exhibit A-7 – Glossy Blue bound book of sample work of Atlantis Water Gardens
- Exhibit A-8 – One page with eight photographs of exterior of the building and display pond on the subject property

Ken Hegarty testified that approximately three of these pieces of equipment would be onsite. There would be some equipment displayed outside in designated areas. Some golf carts will be left outside at night. Testimony included a letter from Stephen Sartola of Woodmont Properties. Majority of the building would be Atlantis Water Gardens with a small portion for equipment sales. Personnel on premises would primarily be one, sometimes two. Anticipated customers of 1-2 per hour. Repair service of wheels and tires desirable but there will be no engine repair. Applicant willing to change the chain-link fence to wood-on-wood. Applicant testified to a signage change from the westerly side to easterly side of driveway and to be an externally lit monument sign. Computer generated signage was entered as Exhibit.

The adjoining property owner was noticed and not present. For the record, Larry Weiner, Esq. stated that although the board will take everyone into consideration, it is the board's decision what will be approved and not Woodmont Properties.

Chr. Murphy opened to the professionals.

John Ruschke, PE commented on the fence, Woodmont’s letter requesting a change in fence type and the potential conflict to NJDEP approval. Voicing a reluctance to remove the chain-link fence without prior NJDEP approval to be obtained. Requiring revised submission to NJDEP for board-on-board fence approval.

Bill Denzler, inquired about a future third use for the proposed property. Stating that a third use in the future would require the applicant to return to the board. Mr. Hegarty confirmed his understanding.

Chr. Murphy opened to the board.

Mbr. Dankos referenced the division of the building and inquired about office space. The applicant stated that the one side would be for the used equipment sales and the other side would be the Design Center and Retail Sales Office for Atlantis. Mbr. Ryan had no questions at this time. Mbr. Korn inquired about the OB-4 use and the Township Planner confirmed that retail use, outdoor storage and freestanding sign are not permitted in the zone. Mbr. Korn referenced having a weight limit for small equipment. Mr. Denzler indicated that the condition would be by equipment type and not equipment weight. Mbr. Korn inquired about diesel machines and the storage of fuel. Mr. Hegarty stated the diesel equipment would be filled at Sunoco and the golf carts are electric. The applicant indicated that not even a 5 gallon tank being onsite. Mbr. Richter inquired about leasing the equipment. Ken Hegarty stated it would all be used equipment sales. Mbr. Hegarty stated that he will not be involved in cleaning up any equipment. Mbr. Passucci inquired about renting of equipment. Ken Hegarty stated there would absolutely not be renting, due to liability. Mbr. Passucci inquired about the proposed location for repairs. Ken Hegarty indicated that service is performed at a Salem Street location in Randolph. The Route 10 location is intended to be more of a show room.

Mbr. Spiess thanked the applicant for the tour of the facility and inquired about the storage. Ken Hegarty responded about limited storage area for the property and just small quantities of landscaping materials such as mulch and stone. Stating that the majority of the storage will be used for water features. Mbr. Spiess wanted to understand what prevents the storage from expanding outside the designated area. The applicant indicated that besides wanting to maintain a good relationship with the township, the zoning ordinances, officer and NJDEP would ensure this did not occur. Remo Caputo, Esq. stated that there is a set number of parking spaces that are required to be maintained. Mr. Hegarty added that the post and rail fence will denote the preservation area, making it easy to see if they have gone outside the designated area.
Chr. Murphy commented on the sign moving to the easterly side of the driveway being a good
decision for visibility and inquired about eliminating Area A as outside storage. Mr. Caputo stated
that the outside storage will be more of a display area. Chr. Murphy voiced concern against
distracting drivers and wanting to ensure the proposed display area not become a storage area
near the highway, to avoid an attractive nuisance. Chr. Murphy asked if the applicant would be
agreeable to have a maximum of four pieces of small equipment in a condition of the resolution.
Ken Hegarty asked if it could be six pieces. Mbr. Spiess added that the number wasn’t as
important a condition as it was that the equipment not exceed the storage area. Mbr. Murphy
agreed. Mbr. Murphy inquired about the fence along the property line. The Township Planner
agreed that the fence in the front yard would need to be decreased to a 4’ height, regardless of it
being chain-link or wood. Stating that a wood fence would require NJDEP approval. Applicant
requested the option to revert to the chain-link fence if the NJDEP did not approve the wood
fence. Mr. Hegarty stated that the NJDEP approval for chain-link was without concrete and that a
wood fence would not stay up without concrete.

