

**Town of Lebanon
Zoning Board of Appeals**

LEGAL NOTICE

The Town of Lebanon Zoning Board of Appeals held a public hearing on Thursday, December 18, 2008 for the following with decision rendered as indicated:

#677 – Dean Tine, P.O. Box 564, Uncasville, CT, 06382, owner, for property located at 282 Lakeside Drive, Lebanon, CT, 06249, located in an L (Lake) Zone District. Variance from Section 5.2*** (Schedule), to reduce rear yard setback from the lake from 40' required to 28' requested for construction of a deck. **DENIED.**

Dated at Lebanon, CT
this 24th day of December, 2008.

Holli E. Pianka
Recording Secretary

TO THE CHRONICLE: Please print once, Saturday, December 27, 2008.

UNAPPROVED AS OF TRANSCRIPTION DATE

**TOWN OF LEBANON
ZONING BOARD OF APPEALS
Thursday, December 18, 2008 7:30 p.m.
SPECIAL MEETING**

MINUTES

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

ABSENT: Lawrence Crowley, Alt.

1) Call to Order:

Chairman Walsh called the December 18, 2008, Special Meeting of the Town of Lebanon Zoning Board of Appeals to order at 7:35 p.m. He introduced the Board noting that Mr. Gardner is a newly appointed regular member.

2) Public Hearing for the following:

#677 – Dean Tine, P.O. Box 564, Uncasville, CT, 06382, owner, for property located at 282 Lakeside Drive, Lebanon, CT, 06249, located in an L (Lake) Zone District. Variance from Section 5.2*** (Schedule), to reduce rear yard setback from the lake from 40' required to 28' requested for construction of a deck.

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

a) Two-page application; b) Abutter's list; c) Assessor's Map #107, Lot #33; d) Assessor's street card for Map #107, Lot #33; e) Site plan showing existing deck addition; f)) Elevation plan; g) Construction plan; h) Certified mail receipts and return receipt cards (collectively).

Mr. David Wigfield, 220 Lakeside Drive, Lebanon, was sworn in and stated he is in support of the variance request.

Mr. Dean Tine, owner, was sworn in and appeared before the Board. The sign was returned and Chairman Walsh returned the sign deposit check to Mr. Tine. Mr. Tine stated he mailed out form letters to the abutting neighbors requesting a response as to whether they were in favor of the variance for the existing deck or not. He said that 11 responses received were favorable and 1 from Red Cedar Lake Association stated no opinion. Chairman Walsh received copies of the 12 letters and labeled collectively Exhibit "I". Response letters are from the following:

- 1) John & Suzanne O'Connell Chartley, 292 Lakeside Drive, Lebanon, CT, 06249
- 2) Robert & Barbara Fay, 305 Lakeside Drive, Lebanon, CT, 06249
- 3) James & Linda Truscio, 272 Lakeside Drive, Lebanon, CT, 06249
- 4) Thomas Ali & Linda Carter, 132 Turner Road, Oakdale, CT, 06370
- 5) Darby & Chris Bibeau, 42 Fowler Road, Lebanon, CT, 06249
- 6) George & Kerry Curry, 395 Broad Street, Windsor, CT, 06095
- 7) William & Doreen Breen, 4 Laurel Street, West Haven, CT, 06516
- 8) Audry Dokas, 271 Percival Avenue, Kensington, CT, 06037
- 9) Julius & Katarina Justh, 315 Lakeside Drive, Lebanon, CT, 06249
- 10) Christine & Scott Day, 31 Meadow Drive, Trumbull, CT, 06611
- 11) Diane Arsenault, 101 New Londondale Drive, Cary, NC, 27513
- 12) Red Cedar Lake Property Owners Association

