The Board of Adjustment of the Township of Denville held its scheduled reorganization meeting on Wednesday, October 7, 2015. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:02 PM. Chr. Spiess presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL:
Present: Roger Spiess, Frank Passucci, Arthur Korn, Tim Fisher, John Murphy, James Rodimer, Susan Richter, Brian Bergen
Absent: Sally Dankos
Prof. Present: Larry Weiner, Esq.,

MINUTES:
September 16, 2015
Motion to adopt the minutes as submitted was made by Mbr. Fisher, seconded by Mbr. Passucci and unanimously approved by all members able to vote.

PURCHASING:
Motion to pay vouchers submitted by Kasler Associates, PA (dated September 30, 2015) subject to the availability of funds, was made by Mbr. Fisher, seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald (dated August 26, 2015) subject to the availability of funds, was made by Mbr. Fisher, seconded by Mbr. Richter and unanimously approved by all Members present and able to vote.

RESOLUTIONS

BA 15-23 Anthony & Cheryl Ferriero
15 Cedar Lake East
Block 60906, Lot 3

A motion to adopt the resolution of approval was made by Mbr. Murphy, seconded by Mbr. Passucci and unanimously approved by all members able to vote.

ROLL CALL: Ayes – Murphy, Passucci, Korn, Fisher

PUBLIC HEARINGS

BA 15-13 James & Wendy MacLean
23 Lake Road
Block 60508, Lot 45

Applicant is seeking to construct a deck requiring 'C' bulk variance relief for front, rear and side yard setbacks. The public hearing for this application was carried from September 2, 2015 to provide legal notice with the last public hearing held on June 3, 2015.

The applicant, James MacLean was present, sworn under oath and read a statement to the board. Recounting the history and prior application and associated conditional approval. The adjacent neighbor is not interested in granting a maintenance easement. The applicant is returning to the board seeking a 2’ side yard setback for the deck. Referenced a platform deck that goes to the existing fence. Mr. MacLean referenced the positive criteria and stated there was no negative criteria.

Larry I. Weiner, Esq. spoke to the survey as it relates to the existing fence being on the neighboring property. Stating that the applicant's property is grossly undersized and agreeing that there is a hardship due to the size of the property. For the record, the board attorney stated that the township's failure to notice work was done without a permit, does not constitute an
October 7, 2015

approval. Re-stating that the deck appears to be on the neighbor’s property. Mr. MacLean stated he didn’t know how to read the survey that was provided when he purchased the home. Stating as a first time property owner he doesn’t know where his property line is.

James MacLean continued with his statement, testifying that the proposed is to remove a portion of the deck to remove the situation. Further stating that this will create a hazardous condition for his children to fall off the deck. Stating this existed when he purchased the home in 2005.

The board attorney advised the applicant as a result of this application, they would be required to provide a survey after the work has been done.

Chr. Spiess opened to the board members.

Mbr. Rodimer inquired about the proposed 2’ setback. The applicant confirmed he was proposing a 2’ setback from the common property boundary line between their property and the adjacent property. The board attorney advised the applicant that the portion of the deck to be cut off may end up being more than 2’ in order to be 2’ off the common boundary. Mr. MacLean stated his understanding and commented that there is a ‘Letter of the Law’ versus the ‘Spirit of the Law’ and it’s sad.

Mbr. Korn inquired about the purchase of the home 10 years ago and if the applicant had legal representation. Mr. MacLean stated that he was unaware this situation existed because he was a first time home owner.

Mbr. Passucci interjected and stated that without a maintenance agreement he could not support the application.

Mbr. Korn continued regarding installation of a fence/guardrail. Chr. Spiess confirmed that the applicant would have to comply with code. Further commenting that the applicant will want to install the necessary guard rails for the safety of his children.

Mbr. Fisher inquired about the maintenance easement and wanted to hear from the neighbor. Mbr. Richter had no questions.

Mbr. Murphy stated the applicant finds himself in an unfortunate position. Applicant may not have known but should have found out. As to the ‘Letter of the Law’ referenced by the applicant, Mbr. Murphy commented that the board is trying to make an accommodation. Pointing out that the ‘Letter of the Law’ would result in a much smaller home and deck. Stating while the board members would not agree to a 0’ setback that the board makes ‘adjustments’. Mbr. Murphy further stated that the 2’ setback may end up being 4’.

