

# Union Township Planning Board/Board of Adjustment

## Minutes of the Regular Meeting

May 28, 2015

The meeting was called to order by the Chairman Kirkpatrick at 7pm:

Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Planning Board/Board of Adjustment Secretary on January 28, 2015 by:

1. Published in the January 29, 2015 issue of the Hunterdon County Democrat and the Courier News
2. Posting such notice on the Township Website
3. Posting such notice on the bulletin board at the Municipal Building.
4. Filed with the Municipal Clerk.

### **Flag Salute**

Chairman Kirkpatrick asked all to stand for the Pledge of Allegiance

### **Identification of those at the podium**

Present: Brian Kirkpatrick, Alan Ford, Bruce Hirt, Orest Walchuk (arrived at 7:05pm), Frank Mazza, Robert Nace, Kathleen Corcoran, James Eschbach, Mark Anderson, Esq, Robert Cierico, Engineer, Elizabeth McManus, Planner, and Maria Elena Jennette Kozak for Grace Kocher, Secretary.

Excused Absent: Christian Kastrud, Albanus Ryland and James Gibbons.

Let the record show there is a quorum.

### **Minutes**

A motion was made by Alan Ford and seconded by James Eschbach to dispense with the reading of the minutes of the May 14, 2015 meeting and to approve the minutes as recorded. All present were in favor of the motion with the exception of Orest Walchuk who abstained. Motion carried.

### **Old Business:**

There is no Old Business to discuss at this time.

### **New Business:**

There is no New Business to discuss at this time.

### **Completeness Review:**

Rossi: Block 25 Lot 1.05, 75 Race Street – Attorney Jay Bone is present. The report prepared by Robert Clerico of Van Cleef Engineering dated May 22, 2015 was discussed. The Board Engineer and Planner agree the waivers requested should be granted. A motion was made by Alan Ford and seconded by Robert Nace to deem this application complete. At a roll call vote, all present were in favor of the motion. Motion carried. See Public Hearing.

Cellco Partnership d/b/a Verizon Wireless: Block 13 Lot 6. 53 Frontage Road. Attorney James Mitchell is present. Chairman Kirkpatrick asked the applicant's attorney if there are still outstanding issues. The attorney responded yes but wanted to have some discussions and proceed. At this time, Board Attorney Anderson reminded everyone that this application is a "D" Variance and requires Board Members Frank Mazza and Bruce Hirt to step down and recuse themselves. Let the record show that Frank Mazza and Bruce Hirt recused themselves and left the room.

The structural report exists but Board Engineer Clerico has requested more information. The application is still incomplete since the applicant has not submitted the requested information.

The applicant has agreed to carry this application to the scheduled June 25, 2015 meeting. No further notice is needed and the application is thus carried.

### **Resolution**

There are no resolutions to discuss at this time.

### **Public Hearings**

Rossi: Block 25 Lot 1.05, 75 Race Street – Attorney Jay Bone is present.

Witness #1 – Mr. Rossi, 75 Race Street, property owner. Sworn by Attorney Anderson. Mr. Rossi stated he bought the property in 1987.

Exhibit A – The application

Exhibit B – Ariel Image. Mr. Rossi explained that he built the home which is a single family home. He obtained the proper permits and received a Certificate of Occupancy. The building of the deck caused a rear set back issue. The house was built to the rear of the property which presents a larger front yard. The rear set back is 100'. The original proposal was to be farther east but was moved to the west to avoid dealing with a buried pipe. The move was about 12". The house is on an angle. The one corner of the deck is what is in the setback by about one foot. The steps are not covered and are permitted by ordinance. At this time there were no questions from the board or professionals.

Planner McManus was asked to help with this application. Planner McManus explained the Ryder to the application and the variance issues. The rear set back issue requires a "C" Variance which can be a C1 or a C2 Variance. In a C1 you need to look at the purpose. Does it promote the visual environment? Does the deck create a more visual off the yard and the applicant responded YES but also reminded everyone that to avoid disturbance of the land because of the downspout gutter being buried in the ground, he moved the deck over to the west. The eastern corner is ok. The Stormwater Management features remain intact and there was an overall limited disturbance to the property. The C2 was then reviewed and incorporates deviation advances which are better than the ordinance requirements. In this case the C2 applies as a deck allows for more usable outdoor space. The front yard is large but a deck promotes backyard space. This is all a position issue. The negative issues also need to be discussed. Does the deviation create a detriment to the public good? Mr. Rossi stated that he built the deck about 20 years ago. The closest neighbor, about 150' west of the deck is ok with the deck. The neighbor to the east is about 160' from the deck. The neighbor to the rear of the deck is about 400' from the deck. Mr. Rossi stated that you cannot really see the neighbors from his deck. The house to the right is closer to the street and the house to the left was destroyed by fire but he can see the three car garage with an apartment from the deck. There is screening between the neighbors. The substantial impact on the zoning ordinance and planning was discussed. Planner McManus explained that the deck is consistent with the ordinance with the exception of the one corner which is 95' from the rear set back and should be 100'. Mr. Rossi explained that he is looking for 5' just as protection when in fact the deck is actually less than 5' and therefore closer to the 100' requirement of the ordinance. The actual number is 1.89 feet but the applicant is just trying to have some wiggle room so that no one will have to go thru this process again. Some concern was expressed. Planner McManus summarized the C1 as being an environmental desirability and for the C2 that this improved alternation over the ordinance was due to a lack of disturbance to the land, no other Stormwater management was needed, there is no detriment to the public good and there is no detriment to the zoning ordinances and planning. It is her opinion that application is before the board due to a particular circumstance due to house alignment.

There were no further questions of the professionals or the board.

The public portion was open for discussion and no one from the public stepped forward.

A motion was made by Alan Ford and seconded by Bruce Hirt to approve this application request based on what is as-built. At a roll call vote, all present were in favor of the motion. Motion carried.

Kohn/Malenchek: Block 4 Lot 2, 176 Route 173 West.

Attorney William Caldwell is present. At this time, Board Attorney Anderson reminded everyone that this application is a "D" Variance and requires Board Members Frank Mazza and Bruce Hirt to step down and recuse themselves. Let the record show that Frank Mazza and Bruce Hirt recused themselves and left the room.

Attorney Caldwell is filling in for Attorney Dilts as there was a potential conflict that exists. All have been consulted and it was agreed that Attorney Caldwell would be present. Attorney Caldwell explained this application. The request for a "D" Variance is because this property is located on Route 173 and is currently zoned as a single use and the applicant is seeking a multi-use. Each use is a permitted use but independently. They are asking for a multi-use on a single property.

Witness #1 – Richard Pfauth – sworn by Attorney Anderson

Exhibit 1 – property rendering

Richard Pfauth explained the rendering. He is under contract with Messrs. Kohn and Malenchek but they need the variances to move forward with the sale of the property. They have never had a zoning violation. They have never had a complaint by the neighbors until recently.

The board had no questions at this time.

The public portion was opened for questions.

Attorney Mark Peck was present with Mr. Perucci and is representing Perryville Associates (located across the street). Mr. Peck asked what this building was used for. Mr. Pfauth stated that Strober Lumber leased from him and that they sold lumber, sheetrock etc. They moved in the 90's or 2000 and

the building was empty. Mr. Peck questioned the parking and if fill was brought in to expand the parking. Mr. Pfauth said that fill was brought in but that nothing changed. There were no further questions.

Witness #2 – Laurie Stocklinski - sworn by Attorney Anderson

She stated that she is in favor of this. They have been working together with the Hot Rod Huddle – a Classic Car Show for two years. This event is approved by the town and the state. She runs the Pattenburg House. She needs permission for a catering permit to do the event. The Township Committee reviews the application. She is looking to do this again this year. She has never had a complaint. It is a one day catering event. Last year she served about 800 people. She figures she sold and did an average of 792 people during the 7 to 8 hours of the event. She employs six servers. ID checks are done on everyone and no one is served without ID.

Exhibit A1- property rendering – Ms. Stocklinski showed the setup of the event. The Beer Garden is in the south west area. The opening is on the side by the grass with four bouncers that are employees and TIP trained (classes trained thru the ABC which teaches how to serve properly). ID is needed to get into the Beer Garden. Discussion took place about the request to be allowed to do this event yearly with the obvious need to file the appropriate permits. There were no fights. Approximately six State Police Officers attend and patrol the event. They are hired by the property owner. She thinks this event also helps her business even though it is a fundraiser. It is a positive influence for her business. She does a lot of charity work and it helps to be responsible.

The board did not have questions at this time. Engineer Clerico asked if she was a food vendor and she responded yes and that she files the proper paperwork.

The public portion was opened for questions.

Mark Peck with Perucci was present and is representing Perryville Associates (located across the street). Mr. Peck asked if there were any other permits needed, such as DOT access? She said no. He asked about parking planning since the testimony states about 800 people attend. She responded by pointing to Exhibit A1 that the cars park in the Northeast area. Mr. Peck asked if all was ok with parking and the response was yes. Mr. Peck asked about a Traffic Control Plan and the response was no and that she handles catering.

Mr. Peck has exhibits that he wants to discuss with Ms. Stocklinski. Attorney Caldwell looked at them. They are marked for identification only.

All photos are of the event, August 11, 2014 and are off the internet

The photos were marked O1 – O9

O1-yes

O2-yes

O3-cannot say – she did not see that

O4-yes

O5-yes

O6-looks like the event last year

O7-never saw the tents

O8 - yes

O9 – thinks yes – parking lot but did not see the sign

That was all from the public.

Witness #3 – Brian Plushanski – Sworn by Attorney Anderson

Exhibit A1 was used to show. He owns the ABM Storage facility located about 100' west on Route 173 and the property with a driveway about 300' west on Route 173. He volunteered to come in because he lives not far from the site. He drives by the property a lot. He remembers when it was an eyesore. He is happy to see the improvements. Use of the property does not interfere with his business. He has never complained. He knows the car show and has attended. He has brought his family to the event. It was a nice day. He supported the vendors. He saw no disorder or problems. Kids were welcome. He is aware that the applicant seeks a multi-use of permitted uses including a tattoo parlor, an antique store and the social club. He does not see this as a negative but more as a positive for the township. He himself was before the board for his building mentioned above to go from a single permitted use to a multi permitted use. He stated that a single use is just a hardship. It makes the property more marketable. If you cannot make ends meet then that affects the property and the town.

There were no questions from the board or professionals.

The public portion was opened and no one had any comments.

Witness #4 – Patrick Ryan – Sworn by Attorney Anderson

He rents from Plushanski in the small building. It is an auto repair facility. The entrance is 100' from the repair facility. He has been there since 2010. He is here at the request of the applicant. He understands there are a few businesses in his building. He has never made a complaint against his neighbor. He is not aware of any complaints. The property next door looks good all the time. The entrance is even better. He attended the car event last year. He supported the vendors. He did not see anything bad. He thinks it is good for the township. No one used their property as they had the entrance blocked. He went back and forth all day and did not have any problems. He was also there the year prior and found things to be the same.

There were no questions from the board or professionals.

The public portion was opened and no one had any comments.

Witness #5 – Amitoz Anand – Sworn by Attorney Anderson

He is the general manager at the Busy Bee located to the east. The property is a multi-use property consisting of a 24hr Gas Station, a 24 hr. Convenient Store, and a Pizza Parlor with operating hours of 10 am to 10 pm daily. He has been the manager for 6 years. He saw the property in this application was previously falling apart but has been cleaned up. He was asked to be here but also volunteered. He believes the event also benefits his store. People are out at the event and stop by his place which is a multi-use approved property. He is not aware of any conflicts between neighbors and has never had a problem with the applicant. He thinks this is a great for the community as it draws people to the area.

There were no questions from the board or professionals.

The public portion was opened and no one had any comments.

At 8:15 Chairman Kirkpatrick declared a 5 minute break.

Witness #6 – Josh Kohn – Sworn by Attorney Anderson

He is the applicant and is to enter into a contract to purchase the property. He has been a tenant since 2012. He has improved the property. They put on a new roof and a lot of elbow grease. The following exhibits were discussed.

Exhibit A2A – Front of Building when lumber yard was there – highway looking in

Exhibit A2B – Same view as above only more to the west

Exhibit A2C – Present day. Showing improvements

Exhibit A2D – West side of building before clean up

Exhibit A2E – East side of building – shows garage doors and fence

Exhibit A2F – 2 pictures on it. Old view back to busy B is the top picture and new view of the same.

Exhibit A2G – West gate top side of property walking down to the L of the building (views Old & New)

Exhibit A2H – Interior shots – before and after. Permits on file.

Exhibit A2I – Before and after office space – upstairs to be a Tattoo Parlor.

When they wanted to put the 2 uses which is what triggered the discovery that only one permitted use was allowed and not multi permitted uses. They split the AC/Heat in the Tattoo parlor, added an Oil Burning furnace in the antique shop, and propane in the 4 car garage. The plans showed a mercantile up front with storage to the back. They had to redo the fire wall to bring to code. They want to have the tattoo parlor upstairs. The lower right would be for the antique shop and the social club (antique car enthusiasts). They do charity events. They are a 501 ( c ) not for profit. They are community orientated. The show started on Jug Town Mountain about 8 years ago. The applicant was requesting seasonal permits with the application and after some discussion, Chairman Kirkpatrick stated that the board can only look at the multi-uses. The Township Committee grants the allowable use for each permitted event. Attorney Anderson questioned the Auto Shop and was assured that this application is not seeking to be a repair facility. The interior use is for a Tattoo Parlor, a Social Club, an Antique Shop and the Storage of Cars relating to the Social Club.

Attorney Caldwell stated that 2 to 5 people will work in the Tattoo Parlor. The hours are Monday thru Sunday from 10 am till 10 pm. Most appointments are scheduled but walk ins are welcome. An appointment is about 3 hours.

Planner McManus explained the uses. She stated that this is a PC District. She thinks this is an E2 Service Business but that the board needs to determine if this use is the use. A Medical Clinic is allowed. A nail salon is an E2 service use (professional use or personal use). The applicant believes it is a service as retail passes across the counter. Upstairs is about 900 sq. feet and the downstairs is about 2000 sq. feet. The tattoo parlor proposes a maximum of 5 employees and that an appointment is about

three hours. The Antique Shop is a permitted use – E1 – retail shop. They are buying an object. The size is 1500-2000 sq. feet. There are big windows in the front. The proposal for employees is 2 to 5 with the hours of operation being Monday thru Sunday from 9 a, to 10 pm. The potential foot traffic is about 1 customer per hour. The social club is a permitted use – C8 which permits a club. There are about 13 members which meet once a month (the first Friday of the Month.). They start at about 9 pm., usually after work. They store cars there and do not do auto repairs. Cars are stored in the 4 car garage, the barn in the back and in the “L” shape. They are not selling cars for a business. They are not a used car lot. They do not repair cars but store them and also prep for shows. They do not store cars outside. They could be out when they are working on them. They will work on signs at a later date and will follow all requirements.

Chairman Kirkpatrick stated that he viewed this as a meeting place and storage for the members, so the storage is an accessory use.

There was discussion of the 501 (c).

The applicant states that the storage of cars is for the social club. The social club consists of car enthusiasts. It supports the principal use of gathering members. The members promote what they do. Attorney Anderson brought up some concerns about the primary use and accessory use. The board was reminded that Strober did store things. This is a pre-existing non-conforming use. Engineer Clerico questioned the site plan and the exterior parking and the applicant stated that no modifications are to take place. No changes to the site will take place. All existing.

The public portion was opened for questions.

Mark Peck with Perucci was present and is representing Perryville Associates (located across the street). Mr. Peck asked if the parking has been expanded and the applicant responded that they did not expand anything just cleaned it up and in exhibit A2F the grassy area in question was just weeds that were overgrown in the millings. A Highlands discussion took place with the applicant stating that he contacted the Highlands Council three years ago and was told that the building was pre-existing and he did not need to obtain anything from them. A Highlands Council Applicability Determination letter is needed and the applicant will obtain that. Septic was discussed and the applicant stated that an inspection was performed. A DOT permit was not looked into. Mr. Peck asked about a Traffic Plan for the event, clarification of the application and the uses being sought and the number of members in the social club.

There were no other comments from the public.

Expert Witness #1 – James M. Chmielak – Sworn by Attorney Anderson

He is a professional engineer and planner. He has practiced about 17 years. He has appeared before 50 boards as an expert witness. No one present had any questions. Mr. Chmielak was accepted as an expert witness. Mr. Peck had no objections.

He was hired as a professional. He is familiar with the legal standards for granting the variances. He has been to the property about 6 times. He has reviewed documents of zoning including the zoning plan and the ordinances. He prepared the minor site plan showing minor improvements for the multi-use.

He has reviewed the professional letters.

Exhibit A1 – Related to the development portion of the property. It is 11 acres. He explained the buildings and the grounds. He showed parking. He explained the need for ADA accessibility and the improvement needed to the site. He also included a 10x10 trash enclosure. He believes that these improvements are reasonable and will improve the site for the multi-use proposal. A C1 variance is needed. This is a hardship variance for the front yard setback which is about 35’. To change this would prevent them from using the property. There is no negative reason to granting the variance. This is pre-existing.

Exhibit A4 – Sheet 1 of the plan (colorized). The applicant does not want to remove the vegetation. 60’ is the average tree line. It screens the property when it is leafed out. To the north of the site is a single family residence. To the northwest is storage. To the northeast is the PC & CM Zone. Residential homes are allowed in the CM Zone.

Mr. Chmielak was asked about DOT access being permitted and responded that on Route 173 the property has 2 driveways. The prior commercial use had more traffic. This proposed project is scaled down in comparison to the prior use and a change in use does not trigger a DOT application. The County did request DOT involvement and he has been in touch with them to obtain a determination. Lighting questions came up and Mr. Chmielak stated that there are no proposed changes. Well and Septic questions were the next topic of discussion. Mr. Chmielak stated that the well was tested and the

results have been submitted. The conclusion was that the Water Quality is ok and the water flow is adequate to provide to the existing fixtures. As for the septic, it's on the plan and can be found in the southeast with a tank and laterals. A report was submitted. The prior use was extensive. There was a camera issue in reaching the end of the line and the applicant is going to handle the repair. The septic is ok and passed a hydraulic load test. The applicant is agreeable to a condition requesting County Health review. Any runoff is towards Route 78 and not towards existing residents. Ground water flow is similar in direction.

Highlands concerns were brought up and the applicant can obtain an applicability determination although they have spoken with the Highlands Council in the past and as long as the property is a pre-existing property and that they are not expanding the foot print of the building then it is exempt.

They will address drainage easements.

D1 Variance – the general welfare is promoted and the application is suited to the location.

1. Regarding the location of the property- there is a benefit of using the highways
2. The uses are permitted in the PC Zone and they believe the uses support planned development.
3. The complex is ideal for the proposed uses as they fit the existing foot print without modifications.
4. Parking accommodates the uses.
5. They are rehabilitating the existing building without expanding the building.
6. There are no expansions to the impervious surface.
7. There is no impact on the residential area.

The benefit of this application is that it encourages the municipality to promote health and safety, it cleans up an existing site thru rehabilitation, it is consistent in its request to convert a single use to a multi-use similar to other properties within the area and the general welfare of the public good is promoted in seeing a rehabilitated facility rather than seeing the deterioration. Mr. Chmielak also stated that purpose I is promoted, purpose G (the application promotes a space for a variety of uses with a few commercial uses benefitting from a village setting which also helps from a financial aspect as well), purpose J (conservation of historic and natural resources in that the applicant is repurposing an old building rather than demolishing it and creating new). In regards to negative criteria there is no detriment and no impairment of the zone plan. Permitted uses in the zone include retail shops, retail services and social. Multi-uses are also permitted in the zone. The townships zone plan allows for it. Regarding the scope of size relating to impact there are limitations as 7.5% of what is permitted is based on zoning. Parking is adequate. There is no added traffic as the proposed uses are low intensity compared to past and potential future uses allowed for the building.

Planner McManus stated that her comments in her memo dated May 20, 2015 have been addressed but she stated that there is an application issue with design issues. The applicant feels that the existing vegetation is a reasonable buffer. Regarding lighting there are improvements on the side facades. The existing new lighting is adequate and there is not a need for additional lighting near the entrance. Lights will be on a timer from dusk to midnight.

At the request of Engineer Clerico, Mr. Chmielak discussed the required parking (31 spaces), the need for some additional review to make sure there is consistency with testimony to parking illustrated on the plans, and the size of the current dumpster and how it can be reduced in the future.

There were no questions from the board or professionals.

The public portion was opened for questions.

Mark Peck with Perucci was present and is representing Perryville Associated (located across the street). If the septic is good and in working order then why is there a Port-a-Jon on the property and is that permanent. Mr. Chmielak responded that it is temporary, it will be removed and they will use the septic. Mr. Peck asked if the master plan was reviewed and how is this application consistent with the master plan of which a response was the testimony of Mr. Chmielak supports this. Mr. Peck also expressed his concerns of an accessory use.

Interested Members of the Public

Anthony Masiello – Sworn by Attorney Anderson

He has known Will and Josh along time, He applauds the improvements and supports the application.

Opposition

Attorney Mark Peck

Witness #1 – Joseph Layton – Licensed Planner – Sworn in by Attorney Anderson

Graduate of Rutgers in 1968. He has testified before 150 towns in NY, NJ and PA. He was accepted as an expert witness. He has reviewed the plan. He has issues with the accessory use for automobile

storage. He thinks it is a principal use as he believes it is the reason they meet there. He also questions a tattoo parlor as a service business. He does not think so. A service is usually a dry cleaner. He agrees with a nail salon. He does not see anything in our ordinance to say it is not.

He questioned the purpose of the PC Zone and some of the controls. The township has not worked on a lot by lot detailed plan review as proposed in the Master Plan. He thinks more improvements need to be done on this property. At this point, chairman Kirkpatrick stated that he thought this witness was actually supporting the request and that smaller uses are therefore better for this site.

At this time, there were no additional questions from the board, professionals or the public.

Chairman Kirkpatrick stated that the board has other matters to discuss and therefore this application is carried to the next scheduled meeting. The public is left open. No additional testimony will be offered by the applicant or the opposition. This is carried to the meeting of June 25, 2015. No further notice is needed.

Engineer Clerico left the meeting at 10:25.

Special Attorney Jonathan Drill joined the meeting

2015 Third Round Housing Plan Element and Fair Share Plan of the Township of Union's Master Plan – continued Public Hearing.

Planner McManus discussed her memo dated May 15, 2015 entitled “Revised Draft Element and Fair Share Plan”. Her memo states that revisions requested by the board include:

1. Update Planning Board members list and Township Committee list
2. Discussion of the Township's other efforts to provide low cost housing on page 12
3. Discussion of existing mobile homes provided on page 15
4. Income distribution table added (new table 16) on page 24
5. Recognition of accessory apartments and ECHO units being permitted in the Township on page 43: no credit is requested
6. Discussion of the environmental limitations on developability on pages 30 and 31

Planner McManus also explained the components:

1. Rehabilitation – 0 – not obligated
2. New Construction – the township must create COAH restricted for 30 years. Prior is 1987 – 2014 and that is zero. The need 2014 – 2024 is 21. You have satisfied this between existing RCA, 2 PS Construction, and the remained is satisfied with the Mulligan Farm project (78 units). The Township will have 84 units so there is a surplus.

No one had any questions or concerns.

Let the record show that there was no one present in the public.

The public comment was closed.

A motion was made by Orest Walchuk and seconded by James Eschbach to adopt the May 15, 2015 draft Housing Element and Fair Share Plan. At a roll call vote, all present voted in favor of the motion. Motion carried.

### **Public Comment**

There were no public comments offered at this time.

### **Adjournment**

Alan Ford made a motion to adjourn. Motion approved. The meeting ended at 10:45 p.m.

Respectfully submitted,

Maria Elena Jennette Kozak  
Covering Secretary