

August 22, 2024, Planning Board/Board of Adjustment Meeting Minutes

These minutes were approved at the September 26, 2024 Meeting.

Call to Order and Notices: Mr. Ford called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00pm.

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 notice dated January 18, 2024, as published in the Hunterdon County Democrat and notice dated January 19, 2024, 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.

Flag Salute

Members Present: Committeewoman Cherney, Mr. Nace, Mr. Kastrud, Mr. Neary, Mr. Kirkpatrick, Mr. Belden, Ms. Bartolomeo, Chair Ford, Mr. Lepore, Mr. Tousignant, Mr. Glacken.

Board Professionals Present: Attorney Anderson, Engineer/Planner Robert Clerico.

Members Absent: Mayor DeGiralamo, and Mr. Gatanis.

Others Present: For Wayne R. Schmied Revocable Trust: Attorney Gruenberg – applicants attorney, Mr. Schmied-applicant, Mr. Mooney-architect, Mr. Ferrante-engineer.

Approval of Minutes: Mr. Kirkpatrick made a motion to approve the minutes of the May 23, 2024, regular meeting. Mr. Lepore seconded the motion. **Vote: Ayes:** Mr. Nace, Mr. Kastrud, Mr. Neary, Mr. Kirkpatrick, Mr. Belden, Chair Ford, Mr. Lepore, Mr. Tousignant, Mr. Glacken. **Abstain:** Committeewoman Cherney, Ms. Bartolomeo, Chair Ford. **No Nays. Motion carried.**

Approval of Minutes: Mr. Belden made a motion to approve the minutes of the July 25, 2024, regular meeting. Mr. Kirkpatrick seconded the motion. **Vote: Ayes:** Mr. Nace, Mr. Neary, Mr. Kirkpatrick, Mr. Belden, Chair Ford, Mr. Lepore, Mr. Tousignant, Mr. Glacken. **Abstain:** Committeewoman Cherney, Mr. Kastrud, Ms. Bartolomeo. **No Nays. Motion carried.**

New and Pending Matters

- Pathan – Resolution
2 Asher Smith Rd
Block 27 Lot 3.16

Chair Ford explained that the resolution was not received. Attorney Anderson mentioned a delay and that he would follow up in resending for consideration at the next scheduled meeting.

- V.A. Spatz & Sons Inc – Amended Site Plan & Variance – Public Hearing
35 Frontage Road
Block 22 Lot 2

Mr. Kirkpatrick made a motion to carry this application and public hearing to the next scheduled meeting without further notice. Mr. Lepore seconded the motion. **Vote Ayes:** Committeewoman Cherney, Mr. Nace, Mr. Kastrud, Mr. Neary, Mr. Kirkpatrick, Mr. Belden, Ms. Bartolomeo, Chair Ford, Mr. Lepore, Mr. Tousignant, Mr. Glacken. **Abstain:** Mayor DeGiralamo. **No Nays. Motion carried.**

At the end of the meeting, Mr. Kirkpatrick reminded the board that it appeared that the next scheduled meeting did not have much in the form of agenda items. Mr. Kirkpatrick amended his motion to state that the public hearing for said application would be carried without further notice to the meeting of September 26, 2024. Mr. Lepore seconded the motion. All present voted in favor of the motion. Motion carried.

- The Wayne R. Schmied Revocable Trust Variance Application – Public Hearing
60 Perryville Road
Block 25 Lots 37.01

Attorney Gruenberg was present on behalf of the applicant. He reminded the board that this is a continued public hearing and that there were a lot of improvements previously proposed, and the applicant has revised the plan to remove all but the driveway expansion. The impervious coverage will be 6.4% with the ordinance allowing for 3%. The property had an existing impervious coverage of 5.8% and the driveway as proposed adds an additional .6% of impervious coverage.

Attorney Anderson explained that the board has jurisdiction. Questions were discussed regarding prior testimony as to whether this is a continued hearing or is this a new hearing. All board members were present at the prior hearing or reviewed the recording and minutes of that hearing so it was agreed that this would be a continued public hearing. Ms. Bartolomeo and Mr. Ford, although not present at the previous hearing, stated that they had reviewed the materials, minutes and recording of that meeting.

Mr. Ferrante, engineer for the applicant, was sworn in and deemed to be a qualified expert by the Board at the prior hearing. Mr. Ferrante was reminded that he is still under oath.

He presented Exhibit A – 10, a revised plan dated 06/17/24 with color rendering added.

Mr. Ferrante explained that this is a 5-acre lot with an existing house, drive, and barn. The change is a slight increase to impervious coverage which already had exceeded what the ordinance permitted when the property owner purchased the land. The existing expanded gravel parking was built for seven cars, but will be reduced to three cars along with a new sidewalk in front of the existing dwelling. The applicant listened to the board and reduced the size of the expanded design. The plan proposes to manage stormwater to handle all impervious coverage on the property over 3%. Support was provided to justify the stormwater management. The existing non-conforming coverage was 5.8% and the proposed would be increased to 6.42% which is what the applicant is seeking regarding the variance.

Board Engineer Clerico prepared a review memo dated August 14, 2024 which was discussed.

Discussion took place regarding the existing right of way easement dedication on both Perryville Road and Cooks Cross Road. The calculations used are to the driveway lines. They are not proposing any

additional changes to the road as everything is interior. The right of way plan shows a transfer to the township. This is a housekeeping item that needs to be addressed. If previously recorded, then the deed needs to be provided. If not, then the deed needs to be recorded. This can be a condition of any approval.

The applicant agreed that a maintenance manual for the stormwater management system would be a condition of the approval. Additional board comments included the request that the maintenance manual be filed with the deed as a condition of the resolution.

The public was invited to ask questions of this witness.

Leslie Kulick – question if the outbuilding is a barn or a shed with a maximum height of 14' and size of 300 square feet being stated. Attorney Gruenberg stated that testimony will be provided in this hearing.

That was the only question of the public for this witness.

Board questions were raised about what is only before the board at this time, stormwater management, impervious coverage, and what is the house and garage approved for in terms of the number of bedrooms and converted garage space to livable. Responses were that prior testimony answered those questions.

Conversion of the garage brought up questions about permits, with Attorney Gruenberg responding that when the garage was converted into livable space that a zoning permit was obtained.

Attorney Gruenberg further reminded the board that the applicant is trying to bring the property closer to compliance.

Additional conversations took place regarding the noting the removal of stone from the expanded gravel parking area and replacing stone with grass pavers. Curbing or transition of parking to non-parking could be placed and this is something that can be added as a condition of approval.

Parking was the next topic of conversation. It was stated that the outbuilding is a barn for sheep and sheep shearing. The parking is not for commercial use but for family visitation use.

The next topic was the outbuilding which uses electricity and water from the house. Applicant Schmied, who was still under oath, stated that the outbuilding/barn does not have heat and that the water hydrant that is used for water consists of a handle that raises and retracts, with the line about 3' underground which is below frost line.

The applicant stated that does not connect to the septic, the outbuilding is not livable space, the outbuilding is for the animals, and the outbuilding does not have heat.

The public hearing was opened to the public:

Rena Gutisen had questions pertaining to the parking of commercial or business vehicles, the length of time a dumpster can exist on the property and whether a cupola with a bell is permitted. Responses included: there is an ordinance pertaining to the parking of commercial or business vehicles on residential property, the township may have an ordinance pertaining to the dumpster and that will be something that Councilwoman Cherney will follow up with, and A copula on a barn with a bell could trigger a noise ordinance which is a township ordinance and a zoning issue. This is not on the plan so the board cannot address. There are no changes to what is existing being proposed.

Another member of the public, Ms. Labelle, questioned enforcement of the board and enforcement of the plan with Chair Ford stating that the board approves a plan with the involvement of board professionals but that enforcement rests with the zoning officer who is an employee of the township. A citizen complaint must be generated to the zoning officer, who would then investigate. Compliance can be enforced through options including the issuance of a summons, which may then result in a fine, a board application or the removal of what is being complained about.

Witness #2 – John Taikina – All Things Planning & Development LLC - He received his degree in 1992 and is a planner in good standing. His first 5 years were spent as a zoning officer, so he understands the enforcement as well. He has testified before about 165 boards, however not in Union. He was accepted as an expert witness.

Planner Taikina stated that the plan is talking about .62% of additional impervious coverage in a zone that permits agricultural use. The Master Plan modernizing zoning was adopted in 1985. Anything prior was considered pre-existing non-conforming. The house, driveway and barn were all there before 1985, so they are allowed to continue. There are arials showing the existing features of the property. The proposed parking area is a reduction and will be used to park cars, turn the hay truck around all in an effort to keep off the grass and often muddy areas. The proposed stormwater controls will cover the excess over the permitted 3% even though the features were prior to 1985. The goal is to bring the property into compliance with the township code.

C variance conversations- This relates to the property and its owner. It advances Municipal Land Use Law with the space being used for agricultural use. It is a creative development, satisfies environmental conditions and is in an appropriate location. The condition is unique to this property and benefits the public. There is a balance of agricultural use and residential use while preserving agricultural soils within the township and county. This project also meets the Highlands goal of preserving water quality. The applicant is adding impervious coverage to the property. However, the application before the board will benefit the township with the stormwater plan being over the 3% per ordinance. The benefits outweigh the detriments. This lot is over five acres. The proposed parking is minimal in comparison to the size of the lot and the intended use of the lot. It is for family use and not business. The Master Plan itself promotes preserving agriculture and soils which is what the applicant is proposing with following the stormwater rules over 3% impervious coverage. The ordinance recognizes that the 3% was just not enough protection for the township and this plan addresses the current requirements, and that is an improvement to the property and therefore an improvement to the township.

The public was invited to ask questions of this witness.

Leslie Kulick stated she still does not see why parking is needed. Many people on the road have family members who visit and accommodate the parking without getting a variance. Planner Taikina said that the applicant stated that the parking is for family and guests with the township getting a better stormwater plan for the property. The plan would also be documented which means the township is back to controlling enforcement. The board was reminded that a complaint was filed because of a zoning issue and that triggered the applicant to appear with a variance application.

Another member of the public who did not identify herself when speaking had questions about public health and safety. Her concern was how to prevent the sheep when grazing from going into the road. The planner stated that good fences make good neighbors which equal good pastures.

There were no additional members of the public with questions for the planner.

Attorney Gruenberg stated that testimony was completed.

The public portion of the public hearing was opened:

Mrs. Kulick was sworn in. She stated that she moved into town in 1989 and that the barn was there. She had looked at the property in question and the driveway was gravel. She believes the applicant paved the driveway approximately 10 years ago. She asked the board if there is a difference between gravel vs paving and Mr. Kirkpatrick stated there was none in regard to impervious coverage. She also noted things that have been removed from the property such as the play structure and if a permit is needed. Mr. Kirkpatrick stated that is a zoning question, however the ordinance has provisions identifying structure removal. The real concern is with what is added to the property. Addition to the property triggers an impervious conversation. Zoning and state construction permits are additional conversation. The next question was regarding the existing flagpole that on the plan says is 25' in height. The applicant stated that the pole is approximately 15' in height and has a diameter of approximately 2". There are no changes proposed to the flagpole. The applicant agreed to amend the plan to 15 feet.

There was no one else from the public that wanted to provide testimony at this time.

Attorney Gruenberg stated that the applicant received a notice of violation, provided an application for board review, heard the comments expressed and revised the plans by reducing what was proposed. If this is approved, the township will know exactly what is on the site and the neighbors will also know what the site was approved for. The applicant agrees to the conditions stated as well as outlined in the review letter.

There was some additional discussion regarding restricting parking with that being something that the board does not need to reference as there is an ordinance that addresses that subject.

Mr. Kirkpatrick stated that the impervious coverage is over 3%, and that the plan captures the excess as per the ordinance which is an improvement to what is currently being done on the property. Groundwater recharge is being promoted with the applicant also promoting agricultural use with sheep. He believes the applicant has satisfied the C2 burdens of proof.

A motion was made by Mr. Kirkpatrick to approve the application with the following conditions:

- 1-compliance with all the comments of Engineer Clerico's memo,
 - 2-preparing a stormwater management maintenance plan and recording along with the plan in the deed,
 - 3-submitting proof of the right of way being filed with the county,
 - 4clearly marking the boundary of the lawn to the pavers,
 - 5- the plans will be amended to mark that the flagpole will not exceed 15' in height. and
 - 6- improvements being shall be completed within 6 months of the final adoption of the resolution, and
- Mr. Lepore seconded the motion. **Vote Ayes:** Mr. Nace, Mr. Kastrud, Mr. Neary, Mr. Kirkpatrick, Mr. Belden, Ms. Bartolomeo, Chair Ford, Mr. Lepore, Mr. Tousignant. **Abstain:** Committeewoman Cherney. **No Nays.** Mr. Glacken. **Motion carried.**

Other Discussion

None

Correspondence

None

Comments from the Public

Mr. Taibi stated that he was at the Township Committee meeting yesterday and it was handled very well. He did have a question about a fire pit permit. Mr. Kirkpatrick stated that fire pit permits are under the direction of the County Fire Marshall.

Motion to Adjourn

There being no further business to discuss, a motion to adjourn was made at 8:50pm by Mr. Lepore and seconded by Mr. Glacken. **Vote: All Ayes. No Nays. Motion carried.**

Respectfully Submitted,

Maria Elena Jennette Kozak

Maria Elena Jennette Kozak – Substitute Board Secretary