

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
38 PARK AVENUE, FLEMINGTON, NJ 08822
HELD VIRTUALLY VIA 'ZOOM WEBINAR' PLATFORM
TUESDAY, JUNE 22, 2021 – 7:00 PM

MINUTES

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

Roll Call:

Present: Mayor Driver, Mr. Campion, Mr. Long, Mrs. Engelhardt, Mr. Cook, Mr. Budney, Mr. Hain, Mr. Doshna, Ms. Giffen @ 7.06 pm, Mr. Norton, Mr. Levitt, Ms. Weitzman, Attorney Kaczynski, Planner McManus, Engineer Clerico, Traffic Engineer Troutman.

Excused: Mr. Hill

Ms. Kaczynski asked if any Board members had a conflict of interest with any items on the agenda for this evening, none were heard.

1. **Public Comments:** No comments had been received to either the planning board email or the Borough's public comment email. There were no public comments from attendees.
2. **Mayor Comments:** Mayor Driver discussed that the Council held its first in person meeting June 14, 2021 and was checking out technology for the Planning Board and hoped that would be back to in person soon. Mayor Driver noted that 2 ordinances were introduced for first reading including parking in the DB district and a cannabis ordinance which would allow 2 licenses in the Borough in the HR, DB or VAS districts and would be limited to 200 ft from a residential district.

7:10 pm Mr. Troutman received a text from Mr. Hill that his internet was down and could not logon to the meeting.

Mayor Driver was in the process of renewing the Comcast/Infinity contract with the Borough.

3. **Council Comments:** Mr. Long was interested to hear the comments on the ordinances from the Board.
4. **HPC Comments:** Three resolutions had been forwarded to the Board, an application at 141 Main Street will need to come to the Board.
5. **Approval of minutes for the May 25, 2021 regular meeting.**

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

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

Nays: (None)

Abstain: Driver, Long

Motion passed: 7-0-2

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6. Ordinance Review: Ordinance 2021-14: Amending the Code of the Borough of Flemington to Set Forth Conditions for Cannabis Retailers and Cannabis Cultivators Locating Within Certain Districts and to Establish a Transfer and User Tax for Cannabis Products

Ms. McManus discussed the ordinance consistency with the Master Plan to permit cannabis businesses and uses in the Borough which would bring an economic development opportunity and asked the Board to provide any recommendations or revisions to Council. Ms. McManus discussed that since the Master Plan did not anticipate the legalization of cannabis the Master Plan was silent on the use but looking at other items such as encouraging underutilized sites, economic development, establishing community, etc. and though it lacks specifics found the ordinance not inconsistent with the Master Plan noting that it was not necessary to be specifically consistent.

Mr. Cook discussed that regardless of where the facilities can go they cannot operate within 200 feet of a residential district.

Mrs. Engelhardt was concerned for the distance to schools and parks. Mr. Doshna discussed that all schools and parks were not located in the DB zone but were all in residential zones where the facility could not be located closer than 200 feet. Ms. McManus discussed the impact of a small Borough on different uses where all the districts were on top of each other.

Ms. McManus discussed the classes of cannabis uses including consumption areas, classes on businesses, cultivation which was not a traditional agricultural use but would be in warehouses in industrial locations; class 2 manufacturer's license for products; class 3 wholesaler; class 4 distribution and transportation from various classes; class 5 retail and class 6 delivery with operation to delivery cannabis noting that marijuana would operate under land use which was unique. The Borough would permit 2 cultivators and 2 distributors.

Mayor Driver discussed that growing would be an industrial use which not permitted in the districts in the Borough and an applicant would need to come to the Board to permit cultivation.

Mrs. Engelhardt recommended the use be permitted in the Vas district and not appropriate in the DB district.

Mr. Cook compared the use similar to a liquor store and a sign of the times and recommended to allow where it fits the best.

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Motion to find the ordinance not inconsistent with the Master Plan and recommend the Council adopt as presented was made by: Driver, seconded by: Cook

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

Nayes: (None)

Abstain: Engelhardt

Motion passed: 8-0-1

7. Ordinance Review: Ordinance 2021-15: Amending Section 2629 of the Code of the Borough of Flemington Regarding Parking in the Downtown Business (DB) District

Ms. McManus provided an overview of the proposed ordinance to make the parking requirements in the downtown easier on applicants to occupy building with an existing permitted use and alleviate the parking restrictions if the use was permitted or existing would not require a 'd' variance noting that it would not apply to office use because the ordinance was intended to follow through with the Master Plan recommendations to increase foot traffic with restaurant and retail businesses where office use was not an active use. Ms. McManus recommended that the ordinance was not inconsistent with the Master Plan where it encourages other uses and crafts parking relief in the downtown business district.

Mr. Doshna discussed that it was a long time goal to alleviate parking restrictions.

Motion to find the ordinance not inconsistent with the Master Plan and recommend the Council adopt as presented was made by: Budney, seconded by: Driver

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

Nayes: (None)

Abstain: (None)

Motion passed: 9-0-0

7:54 pm Mayor Driver and Mr. Long were recused from the next 2 Use Variance applications and did not return to the meeting.

8. Public Hearing: Application #2020-03 - Lee B. Roth - Block 21, Lot 25 – 91 Main Street
Continued from February 23, March 9 & 23, April 13 & 27, May 5 & May 25 and June 8, 2021

Mr. Doshna discussed that the hearing would continue with cross examination of Mr. Remsa by the applicant, then the Board and public.

Attorney and applicant, Lee B. Roth, appeared and asked Mr. Remsa if he found creating a net zero energy building; creating a 2 bedroom affordable unit and provided for a ground floor accessible unit a

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public benefit and if all the proposed residential was built and someone wanted to change to an office or retail they would need even more parking. Mr. Remsa responded. Mr. Roth asked if the Union Hotel recordings had been viewed where the professionals recommended the developer only provide parking needed on the specific site with an abundance of parking offsite. Mr. Remsa stated that each site stands on its own merit. Mr. Roth opined that the residential project would come closer to meeting the parking requirement than an office project. Mr. Remsa cited the importance of the parking requirement at different times during the day where the overnight parking required for residential was quite different but if just absolute numbers yes. Mr. Roth asked if the project was more intense than the neighboring properties, how many spaces were available on the County lot, how many electric meters serviced the adjoining building and the uses; parking at Main Street and a bank building; cited broken window broken buildings theory noting that it was important for buildings to be occupied and flourishing to revitalize.

Mrs. Engelhardt asked if a bulk variance for the side yard setback for the parking deck would be required and asked if the project was too intense for the existing site where bulk and use variance should be per this particular location. Mr. Remsa discussed that if the structure was not integrated that a variance would be required and noted that there was no overnight parking in parking area #1 owned by the County per the parking ordinance.

There were no public questions for Mr. Remsa.

Mr. Lanza appeared and thanked the Board members for their patience as he got into this late and discussed that the Board members would find difficulty in any other conclusion other than a 9 unit building was much too intense for the size of the lot with the number of customers and visitors and opined that the project meeting neither the positive or negative criteria; was not about the sheriff office or development down the street; did not meet the tone or intent of the Master Plan. Mr. Lanza discussed the positive criteria causing undue hardship on the owner where there was not any more than on other neighbors; the applicant offered no other plans with less parking demand adding that economic opportunity for the applicant was not a reason; where there was no requirement for floor area ratio the density was controlled by impervious coverage and parking requirements where 13 spaces were proposed 1 which was dedicated to ADA requirements with an eight car parking carousel and stacker parking deck, Mr. Lanza cited issues with the narrow access drive and the site was still 6 spaces short if no contraptions were being built. Mr. Lanza discussed the negative impacts on the historic district of Main Street; HPC comments were against this development where the project was inappropriate from a historic perspective and the design does not fit into the district with the construction of a tower visible from Main Street not in character adding that the site was not particularly suited for the use where the site was too small. The applicant offered nothing to address stormwater issues due to the soil investigation being too expensive noting that once approved it would be forever in place; applicant did not address the conflicting access to the site causing congestion and concerns for public safety adding that the site was not suited to the parkmatic structure. Mr. Lanza discussed the fire marshal letters concerns for emergency vehicle access to the 3 story building in the

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rear during a fire or emergency. Mr. Lanza opined that the project would be a substantial detriment to the public and would negatively impact the zone plan which encourages active uses on Main Street to draw visitors with 445 sf of office space to remain; parking for overnight tenants and visitors would disrupt parking area. Mr. Lanza did not feel the applicant met the Medici standard of enhanced proofs and that there was substantial evidence to deny this application.

Mr. Roth shared his closing statement exhibit dated June 8, 2021 and discussed the history of the site the existing conditions; that there was no longer a need for large office space; the residential areas could be converted in the future if there was a demand; discussed parking availability; his personal history in town; issues that he and the Borough was facing today including vacancy rates; what he was offering was 9 units down from 10 proposed, eliminated sitting area for tenants, lowered the rear building by one floor, proposing solar panels, net zero energy project; structured parking which was encouraged by the Master Plan; affordable housing unit created; and discussed the testimony provided by Mr. Lanza where the object must demonstrate reasons why they object where an owner of land has a right to develop property within reason. Mr. Roth showed that relief can be granted without substantial detriment to the zoning plan or ordinance and cited cases where the objector failed to introduce effective testimony and shifted the burden of proof to the objector noting that there was abundant parking within a reasonable distance to the site per Mr. Troutman testimony during another application. Mr. Roth hoped to get an affirmative vote for this project.

9:24 pm the meeting recessed.

9:30 pm the meeting resumed.

Mr. Doshna asked for public comment which would be limited to 3 minutes.

Brian Blake, 95 Main Street, represented by Counsel through Mr. Lanza, appeared and discussed that he met with Mr. Roth on March 3, 2021 for 2 hours where he became concerned with the parkomatic structure's foundation, vibration and noise as well as the proximity of the parking deck to his property with a 2.5 foot gap as a child safety issue. Mr. Blake discussed that this was promoted as a green structure but no landscaping was proposed and was concerned that the site would be 95.5% residential and 4.5% commercial use was not sure that was what the town was looking for where his property had 28 parking spaces and he wants to be part of the redevelopment with 100% commercial proposed on his site. Mr. Blake's 3 minutes was up.

No other public comments were heard.

Motion to close the public hearing was made by: Cook, seconded by: Hain.

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

Nays: (None)

Abstain: (None)

Motion passed: 7-0-0

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The Board's professionals were sworn in for testimony.

Ms. McManus discussed the use and bulk variances requested as well as site plan approval which had been modified from 4 story, 10 unit to 3 story, 9 unit project. D variances included: residential use on the first floor; rotary parking carousel use; 2 story parking deck where the parking deck was a separate structure; impervious coverage of 97% proposed where 96% was existing. C variances included: rear yard setback of 3 feet proposed where .73 feet was existing; side yard setback for the bi-level parking deck accessory structure of 2.5 feet proposed where 15 feet was required; pre-existing front yard setback; parking variance of 13 proposed spaces where 19 were required including the parking carousel and bi-level parking deck; lighting waiver of .1 fc required where 3 fc proposed; street tree requirement where the applicant declined to provide any trees and declined to provide filtered buffer required by code; landscaping not being provided where to be consistent with intent of the ordinance 1 street tree would be required where none were proposed. Ms. McManus discussed the variance consideration and the criteria to grant the use and bulk variances including whether the site was particularly suited for the proposed use and what other positive and negative criteria the project meets and if there would be substantial detriment to the public good, the zoning plan or ordinance and take into consideration the Medici argument. For c2 variances the Board should weigh the benefits versus the detriments; c1 variance or hardship can also be applied and the last criteria if the exceptions and deviations were reasonable or impracticable or a hardship to the developer. The Board should consider land use policies, how to protect pedestrian traffic along Main Street, if the lack of parking was acceptable; if building architecture and style appropriate for the location; visibility of building in the historic district and generally comfortable with the level of development where parking requirements and impervious coverage can measure intensity and level of activity; tree coverage; land use policy and Master Plan goals and the vision for the Borough along Main Street.

Mr. Cook asked if the Board should take one variance on its own. Ms. McManus discussed that the variances and the site plan were integrated and connected in this particular application noting that the financial viability should not be a consideration of the Board or fiscal concerns or the number of vacancies which was beyond the Master Plan recommendation of economic development.

Mr. Budney asked if the tree requirement was 1 tree per 3 parking spaces. Ms. Kaczynski discussed that the Board should not consider the redevelopment project for Courthouse Square which was subject to a Redevelopment Plan including parking and trees. Mr. Budney confirmed that the applicant could contribute to the payment in lieu of trees.

Mr. Clerico summarized the technical issues including: impervious coverage where the applicant was not seeking relief from the design element obligation to provide additional stormwater management noting that the applicant would have to comply and provide the subsurface soil testing; site circulation where some spaces would require several turning movement to exit; fire marshal limitation to get emergency access to the site; detail on limitation on the site; pedestrian conflicts; limited access to the street;

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safety elements on and off site to be provided; utility service pending until Board decision for water and sewer service; underground electric location; 2 water service lines; 1 sewer line.

Mrs. Engelhardt was concerned about utility crossing the new street scape and recommended the applicant assure that there would be no disturbance. Mr. Campion confirmed that there was a 5 year moratorium with health, safety and welfare the only reasons for the road to be dug up.

Mr. Clerico discussed that there would be constraints on road opening permits on the street scape per the agreement with the Borough, applicant would have to come back to Board; applicant to locate leader drain connection into the drainage system.

Mr. Doshna asked if the required stormwater elements could be done and the impact on adjacent properties. Mr. Clerico discussed that it would depend on soil test and the proposed design to show no adverse impact and if it cannot comply the project cannot proceed.

Mr. Troutman discussed the traffic impact numbers and trip reduction in traffic impact on a weekday but showed an increase in weekend traffic; driveway access trips will increase at peak at most 13 trips in an hour with a car every 7-8 minutes would be a low incidence and does not create a safety issue in his experience, applicant could place signage or warning striping; discussed that multi point vehicles turns were required to exit some spaces; overnight parking to be available nearby with no enforcement from police or County; sight distance plan needs to be revised.

Mrs. Engelhardt asked how to guarantee the County will always be there and where else will tenants park.

Mr. Troutman stood by his comments on the Union Hotel to only build parking for the site where the Courthouse Square had multiple uses.

Mr. Doshna discussed that the Board did not start new business after 10:30 pm and would not get to the public hearing for Premier Outdoor Media tonight. Attorney for that application, Jeff Hall, appeared and agree that the hearing would continue on July 13, 2021 meeting which would be held remotely at 7:00 pm with no further notice of hearing to be provided the application would be first up for public hearing.

Ms. Kaczynski discussed the conditions including: compliance with the Board professional's reports; compliance with the streetscape plan; ADA requirements; pavement replacement; any amendment to the site plan would need to come back to the Board; bicycle rack to be provided; trash pickup based on onsite need per requirements; stormwater system compliance; existing mirror to be maintained by the applicant; any bollards or traffic calming measures up to the Board; signage to be provided for access drive; discouragement of onsite deliveries; leases to assign parking spaces and electric charging stations; identification of utilities lines; detail on snow removal; provide 1 2-bedroom low income affordable housing unit and compliance with all affordable housing regulations and use of Borough Administrative

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Agent required; maintenance of impervious pavers; net zero submission of documentation; taller railing to be provided on the deck; moving of pile foundation pending verification of location of adjacent foundation; fire rated doors to be provided; compliance with all code and construction; compliance with HPC recommendations; fake window or paint on blank walls per Board recommendation and to the satisfaction of the Board planner; stormwater design issues would need to come back to the Board; location of rear building roof leader discharge to be shown; all outside approvals including the Borough water and sewer departments; plans to be revised to show underground utilities; applicant to provide payment in lieu of providing trees; sight distance plan to be provided.

A motion to grant the 'd' and 'c' variances requested and design relief subject to the conditions as discussed was made by Mrs. Engelhardt; seconded by Cook.

The Board discussed.

Mr. Cook agreed that the town needs redevelopment and appreciated Mr. Roth bringing a carousel parking structure to the Borough but was not in favor of granting a parking variance adding that when taken in the aggregate he was not in favor of the plan.

Mr. Budney looked very closely at the site and what works best, he liked the net zero energy and innovative materials and design where it was good to incorporate additional residential in the downtown but not the intensity of 9 units and found a problem with granting the variances for the parking requirements, setbacks and the stormwater which was unknown adding that for a green project no greenery was being provided noting that the payment in lieu should be for the number of trees required. Mr. Budney had concerns for the health and safety concerns in the fire marshal review which was the worst he had seen in 10 years with concerns for the neighboring properties and found no attempt to address the fire marshal's comments and would have liked to hear from Ken McCormick. Mr. Budney would agree to use of residential units on the first floor.

Mr. Giffen had special concerns with the fire marshal's letter with no additional comments from the applicant to address these items and that the goal should be for the property to be appropriately scaled with a better site design where what was proposed was not adequate for the site and uses not particularly suited to the property. Ms. Giffen found the project detrimental to the public good with concerns for fire safety and the site plan as presented does not satisfy the criteria as it stands now.

Mr. Hain agreed with the net zero part of the project but it needs more research for the stormwater which could create a problem for safety. Mr. Hain agreed with a payment in lieu for trees; parking availability in the Borough should not be for tenants; had fire safety concerns where access to the site was all about the time getting in and out. Mr. Hain was alright with a use variance but 9 units were too much for the site and would be support of an appropriately scaled development.

Mr. Norton liked the idea of the project but would like to see it come back with a smaller scale having concerns for emergency access and parking requirements.

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Ms. Weitzman agreed with the fire safety concerns; the parking issue on the street overnight creating more competition for people in the area where the applicant should provide parking for the proposed project.

Mrs. Engelhardt thought the proposed project was too intensely used for the 0.19 acre lot where all of the variances relied each other and found the shared parking testimony weak and questioned whether the parking structures were suitable for this particular site adding the concern for the amount of square footage lost in office space. Mrs. Engelhardt discussed the biggest issue was with the rear first floor residential quality of living conditions and having the affordable unit one of the worst locations adding concerns for the aesthetics; stormwater issues and crossing the streetscape with a grant issue to not disturb. Mrs. Engelhardt discussed that the Board cannot approve a project anecdotally and cannot be compared to the Union Hotel project which was under the different condition of a redevelopment plan and the project could not rely on County property for parking and the parking deck still required a side yard setback variance and while the revisions to the site plan by the applicant were appreciated, the quality of the architectural and civil drawing were poor with no delineation of dimensions.

11:26 pm Ms. Parks was disconnected from the meeting. Mrs. Engelhardt called to see what happened. Mr. Cook discussed that the applicant did agree to sprinkle the whole building in response to the fire marshal comments.

Mr. Doshna agreed but cited the 10 foot drive access where the applicant proposed alterations to the rear structure and could have made changes to the access and circulation adding that there was a lot of use proposed on a small lot which was of great concern.

Attorney Kaczynski confirmed that Mr. Campion had viewed the recordings of meetings that he missed. Mr. Hill had also viewed the recording.

Attorney Kaczynski called for a vote with the motion on the floor being the approval all requested variances subject to the conditions as discussed. Mr. Doshna added that there was discussion to include a payment in lieu of tree replacement.

Ayes: None

Nays: Doshna, Engelhardt, Cook, Budney, Hain, Giffen

Abstain: Campion

Motion denied: 0-6-1

9. Public Hearing: Application #2020-01 Premier Outdoor Media – Block 49 Lot 2

Continued from May 25, 2021

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Mr. Doshna announced that the public hearing would continue to the July 13, 2021 meeting which would be held remotely at 7:00 pm with no further notice of hearing to be provided the application would be first up for public hearing.

10. Chair Items:

- Mr. Doshna discussed the transition to return to in person meetings. Ms. Kaczynski discussed that if the Premier Outdoor Media hearing did not finish on July 13, 2021 an announcement to either remote or in person meeting for the continuation would suffice as adequate notice without new notice being required.

Mrs. Engelhardt would not be attending the July 13, 2021 meeting.

- Next meeting: July 13, 2021. Outstanding items included: public hearing for Premier Outdoor Media, LLC; Padovani, Captiva Main Street and a possible sign application which had not been submitted.

11:37 pm Ms. Parks returned to the meeting.

11. Bills:

Motion to audit the bills was made by: Cook, seconded by: Hain.

Ayes: Campion, Engelhardt, Cook, Budney, Hain, Doshna, Giffen, Norton, Levitt

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

12. Professional Reports: None

13. Executive Session: Not needed.

Mr. Doshna thanked the Board for the work on the recent long applications.

14. Adjournment:

Motion to adjourn the meeting at 11:41 p.m. was made by: Budney, seconded by: Cook. All were in favor.

Respectfully submitted:

Eileen Parks, Planning Board Secretary