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

Jaak Harju, owner of Atlantis Water Gardens, LLC (53 Broad Street, Rockaway) was present and
sworn under oath. Atlantis builds, maintains and installs water gardens. Decorative features
such as ponds and waterfalls. Entered Exhibit A-7, a blue binder containing type of work
performed at the customers. Atlantis performs both residential and commercial work on the
customer’s site. Applicant stated that they handle all segments from retail, the do-it-yourselfer,
entry level water gardens to custom water features. This includes aquatic plants, fish, food,
staturaries and pump supplies. Referenced the pond in the front yard being a test garden for
NJDEP, having received approval from NJDEP to modify the existing pond by adding boulders
and filtration system. Cash and carry decorative features, aqua basins and fish such as Koi and
Goldfish. Mr. Harju confirmed that Area A would be a display area, decorative in nature and not
to exceed 6’ in height.

Chr. Murphy opened to professionals.

John Rusche, Township Engineer had none at this time.

Bill Denzler, Township Planner inquired about construction equipment. Jack Harju stated only a
service truck when he’s there as the large equipment is stored in Rockaway.

Chr. Murphy opened to the board.

Mbr. Korn inquired about limitations regarding the number of live animals and the size of the fish
tanks. The Township Planner stated that this only applied to farm animals. Mr. Harju stated there
would be four to six self contained tanks run on electricity approximately 3.5’-4’ in size.
Mbr. Richter inquired about water onsite. Mr. Harju indicated that there is a well onsite but that
the pond out front is fed by a stream.

Mbr. Passucci commented on the swimming pond versus swimming pools. Mr. Harju confirmed
that they build swimming ponds and there would be no swimming pool products onsite.
Mbr. Spiess was concerned the site would become an excavation yard. Mr. Harju stated he has
a construction yard for storage larger quantities and equipment.
Mbr. Dankos inquired if protective covering would be used for the fish outdoors. Mr. Harju replied
yes to avoid having to replace them.

Mbr. Ryan had no questions at this time.

Chr. Murphy inquired about a gazebo for the site. Jack Harju indicated that there would be one
150’ sq. ft. structure but not near Rte. 10. Chr. Murphy asked that a 5-6’ height limit be used for
anything near Rte 10. Mr. Harju confirmed that there would be benches and statuary but no
barbeques on display. The outdoor display would be used to immerse the customer in the
experience.

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

Laura Brill, PP, Licensed Land Surveyor and Wetlands Consultant (216 Spring Valley Road,
Blairstown) Ms. Brill provided an environmental overview of the 4.27 acre site conditions having
a one story concrete building, two gravel driveways, a gravel parking area and small pond out
front. As wetlands consultant, Ms. Brill testified to demonstrating to the NJDEP that the site
conditions existed prior to the Wetlands Act in 1988. 6,800 sq. ft. transition area. The building
has been abandoned for twenty-four years. Applicant has applied for two permits, a
redevelopment (transition area) waiver and an extension of the LOI that expired in July 2011.
With a 150’ transition area, the site is covered with transition area and wetlands. Violations
occurred for utilities and driveway crossing the wetlands. As part of the remediation, the
applicant has agreed to a Conservation Restriction Easement imposing additional restrictions
along with erecting a post and rail fence. Ms. Brill spoke to the post and rail fence being part of
the remediation to define the conservation area depicted in gray. No concrete footings in
wetlands approval. Fence cannot have concrete footings, change of fence would require
approval. Special dispensation for the pond because it’s a Feral pond. Stating additional
plantings would not be a good idea based upon the area being heavily wooded. Ms. Brill advised
that NJDEP specified no deviations on the split rail fence and the landscape plan.

