TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MINUTES

December 5, 2012

The Board of Adjustment of the Township of Denville held its regular scheduled meeting on
Wednesday, December 5, 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, Arthur Korn, Susan Richter
Absent: James Rodimer, Sally Dankos, Sean Ryan, Frank Passucci, Tom Dolan
Prof. Present: Larry I. Wiener, Esq., William Denzler, PP, John Ruschke, PE

MINUTES:
Motion to adopt the minutes dated September 5, 2012 as submitted, was made by Mbr. Korn,
seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

Motion to adopt the minutes dated September 19, 2012 as submitted, was made by Mbr. Korn,
seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

Motion to adopt the minutes dated October 3, 2012 as submitted, was made by Mbr. Korn,
seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

Motion to adopt the minutes dated October 17, 2012 as submitted, was made by Mbr. Korn,
seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

Motion to adopt the minutes dated November 7, 2012 as submitted, was made by Mbr. Korn,
seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay vouchers submitted by Hatch Mott Macdonald (dated October 26, 2012 and
November 20, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by
Mbr. Richter and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Denzler & Associates (dated November 6, 2012) subject
to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Richter and unanimously
approved by all Members present and able to vote.

Motion to pay vouchers submitted by Larry I. Weiner, (dated November 13, 2012 and November
20, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Richter
and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by The Buzak Law Group, (dated November 8, 2012) subject
to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Richter and unanimously
approved by all Members present and able to vote.

RESOLUTIONS

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

A motion was made to adopt the resolution by Mbr. Spiess, seconded by Mbr. Richter and
unanimously approved by all members able to vote.

Roll Call: Ayes – Spiess, Richter, Korn, Murphy
A motion was made to adopt the resolution by Mbr. Spiess, seconded by Mbr. Richter and unanimously approved by all members able to vote.

Roll Call: Ayes – Spiess, Richter, Korn, Murphy

Chr. Murphy referenced that there was some points for interpretation on the above referenced resolution that were open for discussion. One of the items related to storm water (Item #13) oil/grit separation. Jason Rittie, Esq. (Einhorn & Harris) represented the applicant and was present. Mr. Rittie stated that his notes and recollection reflect that the applicant did not agree to compliance with this item. This was a comment (#6) in John Ruschke, PE’s reported dated July 24, 2012. Marc Walker, PE testified that based upon (1) the site existing for many years and (2) improvements not being a major project that oil/grit separation was not going to be implemented. John Ruschke, PE agreed that this was one of his recommendations and that the applicant did not agree. However, Mr. Ruschke did not recall the deliberation of the board.

Chr. Murphy opened to the board for questions.

Mbr. Korn inquired if this was a Township ordinance or State regulation. John Ruschke, PE stated that there was a State mandate that the Township adopt the storm water regulations that indicate disturbance of over one acre of impervious coverage in 2007. Originally this was NJDEP but now it is also the Township of Denville. Only mandated on new construction but not on renovations. Mr. Ruschke confirmed that this is a water quality device and a good recommendation. Mr. Rittie stated that it would have been beneficial to have these objections at the public hearing and he was not prepared to agree upon anything without speaking with his client and engineer. Stating that the recommendation of water quality is not appropriate for an application of this size.

Mbr. Richter had no comments.

Mbr. Spiess advised that he was not present for the application. Commented that the board has a responsibility to make an applicant become compliant when they make an application before the board. Stating that water quality is an important issue, the application is not de minimis in nature and that he would be for having this condition remain in the resolution.

Mbr. Murphy stated that based upon the size of the land and the flooding frequency he would also be inclined to have the condition remain in the resolution. Suggesting that the applicant be given an opportunity to present their engineer before the board adopts the resolution. Mbr. Murphy confirmed to the members of the public that this would be carried to the January 16, 2012 public hearing.

PUBLIC HEARINGS

BA 12-24: Panera, LLC
3056 Route 10
Block 21203, Lots 1

Paul A. Conciatori, Esq. of Price, Meese, Shulman, & D’Arminio, P.C. (50 Tice Boulevard, Suite 380, Woodcliff Lake) represented the applicant, Panera, LLC. Applicant is proposing to construct awnings requiring bulk variance relief for signs in the business district. There is already an existing bakery café at this Shoppes at Union Hill location. The existing solid colored awnings would be replaced with new awnings that have a wheat pattern on them. Based upon the ordinance, the wheat picture is interpreted as a sign, requiring this variance. The square footage has increased slightly but the size of the awning will remain the same. This is due to having one awning instead of several awnings with gaps between them. No other changes to the site.

Bill Denzler, PP confirmed that the three awnings combined with the Panera sign above would total four signs where only three are permitted.

Justin Auciello, PP (125 Half Mile Road, Suite 200, Red Bank) was present, sworn under oath and accepted by the board as an expert witness. Stating that the application is straightforward in nature. Although there is no lettering, the wheat pattern design is construed as a sign within the ordinance. The awning is interpreted as a sign. Other tenants have similar awnings. It is aesthetically pleasing and consistent in appearance. Lifestyle center, consistent with the planning attributes of Denville and has no detriment to the surrounding area.

Chr. Murphy opened to the board professionals.

Bill Denzler inquired about the impact to the surrounding area. Mr. Auciello stated that the awning is consistent with the surrounding area both in feel and appearance.

Chr. Murphy opened to the board members.

Mbr. Korn inquired about the sign motif and being less than 10% area, Bill Denzler confirmed.

Mbr. Korn inquired of the board attorney regarding Panera being a tenant. Larry I. Weiner stated that Mark Pottschmitt signed as the owner of the building. The applicant agreed that a letter of
consent was obtained from the landlord. Mbr. Korn indicated that he was in favor of the application.
Mbr. Richter had no comments or questions.
Mbr. Spiess commented favorably on the awning appearance and not having gaps when it rains.
Chr. Murphy inquired about the color of the façade. Bill Denzler confirmed that the sage color was building design and had no impact on the signage. Chr. Murphy had no problems with the 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. Richter, and unanimously approved by a majority of members eligible to vote.

Roll Call: Ayes – Spiess, Richter, Korn, Murphy

OLD BUSINESS
Chr. Murphy referenced an administrative change to the Kuo-Tung Liang & Xiaohan Zhou resolution (25 Lake Road) that was adopted on October 17, 2012. Regarding the inclusion or omission of the front porch relief. The porch was part of the original application and is no further side yard setback than the rest of the home. Larry I. Weiner stated that this is the boards own interpretation of what was intended in the resolution for future reference. All board members present were in agreement that the porch was included.

Chr. Murphy presented a plaque to Bill Denzler in recognition of his twelve years of service to the zoning board. Larry I. Weiner spoke to Bill’s positive attributes and ability to remain uninfluenced. Larry Weiner wished Bill Denzler the best of luck in his future endeavors on behalf of the board. On behalf of the board, John Murphy thanked Bill Denzler for his service.

NEW BUSINESS
Dave Pateman of 40 St. Mary’s Place was present and wanted to speak to the interpretation of the zoning law. Mr. Pateman stated our zoning inspector requested he remove his ‘pet’ chickens. Larry Weiner, Esq. advised Mr. Pateman he has a right to speak but that he would need to file an application. Stating that he can refer to a land use attorney for the interpretation of the law and that he may wish to request a variance.

Motion to Adjourn.

Denean Probasco, Board Secretary Date Approved: January 2, 2013