

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
38 PARK AVENUE, FLEMINGTON, NJ 08822
HELD IN PERSON AND OFFERED VIRTUALLY VIA 'ZOOM WEBINAR' PLATFORM
TUESDAY, APRIL 25, 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. Cook, Mr. Campion-remote, Ms. Giffen, Ms. Weitzman-remote, Mr. Hill-remote, Mr. Cimino, Mr. Eckel, Mr. Weintraub, Mr. Schoeb-remote, Attorney Kaczynski, Planner McManus, Engineer Clerico, Traffic Engineer Troutman

Excused: None.

1. **Public Comments:** Betsy Driver, Flemington resident, discussed that there was misinformation at last night's Council meeting regarding the redevelopment areas for the Captiva project where it was stated that Captiva walked away on negotiations on the PILOT agreement which was not true and they did not walk away on her watch.

2. **Mayor Comments:** Mayor Karrow responded that was the information that she was given to her by the acting clerk and took exception to being called a liar.

3. **Council Comments:** Mrs. Engelhardt discussed the Council last night introduced Ordinance 2023-16. Mr. Doshna noted that the Board had 35 days to review, and that the ordinance was not sent the Board after introduction and could not be on the agenda tonight. Mrs. Engelhardt discussed that the introduced Ordinance was to repeal previous Ordinance, 2020-2 regarding the area south of Route 12 Overlay and that the Board would have 35 days to review and provide a consistency determination and recommendation back to Council.

Mr. Cook asked if the status of the areas in need of redevelopment could be added to the meeting agenda under Council comments. Mrs. Engelhardt agreed and updated that there was some movement today on the Captiva project; the Liberty Village subcommittee met and was updated in executive session and the Union Hotel was moving along with construction.

Mayor Karrow updated on the Cardinal Capital area, they were working on a new design and an idea for the train depot where a grant may be available to help move it. Mayor Karrow discussed that they will be working on revising the Redevelopment agreements.

4. **HPC Comments:** Mr. Schoeb discussed that the meeting last night was cancelled and reminded the Board that the house tour was scheduled for June 3, 2023 11 am to 5 pm rain or shine and asked for volunteers noting that tickets were on sale.

5. **Approval of minutes for the April 18, 2023 regular meeting.**

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

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

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

6. Resolution 2023-09: Adopting the Amended By-Laws and Rules on Procedure

Mr. Doshna noted that a clean copy of the amended By-Laws had been circulated and asked for any revisions, none were heard.

Motion to adopt the By-Laws was made by Engelhardt, seconded by: Giffen.

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

Nayes: (None)

Abstain: (None)

Motion passed: 9-0-0

7. Chair Items:

- Next meeting May 9, 2023: Continuation of the public hearing for the BSD Flemington Apartments (Spice Factory) and updates from subcommittee on Citizen Input and Ordinances.

8. Bills:

Motion to audit the bill was made by: Engelhardt, seconded by: Cook

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

Nayes: (None)

Abstain: (None)

Motion passed: 9-0-0

9. Professional Reports: None.

7:18 pm Mayor Karrow and Councilperson Engelhardt were recused from the next agenda item and left the meeting; they did not return.

10. Public Hearing: BSD Flemington Apartments, LLC – Block 39 Lots 3 & 4 – 70 Church Street

Attorney Kaczynski asked if any Board members had a conflict with this application, none were heard.

Attorney, Steven P. Gruenberg, appeared and discussed the application which was re-noticed for tonight based on the Board professional's comments on the relief required. Ms. Kaczynski, having reviewed the new notice of hearing that was submitted, found that the Board had jurisdiction to proceed. Mr.

Gruenberg discussed that this site was subject to a prior application that approved by the Board in 2017 known as the Spice Factory including a use variance, height etc. where the new applicant was proposing to make the application better and a benefit to the town. Phase 1 was not changing which received

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preliminary and final approval and was currently being built. Phase 2 was being tweaking to make the plan better with access to Broad Street with addition of Lot 4 which resulted in a reduction in FAR which was previously granted for 0.73 to the proposed 0.657; height remains the same and will need new d6 variance relief.

The applicant, Eli Yenay, applicant's engineer and planner, Chris Nusser and the applicant's architect, Alan Zimbler were all sworn in for testimony.

