

North Middleton Township Public Hearing

Tuesday, March 18, 2008

Third Pine Floor Partners/Motor Freight Terminal

Conditional Use Hearing #12

Township Building

2051 Spring Road

Carlisle, PA 17013

The hearing was held by the Board of Supervisors at the North Middleton Township building on Spring Road, in Carlisle, PA.

Attendance

Board of Supervisors Members-**Richard Bucher** (Chairman), **Dennis E. Hurley**, **Robert Reisinger**, and **Harry Kelso**

Solicitor-**Mark W. Allshouse**

Codes Enforcement Officer-**Paul Fegley**

Brehm-Lebo Engineering-**Greg Lebo**

Recording Secretary-**Michael S. Medvid**

Reporter-Kathy Plizga

Visitors:

Laura C. Lenhart-1190 Neville Road, Carlisle, PA

Rick Hoover-1190 Neville Road, Carlisle, PA

Arlene Calaman-1160 Neville Road, Carlisle, PA

Harold Calaman-1160 Neville Road, Carlisle, PA

Jean Heishman-1162 Neville Road, Carlisle, PA

Stewart Heishman-1162 Neville Road, Carlisle, PA

Ron Lucas-Stevens & Lee, 17 North 2nd Street, Harrisburg, PA

Pat Arbegast-1178 Neville Road, Carlisle, PA

Terry Arbegast-1178 Neville Road, Carlisle, PA

Jason Scott-The Sentinel

William P. Moore-1200 Neville Road, Carlisle, PA

Joan Moore-1200 Neville Road, Carlisle, PA

Norma Gayman-1192 Neville Road, Carlisle, PA

Merle Gayman-1192 Neville Road, Carlisle, PA

Andrew Gaul-1174 Neville Road, Carlisle, PA

Kenneth Lehman-1194 Neville Road, Carlisle, PA

Phyllis Kotzmoyer-1194 Neville Road, Carlisle, PA

Chris Peters-41 East 1st Street, Boiling Springs, PA

Nathan C. Wolf, Esquire-10 West High Street, Carlisle, PA (C.C.N.M.T.)

Harry Roth-1681 Crown Avenue, Lancaster, PA, 17601

Roy Lindstrom-1172 Neville Road, Carlisle, PA

Kim Lindstrom-1172 Neville Road, Carlisle, PA

Jason Malmont-The Sentinel

Shelley Wetzels-1188 Neville Road, Carlisle, PA

Tim Whitcomb-Carlisle, PA

Jack Shepley-1015 Mumma Road, Wormleysburg, PA
Winston Cleland-308 Summit View, Carlisle, PA

Call to Order

Chairman Richard Bucher called the hearing to order at 6:30 p.m. and led the Pledge of Allegiance.

Chairman Bucher had one administrative note. He mentioned that Supervisor Shearer would not be present this evening. Mr. Bucher asked for any other administrative comments from his fellow supervisors. None were offered. Mr. Bucher turned over the proceedings to Solicitor Allshouse.

Conditional Use Hearing, Third Pine Floor Partners/Motor Freight Terminal (Continued)

Mr. Allshouse began by mentioning Applicant's Exhibit 60, which he noted was discussed at the last hearing and is known as "The Statement of North Middleton Township Zoning Ordinance History." Mr. Allshouse stated that he had personally checked this history, along with the Codes, to be sure that the statement was correct. He further said that the exhibits have now been attached to that statement, and that those exhibits likewise have been verified to be the correct exhibits. He noted that the only exception is that Exhibit "B" does contain some highlighting done by the Applicant in order to show some color. Solicitor Allshouse stated that the record should reflect that A-60, the original, contains highlighter that was placed on by the Applicant for the purpose of showing the difference between light manufacturing and heavy manufacturing only. He pointed out that the color itself holds no significance. Attorney Lucas said he wished to state for the record that he obtained that information and confirmed it with the Zoning Officer. Mr. Allshouse indicated that as noted at the last hearing, he will take judicial notice of that document, along with the exhibits, based upon the fact that those are records which were created and/or stored in North Middleton Township. Mr. Allshouse asked if it was correct that this closed the Applicant's case. Mr. Lucas acknowledged that this was correct. Mr. Allshouse said he was pretty sure that Exhibit 60 will be admitted because he is taking judicial recognition of it.

Solicitor Allshouse explained that Attorney Wolf will be proceeding on behalf of his clients this evening. He stated that Mr. Wolf has provided notice of two individuals, together with a report. Mr. Moore and Mr. Lucas indicated that they had received copies of the reports. Mr. Wolf stated that at the outset he didn't initially intend to offer too much in regard to proposed conditions, but asked that there be an opportunity at the end to submit proposed conditions, if it appears that that may be the direction the proceedings are taking, as opposed to a denial. Mr. Allshouse briefly suggested to Mr. Wolf that he may wish to provide suggested conditions to the Board in the form of a written legal memorandum.

Mr. Wolf noted that A-4 (the site plan) had been supplemented as of the last hearing with a new site plan which includes a turnaround. He asked if the Board intends to permit any modifications to that site plan pending the completion of the Objectors' case. Mr. Wolf asked that the Applicant not be permitted to supplement that site plan with changes as deficiencies are brought up, so that the "goal post isn't continually moving" as the opposition case is being presented. He asked for the opinion of Solicitor Allshouse. Mr. Allshouse said he didn't think it would be unreasonable that a supplemental plan not be submitted during the Objectors' case but that the Board will probably allow modifications to the site plan prior to the end of the hearing if the Applicant chooses to do so after hearing the Objectors' case. He explained that this would especially be the case if some of those modifications address concerns that are raised. Mr. Allshouse asked Mr. Lucas if he would object to holding any modifications until after Mr. Wolf presents his defense. Mr. Lucas stated that any changes would be made during rebuttal. Mr. Allshouse noted that Mr. Wolf will have a chance to address those changes at that time.

Mr. Wolf called Harry Roth at this time. The witness was sworn in. Mr. Wolf submitted as Objectors' Exhibit #8, Mr. Roth's resume as a community planner. Mr. Lucas stated that he would stipulate with regard to Mr. Roth's resume if Mr. Wolf intends to present it as an exhibit. Mr. Wolf also submitted a client list of Mr. Roth's, which he identified as Objectors' Exhibit #9. Mr. Lucas had no objections to the client list. Mr. Wolf stated that he intends to offer Mr. Roth's report as Objectors' Exhibit #10. The witness identified himself as Harry Roth. He stated that his business address is 1681 Crown Avenue, Lancaster,

PA, and that he is self-employed as a community planning consultant. Mr. Roth testified that he is a certified planner and is a member of the American Institute of Certified Planners.

At the request of Mr. Wolf, Mr. Roth summarized his background and experience in community planning. Mr. Roth testified to previously working with North Middleton Township on the Township's Comprehensive Plan and the Zoning Ordinance that was adopted in 1997. Mr. Roth acknowledged that he had prepared a report on the Conditional Use Plan in this matter. Mr. Wolf offered Mr. Roth as an expert in municipal ordinance drafting and in community land planning. Mr. Lucas pointed out that Mr. Roth is not an attorney. Mr. Lucas objected to Mr. Roth being used to give his opinions and interpretations of what are legal issues. Mr. Moore had nothing to say on this issue. Mr. Wolf responded to Mr. Lucas's objection. Mr. Lucas indicated that he did not object to Mr. Roth speaking from his past experience as a land planner. Mr. Allshouse stated that Mr. Roth will be accepted as the purpose of a community land planner. He further stated that the Board will not hear legal argument or Mr. Roth's interpretation of the intent of the ordinances.

Mr. Roth testified that he is the author of the report dated March 5, 2008, which has been identified as Objectors' Exhibit #10. Mr. Roth testified at length in response to questions from Mr. Wolf. What follows is a brief summary of portions of the hearing.

Mr. Wolf began with some questioning about the Conditional Use process. He mentioned, as an example, that a note has been provided regarding lighting on this property. He asked Mr. Roth if he believes this is acceptable. Mr. Roth stated the Zoning Ordinance places a heavy burden of proof on the Applicant in that it requires that the Applicant demonstrate compliance with all applicable provisions of the Zoning Ordinance. He explained that this is so that everyone who is concerned about this application is informed as to the techniques that the Applicant is going to use in proposing this use and its operation, and that this should be done as part of this process. Mr. Roth testified as to the difference between a Conditional Use and/or Special Exception, and a permitted use. Mr. Roth stated that a use is not just a use and that the design and operation of a site must be considered as part of the Conditional Use process. Mr. Wolf asked if this goes to the site location as well. Mr. Roth replied, "Absolutely." He expounded on this further.

