TOWNSHIP OF DENVILLE  
BOARD OF ADJUSTMENT  
MINUTES  

October 2, 2013  

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, October 2, 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, Sally Dankos, Arthur Korn, Frank Passucci, Tom Dolan, Susan Richter, Tim Fisher  
Absent:  James Rodimer  
Prof. Present:  Larry Weiner, Esq., Jason Kasler, AICP, PP, John Ruschke, PE  

MINUTES:  
Motion to adopt the minutes dated August 7, 2013 as submitted, was made by Mbr. Korn, seconded by Mbr. Passucci and unanimously approved by all Members present and able to vote.  

PURCHASING:  
Motion to pay vouchers submitted by Larry I. Weiner, (dated September 24, 2013) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Passucci and unanimously approved by all Members present and able to vote.  

Motion to pay vouchers submitted by The Buzak Law Group, (dated September 15, 2013) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Passucci and unanimously approved by all Members present and able to vote.  

RESOLUTIONS  

BA 13-15:  Loren Barrows & Ron Wally  
86 Cedar Lake East  
Block 60402, Lot 166  
A motion was made to adopt the resolution by Mbr. Korn, seconded by Mbr. Richter and unanimously approved by all members able to vote.  
Roll Call:  Ayes – Korn, Richter, Dankos, Passucci, Spiess, Murphy  

BA 13-17:  Sabrina & John Giordano  
112 East Shore Road  
Block 40902, Lot 718  
A motion was made to adopt the resolution by Mbr. Korn, seconded by Mbr. Richter and unanimously approved by all members able to vote.  
Roll Call:  Ayes – Korn, Richter, Dankos, Passucci, Spiess, Murphy  

BA 13-18:  Jayesh Patel/Punita Shah  
8 North Ridge Road  
Block 10201, Lot 10  
A motion was made to adopt the resolution by Mbr. Korn, seconded by Mbr. Richter and unanimously approved by all members able to vote.  
Roll Call:  Ayes – Korn, Richter, Dankos, Passucci, Spiess, Murphy  

BA 13-05:  Thrift Auto Sales, Inc.  
254 Route 46  
Block 51001, Lot 22  
A motion was made to adopt the resolution by Mbr. Spiess, seconded by Mbr. Dankos and unanimously approved by all members able to vote.  
Roll Call:  Ayes – Spiess, Dankos, Richter  
Nays – Korn, Passucci, Murphy
PUBLIC HEARINGS

BA 13-16: Russell & Laura Thomas
55 Cedar Lake Road
Block 60801, Lot 54

The applicants, Laura & Russell Thomas (55 Cedar Lake Road) were present and sworn under oath. Mr. Thomas testified to wanting to install a hot tub on the side of their home on the existing patio requiring ‘C’ bulk variance relief for having frontage on both Rose Court and Cedar Lake Road. They were denied on August 5, 2013 by the zoning officer as accessory structures are not permitted in front yards (19-5.705). Russell Thomas referenced other locations not being suitable. The back yard slopes and the deck is high off of the ground. Stating that they will surround the hot tub with evergreen landscaping for privacy. Applicant stated that the approximate distance from Cedar Lake Road is 49.8’ and 37’ from the corner.

Chr. Murphy opened to the board professionals for comments and questions.

Jason Kasler, PP had none.
John Ruschke, PE had none.

Chr. Murphy opened to the board members.

Mbr. Dolan had none.
Mbr. Fisher inquired about the platform. The applicant stated it was not concrete so that it could be removed at a later date.
Mbr. Dankos had none.
Mbr. Korn had none.
Mbr. Richter had none.
Mbr. Passucci inquired about the screening as it relates to the deer and possible fencing.
Mbr. Spiess commented on the existing screening and liked the application.
Chr. Murphy commented on the landscaping enhancing the hot tub and voiced satisfaction with the plan.

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

Larry Weiner, Esq. inquired about the size. Mr. Thomas confirmed that the size of the hot tub is 92” x 92” square and that no additional lighting or changes to the existing lighting are proposed.

