

November 10, 2011

Mr. Kirkpatrick called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:05 p.m. The Sunshine Statement was read.

Members Present: Mr. Nace, Mrs. Corcoran, Mr. Badenhausen, Mr. Ryland, Mr. Ford,  
Mr. Kirkpatrick

Members Absent: Mr. Bischoff, Ms. McBride, Mr. Walchuk, Mr. Taibi, Mr. Kastrud

Others Present: Atty. Mark Anderson, Robert Clerico, Beth McManus, Atty. Donald Morrow, Robert Zederbaum, Robert Hoffman, Tylman Moon, Brian Fitzpatrick, Lisa Frantz, Stephen Hurford

**Public Hearing cont'd. - Lehigh Gas/Jutland Convenience Store: Block 13, Lot 11.01, 169 Perryville Road:** Atty. Morrow asked Engineer Zederbaum to address issues raised by the Board at the last meeting. Mr. Kirkpatrick said there were only six members present and Mr. Ryland was not eligible to vote. Atty. Morrow thought the best solution was for applicant to proceed with the balance of their presentation, ask absent members to review the transcript and grant the Board an Extension of Time to Act. Mr. Kirkpatrick said the Extension should be granted until January 1, 2012. Atty. Morrow requested a consent, on behalf of his client, to grant the extension until January 1, 2012.

Mr. Zederbaum proceeded with testimony. He presented four exhibits. Exhibit A-5 was a revision of Sheet 5; Exhibit A-6 was a revision of Sheet 4; Exhibit A-7 was a revision of Sheet 12 and Exhibit A-8 was a new Sheet (12a). Mr. Zederbaum said roof runoff was directed away from the existing paved area toward vegetated strips. Mr. Kirkpatrick asked if there was a new outfall and if it was located in the transition area. Mr. Zederbaum said that was correct. Mr. Kirkpatrick said a Freshwater Wetlands Permit would be required. Mr. Zederbaum said applicant would not want to apply for another permit and would direct the runoff around the side of the building as it has been.

Mr. Zederbaum said the trench repair detail is shown on modified Sheet 12 as requested by Mr. Clerico. Existing curbing and changes to curbing are shown on Sheet 5. Concerns were raised regarding access for physically handicapped and widening the sidewalk for wheelchair access. Sheet 12 has a diagram showing how someone in a wheelchair can properly enter the building. Mr. Zederbaum said applicant has exceeded what is required by Federal Regulations. Mr. Kirkpatrick said applicant's planner thought the access was tight. Mr. Zederbaum emphasized that the situation is not tight. Mrs. Corcoran asked the rule. Mr. Zederbaum said a minimum of sixty inches is required and sixty-four inches is provided. He also said Regulations require thirty-six inches past the doorway so a wheelchair can pass the door and enter the building. Mr. Zederbaum indicated applicant proposes more area than required by Regulations. Mrs. Corcoran asked the size of the door and was it one door or two. Mr. Zederbaum said it is a double door.

Mr. Zederbaum referenced Mr. Clerico's concern about widening the sidewalk, modifying the concrete pad and leaving a three-foot strip of that pad. He said the new Plan shows the three-foot strip removed and that area paved. Mr. Zederbaum said the whole area in front of the sidewalk would be designated as a non-stopping and parking area. Mr. Zederbaum said more detail has been provided regarding the vegetated strips for removal of TSS. Seeding of the strips is shown on the Landscaping Plan. The Plan had been submitted to Mr. Hintz (shown on Exhibit A-5). Stop signs and stop bars have been added on both entrances and exits, as requested by the Board (shown on Exhibit A-6). Applicant confirmed that the line coming in the back of the building is the electrical service. Curb details have been modified to indicate that all curbing constructed on site would be concrete (shown on Sheet 12a).

Mr. Zederbaum addressed the proposed septic system. Mr. Kirkpatrick had been concerned about the calculations submitted with the Plan regarding water usage. Applicant calculated usage of 265 gallons per day (GPD) and designed the septic disposal bed for 350 GPD. After discussing the matter with Robert Vaccarella at the Hunterdon County Health Department (HCHD) applicant expanded the disposal bed to accommodate up to 700 GPD. Mr. Zederbaum said the septic design shows a double-compartment tank for treatment of wastewater. Sewage would flow in the first compartment. Solids would flow into the second compartment for cleansing, with the remainder entering the disposal bed. Mrs. Corcoran asked the size of the tanks. Mr. Zederbaum said he would forward the information to the Board office.

Mr. Zederbaum thought had had addressed Board concerns. He said revised drawings would be submitted to the Board and will include Tylman Moon's Architecturals. Mr. Nace asked about removal of water from the canopy. Mr. Zederbaum said the water comes down the leaders and empties on the ground. Atty. Morrow indicated the flow would not increase.

Mr. Ford asked Mr. Zederbaum if revised plans had been submitted to Messrs. Clerico and Hintz. Mr. Zederbaum said they would be provided. He said Garden Associates, applicant's Landscape Architect, had talked to someone at Mr. Hintz's office. Beth McManus, from Mr. Hintz's office, reviewed changes. She said one additional tree had been added along the northern property line, Spirea at the corner of the northeast of the parking lot would be replaced with a smaller shrub and the seed mix had been changed. Ms. McManus said a few plants should be added in the southeast corner of the parking lot. She said plantings should not inhibit the ability of the vegetated strip to cleanse water. Mr. Nace asked if the proposed Viburnum in the southeast corner would be replaced with a smaller type shrub. Viburnum grows tall and could inhibit visibility of vehicles backing out of parking spots. That issue had been raised at a previous Hearing. Ms. McManus indicated she would speak with Mr. Hintz about that matter.

Atty. Morrow asked if the Board had other questions. Mr. Kirkpatrick said there would be no questions on the testimony of the aforementioned topic. He did ask for additional testimony from the Traffic Engineer. Atty. Morrow called Robert Hoffman to come forward. Mr. Hoffman said, as requested by Mr. Ford at the previous Hearing, he had prepared a table that summarized the increase in delay when comparing the no build versus build conditions. Mr. Ford had questions about movement of traffic at the four-way intersection by Perryville and Frontage Roads and the I-78 off ramp at Frontage Road and the Site driveway. Mr. Hoffman explained how the movements would occur. Mr. Ford asked about stacking at the I-78 off ramp. Mr. Hoffman said he did not know the number of cars that could stack at the ramp. Mr. Ford said there are also trucks at the ramp. Mr. Clerico asked Mr. Hoffman to provide a que length stacking assessment to address the stacking concerns. Mr. Ford said trucks stacking at the light at Perryville and Frontage Roads obstruct access onto eastbound lanes of Frontage Road. He said figures provided by Mr. Hoffman indicate that the situation would worsen if the development was approved. Mr. Kirkpatrick said that essentially the Level of Service would be F. The Board has concerns about someone getting rear-ended. He did not feel there would be a significant cue increase because of additional time for movement. Mr. Hoffman said he would provide the cue analysis as requested by Mr. Clerico.

Mr. Ford asked Mr. Hoffman if he could present evidence about similar situations. Mr. Kirkpatrick said Mr. Hoffman had testified earlier that the accuracy of surveys was generally within ten percent and they were within that range. Atty. Anderson asked the purpose of Level of Service Classifications. Mr. Hoffman offered an explanation. Mrs. Corcoran asked Mr. Hoffman if trucks turning left off of the ramp were factored into the model. Mr. Hoffman indicated that was part of the study. He said traffic counts included cars and trucks. Mr. Ford voiced his concern about blind spots created by trucks lined up on the ramp and the likelihood of a car that squeezed by the truck being broadsided by a westbound vehicle. Atty. Morrow did not think any study could take into account people violating the law. Atty. Anderson said it was a valid concern of the Board.

In response to a concern of Mr. Ford, the ranges of Level of Service Classifications A – F were stated by Mr. Hoffman. There would be different delay standards for intersections that were signalized and those that were not signalized. Mr. Kirkpatrick said effectively what he sees is there are negative impacts of traffic circulation significant enough to raise concerns for the Board. He asked what could be done to mitigate the negative impact. Mr. Hoffman said generally it would be signalization and that cannot be done at this location. He said the State would require certain volumes of traffic in order to install a signal and he did not believe there would be enough of increase to warrant the signal. Mr. Hoffman also said there would not be adequate space between a new signal and the existing signal. Mr. Kirkpatrick said there could be changes in the operation of the existing signalization.

Mr. Kirkpatrick referenced another project at which time the traffic engineer indicated traffic would not increase enough to present a problem. He said the Board and Committee have received many complaints about increased traffic. Mr. Kirkpatrick re-emphasized the Board's concern about safety at the intersection and thought they would probably find the project unacceptable. Mr. Hoffman said that the requested analysis would be provided. However, he thought the referenced site was different. Mr. Kirkpatrick said the testimony and conclusions were similar. Mrs. Corcoran had a concern about the time applicant had taken traffic counts. She said peak truck traffic might be different from those hours. Mrs. Corcoran emphasized the issue of extreme conditions when there were a lot of trucks making left turns at the intersection. Mr. Kirkpatrick asked Mr. Hoffman if he had done a destination analysis. Mr. Hoffman said the turning movements had been recorded.

