The Board of Adjustment of the Township of Denville held an additionally scheduled regular meeting on Wednesday, September 07, 2016. The meeting was held in the Municipal building, 1 St Mary’s Place and commenced at 7:00pm Chr. Dankos presided.

Secretary Unrath read NOTICE OF PUBLIC MEETING

ROLL CALL:
Present: Brian Bergen, Adam Caravaglia, Daniel Napolitano, Ed Moroney, Daniel Roman, Harold Fahrer, James Rodimer, Sally Dankos
Absent: Tim Fisher
Prf. Present: Larry Weiner, Esq., John Ruschke, PE, Jason Kasler, AICP, PP

Meeting Minutes

A Motion to adopt the August 3rd minutes was made by Mbr Napolitano, seconded by Mbr Roman and unanimously approved by all member able to vote.

PURCHASING
A Motion to pay Larry I Wiener was made by Mbr Moroney, seconded by Mbr Napolitano and unanimously approved by all member able to vote.

CORRESPONDENCE

RESOLUTIONS
None

PUBLIC HEARINGS  BA/16-19  James Melcher
6 Overlook Drive
Block 60902, Lot 13

Applicants James Melcher and Karen Oxenford- Melcher (6 Overlook Drive) Sworn in and testified. The applicants are seeking to add external stairs to their rear deck. There will be a turn in the stairs to be able to reach the ground level and within height of the existing deck. The variance is needed because the set back is 50ft from the rear of the property. The existing set back is 30ft and with the deck stairs that are requested the set back is 26ft.

Open to the Professionals
John Ruschke, PE- No questions
Jason Kasler, PP- Inquired about the 4ft platforms that were proposed. The applicant’s states there will be two 4ft platforms included in the staircase.

Open to the board
Mbr. Napolitano- Inquired about the pre-existing deck and if this deck is already on a built on a setback. The applicants state the past owners got a variance approved for deck setback.
Mbr. Fahrer- No questions
Mbr. Rodimer- No questions
Mbr. Moroney- No questions
Mbr. Caravaglia- Inquired about the width of the stairs. The applicants state the width is 4ft.
Mbr. Roman- No questions
Mbr. Bergen- No questions
A motion to approve this application was made by Mbr. Rodimer, seconded by Mbr. Napolitano and unanimously approved by all members able to vote.

Roll Call: Rodimer, Napolitano, Bergen, Roman, Caravaglia, Moroney, Fahrer, Dankos

 Applicant Stephen DeTomasso (27 Copeland) was sworn in and testified. The applicant is seeking to construct a spa, patio and walkway for beatification and resale value. A variance is requested for steep slope so the applicant is able to create more lawn space. The applicant is requesting to add a retaining wall and 2 levels that will extend the north side of the property.

Open to the professional
John Ruschke, PE - Inquired about the comments he made in April suggesting minimizing the disturbance during construction. Mr. Ruschke suggests systematically phasing the construction process for steep slope applications. This will minimize the percentage of disturbance.

Jason Kasler, PP - Inquired about the existing deck and retaining wall and how they will co-exist. Mr. DeTomasso states the deck is located on the first level and it is a 2-tier deck. The wall will go around the deck and sunroom. The wall will then come up from the 2nd tire of the deck. Mr. Kasler inquired about the generator for the spa and the noise that may occur because it is off the property line. Mr. DeTomasso states that the generator is on the property line and does meet the setback requirements.

Open to the board
Mbr - Napolitano - No questions
Mbr Faber - No questions
Mbr Rodimer - Inquired about the safety from the guardrail to the deck. Questions if the applicants would consider putting trees or a fence. The applicants have agreed to take this into consideration.
Mbr Moroney - No questions
Mbr Caravaglia - No questions
Mbr Roman - No questions
Mbr Bergen - No questions
Chr Dankos - No questions

Open to the public
Betty Thomas (8 Benedict Crescent) - Inquired about the comments made by John Ruschke in his memorandum. Larry Wiener explains that the comments made by Mr. Ruschke are just recommendations from our town engineer and are not definite with the application. Ms. Thomas inquired about the resale value the applicant mentioned in his testimony. Larry Wiener states that this part of his testimony would not be considered if his application is approved or denied.

Jeff Egarian (DJ Egarian & Association) - Sworn in as a professional engineer. The property is about 1 acre in size and the steep slopes exhibit 20-30%. The improvements proposed are a 306 sf spa, front paver walkway, new rear patio to support the spa and a new staircase to enter the spa area. There will also be boulder retaining walls approximately 6ft in height. There is already a pre-existing retaining wall in this area that will need a 3ft minor cut. This would be a C-1 variance because of the topographical features. In regard to John Ruschke’s comments the engineer and applicant state they will comply with all comments/suggestions given to this application.

Open to the professionals
John Ruschke, PE - Stated he does agree with the engineer and that the proposed location of the spa is the best spot for this property to minimize steep slope.

Jason Kasler, PP - Inquired about the removal of part of the driveway. Mr. DeTomassa states that this is just for esthetic purposes. Mr. Kasler questioned what type of 4ft fence is going out the spa area. The applicant states that the fence has not been selected yet, but it will be meet the code. The applicants state there will be lighting from the stairs to the house.

Open to the public - no questions

Open to the board -
Mbr. Caravaglia - Inquired about part of the fence that is offset from the retaining wall. Mr. Egarian states this 5ft wall is there for esthetic purposes. Mr. Ruschke states this is part of a construction code and construction officials would have the final approval.

Mbr. Roman - Inquired about the fill that will be brought in to fill the retaining wall. Mr. Egarian states that first a silk fence is put into place then retaining wall will be built. Once that is set any extra soil will be brought in after exuviating the spa. Inquired about where the cart way will be put on the property. Mr. Egarian states that is the tracking pad for construction vehicles to enter the property.

Mbr. Bergen - States he was unable to look at the location prior to the meeting. Inquired about what is behind and at the bottom of the property. Mr. DeTomasso states there is a boulder wall, tree and houses from Benedict Crescent are located about 500 ft. away. He also states there is a slight slope from his house to these neighboring properties. Mr. Bergen inquired about the current water flow.

Mbr. Napolitano - Inquired about how close is the retaining wall is from the house. Mr. Egarian states the wall is about 3ft from the house. Mr. Napolitano suggested putting a fence around the existing retaining wall and the applicant states that there is already a fence shown in the site plans.

Mbr. Fahrer - No questions

Mbr. Rodimer - No questions

Mbr. Moroney - Inquired about how the applicant will be stabilizing the spa. Mr. Egarian states it will be built below and underground. This will stabilize the surrounding ground.

Chr. Dankos - States she agrees with John Ruschke's comments about putting lawn drains. The applicant also agrees to this.

John Ruschke, PE - Suggested to limit the amount of fill for this construction. Also got confirmation from the engineer that the right percentages requested for variance was correct with the disturbance of vehicles.

Open to the public

Betty Thomas (8 Benedict Crescent) – States about current water problems in her area and how it affects her property. Ms. Thomas questions the Mr. Egarian if this construction will make the problem better or worse. Mr. Egarian states that from the suggests made from Mr. Ruschke and the correct drainage there will be no increase in water flow.

Betty Thomas - Inquired about how the boulder walls will help the flow of water.

John Ruschke, PE - States the town does not have an ordinance on how storm water is managed and he looks at two guidance documents to help regulate the storm mitigation. Mr. Ruschke would accept the testimony given by the applicants. States he does think stone behind a boulder would not work for storm water mitigation. He does recommend using drywell for this application.

Richard Zimmer (Scenic Landscaping 7 Argyle Street, Haskell NJ) - Sworn in a professional architect. Exhibit A-1 to show the site plan and landscaping. Applicant is proposing spa, patio and lawn space. Architect plans to create buffers for privacy and create a backyard feel. Explains most of the construction will be done by the spa area, and the rest of the yard will just be landscaped.

John Ruschke, PE - Emphasized that a detailed landscaping plan would be needed prior to approval of the application. Richard Zimmer approved of making these plans.

Jason Kasler, PP - Received clarification from the architect that there will be a buffer from the applicant’s property to the surrounding neighbors.
Open to the members

Mbr. Caravaglia- Received clarification for the architect that there will be no demolition of trees.
Mbr. Roman- No questions
Mbr. Bergen- No questions
Mbr. Napolitano- Inquired about landscaping surrounding the spa and retaining walls. Richard Zimmer states that he will be planting 2ft evergreen trees around that area.
Mbr. Fahrer- Inquired about construction vehicles that will be entering the property toward the steep slope. Richard Zimmer states that they will need to enter through the front lawn.
Mbr. Rodimer- No questions.
Mbr Moroney- Inquired about how high the spa will be off the ground. Richard Zimmer states it will be flush with the ground.
Chr. Dankos- No questions

Open to the Public
No questions

Public Testimony

Betty Thomas (8 Benedict Crescent) – Sworn in to testify. Concerned with her property that this new construction will directly affect her and cause flooding in her basement. She also does not want her own property to be de-valued from this new construction. States this is a very steep slope and there should be no construction built on it.

Stephen DeTomasso-(27 Copeland Rd)- States that most of the surrounding houses within this area have all made updates to the rear of their yard. The new construction will not increase the sale price of his house, but it will be positive for his selling point. Mr. DeTomasso does believe this construction will have a positive outcome in water drainage in years to come.

Mbr. Caravaglia- Inquired to the application how long he plans on staying at this property. Mr. DeTomasso states he plans to live at this property for quite a few more years.

Mbr. Bergen- States he would like to make a motion to approve this application, that the application has created a hardship for his topographical condition. Also that the applicant does have the right to improve his own property. Mr. Bergen does state two conditions prior to the approval, first is a water retaining system and, second is to submit a planning schedule. Mr. Wiener states that along with these two conditions that the applicant would also need to follow Mr. Ruschke’s memorandum comments discussed before.

A motion to approve this application was made by Mbr. Bergen, seconded by Mbr. Rodimer and approved by certain members of the board.
Roll Call- Rodimer, Bergen, Roman, Caravaglia, Moroney, Fahrer, Dankos
Denied- Napolitano

Break from 8:49- 8:57

BA/PSP/FSPV: 16-16 Englewood Auto Group carried from August 03, 2016
256 Route 46
Block 51001, Lot 2

Applicant is seeking approval to use the entire property (including the previously approved 5,301 sq. ft.) to be utilized for automobile sales, automobile repairs, service detailing and delivery preparation services for new and used automobiles.

Jason Rittie (Einhorn and Harris- Attorney) Inquired about members who missed the last meeting on 8/3/16 if they listened to the audio.

Larry Wiener, Esq- State that Harry Fahrer and James Rodimer have both signed affidavits that they have listened to the audio.
Jason Rittie- (Attorney)- States that since the last meeting the applicants have submitted new site plans with sidewalks pending any DOT approval.

Franz Laki (12 Maple Ave, SESI)- Previously sworn in as an engineer state the applicants have reduced the number of handicap parking from two to one and they have been moved 2ft away from the building. Also in accordance with Mr. Ruschke comments they have extended the wetland buffer. A recycling bin has also been added, along with sidewalks and crossways.

John Ruschke, PE- States they will need to get approval with DOT, but with their current plans they are missing some of the requirements.

Jason Kasler, PP- No comments

Open to the board
Mbr Napolitano- Inquired about any pending approvals and comments from DOT will the applicant comply, Franz Laki agrees make any changes pending any DOT comments,
Mbr. Fahrer- Inquired about safety bollards and the encroachment on route 46. Mr. Laki states that no safety bollards were required and the encroachment is pending DOT approval for the sidewalk. Also clarifies that there will be no washing of cars at this facility.
Mbr Rodimer- Inquired about the max number of cars on this property. Steve Descalzi (operating member) has been previously sworn in states in pending that pending DOT approval of parking spots there will be approximately 45-50 cars on this property.
John Ruschke, PE- Inquired about where these cars will fit and where does it show in the plans these number of spots. Mr. Descalizi states that these cars will be stacked. Franz Laki confirms the stacked spots will be 35ft in depth and fit 2-3 cars in these spots. There will be approximately 25-40 cars on the property.
Mr. Rodimer -states that this is too small of the property to fit those number of cars.
Mbr. Moroney- No questions
Mbr.Caravaglia- Inquired about ADA curb ramp and stripes. Mr. Laki states the locations Mr. Caravaglia mentioned in would not be required.
Mbr Roman- No questions
Mbr. Bergen- No questions
Chr. Dankos- No questions

Open to the public
Seth Johnson (49 Lakewood Drive)- Inquired about a plan B if DOT should deny the sidewalks. Jason Ritte (attorney) state that they would have to come back to the board with any other recommendations they might have or pending DOT comments.

Amy Plishton (18 Basswood Drive)- Inquired how the number of cars will be maneuvered in this facility. Mr. Descalizi states that this property is meant to be a dealership and will have no problems with maneuvering the cars.

Gene Feyl (44 Lakewood Drive)- Inquired to the applicant's professionals if they were aware that property is located on an aquifer sensitive overlay. Mr. Laki was not aware of this ordinance.

Kevin O'Connor (10 Basswood Drive)- Inquired to the applicant and professionals if they have ever driven by this property on a Saturday afternoon. Franz Laki stated he has driven by this property during a Saturday afternoon. Scott Descalzi also clarifies that no flatbed trucks will be going into this property previously mentioned by Mr. O'Conner.

Gene Feyl (44 Lakewood Drive) Questions the applicant and engineer if they were aware this property is surrounded by a 10yr or 100yr flood. Franz Laki states he is aware of it and clarifies what each of those mean.
Richard Zimmerman (planner)-Previously sworn in a professional planner. States this property was granted a variance in 2014 when Fusion spa wanted 52% of this property and 48% of the property is conformed to automobile site. This applicant would like to use those other non-conforming use as the
automobile establishment. This application is compatible for a use variance because the building is already suitable for an automobile facility. This does advance the MLU because the location is set for commercial automobile facilities. Mr. Zimmerman also states that property will not have heavy traffic, perhaps 5 patrons a day. Exhibits A-3 of an aerial photo of the property to the show the tree coverage blocks the surrounding residential homes. This applicant has no real high demand of traffic and is taxable for the town.

**Jason Kasler, PP**- Clarifies with Mr. Zimmerman of the non-conforming and incongruent uses of the two lots. Mr. Kasler states with agreeance from Mr. Zimmerman that there is no problem for the other 48% to be used as a retail space. Inquired about if the applicant should move a non-conforming use to conforming or move onto another use. Mr. Kasler questions the parking spaces that are non-conforming and the spaces that are within the building. Mr. Zimmerman states there should be no problems with parking with in the facility and there are no variances disapproving of this.

**John Ruschke, PE**- States the number of cars entering this property in a floodplain isn't suitable. Using this a retail space would be more realistic.

Open to the board members
- **Mbr. Napolitano**- No questions
- **Mbr. Fahrer**- No questions
- **Mbr Rodimer**- No questions
- **Mbr. Moroney**- No questions
- **Mbr. Caravaglia**- States he is agreeance with Mr. Ruschke’s comments.
- **Mbr. Roman**- Inquired about the dealership across the street. Mr. Kasler states that it is in the B-2 zone.
- **Mbr. Bergen**- Sates that the ordinance they are applying for strictly prohibits the usage of automobile dealerships. Mr. Zimmerman does state that he is aware of this ordinance. Inquired about the applicants inherent to the public good with this property. Mr. Zimmerman agrees with this statement.

**Jason Kasler, PP**- Clarified with Mr. Zimmerman that this property will be washing of cars off property.

Open to the board

**Public Testimony unknown**- (26 Ridgewood parkway west, Denville NJ)- Inquired about any demographic studies that have been done for this property Mr. Zimmerman states he has not done any studies, but some studies have been mentioned in past testimonies.

**Open to public testimony**

**Gene Feyl (44 Lakewood Drive)**- Sates that this property has been under NJDEP scrutiny for 2 years and the applicant has done little to improve this facility. Mr. Feyl states that it is the boards duty to deny this application based on the testimonies given.

**Jason Rittie (Attorney)**- Inquired to Mr. Feyl if he has any written document from them NJDEP and Mr. Feyl states he does not have a letter only documents provided from himself. Mr. Rittie clarifies that if any changes to lighting are recommended the applicant will comply to those changes.

**Larry Wiener, Esq**- Clarifies the site plans and ordinances with no automobiles and discusses the B-2 zone.

**Craig King (100 Lakewood Dr.)**- Sworn in to testify. States this is no longer a car dealership. The vision the town has already made in a site plan that prohibits the usage of a dealership. States he hopes the board votes no and keeps this vision for the town.

Closing from the board
- **Mbr. Bergen**- Makes a motion to deny this application for reasons of not demonstrating a D variance.
- **Mbr. Rodimer**- Denys this application for the over use of the property.
- **Mbr. Caravaglia**- Denys this application for overcrowding and better for a conforming use.
- **Mbr. Roman**- Denys this application because it will not improve this property.
- **Mbr. Napolitano**- Denys this application based on the applicant’s inability to prove this site would be better used as a car dealership.
Mbr. Moroney- Denys this application for not giving a compelling case.
Chr. Dankos- Denys this application based on all the statements given by the other board members.

A motion to deny this application was made by Mbr. Bergen, seconded by Mbr. Rodimer and unanimously denied by all members eligible to vote.
Roll Call- Rodimer, Bergen, Napolitano, Roman, Caravaglia, Moroney, Fahrer, Dankos

OLD BUSINESS
None
NEW BUSINESS
None

ADJOURNMENT __10:42pm

Melissa Unrath, Board Secretary Date Approved: September 21, 2016