

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
38 PARK AVENUE, FLEMINGTON, NJ 08822
HELD IN PERSON AND OFFERED VIRTUALLY VIA 'ZOOM WEBINAR' PLATFORM
TUESDAY, MARCH 14, 2023 – 7:00 PM

MINUTES

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

Present: Mayor Karrow, Mrs. Engelhardt, Mr. Doshna, Mr. Levitt, Mr. Campion-remote, Mr. Cook, Ms. Giffen, Ms. Weitzman-remote, Mr. Hill-remote, Mr. Cimino, Mr. Eckel-remote, Mr. Weintraub, Mr. Schoeb-remote, Attorney Kaczynski, Planner McManus.

Excused: Engineer Clerico, Traffic Engineer Troutman

1. Public Comments: None.

2. Mayor Comments: None.

3. Council Comments: Mrs. Engelhardt stated that the 2 cannabis ordinances were adopted by Council last night without any modifications and discussed that it appeared that the Council members most likely never read the ordinances and did not have the Planning Board resolutions with the recommendations and consistency determination in their meeting packet for review which would need to be corrected. The Board discussed.

4. HPC Comments: Mr. Schoeb reminded the Board that the house tour was scheduled for June 3, 2023 11 am to 5 pm rain or shine.

5. Approval of minutes for the February 28, 2023 regular meeting.

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

Ayes: Karrow, Cook, Engelhardt, Doshna, Giffen, Levitt, Weitzman, Hill

Nays: (None)

Abstain: Campion

Motion passed: 8-0-1

6. Chair Items:

- Next meeting March 28, 2023: Public hearing for the BSD Flemington Apartments, LLC (Spice Factory). Mr. Cook would not be able to attend and possibly Mr. Campion.
- Mr. Doshna discussed that an email from a grad student wanted to interview a Board member on what it was like to be on the Planning Board - Mr. Levitt volunteered to the interview.

7:50 pm Mr. Hill left the meeting and did not return.

- Subcommittee report: Planning Board By-Laws

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Ms. Kaczynski discussed the draft revision she prepared for discussion purposes noting that the last page stated that any revisions or amendments to the By-Law required a 2/3 majority vote presented to and voted on by the 9 regular members of the Board at a meeting and then adopted at the next regular meeting therefore needing a vote of 6 members in favor.

Ms. Kaczynski discussed the proposed clarifications and items for discussion as highlighted in the draft she prepared including:

Section 3: A correction on the number of alternates from 2 to 4 as well as the voting and participation of alternate members when acting as the Planning Board and as the Zoning Board of Adjustment. The Board discussed the classification of members of the Board as Class 2 & 4 including language concerning Board members that were also a member of the HPC, Environmental Commission and also a member of the Board of Education being a Class 2. Ms. Kaczynski that due to the Borough have a combined Board it will not be an issue. The discussed. Add that no alternate members eligible to be nominated as Chair or Vice Chair of the Board. Ms. Kaczynski discussed the participation and voting eligibility of Alternate members in the absence or disqualification of a Class 4 regular member and that a vote shall not be delayed in order that a regular member may vote instead of an alternate member. Section 5: Regarding removal of a Board member for excessive absences the Board discussed requiring a vote to formally excuse a member when they have excessive absences.

Article 2: Section 2: The Board may elect a secretary from the regular Class 4 members or appoint an administrative secretary that is not a member of the Board. The Board discussed. The Board discussed Roberts Rules which allowed voting in many forms and a mechanism to allow a ballot vote rather than a roll call in the case of multiple nominations for Chair or Vice Chair and discussed the order of calling the vote to allow members to vote their conscious. Suggested that all nominations vote on a secret ballot with a simple majority and revote until get a result. Ms. Kaczynski clarified that no more than nine (9) members of the Board were allowed to vote per the MLUL on items that were not a Zoning Board matter which then would be a maximum of 7 votes.

Section 3: Regarding an Alternate being an Acting Chair or Vice-Chair in the case similar to last year where several Class 4 members were recused from an application. The Board discussed to not regulate but were trying to plan ahead for any circumstances. The Board discussed if the Chair or Acting Chair would need to be present.

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Article 3: Section 1: Page 4 The Board discussed appointments to temporary or subcommittees when looking for volunteers and suggested that it be left to the Chair's prerogative or if the Board cannot come up with agreement there was a mechanism under Roberts Rules to challenge the decision of the Chair by majority vote.

Section 8: Typical order of business on an agenda was discussed.

Section 11: The Board discussed filing of application documents and scheduling on an agenda including any site plan changes to be posted at least 10 days posted; the Board has the ability to carry matter to give time to review with Exhibits to be submitted at least 5 calendar days with the number of copies to be in accordance with the ordinance which the Board would be revising to include 6 hard copies with all documents electronically filed.

Section 15: The Board discussed qualifying applicant's witnesses and discussed the selection experts if the Board required a witness such as the zoning officer to testify.

8:45 pm Ms. Parks lost connection remotely and the Board recessed.

8:54 pm Ms. Parks reestablished connection and the meeting resumed.

The Board discussed qualifying witnesses and if you could rescind qualifications if something comes up during testimony that you may need to be recused.

Section 20: Any witness appearing via Zoom shall be visible to the Board while testifying. Ms. Kaczynski discussed that the Board needed to know that it is the person speaking and match a name with a face, adding that it was discussed that attending remotely is at the risk of the applicant for lost connection or technical difficulties.

Section 23: Discussed voting margins per the MLUL with case law that while acting as the Zoning Board of Adjustment no more than 7 members could vote with an applicant limited but not entitled to 7 board members where the applicant cannot delay a vote until there are 7 voting members.

Section 25: Discussion that if regular Board members are eligible to vote by attendance or lighting to the recordings an alternate shall be precluded from voting.

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Section 27: Discussion on abstentions when recused and if they can sit in the audience as a member of the public whether recused for a conflict or recused by being within 200 ft of a subject property and the question of intimidation from audience or influence from the recused member. Ms. Kaczynski discussed that if recused a member cannot participate or influence noting that this Board has opted to not allow appeals to the governing body. The Board whether to remain in the audience during a hearing when recused with discussion to protect town to avoid any litigation. Discussion on abstentions and whether they should be counted.

Article 11: Section 2: Master plan discussion points to impose a time period that the proposed Master Plan revisions or amendments are provided to the Board at least 14 days prior to discussion.

Article 13: Other discussion points:

- Add section entitled: Actions to be undertaken between date of Mayoral election and reorganization meetings – mayoral election cycle only:
- Vacant positions to be filled before election day only
- No new business introduced between election day and reorganization meeting requiring vote of the Board, but for conclusion of business requiring vote to satisfy legal requirements
- No public hearings to take place between election day and reorganization

The Board discussed noting that it would be a burden for applicants to shut down for 2 months from Election Day to mid January. The Board discussed limiting the meetings before Christmas and pushing political agendas during a lame duck session as Mayor.

Mr. Cook suggested that the By-Laws amendment paragraph should be removed where an amendment would always be required to have 2/3 approval with no exceptions for reorg meeting.

Ms. Kaczynski discussed a proposed public comment acknowledgement form to voluntarily decline to provide their home address in connection with a public hearing which would be different from Daniels Law where the Board may give less credibility or weight to questions without providing an address and to make the form part of rules of Citizen Input for the boards consideration to make part of the record and would cover renters. The Board discussed.

Discussion on Daniels Law regarding the tax assessor 200 foot list which now does not provide name just address with the name redacted.

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The subcommittee would revise the By-Laws based on the discussion and distribute for review prior to adoption.

Discussion on the Master Plan subcommittee would be deferred to another meeting.

- April 18, 2023: Subcommittee report on Master Plan

7. **Bills:** None.

8. **Professional Reports:** None.

9. **Executive Session:** None.

10. **Adjournment:**

At 9:57 pm. Motion to adjourn was made by: Karrow, seconded by: Cimino. All were in favor.

Respectfully submitted:

Eileen Parks, Planning Board Secretary