

REGULAR MEETING

Lebanon Township Board of Adjustment

October 28, 2009

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 7:30 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Abuchowski, Mr. Perry, Mr. Nagie, 2nd Alternate Maurizio, Attorney Gallina and Planner Bolan.

Excused: Mr. Eberle

This meeting was noticed 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 October 21, 2009.

PRESENTATION OF MINUTES: September 23, 2009 Regular Meeting

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

UNFINISHED BUSINESS:

Transtar Truck & Autobody Block #41 Lot #4

c/o Dominick Tranquilli Route 513 I5

514 Route 513

Califon, N.J. 07830

CONTINUATION OF A PUBLIC HEARING

Use Variance for Storage Units/

(Applicant requesting a continuance/letter from Attorney) Addition to existing building Site

Chairman Terzuolo asked Ms. Glashoff about the letter she received regarding the continuance. Ms. Glashoff read into the record the letter she received. Per the letter Attorney Gilbert extended the time until the end of January 2010. Ms. Glashoff said in speaking with Mr. Tranquilli he said he would like to come in at the meeting of January 27, 2010. Zoning Officer John Flemming asked to address the board. Mr. Flemming stated that this application started back in 2007; the issue is with the site plan and all the violations that have occurred over the years. There has been an illegible expansion that occurred since the approval from the Planning Board. Mr. Flemming went over all the violations that have occurred and felt that two years was excessive.

Chairman Terzuolo asked Attorney Gallina for legal guidance. Attorney Gallina asked Ms. Glashoff if the escrow account has been satisfied. Ms. Glashoff said that Mr. Tranquilli paid half of what she requested, but that the amount did cover vouchers that were outstanding leaving a minimum amount in the account. Before Mr. Tranquilli comes back before the board the balance must be paid. Attorney Gallina noted that Transtar has been before the board on 4 occasions with the public hearing starting on October 22, 2008 with a continuance to December 2008, then asking for a continuance to March 2009 then April. They came in May 27th, July 8th and July 22, 2009. They were scheduled for September 9th then asked for a continuance until to October 28th. Mr. Tranquilli is now asking for another continuance until the end of January 2010. Attorney Gallina asked Ms. Glashoff if Mr. Tranquilli gave a reason for another continuance. Ms. Glashoff said it had to do with his knee surgery. Attorney Gallina said the board can do several things. The board can deny this application without prejudice since it has gone on too long with delays which means the applicant would have to reapply and start over or the board can grant an extension and make it known to the applicant stating this is the last extension he will get. A dismissal means that your application is suspended and you can continue at a later time. Attorney Gallina did not feel a dismissal was appropriate with this application. Chairman Terzuolo noted that he can not vote on this. Mr. MacQueen brought up some good points and the board discussed them at length.

During the discussion, Attorney Gallina stated Ms. Glashoff can send a notice that the escrow is deficient and if his escrow isn't brought up to date then he would risk a possible dismissal without prejudice. A dismissal means our professionals are not authorized to proceed any further with their review because the escrow is deficient. With a dismissal the applicant would have to re-notice for a new hearing. Mr. MacQueen suggested having Attorney Gallina and Ms. Glashoff put together a letter to be sent to Mr. Tranquilli and his attorney stating there will be no more extensions. At the conclusion of the board's discussion, Chairman Terzuolo asked for a motion.

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Motion by Mr. Maurizio and seconded by Mr. Kozlowski to grant an extension of time as discussed with perimeters that will be laid out in a letter dictated by Attorney Gallina addressed by Ms. Glashoff regarding escrow monies being submitted 2 weeks prior to the hearing.

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

NEW BUSINESS:

Michele Cavett	Block #38	Lot #5.04
31 Hickory Run Road	Hickory Run Road	R3
Califon, N.J. 07830		

APPEAL Section 400-10 Not a permitted Use (Outdoor Wood Burning Furnace)

Chairman Terzuolo announced the next application. Attorney Gallina had the applicant and the Zoning Officer sworn in to give testimony. Attorney Gallina marked the following into evidence: **A1-Zoning Denial** dated October 19, 2009. Ms. Cavett made a presentation to the board explaining she purchased the outdoor furnace in April 2009 from Mayberry Sales in Port Murray. Ms. Cavett said she was told by the dealer that she did not need any permits. Wortman Plumbing installed the furnace in June and told her again she did not need permits. Ms. Cavett said when she raised concern with the plumber doing the electrical, the dealer informed her that he had done several of these and it wasn't an issue. In July the applicant hired a handyman and in speaking with him was informed that permits were needed. Ms. Cavett said she then contacted the Construction Official Charlie Rogers and was informed that zoning

approval was probably necessary since the wood burning furnace was a structure and also need building, plumbing and electrical permits.

Ms. Cavett said she turned off the wood burning furnace until she could get all these issues resolved. She came in to see Mr. Flemming and was told she did need a zoning permit. Ms. Cavett stated she filed the appropriate paper to appear before the board this evening. Chairman Terzuolo asked if the applicant was contesting Mr. Flemming's denial, Ms. Cavett said she is appealing the denial. Chairman Terzuolo asked on what grounds. Ms. Cavett said this should be an obvious and normal use as a sustainable, safe and renewable source of energy for her home. It will be heating the hot water baseboard heating. It will replace the oil heating she presently has. She also plans on heating her in ground pool which will replace the propane heating. Regarding the smoke issue, her unit meets the emissions standards for 2012. This is a very responsible, practical and financial benefit. Chairman Terzuolo asked if the board had questions of the applicant. Mr. Nagie asked if the smoke from the furnace can be brought in as a nuisance factor to the public around the applicant's property. Ms. Cavett said if she was contacted by the County Board of Health she would explain to them all the precautions she took with the furnace she purchased. Her unit burns at an excess of 2000 degrees. This unit has an electrical blower fan and if the fire starts to go down which the smoke will increase at a certain temperature which is set at 180 degrees (water temp) the fan will kick on and will blow the ambers and create more of a fire to keep it burning at an appropriate level that will reduce the smoke. Ms. Cavett stated that before having this unit installed she had concerns of where this unit should be placed and also took pieces of ribbon and tied them in different areas around the property to see how the smoke went. The smoke would blow up the hill behind her house on her 9.65 acres. Ms. Cavett said she wants to be a good neighbor.

The board referred to the information they had on the unit that was installed and asked if the picture on the front of the brochure was the unit she had installed. Ms. Cavett answered yes. Attorney Gallina marked into evidence the brochure. **A2**-Brochure on Outdoor Wood Burning Furnace. Mr. Nagie asked if Ms. Cavett had storage for her extra hot water and stated he was informed that these furnaces people are burning them real hot to eliminate the smoke and they have huge storage tanks and pump the hot water from the storage tank and circulate it through the house and asked if this was the type of furnace Ms. Cavett had. Ms. Cavett answered yes. Mr. Nagie said in other states using this system they're looking to eliminate the problem with the issue of the smoke. Mr. Nagie asked if the ribbons used to see the direction of the smoke were used on a windy day or a clear day. Ms. Cavett said it was done over a period of two weeks. During that time there was rain, humidity and wind.

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At this time, Attorney Gallina had the following marked into evidence: **A3**-Site Plan/Parcel Survey of property. Mr. Flemming asked if a wood burner is an accessory use in Lebanon Township. Attorney

Gallina said we have standards for accessory uses and in the R3 zone customary accessory uses are permitted. The board has to decide if this is a proper accessory use and does it meet the standards for an accessory structure within the proper setbacks. Chairman Terzuolo asked Mr. Flemming why he denied this based on Section 400-10. Mr. Flemming said he brought this subject up to the Township Committee to see if this was something they would want and if so develop standards or is it something we don't want. This has not been determined. Mr. Flemming said this is a black and white situation, either they are allowed or they aren't. If the board says they are allowed then home made ones will be okay along with the one properly installed. Mr. Flemming said in his opinion this is in the authority of the Township Committee and if they want then an ordinance should be created. Chairman Terzuolo asked Ms. Cavett why she thinks the permit should have been granted. Ms. Cavett said the reason Mr. Flemming denied her permit was it would become a nightmare for him figuring out what would happen with the Board of Health. Ms. Cavett said the issue, is this a customary and normal use.

Attorney Gallina went over the first section of the ordinance #400-10 which deals with accessory structures and read into the record the definition. Planner Bolan noted the section of the ordinance this addresses is Section #400-4. Attorney Gallina said this is an accessory to the home since it is being used to heat the principle residence. Chairman Terzuolo noted in a workshop session the discussion was on accessory structures and what constitutes an accessory structure by definition. It was noted that a septic system and a well are accessory structures and Planner Bolan said no they are customary uses as part of the principle building. Chairman Terzuolo asked where is the distinction, since it is not an accessory use but a customary use. A heating appliance is required to heat a home. It is a customary use. Mr. Flemming said that wood burning furnaces are not a customary use in this area, they are not common. The board continued to discuss this issue at length. Chairman Terzuolo noted that an ordinance is being worked on at the present time. During the discussion it was noted that without standards in on ordinance we have no control per Mr. Flemming. Chairman Terzuolo agreed that we are opening Pandora's Box. Chairman Terzuolo said the standards fall with the construction department along with outside agencies. Mr. Flemming said if the board deems these as permitted accessory uses and structures, there are no standards they will basically be approved as regular accessory uses. Attorney Gallina said we are just talking for a zoning point of view. Also, the zoning approval doesn't guarantee you will meet the local, state, county, federal emissions standards. Attorney Gallina referred to a letter from Construction Official Charlie Rogers which states a construction permit is issued under the following conditions: a) applicant has Hunterdon County Board of Health approval, b) applicant has proper zoning approval, c) applicant has a signed wood boiler certification then a construction permit can be processed.

Mr. Flemming stated if the board deems this as an accessory use, then zoning permits will be approved on a regular basis and there will be no control over when they burn etc. During the discussion, Mr. MacQueen noted the Planning Board is working hard on an alternative energy ordinance for geothermal, solar, windmills and outdoor wood boilers. Chairman Terzuolo said he understands Mr. Flemming's reason; he's actually trying to protect us until we have the ordinance. Chairman Terzuolo said he considers this to be a customary accessory use. There are standards at the County Board of Health. When and if we do get this ordinance in effect then the standards still come from the DEP and there are standards that govern electrical and plumbing for these units. If you (Mr. Flemming) issue a zoning permit, then the outside agencies having jurisdiction and they would have to do the enforcement. At this time they seem to be doing enforcement just on complaints. Ms. Cavett said if the board approves this appeal with the stipulation that the ordinance which is forthcoming, she would have to comply with it. Attorney Gallina informed Ms. Cavett that she does not have to commit herself to that. Ms. Cavett said

she feels this is an important alternative energy use; it is viable, safe and sustainable. There are so many benefits that belong to this.

Chairman Terzuolo said basically we are discussing and the point of this meeting is Ms. Cavett is appealing the decision of the zoning officer. The board has heard Ms. Cavett's reasons for having this and we have heard Mr. Flemming's reasons for not allowing it. What the board has to decide if this a customary accessory use to a house or not. Does the board feel that the zoning permit should be granted and if so, beyond that it is all the outside agencies that have jurisdiction? The board continued to ask questions of the applicant. Attorney Gallina noted Ms. Glashoff provided a letter from the DEP which referred to 8 models that meet EPA standards. Mr. Machauer asked how far the adjoining neighbors are. Ms. Cavett said she did not know how far

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away her neighbors are. Chairman Terzuolo said we are getting into areas that we don't need to get into. The question, is this a customary accessory use or not. The board in their discussion agreed this is a customary accessory use. The board was also glad that the Planning Board was working on creating an ordinance to address alternative energy. Attorney Gallina stated in the resolution that the board would approve, it would contain language that the granting of this appeal does not in anyway approve any standards that would apply.

Mr. Flemming asked if this approval means all wood burning furnaces, not just this property. Attorney Gallina said the board has found in their ruling that this is a customary accessory use. Mr. Flemming asked if it was across the Township. Attorney Gallina said in regards to this application only. Chairman Terzuolo opened the hearing to the public for questions. There were none. Planner Bolan asked if this decision means they are permitted anywhere in the Township at this point with the board making this ruling. Attorney Gallina said the board is not making a general finding. It pertains to this application only. Mr. Flemming asked does this mean it is a customary accessory use in the Township. Planner Bolan asked if this would set a precedent. Attorney Gallina said each application is judged on its own merits. Mr. Flemming said if someone comes into the office tomorrow and asks for permit for an outdoor wood burning furnace and they meet the setback requirements, he will sign off on the zoning permit. Attorney Gallina said we should not be discussing that. Chairman Terzuolo interjected stating that Ms. Cavett is challenging the denial, had she come in for an Interpretation then it is universal. This decision is based on this particular application only. Mr. Flemming stated when the board was polled on whether this was a customary accessory use, the board unanimously agreed that it was. Chairman Terzuolo said this is based on an Appeal only and it is a big difference legally. Chairman Terzuolo said we are just dealing with this application tonight and if something else comes up we will deal with it. Mr. Abuchowski said it is a valid question and Mr. Flemming wants to know what to do when the next one comes along. Chairman Terzuolo asked if there were any comments from the public. There were none. Chairman Terzuolo announced that the evidence taking portion is now closed. Attorney Gallina went

over what will be in the resolution. During the discussion, Mr. Abuchowski noted that he did not hear any clarification of the issue he described in the purposed resolution. The board discussed this issue at length. At the conclusion of the board's deliberation, motion by Mr. Kozlowski and seconded by Mr. Nagie to have Attorney Gallina prepare a Resolution reversing the denial by the Zoning Officer.

ROLL CALL

Yes: Mr. Machauer Mr. Abuchowski

Mr. Kozlowski Mr. Perry

Mr. MacQueen Mr. Nagie

Mr. Terzuolo

Attorney Gallina will prepare the Resolution to be adopted at the next meeting on November 12, 2009.

ITEMS FOR DISCUSSION:

- a. **Set Reorganization Date:** January 27, 2010

The board will hold their Reorganization on Wednesday January 27, 2010

- b. **Budget 2010**

Motion by Mr. MacQueen and seconded by Mr. Abuchowski to approve the proposed budget for 2010. Unanimously approved.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$172.50 – Phone Conf. Bd Sec, Chairman, Attend Mtg 9/23/09

legal research re: escrow, prepare ltr to Bd Sec.
\$316.25 - Review file, Attend Mtg 9/23/09 (**Escrow/Edwards**)
b. Bayer/Risse Engrs. \$258.75 - Inspection of roof runoff/installation of drywell
system (**Escrow/Giordano**)
\$268.88 - Attend Mtg 9/23/2009 (**Escrow/Edwards**)
c. Court Stenographer \$200.00 - Attend Mtg 10/28/2009
Total: \$1,216.38

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Ms. Glashoff said she had one additional bill to add. The bill is from Attorney Gallina in the amount of **\$201.25** which brings the total to **\$1,417.63**. Motion by Mr. Abuchowski and seconded by Mr. Nagie to approve the bills as amended. Unanimously approved.

CORRESPONDENCE:

- a. Zoning Practice - October 2009
- b. Law Bulletin - October 2009
- c. NJPO Newsletter – Late Summer & September/October 2009
- d. Zoning Law September 28, 2009
- e. Ltr from NJLM 10/7/09 & NJLM Article on Farming

Being no further business to come before the neither board, nor comments from the public, motion by Mr. Nagie and seconded by Mr. Abuchowski to adjourn the meeting at 8:45 p.m. Unanimously approved.

CHAIRMAN BRUCE TERZUOLO

GAIL W. GLASHOFF, BOARD SECRETARY