

A regular meeting of the Board of Adjustment of the Township of Roxbury was held on Monday, June 11, 2012 at 7:00 p.m. with Chairman Edward Data presiding. After a salute to the flag, Mr. Data read the Open Public Meetings Act.

BOARD MEMBERS PRESENT:

Mr. Wetzel, Ms. Kinback, Mr. Giardina, Mr. D'Amato, Ms. Robortaccio, Ms. Dargel, Mr. Data.

ABSENT BOARD MEMBERS:

Mr. Grossman, Ms. Darling

PROFESSIONAL STAFF:

Mr. John Hansen, P.E. (excused)

Mr. Russell Stern, P.P.

Richard Saunders, Esq. /*Mr. Larry Wiener, Esq. Arrived at 7:29 p.m.

Mr. Erik Brachman, Zoning Officer

Minutes of 05/14/12

Ms. Dargel made a motion to approve the minutes of May 14, 2012, Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Mr. Giardina, yes; Mr. Wetzel, yes; Mr. Data, yes.

RESOLUTIONS FOR EXTENSIONS:

ZBA-07-33 Mountain Landscaping for property located at 278 Ledgewood Landing Road, Block 9601, Lot 5 in a LI / OR zone.

In the matter of Mountain Landscape Extension

Case No. ZBA-07-33

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 14, 2012

Memorialized: June 11, 2012

WHEREAS, Mountain Landscape has applied to the Board of Adjustment, Township of Roxbury for permission to obtain use variance and preliminary site plan approval for premises located at 278 Ledgewood Landing Road and known as Block 9601, Lot 5 on the Tax Map of the Township of Roxbury which premises are in a "LI/OR" Zone;

WHEREAS, Mountain Landscape appeared in front of the Board seeking relief from one of the conditions of said resolution;

WHEREAS, the Board, after carefully considering the evidence presented by the applicant, hereby makes the following findings:

1. The applicant was requesting an extension of time from the conditions of paragraph 8(d) of the resolution. The applicant's reasons were set forth on the record and submitted in writing via in a letter dated May 4, 2012 from Larry I. Kron, the applicant's attorney.

WHEREAS, the Board finds there is good cause for the relief requested by the applicant. Paragraph 8(d) is hereby modified so that the temporary Certificate of Occupancy will be rescinded by the Township unless the final site plan approval is obtained by the applicant by June 8, 2013 or an extension is granted by the Zoning Board. All other conditions of approval are not modified and remain in full force and effect.

Ms. Dargel made a motion to approve the resolution for a one year extension, Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Mr. Giardina, yes; Mr. Wetzel, yes; Mr. Data, yes.

ZBA-09-00012 WDIFTK, LLC, for property located at Hillside Avenue, Block 5203 Lot 46, in a R-3 zone.

In the matter of WDIFTK, LLC Extension
Case No. ZBA-09-00012

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 14, 2012

Memorialized: June 11, 2012

WHEREAS, WDIFTK, LLC previously received approval from the Board of Adjustment, Township of Roxbury for permission to obtain a minor subdivision in connection with a "D" variance for premises located at Hillside Avenue and known as Block 5203, Lot 46 on the Tax Map of the Township of Roxbury which premises are in a "R-3" Zone; said proposal required relief from Section 13-7.701 of the Roxbury Township Land Use Ordinance; and

WHEREAS, set approval was memorialized in a resolution adopted September 13, 2010.

WHEREAS, the applicant has shown good cause and the Board hereby approves the applicant's request for an extension of time for the perfection of the minor subdivision for 120 days from the adoption of this resolution. Same were set forth on the record and submitted in writing via a letter dated April 23, 2012 from Ronald S. Heymann, the applicant's attorney.

Ms. Dargel made a motion to approve the resolution for 120 day extension, Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Mr. Giardina, yes; Mr. Wetzel, yes; Mr. Data, yes.

RESOLUTIONS:

ZBA-12-010 Lupinacci, Bulk Variance for property located at 12 Jessica Lane, Succasunna, Block 4401, Lot 9 in a R-2.5 zone.

In the matter of Jeffrey & Karen Lupinacci

Case No. ZBA-12-010

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 14, 2012

Memorialized: June 11, 2012

WHEREAS, Jeffrey & Karen Lupinacci have applied to the Board of Adjustment, Township of Roxbury for permission to construct an in-ground swimming pool in violation of the setback requirements resulting in the need for a variance for premises located at 12 Jessica Lane and known as Block 4401, Lot 9 on the Tax Map of the Township of Roxbury which premises are in a “R-2.5” Zone; said proposal required relief from Section 13-7.1201F12c of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicants are the owners and occupants of the single-family home on site.
2. The applicants previously installed a pool, fence, and rear yard paver patio. As built, those improvements exceeded what was permitted on the original zoning permit. A shed was installed on Township property, as well. The applicant has a “will remove” encroachment on Township property and, in addition, to re-locate the shed to a conforming location.
3. The applicant stated they inadvertently mislocated the pool. The Board notes that, at its closest point, the swimming pool is 6’ from the northerly rear yard boundary. The zoning ordinance requires a 10’ setback.
4. Applicant received a letter of denial dated 2/27/12 and 3/28/12 from Erik Brachman, the Zoning Officer.

WHEREAS, the Board has determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board finds the proposed relief to be *de minimis* under the circumstances of this case. The adjoining property is owned by the municipality. The non-conforming location of the swimming pool will have little or no impact.
2. Removing the non-conformity or requiring the applicant to bring this pool into compliance, would be an extreme hardship. Given the nature of the deviation from the zoning ordinance and the lack of negative impact, leaving the pool in its present location is a better alternative than strict adherence to the zoning code.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 14th day of May, 2012 that the approval of the within application be granted subject, however, to the following conditions:

1. Applicant shall confirm that all improvements on Township property have been rectified. The shed, fence and pavers shall either be removed or brought into conformity.
2. Payment of all fees, sureties, and escrows required by ordinance.

Ms. Dargel made a motion to approve the revised resolution, Ms. Robortaccio seconded. Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Mr. Giardina, yes; Mr. Data, yes.

ZBA-12-016 Hefferon, Bulk Variance for property located at 207 Mountain Road, Flanders, Block 9203, Lot 31 in a R-1 zone.

In the matter of Michael J. Hefferon

Case No. ZBA-12-016

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 14, 2012

Memorialized: June 11, 2012

WHEREAS, Michael J. Hefferon have applied to the Board of Adjustment, Township of Roxbury for permission to construct an accessory structure requiring dimensional variance relief for premises located at 207 Mountain Road and known as Block 9203, Lot 31 on the Tax Map of the Township of Roxbury which premises are in a “R-1” Zone; said proposal required relief from Section 13-7.905C of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicant is the owner and occupant of the single-family home on site.
2. The applicant was proposing to construct a pole building type garage 30’x32’.
3. Applicant received a letter of denial dated 3/26/12 from Erik Brachman, the Zoning Officer.
4. The applicant submitted various drawings. A hand drawn plot plan, a location survey prepared by Nicholas J. Wunner, dated 6/8/00, and elevation drawings and construction details dated 3/13/12 consisting of 6 pages showing the on-site conditions as well as the proposed pole barn.
5. As noted by Mr. Brachman, the applicant requires a variance due to the size of the accessory structure compared to size of the principal structure – 50% is permitted, the applicant’s proposal is at 76% (rounded up).
6. Four (4) existing structures would be removed and the new pole barn would provide an opportunity to eliminate the other accessory structures.
7. The applicant stated he was a collector of iconic cars. The cars could be stored in the pole barn. He stated the pole barn would not require a driveway and stated vehicular traffic in and out would be minimal during the course of the year.
8. The applicant stated the relief was required due to the existing home being a somewhat smaller structure. He also noted there was a garage, but, as constructed, was barely adequate for a normal sized motor vehicle.

9. The applicant's property is just under one acre in size.

WHEREAS, the Board has determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board finds that the strict application of the zoning ordinance in this particular case is not merited. By granting the relief for the applicant, the property will be aesthetically upgraded, two non-conforming structures will be removed, four existing informal structures will be removed, and a new structure will be created.
2. The applicant's bi-level home is relatively small for a one acre lot. This lot can clearly "carry" the additional structure proposed by the applicant. Had the applicant desired, he could attach a structure this size to the house probably without the need for a variance.
3. Given the screening, location, and low impact nature of the structure, there will be no negative impact. It would not be surprising that, given the zoning and the size of the existing house, that sometime in the future, same would be enlarged.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 14th day of May, 2012 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. Accessory garage to be constructed and located as depicted on the exhibits attached to the application.
3. All of the other remaining accessory structures shall be removed prior to the issuance of a Certificate of Approval for the application. (This does not apply to the antique gas station non-working pump.)
4. The accessory garage shall solely be utilized as a residential garage for the storage of the applicant's own personal (non-commercial) items including the applicant's automobiles and other typical homeowner equipment.
5. The only utility to the garage shall be electricity.

Ms. Robortaccio made a motion to approve the resolution, Ms. Dargel seconded.

Roll call: Ms. Robortaccio, yes; Ms. Dargel, yes; Mr. Giardina, yes; Mr. Data, yes.

ZBA-12-017 Roy, Bulk Variance for property located at 10 O'Conner Court, Ledgewood, Block 8304, Lot 5, in a R-1.8 zone.

In the matter of Eric & Jennifer Roy

Case No. ZBA-12-017

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 14, 2012

Memorialized: June 11, 2012

WHEREAS, Eric & Jennifer Roy have applied to the Board of Adjustment, Township of Roxbury for permission to add two (2) additional accessory structures (a total of four (4) requiring variance relief for premises located at 10 O'Conner Court and known as Block 8304, Lot 5 on the Tax Map of the Township of Roxbury which premises are in a "R-1.8" Zone; said proposal required relief from Section 13-7.905B of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicants are the owners and occupants of the single-family home on site.
2. The applicants presently have two (2) existing accessory structures – an in-ground pool and hot tub.
3. The applicants were proposing to add a 16'x16' pavilion and a 4'x15' barbeque pit.
4. The Board received a memorandum from Michael A. Pellek, Fire Official/Safety Officer, dated 5/8/12.
5. Applicant received a letter of denial dated 4/24/12 from Erik Brachman, the Zoning Officer.
6. As noted by Mr. Brachman, the applicant's proposal would result in four (4) accessory structures. The Township Ordinance only permits two (2) accessory structures thus, a variance is required.
7. The proposed barbeque pit and pavilion were depicted on a plot plan attached to the application. In addition, the applicant provided a sketch of the covered pavilion and the applicant also provided a picture depicting what the proposed barbeque pit would look like. The pit was essentially 4' wide, 18" deep and about 21" high.
8. The applicant stated the proposed additional amenities would essentially finish off the applicant's property. He further noted the pavilion was necessary due to the lack of shade in the rear yard.

WHEREAS, the Board has determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board notes that the applicant's improvements are on top of existing improvements. No variances are required for coverage. The nature of these uses is minimally intrusive. It does not appear to affect any adjoining property and thus, the impact will be minimal.
2. In the context of this specific property, the relief requested is *de minimis*.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 14th day of May, 2012 that the approval of the within application be granted subject, however, to the following conditions:

1. Applicant shall be permitted a total of four (4) accessory structures. The new structures shall include the pavilion and barbeque pit which will be sized and located as depicted on the drawings attached to the application.

Ms. Dargel made a motion to approve the resolution, Mr. Giardina seconded.
 Roll call: Ms. Dargel, yes; Mr. Giardina, yes; Ms. Robortaccio, yes; Mr. Wetzel, yes;
 Mr. Data, yes.

ZBA-12-018 Maddali, Bulk Variances for property located at 84 Lazarus Drive / 1
 Cather Court (mailing address), Ledgewood, Block 8303, Lot 10, in a R-1.8 zone.

In the matter of Srinivas Maddali
 Case No. ZBA-12-018

**RESOLUTION OF FINDINGS AND CONCLUSIONS
 BOARD OF ADJUSTMENT
 TOWNSHIP OF ROXBURY
 RESOLUTION**

Approved: May 14, 2012
 Memorialized: June 11, 2012

WHEREAS, Srinivas Maddali has applied to the Board of Adjustment, Township of Roxbury for permission to obtain “C” variance relief (rear yard setback retaining wall, impervious coverage, and number of accessory structures) for premises located at 84 Lazarus Drive and known as Block 8303, Lot 10 on the Tax Map of the Township of Roxbury which premises are in a “R-1.8” Zone; said proposal required relief from Section 13-8.809J; 13-7.1605G; 13-7.905B of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicants are the owners and occupants of the single-family home on site.
2. The applicant is seeking *ex post facto* variance relief for a backyard project which has been under construction on the applicant’s premises.
3. Applicant received a letter of denial dated 4/24/12 from Erik Brachman, the Zoning Officer.
4. The Board received a memorandum from Michael A. Kobylarz, Township Engineer, dated 5/8/12.
5. The proposed construction was depicted on a conceptual landscape design provided with the application and several photographs, plot plan and a tax map
6. The project, as contemplated by the applicant, would include a retaining wall, pavers, a backyard kitchen, and a hot tub.
7. As noted by the Zoning Officer, the applicant needs the following relief:

Rear Yard Setback Retaining Wall	13-8.809J Retaining walls shall maintain a property line setback equal to their height above grade.	3 feet minimum	N/A	2 feet
Impervious Coverage	13-7.1605G	35% maximum	25.5%	37%
Accessory Structures	13-7.905B No more than two accessory structures shall be permitted on a residential lot.	Two	One: 1. Gazebo	Three: 1. Gazebo (Existing) 2. Hot Tub (New) 3. Outdoor Kitchen (New)

8. During the testimony, the applicant indicated that the correct setback for the retaining wall would be met and that a variance for rear yard setback retaining wall would not be needed.
9. The applicant stated, in his opinion, what he was proposing, was a reasonable outdoor amenity. As noted, the applicant has an existing gazebo and was proposing a hot tub and an outdoor kitchen. Those three items violate the maximum permitted two accessory structures.

WHEREAS, the Board has determined that the relief requested by the applicant **can be granted in part and denied in part** without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board notes that the applicant is seeking *ex post facto* relief. The Board considers this application as if these structures had not been completely started and/or partially completed thus, no inferences are to be drawn from the fact that the structures are essentially in place or from the applicant's violation of the zoning ordinance.
2. The Board finds the applicant's request for impervious coverage relief to be reasonable under the circumstances. This is only a *de minimis* increase and much of it is offset by the nature of the patio blocks themselves. The applicant's request is very similar to other rear yard amenities in the Poet Peak's section of Roxbury Township.
3. The Board finds no legal justification for adding yet a third accessory structure. The applicant already has a gazebo and the outdoor kitchen is a significant structure in and of itself. When queried, the applicant stated that, if he had to give up one of the accessory structures, it would be the hot tub.
4. The grant of relief for the impervious coverage will have no significant negative impact, while the relief for the hot tub would add yet more intensity of use and an intrusion into the rear yard and thus, would have a negative impact.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 14th day of May, 2012 that the partial approval of the within application be granted subject, however, to the following conditions:

1. Applicant shall comply with the municipal ordinance regarding accessory structures. Same shall be limited to two (2).
2. Applicant shall comply with the rear yard setback for Retaining Wall Ordinance as stated at the hearing. Wall to be reduced to two feet in height.
3. Applicant shall have no more than 37% impervious coverage. Applicant shall comply with the request for the Township Engineer relative to the presence of the Township infrastructure within the 15' utility easement. No final permit to be issued until the applicant obtains confirmation from the Township Engineering Department.

Ms. Dargel made a motion to approve the revised resolution, Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Mr. Giardina, yes; Mr. Data, yes.

ZBA-12-019 Maiella, Variances for property located at 105 Kingsland Road, Landing, Block 11001, Lot 13, in a R-3 zone.

In the matter of Randy Maiella
Case No. ZBA-12-019

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 14, 2012
Memorialized: June 11, 2012

WHEREAS, Randy Maiella has applied to the Board of Adjustment, Township of Roxbury for permission to construct an addition and accessory structure requiring variance relief for premises located at 105 Kingsland Road and known as Block 11001, Lot 13 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Zone; said proposal required relief from Section 13-7.905C, 13-7.1301D4, 13-7.13018 of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicant is the owner and occupant of the single-family home on site.
2. The applicant was proposing a comprehensive upgrade of the existing modest, dilapidated home.
3. Applicant received a letter of denial dated 4/30/12 revised 5/2/12 from Erik Brachman, the Zoning Officer.
4. The applicant’s proposal was set forth on an architectural rendering prepared by Joseph A. Gates, architect, consisting of one sheet, dated 3/30/12.
5. Joseph A. Gates testified at the public hearing. He identified three exhibits. A-1 being a colorized rendering of sheet A-1 of his plans; A-2 a photo showing the existing conditions; A-3 an additional photo showing existing conditions.
6. Mr. Gates stated the existing infrastructure and undersized nature of the lot were hardships affecting the premises. He noted the premises were close to Lake Hopatcong and he had designed the proposed improvements (detached garage) with a mind to providing reasonable amenities for the applicant. He noted much of the house was surrounded by unimproved property not likely to be improved and that the existing home was totally inadequate, out of character, and a general eyesore.
7. As noted, the following variances are required:

	Section	Required	Existing	Proposed
Detached Garage	13-7.905C	Less than 50% of Principal Dwelling	58.7%	71.6%
Front Yard Setback	13-7.1301D4	35 feet	18.5 feet	17.5 feet
Impervious and	13-7.13018	Impervious	28.3%	31.2%

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Building Coverage		Coverage Maximum 25%		746 sq ft
		Building Coverage Maximum 15%	13%	15.9% 108 sq ft

WHEREAS, the Board has determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board finds the testimony of the applicant and the applicant’s architect to be compelling and credible.
2. Clearly, the existing house is at the end of its useful life. It is an eyesore and clearly incompatible with this neighborhood.
3. The proposed addition will provide a significantly improved and aesthetic structure. Much of the relief is triggered by the lot being somewhat undersized (12,000 sq. ft. in a zone that contemplates 15,000 sq. ft.). The relief for the size of the garage is triggered by the relatively small footprint of the house. It is also interesting to note that the architect has very cleverly “double dipped” on the garage. The interior will, of course, serve as a garage and storage area and the architect has provided for a rooftop deck that will provide an outdoor amenity with an opportunity for a seasonal view of Lake Hopatcong.
4. Clearly, the grant of this relief will have no negative impact on any of the surrounding properties. The lot is somewhat isolated and adjoins vast areas of unimproved property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 14th day of May, 2012 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. House and accessory garage to be constructed as depicted on the exhibits submitted with the application and the colorized rendering marked A-1.
3. During the hearing, Mr. Gates stated the applicant might want to add a modest foyer within the area of what was designated an open porch. The Board has no objections to same.
4. The only utility permitted in the accessory structure shall be electric. Garage is to be maintained strictly as a residential non-commercial garage in connection with the main residential use on-site.
5. Total impervious coverage not to exceed 31.2% as requested, total building coverage not to exceed 15.9 %, as requested, the detached garage shall be no more than 71.6% as a calculated footprint of the existing house, as requested.
6. Trampoline, dog run and rabbit hutch are to be removed.

Ms. Dargel made a motion to approve the resolution, Ms. Robortaccio seconded.
 Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes, Mr. Giardina, yes; Mr. Wetzel, yes;
 Mr. Data, yes.

ANNUAL ZONING REPORT FOR 2011*RESOLUTION

**ROXBURY TOWNSHIP
ANNUAL ZONING REPORT FOR 2011**

Approved: May 14, 2012

Memorialized: June 11, 2012

WHEREAS, NJSA 40:55D-70.1 of the Municipal Land Use Law requires the Zoning Board of Adjustment at least once a year to review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any; and

WHEREAS, said statute requires the Board of Adjustment to send copies of the report and the recommendations made to the Governing Body & Planning Board; and

WHEREAS, in light of today's outdoor lifestyles, the Board of Adjustment recommends to the Governing Body & Planning Board to reconsider and increase the number of permitted accessory structures allowed on a residential lot, which is currently restricted to two (2), in order to accommodate smaller structures such as fire pits, outdoor kitchens, hot tubs, etc.; and

THEREFORE BE IT RESOLVED, that the attached annual zoning report for 2011 together with the attached computerized chart of applications and the recommendation be and is hereby designated as the annual zoning report for 2011 in conformance with said statute;

Ms. Dargel made a motion to approve the resolution for the 2011 Annual Zoning Report, Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Mr. Giardina, yes; Mr. Wetzel, yes; Mr. Data, yes.

APPLICATIONS:

ZBA-12-014 Kearney, Bulk Variance for property located at 298 Howard Boulevard, Mt. Arlington, Block 13201, Lot 14 in a OS zone.

Mr. Kenneth Kearney, of 298 Howard Boulevard, Mt. Arlington was previously sworn in. In the new packet to each Board Member is a picture of the proposed 34' X 46' garage, which shows the (three) 10' X 10' garage doors. Also submitted was a phased plan, explaining what old garages, sheds, etc. are going to be removed from the property and a time line as to when this will take place.

- Page 1, shows the building with general dimensions.
- Page 2, shows the right side and back side view of the building.
- Page 3, is a view of what the property looks like from the street, it was taken directly across from the property.
- Page 4, is an aerial picture of the property.
- Page 5, shows an over all view of the property with all the old sheds & garages location and each one numbered.
- Page 6, lists the proposed plans for the numbered buildings on the property
- Page 7, shows in what phase (one or two) the buildings will be removed.

The property is 8.5 acres. In phase one five building's will be taken down as shown on the Proposed Plans Sheet (building # 3, 8, 9,10 &11) and the new proposed barn would be built. In phase two an additional five (building # 1, 2, 5, 6, 7) buildings will be taken down. The buildings are being taken down in phases for financial reasons.

The property is really a large mess, the garages and sheds will be used for storage only which will help to clear and clean the area as needed. A lot of these buildings were built in the 1920-1930's and need to be taken down for safety reasons.

There was a discussion as to what will be stored in the sheds and in the new garage, also how the property at one time had twelve car bays and after the clean up there will only be a total of six bays on the property.

Mr. Kearney is requesting a two year phased plan and will try to do as much as possible in a one year term. The large garages will have underground electric service only. The only building that at one time had water was the pump house but that is going to be removed. The buildings will all be the same (two tone) color; the new building will have two large double doors instead of three smaller doors.

There will be NO rentals or leasing to commercial business or construction, this property will be used for personal use only. The larger equipment on the property will be used to maintain the property. The Board agreed the project could be completed within eighteen months.

Open to the public; No one stepped forward; Closed to the public.

Ms.Robortaccio made a motion to approve this application with all the stated stipulations, Mr. D'Amato seconded.

Roll call: Ms. Robortaccio, yes; Mr. D'Amato, yes; Mr. Giardina, yes; Ms. Dargel, yes; Mr. Wetzel, yes; Mr. Data, yes.

7:29 p.m. *Mr. Wiener stepped in and replaced Mr. Saunders as Board Attorney.

ZBA-12-005 Moran, Variances for property located at 5 Yellow Barn Avenue, Landing, Block 11601, Lot 41 in a R-3 zone.

Mr. Douglas Henshaw, Attorney for the applicant, previously sworn in, stated; that this is the third hearing for this application. He was not in attendance for the first hearing held on Monday, March 12, 2012 but he did receive the transcripts for that meeting. He also questioned who would be eligible to vote at the meeting this evening, Mr. Wiener requested the Board Secretary to inform everyone on the Board this evening who is eligible to vote.

According to the Board Secretary;

Mr. D'Amato, Mr. Giardina, Ms. Robortaccio, Ms. Dargel, Mr. Wetzel and Mr. Data could vote.

Mr. Henshaw then requested that the Board hear Mr. Nyari first, because Mr. Nyari is here in response to a subpoena.

Mr. Sandor Nyari, 22 Felter Place, Lake Hopatcong NJ, is the retired Construction Official for the Township of Roxbury. Mr. Nyari was the Township Building Inspector

for 29 years and stated that he had been to the premises of 5 Yellow Barn. Mr. Chaplin bought the property for his son and Nyari stated that he had visited the property many times. If Mr. Chaplin claimed in his application that the pilings were existing, the Lake Commission and Building Inspector most likely verified and issued a ruling allowing for permits to be issued.

There was discussion on the authority of the Lake Commission; the types of applications that were reviewed by them along with the recommendations and /or reports which the Lake Commission had filed.

Mr. Stern stated that in reviewing the Construction Department's permits for this application there are a variety regarding the garage, boat house and docks. It is important to know that the policy for zoning permits did not begin until the end of 1995.

Mr. Nyari stated that a number of permits issued to Mr. Chaplin were renovation and alteration permits and were not subject to zoning permits. Zoning permits were only issued if the structure was to be enlarged or was non conforming. He further explained that there was an existing boathouse and a permit was issued to renovate that boathouse (the boathouse was rebuilt, it was not new).

There was a discussion on the aerial photos of the docks, and the meaning of a dock verses a structure. Exhibit A-6 a survey from 1933 it shows one dock, 2002 aerial shows two docks and 2007 aerial shows three docks. Mr. Nyari stated that this was a project done over time. Mr. Chaplin did the work himself whenever he had time. As long as an inspection was done (by the Building Inspector) every six months, the permit was kept open. Mr. Nyari felt this project was for a renovation of an existing building and that in some instants a permit was not necessary.

There was a discussion on bulk heads verses docks and piers, what the difference is and if the Township had any ordinances on them.

Open to the Public; No one stepped forward. Closed to the Public.

Mr. Henshaw presented Exhibit A-7 a letter from the Lake Hopatcong Commission dated March 5, 2012 stating the Commission's review of this matter. In short that as long as all the requirements are met regarding the DEP and the Township's building parameters are followed, there should be no adverse effect on the Lake's environment. Also a letter from the State of New Jersey, Department of Environmental Protection dated March 22, 2012 for Flood Hazard Area Applicability Determination states no written flood hazard area approval is required for this application.

The Board was polled and a majority of the Board Members felt the docks were constructed with Municipal approval.

R. Henry Huelsebusch, 500 O'Knockie Road, Denville NJ Licensed Engineer in the State of New Jersey, was employed by Roxbury as a Township Engineer from 1993 to 1999. He was sworn in and reviewed the plans that were submitted to the Board with a revision date of 03/22/2012

1. The height of the wall near the proposed garage addition was modified to be a maximum height of 3.9 feet
2. A portion of the existing gravel area near the existing garage was removed to reduce impervious coverage. The existing impervious coverage is at 65.8% and the revised impervious coverage is at 64.9%. The result is a reduction of 0.9% impervious coverage on the site. (With the roadway.)
3. The items in Ms. Michetti (Township Engineer) review dated 03/06/2012 were addressed and the drawings were revised as shown on page one in the notes #10 through 19.
4. The offset dimensions of the docks were added. Northerly dock 34.5' measured from the bulkhead/foundation of the boathouse. Center dock 41.1' measured from the bulkhead/foundation of the boathouse. Southerly dock 50.6' measured from the bulkhead not the 12' wide catwalk.
5. The list of Variances on sheet one were revised;
 - Note two- impervious coverage calculations were modified to reflect the proposed reduction of 0.9% resulting in a total of 64.9%
 - Note three- was revised to reflect the correct building coverage of 18.0%
6. The list of Existing Non Conforming conditions on sheet one were revised.
 - Note nine -Pier lengths were added as stated within item #4
 - Note ten- was revised to reflect the 21.6% occupation of water lot area within the pier head line by the docks,15% is required.

There was a discussion on the May 10, 2012 memo from Township Engineer Ms. Michetti in reference to the sewer pump location (nothing will cover or be within two feet of the sewer pump). She requested that the final Resolution of Approval include a statement that fences, walls, landscaping or other physical encumbrances shall not be permitted between the front of the home and the pump chamber in order to maintain unobstructed access to the pump chamber.

Open to the Public; No one stepped forward, Closed to the public.

David Zimmerman, Planning Consultant for the applicant was previously sworn in and reviewed Exhibit A-9, dated 06/11/2012, showing an overlay of the existing conditions and proposed additions. The illustration showed what is on the property (shed, garage, deck, boathouse, pavement, etc.). There was discussion on the side yard setback infringement of 3.0 feet. The existing building coverage is 18%, a slight increase of 21.9% is proposed (approximately 600 square feet). There was discussion on 2000 Roxbury Township Master Plan in maintaining the scale of development in existing neighborhoods. Exhibit A-10, a photo that shows the front view of the applicants existing house compared too the neighboring houses on the left and right of the property which clearly shows the applicants house is much smaller than the surrounding homes.

Exhibit A-11 is a photo that shows the applicant's house from the lake front. Even with the upgrade to this house there is still ample light area and open space on either side of the property. The benefits to this application out weigh the detriments. There was a discussion on the yard equipment stored in the shed and the storage of classic cars in the garage. Mr. Henshaw stated that a point of relief be included (noted) if in the renovation of this existing structure, a wall had to be opened (which was not planned) this would be okay as long as the perimeter does not change.

Open to the public; No one stepped forward, Closed to the public.

Mr. D'Amato made a motion to approve this application, Mr. Giardina seconded. Roll call: Mr. D'Amato, yes; Mr. Giardina, yes; Ms. Robortaccio, no; Ms. Dargel, yes; Mr. Wetzel, yes; Mr. Data, yes.

ZBA-12-015 Ledgeland, LLC, Interpretation of Zoning for property located at 254 Center Street, Landing, Block 10502, Lot 7 in a B-1/R-4 zone. Mr. Joseph Zaccarino, 21 Dickerson Court, Ledgewood; Mr. Richard Hoer, 149 Brooklyn Stanhope Road, Hopatcong; Frank Mileto, 14 Beaver Brook Drive, Long Valley and Attorney Ronald Heymann, Heymann & Fletcher, 1201 Sussex Turnpike, Mt Freedom were present. Mr. Heymann stated the applicant is seeking certification under Section 68 that this proposed use will be a continuing use, establish when the non conformity started, that it is continued and that what is proposed is substantially the same with no abandonment. Mr. Hoer has owned the property in question since 2007, as well as the adjoining residential apartment (three units) building, which Mr. Hoer purchased in 2002. Mr. Hoer is the owner of Lakeside Construction Company, a heavy duty construction company specializing in site work, highway, bridge and road construction.

This property was purchased from Mr. Joesph D'Auria, and used as a construction site. In the front of the premises was a gas station with an auto repair shop. The tanks were removed sometime in late 1980's. The gas station stopped operating around 1984; the building in the back that is attached has been a trucking company and construction operation business since 1952. A photo marked in as Exhibit A-1 dated back to 1948 and shows a Service Station owned by the Granato Brothers; the front of the building being the Service Station or auto repair center for the past 64 years. Around 1952 Bell Telephone rented the property from the Granato Brothers. Bell Telephone Company built the back facility and utilized this location for storage of telephone poles, cable, bucket trucks etc. and the Granato Brothers did all the work and service on the telephone company equipment up until the 1960's when a new facility was built on Route 206 behind the State Police Department in Netcong, although the Granato Brothers continued to do the work on the Bell Telephone vehicles. Mr. D'Auria worked for the Granato Brothers as a kid and purchased the property from them in 1970. Mr. D'Auria ran a trucking and towing business from the rear of the property and leased the front as a gas station, up until around 1984. The property is a little less than a acre, it fronts Center Street and goes all the way back to Main Street (the rear of the property) Exhibit A-2, a photo dated March 1980, clearly shows this area. In the 1970s the entire piece of property was utilized by the commercial establishment. Sometime in the mid 70's the Township

told Mr. D'Auria the rear of the property was rezoned and could no longer be utilized as commercial property. This portion of the property was fenced off and today it is buffered by natural woods. In mid 1995 and continuing to the present the property was utilized by Ace Truck Repairs, Asia Construction and K&D Auto. There was a discussion on the time line of different trucking companies that occupied this location and the length of time they were there.

Mr. Hoer bought the property in 2007 from Mr. D'Auria as an investment property. Mr. Hoer owns a heavy construction business and has a separate facility for that business. The rear portion of the property would be used by North Jersey Crane and Construction. This location was used by Huskey Truck Repair who was a vendor for the Township; Huskey did a lot of work for the Township Municipality. Huskey moved out and North Jersey Crane came in. They repair and store their equipment at this location. The property has been cleaned up; the roof on the building has been replaced along with new fencing and landscaping for curb appeal.

There was discussion on the previous application submitted in 1987 to the Board of Adjustment, the owner was given a year to submit final site plan approval this was never completed. This property was vacated for a short period of time and the approval was voided.

Open to the public: No one stepped forward. Closed to the public.

