



**Lebanon Township Board of Adjustment**  
**July 25, 2007**  
**Page 2**

Attorney Gallina had Mr. Van Nest sworn in at this time to give testimony. Mr. Eberle informed the board that Mr. Van Nest worked for him for a couple of years about 7-8 years ago and he wanted to know if the board would like him to recuse himself. Mr. Eberle stated that Mr. Van Nest was a sub-contractor. Attorney Gallina asked if the board or the applicant had a problem with Mr. Eberle sitting in on this application. After a brief discussion, it was decided that there was no conflict of interest and Mr. Eberle can participate in this application.

Chairman Terzuolo asked Mr. Van Nest to explain to the board why he is here this evening. Mr. Van Nest stated he had several conversations with the Zoning Officer who in turn spoke with the Township Attorney and the Zoning Officer was unsure of his decision due to the lot being non-conforming and stated that he (Mr. Van Nest) would have to get a variance. Mr. Skene informed him that he would probably have to get a variance for the deck that was approved back in 2003 or get a variance for both the deck and the sun room. Mr. Van Nest stated that since he had been approved for the deck back in 2003 he did not think that now enclosing the deck to make a sun room would be a problem. Mr. Van Nest stated that he did not have any plans to make the enclosure bigger than what it is now.

Attorney Gallina suggested making the Appeal Application and the attachments as one exhibit. **A1**-Application, Zoning Denial, Property Survey and attachments. Chairman Terzuolo noted that since the lot is undersize why was the Zoning Permit approved and is there any relevance now. Attorney Gallina said that the only relevance is that the applicant can keep the deck where it is. It is now a non-conforming structure, but not a prior non-conforming structure per the MLUL. The applicant is now looking to make improvements to a non-conforming structure. This is now considered an expansion. The applicant is converting a non-conforming structure into something else. Ms. Glashoff explained why Mr. Freedman denied the applicant and Mr. Mills approved. The ordinance had been amended in between. Attorney Gallina stated that Mr. Mills had used the wrong ordinance when he approved the Zoning Permit. It appears that the zoning permit may have been issued in error. Since the deck does not predate the zoning ordinance, it is not a prior nonconforming structure. Attorney Gallina went on to say that the ordinance states that additions to single family dwellings on undersized lots may be erected without requiring a variance, the ordinance requires that both the existing dwelling and the proposed addition must meet all yard requirements for that zone with the only nonconformity being the deficiency in the lot area.

Attorney Gallina informed Mr. Van Nest that in the event the board denied his request to convert the deck into an enclosed sun room, he will still have the deck. That won't change.

After a lengthy discussion by the board, the board is satisfied that the Zoning Officer was correct in denying the Zoning Permit application to convert the existing deck into a sunroom. Motion by Mr. Abuchowski and seconded by Mr. Eberle to uphold the decision of the Zoning Officer of a Zoning Denial.

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Machauer	Mr. Perry	<b>No:</b> None
	Mr. Kozlowski	Mr. Abuchowski	
	Mr. MacQueen	Mr. Eberle	
	Mr. Terzuolo		

**Attorney Gallina will prepare the Resolution to be placed on the next meeting agenda of August 22, 2007**

**ITEMS FOR DISCUSSION:**

- a. Private Roads – copy of Mendham Boro Ord.

Chairman Terzuolo referred to the Mendham Boro Ordinance on private roads that Ms. Glashoff obtained from the Boro. Chairman Terzuolo read a portion of the ordinance: “All private roads whether existing or newly established shall be maintained in condition that will permit the safe passage of Police, Fire & First Aid emergency vehicles. This requirement shall be noted on the final plat and stipulated in any deed of conveyance of title to property served by a private street including the allocation of cost of maintenance of each property in respect to all properties so served. If in the opinion of the Boro Council after a report from the Boro Engineer any private street that is not maintained in such safe condition after written notice to the owners and hearing by the Council said private street may be repaired at the Boro Engineer’s direction and the owners assessed of cost there of”. Chairman Terzuolo stated that this Township should have the

**Lebanon Township Board of Adjustment**  
**July 25, 2007**  
**Page 3**

same ordinance with those standards. Attorney Gallina asked whether this ordinance has ever been challenged. Chairman Terzuolo stated that when he worked at a property in the Boro that was on a private street, the Boro Council found that the road was not being maintained per the ordinance and the Boro had the work done on the street and billed the property owners. The owner in question where Chairman Terzuolo was working informed him that after that the property owners made sure the road was keep up to standards.

Attorney Gallina wanted to know what the track record was with this ordinance. Ms. Glashoff said she would contact Diana the Planning Board Admin and find out. Mr. MacQueen stated that someone was clocked doing 67 mph on his private road. It was suggested sending this ordinance on to the Planning Board as an FYI.

Attorney Gallina noted that there is a new BBQ place on Route 31 at Davara. Ms. Glashoff informed the board that she, the municipal clerk and the zoning officer all informed the new person that if he wants to be stationery/permanent he has to come before the Planning Board otherwise he can only be there during the day and has to pack up and leave at the end of each day just like the hot dog vendor. Ms. Glashoff stated that this was made very clear to this vendor and he is doing what he wants not what he was told. The Zoning Officer has been made aware of the situation and will follow up on it.

Being no further business to come before the board, nor comments from the public, motion by Mr. Perry and seconded by Mr. Abuchowski to adjourn the meeting at 8:21 p.m. Unanimously approved.

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**CHAIRMAN BRUCE TERZUOLO**

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**GAIL W. GLASHOFF, BOARD SECRETARY**