

December 8, 2011

Mr. Ford called the workshop meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Nace, Mrs. Corcoran (7:10 p.m.), Mr. Badenhausen, Mr. Ryland, Mr. Taibi, Mr. Kastrud, Mr. Ford, Mr. Kirkpatrick

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

Others Present: Atty. Mark Anderson, Robert Clerico, Carl Hintz, Atty. Donald Morrow, Robert Zederbaum, Robert Hoffman, Lisa Frantz, Lucille Grozinski, John Titus, John Brennan, George Maloof, Stephen Hurford

Approval of Minutes: Mr. Kirkpatrick made a motion to approve the minutes of the September 29, 2011 meeting. Mr. Kastrud seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Kastrud, Mr. Nace, Mr. Ryland, Mr. Ford

Abstain: Mr. Badenhausen, Mr. Taibi

Issue of Completeness: Titus: Block 9, Lot 1.6, 12 Serpentine Drive and Brennan: Block 9, Lot 1.5, 10 Serpentine Drive – Lot Line Adjustment: Mr. Clerico had submitted a letter dated December 1, 2011. He gave an overview of the letter that outlined deficiencies in several pertinent checklist items of the application. Mr. Clerico recommended the Board deem the application complete. Mr. Kirkpatrick said applicant needs to show existing conditions and what they are proposing. Applicant must also prove that all bulk standards of the Ordinance would be met and that no permits would be required from the NJDEP.

Mr. Kirkpatrick made a motion to deem the application incomplete for the reasons set forth in Mr. Clerico's December 1, 2011 letter. Mr. Kastrud seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Kastrud, Mr. Nace, Mrs. Corcoran, Mr. Badenhausen, Mr. Ryland, Mr. Taibi, Mr. Ford

Lehigh Gas/Jutland Convenience Store, Public Hearing cont'd.: Block 13, Lot 11.01, 169 Perryville Road: Atty. Morrow, representing applicant, said Robert Hoffman had submitted a que report. Mr. Hoffman displayed an Exhibit, marked A-11, entitled Figure One Ramp Observations, dated November 16, 2011. Mr. Hoffman said it was also in the Queing Report. He described the queing that occurs on the eastbound off ramp and the potential with redevelopment of the subject property. Mr. Hoffman said there is a potential of a three-vehicle increase, which should not cause any safety issues related to traffic exiting from I-78 to the back of the cue. Mr. Kirkpatrick summarized. He said there are measurable increases in delays with the proposed change in use at the site. Mr. Kirkpatrick also said no mitigation measures were proposed for the increase in delays. Mr. Hoffman indicated there would be an increase in delay; however, there would be no change in the level of service.

Mr. Kirkpatrick said there were changes in the level of services at all intersections. Atty. Morrow asked Mr. Hoffman if the impact was di minimus. Mr. Hoffman replied in the affirmative. Mr. Kirkpatrick said that was a matter of opinion. He noted the Township Committee concurs regarding the function of the intersection. The Committee has discussed the situation with the County and the State. Mr. Kastrud asked who was in control of timing of the light at the intersection. Mr. Hoffman said the State has jurisdiction.

Mr. Ford asked who would grant approval to close the northern driveway on Perryville Road. Mr. Hoffman said it was the County. Mr. Clerico indicated that the narrowing of the entrance driveway off Frontage Road would require a sign-off from NJDOT. Mr. Hoffman said that was correct. Mr. Kastrud asked at what point the DOT would get involved. Mr. Hoffman said if this was a new project or a major modification to a driveway within the State Right-of-Way. Mr. Kastrud voiced concerns about worsening conditions at the intersection. Mr. Ford had concerns about trucks making left turns at the intersection and proceeding to the traffic light, creating a backup. Mr. Clerico brought up the matter of a change in the timing of the light or anything that would improve the situation. He recalled Mr. Hoffman indicated there was nothing that could be done. Mr. Kastrud asked the typical cycle for a traffic light. Mr. Hoffman said the subject light runs on a ninety-second cycle. Mr. Kastrud asked how long the light stays red for eastbound traffic on Frontage Road. Mr. Hoffman said it varies, depending upon demand. Mr. Kirkpatrick said the signaling on Perryville Road does not have the left hand delay. Mr. Hoffman agreed. Mr. Kirkpatrick asked if changing the timing of the signal at Perryville Road would improve or decrease delays. Mr. Hoffman thought it would decrease. He said there are two components. Traffic volume was one component and the second was that time would have to be taken from somewhere to achieve the signal change.

Mr. Kirkpatrick and Mr. Ford asked about signage that no left turns could be made at the bridge. Mr. Hoffman indicated he would take a look at that proposal. Mr. Kirkpatrick said westbound traffic seems to be the biggest problem at the intersection.

