

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**May 27, 2009**

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, May 27, 2009. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Kuntz presided.

**Secretary Probasco read Notice of Public Meeting.**

**Roll Call:**       **Present** – Mayor Hussa, Chr. Kuntz, Vice Chr. Filauro, Glenn Buie, Howard Shaw, Peter Nienstadt, Lou Maffei, Jim Schoner  
                      **Absent:** Kurt Schmitt  
                      **Professionals present** – Tiena Cofoni, Esq., Nicholas Rosania, PE, P.P., William Denzler, P.P.

**MINUTES**

**April 22, 2009**

Motion to adopt the minutes as amended was made by Mbr. Shaw, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

**PURCHASING**

Motion to pay vouchers submitted by Denzler and Associates, (dated May 5, 2009) subject to the availability of funds, was made by Mbr. Buie and seconded by Mbr. Nienstadt and unanimously approved by all Members present.

**CORRESPONDENCE**

Chr. Kuntz referenced the Zoning Board of Adjustment's 2008 Annual Report.

**PROFESSIONAL COMMENTS**

William Denzler, Township Planner indicated that he had no professional comments.

Mayor Hussa stated he had no comments but that everyone should familiarize themselves for future discussions regarding the Master Plan.

Nicholas Rosania, Township Engineer indicated that he had no professional comments.

**PUBLIC HEARINGS**

**MSV 07-10: Joseph D'Egidio  
Block 61901, Lot 3  
59 Kitchell Road**

Mbrs. Schoner and Shaw were notified property owners and recused themselves for this application. Michael D'Agostino, Esq. (702 Prospect Avenue, West Orange) represented the applicant. Applicant proposes to construct a minor subdivision containing an existing dwelling under construction requiring variance relief for steep slopes and wall heights. The applicant will build the new home himself to be similar to the existing home but both the home and garage will be smaller in size. The decrease in the home size is to minimize the steep slopes.

Mr. Giusuppe "Joseph" D'Egidio (63 Mabro Drive) was present and sworn in. Mr. D'Egidio testified to building the existing home at 59 Kitchell Road. As a landscaper and builder, Mr. D'Egidio has built 10 homes, plumbing, roofing, electrical and woodworking performed by others. Mr. D'Egidio indicated that he performs tilework, stone work, masonry and driveway himself. Pending the subdivision, a new home would be built and the first home would be sold. Mr. D'Egidio testified that it has taken two years to obtain a LOI from the NJDEP.

Mr. Fred A. Stewart, Jr. (25 Pine Street, Rockaway) was present and sworn in. As a licensed Civil Engineer and Land Surveyor Mr. Stewart was accepted as a professional witness. Mr. Stewart testified to the existing conditions using Exhibit A-1 – Subdivision Plan. The location of the property is located on the westerly side of Kitchell Road, sloping to the rear of the property. Sanitary Sewer Easement was recently installed. Wetlands located to the rear of the property. Testified to the location of the existing home and proposed dwelling within the wetlands buffer using Exhibit A-2 – Grading, Soil and Sediment Control Plan. The proposed improvements are towards the southerly side with lesser sloped area of 5% in front of the garage and a driveway of a 15% slope. Grading from the roadway to the front of the dwelling to match the existing dwelling with some existing fill. Two retaining walls on the northern side will be replaced along the buffer line. The first tier lower wall will be at a 5' maximum height. The second tier wall will be at a 5' maximum height as well with a 3' high safety barrier of aluminum fence on top. Only 5' between the tiers is proposed where 10' is required. This variance is being requested to allow a larger recreation area. There is 137' from the dwelling to the rear boundary line and there are no dwellings to the rear. A natural buffer of 110' between the rear and the wall with vacant property behind. Another set of walls near the driveway is proposed with the first tier height of 5.7' and the second tier height of 3'. A similar variance is requested for a separation between tiers of 5' where 10' is required. The bulk zoning requirements are all met for lot area and setbacks with the only variances requested for steep slopes and

retaining walls. Mr. Stewart's testimony continued using Exhibit A-3 - Slopes Exhibit to reflect slope tables and slope disturbances for each lot. Lot 3.01 with the existing structure will have slight regrading in the front yard for run-off. The recently installed septic will be abandoned for the new sanitary sewer line. Mr. Stewart reviewed the slopes of 13,485 sq.ft. in the 15-20% area. Proposed disturbance is 3,016 sq. ft. where 6,743 sq. ft. is allowed for a total of 22.4% where 50% is allowed. In the 50% steep slopes area proposed disturbance of 40.9% where 25% is allowed. Requiring a variance to disturb 2,146 sq. ft. where 1,312 sq. ft. is allowed. In the 25-25.99% slope range proposed disturbance is 24.2%/1741 sq. ft. where 10%/720 sq. ft. is allowed. In the slopes area of 30% and greater 20.1%/2,753 sq. ft. of slopes disturbance is proposed where 0% is allowed. This disturbance is primarily toward the roadway to get from the road onto the property with regrading along the front of the proposed dwelling for runoff.

Mr. Stewart testified that the proposed location is the ideal to mitigate the steep slopes disturbance in an area constrained by wetlands. The proposed home will have a walk-out basement to the rear yard.

Chr. Kuntz opened to the professionals for comment.

Nick Rosania, Township Engineer inquired about the size of the proposed dwelling and reviewed his engineering report dated May 27, 2009. Mr. Stewart did not have the size available. Mr. D'Egidio responded to the proposed dwelling being approximately 3,200 sq. ft. versus the existing dwelling of 3,600 sq. ft. Mr. Rosania inquired about the slopes around the home. Fred Stewart replied that there was a .3 difference between the dwelling and the retaining walls. To the south of the property is open space, industrial property. Mr. Stewart confirmed that there were no bulk variances on this application. Nick Rosania inquired about the driveway profile sloping down 15%. No curbing is proposed. Soil movement is proposed with some soil onsite in front of the home and structural fill in front of the driveway. Mr. Rosania indicated that a figure on soil movement would need to be provided and that soil erosion appears to be typical. A Letter of Interpretation was provided by the NJDEP. The Township Engineer agreed with the applicant's engineer that the road is wide enough and would agree with granting the requested waiver. Mr. Stewart confirmed that the total disturbance on the lot was approximately 5,000 sq. ft. With some disturbance allowed, this equates to approximately 7% overall disturbance on the lot. Mr. Rosania indicated that this is a fairly reasonable proposal on a large lot, with wetlands buffer LOI and constraints of the wetlands.

Bill Denzler, Township Planner inquired about the time the buffer averaging was performed on the property with the existing dwelling as it related to the wetlands transition line. Mr. Stewart confirmed that the buffer averaging was performed after the existing dwelling was built. Mr. Denzler concurred that there were no bulk variances and the property was limited by steep slopes and wall heights. Disturbance was discussed. Mr. Stewart confirmed that shifting the proposed dwelling to the east would provide minimal advantage resulting in a few feet only. Bill Denzler inquired about future homes and limitations of the conservation easement. In response to the conservation easement, Fred Stewart stated that there was no need to go beyond the wall as it provides a barrier.

Tiena Cofoni, Esq. inquired about the existing dwelling on Lot 3.901 being under construction and requiring prior board approval for steep slopes. The Township Engineer explained that Lot 3.01 did not require approval for steep slopes prior to subdivision. Disturbance on the first lot is minimal and Fred confirmed to Tiena that the steep slopes percentages are a result of the existing application and not as a result of the existing home. Soil erosion and soil movement are to be included as part of the application.

Chr. Kuntz opened to the public and seeing no one closed the public portion.

Chr. Kuntz opened to the board members for questions.

Mbr. Filauro inquired about the elevation of the wall behind the home. Fred Stewart confirmed the wall ranged in elevation from 552 to 541 to bottom wall for a total of 11', 5' each wall with a 1' slope between the walls. Mbr. Filauro indicated her discomfort and concern for safety for children with the distance from the walls, despite the fence on top and inquired about profile for the driveway. Fred Stewart indicated that a profile was not available but that there was a maximum of 15% to bottom of the transition area. The only disturbance is in the sewer easement area. Mbr. Filauro inquired about the elevation of the steps. Fred Stewart responded a full set of stairs lead to the deck. The ground elevation of 557.1 with the deck elevation of 565.4 leaves an 8' difference from deck to the ground below. Fred Stewart indicated that any wall over 30" requires a safety barrier regardless of staggering the walls. Michael D'Agostino, Esq. indicated that the purpose was to create the largest viable and useable backyard.

Mbr. Buie voiced concern for the steep slopes ordinance. Mr. Stewart indicated that the size of the property being similar in size to surrounding properties in the area and referenced Lots 9 and 4. Mbr. Buie commented that although the lots may be oversized but that in his opinion it was the intent to subdivide the lots requiring variances. Mbr. Buie commented that the ordinances should be followed. Mr. Stewart indicated that Lot 3.01 at 42,567 sq. ft. and Lot 3.02 at 69,357 sq. ft. where 40,250 is required by ordinance.

Mayor Hussa inquired about the buffer averaging. Mr. Stewart explained that the transition area restricts to the property within the 150' wetland boundary line. Limited to going beyond the line of the compensation area with any disturbance. The area is steeper but not wetlands. A portion of 16.5' from the deed line will be dedicated. A formal deed of dedication would be required for the property that would

have a title transfer. Mr. Rosania confirmed limitations existed on the conservation easement area and that maintenance of the property is allowed. Mr. Stewart confirmed that further subdivision of the property is virtually impossible. Mayor Husa voiced concern for the steep slopes and that it was an advantage that the property behind was vacant.

Mbr. Buie inquired of the allowable disturbance of slopes within a 74,000 sq. ft. lot. Mr. Stewart replied that 15,000 sq. ft. of 74,000 sq. ft. where 6,500 sq. ft. is allowable.

Mbr. Nienstadt indicated that Mbr. Buie had asked what he wanted to know and had no other questions.

Mbr. Maffei voiced concern with steep slopes but inquired about the fence being more for aesthetics than for safety. Inquiring if the same fence would be on the driveway side. Mr. Stewart indicated that a timber guide rail would be called out for the driveway. Mbr. Maffei major concern was for the steep slopes ordinance and had no other questions.

Chr. Kuntz was concerned about drainage downhill. Fred Stewart responded that the water would drain to the wetlands transition area. Nick Rosania, P.E. indicated drainage was a good point and that water should be looked at to avoid erosion. Mr. Stewart responded that it was looked at and was not expected to channel across the driveway, sheet flow is expected at a 5% downward, no collection to that area, also to the front of the property. Nick Rosania indicated that the engineer could look at this in more detail and some embellishments to the plan would give the board reassurance. This should include recoloring code on the steep slopes and more detail on the soil movement. Michael D'Agostino, Esq. indicated what Joe D'Egidio, Jr. spoke to similar driveway of the existing driveway and the runoff is not a problem. Chr. Kuntz voiced discomfort and concern for further detail on the runoff. Mr. Rosania suggested adjournment for the applicant to return with further detail. Chr. Kuntz inquired about tree removal. Mr. Stewart responded that tree removal would be provided to the board.

Tiena Cofoni, Board Attorney provided a recap of what the applicant should provide for the next hearing to include; soil movement information, revised slope disturbance coloring, tree removal, driveway profile, drainage detail for driveway runoff, safety fencing detail, wall height and separation between.

Chr. Kuntz announced that the application would be carried to June 24, 2009 without further notice.

After a short break, the meeting resumed.

**MS 09-04: William & Catherine Jensen  
Block 60505, Lot 4  
361 Diamond Spring Road**

Applicant proposes to construct a minor subdivision lot line adjustment between two properties. Applicant resides at 357 Diamond Spring Road. The property 361 Diamond Spring Road is owned by the applicant's who reside at Franciscan Oaks. Ms. Jensen testified their desire to adjust the lot line for privacy purposes prior to the sale of her parent's adjacent property.

For the record, Mbr. Nienstadt recused himself.

Tiena Cofoni, Board Attorney confirmed that the parents of the applicant consented to the application.

Chr. Kuntz opened the application to the professionals.

Nick Rosania, Township Engineer stated that the two lots were currently and would remain conforming. Bill Denzler, Township Planning stated there were no planning concerns before and after the adjustment and no proposed construction.

The applicant confirmed to Tiena Cofoni, Esq. other than privacy there were no reasons for the lot line adjustment, there would be no further subdivision and no further improvements.

Chr. Kuntz opened the application to the public and seeing no one closed the public portion.

Chr. Kuntz opened to the board members.

No board members had any questions.

Motion to **approve** the subdivision was made by Mbr. Shaw, seconded by Mayor Husa and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Shaw, Husa, Filastro, Buie, Maffei, Schoner, Kuntz

**ADJOURNMENT**

Motion to adjourn.

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Denean Probasco, Board Secretary

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Date adopted