TOWNSHIP OF DENVILLE
BOARD OF ADJUSTMENT
MEETING MINUTES

March 30, 2016

The Board of Adjustment of the Township of Denville held an additionally scheduled regular meeting on Wednesday, March 30, 2016. The meeting was held in the Municipal Building, 1 St. Mary’s Place and commenced at 7:06 PM. Chr. Dankos presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL:

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

MINUTES

February 3, 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, Spiess, Roman, Caravaglia, Dankos

RESOLUTIONS

BA 16-05: Christopher & Lisa Wagner
14 Hardman Terrace
Block 60904, Lot 1

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

ROLL CALL: Ayes – Spiess, Richter, Napolitano, Roman, Caravaglia, Dankos

BA 16-04: 307 Palmer Road Associates, LLC
307 Palmer Road
Block 40102, Lot 4.02

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

ROLL CALL: Ayes – Spiess, Richter, Napolitano, Roman, Caravaglia, Dankos

PUBLIC HEARINGS

BA 15-27 Thomas J. Carlyon
30 Cedar Lake West
Block 60906, Lot 29

Applicant is seeking certification of a pre-existing non-conforming structure and use associated with this property. The public hearing for this application was carried from January 6, 2016.

BA/A 15-08 Cedar Lake Property Owners, Inc.
30 Cedar Lake West
Block 60906, Lot 29

Applicant is seeking to appeal zoning officer’s decision on issuance of zoning permit for construction associated with this property. The public hearing for this application was carried from March 16, 2016 for scheduling only.

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

Mr. Thomas made a statement referencing a letter sent to council dated March 29, 2016. Mr. Weiner responded that he had received the letter. Mr. Weiner took a poll of the board members asking if they were up to date on the audio from all of the meetings that have taken places. All board members agreed that they were up to date.

Mr. Thomas spoke briefly requesting the board to make a decision on all three matters this evening.

David Brady, Esq. of Brady & Correale, LLP (Post Office Box 2136, Morristown) represented the applicant, Thomas J. Carlyon.
Richard Sweeney, Esq. of Laddey, Clark & Ryan (60 Blue Heron Road, Sparta) represented Ken & Marilyn Kuntz-Spencer of 17 Cedar Lake West.

Mr. Sweeney cross examined Mr. Denzler’s testimony from the February 3rd public hearing. Mr. Sweeney asked questions regarding principal, accessory and utility structures on a lot. Mr. Sweeney stated that a utility building or shed is limited to a roof height of 12 feet and a maximum of 200 sq. ft.

Mr. Sweeney referenced Moskowitz definitions and closed stating the Webster’s dictionary has the same definition of shed and boat houses.

Mr. Brady asked Mr. Denzler if the word “shed” is defined in the land use ordinance of Denville. Mr. Denzler stated that it does not. Mr. Brady asked questions regarding the principal, accessory and utility structures.

Mr. Sweeney called a witness Barbara Vidal (13 Cedar Lake West). Questions regarding observations and elevations were asked using Exhibit O-8 and Exhibit O-9. Ms. Vidal stated that she looked at the structure before Mr. Carlyon purchased it and the elevation on the door is now higher. When asked how much higher the street side elevation is now, Ms. Vidal indicated that she was unsure.

Larry Weiner, Esq. inquired if there was anything else other than public comment. Mr. Brady, Mr. Thomas and Mr. Sweeney agreed to move on to public comment.

The meeting was then opened up to questions from the public to Mr. Denzler.

Sandro Einstein (35 Cedar Lake West) inquired about Mr. Carlyon’s ‘lakefront living room’ being a public safety issue.

Mr. Denzler stated that he did not think the proposed use would be a safety issue to the public.

No other members of the public had questions for Mr. Denzler.

The meeting was then opened to general comments from the public.

Kevin Compton (154 Cedar Lake West) asked if the structure is going to be used as a residence. Mr. Brady answered that was it is not. He commented that he has seen a lot of change in Cedar Lake and was very concerned that the structure was going to be used as a residence. There are parking issues and with the road being narrow, he is concerned about safety.

