

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

The meeting was called to order at 7:05 PM by Mrs. Engelhardt.

Roll Call:

Present: Mayor Driver, Mrs. Engelhardt, Mr. Cook @ 7:12 pm, Mr. Runion, Mr. Campion, Mrs. Pedrick, Ms. Giffen, Mr. Budney, Mr. Hain, Mr. Hill, Attorney Kaczynski, Engineer Clerico, Planner Kyle, Traffic Engineer Troutman .

Excused: Mr. Townsend

1. Public Comments:

Elaine Gorman, 34 New York Avenue, asked if the Historic Preservation Map revisions would be on the October 22, 2019 Board agenda. Mrs. Engelhardt confirmed that this would be on the agenda.

Steve Tuccio, 61 Elwood Avenue, provided his comments that the Planning Board seemed to be being in a rush to do things without being provided the information and were being less than transparent and asked the Board to think about the long term consequences and long term plan for the towns and what they really want to have happen.

7:12 pm - Mr. Cook entered the meeting.

Tim Bebout, 194 Main Street Bed and Breakfast owner, appeared and commented that he and many other in the FCP wanted the town to move forward on plans including the Courthouse Square to direct more people to Main Street businesses.

Chris Englehart, 180 Main Street, asked what the pipes were sticking out of the Plaza One building. Mrs. Engelhardt directed her to the construction official.

7:15 pm - Mr. Cook chaired the meeting.

2. Mayor Comments:

Mayor Driver discussed that the first reading of the overlay zone ordinance for the Route 12 area would be introduced at the October 15, 2019 Council meeting which referenced the Master Plan. Ms. McManus discussed the overlay zone and differences from conventional zoning ordinances and procedures for adoption.

Mayor Driver discussed that a meeting would be held October 17, 2019 (Thursday) for the developer of Global Agway site to present the improvements to the site.

3. Council Items:

Mr. Runion discussed that Council had referred an ordinance regarding Planning Board appeals to the Board for review and that the Ordinance would be on the next Council meeting for public hearing.

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

4. Approval of minutes for September 24, 2019 regular meeting.

Motion to approve the minutes as presented: Pedrick, seconded by Hain

Ayes: Engelhardt, Campion, Cook, Pedrick, Giffen, Budney, Hain, Hill

Abstain: Driver, Runion

Motion passed: 8-0-2

5. Discussion: Letter of No Interest Request – Block 71.17 Lot 33 – Raritan Township

Ms. Kaczynski discussed the request for a letter of no interest for the Shoprite application to expand the shop from home operation with the conversion of the old Dress Barn area being converted for this use with an increase in building height which was primarily located in Raritan Township with a portion of the lot located in the Borough, noting that a similar letter of no interest had been provided for this application in the past. The Board discussed.

Motion to direct Ms. Parks to prepare a letter of no interest: Engelhardt, seconded by Budney

Ayes: Driver, Runion, Engelhardt, Campion, Cook, Pedrick, Giffen, Budney, Hain

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

6. Completeness: 70 Church Spice Factory, LLC – Block 39 Lot 3 – 70 Church Street – Final Site Plan

Deferred to the next meeting.

7. Ordinance Review: Ordinance 2019-21 Amending Chapter XIV

Ms. Kaczynski discussed the ordinance review procedures including that the Board was within the 35 day period to provide comments and recommendations on the ordinance back to Council as the referral to the Board was provided on September 9, 2019. Ms. Kaczynski discussed that the proposed ordinance allows any approval of 'use' or 'd' variances by the Planning Board acting as the Zoning Board of Adjustment to be appealed to the governing body instead of appealing the approval directly to the courts noting that denials of 'use' or 'd' variances were prohibited to be appealed to the governing body under the MLUL. Ms. Kaczynski discussed that the ordinance would provide an interim mechanism of appeal instead of going directly to the courts.

Mrs. Engelhardt asked who would be appealing an approval and what advantage would it be to the Borough to provide this mechanism. Ms. Kaczynski discussed that any objector that was unhappy with the approval would most likely appeal the decision. Mayor Driver asked who would pay if an expert was hired and asked if the taxpayers would bear the cost. Ms. Kaczynski discussed that the statute allowing this provision was minimal with limited guidelines where the municipality could bear the costs incurred noting that the appeal process was well spelled out in the courts. Ms. Kaczynski discussed that the

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

governing body could confirm, deny or modify any approval where the applicant would then recapture an approval by going to the courts causing delays and expense.

Mr. Cook discussed the process of granted 'use' or 'd' variances by the Planning Board when acting as the Zoning Board of Adjustment which were the most difficult approvals to achieve as they must be approved on the positive and negative criteria set forth by the MLUL and have a super majority of 5 Zoning Board members approve the variance noting that there were 5 'use' variances granted in the last 3 years. Mr. Cook discussed that the Board members received training on the criteria where no approval could be granted without just cause and questioned if the governing body would have the training to review an appeal. Mr. Cook discussed that there was value in separation of powers and recommended to not allow potential outside interests into the process at this juncture in Flemington. Mrs. Engelhardt asked why this ordinance was developed. Mr. Runion discussed that he did not prepare the ordinance but that one argument was that a wealthy applicant could take an appeal to court where a resident would not be able to afford the costs noting that Ms. Peterson and Mr. Harris sponsored the ordinance. Mr. Runion explained that a wealthy resident who does not approve of the zoning board of adjustment's decision on a 'd' variance can appeal such a decision to the courts, whereas a resident of lesser financial means has no such power and no such voice. Mr. Cook discussed that he feared some politicization of the Board's decisions and questioned the impetus of the ordinance now. Mrs. Engelhardt noted that the Board members do not get voted into the position but were appointed to a term to keep them politically separate from Council where many of the Board members were appointed by various mayors in the past adding that the ordinance would open Council up to be questioned if a decision was overturned. Mr. Cook discussed that Council could listen to the Board recommendations, do nothing or amend the ordinance based on the comments. Mr. Budney discussed that the Board made informed decisions on 'd' variances and feared that this would politicize the Board of Adjustment decisions where the Board was apolitical where there should not be a fear of controversial applications on height, density. Mr. Budney stated that it would not be appropriate for the ordinance to pass as written and did not want people running for office to use the ordinance as a threat to overturn a decision. Mr. Hill supported the Board and found the ordinance not appropriate. Ms. McManus discussed her concern that the ordinance had the potential for political purposes and puts the Council in an unenviable position with no training noting that this was not widely used. Mr. Runion asked what training. Ms. McManus explained noting that the governing body members of the Planning Board were not required to take the training class. Mr. Runion asked the extent of the training which Ms. McManus responded 5 hours. Mr. Runion asked if any surrounding municipalities had a similar ordinance. Ms. Kaczynski did not do the research but few municipalities engage the ordinance. Mr. Runion responded that he was of the understanding that Raritan Township has such an ordinance and our borough attorney pulled the language from the Township's ordinance. It was stated that this would be confirmed. The Board discussed 'd' variances and the positive and negative criteria. Ms. Kaczynski discussed that the courts review the body of evidence from the public hearing and the Board decision where the governing body would not be looking at the testimony and evidence. Mr. Budney asked the appeal period to the governing body which would be 10 days after publication of the decision.

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

Attorney, Doug Steinhart, for Flemington Outdoors, LLC noted that there were public present for the public hearing of the application. Mr. Cook continued with the recommendation on the ordinance.

The Mayor discussed that the ordinance appeared to be an effort to politicize where the appointments of Board members were made for reasons where Ms. Giffen had an engineering background, Mr. Runion provided insight on sustainability noting that the Board should be allowed to do their job. Mayor Driver discussed that the tax payers should not have to bear the costs of an appeal. Mr. Hain discussed that the placing the cost on the taxpayers for an appeal did not make sense, noting that he had been on the Board for a long time and was concerned that this was a political move. Mr. Cook read a list of recommendations that was previously distributed to the Board and added some additional language.

The Board discussed the recommendations to Council to not adopt the Ordinance as written.

Motion to approve recommendations as discussed to Council: Engelhardt, seconded by Budney

Ayes: Driver, Engelhardt, Campion, Cook, Runion, Pedrick, Giffen, Budney, Hain

Abstain: (None)

Motion passed: 9-0-0

8. Public Hearing: Flemington Outdoor, LLC – Block 44 Lot 6, 307 Route 202

Continued from September 3 and September 24, 2019

Mayor Driver and Councilman Runion were recused from the application and stepped down from the dais.

Ms. Kaczynski discussed that the applicant had finished testimony and public questions of the applicant and traffic engineer and the hearing would continue with questions of the applicant's civil engineer and planner.

The applicant's attorneys, Jaclyn D'Aminio and Douglas Steinhart, appeared and discussed that additional testimony would be provided by Mr. Bloch to clarify the planning testimony.

The applicant's engineer, James Biegen, and planner, Daniel Bloch from Maser Consulting appeared still under oath. Mr. Bloch discussed that the proposed use was not permitted in the HR zone and listed the positive criteria items that supported granting the 'd1' variances including 'a' where the site was particularly suited for the use; 'b' securing from flood, fire & natural disaster by providing emergency broadcasting; 'c' providing adequate light and air in public space and reducing coverage; 'g' suitable location for a variety of uses with respect to environmental requirements; 'l' promoting a desirable visual environment by improving the aesthetic; 'n' utilization of renewable energy by providing solar panels that would provide 55% of the power on site. Mr. Bloch discussed the negative criteria by providing no substantial detriment to the public good, where traffic testimony was provided; noting a net positive visual impact, no detriment from lighting; no detriment to the Master Plan or zoning

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

ordinance with an enhanced quality of proof even though a billboard use was prohibited throughout the Borough where the governing body did not take into consideration this new modern sign versus a traditional monopole billboard which the Borough did not want. Mr. Bloch noted that many of the goals of the Master Plan were being furthered with economic development, enhanced commercial corridor, specialty retail, encouraged sustainable energy. Mr. Bloch discussed the 'c' variance which he opined were subsumed into the 'd' variance.

Public Questions.

Tim Bebout, 194 Main Street, asked if the sign was to attract people to Main Street Flemington and bring more customers downtown. Mr. Bloch discussed the advertising opportunity and would include local, regional and national businesses with the Borough granted an 8 second sign every 2 minutes and would be linked to emergency messages. Mr. Bebout asked about maintenance. Ms. D'Arminio stated that prior testimony had been provided that maintenance would be the responsibility of the applicant.

Chris Englehart, 180 Main Street, asked if there was a picture of the sign from ground level, why there was a 4 foot wall under the sign; if there were any pictures of the plantings in different seasons; if there was a picture of the solar tree. The applicant's professionals responded.

Beryl Doyle, 37 Cherryville Hollow Road, discussed that Sweden banned digital billboards based on a study. Ms. Kaczynski asked for questions of the engineer or planner. Mr. Steinhart could not answer a question on planning in Sweden.

Resident Watkinson, Raritan Township – asked if any tax abatement were being provided. Mr. Steinhart noted that there were no tax abatements and that the project was privately funded.

Lois Stewart, 26 Spring Street & 32 Emery Avenue, asked how many trees were being removed including those less than 12 inches in diameter. Mr. Biegen discussed he could only testify to the surveyed trees over 12 inches where 6 were being removed clarifying that 2 additional trees would be saved where originally 8 were to be removed adding that the applicant would comply with the ordinance. Ms. Stewart asked why the renderings differed in the number of trees; had all State approvals been granted; had engineer's and planners comments been addressed; how would the applicant comply with the conditions; had any other municipalities been approached; where the water for the irrigation system would come from; height of the solar trees; if it was possible to have the lights not on 24 hours a day; if there was residual water contamination; how long the monitoring wells would be there; how the monitoring wells were abandoned; who would determine the compliance of the abandonment; if it was

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

possible to hack into the sign content noting that a sign in Detroit was hacked into and displayed pornography. The applicant's professionals responded. Ms. Stewart found the landscaping deceptive and not fair to the public.

AC Sykes, Flemington, asked about a digital sign on Route 28; asked the reason for the trees being removed; noted the renderings were not factual; asked if the landscaping would have the same colors as depicted in the rendering; if there would be colors other than green or brown in the landscaping; asked if she should not be concerned that there will be brown color shading; asked if the only way for a person in a vehicle on the circle to safely view the sign was to be a passenger. The applicant's professionals responded.

Robert Shore, 47 Broad Street, asked if there was anywhere in the ordinance where the use was permitted; could it be made more visually appealing to adjacent properties; The applicant's professionals responded. Mr. Shore asked if there would any discount rates available to Flemington businesses or any preferential treatment for a local area retailer. Ms. D'Arminio could not answer for the applicant and would object to as a condition.

Chris Englehart, 180 Main Street, asked if there was another digital billboard on a circle; what flowers would be planted at the wall; what company designed and who would install the sign; if the applicant provided any live footage of the 8 second ads. The applicant's professionals responded.

Steve Tuccio asked how the signs would direct traffic to the Borough's small businesses; how would a person in the vehicle know how to find the bed and breakfast on Main Street; what would the ad look like; how many cars on an hourly or daily basis be directed to the local businesses. The applicant's professionals responded.

Ray O'Donnell, stated that he had 4 daughters and asked what makes this sign different that one in Detroit that had porn shown. Mr. Biegen responded that the control of the sign was off-site and that the sign did not have video capability.

Lois Stewart, 26 Spring Street & 32 Emery Avenue, asked what studies had provided proof of economic benefit. Ms. D'Arminio responded.

Tim Bebout, 194 Main Street, asked why this location and if the site was a viable place to generate revenue. Mr. Bloch responded.

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

Chris Englehart, 180 Main Street, asked how many signs the applicant had installed and where. Ms. D'Arminio responded.

Steve Tuccio, 61 Elwood Avenue, asked how many installations had displaced an ongoing business; what permits had been secured by the DOT; had any car count been done; how traffic was directed to Flemington businesses; if they were familiar with traffic flow of the circle. The applicant's professionals responded.

AC Sykes, Flemington, asked if any research was done approaching local businesses interested in advertising and if not successful would the billboard be abandoned. Mr. Steinhart responded.

9:37 pm the Board took a break.

9:46 pm the meeting resumed.

Public Comment & Testimony.

Mr. Cook requested that the public make the comments succinct as possible and try not to be duplicative. Ms. Kaczynski asked to try to make all comments at one time.

Michael Harris, appeared and discussed that the public were not professionals and should not be limited to one comments period. Ms. Kaczynski clarified.

Robert Shore, 47 Broad Street, requested that any approval include stipulations to have trees installed behind the wall to grow tall; local Flemington businesses have preferential rates for advertising as there should be a benefit to Borough businesses, discounted rates would be good; would prefer a PILOT agreement as taxes will go the schools; would like the Board comments to be limited to 3 minutes or less.

Lois Stewart, 26 Spring Street & 32 Emery Avenue, commented that the application cannot be allowed to go forward; was amazed that some are in favor; compromising safety and health of the community and drivers passing through the circle; cited police department accident reports with percentage of accidents occurring in the circle as prepared and given by the chief of police. Mr. Steinhart objected as he had not seen the data or how it was quantified. Ms. Stewart noted the safety concern and referenced a pamphlet from the Flemington Opportunity Zone statistics that 50,000 cars drive on Route 202/31 each day and studies that show that taking eye off the road for 3 seconds can cause a crash; handheld phones had adverse effects; brings zero public benefit with no jobs, retail; 8 variances being

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

requested most for signs where there were recent changes to the sign ordinance; the Board will need to explain the actions to the community; GPS way to find way around, roadside signs decreasing this is going against societal trends; Sweden traffic injury prevention study found billboard attract and retain attention and found drivers looked at digital billboard longer; cited a Virginia Tech study – anything more than 2 seconds increases the risk of a crash, digital billboard attract drivers attention and recommended the removal of all digital billboards in Sweden. Mr. Steinhart objected that it was not admissible because Ms. Stewart could not produce the experts to testify and cannot simply read a study into evidence– testimony without foundation and no opportunity to question the author. Ms. Stewart listed the study. Ms. Stewart commented that the job of the Board was to protect the public from development and detriment to the public good and would be setting a dangerous precedent; disturbed by the lack of forthcoming information; applicant does not have the guy to run the slides, wanted to request a slide to review; drove around the circle and could see the existing building from Route 12; all the pictures are renderings, applicant does not have studies; nothing to provide that there is any benefit; hope Board requires full answers that have not been adequately addressed; what is required to have the sign removed if crashes go up; so many concerns and cannot understand an approval.

Steve Tuccio, 61 Elwood Avenue, concerns on differing questions on testimony of traffic engineer; hacking in Detroit where content is always at risk; concern on testimony on speed into circle from Route 202 which brings all his testimony into questions; asked the Board to consider eliminating all or most of this testimony; representation that DOT permits granted where he OPRA's the DOT and received no applications or permits issued for this block and lot; applicant has not explained how the sign benefits local business, dismantling businesses, opposite message sent by governing body to support local business. Mr. Tuccio commented that the positive and negative criteria of the application failed in every aspect except impervious coverage which was not much; troubling that this could set a precedent; sign ordinance recently changed where the application is the antithesis of that work ~~is~~ in size, height etc.; Board should encourage businesses like the one already there – sole proprietor – perfectly good use at it is; another reason to discount that the sign could not be seen is a misleading statement at best; impact to other surrounding businesses – Route 202 has a plethora of signs there already, checked with the Borough Clerk no permit sought or issues to the zoning officer; and asked the Board to table any action until some of the facts can be reconciled and in his opinion having a traffic study waived is outrageous.

Ms. Kaczynski clarified that DOT permit approvals were in the record.

AC Sykes, Flemington, asked if the experience of the applicant that his is beneficial to the municipality; tried to read the sign on Route 28 near the ballpark and trying to pay attention and being a safe driver was challenging; takes offense to the applicant's testimony that this is not a moving sign when a driver

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

will see the screen change; there would be fewer accidents if we stayed present driving where the only safe person viewing the screen would be a passenger; would prefer to have a drive-in theater; concerns for the dangerous area driving north on Route 202 to Route 31 with a tight curve where the view of the primary sign is most dangerous. Ms. Sykes opined that the only benefits would be to area hospitals or funeral homes and would contact the victim of accidents that the Board was warned that this was a dangerous application that will set a precedent; in 12 months there will not be any of the colors represented – not in January; the Master Plan is silent on billboard since they are not appropriate in the Borough; referenced It's a Wonderful Life movie; asked the Board to be good public servants and do what is best for the community.

Tim Bebout, 194 Main Street, thanked Ms. Stewart and Ms. Sykes for their input; trust the Planning Board to make decisions; Mr. Bebout liked the billboard thought it was beautiful and the variances should be evaluated on their own merits; commented that it is a matter of life that people are driving past Flemington and this is an opportunity if done correctly; would like more advertising time or rates for town retailers where they cannot compete with national chains; perhaps can work with Council to add local business signs into rotation as they are looking to attract customers that do not know Main Street as an inn keeper. Main Street has a lot to offer where the sign gives an opportunity to pause if done safely such as DOT caution signs that alert traffic; the Union Hotel is dilapidated with vacant stores on Main Street; we have a qualified Board to make the decision.

Chris Englehart, 180 Main Street, applaud Stewart, Tuccio, Sykes; found the application appalling; technology provides other ways to advertise that are much safer; concerns for safety; hope Board does the right thing; cannot hear all the testimony the first time; some questions not answered; not good visuals; there are many unknowns; concern for quality of life; sign does not speak to the historic town; concern for setting precedent; did not know how the Board can make a decision.

Lois Stewart, 26 Spring Street & 32 Emery Avenue, supported Tuccio reference to deceptive testimony where the traffic expert testified that there was no increase in crashes where a billboard was present; concerns about the application and owner's testimony that he was willing to do what the Borough wants. Ms. Stewart commented that it would be prudent to not take any action tonight, to review the testimony and comments and discuss with the owner to make changes to make this a more acceptable project that it was not fair to be subjected to be in an emergency room or funeral home.

Steve Tuccio, 61 Elwood Avenue, asked the Board to not make a decision in haste.

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
LOCATED TO HISTORIC COURTHOUSE – 75 MAIN STREET, FLEMINGTON, NJ 08822
MONDAY, OCTOBER 7, 2019 – 7:00 PM

MINUTES

Michael Harris, 173 Main Street, heard comments in support and not support; he had concerns in regards to safety; that there was incomplete information where the public was told that all the specialists would be returning; potentially doing a disservice to the applicant if the Board was unsure; concerned that the Board did not have its own study; concern for the hour and in light of the concerns of inconsistencies in testimony suggested that the path to take was to allow the applicant to come back or have the community provide an expert. Mrs. Engelhardt discussed that the Board had their expert here.

Motion to close the public portion of the hearing: Hain, seconded by Campion.

Ayes: Engelhardt, Campion, Cook, Pedrick, Giffen, Budney, Hain

Abstain: (None)

Motion passed: 7-0-0

Mr. Cook discussed that the Board would not have time to deliberate tonight. Mr. Steinhart understood and requested that the matter be continued with no professional experts appearing and would like to open with a statement at the next meeting prior to the Board deliberations. Mr. Cook requested that the Board not discuss the application and not look or engage in Facebook.

Ms. Kaczynski announced that the hearing on this matter would be continued to the October 22, 2019 at the Historic Courthouse, 75 Main Street at 7:00 p.m. and that further public notice would be provided.

9. Chair Items:

HPC comments: None.

Chair Items: None.

Next meeting: October 22, 2019 (Tuesday) located at the Historic Courthouse – 75 Main Street. Mr. Budney would not be present.

10. Bills: None

11. Executive Session: None needed.

12. Adjourn

Motion to adjourn at 11:05 p.m.: Hain; second: Campion

Ayes: All were in favor

Motion passed: 7-0-0

Respectfully submitted:

Eileen Parks, Planning Board Secretary