

PLANNING BOARD MINUTES
PUBLIC MEETING
MAY 13, 2021 - 7:00 P.M.
HELD AT OAKLAND COUNCIL CHAMBERS
Via Video Conference
(Zoom link is located on the Borough's website)
www.oakland-nj.org

Pursuant to Chapter 231, Public Law 1975 (Open Public Meetings Act) adequate notice of this meeting has been provided by:

- ❑ Adoption of an annual schedule of meetings
- ❑ Posting a copy of same at Borough Hall and the Borough's website
- ❑ Advertised in The Record more than 48 hours in advance of the meeting
- ❑ Mailing a copy to any person requesting same

** MEETINGS CONCLUDE AT 10:30 P.M., THEREFORE, NO TESTIMONY WILL BE TAKEN AFTER 10:00 P.M.

PLANNING BOARD MEMBERS:

Andrea Levy, Gregory Liss, Joseph Marscovetra, Michael Rose, Thomas Connolly, Sandra Coira, Lee Haymon, John Morris, Councilman Kulmala, Mayor Linda H. Schwager and Chairman Thomas Potash.

FLAG SALUTE, MEETING OPENED AT 7:06 P.M., ROLL CALL:

Present Members: Mmes. Coira and Levy, Messrs. Liss, Rose, Marscovetra, Connolly, Haymon, Morris, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Absent Members: None

EXCUSE ABSENCES:

None

Mr. Joseph Russo, Esq., Board Attorney, John Yakimik, Boswell Engineering and Mr. Edward Sniekus, Burgis Associates were also in attendance

BOARD PROFESSIONALS SWORN IN:

Mr. Yakimik and Mr. Sniekus were sworn in.

OPEN MEETING TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA.

Motioned by Mr. Connolly and seconded by Mayor Schwager, to open the meeting to the public for matters not on the agenda was voted unanimously by the Board.

No comment.

Motioned by Mr. Connolly and seconded by Mayor Schwager, to close the meeting to the public for matters not on the agenda was voted unanimously by the Board.

PUBLIC HEARING:

1. Bellizzi – 62 Monhegan Avenue and 89 Manito Avenue, Block 5501, Lot 1 and 2. Public hearing for a minor subdivision.

Mr. Cascio, Esq., law office located in Franklin Lakes, was before the Board to represent the application. He explained that this is a minor subdivision to add more parking area to 62 Monhegan Avenue. Due to a failed septic in the rear of the property, a new septic would need to be installed in the front yard taking away the Bellizzis additional parking. The subdivision is from Mr. Daniel Maas's property to the Bellizzis.

Richard Wostbrock with Wostbrock Associates was sworn in. He gave his credentials and the Board accepted his qualifications.

Mr. Wostbrock testified that due to a failed septic in the rear, the Bellizzis needed to replace the system. The front yard would be the most suitable location for the mounded system which eliminated additional parking for their vehicles. Since there is no parking on their street, Mr. Bellizzi approached his neighbor Mr. Daniel Maas located at 89 Manito (corner lot), to purchase a 14' X 42' a rectangular portion of his property to increase his parking area. The subdivision involves 588 square feet of the Maas's property to the Bellizzi's for the purpose of constructing a new driveway.

Mr. Wostbrock informed the Board that the lot line adjustment has been filed and approved April 27, 2021 by Bergen County Planning Board and will be recorded on both deeds. Some trees will have to be removed for the septic system installation.

Mr. Sniekus confirmed that there are no sight visibility issues with the retaining wall surrounding the new septic system and the driveway is comparable to other driveways in the neighborhood. There will be an impervious coverage increase to 62 Monhegan of 140 square feet however, it is still below the maximum allowed. Questions from the Board.

Chairman Potash confirmed that the installation of the new septic system will not interfere with the Maas's system. Mr. Yakimik expressed that he has no issues with the improvements however, the applicant will need to contact Shade Tree Commission and receive the required permits for

the removal of 5 trees. In addition, it will be a stipulation of approval that the applicant coordinate with Department of Public Works a review of the lot line and the Borough right-of-way. Mr. Russo requested that the site plan be entered as an exhibit.

Exhibit A-1, Minor Subdivision & Plot Plan of Bellizzi's driveway prepared by Richard Wostbrock & Associates dated March 11, 2021.

Exhibit A-2, Letter of Exemption from Bergen County Planning Board dated April 27, 2021.

No further questions. Chairman Potash entertained a motion to open the meeting to the public.

Motioned by Mr. Connolly and seconded by Mayor Schwager, to open the meeting to the public regarding matters concerning the Bellizzi/Maas subdivision was voted unanimously by members of the Board.

No comments.

Motioned by Mr. Connolly and seconded by Mayor Schwager, to close the meeting to the public regarding matters concerning the Bellizzi/Maas subdivision was voted unanimously by members of the Board.

Further discussion; Councilman Kulmala explained that Monhegan Avenue does not accommodate street parking and he supports the applicant's efforts and supports the application. Mayor Schwager expressed that this is a great solution and commended the applicant and the neighbor on working out a great solution. No further discussion. Chairman Potash entertained a motion.

Motioned by Mayor Schwager and seconded by Mr. Rose, to approve the Bellizzi application subject to Shade Tree approval, DPW approval and sight distance be confirmed.

Roll Call Vote: Ayes: Mrs. Coira, Messrs. Marscovetra, Rose, Connolly, Haymon, Morris, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None

Abstain: None

Absent: None

2. Liss- 59 Glen Gray Road, Block 901, Lot 13. Public hearing for construction of a new single family dwelling in the floodplain.

Board member Gregory Liss recused himself as a member to become the applicant.

Mr. Francis Battersby, Esq., law office located in Oakland, NJ, was before the Board to represent the applicant. He explained that this is an application to replace a single family home in the floodplain. The property is located in a RA-1 Residential zone and within the flood zone. The applicant proposes to remove and replace a single family home over the same footprint. The

applicant has received NJDEP permit approval. Mr. Battersby offered testimony from Mr. Robert Weissman, the applicant's engineer.

Mr. Robert Weissman with Weissman Engineering located in Midland Park was sworn in. He offered his credentials and the Board accepted his qualifications.

Mr. Weissman explained the existing conditions as a vacant single family dwelling located on over an acre, 52,011 square feet, of property with an existing non-conformity on the west side. The applicant proposes to demo the existing dwelling, replace the septic and replace it with a 2 story, 1 bedroom dwelling without a basement. The dwelling will consist of 2,680 square feet on the first floor and 2,176 square feet on the second floor.

The first floor will contain a garage with 4 bays and a bathroom. Fourteen smart vents will be installed to allow the flow of water in the event of a flood. The second floor will contain an open space concept with a kitchen and bedroom. There will be minor excavation with the improvements. The septic system and drainage seepage pits will be located in the rear yard.

The NJDEP required that the new dwelling to be constructed in the same location of the existing dwelling due to the topography of the property. The Flood Hazard Elevation is 238.7-feet and the first floor will be at 249-feet above the required elevation. Mr. Weissman confirmed that they would comply with the request from Mr. Yakimik's report dated May 12, 2021.

Chairman Potash pointed out that the most important approval was obtained by the NJDEP. He questioned the elevation of the utilities and referenced number 14 of Boswell's report. Mr. Weissman confirmed that the applicant will comply with the items listed in paragraph 14 (a) and (h).

Mr. Yakimik questioned the location of 2 propane tanks and whether an additional variance would be required. Mr. Weissman reviewed the possible variances that may be required. The applicant will be requesting a 20.5-foot side yard setback or the dwelling where 30-feet is required and a 16-foot side yard where 30-feet is required for 2 air conditioning condensers and a side yard setback of 10-feet for 500 gallon propane tanks. Mr. Morris questioned if there was a required distance that the propane tanks needed to be from the dwelling. Mr. Weissman responded that he would double check and get a number to the Board before the next meeting.

Mr. Yakimik requested stormwater calculations, that a minor soil movement permit be obtained and that the plans show the footprint of the first floor plan.

Mr. Gregory and Mrs. Denise Liss was sworn in and testified their intentions of the first and second floor layout of the proposed dwelling. They confirmed that the variances being requested are a side yard of 20.5-feet for the dwelling on the western side and a side yard setback of 16-feet on the western side for the air conditioning units. In addition, a side yard setback of 10-feet on the western side for 500 gallon propane tanks. Mr. Yakimik requested that the applicant will still require a Bergen County Soil Conservation District certification and Health Department Approval.

Mr. Sniekus reviewed elevations of the dwelling and requested that the storm vents be displayed on the revised drawings. No further discussion. Chairman Potash entertained a motion to open the meeting to the public.

Motioned by Mr. Connolly and seconded by Mayor Schwager, to open the meeting to the public regarding matters concerning the Liss application was voted unanimously by the Board.

No comments.

Motioned by Mr. Connolly and seconded by Mr. Rose, to close the meeting to the public regarding matters concerning the Liss application was voted unanimously by the Board.

Mr. Russo pointed out that NJDEP approved the plans August 3, 2020 and plans were revised reflecting NJDEP comments on November 9, 2020. He reviewed that approval will be for 3 variances in the side yard for dwelling, air conditioning units and propane tanks. And approval will be subject to a Bergen County Conservation District certificate, Health Department approval, minor soil movement permit and complying with (a) and (h) of Mr. Yakimik's report dated May 12, 2021. Chairman Potash entertained a motion.

Motioned by Mr. Rose and seconded by Mr. Connolly, to approve the Liss application contingent to the conditions mentioned above by Mr. Russo.

Roll Call Vote: Ayes: Mrs. Coira, Messrs. Marscovetra, Rose, Connolly, Haymon, Morris,
 Councilman Kulmala, Mayor Schwager and Chairman Potash.
 Nays: None
 Abstain: None
 Absent: None

ORDINANCE REVIEW:

Amendment to Ordinance 21-CODE-826 Regulations for keeping chickens

Chairman Potash requested that Councilman Kulmala review the changes made to the ordinance with the Board. Councilman Kulmala informed the Board that the amendment to the ordinance was to include fencing to keep chickens in the yard of the owner. Mr. Russo explained in paragraph 4 that they included the wording "a fully enclosed chicken run provided" and in paragraph 6, the wording, "chicken shelter coup shall". No further discussion. Chairman Potash entertained a motion to direct Mr. Russo to draft a letter recommending the amendments to the ordinance.

Motioned by Councilman Kulmala and seconded by Mr. Rose, to direct Mr. Russo to draft a letter recommending the amendments to the ordinance as written.

Roll Call Vote: Ayes: Mrs. Coira, Messrs. Marscovetra, Rose, Connolly, Haymon, Morris,
 Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None
Abstain: None
Absent: None

Ordinance 21-CODE-828, Marijuana Prohibition

Chairman Potash explained that the Board has discussed the marijuana ordinance on many occasions and the Planning Board has expressed they are in favor of multiple uses for certain locations within the Borough. The draft ordinance before them is to prohibit all uses in all locations within the Borough. There is a state mandate that an ordinance be passed to opt-in or opt-out by August 21, 2021 and if nothing is done by that date, all uses, such as establishments, distributors or delivery services will be allowed in the town. This decision will hold for 5 years. His interpretation of the ordinance is that by prohibiting all establishments and distribution of marijuana, it gives the Borough more time to plan and after the 5 years, they will be able to change this decision.

Councilman Kulmala explained further that he would like to see this ordinance passed which will slow down the process and give the Borough an opportunity to see how the commission will be ruling, how revenues will be collected and receive the proper legal advice and guidance as to where these establishments should be placed for the good of Oakland.

Most of the surrounding towns are opting-out prohibiting marijuana establishments and distribution as per the recommendation of the League of Municipalities. He explained to the Board that after the 5 year period, the Borough can revisit their decision and opt-in once the legal platform has been established. Chairman Potash questioned Councilman Kulmala if the councilmembers in favor of opting out would be receptive to different uses in the future once the dust settles. Councilman Kulmala responded that he believes there could be an opportunity in the future for certain uses in certain locations. He expressed that this a cautious approach and can be revisited down the road.

Mayor Schwager expressed that she disagrees with Councilman Kulmala and expressed said she believes the council does not want marijuana and that this is an excuse for them to pause and not investigate the matter. Currently she is working with 2 councilmen, one pro one against, marijuana licensing. This is not a discussion to legalize marijuana because the legislature has already done that and the Governor has signed it into law. She informed the Board that she is setting up a committee and has talked to residents who are interested in being on the committee. Some of these residents are in favor of the town possessing 1, 2 or 3 of the required licenses and some that are not interested in having retail marijuana. She is still looking for people opposed to opting in to join her the committee.

The Borough has appropriate areas for the manufacturing and cultivating marijuana. State legislature will not allow the Borough to stop deliveries of marijuana coming through the town. She does not want to miss out on the tax revenues associated to manufacturing, cultivation and wholesale and the revenues that can be received by the sales. This is going to be a big business

opportunity for the Borough and if all the other towns are going to ban it, why not take advantage of making money for the town. Mayor Schwager is concerned that the Council will sit back and do nothing and asked the Board to take a hard look at this subject and express their opinion of future manufacturing, wholesaling or cultivation of marijuana. The legalization of marijuana passed 2 to 1 in Oakland and in the state 66% to 33% which confirms that people want marijuana around.

She expressed that this Council will pass this ordinance to prohibit establishments and distribution of marijuana. The Planning Board should give their opinion on if they want to see manufacturing and cultivating come into the Borough at some point and what areas. There are different types of licensing for manufacturing, wholesale, medicinal and retail and the Borough will be able to control the type of businesses that can come into town.

Councilman Kulmala explained that he would like to echo what the Mayor mentioned about forming a committee. He expressed that it would be helpful to work on a plan and identify proper locations for whatever uses you want to allow in town. This plan should include distances from schools and houses of worship. However, right now, he does not think the proper guidance is in place.

Mr. Morris expressed his opinion that the Borough be in the forefront and the town be aggressive in allowing the sale and cultivation of marijuana in town. The towns who are ready for it will get the first opportunity to move forward. He understands that, like alcohol, there are people that think it will have a detrimental effect but other than some overcrowding issues in certain states when it first opened up, he has seen few negative articles pertaining to the distribution and sales of marijuana. He is in favor of the Mayor's approach, being more aggressive and the fact that Oakland people voted for it in the referendum. Also, he prefers not to hide it in the industrial zone because retailers may not want to be located there and go to another town that allow sales in their downtown where they can potentially get more business. The legalization of cannabis is going to become a way of life, let's accept it and move forward.

Mr. Rose agrees with being aggressive about allowing cultivation and sales in town. He does not agree with prohibition. He does not think retail of marijuana should be near a school but they should have a space in the downtown area. This is not the first time that the council has limited the town. Taxes are very high in town and it is putting a strain on the young and elder to remain living here. The Borough should not hesitate to allow marijuana cultivation and distribution because this could help improve areas like the downtown. The town should have rules and parameters but if Oakland does not allow it, people will go to other towns to get it. If we don't do something now, Pompton Lakes, Wayne or Mahwah could take the business away from us. Chairman Potash informed the Board that Wayne is passing an ordinance to prohibit cannabis because they feel the 2% revenue will not have that much of an impact to help the property taxes.

Mrs. Coira agrees with the previous speakers that even before the referendum, this Board has been in favor of the regulation and taxation of cannabis. It was clear in the referendum that Oakland supports, by 67% percent, the legalization of this product. She is disturbed that the Council wants to prohibit opting in and expressed that they need to remember that their jobs are

to represent the people. As far as statements made concerning revisiting the opting in option once the regulations are in place, she informed the Board that this is the town's job. She agrees with the Mayor that if this ordinance to prohibit passes, opting in will be forgotten. She is 100% for allowing marijuana businesses in the town and believes there is no benefit to wait.

Mrs. Levy echoed the other Board members. The Planning Board members are on the same page. She expressed that most importantly, the Planning Board should work on identifying locations in town to allow the different uses, create a plan to manage effectively and establish a safe ordinance to pass allowing the uses. She believes that by opting in and allowing the use, it will have a residual effect and other businesses will prosper from it. Oakland is centrally located and people will likely come to town for the product. In addition, she believes that other business will benefit from opting in. She expressed that the town should be aggressive in allowing cannabis and believes that if the town opens up to these marijuana facilities, other businesses will be drawn to the town as well. There are many businesses out there that are "cash heavy" looking for a place to set up and we do not want to lose out on that. Mayor Schwager informed the Board that she has already received 4 calls from people serious about locating in Oakland. She told these people she is in favor of opting in but she is only one person. She knows that there are vacancies in the industrial park area along West Oakland Avenue. She referred to Mr. Yakimik concerning the Dewey property. Mr. Yakimik explained that the Dewey property, on the other side of 287, is very large parcel that was subdivided a few years back.

Mayor Schwager expressed that rather than say no, she would like to see the Planning Board work with the Borough Planner and identify locations where it could conduct business. Mr. Yakimik informed the Board that Boswell has prepared a map identifying all the schools and houses of worship to be used like as a tool to start the process.

Mr. Rose confirmed with Mr. Guadagnino that he is a licensed chiropractor and questioned if he is in favor of the legalization of cannabis. Mr. Guadagnino responded that he cannot sell CBD through his office but he recommends it. He explained that he does not drink coffee or alcohol, he does not eat meat or use marijuana products but he will not tell others what to do with their lives. He attended the meeting to voice his disagreement with the prohibition ordinance being discussed. Oakland should not follow the lead of other towns because they will miss out. The Council should hear the voices of the 67% of Oakland residents who voted in favor of legalizing marijuana.

Mr. Liss expressed that the town should take advantage of the opportunity and move forward. He is not in favor of the prohibition ordinance.

Mr. Marscovetra is also not in favor of prohibition. The town needs to be progressive and move forward.

Mr. Haymon expressed that he too is not in favor of prohibition and is in favor of medicinal marijuana. However, he does have some concerns with retail sales.

Chairman Potash informed the Board that Mayor and Council will introduce this ordinance at the next Council meeting and they have requested that the Board review, modify and give our recommendations. By the responses this evening, it appears that the Board's opinion has not changed. They remain positive and in favor of allowing manufacturing, cultivation, retail and medicinal uses of marijuana in the town and are against the prohibition. He too echoes the opinion of the other members and expressed that the Council should honor the people and work on establishing locations for cultivation and retail. The Planning Board makes it clear that they have not changed their recommendations set forth in Mr. Russo's letters dated November 17, 2020 and April 9, 2021. Mr. Russo confirmed that he will draft a letter stating that the Planning Board does not support the proposed ordinance. No further discussion. Chairman Potash entertained a motion.

Motioned by Mr. Morris and seconded by Mr. Rose, to authorize Mr. Russo to draft a letter to Mayor and Council opposing the prohibition ordinance and still recommend the prior recommendations set forth in Mr. Russo's letter dated November 17, 2020 and April 20, 2021.

Roll Call Vote: Ayes: Mrs. Coira, Messrs. Marscovetra, Rose, Connolly, Haymon, Morris,
 Councilman Kulmala, Mayor Schwager and Chairman Potash.
 Nays: None
 Abstain: None
 Absent: None

MEMORIALIZATIONS:

None

PAYMENT OF BILLS:

Motioned by Mr. Rose and seconded by Mr. Connolly, to approve the bills list subject to the availability of funds.

Roll Call Vote: Ayes: Mrs. Coira, Messrs. Marscovetra, Rose, Connolly, Haymon, Morris,
 Councilman Kulmala, Mayor Schwager and Chairman Potash.
 Nays: None
 Abstain: None
 Absent: None

APPROVAL OF MINUTES:

Motioned by Mr. Morris and seconded by Mr. Connolly, to approve the April 8, 2021 Minutes.

Roll Call Vote: Ayes: Mrs. Coira, Messrs. Marscovetra, Rose, Connolly, Haymon, Morris,
Mayor Schwager and Chairman Potash.
Nays: None
Abstain: Councilman Kulmala
Absent: None

NEW BUSINESS:

The Board discussed in person meetings. Mayor Schwager informed the Board that they plan to meet in person at the next Council meeting at the Senior Center. She is still not comfortable meeting in the Council/Court Chambers. In the Senior Center they will be able to properly social distance and open windows to improve ventilation. Councilman Kulmala explained that they can combine in person and Zoom but more information would be available tomorrow from the CDC. Mr. Russo expressed that giving notice for virtual meetings has become very tricky. Councilman Potash informed the Board that they will meet virtually for June and see what the CDC advises for July. There is no urgency right now to meet in person however, when a bigger application comes in, he would prefer to meet in person.

OLD BUSINESS:

PUBLIC MEETING ADJOURNED AT 9:06 P.M.

Motioned by Mayor Schwager and seconded by Mr. Connolly, to adjourn the meeting by a unanimous vote by the Board.

Respectfully Submitted by,

Kathlyn Gurney, Administrative Assistant

*Next meeting on June 10, 2021