

FLEMINGTON BOROUGH
PLANNING/ZONING BOARD MEETING
RELOCATED TO THE STANGL FACTORY, 4 STANGL ROAD, FLEMINGTON, NJ 08822
HELD IN PERSON AND OFFERED VIRTUALLY VIA 'ZOOM WEBINAR' PLATFORM
TUESDAY, OCTOBER 25, 2022 – 7:00 PM

MINUTES

The meeting was called to order at 7:04 PM by Chairman Doshna.

Present: Mayor Driver, Mr. Parker, Mr. Doshna, Mrs. Engelhardt, Mr. Cook, Mr. Budney, Ms. Giffen remotely, Mr. Campion remotely, Ms. Weitzman remotely and in person, Mr. Hill remotely, Mr. Levitt, Attorney Kaczynski, Engineer Clerico, Planner McManus, Traffic Engineer Troutman

Excused: None.

1. **Public Comments:** None
2. **Mayor Comments:** None
3. **Council Comments:** Mr. Parker discussed that Council had approved the installation of crosswalks and conditional approval for a oneway street for Corcoran Street which may change the direction to eastbound and the Borough officially closed on the police station.
4. **HPC Comments:** None.
5. **Approval of minutes for the October 12, 2022 regular meeting.**

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

Ayes: Engelhardt, Cook, Budney, Giffen, Hill

Nays: (None)

Abstain: Driver, Campion, Parker, Doshna, Weitzman

Motion passed: 5-5-0

6. Resolution 2022-09: Flemington Center Urban Renewal, LLC – Union Hotel Redevelopment

Ms. Kaczynski discussed that the resolution for amended site plan approval had been distributed to the applicant for comment with a minor change to made for the lots to be corrected.

Motion to adopt the resolution as discussed was made by: Engelhardt, seconded by: Parker

Ayes: Engelhardt, Parker, Driver, Doshna, Campion, Budney, Weitzman, Hill, Levitt

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

7:13 pm Mayor Driver, Mr. Doshna, Mrs. Engelhardt, Mr. Parker, Mr. Cook were recused from the next item on the agenda and left the dais. Mr. Budney chaired the meeting.

7. Public Hearing: Family Promise of Hunterdon County, Inc. – Block 19, Lots 7 & 8 (8 New York Ave)
Continued from June 14, July 12, July 26, August 9, August 23 and September 13, 2022

Ms. Kaczynski discussed that Ms. Weitzman had joined the meeting via zoom on her phone and was on her way to the meeting and would not miss anything.

Attorney for the applicant, Steven Gruenberg, appeared and summarized the application with no changes to the site for transitional housing for up to 14 members on a temporary basis.

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7:16 pm Ms. Weitzman entered the meeting in person.

Mr. Gruenberg noted that an argument could be made that they do not have to even be here where churches have used their facilities over the years to house people for whatever reason are homeless on a temporary basis and if they were talking about domestic violence, persons with a terminal illness, head injuries, etc they would be permitted uses in a residential zone under the State statute and under the Borough ordinances that permitted no more than 15 persons in a facility for the developmentally disabled would be permitted as long as no more than 15 people were housed not including staff. Mr Gruenberg discussed that what was proposed was for families in need of housing due to fire, flood or economic reasons find themselves in need of services from the local church adding that Family Promise was a wonderful program that provided career guidance to get out of their circumstances and discussed that this was an inherently beneficial use citing case law where transitional housing was determined to be an inherently beneficial use which was so close to a definition of community center.

Mr. Gruenberg discussed the 4 standards for a use to be found to be an inherently beneficial use noting prong 1. that the County has a problem with homelessness where the Board planner included in her report that 13.5% of County residents were living below the poverty level creating a need in Hunterdon County and the Borough. Prong 2 – any detrimental effect that would ensue, usually noise, traffic etc where no changes being made externally with no proposed signage. Prong 3 - reasonable conditions could be imposed to mitigate any detrimental effects where the applicant has agreed to comply with all State standards from the Division of Community Affairs and all building codes. Prong 4 – demonstrate that the use posed no substantial detriment to the public good where he could only see benefits to the community and addressed the concerns from residents where they heard from objectors that they liked what your doing but it was not great for New York Avenue and when asked why it came down to find another location for those people that may pose a danger. Mr. Gruenberg discussed that under MLUL the applicant has proved its case where a really good thing was being done by really good people and addressed the request for full site plan approval requirement where the applicant was not making any site changes and provided an updated survey from Mr. Pickell with updated parking noting that the site can accommodate the use and they provided a site plan that was appropriate for the change in use involving interior changes with waivers from the ordinance which was exactly what you have here. Mr. Gruenberg urged the Board to vote in favor of the application.

Motion to close public portion of the hearing was made by: Weitzman, seconded by: Levitt.

Ayes: Budney, Giffen, Campion, Weitzman, Hill, Levitt

Nayes: (None)

Abstain: (None)

Motion passed: 6-0-0

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Ms. Kaczynski discussed the procedures for Board deliberations starting with a motion on whether the use was an inherently beneficial use which would require less proofs as discussed; vote on the use variance and then a vote on the site plan requirements.

Mr. Hill discussed that the application was not expecting additional cars by the residents where they could be bused if there were too many cars and discussed traffic questions.

Mr. Levitt asked what benefit a full site plan would provide. Mr. Clerico discussed that the issue of site plan came up back in May when site issues would be dealt with later and the first issue would be the use variance adding that he made some suggestions for site plan items. Mr. Gruenberg clarified that they requested a waiver from site plan where the application may be eligible for a full site plan waiver but also allowed to make waivers from checklist items noting that Mr. Pickell provided an updated survey with the understanding that no site changes were proposed. The applicant did notice for minor site plan and submitted the plan.

Ms. Kaczynski discussed the votes before the Board to determine 1. Determine if this was an inherently beneficial use, 2. Use variance relief 3. Site plan.

Mr. Budney discussed that there had been a lot of testimony on the beneficial use as well as testimony on occupancy and asked if there was anything in the ordinance to support the proposed occupancy. Ms. McManus cited the MLUL definition which specified certain uses that shall be permitted in certain districts noting that the permitted uses listed was not based on site conditions or building conditions and were permitted on every lot in the district and further discussed the allowable occupancy where the number was not regulated in zoning code but in the building and fire code which the Board could place as a condition in resolution to comply with the building and fire codes and place a 14 person maximum in the resolution.

Ms. McManus discussed the standards to be applied and read the definitions of an inherently beneficial use including group homes that add value to the community and that benefit the public good noting that the examples listed did not include all uses that are inherently beneficial uses adding that the Board should make its own findings since this particular use was not listed as an example. If board finds that it is an inherently beneficial use the criteria to grant a use variance changes where an inherently beneficial use does not need to meet the special positive criteria as it was assumed that the criteria has already been met which also applied to negative criteria and the why it was not permitted would not be required. Ms. McManus discussed the alternate standard and the Sica test which was the 4 task test;

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Task 1. Public interest stake where the applicant cited statistics in the County Task 2. Identify any detrimental effects such as the number of people, occupancy, activity on site as a result of the residents; Task 3. Any legitimate detriments and conditions that can be imposed to lessen the effects; Task 4. Balance of the positive and negative criteria.

Mr. Hill noted that with all definitions provided in the MLUL this particular use does not meet that definition and that was why we are having this discussion.

Mr. Levitt noted that this application pretty clearly met the standard as an inherently beneficial use.

Ms. Giffen discussed that it seemed to clearly be a benefit and fell through the gaps not being specifically mentioned.

Mr. Budney found that this benefits the community from the testimony which would help people that have lost everything with limited evening and weekend occupancy and even if it was 24/7 would still meet the standards as an inherently beneficial use.

Motion to deem as an inherently beneficial use was made by: Weitzman, seconded by: Levitt.

Ayes: Budney, Giffen, Weitzman, Hill, Levitt

Nays: Campion

Abstain: (None)

Motion passed: 5-1-0

Ms. McManus discussed the criteria for a use variance to 1. identify the public interest at stake; 2. determine if there would be detrimental effects; 3. how any detrimental effects can be reduced by conditions; and 4. balance of positive and negative criteria.

Ms. Giffen discussed that the positives have been discussed; negatives where some feel there was major detriments people need to be aware that we listened to all of the testimony where some did not hear the testimony from the first meeting and most people had not reviewed the recording of the first meeting regarding the request for full site plan which had already been discussed.

Mr. Hill agreed with Ms. Giffen that the Board took all of the testimony given and that there seemed to be a concentration on issues already ongoing on the site that are not actually an effect of the application where the ongoing activities may be more of an effect than a family moving in would provide adding that they have to look at the proposal before the Board not the existing conditions.

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Mr. Budney discussed the intensity with buses coming and going where he thought it was more a large van or link size vehicle that would be used as more of a transportation van.

Mr. Hill discussed that other uses that are causing a problem take place when residents are not there.

Ms. Kaczynski directed the Board that the existing uses should not be the focus and that conditions can be placed for the applicant to address the existing problems such as traffic and noted that there were some conditions for the Board to consider. Ms. Kaczynski discussed the Sica test and conditions including that the application supports community benefit; the detrimental effects include other onsite uses, occupancy, traffic, overcrowding and overlapping church events where conditions can be imposed to limit these detriments. Conditions to think through include: the applicant must meet all DCA regulations where they have agreed; applicant to comply with all building and fire codes where they have already agreed; provide proper classification; applicant to make sure the occupancy complies with building and fire codes; the use variance would run with the land where the Board could impose a condition that any new tenant must make a presentation to the Board to run the facility in the same manner; temporary housing to set as a 90 day maximum requirement or give flexibility for stays longer than 90 days; facility to be occupied 5 pm to 9 am and on weekends; excess cars can be parked at Bartles Road facility and residents transported back to New York Avenue facility; compliance with all ADA building codes; compliance with any water sewer upgrades per occupancy as deemed necessary; position of cameras so as not directed at neighbor's property; garbage and dumpster to be provided by church or will need to get more dumpsters or increase the garbage pickup; the current deed restriction would remain and the property bound by any deed restriction will continue regarding church and ancillary uses to the benefit of the owner of the property; compliance with locking of fire escape windows per code regulations.

Ms. Giffen agreed with most of conditions except the 90 day residency and recommended that Family Promise run their program as they see fit and see if the church and Family Promise were open to suggest a meeting or regular meetings with the neighbors. Ms. Kaczynski suggested a quarterly report.

Mr. Hill suggested to notify the code officer for any stays over 90 days and suggested that the church to work on the other existing uses. Ms. Kaczynski added that all the uses to be harmoniously conducted on site.

Mr. Levitt agreed that limits on the length of stay was not necessary and that the hours of occupancy was not necessary to place on the record in a resolution.

Mr. Budney suggested the approval be specific for Family Promise and any other group would be subject to come back to the Board for a presentation as a condition.

Mr. Gruenberg suggested they can have a review from the zoning officer and would be required to abide by the operations of the approved use. Ms. Kaczynski to revise the condition.

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Motion to grant the use variance was made by: Campion, seconded by: Hill.

Ayes: Budney, Giffen, Weitzman, Hill, Levitt

Nays: Campion

Abstain: (None)

Motion passed: 5-1-0

Ms. Kaczynski discussed the submission to the Board where the applicant thinks they met the site plan requirements as requested by Mr. Clerico and they should determine does the Board need more information on the minor site plan application.

Mr. Clerico asked if it was the representation of Mr. Pickell that the additional information on the map was an accurate representation of the existing conditions; dumpster locations if additional would be needed, if the board was satisfied with the condition as presented including the entrance ways, lighting on site, with no proposed paving they could waive site plan requirements.

Mr. Budney asked if the church or any building owner wanted to update their lighting, dumpster or ADA ramp would they need to come for a site plan. Ms. Kaczynski discussed that as a condition if what is presented is acceptable and down the road a dumpster location plan would be needed or changes to existing property they may have to come back to the Board for site plan approval to address those concerns.

Mr. Hill asked if they need to grant variances. No variances were requested or required.

Ms. Giffen clarified that the vote was to not require a full site plan where the changes being made to site are covered under building permit requirements which would be covered by that control mechanism and they do not need a full site plan for changes made inside which are covered by the code enforcement.

Mr. Gruenberg noted that there was testimony that no ADA ramp was required and any issue with garbage would trigger an increase frequency of pickup with no site plan issues at this point agreeing if they do then they would need to go by the normal process.

Motion to grant minor site plan approval and grant waivers for site plan requirements was made by: Hill, seconded by: Giffen.

Ayes: Budney, Giffen, Weitzman, Hill, Levitt

Nays: Campion

Abstain: (None)

Motion passed: 5-1-0

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9:01 pm the meeting recessed.

9:10 pm the meeting resumed.

Roll Call: Present: Mayor Driver, Parker, Doshna, Engelhardt, Campion, Cook, Budney, Weitzman, Hill @ 9:17 pm, Levitt, Kaczynski, McManus, Clerico, Troutman. Absent: Giffen.

Mayor Driver, Mr. Doshna, Mrs. Engelhardt, Mr. Parker, Mr. Cook returned to the dais. Mr. Doshna chaired.

8. Public Hearing: Tidbits NJ, LLC – Block 38 Lot 1.01 – 144 Main Street

Continued from October 12, 2022

Attorney for the applicant, Aaron Colton, appeared and discussed the application at 144 Main Street for preliminary and final site plan with 1 variance requested, to convert the property to a restaurant.

Witnesses to appear were Gary O'Connor, architect and Skylar Bird, owner were sworn in for testimony along with the Board professionals.

