

February 27, 2014

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

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 16, 2014, as published in the Hunterdon County Democrat and 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 Clerk.

Members Present: Mr. Walchuk (left at 8:55 p.m.), Mr. Nace, Mr. Kastrud (7:10 p.m.), Mr. Ryland, Mr. Eschbach, Mr. Gibbons, Mr. Ford, Mr. Kirkpatrick

Members Absent: Ms. McBride, Mr. Bischoff, Mrs. Corcoran

Others Present: Atty. Donald Scholl, Julie Van Scot, Atty. Joseph Novak, Stephen Risse, Brian Plushanski, David Bright, Jamie Johnson, James Snook

Approval of Minutes: Mr. Gibbons made a motion to approve the minutes of the December 13, 2013 regular meeting and the January 9, 2014 reorganization meeting. Mr. Eschbach seconded the motion.

Vote: Ayes: Mr. Gibbons, Mr. Eschbach, Mr. Walchuk, Mr. Nace, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Memorialization of Resolution: P.S. Construction: Block 22, Lot 27.04, Race Street: Mr. Ryland made a motion to memorialize the Resolution. Mr. Nace seconded the motion.

Vote: Ayes: Mr. Ryland, Mr. Nace, Mr. Walchuk, Mr. Eschbach, Mr. Gibbons, Mr. Ford, Mr. Kirkpatrick

DJOCVS Holdings LLC: Block 26, Lot 18, 52 Finn Road: Appeal from Zoning Official's Denial of Permit: Atty. Donald Scholl was present on behalf of DJOCVS Holdings. Mr. Scholl said the owners of the property want to convert the existing day care center to a single-family residence. The property is in the Village Residential District with a minimum lot size of two acres. The subject property is 1.45 acres. Atty. Scholl cited 30-9.1 of the Municipal Land Use Ordinance which pertains to Continuance of Nonconforming Uses and Structures. No expansion or changes to the building exterior are proposed neither is any subdivision or modification of the lot. Mr. Scholl said Section 30-9.1 of the Ordinance allows a non-conforming use to remain and permits a non-conforming use to be altered or rebuilt within the parameters of sub-paragraph a, up to 20% of the true value, and to enlarge, if it is made conforming, and providing height and area regulations are not further violated. He said it is a good planning practice to bring a property into conformance with the Ordinance. Atty. Scholl said a non-conforming use changed to a conforming use cannot be changed back to a non-conforming use. Mr. Scholl stated his belief that a variance is not required.

Mr. Nace asked if the building, which had been a former school and then a grange hall, was on any historical register and, if so, would there be an impact on any changes to the building. Atty. Scholl indicated his client could answer that question. Julie Van Scot, who said she was the sole partner of DJOCVS, was sworn by Atty. Scholl. Ms. Van Scot said it was not a registered site even though it has historical significance. It had last been used as day care center. Ms. Van Scot said the proposal to convert the building to a residence is the best use. She said there would be no change to the building footprint or the exterior. Mr. Nace asked Ms. Van Scot if she would be removing one of the driveways. He did not think that would be allowed. Atty. Anderson said that would depend on whether applicant was entitled to a zoning permit without a variance. Atty. Scholl said the appeal is a legal argument based upon what has been submitted and the application of the Ordinance section cited above. Mr. Kirkpatrick asked if there were any clauses in the Resolution regarding the day-care center and restoration of the building if it no longer was operating as a day-care center. He said the configuration of the building and the parking lot is not in keeping with the residential character of the neighborhood. Mr. Kirkpatrick did not think there was adequate information to make a decision.

Atty. Scholl said that guidance was helpful to him and he felt having reviewed the language of the Ordinance was helpful to the Board. Mr. Scholl responded to Mr. Kirkpatrick's concerns. He felt the language of the Ordinance was clear and the only stipulations relate to a change to a conforming use. Atty. Scholl emphasized the use is less intense and more conforming. Mr. Kirkpatrick mentioned another school in the Township that is now a residence. He did not know if there had been Board approval or if the conversion was handled by the construction official. Atty. Anderson stated the reason why a variance is required. He said the existing use is nonconforming and the lot is undersized. Atty. Scholl believes a variance doesn't make sense. Mr. Anderson said the Zoning Official issues or does not issue a permit based upon what is allowed by Ordinance. He said if the lot existed without a structure, a (c) variance would be required because the lot is undersized. Atty. Anderson said that Atty. Scholl referenced 30-9.1 and focused on paragraph a. with comments on paragraph b. Atty. Anderson noted the introduction to those paragraphs pertains to Continuance of Nonconforming Use or Structure and applicant is not asking to continue the use. Mr. Anderson reiterated the lot is undersized and applicant is seeking a new use of the property. Atty. Scholl said there would be no purpose to the Ordinance if the language pertaining to changing to a conforming use is not read in conjunction with the title. Mr. Kirkpatrick said that when the variance/site plan was granted for the day-care center would it then not have become a conforming use? Atty. Scholl said it is nonconforming in the district and he thought that the planning principal would be to bring all property into conformance.

