

## **REGULAR MEETING**

**Lebanon Township Board of Adjustment**

**September 23, 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 7:32 p.m. Vice Chairman Abuchowski. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen,

Mr. Perry, Mr. Nagie, 1<sup>st</sup> Alternate Eberle, 2<sup>nd</sup> Alternate Maurizio, Attorney Gallina, Engr. Risse.

**Excused:** Mr. Terzuolo, Planner Bolan.

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 September 16, 2009.

**PRESENTATION OF MINUTES:** September 9, 2009 Regular Meeting

Motion by Mr. Kozlowski and seconded by Mr. Maurizio to approve the minutes as presented. Unanimously approved.

September 9, 2009 Executive Session

Motion by Mr. MacQueen and seconded by Mr. Eberle to approve the Executive Minutes as presented. Unanimously approved.

**FYI – Memo from Board Secretary**

**UNFINISHED BUSINESS:**

Off Road Welding Co.                              Block #37 Lot #36.01  
c/o Michael & Fran Edwards                      Little Brook Road RC  
417 Little Brook Road  
Glen Gardner, N.J. 08826

**CONTINUATION OF A PUBLIC HEARING**              D Variance for a Commercial Use in a  
Residential Zone

Mr. Nagie informed the board that he visited the site. Attorney Gallina stated that at the appropriate time, any board member that visited the site and want to make a statement can do so. Attorney Gallina noted that the opposition represented by Attorney Lavery still has witnesses to give testimony. Attorney Lavery said he has their Planner and one other witness to give testimony this evening. Planner David Zimmerman was sworn in to give testimony on behalf of the opposition. Planner Zimmerman said that he has reviewed the file and the exhibits at the municipal building. He was also given the transcripts from the April 22<sup>nd</sup> and June 10<sup>th</sup> meetings to review. Planner Zimmerman said he was also in attendance at the last meeting of this application and has reviewed the Master Plan and ordinances. He also did a site inspection of the area. Planner Zimmerman stated he has several items he would like to get on the record. The first is the view of the subject property. Planner Zimmerman had an enlarged section of the Edwards property which is showed in the rear compound area. His clients live immediately behind the property. Planner Zimmerman noted he color coded certain sections of the property. The yellow is the existing house & deck. The red represents the commercial use, garage for the welding business, other structures (sheds, racks) that are used for the welding business. Also outlined in red is the area that is paved or utilized storage associated with the subject property. The dwelling unit on the plan is 1,676 sq. feet in size; the business building is 2,150 sq feet or 30% larger than the single family dwelling unit. The framed shed is 298 sq feet, the storage racks and aggregate are 225 sq feet. There is an area of bituminous pavement and outdoor storage area which is about 5,000 sq feet in size. The difference in scale between the single family dwelling which is suppose to be the principle use on the property and business building and business use in aggregate which includes the garage, concrete, storage area, racks etc comes to over 9,000 sq feet in size.

The business is the major use on this property per Planner Zimmerman. The applicant has submitted an application for D3 Variance asking for a Variance from conditions, standards in the Conditional Use Home Occupation. This is not the proper variance to be before this board. Planner Zimmerman said this should be an application for two principal uses on the property. Referring to Section 400-8b(5) of the zoning ordinance, Planner Zimmerman quoted that section of the ordinance. Also, the definition of Structure which is defined in the MLUL and the Lebanon Township Ordinance, "a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land".

## **Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 2**

The principle use on the property is the business use along with a dwelling use per Planner Zimmerman. Planner Zimmerman stated this is a D1 Use Variance and not a D3 Variance. Planner Zimmerman noted that one of the standards in the Conditional Use criteria in Section 400-11(6)a1, he quotes: "The Home Occupation shall be conducted entirely within a principal building or a permitted accessory building". In the definition section of the ordinance the definition of an accessory use or structure is as follows: A use or structure subordinate to and

customarily incidental to the principal use or structure on the same lot.

Attorney Gallina asked if Planner Zimmerman wanted to have the color coded version of the Site Plan marked into evidence. Planner Zimmerman answered yes. The following was marked into evidence: **039**-color coded version of Site Plan. Planner Zimmerman stated the ordinance allows for a Home Occupation to be in the home or accessory structure. The ordinance states that no more than 20% of the gross floor area of the principal structure can be used. It also states a Home Occupation can be in an accessory building. On April 22<sup>nd</sup>, the Zoning Officer John Flemming wrote a report to the Zoning Board. When Planner Zimmerman referred to the report, Attorney Gruenberg objected since Mr. Flemming is not present. Attorney Lavery interjected stating that the report was given to the board in advance of the hearings and that the report is relevant and that it is important for the board to hear what Planner Zimmerman has to say about what Mr. Flemming said in his report. Attorney Gallina noted that Mr. Flemming did give testimony at the beginning of the hearings. Attorney Gallina also said that reading from the memo is hearsay and Mr. Flemming did not represent himself as an expert in this matter. Attorney Lavery disagreed and stated that Mr. Flemming is the Township's Zoning Officer and serves the Township and he has issued a report to the board, which is his job and this Town hired him as the Zoning Officer and in doing so, must feel that he has some expertise in zoning matters. Attorney Lavery stated that the report has relevancy and it is a public document that was issued by the Zoning Officer. My client got this public document through an OPRA request. Attorney Gallina informed Attorney Lavery that he can have Mr. Flemming come to a meeting and give testimony on his report but it would be inappropriate to read from the report without Mr. Flemming being here.

Attorney Lavery said to make it clear since the court reporter is here, the board attorney is making a ruling; they can not introduce statements made in a report submitted to this board about this application. Attorney Gallina noted again that Mr. Flemming is not present this evening to testify and reading from his report would be just hearsay. Mr. Flemming has not professed any expertise in the planning area. Attorney Lavery said it is the job of the zoning officer to interpret zoning ordinances of the Township. Attorney Lavery asked Planner Zimmerman to continue with his testimony. Attorney Gruenberg objected again to Mr. Flemming's report. At this time, all three attorneys got into a discussion on the report from the Zoning Officer. Attorney Lavery stated he had a problem with the board receiving a report from a paid professional giving an opinion on application in front of them and objecting to his

Planner discussing that with the board. Attorney Gallina said that it was not part of Mr. Flemming's job to do a report to this board and it was objected to by Attorney Gruenberg. Attorney Lavery stated that the board has already accepted the report and not allowing his expert to talk about the report which the board has had for some time. Attorney Gallina noted that Mr. Flemming is not an employee of either board but of the Township.

It was agreed to have Planner Zimmerman continue with his testimony. Planner Zimmerman reviewed for everyone the Home Occupation Ordinance. In referring to accessory structures, it was noted that accessory buildings; are confined to being exactly what is stated in the definitions for accessory buildings; that it is subordinate to customarily incidental to the principal use or structure on the same lot. Planner Zimmerman stated he interpreted it as the accessory building can not be larger than the principal building or use on the property. The accessory building for the welding business including all the structures is in excess of what the ordinance contemplated for an accessory use. This use is not insubordinate or incidental, it is sufficiently larger than the principal structure on the property. The applicant has not applied to have two principal uses on the property and there has been no testimony to that effect. Planner Zimmerman said he could not see how the ordinance could be interpreted to allow something that is sufficiently larger than principal residential/structure on the property. Planner Zimmerman continued with the home occupation guidelines stating that this is far in excess of what anyone normally would consider to

be a home occupation. Planner Zimmerman referred to the definition of home occupation that is defined by the latest Illustrated Book of Development Definitions by Planners Harvey Moskowitz and Carl Lindbloom. They define Home Occupation as "customary incidental and accessory to the principal residential use". The home occupation must be carried out indoors without any outdoor storage. The residential appearance of the structure can not be altered. If you go on

**Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 3**

the Edwards property, you can see this is not the case; it is not a residential appearing piece of property. Planner Zimmerman said he looked at another planning book called "A Planners Dictionary" published by the American Planners Association which also has definitions from all over the country written by Planners Moskowitz and Lindbloom. The definitions are the same, "an occupation, profession, activity or use that is clearly a customary/secondary incidental use of a residential dwelling unit which does not alter the exterior of the property or affect the residential character of the neighborhood". Planner Zimmerman stated you want to have something that is an accessory to the residence and not have something that overtakes the property. An accessory building can not be larger than the principal building. This is 2 principal uses on the property. Planner Zimmerman did not understand how the Township could allow an accessory building/structure to be larger than a principal dwelling. Planner Zimmerman said in his opinion the applicant should be applying for a Use Variance.

