

August 26, 2010

Mr. Ford called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. He read the Sunshine Statement.

Members Present: Mr. Severino, Mr. Bischoff, Mr. Nace, Mrs. Corcoran,
Mr. Badenhausen, Mr. Ryland, Mr. Taibi, Mr. Ford,
Mr. Kirkpatrick (7:05 p.m. absent for roll call)

Members Absent: Mr. Walchuk, Mr. Kastrud

Others Present: Atty. Mark Anderson, Robert Clerico, Tom Petto, Atty. Guliet Hirsch,
John Cortese

Page Stiger: Hunterdon County Board Design Awards: Chairman Kirkpatrick had told Mr. Stiger he had no recommendations for an Award.

Approval of Minutes: Mr. Taibi made a motion to approve the minutes of the July 8, 2010 workshop meeting, as amended. Mr. Ryland seconded the motion.

Vote: Ayes: Mrs.. Corcoran, Mr. Ryland, Mr. Badenhausen, Mr. Taibi, Mr. Ford
Abstain: Mr. Severino, Mr. Bischoff, Mr. Nace, Mr. Kirkpatrick

Mr. Ford relinquished chairing the meeting after the arrival of Mr. Kirkpatrick

Issue of Completeness: Lehigh Gas/Jutland Convenience Store, Block 13, Lot 11.01, 169 Perryville Road: Applicant submitted a letter granting the Board an Extension of Time to Act until September 30, 2010.

Fallone: Block 22, Lot 34, Perryville Road: Request for Extension of Final Approval: Applicant or a representative of Fallone was not present. Atty. Anderson said the current Extension expires in November 2010. He suggested holding the matter until later this evening. Applicant could be delayed.

Empirion, Inc. Foster Wheeler Site: Block 13, Lot 6, 53 Frontage Road: Tom Petto was present on behalf of Empirion. Applicant is requesting a site plan waiver in order to install a nitrogen tank in the rear of the FW Building. Atty. Anderson emphasized that since Empirion is a corporation, an attorney would be required to represent them. Mr. Anderson said the Board could act on the application before them. He said a site plan waiver is within the jurisdiction of the Board, under certain circumstances. The Board would have to consider the waiver provisions of the Ordinance. Mr. Kirkpatrick said the application for installation of a tank within the Office Research District and a tank could be associated with an industrial use. It would not be a permitted use in the OR District. Mr. Kirkpatrick said he would want to hear testimony from the applicant before considering the granting of a waiver. Atty. Anderson said he had some concern as to whether the application meets the terms of the site plan waiver section of the Ordinance.

The proposal would eliminate a parking space and Mr. Anderson did not see that within the waiver section. Mr. Kirkpatrick indicated he felt the Board would probably want more information. Mr. Petto thanked the Board for their time.

Block 22, Lot 5, 35 Route 173 East: John Cortese: Concept Plan

Atty. Guliet Hirsch was present on behalf of applicant. Mr. Cortese distributed a plan showing existing conditions at the site. Atty. Hirsch said Mr. Cortese was here because of potential changes that would occur when and if the Township adopts the Highland Ordinance. Ms. Hirsch said she understood that Union Township wanted to bring both the Preservation and Planning Areas in conformance with the Highlands Regional Master Plan. Mr. Cortese asked her and other consultants to look into the impact on his property.

Atty. Hirsch had reviewed the current Ordinance. Mr. Cortese's property is in the Village Commercial District. She cited some of the permitted and conditional uses in that District. Mr. Cortese had appeared before the Board in February 2010 with a concept proposal for a garden center/landscape yard use. Ms. Hirsch thought that use would be permitted. She did not necessarily feel that applicant would be proposing that use again. Mr. Kirkpatrick recalled that variances would be required because of the intensity of the proposed development. Atty. Hirsch noted that there might be Ordinance changes because of the Highlands Regulations/Constraints. Mr. Kirkpatrick emphasized that none of the Ordinances before the Highlands have been adopted by the Township. Ms. Hirsch said the Highlands Plan would place a severe constraint on installation of a septic system. Under the Nitrate Dilution Model Standards and considering the property is located in a Sub-Watershed it might be possible to install one more septic on the entire fifteen-acre property. Approximately five acres in the front of the property is in the Community Zone and the back of the property is in the Protection Zone. The property is heavily forested and remains uncertain how much of the area can be cleared. The property is also designated as a Critical Wildlife Habitat, Water Deficit and Agricultural Resource Area. Atty. Hirsch said with all those constraints it would be unlikely that it would be possible to build a structure larger than 2,400 square feet.

Atty. Hirsch said applicant is seeking direction from the Board about proceeding with an application for some type of a retail-commercial use. She also wanted to know if the Board would be amenable to waiving some of the Ordinance requirements that would generate a great expense. Specifically, the possibility of waiving the requirement for an E.I.S. and an Aquifer Report. Hirsch said the Aquifer Report would be in conjunction with an application. It would become a condition of an application for a building permit. Mr. Kirkpatrick said it would not be possible to make any sort of commitment without seeing a proposal for the site. Atty. Hirsch acknowledged there is no commitment on either the applicant or the Board. Mr. Bischoff asked, "What is the Concept"? Mr. Cortese said he had been before the Board in 2007 with a concept for a landscape yard and would still like to proceed. Mr. Nace mentioned that the property is in a Water Deficit Area and a nursery would require a lot of water. Atty. Hirsch responded.

She questioned the Highlands Methodology about that designation. She said applicant would have to prove that there was enough water for the proposed use.

Mr. Cortese said that Kevin Page had provided information in February that rainwater would be collected and used for watering purposes. He also said it was proposed that there would be pavers, topsoil, mulch, etc. for sale at the site. Mr. Cortese said there is an existing home on the property that has not been occupied for a while. The Zoning Official had denied Mr. Cortese's wife a building permit because the property was classified commercial. Mayor Severino asked Atty. Anderson if there was a procedure for reusing a home and what would the procedure be. Mr. Anderson said if the home had been abandoned, in a technical sense, applicant would need to apply for a variance. Atty. Anderson said an alternative could be to apply for an interpretation of the Ordinance. Mr. Anderson voiced a concern about Mayor Severino and Mr. Bischoff's participation in what could be considered a Board of Adjustment matter. Atty. Hirsch felt applicant should stay with a concept of some type of retail/commercial use that is in conformance with the Ordinance. Ms. Hirsch said that if the only option is to renovate the house to be used as a dwelling that would be dealt with at another time. She said that would not be the highest and best use of the property. Mr. Kirkpatrick stressed that his recall of the previous concept plan was that primary issues were the intensity of development compared with what is permitted by the Ordinance and that there were two uses on the site. He did not recall that the Board broached the subject as to whether one or both of those uses were conforming. Mr. Kirkpatrick said the two uses proposed were for a retail use and a landscape yard.

Mr. Ryland said he recalled that wholesaling of plants and outside storage was brought up at the February 2010 Workshop. Mr. Kirkpatrick said that was the crux of the intensity of development, as well as the multiple uses. Atty. Hirsch asked the Board for permission to speak to Atty. Anderson and other Board Consultants about the issue. Mr. Kirkpatrick told Ms. Hirsch she could speak with Mr. Anderson about what occurred and his interpretation and what and why it occurred. Mr. Kirkpatrick told her he would not suggest exploring new uses outside of there being an application. Mr. Cortese hypothesized a situation where there was a retail use and his son would occupy the existing home. A variance would be required for two uses on the property. Mr. Cortese asked if he could present an overview of what transpired at the February 2010 Workshop. Mr. Kirkpatrick said that would be fine. Atty. Anderson cautioned about Mayor Severino and Committeeman Bischoff's presence for what appears to be a Board of Adjustment matter. Prior to additional discussion Messrs. Severino and Bischoff recused themselves. (7:55 p.m.). Atty. Hirsch referenced E-1, Retail Shop Use Category of the Ordinance. Ms. Hirsch said E-1 allows establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. She wanted to know if the problem was with the landscape yard. Mr. Kirkpatrick said that was correct. Mr. Cortese proceeded with an overview of his proposal. He displayed a concept plan. The plan showed the existing house. Most of the property is heavily wooded.

There is a C-1 Stream on the lot as well as Wetlands. Mr. Cortese said trellises and flowers were proposed in the front of the property. Pavers, topsoil, mulch, etc. would be located in the center of the property. Storage would be in the back of the property and hours to that area could be limited. Three-hundred-foot buffers from C-1 Stream would be required. Atty. Hirsch was uncertain if that buffer would be necessary for Wetlands. A consultant would need to review that matter. Mr. Cortese said that was basically the original concept plan. He said it could be scaled down. Mr. Cortese said he hoped to get the project completed before the Highlands would preclude development. Mr. Badenhause asked Mr. Cortese what would be sold in the retail component of the site. Mr. Cortese said pavers, stones, etc. would be sold. Mr. Ford had a question about trees on the lot and the need to remove many of them (as much as 50%) if the site was developed as proposed. Mr. Cortese said they would cut what was allowed by Ordinance. Mrs. Corcoran mentioned the Tree Ordinance. Mr. Kirkpatrick told Mr. Cortese he should review that Ordinance carefully. Mr. Kirkpatrick said the best opportunity for an approval would be to focus on a single use with few variances. Atty. Hirsch thanked the Board for their time.

Fallone: Block 22, Lot 34, Perryville Road: The matter will be carried until the September 23, 2010 meeting.

Correspondence: None

Comments from the Public/Other Discussion: Several members of the Board brought up the issue of traffic congestion at the bridge over Interstate 78 at Exit 12. The Board feels that widening of the bridge could alleviate congestion at the bridge and adjoining intersection. The Board asked Atty. Anderson to draft a letter to the Township Committee requesting their assistance in mitigating the problem.

Motion to Adjourn: There being no further business, Mrs. Corcoran made a motion to adjourn. Mr. Nace seconded the motion. (8:40 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary