

October 11, 2012

Mr. Ford called the workshop meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 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 19, 2012, as published in the January 19, 2012 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. Hirt, Mr. Walchuk, Mr. Nace, Mr. Ryland, Mr. Kastrud (Absent for Roll Call), Mr. Ford, Mr. Kirkpatrick (Absent for Roll Call)

Members Absent: Mr. Bischoff, Mrs. Corcoran, Mr. Badenhausen, Mrs. Dziubek

Others Present: Atty. Mark Anderson, Robert Clerico, Atty. Joseph Novak, Stephen Risse, Brian Plushanski

**Perryville Centre LLC: Block 12, Lot 9, 78 Route 173 West: Amended Preliminary and Final Site Plan/Variance:** Atty. Joseph Novak, representing applicant, provided Notice Documents. Mr. Novak asked that all Documents be marked prior to proceeding with the Hearing. The Amended Preliminary and Final Site Plan, revised through September 28, 2012 and the Drainage Report and Natural Features Map, dated September 12, 2012, revised through September 28, 2012, were marked Exhibit A-1. The letter from Stephen Risse, dated September 28, 2012, was marked Exhibit A-2. Attached to A-2 was the General Floor Plan and copies of the L.O.I. (July 2004) and Highlands Exemption (July 19, 2007) letters. The Hunterdon County Planning Board letter dated September 19, 2012, was marked Exhibit A-3. The Hunterdon County Department of Public Safety, Division of Public Health Services, dated September 26, 2012, was marked Exhibit A-4. The Hunterdon County Health Department Construction Permit Referral Form, dated July 19, 2012, was marked Exhibit A-5. It was an approval by the HCHD for a Volleyball Program. The Curriculum Vitae of Stephen Risse was marked Exhibit A-6. The Hunterdon County Soil Conservation District letter dated October 11, 2012 was marked Exhibit A-7. A Colorized Version of Sheet 3 of the Amended Preliminary and Final Site Plan was marked Exhibit A-8. Various photographs of the Site were marked Exhibit A-9.

Brian Plushanski and Stephen Risse were sworn by Atty. Anderson. Atty. Novak asked Mr. Ford how he wanted to proceed. Mr. Ford asked if all information requested at the September 27, 2012 meeting had been submitted. Mr. Risse addressed that question. He said application will be made to the NJDEP for Highlands Exemption for two additional parking spaces. A Wetlands Transition Averaging Plan will be required because of the location of the parking spaces. The As-Built Survey will be provided after improvements are completed and approved. Mr. Ford asked Mr. Clerico for input. Mr. Clerico said he had verified submission of the documentation. He understood that copies of Deeds had been submitted. Mr. Ford said applicant could proceed with the Hearing.

Atty. Novak gave a brief overview of the E.J. Foley Preliminary Site Plan approval. Mr. Ford asked that information be provided by the two sworn witnesses. Brian Plushanski apprised the Board of what has taken place since he purchased the property. Mr. Plushanski said his construction business and several other tenants occupy the building. There is office space, a machine shop, a cabinet shop, a special events business and two engineers. Mr. Plushanski had obtained building permits and a Certificate of Occupancy from Union Township. Taxes have been paid over the past seven years. Mr. Plushanski has been contacted about use of two of the bays for a volleyball school. Mr. Ford asked Mr. Hintz if that use would be permitted. Mr. Hintz said recreation is a permitted use. Atty. Novak cited C-3 Commercial School of the Land Use Code which states such use shall include a trade, professional, martial arts, performing arts, or similar type uses. Mr. Novak considered the proposal to be within the realm of or a type of martial or performing arts. Mr. Ford asked if the Zoning Official had been contacted. Atty. Novak said the Zoning Official told applicant to submit an application to the Board. Mr. Plushanski referenced C-6 Athletic Facility which lists volleyball as a permitted use.

Atty. Novak said applicant is seeking a variance to confirm what exists on the site which includes multiple uses. Applicant also seeks approval for the volleyball school. Mr. Hintz referenced section C-6 of the Land Use Code, concurring with Mr. Plushanski's statement that volleyball is a permitted use. Mr. Nace asked about parking. Atty. Novak said that would be addressed by Mr. Risse. Mr. Plushanski said his office occupies one-half of the eight offices in the front. His shop occupies three of the twelve bays in the back of the building. Mr. Plushanski stores construction equipment in the rear of the property.