A motion to approve this application was made by Mbr. Spiess, seconded by Mbr. Richter, and unanimously approved by remaining board members eligible to vote.
Roll Call: Ayes – Spiess, Richter, Dolan, Dankos, Korn, Passucci, Murphy

BA/PSP/FSPV 12-22: Morris Habitat for Humanity
7 Lake Lenore Road
Block 31109, Lot 13.01

Sean Monaghan, Esq. of Schenck, Price, Smith & King, LLP (220 Park Avenue, Florham Park) represented the applicant, Morris Habitat for Humanity. Mr. Monaghan provided a brief overview of the application. Applicant is requesting approval to construct six units of affordable housing requiring use and bulk variance relief. The public hearing for this application was carried from October 2, 2013. Prior public hearings were held on June 19, 2013 and August 7, 2013.

Sean Monaghan, Esq. asked Mr. Stewart to provide answers to the questions that were raised at the last meeting.

Alfred Stewart, PE and Land Surveyor of Stewart Engineering (148 East Main Street, Rockaway) was present, and remained under oath. Mr. Stewart testified to the impervious coverage and drainage calculations. Stating that the concrete pads in front of the man doors were omitted from the original calculations. The total of each of the three 3’ x 8’ concrete pads is 24 sq. ft. totaling 72 sq. ft. At approximately 37 sq. ft. less than the threshold, the overall impervious coverage remains under ¼ of one acre and that the NJ stormwater regulations are not a requirement for this project. Mr. Stewart stated that the drainage area calculation should be increased from the Weetucket roadway. Estimating additional runoff of 4/10 of one acre onto Burton Lane and confirming it could impact the stormwater management plan.

Chr. Murphy opened to the board professionals for questions of the impervious coverage and stormwater and drainage calculations only.

John Ruschke, PE commented that the offsite drainage calculations should be modified to reflect the change. Mr. Stewart confirmed.
Jason Kasler, PP had no comments.

Chr. Murphy opened to the board members only for this evening’s testimony.

With the exception of Chr. Murphy, the board members had no questions.
Chr. Murphy inquired about the percentage of impervious coverage. Mr. Stewart confirmed that the impervious coverage was 24.91%. With 43,560 sq. ft. in one acre the threshold is 10, 890 sq. ft.

Chr. Murphy opened to the public for questions only of the engineer’s testimony this evening on the impervious coverage and drainage calculations at 7:25 pm.

Richard Vollmar (16 Lake Lenore Road) spoke to being incredibly close on the impervious coverage threshold and asked about air conditioning unit pads. Mr. Weiner stated that the applicant would have to reappear before the board if they wanted to install air conditioning units. Mr. Vollmar addressed Mr. Weiner and referenced having sent him a letter. Larry Weiner, Esq. responded with his legal interpretation of the application and advised that any member of the public could retain their own legal counsel. Ending at 7:36 pm.

Nick Nicoletta (55 Memory Lane) inquired about air conditioning pads and a hypothetical concrete pad for a shed. The applicant’s testimony was that there wasn’t any air conditioning units proposed. Any improvement would require board approval or the homeowner would be in violation. Ending at 7:39 pm.

Zbigniew Nowacki (37 Memory Lane) inquired about how the apartments would be cooled and if the patios and sidewalks were included in the calculations. The homeowner will be responsible for any air conditioning and Mr. Stewart, PE confirmed that these items were included in the calculations. Ended at 7:43 pm.

Renee Vollmar (16 Lake Lenore Road) inquired about the grassy turnaround. Mr. Stewart confirmed it was 94% pervious. Ms. Vollmar had other questions that the board attorney advised had been asked and answered. Reminding the public what the Superior Court’s position would be if an application was denied on speculations and hypotheticals. Ended at 7:48 pm.

Frank Tenico (4 Lake Lenore) spoke briefly and was asked to defer his comments until the appropriate time. Chr. Murphy reminded the members of the public that everyone would have an opportunity to speak and make comments. Stating that opinions need to be deferred until the correct time. Ended at 7:51 pm.

Jason Kasler, PP inquired if the portion of the property as it relates to the neighbor’s easement was included in the calculation. Mr. Stewart, PE confirmed that it was.

