

January 31, 2019 Planning Board/Board of Adjustment Minutes

Mr. Ford called the Meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m.

Members Present: Mr. Mazza, Mr. Stothoff, Mr. Nace, Mr. Eschbach,, Mr. Kastrud, Mr. Petitt, Mr. Dix, Mr. Kirkpatrick, Mr. Ford

Board Professionals Present: Atty. Mark Anderson, Robert Clerico, Andrea Malcolm

Members Absent: None

Others Present:

V.A. Spatz Atty. Joseph Novak, Engineer William Salmon, Planner Daniel Bloch, Applicant Paul Spatz

Open Public Meetings Act Notice: I would like to have placed in the minutes that the Open Public Meeting Requirements of Law have been satisfied by our notices dated January 17, 2019, as published in the Hunterdon County Democrat and January 16, 2019, as published in the Courier News. A copy of the Notice has also been posted on the Township Website, the Bulletin Board in the Municipal Building and a copy has been filed with the Municipal Clerk.

Mr. Ford announced that the Powerco Resolution is being deferred to a later date and there will be a discussion at the end of the meeting regarding communication's equipment.

Mr. Ford said that Quick Chek has asked that their Hearing be deferred until March 28, 2019. The Hearing had been previously adjourned without further notice until February 28, 2019. He said that should be announced at the February 28, 2019 meeting. He asked for a motion.

Motion: Mr. Eschbach made a motion to carry the Quik Chek Hearing until March 28, 2019 with no further notice required. Mr. Kirkpatrick seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Public Hearing: V.A. Spatz and Sons Construction, Inc. Block 22, Lot 5, 35 Frontage Road: Use Variance:

Atty. Novak was present on behalf of applicant. Atty. Anderson noted this is a "D" Variance and would be heard by the Board of Adjustment, whereupon, Committee Members Mazza and Stothoff recused themselves. Mr. Novak said at a previous Hearing the Board interpreted the Ordinance with regard to outside storage as anything that is not licensed and registered as a motor vehicle with the State of NJ, and parked outside is considered outside storage. It was also determined that a "D" Variance was required to allow outside storage of those vehicles.

Atty. Novak asked that all witnesses be sworn. Whereupon Planner Daniel Bloch, Traffic Consultant Douglas Polyniak, Engineer William Salmon, Landscape Architect Bruce Hawkins, Environmental

Consultant John Peel and V.A. Spatz President Paul Spatz were sworn by Atty. Anderson. Mr. Novak said Professionals would provide qualifications prior to giving testimony. He said their resumes are included in a Binder that includes various Exhibits.

Issue of Completeness: Mr. Clerico noted this is a “D” Variance and the Board should address the Completeness Issue prior to the Public Hearing. On January 7, 2019, Mr. Clerico issued a letter recommending the application be deemed complete. Mr. Ford asked for a motion.

Motion: Mr. Kirkpatrick made a motion to deem the application complete. Mr. Nace seconded it.

Vote: All Ayes, No Nays, Motion Carried

Atty. Novak asked Paul Spatz to provide an overview of V.A. Spatz Construction Company. Mr. Spatz said the Company is currently located in Berkeley Heights NJ. That property has been deemed for redevelopment. He and his wife are residents of Union Township and the fifteen-acre property on Frontage Road was considered to be ideal for relocation of the Company. Mr. Spatz said they plan to demolish the existing house and garage and construct a building for an office and garage. He described the equipment that would be on the site, including backhoes, pavers and milling machines.

Mr. Ford asked Mr. Spatz about the type of materials that would be stored on the site. Mr. Spatz said only materials that they use in repair work on their equipment. Mr. Ford asked for questions from the Public for Mr. Spatz. There was none.

Atty. Novak asked Mr. Salmon to come forward. Mr. Salmon presented his credentials and they were acceptable to the Board. He displayed an Aerial Map showing existing Site Constraints, dated January 31, 2019 that was marked Exhibit P-28. A Binder including Exhibits P-1 through P-27 had been provided to the Board earlier. Mr. Salmon said the Site consists of approximately fifteen acres that are mostly wooded. He also said the site has a three-hundred foot riparian zone, freshwater wetlands and three ranges of steep slopes, which leaves approximately five acres of developable land. The Net Buildable Area is 1.5 acres and there is 4.7 of disturbance. Mr. Salmon apprised the Board of the tree removal and replacement proposal.

Mr. Salmon displayed an Exhibit entitled Overall Site Plan Rendering that was marked P-29. The Exhibit shows the proposed development area in relation to the entire tract and surrounding properties. Mr. Salmon described the driveway that has NJDOT approval for access. He also presented information regarding storage of vehicles and materials, as well as employee parking.

Mr. Salmon displayed another Exhibit, a magnified copy of P-29 that was marked P-29b. Exhibit P-29 was subsequently marked Exhibit P29a. He described the proposed structures and their location on the property. The proposed inside storage structure was described and discussed at great length. Mr. Nace asked about nearby neighbors. Mr. Salmon indicated that freshwater wetlands would encumber development. Mr. Salmon said fifty parking stalls and forty banked parking areas are proposed. He noted that applicant has Hunterdon County Health Department approval, dated September 15, 2018, to construct a sewer system (Exhibit P-9) as well as approval of the septic field.

Mr. Salmon referenced the monument sign at the front of the property (Exhibit P-24). He said applicant has a “Will-Serve Letter” from the Town of Clinton (Exhibit P-10), dated September 6, 2018 for private

water service from a public system. Atty. Novak said Hunterdon County Planning Board granted Conditional approval to construct on November 7, 2018 (Exhibit P-7).

Atty. Novak mentioned the Driveway Access Approval by NJDOT (Exhibit P-25). He also said that Hunterdon County Soil Conservation District granted approval on January 28, 2019 (Exhibit P-27). Pattenburg Volunteer Fire Company (PVFC) had submitted an e-mail stating they had no concerns (Exhibit P-26). Mr. Novak said Consent of Property Owners Carmen and Maria Gesualdo is stated in Exhibit P-12. Atty. Novak listed other Exhibits: Preliminary & Final Site Plan (Exhibit P-5), Certification of Paid Taxes (Exhibit P-6) and the Tax Assessor's List of Property Owners (Exhibit P-11).

Mr. Salmon said the property is in the Village Commercial (VC) District and that applicant complies with Ordinance Regulations regarding setbacks, lot size, impervious surface coverage, building height and Floor Area Ratio (FAR). Mr. Ford asked about the retaining wall. Mr. Salmon said the setback for that wall is sixty-one feet from the building. He also referenced the fifteen-foot driveway width.

Mr. Salmon displayed an Exhibit, Steep Slope Disturbance that shows the current dwelling and garage, dated January 31, 2019. It was marked P-30. Mr. Clerico had questions regarding the Steep Slopes Disturbance and associated calculations. Mr. Salmon said some of the Slopes are natural and some manmade. Mr. Kirkpatrick noted that applicant is requesting relief from steep-slope requirements. Mr. Clerico asked about alterations to the building location that would reduce Disturbance. Mr. Salmon indicated that Mr. Clerico's concerns were considered and applicant believes the layout to be the most efficient for the property.

Ms. Malcolm had a question about trees and the relationship to Disturbance. Mr. Kirkpatrick said the Landscape Architect would be providing testimony about trees. Mr. Kastrud referenced earthwork volumes and asked Mr. Salmon if raising the site would minimize Disturbance or just push it from one side to the other. Mr. Salmon said, "Basically, that is the idea". Ms. Malcolm asked about a possible conflict between the loading area and employee parking. Mr. Salmon indicated there was no conflict.

Atty. Novak asked Mr. Salmon about front yard structures. Mr. Salmon said the Ordinance considers drainage inlets, meter pits and monuments as structures; therefore, a variance would be required for the inlet. He said there would not be a building structure in the front yard setback. Ms. Malcolm asked if the drainage inlet could be relocated. Mr. Salmon said it would not serve its purpose. Atty. Novak asked if the Water Company required any structures. Mr. Salmon said, "Yes, we will have structures for the Water Company, including a Knox Box. The hotbox will be beyond the front yard setback. Ms. Malcolm asked the dimensions and material of the box. Mr. Salmon said the box is twenty-feet long and four or five feet high. The box could be screened. The Landscape Architect could address the screening. Ms. Malcolm noted that in other towns, the boxes are painted dark green.

Atty. Novak asked Mr. Salmon about pole height and light illumination. Mr. Salmon said both would be sixteen-feet high. Mr. Salmon said applicant would like relief from Landscaping of the Parking Island. Atty. Novak asked Mr. Salmon about the L.O.I. Mr. Salmon said they are awaiting a response from the NJDEP. He also said applicant has flood hazard area clearance in the floodplain and riparian zone.

Mr. Kastrud had a question regarding structures visible from Frontage Road. Mr. Salmon indicated that because of the grade from the road to the site, existing vegetation and screening the structures would not be that visible.

Mr. Nace asked if fuel would be stored on site for equipment. Mr. Salmon said, "No Fuel".

Mr. Kirkpatrick asked about the slope of the Driveway and if there would be a flat area at the entrance from Route 173. Mr. Salmon said there would be an approximate fifty-foot flat area as per NJDOT Standards.

Atty. Anderson had questions to be clarified about the amount of proposed disturbed area, banked parking and structures in the two-hundred foot front yard area. Mr. Anderson asked about the generator (shown on Sheet C-06). Mr. Ford asked if it would have an aboveground tank. Mr. Salmon said he believed it would be below ground. Atty. Novak asked if the fuel was gas or propane. Mr. Salmon said it would be gas. Mr. Novak asked about natural gas service. Mr. Salmon said that would be the preference.

Mr. Ford asked the Public to ask questions of Mr. Salmon. There was none. Mr. Clerico asked for a clarification about storm water ratio. Mr. Salmon said applicant would work with Mr. Clerico to resolve any design issues. Mr. Kastrud asked about the alternate Storm Water Design. Atty. Novak said applicant pulled that Design to avoid holding up the application.

Atty. Novak asked Landscape Architect Bruce Hawkins to come forward. Mr. Hawkins provided his credentials. Mr. Kirkpatrick said he had been qualified previously. Mr. Hawkins gave a brief history of the site and referenced Exhibit P-4. He said it was a farm field in the 1950's and the trees on site should not be preserved. Mr. Hawkins referred to Exhibit P-29b. He described the location of the existing driveway, house, garage and vegetation. He said the Plan has been modified to show trees that will be preserved. Mr. Salmon said rows of evergreen trees are proposed in front of the hedges, septic field and buildings.

Atty. Novak asked Mr. Hawkins if any part of the site had been cleared prior to preparing reports submitted to the Board. Mr. Hawkins said the underbrush had been cleared so applicant could count, measure trees and provide calculations for potential replacement, as required by the Township Tree Ordinance. Mr. Hawkins concluded that applicant is not obligated to provide any trees under the Union Township Ordinance. Mr. Ford asked Mr. Hawkins to quantify the number of trees to be removed and replaced. Mr. Hawkins explained that the Ordinance requires replacement of trees by caliper. He emphasized that applicant is obligated to provide trees for the street and parking lot. Mr. Hawkins said other greens and deciduous trees are being added along the northerly side of the site. Mr. Ford asked Mr. Hawkins if he was talking about screening and visual impact. Mr. Hawkins said a visual buffer exists between this property and neighboring properties. Mr. Ford emphasized his concern was about green coverage and the positive impact of trees on the environment. Mr. Kirkpatrick explained the process Mr. Hawkins used to determine applicant's compliance with the Township Tree Ordinance. Mr. Hawkins said approximately two hundred trees will be removed and for which replacement is proposed. He also said the present property owner has a Management Plan that will be discontinued if the Spatz application is

approved. Atty. Novak asked if Board Professionals or the Public had questions for Mr. Hawkins. There was none.

Ms. Malcolm voiced a concern about proposed plant species. Mr. Hawkins indicated applicant was trying to comply with the Tree Ordinance that requires a specific plant species. Mr. Hawkins said the site will be totally fenced, with a decorative fence along the northerly side and the remainder will be a black chain link fence. Mr. Kastrud asked about a gate. Mr. Hawkins said a double-swing gate is proposed and the Fire Company will have a lock box access the site in an emergency. Mr. Clerico referenced the Landscaping Plan that shows trees are proposed on the retaining wall and are close to the Storm Water Facility Piping System. He did not think the trees could be planted in that area and suggested that Mr. Hawkins work in coordination with Mr. Salmon concerning the issue. Mr. Hawkins said there is a five-foot strip between the edge of the pavement and the retaining wall. Ms. Malcolm mentioned the health of the trees in the wetland area and suggested moving trees across the road. Mr. Ford asked for questions from the Board and/or Public. There was none.

Mr. Ford announced there would be a short recess. The Hearing resumed at approximately 8:55 p.m.

Atty. Novak asked Daniel Bloch to come forward. Mr. Bloch presented his credentials. They were acceptable to the Board. Mr. Bloch displayed an Exhibit, Existing Land Use Map that shows surrounding areas, along with color-coded properties designated as to their usage. It was marked P-31. Mr. Bloch said the subject property is in the Village Commercial (VC) district and has an existing single-family house. He said the VC District includes G-1 Contractor Trade and that is what applicant is proposing.

Mr. Bloch said applicant is seeking a D-1 Variance for outdoor storage based on the Interpretation of the Board at their December 6, 2018 meeting and memorialized on January 24, 2019. The variance requests an area of thirty-seven square feet (sf) of outdoor storage space in the rear portion of the site to be used for equipment, vehicles and limited construction materials. He displayed an Exhibit P-29A showing that area. Mr. Bloch said there would be no hazardous materials or gasoline stored on site.

Atty. Novak asked Mr. Bloch to address positive and negative criteria. He said the site lends itself to the proposed type of development and is a particularly suitable use of the property. There are similar uses along Frontage Road that have outdoor storage components. Mr. Bloch said other uses in the VC District include an electrical company, disposal service and quarries; therefore, this use fits in with the character of the area. Mr. Bloch referenced Purposes of the Land Use Ordinance regarding health, safety and general welfare, the size of the property and a better visual environment because of proposed improvements, specifically proposed buffering. Mr. Bloch said, in his opinion, there is no substantial detriment to the public good, that the use would fit in with the character of the neighborhood.

Mr. Bloch reviewed the 1999 Union Township Master Plan (MP), the 2004 Amendment to the Land Use Plan and associated Re-Examination Reports. In his opinion, applicant is not inconsistent with the intent of the MP by proposing an outdoor storage area.

Atty. Novak asked Mr. Bloch if he had anything additional to what was proposed by the prior witness. Mr. Bloch said that was all he had on the "D" Variance. Ms. Malcolm asked Mr. Bloch to address the

proposed use with other permitted uses in terms of intensity. Mr. Bloch said permitted uses include community residences, continued care facilities, places of worship, athletic facilities, construction trades, etc. He said the proposed use is below the permitted intensity and traffic impact would probably be lower than what is permitted. Atty. Novak asked the Chairman if there were questions from Professionals or the Public regarding the "D" Variance. Mr. Ford had none and there was no response from others.

Atty. Novak said the "C" Variances could be addressed. Mr. Bloch said there is a variance for parking and testimony was provided earlier. Mr. Novak said the MLUL provides for exceptions under NJSA 40:55D-51. He asked if the application would be for a "C-1 Variance, an exception or a waiver and requested that be on the record as Mr. Bloch continues his testimony.

Mr. Bloch said applicant is not proposing to deed restrict a conservation area and requests a Variance or Exception from that Ordinance requirement. Mr. Bloch said the tract is fifteen acres, area to be developed is 4.7 acres and the maximum to be developed would be 5.1 acres. The deed restricted area would be less than one-half acre since the remaining acreage is effectively restricted by wetlands, C-1 buffers and other environmental constraints. Mr. Kirkpatrick asked that the areas that cannot be developed be included in the conservation area and the 5.1 acres retained for future use. Mr. Bloch said applicant would be agreeable to that as an alternative.

The next Variance was for Steep Slope Disturbance. Mr. Bloch said applicant exceeds the maximum disturbance allowed. It is proposed to cut and fill some of the area to make a suitable flat development. Mr. Kirkpatrick said he was not aware of an exception in the Ordinance for excluding manmade slopes, He assumed Mr. Bloch based his determination on the totality of the site plan and not on specific numbers. Mr. Bloch said there is an exception for previously and sustainably developed portions of the lot in the Ordinance but thought the numbers came from the site plan. Mr. Kirkpatrick asked Mr. Bloch if his testimony was based on the totality of the lot, or the numbers in the application. Mr. Bloch said as a Planner the totality of the constraints for the steep slopes are being disturbed in that area.

Atty. Novak asked Mr. Bloch about the structures in the front yard setback. Mr. Bloch said the storm water drain, water meter chamber and generator are considered structures and C-1 variance relief is sought. Mr. Bloch said variances are not required for trees, or height and illumination of light poles. He said the maximum light illumination ratio is eight to one and proposed is 9.7 to one. The lighting expert who designed the Plan said that is appropriate. Mr. Bloch said there are hotspots under the fixtures.

Mr. Bloch said applicant is in compliance with the ADA; however not necessarily with the Ordinance. He said the Ordinance requires a width of twelve and a half feet for a handicapped space and applicant proposes eleven feet with a van access space. Mr. Bloch said applicant is not proposing a formal loading area and the Ordinance requires one; therefore, Variances are requested.

Atty. Novak asked Mr. Bloch to opine regarding the potential impact on the Zone Plan. Mr. Bloch said the benefits to the applicant and to the general welfare of the neighborhood exceed any potential detriment. He did not see any actual substantial detriment from any variances requested.

Atty. Novak asked if that also applied to "D" Variances. Mr. Bloch said "Correct". He said his testimony would be exactly the same. The benefits outweigh the detriments and regarding the Board granting Variances, Mr. Bloch did not see any substantial detriment from the Ordinance or the Zone Plan.

Atty. Novak asked Mr. Bloch to offer his Professional opinion regarding advancing or approving the "D" Variance and the Use Variance, why should they make those exceptions. Mr. Bloch said the "D" Variance could be granted. He also said the site was particularly suitable for the proposed outdoor storage area and there would be no substantial detriment to the public good and no substantial impairment of the Zone Plan. Mr. Bloch referenced the "C" variances related to the Site Plan and said the benefits outweigh the detriments in each case and there is no substantial detriment to the surrounding neighbors or to the Zone Plan. Atty. Novak and Messrs. Kastrud and Kirkpatrick had no questions. Mr. Ford asked for questions from Ms. Malcolm and Mr. Clerico. They had none.

Atty. Anderson asked Mr. Bloch why applicant could not comply with Ordinance Handicap Access requirements. Mr. Bloch said they are ADA compliant, the area is the same and there is space for a van. Messrs. Kastrud and Kirkpatrick indicated applicant's compliance with the ADA was acceptable. Atty. Novak asked, "Mr. Bloch, the public is not invited to the site, is that correct". Mr. Bloch replied, "Correct". Mr. Ford asked for questions from the Public for Mr. Bloch. There was none.

Atty. Novak said Mr. Polyniak from Traffic Engineer Gary Dean's Office and Environmental Engineer John Peel were present if Board members had any questions. Mr. Kirkpatrick said he had none. Atty. Novak referenced Geologist Matt Mulhall's report that had been reviewed by the Board's Geologist who found it to be agreeable. Mr. Kastrud said, "As long as they can work it out with Mr. Clerico". Mr. Clerico noted inconsistencies in the storm water report. He also said he did not have a traffic report. Mr. Novak said the five-page report was dated September 4, 2018. Mr. Kastrud referenced Mr. Salmon's testimony that the turning radii is adequate for garbage trucks. Atty. Novak stated that applicant would work with Mr. Clerico regarding engineering issues. Mr. Salmon concurred.

Atty. Novak requested the Board grant the "D" and "C" Variances and/or exceptions as well as Preliminary and Final Site Plan approval, subject to outstanding approvals as set forth in Mr. Clerico's letter. Mr. Novak said applicant would put conservation restrictions on the constrained area. Mr. Salmon said the septic design would be modified. Mr. Kastrud asked about oil changes. Would fluids reach a threshold for DEP reporting? Mr. Spatz said they would not have anything you would not find at an average gas station. He said an outside company collects waste oil. Batteries are recycled appropriately. Mr. Kastrud asked about the proposed generator. Mr. Spatz said natural gas would be preferred. A self-contained diesel unit with the tank underneath would be a second choice. Mr. Ford said propane could be considered.

Mr. Ford asked for other questions. Mr. Kastrud asked if there was a limit to what is allowed to be stored underneath the canopy. Mr. Kirkpatrick said there was testimony that pipe racks and those sort of things would be stored, not hazardous or bulk materials.

Mr. Kastrud wanted confirmation that Mr. Spatz would not have to provide additional information if the Board approves the application. Mr. Clerico pointed out the maintenance shop has a drain that is connected to an exterior holding tank. Mr. Spatz said a local company pumps the tank.

Mr. Ford asked for final public comments on the application. He asked Ms. Malcolm and Mr. Clerico for comments. There was none. Mr. Ford asked for a motion.

Motion: Mr. Kirkpatrick made a motion to approve the application, subject to third-party approvals as to the applicant resolving any conflicts from the reports of the design as described by our engineer and planner to their satisfaction, and the filing of a conservation easement that includes the remaining wetlands, riparian zones and that the generator be either a self-contained diesel-powered unit or powered by natural gas. Mr. Eschbach seconded the motion. Mr. Kastrud asked about the Knox Box for the front gate. Atty. Novak said most towns have a Knox Box Ordinance. Mr. Spatz said they would do whatever is necessary.

Mr. Ford asked for further discussion. Mr. Kastrud asked whether the conservation easement was absolutely necessary. Mr. Kirkpatrick said the Ordinance requires that all Natural Resource Lands be placed in a Conservation Easement. Atty. Anderson asked a variance for the lighting. Mr. Salmon said a variance is not necessary for the height of the poles. Mr. Anderson understood applicant agreed there would be no fuel storage on site. Atty. Novak said unless there would be diesel required for the generator. Atty. Anderson understood applicant agreed to screening for the water facility. Mr. Kirkpatrick said he lumped that in with the question they resolve the conflict of the design in the report to the satisfaction of the engineer and planner. Mr. Anderson asked about storage of bulk materials and an exception. Mr. Ford understood there would be no storage of bulk materials except for sand and gravel. Mr. Kirkpatrick concurred. Atty. Novak said that was acceptable.

Atty. Anderson asked if imposing a condition for future use of the site that it would have to meet parking requirements or obtain a variance for use change to another permitted use. Mr. Ford said restrictions like that have been imposed in the past. Mr. Novak said that was relevant to the banked parking.

Vote: Ayes: Mr. Kirkpatrick, Mr. Eschbach, Mr. Nace, Mr. Kastrud, Mr. Dix, Mr. Pettit, Mr. Ford

Comments from the Public/Other Discussion: Mr. Ford mentioned a proposed Ordinance pertaining to placement of Small Cells and Cabinets in Municipal- Right-of-Ways. Atty. Anderson said the Committee asked the Planning Board to review the Ordinance. Mr. Ford asked Board members to convey comments to Mr. Anderson and he will provide them to Municipal Atty. Peter Jost.

Appointment of Traffic Engineer: Mr. Ford said that appointment would be made at the next meeting.

Motion to Adjourn: Mr. Kirkpatrick made a motion to adjourn. Mr. Nace seconded the motion. (10:00 p.m.)

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary