

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
38 PARK AVENUE, FLEMINGTON, NJ 08822
HELD IN PERSON AND VIRTUALLY VIA 'ZOOM WEBINAR' PLATFORM
TUESDAY, JULY 27, 2021 – 7:00 PM

MINUTES

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

Roll Call:

Present: Mayor Driver, Mrs. Engelhardt Mr. Budney, Mr. Hain, Mr. Doshna, Ms. Giffen, Mr. Hill, Mr. Levitt, Ms. Weitzman, Attorney Kaczynski, Planner McManus, Engineer Clerico, Traffic Engineer Troutman.

Excused: Mr. Long, Mr. Cook, Mr. Campion, Mr. Norton,

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:** None.
2. **Mayor Comments:** None.
3. **Council Comments:** None.
4. **HPC Comments:** None
5. **Approval of minutes for the July 13, 2021 regular meeting.**

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

Ayes: Hain, Budney, Doshna, Hill, Levitt, Weitzman

Nays: (None)

Abstain: Driver, Engelhardt, Giffen

Motion passed: 6-0-3

6. Resolution: Application #2020-03 - Lee B. Roth - Block 21, Lot 25 – 91 Main Street

Ms. Kaczynski prepared a draft resolution to be reviewed by the Board professionals and the applicant.

7:07 pm Mayor Driver was recused from the next application for a use variance, left the meeting and did not return.

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

Continued from May 25, June 22 and July 13, 2021

Mrs. Engelhardt and Ms. Giffen had reviewed the recording of the July 13, 2021 meeting and were eligible to vote.

The attorney for the applicant, Jeffrey Hall, appeared seeking either a d1 or d2 variance intending to establish the continued use of the billboard over the years and having searched for zoning ordinance

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that would pre-date the construction of the billboard nothing was found with the earliest known ordinance dating 1975 and therefore this was a legal non-conforming use predating zoning, Mr. Hall also noted that the applicant was prepared to amend the application to reduce the height to a total of 25 feet based on the feedback from the Board and established the dates of the transactions for the billboard and sale of the Spring Street property at separate times in 2018.

The applicant's planner, John McDonough, appeared via zoom, gave his credentials as a planner and landscape architect and hearing no objections was accepted as same. Mr. McDonough discussed the existing conditions sharing a zoning exhibit with and aerial photo noting that it was clear that the billboard existing since the mid 1940's, gave the date of April 23, 2021 for the views of the billboard from the north and southbound and noted that the dense vegetation would remain. Mr. McDonough discussed that the application was a modernization of the existing use in a mostly non-residential area where the proposed sign would be raised from the ground level on a monopole with the actual sign dimensions remaining the same with a maintenance driveway being added noting that there have been no commercial uses proposed over the years on this undersized lot.

Mr. McDonough discussed that the application met both the d1 and d2 test and listed that variances required which were on page 4 of Ms. McManus's report and discussed the more stringent test for the d1 relief including that the billboard has been there for a very long time and not hidden with a NJDOT permit for the location under the rules and safety regulations to which the use has been compliant and obtained a permit for digital display in an optimal location that does not create a safety hazard and met the land use law core purposes to promote public health safety and welfare with a specialized form of land use in a form of communication with constitutional free speech that works for businesses that invest in it adding that the use would benefit inherently beneficial uses such as churches, healthcare, education, and the promotion of real time messages to offer psa's and alerts. Mr. McDonough cited purposes 'g', 'h', 'l', 'n' of the MLUL were met to grant the variance with no substantial negative impacts to the neighborhood as a compatible use with residences located over 550 feet away and buffered by existing vegetation adding that the billboard had no adverse impacts from lighting, traffic, no water/sewer was required and no impairment to the zoning plan or the MLUL. Mr. McDonough noted the limited capacity for commercial development on the lot, cited case law and discussed that the sign would comply with the height to further blend into the surrounding context while raising the sign would provide clearance to see what was behind the sign noting that the parcel was an existing non-conforming lot with a lot size appropriate for this land use and a distinct piece of property that was particularly suitable for the use adding that the d2 test would be met as well and clarified that the height would not require a d6 variance.

