

PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – April 13, 2023
VIRTUAL ONLINE MEETING

1. **O.P.M.A. Statement:** A statement of adequate meeting notice and adherence to the state mandated emergency remote meetings protocols, as set forth on this meeting's web-posted agenda, was read by Chair, Robert Graham, at 7:32 pm.
2. **In Memoria:** As called for by Chair Graham, all meeting attendees observed a moment of silence in memory of long standing and esteemed Board member Terry Thompson, who passed on April 12th.

3. **Roll Call:**

Present – Members Canose, Gardner, Graham, Horowitz, Macmillan and Simoff.

Absent – Members Kellogg and McQueen.

Board Professionals Present: Attorney Steven Warner, Planner John Szabo, Jr. and Engineer Robert Brightly. Also in attendance was Borough redevelopment attorney Joseph DeMarco.

4. **Minutes:** Review draft minutes of 3/16/23 meeting.

Upon review, Ms. Gardner noted a pair of typographical errors. A motion to approve the minutes as corrected was made by Mr. Simoff and seconded by Ms. Gardner.

Voice vote:

All eligible members voted in the affirmative. Mr. Macmillan abstained.

5. **Communications:** The following correspondence was acknowledged by the Chair:

A. 3/28/23 A. Suriano email transmittal of intro'd Ord. #2023-1960 re: Palmer Property Redevelopment Plan w/ Ordinance #2023-1960 (*re: 7A*).

B. 4/4/23 A. Suriano email transmittal of Community In Crisis Tort Claim w/ 4/4/23 Tort Claim.

C. 3/24/23 Downtown Revitalization Committee list of comments re: Palmer Redevelopment Plan (*re: 8A*).

D. The New Jersey Planner, January/February 2023, VOL.84, No.1.

6. **Business of Visitors not related to the agenda:** None.

7. **Old Business:** None.

8. **New Business:**

A. A40 Master Plan Consistency Review Intro'd. Ord. #2023-1960 re: Palmer Property Redevelopment Plan (RDP).

Mr. Warner opened the proceeding explaining the review at hand and the Board's sole charge of evaluating the ordinance's consistency with the master plan as mandated by the Local

Redevelopment and Housing Law (LRHL). He advised that he had prepared a draft resolution for the Board's use should it find the ordinance not inconsistent with the master plan. He noted that this is not a public hearing and a public comment and/or question period is not required. Ms. Gardner and Chair Graham asked if an additional (new) planner might review the Redevelopment Plan since it is a complex and complicated issue. Mr. Warner opined that he finds no conflict of interest in Mr. Szabo having prepared the redevelopment plan now before the Board and him opining tonight on the plan's consistency with the master plan. It was Mr. Warner's opinion that Mr. Szabo would not have developed a plan that was inconsistent with the master plan. Mr. DeMarco added his concurrence that there is no conflict of interest and that it is fairly common for planners to appear before both the governing body and the Planning Board.

Mr. Szabo said that he prepared the plan in accordance with the agreements and discussions the governing body has had with the potential redeveloper and in the format required under the LRHL. He said it is necessary that the RDP demonstrates compatibility or consistency with the master planning policies of not only the municipality, but how it impacts the state, county and adjoining municipalities. This review affords the Board the opportunity to make recommendations in a collaborative effort with the Council's formation of an approved RDP. However, the powers and authority with this ordinance as provided under the LRHL rest almost entirely with the governing body. It can choose to accept all, some or none of the Board's recommendations and can also modify and reintroduce the ordinance/RDP.

Mr. Warner and Mr. DeMarco clarified for the Board that the adopted RDP will establish the base zoning for the multi-lot parcel to be redeveloped. Tonight is the Board's sole chance to comment on what's contained in the RDP. Ultimately, the designated redeveloper will have to return to the Board for site plan approval but the bulk standards, as set forth in the adopted RDP, such as density, will no longer be subject to revision. Mr. Warner added that tonight's proceedings are not a public hearing per se. The public hearing on the ordinance will occur at the governing body's second reading of the ordinance.

Before presenting the RDP/ordinance he prepared, Mr. Szabo was sworn by Mr. Warner. He shared his screen and reviewed the elements of the 3/24/23 plan. He noted that all of the sections of the ordinance are mandated by the LRHL. On 9/12/22 the Council designated the Palmer site an area in need of redevelopment without condemnation. Subsequently, the Council authorized Burgis Associates to prepare the subject redevelopment plan. The plan's components identify the relationship between local objectives as to appropriate land uses and, density, population, traffic improvements, public transportation, public utilities, recreational community facilities and other improvements. It identifies the proposed land uses and the building requirements; provisions for relocation of any residents that may be displaced by the project; any properties within the redevelopment area which are proposed to be acquired (there are none) and, the significant relationship of the development, plan or ordinance to the master plans of not only this municipality but contiguous municipalities, the county master plan and the State development and redevelopment plan. Mr. Szabo opined that not only are the plan and ordinance not inconsistent with the master planning documents, they also promote them because of the expressed need for a more vibrant downtown. And for the most part, the plan's zoning regulations are consistent with the recently adopted downtown zoning. For the sake of consistency and compatibility, the architectural standards and guidelines embodied in the downtown zoning were incorporated into

this ordinance. He said that it is important that the developer live up to the standards that have been set by the Borough. In exchange for deviations from those standards, the developer will be making improvements to the intersection, providing enlarged sidewalks and redeveloping the property to generate some interest at this busy town intersection. Mr. Szabo emphasized that no development can occur without the formal designation of a developer by the governing body. The two parties must enter into a development agreement based on the adopted RDP. Once that is done, the developer would have to file an application with the Planning Board for site plan approval. Mr. Warner added the site plan approval process would mimic what the Planning Board is already used to.

Describing the site and its environs, Mr. Szabo said that it is located in the Downtown Core zone and is a little less than an acre in size. The plan affects only Block 125, Lots 1, 2 and 3, and no others in the downtown or Borough. Definitions, permitted uses and permitted accessory uses are all consistent with the downtown zoning requirements, as are placement of buildings, façade treatment, building articulation and nuisance provisions. Where the plan differs, such as in density and setbacks, it is the result of negotiations with the developer whereby improvements and benefits to the public must also accrue. This particular redevelopment agreement would allow for 68 units, a number that may not be exceeded by the developer. The plan's bulk regulations, which are mostly consistent with the current downtown zoning, were developed by looking at the specifics of the project and layout of the concept plan as relates to a potential development agreement. Sidewalk widths have been increased to 9'. In order to encourage shared parking, one parking space per 300 S.F. was set as the non-residential parking requirement. There was much discussion regarding how this is calculated for retail and restaurant parking. Cross access between adjacent parking areas will be allowed when feasible. Changes in tenancies will require overall parking reviews by the zoning officer to ensure an adequate supply of parking. The plan allows for offsite parking within 600' of the development.

Mr. Simoff suggested that a separate, per seat, parking standard be added for restaurant tenants as restaurant parking needs are typically higher than office and retail uses. He recommended that the off-site parking that is allowed within 600' be required to be on private property. He further recommended that a *Parking Space* be defined as 9' x 18' with a 24' aisle, as a way to restrict tandem parking. Another recommendation was that a designated loading area be required on-site. Chair Graham opined that without knowing the unit breakdown of the apartments it is impossible to evaluate parking adequacy per RSIS. He also thought the Board should recommend that the developer consult with the fire official regarding safety issues relative to EV charging stations in underground garages and have police and ambulance weigh in during the design of the redevelopment site plan. Mr. Warner advised the Board of its need to remain within the scope of its authority, which is primarily to review the plan's consistency with the master plan as a whole, and not try to rewrite the RDP. Mr. Szabo said that the Board in its evaluation needs to strike a comparative balance in weighing all of the components of the RDP against all of the components of the master plan to determine substantial consistency with it. He agreed that adding a third parking category for restaurants would be a good recommendation to the Council. He also confirmed for Mr. Horowitz that the provision of EV charging stations will not result in a 10% reduction of the required number of parking spaces as it would for typical developments. Several Board members recommended that a traffic study should be required to be performed by the developer regarding ingress into and egress from the site, recognizing that state and county authorities have jurisdiction. Chair Graham and Mr. Simoff both thought the section on outdoor dining needs to be clarified as it may be unachievable given the various constraints to maintaining a 4' clear path along the sidewalk, such as protective barriers, planters and tree grates. Mr. Szabo

said the RDP regulations for outdoor dining are the same as those in the current downtown zoning regulations, as is most of the RDP zoning. It should be suggested to the Council that regulations for outdoor dining in both may need to be revisited.

Discussion of the 0' side yard setback requirement triggered concerns about fire safety, building repairs and maintenance and the lack of open space and outdoor communal areas such as parks and greenways. Mr. Szabo said that deviations from the current downtown zoning were tailored to the particulars of the Palmer site. For example, the allowable 40' building height and number of stories take into consideration the extent to which the elevation changes across the site. The allowable height remains the same as the downtown core zoning but one additional story is allowed and the measurement is tied to a median ground elevation of 408'. Mr. DeMarco pointed out that new structures would still end up being lower than the high roof on the adjacent Masonic Lodge. Because it is only implied in the ordinance that more than one principal use may exist on the same lot, Chair Graham felt that should be specifically stated in the ordinance. Mr. Szabo explained that while bay window projections up to 6' are permitted to occur within setbacks, they may not project over property lines and specifically not into public ROWs. Relative to this point, Mr. Warner pointed out that the allowances for projections/encroachments under *Permitted Building Attachment Standards* appear to be incongruous with those given under the *Placement of Buildings* section and may need to be reconciled. Mr. Szabo responded to the Chair's question that cannabis-related uses would not be permitted by the RDP as the town has opted out of allowing same Borough wide. Upon discussion, it was agreed that the term Bed and Breakfast should be removed from the definitions to further reinforce that it is not a permitted use.

Vice Chair Horowitz, who is also a member of the Downtown Revitalization Committee, had forwarded to the Board a list of 11 comments made by the committee. A copy of the comments are appended hereto. Upon conclusion of Mr. Szabo's presentation of the RDP, the Board took up discussion of the Committee's comments that had not already been discussed above.

Public Benefits: Although minimum 9' wide sidewalks will be required as part of the plan, Mayor Canose commented that benefits like publicly accessible open space, greening the downtown or rebuilding Olcott Square, are the types of things that the Council will negotiate as part of the developer's agreement. Mr. Szabo said that while such public benefits are difficult to quantify in an ordinance, the Council could consider adding a policy statement calling for their provision.

Traffic: Acknowledging that improved traffic at the intersection would be of benefit to the public, it was recommended that performance of a traffic study by the developer should be required.

Setbacks, Sidewalks and Landscaping: Wider sidewalks, and more appropriate landscaping than the general landscaping proposed for the downtown should be required.

Affordable Housing (AH): Mr. Szabo said that fulfillment of the AH obligation that results from the residential component of the RDP will be negotiated by the Council as to whether it occurs on-site, off-site or as a payment in lieu. It was the Board's recommendation that payments in lieu not be accepted and that all affordable unit be built on-site. If it is agreed that the affordable component may be built off-site, the developer must be required to have control of the property prior to beginning development of the Palmer site.

Unit Sizes: It was the Mayor's belief, and Mr. Szabo concurred, that it will be one and two bedroom rental units that the developer will be constructing and research shows that that mix of dwelling units rarely adds to the school going population. Mr. Szabo also reported that his firm is

not seeing a lot of studio apartments being developed. It was recommended that Council fully understand the ramifications that various types of dwelling units can have on a municipality.

Green Environmental Provisions: The Board recommends that solar power be incorporated into the development. Additionally, it was recommended that emergency backup power generation be considered in preparation for power outages that are certain to occur.

Density: Mr. Szabo explained that the density allowed in the RDP derives from the improvements that are going to be expected by the Borough in return, which will be extensive and will need to be articulated in the redevelopment agreement. This ties back into expanding the policy statement as discussed earlier. He said an RDP needs to be economically feasible to attract investment by a developer. The constraints on this site in terms of what can reasonably be developed include its size, location, configuration and slope. Chair Graham stressed the importance of stating an accurate density figure in the ordinance that is based on 68 dwelling units and the true size of the parcel, recognizing that it is not exactly one acre in size.

Mr. Brightly recommended that terminology used in the RDP for describing the point from which building height is to be measured be revised for consistency and that the predevelopment grade elevation of 408' be added to the definitions. He also recommended removing the section under *Building Attachments* that talks about the need to recess drive through facilities when such are not permitted in the RDP. He noted that he does not believe the Borough Engineer will have jurisdiction to approve the location of driveways into and out of the development as the adjacent roadways are controlled by state and county.

Chair Graham said the Council should make sure that the developer is planning to heavily soundproof the dwellings given all of the nearby vehicular traffic and train noise.

In response to Mr. Warner's questioning, Mr. Szabo affirmed that for the reasons stated in the ordinance, and in his professional opinion as given to the Board, the redevelopment plan is substantially consistent/not inconsistent with the master plan. He further affirmed that that opinion remains unchanged after hearing the entirety of the discussion that took place this evening. Mr. Warner said he would modify the draft resolution he had prepared to include all of the Board's recommendations to the Council, which he proceeded to summarize for the Board.

A motion to find ordinance 2023-1960 not inconsistent with the master plan and adopt Planning Board resolution #2023-12 with the above discussed recommendations to the Borough Council appended thereto was made by Mr. Simoff and seconded by Mayor Canose.

Roll call vote:

All in favor: Members Canose, Horowitz, Macmillan and Simoff.

Those opposed: Members Gardner and Graham. Those abstaining: None.

B. Review of 3/16/23 Bills List w/ Invoices:

Upon review a motion to pay the listed invoices in the amount of \$4,276.00 was made by Ms. Gardner and seconded by Mayor Canose.

Roll call vote:

All members voted in the affirmative.

9. Board Reviews/Public Hearings/Pending Applications: The Board acknowledged the following matters and their current status:

A. Workshop review of 7/28/22 draft "Parks and Recreation Master Plan" w/ Recreation Director Bob Markowick; First draft reviewed 5/26/22; Revised plan rec'd 7/28/22; *Scheduled for workshop review on 4/27/23*; Public hearing date for master plan inclusion - T.B.D.

B. Application #SP-245 – WEBBER – Conforming Conditional Use for Home Professional Office; 2 Mullens Lane, B:63, L:13; Received 1/6/23; Deemed incomplete 2/14/23.

Mr. Mottola advised the Board that this application will need to apply to the Board of Adjustment because after obtaining a new survey, the applicant's attorney determined that one of the conditions of the conditional use cannot be met.

C. Application #SP-246 – FEST, LLC. – Addition & Renovation to Existing Mixed Use Bldg.; 12 Mine Brook Road, B: 99, L: 2, Zone: D-C; Received 2/6/23; *Pending completeness review.*

D. Application #SP-238A – EQUINET PROPERTIES, LLC – AMENDED PRELIMINARY & FINAL RESIDENTIAL SITE PLAN w/ Variance & Design Waivers; 55 Claremont Road, B:71, L:6, Quimby Lane Redevelopment Zone – Subarea 6; Received 3/16/23; *Pending completeness review.*

E. Application #SP-247 – AR at BERNARDSVILLE, LLC – PRELIMINARY MAJOR SITE PLAN w/Variations & Design Waivers; 39 Olcott Sq. + 5 Morristown Rd.; B:125, L: 1-3, Zone: D-C; Received 3/21/23; *Pending completeness review.*

10. Business of Visitors – second opportunity: None.

11. Executive Session: Community In Crisis Ongoing Litigation + New Tort Claim

A motion to close the public meeting and reconvene in executive session was made at 10:44 pm by Mr. Horowitz and seconded by Ms. Gardner.

Roll call vote: All members voted in the affirmative.

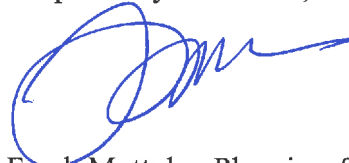
It is anticipated that the matters discussed in closed session may be disclosed to the public upon determination of the Board that the public interest will no longer be served by such confidentiality.

A motion to close the executive session and reopen the meeting to the public was made at 11:15 pm by Mr. Simoff, with no second.

Voice vote: All members voted in the affirmative.

12. Adjournment: Chair Graham adjourned the meeting at 11:16 pm.

Respectfully submitted,



Frank Mottola, Planning & Zoning Boards
Administrative Officer & Recording Secretary

Keywords: #2023-1960-Palmer-redevelopment-Olcott-Square-Community-Crisis-litigation-tort.

ISSUES TO MODIFY IN THE PALMER PLAN DATED MARCH 24, 2023

Members of the Downtown Revitalization Committee have now received a copy of the Plan and are pleased to have an opportunity to comment on the Plan with the goal of having an amendment drafted by Burgis before the Planning Board meeting on April 13, 2023. The amendment will address the points that may elicit negative reactions from the public and at the same time improve the quality of the report in terms of benefits to the community and drafting inconsistencies. The key points requiring modification in the amendment are:

1. **Public benefits.** The Plan should be amended to provide for public benefits which we understand will be obtained from the project. These include a sidewalk on Morristown Road which will be a minimum of 20 feet wide to create a mini-plaza, reconstruction of the triangle in the center of Olcott Square and any others contemplated for this redevelopment.
2. **Traffic.** The Plan needs to include a requirement of a traffic study as a prerequisite to Planning Board approval of the Site Plan.
3. **Setbacks, Sidewalks and landscaping.** The Plan provides for virtually no setbacks and minimal landscaping requirements (one tree 40 feet on center). The provisions for setbacks, landscaping and sidewalks should be amended so they are consistent with the public benefits intended for this redevelopment, including the mini-plaza. Additionally, landscaping should be greatly supplemented to a scale more appropriate for a pedestrian orientation.
4. **Building height.** This provision needs to be amended to better provide for the slope of the site. The building should be no more than 4 stories at any point, which may result in fewer floors at the eastern end. The various height references in the Plan (40, 45 and 55 feet need to be explained more clearly. An explanation to justify 4 stories along Morristown Road should be provided.
5. **COAH.** The Plan should expressly provide for how this development will either meet COAH requirements or assist the Borough in meeting its COAH obligations.
6. **Parking.** The parking requirement should be amended to meet RSIS standards and existing Downtown Core requirements for residential and commercial. Reference to a hoped-for future development will not persuade residents that this project will not burden existing parking.
7. **Unit sizes.** To assure a quality development, the size of apartments and the distribution by bedrooms should be provided for in the Plan.
8. **Environmental energy.** Solar or other sustainable energy and power sources as well as sustainable building/engineering systems within the structures should be required. The Plan should require the developer to obtain a LEEDS gold rating as well.
9. **Density.** The new density standard for the Borough is 35/acre yet the Plan provides for 68 units on a 1 acre site without any explanation of the reasons for this differential that resonates with the public. The Plan should provide a rationale for balancing public benefits against the higher density; this will serve as a good precedent for future ANR projects. The Plan should also provide for a minimum/maximum number of buildings on the site.
10. **Goods and merchandise sales on surrounding sidewalk.** These should be prohibited.
11. **Fire safety.** This should be address as part of the Plan.