Bruce R. Katona, PP (475 Route 304, New City, NY) was present, sworn under oath and accepted as a professional witness by the board. Mr. Katona referenced his June 2013 planning report. Stated that the driveway and a uninhabitable single family building which is also in disrepair. The current property is not serviced by the municipality’s sewer system. The septic system is currently being removed and the site will be serviced by public utilities. Stating the proposed driveway will improve soil erosion and emergency access to the site and would not have a visual impact to the homeowners on Memory Lane. NJ Natural gas is proposing to extend gas to this site and will benefit the Memory Lane neighborhood. An additional fire hydrant is proposed that would also benefit the Burton and Memory Lane neighborhoods. Stated that this project is an inherently beneficial use under MLUL. With 100% of the project being affordable housing and meeting the positive criteria for the board to grant the request. Bruce Katona, PP spoke to the inherently beneficial uses, benefits of the project outweighing the detriments. Testified that the density of the project would be consistent with the Memory Lane neighborhood. The current density of Memory Lane is 3.5-4.0 dwelling units per acre and the with a 3.3 dwelling units density for the proposed in the R3 zone. No detriment because it’s consistent with the Memory Lane neighborhood. Testified that the applicant has minimized the impact to the steep slopes disturbance by installing retaining walls. Stated that this is a classic hardship variance due to the unique nature of the site which include its slope and shape. Ended at 8:05 pm.

Chr. Murphy opened to the board professionals.

Jason Kasler, PP agreed with the applicant that under the ‘Homes for Hope’ the proposed is an inherently beneficial use. Stating that for board it will be a determination of ‘substantial’ detriment to the zone plan or zone ordinance. Mr. Kasler had no direct questions at this time.

Larry Weiner, Esq. referenced the ‘Homes for Hope’ being an inherently beneficial use and having satisfied the positive criteria. Under the law, the board would need to take a hard look at the negative criteria and the impact on the neighborhood.

Chr. Murphy opened to the board members for questions at 8:11 pm.

Mbr. Korn inquired about the affordable housing on Joanne Drive. The distance being 350’-400’. Mbr. Richter had no questions.

Mbr. Passucci inquired about vertical separation. Bruce Katona referred to the sight comparison (Exhibit A-1 Site Comparison profile for Lake Lenore Road) from Mr. Stewart’s prior testimony.

Mbr. Spiess had none.
Mbr. Dolan inquired about the COAH requirements as it relates to Denville’s percentage of affordable housing. Jason Kasler, PP spoke to the inherently beneficial status, regardless of being over the percentage. Larry Weiner, Esq. referenced the inherently beneficial use as it relates to the impact to the neighborhood.

Mbr. Fisher had no questions at this time.

Mbr. Dankos inquired about the single family homes of the neighborhood and how it would fit into the homes. Mr. Katona responded that the density of the Habitat proposal meeting the density of the single family homes. Using carving the property into six lots versus cluster development of six units surrounded by open space as an analogy.

Chr. Murphy inquired about similar density. Mr. Katona referenced the Senior Housing on Diamond Spring Road.

Jason Kasler, PP stated that the COAH plan was for 160 unit requirement between 2010 and 2018. The hearing resumed at 8:47 pm after Chr. Murphy announced there would be a brief break prior to public comment.

Paul Longo (41 Memory Lane) inquired about benefits to Memory Lane residents. Katona responded that it would bring more fire safety and public gas. Not an eyesore but inquired about noise. Bruce Katona stated no noise studies were performed. Ended at 8:52 pm.

Arthur Rogoff (2 Lake Lenore Road) inquired about the density of the Lake Lenore Road being a R1 zone instead of Memory Lane. Mr. Katona stated a large portion of the subject property is adjacent to Memory Lane. Ended at 8:59 pm.

Beverly Barnes (15 Memory Lane) inquired about the natural gas proposed. Mr. Katona deferred to Morris Habitat for Humanity. Ended at 9:02 pm.

Renee Vollmar (16 Lake Lenore Road) inquired about the density of Memory Lane. Mr. Katona repeated his earlier testimony regarding density. Ms. Vollmar inquired about a single family home being an inherently beneficial use. Larry Weiner, Esq. responded yes. Ms. Vollmar inquired about the spending plan. Mr. Katona responded. Mr. Kasler stated that the spending plan was approved as a condition that this be added to the master plan. The housing plan is to be updated. Ended at 9:10 pm.

Gilbert Shaffer (25 Memory Lane) spoke to the quality of life and voiced concern about the amount of traffic. Ended at 9:13 pm.

Jane Martin (29 Memory Lane) inquired about the 7,500 sq. ft. Mr. Katona clarified it was the zoning and not the lot size. Ms. Martin asked for the negative criteria to be repeated. Ended at 9:16 pm.

Frank Tenico (4 Lake Lenore Road) had no questions and was deferred to the comments portion of the meeting. Ended at 9:18 pm.

Steven Yagozinski (40 Memory Lane) referenced the Peer Place project. Had no questions and was deferred to the comments portion of the meeting. Ended at 9:19 pm.

Richard Vollmar (16 Lake Lenore Road) inquired about a number of things including characterization, the planner’s opinion and referenced ordinances, proofs, deed restriction and calculations. The board attorney reminded Mr. Vollmar to be fair in his statements and opinions, stating that he was given a great amount of latitude. Asking Mr. Vollmar to wait until the correct time to make his statements. Ended at 9:50 pm.

Michelle Nicoletta (55 Memory Lane) inquired about the similarity to homes on Memory Lane. Mr. Katona stated it was the density that the proposed was consistent. Larry Weiner, Esq. stated that the testimony wasn’t regarding the architectural aspects being consistent with Memory Lane. Ended at 9:52 pm.

Nick Nicoletta (55 Memory Lane) inquired about the costs of the project. Both the applicant’s and board’s attorney’s stated that the questions were beyond the scope of the planner’s testimony and not for analysis by the board. Ended at 9:56 pm.

Katherine Valentino (Estling Lake Road) inquired about the steep slopes of the property. The applicant’s attorney stated the questions were not for this professional. The board attorney stated that these questions were asked and answered in prior testimony and that Ms. Valentino’s questions should be of the Mr. Katona’s direct testimony. Ms. Valentino inquired about the percentages of properties by zone and what formula is used. Mr. Katona responded to the density increase as it relates to the public utilities and a rational nexus between the Right of Way of Memory Lane and Burton Lane which extends to the site. As a result, a logical conclusion was drawn to a compatible use. Ended at 10:08 pm.

Renee Vollmar (16 Lake Lenore Road) asked if the board chairperson and board attorney could go through what happens next. Both Larry Weiner, Esq. and Chr. Murphy responded. The handouts with the protocol were referenced. Ended at 10:12 pm.

Chr. Murphy opened to members of the public for overall comments at 10:13 pm.

Frank Tenico (4 Lake Lenore) was sworn under oath and not a notified property owner. Mr. Tenico questioned consistency as it relates to a prior subdivision approval. Ended at 10:15 pm.

Donald Bradley (47 Memory Lane) was sworn under oath and referenced emergency access. Ended at 10:19 pm.

Michelle Nicoletta (55 Memory Lane) was sworn under oath and not a notified property owner. Ms. Nicoletta referenced the number of children, an additional teacher, school bus requirements, school district and the same education for her children. Ended at 10:22 pm.
October 2, 2013

Malcolm Yuill (11 Memory Lane) was sworn under oath and not a notified property owner. Thanked his neighbors for coming out. Ended at 10:23 pm

Zbigniew Nowacki (37 Memory Lane) was sworn under oath and was a notified property owner. Mr. Nowacki stated that the plan does not fit into the neighborhood, voiced concern for safety of his children with the increase of vehicles. Ended at 10:27 pm

Renee Vollmar (16 Lake Lenore Road) was sworn under oath. Commented on how these plans got this far without a contingency plan, regulating the residency, regulating parking and fire safety concerns. Ended at 10:36 pm.

Paul Longo (41 Memory Lane) was sworn under oath and was a notified property owner. Mr. Longo voiced concern for the proposed project being oversized for the area and inquired about garbage collection. Ended at 10:37 pm.

Nick Nicoletta (55 Memory Lane) was sworn under oath and was not a notified property owner. Mr. Nicoletta applauded the board for going to see the site conditions. Voiced concern for safety concerns and being close to allowable thresholds. Commenting on costs of the project for a non-profit agency having a better use of funds. Ended at 10:42 pm.

Chr. Murphy asked for a show of hands for the remaining members of the public. Stating that the public hearing for this application would be carried to November 6, 2013 without further notice.

Board Secretary Probasco referenced the Hennessy Resolution. Stating that there was an Administrative Change on BA 13-12 (Brian & Barbara Hennessy) 42 East Shore Road, that the setbacks in the zoning denial differed from the applicants relief. The actual relief sought was for a 3’ side yard setback and a 5’ rear yard setback. This was changed administratively and has now been made as a matter of record and will be incorporated into the minutes.

Motion to Adjourn.

Denean Probasco, Board Secretary ------------------ Date Approved ---------------