

FLEMINGTON BOROUGH  
PLANNING/ZONING BOARD MEETING  
TUESDAY, OCTOBER 24, 2017 – 7:00 PM

MINUTES

The meeting was called to order at 7:00 PM by Chairman Cook.

**Roll Call:**

Present: Ms. Kenoyer, Mayor Greiner, Ms. Melfi, Mr. Cook, Mrs. Pedrick, Mr. Budney, Mr. Perron, Mr. Townsend, Attorney Gianos, Engineer Clerico, Planner McManus, Traffic Engineer Rocciola.

Excused: Mrs. Engelhardt, Mr. Doshna, Mr. Hain.

**1. Public Comments:** Lois Stewart, 26 Spring Street, asked if the Board would allow public comments regarding the Hotel Area Redevelopment Plan tonight. Mr. Gianos stated that the matter was before the Board at the October 30, 2017 special meeting agenda and would be discussed at that time. Mr. Stewart asked if public comments would be taken at that on Monday. Mr. Cook stated that the public comments would be limited to whether the Redevelopment Plan was consistent with the Master Plan.

**2. Approval of minutes for October 2, 2017 regular meeting.**

Motion to approve the minutes: Melfi, seconded by Budney

Ayes: Kenoyer, Melfi, Cook, Pedrick, Budney

Nays: (None)

Abstain: Greiner, Perron, Townsend

Motion passed: 5-0-3

**3. Completeness: A2B Realty, LLC – Block 13 Lot 8**

Attorney and part owner, Howard Burger, appeared and discussed the application. Ms. McManus stated that a report was not prepared due to the limited nature of the application and further stated that she had worked with the applicant to determine if adequate information had been submitted to prepare a review. Ms. McManus recommended that the application could be deemed complete.

Motion to deem complete: Melfi, seconded by Budney

Ayes: Kenoyer, Melfi, Cook, Pedrick, Budney, Perron, Townsend

Nays: (None)

Abstain: (None)

Motion passed: 7-0-0

The applicant agreed to schedule the matter for public hearing on the November 28, 2017 meeting.

**4. Public Hearing: Islamic Center of Hunterdon County – Block 13 Lot 8**

7:15 pm Mayor Greiner was recused for the Zoning Board of Adjustment applications and did not return.

Mr. Gianos stated that the proofs of notice entered as Exhibit A-1 had been submitted and reviewed and he found that the Board had jurisdiction to proceed with the public hearing.

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The applicant's attorney, Tamer Ahmed, appeared for the application. Yaser Elmenshowy, chairman of the Board of the Islamic Center, was sworn in for testimony. Mr. Elmenshowy stated that the Center has occupied 39 Mine Street since August 2009 and were formerly at 24 Mine Street and now proposed to relocate to 1 East Main Street which was in the Professional Office (PO) zone which did not permit houses of worship use. Mr. Elmenshowy stated that prayers would take place 2 times a day, the 1<sup>st</sup> in the morning about 40-50 minutes before sunrise and 2<sup>nd</sup> at 8 p.m. or an hour and ¼ after sunset with 1-5 attendees in the early hours and 10-15 for the evening hours which were not during business hours. Mr. Elmenshowy stated that a congressional prayer was held on Friday's 1:-15 p.m. – 1:50 p.m. with approximately 80-100 attendees with an occasional attendance of 120. Mr. Elmanshowy stated that there would be classes during the week with 3 adult Arabic classes from 7-8 p.m. with 3-8 attendees and a Sunday school with children at 1 p.m. with 10 adults and up to 60 children where the parents would drop off and pick up. Mr. Elmenshowy stated that the Islamic Center had an agreement with the Flemington Presbyterian Church to use their parking for overflow parking if needed with an additional 45 spaces available. Exhibit A-2 – a letter from the Flemington Presbyterian Church was entered. Exhibit A-3 – a letter from the Flemington Borough Water Department regarding the resolved issue of water usage was entered.

Elaine Gorman, 34 New York Avenue, stated that the agenda noted the applicant as the Islamic Center of Hunterdon County, but Mr. Elmenchowy mentioned a mosque and asked for clarification and asked if there would be a call to prayer that would heard by the community. Mr. Elmenshowy explained.

Mr. Cook asked if the availability of overflow parking would be disseminated to the members with no additional signage being required. Mr. Budney asked if there would be any safety features to and from the overflow parking provided. Mr. Elmenchowy stated that they would agree to provide volunteers. Mr. Rocciola stated that the members should be directed to the sidewalk and marked crosswalks adding that the volunteers would have no authority to stop traffic.

The architect for the applicant, Lionel Scriven, stated his credentials as a professional architect licensed in New Jersey and was accepted as same. Mr. Scriven described the layout of the parking, building and overflow parking area and located the proposed area of use in the building noting that there were 72 parking spaces on the site. Exhibit A-4 – a change of use plan was entered which showed 2 proposed prayer areas with no fixed seating and 4 classrooms noting that there were no load bearing walls being affected and that the means of egress were all functioning and up to code with no waivers from the building code being proposed and with no structural changes.

Mr. Budney asked if there were any exterior changes proposed. Mr. Schripen explained.

Ms. Melfi asked the use of the classrooms. Mr. Schripen explained.

Ms. Kenoyer asked if all changes were on the first floor. Mr. Schripen explained.

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The applicant's planner, Elizabeth McKenzie, was sworn in for testimony and having appeared numerous times before the Board was accepted as a professional planner. Ms. McKenzie discussed the building built around 1985 and the original uses and zone at the time of construction noting that the parking does not meet the ordinance then or now and that variance were probably granted at the time of site plan approval. Ms. McKenzie stated that there was an entrance on the East Main Street side of the building so that members would not need to go around the building from the overflow parking. Ms. McKenzie stated that the current location at 39 Mine Street was too small for the needs of the Center and was not in good condition with no adequate bathroom space and only 1 classroom. Ms. McKenzie stated that no activity would be occurring during business hours which would provide adequate parking if the building was fully occupied with the exception of Friday prayers where there was overflow parking available noting that it would be a more efficient use of parking spaces. Ms. McKenzie stated that the use was particularly suited to this building which makes use of the diagonal orientation for prayers and which will accommodate a separate space for women to worship from the men.

Ms. McKenzie stated that the site was in the PO zone where houses of worship was not listed as a permitted use and required a 'd' use variance which required the applicant to provide special criteria and an enhanced burden of proof noting that there was case law which applied to this application including inherently beneficial uses which houses of worship were generally considered which had a presumption that the special reasons were already met and were more compelling than other uses. Ms. McKenzie stated that the negative criteria must be met and discussed the balancing test stating that the building was not fully utilized and that the applicant would be using this space temporarily as they have been granted approval in Raritan Township for a permanent building that was currently being constructed.

Ms. McKenzie discussed the report prepared by Ms. McManus and stated that the applicant had discussed and worked out with the owner to restripe the parking area and resolve the number and location of the dumpsters on site and provide screening of the dumpsters prior to signing a lease. Ms. McKenzie stated that the benefits outweighed the negatives in her opinion.

Mr. Budney asked if there were any other religious uses in the PO zone. Ms. McKenzie explained that there were none to her knowledge but there were in the TR zone. Mr. Budney asked if there were any negative impact on office use in the zone and asked if this was a less intense use of the site than the previously approved Trillium Charter application. Ms. McKenzie explained.

Mr. Cook asked if a member of the Islamic Center would be able to rent the space for a party/wedding. Mr. Elmenchowy explained that any community dinners were outside of the Center where they rented a space and noted that there were no kitchen facilities in the building.

Ms. McManus discussed her report noting that the application required little variance relief with no changes to the exterior and did not recommend preparing a survey to calculate the impervious coverage which was an existing nonconforming condition. Ms. McManus recommended that a night light test be performed to ensure adequate lighting for safety which could be discussed with the owner and deferred any traffic to Mr. Rocciola. Mr. Rocciola stated that he had reviewed the application in Raritan Township and stated that the overflow parking

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was an appropriate way to take care of parking and found no problems or issues related to the proposed use

Betsy Driver asked if additional lighting would be required. Ms. McKenzie stated a light test would be performed to the satisfaction of the Board professionals. Ms. McManus stated that there was no intention to add lighting.

Howard Burger, owner of the site, stated that the location and number of the dumpsters would be addressed and contained in a specified area and the parking lot would be restriped.

Ms. McManus stated that there was a specified area on the original site plan and was a condition of the original site plan approval to be enforced.

Motion to close public hearing: Melfi, seconded by Townsend  
Ayes: Kenoyer, Melfi, Cook, Pedrick, Budney, Perron, Townsend  
Nays: (None)  
Abstain: (None)  
Motion passed: 7-0-0

Mrs. Pedrick stated that the Borough police should be called when necessary for crossing to the overflow parking due to traffic when necessary. The applicant agreed.

Motion to approve: Melfi, seconded by Townsend  
Ayes: Kenoyer, Melfi, Cook, Pedrick, Budney, Perron, Townsend  
Nays: (None)  
Abstain: (None)  
Motion passed: 7-0-0

**5. Public Hearing: 70 Church Spice Factory, LLC - Block 39 Lot 3**

Mr. Gianos stated that this was a continuation from the September 26, 2017 public hearing and no new notice was required. Mr. Gianos stated that Ms. Melfi had listened to the recordings of the September 5, 2017 and September 26, 2017 public hearings and was eligible to vote.

The applicant's attorney, George Dilts, appeared.

Mr. Fleisher, who was previously sworn in, discussed the modifications to the new building. Exhibit A-9 - colored rendering of the revised architectural plan, Exhibit A-10 - multiple rendered pictures of the façade and Exhibit A-11 – a building height comparison elevation plan were entered. Mr. Fleisher stated that the revised new building would have the same number of units but now would include 32 - studio units, 22 – 1 bedroom units, 8 – 2 bedroom units and 2 – 3 bedroom units for a total of 64 units adding that the 24 parking spaces on the first floor were to remain. Mr. Fleisher stated that the top floor had a reduced number of apartments that were stepped back to provide a balcony with the overall height being reduced to 58 feet and the building width had been reduced to eliminate the side yard setback variance. Mr. Fleisher stated that the stairwell was moved to the west side of the property and the sidewalk on the east side of the building was eliminated. Exhibit A-12 – a brick sample of the façade was

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entered, the façade would match the existing Spice Factory building. Mr. Fleisher stated that there would be a 5000 square foot green roof which would improve the impervious coverage calculation and that an area for shared space was added on the 2<sup>nd</sup> floor for proposed amenities for the tenants. Mr. Fleisher stated that the lighting would match the existing building and would conform to the ordinance. Mr. Fleisher compared the proposed building height to the Herman Capp building noting that with the existing grade the building would be almost the same height adding that the water tower on top of the salon building was 58 feet.

Mr. Cook clarified that tenants would not be walking on the green roof system and that the plants would not be seen from the ground. Mr. Fleisher agreed.

Ms. McManus asked if a maintenance schedule for the green roof and watering system would be required. Mr. Fleisher agreed. Mr. Clerico stated that the maintenance scheduled would be required in the stormwater operating and maintenance manual if used as best practices for stormwater.

Lois Stewart asked the total number of units proposed. Mr. Fleisher explained that the total number remained at 100 units.

Mr. Nusser, who was previously sworn in, appeared. Exhibit A-13 a rendered copy of the revised conceptual site plan which incorporated the new building footprint was entered. Mr. Nusser stated that the revised building width had been reduced to provide a 25 foot side yard setback and eliminated sidewalk and entrances on the east side of the building to dissuade parking on the adjacent property. Mr. Nusser stated that there was a reduction in the number of parking stalls required of 231 leaving a deficit of 32 stalls where 199 stalls were proposed. Mr. Nusser stated that additional soil borings were performed under the observation of Mr. Clerico's office which rendered the same results satisfying this condition. Mr. Nusser stated that 2 spaces near the new building would be designated for loading/unloading at certain times of the day and then return to regular spaces at all other times. Mr. Nusser stated that 67 trees were required with 23 existing trees to remain and 25 proposed which would leave a deficit of 19 trees noting that additional trees could be provided to the easterly side of the new building and that for any remaining deficit of trees a payment in lieu of planting would be paid to the Borough. Mr. Nusser stated that he had made an inquiry to the Borough water department which replied that that any feedback would be after the Board made a decision and noted that there was no further response from the fire marshal yet.

Mr. Nusser stated that there was a reduction in impervious coverage with the addition of 5000 sf of green roof, reduction in building width and elimination of the sidewalk leaving a 62.4% coverage where there was 65% existing coverage. Mr. Nusser stated that with the addition of the green roof the maximum permitted coverage would be 70% and therefore be compliant

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with the ordinance. Mr. Nusser stated that the proposed FAR was being reduced from 0.8 to 0.71 with the modification to the building where 0.2 was permitted.

Mr. Clerico asked for clarification on the coverage calculation. Mr. Nusser explained.

Ms. Stewart asked for a comparative figure for the existing & proposed coverage percentage. Mr. Nusser provided the number. Ms. Stewart asked if the Borough engineer was in agreement that the applicant does not have to meet the 50% coverage. Mr. Clerico explained and noted that relief from the ordinance may need to be addressed. The Board discussed. Mr. Dilts stated that the applicant would agree as a condition to explore the conversion of the detention basin to a bio retention basin or would need to receive the relief. Ms. Stewart asked about porous pavement and the plantings in a bio retention basin, asked if the lighting would have an effect on the night sky and the deficit number of trees to be planted. Mr. Dilts & Mr. Nusser explained. Ms. Stewart stated that she was concerned with the variety of species. Mr. Dilts stated that the plant species would be to the satisfaction of the Ms. McManus.

Steven Tuccio, 61 Elwood Avenue, asked to clarify the function of the green roof. Mr. Nusser explained.

Chris Englehart, 180 Main Street, asked the kind of plants on the green roof. Mr. Fleisher explained.

Gabriel Bailer, previously sworn for testimony, and discussed the impact of the revised new building where the FAR was being reduced noting that bringing residents into Flemington to make a vibrant downtown would justify the density being proposed. Mr. Bailer discussed the 'd' variances including the residential use that was not changing, FAR that was reduced to 0.71 where .2 was permitted and building height of 64 feet for the Spice Factory and a reduction to 58 feet for the new building. Mr. Bailer discussed the 'c' variances including parking of 199 spaces where a reduced number of 231 were required, existing nonconforming condition for the Spice Factory of side yard of 19.91 feet where 25 feet was required and front yard 17.95 feet where 35 feet required, impervious coverage of 60.42% reduced from 65% where 50% was permitted and the design waiver of the number of trees to be planted. Mr. Bailer discussed the variances and the positive and negative criteria for granting the relief. Mr. Bailer stated that the project promoted the MLUL and contributed to the well being of the public.

Chris Englehart asked how many studio apartment were proposed and what the market was for these units and asked what amenity space was. Mr. Bailer explained.

Mr. Cook asked if the addition of studio units was in response to the Board's comment. Mr. Bailer explained that it was.

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Mr. Dilts stated that the applicant had listened to the comments during the hearings and tried to address those comments while still making the project viable including modifications to the parking, reducing the height of the new building and was also stepping back the 5th floor units creating a balcony and noting that the proposed height was relatively the same as the existing Herman Capp building. Mr. Dilts stated that he had lived and worked in Flemington for many years and stated that the town was dead and needs infill and help to revitalize the town and stated that there was no better place to try to do that than with this project which had none or little impact on neighbors. Mr. Dilts stated that the applicant had agreed to the conditions of the Board.

Mr. Cook asked for comments from the public. Ms. Stewart asked for additional comments on traffic. Mr. Dilts provided a summary of the traffic based on Mr. Seckler's testimony.

Lois Stewart, 26 Spring Street, stated that the applicant had worked hard to revise the project based on comments and stated her concern of the height suggesting that both buildings be reduced to 4 stories stating her concern that the Board would be setting a precedence by allowing the proposed 5 stories and stated her concern regarding the impervious coverage.

Chris Englehart, 180 Main Street, stated that she liked the idea of the green roof but was sad that no one could see it and stated her concern with the height seeing no reason for more than 4 stories and her concerns for the Board setting a precedence for the next developer adding that she would like to keep the character of the town.

Steven Tuccio, 61 Elwood Avenue, stated his concern about setting a precedent regarding the building height and his concerns about the traffic increase at the access drive on Church Street and whether a new traffic light might be necessary.

Joanne Braun, 77 Jefferson Court, stated her concern regarding setting a precedence of building height stating that it was against the Master Plan.

Mr. Dilts stated the application would not set a precedent where every property and project stood on its own merits noting that this application particularly fits into the neighborhood and that the revised building had been lowered but to be viable for the developer the building needed to stay at the proposed level.

Motion to close public hearing: Budney, seconded by Pedrick  
Ayes: Kenoyer, Melfi, Cook, Pedrick, Budney, Perron, Townsend  
Nays: (None)  
Abstain: (None)

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Motion passed: 7-0-0

The Board members discussed the application and stated their concerns and provided comments.

Motion to approve the 'd' variances: Townsend, seconded by Pedrick

Ayes: Kenoyer, Melfi, Cook, Pedrick, Perron, Townsend

Nays: Budney

Abstain: (None)

Motion passed: 6-1-0

Mr. Gianos stated the requested 'c' variances including the total number of parking spaces of a proposed 199 where 231 required, existing condition of front yard setback of 17.95 feet where 35 feet required, existing condition of side yard setback of 19.91 feet where 25 feet required, proposed building height of 5 stories where 2 stories permitted and impervious coverage of 60.42% where the ordinance permits 50%. Mr. Gianos stated the design waiver being requested of the 67 trees required where the applicant proposed 48 adding the that the applicant agreed to plant additional trees where possible and make a payment in lieu of any remaining required trees to be planted. The applicant agreed that they would seek preliminary site plan approval at this time and come back to the Board for final site plan approval.

Mr. Clerico stated that some site plan items may need some more information including the nonstructural stormwater management items.

Mr. Dilts stated that the applicant would agree to convert the rear detention basin into a bio-retention basin.

After discussion, the Board decided to make a motion on site plan at tonight's meeting rather than have the applicant return to hear more testimony on stormwater management noting that the applicant would need to return for final site plan approval and agreed that a condition of any approval would be revisions to the application to the satisfaction of the Board's professionals.

Motion to approve the 'c' variances, design waivers and preliminary site plan with the conditions as discussed: Townsend, seconded by Kenoyer

Ayes: Kenoyer, Melfi, Cook, Pedrick, Perron, Townsend

Nays: (None)

Abstain: (None)

Motion passed: 7-0-0

**6. HPC resolution from October 4, 2017:**

- 119 Main Street – Hunterdon County Chamber of Commerce. Mr. Budney discussed the application to paint the building in an approved color. Mr. Cook stated that courtesy reviews should not be on the agenda as the Board had no jurisdiction.

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**7. Council Items: None**

**8. Chair Items:**

HPC Comments: Ms. Gorman asked why the application was a courtesy review as the building was not owned by the County. The Board discussed and determined that it was not a courtesy review.

Motion to approve the HPC resolution for 119 Main Street: Budney, seconded by Townsend

Ayes: Kenoyer, Cook, Budney, Perron, Townsend

Nays: (None)

Abstain: Melfi, Pedrick

Motion passed: 5-0-2

Mr. Cook discussed the agenda items for the next meeting on November 6, 2017 and the special meeting scheduled for October 30, 2017 at the Historic Courthouse at 7:00 p.m.

**9. Bills:**

Motion to approve the bills: Budney, seconded by Perron

Ayes: Kenoyer, Melfi, Cook, Pedrick, Budney, Perron, Townsend

Nays: (None)

Abstain: (None)

Motion passed: 7-0-0

**10. Adjourn**

Motion to adjourn at 11:25 p.m.: Melfi; second: Pedrick

Ayes: All were in favor

Motion passed: 7-0-0

Respectfully submitted

Eileen Parks  
Planning Board Secretary