Atty. Novak asked Stephen Risse to come forward. Mr. Risse stated his credentials. They were acceptable to the Board. Atty. Novak emphasized the uniqueness of the application. Atty. Anderson said Mr. Novak had mentioned a "D" variance. Committeeman Hirt would not be eligible to vote on that variance. Atty. Novak stated the variances requested. He said there is a building coverage variance. At the time of Preliminary approval, 50% of the lot could be covered. Applicant proposed 9% coverage. Mr. Plushanski has covered 9% of the lot and the Land Use Code allows for 6% coverage. The second variance requested is to allow construction of a 2,000 sf building for storage of machine shop materials. Atty. Novak said storage was approved with the Preliminary approval. Applicant is seeking approval for less than what was approved at the time of Preliminary approval. Mr. Hintz said testimony was needed from either Mr. Risse or Mr. Plushanski since he found storage in the rear yard setback that was not on the Preliminary Plan or Mr. Risse's Plan. Atty. Anderson voiced his concern about the issue raised by Mr. Hintz. Was this the storage that was approved with the Preliminary Plan? If it was approved a variance would not be required. Atty. Novak said a variance is being requested for outside storage; not necessarily for what was approved, since some of the proposed storage is in a different area. Mr. Kirkpatrick said he believes two "D" variances were required. The proposed storage area is in a different location than that of the previously approved Plan and multiple principal uses are also proposed. A discussion followed regarding Mr. Hirt's presence at the Hearing. There were only six Zoning Board members in attendance. It was determined that Mr. Hirt should recuse himself and he did so at 7:47 p.m. Applicant wanted to proceed even though there were only six members present. Five affirmative votes are needed for the "D" Variance approvals.

Mr. Risse apprised the Board of Land Use Code Regulations that were effective at the time Preliminary Approval was granted in 1989 and what Regulations are currently in effect, as well as what was approved in 1989, what exists on the site and what the applicant seeks to add. Mr. Risse said the current zoning requirement is 6%. The requirement in 1989 was 30.3%; the 50% listed above was the impervious surface ratio. The approval in 1989 allowed 9% coverage. The existing coverage is 9%. The proposed addition of a 2,000 sf building would have coverage of 9.6%. The current standard is 6%. Mr. Risse displayed a Board with modifications to the Plan, revision dated October 11, 2012. Mr. Kastrud asked about an area on the Plan that was shown in red. The area has impervious surface and the proposed 2,000 sf addition would be constructed in that area. The building to the rear houses materials for the machine shop and was part of the original approval. Mr. Risse described the orange area on the Plan. He said it was previously approved for equipment and vehicle storage. The area is currently utilized for those purposes. Applicant does not have or propose as much storage area (21,356 sf) as what was previously approved. Vegetation has been installed in the remainder of the area previously approved for storage. Mr. Risse said the storage area would be for equipment and related materials used in Mr. Plushanski's construction business. Mr. Hintz noted that there is storage in an area not set forth in the Plan. Mr. Clerico emphasized to Mr. Plushanski the importance of apprising the Board of how the property is to be used so the Board could determine if the use was a deviation from the Ordinance and whether they would permit the use. Mr. Plushanski said he would like to store his construction equipment and accessory items on the lot. Mr. Ford said it appears there is a greater area used for storage than what is shown on the Plan. Mr. Kirkpatrick indicated that unless Mr. Plushanski plans to confine all the construction equipment and material storage to the designated area the Plan would have to be revised to include additional outdoor storage area.

Mr. Hintz said he saw equipment and other materials stored in the orange area designated for equipment and vehicles on the Plan. He emphasized that if Mr. Plushanski plans to store materials it should state that on the Plan. Mr. Plushanski said he planned to remove the materials from that area. Mr. Hintz said a variance might be required for a rear yard setback. Atty. Novak wanted to discuss that matter with Mr. Plushanski since application had not been made for a rear yard setback. Mr. Kirkpatrick understood that applicant was requesting six variances; two "D" variances, one for multiple uses and one for outdoor equipment storage; and bulk variances for rear and side yard setbacks, maximum building coverage and maximum impervious coverage. Atty. Novak said that concurred with his list. Mr. Kirkpatrick asked Atty. Anderson if the Notice was adequate to cover the six variances. Mr. Anderson said that setbacks were not specifically requested. Atty. Anderson said the Notice had requested any other variances that may be required. It would be up to the Board to decide if that was sufficient. There were no objections from any Board member regarding the Notice.

Atty. Novak asked Mr. Risse to provide information regarding the location and uses of the structures on the site. Mr. Risse said offices are in the front of the two-story building. He provided a floor plan. Each floor has 8,452 sf. There are four offices on each floor. There are twelve flex bays in the rear of the building and each bay is 30' x 60'. Mr. Plushanski occupies three of the bays in the southeastern portion of the building. Exotic Events occupies three bays in the northeastern portion of the building. A Cabinet Maker uses the most northwestern bay for storage. One bay is used for fire-suppression equipment. Two bays are vacant and two are proposed for the volleyball school. There is a 50' by 75' flex building to the rear of the two-story building is used as a machine shop. The proposed 2,000 sf addition is also shown. Mr. Ford asked if there was adequate space for handling waste materials. Mr. Risse indicated there was adequate space. Mr. Kirkpatrick understood there is currently 16,904 sf of office space, roughly five bays for warehouse use, two bays for the volleyball school and one building for light manufacturing/fabrication. Mr. Kirkpatrick asked applicant if any other uses were planned. Mr. Risse indicated applicant would like to do whatever is permitted in the Zone. Applicant would like to rent the two vacant bays and would seek a tenant/tenants compatible with the existing/permitted uses.

Mr. Risse addressed the existing and potential parking calculations/regulations at the site. Ninety spaces are required and one-hundred and ten are provided. The proposed Banked Parking area was also addressed. Mr. Clerico stressed the importance of potential uses and the impact on parking requirements. Mr. Kirkpatrick emphasized the importance of providing adequate parking spaces so that applicant would not have to appear before the Board as tenants changed. Mr. Risse referenced Exhibit A-9, an array of photographs showing parking at the site. He had taken those photos earlier today. Mr. Risse described the photos, including those showing vegetation and storage areas.

Mr. Risse reviewed the uses on the site. He said all are permitted; however, a "D" variance is requested for multiple uses. Atty. Anderson noted that Mr. Risse was giving planning testimony and his qualifications in that regard had not been placed on the record. Atty. Novak asked Mr. Risse to state his qualifications as an engineer and a planner. After stating his credentials, Mr. Risse noted the application was unique. Atty. Novak said the structure is existing and is the same footprint as the building that was granted Preliminary Site Plan approval in 1989. Mr. Novak asked Mr. Risse if he thought the purposes of zoning would be advanced by deviation from the Standards with regards to what is sought by a "C" variance and the benefits would outweigh any detriment. Mr. Risse replied in the affirmative. He said the issue of not having Final Site Plan approval had arisen when applicant requested a permit for the 2,000 sf addition. Atty. Novak asked Mr. Plushanski if he had received any zoning violations from the Township regarding the property. Mr. Plushanski said he had not.

Atty. Novak asked Mr. Risse if the requested "D" variances would impair the Ordinance. Mr. Risse said he did not believe they would. The Strober Building is similar to this proposal because it too has multiple uses. Atty. Novak noted Exhibit A-8 shows blue and purple lines. Mr. Risse said the blue line represents the 300 foot riparian buffer from the branch of the Mulhocoway Creek and the purple line represents the 150 foot wetlands setback as delineated in 2004.

Mr. Risse said portions of the thirty parking spaces that were constructed in the front were built over existing lawn area and are within the 150 foot wetlands transition area. Applicant will need to obtain a Permit from the NJDEP for a Wetlands Transition Averaging Plan. Mr. Kirkpatrick asked about the building. Mr. Risse said it was constructed prior to the Highlands Legislation. Mr. Kirkpatrick asked the date of the original Site Plan approval. Mr. Risse said it was 1989. Mr. Kirkpatrick said the building was constructed after the Transition Area Requirements of the Freshwater Protection Act. Mr. Kirkpatrick asked when the Storm Water Maintenance Basin and the Outfall were built and where were the permits. Mr. Plushanski said they were built by E.J. Foley. Mr. Kirkpatrick told Mr. Plushanski that as the property owner, he was responsible for the permits. Mr. Hintz said applicant may have to compensate an area in the back to comply with Transition Area Requirements. Mr. Kirkpatrick said it could be a condition of approval.

Atty. Novak said he had no further testimony. Mr. Novak said Mr. Plushanski would like to address the Board regarding the Volleyball School use. Mr. Plushanski said the Zoning Official could not issue a Permit since the site had not received Final approval. Atty. Novak said Mr. Plushanski was asking that, if the Board were to approve this application tonight, that an indication be given to the Zoning Official in order that a Permit could be issued. Mr. Ford asked Messrs. Clerico and Hintz for any comments or questions. Mr. Hintz said none on the Volleyball School. Mr. Hintz said the equipment/storage location was proposed because of the septic system. Mr. Hintz said testimony had been presented regarding use of some of the bays for warehousing. He said warehousing is not a permitted use. Mr. Risse said the use was accessory to the office use. Mr. Clerico addressed outdoor storage and the increase in building coverage for the addition. He noted outdoor storage and multiple uses of the property were "D" variances. Impervious coverage and building floor area would be bulk variances. Mr. Clerico noted open issues regarding the site plan, including what areas are being defined for equipment storage, storage of materials and the type of materials allowed. Mr. Clerico asked about lighting. Mr. Plushanski said the lighting was installed as per the approved E.J. Foley Plan. Mr. Clerico noted the proposed addition would be over the septic area. Mr. Risse said that concern would be addressed on the Amended Plan. Mr. Clerico said that about one-third of the existing parking area has gravel and paving has been proposed for banked parking. Mr. Kirkpatrick said Mr. Plushanski stated that gravel parking spaces would be designated with bumper blocks and paved spaces would be striped. Mr. Clerico thought the use issues, bulk issues and administering of the tenancies should be addressed before telling the Zoning Official the Permit for the Volleyball School could be issued.

Mr. Kirkpatrick said applicant should provide the number of parking spaces required for the use of the building, as required by the Ordinance at the time of change of any use of the building. He said the Zoning Official would have the tools to issue permits without having to refer to an earlier Ordinance. Mr. Hintz noted the E.J. Foley approved landscaping is different than the current Landscaping Plan. Mr. Kirkpatrick indicated there had not been testimony on landscaping. Atty. Novak said it was discussed at the time of completeness. He asked Mr. Risse to address that issue. Mr. Risse said the Foley Plan had additional plantings on the side of the property.

Vegetation on the site was not as mature as shown on the photos presented tonight. Mr. Risse said the existing building is nicely landscaped and the site is heavily wooded on all sides by native species. Mr. Hintz said an amended Landscaping Plan has been forwarded. Mr. Ford said that Plan shows existing landscaping.

Mr. Ford asked for questions from Board Members and/or Professionals. Mr. Walchuk asked about the issue of the encroachment into the setbacks and if adjoining landowners would have been noticed. Mr. Kirkpatrick said applicant was seeking variances and he understood the landowners were noticed. Mr. Kastrud asked whether gasses for welding would be stored in the proposed additional building. Mr. Risse understood the storage would be for raw metal. Mr. Kastrud also asked about landscaping in front of the sign. Mr. Plushanski said landscaping would be installed in the spring.

Mr. Ford asked for a motion. Mr. Kirkpatrick said variances granted would be for multiple principal uses on the site, to 1) include all uses currently permitted in the Zone, with the exception of houses of worship, day care centers and medical services; 2) outdoor storage of equipment and materials, the bulk variances including 3) a rear yard setback for outdoor storage; 4) a side yard setback for outdoor storage; 5) a variance for maximum building coverage and 6) maximum impervious coverage.

Conditions are: 1) Applicant shall obtain all NJDEP and other outside agency requirements within one year; 2) all outdoor storage material and equipment shall be confined to the areas designated on the approved Plan; 3) no hazardous materials shall be stored on the site; 4) storage of materials shall not create conditions favorable for mosquito breeding or nuisance vegetation; 5) any equipment stored outside must be clean and in good working condition (no dilapidated trucks, etc.); 6) any motor vehicles stored on the site must be registered and properly insured; 7) applicant shall, at all times, provide the minimum number of parking spaces required, by Ordinance in place, at the time of any changes of use on the site; 8) the parking spaces and aisles shall meet the minimum Ordinance Standards in place at the time of any changes of use on the site; 9) all parking spaces in the gravel areas must be identified by bumper blocks; 10) any parking in non-designated parking spaces shall be considered a violation of this approval; 11) additional landscaping shall be provided around the entrance sign and 12) applicant shall erect a flag pole not more than 35 feet tall. Atty. Novak wanted assurance that Mr. Plushanski did not have to have approval to erect the flag pole. Mr. Kirkpatrick concurred.

Mr. Kirkpatrick made the motion to approve the requested variances, with the listed conditions. Atty. Anderson asked for clarification on proposed changes of use. Uses permitted would be those currently permitted in the Ordinance or those existing? Mr. Kirkpatrick preferred the Resolution state the uses and definitions existing now. If the zoning changed, application would have to be submitted to the Board. Mr. Clerico asked about a timeline on permits, cleanup of the site and amending the Plan. Mr. Kirkpatrick said all of those items must be completed when the Resolution is signed, otherwise, applicant would be in violation of the approval. Mr. Kastrud seconded the motion.

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

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Atty. Novak and Mr. Plushanski thanked the Board. Atty. Novak and Mr. Plushanski mentioned the urgency of receiving a permit to allow the Volleyball School to locate at the site. Mr. Kirkpatrick said he would contact the Zoning Official tomorrow and apprise him of tonight's decision.

There being no further business to come before the Board a motion to adjourn was made by Mr. Nace and seconded by Mr. Kastrud. (9:30 p.m.)

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary