

**REGULAR MEETING**

**Lebanon Township Board of Adjustment**

**June 10, 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 Chairman Bruce Terzuolo. Present: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Perry, Mr. Nagie, Mr. Abuchowski, 1<sup>st</sup> Alternate Eberle, 2<sup>nd</sup> Maurizio, Attorney Gallina, Planner Bolan and Engineer Risse.

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 June 3, 2009.

**PRESENTATION OF MINUTES:** May 27, 2009 Regular Meeting

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

**UNFINISHED BUSINESS:**

Susan Sarao	Block #10	Lot #21
301 Rocky Run Road	Rocky Run Road	R1½
Glen Gardner, N.J. 08826		

**CONTINUATION OF A PUBLIC HEARING** D Variance for a commercial use in a  
Residential Zone

Attorney William Gianos was present to represent the applicant in the absence of Attorney Rylak. Attorney Gianos asked to confirm that the board will be deliberating and voting on this application this evening. Chairman Terzuolo said yes. The board went into deliberations at this time. Mr. Maurizio said based on the evidence presented, he did not have a problem with the applicant continuing with her business. Mr. Kozlowski stated he had walked near the property and did hear dogs barking. He appreciates the concerns of neighbor Wirasnik regarding property values and the empty lot next to the applicant. Even though the dogs are small, but who's to say that at some point there could be larger dogs, another breed of dog or another louder breed of dog and said he will be leaning against the application. Mr. MacQueen said he felt the same way, whether it be a kennel or a retail use. A retail use presents a whole other set of problems, parking, lighting and it is not conducive in that area for that type of use, they need 7 acres and only have 2 acres. A concern would be policing this type of use and didn't feel it was a good fit for that area. Mr. Nagie said he agrees with Mr. MacQueen and also has a problem with changing properties in these areas that are residential zones into commercial zone when it is primarily and strictly a residential area. Mr. Nagie said he had a problem with the lot size; policing the area and being kept the way they say it will be done.

Mr. Abuchowski said he had similar thoughts and had a concern that the approval would go with the property. If the property is sold the operation would go with the property and we would still not be able to police it and felt it would set a bad precedent in the Township. Chairman Terzuolo said basically this is a retail establishment. Chairman Terzuolo quoted the ordinance on retail establishments. The puppies are merchandise advertised online along with the products related to the puppies that are also offered online. In the code under use regulations 400:9, it describes the districts and kennels are permitted in the RC and R5 residential districts, if you have 7 acres and meet the other requirements and no where in any of our residential or resource conservation districts are retail trade permitted. Retail Trade is only a principle permitted use in a B1 or B2 zone. We would have to rewrite some of our ordinances almost completely by variance for this particular application. Chairman Terzuolo said he can not vote for it because of the number of variances required. Mr. Machauer in referring to the residential districts in the ordinance it requires large distances from homes and larger setbacks. Even though this is a small operation it is not a permitted use. Per our ordinance this is not a kennel by definition. The puppies that are on site are not over 1 year old. However, the applicant testified that she has 6 dogs of her own and the ordinance states if there are more than 6 dogs then it becomes a kennel. Mr. Machauer stated that he understands that if the applicant is shut down it will create a hardship but it doesn't change the fact that they have been in this business a long time in various locations and this situation has probably reared its head in more than one place and questioned whether this is a valid application on this basis. At the conclusion of the board's deliberations, Chairman Terzuolo reviewed for the board the letter from Attorney Gallina.

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accessory structure. The purpose of this application is to allow the applicant to continue with his welding business as part of a Home Occupation in the RC 7½. Attorney Gruenberg said he would like to continue this evening with Planner Jim Chmielak testimony on all the planning issues, the Coventry Square case and the difference between a Conditional Use and a Principle Use Variance. Planner Chmielak stated with a Principle Use Variance it is a use that is not permitted in the zone. In the Lebanon Township Ordinances it does allow a Home Occupation Use. The applicant is here not for the Home Occupation but for a variance for the deviation of two conditional use standards. The first standard is 1) not more than 1 non-residential employee on the premises and 2) storage area located adjacent to the garage building. Due to the presence of outside storage for canisters and left-over material a variance is being requested. Regarding special reasons given the fact that of the nature of the applicant's welding business it presents a difficulty and an undue hardship for them to fully comply with the conditional use standards. In terms of the standard for non-residential employees, there are several reasons why the variance should be considered. Testimony has been provided that 10-15% of the time there are employees on the property and about 80% of the time the work is done off site so that standard is not complied with. Also there is a need for the applicant to perform maintenance which is done within the garage structure. Lastly, there is a time when materials are brought to the site after a job and several employees would be on the property.

In referring back to the Coventry Square case, Planner Chmielak stated it has been established by that case that the Township's municipal ordinance and having the home occupation as a conditional use the ordinances identifies that this has an applied value to the general public. Also, the Coventry case also found that permitted conditional uses are compatible with other uses in the zone. Planner Chmielak said they are looking for is a deviation from those two standards and the special reasons for this variance are constituted by the fact even given the deviations that are being requested, the site is still suitable. Attorney Gruenberg said the storage outside is minimal and asked the Planner if it made this site no longer suitable for the permitted home occupation. Planner Chmielak said it doesn't change anything regarding the suitable of the site. Planner Chmielak said even with the two deviations, the suit still remains suitable for this home occupation use.

At this point Attorney Gruenberg asked the Planner to describe the Negative Criteria for the board. Planner Chmielak said that the variance can be granted without substantial detriment to

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the public good. Planner Chmielak said in his opinion the 3 non-resident employees, isn't an issue and this standard strives to regulate the intensity of the use. Since 85% of the work is done off site, this proves that there is not a substantial detriment to the public good. Secondly, the work is done inside the building. All work is done with the doors to the building closed. There has been testimony that there is no noise or nuisance element. Planner Chmielak stated that there is no issue with parking or employees. The building is not visible from the road or visible for the first couple of hundred feet down the driveway. Also the rear of the property is wooded that abuts the residents on Backhus Estate Road. Lastly, work was done outside in the driveway, the neighbors had issue with it. The applicant has instituted controls that any work being done on the property associated with the business is done within the building with the doors closed. It was also testified that there had not been any noise or nuisance complaints during the first 9 years that the business was being operated. It wasn't until there was greater intensity that there were complaints. The second prong to the negative criteria is the variance will not substantially impair the intent and purposes of the zoning ordinance. Planner Chmielak stated that the board has to weigh whether there is a substantial impairment to the public good for those two deviations or is there substantial impairment to the intent and purpose of the zone plan. Planner Chmielak said with their testimony, they do not feel there is any impairment to the intent and purpose of the zone and no detriment to the public good and the site remains suitable.

Planner Chmielak went on to say it is a benefit to have this business in the local neighbor in this area of the Township. The applicant provides a service to the Fire Department as well as other elements of the Township. This out weighs any detriment. At the conclusion of Planner Chmielak's testimony, Vice Chairman Abuchowski asked if the board had questions. Mr. MacQueen informed Attorney Gruenberg that he has read the entire transcript and is eligible to vote on this application. The board and the board professionals asked many questions of Planner Chmielak. The questions centered on noise, elevations, screening, hours of operation, OSHA standards, storage and how time is spent by employees on the property. Planner Bolan asked about the use, when it was established, what was the prior use and when was that established. Attorney Gruenberg said the prior use was an excavating business which did similar type of work. The building was used for the repair of equipment and there was outside storage of equipment on site. In Mr. Edward's testimony he was assured that he would be able to continue that type of business and Claire Weightman assured people back in the early 1980's that this was a blue collar township and this type of use was appropriate.

At the conclusion of the questions, Vice Chairman Abuchowski announced the board will take a recess at this time 8:45 p.m. When the board reconvened at 9:00 p.m. the hearing was opened to the public. Vice Chairman Abuchowski announced that the hearing will close at 9:45 pm since the board has other items to address before adjourning. Attorney Michael Levery was present

representing the Enzo & Karen Columbro and Larry Maurino adjoining property owners opposing the application of Michael and Fran Edwards. Attorney Levery asked many questions of Planner Chmielak. Attorney Levery quoted sections of the ordinance book noting this property is in the RC Rural Conservation zone. In his questioning he referred the report prepared by Planner Chmielak and asked several questions regarding statements made in the report. Mr. Renee Hodgskin also asked several questions of the witness regarding noise. At this time Vice Chairman Abuchowski asked Ms. Glashoff for a continuation date. Ms. Glashoff offered a few dates and in conclusion, this application will be continued to August 12, 2009. Ms. Glashoff asked for a letter extending the time to August 30, 2009 which Attorney Gruenberg agreed. Attorney Gallina announced to the public, the Edwards application

will be heard on August 12<sup>th</sup>. The opposition stated that they were not given an opportunity of being apart of the continuation date discussion and wanted to know who they should see to file a complaint. They were told to see Ms. Glashoff.

**PRESENTATION OF BILLS:**

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| a. John Gallina, Esq. | \$316.25 – Phone Conf. Bd Chair & Bd Sec.<br><br>Attend Mtg 5/27/09    |
|                       | \$143.75 – Escrow ( <b>Transtar</b> )                                  |
| d. Court Stenographer | \$200.00 – Attend Mtg 6/10/2009<br><br>\$372.00 - Transcript (Edwards) |
|                       | <b>Total: \$1,032.00</b>   |

Motion by Mr. MacQueen and seconded by Mr. Maurizio to approve the bills as presented. Unanimously approved.

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**CORRESPONDENCE:**

- a. Zoning Law 5/15/2009
- b. Article/NJLM June 2009

Being no further business to come before the board, nor comments from the public, motion by Mr. MacQueen and seconded by Mr. Maurizio to adjourn the meeting at 9:55 p.m. Unanimously approved.

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**VICE CHAIRMAN ABE ABUCHOWSKI**

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**GAIL W. GLASHOFF, BOARD SECRETARY**