

REGULAR MEETING

Lebanon Township Board of Adjustment

June 14, 2006

Municipal Bldg 530 West Hill Road Glen Gardner, N.J.

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at 7:40 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Perry, 1st Alternate Abuchowski and Attorney Gallina.

Notice of this meeting was provided for in the "Annual Meeting Notice Schedule" adopted by this board on January 11, 2006, 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 May 3, 2006.

PRESENTATION OF MINUTES: May 24, 2006 Regular Meeting

Motion by Mr. Abuchowski and seconded by Mr. Perry to approve the minutes with minor corrections. Unanimously approved.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$262.50 – Attend Mtg 5/24/06
\$157.50 – Escrow (Pfister)
- b. Court Stenographer \$200.00

Total: \$620.00

Chairman Terzuolo asked if there were any additional bills to add to the list. Ms.Glashoff stated she had two additional bills to add to the bill list both from Engineer Risse. The first bill \$555.50 Escrow for Cingular Wireless and the second bill for meeting times for \$454.50 2/22/06 & 3/22/06. The additional

bills total **\$1,010.00** giving a new grand total of **\$1,630.00**. Motion by Mr. MacQueen and seconded by Mr. Kozlowski to approve the bills as amended. Unanimously approved.

Ms. Glashoff informed the board the Township Committee appointed Mr. Abuchowski to the unexpired term of Brian Cerf and appointed Mr. Eberle as Alternate I with an unexpired term of 12/2006. Since Mr. Eberle was absent, he will be placed on the next agenda to be sworn in.

SWEAR IN: Abe Abuchowski Class IV Regular Member Unexpired Term 12/09

Attorney Gallina did the honors and sworn in Mr. Abuchowski. The board congratulated Mr. Abuchowski.

CORRESPONDENCE:

UNFINISHED BUSINESS:

Cingular Wireless	Block #24	Lot #20
c/o Judith Babinski, Esq.	Route 513	R3
Pitney Hardin, LLP		
P.O. Box 1945		
Morristown, N.J. 07962		

CONTINUATION OF A PUBLIC HEARING

Conditional Use/Site Plan/Variances

Cell Tower in a Residential Zone as

a third use on the property

Chairman Terzuolo announced that the application for Cingular Wireless will be carried to the July 12, 2006 Regular Meeting at 7:30 p.m.

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NEW BUSINESS:

Kenneth Secor	Block #65 Lot #10
19 Dewey Lane	Dewey Lane R5
Glen Gardner, N.J. 08826	

APPEAL

An appeal from Zoning Officer Decision

(Per MLUL State Statute NJS 40:55D-72)

Attorney Walter Wilson was present to represent the applicant. Attorney Wilson referred to Attorney Gallina's letter of June 12, 2006. Regarding the timeliness of the application being filed, the Statute refers to a procedure that relates to the notice to the Zoning Officer if you are appealing the decision of the Zoning Officer. The applicant had several conversations with the Zoning Officer before and after the denial. Attorney Wilson asked if the board does not allow the Appeal to move forward, if they would consider doing an Interpretation or Special Question which he does not believe requires noticing in the newspaper.

Attorney Gallina stated the board needs to determine whether this Appeal was timely. In referring to his letter Attorney Gallina noted that the Zoning Permit Denial is dated March 31, 2006 and the appeal application is dated May 18, 2006 which is beyond the 20 days. The application was filed on June 5th per Ms. Glashoff. Attorney Gallina referred to the MLUL which states: "Such Appeal must be taken within 20 days by filing Notice of Appeal with the Officer from whom the Appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken". Attorney Gallina noted that the MLUL does not give any leeway to extend the time. Basically if it is not done within the 20 days the board is without jurisdiction to hear the Appeal. Attorney Wilson countered stating that the MLUL doesn't say how the notice is to be given or how the Appeal is to be filed and that the verbal discussion the applicant had with the Zoning Officer would satisfy the requirements.

Attorney Gallina asked if the applicant had filed an Appeal with the Zoning Officer within the 20 days from March 31, 2006. Per Attorney Wilson, the Appeal was filed verbally. Attorney Gallina deferred on Attorney Wilson's opinion regarding how the Appeal should have been filed.

Chairman Terzuolo interjected stating that the notice for tonight's meeting was a written notice and posted. This board finds that notice must be written. Attorney Wilson asked if the board would consider hearing this evening either an Interpretation or Special Question. Attorney Gallina referred to Case Law stating it would be improper for the board to avoid the 20 day requirement and hear it as an Interpretation. If the applicant wants to file a separate application, it would have had to be filed within the 20 days, same as an Appeal. Attorney Wilson stated that he thought it was ridiculous that they were even here this evening. They will go back and have a discussion with the Zoning Officer Mr. Skene.

At this point in time, Chairman Terzuolo asked the board for their input on this matter. Members of the board agreed that written notice should have been done within the 20 days. Mr. Secor asked to make a comment. Mr. Secor informed the board that the rejection letter was generated while he was waiting on a letter from the Township Attorney regarding a requirement of dismantling the kitchen to comply with the zoning. Mr. Secor had made it clear that he was not creating a two family dwelling. The issue came up regarding the Attorney's response in writing since they needed a request in writing to give a response in writing. Mr. Skene suggested that Mr. Secor proceed since this wasn't going to go through. Mr. Skene suggested that he get a rejection letter now and start working on the application while waiting for a

response from the Township Attorney. Mr. Secor needed to know if he could build the addition if we remove the kitchen before getting a Temporary CO. None of this was ever answered. Mr. Secor said he had been back and forth with the Zoning Office several times and informed Mr. Skene he didn't know had to proceed at this point. Mr. Secor stated that Ms. Glashoff was kind enough suggest to him to seek legal counsel because it was beyond his comprehension on how to put this process through. Mr. Skene made it clear there were issues at that time with legal counsel for the Township. He got a denial letter from Mr. Skene who told him to get going on this and to find a lawyer to represent him.

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As a side note, Chairman Terzuolo made it very clear that the Zoning Officer will be present and if it is a problem a subpoena can be issued. Chairman Terzuolo stated that he does not want to embarrass the applicant and he does not want this board embarrassed. Chairman Terzuolo asked if that was clear. Ms. Glashoff stated "you do not have a problem with me with that". Ms. Glashoff stated for the record, she approached Mr. Skene on two occasions asking him to come to this meeting and he stated it was not necessary. Chairman Terzuolo stated that Ms. Glashoff then should have contacted him and he would have issued a subpoena. Chairman Terzuolo asked Attorney Gallina where are we going from here. Attorney Gallina stated there is no indication that a written appeal was filed with the Zoning Officer or that an application for the appeal was filed within the 20 day file period. Chairman Terzuolo referred to the plans that have been submitted along with the filing fees. Chairman Terzuolo suggested if there is no objection, accepting these but we need the letter and Mr. Skene here. Chairman Terzuolo asked Ms. Glashoff to have Mr. Skene call him.

Attorney Gallina noted there were other issues that have to be considered, is it the same application, is there anything different about it. Chairman Terzuolo stated if the applicant gets another denial from the Zoning Officer, he should then file an appeal and come back to the board. Attorney Wilson stated that they will go back to the Zoning Officer and file another zoning permit application and if it is denied they will be back to the board. Discussion on this issue continued.

At this time the board recessed at 8:07 p.m. When the board reconvened at 8:12 p.m. Chairman Terzuolo asked what the opinion of the board was and the next step. Attorney Gallina stated that the application was filed after the 20 day filing period under the MLUL and the board does not have jurisdiction to proceed with an Appeal.

Being no further business to come before the board and no comments from the public, motion by Mr. MacQueen and seconded by Mr. Perry to adjourn the meeting at 8:15 p.m. Unanimously approved.

CHAIRMAN BRUCE TERZUOLO

GAIL W. GLASHOFF, BOARD SECRETARY