TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MEETING MINUTES

February 3, 2016

The Board of Adjustment of the Township of Denville held its scheduled reorganization meeting on Wednesday, February 3, 2016. The meeting was held in the Municipal Building, 1 St. Mary’s Place and commenced at 7:02 PM. Chr. Dankos presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL:
Present: Brian Bergen, Adam Caravaglia, Sally Dankos, Susan Richter, Jim Rodimer, Dan Roman, Roger Spiess
Absent: Tim Fisher, Dan Napolitano
Prof. Present: Larry Weiner, Esq., John Ruschke, PE, Jason Kasler, AICP, PP

MINUTES
November 4, 2015
A motion to approve this application was made by Mbr. Richter, seconded by Mbr. Bergen and unanimously approved by all members able to vote.
ROLL CALL: Ayes – Richter, Bergen, Spiess, Dankos

January 6, 2016
A motion to approve this application was made by Mbr. Rodimer, seconded by Mbr. Richter and unanimously approved by all members able to vote.
ROLL CALL: Ayes – Rodimer, Richter, Bergen, Spiess, Dankos

January 20, 2016
A motion to approve this application was made by Mbr. Richter, seconded by Mbr. Spiess and unanimously approved by all members able to vote.
ROLL CALL: Ayes – Richter, Spiess, Bergen, Dankos

PURCHASING:
Motion to pay vouchers submitted by Larry I. Weiner, Esq. (dated January 12, 2016) subject to the availability of funds, was made by Mbr. Richter, seconded by Mbr. Bergen and unanimously approved by all Members present and able to vote.

RESOLUTIONS
BA 15-21 P & I Holdings Co., Inc.
190 Route 46
Block 50202, Lot 5
A motion to approve this application was made by Mbr. Rodimer, seconded by Mbr. Richter and unanimously approved by all members able to vote.
ROLL CALL: Ayes – Rodimer, Richter, Dankos

PUBLIC HEARINGS
BA 15-30 Edward & Margaret Galuska
9 Hilltop Trail
Block 40811, Lot 502

BA 15-31 John & Jamie McMahon
41 Shawnee Trail
Block 40702, Lot 816

BA 15-33 Eduardo D’Iapico
71 Sunset Trail
Block 41103, Lot 289

Chr. Dankos announced that the public hearings for these applications would not be heard tonight. All three public hearings were carried to February 17, 2016. BA 15-31: John & Jamie McMahon was carried without further notice to February 17, 2016. The applications BA 15-30: Edward & Margaret Galuska and BA 15-34: Eduardo D’Iapico were carried to February 17, 2016 after perfection of legal notice.
Robert Thomas, Esq. of Dolan & Dolan requested the agenda be re-sequenced and requested the Cedar Lake West Property Owners Association appeal matter be heard first. David Brady, Esq. of Brady & Correale, LLP responded to indicate why the sequence should remain the same. Larry I. Weiner, Esq. noted Mr. Thomas' objection and stated he has advised the board to continue with hearing the Thomas J. Carlyon matter first.

(One Legal Lane, 53 Spring Street, P.O. Box D, Newton) represented Cedar Lake Property Owners, Inc.

David Brady, Esq. of Brady & Correale, LLP (Post Office Box 2136, Morristown) represented the applicant, Thomas J. Carlyon.

Robert Thomas, Esq. of Dolan & Dolan (One Legal Lane, 53 Spring Street, P.O. Box D, Newton) represented Cedar Lake Property Owners, Inc.

Richard Sweeney, Esq. of Laddey, Clark & Ryan (60 Blue Heron Road, Sparta) represented Ken & Marilyn Kuntz-Spencer of 17 Cedar Lake West.

