

REGULAR MEETING

Lebanon Township Board of Adjustment

May 13, 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 7:33 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Nagie, Mr. Abuchowski, 2nd Alternate Maurizio, Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. Perry and Mr. Eberle

Notice of this meeting was noticed 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 May 6, 2009.

PRESENTATION OF MINUTES: April 22, 2009 Regular Meeting

Motion by Mr. Maurizio and seconded by Mr. Abuchowski to approve the minutes with corrections.
Unanimously approved.

April 29, 2009 Regular Meeting

Motion by Mr. Nagie and seconded by Mr. MacQueen to approve the minutes with minor corrections.
Unanimously approved.

UNFINISHED BUSINESS:

Susan Sarao

Block #10 Lot #21

301 Rocky Run Road

Rocky Run Road R 1½

Glen Gardner, N.J. 08826

Attorney Al Rylak was present along with the applicant Susan Sarao. Attorney Rylak had their first witness sworn in to give testimony, Bernard Pridy an adjoining property owner on Rocky Run Road. Attorney Rylak asked Mr. Pridy if he has ever detected any odors or noise from the Sarao property. Mr. Pridy said no. Mr. Pridy stated that Ms. Sarao has made improvements to the property, cleaned it up inside and out. Mr. Pridy said he recommended approval and that Ms. Sarao is a good neighbor. At the conclusion of Mr. Pridy's testimony, Chairman Terzuolo asked if the board had questions of the witness. Mr. Machauer asked questions. There were no questions from the Planner and Engineer. When opened to the public, there were no questions.

Attorney Rylak had Ms. Sarao back to give more testimony. It was noted that she was sworn in at the last meeting. Ms. Sarao brought with her one of her 11 week old puppies for the board to see. Attorney Rylak asked how many puppies are sold during the course of a year. Ms. Sarao said 15 puppies per month. Attorney Rylak asked about the vacant lot next door to Ms. Sarao and whether it is for sale and if so would Ms. Sarao need that lot to run her business. Ms. Sarao said she would not need the lot next door to run her business. At the conclusion of Ms. Sarao's testimony, Chairman Terzuolo asked if the board had any questions. Mr. Kozlowski asked if the property next to the applicant was for sale. Ms. Sarao did not know but noted it was a wooded lot. Mr. Maurizio asked from the time the puppies arrive when do they leave the property. Ms. Sarao said about 12 weeks of age; they arrive from Ireland at the age of 10 weeks. Mr. Machauer asked if she has 15 puppies on the property per month or sold per month. Ms. Sarao said both, she sells 15 per month. Mr. Machauer stated that 180 puppies per year and Ms. Sarao answered yes. Mr. Machauer noted from testimony given that Ms. Sarao has 6 dogs of her own and asked if they are used for breeding. Ms. Sarao said they are her pets and they are used for breeding. Her own litter would be added to the total number of puppies on the property. Mr. Machauer asked about when she was living in Tewksbury Township. Ms. Sarao said she rented a place in Pottersville and she kept the puppies at another location off Route 512, The property was on the corner of Fox Hill Road. Ms. Sarao said she originally lived in Bergen County. Mr. Machauer asked if moving out of Tewksbury had anything to do with the business and zoning ordinances. Ms. Sarao said absolutely not. Ms. Sarao said when she moved into Lebanon Township July 2006 the puppies were still be housed in a barn in Tewksbury Township and eventually brought them home. Mr. Machauer asked if there were any requirements, anything that had to be taken care of in regards to raising and selling of these puppies. Ms. Sarao did not understand the question. Mr. Machauer said that the applicant is looking to get a variance to do something that is not permitted by our zoning ordinance. Ms. Sarao said that no one ever said anything to her. Mr. Machauer

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asked Ms. Sarao when did she find out what you are doing requires a variance. Ms. Sarao said she was notified a year ago, that she received a call from the Zoning Officer regarding her kennel operation. Ms. Sarao said she had no idea that she was a kennel and all she has is a couple of pens with tiny little puppies in them and didn't consider herself to be a kennel. Ms. Sarao said she found out by New Jersey State law if you breed or sell 6 or more dogs per year you are considered a kennel. Attorney Gallina asked how much they weigh at 10-12 weeks of age. Ms. Sarao said between 3-5 lbs. Planner Bolan asked about the state law that was referenced and asked if an age is specified in the law. Ms. Sarao did not know only that it pertained to 6 or more.

Chairman Terzuolo referred back to questions asked by Mr. Machauer. Prior to moving to Lebanon Township, the puppies were kept in Tewksbury Twp. and asked why the puppies were moved out of there and wanted to know if she was asked by the zoning officer to move them. Ms. Sarao said no. Ms. Sarao said she was renting barn space, Chairman Terzuolo interjected and said the people you were renting the barn space from, were they approached by the zoning officer and told that the puppies had to leave. Ms. Sarao said no, what was asked if they wanted to do something to keep the puppies there and it wasn't cost effective for her so she brought the puppies to her home in Lebanon Township. Mr. Machauer asked if she deals very closely with US Customs and in Ireland regarding shots and all the requirements that are needed. Ms. Sarao answered yes. Ms. Sarao said she has also been involved with Hunterdon County Board of Health but not the whole time. Mr. Machauer said since this is so critical with the dogs and bringing them here from Ireland, caring for them and making sure you meet all the standards coming into this country and questioned how much Ms. Sarao has been involved with agencies in this country. Ms. Sarao said she exceeds any and all requirements as far as care is concerned and there isn't any requirement for any vaccinations other than rabies. Mr. Machauer said if this variance is granted then approval from the County Board of Health is required. Attorney Gallina asked if Attorney Rylak was going to refer to the letter from the County Attorney Guy De Sapiro dated April 9, 2009. Attorney Rylak said that Ms. Sarao needs a fire inspection and she has also had inspections by Mario Filippi, County Health Inspector and Jim Gallos from the Hunterdon County Board of Health. Ms. Sarao stated she has a conditional approval from the county pending approval from this board and having a fire inspection. Attorney Rylak said the county only inspects the facility. The following was marked into evidence: **A9-**Ltr from Hunterdon County Counsel De Sapiro dated April 9, 2009 to Fire Official Gary Apgar.

Mr. Kozlowski asked how many puppies are sold each year. Ms. Sarao said 180. Mr. Kozlowski asked how much the puppies sell for. Ms. Sarao said \$1,500.00. Ms. Sarao said each puppy cost her \$900.00. At this time, Attorney Rylak had James Chmielak sworn in to give testimony. Mr. Chmielak is a licensed Engineer and Planner. Before Engineer Chmielak made his presentation the following items were marked into evidence: **A10**-Survey prepared by Robert Ent dated August 7, 2008. **A11**-Summation of exhibits A-E, **A12**-Summation of site photos. Attorney Rylak asked Engineer Chmielak review for the board the project report that was prepared for this hearing. The property is approximately 1.9 acres located in a residential zone. The lots in the area range from 1 acre to 2.8 acres. Behind the property is an 88 acre parcel that is preserved. The building that houses her business is 780 square feet. There is a fenced corral area which is the exercise area. The puppies are housed in dog pens which are located within the building. There is some vegetated buffering along the property lines for visual impact to the property. In visiting the site Engineer Chmielak stated there is no noise element even when the dogs are outside. The puppies weigh an average of 5 lbs for a 10-12 week old puppy. Engineer Chmielak stated at the last

meeting, there was testimony by the neighbor immediately east of the subject property who stated there was no noise element also the neighbor across the road from the Sarao property testified that he did not hear a noise element. There is a vacant lot consisting of 2.88 acres next to the Sarao property to the west.

