TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

October 17, 2012

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, October 17, 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, Sally Dankos, Arthur Korn, James Rodimer, Frank Passucci, Sean Ryan, Susan Richter
Absent: Tom Dolan
Prof. Present: Larry I. Wiener, Esq., William Denzler, PP, John Ruschke, PE

PURCHASING:
Motion to pay seven vouchers submitted by William Denzler & Associates subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all Members present and able to vote.

Motion to pay five vouchers submitted by Larry I. Weiner subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all Members present and able to vote.

Motion to pay five vouchers submitted by Hatch Mott MacDonald subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all Members present and able to vote.

Motion to pay one voucher submitted by The Buzak Law Group subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all Members present and able to vote.

RESOLUTIONS
BA 12-28: Catherine Barrett (Gary Musciano)
26 Riekens Trail
Block 41002, Lot 26
A motion to adopt the resolution of approval was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all members eligible to vote.
Roll Call: Ayes – Rodimer, Ryan, Dankos, Korn, Passucci, Spiess

BA 12-31: Kuo-Tung Liang & Xiaohan Zhou
25 Lake Road
Block 60508, Lot 47
A motion to adopt the resolution of approval was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all members eligible to vote.
Roll Call: Ayes – Rodimer, Ryan, Dankos, Korn, Passucci, Spiess

BA 12-32: Michael & Karen Bilza
50 South Wynde Drive
Block 40816, Lots 1775
A motion to adopt the resolution of approval was made by Mbr. Rodimer, seconded by Mbr. Ryan and unanimously approved by all members eligible to vote.
Roll Call: Ayes – Rodimer, Ryan, Dankos, Korn, Passucci, Spiess

PUBLIC HEARINGS
October 17, 2012

MSV 12-03: RMDJ Realty, LLC
Block 50003.01, Lot 6.10
57 Old Boonton Road

Chr. Murphy announced to members of the public that this application was withdrawn by the applicant and will not be heard or rescheduled.

BA 12-26: Peter & Susan Agostini
28 Cambridge Avenue
Block 11501, Lot 14

The applicant, Peter Agostini (28 Cambridge Avenue) was present and sworn under oath. Mr. Agostini testified to having replaced a metal shed on his property during the time of a pool installation April 30, 2005. The applicant appeared before the board to obtain a side yard variance for the pool at that time. Stating that the shed replaced an existing shed in the same location at 7’, does not meet the new 15’ requirement for side yard setback. The setback was previously a 5’ requirement. The shed will be used for pool items, patio furniture, toys and tools. There is no plumbing or electric in the shed. Mr. Agostini indicated that tax records show that the dimensions of the shed are 8’ x 12’ when the actual size is 8’ x 16’. Mr. Agostini stated that the shed is not an eye sore, matches the siding of the home. There is a patio around the shed, with the pool around the patio. It is a 8’ x 16’ shed with no foundation and matches the siding of the home.

Chr. Murphy opened to the professionals.

John Ruschke, PE had none.

Bill Denzler, PP commented on the adjacent hedgerow providing sufficient screening and that there would be no detriment to the surrounding area. Chr. Murphy inquired about the setbacks being conforming at the time of 2005. Bill Denzler confirmed.

Chr. Murphy opened to the board members.

Mbr. Rodimer had no problem with the application.
Mbr. Ryan had no questions.
Mbr. Dankos had no questions and stated she was sorry for the applicant’s inconvenience.
Mbr. Korn walked around the applicant’s property and had no questions or problems.
Mbr. Richter had no questions.
Mbr. Passucci had no problems with the application and wished the applicant good luck.
Mbr. Spiess commented on the neighbor having a shed with a similar setback. With them being back to back and having a hedgerow, Mbr. Spiess had no problem with the application.

Chr. Murphy commented on having been to the property, seeing the fence and nice hedgerow. Chr. Murphy had no questions or concerns at this time.

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

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

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

BA 12-04: David Ray
20 Mary Avenue
Block 60303, Lots 47

There were two board members that were not present for the prior public hearing on this application and were prepared to recuse themselves. The attorney for the applicant stated that there was no prior testimony that would not be represented this evening. The board attorney stated that this public hearing could begin as new. The applicant’s attorney stated that he believed his client had the right to a full board. Larry Weiner, Esq. referenced that there was a threshold issue regarding the right of access that the applicant hasn’t gotten past yet. The township attorney had raised a few issues. The applicant has new witness/testimony and the application can go forward if it’s acceptable to the board. Michael Rowland, Esq. stated that he saw no harm in starting from the beginning and that they never got far enough to even mark the exhibits. Chr. Murphy concurred with the professionals that starting the public hearing for this application from the beginning was both efficient and fair to everyone.

