

**LEBANON TOWNSHIP BOARD OF ADJUSTMENT
MEETING MINUTES – MAY 8, 2024 – 7:00 PM
LEBANON TOWNSHIP MUNICIPAL BUILDING**

The Lebanon Township Board of Adjustment meeting was called to order at 7:00 PM by Chairman Wayne Eberle followed by the salute to the flag.

The following statement of compliance with the Open Public Meetings Act as listed on the meeting agenda was read into the record by Chairman Eberle: Notice of this meeting was published in the “Annual Meeting Notice Schedule,” adopted by this Board on January 10, 2024. Notices of this meeting and location were published in the Hunterdon Review and Hunterdon County Democrat on December 14, 2023. Copies of the agenda were posted on the bulletin board at the Municipal Building and as a courtesy, posted on the Township website.

Attendance – Roll Call

Present: Michael Iannace
Tom Sachs
Matt Walls
Karen Zatika
Wayne Eberle
Brandon Staten – *Alt. #1*
Derrick Van Doren – *Alt. #2*
Jonathan Drill, Esq.
Alison Kopsco, Planner

Excused: Derek Porcino

PRESENTATION OF MINUTES

A motion was made by Karen Zatika and seconded by Tom Sachs approving the 4/10/24 minutes with no revisions noted. The motion was approved by voice vote with Mr. Walls abstaining.

PRESENTATION OF BILLS

It was noted for the record that an additional bill from Christina Restuccia in the amount of \$250 for reporter services was added to the bill list for approval.

A motion was made by Karen Zatika and seconded by Tom Sachs approving the 5/8/24 vouchers for payment. The motion was unanimously approved by voice vote.

RESOLUTION

Approval of Resolution ZBA#2024-02: NAR Group: 62 Anthony Road – Block 57 Lot 23 – Denial of Use Variance/Site Plan Application for Medical Cannabis Growing Facility

It was noted for the record that Co-Chair Karen Zatika took over the meeting at this time.

A motion by Tom Sachs, seconded by Matt Walls to approve Resolution ZBA#2024-02 denying NAR Groups use variance/site plan application for a medical cannabis growing facility was approved by roll call vote by those members eligible to vote on the resolution.

Sachs: Yes, Walls: Yes, Zatika: Yes

PUBLIC HEARING

It was noted for the record that Chairman Eberle took over the meeting at this time.

Judith Jaheriss – Block 35 Lot 31.18 – 4 Whiteoak Ridge Road: Use Variance Approval to Allow an Existing Two-Family Dwelling or in the Alternative, Conditional Use Approval to Allow Existing Supplementary Apartment

Chairman Eberle explained the property currently contains a residential dwelling which was converted into an apartment for a family member. The applicant desires to retain the dwelling as is, either as a two-family dwelling where two-family dwellings are not permitted in the zone in which the lot is located, thus requiring a “d(1)” use variance from the Board in accordance with N.J.S.A.40:55D-70d(1), or as a supplementary apartment which is a conditional use in the zone but requires a “d(3)” conditional use variance in accordance with N.J.S.A. 40:55D-70d(3) because the apartment does not comply with all of the conditional use requirements.

Present for the public hearing was applicant Kristy Jaheriss, Planner/Surveyor Christopher Melick and Attorney Brent LaMaire.

Present on behalf of the objectors, Brenda and Andy Ziray, was Attorney Michael Selvaggi.

Attorney Drill swore in all parties.

Attorney LaMaire stated his client is withdrawing the request for the d(1) use variance and seeking the d(3) conditional use approval to allow the supplementary apartment and highlighted the following details supporting why the property is appropriate for the conditional use despite the deviations from one or more of the conditions outlined in the ordinance:

1. There is no detriment to the public good
2. The apartment doesn't substantially impair the Master Plan or Zoning Ordinance
3. The lot is suitable to keep the apartment
4. The house was built prior to 7/1/87 per the applicant's testimony, plans exist showing the home was built in 1979. Planner Kopsco agreed.
5. The home and apartment are private and secure from each other
6. The apartment has its own separate entrance

The following specific details were provided regarding the apartment:

It contains a living area, 1 full bathroom, 2 or more rooms/bedrooms and a kitchen area with a sink, stove and refrigerator.

There was some discussion on the total square footage of the apartment being 1600 sq. ft. per Ms. Jaheriss's testimony but Planner Kopsco's report indicates it is 1470 sq. ft. Attorney Drill clarified the apartment must be less than 40% of the gross floor area of the principal structure. He noted if the house is 4200 sq. ft. minus 1600 sq. ft. for the apartment, that is 2600 sq. ft. and 40% of 2600 means the apartment can only be 1150 sq. ft. which means it is larger than what is permitted under the ordinance and will require a d(3) variance. He further explained that if the home is rented out and not owner occupied, then the kitchen would have to be removed in the apartment if the d(3) variance is granted.

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Attorney LaMaire noted there are 4 off street parking spaces, 1 garage space and parking for the apartment on the property. Attorney Drill asked if there were any adults, not on the deed, residing in the apartment. Ms. Jaheriss said no. Attorney Drill noted that if the d(3) variance is granted and if the home was rented and not owner occupied, the kitchen in the apartment would have to be removed.

Attorney LaMaire commented on the size of the property noting the lot is 1.63 acres where 7.5 acres are required. Ms. Jaheriss confirmed that there is 1 septic system servicing the home and apartment. She indicated when the previous owner pulled permits in 2006 for the addition to the home, the septic system was brought into compliance at that time. Attorney Selvaggi objected to Ms. Jaheriss's testimony stating the Board cannot rely on what the prior owner told her. Attorney Drill agreed.

Planner/Surveyor Christopher Melick spoke up from the public and explained that he had OPRA requested all of the zoning, construction and County Board of Health records. He concluded that the septic system is sufficient for the number of bedrooms in the house but noted it did not address the 2 kitchens. He also stated he did not have copies of any of the records with him.

The following specific details were provided regarding the number of bedrooms:

4 bedrooms in the dwelling

2 bedrooms in the apartment

Planner/Surveyor Melick stated the Construction Official issued a Certificate of Occupancy after the addition was built, but he did not have a copy of the document with him. Attorney Drill asked about electrical, plumbing and construction permits for the kitchen in the apartment. Mr. Melick commented that no permits appear to have been pulled. It was noted for the record that on the architectural plan the kitchen area in the apartment is referred to as a "nook."

Attorney LaMaire addressed the positive and negative criteria highlighting the following details:

1. The apartment does not change the character of the neighborhood
2. No exterior aesthetics have changed

Attorney LaMaire presented **Exhibit A-1**: The proposed language for the deed restriction on the apartment. *The dwelling on the property was constructed and approved as a single-family dwelling and, as such, shall only be utilized as a single-family dwelling. The supplemental apartment in the dwelling shall only be occupied by immediate family member(s) of the occupant(s) of the dwelling and shall not be rented to any individual(s) who are not immediate family member(s) of the occupant(s) of the dwelling. This restriction shall not prohibit the owner(s) of the dwelling from leasing the entire dwelling to a single family. For purposes of this restriction, immediate family means parents, siblings, spouses and children, including stepparents, stepchildren, stepsiblings, grandparents, grandchildren whether by blood, adoption or operation of law.*

Attorney Drill took issue with the "lease" language reference.

Attorney Selvaggi commented that the structure is not a single-family home if a supplemental apartment exists. Attorney Selvaggi stated he would like all references to extended family removed from the deed language.

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Charman Eberle asked how the apartment was referenced in the real estate listing. Attorney LaMaire indicated it was a single-family home with an in-law suite. Chairman Eberle asked if there were separate electric meters. Ms. Jaheriss said no.

Ms. Jaheriss clarified that there are 3 owners of the home: Herself, her husband and her mom and stated they all reside there.

Ms. Zatika asked how the Zoning Official wound up coming to the home. Ms. Jaheriss stated the Tax Assessor came to the home because the purchase price wasn't in align with the assessed value and she brought the Zoning Official with her.

Ms. Zatika asked if the kitchen in the apartment can be removed. Ms. Jaheriss expressed concern over the potential decrease in value of the home. Attorney Drill remarked that if the listing was for an in-law suite and not a two-family home then there is no decrease in value. Ms. Zatika asked Ms. Jaheriss what her future plans are with the home noting she could have a toaster oven and microwave. Ms. Jaheriss noted her Mom is currently residing in the apartment and she wants her to be able to maintain her independence as long as she can and would like to keep the kitchen intact for re-sale purposes.

Mr. Sachs asked if there is a separate heating and cooling system for the apartment. Ms. Jaheriss said yes and clarified there is a heat pump. Mr. Iannance asked when the heat pump was installed. Attorney LaMaire noted in 2006 when the addition was added. Ms. Jaheriss explained there are several electric panels for the house which were all created/installed in 2006.

Attorney Selvaggi presented Exhibit O-1: The on-line real estate listing dated 11/5/21. Attorney Drill stated the listing will be marked for identification purposes only and not as an actual exhibit.

It was noted for the record that the listing indicates 1 kitchen.

Attorney Selvaggi asked Ms. Jaheriss several questions with the following details being noted:

1. No OPRA records were sought prior to purchasing the home
2. There were no conversations with the Zoning Official prior to purchasing the home
3. They did not seek a mortgage on the premise that the home would be "income generating"
4. There were no conversation with the County Board of Health regarding 2 septic systems
5. Both the apartment and main house can be accessed via the first floor

Chairman Eberle asked if there were any questions from any members of the public. It was noted for the record that no one from the public came forward.

It was noted for the record that the Board took a break from 8:22 PM – 8:30 PM.

Planner/Surveyor Christopher Melick came forward and provided his credentials to the Board. He was accepted as an expert to provide testimony on the application. He provided details on the site plan and the architectural plans noting the apartment references a "kitchenette" with a sink and refrigerator. He stated there is no reference to a stove.

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There was extensive discussion with Planner/Surveyor Melick on the square footage of the principal structure (2632 sq. ft.) and the apartment (1564 sq. ft.) with the Board determining that a d(3) variance is needed for the apartment, per the ordinance, because it is over 40% of the gross floor area of the principal structure. Planner Kopsco also agreed that a d(3) variance is needed.

There was some discussion on the deed language regarding the home being rented with Attorney Drill commenting that either the stove needs to be removed from the apartment or there needs to be a restriction that the home cannot be rented out to non-family.

It was noted for the record that the public hearing will be carried to the Board's 6/12/24 meeting at 7 PM with no further public notice required.

Attorney Drill clarified that he wants pdf files of the architectural plans along with 12 sets of the plans provided for the Board and all of the septic information from the County prior to the June 12th meeting. Additionally, he noted Planner/Surveyor Melick will need to provide testimony on the following items:

1. The apartment being larger than the 40% gross floor area of the principal structure
2. An owner living on the premises at all times
3. The 1.6 acre lot size not meeting the 7.5 acre requirement
4. There being only 1 septic system servicing the home and apartment

NEW BUSINESS

Request from Robert Dell Elba for an Extension of Prior Zoning Approval to Construct a Log Home within the Existing Footprint on Block 69 Lot 15

It was noted for the record that the Board requested Mr. Dell Elba attend the next meeting to explain why he never sought extensions over the past 16 years.

CORRESPONDENCE

It was noted for the record that no correspondence was listed on the agenda.

OPEN TO THE PUBLIC

Chairman Eberle opened the floor to public comment. Paul Lewis of 57 Sliker Road inquired about the real estate listing for the Dell Elba property. Seeing no other members of the public who wished to speak, Chairman Eberle closed the floor to public comment.

ADJOURNMENT

A motion by Karen Zatika, seconded by Tom Sachs to adjourn the meeting was unanimously approved by voice vote.

The meeting adjourned at 9:42 PM.

Maria Andrews, Zoning Board Secretary