Atty. Anderson emphasized this is an appeal from the zoning official's decision that is based upon the Ordinance. Mr. Anderson said the Board has the same obligation. If the Board thinks the Ordinance should be changed they can make that recommendation to the Township Committee. Atty. Scholl stated he feels the property fits within the Ordinance. Atty. Anderson asked Atty. Scholl if he thought the use is a lawful nonconforming use. Atty. Scholl responded. He said the property is nonconforming under existing zoning.

Atty. Anderson said the use requested is not a lawful nonconforming use that applicant wants to continue. Atty. Scholl referenced 30-9.1 regarding any existing building designed, arranged, intended or devoted to a nonconforming use may be reconstructed, etc. Atty. Anderson said the building cannot be reconstructed if it is not devoted to a nonconforming use. Mr. Kirkpatrick said nothing in 30-9.1 indicates that applicant would not have to come before the Board in order to change the use from nonconforming to conforming. Atty. Scholl said he had difficulty with the language in 30-9.1.

Mr. Kirkpatrick said it had been established that the Board does not have enough information to make a decision. He suggested that applicant provide additional information to the Zoning Official. Atty. Scholl asked for clarification that the Board would need information regarding any prohibition or restriction if the previous day-care use was changed. Mr. Clerico said applicant should provide a survey of the property.

Atty. Anderson said the Board should adopt a Resolution reversing or upholding the Zoning Official's decision. Mr. Ford made a motion to uphold the Zoning Official's decision. Mr. Kastrud seconded the motion.

Vote: Ayes: Mr. Ford, Mr. Kastrud, Mr. Walchuk, Mr. Nace, Mr. Ryland, Mr. Eschbach, Mr. Gibbons, Mr. Kirkpatrick

Greenrock Recycling LLC: Block 22, Lots 15 & 15.01, 3 Frontage Road: Minor Site Plan/Variance: Mr. Kirkpatrick said the Quarry License application for Greenrock will be heard after **Kramer Electronics USA**. Atty. Joseph Novak, representing applicant, introduced Engineer and Planner Stephen Risse and Brian Plushanski, owner. Messrs. Risse and Plushanski were sworn by Atty. Anderson. Mr. Novak said applicant is seeking approval for an 18' x 30' site-manager's office located near the front gate of the 18+ acres property. The proposal would not comply with front, side and rear yard setbacks. Atty. Novak asked Mr. Risse to provide testimony. He had appeared before the Board and his credentials were accepted. Mr. Risse displayed an Exhibit entitled Minor Site Plan & Variance Site Mgr. Office Structure Plan, dated January 8, 2014. It was marked A-1. Mr. Risse said due to the shape of the property, variances are required. The office would provide space for the site manager and related business supplies.

Mr. Kirkpatrick asked what Building Code the structure would be designed to meet (steel/frame)? Mr. Plushanski said it is a wood building with a metal frame. It has vinyl siding and is similar to a shed that is used in residential back yards. In response to questioning by Mr. Kirkpatrick, Mr. Plushanski said the structure had been used as an office trailer and he had appeared before the Board previously for an interpretation and was told that a mobile home is a trailer regardless of whether or not it had wheels it was considered a mobile home and that mobile homes are not a permitted use in any District. Had anything changed about the structure? Atty. Novak said it is the same structure. Mr. Novak said that at the meeting regarding interpretation, it was stated that the structure never was nor ever will be a home. Atty. Novak emphasized that the structure is like a shed a property owner would place in their backyard.

Atty. Novak provided a photograph of the structure. There is electric for the structure, as well as cable wiring for credit card use. Mr. Kirkpatrick referenced the Ordinance regarding mobile homes. He said applicant had been told previously that a use variance was required. Atty. Novak understood when they appeared at the December 11, 2013 meeting that an application should be submitted for a minor site plan with any variances that might be required for setbacks. Atty. Novak had provided Notices to the Hunterdon County Democrat and property owners within two-hundred feet. Mr. Kirkpatrick noted that the language in the Notice was weak; however, it was concluded that the Board could proceed with the use variance and bulk variances with no additional application fees, reviews or notices and no additional fees. The Board still believes that a use variance was required. Atty. Novak asked to proceed with the use variance. Mr. Kirkpatrick said no additional testimony would be required. He agreed with granting approval for the bulk and use variances. Atty. Anderson stated for the record that he did not consider the Notice to be sufficient for the use variance. He said any risk associated with the Board's action would be that of the applicant. Atty. Novak said that was understood. He noted for the record that notice requirements of the Land Use Act are very broad.