Chr. Murphy opened to professionals.
John Ruschke, PE referenced the inconsistency to the NJDEP conservation area and the split rail fence. Indicating that the conservation area is contradictory. Laura Brill responded that the NJDEP specified that there be no deviations on the split rail fence and the installation be as shown on the landscape plan. The Township Engineer stated that the entire property lies within the transition area of redevelopment. Ms. Brill confirmed that this was not an averaging plan but a transition area redevelopment plan. Stating it must be same area or less. Applicant is to obtain confirmation from NJDEP regarding the location of the post and rail fence and whether the pond can be maintained.

Bill Denzler, Township Planner had none.

Chr. Murphy opened to the board.

Mbr. Dankos inquired about the three septic tanks. Laura Brill explained that they were holding tanks and already existed.

Mbr. Ryan indicated his questions had been answered.

Mbr. Korn commented on drainage near the sign. Ms. Brill explained that the sign would not be in a ditch and that the two driveways would be merged.

Mbr. Richter commented on the driveway being one way and that the signage wouldn’t be a visibility issue. Stating the proposed would be better than what currently exists.

Mbr. Passucci sought and received confirmation from Ms. Brill that there would be nothing else going on the premises such as trails, pony rides, equipment storage or demonstration.

Mbr. Spiess had no further questions.

Chr. Murphy inquired about all existing piping being removed, 12” plastic pipe and existing spring. Ms. Brill commented that only the easterly driveway not all existing piping would be removed. The 30” concrete enforced piping is shown correctly on the site plan and the engineer can address. Stated that the elevation of the piping and that the ground not be altered.

Chr. Murphy opened to members of the public and seeing none, closed the public portion of the hearing.

Christian Kastrud, PE (952 Route 22 East, Bound Brook) was present and accepted as an expert witness. Mr. Kastrud spoke to the property being on the eastbound side of Route 10, restricted by wetlands, with a riparian buffer along the brook. The existing 6,801 sq. ft. of impervious coverage is being reduced by 104 sq. ft. This reduction in run-off has been approved by the NJDEP. The existing building of 2,728 sq. ft. allows for 1 space per 200. The total parking spaces of 15 (14 standard and 1 handicapped) is in compliance with retail establishment. The lighting, walkway and revised lighting fully comply. The sign was originally internally illuminated sign. Alternate sign is presented as an externally illuminated sign with small LED lights, downward pointed as a down treatment along the top of the sign. Dimensions 6’4” with a height of 8’8”. Proposed signage (Exhibit A-6) is what the applicant is interested in having. Sign located one foot off the ROW. Due to the ditch and the piping. Six trees to be removed for the driveway, storage area and pedestrian access around the building. Tree removal to take place by April 1st or must wait until October 1st for the Indiana bat migration. Changes to the plan were made to address the planners and engineers comments. Runoff for sheet flow across the driveway and into the ditch, no curbing proposed. NJDEP requested there be no curbing. Addresses all 100 year flood hazards for the property but there is no published flood on the property. Proposed parking lot realignment will result in 31 cubic yards of soil (2 truck loads) to be moved onsite. The driveway will be removed but the existing 30” concrete pipe will remain. There will be a 55’ linear foot pipe added to the 30” pipe. There are three 1,000 gallon solid holding tanks onsite. They have been tested by Peach Bros. and do not leak. These tanks will hold the sewage that will need to be pumped and removed from the site. Based upon the useable land the parking lot cannot be moved without further encroachment on the restricted areas. The applicant is submitting for Treatment Works Approval (TWA) and understands it would be a condition of approval.

Chr. Murphy opened to professionals.

John Ruschke, PE referenced the health department comments stating that the holding tanks are an important issue to be resolved. Applicant stated that there is a well but there will be public water for the ponds on this property. There is no way to connect to sanitary sewer within the code requirements. John Ruschke stated that the demands for the waste water have changed from the prior use and should be revisited, with holding tanks as a last resort. Inconsistencies exist between the two NJDEP drawings. Applicant to verify NJDEP wants 30” RCP to the right of the driveway to remain. Township Engineer also requested As-Built drawings.

