

**TOWNSHIP OF FRANKLIN
PLANNING BOARD
COUNTY OF SOMERSET, NEW JERSEY**

**VIRTUAL
REGULAR MEETING
June 2, 2021**

The regular meeting of the Township of Franklin Planning Board was held at 475 DeMott Lane, Somerset, New Jersey and was called to order by Chairman Orsini, at 7:30 p.m. The Sunshine Law was read, the Pledge of Allegiance said, and the roll was taken as follows:

PRESENT: Councilman Chase, Jennifer Rangnow, Charles Brown, Robert Thomas (arrived at 7:39 p.m.), Carol Schmidt, and Chairman Orsini

ABSENT: Carl Hauck, Meher Rafiq, Mustapha Mansaray, and Sami Shaban

ALSO PRESENT: Mr. James Clarkin, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

MINUTES:

- **Regular Meeting – April 21, 2021**

Councilman Chase made a motion to approve the Minutes, as submitted. Chairman Orsini seconded the motion, and the roll was called as follows:

FOR: Councilman Chase, Ms. Rangnow, Vice Chair Brown, Ms. Schmidt, and Chairman Orsini

AGAINST: None

RESOLUTIONS:

- **Eznergy NJ, LLC / PLN-21-00006**

Chairman Orsini made a motion to approve the Resolution, as amended. Councilman Chase seconded the motion, and the roll was called as follows:

FOR: Councilman Chase, Ms. Rangnow, Vice Chair Brown, Ms. Schmidt, and Chairman Orsini

AGAINST: None

DISCUSSION:

- **Cannabis Ordinance**

Mr. Vincent Dominach, Economic Development Director and Executive Director-Hamilton Street Advisory Board, came forward. Mr. Dominach spoke about a few years ago when the State opened up medical licensing for cannabis, the Economic Development Committee, along with Mr. Healey, Planning Director, the Township Council, and himself, about supporting medical marijuana in the Township. He added that the Council, at that time, agreed that they should interpret the Ordinance for medical sale, manufacturing, etc., just like they do with other goods and services. Mr. Dominach noted that for the past year and a half, anyone who came into the Township for a Zoning Permit or for a letter from himself, he indicated that it was a permitted use. Recently, he reminded the Board that there was a public question to allow cannabis and make it legal in the State, which overwhelmingly passed. He added that the State then passed additional legislation that created six (6) different licenses with a very specific time frame where municipalities could opt in or out of all licenses, some licenses, and if they did not, they would have to follow the what the State law permitted. Mr. Dominach then told the Board that Township Council took a vote (9-0) in favor of authorizing staff and the Township Attorney to draft an ordinance that would permit all types of marijuana as per the State law. He then told the Board that the ordinance they had before them gave a brief explanation of the law and how cannabis became legal, it then described all six (6) different types of cannabis licenses that would be available and explained the process for municipalities to regulate or prohibit and impose a transfer tax. Mr. Dominach then indicated that the most important part of the ordinance for the Planning Board was that it amended the development ordinance to allow five (5) cannabis licenses (cultivation, manufacturing, wholesaling, distribution, and delivery service) in the Business & Industry Zone (B-I). Mr. Dominach then told the Board that all of the types of uses were permitted for all other types of businesses in the B-I Zone, and were just specifically calling it out, per the State law. Additionally, he told the Board that it would amend the development ordinance to allow retail sales in the four (4) existing retail zoning districts, including (Neighborhood Business (NB), General Business (GB), Hamilton Street Business District (HBD), and the Retail District Overlay (RDO). He

then told the Board that the delivery service license would be permitted in those four (4) zones if the cannabis delivery service was an accessory to the retail cannabis use. He indicated that the ordinance amends the development ordinance and defines the six (6) licenses. He did add, however, that they limited the retail selling of cannabis from 9:00 a.m. to 10:00 p.m., which was the exact hours that retail sales of liquor were limited to. Mr. Dominach then told the Board that it also established, at the end, the transfer and user taxes that were allowed per the law. Lastly, he told the Board that it would be going before the Council for adoption in a few weeks in order to be in conformance with the law and opt in before the August deadline date.

Councilman Chase stated that what came out of Council discussions was the basic idea of permitting uses where you think they would be permitted but make it clear both to the marijuana businesses and to the general public what is permitted where. A discussion ensued.

Mr. Dominach then detailed that he had in excess of 50 inquiries regarding these types of business, both large and small, but it was important to note that licenses would be limited. He noted that even if they only got a few of these businesses, it shows other types of businesses that Franklin Township is open and welcoming to all types of businesses regardless of the politics associated with the issue.

Ms. Schmidt asked for clarification as to where in the ordinance the hours of operation were noted, and Mr. Dominach stated that it was in a footnote #4 under the district tables. Ms. Schmidt then gave her experience of being with a friend in San Diego a few years ago who wanted to purchase some medical marijuana and noted that the facility had armed guards. She then asked Mr. Dominach if that was what they could expect in Franklin, and he told the Board that the security was going to be high because there was a lot of money involved in this type of business and the State was requiring very extensive security. He added that it would be up to the individual businesses if they were to have armed guards. Ms. Schmidt also stated that she recalled that it was a cash only business and wondered if it would be the same if it were to come here to Franklin. Mr. Dominach stated that his answer would probably be "yes", citing that the federal law still did not permit it so banking regulations and not being able to take certain taxes for the business would prohibit the business from taking payment in any other form but cash.

Vice Chair Brown gave his experience while on business in Colorado that there did not seem to be armed guards at these types of establishments, but they did have to let patrons access to the facility individually. He then asked Mr. Dominach if there would be a limit to the number of cannabis retailers in one (1) area. He answered in the negative; however, he related that the State would be the ones to issue the licenses and were treating this type of business like any other business that would want to come to the Township. He also indicated that Franklin may get some manufacturers and distributors, but no retailers, because we have a very large area that would allow that type of business. A discussion ensued regarding a business located in a business

district delivering the product to a residential zone, with specifics/regulations that the State had not issued yet on how that would be controlled. A discussion ensued.

Mr. Healey then agreed with Vice Chair Brown that the ordinance did regulate the origin, and if there was a delivery service, it could be based in one of the business zones or in the same location as the retail. He added that in reading some of the law, it was his understanding that a town could not prohibit the delivery but could regulate the origin. Mr. Dominach concurred with Mr. Healey's statement. Councilman Chase reminded the Board that they limited the delivery service and may be associated with a retail outlet, but could deliver only for that retail outlet, which precludes the use of Uber or DoorDash.

Vice Chair Brown then opened a discussion regarding the hours of operation of the retail outlet being the same as the delivery option. Mr. Dominach indicated that the delivery service did not have a limitation on hours because the Township could not place a limitation on that. Mr. Dominach then added that he would be surprised if the State did not limit that accessory use in keeping with the stated hours of operation. A discussion ensued.

Ms. Schmidt and other Board members confirmed that they could not see the footnote regarding hours of operation spelled out anywhere in their copy of the proposed ordinance. Mr. Dominach stated that he would make sure that it was included in the official copy with the Township.

Ms. Schmidt then drew the Board's attention to the fact that there should be some limitation of how many people enter the business at one time. Again, she explained that her experience with her friend in California showed that there were a number of people waiting outside the business for their turn to enter, presumably with a lot of cash. She mentioned her concern to where the facility was located and how big the facility was and how it was controlled. Mr. Dominach stated that most of the retailers inquiring were looking for about 5,000 sq. ft. and were very experienced with this type of business by working in other states. A discussion ensued regarding the informal market that existed now, according to Councilman Chase. Mr. Dominach spoke of having the ability to change an ordinance if they saw there was a problem. A discussion ensued.

Mr. Healey indicated that the Board needed to give the normal referral from the Council when any change to the Land Development Ordinance was proposed. Under the Municipal Land Use Law (MLUL), the Board was to review it and let the Council know if there was any way in which the ordinance was not consistent with the Master Plan and/or if there were any recommendations that they wanted to make to the Council.

Chairman Orsini made a motion to recommend the Ordinance back to Council with the Planning Board's endorsement that it was consistent with the Master Plan. Councilman Chase seconded the motion, and the roll was called as follows:

FOR: Councilman Chase, Ms. Rangnow, Vice Chair Brown, Mr. Thomas, Ms. Schmidt, and Chairman Orsini

AGAINST: None

Extension of Time:

- **Pedro Vieira / PLN-20-00002**

Chairman Orsini stated that the Application was a subdivision that was approved last year, located on Treptow Lane. According to the letter that was sent to the Board, dated May 11, 2021, Chairman Orsini stated that the Applicant was having difficulties with their engineering services. According to the letter, the Chairman indicated that they seem to have that situation smoothed out but need an Extension of Time.

Mr. Samuel Brodie, Esq., Attorney, appeared before the Board on behalf of the Applicant, Pedro Vieira. Mr. Brodie asked for an Extension of Time till January 21, 2022 in order to have extra time in order to record the deeds.

Chairman Orsini made a motion to approve the Extension of Time for one year, retroactive from January 21, 2021 and set to expire on January 21, 2022. Councilman Chase seconded the motion, and the roll was called as follows:

FOR: Councilman Chase, Ms. Rangnow, Vice Chair Brown, Mr. Thomas, Ms. Schmidt, and Chairman Orsini

AGAINST: None

PUBLIC COMMENTS:

Chairman Orsini then made a motion to open the meeting to the public for general Planning comments. Councilman Chase seconded the motion, and all were in favor.

