

CONTINUATION OF A PUBLIC HEARING

D Variance for a Commercial Use in a
Residential Zone

Attorney Gruenberg said that at the last meeting on June 22nd they finished up with Engineer/Planner Chmeliak testimony with the board and the public did a crossed examination. Attorney Gruenberg stated that they do not have any additional witnesses to give testimony and hope to conclude this evening. Attorney Gruenberg said that at the conclusion of the public's testimony, he would like to reserve the right to call any additional witnesses and said he feels the applicant has met his burden of proof.

Vice Chairman Abuchowski opened the hearing to the public for testimony. Attorney Gallina said there are objectors to this application who are represented by counsel and their counsel has an expert witness and as a courtesy we will have them give testimony first. Attorney Michael Lavery from Courter Korbert announced he is representing Mr. & Mrs. Columbro and Larry Marino. Attorney Lavery had Karen Columbro of Backhus Estate Road sworn in to give testimony. Ms. Columbro said there are racks and racks of metal on the property. Ms. Columbro stated her house is 199' from the property line and noted her house sits higher and there are reflections from the metal and lights. Ms. Columbro said there is a light pole with 6-8 lights on the pole that constantly shine in her house which are 10' plus above the garage. The lights are on from dusk to dawn. Her property is in back of the Edwards property and said the Edwards have bulldozed up to her property line and also up to the Marino's property line. Attorney Lavery asked about smells from the Edwards property. Ms. Columbro said there are horrible odors constantly coming from the property, there is the smell of diesel trucks, welding fumes, burning smells. Ms. Columbro stated the applicant has a 55 gallon drum that is used for burning. There is a propane tank attached to the drum to fuel it up and there are times that it smells like rubber burning. Ms. Columbro said she has seen numerous trucks on the property at one time including employee vehicles upwards of 20 vehicles. Ms. Columbro testified that vehicles with the Off Road Welding name have been on the property overnight. Referring back to the lights, she said when the lights are on they shine in every room of her house that faces the back of the property. Ms. Columbro said the smells come into her house and she has to keep the windows closed. She noted that they (she and her husband) had to install a \$2,000.00 air filtration system because of the pollution from the smells from the applicant's property which is daily.

Attorney Lavery asked if the driveway is paved. Ms. Columbro said part of it is paved and the rest has been expanded, they have taken bulldozers and have expanded and put down gravel to make more parking spaces. The Edwards have expanded up to their property line, bulldozing up to the Marino's property and bulldozed on top of the Lavezzi's property and have destroyed part of the Lavezzi's property trying to make more parking spaces. They (Edwards) have constructed a temporary garage on the Lavezzi's property to house all their vehicles.

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At this time Attorney Lavery said he had a number of exhibits that he wanted marked into evidence. The following items were marked: **O1**-copy of the Website page of Off Road Welding, **O2**-Photo from Spring 2008 of rear of Edwards property, **O3**-Photo from September 2008 of large septic truck of on-site work, Attorney Gruenberg objected to exhibit **O3**, **O4**-picture of a Press Break 10/5/2008, **O5**-Advertisement of hours of operation, **O6**-Photo of Garbage on site dated September 2008, **O7**-Photo of garbage, **O8**-Photo of light pole showing 6-7 lights on pole (2 sheets), **O9**-Letter dated September 15, 2008 to Construction Official Charles Rogers, **O10**-Notice of Order of Penalty dated November 12, 2008, **O11**-Printout of Edwards annual sales \$280,000.00 for 2007, **O12**-Printout of Edwards annual sales \$400,000.00 for 2008, **O13**-Photo of expanded work area with damages to the Marino property, **O14**-Photo of expansion of parking (impervious coverage), **O15**-2nd Photo of expansion of parking (impervious coverage), **O16**-Aerial View photo showing destruction of Lavezzi property dated 1/9/2009, **O17**-Photo showing structures and parking on Lavezzi property, **O18**-Backview of structures on Lavezzi property, **O19**-Photo showing parking of employee vehicles dated September 2008, **O20**-Fuel tanks exposed to traffic, **O21**-Fuel tanks possibly located in setback-letter from Zoning Officer Flemming, **O22**-Flammable Gas Chart, **O23**-Photo of burning, **O24**-Photo of burning with possibly fuel tank, **O25**-Photo of burning haze, **O26**-Complaint Report from H.C. Board of Health dated June 2, 2008, **O27**-Complaint Report from H.C. Board of Health dated August 4, 2008, **O28**-Newspaper Article of Acetylene explosion Washington Twp Public Works dated September 10, 2008, **O29**-Newspaper Article of Acetylene explosion of March 26, 2009, **O30**-Newspaper Article from New York Times Acetylene gas Blast in NJ dated January 26, 2005, **O31**-Newspaper Article Oxygen Tank Blast-Linden Plant dated May 14, 2009, **O32**-Newspaper Article on Oxygen Explosion, **O33**-Photo of Outdoor storage, **O34**-Photo of Outdoor Storage, **O35**-Photo of Outdoor storage, **O36**-Photo of Outdoor storage, **O37**-Photo of Outdoor storage, **O38**-Printout from website advertising Off Road Welding showing 4 mobile trucks. During the marking of the exhibits, Attorney Lavery had Ms. Columbro testify to each exhibit.

