TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

November 6, 2013

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, November 6, 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, James Rodimer, Arthur Korn, Frank Passucci, Tom Dolan, Susan Richter, Tim Fisher
Absent: None
Prof. Present: Larry Weiner, Esq., Jason Kasler, AICP, PP, John Ruschke, PE

MINUTES:
Motion to adopt the minutes dated October 2, 2013 as submitted, was made by Mbr. Dankos, seconded by Mbr. Korn and unanimously approved by all Members present and able to vote.

Motion to adopt the minutes dated October 16, 2013 as submitted, was made by Mbr. Korn, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay vouchers submitted by Larry I. Weiner, (dated October 15, 23, and 30, 2013) subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Kasler Associates, PA, (dated October 31, 2013) subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald, (dated September 19 and October 21, 2013) subject to the availability of funds, was made by Mbr. Rodimer, seconded by Mbr. Dankos and unanimously approved by all Members present and able to vote.

RESOLUTIONS
BA 13-10: Susan Richter
166 Franklin Road
Block 40513, Lot 42
A motion was made to adopt the resolution by Mbr. Dankos, seconded by Mbr. Korn and unanimously approved by all members able to vote.
Roll Call: Ayes – Dankos, Korn, Dolan, Passucci, Spiess

PUBLIC HEARINGS
Chr. Murphy re-sequenced the order of the agenda and asked Vice Chr. Spiess to take the chair.

BA 12-37: Amarfo, Inc.
45 East Main Street
Block 50307, Lot 1
The public hearing for this application was carried from October 16, 2013. Michael J. Rowland represented the applicant, Amarfo, Inc. The architect, Gerry Kelly and the President of Amarfo, Aref Assaf were both present. Michael Rowland, Esq. stated that the requested changes were submitted to the board and asked Mr. Kelly to provide an overview.
Mr. Kelly provided an overview of the revised drawings dated October 17, 2013 to reflect the items that were removed from the property and those that would remain. Items referenced included the plantings, storage cabinet and ice machine. The rear of the property having been cleaned up since the October meeting.

Vice Chr. Spiess opened to the professionals.

John Ruschke, PE spoke to the zero net fill. Larry Weiner, Esq. interjected that any approval would require approval from NJDEP. John Ruschke, PE referenced that it would be a good idea to obtain a letter of non-applicability. Jason Kasler, PP had no comments. Larry Weiner, Esq. inquired if the site plan was sufficient. Jason Kasler responded that the applicant has provided the changes requested by the board.

Vice Chr. Spiess opened to the board members.

Mbr. Dolan had none.  
Mbr. Fisher none.  
Mbr. Rodimer also had none.  
Mbr. Dankos had no questions and commented that the back had been cleaned up nicely.  
Mbr. Korn commented on the clean-up and was pleased the issues have been taken care of. Inquired with Kasler regarding the number of signage. Mr. Kasler responded that three signs, plus the freestanding sign. Stating there were two signs being removed. Signage in the window not currently addressed by ordinance. Suggesting the board make this a recommendation to council for the future.  
Mbr. Richter had no questions.  
Mbr. Passucci commented on the BP periodic checks and inquired if they would continue. Mr. Rowland stated that more frequent checks would take place if violations exist. As it relates to operations and franchise requirements contract it’s the applicant’s responsibility.

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

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

Chr. Murphy returned to take the Chair.

**BA 13:20 Eleanor May**  
**18 Ridgewood Parkway**  
**Block 50904, Lot 10**

The applicant, Eleanor May (18 Ridgewood Parkway) was present and sworn under oath. Ms. May’s builder, Mr. Bob Foley was also present and sworn under oath. Applicant is requesting approval to add one additional room on the first floor.

Larry Weiner, Esq. commented.

Chr. Murphy opened to the professionals.

John Ruschke, PE inquired about flooding during a storm even such as Hurricane Irene. Eleanor May responded there was none and has not been a problem in twenty years.

Jason Kasler, PP had no questions, but commented on the proposed bedroom is an existing deck, extending at the same dimension.

Chr. Murphy opened to the board members.

Mbr. Korn commented on the poor condition of the rear deck, having no concern for the deck area but inquired about the window opening referenced from the construction official. John Ruschke commented that we would defer to the building department.

Mbr. Richter inquired about the existing deck. The applicant stated that the cutout will become part of the dwelling. The balance will be replaced as it is currently. 
Mbr. Passucci had no questions.  
Mbrs. Spiess, Dolan and Fisher had no questions.  
Mbr. Rodimer commented on the 2’ 9” and a ladder as it relates to the maintenance. Mr. Foley commented that it would not be a problem.  
Mbr. Dankos had no questions.  
Chr. Murphy had none.
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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. Dankos, and unanimously approved by remaining board members eligible to vote.

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

**BA 13-11: Mary & Philip Pascarella**

73 River Road
Block 50806, Lot 1

The applicants, Mary Pascarella and Philip Pascarella (73 River Road) were present and sworn under oath. Ms. Pascarella spoke to replacing the existing porch on the home that is over 100 years old. Applicant is seeking to wrap the porch around the side of the home. Proposed requires bulk variance relief for a 29’ side yard setback where 50’ is required. This would allow access to the front door where currently it requires visitors to walk across the lawn. Stated the neighbors don’t have a problem. Doesn’t impede with septic and would improve the aesthetics and value of the home.

Chr. Murphy opened to the professionals.

John Ruschke, PE inquired about the location of the septic on the 100 year home. Ms. Pascarella testified that the surveyor came, dug and provided a certified location for the septic.

Jason Kasler, PP voiced concern for the accuracy of the survey. The scale on one survey, north arrow incorrect on another, scale on septic survey and tax maps show something different. Nailing down the actual dimension. Not a concern for the porch from a planning perspective. Larry Weiner, Esq. responded that the board wants to protect the homeowner for the possible de minimis relief between the 20’ and 24’. There was some discussion regarding the accuracy of the survey and the potential for future owner of this home. The applicant was cautioned and was suggested that the homeowner obtain an updated survey to include the correct dimension. The key dimension is 24’.

Chr. Murphy opened to the board members.

Mbr. Dolan had none.

Mbr. Rodimer had no questions and commented on liking the plan.

Mbr. Dankos had no questions.

Mbr. Korn commented on the residential zone and having no concerns.

Mbr. Richter had none.

Mbr. Passucci had none.

Mbr. Spiess liked the plan.

Chr. Murphy had no questions.

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

A motion to approve this application along with the condition that it be no closer than 24’ was made by Mbr. Spiess, seconded by Mbr. Dankos, and unanimously approved by remaining board members eligible to vote.

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

**BA 13-07: St. Mary’s Prep School**

100 Route 46
Block 50402, Lot 15

Cynthia Collins, Esq. represented the applicant. Stating that the parish and school are located in an R-4 Residential Zone and require approval to construct a canopy requiring variance relief for pre-existing non-conforming use. The proposed dark blue canopy with white lettering is needed to provide protection from inclement weather along with a more appealing presentation from the road.

John Giacchi, Principal (33 Davis Road, Franklin) spoke to the need, the reasons and a more permanent structure that won’t require replacement in five years when funds may not be available.

Chr. Murphy opened to the professionals.

John Ruschke, PE had none.

Jason Kasler, PP had no questions.

Chr. Murphy opened to the board members.

Mbrs. Dolan and Rodimer had no questions.

Mbrs. Fisher and Dankos had none.

Mbr. Korn inquired about the dimension of 36’ 6” or 38’. Jeffrey McEntee, AIA sworn under oath and accepted as a professional witness. Provided expert testimony, stating the 36’ 6” was the outside dimension. Two coach lights are proposed along with recessed lighting. There will be NO floodlights.
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Mbr. Richter had no questions.
Mbr. Passucci asked about bad weather scenarios and children being unsupervised. Mr. Giacchi confirmed that there would be no ball playing or running around.
Mbr. Spiess commented on the proposed improvement to functionality and aesthetics.
Chr. Murphy had none.

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. Dankos, and unanimously approved by remaining board members eligible to vote.

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

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

The public hearing for this application was carried from October 2, 2013. Prior hearings were held on June 19, 2013 and August 7, 2013. Chr. Murphy spoke to the members of the public and referenced that we would pick up where we left off with public opinion. Stating that the board would like to get to a vote tonight.

Michele Shaffer (18 Memory Lane) was present and sworn under oath. Not a notified property owner. Ms. Shaffer commented that the proposed was too much for too small a neighborhood and referenced numerous power outages.

Mark Ford (54 Memory Lane) was present and sworn under oath. Not a notified property owner. Voiced concern for marginally meeting the density for the zoning of R1 versus R3 and one home per lot.

Malcolm Yuill (11 Memory Lane) was present and sworn under oath. Voiced concern for changing the character of the neighborhood.

Nick Nicoletta (55 Memory Lane) was present and sworn under oath. Not a notified property owner. Mr. Nicoletta spoke to the politics in play and not being in favor of having these variances granted.

Arthur Rogoff (2 Lake Lenore Road) was present and sworn under oath. Was a notified property owner. Quoted from various planning and zoning board meeting minutes.

Jane Martin (29 Memory Lane) was present and sworn under oath. Was a notified property owner. Voiced concern of the safety of the families and children.

Anna Nowacki (37 Memory Lane) was present and sworn under oath. Was a notified property owner. Voiced concern for the impact on the schools and not being in favor of the proposed construction.

Renee Vollmar (16 Lake Lenore) was present and sworn under oath. Not a notified property owner. Provided a summary and voiced suspicion towards the governing body. Ms. Vollmar made references that were stricken from the record by legal counsel for the board. Voiced inconsistency with the character of the neighborhood. Too dense, too negative for the environment and too intrusive for the site.

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

Sean Monaghan, Esq. of Schenck, Price, Smith & King, LLP (220 Park Avenue, Florham Park) represented the applicant, Morris Habitat for Humanity. Mr. Monaghan, Esq. provided an overall summation of the proposed development. Spoke to the spirit of the planning board comments. Referenced the positive criteria for the proposed. Stated the prohibition of subdivision and deed restriction having no relevance to the application.

Chr. Murphy closed the public portion of the meeting.

Larry Weiner, Esq. spoke to the legal aspects of the application and pointed out that it’s an inherently beneficial use. Real estate and schools are speculative and not competent testimony for consideration by the board. Other issues about condos not being like houses is also not relevant. Referenced Homes for Hope, appellate division, entire project court reaffirmed that COAH applies. Negative criteria requires a careful analysis. Mr. Weiner continued with the intensity of use, satisfying the affirmative criteria and the focus on the negative criteria. Focus on the inherently beneficial use and if there are conditions that can be put on the negative criteria. Must be substantial negative criteria. Complex issue cases and challenge during deliberation to be analyzed.

Chr. Murphy opened to the board members.

Mbr. Spiess voiced being opposed to the proposed project.
Mbr. Korn voiced being opposed to the proposed project.
Mbr. Passucci voiced being opposed to the proposed project.
Mbr. Fisher concurred with fellow board members and voiced being opposed to the proposed project.
Mbr. Rodimer agreed with fellow members of the board.
Mbr. Dankos agreed that the proposed was too much for the size of the property.
Chr. Murphy spoke to the inability of increasing the roadway or the addition of A/C pads that would increase the project beyond the threshold. Amenities missing for this size of development to enhance the property. Also referenced Steep Slopes for negative criteria. Stating he could not vote in favor of this application.

A motion to deny this application was made by Mbr. Spiess, seconded by Mbr. Dankos, and unanimously denied unanimously by the board members eligible to vote.
Roll Call: Nays – Spiess, Dankos, Dolan, Rodimer, Korn, Passucci, Murphy

Motion to Adjourn.

Denean Probasco, Board Secretary

Date Approved