

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
38 PARK AVENUE, FLEMINGTON, NJ 08822
HELD VIRTUALLY VIA www.GOTOMEETING.COM
TUESDAY, APRIL 28, 2020 – 7:00 PM

MINUTES

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

Roll Call:

Present: Mayor Driver, Mrs. Engelhardt, Mr. Champion, Mr. Cook, Mr. Long, Ms. Giffen, Mr. Budney, Mr. Hain, Mr. Norton, Attorney Kaczynski, Planner McManus, Mr. Hill

Excused: Mrs. Pedrick, Engineer Clerico, Traffic Engineer Troutman.

Mr. Cook stated that the meeting was being with alternate recording methods and read the guidelines and stated that the virtual meeting had been properly noticed in conformance with the Open Public Meetings Act.

1. **Public Comments:** None. Ms. Parks discussed that no public comments had been submitted as of 3:00 pm to either the planning board email or the Borough's publiccomments email.

2. **Mayor Comments:**

Mayor Driver discussed that the Center Designation expiration had been extended 180 days after revocation of executive order 103 and that the Opportunity Zone grant may likely be extended as well. Mayor Driver discussed that the Borough's 2020 budget had been introduced at last night's Council meeting with some cuts in the budget that did not affect the Planning Board.

Mayor Driver discussed that ipads had arrived yesterday and would assigned to each Planning Board member and Council member with passwords installed to access the device for Board or Council items only.

3. **Council Items:** Mr. Long discussed the productive Council meeting regarding the Census with coordination with the OEM coordinator, Catherine Javier and Councilperson Giles-McCormick to provide a notice on the website in 2 languages and on social media outlets. Mr. Long thanks Jess Hand from the Board of Education for her assistance on the Census online. Mr. Long noted that the response rate for the Borough was

4. **HPC Comments:**

Richard Giffen, member of the HPC, discussed that the next workshop meeting would be held via the goto meeting virtual platform next Wednesday, noting that there were no applications with the exception of a paint application that would be handled administratively.

7:10 p.m. – Robin Lapidus of the Flemington Community Partnership entered the meeting as part of the public.

5. **Approval of minutes for the April 14, 2020 regular meeting.**

Motion to approve the minutes was made by: Hain, seconded by: Budney.

Ayes: Driver, Champion, Giffen, Engelhardt, Cook, Long, Budney, Hain, Hill

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Nays: (None)
Abstain: (None)
Motion passed: 9-0-0

A motion to amend the agenda to include item 6 as discussion on proposed ordinance to permit outdoor dining as an accessory use to restaurants in all zones and not require a site plan to aid the recovery in anticipation of the re-opening of the economy after Covid-19 epidemic and add item 7 as discussion on a proposed amendment to the land use ordinance to add Social Service uses in the HR zone was made by: Hill, seconded by: Hain.

6. Discussion: Amending The Land Development Ordinance Of The Borough Of Flemington To Expand And Further Outdoor Dining As A Permitted, Accessory Use Throughout The Borough

Mr. Cook objective to not require a site plan to add outdoor dining and provide some regulation on how it is governed and permitted so as not to involve the Board. Mr. Cook discussed the draft ordinance that had been distributed to the Board members noting that the ‘parklets’ had been removed from the ordinance adding that the idea was to expedite the approval to assist businesses in the post-Covid-19 world noting that parklets could be addressed in the Master Plan.

Ms. Kaczynski discussed comments from McManus to allow the outdoor dining as an accessory use in all zones with the exception of residential zones.

Mr. Cook read the definition of outdoor dining as an accessory use. The Board discussed allowing the use in all zones noting the concerns to not limit the accessory use to anyone currently operating a restaurant. Mrs. Engelhardt suggested allowing the outdoor dining anywhere we have permitted a restaurant including those that were granted a use variance to include outdoor dining as a permitted accessory use. Ms. McManus discussed that the outdoor dining would be an expansion of a non-conforming use which would cause the applicant to return to the Board for approval. Ms. Giffen thought that this was a temporary situation to alleviate the re-opening of restaurants with social distancing and asked if this would be permanent. Mayor Driver discussed that this had been on her to do list long term where covid-19 prompted to do this now. Mayor Driver discussed the Nilkanth development having a restaurant in the Professional Office zone and suggested not restricting in certain areas. The Board agreed to permit the accessory outdoor dining use anywhere there is a restaurant. Mr. Cook discussed that the draft ordinance did not permit the use in shopping centers and convenience stores. Engelhardt discussed that permitting the use would be all encompassing in the entire Borough, and asked if the Board could restrict the use in a future application, Ms. Kaczynski can put restrictions for safety issues but would be a permitted use. Mr. Cook discussed that he was comfortable with permitting at convenience stores noting that cars may be idling and people congregating. Mayor Driver recommended not including convenience stores noting concerns with the proximity to residential zones. Mr. Long recommended any restaurants that are providing outdoor dining now would continue and the ordinance would provide assistance to restaurants that may be teetering to provide the service outdoors. Mayor Driver suggested permitting outdoor dining in shopping centers where there would be an agreement between the tenant and landlord.

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Mr. Cook discussed the parking regulations where no additional parking would be required for outdoor dining and discussed the location of the dining to solely on the sidewalk area within the right of way of the Borough which would be setback 4 feet from the curb and located adjacent community space if privately owned. Ms. Kaczynski suggested that the Borough provide a blanket easement in the right of way and would work with Ms. McManus to provide the language along with the Borough attorney. Ms. McManus recommended that the outdoor seating definition to be amended. Mr. Cook discussed whether the tables, chairs, umbrellas, heat lamps, lights and/or planters to be secured or removed. The Board discussed their concerns for safety, liability and theft issues and agreed to provide language regarding same to secure items against the elements and improper use leaving enforcement to the zoning officer. Mr. Cook discussed the dates outdoor dining allowed from April 1 to December 31, the Board discussed and agreed to remove the dates and to allow all year long.

Mr. Cook asked for comments regarding the requirement to obtain a license issued by the zoning officer including a sketch of the dining area The Board discussed and agreed that the license would not transferable and shall be automatically renewed unless changes are made. The Board discussed the fees for the license and agreed that a one-time \$50 fee, to cover code enforcement officer costs, would be included and suggested that to alleviate the economic burden during the Covid-19 crisis the Council could waive the fees for period of 180 days after the rescinding of executive order 108 in a sidebar resolution. Ms. Kaczynski discussed that the seating during social distancing may need to be place tabled further away, limited the number of seating. Mr. Hill suggested that the application for outdoor dining be in the form of a permit and not a license where a permit can have an end date included noting that issuing permits would provide a catalog of seating, the Board discussed and agreed to change license to permit. The Board discussed the permit application, which was to include identification of the primary building, plan drawn to scale, a consent by the owner, and a measurement to the curb and encourage electronic submission with the patio plan to be attached to the application and suggested that Mr. Klein to be consulted on the permit application. The Board discussed having food prepared in the dining area and agreed to revise the ordinance to read that food and drink can be prepared but not cooked in the outdoor dining area to avoid any safety issues. All food to be prepared in accordance with health and fire regulations. Item 9 to be revised to have apparatus secured to prevent improper use. Mr. Campion asked about no-smoking areas and providing trash receptacles and to not use Borough trash or recycling containers, the Board discussed and agreed to include in the ordinance.

Attorney Kaczynski discussed the revisions to the ordinance including changing the title of the ordinance to remove the reference to 'Parklets' as discussed by the Board noting that she would prepare the ordinance for submission to Council for their May 11, 2020 meeting for introduction.

Motion to revise the ordinance as discussed and submit to Council: Hill; second: Giffen

Ayes: Driver, Engelhardt, Campion, Giffen, Cook, Long, Budney, Hain, Hill

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

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7. **Discussion:** Amendment to Land Development Ordinance to Permit Social Service Uses in the Highway Retail zone.

Mayor Driver discussed that after discussion with a developer that was looking at a site in the HR zone the social service use was not permitted and after speaking with the zoning officer the use of Social Service facilities appeared to have been an oversight and would like to see the use added. The Board discussed their concerns including parking regulations for the use. Mayor Driver discussed that there was not a pressing need to adopt this ordinance at this time and suggested that it could be held to a future meeting to address the parking requirement. Mr. Long to consult with Mr. Klein for some recommendations.

8. **Discussion: Subcommittees**

Mr. Cook asked for updates from the subcommittees. Mrs. Engelhardt had no updates on the Master Plan. Mr. Hill had provided an updated map for the circulation plan which he will send for distribution to the whole Board.

Mr. Hain had provided a draft of the rules for citizen input and the Planning Board Bylaws and rules of procedure. The Board discussed the documents noting that when put in place they would create procedures in place for public input and how meetings are conducted and provide some protection from future litigation. Mr. Cook asked the Board to review thoroughly for the next meeting.

9. **Chair Items:**

Mr. Cook stated the meeting went well and that the next meeting date was May 5, 2020 which would be cancelled. Mr. Cook discussed that there was a new application submitted electronically Ms. Parks to work with Mr. Clerico and the applicant to schedule the completeness determination either May 19 or June 9, 2020. Ms. Kaczynski to prepare guidance moving forward with applications and electronic submission. Next meeting May 19, 2020 bylaws and citizen input as well as possible completeness.

Mrs. Engelhardt discussed that she attended a meeting with the Global Agway developers who were making progress on the project.

10. **Bills:**

Motion to audit the bills: Hain; second: Engelhardt

Ayes: Driver, Engelhardt, Campion, Giffen, Cook, Long, Budney, Hain, Hill

Nayes: (None)

Abstain: (None)

Motion passed: 9-0-0

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11. Professional Reports:

Attorney: Ms. Kaczynski discussed that there was no new information from the courts.
Planner: Ms. McManus had nothing additional.

12. Executive Session: None

13. Adjournment:

Motion to adjourn the meeting at 9:30 p.m. was made by: Driver, seconded by: Hill. All were in favor.

Respectfully submitted:

Eileen Parks, Planning Board Secretary