Attorney Lavery asked Ms. Columbro when she moved to Lebanon Township. Ms. Columbro responded saying she and her family moved to the Township in August 2001. Ms. Columbro said there is still a huge amount of metal being stored on the property and she still smells burning late in the evening around 11:00-12:00 and because of the smells, her son's asthma has gotten progressively worse. Ms. Columbro said her asthma has also gotten worse which is why they purchased an air filtration system and went on to say she is woken up in the middle of the night and early in the morning with the noise of all the vehicles coming in and can't enjoy her house anymore. When she is outside or with the windows open she hears the sound of a huge business which sounds like the combination of Johnny's Truck Stop and Bridgewater Autobody combined. At the conclusion of Ms. Columbro's testimony, Vice Chairman Abuchowski asked if the board had questions of the witness.

The board asked many questions of the witness. Mr. Nagie asked the witness how she knew the distance from her property line to the Edwards garage to be 199'. Ms. Columbro said the distance was noted on the site plan. The question was asked about the lights. Mr. Nagie noted there had been testimony that the lights were shaded. Ms. Columbro said that the light shined in her bedroom during the night. Mr. Nagie asked about the constant smell of welding. Ms. Columbro said she is home all the time. Question was asked about the hours of operation. Attorney Lavery interjected stating that Mr. Edwards's ad states

7am-7pm. Attorney Gallina said there was an exhibit illustrating a yellow page ad that stated the hours of operation from last year. Mr. Nagie questioned the comment regarding the 20 vehicles per day. Ms. Columbro said that she has witnessed up to 20 vehicles at one time on the property. Mr. Perry asked when they (Columbro's) moved in. Ms. Columbro said August of 2001. The Edwards moved in before them. The question was asked about the pictures that were taken and if they were taken on the Edwards property. Ms. Columbro said she has only been on the Edward's property once. The pictures were taken from the neighbor's property with permission along with pictures taken from her property. The properties in question are the Marino property, Hodgskin and Lavezzi property. Mr. Perry asked about the dumpsters. Ms. Columbro stated there have been up to 3 commercial dumpsters full and sitting for months. Mr. Perry asked about the diesel fuel. Ms. Columbro stated she smells diesel fumes all the time which makes her sick. Mr. Machauer asked Ms. Columbro how did she know that the work being done on the Edward's property was for the business vs for his home use. Ms. Columbro said that Mr. Edwards stated the garage is 100% for his business and he is working out of that garage, also has equipment there along with his employees. Mr. Machauer asked about the 20 commercial vehicles on the property. Ms. Columbro said at one time there were up to 20 vehicles including his employees, mobile trucks and his personal vehicles. There is a constant shifting of vehicles and that over the past

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several months the commercial vehicles have been stored on another site and wondered why the board didn't ask where they were being stored since they are in Lebanon Township. Ms. Columbro said that before the vehicles were moved there were 4 large vehicles, vans and said she has lost count. Mr. Machauer asked about the welding fumes. Ms. Columbro said the welding fumes are during the day, weekends, early in the morning into dust. Mr. Machauer questioned her about the burn barrel. Ms. Columbro said Mr. Edwards burns frequently averaging once a week. Mr. Machauer asked Ms. Columbro who filed the first complaint. This triggered some heated discussion between Attorney Lavery, Attorney Gallina and Mr. Machauer. In conclusion, Ms. Columbro answered the question stating she had contacted the Zoning Officer John Flemming after trying to speak to the Edwards getting no where. She informed Mr. Flemming that she believed the Edwards were operating a business. Ms. Columbro said that Mr. Hodgskin thanked Ms. Columbro for filing a complaint and said they should have done it years ago. Mr. Machauer asked why Ms. Columbro waited so long to file a complaint. Ms. Columbro stated she was trying to be a patient neighbor. Attorney Lavery objected to the questioning at this point. Attorney Gallina interjected regarding the objection made by Attorney Lavery. Attorney Gruenberg said the applicant has not conceded that this use is not a permitted use. Attorney Gruenberg said he thought this business was grandfathered.