Engineer Chmielak noted the applicant is here for variances. If the board was in favor of the variance and there were any site issues that needed to be addressed, the applicant would address it at a future date. At this time, no improvements are proposed. Perspective puppy buyers come to the property by appointment only. Engineer Chmielak reviewed for the board the photos from Exhibit A12. Engineer Chmielak stated in identifying the variances, the applicant has more than 6 dogs that she sells on the property, she does qualify as a kennel and a kennel use is not permitted in the R1½ zone. Kennels are permitted as a C.U. in the RC & R5 zones. Engineer Chmielak reviewed for the board the standards for a Conditional Use. Engineer Chmielak said the scope of the variance relief the applicant is seeking a D1 Variance/Use Variance in the R1½ zone for her kennel use. Engineer Chmielak stated this is a limited kennel use; it is limited to a specific type of dog and size of dog. Engineer Chmielak referred to the special reasons for the

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variance, limited animal kennel use will contribute to the well being of the applicant to be able to continue her existing successful home business on a residential property and the general character

of the neighborhood would be maintained and would not be sufficiently altered. Engineer Chmielak noted he looked at the Master Plan and goals, in supporting the positive criteria and special reasons he felt that some of the policies and goals of the Master Plan would be furthered if the applicant were able to legally continue the operation on her property. Engineer Chmielak felt the nature of her business would further rule number one, to protect and maintain prevailing rural character sense of place in the Township which includes diverse neighborhoods& historical settings. This is not a typical farm use or agricultural use but it fits well with the Township. Engineer Chmielak stated there are suitable conditions for this type of business. The board will need to decide whether 2 acres is enough for this type of business. In terms of the negative criteria, the MLUL requires that a variance not be granted unless it is demonstrated there will no substantial detriment to the public good. Attorney Rylak had Engineer Chmielak review the distances from the applicant's building to neighbor houses and property lines.



At the conclusion of Engineer Chmielak testimony, Chairman Terzuolo asked if the board had questions of this witness. Mr. Machauer referred to a picture from B2 which is not in the booklet given to the board members and asked if this picture has been marked into evidence. The answer was no. Engineer Chmielak stated that the picture from B2 was updated at the request of Engineer Risse and copies were

sent to the Board Secretary for distribution. After a brief discussion, the following was marked into evidence: **A13-B2** Aerial map dated 8/7/2008 and revised 12/26/2008 project #8033, **A14-B3** Aerial map dated 12/26/2008 project #8033 which shows septic and well. Engineer Chmielak went over all the dimensions from the building to the outer radius and from the property lines to the abutting lots and residences. Mr. Machauer said these distances range from 222' to 605' and wanted to know what is the significance of the dimensions. Engineer Chmielak said the significance of the dimensions is to address the ordinance requirements for the kennel use. Engineer Chmielak referred to the ordinance 400:11.9c on kennels. Planner Bolan asked about the fenced area to the east. Ms. Sarao responded and said it is a vegetable garden.

At this time, Chairman Terzuolo opened the hearing to the public. Ed Wirasnik asked about the value to his property. Attorney Rylak informed Mr. Wirasnik that two adjoining property owners do not have problem with the applicant's business. Mr. Wirasnik was asked if he plans to sell the adjoining lot to Ms. Sarao. Mr. Wirasnik answered no. Since no one else from the public had questions, Chairman Terzuolo announced the board will take a brief recess at 8:57 pm. When the board reconvened at 9:10 p.m. Attorney Rylak announced that he does not have any additional witnesses to give testimony. Chairman Terzuolo had Planner Bolan sworn in to give testimony. Planner Bolan referred to his report dated March 11, 2009. Planner Bolan referred to the special reasons as promoting the general welfare which is a reason often relied on by applicants seeking variance relief. The case law on this is that the benefit to the general welfare derives not from the use, but from the development of the site in the community that is particularly suited for the enterprise that is proposed. The negative criteria are without substantial detriment to the public good or substantially impair the intent and purpose of the Master Plan and zoning ordinance. The other issue that has been discussed is the animal kennel. In reading the definition of kennels, this is not an animal kennel as defined on page 400:5 (An establishment wherein or whereon the business of boarding, selling or breeding more than six dogs each over one year old is carried on). Planner Bolan said in looking at some of the criteria that is in the ordinance for animal kennels as a conditional use, it doesn't look to be applicable. It should be considered in the context of the neighborhood as you do with any use variance. Planner Bolan said this is not a kennel; it is a retail use essentially.

At the conclusion of Planner Bolan's testimony, the board asked questions of the Planner. Mr. Nagie asked if the board grants this variance does it go with the land or can it be denied at a later date. Planner Bolan responded saying the board has the right to put conditions with a use variance on any approval and the conditions should be well specified. Planner Bolan said that variances run with the land. Mr. Abuchowski asked since this is not a kennel what other ordinances come into play. Since this is a business what ordinances apply? Attorney Gallina noted this is a retail operation located in a residential zone which needs a variance. Mr. Maurizio asked if the variance is granted can it include that the scope of the business does not change. Attorney Gallina stated that when a variance is granted, if the scope/expansion occurs then the applicant would have to come back to the board for further relief. Mr. MacQueen said he doesn't understand how the board can grant a variance for a retail business of selling dogs. Mr. MacQueen did not feel the issue of noise regarding the dogs was addressed enough especially if

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the vacant lot next to the applicant has a house built on it. Mr. MacQueen noted that the State refers to 6 dogs and they override us. The board discussed this issue at length. Chairman

Terzuolo asked if the applicant had questions. The response was no. When opened to the public for questions, there were none. At this time, Engineer Risse was sworn in to give testimony. Engineer Risse said this is a planning issue and he agrees with Planner Bolan on ordinance regarding kennels. Engineer Risse referred to additional screening and sound proofing of the building. At the conclusion of Engineer Risse's testimony, Mr. Kozlowski question dealt with noise. Engineer Risse said the ordinance states that the board should look at site plan elements to ensure there is no off site nuisance elements from a kennel operation. Being no other questions from the board nor questions from the applicant or public, Chairman Terzuolo asked if there were any interested parties that would like to give testimony. Mr. Ed Wirasnik of Rocky Run Road was sworn in. Mr. Wirasnik informed the board that he has been a resident of Rocky Run Road for 47 years. He expressed concern for the value of his home and the vacant lot next to the applicant with this type of business operation. He informed the board that he does hear dogs barking. At the conclusion of Mr. Wirasnik's testimony, the board asked a few questions. Attorney Rylak asked about the barking dogs. Attorney Rylak asked to have a rebuttal witness. Mr. Priddy who gave testimony earlier, said he does not have a problem with the dogs.

Chairman Terzuolo asked Attorney Rylak to give his summation. At the conclusion of the summation, Chairman Terzuolo announced that the evidence taking portion of the hearing is now closed. Because of the late hour, Chairman Terzuolo polled the board to see if they would prefer to do their deliberations on another night. The board discussed continuing to another night for their deliberations. The board agreed to have a continuance. Attorney Rylak did not have a problem with the board's decision. Chairman Terzuolo asked Ms. Glashoff for a date. Ms. Glashoff offered June 10th. Attorney Rylak informed the board that he could not be present, but he will send his partner Attorney Gianos to cover. Attorney Gallina announced to the public, this application will be carried to the June 10th meeting date without further notice.

PRESENTATION OF BILLS:

a. John Gallina, Esq.

\$546.25 – Phone Conferences with Board Chair

Phone conf. w/Bd Sec./Atty Bernstein,

Zoning Officer re: Atty Gruenberg letter

\$172.50 - Escrow (**Michael Edwards**)

- \$ 86.25 – Escrow (**Patrick Allen**)
- b. Court Stenographer \$200.00 – Attend Meeting 5/13/2009
- c. Dues NJAPZA-2009 \$ 45.00 - Gail Glashoff

Total: \$1,050.00

Ms. Glashoff informed the board she had two additional bills for approval from Bayer/Risse Engrs. The escrow bill for Patrick Allen, \$298.75 and the other for the board \$418.25, totaling **\$717.00** with a grand total of **\$1,767.00**. Motion by Mr. MacQueen and seconded by Mr. Abuchowski to approve the bills as amended. Unanimously approved.

CORRESPONDENCE:

- a. Zoning Law 5/1/2009
- b. Law Bulletin 5/2009

Ms. Glashoff announced on June 2nd the Planning Board they will have a presentation by the Highlands Council. Ms. Glashoff asked who would be interested in attending from the board. It was decided to place a notice in the paper in the event there is a quorum.

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

CHAIRMAN BRUCE TERZUOLO

GAIL W. GLASHOFF, BOARD SECRETARY