Thomas J. Carlyon (17 Woodland Road) was present, sworn under oath and testified to the 10' x 18' structure being on the property when it was purchased. Mr. Brady referenced Exhibit A-6 and Mr. Carlyon confirmed to the structure in the photograph having an 8’ x 10’ porch with six steps and railings. Stated this was his lakefront living room. Spoke to the structure, intent of use in February 2015. Mr. Carlyon spoke to obtaining a permit from the building department to add a second level to the structure. Existing foundation was substandard by today's standards. Reinforced the existing foundation with tubes/piers and the finished floor is within inches of the original foundation. The existing foundation was straightened in locations where gaps existed between the wood and the existing block. The 100 Amp electrical service existed and was not removed. Remediation of the structure to avoid mold and rot was performed by adding two levels of block in the rear. The height of the finished floor was not raised. Rat slab of 1.5-2" of concrete was poured to keep moisture out of the 16" crawl space. Testified that the footprint of the building did not increase or decrease. Work was stopped in spring of 2015. The new plan, proposes to remove the new floor and roof pitch and to return the structure to maintain the historical use of the structure as a cabana/boathouse. No intention of using as residence. Mr. Weiner inquired about the date of Exhibit A-6. Thomas Carlyon confirmed that the photo is exactly what the structure looked like upon purchase. Spoke to two structures in Exhibit A-6 which came from website book by Mr. Pryor, previous president of Cedar Lake Property Owners Association.

Chr. Dankos opened to the professionals.

John Ruschke, PE had none.

Jason Kasler, PP referenced the structure size becoming slightly smaller. Thomas Carlyon responded to the removal of several layers of siding on the structure and the 3-4" reduction of the exterior size. No further questions.

Chr. Dankos opened to the board members.

Mrs. Caravaglia, Spiess, Richter and Roman had none at this time.

Mbr. Rodimer had one regarding the historical photograph. Thomas Carlyon stated the one next to it was same width but not as deep.

Mbr. Bergen inquired about the removal of everything above the foundation. Mr. Carlyon responded not at one time. Framing members were replaced on the original 1915 structure but the foundation, porch, porch foundation and electrical service were not replaced. Mbr. Bergen inquired about the deed. Mr. Brady responded.

Mbr. Dankos had none.

Chr. Dankos opened to legal counsel present.

Roger Thomas, Esq. Mr. Carlyon testified to living in Cedar Lake for sixteen years and having a residence not attached to the property in question. Mr. Thomas referenced property card Exhibit A-4, page 2 and that it states a shed. Referenced property record card Exhibit A-5, stating it notes shed.

Richard Sweeney, Esq. of Laddey, Clark & Ryan (60 Blue Heron Road, Sparta) represented Ken & Marilyn Kuntz-Spencer of 17 Cedar Lake West. Mr. Sweeney referenced the Deed and purchase from the Priore's. Mr. Sweeney continued with his line of questioning related to Exhibits produced.
EXHIBITS LISTING:
Exhibit O-1 – Deed of 3 pages.
Exhibit O-3 – Building Subcode Technical and building department documents of 5 pages.
Exhibit O-4 – Rockaway Valley Regional Sewerage Authority packet of 2 pages.
Exhibit O-5 – As-Built Location Survey from Bricker & Associates, Inc.
Exhibit O-6 – (Previously Exhibit A-9) Packet of 21 pages titled 30 Cedar Lake West, From Boathouse to Residence
Exhibit O-7 – Color photograph
Exhibit O-8 – Color photograph

Chr. Dankos opened to the public for questions on the testimony only.

Sandor Einstein (35 Cedar Lake West) inquired about sewer application and the building permit from the town. Mr. Brady responded to the RVRSA form. Mr. Carlyon stated yes, the building permit was for a residence.

Barbara Videll (13 Cedar Lake West) inquired about the floor height. Thomas Carlyon responded to the existing foundation not being plumb or level and the height being within inches.

Ellen Shelley (33 Bald Nob Road) inquired about the plans and limited space to walk on the side of the building. Mr. Carlyon indicated 3’ is adequate.