Planner Zimmerman said the applicant should have applied for a D3 Variance which is a variance from a conditional use standard. At a prior hearing, the applicant also indicated, referring to the Coventry Square Case from 1994, the applicant was proposing a multi family project in Westwood, N.J. It was a conditional use with certain setback requirements in the zone. Planner Zimmerman quoted a section of that case to the board during his testimony. Planner Zimmerman referred to the Meridian Quality Care Case in Wall Twp. from 1992 and several other cases. These cases deal with Conditional Use applications. Planner Zimmerman said there is no case he is aware of that dealt with a conditional use application where the intensity of the use is greater than what the standards in the conditional use ordinance would allow. Planner Zimmerman said that the applicant in this case has a greater burden than in the garden variety conditional use variance cases to prove these variances can be granted. Planner Zimmerman referred to one more additional case from 1991 quoting, "the greater the disparity between variance sought and the ordinance restriction, the more compelling and specific the proofs must be to grant the variance as appropriate and will not be detrimental to the public good, zone plan and zoning ordinances".

Planner Zimmerman noted the property in question is undersize. The RC zone requires 7.5 acres and this property has 6.44 acres. The minimum lot wide is 350' and this property has 131.4' which is 1/3 of the requirement. The minimum lot frontage is 350' and the existing lot frontage is 235.5'. This property has an excessively large accessory building on an undersized lot, frontage and width. Everything is jammed in the rear area of the property next to existing homes. If this property were 15-20 acres, the situation might be different. With a larger property of 15-20 acres, it would give you a good buffer from homes in the area. Planner Zimmerman noted he reviewed the report from the board's Planner and the testimony of the applicant's Planner. The nature of the applicant's welding business represents an undue hardship to fully comply with the ordinances. Planner Zimmerman thought a hardship had to do with the shape of the property. The hardship with this application is the applicant wants more employees on the property than the ordinance allows. The applicant wants to use an area of his property outside of the accessory building for his business which is not allowed. We have an undersize lot and a compound area which is over built and over developed with a business in conjunction with the residence. In this Township we have an Industrial Zone and a Commercial Zone which would allow this type of use. We are not saying that this business can not exist in this Township, but it needs to be in the appropriate zone.

Planner Zimmerman stated the applicant is exceeding the number of employees #4 of the ordinance that are on the site and #7 of the ordinance states that there will not be a nuisance element detected beyond the property line in connection with the home occupation. During Planner Zimmerman testimony, the following was marked into evidence: **O40**-Aerial photo dated 2007 from the Hunterdon County Planning Board scaled 1" equals 300'. This photo shows the subject property outlined in blue and other properties outlined in yellow. On the photo you can see all the business, residence in the rear of the property which abuts two neighboring properties. These neighbors have put on the record there is a nuisance factor associated with this welding business. The property to the right, which is 26 acres, is currently vacant and can be developed for residential purposes. It would be a detriment to have future residences next to the applicant's property with the scale and size of the business. To the left of the property is a 13 acre parcel which can also be developed. That property would also have to put up with the nuisance factor. The subject property is a detriment to the public good. Planner Zimmerman quoted from Section 400-11A "a

conditional use does not substantially impair the use and enjoyment of surrounding properties and does not substantially impair the character of the surrounding area and does not

**Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 4**

have any substantial adverse effect on surrounding properties”, this speaks of a negative criteria pertaining to what the public good is all about. Planner Zimmerman referred to the Master Plan page 2 under guiding principles: “the essential character of Lebanon Township which is a community of single family homes and farms which shall be maintained. Commercial development shall be limited to development nodes where services and facilities can be provided and maintained most economically. Industrial development, which this business is a species of, should be sharply restricted as it produces negative affects on the residential and agricultural nature of the Township.” On page 6, “to provide for a proactive approach to physical design and community planning so that adjacent land uses function compatibly and harmoniously in terms of scale and location”. Planner Zimmerman said this use violates the objectives of the Master Plan. This application suffers from 1) being a use variance application over and above a application for conditional use and 2) the applicant has not provided the extensive testimony that should be required for this type of use application, 3) it violates the spirit intent of what we want as a home occupation on a residential piece of property in a residential zone and 4) the property is too small and the location of the business is in the worst location on the property since it abuts single family properties and lastly, it has not satisfied the negative criteria and it is contrary to the principals, goals and objectives of the Township Master Plan.

