

**TOWN OF LEBANON  
ZONING BOARD OF APPEALS**

**NOTICE OF CONTINUED HEARING**

The following public hearing has been continued to May 21, 2009:

**#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.

Respectfully Submitted,

Holli E. Pianka, Recording Secretary

***UNAPPROVED AS OF TRANSCRIPTION DATE***

**TOWN OF LEBANON  
ZONING BOARD OF APPEALS  
Thursday, March 19, 2009 7:30 p.m.  
SPECIAL MEETING**

**MINUTES**

**PRESENT:** Jeffrey Walsh, Chairman  
Michael Okonuk, Vice Chairman  
Kenyon Gardner  
Joyce Godere  
Alicia Wayland  
Lawrence Crowley, Alt.  
Donald Anderson, Alt.  
Cheryl Straub, Stenographer  
Holli Pianka, Recording Secretary  
Phillip Chester, Zoning Enforcement Officer

**ABSENT:** Jerome Walsh, Alt.

**1) Call to Order:**

Chairman Walsh called the March 19, 2009, Special Meeting of the Town of Lebanon Zoning Board of Appeals to order at 7:40 p.m.

**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.

Chairman Walsh read the legal notice and the following exhibits were read into the record:

a) Two-page application with three-page addendum; b) Letter dated 02/02/09 to ZBA from Heller, Heller & McCoy re: Appeal of Dean V. Tine and Robin L. Tine with one-page attachment (authorization); c) Two-page Appeal and Complaint; d) Two-page Quit Claim Deed; e) Abutter's List; f) Assessor's street card for Map #107, Lot #33; g) Assessor Map 107; h) Plot plan for 282 Lakeside Drive, dated 11/28/08 by A-2 Maps and Surveys, P.O. Box 116, Oakdale, CT, 06370; i) Certified mail receipts and return receipt cards (collectively).

Additionally, items received this evening were read into the record and labeled as exhibit:

j) Letter from Heller, Heller & McCoy, a return receipt card from Erica Cobb, a memorandum, and a 16 page affidavit from Mr. Tine.

Attorney Harry Heller representing Mr. & Mrs. Tine appeared before the Board. He submitted the following items for the record and they were labeled as exhibits:

k) Original affidavit of Mr. Tine; and l) Original memorandum

Atty. Heller stated that Mr. Tine applied for a variance of 28' to legitimize a deck which was constructed on the property. The Board denied the request in December 2008. The Tine's purchased two adjoining lots in 1999 and applied for a number of variances in order to construct a seasonal dwelling and these were granted by the Board. The original plans submitted with the building department application specified a two-story structure with rear doors facing the lake but did not specify egress into or out of this rear elevated entry. Over the next several years, the Tine's, acting as their own general contractors, constructed this seasonal dwelling and in conjunction with that, and without permits and town authorization, constructed the deck, which was completed in May, 2004 (this being stated in the Tine's affidavit). Subsequently, nothing administratively took place on the property until the Fall of 2008, when the Tine's approached the Building Official in order to obtain a Certificate of Occupancy for the structure because of a potential sale of the property. At this time, Mr. Chester inspected the property and became aware there might be a violation on the property and requested an A-2 Survey be submitted to demonstrate compliance with the zoning regulations. The survey located the deck too close to the lake encroaching into the setback by 12 feet. As a result, a variance was applied for the deck and not approved. The Notice of Violation issued, cites three violations of the Lebanon Zoning Regulations: 1) allegation that the property violates the impervious coverage requirement in the Lake District (33%). The A-2 survey map was prepared and the certification done by David King is attached to the memorandum exhibit (l) and states that the impervious coverage ratio is 32.2% meeting compliance. 2) Alleged violation of Section 5.2 concerning rear yard setback. It is the appellant's position that although the deck encroaches 12' into the setback, the deck is now a validly existing, non-conforming structure as a result of the operative effect of Conn. General Statutes 8-13(a)(a) which provides that when a building has been located on a lot for a period of three years without enforcement action, an issuance of a cease and desist order, filing a variance application or an appeal of are not institutions of action within the statute. There still has been no enforcement action within the context of Statute 8-13(a). The deck, having existed in its completed state for a period of three years is protected by Statute 8-13(a). In order for the deck to be protected under the statute, there are two elements which must be satisfied: 1) the deck must be considered a building; 2) the building must have been in its completed state for three years prior to the institution of an enforcement action. Based on the affidavit submitted into the record, there is no question that the deck has been in existence for three years. The critical question becomes whether or not this deck is considered a building or a structure? It is clear that structures are not protected under the 8-13(a). In the memorandum submitted by Attorney Heller, a number of Connecticut court cases have been cited dealing with 8-13(a) and distinction between building and structures. He has provided the history of these cases in the memorandum because he feels it is relevant to the determination by the Board. Attorney Heller provided brief history of these cases along with copies of the decisions for the Board's review. Chairman Walsh entered these into the hearing record and labeled (collectively) exhibit (m).

