The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, February 15, 2012. The meeting was held in the Municipal Building, 1 St. Mary’s Place and commenced at 7:00 P.M. Chairperson Murphy presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL: Present: John Murphy, Roger Spiess, James Rodimer, Sally Dankos, Frank Passucci, Arthur Korn, Susan Richter
Absent: Sean Ryan, Tom Dolan
Prof. Present: Larry I. Wiener, Esq., William Denzler, PP, Peter Turek, PE

MINUTES:
January 18, 2012
Motion to adopt the minutes as submitted was made by Mbr. Korn, seconded by Mbr. Passucci and unanimously approved by all Members present and able to vote.

February 1, 2012
Motion to adopt the minutes as submitted was made by Mbr. Dankos, seconded by Mbr. Rodimer and unanimously approved by all Members present and able to vote.

PURCHASING:
Motion to pay vouchers submitted by Larry I. Weiner, (dated February 8, 2012) subject to the availability of funds, was made by Mbr. Korn, seconded by Mbr. Spiess and unanimously approved by all Members present and able to vote.

RESOLUTIONS:
BA 12-01: Joseph & Dorinda Sceurman
Block 50401, Lot 15
76 Riverside Drive
A motion to adopt the resolution of approval was made by Mbr. Spiess, seconded by Mbr. Korn and unanimously approved by all members eligible to vote.
Roll Call: Ayes – Spiess, Korn, Rodimer, Dankos, Passucci, Murphy

BA/SP 08-03: Maurice Soussa
Block 31001, Lot 31
Evergreen Road
A motion to adopt the resolution of dismissal without prejudice was made by Mbr. Spiess, seconded by Mbr. Korn and unanimously approved by all members eligible to vote.
Roll Call: Ayes – Spiess, Korn, Rodimer, Dankos, Passucci, Murphy

PUBLIC HEARINGS:
BA/PSP/FSPV 11-14: Lustig Enterprises (Acura)
Block 20701, Lot 23 & 24
3109 Route 10 East
Karlene K. Knaub, Esq. of The Margolis Law Firm, LLC (Five Becker Farm Road, Roseland) represented the applicant, Lustig Enterprises, LLC. Ms. Knaub was accepted as a professional and provided a summary of the application for the Denville Acura Dealership to obtain more inventory space. The applicant is proposing preliminary and final site plan approval with variance relief to construct an additional off-street parking facility for 44 vehicles at the existing Acura automobile dealership. Proposed improvements include landscaping, lighting and the merger of Lots 23 and 24. Applicant is seeking a design waiver and use variance relief for expansion of existing non-conforming use.
The applicant's attorney explained that there would be three witnesses. Steven Lustig, family member and owner of the dealership, John Manilio, PE of Redco Engineering and Professional Planner, John McDonough.

Steven Lustig (6 Peach Tree Lane, Chester) was present and sworn under oath. Mr. Lustig is the Vice President of Denville Acura and Bridgewater Honda, LLC. Stating he is a manager and owner of both dealerships.

Mr. Lustig explained that you earn more as you sell more. Explaining that the manufacturer increases a new car dealership's inventory as the new car sales production increases. The additional space will improve the storage and navigation of the lot while providing cleaner aesthetics. The congestion of the lot makes navigation and customer parking in the lot difficult. The proposed lot would not be used by the customers.

Chr. Murphy opened to the professionals and seeing none, opened to the board.

Mbrs. Rodimer and Dankos had no questions. Mbr Korn stated that other car dealers along the Route 10 corridor have also stated that inventory is required. Mbrs. Richter and Passucci had no questions. Mbr. Spiess commented on the parking lot caving in near the sewer grate. Mr. Lustig confirmed that if approved, this would be repaired as part of the application. Chr. Murphy had no questions at this time.

Chr. Murphy opened this portion of the hearing to the public. Reminding the public that there would be opportunities to ask questions of all the witnesses, as well as an opportunity to make a statement.

Abdelraouf Abdelal (44 Mt. Pleasant Tpke,) was present and inquired about the access points to the roadways. Mr. Lustig responded that the parking lot would only be accessible from within the current parking lot. Mr. Abdelal had no further questions.

Kevin Kessler, Director of Operations of API Systems (317 Route 10 East) was present and wanted to ask questions. Larry Weiner, Esq. stated that a corporation should be represented by an attorney. Stating that limited questions would be allowed if the applicant’s attorney did not object. Karlene Knaub, Esq. allowed the question. Mr. Kessler inquired what the distance from the creek was and was told that this would be addressed in the engineer's testimony. Mr. Kessler had no further questions.

Chr. Murphy asked if there were other members of the public and seeing none, closed the public portion of the meeting.

Giovanni ‘John’ Manilio, PE and Head of Engineering of Redco Engineering (137 Elmer Street, Westfield). Mr. Manilio was present, sworn under oath and accepted by the board as an expert witness. Mr. Manilio explained that there were two lots and Lot 23 facing Mt. Pleasant Tpke, would be referred to as the small lot and the large lot, Lot 24 facing Route 10 and Hill Road, would be referred to as the current dealership. The two lots will be merged into one Lot of approximately 3.6 acres with three frontages. Using a colorized version of the Sheet 2, Site Plan (Exhibit A-1) Mr. Manilio explained the DenBrook and State imposed buffers. Explaining that this project does not apply under the Special Water Resource Protection Area due to it’s size. It does not meet the criteria for a Major Development of one acre of impervious or one acre of disturbance with the proposed being only .22 impervious and .4 disturbance. The 300’ Flood Hazard Riparian zone does apply and comes to the building line. Allowable if two provisions apply. (1) Not a storm water major development and (2) that the areas are previously disturbed. The proposed parking lot previously had a dwelling with a deck, garage and driveway on this property. 

Mr. Manilio stated that the remaining constraint is the Wetlands Transition Area that was referenced in the Township Engineer’s report and would require a transition waiver. Mr. Turek, PE explained that there would be a swap of land in this transition area but that the plans have not yet been provided to Hatch Mott MacDonald. Peter Turek, PE spoke to the difficulty of the plans missing proposed information. The site plans do not reflect the different lines for the regulatory areas such as the transition area and wetlands.

The public hearing was adjourned temporarily for the township engineer to review the applicant’s information. After a brief five minute break the applicant was allowed to proceed with the advice of the board engineer and attorney. Handouts were distributed and the public hearing resumed.

Using a colorized version of the Site Layout and Grading Plan (Exhibit A-2) Mr. Manilio provided an overview of the various areas. The entire stapled packet of five pages was entered as and Exhibit (Exhibit A-3). Mr. Manilio testified to the area shaded in red being a small area of encroachment into the buffer area and the area above being an area where the applicant would be giving some area back to the buffer area.

- Variance for Parking Space Size - Variance relief for 8’ x 18’ less than the required 10’ x 20’ parking space size. Proposed 44’ parking lot for new inventory only, driven by private

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employees, not for use by the public, limited use, used sparingly and only to be accessed by existing car dealership.

- **Variance Design Waiver** - Variance relief from 6" Granite Block Curb on the western boundary. The granite block curb would be provided everywhere but this boundary. Due to storm water it will be granite block curb that is flush to allow for water and for snow removal and plowing.

- Use **Variance** – Variance relief for expansion of an existing non-conforming car dealership use.

- Variance for lighting to be addressed in the planning testimony.

The applicant's engineer addressed the township engineer’s report dated September 6, 2011 containing 18 bulleted items.

- **Steep Slopes** – (Exhibit A-4, Sheet 5) In compliance with steep slopes and disturbance. No relief required.

- **Granite Curbing** – Will comply with 6' on all but one 0' clearance on a design waiver.

- **Storm Water** – No need to comply as the project is not a major development. .03% increase into the DenBrook. Low impact development. Parking lot does not flow directly into the DenBrook, testified to the incremental increase of storm water runoff of (10 Garden hoses versus 35K garden hoses) Peter Turek confirmed that less than ¼ acre of impervious and less than 1 acre of disturbance agrees that this is not a major development. But since storm water is still a concern, Mr. Turek urged the applicant to investigate the Best Management Practices and consider possible retrofit of the existing storm water detention basin to mitigate some of the water from new parking lot.

Gregory James Redington, President and Owner of Redco Engineering and Construction (137 Elmer Street, Westfield) was present and accepted as a professional witness. Mr. Redington stated that the NJDEP has changed it's regulations so as not to burden things that are miniscule in their effect. Voiced respect for the laws but the desire not to burden the applicant.

John Manilio continued addressing the township engineer’s comments in the September 6th report.

- **Parking Calculation** – 47 spaces for customer and employee parking. 98 spaces for new car inventory and display total. Total of 189 onsite. Post construction numbers; 30 Customer Spaces, 17 Employee Spaces, 83 New Car Spaces, 59 Used Card Spaces for a Total of 189.

- **Lighting** - (Sheet 3) to reflect the same lighting locations but the wattage was decreased to 100 watts. Maximum light of 3.5 foot candles, design waiver to go below .2 in some areas. Average 1 foot candle which is proposed. Average minimum 5 to 1. Property line is .3 for residential and .5 for non-residential and proposing no light at the property line. Back light shields are proposed to prevent glare. One light that is marked with a star that will be on all night for security reasons. The light to remain on is not directed to the neighbors.

- **Car Carriers** – The Police Department's concerns regarding the loading and unloading of vehicles on Hill Road. Mr. Lustig spoke to the car carriers for lease returns at this dealership coming off of Route 10 and parking in front of their building. Stating that there is a sign on Hill Road stating no car carrier parking.

Chr. Murphy opened to the professionals.

Peter Turek, PE had no new concerns but returned to parking of substandard 17’ long stalls stating they should not be included in the parking count. John Manilio spoke to the existing site plan. Sheet 1, to be treated as pre-existing non-conformities on the site. Updated survey reflects that the stalls are 18' and not 17'.

Bill Denzler, PP inquired about the lighting intensity and if it would apply for new and/or existing lot. John Manilio indicated that it was for the new lot only. Bill Denzler referenced lighting from the residents regarding the overall lighting on the site including the existing lot. Applicant will be willing to address the existing on the site and work with the township engineer to address.

Chr. Murphy opened this portion of the public hearing to the board members.

Mbr. Korn referenced the condition of the existing garbage enclosure on the site. Applicant agreed to repair the dumpster enclosure.

Mbr. Richter had none.

Mbr. Passucci requested the hose calculation be repeated. CFS is Cubic Feet per Second. Roughly 7.5 gallons of water. At 9 gallons per minute. Increase for 100 year storm for the entire site is .2 CFS equating to 10 garden hoses in the parking lot. Stating it’s 300'ths of a percent.

Mbr. Spiess inquired of Peter Turek’s concerns being quantity or quality. Peter Turek responded primarily quantity. Mbr. Spiess asked for some suggestions for what the board should be looking
for regarding the storm water runoff. Peter Turek responded that he isn’t the designer but suggested to the board that a reasonable condition of approval requiring the applicant to submit something for the township engineer’s review and approval. Mbr. Spiess was interested in having the lighting concerns meet with the township engineer’s approval as well as the storm water. Chr. Murphy clarified that the engineer agreed that there are some practices that the applicant can implement to accommodate the runoff. Mr. Turek confirmed that something could be done, the extent of which would be determined by what the applicant presents.

Chr. Rodimer commented that he was pleased to see successful businesses in Denville and inquired about the size of the additional parking lot. John Manilio stated that it would be 9,300 sq. ft. A 6,000 sq. ft. increase from the prior approved residence of 3,000 sq. ft. The soil would be approximately 600 cu yd. Equating to 60 truckloads of soil over a period of two months. One 2’ Gabion wall proposed along one section of the parking lot. The existing 25’ from existing parking lot to the wetlands and the proposed is approximately 55’.

Mbr. Dankos commented on potential costs but voiced concern for mitigation of the runoff of the water. Stating that without mitigation of the storm water she would be unable to vote in favor of the application.

Chr. Murphy spoke to the de minimis runoff as per the applicant. Inquired about impact to the property during Hurricane Irene. Mr. Lustig responded to not having an issue at the property and never having had a problem. Stating that smart business decisions are not made on exceptions. Voiced a willingness to work with the neighbors, referenced the proposed meets NJDEP requirements and explained that there is a limit to what can be done from a cost perspective. Applicant confirmed that the temporary gravel driveway would be removed. The evergreen trees will be 6-8’ tall when planted and the three dogwood trees will be 2.5’ in diameter.

Chr. Murphy opened the public hearing to the public.

Hank Huelsebusch (500 Openaki Road) was present and commented on the applicant having conceded to correcting lighting concerns from the residents. Mr. Huelsebusch stated the Bricker’s wanted the plantings to be 8’ in height. The applicant agreed.

Donna Andrews (35 Mt. Pleasant Tpke) was present and referenced the first page #2 and the overflowing sewers. Voiced concern for runoff, having had prior sewers overflow and inquired about the curbing. The applicant’s engineer spoke to the water in the new parking lot going in one direction and the water in the existing parking lot going in another direction. Ms. Andrews referenced the lighting and stated the lights are on all night long. Chr. Murphy indicated that the neighbor can call the police when there is drop-off taking place. There is no ordinance indicating that there is no drop-off of vehicles. Chr. Murphy stated that there will be a condition of approval that no car drop-off take place on Hill Road.

Chr. Murphy asked for other members of the public, seeing none, closed the public portion.

John McDonough, PP and Principal of John McDonough Associates, LLC (101 Gibraltar Drive, Morris Plains) was present and accepted by the board as an expert witness. Provided an overview using three colorized pages (Exhibit A-6). Page one depicts an aerial photograph and Pages two and three are ground photos.

Merger of Lots 23 and 24. A site that has been previously developed and previously disturbed. There will be no tree elimination, no steep slopes, no signage and no public access. Seeking design waivers for stall size, curbing and lighting. Stating that the lighting is less than what is allowed by code.

Positive Criteria - The MLUL tie-in to promoting general welfare, improving business, customer friendly and relief to current onsite congestion. Promotion of free flow of traffic. Desirable visual environment, green wall and screening to public benefit and efficient use of land, already cleared. Connectivity of the two sites, cleared and flat pocket.

Negative Criteria – Public health, safety and welfare, traffic and circulation standpoint and no substantial detriment, no unloading of vehicles on Hill Road. Nothing that causes anything unhealthy. Not in aquifer sensitive area, no visual nuisance, lighting or noise. Consistent with goals to improve the site, the master plan and the MLUL.

Referenced the planner’s report dated June 28, 2011.

Chr. Murphy opened this portion of the hearing to the professionals.

Bill Denzler, Township Planner concurred with the applicant’s planning testimony. Commented that lighting is an ordinance and not a design waiver. John McDonough responded affirmatively. Bill Denzler asked if the applicant would agree to having the landscaping to meet the planner’s approval to ensure that the landscaping meets the 8’ or higher buffer for the residents. The applicant agreed to this as a condition of approval. Peter Turek, Acting Township Engineer had none.

Chr. Murphy opened to the board for questions on the planning testimony.
Mbr. Rodimer, inquired about a large tree in the center of the lot. Mr. McDonough confirmed that the tree will remain and is a good representation of what the mature trees will look like. Stating that the interconnection between the two lots is where the row of cars is shown. The edge of pavement will be approximately 12' from that tree.

Mbr. Dankos thanked Mr. McDonough for a good presentation and stated she had no questions. Mbr. Korn inquired about the soil and Mr. Denzler indicated that the soil permit is handled by the township engineer. Mbr. Korn inquired about the number of signs on the building. Mr. Denzler indicated that the signs were not handled as part of the application and are handled by zoning.

Mbr. Passucci confirmed there would be no signage along the backside of Mt. Pleasant. Inquired about freeing up parking for customers use and the offloading of trucks. The applicant confirmed Mbr. Passucci’s understanding.

Mbr. Spiess concurred with Mbr. Dankos on the planner’s presentation and commented that he was in favor of the proposed.

Mbr. Richter had none.

Mbr. Murphy inquired that there would be no stackers and that the double stacking would be eliminated. The applicant confirmed.

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Chr. Murphy opened to the public for questions on the planning testimony and seeing none, closed this portion of the meeting.

Gregory Redington of Redco commented that the township update their ordinances to reflect the boards opinion. Stating that the applicant provided a proposal that met the township and state guidelines and was surprised by the requests to go above and beyond the requirements. Requesting that the board not impose a burden upon the applicant that would require timely and costly re-engineering. Larry Weiner, Esq. addressed Mr. Redington by explaining at the township engineer’s advice, the board’s position was to have the applicant make reasonable accommodations to tweak the storm drainage plan for improved mitigation.

Chr. Murphy opened to the public for overall comments on the application.

Kevin Kessler commented on the wisdom of the board and provided thanks for meeting the resident’s needs. Mr. Kessler urged the board to approve the application, stating that the township engineer made a lot of sense and indicating a willingness to assist with drainage on their property if helpful.

Chr. Murphy asked if there were other members of the public, and seeing none, closed the public portion of the meeting.

Karlene Knaub, Esq. provided a closing statement. Stating the contribution that the applicant’s family has made to the community and that the statutory requirements have been met. Restating the overall benefits of the proposal outweigh any detriment to the township.

Chr. Murphy requested a brief deliberation of the board’s opinion.

Mbr. Korn voiced being overall in favor of the application, business expansion great, improvement for the town and good that the engineers work together for a solution.

Mbr. Richter commented that the applicant had an ideal location for expansion and was in favor of the proposed.

Mbr. Passucci had no questions or comments.

Mbr. Spiess stated it was good to see a business thriving, glad they are staying in Denville and with a few conditions, believes this is a good application.

Mbr. Rodimer liked the plan and thought it was good use of the lot. Combined new and used car sales of approximately 85 cars monthly.

Mbr. Dankos spoke being in favor of the application and wished the Lustig family good luck.

Chr. Murphy added comments to the applicant being receptive to the neighbor’s concerns regarding lighting and will make attempts to meet the best practices in mitigating runoff.

A motion to approve this application was made by Mbr. Spiess, seconded by Mbr. Dankos and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Spiess, Dankos, Rodimer, Korn, Passucci, Richter, Murphy

OLD BUSINESS:

Chr. Murphy referenced the annual report that was distributed by the board secretary. Asking all board members to review the annual report before it’s adoption at the March 7, 2012 meeting.

Chr. Murphy also reminded the board members to log in to their new township emails so that the board secretary can begin sending communications to the new addresses.

Motion to Adjourn.

Denean Probasco, Board Secretary Date Approved: March 7, 2012