Bill Denzler, PP inquired about the holding tanks, the exterior display areas and lighting. Chris Kastrud responded that the openings to the tanks will remain accessible and that landscaping and walking around the tanks is perfectly acceptable. Mr. Kastrud confirmed that the shoebox lighting proposed has the ability to be shielded. Performance standard will meet the ordinance. New driveway will meet adequate sight distance standards and a NJDOT application will be made to ensure all requirements are met.

Chr. Murphy opened to the board members.

Mbr. Dankos had none.
Mbr. Ryan indicated that the township engineer had addressed his questions.
Mbr. Korn, Richter, Passucci had none.
Mbr. Spiess had no questions but voiced concerns regarding the septic. The board and applicant's attorneys confirmed that the tanks would need to meet NJDEP TWA and Health requirements. Based upon the code using .125 gallons per day for this type of establishment, the tanks would need to be pumped approximately every 14 days.
Chr. Murphy inquired about the 30" RCP into a 12" pipe. Mr. Kastrud confirmed that the drawings will show as a 30" to 30" RCP.

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

P. David Zimmerman, PP (21 Western Avenue, Morristown) was present and accepted as an expert witness. Spoke to variances. Two are existing non-conformities. Lot depth existing condition #1. Building is within the front yard 100’ and 83.24” – 16’ into the front yard existing condition #2. No proposed change. No infringement. First use variance for no retail sales and service use. Low intensity retail uses (i.e. not restaurant or convenience store). Second use variance for freestanding sign and third use variance for outdoor display and storage. Parking variance for parking in front yard and 10’ from building where 6’ is proposed. Requisite number of parking spaces is provided. Location is dictated by the environmental features of the property and no alternative exists. In-obtrusive parking in the front due to the width of the lot. The ditch in the front portion of the property establishes some constraints due to the location of the sign. Spoke to the positive and negative impacts of the requested variances. Reasonable use of the property factoring in any environmental constraints. Does not have any substantial impact to the public good and does not impair the zoning ordinances or the Master Plan. Stating that the property was particularly well suited for the proposed, low traffic generator and that the improvements are aesthetically pleasing. Mr. Hegarty is 8901 licensed as it relates to the pumping of the storage tanks. The applicant is seeking building signage of 8 sq. ft. for each of the two proposed tenants. The Township Planner confirmed that this would be consistent with the retail use.

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

Mbr. Korn commented that the property is particularly well suited for the proposed.
Mbr. Richter commented that the property already looks better.
Mbr. Passucci agreed he would go along with his colleagues provided it was subject to the necessary approvals.
Mbr. Spiess concurred with his colleagues.
Mbr. Dankos agreed with the board members.
Mbr. Ryan also agreed with fellow board members.
Chr. Murphy commented on the difficult application to work with and that he was pleased with the rough edges being fine tuned by the board members and the NJDEP.

Conditions cited by Mbr. Spiess included but not limited to; no storage of equipment onsite outside of the designated storage areas, no display outside of the property line to exceed 6’ in height, water hook-up, paving of the lot, no fuel storage onsite, display/storage area ‘A’ limited to aquatic displays only, all fencing to meet with NJDEP approval for fence type and location, TWA permit necessary for holding tanks, holding tank or septic to meet with NJDEP approval, clarification letter or correspondence from NJDEP for both the survey delineation for the fencing, as well as the 30” piping along the driveway, NJDOT approval for driveway ingress and egress, lighting to be approved by the township engineer, as-built drawing, site use for specific use, façade signage, relocation of the freestanding sign, façade signage for tenants, lighting to be field adjusted, no short term rentals of the equipment, exhibits depicting the specific type of equipment, no storage of fuel onsite, final sign to be reviewed and approved by township planner and everything else that has been stipulated on the record, set forth in the reports of the professional staff and the various agencies of the township.

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

Roll Call: Ayes – Spiess, Dankos, Ryan, Korn, Passucci, Richter, Murphy

NEW BUSINESS
Mbr. Korn referenced an article on email as it relates to being public information if new legislation passes.

Motion to Adjourn.