At the conclusion of Planner Zimmerman’s testimony, Vice Chairman Abuchowski announced the board will take a short recess. The board recessed at 8:35 p.m. When the board reconvened at 8:45 p.m. Attorney Gruenberg had questions of Planner Zimmerman. Attorney Gruenberg questioned Planner Zimmerman on his comment regarding the building being a principal versus an accessory structure for the business. Planner Zimmerman said it is the size of the building and the activities along with the other structures on the property which in aggregate lead him to his conclusion that it is a principal use and structure in terms of the welding business along with the principal dwelling unit. Planner Zimmerman said that’s why he went through and talked about the amount of area used for paving, storage racks, sheds, tank racks. Attorney Gruenberg referred to the pond areas in front of the residential home. Attorney Gruenberg referred to A10 which shows a substantial area devoted to the front of the property with a long drive leading up. Attorney Gruenberg asked the Planner if he has been on the property. Planner Zimmerman answered no, stating that he has been at the front of the property and at the rear of the property. Attorney Gruenberg asked Planner Zimmerman where in the rear of the property he was. Planner Zimmerman stated he was on the property between the garage and the property line about a month and a half ago. Attorney Gruenberg asked where he was in the front of the property and Planner Zimmerman said he was on Little Brook Road. Attorney Gruenberg asked if the Planner knew how many

people live in the house. Planner Zimmerman said no. Attorney Gruenberg asked if the Planner knew if there were any children living in the house. Planner Zimmerman said he assume there are children since on Exhibit **O39** shows a playhouse and play area. Attorney Gruenberg asked if the Planner knew of the area for the dogs. Attorney Lavery objected to the question regarding the area for the dogs, since it has nothing to do with anything. There was discussion regarding the dog pens by the attorneys. Attorney Gruenberg continued with his questions of the witness. Attorney Gruenberg asked if Planner Zimmerman knew how the Edwards used the pond. Planner Zimmerman said people use a pond for different reasons and he did not know how the Edwards used the pond.

Attorney Gruenberg questioned the Planner on the size of the garage area along with the nature of the use and asked if the owner used the garage for welding for his own personal use would that be permissible. Planner Zimmerman said yes, if it were for his own personal use. Attorney Lavery objected to this line of questions. Attorney Gallina said since this is just hypothetical there was nothing wrong with the questions. Attorney Gruenberg referred to the testimony given by Planner Zimmerman regarding the conditional use standards and the two standards that the applicant needs relief from. The board needs to decide whether the property is appropriate for a conditional use even though there are variances and even though the application does not satisfy those particular standards. The standard in terms of the focus on Coventry Square is on the effect of the surrounding properties of the granting of the variances for the specific deviations from the conditions purposed by the ordinances. Planner Zimmerman said yes. Attorney Gruenberg said the board is to take a look at those two deviations to determine whether there would be an affect on the surrounding properties which would make it no longer suitable. Attorney Gruenberg asked if the Planner agreed. Planner Zimmerman said no, the board has to do two things, 1) there are 3 standards that are in violation, the one standard is the welding business has to be conducted entirely in the principal building or the permitted accessory building, secondly, not more than one non-resident employee, the application says 3-5 employees and has been modified to 3 and lastly, there should be no nuisance element and we have a nuisance element with this use, 2) relates to

### **Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 5**

what the ordinance says regarding conditional uses. Planner Zimmerman went over some of the standards that the board should consider which are the ten specific standards of which the applicant violates three of those ten standards. Attorney Gruenberg went over those standards with Planner Zimmerman. Attorney Gruenberg asked how often are the employees on the property. Planner Zimmerman stated from testimony given only 10% of the time. Planner Zimmerman asked how do you police that, how do you determine if the employees are there 10%, 40% or 50% of the time. Even though the board can impose conditions, Planner Zimmerman noted that it would be impossible to enforce. There was some heated discussion between the attorneys regarding smoke readings and a noise study. At the conclusion of the questions by Attorney Gruenberg, the board had questions of the witness.