Mr. Tine explained that most of the lots at the lake are small and need variances. There are many cottages with decks closer to the lake than his, and this therefore, does not make his home out of character with the lake. He feels he is at fault, but also questions why a building permit for the house was issued when a 6' pair of french doors on the first floor with a walkout basement below, as well as a side door, were shown on blueprints. He believes this should have been noted and brought to someone's attention during the building process. He believed when his variance was approved in the year 2000, that it would have included outcroppings such as stairs or a deck. He said that others felt the architect was to blame for not including the deck on the original plans, but ultimately, Mr. Tine feels the blame lies with himself and he is trying to correct the situation. He described the deck being designed as an intricate part of the house and presented pictures which Chairman Walsh labeled as Exhibit "J". After an inquiry by Ms. Wayland, Mr. Tine stated this was brought to the town's attention during the selling process of the house when the future buyer researched the file finding that no certificate of occupancy (C.O.) had been issued for the house. Chairman Walsh requested background on the property from Mr. Chester, Town Planner and ZEO, present at the meeting. Mr. Chester stated that upon owner's request for issuance of the C.O., he visited the site, took photographs, and required a certified as-built be submitted, which is standard procedure. Mr. Tine provided him the as-built which showed an existing deck not approved under the original plan and variance. Mr. Chester stated a 35' variance was granted on this property by ZBA in year 2000. It is not clear when the deck was constructed and the last record of inspection by the Building Official took place in 2006. Mr. Chester stated the attorney representing Mr. Tine questioned if the house now is pre-existing more than three years, should it therefore, be signed off by the Zoning Officer under Section 8-13a. Mr. Chester said if the variance is approved, he could sign approval for the C.O. to be issued but will have to make that determination. There are other issues such as wetlands permit requirement and current violation of living in the house without a C.O. Chairman Walsh inquired whether the home was existing in 2000 and the owner stated it was a new house being built at the time. V. Chairman Okonuk asked the owner if he understood that he needs a building permit to add anything new to his property and also a C.O. needs to be issued when completed. He added that now Mr. Tine has a house without a C.O. and a deck without a C.O. and living in it and from the beginning trying to lay blame on the town for not doing something it should be. V. Chairman Okonuk asked when the deck was built and when the deck was completed. Mr. Tine stated he started construction on the house in 2000 and built the deck about three to four years ago and the house was completed about four years ago. He explained that he had rough-in inspections which passed in order to sheetrock and then never called the Building Official back for the remaining inspections and did not apply for a deck permit at any time. Mr. Chester reviewed

the building file and described the progress of construction and when the inspections took place, the last inspection taking place in March, 2006 for rough plumbing. Vice Chairman Okonuk named other items listed on the street card that existed such as a dock, shed and fireplace. Mr. Tine stated that the shed was removed, the dock was built without permission, and the fireplace was not built at all. Chairman Walsh labeled the as-built Exhibit "K".

V. Chairman Okonuk asked Mr. Tine at what point did he realize the deck was not part of the variance approval. Mr. Tine stated he did not realize the deck was not included in the variance and it was a mistake on his part that it was not included (either stairs or a deck) with the single family house plans. V. Chairman Okonuk stated that the Board tends to be liberal towards approving requests on the lake zone properties due to the small lots and is concerned about future problems it may create. He believes that the house on this lot should have been located farther back from the lake prior to building in order to accommodate a deck and Mr. Tine agreed. Mr. Gardner questioned that the Building Department may have been in error since the first floor doors were on the original house plans and that stairs or deck would be required for access. V. Chairman Okonuk said the main concern of the Board is the proposed house location and the setbacks, not the amount of doors or windows on the structure.

Further discussion took place among Board members and Mr. Chester regarding Section 8-13a and the definition of a building. Mr. Chester stated a certificate of occupancy can be issued on the building if it is grandfathered under that Section only when the ZEO approves. If the ZEO denies approval for a C.O. formerly, the applicant could appeal that decision.

Mr. Chester stated that according to the local zoning regulations description of a building, he understands that a deck is not a building and the three year approval rule does not apply. The Town's attorney agrees with this. V. Chairman Okonuk stated he does not want these situations to be repeated in the future and if the Board grants every application, it will set precedence. Mr. Chester reminded the Board that this is a standard application for a variance request for a deck setback from the lake and they should not be considering Section 8-13a because this is not what the applicant is appealing to. If the applicant appealed Section 8-13a, this would be determined by the Zoning Officer.

Chairman Walsh read the Record of Decision procedures according to the Connecticut General Statutes and with no further testimony, closed this application hearing.

3) Adjournment:

With no further business, Ms. Wayland motioned, Ms. Godere seconded, and the board unanimously voted to adjourn the special meeting at 8:16 p.m.

Holli E. Pianka, Recording Secretary
December 23, 2008

UNAPPROVED AS OF TRANSCRIPTION DATE

**TOWN OF LEBANON
ZONING BOARD OF APPEALS
Thursday, December 18, 2008, 7:30 p.m.
REGULAR MEETING**

MINUTES

PRESENT: Jeffrey Walsh, Chairman
Michael Okonuk, V. Chairman
Kenyon Gardner
Joyce Godere
Alicia Wayland
Donald Anderson, Alt.
Holli Pianka, Recording Secretary

ABSENT: Lawrence Crowley, Alt.

1) Call to Order:

Chairman Walsh called the December 18, 2008, Regular Meeting of the Town of Lebanon Zoning Board of Appeals to order at 8:18 p.m.

2) Discuss and Act on Public Hearings:

#677 – Dean Tine, P.O. Box 564, Uncasville, CT, 06382, owner, for property located at 282 Lakeside Drive, Lebanon, CT, 06249, located in an L (Lake) Zone District. Variance from Section 5.2*** (Schedule), to reduce rear yard setback from the lake from 40' required to 28' requested for construction of a deck.

Ms. Wayland doesn't feel anything will be gained by denying the request and feels that not much harm has been done. Ms. Godere agrees. V. Chairman feels that it sets precedence and others property owners will do the same.

Chairman Walsh stated the owner needed permits and didn't get them. French doors were drawn on the house plan and the owner did not apply for deck approval with the original variance and feels this was not an innocent mistake by the owner. The owner should have planned ahead and come to the Board so that something could be resolved. He said that quite a lot of additional reduction is the setback is necessary and this is troublesome to him.

V. Chairman Okonuk stated the owner came to the Board in year 2000 and requested a variance for 40' setback and after that was granted, decided to proceed in building a deck and claims to not realize it was not included in his approvals. The house could have been moved back to accommodate the deck. V. Chairman Okonuk feels more lakefront owners in the future will do the same (claim they don't know approval is required) and is opposed to this. What purpose then will ZBA serve in the future? Chairman Walsh stated it encourages

others not to come in to apply for building permits. Mr. Gardner stated the Building Official approved the prints and inspected the job and the framing and a lot of the future problems could have been eliminated if this was caught. Mr. Gardner asked if the Assessor had been to the site. Mr. Chester responded that the Assessor visits every four years and the Assessor had been there this year. No C. O. was requested, so the Assessor has not been there previously. Chairman Walsh, after a review of the building plans, verified that the first floor plans show doors opening to nothing.

Chairman Walsh said two questions can be considered. 1) What happens if the Board votes the application down and 2) should the Board take into consideration there may have been an oversight by the Building Department in that the first floor French doors open to nowhere. V. Chairman Okonuk stated the land has to be the hardship of the variance and the house could have been pushed back 12' without a problem when built.

Mr. Gardner stated building permits are very expensive and feels the Building Department is responsible for reviewing plans thoroughly and you cannot put a door to an empty space with a 10' drop. The blueprints should have been change.

V. Chairman Okonuk stated if no deck was proposed, the Building Official inspected correctly and did his job. The doors might not have been in at the last inspection in 2006 and there was no C.O. inspection performed.

With no further discussion, Mr. Gardner motioned to approve the variance, Ms. Godere seconded. Vote: For approval – A. Wayland, J. Godere, K. Gardner. For denial – J. Walsh, M. Okonuk. **MOTION DENIED.**

3) Approval of Minutes of Previous Meetings:

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

4) Old Business: None this evening.

5) New Business:

- a) Acceptance of 2009 Meeting Dates

Ms. Wayland motioned, Ms. Godere seconded, and the Board voted unanimously to approve and accept the 2009 Meeting Dates. They will be filed with the Town Clerk's Office.

Ms. Wayland motioned to add #5b on the agenda to discuss and act on 2009-2010 budget, Ms. Godere seconded. Vote: Unanimous.

- b) 2009-2010 ZBA Budget Discussion and Action

After discussion, Ms. Wayland motioned, Ms. Godere seconded and the Board unanimously voted approval to adopt the proposed and revised ZBA budget of \$4,760.00 for the 2009-2010 fiscal year.

6) Bills: None this evening.

7) Correspondence:

- a) The CFPZA Fall 2008 Newsletter was received and placed on file.
- b) Holiday card from Branse, Willis & Knapp LLC

8) Adjournment:

The Board, upon adjourning their meeting, remembered Ted Littlefield, long term, devoted and well respected fellow Board member who recently passed away.

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
December 23, 2008