David Weber (7 Cedar Lake West) inquired about submitting with survey, boundary properties and not to zoning board. Thomas Carlyon responded no.

Chr. Dankos asked for other members of the public wishing to speak, seeing none, closed the public portion.

David Brady, Esq. inquired about board, appeal and pitch. Mr. Carlyon responded to strength, and snow load. Spoke to the deed restriction, drainage and work performed on the rear of the property.

Roger Thomas, Esq. requested that Exhibit A-9 now be changed as a matter of record in both applications to Exhibit O-6.

Richard Sweeney, Esq. continued with questioning for fifteen minutes, inquired about grading, dirt mound, laminated beam, existing foundation, interior walls, other wood members and rock underneath it. Thomas Carlyon responded that anything that was not functional or able to be used was removed. Mr. Sweeney spoke to grading being substantially different. Mr. Carlyon stated the grading had changed but was not substantially different.

David Brady, Esq. inquired about the highest level of existing building. Mr. Carlyon confirmed that the existing block work remained and was filled in where there were deficiencies.

Chr. Dankos opened to members of the public of the redirect examination, seeing none, closed the public portion.

A ten-minute break was announced at 8:51 and the meeting resumed at 9:07 pm.

William Denzler, PP (6 Hickory Lane, Long Valley) was present, sworn under oath and accepted as an expert witness. Mr. Denzler testified to occupancy, point of time and spoke to the township ordinances. Referenced definitions regarding non-conforming lots and structures. Referencing failure to comply with use prior to November 17, 1952 and continuance of non-conforming use and structure. Referenced non-conformities prior to July 22, 1964 can be continued upon restored or repaired in partial thereof. Referenced the building permit, wood structure and foundation remained even though modified. Spoke to the methodology used in the township to date and referenced the way it’s been done during his being the zoning officer prior to being the township planner. Stating the structure was not modified in width or length but was going upwards. Mr. Brady inquired about Mr. Denzler’s opinion as it relates to the modernization of the pre-existing non-conforming use and structure. Use as a boathouse/shed will continue by the plans submitted by the applicant. Slight modifications but the exterior of the building remains the same. The deed restriction started in 1915 and the boathouse 1925 which predates the 1955 and 1964 dates of the township ordinance.

David Brady, Esq. inquired about any way the lot could be made (1) conforming, (2) conforming lot, (3) conforming use. William Denzler, PP stated that based upon the township ordinance there is no way that the lot could be made conforming. Based upon the lot dimensions there is no way that the structure could be made conforming. Further stating there is no way that the use could be made conforming without a use variance. A D1 use variance for the structure boathouse/shed is an accessory structure/shed. A separate use on its own due to no primary structure on the lot. Not a principal use without a primary principal use. A review of the deed can only be used as a
boathouse/shed/landing. Would be deemed into inutility due to no structure on the property. This
would require demonstrating special reasons, no substantial detriment, the use was not
considered in the muni master plan. Spoke to the positive and negative criteria. Denzler spoke
to the hardship of being deemed into inutility would be because an existing use was on the
property and a use variance is not granted under the board. Would need to proven. Particular
suitability – historic as a boathouse/shed, adjacent to the lake, no changes to intensity of the use
or modification of the building. Simply modernization of the dilapidated structure. Mr. Denzler
spoke to the purposes of the zoning, visual environment, encouraging coordination all being
positive. Stating no negative criteria. Use has existed for over 80 years. Modifications in the
lake with this structure there. No intensification of the use of the boathouse/shed. Improvement
of the aesthetics. No detriment to the town. Reconcilable (as not considered in the master plan)
not a type of use that would not be found in this type of community. Based upon the lot size it is
not possible to make the lot conforming. Spoke to the pitch of the roof change. Mr. Denzler
spoke to a modernization of the existing structure and that things do change over time.
Construction is similar to prior.

Chr. Dankos opened to the board professionals.

Jason Kasler, PP inquired about the private public development section. Mr. Denzler spoke regarding (using roadside/lakeside instead of front and back) the final grade the majority was to
provide better drainage and stop the drainage into the existing building. Mr. Kasler stated nothing
proposed for the lakeside of the structure. Mr. Denzler confirmed.

John Ruschke, PE inquired about the existing use and abandonment. William Denzler, PP
stated it was still a functional structure, always owned by someone and as an accessory structure
would not have daily occupancy. A boathouse is a storage structure.

Jason Kasler, PP asked about there being one single definition by ordinance. Mr. Denzler
responded that the closest definition per township ordinance would be an accessory structure.
Boathouse is storage/shed. Mr. Kasler inquired about having a closet in a shed. Mr. Denzler
stated no and it also wouldn’t have a deck on a shed.

Roger Thomas, Esq. questioned Mr. Denzler. Inquiring whether he would have issued a permit,
if a second floor was considered a substantial change and a boathouse. Mr. Denzler confirmed
that a closet would not be in a boathouse, and the height of structure change of more than 6”
would be considered a substantial change over the height that was there. Essentially the same
roof height of the roofs in the photograph. Mr. Thomas inquired about abandonment of pre-
existing use, total destruction vs. partial destruction and cause of loss of use. Mr. Denzler
confirmed. Mr. Thomas referenced case law regarding the total vs. partial and Lacey Twp.

Richard Sweeney, Esq. referenced the July 29, 2015 report from William Denzler & Associates
to Mr. Poli. Entered and referenced Exhibits O-7 and O-8 photographs. Dick Sweeney, Esq.
asked about the supporting members not existing before. William Denzler, PP confirmed.
Stating they were part of the modernization.

Chr. Dankos opened to the board members.

Mbr. Caravaglia had none.
Mbr. Spiess inquired about the proposed bath and inquired about the difference of the 5 and 7
pitch. William Denzler, PP responded it was a difference but not a substantial one.
Mbr. Richter inquired about the 7 pitch roof and the proposed roof height of 12’ 10” being within
maximum.
Mbr. Roman none.
Mbr. Rodimer inquired about accessory structure. William Denzler, responded that an accessory
structure can be a detached garage. Accessory structures can have running water and
bathrooms just not a living area. Stating there is nothing in ordinance against it.
Mbr. Bergen inquired about the permit issued by the town, if there was an intent to make it a
home and at what point is it considered to be a conforming use at what point.
Mr. Denzler stated when the use becomes certified. Jason Kasler, PP confirmed.
Jason Kasler, PP stated yes at the point of a Certificate of Occupancy and the use never having
changed to a conforming use.

The board secretary announced the next available date was April 6th and April 20th. Neither dates
were acceptable to the legal counsel present. The public hearing for this application was carried
to March 16, 2016 for scheduling purposes only.

OLD BUSINESS

None.
February 3, 2016

NEW BUSINESS
None.

ADJOURNMENT

Motion to Adjourn at 10:09 PM.

Denean Probasco, Board Secretary  Date Approved: March 30, 2016
Exhibit Listing

- Exhibit A-1 – March 20, 2015 letter from TJ Carlyon to Sal Poli. (stamped received June 26, 2015)
- Exhibit A-2 – July 1, 2015 letter from Sal Poli to TJ Carlyon.
- Exhibit A-3 - April 8, 2015 letter from Denean Probasco to TJ Carlyon.
- Exhibit A-4 - Photo undated, titled pre-existing boathouse (post construction)
- Exhibit A-5 - Photo dated April 1, 2015, titled new structure from street (post construction)
- Exhibit A-6 - Photo dated April 4, 2015, titled view from lake (post construction)
- Exhibit A-7 – Four page packet of technical forms, dated July 1, 2015, technical sections for building, electrical, fire, and plumbing all marked ‘Permit Update’.
- Exhibit A-9 – Twenty page packet, undated, titled From Boathouse to Residence