John Skoufis (31 Cedar Lake East) commented that he has lived across the lake from this structure for more than fifty years. In that time, he has never seen any activity other than the storage of boats. He also has never seen it be used as an entertainment area. Mr. Brady did not have any questions. Mr. Thomas asked if Mr. Skoufis had seen parties or activity on the deck in 50 years and Mr. Skoufis said he had not. Mr. Sweeney asked how often he uses his deck and yard looking across the lake.

Barbara Vidal reappeared and asked Mr. Denzler to confirm that he wouldn’t have issued the permit for a two story residential structure. Mr. Denzler confirmed that he would not have issued a permit for a two story residential structure. Ms. Vidal commented that if this building is to be used on a more frequent basis, without parking, it would create a dangerous situation for kids walking to and from the bus stop. Mr. Thomas inquired about the closet of the boathouse and Ms. Vidal’s observations. Ms. Vidal stated that it was not a closet that she would have in her home but more of a separate piece of wood that did not look like part of the building. Mr. Thomas asked if there was anything about the inside that would lead her to believe that it was an active living space. She said there was not. Mr. Brady did not have any questions.

Kathleen Carey (27 Cedar Lake West) commented that she is concerned about the safety issue. She lives directly across from the structure and stated that there is no safe parking due to the narrow road and her brick wall.

Sandro Einstein (35 Cedar Lake West) reappeared and commented on a conversation with Mr. Poli. Mr. Brady objected. Tiena Cofoni, Esq. objected to the line of questioning. Larry Wiener, Esq. stated that in context of the appeal and granting of the original permit that Mr. Einstein could testify. Mr. Einstein expressed his concern about safety issues due to the narrow roads in Cedar Lake. Mr. Thomas inquired about duration of residence. Mr. Einstein stated 34 years and that he has never seen parties, BBQ’s or use as a lakefront living room in this structure.

Sandra Danforth (136 Cedar Lake West) expressed her concern for the safety of children with the increased use of this structure. She stated that road is well traveled by walkers and urged the board to take this into consideration when making their decision.
Mr. Weiner stated that there are three separate matters in front of the board. He asked if a consensus had been reached as to the order that the three matters should be voted on. Mr. Thomas voiced his position on the sequence: the appeal first, then section 68, and then the ‘D’ variance, if necessary.

Mr. Weiner, Mr. Brady and Ms. Cofoni agreed.

Roger Thomas, Esq. of Dolan & Dolan provided summation on all three cases.

- Structure was purchased by Thomas J. Carlyon in 2014 for $5K
- In February 2015, an application was approved and a permit issued for a two story, single family residence
- All four walls were removed
- The foundation was clearly modified
- Roof pitch as it relates to view corridor
- Mr. Denzler would have not approved this application if it had come before him in 2015
- Destruction case versus intent case as it relates to the structure and use
- Negative and positive criteria as it relates to a ‘D’ variance
- Referenced case involving Mr. Sweeney stating this application is not consistent with previous case
- Referenced another case where the aesthetic improvement is not consistent with this structure
- Issuance of a building permit should have never been issued
- Section 68 doesn’t apply if only foundation and footings are left as per case law
- Acknowledged the public’s safety concerns
- No basis to grant a ‘D’ variance for a ‘lakefront living room’
- Original application asked for water and sewer

Richard T. Sweeney, Esq. of Laddey, Clark & Ryan, LLP provided a summation on all three cases.

- Permit should not have been issued
- Stated that based on what Mr. Carlyon did, he destroyed whatever nonconforming status that may have existed
- Cannot be deemed into insularity – not so – plenty of vacant lots used for access to lake
- Applicant should not be rewarded for misdeeds
- Commended the public for their concern

David Brady, Esq. of Brady & Correale, LLP provided a summation on all three cases.

- Referenced the deed with rights to using the property as a landing, etc. for boat and use as a boathouse since 1928 predating the MLUL
- Boathouse, cabana, shed, lakefront living room regardless of the name, use is the same, fishing, swimming, boating, BBQ, sunbathing. Used for recreation consistent with the use of any lakefront lot would be used
- Prior proposal versus what is proposed today. Roof will be returned to close to prior height, – can be limited to be consistent to the adjacent boathouse roof height
- Mr. Denzler wouldn’t have approved. Submits to the appeal of permit being amended to allow what is now proposed on proposed plan should not be revoked or overturned as to what was submitted to July 27, 2015 and August 24, 2015
- Section 68 – Mr. Carlyon has the right to continue a pre-existing nonconforming structure. An argument has been made the previous structure has been destroyed. Structure was not taken down to footings. The foundation was reused. Applicant obtained permit from to make these modifications.
- ‘D’ use of accessory use to upland lots. Mr. Carlyon is a property owner in Cedar Lake and is an upland owner. Spoke to the different types of uses including recreation activities not a new use. No increase of traffic associated, parking is permitted on the road. No increased detrimental impact. Dimensional variances are simply hardship variances.
- Pointed out that the plans have been revised essentially putting back the exact structure that was there before. Mr. Carlyon is no longer asking for water and sewer.
- Agreed with Mr. Thomas regarding a private issue regarding the approval requirements between the applicant and the lake association.

Mr. Weiner recommended that the board discuss the appeal of the permit that was issued and whether or not the Zoning Officer was correct in issuing the permit. Mbr. Richter excused herself from the room and recused herself from the vote on the appeal.

Mbr. Spiess commented that the attorneys on the both sides made a good case and it comes down to a decision on whether or not the permit should have been issued or if it was amended.
Mr. Weiner said the board should be looking at the permit that was issued and deciding if that permit should have been issued. He reminded the board the Mr. Denzler testified that he would not have issued the permit for the construction of a two story residence.

Mr. Brady asked that board look at amended supplication.

Mr. Weiner asked Mr. Thomas and Mr. Sweeney to comment on Mr. Brady's request. Mr. Sweeney stated that the first permit was never rescinded and board should be voting on the original permit that was issued.

Mr. Thomas stated the appeal filed against the two story single family residence original permit issued must be voted on. Voting on amended application is not acceptable. The order of the should be on the original permit, then section 68 followed by the ‘D’ variance.

Mr. Weiner reminded Mr. Thomas that a permit was never issued for the amended application. Mr. Brady asked the board to vote on the amended application and issue a permit. Mr. Weiner stated that the board needs to make a decision on the original permit issued.

Ms. Cofoni clarified that there were no other permits issued. Only the original permit was issued.

Mbr. Spiess asked if voting to grant the appeal means that the permit should not have been issued. Mr. Weiner confirmed. Mbr. Spiess made a motion to grant the appeal. A second was made. The motion was unanimously approved.

ROLL CALL:  Ayes – Spiess, Rodimer, Napolitano, Roman, Caravaglia, Dankos

Mbr. Spiess made a motion that the structure remain a pre-existing non-conforming use structure (boathouse). The motion was seconded by Mbr. Rodimer. The motion was unanimously approved.

ROLL CALL:  Ayes – Spiess, Rodimer, Napolitano, Richter, Roman, Caravaglia, Dankos

Mbr. Spiess made a motion that the ‘D’ Variance be granted with the stipulation that the structure never have sewer or water, the roof height be returned to match the adjoining structure within plus or minus 6 inches and that no outdoor lighting be used other than standard residential lighting. The motion was seconded.

ROLL CALL:  Ayes – Spiess, Rodimer, Napolitano, Richter, Roman, Caravaglia, Dankos

OLD BUSINESS
None.

NEW BUSINESS
None.

ADJOURNMENT

Motion to Adjourn at 10:09 PM.

Denean Probasco, Board Secretary  Date Approved