Mr. Joseph Zaccarino, is the owner of PMZ Landscaping since 1982 and has lived in Roxbury Township his entire life. Mr. Zaccarino provided a series of polaroid pictures dating back to 1977. Exhibit A-4 a photo taken in 1977, is Joe thirty years ago working in the back of the referenced location showing the trucking garage area. Exhibit A-5, another polaroid photo dated 1977, is Mr. Zaccarino on top of one of the trucks, this view is taken from Center Street looking into the property. Mr. Zaccarino as a young man worked for Mr. D'Auria's Trucking Company the photo shows the tractor trailers lined up on the property and Joe cleaning one of them. Mr. Zaccarino lived in Port Morris as a young boy, he moved out in 2001. Mr. D'Auria was actually a cousin to Mr. Zaccarino. There was discussion on Mr. Zaccarino's memories as a young boy; the property always being used for heavy duty tractor trailer and truck repairs. Exhibit A-6 thru 8 are photos taken by Mr. Zaccarino of the tractor trailers on the property from 1979 thru 1981.

In 2011 Mr. Hoer was leasing the property, the owner of the property was not paying his taxes and the State came to the location, locked it down. Thru foreclosure Mr. Hoer was able to purchase the property back.

Open to the public: No one stepped forward. Closed to the public.

Mr. Mileto, is a Licensed Planner in the State of New Jersey since 1972, a Zoning Officer for the City of Clifton for fifteen years and currently the Zoning Officer in Long Valley.

He explained the statute in the Municipal Land Use Law 40:55D-68 that establishes a method of how you can establish a legal existing non conforming use or not.

There was discussion on this matter and the proofs that need to be shown are;

- 1) Exactly what the use was at the time of the adoption of the ordinance.
- 2) It must have been continuously in use of the area.
- 3) The history of the property and use of the property through today.

The proofs have been shown that the business was ongoing throughout the years and also the history of the property has been provided. This is important; it establishes that the use has been continuous and that trucks and vehicles have been stored on the property throughout the years. There has never been any abandonment of the property. Back in the 1970 when gas was not available they closed the gas station until they were able to get gas to reopen. This property has been continuously operated. There was discussion on the new use for the property.

Mr. Robert Hegarty, Lake Hopatcong, was sworn in. Mr. Hegarty is the owner of North Jersey Crane Service. In attempting to enter into a lease with Mr. Hoer, Mr. Hegarty applied for a change of tenancy with the Zoning Office and was denied which is the reason Mr. Hoer is before the Board. North Jersey Crane Service would like lease the back garage to be able to service cranes that are mounted on trucks and do repairs as well. Mr. Hegarty has lived in the area for the past 30 years; he also worked for Mr. D'Auria and agrees that the uses described have not changed. Mr. Hegarty plans on continuing in the same aspect of use as to the previous use.

There was discussion on the photo disturbed by the Zoning Officer (taken 6/11/12) Exhibit A-9 which shows two trucks and a large storage container, a covered automobile along with another smaller covered dumpster.

Mr. Stern explained although this application is for pre existing non conforming use. It seems there are some site plan type of issues for this use in particular the Township allows outdoor storage and there are restrictions on height. There are height restrictions specifically because of crane operations. There was discussion as to why there are height restrictions on cranes in the Township. Mr. Hegarty explained that the only time the crane will be extended on the property is when it is being serviced or maintained. The crane will not be used for advertisement on the property. There was discussion on fencing and storage on the property.

Open to the public:

Mr. Harold Moore, 258 Center Street, Landing Roxbury was a resident for the past thirty five years and has no issues with the business, but would like to know the hours of operation, and have the old fence in the back of his property replaced.

Mrs. Patrica Sherrer, 586 Main Street, Landing stated that the property is cleaner but also noisier.

The Township has an ordinance for hours of operation 7:00 am to 11:00 pm are allowed this is an active area. Most repairs will be done inside the facility.

No one else commented. Closed to the public.

Ms. Dargel made a motion to accept and certify this as a non conforming, pre existing and continuing use for the repair of heavy equipment and trucks as well as an auto repair. Work will be done between 7:00am -11:00pm as per the Township noise ordinance. The fence will be replaced and that will be a condition of certification. The new tenant will be New Jersey Crane. There shall be no decorating on the cranes. The storage container will have no storage on top of it. The dumpster will be added and gated. Ms. Kinback seconded.

Roll call: Ms. Dargel, yes; Ms. Kinback. Yes; Mr. D'Amato, yes; Mr. Giardina, yes; Mr. Wetzel, yes; Mr. Data, yes.

ZBA-12-021 Faschan, Use Variance for property located at 245 Center Street, Landing, Block 10503, Lot 29 in a R-4 zone. *Carried to July 9th 2012, with no further notice.*

Motion was made to adjourn the meeting at 10:32 p.m.

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Dolores Tardive, Board Secretary
June 11, 2012