Eli Yenay appeared and discussed that he purchased the property 1 year ago to develop the project and purchased Lot 4 which had a vacant existing house where the prior tenants had moved out of the dilapidated structure, and he was issued a demolition permit. This new lot would provide an additional access point to the project, provide larger units which would be more marketable. Mr. Yenay had discussions with the owner of 112-114 Broad Street to purchase that lot but could not come to an agreement. The hours of operation for the existing Regis workstation building were 9 am – 5 pm with after hours pretty much empty. They were almost finished with the interior demolition of existing buildings; the elevator shaft was becoming more usable and lumber would be arriving next week to construct the additional stories to the existing building as approved noting that the construction did not interrupt business downstairs. Mr. Yenay discussed the amended plans to build larger units where the existing approved units were under 400 square foot micro units that were not marketable so he needed to acquire additional land; this would provide more affordable units to the Borough and have added amenities to the building units including: parking, a library/meeting room, fitness center, mailroom, green roof, key fobs in proposed Building 3, Building 2 which was under construction will have some amenities including a mail package room and will have access to the facilities in Bldg. 3. Debris on site was cleaned up and cameras installed to stop the dumping that was occurring, he contacted police to coordinate and fixed the fence. Mr. Yenay had contacted the adjacent owner, Mr. Zimmermann, to provide parking, which he declined so to alleviate concerns Mr. Yenay agreed to extend the 6-foot-high board on board fence to end of the property to prevent parking on Mr. Zimmerman's lot.

Ms. Giffen discussed the property on Lot 4 and asked when the building became dilapidated. Mr. Yenay thought it was when the lot was purchased, noting the tenants moved out soon after. Ms. Giffen asked about the demolition permit. Mr. Gruenberg noted that the property was not in the historic district, and it was always the intention to demolish the building as they will need it for staging for phase 3 of project noting that the permit had been issued. Ms. Giffen asked if it was normal procedure to seek a demo permit prior to an application to the Board. Ms. McManus noted that it was not a requirement.

Exhibits were entered into the record:

- A-1 Application and supporting documents.
- A-2 Notice of Hearing and Affidavit of Service
- PB-1 Mr. Clerico's report dated March 24, 2023
- PB-2 Ms. McManus's report dated March 23, 2023
- PB-3 Environmental Commission letter
- PB-4 HPC Review
- PB-5 Mr. Troutman's report dated March 27, 2023

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A-3 February 27, 2023 letter from Mr. Gruenberg regarding the HPC review.
PB-6 March 21, 2023 letter from Ms. Kaczynski in response.

Mr. Gruenberg agreed that the applicant would comply with all affordable housing requirements. Ms. Schoeb asked how many parking spaces would need to be given up if the existing building remained since it was historic. Mr. Yenay deferred to his engineer to answer.

Attorney, John Caplan of Harold Moore Law, representing 114 Broad Street, LLC partner Harold Zimmerman, the only partner present. Ms. Kaczynski requested a list of partners in the LLC for the next meeting. Mr. Caplan agreed. Mr. Caplan asked how the additional lot make the project better; how did removing an entire floor of parking and making 15 additional units and making larger unit make the project better. Mr. Yenay acquired the land to provide parking and larger units which makes the site more attractive and marketable. Mr. Caplan asked about litter and the hours of operation. Mr. Yenay responded adding that he proposed to extend the fence and not replace the entire fence.

The applicant's engineer, Chris Nusser, appeared and was qualified as a professional engineer and planner. An aerial photo which was part of original application was discussed to describe the existing surrounding conditions and uses, existing site conditions including the Spice Factory building and hair salon building. Mr. Nusser discussed the Phase 1 approvals granted in 2017, including an addition to the existing Spice Factory building which was 3 stories to add more 2 stories on top of the building to bring to a total of 5 stories and 60'-4" height. Items to be done now as part of this application included installing a sidewalk along the frontage to be corrected to meet ADA standards, a new trash enclosure for entire development would be part of Phase 1 and upgrades to the stormwater management system with the detention basin to be changed to bio retention basin to provide added water quality, Phase 1 had preliminary and final site plan approval and was currently being built.

Mr. Nusser discussed that proposed Building 3 was originally approved, but this has been modified with the addition of Lot 4. The pocket park was to remain which was not for active recreation, and the extension of parking to the north to railroad tracks would remain as approved as Phase 2 and has not been changed. The Major change was the removal of the parking on first floor and the access out to Broad Street noting that given the location of the existing house on Lot 4 there would be very few parking spaces left if the house remained and it would be very difficult to provide appropriate aisle width and provide access to Broad Street which the Borough has recommended for cross access. Mr. Nusser discussed that the benefit of the new plan was to improve traffic with access to Broad Street noting that the potential future access would remain onto Lot 3.01 if becomes viable in the future.

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Exhibit A-4 was marked dated April 20, 2023 titled site plan exhibit for Spice Factory prepared by French & Parrello Associates. Mr. Nusser had met with Board professionals on how to modify the plan to address their concerns and based on comments from that meeting the wall of bio retention basin would be revised; a propose sidewalk to Broad Street for pedestrian access would be provided; they would add a sidewalk to the western side of the parking lot and added 2 speed bumps; the EV charging stations were moved to avoid conflicts with sidewalks and he adjusted number to 39 EV spaces proposed noting that they were not exclusive to electric vehicles; landscaping changes to add trees along perimeter in order to get closer to the required trees per parking space on site. Along Broad Street per Lois Stewart's comment they would be providing along the edge a visual interest of proposed stone landscape walls with planting of shrubs and flowering trees; no signage was proposed.