Michael J. Rowland, Esq. (4 Second Avenue, Suite 202) represented the applicant, David Ray (35 Mary Avenue). Applicant is proposing to construct a new single family dwelling requiring bulk variance relief for not fronting on an approved road. Michael Rowland, Esq. referenced the Mary Avenue extension off of Diamond Spring Road as it relates to this application along with resolutions of approval from 1998, 2007 and 2008 for ingress and egress over the same access way. A title expert will provide professional title testimony tonight. A professional engineer, as well as the applicant will also be providing testimony.

Charles Scott Lyon, PE of Lyons Engineering (10 Stone Cottage Lane, Wharton) was present, sworn under oath and accepted as professional witness by the board. Sheet One - General Site Plan depicting the proposed development of a single family dwelling. Sheet Two – Slopes, Driveway Profile and Landscaping. Referencing that the plans have been amended and all
variances have been eliminated except for building on an unimproved road. Michael Rowland, Esq. interrupted the engineer's testimony for title testimony.

Bruce Dostal, President and Owner of Stonebridge Title Services, Inc. (29 Bonaview Lane, Towaco) was present, sworn under oath and accepted as a professional witness by the board. Mr. Dostal testified to underwriting for Stewart Title, Fidelity National Title and Old Republic National Title. The board attorney advised the board members that the difference between being a witness and an expert witness is that they expert witness can provide an opinion testimony. The board members have the option of rejecting the witness as an expert and not allowing them to provide opinion testimony.

Bruce Dostal provided testimony using the Stonebridge Title Services, Inc. report dated October 3, along with Exhibits A-1 (Sheet 603, 1973 Tax Map) and Exhibit A-2 (Sheet 316, 1907 Tax Map). Using Exhibit A-2 Mr. Dostal explained that two parcels of property were conveyed to Mary Wright. Only one of the two parcels included a right to access Diamond Spring Road in the deed. The deed of the parcel (highlighted in red) allowed for the right to use the 25’ right to ingress/egress to Diamond Spring Road. The deed for the larger parcel of land did not include this right of access. Referencing that Lot 6 fronts on Mary Avenue, which in 1907 was Summit Avenue. Explaining that Lot 6 has an easement with Lot 19 for ingress/egress which borders Lot 47, the subject property. Lot 19 is owned by Dr. Wulster and Lot 47 is owned by David Ray, both lots front on Summit Avenue. The Worts property is part of the larger property (outlined in green) which does not have the ingress/egress right to Diamond Spring Road and uses Crystal Drive. In Mr. Dostal’s professional opinion the Worts case has no impact on the application before the board. This is based upon the property being part of the larger tract of land which does not have ingress/egress rights in the deed. Mr. Dostal is in agreement with Mr. Flanagan’s opinion before the board in 1998 and 2007. Mr. Dostal stated that he also agrees with the opinion in the Worts case but that it does not have any impact on this application.

Larry I. Weiner, Esq. made inquiries relative to the aforementioned facts. Mr. Dostal confirmed that there were two parcels of land conveyed to Mary Wright, the smaller was 2.92 acres and the larger was 36 acres. The basis of difference being the abutment to that 25’ right of way to Diamond Spring Road. Lots 19.01 and 19.02 to the east benefit by an easement on Lot 6. Moving further west, the lots would require an easement. To cross Lot 47. Bruce Dostal referenced that there was only one access on the 1907 map which was through Dickerson Avenue, which runs the canal and runs through the lower portion of Lot 2.9 acre piece which is referenced in that deed out to Diamond Spring Road. There is an existing easement for Lot 6 to Lot 19. Mr. Dostal confirmed for the board, that the paper street is available for improvement for the purpose of access. Chr. Murphy summarized that the applicant is testifying to access easement from Diamond Spring through Lot 5, Lot 10, Lot 6, to Lot 19 to Lot 47. Mr. Dostal confirmed.

Chr. Murphy opened to the board professionals.

John Ruschke, Township Engineer stated that it’s a traveled way following the path of the canal and inquired about the landlocked parcel. Mr. Dostal confirmed that there was a 2.9 acre piece that Lot 6 was a part of. Lot 6 granted an easement to Lot 19 which abuts the applicant’s lot. This was a 1907 subdivision. Mr. Dostal clarified that his use of the term landlocked is merely factually and not legally. Mr. Ruschke had no further questions.

Bill Denzler, Township Planner had none at this time.

Chr. Murphy opened to the board members.

Mbr. Rodimer had no questions for this witness.

Mbr. Ryan had no questions.

Mbr. Dankos had no questions.

Mbr. Korn inquired about access from any Lots crossing over any Township of Denville properties. Mr. Dostal stated that there is a pump house station on Lot 11 which was part of the original 2.9 acre parcel. Mbr. Korn inquired about any restrictions on Lot 11. Mr. Dostal did not know of any. Mr. Ruschke indicated if the property was purchased with Green Acres funds that the parcel would come with encumbrances. Stating that once the property is taken over by the Township that improvements such as widening the road would present an issue. Mr. Dostal stated that he believes Lot 11 was taken by a tax sale foreclosure by the Township.

Mbrs. Richter, Passucci, Spiess and Chr. Murphy had no questions.

Chr. Murphy opened the hearing to members of the public for questions of this witness.

Kurt Dittmar (25 Mary Avenue) spoke to a prior litigation with Worts, fall through sale of Gotham Homes and voiced displeasure. The board attorney referenced that this is a quasi-judicial board and that there will be a time for comments. This portion of the public hearing is for questions only. Mbr. Dittmar had no questions, stated he was going to defer to his attorney and left council chambers.
John Ruschke, PE inquired about the larger parcel and having a copy of the document. Mr. Dostal stated he had a copy of the deed between Daniel Dickerson and Mary Wright. Referencing the deed book and page of V-18, page 109 dated April 30, 1907. This deed was marked as Exhibit A-3.

Larry Weiner, Esq. stated that this may be a good time to obtain a Preliminary Determination. Michael Rowland, Esq. agreed. Mr. Rowland stated that there was one element of proof that did not relate to the right of ingress/egress and referenced the Walster 2007 and Valvano 2008 approvals. Mr. Weiner stated that this was being considered a new case with a new set of proofs and that there was subsequent litigation. Mr. Weiner indicated that the township attorney has reviewed the information and agrees that the application before the board is a different access point than the prior litigation.

Chr. Murphy stated that it was time to take the temperature of the board as to whether the applicant has established proof to the right of way of the property. Mr. Rowland agreed that he would submit to the board’s approval on this subject. Mr. Ruschke stated the deed does call out that there is a 25’ ROW width now used on the north side of the Morris Canal and leading from the property conveyed to the road leading from Denville to Boonton. The Township Engineer made reference to the traveled ROW within the established ROW and deferred to the attorneys. Larry Wyrry asked if there is a paper street if one has the right to improve the paper street and Mr. Ruschke replied yes. Mr. Weiner then stated that if Lots 6 and 11 are in a position to grant an easement to the people that are to their west, along this paper street, that’s part of the planning variance. Stating that it also has to be safe for emergency vehicles. There was further discussion regarding possible speculation of the intentions of the easement to other properties. Larry Weiner, Esq. stated that the board has a right to hire a title search agency. There was brief deliberation of the board members. The majority of the board believed the applicant had made their case regarding the easement and were in favor of moving forward with the testimony. Michael Rowland stated that the development of Mary Avenue is a separate issue than ingress and egress. The easement was developed to avoid steep slopes and impact to the neighbors. Developing Mary Avenue is not possible. The board attorney stated it was a threshold issue. Stating the consensus of the board that the applicant has established legal access is only part one.

After a brief break, the public hearing resumed and Michael Rowland, Esq. called the engineering witness.

Charles Scott Lyon, PE of Lyons Engineering provided an overview of the proposed single family dwelling. A driveway easement across the front of Lot 19 is proposed to avoid disturbance of the steep slopes in the ROW. Referenced the steep slopes depicted in the heavy shaded area of Sheet Two. Stating that if development of the paper street was proposed today it would not be approved because of the steep slopes. Mr. Lyon went on to provide a summary of the practical issues of developing the ROW and how it would impact Lots 14 and 18. Informal access meanders across Lots 27 and 47. It is not the applicant’s intention to prevent Mr. Dittmar from accessing his property this way. The applicant is proposing to preserve access for the Mr. Dittmar by a 12’ easement extension of the traveled way. Applicant is also proposing 7 evergreens along the easement (6 in front and 1 on the side) to provide screening. The proposed application is for two easements. The first easement is a 12’ ease of access easement for the neighbor. The second is a driveway easement for Lot 19.01 which grants access to the property over a driveway.

August 11, 2012 is the revised drawings. The proposed dwelling has a 60’ front yard setback to allow for the 50’ ROW. Leaving the only remaining variance is for the dwelling on an unimproved road. The Dittmar home on Lot 18 is approximately 12’ from the ROW. The proposed driveway easement beginning on Lot 19.01 and ending on Lot 47 would be approximately 67’ feet away from the Dittmar property. Stating that there will be gravel down to replace the existing dirt driveway for the Dittmar property.

Scott Lyon referenced the fire department and their response being favorable. During a face-to-face review of the plans, the fire officials voiced no concerns. The length of the proposed driveway was adequate and that the front and rear overhang of the fire truck with a 10% grade and all the transition was also not an issue. Stating further that there is a cul-de-sac between Lots 6 and 19.02.

Chr. Murphy opened to the board professionals.

John Ruschke, PE referenced that a temporary construction easement will be required due to the grading going off the easement. Michael Rowland that this could also be part of the permanent easement and will not be a problem for the applicant. Mr. Lyon confirmed that this would be a private driveway with a property to property access easement from Lot 19 to Lot 47 and would not provide access to others. The applicant agreed to test pits in the area and health department approval of the septic. The applicant agreed that any resolution of approval contains language that the township is not responsible for the easement.

Bill Denzler, PE stated that the applicant has satisfactorily addressed that emergency services have access of the property and had no further questions.
Chr. Murphy referenced the ownership, lot easements and chain of easements to Diamond Spring Road. Asking if the applicant would be willing to benefit those to the west, by extending the 35’ easement along Lot 19 and extending it parallel to the ROW. After brief deliberation with his client, Michael Rowland, Esq. stated that the driveway easement that Lot 19.01 is granting to Lot 47 could be given to the public in general. This would only affect Lot 19.01 it would bypass the steep slopes and would return the public’s right to gain access to the ROW if desired in the future. The applicant would not develop anything other than what is reflected on the proposed plan but the area that is affected by this easement from the point where the easement is drawn south of the property line would be granted to the public. Giving the public the ability to travel over the easement, and to gain access to the paper street beyond the steep slope interference. Michael Rowland, Esq. clarified that the applicant would not be developing any portion of the public ROW other than the portion that benefits Lot 47.

Chr. Murphy opened to the board members.

Mbr. Korn had no questions.

Mbr. Richter referenced the removal of a berm and trees. Mr. Lyon stated that there is no berm in the area in question. Michael Rowland, Esq. stated that the berm with large trees is part of Mr. Valvano’s property and will not be affected by what the applicant’s proposing. Mr. Lyon stated that most of the trees do not fall in the proposed development.

Mbrs. Passucci, Spiess, Rodimer, Ryan, Dankos and Chr. Murphy had no questions.

Chr. Murphy opened to members of the public.

Dave Valvano (22 Mary Avenue) was present and sworn under oath. Mr. Valvano thanked the board for allowing his comments and stated that tree removal should be included on the site plans. Indicating that it is his belief that some trees on Lot 3 will be removed at the entry of the driveway. Michael Rowland, Esq. stated that any tree removal would require a permit but that he is not aware of the removal of any trees on the property of others. This includes property of the township. Mr. Valvano referenced increased traffic, emergency vehicles and lack of infrastructure. Stating that there are issues of lighting, potholes, water pooling, danger, hanging limbs and the narrow width of Mary Avenue. Mbr. Korn asked the Township Planner to respond. Bill Denzler, PP stated that there does reach a development saturation point. Police and Fire have no concerns at this point. However, there will reach a threshold point as it relates to further development on Crystal Drive connecting to this private traveled way. Chr. Murphy referenced that while the township recognizes the area is problematic, there has been reluctance to take ownership of this traveled way across private properties. Stating that neighbor’s should address this with the governing body.

So that the plans can be revised, Mbr. Spiess made a motion to approve this application and authorized the board attorney to draft a memorialized approval on the night of the resolution. Larry Weiner, Esq. stated that any comments that were agreed upon be shown on the revised plans. Mr. Rowland, Esq. referenced that the revised plans would be submitted by October 30, 2012.

A motion to approve this application was made by Mbr. Spiess, seconded by Mbr. Korn, and unanimously approved by a majority of members eligible to vote.

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

OLD BUSINESS
Chr. Murphy referenced that the boiler plate language for inclusion in the resolutions will be included in the annual report.

NEW BUSINESS
None.

Motion to Adjourn.

Denean Probasco, Board Secretary Date Approved: December 5, 2012