Mr. Machauer asked if the purpose of the home occupation is to allow a person to earn a small amount up to full earnings. Planner Zimmerman said the earnings have nothing to do with the home occupation. Mr. Machauer asked several more questions one of them being if a person lived in a small dwelling and had a building larger than the dwelling would that be allowed. Planner Zimmerman did not think it would satisfy the requirements of the ordinance. Mr. Machauer questioned Exhibit O40. Mr. Maurizio questioned the relevance of the size of the dwelling unit versus the accessory building. Mr. Maurizio asked if there was any relevance to the fact that if all of the work was done on the property would it change your opinion of the situation. Planner Zimmerman said he is well aware from the testimony by the applicant and it would not change his opinion. Mr. Maurizio referred to the upper right hand corner of the picture and asked the Planner to identify it. Planner Zimmerman said a house and pond and stood corrected. Mr. Maurizio referred to the property on the left side and to development in the future. Mr. Maurizio asked if the Planner was aware that the Township is in the Highlands and development is not possible. Planner Zimmerman said no. Mr. Maurizio referred to the RC zone and asked if Planner Zimmerman knew what the zoning was for this property before the rezoning. Planner Zimmerman answered 5 acre zoning. Mr. Maurizio said when this property was developed it had more than the 5 acres required. Planner Zimmerman said this has been a long standing non-conforming use on this property. The prior owner never got board approval for his home occupation and never did the current owner until they were brought before this board sited by the zoning officer. This property has continuously been used in a way contrary to the township's zoning ordinances

Mr. Eberle asked about the surrounding areas, were there accessory structures on those properties. Planner Zimmerman said he saw detached garages and on the farm type properties there were barn structures. Mr. Eberle asked if a Morton Building would be out of character for Lebanon Township. Planner Zimmerman said no. Mr. Eberle asked if the Planner knew the size of the homes on Backus Estates Road. Planner Zimmerman said about three to four thousand square feet. Mr. Eberle asked if a 2,000 sq. ft. building would be out of scale for those properties. Planner Zimmerman said yes. Planner Zimmerman said you are limited to 20% of the home, but not limited to the size of an accessory structure. Planner Zimmerman said he did not look at the impervious coverage, which might be an additional factor as far as limiting you on the property. Planner Zimmerman said in driving around the township he saw some home occupations but none of the magnitude of the one in question. Mr. Eberle asked if it would be inherited beneficial to have the emergency vehicles worked on in the township. Planner Zimmerman said no.

Mr. Nagie asked about the nuisance element and what constitutes a nuisance. Planner Zimmerman said that nuisance is defined as "annoying act or person". A nuisance with an ongoing business is very different from a passing truck. The nuisance that is associated with this use is far over and above what is reasonable to expect on a residential piece of property. Attorney Gallina interjected regarding Planner Zimmerman referring to his opinion. Attorney Gallina said Planner Zimmerman's opinion is what his findings are based on, which are the facts, law and regulations that he has reviewed on this issue. Mr. Perry said when he was on the property, the location of the houses of Planner Zimmerman's clients and where the building is on the property, regarding noise, it seems it is quite a distance. Mr. Perry said all noises are annoying. Mr. Perry asked how do you tell when a noise is considered a nuisance. Planner Zimmerman said the distance from the houses to the business is about 300-350 feet. Mr. MacQueen noted the garage is 121' from the property line. One objector's house was 375' from the applicant's property line, one was 294' from property line and the other was 305' from property line. Planner

Zimmerman said that his clients are not complaining about normal residential everyday noises, but engines starting, diesel engines, etc. are noises that you would not want to hear.