Mr. Kirkpatrick asked for questions for Mr. Hoffman from Professionals or the Public. Mr. Ford wanted to reserve the right to question Mr. Hoffman further after additional information is received. Steven Hurford, 25 Main Street, Jutland, asked if anybody thought there would be more truck traffic because of the proposed change in use. Mr. Hoffman said in his opinion, "No". He also said it was discussed that trucks would be prohibited. Mr. Ford said trucks are inherent at the intersection and the problem would be exacerbated. Mr. Nace asked Mr. Hoffman if he had taken into account that there are coffee shops at all four corners of the intersection. Mr. Hoffman said that was captured in the traffic counts. Mr. Nace noted that some people would not buy gas at Exxon and thought that having coffee at the Shell Station might reduce traffic at other corners. Mr. Hoffman said that is his client's hope. Mr. Kirkpatrick said the pass-by analysis was missing. If convenience facilities were not available, traffic would continue on Route 78.

Mr. Kirkpatrick asked if there was another witness. Atty. Morrow said the Board had questions regarding architecture and security and Mr. Moon was present. Mr. Moon said modifications had been made to drawings. He presented new drawings that were marked Exhibits A-9 and A-10. The colored rendering (A-9) showed the color being changed, with the trim remaining white. The eastern end of the building has four glass windows with black-painted plywood behind them. Exhibit A-10 consists of drawings Sheets 1 through 6, revised date of October 25, 2011. Sheet 1 shows the emergency fuel shutoff disconnect switch between the easternmost door and the entrance into the sales area of the building. Also shown is the fuel oil tank for the air handling and heating system of the existing building. The electric meters are located on the rear of the building in the position as shown on the floor-plan drawing.

Sheet 2, revised plan, shows the fuel oil tank for the heating system in the same position. Electric meters have been relocated to a recessed area on a concrete pad in the proposed mechanical storage area. The heating system and air handler are above the ceiling over the bathrooms. The reach in refrigerator remains as previously shown. Cameras are located adjacent to the door into the proposed mechanical space, the egress area on the west side of the building, inside the front door and the proposed sales area.

Mr. Moon described the exterior lighting that includes a gooseneck fixture by the door on the western side of the building, three fixtures providing illumination on the sign over the front door and recessed fixtures in the canopy. Mr. Moon said there are three glass exterior windows with black backing on the eastern side of the building. Mr. Moon said Drawing 3 of 6 shows existing conditions of the front, north and eastern elevations. Drawing 4 shows existing conditions for the west and south elevations. Drawing 5 of 6 shows the proposed new north elevation across from the pumping stations. Two exterior security cameras are shown on the sloping part of the roof of the south elevation. The camera for the eastern elevation is shown on Drawing 6. Mr. Kirkpatrick asked the coverage area of the cameras. Mr. Moon thought the cameras had a lens that would provide wide coverage without directing light into neighbors or drivers eyes. The canopy is less ornamental than previously proposed since the Board had expressed a concern about the appearance of the eastern side of the building.

Mr. Moon said Drawing 6 of 6 shows the lighting fixture outside the door on the western side of the building, the location of the security camera and the refrigeration box at the rear of the building. He said elevations of the roof leaders coming from the gutters are consistent with Mr. Zederbaum's Drawing for water management.

Mr. Kirkpatrick asked about the resolution of the camera, where the recorder is located and the frequency that photos would be taken. Mr. Moon deferred to Ms. Frantz. Ms. Frantz said the two cameras at the corner would have a full view of the front. They are observed from remote locations so they can watch what is going on in the store as well as observing general behavior and activity. Mr. Kirkpatrick asked if the resolution of the camera would be sufficient to record a license plate number and be able to recognize a face. Ms. Frantz replied in the affirmative. Mr. Ford asked Ms. Frantz if he understood correctly that signals from cameras were sent to another location. Ms. Frantz said "Yes". Mr. Nace asked Mr. Moon the distance the canopy on the east side of the building extended and if it was high enough for a tanker truck to go underneath it. Mr. Moon said the canopy extended about three feet and there should be adequate clearance.

