The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, February 19, 2014. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:03 P.M. Chairperson Spiess presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL: Present: John Murphy, Roger Spiess, Sally Dankos, Arthur Korn, Frank Passucci, Tim Fisher, Susan Richter
Absent: James Rodimer, Tom Dolan
Prof. Present: Larry Weiner, Esq., Jason Kasler, AICP, PP, John Ruschke, PE

MINUTES:
January 8, 2014
Motion to adopt the minutes as submitted, was made by Mbr. Murphy, 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 January 28, 2014) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Fisher and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald, (dated December 3, 2013 and January 28, 2014) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Fisher and unanimously approved by all Members present and able to vote.

RESOLUTIONS
BA 13-23 Micah & Ashley D'Orazio
9 Thompson Road
Block 31402, Lot 12
A motion was made to adopt the resolution of Approval by Mbr. Murphy, seconded by Mbr. Dankos and unanimously approved by all members able to vote.
Roll Call: Ayes – Murphy, Dankos, Korn, Passucci, Spiess

BA 13-14 Herman & Donna Zablatzky
12 Beaver Brook Lane
Block 70101, Lot 18
A motion was made to adopt the resolution of Approval by Mbr. Murphy, seconded by Mbr. Dankos and unanimously approved by all members able to vote.
Roll Call: Ayes – Murphy, Dankos, Korn, Passucci, Spiess

BA 13-26 Carlyon & Gill, LLC
12 Wildwood Terrace
Block 60203, Lot 128 & 131
A motion was made to adopt the resolution of Approval by Mbr. Murphy, seconded by Mbr. Dankos and unanimously approved by all members able to vote.
Roll Call: Ayes – Murphy, Dankos, Korn, Passucci, Spiess

PUBLIC HEARINGS
BA 13-25 Ed & Michele LaBruno
115 Hillcrest Drive
Block 70501, Lot 493
The applicant, Ed LaBruno (115 Hillcrest Drive) was present, sworn under oath along with his contractor, Bob Foley. Applicant is seeking to construct an addition requiring ‘C’ bulk variance relief for rear and side yard setbacks. The proposed rear yard setback of 49.27’ where 100’ is
required and the proposed 47.64’ side yard setback where 50’ is required. This is the first public hearing on this application. It was carried from the February 5, 2014 meeting. Mr. LaBruno testified to a proposed addition on their existing dwelling for an in-law suite. Proposed addition would require expansion of the existing kitchen and an addition of a living room, bedroom and bathroom to accommodate an in-law suite.

Chr. Spiess opened to the board professionals.

John Ruschke, PE spoke to his engineering report dated January 31, 2014. Stated the key points of requiring health department approval. There was a brief exchange regarding an implied easement to the township, case law and referencing in the resolution. Mbr. Korn commented on future widening of the roadway. The Township Engineer stated that it would be impractical to widen.

Jason Kasler, PP had no questions or comments.

Mbr. Korn asked if the applicant would be agreeable to meeting the requirements and approval of the Township Engineer as it relates to stormwater on the property. The applicant agreed. The applicant confirmed they are working with the health department on the septic requirements. There is no opening between the existing home and addition intentionally to provide privacy. Mbr. Richter inquired about access to the basement and crawl space. Bob Foley responded that there will be a double access door to basement. The crawl space and basement are interconnected and one area, divided by a low height partition.

Mbr. Passucci had no questions and commented on being satisfied. Stating it was not a mother/daughter without an additional kitchen. Mbr. Fisher had no questions and commented positively on the application. Mbr. Dankos had no questions and commented it was a nice plan. Mbr. Murphy stated his questions had been asked and answered.

Chr. Spiess stated he also had no questions.

Chr. Spiess asked for members of the public and seeing none, closed the public portion of the meeting.

Conditions would include that the home remain a single one family integrated home, soil erosion and sediment control measures, septic design to meet with health department approval and onsite stormwater management to meet the approval of the Township Engineer.

A motion to approve this application, with conditions, was made by Mbr. Dankos, seconded by Mbr. Murphy, and unanimously approved by remaining board members eligible to vote.

Roll Call: Ayes Dankos, Murphy, Korn, Passucci, Richter, Fisher, Spiess

BA 13-27 Bryan & Jennifer McMahon 2 Huron Place Block 40516, Lot 28

The applicant, Bryan McMahon (2 Huron Place) was present and sworn under oath along with his father, who will be the builder, Arthur McMahon (24 Fox Hill Road, Branchville). Bryan McMahon spoke to the existing non-conforming setbacks of the home. The proposed construction will ‘C’ bulk variance relief of a covered front porch for front yard setback of 22’ where 25’ is required, of a rear deck for rear yard setback of 15’ where 35’ is required and of a rear balcony for rear yard setback of 24’ where 35’ is required.

Chr. Spiess opened to the board professionals.

Jason Kasler, PP stated there was an oversight in his planning reports and inquired about the setback for the covered porch. Stating that the 22.1” FYS relief did not include the steps and recommended amending the application to a FYS of 19.1”.

John Ruschke, PE had no comments and stated that the site work was minimal.

Chr. Spiess opened to the board members.

Mbr. Murphy referenced the height as it relates to the downhill neighbors and spoke to the lighting being of a down lighting type for the neighbors. Bryan McMahon agreed to the lighting recommendation. Mbr. Dankos had no questions. Mbr. Fisher had no questions and liked the plan.

Mbr. Passucci thought it was a good plan and wished the applicant good luck. Mbr. Richter asked if the lighting could be the same on the front porch. Bryan McMahon agreed. Mbr. Korn inquired about the bedrooms. The applicant stated that there would be four bedrooms. Chr. Spiess opened to the public and seeing none, closed the public portion of the meeting.

A motion to approve this application, as amended, was made by Mbr. Korn, seconded by Mbr. Murphy, and unanimously approved by remaining board members eligible to vote.

Roll Call: Ayes Korn, Murphy, Passucci, Dankos, Richter, Fisher, Spiess
The applicants, Darlene and Christopher Golinski (41 Warren Trail) were present and sworn under oath. Christopher Golinski testified to the proposed modification of the existing entrance to the home being presently awkward. Proposed construction would require ‘C’ bulk variance relief of 22.9’ front yard setback where 30’ is required and 7.6’ side yard setback where 15’ is required. The existing porch would be removed and replaced. The proposed porch would be no closer to the existing neighbor but would be closer to the street.

Jason Kasler, PP commented on amending the setback to 20’ to accommodate the third step extending from the front porch.

John Ruschke, PE had no questions and stated the plan looked beautiful.

Chr. Spiess opened to the board members.

Mbr. Murphy had no questions.
Mbr. Dankos had no questions and commented it was a great plan.
Mbr. Fisher had no questions or comments.
Mbr. Passucci had no questions and wished the applicant good luck.
Mbr. Richter had no questions and commented it was nice.
Mbr. Korn commented on it being nice.
Chr. Spiess concurred.

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

A motion to approve this application, as amended, was made by Mbr. Dankos, seconded by Mbr. Murphy, and unanimously approved by remaining board members eligible to vote.

Roll Call: Ayes Dankos, Murphy, Korn, Passucci, Richter, Fisher, Spiess

The applicant, Robert Mariani (3 Roy Street, Rockaway) and Fred Stewart, PE and Land Surveyor of Stewart Surveying & Engineering, LLC (148 East Main Street, Rockaway) were both present and sworn under oath. Mr. Stewart was accepted as a professional witness.

James Pryor, Esq. of Bell Shivas & Fasolo, PC (150 Mineral Springs Drive, Rockaway) represented the applicant. Mr. Pryor stated that there was a home previously on the property, the property has steep slopes and that the proposed new dwelling would be on the least sloped portion of the property.

Robert Mariani confirmed that he was not the owner of the property but was authorized to make the variance application. Mr. Mariani testified to the original single family dwelling having been removed after a fire. The proposed dwelling would have three bedrooms.

Mr. Pryor referenced the comments sheet from the health department with email attachment from the Township’s Health Officer dated September 3, 2013 referencing five requirements. Mr. Mariani stated that the septic would be for a three bedroom home and that there is no public sewer available in the surrounding area. Mr. Mariani confirmed that the prior cesspool would need to be decommissioned in compliance with all regulations. The applicant further confirmed his understanding that any board approval would be contingent upon the applicant submitting plans designed by a professional engineer and that the septic design would need to comply with all applicable regulations.

James Pryor, Esq. referenced the Hatch Mott MacDonald engineering report dated January 17, 2014. Mr. Pryor entered Exhibit A-1 Central Jersey Title Report dated October 12, 2004 to respond to legal access of the property.

Chr. Spiess opened to the board professionals.

John Ruschke, PE had none at this time.
Jason Kasler, PP inquired about the attic space height. Mr. Mariani stated it was about 8’. Mr. Kasler referenced a closet in the attic and inquired if there were plans to make it a future bedroom. Mr. Mariani stated no.
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Mbr. Korn inquired about the water source and the interior size of the home. Mr. Mariani stated it was a well and that the home was approximately 2,800 without the basement. Mr. Pryor indicated that it was on the plans. Mbr. Korn commented that the proposed home would be considerably larger than the neighboring homes.

Mbr. Richter had no comments or questions.

Mbr. Passucci commented on the size being large and not necessarily in keeping with the neighborhood.

Mbr. Dankos commented that the proposed seemed to be larger than the dwelling originally on the property, that it was close to the neighbor and a beautiful plan.

Mbr. Murphy referenced a prior application in 2004 and the prior engineer’s proposal for a serpentine driveway. Voiced serious concerns with what was before the board. Commenting that he doesn’t believe the lot is unbuildable but wanted to see whatever is built to be built safely. Mbr. Murphy inquired about removal of an easement on the property. Mr. Mariani stated this was not the case. Mbr. Murphy voiced interest in hearing Mr. Stewart’s testimony.

Chr. Spiess agreed with Mbr. Murphy’s concerns to the proximity to the neighbor’s home.

Fred Stewart, PE referenced the easement (Exhibit A-1) ending at the boundary line of the applicant’s property. Referencing the shaded tree line not being different than what was there originally. Mr. Stewart spoke to the subject property being sloped and referenced the flattest area being where the dwelling is proposed. A two-car garage with a two-car driveway is proposed. Minor grading is proposed around the house. No further disturbance of the slopes are proposed. Proposed septic, drywell and existing well. Mr. Stewart stated that a home could not be built on this property without triggering variances. Referenced HMM report of January 17th and the need for a second dry well for stormwater management. Mr. Stewart responded that due to the increase of 2,000 sq. ft. of increased impervious coverage that HMM is recommending a larger drywell system. Mr. Stewart stated that the dry well is at 50’ and 50’ from the septic. Another dry well may be possible in the rear. The applicant would agree to this as a condition of approval. The applicant agreed with the other items in the engineering report. Mr. Stewart provided the percentage of disturbance in the various steep slope categories for the 13,459 sq. ft. of area. Disturbance of 1,417 sq. ft. in the 15-99% category, 710 sq. ft. in the 20-24.99% category, 788 sq. ft. in the 25-29.99% category and 2,401 sq. ft. in the 30% or greater category.

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

John Ruschke, PE took no exception to the applicant’s comments to the engineering report. Referenced that if the board was agreeable, the applicant would need to obtain approval from the fire marshal on the water holding tank. Referenced the configuration of the home and suggested possible shifting, orientation or rotation of the proposed dwelling to mitigate the setbacks and requested relief. Possible options of the disposal bed locations, additional landscape buffering between the homes and if the home size can be reduced. Recommended options and alternatives be considered.

Jason Kasler, PP inquired if there would be professional planning testimony. Mr. Pryor stated that the hardships are self-evident and the applicant was not having a planner testify. Mr. Kasler voiced extreme concern for the 10.2’ side yard setback, stating it not being sufficient.

Larry Wiener, Esq. spoke to the applicant providing more testimony to substantiate the size of the home along with the constraints of the property for the board. Stating that from a planning standpoint the zone contemplates large homes. Referenced that during resale homeowners have to make a representation that all work was performed with permits. The applicant should revisit the application tweaking the application and looking at the zone and the lot.

Mbr. Murphy agreed with the commentary from the board. Concerned with the proximity. Read a section of the easement, asked Mr. Stewart to respond. James Pryor, Esq. stated Mr. Stewart wasn’t involved in the preparation and would require time to familiarize himself to respond. Mbr. Murphy inquired about other possibilities of the swapping the location of the home and the septic. Stating it would become more acceptable.

Mbr. Dankos agreed with Mbr. Murphy, voicing concern with the proximity and desire to shift the location of the home.

Mbr. Passucci commented on having concern to proposed proximity to the property line. Mbr. Korn referenced the easement from one property owner to adjacent property owner. Mr. Pryor stated the applicant would be taking the boards comments under consideration. Mbr. Korn further commented on the location of the home being all wrong and the cesspool being filled to avoid future collapse.

Mbr. Richter commented that she would be unable to pass the application with the issues that have been raised.

Chr. Spiess stated that his concerns have already been voiced.

Chr. Spiess announced a brief break at 8:45 p.m. and resumed at 8:53 p.m.

James Pryor, Esq. stated that he had conferred with the applicant and they wish to adjourn for revisions.
Chr. Spiess announced that the public hearing would be carried to March 19, 2014 without further notice. Larry Weiner, Esq. inquired about an extension of time. The applicant agreed that an extension of time would be granted through April 30, 2014.

Mbr. Korn requested a copy of the title search. The board attorney advised the board that the title search should be read with caution.

OLD BUSINESS
Chr. Spiess referenced the Resolution Limitations Language & Memo from Zoning Officer, Sal Poli. Mbr. Korn commented on the memo from Sal Poli not addressing his concerns. Stating that the concern is more for the industrial than for the residential homeowners.
Mbr. Murphy referenced the conversation with Sal Poli. Agreed with points one and two made by Sal Poli. Stating a three year cap would have a minimal impact to residential dwellings. Believes that point three contradicts one and two. Stating that they have to look at the resolution language anyway. Commenting that a three year is still reasonable. Larry Weiner, Esq. read a clause to the board for future boiler plate.

A motion to approve this limitation language in future resolutions, was made by Mbr. Murphy, seconded by Mbr. Fisher and unanimously approved by remaining board members eligible to vote.

Roll Call: Ayes - Murphy, Fisher, Korn, Passucci, Dankos, Richter, Spiess

NEW BUSINESS
Chr. Spiess referenced the Mayor’s Bus Tour and asked for property suggestions. Mbr. Murphy stated that the Tri-plex and TD Bank were successes and on the negative side, the Hillcrest parking deck was unsightly and the Fred Lash homes on Seneca Trail were inconsistent with current standards on the lake. Mbr. Dankos referenced a large home on North Shore. The Rehabilitation Zone was also suggested.

Chr. Spiess referenced the annual report and asked for suggestions. Mbr. Korn referenced the comments from last year’s annual report. Rockaway River Country Club zoning was also referenced. There was some discussion regarding making a recommendation that the governing body consider a zoning study on controlling the bulk and size of single family dwellings. John Ruschke spoke to looking into stormwater regulations and future recommendations. Jason Kasler referenced parking, signing and the checklist.

Larry Wiener, Esq. provided a summary on the Jerman v. ZBOA and Township of Manchester case that was distributed. Stating that it’s an embarrassment and reminding the board to be cautious in all decisions that are made. Regardless of the decision to approve or deny, fairness to all should be demonstrated. Use common sense and courtesy.

Chr. Spiess referenced Regular Member Dolan has resigned. Stating that the board should recommend any interested parties forward their resume to the governing body.

ADJOURNMENT

Motion to Adjourn at 9:36 pm.

Denean Probasco, Board Secretary Date Approved: March 19, 2014