Ms. McManus asked for elaboration on how the site contributed to a digital billboard as opposed to other sites. Mr. McDonough replied that the site meets the separation requirements for digital billboards with a complementary land use across the street which was determined to be suitable, the use has been on this site for a long time with a modernized version of the use. McManus discussed purpose 'a' that PSA's would already be displayed on the use across the street. Mr. McDonough discussed that the messages were not all in the same line of sight and may appear at different times and

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would be an enhancement and discussed the traffic benefits to alert motorists of any issues and did not cause traffic impact or dangerous condition. Ms. Kaczynski clarified the distance requirement between billboards on the same side of the highway as 3000 feet for digital board and 300 feet for static boards which did not apply across the street.

Mrs. Engelhardt asked the difference between an existing legal non-conforming use vs. an illegal non-conforming use. Mr. McDonough explained. Mrs. Engelhardt asked that the applicant increase the amount and quality of the proposed landscaping; the applicant agreed to work with the Board planner on landscaping. Mrs. Engelhardt noted that the Shoppes at Flemington had an extremely small wayfinding sign and asked if the applicant would work to improve the entrance signage.

Ms. Giffen asked if the NJDOT considered safety specific to the roadway configuration. Mr. McDonough discussed.

Robin Lapidus, executive director of the FCP, supported the signage promotion for the Shoppes of Flemington.

Lawrence Cohen, appeared as counsel for Flemington Outdoor, LLC, asked Mr. McDonough's opinion if a d1 or d2 variance was required where a d1 variance would need enhanced proofs noting that the ordinance specifically prohibited billboard in the zone where the legislature made a conscience decision to prohibit the use. Mr. McDonough discussed that a wholly new billboard would have a greater burden of proof but this billboard had been in use continuously for 80-90 years. Mr. Cohen asked what fees would be charged to local businesses Mr. McDonough did not know. Mr. Cohen discussed that PSA alerts on the monument sign across the street had a requirement that public display be allowed 2 minutes every hour 200 feet away from this site. Mr. McDonough replied that it was not redundant but enhanced service announcements and met purpose 'm' for good planning with reconstruction over new construction with essentially a replacement with no increase in disturbance. Mr. Cohen asked if this would be more profitable. Mr. McDonough replied that economics was not a basis for planning testimony. Mr. Cohen asked if the standards applied even though the same exact message would be on another sign right across the street, Mr. McDonough noted that there would different vantage points and added that the lighting does not create a skyline; the sign would be nestled into the existing landscaping; additional landscaping can be added below the sign. Mr. Cohen asked what other purposes were being met. Mr. McDonough discussed the purposes mentioned in his testimony, Mr. Cohen asked if there were any negative impacts, Mr. McDonough discussed.

8:26 pm the Borough lost internet connection.

8:30 pm the meeting recessed.

8:37 pm the meeting resumed.

Mr. Hall reserved the right to redirect with Mr. McDonough when he returned.

Dominick Vastino, of Premier Outdoor Media, LLC, appeared still under oath, and discussed the NJDOT permit for this site was approved prior to the permit across the street and discussed the application and

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review process by the NJDOT noting that the permit was transfer to the new owner and operator where the permit number does not change – just the name. Exhibit A-10, 2 page notice of approval dated 2016 to Mr. Blum at DOT (the third page was missing and to be submitted to amend Exhibit A-10). Mr. Vastino agreed to work with the FCP to provide local businesses lower advertising costs and noted that the height was reduced 8 feet for a total of 25 feet and agreed to work with the business in the Shoppes of Flemington. Mr. Vastino discussed the nature and type of advertisements and the statement of principals of standards for signage which included free speech, protection of minors, providing PSA's and discussed that the sign would have ambient lighting with no flashing. Mr. Vastino did not find any ordinances filed with the County clerk prior to the construction of the billboard in the mid 1940's.

Mr. Cohen discussed that there would be adequate coverage on his client's sign for PSA's. Mr. Vastino discussed that the sign across the street were no standard signs and the alerts would have to be redone on a non-standard sign so they would not be real time alerts.

Mr. Hill asked to clarify that southbound vehicles would have to go around the circle to view the billboard. Mr. Vastino replied yes.

Ms. Giffen asked if the sign would be visible to some vehicles in the circle. Mr. Vastino replied yes.

Mr. Budney asked if there was any allocation per month for the FCP. Mr. Vastino replied not yet and agreed to work with the FCP noting that the sign would work for local businesses within the first few miles of the sign.

Mrs. Engelhardt asked how the DOT approvals relate to this application and if approval from the Board was required; if the applicant included site improvements by partnering with neighbors or adding any special features or landscaping; asked if emergency advertising was required; asked if the blips per month were for the Borough only; what about schools or Raritan Township. Mr. Vastino discussed.

Mr. Hain asked if there would be any name or logo elsewhere on the sign and if that would constitute an additional sign. Mr. Vastino discussed that the name of the company, the permit ID and number were required to be on the sign and would be an additional 12 square feet on a separate sign on the skirt of the billboard.

Ms. Weitzman asked about the Shoppes at Flemington sign and if it was on the applicant's property. Mr. Hall discussed that the sign was on the adjacent owner's property of Mavis within an easement where the applicant had no jurisdiction.

Mr. Cohen noted that it was hard to hear Mr. Vastino and Mr. Hall and asked how the PSA's had to be adjusted for non-standard billboards and asked if the dimensions of the billboard across the street was

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known. Mr. Vastino discussed. Mr. Hall entered the resolution for the Flemington Outdoor, LLC application which listed the sign dimensions which confirmed the sizes were not standard. Mr. Vastino listed the standard sizes for billboards.

The applicant's engineer, Tiago Duarte, gave his credentials as an engineer and hearing no objections was accepted as same. Exhibit A-11 a colorized sheet 3 of the site plan was entered. Mr. Duarte discussed the existing conditions in the O/SS overlay zone district with the existing 14'x48' billboard signs to be removed and replaced with new digital signs with a 16 foot front setback to remain the same, side yard to be increase from 25.4 feet to 29.3 feet and the rear yard to increase by 2.8 feet to the property line; trees to be removed in the middle of the signs with all other vegetation to remain; height now proposed at 25 feet overall for a 7.5 foot increase; access to the site with a new curb cut on Route 202 which was approved by NJDOT for maintenance vehicle parking, noting that maintenance was about 2 times per year with no utilities for gas, water or sewer with new electric service by the provider. Mr. Duarte shared - sheet 5 – lighting plan of the site plan. Mr. Duarte discussed the digital array illumination vs. the static sign lighting with uplights which created halos and some light spillage where the digital sign lights were perpendicular to the sign and discussed the manufacturers lighting data which complies with the industry standards for footcandle illumination slightly lower than the standard which was not a distracting light level with the array and spread directed to provide the best image to roadway traffic. Mr. Duarte agreed to provide additional landscaping to the satisfaction of the Board professionals. Exhibit A-12 – the landscaping plan was entered and agreed to provide evergreen and ornamental plantings. Mr. Duarte discussed the other outside approvals obtained including: DOT for the curb cut, County exemption, certification by the Soil Conservation District and clarified the dates for the google maps for the northboard aerial view as November 2017 on A-4 and southbound dated October 2019 on A-5.

Mr. Clerico asked if the access driveway would be turf. Mr Duarte discussed that it would not be a paved drive but would have a concrete apron to grass pavers noting that a detail was provided on the plans and designed for a typical maintenance vehicle with adequate turnaround on site. Mr. Clerico discussed that there was a stockpile of dirt that looked to be over the top of a Borough sewer line and asked if there was a permit for the stockpile and recommended that the location of the sewer line to identified and the stockpile removed as any condition. Mr. Duarte agreed.

Mr. Troutman confirmed an error on the light levels to be corrected.

Mr. Doshna discussed the lighting with 1 foot candle above ambient light and asked what did the light compare to in practical terms. Mr. Duarte discussed the levels of safety lighting. Mr. Doshna asked if the proposed landscaping species were from the Borough approved list. Mr. Duarte agreed to change and would consult with Ms. McManus.

Mr. Levitt asked if the proposed sign would be better than the existing. Mr. Duarte replied better.

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Mr. Hain confirmed that there would be no antenna, the proposed concrete apron was approved by DOT; the sidewalk would be replaced; high pressure sodium lights would be removed; the sign would be used 24/7 and confirmed the safety features were included during a foggy day with use of an internal meter and that there would be two separate signs.

Mr. Hill asked responsive the meter was to outdoor light and if traffic headlights would effect the meter; what happened when the power went out with no backup generator. Mr. Duarte discussed.

Mrs. Engelhardt asked at what angle do you stop seeing the sign. Duarte replied 60 degrees. Mrs. Engelhardt asked if the landscaping plan was designed by a professional.