Mr. Kirkpatrick asked if Professionals had any comments or questions for Mr. Moon. Ms. McManus said she was pleased to see windows on the east elevation of the building. It was in keeping with the character of the Township.

Mr. Kirkpatrick asked for comments from the Public. There were none.

Atty. Morrow asked that Environmentalist Brian Fitzpatrick comment on the letter from Hydrogeologist Uhl. Mr. Fitzpatrick was sworn by Ms. Grozinski. Mr. Kirkpatrick asked Mr. Fitzpatrick to state his credentials and the topic he would be testifying to. Mr. Fitzpatrick said he has a degree in geology and has 25 years of experience as an environmental consultant, investigating and remediating contaminated groundwater and soil in New Jersey, Pennsylvania, Louisiana and a number of other states.

Mr. Fitzpatrick said he would be testifying with respect to environmental conditions at the subject property. He had not testified before other Boards in New Jersey. He is a Professor of Geology in Pennsylvania and a Subsurface Evaluator in New Jersey. Mr. Kirkpatrick said he would accept him as an expert on the topic. He asked the Board if they had any questions about Mr. Fitzpatrick's qualifications. There were none.

Mr. Fitzpatrick said there is an open case with the NJDEP from 1998 that relates to the removal of an underground diesel tank. The responsibility for the resolution of that case remains with Haynes Motor Oil. Mr. Fitzpatrick said there is one monitor well on the site and one potable well. Lehigh Gas has a report submitted by a consultant on behalf of Haynes that was issued to the DEP in 2002 and that is the latest data they have for the monitoring well. Lehigh has samples from the potable well indicating that there are no detectable levels of any volatile organics or any gasoline constituents. Mr. Fitzpatrick had nothing more regarding groundwater conditions at the site. He said tanks are monitored as required by State and Federal regulations. Lehigh Gas has those records. Mr. Fitzpatrick said no issues have arisen that triggered an investigation. Atty. Morrow asked Mr. Fitzpatrick if the proposed use would be better environmentally than the auto repair center and service station. Mr. Fitzpatrick indicated the proposed use would be better. Atty. Morrow referenced the matter before the DEP. Mr. Fitzpatrick said that under the agreement Haynes signed with Lehigh Gas, there is no access to the monitoring well, unless there was a triggering event. Mrs. Corcoran asked about the type of event. Mr. Fitzpatrick said it would be a release from the tank, a spill at the site.

Mr. Badenhausen asked for more information about the diesel tank. Ms. Frantz said the DEP Website states that the diesel tank and a kerosene tank were removed. Mr. Fitzpatrick said the removal triggered the 1998 investigation. Mr. Badenhausen asked if there was any kind of threat from the diesel tank. Mr. Fitzpatrick said no, other than residual contamination as contained in the 2002 report. Mr. Clerico asked about ongoing remediation. Mr. Fitzpatrick said the DEP case number is required to be closed. He said there is nothing in the State file indicating anything is occurring. Mrs. Corcoran asked if Lehigh Gas had an agreement allowing a representative from Haynes to do sampling of the well. Mr. Fitzpatrick indicated there was an agreement. Mr. Clerico asked the location of the monitoring well. Mr. Zederbaum said it is shown on the Plan. Mr. Fitzpatrick said the monitoring well is clearly marked. Mr. Badenhausen asked how often the well was monitored and if findings were logged. Mr. Fitzpatrick said the last documents were submitted in 2002.

Mr. Clerico asked Mr. Fitzpatrick if he had conversations with Mr. Uhl about findings. Mr. Fitzpatrick said he had not. Mrs. Corcoran asked if there was any documentation about the relationship between Lehigh Gas and Haynes and the responsibility between the two parties regarding contamination. Atty. Anderson said he was not aware of any. Mrs. Corcoran thought the Board should have that information. Mr. Kirkpatrick asked if Lehigh Gas had testing protocol for the potable well to see if contamination migrates into the potable well.

Mr. Fitzpatrick said currently it is not required to be monitored with any frequency. He understood with the proposed use, the well would have to be monitored annually. Atty. Morrow said the well had been tested and submitted as part of the application. Ms. Frantz submitted the test reports to Mr. Uhl. Mr. Kirkpatrick asked for comments or questions from Professionals. Ms. McManus said she had none. Mr. Clerico said he spoke with Mr. Uhl and he understood that Mr. Uhl was waiting for documentation regarding prior contamination. He said that applicant should contact Mr. Uhl because the Board would need to hear from Mr. Uhl before they vote. Mr. Fitzpatrick said he would contact Mr. Uhl. Atty. Morrow felt the DEP had little concern about the site since they have not followed through; however, he said the Board is entitled to information. Mr. Kirkpatrick said there are three questions. Does Haynes have the ability to continue to do any clean up that DEP might require; does the existing contamination pose a threat to drinking water that is available to the public and is there an adequate system in place to detect any contamination of the potable well? Atty. Morrow said those were also applicant's concerns. Mr. Kirkpatrick asked for comments from the Public. There was none.

Atty. Morrow said a Board member had inquired about pricing. He asked Ms. Frantz how gas prices were determined. Ms. Franz said comparisons are made with what other gas stations are charging and the delivery cost, after which time a price is set. Mr. Kirkpatrick asked if the fuel price was controlled by Lehigh Gas or their supplier. Ms. Frantz said Lehigh Gas controls the price if they operate the station. If the station is leased to a commission agent who does not take title to the gasoline and is not subject to the rules of the Petroleum Marketing Practices Act (PMPA) then Lehigh Gas controls the price. If the station is operated by a dealer under the rights and privileges and protections of the PMPA Lehigh Gas does not control the price. Mr. Kirkpatrick asked which scenario would be prevailing at this site. Ms. Frantz said it is expected to open as a company operated location. After that it could be operated by a tenant or dealer. The Exxon Station is operated by a dealer and they set their own price. Mr. Kirkpatrick asked Ms. Frantz if she could say how the station would be operating in the long term. Ms. Frantz said "Not forever, no".

Mr. Kirkpatrick asked Ms. Frantz about the price of fuel in the future. Would the site become a discount station or would the price remain similar to what Shell pricing is in the long term. Ms. Frantz said they would have no reason to give the product away. Mr. Kirkpatrick asked if Lehigh Gas would be the supplier of gas. Ms. Frantz said "Yes". It is a franchise type of relationship. Lehigh Gas would control the wholesale cost of gas. Mr. Kirkpatrick asked if it was anticipated that Lehigh Gas would provide fuel at a wholesale cost so that the price could be less than surrounding stations. Ms. Frantz said that is not their business model and she did not foresee a change. Mr. Ford asked if Lehigh Gas or any affiliated company operate any other station in Hunterdon County, and if so, where. Ms. Frantz said Lehigh Gas supplies the Mobil and Shell stations at Exit 11 and the Exxon station on Route 31 in Clinton.

Atty. Morrow said applicant had supplied a list of places in New Jersey. Ms. Frantz said she picked facilities similar to the subject site. Mr. Ford asked if any in Hunterdon were not similar to subject property.

Ms. Frantz mentioned the Mobil station at Exit 11, the Exxon station on Route 31 in Clinton and Paul's One Stop on Route 31 South... Mr. Kirkpatrick said he thought he heard earlier that the combination of service bays and fuel supply was no longer a viable combination of services provided at this type of facility. Ms. Frantz said their planner testified to that. Mr. Kirkpatrick said one of the facilities provided with the list of similar facilities included a gasoline station and service bays. Was that facility economically viable? Ms. Frantz explained. She said that facility had an operator with a loyal clientele. However, when he did not want to continue, there was no one to take over.

Mr. Kirkpatrick said he had nothing further. He asked for questions and/or comments from the Public as well as Professionals.

Atty. Morrow said applicant would provide que analysis. Information showing that Haynes representatives can come on subject property to monitor wells and the agreement Lehigh Gas with Haynes would also be provided. Mr. Clerico asked when plans would be provided. Mrs. Corcoran requested information regarding the septic system design. Mr. Zederbaum said site plan drawings would show the design. Mr. Kirkpatrick emphasized that information should be provided at least twenty days in advance of the next Hearing. The next meeting is December 8, 2011. Mr. Zederbaum said the plans would be submitted next week. Mr. Hoffman said the queing information would also be submitted promptly. Mr. Clerico urged Mr. Fitzpatrick to communicate with Mr. Uhl in order for Mr. Uhl to report to the Board. Atty. Anderson understood that on December 8, 2011 there would be potentially additional testimony and questions and that the Hearing was being carried to that date. Mr. Kirkpatrick indicated the Traffic Engineer would be most significant. Atty. Anderson said the Hearing was carried until December 8, 2011, without further notice.

**Motion to Adjourn:** Mr. Ford made a motion to adjourn. Mr. Badenhause seconded the motion. (9:10 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary

