The Board of Adjustment of the Township of Denville held its scheduled regular meeting on Wednesday, January 22, 2020. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:00 P.M.

Secretary Unrath read NOTICE OF PUBLIC MEETING.

ROLL CALL:
Present: Dan Napolitano, Tim Wagner, Tim Fisher, Ed Moroney, Adam Caravaglia, Christine Hong, Chris Titze, Kurt Senesky

Prof. Present: Alyse Hubbard, Esq., Jason Kasler, PP, Samantha Anello, PE

Mrs. Hubbard performed the Oath of Allegiance for new member Kurt Senesky. He was sworn in as Alternate #2 with the term expiring in December 2020

MINUTES: None

PURCHASING:
Motion to pay vouchers submitted by Mott MacDonald subject to the availability of funds, was made by Mbr. Moroney, seconded by Mbr. Hong and unanimously approved by members able to vote.

RESOLUTIONS:

BA 19-36  Mark Hoffman
70 Cedar Lake West
Block 61005, Lot 28 & 29

A motion to approve a resolution of approval was made by Mbr. Fisher, seconded by Mbr. Caravaglia and by all board members able to vote.

AYES- Fisher, Caravaglia, Hong, Wagner, Titze, Napolitano

PUBLIC HEARINGS

BA 19-25  Peter Rolandelli
385 Diamond Spring Rd
Block 60505, Lot 31

Peter Rolandelli (385 Diamond Spring Rd) – Owner of the property. The application was carried from a previous hearing where the board members requested to have an updated survey of the property. Mr. Rolandelli stated they would not be proposing a fence anymore. The survey shows that the shed that was built without the proper permits and is in the right of way. The steps coming from the house is 9 ½ ft from the shed. The current shed is 12x 16 ft. The shed is over the property line by 4ft on the North Side and 7ft on the south side. Mr. Rolandelli stated there is nowhere else on the property to put the shed and the house does not have a garage.

Open to Board Professionals
Samantha Anello, PE- Questioned if the shed is secured in the ground and Mr. Rolandelli stated that it is on a gravel bed and can be moved.

Jason Kasler, PP- Questioned if the ramp going to the shed can be moved and it was stated that it could be moved if needed.

Open to Board Members

Mbr. Moroney- Clarified that it is not within the boards jurisdiction to grant anything within the right of way.

Mbr. Fisher- Discussed if the shed could be shifted and have the ramp enter from the right of way.

Mbr. Titze- Stated that a variance would need to be requested for an accessory to be 10ft away from the steps.

It was discussed between all the board members that they do not have the power to grant an approval for anything in the right of way. It was stated that the applicant should figure out another location on the property to fit the shed. The applicant should also know all the dimensions the shed would be from the house and edge of the property. Mr. Kasler stated that the applicant should look at ordinance 19-5.705 to know exactly what the setbacks should be for an accessory structure.

The application was carried to March 18,2020 without further notice.

BA 19-41 Joseph & Adrianne Whitney
4 Wetmore Dr
Block 60506, Lot 2

Joseph & Adrianne Whitney (4 Wetmore Dr)- The applicant is requesting a 10x 16 shed that would be partitioned to install a 5x 10 bathroom. The remaining portion a would be 10 x11 shed. The applicants are also proposing an outside shower coming from the bathroom. Mr. Whitney stated they are in the process of installing a pool and the shed would hold all the pool equipment. There currently isn’t a bathroom on the first floor that is easily accessible to guests using the pool. There is an existing fence along the sides of the property. The proposed shed would be 3ft from the side property line and current fence. It would require a variance for a side yard setback. Mr. Whitney stated this is an ideal location because it is the most level part on the property and close to the sewer connection. The outside bathroom would only be used in the summer months.

Open to Board Professionals

Samantha Anello, PE- Stated that if this application was approved that she would be in favor of reviewing drawing showing all sewer and water connections. It was discussed that there are no gutters proposed and gravel should be around the shed to collect any water runoff.

Jason Kasler, PP- It was questioned and answered the height of the front part of the shed is 7ft and the back is 6ft. Questioned the applicant if they would consider moving the shed 5ft from the property line and the applicant stated they would rather keep it 3ft.

Open to Board Professionals

Mbr. Hong- Questioned adding an addition to the house for the bathroom and the applicant were not in favor of making an addition.

Mbr. Moroney- It was questioned and answered that the shed next door is parallel to the proposed shed.
Mbr. Fisher - Stated he would be in favor of moving the shed 5ft.

Mbr. Caravaglia - It was clarified the proposed shed that’s in the application is what the applicant is proposing but the colors and doors could be different. It was discussed the ventilation from the bathroom would need to be facing towards the front to allow a 10ft ventilation.

There was a discussion regarding the ordinance for a setback of 13 ft for the front rear half the side yard.

Mr. Whitney stated the hardship of moving the shed 5ft is the accessibility of entering the gates.

Chr. Napolitano - Questioned the design of the shed and where bathroom/shower would be located. Mrs. Whitney marked Exhibit A1 which showed the dimension of the shed, shower and bathroom.

Open to public for questions/comments

Brian Bergen (54 Shawger Rd) Stated that in the past the board has approved sheds to be 2ft from the property line and he is requesting the board to look favorably on granting 3ft.

It was asked among the board members if they would be in favor of 5ft or 3ft setback.

Mbrs. Titze, Moroney, Fisher, Caravaglia and Napolitano stated they would in favor of granting a 3ft setback.

Mbrs. Hong and Senesky stated the would be in favor of a 5ft setback.

A motion to approve the application with a 3ft setback and a condition that the plans be reviewed by the township engineer was made by Mbr. Moroney, seconded by Mbr. Titze and approved by certain members of the board.

AYES - Moroney, Titze, Fisher, Caravaglia, Wagner, Napolitano

NAYES - Hong

BA 19-42  Denville West Main LLC
2-28 West Main St/ 13 Church St
Block 50412/ Lot 12

Chr Napolitano stated there are no conflicts with board members and/or family being patients with this orthodontist office.

Howard Geneslaw, Esq (Law firm of Gibbons PC) – Representing the applicant. The application is for a Use Variance to permit a medical facility on the first floor. The current ordinance does not allow a medical office on the first floor, but only on the second floor. There is currently only one vacancy in the shopping center and its 2,647 Sq. ft. That is on the lot seeking the Use variance. The lot was previously owned by Ah Pizza and has been vacant for over a year and half. The interest in the building has been mostly for medical uses. The proposed tenant is for Diamond Braces. The lot is split into 2 zones the B4 and B3. The B4 is the front half of the building which does not allow medical use on the first floor and the B3 which is in the back of the building and has no restrictions. In 2007 the Planning Board granted approval for the shopping center. The parking variance is to permit all non-Walgreens lots in the restaurant’s category for parking. This would allow for 1 per 65 which is the highest parking requirement and it would run with the land. The medical use parking has the lowest parking requirement. There are no changes to the site plan and all signage would conform to the code.

Jason Lerner (720 E Palisade Ave #203)- Real estate agent for Lerner Properties LLC and is the agent for this particular shopping center. Lerner Properties own 24 shopping centers in the north east. Mr. Lerner explains that this shopping center was built in 2007 and has always had a tenant. When Ah Pizza left about a yr. and half ago there has been a challenge to fill the vacancy. Lerner Properties has worked with brokers and marketing agencies to help fill the vacancy. There has been a challenge for retail
properties because of Amazon and another online store. There has been an increase of medical uses in shopping centers. Diamond Braces would be the new tenant for this particular property. Mr. Lerner stated that it would be a benefit to the other shops to have a medical use in the same center with more customers. It was questioned and answered the trash compactor located in the rear of the property would remain the same. It was explained that when the trash compactor hits a center level Lerner Properties is notified and then is emptied.

No questions from Board Professionals & Board Members

Next Witness

**Samantha Sanchez** (15 Engle Street # 303)- Project coordinator and General Manager of Diamond Braces. There is an existing Diamond Braces in Dover and the company is looking to relocate to Denville Plaza. Diamond Braces is a privately owned business specializing in orthodontics for adults and children. The business has been operating for over 20 years and currently has 23 locations. Ms. Sanchez stated there would be about 18-22 employees and patients throughout the day. In regards to any medical waste Ms. Sanchez stated that only waste would be wire fragments and used brackets. There is a medical container that those are stored in and are removed from the company approximately 1-2 times a year. There is no other medical waste at this facility.

Open to Board Professionals

**Samantha Anello, PE**- Discussed that if this application gets approved the medical waste could be different for all tenants.

**Jason Kasler, PP**- It was clarified that there would be 1-3 doctors, 4 assistants, 2 treatment specialists, 2 receptionists and 7 patients (varied thorough out the day).

Open to Board members

**Mbr. Titze**- It was clarified that in the B3 medical use is not permitted on the ground floor, but allowed on the 2nd floor. In the B4 Zone it is permitted in the whole building.

**Mbr. Hong**- It was discussed that there would be additional people in the waiting room. These would be mostly parents waiting for their children.

**Mbr. Moroney**- Clarified that this application is only for the Use variance for the current vacancy. It would not be acceptable for any of the other tenants. Also, the Use variance would be for a medical use not specifically for an orthodontist use.

Mr. Geneslaw stated that all medical waste would need to follow a particular code for disposal. Mrs. Hubbard described that Walgreens gives flu shots and they are required to follow code for all medical waste disposal.

**Mbr. Fisher**- Expressed that he does have an issue with having a carte blanch medical use allowed. He would be in favor of a more restricted medical use.

It was discussed that medical use that is allowed on a second floor. There is no definition of an exact medical use in the code.

**Chr. Napolitano**- Questioned Ms. Sanchez why they chose this location and if they were aware, they needed a Use variance. Ms. Sanchez stated their current Dover office is located on the second floor and is not visible for new customers. The Denville location would be visible and welcome new customers. It was stated that Diamond Braces was aware that a Use variance was requested for this tenant space.

Open to public questions
**Terry Wultster** (35 West Main St) – It was questioned if Diamond Braces chose this location because of the signage available to first floor tenants. Ms. Sanchez stated that all signage would be to code and the visibility would be to foot traffic within the strip mall.

**Jack Cunic** (13 Old Mill Dr) - Questioned if the business is ever full to capacity and Ms. Sanchez stated the appointments are scheduled evenly throughout the day.

There was a discussion about the 2nd floor loft area and it was stated that only staff would be allowed and no patients would be seen in that area.

Jason Kasler stated that the loft would be consider a second floor according to the code, but there is no exit from the loft.

Next Witness

**Sean Moronski** (300 Kimble Dr) – Sworn in a professional planner. The applicant is requesting a D1 variance to permit a medical use on the first floor. There would be no operations permitted on the 2nd floor loft. The lot was developed vertically which gives the development substantial amount of parking and it provides a range of uses. It was stated that there would be adequate parking for this medical use. Mr. Moronski stated this application would promote public health and general welfare. There would be no determinate to the public good and no change to the parking requirements. The business hours for the current tenant fits within the shopping centers current hours. There are no proposed site changes. There is no determinate to the zoning ordinance or zone plan. Mr. Moronski stated that shopping centers need to be able to change to the current market places. When the shopping center opened in 2007 there wasn’t a high demand for medical center, but years later that demand is changing. This specific space can support a variety of uses, including service establishment and general medical uses. It was explained that the ADA spots must change their location for rehabilitation uses or hospital outpatient facilities.

Open to Board Professionals

**Jason Kasler, PP** - Clarified with Mr. Moronski that all medical waste would be kept inside.

Open to Board Members

**Mbr. Senesky** - Questioned the hours of the business and Mr. Geneslaw stated the business would be current with the operating hours of the shopping center.

**Mbr. Caravaglia** - Questioned if there is anywhere nearby with this type of split use. Mr. Geneslaw stated the board approved Med spa in the Union Hill Shopping center, which was not permitted in that zone.

**Mbr. Titze** - Questioned Mr. Kasler the purpose of the zoning for this particular area. Mr. Kasler stated that it pre-dates his time but when the town updates the Master Plan this area would be one zone. It was clarified the B3 allows general retail and professional services. The B4 is the neighboring shopping center with only retail. Mr. Titze stated that this type of medical use is similar to a hair salon with 15-minute increments, which is permitted in this zone.

**Mbr. Hong** - Clarified that this space would not be subdivided.

**Mbr. Fisher** - Stated that the CVS shopping center there are split uses with medical and retail.

Open to public comments/ questions

**Terry Wulster** (35 West Main St) – Questioned that if another medical center wanted to come to the board if Mr. Moronski would use the same testimony as this application. Mr. Moronski stated that every application stands on their own merit. Ms. Wulster stated that she applied to the board to run her chiropractor office on the first floor and got denied by the board. The board denied her application because the town wants to promote retail on the first floor and there are other zones in Denville that...
would allow her business on the first floor. It was stated that current medical businesses suffer with not being able to put signage up.

Public portion closed

Howard Geneslaw, Esq- Explained that retail is changing there is more of demand for medical uses. The application meets all the criteria and is not requesting a hardship variance. The public is making statements on economic competition which would not be a valid condition of granting or denying a variance. The applicant is only requesting to run a business on the first floor

Mbr. Moroney stated that he approves this Use variance for this particular lot. The parking offered is within the code and presents a different criteria than the other medical spaces downtown with limited parking and Mbr. Wagner seconded that motion.

AYES: Fisher, Titze

NAYES- Caravaglia, Hong, Napolitano

Mbr. Hong- Stated if this were to be approved it would set a precedent for taking away retail space and giving it to medical use and called me old school, but I don’t see me getting a mammogram and then picking up a cell phone in one visit.

Mbr. Napolitano- Stated he is concerned with adding medical services/ buildings. There is no hardship because there are medical buildings available.

The votes were 4 to 3 and the application was denied

OLD BUSINESS - None
NEW BUSINESS - None

Meeting adjourned at 10:08 PM
Minutes Approved: February 19, 2020  Melissa Unrath, Board Secretary.