Vice Chairman Abuchowski announced that the board will take a recess at this time 8:50 p.m. When the board reconvened at 9:05 p.m. the board continued with their questions. Mr. Maurizio asked Ms. Columbro when she first noticed the fumes and noise from the adjacent property. Ms. Columbro said she had been awakened in the middle of the night and then found that the fumes and noise were coming from

the Edward's property. Then everything started to escalate and they were not able to open their windows some days because of the fumes. It gradually got worse over time. It wasn't as bad as it became. Mr. Maurizio asked when there is work going on, is it possible that it could be private work or personal vs being business related work. Ms. Columbro stated it is business related work from what she has observed. The majority of work that goes on is business related. Mr. Maurizio questioned the distance of the 199' from the Columbro's property line to the Edward's property line. Mr. Maurizio noted with all the distance and vegetation, how could you probably observed everything. Ms. Columbro said it is extensive and you can see it through the trees and it is not as thick as you would think. During the winter months you can see everything plain as day per Ms. Columbro. Mr. Maurizio referred to the pictures noting that they look to be about 20-50' away not 199' away. Ms. Columbro said she took some pictures closer. Mr. Maurizio asked if Ms. Columbro has ever taken picture while on the Edward's property. Ms. Columbro said never because she didn't want to get into trouble.

Attorney Gallina asked if the 199' was from her house to the property line or from her house to the Edward's garage. Ms. Columbro responded saying the 199' is from property to property which is shown on the Edward's survey. Mr. Kozlowski asked Ms. Columbro if the noise/grinding is 7 days per week. Ms. Columbro said sometimes. Mr. Kozlowski asked about the constant smell of the diesel. Ms. Columbro said she smells diesel fuel constantly from her property along with some gasoline odors. Mr. Kozlowski asked about the encroachment on the Lavezzi property and was it resolved. Ms. Columbro said Mr. Flemming forced the Edward's to remove all the buildings on the Lavezzi property also a fence enclosure along with a hunting stand. Mr. Kozlowski asked Ms. Columbro about the dumpsters and the electrical panel when she spoke to Ms. Edwards. Ms. Columbro said she was informed that they bring garage from their off site jobs on to their property when there isn't enough room to throw the garage away at the job site. Mr. Kozlowski asked Ms. Columbro how she spoke with Ms. Edwards. Ms. Columbro said that she and Mr. Marino have spoken to the Edwards numerous times and the Edwards came on to Mr. Marino's property. Mr. Kozlowski asked if the air filter has been effective. Ms. Columbro answered sometimes and a few days after the last hearing she went to the doctors because there were horrible smells coming from the Edwards property which made her get sick.

Mr. MacQueen referred to the violations from the Construction Dept in Tewksbury Township and asked if these violations had been taken care of. Ms. Columbro said not everything has been resolved. Mr. MacQueen asked Ms. Columbro if she had called the Fire Dept because of open burning. Ms. Columbro responded asking Mr. MacQueen if he would have called if he saw open burning on his neighbor's property. Attorney Gallina interjected and asked for an answer to the question. Ms. Columbro answered yes that she had called the Fire Dept. but that the fire was put out before the Fire Dept showed up. Mr. MacQueen asked about the distance from the Edward's property to the Columbro's property regarding the 199'. At this point Engr. Risse was asked to measure the distance on the survey from the corner of the Columbro's house to the corner of the Edward's property in a straight line. The distance is 375' per Engr. Risse. The Edward's garage

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is 121' off the property line. Mr. MacQueen asked Ms. Columbro what she can see from her house which is about 400' from the garage? Ms. Columbro said her house sits high on the property and she can see down to the Edward's property. Mr. MacQueen asked when the County Bd of Health came out to the Edward's property if they were fined. Ms. Columbro said she didn't think they were fined, but given a warning. Mr. MacQueen asked if Mr. Edward's was still burning. Ms. Columbro said she's not sure if he is still burning. Ms. Columbro was then asked if the sheds had been moved. Ms. Columbro said there were 6 items on the Zoning Officer's list that he believed to be within the setback lines that will need to be moved at some point. Ms. Columbro felt that some of these items have been addressed. Ms. Columbro said there were still violations that needed to be addressed. Vice Chairman Abuchowski said references have been made that changes are being made on the property. Ms. Columbro said the next day after the application had been deemed complete, at 8:00 am there were 8 trucks filled with materials that were delivered to the site and their workers were extending the berm that is shown on the site plan. Vice Chairman Abuchowski questioned the relevance. Ms. Columbro said they were extending the impervious coverage. Attorney Lavery said the Highlands Council considers gravel to be impervious coverage. Vice Chairman Abuchowski asked Ms. Columbro if she has contacted the EPA. Ms. Columbro said if the board wants her to contact them she will. Vice Chairman Abuchowski said it is up to her if she wants to contact them, it's not what the board wants; it's only if she wants to. Ms. Columbro stated she wants to know if there has been any ground water contamination also because of all the pipes, metals and chemicals that have gotten into the ground. At this point there was discussion back and forth among Attorney Lavery and Attorney Gruenberg on this subject.

Planner Bolan noted there are nuisance standards in the ordinance. Either they comply or don't comply. Vice Chairman Abuchowski asked if any of these nuisances have been brought to the attention of Mr. Flemming. Ms. Columbro stated that in his letter there are constant complaints about odor and noises coming from the property. Ms. Columbro said she can smell and hear the entire business and has been hearing it for years. Vice Chairman Abuchowski used an example of a farm and spreading fertilizer or running a tractor at 7:00 am you will hear it or smell it. Ms. Columbro noted that farms are a permitted use, welding and burning is not a permitted use in a residential zone. Mr. Machauer referenced the grinding noise, is it constant with the same intensity, volume or change in pitch or sound? Ms. Columbro said it is a variety of smells, sounds that come from the business. Mr. Machauer asked if the odor would come and go with the wind. Ms. Columbro said that at times it is more intense whether it is in the back of her house or in the front of house. Mr. Maurizio asked if the smells could be coming from a neighbor's house. Ms. Columbro said the closer you walk towards the Edwards house and business the stronger the odor gets. Mr. Maurizio reiterated, could the odor be coming from a neighbor's house. Ms. Columbro said no. Mr. Kozlowski asked if things have gotten better since Mr. Edwards filed his application. Ms. Columbro said it has gotten better not since they filed, but since the hearings started. Ms. Columbro believes that the Edwards have been away and that's why she hasn't heard anything. Mr. Kozlowski asked if the Edward's have been responsive at all when she had these meetings in the back of the Marino property. Ms. Columbro said no, they made excuses for everything. Ms. Columbro stated that Ms. Edwards came to her front door and wanted to work something out if she didn't notify the Zoning Officer, but felt this had been going on for so long and they had been so uncooperative and it had escalated so badly that there was no way to work it out without having the Zoning Officer involved.

Vice Chairman Abuchowski referred back to the testimony given by the Edward's Planner regarding the noise levels. Apparently, the noise level was within normal standards and asked if Ms. Columbro had taken any undertaking to have an independent do sound levels at her property. Attorney Lavery noted that at the last hearing he had handed out to the board, the Clarksburg case that talks about how they changed the standards, the only way you can prove that a noise is a nuisance is to stand at the property line, bring in the County Board of Health who can measure the sound from the property line. Attorney Lavery noted they have not hired a sound expert.

At this time, Vice Chairman Abuchowski opened the hearing to the public for questions of the witness. Attorney Gruenberg asked Ms. Columbro when was the first time she made a complaint to the Edwards. Ms. Columbro said a couple of years ago (2-3 years). Attorney Lavery objected to the line of questions. At this point the discussion became somewhat heated between all three attorneys. When Mr. MacQueen interjected, Attorney Lavery told Mr. MacQueen he did not want him prejudging this application since this is a quasi judicial board. At this point the discussion became somewhat heated between all parties involved.

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Attorney Gruenberg said he wants to put on the record that Attorney Lavery has obstructed these proceedings and is trying to make this hearing go on and on so this hearing gets adjourned so his client spends more money. The board has been very tolerate of what's been going on with the last meeting and this meeting. Attorney Gruenberg stated his original question was when did Ms. Columbro first filed a complaint. The discussion again became somewhat heated. Ms. Columbro said she would answer the question. She said she had approached the Edwards about 2 ½ to 3 years ago and told them she could not deal with it anymore even though it started long before that. Attorney Gruenberg continued with his questions of Ms. Columbro. Attorney Lavery objected to the question. Attorney Gallina told Attorney Lavery he was being overly argumentative. Vice Chairman Abuchowski interjected stating they had 3 minutes left before we adjourn the hearing. Attorney Gruenberg again continued with his questioning of Ms. Columbro. Attorney Gruenberg asked questions regarding some of the exhibits that had been marked into evidence. At this point Attorney Gallina asked Attorney Lavery if he had any additional questions of his witness. The answer was no.

Vice Chairman Abuchowski asked Ms. Glashoff for a continuation date. Ms. Glashoff offered the 23rd of September. Everyone agreed to the date. Attorney Gallina made the announcement to the public.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$431.25 – Escrow (**Transtar/Tranquilli**)
 \$ 28.75 - Meeting Time ¼ hr. 7/22/2009
- b. Court Stenographer \$200.00 - Attend Meeting 8/12/2009

Total: \$660.00

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

CORRESPONDENCE:

- a. Zoning Law July 24, 2009 & August 7, 2009
- b. Law Bulletin June & August 2009

Being no further business to come before the board, nor comments from the public, motion by Mr. Perry and seconded by Mr. Nagie to adjourn the meeting at 9:53 p.m. Unanimously approved.

VICE CHAIRMAN ABE ABUCHOWSKI

GAIL W. GLASHOFF, BOARD SECRETARY