Mr. Nusser discussed that there were 13 additional residential units proposed with an increase of 9 additional trips noting that Mr. Troutman's report noted standards guidance which have been lowered for multifamily units adding that the alternative access to Broad Street improves the flow of traffic and was better than what was previously approved. Parking required per ordinance: 256 spaces; by providing EV spaces that number is reduced to 231 spaces where they were providing 206 spaces on property for a 25 space deficiency where the prior approval had 31 space deficiency. With a shared parking analysis provided for the prior approval there would be a 151 space peak parking demand. Mr. Nusser compared the parking to the Union Hotel standards, if calculated on that plus retail the required number of spaces would be a demand of 200 spaces total with 206 spaces physically provided therefor adequate parking would be provided on the site adding that the Master Plan encouraged the shared parking approach.

Mr. Nusser indicated the limit of additional parking marked in gray to the west to Broad Street which provides 15 minute parking spaces close to the building entrance to avoid standing vehicles double parking and providing traffic issues. The applicant proposed that no designated parking for residential units was not appropriate for this site. They proposed to post signage for the commercial businesses close to their doors for business parking only up to 5 pm noting that this would be a property management and lease agreement matter to show where they can park added proposed signage to be located along the property line for guest parking. Mr. Nusser discussed the location of the existing fence along Lot 4 and Lot 3.01 and was willing to extend the fence along the property line towards the railroad tracks and towards Broad Street to the extent allowed with the intent to discourage parking for the site on the adjacent lot.

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Impervious coverage with the addition of the sidewalks as recommended by the Board professionals was now proposing 60.54 % where 58.85% previously approved and where 70% is permitted but if you cannot meet the provisions of the ordinance to include stormwater with green measures the required is reduced to 50% where the plan included a bio retention pond and pervious pavement which would meet the requirement were being provided.

Drainage would be maintaining what was previously proposed for Lot 3 where Lot 4 drained toward Lot 3 and the Herman Capp building, they have proposed porous pavement and will have separate systems for each lot.

Landscaping as proposed would continue the theme previously approved, they added more trees to the south of the western parking lot and along the perimeter of northern parking lot with foundation plantings and the pocket park with detailed landscaping in those spaces.

Lighting would be continuing to use existing fixtures with any new fixtures to match the style of historic looking lantern style with metal halide fixtures. Mr. Nusser discussed the Environmental Commission comment that the fixture style should be changed where the lighting was proposed to match the site where replacing the existing lights would create waste and opined that the proposed lighting was appropriate. As for utilities including public water and sewer where he heard back from the Borough engineer Terry Vogt that the Borough does have water and sewer available where they submitted the Form A - and would continue to work with the Borough water and sewer departments.

8:55 pm the meeting recessed.

9:05 pm the meeting resumed.

9:07 pm all Board members returned.

Mr. Nusser took no exception to any comments in Mr. Clerico's letter.

Mr. Troutman discussed the retail parking calculations and asked for clarification on the footprint of building and asked if there had been any observation on how parking works during different times and days.

Mr. Clerico asked for EV parking spaces calculation clarification and deficiencies from prior plan to proposed plan of 32 being reduced to 25. Mr. Nusser felt that the parking spaces were sufficient – Mr. Clerico discussed his recommendations including for the northerly parking lot for a proposed sidewalk on east side and asked why they proposed the sidewalk on the west side, Mr. Nusser explained that the grading and soil disturbance necessary would remove trees and east side was narrow. Mr. Clerico was concerned that people would be walking through the parking lot. Mr. Clerico recommended a crosswalk

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from the salon power building to the main entrance. Mr. Nusser would adjust the island in parking set and agreed to provide. Mr. Clerico asked how they would enforce parking from the adjacent lot and why there was a sidewalk along the proposed building. Mr. Nusser had no issue with removing a section of the sidewalk.

Ms. McManus asked the height of the proposed stone wall on Broad Street and if there would be a detail. Mr. Nusser will provide details and the height to the satisfaction of Board professionals, and proposed a stone look for consistency with Broad Street with a height of 2-2.5 feet tall. Ms. McManus noted that the maximum fence height was 4 feet high in the front yard and asked if they proposed to extend the 6-foot-high fence to the end of parking lot which would require relief. Ms. Giffen suggested that they could taper the fence down to the required 4 feet height. Mr. Gruenberg agreed to 4 ft to the setback line and grade up to the 6 ft high fence with no relief necessary.

Mr. Clerico discussed the EV standard and requirement for handicap spaces. Mr. Nusser would comply to the standards. Mr. Clerico discussed his report summary including the variances proposed with prior approvals and variance noted on page 5 where the proposed sidewalk extension would eliminate the design waiver, there was a height variance, a setback variance where 12.53 feet was proposed where 25 feet was required, a variance for the parking deficiency, and an impervious coverage variance with green infrastructure noting that with documentation of the classification of the soils they would not have a requirement for infiltration and would need a reclassification from the soil conservation district. Mr. Nusser discussed the ordinance requirement with green infrastructure measures which were being provided noting that infiltration was not part of the standard noting that the application was in line with the ordinance standard for 70% requirement with techniques being used.

Mr. Schoeb asked how many spaces were eliminated on the ground floor of Building 3. Mr. Nusser approximated 24 spaces. Mr. Schoeb asked if the separate driveway to Broad Street was a requirement. Mr. Nusser discussed that interconnectivity has always been recommended by the Borough. This was not a requirement per Ms. McManus. Mr. Schoeb asked about parking from Tire store. Mr. Gruenberg noted that was an enforcement issue, adding that they will not be able to park on the subject property.

Ms. Giffen did not recall that access to Broad Street had been suggested by the Board. Mr. Gruenberg discussed that was his understanding to provide a benefit to Broad Street noting that he was not here for the prior application. Ms. Giffen placed on record that access to Broad Street was not a recommendation from the Board. Mr. Nusser noted that the connection to Broad Street was a benefit to the site. Ms. Giffen discussed the shared parking Union Hotel standards

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asking if the proportion of retail to residential was taken into account; noting that the Union Hotel had access to public parking and asked for clarification on the sharing parking analysis and a comparison for context; with a total number of parking spaces required 256 down to 231 with EV credits with proposed 206 spaces; asked where the cars are going to park. Mr. Nusser stated that the RSIS standards from 1996 have shown them to have more parking than required where the Union Hotel standards more current for actual demand. Ms. Giffen asked if trip movement had been observed at the signal at Broad Street and Church Street and asked if this would be used as a cut through. Ms. Giffen confirmed that there would be no truck traffic on site and asked if they heard from the fire department. Mr. Nusser discussed that yes changes were made to prior application from the Fire Marshal comments and was improved with access to Broad Street. Ms. Giffen asked if the fire department was okay with speed bumps. Mr. Nusser had not shown the new plan to the fire department. Ms. Giffen asked how many spaces would be lost to keep the house and if there was no access to Broad Street. Mr. Nusser estimated at least 14 spaces would be lost for the house and would leave a house in poor condition with no yard. Ms. Giffen discussed the parking along the bottom edge Building 3 and the cross parking and parking restrictions asking if there has been discussion with adjacent building owners regarding parking since they were losing illegal spaces. Mr. Nusser responded that no discussions had been made.

Mr. Eckel clarified that the temporary parking was a 30 minute restriction on the plans. Mr. Nusser confirmed 30 minutes.

Mr. Doshna provided parking clarification where the town ordinance was based on the 25 year old RSIS standards, which was perhaps outdated and too much parking was being built than what we need.

Attorney, John Caplan, on behalf of 114 Broad Street LLC asked if the building footprint was larger; if 24 parking spaces in garage was eliminated; if 13 units were eliminated would the parking requirement meet the ordinance; if you kept the same building would you comply; about impervious coverage; if the Union Hotel used a different ratio of retail to residential; if it was more appropriate to use standard of hotel as a more real world standard then why hasn't the Borough changed the ordinance; if the trees between Lot 4 and 3.01 were to remain; will the retaining wall kill the trees and if will they be replaced; asked the length of signal at Broad and Church; asked the dimensions of parking spaces; the number of ADA stalls proposed; if any spaces would be dedicated parking for employees, visitors or residents; if there was a parking issues with overflow; if there was any offsite parking; if the fire department okayed the plan the last time; if the same with garbage collection; where would the snow go; asked if there was a lighting design waiver; how many trees will be lost with demolition; was there any where to place more trees between lots. Mr. Nusser responded.

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Mr. Schoeb asked if there was concern for vehicles accessing site from Route 31 and was the site as cut through to Broad Street. M. Nusser thought it was not practical or widely known that you can access from Route 31.

Mr. Doshna announced that the public hearing on this matter would be continued for the May 9, 2023 agenda at Borough Hall at 7:00 pm and that no further notice would be provided.

11. Executive Session: None.

12. Adjournment:

At 10:24 pm. Motion to adjourn was made by: Levitt, seconded by: Cook. All were in favor.

Respectfully submitted:

Eileen Parks, Planning Board Secretary