

These minutes were approved at the November 4, 2021 Meeting

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

Open Public Meetings Act Notice: The Open Public Meeting Requirements of Law have been satisfied by our notices dated January 21, 2021, as published in the Hunterdon County Democrat and January 20, 2021, 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.

Members Present: Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Ford, Mr. Beldon, Dr. Rasavage.

Board Professionals Present: Atty. Mark Anderson

Members Absent: Mr. Mazza, Mr. Stothoff, Mr. Kastrud, Mr. Dix

Others: Lee Roth-Attorney, Cecilia Astillero, William Cordes

Approval of Minutes: Mr. Kirkpatrick made a motion to approve the minutes of the July 8, 2021 Meeting minutes. Dr. Rasavage seconded the motion.

Vote: Ayes: Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Beldon, Dr. Rasavage and Mr. Ford.

No Nays. Motion carried.

Resolution of Approval:

Tigmar, Inc. dba Spruce Run Exxon: Block 12 Lot 8.01, 70 Route 173

A motion was made by Mr. Nace and seconded by Mr. Beldon for the Resolution of Approval.

Vote: Ayes: Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Ford. **No Nays. Motion carried.**

PS Construction: Block 22, Lot 27.04, Race Street

A motion was made by Mr. Kirkpatrick and seconded by Mr. Petitt for the Resolution of Approval.

Vote: Ayes: Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Ford, Mr. Beldon. **No Nays. Motion carried.**

106 Pittstown Rd – Apartments – Nonconforming uses

Attorney Anderson summarized the decision before the Board for certification of a pre-existing non-conforming use. He explained the MLUL and ordinance advises if a use is lawfully established it may be continued indefinitely even if it becomes prohibited by the Ordinance as long as it is not abandoned. He continued a grandfathered use must be limited to what existed at the time when the prohibited use was adopted. He described the types of changes that would require variance approval.

Attorney Anderson explained that before Union Township had a zoning ordinance, all uses were legal. The burden of proof is upon the applicant. This can be done by documentation and testimony under oath and that only facts are to be considered.

Mr. Roth-attorney for property owner, Cecilia Astillero, advised he is before the Board to answer a notice of violation and also seek certification of a non-conforming pre-existing use of three apartments in a converted dairy barn on the property as well as an existing one-story cottage on the property. He advised the first zoning ordinance was adopted in April 1962.

Mr. Roth advised he has two witnesses today, resident William Cordes, and the owner of 106 Pittstown Road, Cecilia Astillero. Mr. Roth advised that the original owner of the farm, Mrs. Moebus, stopped farming the property and rented out the cottage to an individual who was not working on the property, as well as the 3 apartments. He advised that Ms. Astillero continued renting the property to tenants, and only stopped briefly to live in an apartment while she was renovating the house.

Mr. Roth also directed the Board's attention to a letter from the previous owner, Edward Frey which stated the cottage had to his knowledge always been rented. The letter stated there were two tenants in the barn.

Attorney Anderson swore in Cecilia Astillero. Mr. Roth, brought the certified statement of Ms. Astillero to the attention of the Board as well as a picture taken from Google within the last week, the actual date of the picture was not known. She identified her property from the picture. It was marked as exhibit A-1. The purpose of the picture was to familiarize the Board with the site.

Mr. Kirkpatrick, advised the letter from Mr. Frey states that sections of the barn were rented to two tenants. He contends this statement makes clear there was one single-family home, one cottage home and two additional tenants in the barn. The letter also states there were two tenants who helped farm the property. Mr. Kirkpatrick asked if the barn was being rented to employees of the farm. Ms. Astillero advised it is not. Mr. Kirkpatrick advised renting to tenants who work on the property versus private individuals is a different use. This was affirmed by the Board attorney. It was determined that the zoning ordinance was established during Mr. Frey's ownership in which his letter does not reference three apartments.

Ms. Astillero referenced a lawsuit from the previous owner. However, the complaint was issued well after Mr. Frey's ownership of the property and the passage of the zoning ordinance. The lawsuit is well after the period of Mr. Frey's ownership and the beginning of the zoning ordinance. The board determined that the cottage had been established as a pre-existing non-conforming use pre-dating the zoning ordinance.

William Cordes, resident who had delivered feed to the previous owner, Mrs. Moebus, was sworn in. He testified that when he would deliver the feed, he observed three apartments in the barn. Mr. Cordes, testified that a friend of his farmed on the property and used the cow barn. He testified that his friend was no longer able to use the barn for cows because there were three apartments in the barn. Mr. Cordes reviewed his history as a resident of the Township. Mr. Kirkpatrick asked how he knew there were three apartments in the barn. Mr. Cordes said when you walked around the barn there were stairs in the back of the barn and an apartment in the front. He testified that he did not see the apartments himself, but that when you walked around the outside of the barn, there was a stairway that you could see went to the apartments. He said he knows for a fact, because in the 50's, he delivered bottle gas for the apartments and three different apartments that used the bottle gas. He explained that he had to run separate lines to each apartment. Mr. Kirkpatrick asked if the farm was being actively farmed at that time. Mr. Cordes testified yes, that there were cows in the barn. Mr. Beldon asked if the three apartments were used for people that were working on the farm. Mr. Cordes was not sure. The Board thanked Mr. Cordes for his testimony.

The zoning officer stated to the Board the reasons that the notice of violation was issued to the owner. She explained that she had received inquiries from realtors, interested buyers, and appraisers. There being no record of the pre-existing non-conforming certification on file, a notice of violation was issued.

Mr. Beldon advised the crux of the application is that the apartments would need to have been in existence prior to the zoning ordinance. He said that the Mr. Frey's testimony is after the Mrs. Moebus's ownership. Thereby, the use may have been abandoned during Mr. Frey's ownership. Mr. Kirkpatrick said that there was the cottage rental, but possibly only two apartments during that time.

Mr. Kirkpatrick stated that it would be appropriate for the Board to take a vote of the pre-existing non-conforming apartments one at a time. The Board agreed and designated the three barn apartments as 1, 2 and 3.

Mr. Kirkpatrick made a motion and Mr. Beldon seconded the motion that the cottage is a pre-existing non-conforming use. **Vote: Ayes:** Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Beldon, Dr. Rasavage, Mr. Ford. **No Nays. Motion carried.**

Mr. Kirkpatrick made a motion to approve Apartment 1 in the barn for certification as a pre-existing non-conforming use. Mr. Nace seconded the motion. **Vote: Ayes:** Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Beldon, Dr. Rasavage, Mr. Ford. **No Nays. Motion carried.**

Mr. Kirkpatrick made a motion to approve Apartment 2 in the barn for certification as a pre-existing non-conforming use. Mr. Petitt seconded the motion. **Vote: Ayes:** Mr. Nace, Mr. Neary, Mr. Petitt, Mr. Kirkpatrick, Mr. Beldon, Dr. Rasavage, Mr. Ford. **No Nays. Motion carried.**

Mr. Kirkpatrick made a motion to approve Apartment 3 in the barn for certification as a pre-existing non-conforming use. Mr. Nace seconded the motion. **Vote: Ayes:** Mr. Nace, Mr. Neary, Mr. Petitt, Dr. Rasavage. **Nays:** Mr. Kirkpatrick, Mr. Beldon, Mr. Ford. **Motion carried.**

The Board will issue the certification in the form of a memorializing resolution.

Comments from the Public

There were no public comments.

Correspondence

NJDEP Freshwater wetlands permit – informational only

Motion to Adjourn: There being no further business to discuss the meeting was adjourned at 8:53p.m. A motion was made by Mr. Kirkpatrick and seconded by Mr. Beldon. **All Ayes. No Nays. Motion carried.**