

REGULAR MEETING

Lebanon Township Board of Adjustment

July 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 7:40 p.m. by Board Secretary Ms. Glashoff. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Perry, Mr. Nagie, 1st Alternate Eberle, 2nd Alternate Maurizio, Attorney Gallina and Planner Bolan. **Excused:** Mr. Terzuolo, Mr. Abuchowski and Engr. 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 July 15, 2009.

NOMINATION FOR CHAIRMAN:

Ms. Glashoff informed the board that in the absence of the Chairman and Vice Chairman this evening the board will need to nominate a Chairman. At this time, Ms. Glashoff asked for nominations for Chairman. Motion by Mr. Perry and seconded by Mr. Kozlowski to nominate Gary MacQueen to serve as Chairman. Being no further nominations for Chairman, nominations are now closed. Unanimously approved.

PRESENTATION OF MINUTES: July 8, 2009 Regular Meeting

Ms. Glashoff informed the board that the minutes from the July 8th meeting are a draft for the board to have for the continuation this evening. The minutes will formally be on the agenda for the August 12, 2009 meeting for approval.

UNFINISHED BUSINESS:

Transtar Autobody & Truck Inc. Block #41 Lot #4

c/o Dominick Tranquilli

Route 513 I5

514 Route 513

Califon, N.J. 07830

CONTINUATION OF A PUBLIC HEARING

Site Plan and Use Variance for Self

Storage Units

Ms. Glashoff noted that Mr. Nagie is stepping down from the proceedings since he has not listened to the tapes from the prior hearings. Attorney Gilbert interjected and requested that Mr. Nagie not step down but if this hearing doesn't conclude this evening, Mr. Nagie will have the opportunity to listen to the prior tapes. Attorney Gallina announced to the public that Mr. Nagie will stay at the board for tonight's hearing. Chairman MacQueen asked Attorney Gilbert if they are doing the Use Variance and Site Plan together or are we changing back to bifurcating the application. Attorney Gilbert said he would like to finish this evening with Planner Zimmerman testimony with the Use Variance aspect and then at another meeting finish up with the Site Plan application. In essence we are bifurcating the application. Planner Bolan said it was a good idea to bifurcate the application because the board can then concentrate on the Use Variance portion.

It was noted that Planner Zimmerman was previously sworn in and is still under oath. Attorney Gilbert asked Planner Zimmerman to recap his testimony he gave at the last hearing on July 8, 2009. Planner Zimmerman said the modest addition of 11,000 square feet to the existing building and the proposal to use the area in the front of the existing building for the self storage units is a good use of the property. There was testimony that there is a need for self storage in the area and it is a low intensity use. A self storage use is appropriate in the Industrial zone for this property per Planner Zimmerman. Planner Zimmerman noted there isn't a zone in the Township that allows for this type of use. There is no negative impact to the public good. The road will not be impacted by excessive traffic. Lastly, there are going to be improvements to the site plan, storage equipment, trucks and materials. This will clean up the site. These are the main points to the planning and zoning testimony per Planner Zimmerman. Attorney Gilbert said he had no direct questions at this time of the Planner.

Chairman MacQueen asked the board for questions of the witness. Mr. Eberle asked if hours of operation fall under the category of questions at this time. Attorney Gallina answered yes. Chairman MacQueen asked Planner Zimmerman to go over the hours of operation. Attorney Gilbert said Mr. Danzis had testified to the hours. It was noted the hours of operation were 6:00