Mbr. Bergen commented that the applicant has done what the board has asked him to do. Chr. Spiess commented on the neighbors working together for one fence on the property line instead of two fences back to back.

Larry I. Weiner, Esq. spoke to the comments from Sal Poli regarding the construction of the deck being unsafe and not to be used. The applicant confirmed receipt of the letter and his understanding.

Chr. Spiess opened to members of the public.

Xiaohan ‘Irene’ Zhou (25 Lake Road) was present and sworn under oath. Referenced the June 3, 2015 meeting minutes. Responded to Mbr. Fisher’s question regarding the maintenance easement. Explaining that the maintenance easement would be costly and not advisable by the professionals consulted.

Patrick Brandeal (Boonton Township) was present and sworn under oath. Mr. Brandeal is a friend of applicant’s and not a licensed surveyor. Mr. Brandeal stated he has experience with these types of matters. Larry I. Weiner, Esq. thanked Mr. Brandeal for his willingness to help and stated that in order to follow the rules of order, he would not be able to testify.

Xiaohan ‘Irene’ Zhou continued with the reasons for wanting to install a 6’ privacy fence. The board attorney advised Ms. Zhou that this wasn’t intended to be a negotiation and that if she has an objection to the proximity of the deck to her home, she should say so. Ms. Zhou stated that it’s no longer in negotiation and they have agreed to split the cost of a new fence with the neighbor. The board attorney explained that the fence could not be a condition of approval. Irene Zhou requested a brief break to speak with her neighbor. Before doing so, Mbr. Murphy explained that this is the purpose of the title survey when you purchase a home.

Chr. Spiess announced a break at 8:06 so that the Mr. MacLean and Ms. Zhou could speak privately. The meeting re-commenced at 8:12 pm.

Ms. Zhou stated she was not opposed to the proposed setback.

Chr. Spiess referenced the 30 day condition suggested by Sal Poli, Zoning and Construction Official.

Chr. Spiess asked for other members of the public and seeing none, closed the public portion of the hearing.
A motion to approve this application with conditions, was made by Mbr. Rodimer, seconded by Mbr. Korn and approved by a majority of members able to vote.

ROLL CALL:  Ayes – Rodimer, Korn, Richter, Murphy, Fisher, Spiess
            Nays – Passucci

BA 15-17  William & Laura Hussa
          70 Birch Run Avenue
          Block 31005, Lot 5

Gerald Kelly, Esq. represented the applicants the Hussa and the Steven and Donna Ferlenza. The applicant is seeking ex post facto relief for the construction of a pool house, gazebo, hot tub and shed requiring ‘C’ bulk variance relief for excess of two accessory structures along with rear and side yard setbacks.

Last public hearing held on September 2, 2015. Mr. Kelly requested adjournment so that the applicant could explore arrangements with the Estling Lake Corporation. It was announced to members of the public that the public hearing for this application would be carried to December 2, 2015 without further notice.

BA 15-25  Christopher McGugart
          38 Memory Lane
          Block 31107, Lot 1

The applicant, Chris McGugart (38 Memory Lane) was present and sworn under oath. Applicant is seeking to construct a 12’ x 8’ shed in the rear corner of his yard, requiring ‘C’ bulk variance relief for rear and side yard setbacks. Mr. McGugart amended his application to a 2’ rear and side yard setbacks. A perpetual 5’ utilities easement was referenced by the applicant. The board attorney recommended that the applicant dial 811.

Chr. Spiess opened to the board members.

Mbr. Bergen had no questions.
Mbr. Murphy commented on being opposed to 0’ setbacks and voiced being pleased that the applicant had amended the application. Stating he would look favorably upon the application.
Mbr. Richter inquired about electric. Applicant stated there would be none.
Mbr. Passucci commented on the roof slant as it relates to an eave and water runoff. The applicant stated the fence is 2’ from the property line, so if the shed is 2’ off the fence, it would be 4’.
Larry I. Weiner, Esq. stated in case the fence is removed in the future, any resolution would be written with the eave measurement for setback.
Mbr. Fisher inquired about the foundation. Applicant stated it would be gravel base. Mbr. Fisher commented he had no problem with the application.
Mbr. Korn had no questions.
Mbr. Rodimer had no questions.
Chr. Spiess also had none.

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

The conditions include but not limited to; the measurement to the eaves and to call 811 for utilities prior to construction.

A motion to approve this application with conditions, was made by Mbr. Murphy, seconded by Mbr. Richter and unanimously approved by all members able to vote.

ROLL CALL:  Ayes – Murphy, Richter, Passucci, Korn, Rodimer, Fisher, Spiess

BA 15-26  Dan & Barbara Worts
          18 Spring Road
          Block 61401, 543

Applicant is seeking to construct a shed requiring ‘C’ bulk variance relief for side yard setback and accessory structure in front yard.

The applicants Barbara Worts and Daniel Worts (18 Spring Road) were present and sworn under oath. Dan Worts spoke to relocating the current shed from side yard approximately 5-7’ forward. Stating the newly constructed two car garage cuts into the side yard. Leaving the shed in the only remaining side yard. Relocating the shed would allow access by vehicles to the rear of the property, better use of recreational area and removed storage of gasoline.

Chr. Spiess opened the public hearing to members of the board.

Mbr. Rodimer commented on the property and had no questions.
Mbr. Korn commented on being on the property and inquired about the dimensions of the shed. Applicant confirmed that the shed would be 5’ off all the property lines. No electric or plumbing. Agreed to it no electric or plumbing as a condition of any approval.
Mbr. Fisher inquired about shrubbery. Applicant stated shrubbery exists. Foundation would be crushed stone. Had no further questions.
Mbr. Passucci inquired about the fenced area. The applicant testified to putting the fence back up in its existing location after the shed is moved.
Mbr. Bergen had none.
Mbr. Murphy commented on the pavement, fence and basketball court. Mr. Worts stated that there is a wide gate for access and in the case of emergency, the fence could be removed.
Mbr. Richter had none.
Chr. Spiess inquired about the garbage enclosure. Commenting being fine on the 5’ setback but wasn’t sure about the shed in the front yard.

Chr. Spiess opened the public hearing to members of the public.
Rose Danscecs (14 Spring Road) was present and sworn under oath. Mr. Danscecs is the adjoining property owner. Voiced concern regarding tree limbs and vegetation, asking nothing be removed. Mr. Weiner, Esq. explained that the neighbors are permitted to remove branches that fall on their side of the property.

Stanton T. VanWinkle, III (69 West Glen Road) catty corner neighbor was present, sworn under oath and referenced concerns of an existing aquifer and future buildings.

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

Chr. Spiess opened to the board professionals.
Mbr. Bergen commented on the compelling concern of the drainage. Stated he won’t be voting tonight but would be in favor of the application.
Mbr. Murphy referenced the trees and the berm that would keep anything on his property and prevent it from going into the catch basin.

Conditions of approval included, but not limited to, no utilities, minimum 5’ side yard setback, minimum 15’ front yard setback, use only as a residential accessory structure and no commercial use of any kind.

A motion to approve this application with conditions, was made by Mbr. Korn, seconded by Mbr. Murphy and unanimously approved by a majority of members able to vote.

ROLL CALL:  Ayes – Korn, Murphy, Richter, Passucci, Rodimer, Fisher
Nays - Spiess

OLD BUSINESS
Secretary Probasco referenced Mbr. Murphy’s inquiry on a Diamond Spring Road property from the last meeting.  Mbr. Murphy added that in cases of a knock-down rebuild, it is at the discretion of the construction official and zoning officer, which both are Sal. Not necessarily a best practice but understands the tough spot it places upon Sal Poli.

NEW BUSINESS
As the Liaison for the Planning Board, Mbr. Korn commented there are currently no larger projects to report on.

ADJOURNMENT
Motion to Adjourn at 9:02 PM.

Denean Probasco, Board Secretary Date Approved: October 21, 2015