The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, September 18, 2013. 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, James Rodimer, Sally Dankos, Arthur Korn, Frank Passucci, Susan Richter, Tim Fisher
Absent: Tom Dolan
Prof. Present: Larry Weiner, Esq., Jason Kasler, AICP, PP, John Ruschke, PE

MINUTES:
Motion to adopt the minutes dated June 26, 2013 as submitted, was made by Mbr. Rodimer, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay vouchers submitted by Hatch Mott Macdonald (dated September 3, 2013) subject to the availability of funds, was made by Mbr. Dankos, seconded by Mbr. Korn and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Larry I. Weiner, (dated September 11, 2013) subject to the availability of funds, was made by Mbr. Dankos, seconded by Mbr. Korn and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Kasler Associates, (dated September 2, 2013) subject to the availability of funds, was made by Mbr. Dankos, seconded by Mbr. Korn and unanimously approved by all Members present and able to vote.

RESOLUTIONS
BA 13-13: Philip & Sandy Vermaelen
54 Parks Road
Block 31001, Lot 33
A motion was made to adopt the resolution by Mbr. Rodimer, seconded by Mbr. Dankos and unanimously approved by all members able to vote.
Roll Call: Ayes – Rodimer, Dankos, Passucci, Richter, Fisher, Murphy

BA/PSP/FSPV 13-04: Celebrate the Children, Inc.
230 & 248 Diamond Spring Road
Block 50601, Lot 10, 11 & 14
A motion was made to adopt the resolution by Mbr. Dankos, seconded by Mbr. Passucci and unanimously approved by all members able to vote.
Roll Call: Ayes – Dankos, Passucci, Spiess, Richter, Fisher
Abstain – Korn
Recusal - Murphy

PUBLIC HEARINGS
BA 13-15: Loren Barrows & Ron Wally
86 Cedar Lake East
Block 60402, Lot 166
The applicant, Ron Wally (86 Cedar Lake East) was present and sworn under oath. Applicant is proposing to construct a 12’ x 18’ shed requiring ‘C’ variance relief for accessory building in front yard. Mr. Wally testified to a variable dimension on his survey. Using the fixed dimension on his neighbor’s survey and the Morris County Tax Maps, he testified to having matched the property line and wanting to change the rear dimension to 8’ from the 2’ on the application that was submitted to the board.
Larry I. Weiner, Esq. addressed the applicant and indicated that the survey that was certified for the applicant’s property is the dimension that should be used. Pointing out to the applicant, that there is no proposed development for the paper road behind the applicant’s property and should stay with the 2’ setback.

Chr. Murphy opened to the board professionals.

There were no questions from the board professionals.

Chr. Murphy opened to the board members.

Mbr. Rodimer commented on the setback of 2’ requiring the applicant to go on the neighbor’s property for maintenance. The applicant stated there would be no electric.

Mbrs. Fisher and Dankos had none.

Mbr. Korn asked the applicant if 3’ would be acceptable as a setback for a ladder or painting. The applicant stated that a stepladder would fit within the 2’ but if it was required by the board, 3’ could be done.

Mbr. Richter stated it was a nice proposal.

Mbr. Passucci commented on the location and having a 3’ setback being ideal. Stating it would not ruin the ambiance.

Mbr. Spiess and Chr. Murphy had no questions.

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

A motion to approve this application as amended with a 3’ side yard setback, 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, Rodimer, Dankos, Passucci, Richter, Murphy

The applicants, Sabrina and John Giordano (112 East Shore Road) were present and sworn under oath. Applicant is proposing to construct a deck requiring ‘C’ variance relief for rear and side yard setbacks. Testifying to having purchased the home in 2000. Deck was in a state of disrepair and was demolished. Proposed deck would be similar to what was demolished. The left side yard setback is to connect decking to a hot tub.

Chr. Murphy opened to the professionals for questions.

There were none.

Chr. Murphy opened to the board members.

Mbr. Korn inquired about fencing around the hot tub. The Township Planner stated hot tubs do not have the same requirements for fencing as pools. The board attorney stated that it would have to meet current building codes. Mr. Kasler confirmed. The applicant stated that 18’ is the correct rear yard dimension and not 20’.

Mbrs. Richter, Passucci, Spiess, Rodimer, Fisher and Dankos had no questions.

Chr. Murphy also had no questions.

Chr. Murphy opened to the public for questions. Seeing no one, closed the public portion.

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

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

The applicant, Jayesh Patel (8 North Ridge Road) was present and sworn under oath. Sean McAleer, (40 Morris Lake Road, Sparta) a contractor was also present and sworn under oath. Applicant is proposing to construct a deck requiring ‘C’ variance relief for rear yard setback. Mr. Patel spoke to the existing wooden deck. Due to the small size of the yard and wanting to utilize it as living space for their children and would extend to the rock wall.

Chr. Murphy opened to the board professionals.

John Ruschke, PE inquired if the deck was in Parsippany. Mr. Patel stated that he is paying taxes in Denville and their children attend school in Denville. The survey depicts the improvements in Denville. The site plan indicates that there is a portion in Parsippany. The survey should be used.
Jason Kasler, PP had no questions and stated that the rock retaining wall was a good dividing line and had no questions.

Chr. Murphy opened to the board members.

Mbr. Rodimer had no questions and had no problem with the proposed.
Mbr. Fisher received confirmation from the applicant that the removable stairs were for access to the mechanicals of the hot tub.
Mbr. Dankos stated it was a good plan.
Mbr. Korn stated that it would have no adverse affect on the neighbors and had no problem with the application.
Mbr. Richter inquired about lighting. Mr. Patel stated that there would be lighting on the rock wall and the house.
Mbr. Passucci had no questions.
Mbr. Spiess had no questions and stated he liked the plan.
Chr. Murphy stated that it was a good application.

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. Rodimer and unanimously approved by a majority of members eligible to vote.

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

BA 13-05: Thrift Auto Sales, Inc.
254 Route 46
Block 51001, Lot 22

Jason Rittle, Esq. of Einhorn Harris Ascher Barbarito & Frost PC (165 East Main Street) represented the applicant, Thrift Auto Sales, Inc. Applicant is proposing to operate a new and used automobile repairs and service business from an existing location at the above referenced property requiring ‘D’ variance relief. Mr. Rittle stated that there is no site plan component of the application with no proposed outside improvements. The spa will be remaining at this location. There will be the existing garage bay portion of the building with some existing offices.

Chr. Murphy made opening comments regarding the original business in the 1940’s predating zoning. Rider in 2003 shows BMW sold car dealership to another dealership and an abandonment of part of the use. Questioning an existing non-conforming use and stated non-use doesn’t equal an abandonment of use. Chr. Murphy inquired why this application should be before the zoning board of adjustment.

Larry Weiner, Esq. stated that there were two reasons that the applicant was before the zoning board. Stating that the applicant may be trying to support a continuing non-conforming use and if it is not determined, that the applicant would be requesting a D1 use variance. The applicant’s attorney confirmed.

John Merriam (235 Solebury, PA) was present and sworn under oath. Mr. Merriam is the managing director of the Bloomfield, LLC. Which was formed in 1990. The property was owned by Frank Gearhart prior to the LLC being formed. Mr. Merriam spoke the construction of the building, number of parking spaces and the business operations at the time. Spoke to the property becoming vacant around 2008 and continuously marketing since that time. Other occupants and the present spa which came into occupancy in 2010. The spa occupies approximately 5,400 sq. ft. totaling 52% of the building. Mr. Merriam spoke to having twelve lifts and front end equipment at that time. The spa is aware of the application and has no objections to the proposed. Thrift Auto Sales was discovered through a Realtor. There was never the intent to abandon the building, the owners have been trying to find another dealership. The dealership franchises were sold but the property was still owned by Bloomfield, LLC.

Chr. Murphy opened to the professionals.

John Ruschke, PE inquired about a floor plan but one was not available at this time.

Jason Kasler, PP received confirmation that the spa was not in existence prior to 2010.

Chr. Murphy opened to the board members.

Mbr. Korn inquired about the ownership and the reason for the applicant to appear before the board. Mr. Weiner stated that a portion of the building is currently conforming. Mr. Kasler inquired about the applicant’s denial. Mr. Rittle spoke to the denial letter and assumes that the denial was for vehicle lubrication being a prohibited use. There was some exchange regarding the existing use, a portion of conforming use, non-conforming use and future use.
Mbrs. Richter, Passucci and Spiess had none at this time.
Mbr. Rodimer inquired about having two separate businesses and future splits of the conforming portion of the Spa space. Larry Weiner, Esq. responded that this is premature. Before this can be addressed, there are two other determinations to be made. First, to determine what if any non-conforming rights they have. Second, if applicant has none, then how to proceed.
Mbrs. Fisher and Dankos had no questions.
Mr. Rittie, Esq. asked one follow-up question. Mr. Merriam stated that the portion from the spa was always used as the service station.

Chr. Murphy referenced Mr. Poli’s confusion and denial letter. Stating that the company is named Thrift Auto Sales, but there are no auto sales proposed.

Chr. Murphy opened this portion of the hearing to members of the public.

Gene Feyl was present and represented the Lake Arrowhead community. Inquired about the parking being rented to a third party. Mr. Merriam replied no. Mr. Feyl had no further questions at this time.

Nick Ouritski (90 Hidden Valley Road, Far Hills) was present and sworn under oath. Mr. Ouritski stated he owns three car dealerships. Dealership locations in Parsippany, Morristown and Mountain Lakes have combined parking for approximately 600 cars. Testified to servicing his inventory of approximately 400 cars. Currently this service is being outsourced. The Denville location will include a photo studio for the internet marketing. Service will be by appointment only and full-time drivers from the retail outlet. Proposed hours of operation will be 9 am to 7 pm Monday through Saturday. Not having a service facility it would begin with 2-3 mechanics. Eventually, full capacity would be 8 mechanics with 8 lifts. No new or used car sales at this facility. No marketing of oil changes, etc. Excess parking currently reviewed the number of cars in inventory and the number of parking available at each of the three facilities. There will be no noise or odors. The bay doors will be locked and all work will be performed inside the building.

Chr. Murphy opened to the board professionals.

John Ruschke, PE inquired about the projected parking needs. Inquired about the queuing of cars and servicing cars that are getting prepped for sale. Applicant stated that it would be an organized process by appointments and only by appointments. Eight employees that can park elsewhere. Number of queuing vehicles per mechanic. Has full-time drivers that could shuttle. Back parking spots are not occupied. General public will be going to the retail facility and not this location. Mr. Ruschke commented on stacking, queuing of vehicles and circulation. Loading and unloading as it relates to parts deliveries. Mr. Ouritski stated it’s not a parts department and not being delivered in bulk. Standard UPS and FedEx deliveries are anticipated. There will be no outdoor storage. The Township Engineer referenced the two used oil drums outside the gate currently. Mr. Ouritski confirmed that this will not happen.

Jason Kasler, PP inquired about tow trucks and storage of cars onsite. Mr. Ouritski responded to the cars having to be delivered by a one-car tow truck if necessary. Jason Kasler inquired about existing conditions and car stacking. Mr. Ouritski stated the mechanics would be shuttled. Mr. Kasler inquired about parking within ROW of Rt.46. Applicant confirmed that parking would be used in the rear and the spots were not being eliminated.

Chr. Murphy opened to the board members.

Mbrs. Rodimer, Fisher and Dankos had none.

Mbr. Korn inquired about trailers or tow trucks being left on the lot. Mr. Ouritski agreed that this could be a condition of approval. Mbr. Korn inquired about fluids, car servicing and parts and pieces remain inside the building. Applicant agreed to 100% be within the building as a condition of approval. Mbr. Korn inquired about lifts existing currently. Mr. Ouritski stated there were not. Mbr. Korn inquired about the floodplain. Mr. Ruschke stated that the building would be self-contained.

Mbr. Richter had none.

Mbr. Passucci inquired about the site being used as a pre-owned dealership. Mr. Ouritski responded it was.

Mbr. Spiess had nothing at this time.

Chr. Murphy commented on having service experience and understanding the limitations of the parking lot. Mr. Ouritski provided further explanation of the business and having outsourced mechanics at this time. Explaining that not having one location for sales and service is not ideal but it would be the most efficient way of doing a service business at this time. Understands the limitations, but willing to work with town to make it a successful business.

Chr. Murphy opened the public portion of this meeting and seeing no one, closed the public portion.

P. David Zimmerman, PP (21 Western Avenue, Morristown) was present, sworn under oath and accepted as an expert witness. Pre-existing non-conforming and also under a use variance. Mr. Zimmerman testified to the testimony of the owner and prospective tenant. Testified to the portion of the building having always been used for a service, and no abandonment of that aspect. The Spa having occupied the sales portion of the building. The spa has a lease agreement that they can use up to 50% of the parking spaces. Stating that it satisfies the criteria of no abandonment.

Property is located in the B2 zone, with vehicle lubrication is not permitted in this zone. Which is what the use variance has revolved around. The special reasons associated with this use were discussed, negative criteria satisfied, particular suitability, being conveniently accessible between
the applicant’s Parsippany and Mountain Lakes dealerships and not far from the Morristown facility.

Chr. Murphy opened to the professionals.

Jason Kasler, PP inquired about the number of repair bays. Mr. Zimmerman indicated that there are ten repair bays of which eight would have lifts. The applicant responded that the photo studio would take up two bays. Mr. Kasler inquired about the lifts being removed. The planner confirmed that the lifts had been removed. The Township Planner inquired about the suitability of the site and inquired about the number of conforming parking spaces. Mr. Zimmerman responded that the site has been used this way in the past and is set-up to be used functionally. The number of conforming parking spaces was not available. Mr. Merriam stated that some of the lifts were taken by the dealer to their new facility and the ones that remained were utilized across the street. Explaining that the lifts are above ground and easily removable. The lubrications systems are still in place.

Chr. Murphy opened to the board members.

Mbrs. Rodimer and Fisher had none.

Mbr. Dankos inquired about evening hours and lighting. Mr. Ouritski stated that there would be no use after 7 pm or before 9 am. Only security lighting in the evening.

Mbr. Korn stated that the parking remains to be of concern. Mr. Zimmerman stated that the parking satisfies the ordinance. Mbr. Korn inquired about the square footage of the building. Chr. Murphy deferred Mbr. Korn’s questions on parking at this time.

Mbr. Richter inquired about the prior Exxon tank removal, manhole covers and change of ownership. The applicant responded that the manhole covers were for sewage removal. The board attorney advised that the environmental concerns were separate from land use.

Mbr. Passucci commented on concerns from the spa regarding the equipment noises from the service station at the spa. Mr. Rittle pointed out that there was no objection by the spa.

Mbr. Spiess inquired about the property being listed during the entire time. Mr. Merriam stated that the property has always been listed with a Realtor. Mr. Ouritski commented that he was interested in the location since 2008 but couldn’t not proceed due to finances.

Chr. Murphy inquired about the Master Plan regarding the uses. Mr. Kasler responded that the ordinances are supposed to be substantially consistent with effectuating the Master Plan. Mr. Zimmerman responded that there is little on B1 and B2 uses in the Master Plan or Re-Examination Plan asides from references to coal, lumber yards and warehouses. Chr. Murphy referenced the concerns for auto dealerships. Mr. Zimmerman indicated that if it was a new use there would be more concern. There was some discussion between the attorney’s regarding the lack of case law as it relates to abandonment, compatibility, intent to abandon and continued use.

Chr. Murphy opened to the public for questions of Mr. Zimmerman’s testimony. Seeing none, closed the public portion.

Chr. Murphy opened to the public for overall comment or testimony.

Gene Feyl (44 Lakewood Drive) was present, sworn under oath and commented on the primary functional use of the building. Spoke to having two uses in one building on one property. Stating that the repair area became ancillary to showroom. The use changed when the spa became an occupant. Mr. Feyl spoke to the vehicles, parking spaces and further exacerbation of the use. Urging the board to request a site plan.

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

Chr. Murphy asked Mr. Rittle to provide a summation. Jason Rittle, Esq. stated that he would rest upon the testimony provided. Stating that the law is not clear for the board except that there has to be an intent to abandon. There is an existing facility, the existing space intended to use has not been changed from what it was before. Stating that it is a continuance of what was there before. Stating that there is a portion of the site that is conforming. The portion of the site that is non-conforming is a less intensive use. Further summarizing that this is a continuance of a non-conforming use.

Chr. Murphy asked that the board deliberate before taking a vote whether or not abandonment of a non-conforming use exists.

Mbr. Korn agreed with the board attorney that half the building is conforming and half is not, having an impact on the pre-existing condition. Stating that the sales portion of the prior approval has been removed.

Mbr. Richter commented that the owners continuing trying to obtain a dealer has been proven. Stating that just because it’s good for business doesn’t mean that it’s good for Denville.

Mbr. Passucci agreed with the board attorney and Mbr. Korn.

Mbr. Spiess commented that despite it not being the ideal location for this applicant, it would be unfair to deny the owner the continued use the site from its prior non-conforming use if it was proven that the use has been abandoned. It wouldn’t be unreasonable to request a site plan and to place conditions on the applicant to bring the site into current standards.
Larry Weiner, Esq. responded that if it is determined that is a non-conforming use the board may not have the right to impose such conditions.
Mbr. Rodimer commented on the use as a service facility was the intent since 1938. Voicing the salon use making it cloudy for him as a board member. Parking unknown, maximum number of tenant uses, guarantee that the use go back to own when one use leaves.
Mbr. Fisher had no questions and commented that his thoughts went along the lines of Mbrs. Spiess and Rodimer.
Mbr. Dankos also agreed and commented that a site plan would be good to look at for understanding. Voiced being unconvinced that this is a good joint venture.
Chr. Murphy commented on the split use and the spa taking more than 50% of the site. Stating that will not convinced that the site has lost its rights, also not convinced in giving a Section 68 variance.

Chr. Spiess made a motion that the use has not been abandoned. The board attorney stated that the motion would be that the use as described and testified to by Mr. Ouritski would protect a continued non-conforming use. Chr. Murphy stated that a yes vote would be in favor of the service detail business.

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

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

**Motion to Adjourn at 9:57 pm.**

Denean Probasco, Board Secretary

Date Approved: January 8, 2014