Mr. Wolf then referred to the report submitted by Mr. Roth. Mr. Wolf noted the 300-foot frontage requirement found in Section 204-109.A of the Zoning Ordinance. Mr. Roth explained the difference between lot width and frontage. Mr. Roth testified to what generally is the purpose of the frontage requirement. Mr. Wolf asked Mr. Roth to describe the recommendation he had made with regard to the frontage requirement. Mr. Roth stated that he recommended that "the Township impose a 300-foot minimum, contiguous minimum lot width frontage requirement...I'm sorry...a minimum 300-foot frontage requirement in this case." He described what he believed would be the adverse impacts of not having this requirement.

Mr. Wolf asked Mr. Roth to provide his opinion as to what the potential negative impact would be if this use were to be permitted. Mr. Roth noted that Section 204-109.A requires that all access drives on a property be separated at least 150 feet from another. There was some discussion of the access drive between 1200 and 1198 Neville Road. Mr. Roth testified that the Applicant's proposed access drive will be closer than 150 feet to the existing access drive. Mr. Roth referred to the site plan. He noted that the property has other principal uses, including two dwelling units. He testified that the Zoning Ordinance does not allow residences to be accessory uses to a motor freight terminal. Mr. Roth referenced Section 204-32. He stated that to have multiple principal uses in this case, the requirement would be a minimum of 550 feet of road frontage. He testified that this property does not provide that. Mr. Roth noted that the dwellings are non-conforming and can continue under the non-conforming use provisions. He added that he believes this is what the Applicant intends to do.

Mr. Roth testified that the second deficiency that relates to this "same flavor of concern" is that each individual use must demonstrate compliance with the lot coverage. He stated that the Applicant has indicated a total lot coverage, but has not done so with respect to the portions of the property that would be related to the dwelling units. He explained this further. Mr. Roth stated that the Applicant is required to provide separate vehicular access to each proposed land use. He referred to the Amanda J. Johnson

dwelling and noted that two land uses are relying upon the same vehicular access. At this point Mr. Lucas objected to what Mr. Roth had stated. Mr. Lucas stated that the Ordinance does not say what Mr. Roth had just testified to. Mr. Allshouse overruled the objection. Mr. Lucas indicated that he would cross-examine Mr. Roth on this point.

Signage was briefly discussed. Mr. Roth acknowledged that based on his information, this use does not propose any sign. He testified that the Application should include any proposed signage to demonstrate compliance with the Ordinance. Mr. Roth referenced numerous sections of the Ordinance. He commented on sign submissions, and noted that these typically go beyond just a site plan. Mr. Wolf asked Mr. Roth if he has seen any ground floor plans or elevations of proposed structures. Mr. Roth testified that he has not. Mr. Wolf asked if these are required under 204-134.A.(1). Mr. Roth stated, "They are." He acknowledged that it was his understanding that there is at least one proposed structure that is not in existence at the present time.

Mr. Wolf referenced Section 204-134.B.(2). Mr. Wolf asked Mr. Roth if he had reached an opinion on what the impact of this proposed usage will be on the use and enjoyment of adjoining or nearby properties. Mr. Roth indicated that he had. He stated that this opinion is based upon his review of the application, the narrative, and the site plan. He also testified that this is based upon his experience in community designs that promote compatibility and minimize adverse impact. Mr. Wolf asked Mr. Roth if there is anything in particular about this site that he believes implicates Subsection B.(2). Mr. Roth replied, "If this site isn't one that is applicable under these conditions, I don't know of any." Mr. Roth testified that in his opinion, the proposed use, as it has been presented on the site plan, will have an adverse impact on the adjoining properties. Mr. Roth described this site as "very unusually located and configured." He noted the depth to width ratio and the planned industry in and around a string of mature houses that have been there for decades. He mentioned the difficulties with having non-conforming residences in an industrial zone. He stated, "I think that it compels more careful attention to the design of the property, if it's permitted at all."

Mr. Roth continued to give his opinion on why he believes there will be an adverse effect on the residential properties. He stated that traffic is going to be a "huge issue" and described the possible problem of traffic stacking on the road in front of the homes. Mr. Roth said he believes that the proposed screening will not work as effectively as it would under normal circumstances. He explained that because the residences are non-conforming, a residential buffer strip is not required. The issue of lighting was discussed. Mr. Roth stated that he believes the Applicant has not provided enough information to show that there will not be an impact on adjoining properties, and that there isn't any way for him as a community planner to evaluate what the impact of lighting will be on adjacent properties. He acknowledged that there are no specific lighting requirements in the Ordinance for motor freight terminals. Mr. Wolf mentioned the proposed parking areas on the site plan. He asked Mr. Roth if there is a section of the Ordinance that requires a lighting plan with regard to parking areas. Mr. Roth referenced Section 204-36.C.(d). Mr. Roth said there is a requirement under C.1.(d) that lighting be depicted for any parking area. He testified that he has not seen any depiction of lighting on any site plan that he has reviewed.

At approximately 8:19 p.m., Solicitor Allshouse called for a recess. The hearing resumed at 8:30 p.m.

Mr. Wolf continued his questioning of Mr. Roth. Mr. Roth commented on how he believed "neighborhood" could possibly be defined in this area. He testified that he believes this proposed use will adversely impact the neighborhood. He mentioned traffic congestion, conflicting traffic movements, activity levels, movement of vehicles, light, noise, and air pollution. Mr. Roth testified that he believes there are other permitted and conditional uses for the I-2 Zone that could be accomplished on this site that "wouldn't present the acute potential for harm that this one does." He stated that if this proposed use didn't adjoin 20-some residences, the impact would not be the same. Mr. Wolf mentioned the lot frontage requirement. Mr. Roth testified that he could not recall any other situation where non-contiguous portions were used to meet a minimum lot frontage or lot width requirement. Mr. Wolf had no further questions at this point.

Mr. Lucas began his cross-examination of Mr. Roth at 8:39 p.m. Mr. Lucas referenced numerous sections of the Ordinance during his questioning. His questions of Mr. Roth pertained to various definitions and requirements in the Ordinance. Mr. Lucas referred to Mr. Roth's earlier questioning about the effect on the use and enjoyment of nearby properties. Mr. Lucas noted Mr. Roth's comments about the design of the lot. Mr. Lucas asked Mr. Roth if it was correct that there isn't any specific requirement of the Zoning Ordinance that would not permit the design of this lot. He asked if it was correct that nothing in the Zoning Ordinance would preclude the exact dimensions of this lot. Mr. Roth stated that he did not know and would have to review the Ordinance. Mr. Lucas asked if there is any requirement in the Subdivision and Land Development Ordinance that precludes it. Again, Mr. Roth stated that he would have to investigate it.

Mr. Lucas showed Mr. Roth a copy of A-60. Mr. Lucas asked if it was correct that this property and the abutting properties have been zoned some form of industrial since the first Zoning Ordinance was drafted in 1966. Mr. Roth acknowledged that this is what the report indicates. Mr. Roth acknowledged that he was involved with the preparation of the Township's Comprehensive Plan in the mid-90's. Mr. Lucas showed Mr. Roth A-13, which he explained is the Comprehensive Plan. At the request of Mr. Lucas, Mr. Roth read a portion of A-13 which recommends industrial uses in this area of the Township. Mr. Lucas referred to the current version of the Zoning Ordinance. He asked if there is a specific buffer requirement between I-2 properties and adjacent non-conforming residential uses that are zoned I-2. Mr. Roth responded, "Unfortunately I do not believe there is." Mr. Lucas listed many of the permitted industrial uses for this property. Mr. Roth testified that any industrial use will have some impact on the adjoining non-conforming residential uses.

Mr. Lucas asked Mr. Roth if he had prepared the 5-page letter labeled as Objectors' Exhibit #10. Mr. Roth stated that he had. Mr. Roth testified that he had done no specific studies, and that the opinions he has given are based on his review of the application, the narrative and the site plan. At this point Mr. Lucas went into detail about his objections to the report submitted by Mr. Roth. Mr. Wolf responded to Mr. Lucas's objection to Objectors' #10. Mr. Allshouse asked Mr. Moore if he had any objections to Mr. Roth's report. Mr. Moore had no objections. Mr. Allshouse accepted Objectors' Exhibit #10.

Mr. Lucas indicated that he wished to cross-examine Mr. Roth on the contents of the report since it is now being accepted as evidence. Mr. Allshouse said it was likely that Mr. Wolf will want some redirect, but that this will not be done tonight. Mr. Wolf noted that Mr. Roth is available for the next scheduled hearing on April 2, 2008 if Mr. Lucas wishes to continue the cross-examination on the written report at that time. Mr. Wolf had no objections to Mr. Lucas continuing the cross-examination at that time. Mr. Allshouse stated that the next hearing would begin with the continuation of Mr. Lucas's cross-examination of Mr. Roth.