Mr. Jason Tabatchnick, of Tabatchnick Fine Foods, Inc., 1230 Hamilton Street, Somerset, NJ, came forward. Mr. Tabatchnick had a question about the ordinance just discussed. He opened a discussion regarding cannabis manufacturers and other uses and whether it was limited to industrial zones. Councilman Chase answered in the affirmative. He told the Board that his facility had been in their location for 100 years and doing business as Tabatchnick Fine Foods, Inc. since the 1990's. He indicated that his business was close to the line where residential and industrial uses separate. Mr.

Tabatchnick indicated that they were poised to participate in the cannabis manufacturing industry, with good manufacturing practices in place, but were not zoned correctly. He wanted to know if there was a way for the Township to consider working with a company that was not in the correct zone but looking to be re-zoned if there was not too much conflict.

Mr. Healey stated that Tabatchnick Fine Foods were in their present location via Use Variance from decades ago, with Applications to expand over the years. Mr. Healey told Mr. Tabatchnick that they could apply for a Use Variance as they had done in the past. Another way to go about it, according to Mr. Healey, was to have their property re-zoned, but he did say that he did not know if it would be appropriate in his case or not without looking more closely at the zoning boundaries. Mr. Healey suggested that Mr. Tabatchnick speak to Mr. Dominach as the point of contact on the issue for the Township

Councilman Chase discussed the possibility that the State might require the business to relocate into a zone where the cannabis manufacturing was permitted so that the variance procedure would not apply. A discussion ensued regarding the possibility of getting his property re-zoned.

Seeing no one coming forward, Chairman Orsini made a motion to close the public portion of the meeting. Mr. Thomas seconded the motion, and all were in favor.

COMMITTEE REPORTS

No reports were discussed.

WORKSESSION/NEW BUSINESS:

- **Board Member/Professionals Self-Introductions.**

The Board members present each discussed how long they had been a resident of Franklin Township, where they were originally from, what they liked the best and least about the Township as a whole, why they were interested in serving on the Planning Board and anything else that they would like to tell the other Board members about themselves.

- **Overview of Planning Board/ Legal Issues**

Chairman Orsini stated that he gave Mr. Healey, Director of Planning, and Mr. James Clarkin, Board Attorney, a list of topics that could potentially be discussed and to go over any recent case law that applied to the Planning Board as well as to discuss why they hear what they hear as a Planning Board and what the Zoning Board hears.

Mr. Healey proceeded to explain what the Planning Board is, stating that it was basically a creature of the Municipal Land Use Law (MLUL), which was a town's ability to zone. He then indicated that a town or township had to have a Master Plan and a Zoning Board of Adjustment and Planning Board. He added that the Boards gave the opportunity for applicants to ask for variances, and the MLUL broke down the different responsibilities of both boards. Mr. Healey stated that the Planning Board was empowered to hear applications for development, in the form of subdivision applications and site plan applications. He added that, in association with that, there were certain classifications of variances that the Planning Board can hear. He then gave examples of C-1 or C-2 variances. Mr. Healey then discussed the main proof an applicant must show with a flexible C-2 variance was that the grant of the variance would result in a better zoning alternative than a compliant development. He gave a few examples for the Board to consider, and Mr. Clarkin expanded on that discussion and Councilman Chase added to the discussion with the Board. Mr. Healey then spoke about uses not permitted in a zone (D-1) and was heard by the Zoning Board. He then spoke about expanding a current, non-conforming use in a zone which required a D-2 variance that was also reviewed by the Zoning Board. Another type of variance was a D-3 Conditional Use Variance, typically heard were houses of worship and schools. Mr. Healey then discussed Floor Area Ratio (FAR) variances if the proposed building were larger than permitted and height variances, which both would be heard before the Zoning Board, along with Certification of a pre-existing, non-conforming uses, and density variances.

Mr. Healey then explained that the Planning Board sort of wears two (2) hats that included application review quasi-judicial-type function where they hear applications and listen to the justification given for the variances that were being requested. He then noted that their other hat was more advisory in nature, an official land use advisory committee to Council, by adopting a Master Plan (a guidance document about how the Township was going to be developed). The Council, he stated, was required by law to consider what was included in the Master Plan. He added that they also review when the Council makes a change to the Land Use Ordinance and determine whether it was consistent with the Master Plan to include any other recommendations the Planning Board would want to make at that time.

Mr. James Clarkin, Board Attorney, then addressed the legal issues the Planning Board must deal with. He reminded the Board of the proofs that an applicant must satisfy in order for the Board to grant the C variance they were requesting. He explained that the C-2 Variance was a hardship variance, and the C-2 Variance was where the benefits of the application substantially outweigh any detriments. He then noted that the hardship variance had to be rooted in the characteristics of the land and could not include personal or financial hardships in order to be granted. Mr. Clarkin then discussed the statutes that govern this type of variance which required that the Board engage in a multi-step process. The first step in the process, according to Mr. Clarkin, was to identify the advantages/benefits of the application to the Township, not the applicant, by granting the variance. He went on to state that the next step was to identify what detriments there will be to the Township if the variance were to be granted and then

engage in a weighing process. He then explained that both types of C variances had to prove the negative criteria, that included two-prongs (whether the variance could be granted without substantial detriment to the public good and whether it could be granted without substantial impairment of the zone ordinance or zone plan). He explained that they must consider any detriments to adjoining property owners and the neighborhood in general (safety, health, traffic, etc.). Mr. Clarkin drew the Board's attention to Conditional Use Variance where all of the conditions must be met, otherwise the case would go to the Zoning Board. Furthermore, Mr. Healey indicated that the Zoning Officer would have to first determine what the variances were, with an applicant's ability to appeal the Zoning Officer's opinion.

Mr. Clarkin then discussed what he called a Courtesy Review, which he felt was topical due to the recent library application. He stated that the subdivision was approved, and it was now time for the Planning Board to listen to testimony, discuss and review all aspects of a site plan (lighting, landscaping, drainage, parking, traffic, etc.), but their role was not to approve or deny, but to make recommendations back to the governing body and possibly include conditions, or not recommend at all. He explained that he did not think that he or his partner were involved with the Planning Board on a similar case that had included substantial neighborhood input. A discussion ensued, and Mr. Clarkin suggested that they ask the same kinds of probing questions they would ask of any applicant as well as preparing for the case by having at the ready a list of suggested conditions so that it would minimize, to the extent possible, any negative impacts that the neighborhood believed would be visited upon them by allowing the library to be built there.

Another item of interest discussed was why the Planning Board could not consider traffic when reviewing cases before them. Mr. Clarkin stated the reason the Planning Board could not consider traffic when reviewing applications was because all of the cases that come before the Planning Board were permitted uses. He noted that the case law in the State of New Jersey stated that if there was a conforming application, a board cannot deny the application because their view that it would generate too much traffic. He explained that the logic behind it was that when the zoning was put in place, it was determined what uses could go in each zone and hypothetically considered traffic issues when deciding whether a use was allowed in that zone. Having said that, Mr. Clarkin indicated that they still required traffic studies and cross-examined Traffic Engineers, and the Planning Board was still free to attach conditions to an approval that impact traffic. He then gave some examples of such conditions that could be imposed. A discussion ensued, and the Chairman brought up the topic of recommending to Council a change in the Master Plan if the density in a certain area/zone had gotten out of hand in order to deal with traffic. Mr. Clarkin also suggested that they could deal with the Master Plan halfwith (widening roadways), giving the Board more flexibility to come up with traffic solutions. A discussion ensued among the Board, where they discussed some issues with working with other agencies' cooperation. Mr. Thomas then asked whether they could question an application's feasibility due to safety concerns, and the Board discussed some examples where that might apply.

Mr. Clarkin then brought up the topic of the difference between a variance and a waiver, to refresh the Board's recollection and for some of the newer Board members. He indicated that if it were in the zoning ordinance, it was a variance and if it were in the site plan ordinance, it would be a waiver. He then discussed the fact that granting a waiver was a lot less strict than with a variance.

Mr. Clarkin stated that he used to conduct the Municipal Training for 20 years and indicated he would bring out his outline to go over for the newer members who have not received the Municipal Training from the NJ Training Office because of the pandemic. Chairman Orsini then discussed the support resources available to the Planning Board members.

- **Board Member/Professional Lists - 1-2 Things That Most Concerns/Interests Them From a Planning Perspective**

Chairman Orsini then asked each Board member to list 1-2 things that most interests them and concerned them from a Planning perspective. He indicated that they would list and prioritize them for future work sessions.

- **Board Selection of Topics From The Above for Longer/Further Discussion - Rank/Vote Priority Topics**

Bikeability, walkability, sidewalks, encouraging bicycle use, charging stations
(Charles Brown)

Adaptive reuse, viability of retail, mixed use to tie in COAH,

Requiring No Idling signs at warehouses
(Councilman Chase – Environmental Commission)

Trees
(Carol Schmidt – Shade Tree Commission - Environmental Commission – Mark Healey)

Mr. Healey then brought up the fact that the Circulation Element of the Master Plan was not finished yet, and there was planned one last sub-committee meeting to make sure the changes they mentioned have been made. The Planning Board might want to have a work session related to the Circulation Element.

EXECUTIVE SESSION:

The Board did not enter into an Executive Session that evening.

ADJOURNMENT:

Chairman Orsini made a motion to adjourn the regular meeting at 10:00 p.m. Mr. Thomas seconded the motion, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
July 17, 2021