Exhibit A-1 Application and supporting documentation; Exhibit A-2 – notice of hearing; PB-1 Clerico letter – dated October 7, 2022; PB-2 McManus letter dated October 7 2022, Rev. October 20, 2022; PB-3 Troutman letter dated October 10, 2022 were entered.

Gary O'Connor appeared and gave credentials as a licensed professional architect and hearing no objections was accepted as same. Mr. O'Connor reviewed memos by the Board professionals and agreed to comply with all recommendations

9:17 pm Mr. Hill returned.

Mr. O'Connor discussed the existing and proposed conditions of site noting that this was a historic rescue using an art deco style adding that there was a resurgence of this style for breakfast and lunch operation in a 1950's gas station. Discussed Ms. McManus review and where the application deviated from the ordinance standards including that it does not meet minimum front yard setback due to the property being a corner lot with 14.47 foot setback on Williams Street and 47 feet on Main Street noting that there was an exception to take an average of the adjacent building setbacks when calculated the setbacks conform; maximum lot coverage where the existing was 89% and the proposed coverage was slightly reduced by creating areas of planting to 85% where the required was 50% noting that this was an existing non conforming condition which will be reduced.

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Mr. O'Connor discussed the proposed signage with a traditional gas station sign on a 1950's gas station noting that the applicant worked to find elements like these vintage signs noting that the ordinance permitted signage no higher than 6 ft maximum where they were proposing 12 ft with a 60" diameter sign where if it was lowered would block visibility. The applicant had worked with Board planner and engineers to revise plans regarding circulation and access reduced on Main Street to one egress.

Skylar Bird discussed that sign height was 12 ft with a total height 18 ft where the vintage sign could not be changed. Mr. O'Connor discussed that the sign was more in line with 1950's gas station with exterior goose neck lighting design which was HPC approved. Proposed signage on building with raised letters off building with a square footage of 46 sf, where 50 sf was permitted. Parking calculations were based on outdoor seating where the applicant would drop 2 spaces of outdoor seating to meet the total of 21 space requirement; hours of operation would be 8 am to 2 pm six days a week with an estimated 5-8 employees. Trash enclosure to be tucked behind building enclosed by wall and fence with a gate between building and wall which will not be seen from the street with masonry walls color to be white and a wood fence with gold trim; loading dock also with white masonry walls with wood fence gate to be painted gold; and a proposed bicycle rack location. Discussed lighting to conform with all lighting shielded to not shine on residential properties with security lighting at night on doorway and trash enclosure and discussed landscaping and agreed to work with Ms. McManus to her satisfaction.

Mr. Clerico discussed the parking changes due to seating reduction to 21 spaces in the new addition and outside to meet the parking requirement and clarified that there would be 52 seats inside confined to the original structure that does not require parking; any changes to sidewalks widths in right of way would need Borough approval on William Street. Mr. Clerico would need additional details on the plans and noted that the applicant has discussed capacity with the Borough Water and Sewer Departments. Utility service was now proposed to be changed to the existing overhead connection from front pole instead of underground.

Mr. O'Connor agree with Mr. Troutman's comment 1 in his report and where the report suggested 2 stop signs requested that they provide 1 stop sign noting that the curb cut on Main Street had been reduced. Mr. Troutman would look into that. Mr. Bird discussed deliveries on site with smaller vendors with smaller trucks with good access on site with early morning or afternoon delivery. Exhibit PB-4 the Fire Marshal report dated June 2, 2022 was entered. Mr. O'Connor discussed that he has been working with fire company to get turning radius noting that with 2 frontage they will have adequate fire protection.

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Ms. McManus clarified that the freestanding sign would not be internally illuminated and that the façade signs would be 3 words with individual letters which was non-compliant as they appear to be 3 individual façade signs where 1 sign was allowed noting that she had no objection to granting the variance but that the relief would be necessary adding that additional details would be required to be on the plans. Mr. O'Connor agreed.

Mr. Budney asked if the parking would be exclusive for customers or would they be used by employees or services such as door dash or grub hub. Mr. Bird discussed that they would be exclusively for customers and was not a big fan of door dash with employee parking offsite adding that there was adequate street parking all times of the day. Mr. Budney asked about the groundwater monitoring and how many active wells were there and how often they were sampled. Mr. Bird agreed to locate the wells on revised plans adding that DEP issued permits to close 11 of 13 wells where there he would have 1 active on site and 1 offsite noting that there would be access to them.

Mr. Levitt asked if the lights would be on overnight. Mr. O'Connor discussed that only lights in the area of front and rear door would remain on overnight not the ones on the façade or freestanding sign.

Mr. Cook discussed the freestanding sign where the ordinance would require 10 feet from curb and suggested that if the proposed sign was not exactly 10 feet that they put the sign where you want it and ask for the variance. Mr. O'Connor thought it looked like it conformed. Mr. Cook asking if the "Do Not Enter" signs in front of building was typical. Mr. Troutman discussed that from a pure traffic engineering point of view he would prefer regulation signs but if the town was not be looking for title 39 enforcement the proposed signs would be adequate for private property where there they would have some leeway.

Mrs. Engelhardt clarified the freestanding sign would externally illuminated and the façade signage would be backlit. Mr. Bird discussed that the sign lighting would be turned off at 10 pm per Borough ordinance.

Mr. Doshna asked the height of the original BP sign. Mr. Bird discussed that the old signs were typically 20-22 feet.

Mr. Cook asked if the 'stars' on the faced were a decorative element or signage to be backlit and suggested that they add the stars into the variance for the number of signs in case they want to add them later.

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Mr. Hill discussed that coming onto the site into first parking spot was tight and asked if a vehicle could park in one movement. Mr. O'Connor noted that it would depend on the car. Mr. Troutman checked the turning template and determined that it would be a tight turn.

Mr. O'Connor saw no detriments to the public good or the zoning plan and saw a positive effect for the Borough and residents in revitalizing the site.

Motion to close the public hearing was made by: Driver, seconded by: Budney.

Mr. Hill returned to the meeting a little late and missed some of the hearing and found ineligible to vote.

Ayes: Driver, Parker, Doshna, Engelhardt, Cook, Budney, Campion, Weitzman, Levitt

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

Mrs. Engelhardt asked the difference in the curbing in the right of way. Mr. Clerico clarified that the curbing was a mix of belgian block & concrete that would need Borough approval to change. Mrs. Engelhardt asked if there were any other opportunities to reduce impervious. Mr. Clerico noted that they were in compliance with stormwater management as the application was not considered a major project and met design standards by reducing coverage. Mrs. Engelhardt did not want to see a stop sign/do not enter sign that was not double sided. Mr. Troutman discussed that he agreed with changing the 'Enter Only' signs to be more aesthetic and to reduce the 'Stop' sign to 1 which should be the recommended DOT standard sign.

Ms. Kaczynski listed the variances and conditions including: that the 'Do Not Enter' signs shall be as proposed on plans with the number and location of Stop signs per PB -3 to the satisfaction of Mr. Troutman; lot coverage of 85% was permitted; variance required for the height of the freestanding sign; variance required for the number of façade signs of 3 where 1 was permitted; plans to be revised per comments as discussed; outdoor seating to be reduced to 21 spaces total which does not include the existing building seating; no underground utilities where the overhead connection to be replaced; parking on site for customers only; lighting be Borough ordinance. Mayor Driver asked if an EV spot would be installed or a 'made ready' spot. Mr. O'Connor did not want to add.

Ms. McManus recommended to not restrict parking to customers only and recommended to not restrict delivery cars on street.

Mayor Driver looked forward to having this in town.

Mr. Cook suggested including the 'star's as a sign to prevent having to come back to the Board and get everything they need and agreed to not restrict who can park onsite.

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Mr. Parker wants this be successful.

Mrs. Engelhardt wished them the best of luck.

Mr. Doshna appreciated the ongoing dialog and informal sessions and revisions along the way which made for a straightforward application.

Motion to grant preliminary and final site plan approval with variances and design waivers subject to the conditions as discussed was made by: Driver; seconded by: Budney.

Ayes: Driver, Parker, Doshna, Engelhardt, Cook, Budney, Campion, Weitzman, Levitt

Nays: (None)

Abstain: (None)

Motion passed: 9-0-0

9. Chair Items:

Next meetings: November 15, 2022: Agenda items to include: Resolution for Family Promise and Tidbits NJ, LLC, Public hearing for 161 Dolce LLC, and completeness for minor site for Aunt Mary's Dispensary.

November 22, 2022 meeting for public input for the Master Plan.

December 6, 2022 discuss professional contracts in executive session.

December 13, 2022 possible public hearing for Master Plan.

Mr. Budney announced that he would leaving the Borough and therefor was resigning from the Board.

Mr. Doshna was thankful for the honor and privilege to work with Mr. Budney and for all the work and service that he provided to the Board.

10. Bills:

Motion to audit the bills was made by: Cook, seconded by: Weitzman. All were in favor.

11. Professional Reports: None.

12. Executive Session: None needed.

13. Adjournment:

10:51 pm. Motion to adjourn was made by: Budney, seconded by: Cook. All were in favor.

Respectfully submitted:

Eileen Parks, Planning Board Secretary