Vice Chairman Abuchowski referred to substantial nuisance & substantial detriment, in 0-100 where do you put substantial. Planner Zimmerman stated there are two prongs, 1) substantial

**Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 6**

detriment to the public good and the second one under the heading of negative criteria is substantial impairment to the zoning ordinance and Master Plan. Planner Zimmerman said that

he did not see anything in the Master Plan that would support this application and saw paragraphs and statements in the Master Plan that would be contradictory to this use and the granting of this use. Planner Zimmerman said per the zoning ordinance, there is nothing in the application that conforms to the zoning ordinance and when you look at the three standards, the applicant has more people on site, some off the site and they have substantial amount of activity, use, pavement, storage, outdoor storage in conflict with what the ordinance says that should be contained within the building itself. Attorney Gallina referred to the Coventry Square standard, there is language on how the board is to deal with negative criteria with regard to substantial detriment to the public good and the court stated as follows "in respect to the first prong of the negative criteria that the variance can be granted without substantial detriment to the public good the focus is on the affect of the surrounding properties of the grant of the variance for the specific deviations of the conditions imposed by the ordinance. The Board of Adjustment must evaluate the impact of the proposed conditional use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute a substantial detriment to the public good. The second prong, the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The board must be satisfied that the grant of the conditional use variance for this specific project at the designated site is reconcilable with the municipalities legislative determination that the condition should be imposed on all conditional uses in that zoning district. The legal criteria as to how the board goes about evaluating negative criteria as to the term substantial". Mr. MacQueen asked Planner Zimmerman, when he was out at the site did he hear any noise, smells or odors and also asked what time of day was he on site. Planner Zimmerman said no to the noise smells etc but he was on site around 6:30 in the evening. Mr. MacQueen asked since Planner Bolan was not present this evening, will there be a time when he can ask questions. Attorney Gallina said that Planner Bolan will need to listen to the tapes from this evening.

Vice Chairman Abuchowski opened the hearing to the public for questions. Since there were no questions from the public, Attorney Gruenberg asked if this matter is adjourned would Planner Zimmerman be returning for questions of Planner Bolan. Attorney Lavery asked to have Planner Bolan review the testimony and if he had questions of Planner Zimmerman then he would come back. Vice Chairman Abuchowski asked if Attorney Lavery had any other witness. Attorney Lavery said one more

witness. Attorney Gallina offered October 14<sup>th</sup> for a continuance. The October date was not good, November 12<sup>th</sup> a Thursday was offered as the next date which everyone agreed too. Attorney Lavery asked if his final witness could give his testimony this evening and noted it would be brief. Attorney Gallina sworn in Larry Marino to give testimony. Mr. Marino stated his property is directly behind the Edwards property. Mr. Marino stated he feels this has been prolonged and unreasonable period time when neighbors had to live with the uncertainty of whether the Township would allow an industrial welding operation in a residentially zoned area or if the Township would entertain an application for a conditional use variance. Mr. Marino said he relied on the advice of Township Officers to determine how to address this issue. After discussion with Township Officials and research conducted by the neighbors, it appeared that the industrial welding operation violated the zoning regulations that were to protect land owner rights. Mr. Marino said he checked to see if any variances were granted for neighboring properties and if there were any outstanding variance applications that would impact his decision to purchase his property. All surrounding properties were residential and there were no pending applications. Mr. Marino went on to say that over the years, the activities on the Edwards property generated noise, odors and lighting concerns at all hours of the day, night and weekends. When these activities reached a persistent and intolerable level that some of the neighbors discovered the Edwards were running a welding business out of their detached building. The neighbors spoke to the Zoning Officer Mr. Flemming to see if he had the right to conduct his business. The neighbors worked with Mr. Flemming for over 17 months to address this issue. Mr. Marino said the Zoning Officer did an inspection of the property and validated that a welding business was being operated on the property along with other violations which Mr. Marino relayed to the board that Mr. Flemming informed them there were no grandfathered rights to operate this business on the property. Mr. Marino said that the Edwards were looking into other sites for their business. After several months, Mr. Flemming informed them that the Edwards had decided to file an application for a use variance because it was too expensive to relocate. Given the proceedings of the last two board meetings focused on this issue, their concerns have escalated. The omission of Mr. Flemming raises concerns among the neighbors since he has been the single point of contact for all of their communications

regarding this issue of the last 17 months. The disturbances from the Edwards property were frequent and occurred at all hours of the day, night and weekends. Mr. Marino said since he is

#### **Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 7**

not home during the daytime, but was frequently disrupted by the noise, smells and lights coming from the Edwards during the evenings, weekends and sometimes into the night. Mr. Marino

stated that this application has been erroneously minimized by the applicant, his attorney and planner. Also, safety issues associated with operating a welding business in a residential zone has been understated. In order to document the facts, they were told to take pictures to document the activities to prove their valid complaints and to refute some of testimony provided by the applicant. He purchased his property 7 years ago and thought he was going to live in a peaceful environment. Mr. Marino said that he listens to ripping of metal, smells of burning materials, clanging of scrap metal being dropped into dumpsters and trucks coming and leaving the property and lights that shine throughout the night in his

home. Mr. Marino stated the Edwards are operating a heavy industrial business out of their primary residence located in a residential neighborhood.

Mr. Marino went on to say he could not imagine that anyone on the board would be happy to live next door to this type of operation. When Mr. Marino mentioned that his real estate agent advised him that living next to an industrial operation would impact the value and marketability of his property, Attorney Gruenberg objected to the comment stating that no testimony has been given. Attorney Gallina stated that the comment is not admissible. Attorney Lavery asked Mr. Marino with this industrial operation next to your home would it reduce the value. Mr. Marino answered yes. Mr. Marino said that since Mr. Edwards did not check with the Township on the legality of his operation it does not give the board cause to approve his request from a conditional use variance for a Home Occupation. Mr. Marino requests that the board deny this application to insure compliance with the Township rules and regulations.

At the conclusion of Mr. Marino's testimony, Vice Chairman Abuchowski asked if the board had questions of this witness. Mr. Machauer asked if Mr. Marino had invited Mr. Flemming to the meeting. Mr. Marino said he was informed that members of the board uninvited Mr. Flemming to the meeting and did not see any relevance for Mr. Flemming attending. Mr. Perry said it was the first time he heard this regarding Mr. Flemming. During the discussion, Attorney Gallina quoted the ordinance regarding the duties of the Zoning Officer. Attorney Gruenberg objected to all the hearsay in the contained statement by Mr. Marino. Mr. Nagie questioned Mr. Marino regarding the Zoning Officer attendance at meetings. Mr. MacQueen asked if the hot house and the building on the neighbor's lot have been removed. Mr. Marino said it was taken care of. Mr. MacQueen said that Mr. Edwards has applied to the Construction Dept. to resolve a lot of the building problems and Mrs. Columbro had said that the whole operation is now tolerable and asked Mr. Marino for his opinion. Mr. Marino said he doesn't have as much experience as Mrs. Columbro during the summer months since he is away a lot. Mr. Marino was asked if it is noisy now. Mr. Marino said it is not noisier than it was before but can't say at this time if the noise has been reduced. Mr. Marino said that things have decreased since this application has been before the board. Mr. MacQueen asked about the taking of pictures. Mr. Marino said that Mr. Flemming told them to take pictures.

Attorney Gruenberg asked about the landscaping that has been done by the applicant. Mr. Marino noted the berm has been built up with trees, but during the winter months when all the foliage is down in his yard he can see the recreation vehicles that are parked on the line, can see every vehicle that drives into the property and the other items on the property. Attorney Gruenberg asked about shielding the lights. Mr. Marino said that this came up 1 year ago and it was only a couple of months ago that it was taken care of since the application has been before the board. The light still shines into his bedroom window at night. At this time, Vice Chairman Abuchowski opened the hearing to the public for questions. There were none.

Attorney Gallina announced this hearing will continue on Thursday November 12<sup>th</sup> at 7:30 p.m. with no further notice given.

**PRESENTATION OF BILLS:**

- a. John Gallina, Esq.            \$287.50 – Attend Bd Mtg 9/9/09 & Legal Research Escrows
- b. Court Stenographer        \$200.00 - Attend Bd Mtg 9/23/09

**Total: \$487.50**

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

**Lebanon Township Board of Adjustment**

**September 23, 2009**

**Page 8**

Being no further business to come before the neither board, nor comments from the public, motion by Mr. Perry and seconded by Mr. MacQueen to adjourn the meeting at 10:00 p.m. Unanimously approved.

---

**VICE CHAIRMAN ABE ABUCHOWSKI**

---

**KIMBERLY JACOBUS, ACTING SECRETARY**