At this point Solicitor Allshouse indicated that he wished to get through Mr. Moore's questions and the Board's questions tonight. Mr. Roth responded to a brief question from Mr. Moore. Mr. Bucher asked Mr. Hurley for his questions. Supervisor Hurley asked Mr. Roth to itemize the list of what he believes will be the unusual adverse impacts on the neighboring residents. Mr. Roth stated that traffic impact from this property is going to be "enormous." In addition to traffic impact, Mr. Roth mentioned not enough road frontage for stacking, activity in close proximity to the rear yards of residences, the effectiveness of the screening, and the lighting. Mr. Roth stated that this ordinance contemplates better protection between industrial land uses and adjoining residential properties. He further stated that this is an unfortunate situation where an established non-conforming neighborhood is sitting in the middle of an industrial zone. Mr. Hurley asked if there will be a health impact. Mr. Roth replied that he is not qualified to answer this, but that he suspected there will be.

Mr. Hurley referred to the traffic issue and asked if there will be a safety impact with transitions to and from the nearby properties. Mr. Roth said he believed there is potential for this and that the traffic engineers will be able to itemize those potentialities. Supervisor Hurley asked if there will be an impact on property values. Mr. Roth replied that this use will lower the property values, with one possible exception. He explained that the exception would be if the Applicant were to somehow purchase those properties, and that this could potentially increase the value of those properties. Mr. Roth mentioned the possibilities of noise impacts and air pollution. He suggested that there be considerations for having vehicles properly

muffled and in good working order. He also mentioned reducing airborne emissions and idling as being among the considerations that this board should look to impose if the use is to be granted. Mr. Hurley asked about the possibility of trucks transgressing the buffer and going onto the yards of the residences. Mr. Roth pointed out that he is not a trucker, but recommended that a much better buffer be considered due to the proximity of the houses.

Chairman Bucher asked Supervisor Kelso for his questions. Mr. Roth responded to several questions from Mr. Kelso. Mr. Roth testified that he has never seen someone using multiple non-contiguous lots to meet a minimum frontage requirement. Mr. Roth suggested that expert opinion be sought as part of this process to determine the potential hazards of stormwater. Mr. Roth said that the right-hand turn lane into the property could cause stacking beyond the frontage of this property and adversely affect the neighboring properties. Mr. Roth then responded to a question from Mr. Kelso about having more than one principal use coexisting on the same lot. Supervisor Reisinger had no questions. Supervisor Bucher had no questions. Mr. Roth stepped down at this time.

Solicitor Allshouse stated that the hearing would be continued at this time. He then listed the documentary evidence being entered on the record at this time as follows:

- Applicant's Exhibit #60/Accepted
- Objectors' Exhibit #8 and Objectors' Exhibit #9/Stipulated to
- Objectors' Exhibit #10/Objections heard and accepted

Mr. Allshouse noted to Mr. Wolf that his 100-day period, which began today, ends on June 26, 2008. Mr. Allshouse listed the upcoming scheduled hearings as follows:

- Wednesday, April 2, 2008, at the Township Building, beginning at 6:30 p.m.
- Wednesday, April 16, 2008, at the Township Building, beginning at 6:30 p.m.
- Wednesday, May 7, 2008, at the Township Building, beginning at 6:30 p.m.
- Wednesday, May 14, 2008, at the Township Building, beginning at 6:30 p.m.

Mr. Allshouse stated that the next hearing will begin with Mr. Lucas's cross-examination of Mr. Roth and will then proceed to Mr. Wolf's redirect. Mr. Allshouse asked for any other questions for administrative purposes. Mr. Allshouse responded to a question from Mr. Lucas about the scope of his continued cross-examination. Mr. Moore had nothing for the good of the order. Mr. Wolf had nothing for the good of the order. Mr. Allshouse turned the proceedings over to the Board for a motion on the continuation.

Adjournment

Chairman Bucher asked for any administrative comments to wrap up the evening. None were offered.

Chairman Bucher moved that this hearing be continued until Wednesday, April 2, 2008 at 6:30 p.m. Supervisor Kelso seconded. All were in favor, and the motion carried. The hearing adjourned at 9:53 p.m.

Respectfully Submitted,

Deborah A. Ealer
Township Secretary

Michael S. Medvid
Recording Secretary