Mr. Ford asked for other questions for Mr. Hoffman from Board Professionals or the Public. There were none. Atty. Morrow noted that the Board was concerned about DEP requirements for cleanup. He said Ms. Frantz had forwarded a letter to the Board secretary explaining that Haynes has the right of access to the property to satisfy DEP requirements. Applicant's Planner, Mr. Fitzpatrick, had sent a letter to Vincent Uhl regarding issues, including the status of the DEP approval and removal of the diesel tank. Atty. Morrow said if there were no other questions pertaining to Ms. Franz' letter he would ask the Board to vote on the application. Mr. Kirkpatrick had a few questions. He asked about camera coverage of the site. Ms. Frantz said all the activity under the canopy, from the driveways, and on the paved area, is clearly shown.

Regarding the filter strips, Mr. Kirkpatrick asked Mr. Zederbaum to coordinate with the Board's Landscape Architect to make the strips like standalone beds so they could be clearly demarcated and maintained. Mr. Zederbaum was amenable. Mr. Kirkpatrick asked that the maintenance and monitoring plan for storm water management facilities be shown on the Plans. He also thought there should be a few more no parking signs on the site; screening of the west side of the building, including the propane storage tanks and details of the discharge from the roof leaders. Mr. Kirkpatrick thought a transition area waiver for redevelopment would be required. Mr. Zederbaum said if that is required, it could be a condition of approval. Mr. Kirkpatrick mentioned a general permit for a storm water outfall. Mr. Zederbaum said timing was an issue. Mr. Nace raised a question about access to the attic space since the Plan shows mechanical equipment in that area. Mr. Nace said he did not see steps, dropdown stairs or hatches. He also said there are only fourteen and a half inches in between the ceiling joists and it would be difficult to install stairs if repairs or replacement were needed. Mr. Ford said the Plan shows the furnace and air-handling equipment in the attic approximately in the center of the building. Mr. Zederbaum indicated there would have to be access for maintenance purposes. In addition, all building codes would have to be met.

Mr. Ford asked Mr. Zederbaum if he had received Mr. Clerico's letter dated December 7, 2011. Mr. Zederbaum said "Yes". Mr. Ford asked Mr. Clerico to review the letter. Mr. Clerico indicated the discharge of the roof leaders through the curb was not ideal. He thought the front leaders could be carried underground and discharged to the back of the lot in an area where a DEP Permit would not be required. Mr. Zederbaum said an attempt would be made to comply. Mr. Clerico said improvements along the County Road would require approval and the driveway mentioned earlier would require something from the DOT. He referenced the propane gas area, that it could either be a bottle refill operation or a tank refill. Mr. Zederbaum said that decision had not been made. He said there were no State Fire or Safety Codes or parking restrictions regarding that issue.

The issues of water usage and whether a pump test was required were discussed, as well as there being no increased discharge into the septic system. Mr. Kirkpatrick understood that if there was no additional consumption of water, a pump test would not be required. He also said the GP 25 DEP approval would indicate that there would be no increase in discharge to the septic system. There was a concern about the lack of documentation. Mrs. Corcoran asked for clarification on the GP 25. Mr. Zederbaum explained. He said the only place on the site where a septic system could be installed was within the wetlands buffer and approval is required from the State. If the State grants approval, the permit is issued. He also emphasized that applicant had increased the size of the system. Mr. Kirkpatrick referenced the Board's concerns about reducing the amount of nitrate discharge because of critical environmental issues. He thought applicant could have addressed the issue differently from increasing the size of the septic system beds. Mrs. Corcoran asked how the projected flows were calculated. Mr. Zederbaum said the flows were based on square footage of the building.

Mrs. Corcoran thought the flows should have been projected higher. She would like to have the flow metered for approximately one year. Reports would be submitted monthly to the Township Engineer. Mr. Ford mentioned a trigger point that would require a reduction in usage. Mr. Kirkpatrick thought flows should be reported to the DEP and the HCHD if they exceed the permitted design flow or exceed what was projected as the existing flow. Atty. Morrow said the Board could impose that requirement as a condition of approval. Mrs. Corcoran summarized the issue. If the flows exceeds 500 gpd in any monthly report, applicant would monitor beyond a year until such time that the flows are reduced to an average of less than 500 gpd. If the flow exceeds 700, gpd reports must be made to the HCHD and the DEP. Mr. Kirkpatrick cited the Ordinance requirement for an aquifer pump test if future flows exceed existing flows. He also said applicant has to comply with the GP 25 Permit. Mr. Zederbaum said the meter would be installed as part of the redevelopment and they do not have a base number. Mr. Kirkpatrick said the base flow number is zero. Therefore, a meter needs to be installed before construction. Mr. Zederbaum emphasized that applicant would not be using a great deal of water nor generating a lot of sewage. Mr. Kirkpatrick noted there was insufficient documentation to determine whether there would be an increase in the amount of water usage. Atty. Morrow reiterated that although he did not consent to imposing conditions the Board had that prerogative.

Mr. Hintz asked about the location of trash and recycling containers. Mr. Zederbaum provided that information. Mr. Ford asked for questions from Professionals and the Public. Stephen Hurford, a longtime resident, commented that he had seen the subject property when it had three uses. He did not see westbound traffic implications, although there could be eastbound backup in the evening. Mr. Hurford said he would like to see the site cleaned up. If the Board was considering rejection of the application, he wanted them to make sure their decision would not elicit litigation.

Mr. Ford thanked Mr. Hurford. He then asked for a motion.

Mr. Kirkpatrick made a motion to approve the project with the following conditions: applicant be required to obtain all permits for letters from regulatory agencies indicating that permits, such as a transition area waiver, are not required; that they monitor water consumption for a period of on the order of three months prior to construction, and for a minimum of twelve months after the completion of construction and that they submit that data to NJDEP Wetlands Enforcement; to Hunterdon County and Union Township; provide traffic mitigation measures to reduce the delays caused by the project to the satisfaction of the Board ; incorporate changes to the landscaping plans to increase the size and protection of the filter strips to the satisfaction of the Board; place the storm water maintenance plan on the site plans; show the coverage of the cameras consistent with the testimony provided at tonight's meeting. Mrs. Corcoran asked about the frequency of how often applicant had to report water consumption. Mr. Kirkpatrick said once a month. Daily data would be reported on a monthly basis. Mrs. Corcoran seconded the motion.

Mr. Ford asked for further discussion among the Board. Atty. Anderson pointed out a couple of other issues that might potentially be conditions: Parking signs in the areas that may require them, such as the propane tanks; screening on the west side of the building in the propane tank area and redirection of runoff from the roof. Mr. Kirkpatrick said it was his presumption that those items would be incorporated into the changes to the Landscaping Plan. He said they could be a separate item.

Atty. Morrow asked the Board's direction regarding traffic mitigation. Mr. Kirkpatrick noted the increase in delays at an intersection that the Township Governing Body and residents have indicated is unacceptable. He said it did not appear that mitigation was considered during presentation of the Plans. Mr. Kirkpatrick was willing to leave that open to see what applicant might be able to come up with and get approved. Mr. Ford mentioned changing timing of lights. Atty. Morrow said applicant could not do that. Mr. Kirkpatrick said he was not making any specific suggestions, but an application could be made to make certain improvements. Atty. Anderson said the phrasing of the conditions implied that applicant would come back to the Board for their consideration before issuance of any permits. Mr. Kirkpatrick said "Absolutely". He said the Board could not tell applicant to make certain improvements. However, the Board can tell applicant that they are unhappy with the delays and they have to be mitigated as a condition of approval. Atty. Morrow said that was fine. Atty. Anderson said his concern was that this sounded like a conditional approval and that the Board should carry the matter for further presentation. Atty. Anderson said Atty. Morrow could comment if he wished, however conditional approval is somewhat difficult for the Board and the applicant. Atty. Morrow asked the Board to vote on what was presented. Atty. Anderson made a statement about the Board believing it did not have sufficient information to approve the application. Mr. Kirkpatrick said he would make it simple. He made a new motion to vote on the application, with no conditions. Mr. Ford asked if the member who seconded the motion needed to withdraw it. Mrs. Corcoran said she would withdraw her motion.

Atty. Anderson said a new motion could be made. Mr. Kirkpatrick made a motion to approve the project with no conditions, no conditions beyond our standard set of conditions. Mr. Nace seconded the motion. Mr. Ford asked for discussion. Mr. Ryland did not think it was a good proposal. Some conditions should be part of the approval. Mr. Ford said two things could happen. The motion could be voted up or down, or it could be withdrawn. Atty. Anderson said the use variance would require a minimum of five affirmative votes among seven people who are eligible to vote. Mr. Ford asked if members were ready to vote. Mr. Kirkpatrick said "Yes". Mr. Ford asked for a roll call. Mr. Kirkpatrick said he liked the project and the idea of the intersection being cleaned up. He recognized certain safety improvements regarding circulation. However, he did not believe that applicant had met the burden of proof in demonstrating the need for multiple uses on the site. Mr. Kirkpatrick was not convinced that the facility could not operate as a standalone convenience store or operate successfully as a standalone fueling station. He also thought that there are some other types of uses for the site that the facility could accommodate without the need for variances.

Mr. Kirkpatrick also believed there were reasonable opportunities to mitigate negative impacts on local road circulation and applicant had chosen not to do so. He was concerned that granting approval of the project could cause violations of other permit conditions, as well as Ordinance requirements regarding water consumption. Increased usage of the site would generate additional waste material, such as nitrates and other pollutants that would enter the ecosystem and have negative impacts on federally listed endangered species, as well as water quality of a tributary to a drinking water supply reservoir. Accordingly, Mr. Kirkpatrick voted no.

Vote: Ayes: Mr. Nace, Mr. Badenhausen, Mr. Ryland

Nays: Mr. Kirkpatrick, Mrs. Corcoran (Due to the no condition status of the Motion), Mr. Taibi (Because of the lack of essential conditions he believed necessary), Mr. Ford

Mr. Ford said Mr. Kastrud could not vote.

Atty. Anderson stated that the motion received three affirmative votes and the use variance required a minimum of five. Mr. Ford asked if anyone on the Board wanted to offer another motion. Mrs. Corcoran proposed a motion back to the original with the original conditions. Mr. Ford asked Mrs. Corcoran if she wanted conditions met before permits were issued. Mr. Ford asked Atty. Anderson to enlighten the Board on the earlier motion. Atty. Anderson understood the original motion was essentially conditional in that the Board had to be satisfied that certain conditions had to be met prior to permits being issued. Applicant would have to return to the Board indicating they had met those conditions. Mr. Kirkpatrick said the condition would be that changes made by the applicant would be submitted to Board Professionals for their review. Final acceptance as to the adequacy of those changes would be referred to the Board and they would accept or reject the Professional's recommendations. Mr. Clerico asked if it would be appropriate for the Board to vote on the use variance and preliminary site plan. Conditions that require applicant to return to the Board could be dealt with as a part of a final site plan. Atty. Anderson said that would be up to the applicant.

Mrs. Corcoran said she would be satisfied to have Professionals determine whether conditions had or had not been met. Her biggest concern pertained to water and sewer flow issues. Mrs. Corcoran indicated she would be satisfied if applicant reported flows and stayed under 500 gpd. Mr. Kirkpatrick said a condition would be that if water withdrawal exceeded 350 gpd an aquifer pump test would be required. Mrs. Corcoran agreed.

Mrs. Corcoran agreed to incorporate Mr. Kirkpatrick's conditions in her previously stated motion. Mr. Kirkpatrick seconded the motion.

Mr. Ford asked that the motion be re-stated. Atty. Anderson said the motion would include a demonstration that all other agency permits are either obtained or are not required;

water monitoring that has been modified to eliminate any measurement prior to construction and be limited to 350 gpd for twelve months; 350 gpd would trigger the need for an aquifer pump test and 500 gpd would trigger the requirement that applicant provide reports to NJDEP, HCHD and Union Township. Mr. Ford said the tests would be made daily and reported monthly for twelve months. Mrs. Corcoran said if 500 gpd was exceeded, monitoring would have to continue after twelve months. The Board Engineer would be involved with traffic mitigation conditions. Mr. Clerico said he would need direction. Mr. Kirkpatrick said the Mayor could provide direction. Landscaping changes, specifically having to do with increasing the filtering area; maintenance monitoring of the storm water facilities; parking signs in appropriate areas, such as the area of the propane tanks, screening on the west side of the building and the propane tanks; camera coverage, roof leaders to be modified to eliminate a discharge to the paved service and to the satisfaction of the Board Engineer and to the extent practicable.

Mr. Ford asked the Board if they were ready to proceed to a vote on the revised motion and if there was any further discussion or questions. There were none.

Vote: Ayes: Mrs. Corcoran, Mr. Kirkpatrick (Mr. Kirkpatrick thought the project would require additional documentation on the need for the variance with regard to the uses; however, given the additional mitigation to offset the potential negative impacts to the community that are addressed by the conditions, he voted yes), Mr. Nace, Mr. Badenhausen, Mr. Ryland, Mr. Taibi, Mr. Ford

Scheduling of 2012 Reorganization and First Regular Meeting: Mr. Kirkpatrick made a motion to hold the reorganization meeting on January 12, 2012 and the regular meeting on January 26, 2012. Mr. Nace seconded the motion.

Vote: All Ayes

Cancellation of December 22, 2011 Meeting: Mr. Nace made a motion to cancel the meeting. Mr. Badenhausen seconded the motion.

Vote: All Ayes

Motion to Adjourn: Mr. Nace made a motion to adjourn. Mr. Badenhausen seconded the motion. ((9:15 p.m.))

Grace A. Kocher, Secretary