Mr. Budney asked if vehicle would at any time have a view of both this sign and the sign on the circle. Mr. Duarte replied yes.

Mr. Cohen asked if any other sign dimension increase besides the height; if the lighting intensity changed or colors; how much further away would the sign be visible from the static sign and if the light would increase the visibility than the existing static sign. Mr. Duarte discussed that the distance would be similar for visibility and that the height would increase the readability.

The applicant's traffic engineer, Justin Taylor, appeared and gave his credentials as a traffic engineer and hearing no objections was accepted as same. Exhibit A-13 – 3 page Traffic and Safety Study and Exhibit A-14 1 page Sight Visibility Study were entered. Mr. Taylor discussed the existing area and found some occlusion on visibility where the southbound traffic was obstructed by the northbound vehicles and discussed the cone of vision for drivers within a 20 degree range and the perception in front and peripherally without taking eyes off the road and the par-peripheral vision at the 40 degree range where the detail and shape visibility go down but there was still a good perception of light which would determine how long a sign would be visible. Mr. Taylor listed the time that the digital sign would be visible from the north and southbound traffic and discussed a study on how people react to 2 billboards which tracking where the eye movements of drivers in proximity to a billboard and the average glance time of 0.3749 seconds where on average a driver needs 1 second to review the content of the billboard and the dangerous time away from the road was 2 seconds concluding that the placement of the billboards would have vehicles to view them safely. Mr. Taylor discussed the DOT review process noting that there were many locations with similar situations with additional billboards adding that safety would not be compromised and may increase by raising the height.

Mr. Troutman asked if there were any issues converting from a static to digital board with movement around the circle and view of the billboard on the circle and if the DOT reviewed.

Mr. Hill asked if a vehicle north bound on Route 202 not coming from the circle face any other issues.

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Ms. Giffen discussed the DOT permit granted in 2016 when the monument sign was not granted at the time therefor the DOT could not have reviewed that impact and asked in the studies in the referenced report were they any related to traffic on circles and with similar volumes. Mr. Duarte replied nothing specifically on a circle but with similar traffic. Ms. Giffen discussed the cones of visibility and asked for data with a vehicle on a circle to show the worst case scenario along a circle with view of both signs. Mr. Taylor did not see travelling in a circle any more challenging where the full distraction of 2 seconds did not take place glancing at a billboard.

Mr. Budney discussed the line of sight and the study with a flip rate of 8 second per ad where a vehicle can see two different ads in the time north and south plus adding the monument sign and asked if the factored into the 2 second dwell time. Mr. Taylor discussed studies which includes cases with numerous signage which show a dwell time well below the 2 seconds.

Mr. Levitt asked if DOT looked actual conditions or proposed conditions. Mr. Taylor replied that the DOT looked at other permitted locations.

Mr. Doshna asked if the DOT looked at the approved plans for the circle reconfiguration when the permit was granted or what was existing and asked if it was standard practice for DOT they looked at the monument sign application that they would assume this site would be built as a digital sign. Mr. Taylor discussed that the DOT look at other DOT projects and permits.

Mrs. Engelhardt asked if the DOT did not consider digital signs on the opposite side of the road and asked if when travelling around the circle if the billboards would not be on the same side of the road. Mr. Duarte discussed.

Mr. Cohen asked what study included billboards on both sides of the road and if there was a safety concern that the monument sign had 4 signs; what the increase in visibility was due to the increase in height. Mr. Taylor replied noting that the increase in height eliminates obstruction from traffic travelling on Route 202 and would not increase the length of visibility.

Mr. McDonough returned and clarified case law conclusion where the denial was reversed.

Mr. Hall provided a summation opining that the testimony provided demonstrated that the criteria had been met for the Board to grant the variances, that this was a legal non-conforming use, a benefit to the Flemington community to bring back the downtown area; will provide a benefit with the PSA's and working with the FCP and local businesses; was ideal to modernize a business in the appropriate space where the site was particularly suited for this use.

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Public comments limited to 3 minutes.

Lawrence Cohen, representing Flemington Outdoor, LLC, thought the application required a d1 variance where the use was specifically prohibited and substantially different from the existing static sign, was not a constantly maintained light, not permitted by ordinance, where the planners purposes were only met with the existing billboard with the only public benefit the municipal use and PSA's which was already met with his client's sign.

Anthony Koester, Dilts & Koester at 361 Route 31 North, Flemington, discussed the competitive nature of the questions from Cohen; that the project would promote businesses and it was clear that the application was a d2 variance though the d1 standards provided were met for either.

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

Ayes: Hain, Giffen, Engelhardt, Budney, Doshna, Hill, Levitt

Nayes: (None)

Abstain: (None)

Motion passed: 7-0-0

Ms. McManus discussed that the Board should first determine what type of use variance was required and also discussed the c variances that were dimensional for lot area, lot depth, lot width, setbacks which were existing and would remain or be reduced as well as the maximum height which was not a c or d variance; the number of signs which required a c variance required for 2'x6' ID signage.

The Board discussed whether the existing sign was a legal non-conforming use discussing the conversion from static to digital; the timeline on zoning ordinances where the earliest found was from 1975; the existence of the billboard in 1946. Ms. Kaczynski noted that the billboard existing prior to the earliest ordinance when nothing prohibited the use.

Motion to determine the use an existing legal non-conforming use was made by: Hill, seconded by: Giffen.

Ayes: Hain, Giffen, Engelhardt, Budney, Doshna, Hill, Levitt

Nayes: (None)

Abstain: (None)

Motion passed: 7-0-0

The Board discussed the type of d variance including does the new structure trigger a d1 variance; if this was an expansion of a non-conforming use; whether the demolition of the structure and not being renovated required a d1 or d2 variance. Ms. McManus discussed that this case was a legally non-conforming use, which once demolished does not carry over for a completely new structure. The Board found downside to consider the application as a d1 variance since it was stricter.

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The Board discussed the d1 proofs, c variances and preliminary and final site plan application.

Ms. Giffen discussed that there cannot be 2 signs within 300 feet on the same side of the road and concern for renewal of the permit. Mr. Troutman discussed that the DOT does not consider these signs to be on the same side of the road. Mrs. Engelhardt asked if Mr. Troutman bought study statistics. Mr. Troutman noted that there would be no traffic increase, the digital sign would gain additional interest; he had heard the safety testimony; there was a DOT permit where if there was a safety issue created there was recourse through the DOT permit process to not renew. Ms. McManus suggested the Board include an abandonment clause to post a bond to remove the billboard if the DOT does not renew the permit.

Mr. Clerico recommended a condition of any approval to verify the location of the sewer; the applicant grant a sewer easement and remove the fill from the site.

The Board discussed the positive and negative criteria as presented including criteria: 'a', 'b', 'c', 'g', 'h', 'i', and 'm'. Mr. Doshna found the strongest point was the suitability of the site. Ms. Giffen found the negative criteria was not met on the traffic safety around the circle.

Ms. Kaczynski listed the conditions as discussed including: PSA's to be provided; guidelines and standards on the advertising content; landscaping to the satisfaction of the Board planner; replace all grass and restore to preconstruction state; stockpile to be removed, verify sewer location and provide easement; lighting plan to be revised to correct footcandle numbers; require removal of abandoned billboard within 90 days and posting of a bond; operations manual to address Borough advertising; zoning office jurisdiction of obscene or inappropriate content; ID sign maximum area 12 square feet or maximum allowed by DOT; DOT permitting renewal ask not to renew if accidents increase; work with FCP on sign content the 1000 blips does not include free content.

Motion to grant d1 variance, c variances and preliminary and final site plan approval was made by: Hain, seconded by: Engelhardt.

The Board discussed the motion.

Vote on motion:

Ayes: Hain, Budney, Doshna, Hill, Levitt

Nays: Giffen, Engelhardt

Abstain: (None)

Motion passed: 5-2-0

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8. Chair Items:

- None.
- Next meeting: August 10, 2021. Agenda items included: Resolution for Lee Roth, Resolution for Premier Outdoor Media, LLC; Completeness for Captiva Main Street.
Mr. Budney would not be able to attend the August 10, 2021 meeting.

9. Bills:

Motion to audit the bills was made by: Engelhardt, seconded by: Giffen.

Ayes: Engelhardt, Giffen, Budney, Hain, Doshna, Hill, Levitt, Weitzman

Nays: (None)

Abstain: (None)

Motion passed: 8-0-0

10. Professional Reports: None

11. Executive Session: Not needed.

12. Adjournment:

The Board unanimously agreed to adjourn the meeting at 12:43 p.m.

Respectfully submitted:

Eileen Parks, Planning Board Secretary