

**REGULAR MEETING**

**Lebanon Township Board of Adjustment**

**April 29, 2009**

**Municipal Building 530 West Hill Road Glen Gardner, N.J.**

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at 7:33 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Perry, Mr. Abuchowski, Mr. Nagie, 2<sup>nd</sup> Alternate Maurizio, Attorney Gallina and Engineer Risse. **Excused:** Mr. Eberle.

Notice of this meeting was provided for in the “Annual Meeting Notice Schedule” adopted by this board on January 28, 2009, 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 April 22, 2009.

**PRESENTATION OF MINUTES:**

**NEW BUSINESS:**

Patrick Allen	Block #16 Lot #64
666 JIN XIU Road	Old Readingsburg Road RC 7½
No. 9 Apt. 1102	
Pudong, Shanghai, China	

**PUBLIC HEARING**

Rebuild second house on private road with additional variances

Section 400:8.b7 & Section 400: Attachment 4:1

Mr. Kozlowski announced he was recusing himself and stepped down from this application. Attorney Gallina announced that all the notices were in order and the board can proceed with the hearing. The following items were marked into evidence: **A1**-Taxes Paid, **A2**-Affadavit of Proof of Service, **A3**-Notice to Property Owners, **A4**-Certified List of Property Owners, **A5**-POD Slips, **A6**-Notice in Newspaper.

Attorney Robert Boak was present to represent Patrick Allen along with Engineer Robert Zederbaum. Attorney Boak informed the board that the applicant was unable to attend the meeting since he is in China. The house in question burned down in May 2006 and the applicant would like to rebuild. Attorney Boak stated that the Zoning Officer informed him that since some time had passed had advised that whatever grandfathering they might have had expired. The property is on a private road and the applicant would need to get zoning board approval. The Zoning Officer had visited the site and noted other violations on the property and said they would need to address them as well. The apartment garage had the roof raised not too long ago and there are setback issues that need to also be addressed. Attorney Boak asked to have Engineer Zederbaum sworn in. Engineer Zederbaum informed the board he is also licensed as a Planner since 1981.

The site plan was marked into evidence as: **A7**-Site Plan/Variance prepared by Engr. Zederbaum dated 7/10/2008 consisting of 4 sheets. Engineer Zederbaum noted on sheet 3 the orientation of the property. There are 12 residential properties on Old Readingsburg Road with the road being passable for emergency vehicles. In the back of the property are the in-ground pool, pool house and deck which are shown on the plan as being over the property line on the State property. The property consists of 9.193 acres in the RC zone. The requirement for an accessory apartment in the RC zone is 11 acres. Engineer Zederbaum stated that rebuilding in the Highlands it allows you a footprint of 125%. The redevelopment of the property will not affect any traffic flow on the road. Engineer Zederbaum stated the house that burned down was a small house. Engineer Zederbaum noted the other violations on the property besides the deck; there is a shed on the neighbor's property. The neighbor is aware of the shed. Attorney Boak asked to have a letter from the neighbor marked into evidence. Chairman Terzuolo interjected stating the board can't ask questions of a letter. The board agreed with the Chairman. There was discussion regarding the letter. It was noted by Mr. Perry the person who wrote the letter was present and they will have the opportunity to address their letter.

Engineer Zederbaum continued with his testimony. The pool house with the deck which is partially on State property also violates the rear yard setback requirements. At the conclusion of Engineer Zederbaums testimony, Chairman Terzuolo asked if the board had questions. Mr. Machauer asked how many homes if any were pass the Allen property. Engineer Zederbaum did not know. Mr. Machauer asked about the accessibility of the road. Engineer Zederbaum said in most parts it is a two lane road. Mr. Machauer asked since the applicant lives in China who

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would be living in the house if it is rebuilt. Engineer Zederbaum did not know the plans of the applicant. Mr. Machauer asked about any guests that lived in the accessory apartment. Attorney

Boak said the in-laws had lived in the apartment but didn't know for what duration. It was noted that there is no intent on renting out the accessory apartment. Mr. Machauer asked if the apartment, converted garage was up to code per electric and plumbing. Engineer Zederbaum did not know if the apartment was up to code. Attorney Boak stated the original building probably predates township records, but Mr. Allen will have to take responsibility for raising the roof and putting the second floor on without any permits. When the question was asked regarding when the fire occurred, Mr. Perry who is on the Lebanon Township Fire Dept. noted that the fire occurred during the day. The question was also asked if the house was being occupied at the time of the fire. Attorney Boak did not know. Mr. Machauer asked about access regarding fire and rescue to the property. Mr. Maurizio referred to the comment about the house being rebuilt on the same footprint and is it a requirement of the Highlands. Attorney Boak answered yes. The Highlands allows up to 125% of the prior footprint. Mr. MacQueen asked about the swimming pool and the building which is attached and over the property line and wanted to know if that neighbor had a problem with it.

Attorney Boak noted the neighbor in question is the State of New Jersey and did not think that they knew that this problem had occurred. Mr. MacQueen asked if they would have to re-due the septic system when they rebuild the house. Attorney Boak said yes including he thought a new well. Mr. Abuchowski asked if the pool house was habitable. Attorney Boak said no. It is in considerable disrepair. Mr. Abuchowski asked if there were utilities. Attorney Boak answered yes and also stating the west face of the building has garage doors and the pool is at the second floor level and there are sheds for storage for lawn furniture. Mr. Abuchowski asked if there were plans to either rebuild or teardown. Attorney Boak deferred to Engineer Zederbaum. Engineer Zederbaum informed the board that he did not do a structural evaluation of the building. He felt that it could be renovated and not torn down. There is a retaining wall to hold up the pool and an outside fireplace with the pool being cement.

Chairman Terzuolo asked if the pool is functional and on the applicant's property. Engineer Zederbaum said it will take a lot of work and it is on the applicant's property, only a portion that is over the property is the back portion of the pool house. Chairman Terzuolo asked how much of the building was over the line. Engineer Zederbaum stated about 15.8 feet is on the State property. He went on to say that the wooden deck could be removed without jeopardizing the structural stability of the pool. The encroachment would be small and he didn't have the dimensions but it would only be a couple of feet over the line. The majority of the encroachment could be removed. Engineer Zederbaum did not feel the encroachment that would remain could be removed easily. Chairman Terzuolo wanted to know if it could be removed and reconstructed to maintain the integrity of the retaining wall. Engineer Zederbaum said since he did not know if this retaining wall was structurally sound, he did not know if it could be cut off and rebuild without jeopardizing the pool. Chairman Terzuolo asked about the two wooden docks and

wooden deck. Engineer Zederbaum said at one time there were rowboats for the lake. Engineer Zederbaum said even the lake will need maintenance because of all the vegetation growing in it.

Mr. Nagie asked about the metal tower on the property. Engineer Zederbaum could not answer the question regarding the tower. Mr. Nagie asked about other foundations on the property. Engineer Zederbaum did not come across any. Mr. Maurizio asked about the pool house which it refers to stone and frame building and is the foundation a stone laid foundation? Engineer Zederbaum was unable to answer the question. Engineer Risse asked about the pool house being constructed versus when the State acquired the property. Attorney Boak said that the state acquired the Ken Lockwood Gorge back in the late 1950's. Attorney Boak referred to an old survey that his client got when he purchased the property back in 1997. The survey is not sealed, but it shows the condition of his client's property when he purchased it in 1997. The following was marked into evidence: **A8**-historic survey of the property not signed or dated. Attorney Boak noted the deck extension over the property line did not exist when this survey was taken.

Planner Bolan said the issue is a variance for a supplementary apartment expanded without permits. Planner Bolan asked Engineer Zederbaum to testify to the items in the Supplementary Apartment Ordinance as to whether or not this may or may not conform. Attorney Boak asked for a recess at this time. The board recessed at 8:17 p.m. and reconvened at 8:25 p.m.

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When the board reconvened Planner Bolan noted that the board has not heard any testimony on the 16 conditions of the Supplementary Apartment Ordinance. Planner Bolan asked Engineer Zederbaum how do they plan to meet those conditions. Engineer Zederbaum said they either meet the conditions or can meet them. Planner Bolan asked that they go thru each condition to show how they meet them. As Engineer Zederbaum went through the conditions, it became obvious that they were unable to meet the conditions in the ordinance. Planner Bolan informed Engineer Zederbaum that this board has dealt with many applications on supplementary apartments. Attorney Boak said they would have the appropriate official review the conditions and confirm. Planner Bolan stated the applicant can not defer to the local official to review. This board has to decide on whether these conditions are met or not. Planner Bolan suggested they submit a floor plan as to what is in the structure. Attorney Boak said this would be difficult since the applicant is in China. Engineer Zederbaum stated that he has not been in the apartment.

Attorney Gallina noted that the question is what is actually inside the building at this time. Attorney Boak said they acknowledge that the building has been expanded since the applicant purchased the property. Planner Bolan said this board is very serious about pre-existing uses. People have come from Vermont to testify on pre-existing uses. The applicant has owned the property since 1997 which is not that long ago. Attorney Boak stated that members of this board may have knowledge of this property from long ago. During the discussion, Engineer Zederbaum went through all the conditions. There were several that conditions that have not been meet.

Planner Bolan asked about the positive and negative criteria specifically relating to this supplementary apartment issue the testimony given was simply a yes or no response to the Attorney's questions and asked if Engineer Zederbaum could elaborate on how it meets the special reasons for a D3 Conditional Use Variance and also how it meets the negative criteria. Engineer Zederbaum said the property is in a state of disrepair but can be brought back up to an unbelievable standard. Also, the structure that burned down was fairly small. Mr. Abuchowski asked about if the apartment had its own septic. Engineer Zederbaum did not know.

Chairman Terzuolo opened the hearing to the public for questions. Mr. Schmidt asked several questions of Engineer Zederbaum. Mr. Abuchowski asked what the square footage of the house before it burned down. Attorney Boak did not know. Nancy Darios had a question regarding the accessory structure versus the principal structure. It was noted that Mr. Allen purchased the property in 1997 and the main house burned down in 2006. Planner Bolan asked if building permits have been issued to rebuild the main house. The answer was no. Planner Bolan noted that this is a private road and asked if they have an access agreement to use this private road. Attorney Boak said it's in the deeds which were sent to Attorney Gallina. Planner Bolan asked about a driveway that services an adjoining lot and also on another adjoining lot and there is a declaration of restriction on the plan and an easement agreement and asked if this had been provided to the board attorney and engineer. Attorney Boak said yes.

From the public, Mr. Kozlowski asked who occupied the main house and apartment. Attorney Boak said that Mr. Allen occupied the main house before the fire and his in-laws occupied the apartment. There were questions regarding the apartment. The board reviewed the supplementary apartment ordinance going over the criteria. Attorney Boak said at the time of the fire no one lived on the property. At the conclusion of Engineer Zederbaums testimony along with questions from the board and public, Attorney Boak announced that he did not have any other witnesses to give testimony. Attorney Gallina had Planner Bolan and Engineer Risse sworn in at this time. After a brief discussion, the board decided they would have Mr. Perry and Mr. MacQueen sworn in to give testimony as to their knowledge of the Allen property.

Engineer Risse said the main issue is the pass ability of the road and the right to access the property. Engineer Risse stated he did an inspection of the property with Engineer Zederbaum. Since this is not creating a new lot there is no need to improve the lane to a Class III common driveway. This road is fairly passable compared to other private roads in the Township. Mr. Machauer asked about large vehicles being able to turn around. Engineer Risse said a minimum of a K-turn should be provided. At

the conclusion of the Engineer's testimony, board questions, Chairman Terzuolo opened the hearing to the public for questions, there were none. Planner Bolan noted with prior testimony given we have a D3 Variance. Planner Bolan said a D3 Variance is a simpler variance than a D1. On the negative criteria the board has to reconcile the grant of the variance from the legislative determination that condition should be imposed. The board needs to focus on the surrounding properties and based on the testimony that we had it sounds like they have variances for a supplementary apartment from subsection: a,b,c,l,o. At the

conclusion of Planner Bolan's testimony, there were no questions from the board, applicant or the public. Mr. Perry and Mr. MacQueen were sworn in at this time. Mr. Perry referred to the fire

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that took place back in 2006 stating that he checked out the supplementary apartment, there was no fire and it didn't look like anyone was living in the apartment. Mr. Perry then proceeded to the rear of the main house where he encountered a Chinese man who spoke no English. Mr. Perry did not know if this person was living in the main house or not. Attorney Boak said that it might be Mr. Allen's father-in-law. Mr. MacQueen said that he worked for the owner back in 1970-1971. Mr. MacQueen said back then it was a beautiful piece of property. Mr. MacQueen described for the board the layout of the swimming pool and pool house. He remembered the different outbuildings, the garage and the owners parking their car in it. Mr. MacQueen said he was at the property a few days after the fire and said that the property wasn't being maintained. The board asked many questions of Mr. Perry and Mr. MacQueen. When the hearing was opened to the public the following person asked questions: Mr. Schmidt.

At this time Chairman Terzuolo opened the hearing for statements and comments. The following person made a statement: Mark Milan. Attorney Gallina had Mr. Milan sworn in. Mr. Perry had a question of Mr. Milan. Attorney Gallina asked Mr. Milan if he knew the layout of the supplementary apartment. (Unable to hear what Mr. Milan said). Mr. Maurizio asked Mr. Milan to look at a picture of the building which houses the apartment and tell the board where the entrance was located. It was noted that the kitchen and bathroom were located on the ground floor. Attorney Gallina had the picture marked into evidence. **A9**-picture of building housing the accessory apartment which captions stating: July 1970's guest quarters over garage, 1987 second floor apartment, 2001 garage removed, made into house, current owner made into house for in-laws. Ms. Glashoff informed the board and applicant that the picture is from the Tax Assessor.

Chairman Terzuolo asked Attorney Boak to give his summation at this time. Chairman Terzuolo announced that the evidence taking portion of the hearing is now closed. During the board's deliberations, the deck which encroaches on the state property, the supplementary apartment which was expanded over time without permits or board approval, the shed on the Wilson property and the septic system were discussed. The board agreed that the deck on state property has to be removed; the shed on

the Wilson property either is given to the Wilsons or is taken down. The main issue was the apartment. The board decided to reopen the hearing to discuss the apartment issue more. Motion by Mr. Abuchowski and seconded by Mr. Maurizio to reopen the public hearing. Unanimously approved. The board discussed the apartment issue at length and in conclusion informed the applicant that a site plan showing the floor area of the apartment needs to be provided along with septic system. The board wants to know if the existing septic system is for both residences or does the apartment have its own septic. At the conclusion of the board's discussion, Chairman Terzuolo asked Ms. Glashoff for a continuation date. Ms. Glashoff offered June 24<sup>th</sup>. Attorney Boak agreed to the date. Chairman Terzuolo announced that the public hearing is closed and will be continued on June 24<sup>th</sup>.

**PRESENTATION OF BILLS:**

- a. John Gallina, Esq.                    \$373.75 – Phone confs. w/Bd Chair, Attend Mtg 4/8/09  
  
   \$201.25 – Review transcript/review corres. from Atty Gilbert  
  
   phone conf. Bd Sec. (**Transtar**)
  
- b. Court Stenographer                \$200.00 – Attend 4/22/09 Meeting

**Total: \$775.00**

Ms. Glashoff noted the additional bills that were on the Agenda Addendum and informed the board that the total is corrected to read **\$2,387.20** bringing the grand total to **\$3,162.20**. Motion by Mr. Nagie and seconded by Mr. Perry to approve the bills with a total correction. Unanimously approved.

**CORRESPONDENCE:**

Ms. Glashoff reviewed for the board the upcoming meetings through June. Being no further business to come before the board, nor comments from the public, motion by Mr. Nagie and seconded by Mr. Perry to adjourn the meeting at 10:05 p.m. Unanimously approved.

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**CHAIRMAN BRUCE TERZUOLO**

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**GAIL W. GLASHOFF, BOARD SECRETARY**