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am to 10:00 p.m. Mr. Perry asked about plantings along the side of the building. Mr. Machauer noted from prior testimony that this use is inherently beneficial, is this to the community or to the people renting the units. Chairman MacQueen noted the comments made regarding negative criteria for the use, isn't extra lighting, extra noise, extra hours, doesn't that fall under negative criteria. Planner Zimmerman said they don't feel there is extra of any of those items. Planner Zimmerman stated that the extra lighting will not be a negative regarding the neighbors and not be objectionable. During Site Plan, there will be a lighting plan for the board to review. Chairman MacQueen asked if Planner Zimmerman was aware of the other uses permitted in the I5 zone. Planner Zimmerman stated the application is for an expansion of the permitted use of the property. In 1991 the application came before the board for a much larger facility than what is presently on the property. Planner Zimmerman went over what is permitted in the I5 zone. Chairman MacQueen asked Planner Bolan for any questions of the witness. Planner Bolan had no questions. The Chairman then asked if the board had any questions of the witness. Mr. Kozlowski asked about the lighting referring to the minutes of July 8th. Mr. Perry asked about security and will the Police need to check on the property. Mr. Machauer asked Planner Zimmerman if he thought having the lights on 24/7 would be safer for security purposes. Planner Zimmerman stated that the facility will close at 10:00 p.m. and is a very secure operation. Mr. Maurizio said even with the lights on you can not see into the facility from Route 513 because of the elevation and felt it was moot point with all the security lighting unless the police had access to the facility. Chairman MacQueen noted that the hours of operation are only proposed at this time.

Planner Bolan referred to the 1991 Resolution approved by the Planning Board, Attorney Gilbert said the resolution states a 2 mix use office and warehouse buildings on a five acre parcel. Building #1 containing 4,500 square feet office space and 17,399 square feet of warehouse and building #2 is purposed to construct for 5,700 square feet of office space and 8,000 square feet of warehouse. The applicant has revised the plans so building #2 now purposed for 4,490 square feet office space and 6,382 square feet of warehouse. The total building will now be 8,990 square feet of office and 23,781 square feet of warehouse. Planner Bolan said now the total will be 23,500 square feet for the existing building that is going to be expanded and the 11,000 square feet for the self storage units.

At this time, Chairman MacQueen opened the hearing to the public for questions of testimony given. Nancy Wolfe of Vernoy Road an adjoining property owner had questions of Planner Zimmerman. After a brief discussion on order of testimony, it was decided to have the public give testimony first. Chairman MacQueen asked if anyone from the public wanted to give testimony at this time. Attorney Gallina noted that testimony would only be for the Use Variance. Adjoining property owner Neil Grossman asked to give testimony. Mr. Grossman was sworn in. Mr. Grossman stated there is a certain criteria which are statutory requirements for a Use Variance that have to be met and he presented an outline of those requirements that he handed out to the board. The following was marked into evidence: 01-1 page document outline of the Positive Criteria/Negative Criteria and Medici Statement.

Mr. Grossman stated the applicant has to demonstrate the Positive Criteria known as Special Reasons. The three questions are: 1) is the use particularly suitable. Particular suitability is the test of the general purpose provision of the MLUL. There are 15 purposes in the MLUL. 2) Does it further other purposes of zoning in the MLUL and 3) Does it further the purposes of the Master Plan. Under the Negative Criteria, 1) is there substantial detriment to the public good? 2) Is there substantial detriment to the intent and purpose of the zone plan? Lastly, the board needs to look at the Medici Standard. Mr. Grossman said a) does an enhanced burden of proof reconcile the grant of a use variance with the ordinance's omission. No evidence was provided that the application complies with the Medici standard. Mr. Grossman stated that in reviewing the Master Plan and the Re-examination Reports by the Planning Board starting with 1988, 1994, 2000, 2001 and 2009. It has never been recommended to include self storage units in the I5 zone. Even though it was noted that self storage units have been around for 25 years, Lebanon Township has never included it the Master Plan and Ordinances for the Industrial Zone. Mr. Grossman noted in the Ordinance self storage units are not listed as a permitted use which means it is a prohibited use. Attorney Gallina answered that was correct.

Mr. Grossman referred to Medici and said it has been singled out in Medici as the one "most clearly amplifiers the meaning of special reasons". The applicant is obligated to look at the other purposes of the zone and of the 15 purposes listed in the MLUL the applicant relies upon the

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following two purposes: a) provide adequate light, air and open space. The applicant states that by virtue of a plan that meets all the setback requirements it meets this purpose. Mr. Grossman said in previous testimony by Planner Zimmerman, he said that another general purpose was to promote a desirable visual environment to creative development techniques in good design and arrangements. There must be a balance between proposed visual improvements versus the impact that an introduced prohibited use would have to the zone. A Use Variance must rest on more than just beautification of the site with more landscaping even a site plan approved for permitted uses would expect the same level of care in a landscaping plan. To suggest that landscaping is worth a trade off to make a prohibited use palpable is a weak argument. Mr. Grossman referred to the Master Plan which states regarding the I5 zone: "the primary non-residential uses permitted in the district include business, administrative, executive, industrial and manufacturing uses and research laboratories" and permitted conditional uses are: "roadside stands, institutional, public uses, detached one family dwellings". Mr. Grossman quoted from the Master Plan "the permitted principal and conditional uses are not proposed for change". Mr. Grossman stated that it is clear in the Master Plan that any changes or additions were not being considered even though self storage units have been around for 25 years. The Master Plan goes into great detail as to how the vision for Lebanon Township future has a guiding principal, particularly how it envisions the industrial district. Mr. Grossman referred back to Medici which states in part, "although certain commercial uses may

inherently serve the general welfare in a community, the typical commercial use can better be described as a convenience to its patrons than as an inherit benefit to the general welfare, for such uses any benefit to the general welfare derives not from the use itself but from the development of site in the community that is particularly approach for that enterprise”.

At the conclusion of Mr. Grossman’s testimony, Chairman MacQueen asked if the board had questions of the witness. There were questions regarding the Master Plan, uses permitted and not permitted in the I5 Zone. Chairman MacQueen asked if the board denies the Use Variance, then there is not Site Plan, correct. Planner Bolan answered correct. Planner Bolan noted that if it weren’t for the Use Variance the application would not be before this board. Mr. Grossman referred to testimony that had been given regarding certain conditions that have been violated, those violations are not going to go away, even if you deny the Use Variance there is still an opportunity to correct those violations by the Township. Attorney Gallina said that the Zoning Board is not an enforcing body. Chairman MacQueen said that the application was originally sent to the board by a judge. Attorney Gallina said it was not sent here by a judge and stated that there is a history where there might had been some municipal court proceedings. Chairman MacQueen said it then became a Use Variance. Attorney Gallina said it was a structure violation which would be part of the Site Plan, not the Use Variance. Attorney Gilbert interjected stating that he wanted the record very clear there was no court action that required Mr. Tranquilli to come before this board and present this application. Chairman MacQueen asked if the board had any other questions for Mr. Grossman. There were none. Planner Bolan did not have any additional questions.

Attorney Gilbert informed the board he would like to call back Planner Zimmerman to respond to Mr. Grossman’s testimony. Attorney Gallina said that rebuttal witnesses are called back after the public testifies then the applicant can put on a rebuttal. Chairman MacQueen asked if anyone from the public had any questions of Mr. Grossman. There were none. Chairman MacQueen announced that the board will take a recess at this time 9:00 pm. When the board reconvened at 9:08 pm, Chairman MacQueen opened the hearing to the public. The board briefly discussed the order of testimony. It was noted by Ms. Glashoff that for a continuation of this public hearing, the next available date would be September 9th. Planner Zimmerman will give his rebuttal testimony at this time. Planner Zimmerman concluded the site will be a better neighbor if this application is approved and if the Site Plan is submitted to this board and reviewed by the board’s professionals and deal with some of the issues that are concerns of the board in terms of coverage, landscaping, lighting and hours of operation, these are all Site Plan issues. Planner Zimmerman stated he is confident that these issues can be satisfactorily dealt with by both sides of the table to achieve something that will be compatible with the house on one side, the industrial on the other side and the horse farm in the rear. Planner Zimmerman said that what is proposed is much better in terms of being a good neighbor then what is presently there at this time. That in itself would be considered Special Reasons. At the conclusion of Planner Zimmerman’s rebuttal, Chairman MacQueen asked if the board had any questions of Planner Zimmerman. Chairman MacQueen then opened the hearing to the public. Jim DeGaetano of Route 513 had questions for Planner Zimmerman.

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Chairman MacQueen asked if anyone else from the public wanted to give testimony. Nancy Wolfe of Vernoy Road was sworn in to give testimony at this time. During Ms. Wolfe's testimony she referred to the two exterior structures that were erected without proper permits.

These buildings were the subject of December 2007 municipal court hearing. Mr. Tranquilli was found guilty, paid a \$500.00 fine and was ordered by the Judge to file an application before the appropriate board. Ms. Wolfe said these illegal structures have been referred to as tents. Mr. Tranquilli's testimony of October 22, 2008 was Attorney Gilbert stated for the record that the tents have been and always will be used for storage. Ms. Wolfe referred to the transcript reading pages 17 & 18. Ms. Wolfe said that the two illegal buildings need to be addressed that were remanded by the court of December 2007, those buildings are illegal and Mr. Tranquilli testified that he has sandblasted, used air compressors and spray painted out of them. Until those issues have been addressed the board can not issue a Use Variance. At this time, Ms. Wolfe asked to have the Zoning Officer John Flemming join her to give testimony as her witness. Mr. Flemming was sworn in. Ms. Wolfe went over Transtar's Resolution from 1991. Ms. Wolfe noted that at the time of approval the coverage on the Transtar site was 39.6% with 40% being allowed by ordinance for coverage. The coverage presently on the property is estimated at 51%. Ms. Wolfe submitted an aerial photograph of the Transtar property to be marked into evidence. The following was marked: **02**-Colored aerial view of the Transtar property from 2008. Ms. Wolfe referred to the Resolution of 1991 stating Item #15 in the Resolution refers to hours of operation. It states that the maximum days of operation will be 6 days per week. Hours of operation will be 7:00 am to 7:00 pm. and the maximum number of employees on site would be 50. Ms. Wolfe said that Mr. Tranquilli had testified that hours of operation were 6:00 am to 11:00 pm per the transcript pages 13 & 14. The third provision from the 1991 Resolution is the applicant indicates from the proposed operation of the site for offices and warehouse and industrial uses will not generate noise, odors or glare from the property. Any and all power equipment and air compressors will be contained within the building. The activities are conducted in the building so the level of noise will not disturb the office uses.

Ms. Wolfe asked Mr. Flemming, since there has been total non-compliance with these provisions from the 1991 Planning Board Resolution and asked how he would address these issues in relation to the Use Variance and expansion on this site. Mr. Flemming said he doesn't have authority over Use Variances. If an applicant has a conforming application it allows him authority then he can approve it, otherwise unless the applicant modifies the application he will reject it and then comes to the board. Once the board has jurisdiction, Mr. Flemming said at that point does not have jurisdiction. Mr. Flemming was then asked if he has jurisdiction over a Planning Board Resolution. Mr. Flemming answered yes stating if the conditions in the resolution are violated he has jurisdiction. Mr. Flemming said he would notify the applicant and ask to have the site brought back into conformance with the Resolution or tell the applicant to go before the board with a revised site plan. Ms. Wolfe went over items in the Resolution and asked Mr. Flemming how to address two illegal buildings that he referred to as quonset huts, Ms. Wolfe also referred back to 2002 and showed the board by marking exactly where these tents are. Attorney Gallina told Ms. Wolfe to mark with an X where the tents are on the property. There are also 3 box trailers made into "u" shape and there is a tarp and all kinds of metal structures that are semi attached to the building. This is where painting is being done. The tent in the back is where the sandblasting is taking place along

with the air compressors. Ms. Wolfe asked how does the applicant proceed with a Use Variance when they must address two illegal buildings that have been used for painting, sandblasting and air compressor. This has been going on for 12 years. In 1991 per Ms. Wolfe, Mr. Tranquilli was also found guilty in the municipal court of sandblasting in violation of the Planning Board's Resolution and paid a fine. Ms. Wolfe stated that the paint residue has drifted across the property into her 3 150 gallons tanks that are used for drinking water for her horses. Ms. Wolfe asked Mr. Flemming what assurances the board has that the two illegal buildings which is included in the coverage for coverage and he (Mr. Tranquilli) won't have the opportunity to paint and sandblast again. Mr. Flemming said the Resolution can be enforced as long as it is written properly. Ms. Wolfe asked if Mr. Tranquilli were approved for those buildings and those uses would he have to go to the DEP and ask for a permit to conduct sandblasting and painting and removing paint, meaning he would need a paint recovery system and noise abatement system. Mr. Flemming referred the question to Attorney Gallina since it is not in his jurisdiction. Ms. Wolfe referred to the ordinance on Performance Standards, Section 18-4.1 of the old ordinance book. **(The Performance Standards in the new ordinance book is: Article III 400:20).** Ms. Wolfe read into the record the Performance standards provided by ordinance. Ms. Wolfe asked Mr. Flemming what assurances he can give that if this is all approved that this type of problem won't happen again. Mr. Flemming stated if the board approves this application and fashions a resolution that is clear and details out

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everything that has to be detailed and Mr. Tranquilli violates the resolution, he would write him a certified letter and if Mr. Tranquilli does not comply with the letter he will take him to court on the first violation. Mr. Flemming said that she can be assured he will do his job. At the conclusion of Mr. Flemming's testimony, Chairman MacQueen asked if the board had any questions. The board nor the professionals had questions of Mr. Flemming. Ms. Wolfe stated their property adjoins five industrial properties and the only property owner that hasn't been a good neighbor has been Transtar. Everyone else has been and is a good neighbor and good citizens. Ms. Wolfe stated that until Mr. Tranquilli becomes a good neighbor following the rules and being in violation, the board should not grant approval for the Use Variance and Site Plan.

Chairman MacQueen asked the board if they had questions of Ms. Wolfe. Mr. Nagie asked about the court appearances. Ms. Wolfe went over what transpired with the court proceedings. Mr. Tranquilli paid a \$500.00 court fine and was told to file an application with the appropriate board by February 2008. Mr. Machauer questioned what had transpired over the past 12 years and asked what actions were taken. Ms. Wolfe went over all that went on over the 12 years for Mr. Machauer. Ms. Wolfe offered to give Mr. Machauer in chronological order a list of all the events that have taken place of the past 12 years. Ms. Wolfe said she has pictures of the sandblasting and painting. Ms. Wolfe said she will provide the board with the chronological order of all the events before the next meeting of this application. Mr. Machauer stated to Ms. Wolfe that the system has let her down and all the people involved have been remiss in their jobs. Chairman MacQueen interjected and asked that due to the late hour, this application will need to be

carried to another meeting date. Ms. Glashoff informed everyone this application will need to be carried to September since both meetings in August are taken. The date offered is September 9th. Everyone agreed. Attorney Gallina announced to the public the continuation date for this public hearing.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$ 86.25 – Attend Mtg 7/24/09 & phone conf. Zoning Officer
 \$316.25 - Escrow (**Transtar**)
- b. Bayer/Risse Engrs. \$418.25 - Prepare & Attend Mtg 6/10/2009
- c. Court Stenographer \$200.00 - Attend Mtg 7/22/2009

Total: \$1,020.75

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

CORRESPONDENCE:

- a. Law Bulletin July 2009
- b. Zoning Law July 10, 2009

Being no further business to come before the board, nor comments from the public, motion by Mr. Kozlowski and seconded by Mr. Eberle to adjourn the meeting at 10:00 p.m. Unanimously approved.

CHAIRMAN GARY MACQUEEN

GAIL W. GLASHOFF, BOARD SECRETARY