Attorney Heller stated that he believes the memorandum from Town Attorney Michael Ziska sent to ZBA contains conflicting information regarding Section 2.1(a) of the zoning regulations. Attorney Heller stated that "certainly structures are subject to the height and setback requirements contained in your regulations" so including the term structure within the definition of a building absolutely subjects all structures in the Town of Lebanon to those

setback requirements. In the zoning regulation, the term structure within the term building is identical to the regulation in the Sparasino case which is cited on page 10 of his memorandum where the definition of building was held determinative by the Superior Court in finding a child's playscape constituted a building under the regulations in that municipality. Secondly, under the statute itself, he believes that the decision of the Connecticut Appellate Court, being the only appellate level decision in the State of Connecticut at this time is controlling in which based on their interpretation of the case held that the elevated deck was attached to the building and an intrical part of the building. That the deck itself constituted a component of the building and not a separate structure. For those reasons they submit to the Board that the decision of the Zoning Enforcement Officer should be overruled and that this deck is entitled to the protection of 8-13(a). Attorney Heller discussed the Statute of Limitations and lack of enforcement actions. These types of violations are difficult to discover unless there is a complaint filed by someone in the neighborhood. He stated that what the Tine's have done has not been found to be offensive by the neighborhood. Although they sent notice to abutting property owners, there is no one appearing this evening to voice their objection. The work has been tastefully done, an attribute to the neighborhood and the property is well-maintained. They request the Board reverse the decision of the Zoning Enforcement Officer and direct the ZEO to issue a Certificate of Zoning Compliance for the deck. As far as the third violation is concerned, the violation concerning the need for a Certificate of Occupancy, he has represented in their memorandum that they acknowledge that this property must obtain a Certificate of Zoning Compliance and must obtain a Certificate of Occupancy. The Certificate of Occupancy is issued by the Building Official but is powerless to issue unless the Certificate of Compliance has been issued.

Chairman Walsh stated he doesn't believe the first violation regarding impervious coverage is an issue and is unrelated to ZBA. ZEO Phil Chester stated that subsequent to the cease and desist notice, after being provided with the information has withdrawn this complaint. Chairman Walsh acknowledged that the owner came to the Board in 2000 realizing he needed variances and permits to build. He got these for the home, but not for the deck knowing the deck was too close to the water. He stated the applicant knew very well he needed permits and chose not to get them.

Additional discussion:

- The first regulatory notice by ZEO of the violation.
- Deck being part of the original structure.
- Proof of date the deck was completed.
- Three-year rule.
- Lack of monitoring system by the town for required inspections, completion and compliance.
- Failure of the applicant to call upon completion in 2004.

Dean Tine stated he applied for all permits for the house and all of the proper inspections took place with exception of the final inspection. He was told to "go ahead and sheetrock" upon the last inspection. Chairman Walsh asked Mr. Tine if in that permit there was a building permit included for the deck. Mr. Tine stated no deck permit was included and there was no egress included in the plan for the french doors in back. ZEO Chester stated in a discussion with the Building Official, the B.O. did not recall seeing a deck in 2006 when called for the last inspection.

There was no further comment either in favor or in opposition. Chairman Walsh read the Record of Decision procedures according to the Connecticut General Statutes.

The copies of cases cited in Mr. Heller's memorandum (l) were labeled (collectively) exhibit (m).

After a brief discussion, Ms. Wayland motioned, Ms. Godere seconded, and the Board voted unanimously to continue the public hearing to May 21, 2009 based upon the receipt of request by Attorney Heller.

Attorney Heller submitted a notice granting an extension of the public hearing until May 31, 2009.

**3) Adjournment:**

With no further business, Ms. Wayland motioned, Ms. Godere seconded, and the board unanimously voted to adjourn the special meeting at 8:50 p.m.

Holli E. Pianka, Recording Secretary  
March 26, 2009

***UNAPPROVED AS OF TRANSCRIPTION DATE***

**TOWN OF LEBANON  
ZONING BOARD OF APPEALS  
Thursday, March 19, 2009, 7:30 p.m.  
REGULAR MEETING**

**MINUTES**

PRESENT: Jeffrey Walsh, Chairman  
Michael Okonuk, Vice Chairman  
Kenyon Gardner  
Joyce Godere  
Alicia Wayland  
Lawrence Crowley, Alt.  
Donald Anderson, Alt.  
Cheryl Straub, Stenographer  
Holli Pianka, Recording Secretary

ABSENT: Jerome Walsh, Alt.

**1) Call to Order:**

Chairman Walsh called the March 19, 2009, Regular Meeting of the Town of Lebanon Zoning Board of Appeals to order at 8:53 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 TO MAY 21, 2009)***

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

- a) December 18, 2008 Special Meeting Minutes. Ms. Wayland motioned, Mr. Gardner seconded and the Board unanimously voted to approve the minutes as presented.
- b) December 18, 2008 Regular Meeting Minutes. Ms. Wayland motioned, Ms. Godere seconded and the board unanimously voted to approve the minutes as presented.

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

**5) New Business:**

Plan of Conservation & Development, Wednesday, April 22, 2009 to meet with ZBA on issues relating to POC&D.

**6) Bills:**

- a) Murtha Cullina LLP, Invoice #374644, \$42.00

Mr. Anderson motioned, Mr. Okonuk seconded, and the Board voted unanimously to approve payment.

- b) CFPZA \$90.00 Membership

Vice Chairman Okonuk motioned, Ms. Wayland seconded, and the Board voted unanimously to approve payment.

**7) Correspondence:**

- a) The CFPZA Winter 2009 Newsletter was received and placed on file.  
b) The CFPZA Annual Conference Invitation

**8) Adjournment:**

With no further business, Ms. Wayland motioned, Ms. Godere seconded, and the Board unanimously voted to adjourn at 9:09 p.m.

Holli E. Pianka, Recording Secretary  
March 26, 2009