

Lebanon Township Board of Adjustment
April 24, 2013
Page 2

Section does apply. Attorney Tubman gave a little history of the property. Attorney Gallina announced that all the notices are in order and the board can proceed with the public hearing. The following items were marked into evidence: **A1**-Taxes Paid, **A2**-Certified List of Property Owners & Utilities, **A3**-Affidavit of Proof of Service, **A4**-Notice to Property Owners, **A5**-POD Slips, **A6**-Notice published in Newspaper, **A7**-Letter from Hunterdon County Planning Board dated March 6, 2013, **A8**-Letter H.C. Soil Conservation dated March 28, 2013, **A9**-Letter of Determination from Highlands dated October 6, 2006, **A10**-Letter from NJDEP dated February 6, 2007, **A11**-Letter H.C. Board of Health dated September 27, 2002, **A12**-Correspondence from H.C. Tax Board dated February 19, 2009.

At this time, Matthew Fox of Canger Engineering was sworn in to give testimony. Engineer Fox said he provided the board with a set of plans and a variance map which is a general overall plan showing the surrounding structures with some overlap in topography. The property is located directly across from the Rolling Hills subdivision off Penwell Road. The plan shows the proposed dwelling which will be located in the same exact location of the barn. They will utilize the same entrance on to Penwell Road. The existing driveway is 9' wide and the driveway will be widened to 18'. All the setback requirements have been met. The property is located in the R 1.5 acre zone and the property is 1.48 acres. Engineer Fox reviewed for the board the existing setback requirements. Engineer Fox stated the setback from the high water mark, the established flood plain limit required is 10'. They are able to provide 16' from the edge of the unnamed tributary to the Musconetcong River to the left rear corner of the proposed dwelling. Engineer Fox said they have provided soil erosion and sediment control notes that was requested by the Soil District. They provided appropriate soil erosion and sediment control details with regard to stabilized construction entrance. They have a summary of impervious coverage calculations that indicate there is a net reduction in impervious coverage. Also, a description that follows the metes and bounds which was written in accordance with the approved limits of disturbance from the Highlands Applicability Determination.

Engineer Fox said the impervious coverage is broken down between existing and proposed areas. The existing coverage's broken down include the driveway and other buildings. There is a stable located on the property, some old foundation ruins along with an existing barn and silo. There is an existing shed which is on the easterly side of the property. The total area of impervious coverage is 6,820 square feet. Engineer Fox said under the proposed impervious there will be the dwelling unit, driveway and walk totaling 4,050 square feet. There will be a reduction of 2,660 square feet. Engineer Fox noted he marked the plan so the Board could see the major constraints.

Attorney Gallina had the plan marked into evidence as **A13**-Site Plan prepared by Matthew Fox dated December 5, 2012, revised April 13, 2013. Engineer Fox continued with his testimony stating that he color coded the area in yellow which is the existing building envelope. The blue color represents the 100 year flood plain limit which will be verified by NJDEP in connection with their flood hazard area permit application. The stream corridor, the 100' line runs along Penwell Road. The entire property is located within that corridor. Engineer Fox stated he has difficulty following our ordinance section that requires 10' plus 3' for the width of the stream or whichever is greater. Attorney Tubman asked Engineer Fox if they measured from the flood plain line or the stream. Engineer Fox said they measured from the top of the bank of the stream since the ordinance says 10' plus 3' whichever is greater. Engineer Fox said this is a smart growth redevelopment project where the existing impervious is going to be placed over to the greatest extent possible. The driveway widening is buffered from the stream by the placement of the house. At the conclusion of Engineer Fox's testimony, Vice Chairman Abuchowski asked if the board had questions.

Mr. Kozlowski asked if they were going to keep the corn crib. The answer was yes. Mr. MacQueen asked that they break it up into 4 pages instead of jamming everything on one page. Mr. MacQueen questioned why they didn't move the dwelling up towards Penwell Road to get away from the stream. Attorney Tubman said they would then have a variance for lot size because they would no longer meet the Township's grandfather requirement. Mr. MacQueen asked what the hashed area is. Engineer Fox said the area of activity within the 100-year flood plain limit. Mr. MacQueen asked if the hashed area on the corner of the house is where the stable was. Engineer Fox said they are going to provide a 5,000 square foot lawn area in the front of the property. Attorney Gallina questioned the 5,000 square feet. Engineer Fox said they consider placing grass or replacing existing vegetation with grass as disturbed vegetated area, so it was limited to 5,000 square feet. Mr. MacQueen asked if a portion of the house was going to be in the flood plain. Engineer Fox said yes, the living quarters will be elevated above the flood hazard

Lebanon Township Board of Adjustment

April 24, 2013

Page 3

area elevation. There will be louvers in the foundation and a crawl space for the water to pass through. Mr. Maurizio asked if they will be stainless steel flood-type louvers. Engineer Fox said yes and they will prevent any debris from coming in. Once a storm passes through, the louvers will open. Mr. Maurizio asked what the elevation difference is from the first floor to where the ground level topography is at the corner of the foundation. Engineer Fox said the first floor elevation is proposed at 458.67 which is the grade at the back of the house. Mr. Maurizio said yes, the corner that's the closest to the area in question to the east. Engineer Fox said it is a couple of feet, about 1.7' below the flood plain limit. Mr. Kozlowski asked if the first floor will be 2.75' above the existing grade. Engineer Fox said above the proposed grade which is the existing grade because they have no fill on the project. Mr. Kozlowski said he went to the site and the back seems low and you can see where the last flood came up. Engineer Fox said it was a good thing that the stream is steep and the water really moves quickly through there. Behind the proposed dwelling the flood plain is rather narrow, it widens out at other portions of the property, but the thread of the stream, the invert along the center of the brook is quite steep. Mr. Kozlowski noted that the visibility to the west is pretty bad, but is also overgrown, particularly behind the fireplace, it's dense and cars come popping around that turn. Engineer Fox said they can clean up any of the dead debris, but are limited to any trees or vegetation that can be removed.

Attorney Tubman said there is a 300' Riparian buffer measured from the top of the bank which DEP prohibits removal of vegetation. They can remove dead vegetation, trim vegetation, but can not clear it. Mr. Kozlowski noted there is overgrowth right up to the shoulder of the road. Engineer Fox said to the extent that they are permitted to clean it up, they will do so. Mr. MacQueen said he noticed where you have written on the plans for the smart vent louvers, far as DEP is concerned the water or whichever organization is in charge of all the water is happy with the way this is set right now. Attorney Tubman said they will be. They need permits such as flood hazard area permit. Also they will need to deed restrict all but 5,000 square feet of vegetation removal. They will have to get a verification of flood hazard upper limit. Attorney Tubman said they will also need to satisfy the DEP people who do the Highlands exemption. Attorney Gallina asked what else they will need to do. Attorney Tubman said the flood hazard area verification which establishes the limit of the flood hazard area.

Mr. Abuchowski said with all the regulations under Section 330-50D, does it permit these activities and structures, you have to show that there's a clear and convincing evidence that the prohibition of such activities would cause extreme economic hardship. Attorney Tubman said if it applies. Attorney Gallina said one factor is that the flood plain encompasses 75% or more, the structures are permitted. Another criterion is to show that you can have a structure in the stream corridor. Attorney Tubman said they are 100%. Attorney Gallina told Vice Chair Abuchowski that Engineer Risse can give more information on it. Planner Bolan said the applicant is still dealing with a variance, so the same variance criteria that there is an exceptional or extraordinary situation affecting the lot. Attorney Gallina said the benefits would outweigh any detriments and would further the purpose of the MLUL. Vice Chair Abuchowski said we would still be issuing the variance based on the fact that there is more than 75% of the tract. Planner Bolan said no, that is in a different section of the ordinance. That is dealing with the stream corridor and the stream corridor ordinance. The variance is from a zoning standard in the zoning ordinance. Attorney Gallina quoted the ordinance, Section 400-8D(3) "no structure can be built closer to the new high water mark of a stream, 10' plus 3' for each foot of the stream width, or 10' from the high water mark of an established flood plain.

Engineer Fox said they are reducing the setback. The existing barn actually goes beyond the limits of the proposed dwelling unit. Attorney Gallina noted they are reducing the impervious coverage. Attorney Tubman said by one third. Mr. MacQueen asked what if the applicant decided to redo the barn and convert it into a house. Attorney Gallina said they would have to come back to the board for additional relief. The plan is to remove the barn and built a new dwelling unit that is in full compliance with the zoning setbacks. Engineer Risse asked about the finished floor elevation which states 459.67 and asked if that was based on the flood elevation or a foot above it. Engineer Fox said yes, a foot above the base.

Planner Bolan referred to the zoning standards that the applicant is requesting relief from and asked if it is mapped anywhere on the plans to see what the encroachment is. Engineer Fox said they only show the existing setbacks. Planner Bolan said that is not what the zoning standard is. It's what is in the zoning ordinance that relief is being asked, but where is it shown on the plan. Engineer Fox said they show 16' from the flood hazard line to the corner of the dwelling and the encroachment. Attorney Tubman asked if the question is, if they are showing the limit of the line

Lebanon Township Board of Adjustment
April 24, 2013
Page 4

into which they are encroaching. Planner Bolan said yes. Planner Bolan asked if they considered moving the dwelling to the west where you have the widest portion that's not in a flood plain. Engineer Fox said the dwelling is located within the deepest portion of the setbacks. Planner Bolan said no. You could go quite a bit to the northwest and still be within the setbacks. Engineer Fox said if they slid the building along the rear setback line, they would encroach into the front setback with the garage in the corner. Engineer Fox said they have restriction of 25' from the septic system. The septic system was approved in the location shown. The placement of the dwelling had to respect the 25' distance requirement that the DEP requires from the septic system. Planner Bolan asked 25' to what. Engineer Fox said to the structure. Engineer Risse said it is 25' to the basement and if the garage is a slab it can be reduced to 15'. Discussion continued over moving the driveway 10'. Attorney Tubman asked if moving the driveway meant moving vegetation. Engineer Fox said yes. Attorney Tubman said that would cut into the 5,000 square foot allowance for the entire tract. Planner Bolan asked if you could compensate for it someplace else on the other side. Engineer Fox said what you are asking is to move the structure closer to the septic. It can only be moved 10' then you would have to relocate and move the driveway closer to the septic. Mr. Kozlowski asked if they were going to widen the driveway on the east side. Engineer Fox said yes. Mr. Kozlowski asked if they could widen the driveway on the west side. Engineer Fox said then you are at the extreme limit with you distance separation from the driveway to the septic system.

Mr. Maurizio noted that Engineer Risse said the garage slab is a different criterion. Engineer Fox said 15' and what you are asking is to move it to the absolute minimum. One of the design elements of the plan is to redevelop the property on the existing impervious areas and to utilize the existing driveway so that they can minimize the amount of disturbance to the surrounding environment. Planner Bolan said you would be increasing the separation on the other end where you are encroaching into the flood plain. Engineer Fox stated they would still need a DEP permit for disturbance and beyond the stream encroachment line. This will all have to be reviewed by the DEP. They will have to meet very strict requirements in terms of disturbed area and fill placed within the flood plain limit. Engineer Fox noted if they revised the dwelling and move it to the west, they would have to study it to see if it would still work. In moving the driveway further to the west, there would be no offset to the Rolling Hills Way ROW line. There was discussion on moving the dwelling and the driveway. At the conclusion of the discussion, Vice Chair Abuchowski asked if there were any interested parties from the public. Mr. Tardanico introduced himself stating his property is adjacent to the Pinsonault property. Mr. Tardanico asked when the flood plain was last surveyed. Engineer Fox said it is being developed. This tributary is unnamed and hasn't been studied by the DEP. Mr. Tardanico said he has seen this stream rises considerably. Engineer Fox assured Mr. Tardanico that it will be mapped. They did study the drainage area and calculated how much water would flow through that stream during a 100 year flood and established the limits of the flood plain.

At the conclusion of Mr. Tardanico questions, Vice Chair Abuchowski asked if Engineer Risse would like to give his testimony at this time. Engineer Risse was sworn in along with Planner Bolan. Engineer Risse said Planner Bolan's idea of sliding the house to the west and that it looks like you could get the corner of the house either further out of the flood plain or completely out of the flood plain. Engineer Risse said in scaling off the distance to the septic system as closer to 40' not 25' according to Engineer Fox's graphic scale. The septic itself is able to be slid 15' either way from the soil logs. Engineer Risse said the building is within the building envelope and the elevation of the building is above the flood plain elevation with the crawl space vented. Engineer Risse stated he doesn't particularly have a problem with it from an engineering perspective. The variance issues are something that the board will need to weigh. Planner Bolan referred to a comment by Mr. MacQueen who said how busy the plans are. It would be a very simple exhibit to show proposed dwelling, proposed septic, then the 10' setback in the 100 year flood plain. Engineer Fox said in speaking with Engineer Risse, he had a question regarding if there were wetlands on the property. Attorney Tubman said Environmentalist Amy Greene did a LOI and her analysis and investigation yielded no wetlands on the site.

At this time, Vice Chair Abuchowski asked if there were any interested parties that would like to give testimony. Mr. Joseph Tardanico was sworn in to give testimony. Mr. Tardanico said he concern is the flood plain. This stream has gone from just a brook to a raging river, it has moved boulders. This brook now runs like a river. Mr. Tardanico said they lost 8' of property with Hurricane Irene. He had an oak tree that actually set down on is property, which was torn out of the ground and took it down stream. Mr. Tardanico expressed concern that the house will not be

Lebanon Township Board of Adjustment
April 24, 2013
Page 5

high enough and felt it needed to be more elevated. Attorney Tubman noted when DEP does a flood hazard area, the base flood elevation verification will require that any habitable portion of the structure be at least 1' above the established elevation. Attorney Tubman said they will file an application and look at the engineering studies. They have to do and submit to DEP. There were no questions of the board for Mr. Tardanico.

Vice Chair Abuchowski announced that the evidence taking portion of the hearing is now closed. The board discussed the plans and that there should be separate sheets that's a lot clearer as to what we really are here to grant relief from. It is definitely difficult to ascertain exactly what the situation is per Mr. Maurizio. Mr. Kozlowski agreed. Mr. MacQueen agreed stating these plans are too busy. Vice Chair Abuchowski said he was in agreement with the board. At the conclusion of the board's discussion, Attorney Tubman said they will devise a new plan for the board. Ms. Glashoff was asked for a date. Ms. Glashoff offered May 22nd at 7:30 p.m. Attorney Gallina announced to the public that this hearing will be carried to the May 22nd meeting date with no further notice given. Ms. Glashoff informed the Attorney Tubman that she will be mailing the packets to the board by May 14th since she will be out of the office from May 15th and returning on May 21st. Ms. Glashoff was informed she would have the revised plans by May 10th.

PRESENTATION OF BILLS:

a. John Gallina, Esq.	\$ 250.00 – Attend ZBA Meeting 3/27/2013
	\$ 218.75 – Escrow (Transtar Resolution)
	\$ 375.00 – Escrow (Review Application/prepare Letter/Pinsonault)
b. Michael Bolan, PP	\$ 156.20 – Escrow (Pinsonault review Ltrs/Memos from Board Engineer & Board Attorney)
	\$ 113.60 - Escrow (Review appl. Prepare for Meeting Review ordinance)
	\$ 260.00 - Attend Bd Meeting 3/27/2013
c. Bayer/Risse Engrs.	\$ 750.00 – Escrow (Pinsonault-Review Plans)
d. Court Stenographer	\$ 250.00 – Attend Meeting 4/24/2013
	Total: \$2,373.55

Ms. Glashoff noted that there is an additional bill on the agenda addendum from Attorney Gallina in the amount of **\$250.00** which brings the grand total to **\$2,623.55**. Motion by Mr. MacQueen and seconded by Mr. Maurizio to approve the bills as amended. Unanimously approved.

CORRESPONDENCE:

- a. Ltr from Attorney Gallina - Pinsonsault
- b. Ltr. From Engineer Risse - Pinsonsault
- c. Law of the Land Article
- d. Zoning Practice Article

Being no further business to come before the board, nor comments from the public, motion by Mr. MacQueen and seconded by Mr. Kozlowski to adjourn the meeting at 9:07 p.m. Unanimously approved.

VICE CHAIRMAN ABE ABUCHOWSKI

GAIL W. GLASHOFF, BOARD SECRETARY