

***UNAPPROVED AS OF TRANSCRIPTION DATE***

**TOWN OF LEBANON  
ZONING BOARD OF APPEALS  
Thursday, May 21, 2009 7:30 p.m.  
SPECIAL MEETING**

**MINUTES**

PRESENT: Jeffrey Walsh, Chairman  
Michael Okonuk, Vice Chairman  
Kenyon Gardner  
Joyce Godere  
Alicia Wayland  
Cheryl Straub, Court Stenographer  
Holli Pianka, Recording Secretary

Alternates: Donald Anderson  
Lawrence Crowley  
Jerome Walsh

ABSENT: None

**1) Call to Order:**

Chairman Walsh called the May 21, 2009, Special Meeting of the Town of Lebanon Zoning Board of Appeals to order at 7:32 p.m. He then read the legal notice and introduced the Board noting that Jerome (Jodi) Walsh is a newly appointed alternate member.

**2) Public Hearing for the following:**

**#678** – Dean V. Tine and Robin L. Tine, 61 Cottage Road, Oakdale, CT, 06370, owners, for property located at 282 Lakeside Drive, Lebanon, CT, 06249. Appeal from the decision of the Zoning Enforcement Officer regarding issuance of a Notice of Violation and Cease and Desist Order, regarding Section 4.4(b)(4) impervious area, Section 5.2 rear yard setback requirements, AND Section 2.2 Certificate of Occupancy of the Town of Lebanon Zoning Regulations. ***(CONTINUED FROM MARCH 19, 2009).***

Attorney William McCoy appeared on behalf of the applicant.

The following additional exhibits were read into the record:

L-1) Submitted with variance application previously, Memorandum of Law prepared by Atty. Harry Heller, dated March 19, 2009; Copy of case (Raymond decision) City of Norwalk vs. Zoning Board of Appeals (previously submitted).

In response to Attorney Ziska's comments, Attorney McCoy would like to clarify that it is not their position "that by definition, all structures are buildings under the state statutes and regulations". Their position is "that structures and buildings can be different, however in this particular case, in this particular context, the deck, which is a structure, is also a building under that statute because it's an integral part of the building and is necessary to the

building". The language in the Raymond decision is virtually identical to this application because it was a deck on a restaurant which was integral to the restaurant, therefore it was found to be a building under the statute. It is their claim that the deck, because it is integral to the building, is covered by the statute. He also noted that Atty. Ziska indicates that the ruling in the Raymond Court was by way of dicta (matters that the court gets into which are not integral to the decision). Atty. McCoy stated the decision was clear that the issue was raised by the court and the court decided that 8-13a applied in that particular situation to the deck that was attached to the restaurant (to the structure). He stated the Ziska letter also leaves open the Board's ability to take further evidence of the issue of when the deck should have come to the attention of the Town for enforcement. The deck was attached to the house at the end of construction in May, 2004. The deck existed from 2004 and was constructed on a house which was part of an open permit taken out in the year 2000. Mr. Tine stated that is so. It is their position that this was an open construction project and had ongoing inspections and the Town should have been made aware of the deck due to the open construction permit. Photographs reflect the deck being in existence for a substantial period of time. Attorney McCoy discussed two other matters. 1) The impervious surface issue, part of the cease and desist order, is no longer an issue per Mr. Chester (ZEO). 2) The issue of the cease and desist order with respect to the Certificate of Occupancy is interrelated with the deck and setback requirement. If the Board grants the application for the deck, by necessity the C.O. is issued. Conversely, if the deck is not legal, the C.O. cannot be issued because it is not in zoning compliance. The two go hand in hand. The statute 8-13a is the statute of limitations and if there is no enforcement of a zoning violation for a period of three years after it is known to the town, the town does not have the ability to enforce after that point. It is their position therefore, because the deck has been in existence for approximately five years, for that reason they are well in excess of the three year period provided by that statute.

Further discussion:

- Buildings verses structures.
- Application of statute 8-13a.
- Definition of a building does not include structures in Town of Lebanon Zoning Regulations.
- Deck not being an integral part of the building at the start of construction, not included in the building plans, proposed wall of windows facing lake.
- Applicant in year 2000 applied for variance, knowingly encroaching on setback to build house 75' to 40' approved. Mr. Tine testified at last meeting that he knew permits and variance were needed for deck and did not apply for them.
- Date in of first notice of the violation to the ZEO.
- Failure of the owner to call for a final C.O. inspection and responsibility of town official to monitor status of project.
- Self-created hardship and violations discovered when owner requested a C.O. in order to sell the property.
- 8-13a statute does not require conduct of the homeowner.
- The building official does not inspect setbacks. The Zoning Official requested a certified as-built which, upon receipt of, disclosed the setback encroachment of the deck.
- Other cited cases.
- If the deck not a building, therefore 8-13a does not apply.
- Notice to the Town is not discussed in 8-13a.
- Doors, windows or balcony on second floor.

Chairman Walsh stated the first constructive notice to town was when Mr. Tine applied for his Certificate of Occupancy in 2008. Attorney McCoy disagreed, stating the first constructive notice to the town is May of 2004 upon completion of the house. When asked by Chairman Walsh how this occurred, Atty. McCoy stated notice does not have to be in writing and it existed from that point on. It is considered an open permit and the town officials were not prevented from going to the sight. Why is there a five-year gap (from 2003 to 2008) where no one paid any attention at all to the property. Mr. Gardner stated, and others agreed, there is responsibility on both sides. Ms. Wayland stated in her review of all of the cited cases, she found that even if the courts differ on the definition of whether the deck is a structure or a building, they all seem to agree there is a limit to the time a town can say they should have been notified and act on it.

Mr. James Jahoda, resident of Lebanon, spoke in opposition to the application, stating that rules and regulations should be followed and the Board should not set precedence allowing people to hide and then place blame on the town for not checking on them. This is not bringing forth good citizenship and teaching our children how to act for the public good.

Atty. McCoy, referring to the responsibilities of the homeowner and of the Town, stated 1) "should be watching" is a key term and 2) the issue is not whether decks are buildings in the general sense, it is in this case. The evidence shows the deck is necessary for the ingress and egress from doors on the second floor. The question is, under the Board's obligation to enforce the statutes, do they have the ability to uphold that knowing that the statute provides a statute of limitations.

Chairman Walsh stated the first question is, is the deck a building and if so, whether statute 8-13a allows it to exist and whether the cease and desist order would be upheld.

Chairman Walsh read the Record of Decision procedures according to the Connecticut General Statutes with no further testimony, Ms. Wayland motioned, Ms. Godere seconded, and the Board voted unanimously to close the hearing for application #678.

### **3) Adjournment:**

With no further business, Vice Chairman Okonuk motioned, Ms. Godere seconded, and the board unanimously voted to adjourn at 8:30 p.m.

Holli E. Pianka, Recording Secretary  
May 28, 2009

***UNAPPROVED AS OF TRANSCRIPTION DATE***

**TOWN OF LEBANON  
ZONING BOARD OF APPEALS  
Thursday, May 21, 2009, 7:30 p.m.  
REGULAR MEETING**

**MINUTES**

PRESENT: Jeffrey Walsh, Chairman  
Michael Okonuk, Vice Chairman  
Kenyon Gardner  
Joyce Godere  
Alicia Wayland  
Holli Pianka, Recording Secretary

Alternates: Donald Anderson  
Lawrence Crowley  
Jerome Walsh

ABSENT: None

**1) Call to Order:**

Chairman Walsh called the May 21, 2009, regular meeting of the Town of Lebanon Zoning Board of Appeals to order at 8:37 p.m.

**2) Discuss and Act on Public Hearings:**

**#678** – Dean V. Tine and Robin L. Tine, 61 Cottage Road, Oakdale, CT, 06370, owners, for property located at 282 Lakeside Drive, Lebanon, CT, 06249. Appeal from the decision of the Zoning Enforcement Officer regarding issuance of a Notice of Violation and Cease and Desist Order, regarding Section 4.4(b)(4) impervious area, Section 5.2 rear yard setback requirements, AND Section 2.2 Certificate of Occupancy of the Town of Lebanon Zoning Regulations. ***(CONTINUED FROM MARCH 19, 2009).***

Chairman Walsh stated at this time, it is only necessary to act on Section 5.2 of the application. Decision should be made on if the deck is a building under zoning regulations, and does section 8-13a apply?

Ms. Wayland thinks the deck is a building and since there is no definition of a deck in the zoning regulations, she must go by common sense and the answer is yes. Also, she can go by the Appellate Court who ruled on the case of the restaurant that the deck was definitely part of the building. Chairman Walsh stated the definition of buildings is in the zoning regulations, although it does not list decks. Ms. Wayland believes the deck is an integral part of the building and living accommodations.

Chairman Walsh stated that in three of the cited cases, the zoning official is what the court looked to for the definition of what a building is. In each of those cases, great deference was given to that definition of building as determined by the person hired by the town to make those decisions. In this case, our ZEO/Town Planner has determined the deck is not a

building for purposes of the Town zoning regulations and is why he issued the cease and desist order. The Raymond case was not an 8-13a discussion, it was a non-conforming use discussion. He sees lots of reasons why the Board should uphold the decision of the Zoning Enforcement Officer.

Without further discussion, Ms. Wayland made a motion that the deck is to be considered an integral part of the building, Mr. Gardner seconded. Motion to approve failed by 3 to 2 vote. In favor: A. Wayland, K. Gardner, Joyce Godere Opposed: J. Walsh, M. Okonuk  
**APPLICATION #678 DENIED.**

**3) Approval of Minutes of Previous Meetings:**

- a) March 19, 2009 Special Meeting Minutes. Ms. Wayland motioned, Mr. Anderson seconded and the board unanimously voted to approve the minutes as presented.
- b) March 19, 2009 Regular Meeting Minutes. Ms. Wayland motioned, Mr. Anderson seconded, and the board unanimously voted to approve the minutes as presented.

**4) Old Business:** None this evening.

**5) New Business:** None this evening.

**6) Bills:**

- a) Recognition Products, Invoice #88843      \$12.75

Vice Chairman Okonuk motioned, Ms. Wayland seconded, and the board unanimously voted approval for payment.

- b) Murtha Cullina LLP, Invoice #380804      \$1,507.50

Vice Chairman Okonuk motioned, Ms. Godere seconded, and the board unanimously voted approval for payment.

**7) Correspondence:**

- a) The CFPZA Spring 2009 Newsletter received and placed on file.

**8) Adjournment:**

With no further business, Ms. Wayland motioned, Vice Chairman Okonuk seconded, and the Board unanimously voted to adjourn at 9:03 p.m.

Holli E. Pianka, Recording Secretary  
May 28, 2009