

REGULAR MEETING

**Lebanon Township Board of Adjustment
Municipal Building 530 West Hill Road Glen Gardner, NJ**

March 27, 2013

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at 7:37 p.m. by Vice Chairman Abe Abuchowski. Present were: Mr. Kozlowski, Mr. Perry, Mr. Eberle, 1st Alternate Maurizio, 2nd Alternate Machauer, Attorney Gallina, Planner Bolan. **Excused:** Mr. MacQueen, Mr. Terzuolo.

Notice of this meeting was published in the "Annual Meeting Notice Schedule" adopted by the board on January 23, 2013. The notice was faxed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on March 20, 2013.

PRESENTATION OF MINUTES: Regular Meeting February 27, 2013

A motion was made by Mr. Maurizio and seconded by Mr. Kozlowski to approve the minutes as corrected. Unanimously approved by those eligible to vote.

Executive Minutes February 27, 2013

A motion was made by Mr. Eberle and seconded by Mr. Kozlowski to approve the Executive Minutes as presented. Unanimously approved by those eligible to vote.

ADOPT RESOLUTION:

Carol & John Jindracek	Block #37	Lot #37
Bulk Variances with conditions	Little Brook Road	R5

After a brief discussion, a motion was made by Mr. Maurizio and seconded Mr. Eberle to adopt the Resolution with minor corrections for Bulk Variances with conditions.

ROLL CALL Yes: Mr. Kozlowski	Abstain: Mr. Perry	Absent: Mr. MacQueen
Mr. Abuchowski	Mr. Machauer	Mr. Terzuolo
Mr. Eberle		Mr. Nagie
Mr. Maurizio		

EXTENSION OF TIME:

Dominick Tranquilli/Transtar Truck & Autobody	Block #41 Lot #4
1 Year Extension of Time on condition #29	Route 513 I5
(Site Plan Approval) Section 45-20 per Ordinance	

Attorney Harvey Gilbert was present and made a presentation to the board on behalf of the applicant Dominick Tranquilli. Attorney Gilbert reviewed for the board what has transpired since Mr. Tranquilli received back in 2011 his approved Site Plan. Attorney Gilbert stated that since the approval, Mr. Tranquilli has not been financially able to obtain the required permits or address the approval that was granted. The economy has now started to recover and Mr. Tranquilli would like to obtain an extension of 120 days from today, if the board is willing to grant the extension for the 1st phase of the project. Attorney Gilbert said that Mr. Tranquilli is present this evening to answer any questions the board may have. Attorney Gilbert stated this delay has been totally economic and he is now ready to continue on the project.

Ms. Glashoff informed the board that taxes are current, fees and escrow are paid and current. Mr. Perry asked if anything has been started. Attorney Gilbert said one of the neighbors was concerned that activities were being conducted not within the confines of the building. Attorney Gilbert went on to say that the sandblasting operation that was being conducted in the tent was removed from the tent and put in the confines of the building soon after site plan approval was granted. The tent was then removed. Attorney Gilbert said that Mr. Tranquilli purchased a sandblasting booth but as of this time has not had it installed due to financial issues. Attorney Gilbert said that since removing the tent the neighbors have not complained and he is now ready to have this sandblasting booth installed in the building. Ms. Glashoff said for the record, that the Zoning Officer has not received any complaints recently regarding Transtar. Attorney Gilbert thanked Ms. Glashoff for her comment. Mr. Eberle asked if Mr. Tranquilli will be applying for permits within the 120 days. Attorney Gilbert said yes, this is the applicant's intention.

Lebanon Township Board of Adjustment
March 27, 2013
Page 2

Attorney Gilbert stated that Mr. Tranquilli is planning on starting construction by this summer. Mr. Maurizio asked what permits will be needed. Attorney Gilbert said one will be needed for the fire tank. The tank will need the approval from the Township Engineer. This is to be done before any other construction is to begin. The construction of the extension of the building into the yard area will commence once the fire tank is installed and approved.

The Self Storage Units are part of Phase II which will be added to the front section of the building. Mr. Maurizio asked if there is sandblasting being done now. Mr. Tranquilli said yes, but it is done inside of the building. Mr. Machauer asked if everything is properly contained inside the building including the filtering of dust and dirt. Mr. Tranquilli answered yes. At this time, Mr. Tranquilli was sworn in to give testimony. Mr. Kozlowski asked about the sandblasting equipment and the painting and wanted to know if it was going into the new addition. Mr. Tranquilli said the sandblasting equipment is in the original portion of the building. Once the addition is up then the sandblasting equipment will be installed in the new section. Vice Chairman Abuchowski asked Mr. Tranquilli why he waited to come back to the board for an extension since the condition of 18 months was in the Resolution and it has now been 2 years. Attorney Gilbert said Mr. Tranquilli had a death in the family, someone who was close to him, also the economics involved. Vice Chairman Abuchowski asked if the applicant was going to get the permits for the self storage units within the 120 days. Attorney Gilbert did not think the storage units would be included in the 120 days. The Board has allowed the applicant to do this project in two Phases. The Self Storage Units are in Phase II. Attorney Gilbert stated in Phase I would be the fire tank and the addition to the existing building. Phase II wouldn't begin until Phase I was complete. Attorney Gilbert noted once Phase I is complete they would then come back to the board for an extension on Phase II. Vice Chairman Abuchowski asked Attorney Gallina for clarification regarding granting the extension of time on Phase I and the handling of Phase II for the Self Storage Units. Mr. Kozlowski asked about the yellow sign in front of the property which states "Industrial Zone". Mr. Tranquilli responded this is a reminder to the neighbors that they are in an Industrial Zone. The question was asked when did this process all start. Ms. Glashoff said originally Mr. Tranquilli came before the Planning Board for Site Plan approval for the original building back in 1991-1992.

The board deliberated at this time. Mr. Kozlowski noted that it was a good sign that the neighbors were not present. Everyone agreed. During the deliberations, the board agreed that it was in the best interest to move forward with this request by granting the extension of time. At the conclusion of the board's deliberations, Vice Chairman Abuchowski opened the hearing to the public; there were no comments or statements. Vice Chairman Abuchowski announced that the public portion was closed. Vice Chairman Abuchowski asked for a motion. Motion by Mr. Maurizio and seconded by Mr. Eberle to grant a 1 year extension of time to complete Phase I and grant an extension of time of 120 days to obtain the permits with the condition:

- a. The applicant will pay all necessary fees and escrows payable in connection with this application.

ROLL CALL	Yes: Mr. Maurizio	Mr. Kozlowski	Absent: Mr. Terzuolo
	Mr. Eberle	Mr. Abuchowski	Mr. MacQueen
	Mr. Perry	Mr. Machauer	Mr. Nagie

Attorney Gallina will prepare the Resolution to be on the next Agenda of April 24, 2013.

NEW BUSINESS:

Douglas & Annette Lemenze	Block #21	Lot #27
208 Butternut Road	Butternut Road	R 1½
Califon, N.J. 07830		

PUBLIC HEARING	Variances	Section 400 4:1 Schedule I
		Section 400-10 a.7

Vice Chairman Abuchowski announced the hearing for the application of Douglas & Annette Lemenze. Attorney Gallina stated that all the notices are in order and the board can proceed with the hearing. The following was marked into evidence: **A1-Taxes Paid**, **A2-Certified List of Property Owners & Utilities**, **A3-Notice to Property Owners**, **A4-POD Slips**, **A5-Affadavit of Proof of Service**, **A6- Zoning Denial**, **A7-Notice in Newspaper**, **A8-Ltr from H.C. Soil**

Lebanon Township Board of Adjustment
March 27, 2013
Page 3

Conservation dated March 4, 2013, A9-Ltr from H.C. Planning Board dated March 6, 2013. Attorney Gallina had Douglas & Annette Lemenze sworn in at this time. Ms. Lemenze made a presentation to the board. Ms. Lemenze said they have been residents for 19 years. Their lot is 1.5 acres. Ms. Lemenze said she believed that the board has the story and pictures regarding the horse. Ms. Lemenze gave the board the background on why she needs to bring the horse home. Ms. Lemenze said they rescued a race horse. At this point Ms. Lemenze became too emotional and Attorney Gallina took over asking the questions. Attorney Gallina said in reading her write up the reason why they want to bring the horse home is because of an injury that has made it impossible for the horse to ever be ridden again. Ms. Lemenze said she wants to be able to give the horse the care that is needed. Ms. Lemenze said the reason why she wants to put the building where it is shown on the plans is because she needs to have the fenced in area face the house. The plans show the building to be 25' off the rear property line.

Ms. Lemenze stated when she spoke to the Zoning Officer, he denied her application because she could not meet the 100' setback on all sides. Mr. Flemming explained that farm buildings on farms, housing farm animals requires the building to be 100' from the property lines. Ms. Lemenze said for the record, she is not a farm. Ms. Lemenze read from the ordinance the definition of a farm and stated she is not a farm. The ordinance also states that definition is for property not less than 5 acres. Ms. Lemenze noted this does not apply to her. This horse needs special care and the horse is presently being boarded elsewhere. Ms. Lemenze said when boarding you are at the mercy of the boarding stable. Ms. Lemenze explained to the board what all goes into the special care that is needed for her horse. Ms. Lemenze noted that they tried to find the best location for the building, they had to take many items into consideration. One concern was for drainage. Ms. Lemenze said she spoke with all the neighbors and explained what they wanted to do and that the neighbors didn't have any issues with their plan.

About a week ago, Ms. Lemenze said she was approached by one of the neighbors who now has concerns. She informed the board they plan on planting trees across the back of their property for privacy. At the conclusion of Ms. Lemenze presentation, Vice Chairman Abuchowski asked if the board had questions of the applicant. Mr. Machauer asked if she plans on having heat and electric in the building. Ms. Lemenze said yes she plans on having electric. Mr. Maurizio said that this looks like a good plan. Mr. Maurizio suggested Hemlock because they grow quickly and will make a good buffer, Mr. Kozlowski asked where the fencing will be. Ms. Lemenze showed the board via the plan where the fencing would be located. The following was marked into evidence: A10-Survey Plan prepared by Frank R. DeSantis, LLS dated October 16, 2012. Mr. Lemenze then reviewed for the board the area(s) that would be used for the horse.

Attorney Gallina noted in the zoning denial, it was based on farms and farm animals. The ordinance states if it is not on 5 acres or more, then it doesn't fall under the definition of farm. Attorney Gallina said farms are permitted in the R1 ½ zone but have to be 5 acres or more. There is nothing in the ordinance permitting a horse or any livestock on less than 5 acres. The board asked if this was a gray area. Planner Bolan read the ordinance regarding accessory uses or structures that are incidental to the principal use, which is the key part of the language in the ordinance. During the discussion, it was noted that many people in this Township have horses, steers, lambs, goats on less than 5 acres. Ms. Glashoff said back in the late 1980's a subcommittee was put together to address the issue of livestock and how much land was needed depending on what animal(s) you had. There were Planning Board members, Township Committee members, a couple of horse people and a few residents in general were on this subcommittee. They discussed at length and obtained this issue on regulating how much land was needed at length, and obtained typical information from Rutgers. In the end they could not come up with how much land you needed for 1 horse, a goat(s) or a few chickens. So they decided to leave it alone. Ms. Glashoff said in Clinton Township you need 2 acres for 1 horse and 1 acre for each additional horse. The point was they decided they didn't want this regulated.

Mr. Eberle asked if the board grants the variance, will the building stay as a horse shelter forever? Attorney Gallina said you can put limitations on it. Mr. Perry asked once the horse isn't here anymore can they put another horse on the property? Attorney Gallina said the board can request that it would be limited to just this horse. Mr. Perry asked how old the horse is. Ms. Lemenze said 12 years old. It was noted that if a use variance was obtained then it would rectify the issue. Mr. Perry asked why the shed can't be moved in closer to the middle of the property. Ms. Lemenze said that regardless of where she puts the building, she can not comply with the 100' setback requirement. Ms. Lemenze said she was told by the Zoning Officer to put it where she wants it since she can't meet the 100' requirement. Planner Bolan said the 100' setback does

Lebanon Township Board of Adjustment
March 27, 2013
Page 4

not apply in this setting, but rear yard setback does apply. Vice Chairman Abuchowski said there are two issues, one is the horse and whether it is allowed on the property and the other is the shed and setbacks. Also, is there any rationale for putting the shed in the rear yard setback. Ms. Lemenze said if she puts the shed within the building envelope then she doesn't need the variance and then doesn't need to be before the board. Attorney Gallina said the issue then is the horse since it isn't allowed on under 5 acres. Ms. Lemenze said then to be fair you should apply this to everyone in the Township that has a horse, goat, sheep etc on less than 5 acres. When she moved to the Township she asked if there was a minimum lot requirement for a horse and was told no.

Attorney Gallina said if the board is going to approach the use variance question, it could be subject to attack since it wasn't properly noticed which also needs to be considered. Vice Chairman Abuchowski said if the shed is moved into the building envelope, you don't need a variance for the shed and then we don't have to worry about the horse. The horse isn't on the property so it is a grey area which means you are not asking the board for anything. If the board grants the shed in the setback in theory it will be creating more of a problem for the applicant. Mr. Maurizio noted that there is a difference in the criteria for hoofed animals. Vice Chairman Abuchowski suggested to the applicant to move the shed into the building envelope where there won't be any issues. Ms. Lemenze said is she going to have a problem with the Zoning Officer if she brings the horse on the property and told she will need a use variance. Attorney Gallina said if the horse is brought on the property she will need to get use variance relief. Vice Chairman Abuchowski suggested a position in the event that the Zoning Officer comes to your property is that other people have livestock on their property under 5 acres. Therefore, he will have to notice all those in violation and you may be in a very good position to negotiate that with John Flemming. Attorney Gallina reminded the board that is an enforcement issue.

Mr. Kozlowski asked the applicant if they are willing to move the building into the building envelope. Mr. Lemenze said he would have to take down some of his fruit trees. The board continued to discuss this issue at length. Mr. Machauer asked if the applicant should come back for a use variance and a variance to have the building in the setback. Attorney Gallina said it was up to the applicant as to what they want to do. Vice Chairman Abuchowski asked if we should open the hearing up to the public? Attorney Gallina said no, since there was no proper notice regarding a use variance. To open the hearing up over the building could be none productive. Attorney Gallina noted there will not be a resolution if the applicant withdraws their application. Vice Chairman Abuchowski said without giving advice, move the shed within the building envelope and then go and talk to John Flemming. If you need to, come to the board for a use variance. Vice Chairman Abuchowski suggested that Ms. Lemenze talk with the Zoning Officer. Ms. Lemenze asked to explain what a use variance was and the difference with a bulk variance. Attorney Gallina said a bulk variance is when you can't meet the dimensional requirements and a use variance is when the use is not permitted. Mr. Kozlowski asked if we can waive fees. Ms. Glashoff said no, fees are by ordinance and can't be waived. The applicant thanked the board for their input.

PRESENTATION OF BILLS:

a. John Gallina, Esq.	\$ 687.50 – Litigation (New Cingular/AT&T)
	\$ 187.50 – Escrow (Jindracek Resolution)
b. Michael Bolan, PP	\$ 284.00 - Escrow (Jindracek review plans/site inspection)
	\$ 260.00 - Attend ZBA Meeting 2/27/2013
c. Court Stenographer	\$ 250.00 - Attend ZBA Meeting 3/27/2013
d. H.C. Planning/Zoning Admin.	\$ 20.00 - Dues 2013
	Total: \$1,689.00

Ms. Glashoff referred to the Agenda Addendum for the additional bills that were listed for **\$752.65** which brings the grand total to **\$2,441.65**. Mr. Kozlowski said he reviewed all the bills and found them to be in order. Motion by Mr. Kozlowski and seconded by Mr. Maurizio to approve the bills as presented. Unanimously approved.

Lebanon Township Board of Adjustment
March 27, 2013
Page 5

CORRESPONDENCE:

- a. Law Bulletin – March 2013
- b. NJPO Newsletter - Jan/Feb 2013
- c. H.C. Planning Board – Ltr 3/8/13 Lemenze
- d. H.C. Soil Conservation – Ltr 3/4/13 Lemenze
- e. Law of the Land Article

OPEN TO THE PUBLIC

Mr. & Mrs. Ulmer from 13 Windy Heights Road informed the board that they were against what the Lemenze's applied for regarding their building. Ms. Ulmer said the building was too big and it was too close to their property line. That it was an intrusion to their property near their pool. They were also concerned with the prospective manure. Attorney Gallina said that the application has been withdrawn and was no longer an issue. Ms. Ulmer continued with her concerns and that the applicant had cut down a lot of trees which reduced their privacy. Ms. Ulmer said the building is very large. Attorney Gallina noted that if they decide to have the building and put it within the building envelope they would get approval from the Zoning Officer. Ms. Ulmer continued with her objections stating it would de-value their property and the neighborhood. Attorney Gallina said that the application has been withdrawn. These comments would be better saved until or if the applicant files a new application. Vice Chairman Abuchowski suggested talking with the applicant to resolve any issues that they have.

Being no further business to come before the board, nor comments from the public, motion by Mr. Eberle and seconded by Mr. Kozlowski to adjourn the meeting at 8:55 p.m. Unanimously approved.

VICE CHAIRMAN ABE ABUCHOWSKI

GAIL W. GLASHOFF, BOARD SECRETARY