

SPECIAL MEETING

**Lebanon Township Board of Adjustment
Municipal Bldg 530 West Hill Road Glen Gardner, N.J.**

November 17, 2010

The Special Meeting of the Lebanon Township Board of Adjustment was called to order at 7:30 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Kozlowski, Mr. Perry, Mr. Abuchowski, 1st Alternate Machauer, 2nd Alternate Maurizio, Mr. Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. MacQueen, Mr. Nagie and Mr. Eberle.

In compliance with the "Open Public Meetings Act" notice is hereby given that the Lebanon Township Board of Adjustment has scheduled a Special Meeting on Wednesday November 17, 2010 at 7:30 p.m. to hear the continuation of a Public Hearing for Transtar Truck & Autobody in the main meeting room in the Municipal Building. Notice of this meeting was published in the Hunterdon Review on November 3, 2010. Copies of the agenda were mailed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on November 10, 2010.

PRESENTATION OF MINUTES: Special Meeting October 19, 2010

Motion by Mr. Abuchowski and seconded by Mr. Kozlowski to approve the minutes with minor corrections. Unanimously approved by those eligible to vote. Mr. Maurizio abstained.

Regular Meeting October 27, 2010 – Next Meeting
(Transcript of Garden Solar Enclosed – 10/27/2010)

**FYI: Hunterdon County Municipal Officers Association
Dinner: November 30, 2010 6:30 pm Cocktails 7:15pm Dinner
American Legion Route 31 Flemington, N.J.
Speaker: Susan Kraft, Executive Director SADC – Solar, Wind & Biomass Energy**

Letter from Attorney Gallina re: Lawsuit (Confidential)

**Update Microphones in Meeting Room, cost split between TC/PB/ZBA
(This expenditure has been approved by the T.C. on November 3rd)**

Chairman Terzuolo announced that he will reverse the order of the applications.

UNFINISHED BUSINESS:

Dominick Tranquilli	Block #41	Lot #4
Transtar Truck & Autobody	Route 513	I5
514 Route 513		
Califon, N.J. 07830		

CONTINUATION OF A PUBLIC HEARING Site Plan with Variances

Attorney Gilbert was present to ask the board for a new date for the continuation of the public hearing. Engineer Parker was unable to have the revised plans done in time to meet the 10 day requirement prior to this meeting. Attorney Gilbert informed the board that Engineer Parker has been able to reduce the impervious coverage from 41.4% down to 40% per the ordinance and eliminate the variance.

Attorney Knox asked to address the board. Attorney Knox noted that at the last meeting on this application the board and professionals were polled for their availability continue this public hearing. Attorney Knox stated that he received a letter from Attorney Gilbert requesting a continuance but said nothing about the plans being revised and not ready for this evening. Attorney Knox said it is outrageous to think the applicant could not be ready to continue this evening. Attorney Gilbert said that the only thing left is to review the revised site plan. He is available for whatever dates the board purposes. The board has heard all the testimony that is needed to be heard from the applicant. Attorney Gilbert said he would like to have the board hear Planner Zimmerman reviewed the overall site plan.

At this time, Chairman Terzuolo asked Ms. Jacobus for an available date. After a brief discussion, December 16th was suggested. Everyone agreed. Attorney Gallina announced that the board will hold a special meeting on Thursday December 16, 2010 at 7:30 p.m. and no further notice will be given. The notice of this special meeting will be published in the Hunterdon Review.

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INTERPRETATION:

Nita Michaels
136 Mt. Grove Road
Califon, N.J. 07830

Block #17 Lot #6
Mt. Grove Road RC 7 ½

Accessory Apartment Ordinance

Attorney Walter Wilson was present on behalf of the applicant Nita Michaels. Attorney Wilson stated that per the ordinance the living facility is not an accessory apartment. The applicant is seeking an interpretation from the board on this issue. Attorney Wilson said the following people are present to give testimony, Nita Michaels and Linda Klingerman the applicant's sister. Attorney Wilson asked to have Nita Michaels and Linda Klingerman sworn in to give testimony. Both ladies were sworn in at this time.

Attorney Wilson stated that the section of the ordinance to be discussed is Section 400-11b (13) which is the Accessory Apartment Ordinance. Ms. Michaels said they have owned and lived at 136 Mt. Grove Road for 20 years. Attorney Wilson asked Ms. Michaels to tell the board what is on the property. Ms. Michaels said a house, pool, patio and a 200 year old barn. The house is also 200 years old. In the barn there are a couple of garage areas. Upstairs is a big open room that they renovated, put wood floors and did electrical work. This was done when they moved in 20 years ago. Ms. Michaels said her husband uses the area as a work shop for himself. Attorney Wilson said that the upstairs area in the barn is only an extension of the main house. Upstairs in the barn there is a bathroom, sink and refrigerator. Ms. Michaels said her sister stores her furniture in the barn. Ms. Michaels stated they were before this board several years ago to have an accessory apartment in the barn and the board denied the request. They have not created an apartment for use of her sister or anyone else. Mr. Abuchowski asked the applicant to explain why they are here this evening. Attorney Wilson stated that the applicant is here this evening to get an interpretation of what makes an apartment since the applicant claims that there is no apartment in this barn. Attorney Wilson they are here to clarify that this is not an apartment but just an extension of the main house.

Attorney Gallina interjected and stated that a complaint has been file with the zoning officer that there is an apartment in this barn. During the discussion, Mr. Perry asked if there was air conditioning and heat in the building. Ms. Michaels said there is heat but the air conditioning broke. Ms. Michaels said there is heat on all 3 floors. Mr. Maurizio asked if the furniture is laid out like a residence. Ms. Michaels said yes. Ms. Michaels went on to say that her sister does not sleep in the barn but does live there because all her belongings are in the barn. Attorney Wilson said it is irrelevant where or not the sister sleeps in the barn. Chairman Terzuolo opened the hearing to the public for questions of the witness. Planner Bolan interjected and asked if there was any cooking being conducted in the barn. Ms. Michaels said no, there is no stove or oven. All eating is done in the main house. Chairman Terzuolo asked if there were any questions by interested parties of the witness. There were none.

The applicant's sister Linda Klingerman gave testimony at this time. Ms. Klingerman said that each morning she goes to the barn and comes back in the evening. There are no sheets on the bed. She does art projects and computer work during the day. Ms. Klingerman said that all her possessions are in the barn except for a few items. Chairman Terzuolo asked if the board had questions of the witness. There were none. The Chairman then opened the hearing to the public for questions. There were none. Chairman Terzuolo had Zoning Officer John Flemming sworn in at this time. Mr. Flemming informed the board that he visited the site and said there is an efficiency apartment. There is furniture, living room, bedroom furniture. Even though he did not see a microwave or hot plate does mean you can't plug one in and cook food. Chairman Terzuolo asked Mr. Flemming what triggered him to go to the property. Mr. Flemming stated he got a complaint from a neighbor that there was an apartment in the barn. Mr. Flemming said there is a bathroom and he did see a bedspread on the bed. Mr. Perry asked if there was a radio or TV. Mr. Flemming did not see one. Mr. Perry asked what time of year he did his inspection of the barn. Mr. Flemming said it was spring. Mr. Perry asked if the heat was on. Mr. Flemming said it was comfortable. Mr. Abuchowski asked about the remedy. Mr. Flemming said that if you take out the bathroom it would no longer be an efficiency apartment and it should solve the problem. Mr. Flemming said they got permits for plumbing and the representation was that it was for a workshop. There was no representation at any time when the permits were issued that this was

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going to be used for living space. The Construction Official didn't approve anything for habitable space. Mr. Flemming stated that the configuration of the area is not that of a workshop. Since there were no further questions by the board, Chairman Terzuolo opened the hearing to the public for questions of Mr. Flemming. There were none. Chairman Terzuolo then opened the hearing to the public for comments and statements. There were none. Chairman Terzuolo announced that the evidence taking portion of the hearing is now closed. Planner Bolan said he had some comments to make. It was decided to have Planner Bolan sworn in at this time. Planner Bolan said this comes down to what is a dwelling unit. The ordinance states that a unit shall have a separate living quarters with cooking, sleeping and sanitary facilities provided within the dwelling unit. This definition is carried through to the accessory apartment in the conditional use standards. The accessory apartment shall have living, sleeping, cooking facilities, kitchen sink and sanitary facilities provided within the accessory apartment. Planner Bolan said if it doesn't have a complete cooking facility then it is not an apartment. The cooking facilities and the sanitary facilities are the key elements of the units. It's those three aspects, sleeping, cooking and sanitary facilities that qualify it has an accessory apartment an if it is not a dwelling unit then you do not have an accessory apartment.

Chairman Terzuolo asked if there were any questions for Planner Bolan. There were none. Attorney Wilson didn't have any questions and when opened to the public there were no questions. Mr. Kozlowski asked for clarification do you have to have all three aspects to have an accessory apartment. Planner Bolan said yes. Mr. Flemming said he had a question. If you don't have a stove then you do not have a kitchen is that correct. Mr. Flemming then asked if you have a hot plate and/or microwave would that make it a cooking facility. Planner Bolan said no. Mr. Flemming asked with this interpretation are they allowed to sleep in the unit. Attorney Gallina said yes. Planner Bolan said that sleeping there was not the issue. Chairman Terzuolo stated since there are no more questions, Attorney Wilson was asked to give his summation at this time.

At the conclusion of Attorney Wilson's summation, the board went into deliberations. At the conclusion of the deliberations, motion by Mr. Abuchowski and seconded by Mr. Maurizio that the findings based on testimony given that the unit is not being used as a supplementary apartment under the ordinance.

ROLL CALL	Yes: Mr. Kozlowski Mr. Maurizio Mr. Abuchowski	No: Mr. Terzuolo Mr. Perry	Absent: Mr. Nagie Mr. MacQueen Mr. Eberle Abstain: Mr. Machauer
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Attorney Gallina will prepare the Resolution to be on the Agenda for December 16, 2010

Mr. Flemming asked are they allowed to sleep there, assuming from the interpretation they are. Also, if someone comes in and configures a building with everything except a stove, then they have not created a dwelling unit. Is that the understanding? Attorney Gallina said that every application is fact specific. This application was based on the finding of facts. Attorney Gallina told Mr. Flemming that he should use his own judgment.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$373.75 – Attend Bd Mtg 10/27/2010
- \$258.75 – Escrow (**Garden Solar**)
- b. Bayer/Risse Engrs. \$358.50 – Attend Board Meeting 10/27/2010
- \$358.50 – Escrow (**Transtar**)
- c. Court Stenographer \$200.00 – Attend Bd Mtg 11/17/2010
- d. HC Planning & Zoning \$ 25.00 - Gail Glashoff – Luncheon/Seminar
- Total: \$1,574.50**

Motion by Mr. Kozlowski and seconded by Mr. Maurizio to approve the bills for payment. Unanimously approved.

CORRESPONDENCE:

- a. Zoning Law 11/2/2010
- b. Law of the Land (2 articles)
- c. NJPO Newsletter
- d. Law Bulletin November 2010
- e. Zoning Practice November 2010

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Chairman Terzuolo referred to the FYI on the agenda for the Municipal Officers Dinner on Tuesday November 30th at 6:30 p.m. and wanted to know who would be attending. Mr. Kozlowski, Mr. Maurizio and Mr. Abuchowski said they would like to attend the dinner since the guest speaker will be talking on Solar, Wind and Biomass Energy. Ms. Jacobus will let Ms. Glashoff know so she can make the reservations.

Being no further business to come before the board, nor comments from the public, motion by Mr. Maurizio and seconded by Mr. Abuchowski to adjourn the meeting at 8:34 p.m. Unanimously approved.

CHAIRMAN BRUCE TERZUOLO

ACTING SECRETARY KIM JACOBUS

Minutes prepared by: GAIL W. GLASHOFF, BOARD SECRETARY