

REGULAR MEETING

Lebanon Township Board of Adjustment

April 22, 2009

Municipal Bldg 530 West Hill Road Glen Gardner, N.J.

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at 7:30 p.m. by Vice Chairman Abe Abuchowski. Present were: Mr. Machauer, Mr. Maurizio, Mr. Kozlowski, Mr. Perry, Mr. Nagie, Mr. Eberle, Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. Terzuolo & Mr. MacQueen.

Notice of this meeting was provided for in the “Annual Meeting Notice Schedule” adopted by this board on January 28, 2009, mailed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on April 15, 2009.

PRESENTATION OF MINUTES: April 8, 2009 Regular Meeting

Motion by Mr. Kozlowski and seconded by Mr. Nagie to approve the minutes with a minor correction. Unanimously approved.

UNFINISHED BUSINESS:

Susan Sarao Block #10 Lot #21
301 Rocky Run Road Rocky Run Road R 1½
Glen Gardner, N.J. 08826

CONTINUATION OF A PUBLIC HEARING D Variance for a commercial use in a residential zone

(Letter from Attorney Rylak requesting an Extension of Time)

Ms. Glashoff read into the record the letter received from Attorney Rylak asking for an adjournment until May 13, 2009 with an extension of time to June 30, 2009. Attorney Gallina announced to the public present that the Sarao application will be continued on Wednesday May 13, 2009 at 7:30 p.m.

NEW BUSINESS:

Off Road Welding Co.

Block #37 Lot #36.01

Michael & Francis Edwards

Little Brook Road RC 7½

417 Little Brook Road

Glen Gardner, N.J. 08826

PUBLIC HEARING

Conditional Use/Home Occupation w/Site Plan

(Letter from Attorney Gallina)

Attorney Gruenberg was present to represent his clients Michael & Fran Edwards. Attorney Gruenberg stated that his clients purchased the property from Kevin Winters in 1998 and have been running their Off Road Welding business from this site since then. The Edwards have been operating a Home Occupation Business since 1998. The business is operated out of an accessory structure on the property which was in existence when the Edwards purchased the property. The applicant is here to request a Conditional Use Variance relief. The applicant needs relief from two standards, 1) the home occupation shall be conducted entirely within a principal building or a permitted accessory building. The business is operated almost entirely in the accessory building with some outside storage. 2) No more than 1 non-resident of the premises shall be employed in connection with the home occupation. The applicant has 3 non-resident employees. At this time Attorney Gruenberg asked to have the following people sworn in to give testimony: Michael and Fran Edwards and Engineer/Planner James Chmielak.

Attorney Gallina announced that all the notices are in order and the board can proceed with the public hearing. The following items were marked into evidence: **A1**-Taxes Paid, **A2**-Affadavit of Proof of Service, **A3**-Certified List of Property Owners & Utilities, **A4**-Notice to Property Owners, **A5**-POD Slips, **A6**-Notice in Newspaper (Hunterdon Review), **A7**-H.C. Bd of Health letter dated November 18, 2008, **A8**-H.C. Soil Conservation letter dated March 26, 2009.

Michael & Fran Edwards, Engineer Chmielak were sworn in to give testimony. Attorney Gruenberg had Mr. Edwards give his testimony first. Mr. Edwards stated that the property is long and narrow, wooded in the front coming in from Little Brook Road, then passing ponds on each

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side of the driveway, the driveway then Y's, one goes to the house the other goes to the shop up behind the house. Mr. Edwards said that the prior owner operated a business on the property which was Kevin Winters Excavating. Mr. Edwards said that when he purchased the property he was lead to believe he could operate his business on the property. Attorney Gruenberg asked Mr. Edwards if he contacted the Township to see if his business could be conducted. Mr. Edwards said no. Mr. Edwards noted that he was already operating his business since 1996. Mr. Edwards stated that he conducts his business at different job sites where most of the welding takes place and said the reason why his trucks are big is to be able to carry all the equipment needed to the jobs to do them efficiently. Mr. Edwards said the reason why he does not have a sign on the property advertising his business because he does not want people coming to his home on evenings and weekends. Mr. Edwards said that 90% of his work is off site. The shop is used for in between jobs. He informed the board that he has 3 non-resident employees. Only 10% of the work is done on site. The shop consists of 3 bays. One bay is shorter with an office inside. One has a car lift; there are several drill presses, two wire feeder welders. There is a 175 ton press brake. It takes 3 phases to use it and he has a generator to run it.

Attorney Gruenberg asked Mr. Edwards to tell the board about the items that are outside including the vehicles that are on site. Mr. Edwards said there are left over material from jobs, a 2 story high rack which is 12' tall and 20' long. There are canisters outside consisting of acetylene tanks & oxygen tanks. The canisters can not be stored inside. Mr. Edwards said he has one light commercial vehicle which is a van E350. The other vehicles on site are no part of the business but for personal use. The other commercial vehicles are kept off site 24/7 at another location in the Township that he rents. There are no commercial vehicles that are kept or stored on site. Mr. Edwards stated he has a cargo trailer that he uses for personal use for hauling snowmobiles, dirt bikes etc.

Attorney Gruenberg asked about deliveries to the site. Mr. Edwards said he has an air gas delivery which is the welding supplier who deliveries 4-5 times per year with buying in bulk. UPS deliveries 3-4 per week, some deliveries are not for the business. Prior to this application, steel was delivered to the site. The steel is now delivered to the different job sites. It was noted that the only business being conducted is the Off Road Welding Inc. Mr. Edwards stated that most of his work is at asphalt plants. They do winter maintenance, repair, ac piping, gas mains, dryers, bag houses etc. All this is done at the locations.

Welding is done at the shop with the doors closed. Attorney Gruenberg asked the applicant if there had been a time before the last couple of years that you had welded or grinded outside. Mr. Edwards answered yes, all the time. Prior to this incident, he worked outside all the time and the doors were kept open. All work was done outside from 1998 up to one or two years ago. There were no complaints until up to two years ago. Attorney Gruenberg asked about the hours of operation and whether the hours have been limited that take place on site. Mr. Edwards stated that his hours of operation had been 7:30 am to 3:30 pm and they are now 8:00 am to 4:00 pm. with no weekend hours. Mr. Edwards was asked about the tanks. Mr. Edwards said he has 3 tanks, one a 300 gallon tank with #2 fuel oil for the backhoe & pressure washer, a tank for gasoline for home vehicles and one for waste oil from the business trucks. Mr. Edwards was asked if he wanted to have a sign, Mr. Edwards stated no. The parking is adequate on the site.

Attorney Gruenberg asked Mr. Edwards when the complaints started. Mr. Edwards said approximately 2 years ago. Mr. Edwards stated he was putting in a retaining wall, had a problem with some very large rocks which he beat on for a week and it made a lot of noise. There have been complaints regarding the business and because of the complaints Mr. Edwards stated that he has changed the hours of operation on site, has scheduled less work on site and is now doing more work off site. All the commercial trucks are now keep off site and only the company van is parked on site. Mr. Edwards said he has removed the metal dumpsters, cleaned up the property, planted landscaping to screen from the neighbors. There had been a wood boiler which he used to heat the swimming pool since the sun is limited and hoped to eventually heat the house. Once complaints started regarding the wood boiler, Mr. Edwards stopped using it. Attorney Gruenberg asked the applicant to talk about the volunteer work that he has done as part of his business. Mr. Edwards stated that he and his men drove into New York to the South Tower after 911 to help with the cleanup. Mr. Edwards said that he has also worked on Lebanon Township Fire Trucks; he helped with the Richard Cudina Memorial Fund etc. Attorney Gruenberg had the following marked into evidence: A9-Newspaper articles on the World Trade Center. Attorney Gruenberg announced that the testimony of Mr. Edwards is now concluded.

Vice Chairman Abuchowski asked if the board had any questions of Mr. Edwards. Mr. Machauer asked Mr. Edwards if he had his business prior to moving to Lebanon Township. Mr. Edwards

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answered yes. Mr. Machauer asked Mr. Edwards if he assumed he could operate his business or did the prior owner volunteer this information. Mr. Edwards said the prior owner didn't assure him he could operate but didn't say he couldn't. Mr. Edwards spoke to Wayne Johnson who informed him that he had to come before the Zoning Board for approval for his business. Mr. Edwards said at that time when he purchased the property he could not afford to come before the board, so he let a sleeping dog lie. Mr. Machauer asked about the hazardous materials that are stored outside and wanted to know about the

standards for federal and state regulations. Mr. Edwards said that he has to follow those regulations. Mr. Maurizio asked if Mr. Winters had ever

inquired to the Township about having a business. Mr. Edwards stated that he was informed by Mr. Winters that he had gone to the Township back in 1984 and asked Claire Weightman if he needed to file a variance application to have his business. Ms. Weightman informed him that this was a blue collar Township and you will not have a problem running your business and that she told several hundred people the same thing. Mr. Maurizio asked about the 10% of the time spent at the property doing work. Mr. Edwards said it is light commercial work that is done. Mr. Kozlowski asked about the truck Mr. Edwards had before moving to Lebanon Township. Mr. Edwards stated that before moving to the Township his truck was kept in Mansfield Township and is now in Lebanon Township. Mr. Kozlowski asked about the electrical service to the property since Mr. Edwards had stated that he did not have 3 phase service. Mr. Edwards stated he needs 3 phase service power to operate the 175 ton break, but only has two services and 3 phase service is not available on Little Brook Road.

Mr. Kozlowski asked about inspections. Mr. Edwards said that his insurance company (industrial insurance) comes out and does the inspections. Mr. Edwards said there is no air conditioning in the building he uses. Mr. Eberle asked if the 3 tanks are above ground. Mr. Edwards answered yes. Mr. Eberle asked if all the maintenance is done in the building and if there was a concrete floor. Mr. Edwards answered yes. Mr. Nagie asked how many employees besides himself and his wife. Mr. Edwards said 3 employees with a total of 5. Mr. Nagie asked how often the employees come to the site. Mr. Edwards said they are working a 4 day work week and his employees are there 32 hours per week. Mr. Perry asked about the complaints that have occurred. There have been multiple complaints when grinding.

At the conclusion of the board questions, Vice Chairman Abuchowski opened the hearing to the public for questions of the applicant and his testimony given. The following people asked many questions of the applicant: Zoning Officer John Flemming, Renny Hodgskin, Enzo Columbro, Karen Columbro, Ronald Smillie, and Larry Marino from Backhus Estates Road, Tom Sachs, Butternut Road, Kevin Burke, Woodglen Road, Karen Lavezei, Little Brook Road. At this point the questions went back to the board. Mr. Machauer asked about the tanks and asked if each tank is serviced by a commercial operation that comes to you for servicing. Mr. Edwards stated that they come to him to pick up empty tanks and leave full ones. Mr. Machauer asked if they are properly stored and chained on racks. Mr. Edwards answered yes. Mr. Machauer asked about noise and how long would it go on 5, 10 minutes or all day? Mr. Edwards said not all day, could be 10-15 minutes at a time. Attorney Gruenberg interjected stating they will have expert testimony regarding noise and their levels.

Vice Chairman Abuchowski announced the board will take a recess at this time 8:43 p.m. and also announced that this hearing will adjourn at 9:30 p.m. since the board has other business to conduct before adjourning.

When the board reconvened at 8:53 p.m. Vice Chairman Abuchowski asked if there were questions from the public or board at this time. The following person from the public had questions: John Jingracek from

Little Brook Road. At the conclusion of the public questions, Attorney Gruenberg introduced his next witness James Chmielak. Mr. Chmielak is a licensed engineer and a licensed planner. Attorney Gruenberg had Mr. Chmielak give testimony as an engineer. At this time the following items were marked into evidence: **A10**-Variance Site Plan dated 12/1/2008 revised 2/23/2009, **A11**-12 photos of the Edwards property, **A12**-Aerial Map, USGS Map, Tax Map, Zoning Map and Soils Map dated 10/1/2008, **A13**-Report dated 12/3/2008 prepared by Engineering & Land Planning Associates of Clinton, N.J.

Engineer Chmielak made a presentation to the board. The property is long and narrow consisting of 6.44 acres and in the RC zone. Engineer Chmielak reviewed for the board the 12 photos from Exhibit A11 and Exhibit A12. Engineer Chmielak went over the criteria for the Home Occupations. During his testimony Engineer Chmielak stated a standard in the Home Occupation Ordinance that the applicant needs relief from is Item #4; no more than one non-resident of the premises shall be employed in connection with the Home Occupation. Besides

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Himself and his wife, Mr. Edwards employs 3 non-resident employees. Item #7 also needs to be addressed; there shall be no nuisance element detectable beyond the property line in connection with the Home Occupation. Engineer Chmielak introduced the next exhibit, **A14**-Preliminary Noise screening Date dated 10/24/2008. Lengthy testimony was given on noise. At the conclusion of Engineer Chmielak's testimony, Vice Chairman Abuchowski announced that this application will be carried over to another meeting date. Ms. Glashoff offered June 10, 2009 as the next available date. This date was agreed to with Attorney Gallina announcing to the public that this application will be continued to Wednesday June 10, 2009 at 7:30p.m. with no further notice given.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$373.75 – Phone confs. w/Bd Chairman, attend Mtg 4/8/09
- \$201.25 - Escrow (**Tranquilli/Transtar**)
- b. Court Stenographer \$200.00 - Attend Mtg 4/22/09

Total: \$775.00

Motion by Mr. Nagie and seconded by Mr. Eberle to approve the bills as presented. Unanimously approved.

CORRESPONDENCE:

a. Law Bulletin 3/2009 & 4/2009

b. Zoning Law 4/3/09

Ms. Glashoff reminded the board that the packets they received this evening is for the April 29th Meeting for the Patrick Allen public hearing. The board also has the information on the Allen application which had been given to the board for the March 25th Meeting.

Being no further business to come before the board nor comments from the public, motion by Mr. Kozlowski and seconded by Mr. Nagie to adjourn the meeting at 10:05 p.m. Unanimously approved.

VICE CHAIRMAN ABE ABUCHOWSKI

GAIL W. GLASHOFF, BOARD SECRETARY