

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
38 PARK AVENUE, FLEMINGTON, NJ 08822
HELD IN PERSON AND VIRTUALLY VIA 'ZOOM WEBINAR' PLATFORM
TUESDAY, DECEMBER 14, 2021 – 7:00 PM

MINUTES

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

Roll Call:

Present: Mayor Driver, Mr. Doshna, Mrs. Engelhardt, Mr. Cook, Mr. Campion, Mr. Budney, Mr. Hain, Mr. Long, Ms. Giffen, Mr. Hill, Mr. Norton, Mr. Levitt, Ms. Weitzman, Attorney Kaczynski, Engineer Clerico, Planner McManus, Traffic Engineer Scott Kennel

Excused: Traffic Engineer Troutman

1. **Public Comments:** None.
2. **Mayor Comments:** None
3. **Council Comments:** None.
4. **HPC Comments:** None.
5. **Approval of minutes for the November 23, 2021 regular meeting.**

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

Ayes: Driver, Long, Doshna, Hain, Budney, Giffen

Nays: (None)

Abstain: Engelhardt, Cook, Campion

Motion passed: 6-0-3

6. Resolution: Padovani, Enzo – 30 Allen Street, Block 16 Lot 1

Ms. Kaczynski discussed that the resolution had been distributed to the applicant's attorney for review.

Motion to adopt the resolution was made by: Driver, seconded by: Giffen
Mr. Hain discussed revisions to the minutes.

Ayes: Driver, Long, Doshna, Engelhardt, Hain, Budney, Giffen, Norton

Nays: (None)

Abstain: Cook

Motion passed: 8-0-1

7. Resolution 2021-14 Amendment: Premier Outdoor Media, LLC – Block 49, Lot 2

Ms. Kaczynski discussed the request to Excise Condition No. 11 of Approval Adopted September 14, 2021 and the letter prepared by Mr. Clerico dated December 12, 2021 which noted that it was almost impossible to comply with the condition to remove the topsoil due to access on the adjacent property and noted that Condition 19 to provide an easement to the Borough would still be required. The Board discussed. Ms. Kaczynski discussed that the condition could be removed or amended as long as the removal was not significant enough that it would change the determination of any Board member's vote on the application which in that case would require a public hearing.

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Vote on whether the condition would have affected the determination on the application.

Nays that it would NOT affect their vote: Doshna, Engelhardt, Budney, Hain, Giffen, Hill, Levitt.

Ayes that it would affect their note: None.

Motion to amend the agenda to add Resolution 2021-21 removing Condition 11 was made by: Hain, seconded by Budney.

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

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

8. Resolution 2021-21: Amendment to Resolution 2021-14 - Premier Outdoor Media, LLC – Block 49, Lot 2

Motion to adopt Resolution 2021-21 was made by: Hain, seconded by Hill.

Ayes: Hain, Hill, Doshna, Budney, Levitt

Nays: (None)

Abstain: (None)

Motion passed: 5-0-0

9. Discussion: Ordinances 2021-11 & 2021-12: Fees and Escrow for Water and Sewer Site Plan Review

The Board discussed the newly adopted ordinance setting application and escrow fees to review Form A for Site Plan applications to be billed to the applicant's escrow account. Mr. Campion discussed the time involved in reviewing large projects. Ms. Kaczynski to look into to see if any changes to the Land Use Ordinances were required.

10. Public Hearing: Lee Roth – 91 Main Street, Block 21 Lot 25 – Continued from November 23 and December 7, 2021

Lee Roth appeared and continued the application with testimony from planner Thomas Stearns, who was sworn in, gave his credentials and was accepted as same. Mr. Stearns addressed the updated Fire Marshal report dated December 9, 2021 which was entered as Exhibit PB-8 where sprinklers and fire lane markings would be installed, Mr. Roth agreed.

Mr. Stearns listed the variances required including: minimum parking requirement RSIS standards where there were 11 proposed spaces plus 1 credit for the EV charging station where 17 were required noting that no one would need to back out of the drive with the amount of room to turn around in the courtyard, there would be a fire suppression system; existing minimum front yard of 12.5 feet where 25 feet was required which was a pre-existing condition that had no remedy and which was in-line with the other buildings on the block which was consistent with the Master Plan; minimum rear yard setback existing 0.73 feet with the new walls setback 3 feet to meet the building code where 20 feet was required where there would be shared spaces between the commercial and residential uses with the 3 proposed surface spaces having a dual purpose which was accepted in all other sites in the Borough noting that if in the

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future the use changes to a restaurant or retail space there would be no parking requirement due to the recent ordinance change, Mr. Stearns discussed the overnight parking analysis with overnight parking available nearby noting that the Borough police did not enforce overnight parking restrictions on the Borough or County lots and that there were plenty of nearby parking offsite and on the street; and a variance required for impervious coverage which was being reduced slightly by 57 square feet noting that the stormwater management requirement would not be substantial due to the reduction of the impervious coverage where Mr. Ingram had testified why stormwater improvement to the site were not proposed. Mr. Stearns discussed the positive criteria being met to grant the variances including that the site was particularly suited being a prime location for apartments which was a permitted use, the buildings were under the height requirement and the front building was vacant except Mr. Roth's office. Mr. Stearns listed the purposes being advanced including 'E' where the project was appropriately scaled with no negative effects on the neighboring properties, included green benefits; purpose 'G' where there was sufficient space for a variety of land uses with the pre-existing conditions and a balanced plan with mixed uses on the property; purpose 'I' to promote a desirable environment by using adaptive re-use and green elements while maintaining the historical character; purposed 'J' promoting conservation in the districts which promoted the core downtown business area while maintaining the historic character; purpose 'N' to promote sustainability elements where this project would add solar panels not visible from the public street and provide a net zero energy building and meets the Master Plan goals for green energy; improvement of the economy of the Borough and promote tourism. Mr. Stearns discussed that the variances could be granted with no substantial detriment to the public good as a less intense use as residential for the parking requirement where if the office space changed to restaurant or retail no parking variance would be required adding that the benefits would substantially outweigh any detriments to the public good and that he saw no detriment to the zoning plan and the project met the Master Plan goals. In conclusion through adaptive reuse the project would strengthen the downtown by reducing vacant space with no negative effects on the community with sprinklers installed in the buildings, electric snow melt in the drive, green benefits, a decreased intensity than other uses and preserve space for retail or a restaurant.

Ms. McManus discussed the parking testimony and asked the closest location for overnight parking that was legally permissible. Mr. Stearns replied the County lot was the closest location noting that it was allowed on Main Street overnight but was allowed on Court Street, Park Avenue, Spring Street, Maple and Mine Streets with ample areas within a block of the site. Ms. McManus asked if parking on the County lot was legal or not enforced. Mr. Stearns referenced a letter from the County attorney which was part of Exhibit A-1 and opined that the parking demand would be oaky based on neighboring sites. Mr. Roth discussed that the parking was best controlled by the market where a tenant will not rent if they found insufficient parking for there needs. Ms. McManus deferred the traffic demand calculation to Mr. Troutman and discussed the Board should decide if sufficient parking was being provided and that other neighboring sites not having parking was not a criterion to be considered. Ms. McManus noted that there were No Parking signs on the lot behind the courthouse and no signage on the lot behind the subject property asking if there was any information overnight parking permitted on the County lot. Mr. Stearns was not sure.

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Scott Kennel was sworn in for testimony and discussed that the RSIs standards were a provision for the downtown area where you can have alternate parking if available which would be a de minimis exception if the testimony provided was adequate and discussed that the applicant agreed to comply with the Fire Marshal report.

Mr. Stearns clarified the impervious coverage where 75% was permitted where 95.31% was existing and 94.55% was proposed. Mr. Clerico discussed the stormwater management ordinance requirements.

Mr. Doshna discussed the proposed utilities and the effect on the streetscape on Main Street where boring under a public right of way was prohibited and asked how this was not a detriment if there was a large cost to the Borough if it messes up the streetscape. Mr. Stearns explained that the sidewalk would be cut and replaced at the cost of the applicant. Mr. Doshna discussed that you could not tough the improvements or the Borough would lose the grant. Mr. Stearns replied that if you cannot bore or cut the sidewalk no one on Main Street could do anything. Mr. Campion explained that when the grant was accepted a moratorium except for health, welfare and safety noting that the improvement was not fully reimbursed adding that the moratorium was for 5 years but not being funded he was not sure when the time of the moratorium would begin. Mr. Campion was sworn in for this testimony.

Mayor Driver discussed the State land use law for EV charging stations and asked how many of the spots would be in the 'made ready' status with electric available but not fully installed. Mr. Stearns replied that the 3 chargers were proposed which was more than what was required.

There were no questions heard from the public for Mr. Stearns.

Mr. Ingram appeared still under oath and clarified that the State law required 15% of the EV charging station to be 'made ready' where 1 would be required for this project where all 3 stations were being fully installed and operational. Mr. Ingram discussed the trash management including that the sizing was for the 95 gallon wheeled totes provided with 2 totes per week being picked up and discussed the stormwater narrative he submitted yesterday which was not in time for a review where he was not anticipating that the inlet connected to the roof leader would be able to handle a large storm and would have overflow back to the street noting that the site could not accommodate detention system where there was not enough pitch to drain properly adding that nothing exist on the site where the applicant was trying to provide the best plan possible by reducing impervious coverage. Mr. Ingram discussed adding bulbs to the planting bed to provide color and agreed to work with the Board planner to provide additional landscaping.

Mr. Roth asked how to install the sprinkler system pipes required for the project given the streetscape restriction. Mr. Ingram agreed that there would a 5 year moratorium and that boring would only be in violation of the Borough policy not the streetscape grant and would defer to the Borough officials.

Mrs. Engelhardt asked for an interpretation of the ordinance for a connection. Mr. Ingram discussed that boring violates the Borough ordinance which would be easier to gain the exception from the Borough to

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connect than from the moratorium noting that the short length of boring necessary would be less risky but would need to request relief from the Borough.

Mr. Schotland appeared still under oath and discussed the supplement drawing, aerials and photos dated 12/09/2021 which was marked as Exhibit A-4 which illustrated what you would see at various distances from the building where you would not see the roof top or it would be obscured by trees. Mr. Schotland discussed the recycling/waste enclosure detail with wood doors and inset metal panels to match the back building which would fit the 95 gallon totes; snow guards would be installed on the roof by the solar panels; the 1 foot wide gutters would be connected roof leaders; discussed the size of the back building in relation to the other buildings noting that the courthouse would appear to look much bigger; discussed the slab condition of the back building which was constructed in 1924 for heavy industrial use where he was not concerned for the ability to support the garage as it was overdesigned for a more intense use noting that the column location was in the center of the garage to easily maneuver around.

Mr. Clerico asked if the back building was constructed as a garage; if any modifications were proposed and if it had a slope. Mr. Schotland discussed.

Mrs. Engelhardt asked how thick the existing garage floor was and if there would be any trench cuts for utilities. Mr. Schotland did not know the thickness and agreed that trench cuts would be necessary for utilizes and footings.

Mr. Roth gave a closing statement asking the Board to approve the project.

9:16 pm the meeting recessed.

9:22 pm the meeting resumed everyone returned.

There were no public comments.

Mr. Kennel discussed the pedestrian activity safety on Main Street with vehicles accessing the driveway and recommended planters be added to move people from the building edge. Mr. Cook asked if the traffic mirror on the pole should remain. Mr. Kennel discussed that it was a benefit and that you did not want something too large to obstruct the view.

Mr. Clerico discussed that the property does come with an easement now shown on the plans on the adjacent property where the applicant has rights of access and the County does not have rights of access to the rear of the property which would assist in some maintenance of the HVAC systems on the rear building. Mr. Clerico discussed that there would be more vehicles on the property then there has been in the past where the Board heard testimony on turning movements; sidewalk cuts and replacement of sidewalks would need details to be provided; the applicant would need to locate the sanitary sewer line on the adjacent property per the letter from Ken Deihl; discussed that it was a small site where the stormwater increase may be de minimis but the ordinance limits exceed the standard for disturbance not an increase in impervious coverage. Mrs. Engelhardt discussed that the applicant did not propose any stormwater management and asked what system Mr. Clerico would suggest. Mr. Clerico noted that

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no soil testing had been provided but maybe some subsurface detention would be designed with staged storage noting that this section of Main Street had no drain inlet system. Mr. Clerico noted that he had no jurisdiction over the boring ordinance where the Borough had their reasons for it noting that boring comes with its own issues with other utilities in the particular area and if this would violate any other condition of the grant agreement was not known.

Mayor Driver discussed a possible holding tank for stormwater noting that this was a big concern and asked if the rear building floor which was said to be built for heavy equipment in the 1930's could compare with heavy equipment today and asked the existing stormwater system and what was being proposed. Mr. Clerico discussed that a PVC pipe leader drain from a 1 foot wide gutter was proposed to connect to a 4" pvc pipe where the applicant acknowledged that this would not contain a larger storm and would overflow to the street. Mayor Driver asked if the shared parking analysis assumed someone was leaving to go to work during the day and if there was any new data on how work spaces changed during COVID. Mr. Kennel confirmed that the assumption was a car leaving for work and that there was limited data and experience with COVID numbers which would be localized.

Ms. Weitzman asked if the fire lane recommended by the Fire Marshal would affect the mirror or planters. Mr. Kennel discussed that it was recommended to have the drive clear at all times and signed and striped adding that all fire equipment would not be going down the driveway but would park on the street.

Mr. Long discussed that the drive would be used more and asked how did that effect traffic on Main Street. Mr. Kennel discussed that entering Main Street would be at the courtesy of other but with a wide sidewalk should be able to be done safely.

Ms. McManus identified the relief requested including: a private garage exceeding more than 3 cars where 8 vehicles were proposed noting that a private garage was a permitted accessory use per definition and did not rise to the level of a 'd' variance; front yard setback where a minimum of 25 feet required with a provision in the ordinance in the DB district that can be reduced to the average setback of the adjacent property noting that the testimony provided supports that a variance was not required with the average as 13.92 feet where 12.85 feet was pre-existing; number of parking spaces of 18 required where 11 or 12 with the EV charging station noting that a change of use to retail or restaurant would not require a parking demand but right now with the office space to continue 5 space relief was required; impervious coverage being reduced by 57 SF with the stormwater management issues as discussed; Ms. McManus noted that she made a recommendation to Council for the elimination of a private garage accessory structure which has not been adopted or acted upon and noted that no 'd' variances were required adding that Mr. Stearns provided testimony for flexible 'c' variances where the application presented was more beneficial than the strict adherence to the ordinance with one or more principals of the MLUL being advance and testimony provided that there would be no substantial

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detriment to the zoning or public welfare in granting the relief; the applicant provided extensive testimony that the solar array criteria required by ordinance to blend into the buildings was being met.

Mr. Doshna asked if the streetscape grant/Borough ordinance prohibiting boring sufficient substantial detriment to the public good or was it a technical matter for the Borough to manage. Ms. McManus discussed that if the project was developed and the Borough lost money or required a reimbursement it would be a substantial detriment or it could be made a condition of outside approval – development of the site to wait for moratorium to be lifted.

Mr. Hain discussed the planter boxes in the front of the building and asked if they would be on the neighbors property and if it would open up a requirement for other property owners. Mr. Kennel discussed that they would be in the front of the building for the subject property and would be under the town regulations. Ms. McManus deferred for a strict legal issue but had no concern with having a planter to provide safe travelling path and the sidewalk was wide enough.

Mr. Doshna asked how the Board should proceed asking if Mr. Clerico would need to review the new information submitted on the stormwater. Ms. Giffen discussed that there were still questions pending including the boring and stormwater. Mr. Doshna discussed that the boring would be Borough matter and could be a condition under the terms of the grant and ordinance. Ms. Kaczynski discussed that the hearing could continue to the next year as long as all members voting review the tapes. The Board discussed. Mr. Clerico to review stormwater information, Mayor Driver or Mr. Long to provide boring ordinance and grant terms.

Mr. Roth granted an extension of time for the Board to act to January 11, 2022.

Mr. Doshna announced that the public hearing for the Lee Roth, 91 Main Street application was continued without further notice to the January 11, 2022 meeting at 7:00 pm which would be held virtually only.

11. Chair Items:

Next meetings: December 15, 2021. Joint Council/ Planning Board meeting for the StanTech presentation at 7:00 pm.

Reorganization meeting: January 11, 2022. 2022 Meeting dates to continue on the second and fourth Tuesdays, discussion of the Master Plan.

Mr. Doshna encouraged everyone to attend the Borough reorganization dinner scheduled for January 4, 2022 and to RSVP.

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12. **Bills:** None.

13. **Professional Reports:** None.

14. **Executive Session:** None needed.

15. **Adjournment:**

10:44 pm. Motion to adjourn was made by: Budney, seconded by: Engelhardt. All were in favor.

Respectfully submitted:

Eileen Parks, Planning Board Secretary