Mr. Kirkpatrick asked for questions from the Board. There were none. He asked for a motion. Mr. Eschbach made a motion to approve the use and bulk variance application. Mr. Nace seconded the motion.

Vote: Ayes: Mr. Eschbach, Mr. Nace, Mr. Walchuk, Mr. Kastrud, Mr. Ryland, Mr. Gibbons, Mr. Ford, Mr. Kirkpatrick

Kramer Electronics USA, Inc. Block 23, Lot 2.04, 6 Route 173: Minor Site Plan and Variance: Atty. Novak, representing applicant, introduced Engineer and Planner Stephen Risse, Kramer President and CEO David Bright and Operations Manager Jamie Johnson. Messrs. Risse, Bright and Johnson were sworn by Atty. Anderson. Atty. Novak said Notice Documents had been provided to the Board secretary. They were marked Exhibit A-1. The Minor Site Plan/Parking Variance Plan, dated January 8, 2014, prepared by Stephen Risse was marked Exhibit A-2. Atty. Novak gave a brief overview of the previously approved Preliminary and Final Site Plan and Variance application for the site. A variance was granted for reduction of parking spaces. Mr. Novak said the parking requirements in the Ordinance have changed, reducing the requirements as they apply to the subject property.

President Bright gave an overview of Kramer Electronics. Mr. Bright said Kramer manufactures video, audio and pc devices. Headquartered in Israel, Kramer has been in the United States for sixteen years. The subject site is their USA headquarters. It was purchased in December 2012 and moved employees to the site in June 2013. Kramer currently leases 15,000 s.f. of space in the Strober Building, 96 Route 173 West. The lease expires in April 2014. Kramer proposes utilizing 15,000 s.f. of the 25,000 s.f. first floor for storage. The 15,000 s.f. area is currently used for underground parking. The other 10,000 s.f. is non-office space. Kramer occupies the entire second floor which has approximately 25,000 s.f. Approximately 12,500 s.f. of the third floor has been leased for ten years.

The leasee currently has twenty employees. There is a possibility that five more employees could be occupying the leased area. Kramer has thirty-five employees. Mr. Bright said owner will be showing the remainder of the third floor for two to three years to a company who employees twenty to forty people. Kramer is contemplating using that area for additional employees in the future. Currently there are between eighty and one-hundred employees at the site. Mr. Kirkpatrick asked the amount of space that would be occupied within the next year or two. Mr. Bright said if the lease goes well, 50,000 s.f. should be occupied. Mr. Ford asked about occupancy of the first floor. Mr. Bright said a receptionist would be located there. Mr. Kirkpatrick referenced the original Resolution regarding square footage usage that states once 45,000 s.f. is exceeded, offsite parking improvements would be required. Atty. Novak thought that 60,000 s.f. usage was contemplated. He said the total for the building was 60,000 s.f. with variances granted for 15,000 s.f. underground garage space. Mr. Bright said the first floor is a lobby with a small meeting space, a conference room and a gymnasium. Atty. Anderson said he has notes indicating occupied space of 25,000, 12,500 and 12,500 s.f. for a total of 50,000 s.f. Mr. Risse interpreted the Resolution to imply there was 20,000 s.f. per floor, for a total of 60,000 s.f. Mr. Kirkpatrick indicated the Board was okay with the parking for one-hundred and ten employees in a 45,000 s.f. building. If the remaining 15,000 s.f. was occupied, theoretically increasing the number of employees beyond one-hundred and ten, then a deck or parking on an adjoining lot would be required.

Mr. Bright said there will be less than one-hundred and ten employees on the site regardless of the configuration. The building will be used solely for office space. Mr. Bright said Kramer has 40,000 s.f. of warehouse space in Long Island that he hopes to move locally. Mr. Kirkpatrick asked Mr. Bright how he would propose controlling the number of people on the site. He explained this was more of a concern for the future, if Kramer sold the building.

Mr. Kirkpatrick asked Mr. Risse to describe proposed improvements to the site. Atty. Anderson asked that Mr. Risse be qualified as a licensed planner. Mr. Kirkpatrick accepted his credentials. Mr. Risse said roll up doors will be installed to enclose the parking garage area which will be converted for storage space. Seven ADA parking spaces (two van accessible) are being restriped and relocated. Mr. Bright said Kramer has been in discussion with the State Police regarding more coverage. Atty. Novak asked Mr. Bright if there were any objections to the Board continuing jurisdiction of parking, as set forth in the previously approved Resolution. Mr. Bright said there was none. Atty. Novak asked Mr. Risse to cite reasons for granting the parking variance. He said it would advance the purposes of the Municipal Land Use Law by promoting public health, safety and general welfare. Atty. Novak asked if there were any questions. Mr. Ryland asked if there was additional land for parking, if that need came up in the future. Mr. Risse said the Board would retain jurisdiction over parking. He also mentioned a second level for parking and a leased area which may be purchased in the future. Atty. Novak said it does not appear any additional area for parking is needed. Mr. Bright had testified that if the need arose he would move the storage area out of the basement and use that area for parking. Mr. Novak said applicant seeks to carry forward what was granted by the Board previously. Atty. Anderson voiced his concern about continuous jurisdiction by the Board.

Mr. Anderson asked what would be wrong with simply limiting the number of employees on the site. Atty. Novak said it could be considered government intrusion on business. Mr. Ford said a threshold for the number of employees should be set. If that number was exceeded, applicant would have to return to the Board. Mr. Kirkpatrick emphasized the Board needs a mechanism to allow them to require applicant to return if employee and parking circumstances change. Mr. Kastrud asked if anyone could apprise the Board the maximum number of people the building could support. Mr. Ryland felt the Board's concern was reasonable. Atty. Novak asked how the number of employees could be policed. Mr. Kirkpatrick indicated it would be under the jurisdiction of the Zoning Official.

Atty. Novak apprised the Board of a possible solution. Mr. Novak suggested that if more than one-hundred and fifty spaces were needed, applicant would either come back before the Board with an alternative plan or open the garage doors and use the thirty-two spaces for parking. Mr. Kirkpatrick said a condition could be that if vehicles associated with the operation of the site are not parked within the designated parking spaces applicant shall return to the Board. Mr. Kastrud asked if the storage area would be climate controlled. Applicant said it would not be. Mr. Kastrud also asked if emergency services had sent letters pertaining to safety issues. Atty. Novak said the Fire Company had been noticed, as per Ordinance. Mr. Risse said the space has a sprinkler system and doors can be operated manually. There were no more questions.

Mr. Kirkpatrick asked for a motion to grant conditional approval. Mr. Clerico said there are checklist waivers set forth in his letter that should be included in the motion. Mr. Kastrud made the motion to grant conditional approval, including waivers cited in Mr. Clerico's letter. Mr. Eschbach seconded the motion.

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

Mr. Clerico said there are site improvements associated with this application. He said there should be a condition regarding the time limit for those improvements. Applicant said they would have the improvements completed by the end of June.

Mr. Kirkpatrick asked for a motion to add that condition. Mr. Ford made the motion. Mr. Eschbach seconded the motion.

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

Greenrock Recycling LLC: Block 22, Lots 15 & 15.01, Quarry License Renewal: Atty. Novak asked Brian Plushanski and Stephen Risse to come forward. They were both sworn by Atty. Anderson. Mr. Clerico gave an overview of the application. He said the quarried area is approximately two acres. He said the plan that was prepared by Mr. Risse depicts the intended area of quarrying and shows the ultimate condition of what the finished excavated and grading out areas would be.

The adjoining recycling facility is also shown. Mr. Risse displayed a Plan entitled Minor Site Plan & Variance Site Manager Office Structure Plan, dated January 8, 2014. The Plan was prepared by Mr. Risse. It was marked Exhibit A-1. Mr. Plushanski said that Red Hills Mining is on the westerly side of his property. Red Hills has quarried up to Mr. Plushanski's property line. Atty. Novak said there is a sixty to seventy-foot drop off. Mr. Plushanski said the Township had asked Red Hills to alleviate the potentially dangerous situation regarding the drop off. Mr. Plushanski said a Red Hills representative asked Mr. Plushanski if they could come onto his property and level the drop off to some degree. In doing so, vegetation on the Greenrock property that provided some buffering was destroyed. Mr. Clerico said the conditions on the Plan before the Board were altered when the drop off was leveled. Mr. Clerico said an accurate map prepared by a surveyor was needed. Mr. Kirkpatrick told Mr. Plushanski his quarry license application is indicating something different than what is out there. He suggested to Mr. Plushanski that he should come back next month with a plan that shows what is proposed for the next two years.

Correspondence: None

Comments from the Public/Other Discussion: James Snook, Geologist/Hydrogeologist Potential Candidate: Mr. Snook gave an overview of his qualifications for the position.

Motion to Adjourn: Mr. Ford made a motion to adjourn. Mr. Nace seconded the motion.
(9:45 p.m.)

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary