

**PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – September 26, 2019
PUBLIC MEETING**

1. Statement of Adequate Meeting Notice: Read by Chairman Graham.

2. Roll Call:

Present – Members Gardner, Graham, Horowitz, Kellogg, O'Dea, Paluck and Thompson.

Absent – Members Sellers and Simoff.

Board Professionals present: Ms. Wolfe and Mr. Szabo

3. Minutes: None.

4. Communications: The following were distributed to and/or discussed by the Board:

A. 9/24/19 Referred Ordinance #2019-1819 for P.B. D26 review (see New Business).

B. 9/16/19 Environmental Commission comments on Quimby Village RFP & Common Ground Planning-Zoning Study (re #8B).

C. The N.J. Planner, July/August 2019, VOL. 80, No.4.

5. Business of visitors not related to agenda: None.

6. Old Business: None.

7. New Business:

A. D26 Master Plan consistency review of introduced Ordinance #19-1819 prohibiting retail electronic smoking device establishments and vape shops.

Mr. Szabo clarified that the proposed ordinance does not entirely prevent the sale of vaping devices only retail establishments with such products as their primary or sole purpose. He said his take on the ordinance is neutral because the use wasn't contemplated when the land use ordinance was written. The Board discussed the definition of vaping and felt it should be defined in the ordinance. The terms electronic smoking devices or e-cigarettes should be limited to solely one of them or both terms together in all instances where used in the ordinance. The Board also recommended the following text revisions:

Within the first Whereas, after the words "...use of electronic smoking devices" add in parentheses the word "vaping", i.e. *"...use of electronic smoking devices ("vaping") issued in 2016..."*

In the fifth Whereas, the Board believes the word "an" to be in error and needs changed to "any".

In the fourth paragraph under subsection 12-23.16 d., after the word "product" delete the words "containing nicotine"

Draft resolution #2019-13, finding the proposed ordinance not inconsistent with the master plan, was prepared by Mr. Warner's office and provided to the Board. The Board revised the ending of the resolution's first Whereas to read "...and vape shops in any zone district in the Borough; and".

A motion finding the proposed ordinance not inconsistent with the master plan, forwarding the Board's additional recommendation to Council and adopting Planning Board resolution #2019-13 as amended was made by Mr. O'Dea.

Second: Ms. Thompson.

Roll call vote:

All in favor: Gardner, Graham, Horowitz, Kellogg, O'Dea, Paluck, and Thompson.

Those opposed: None.

B. Review of downtown planning /zoning study prepared by Common Ground.

Mr. Szabo stated that the zoning study and proposed ordinance prepared by Common Ground that was referred by the Council is for pre-introduction review and not master plan consistency review. The proposed ordinance changes would require master plan amendments and public hearings prior to enactment. The most expeditious method would be to do a new master plan reexamination with an attached land use element. The MLUL notice requirements for zone changes, which can be quite onerous, are exempted when related to master plan reexaminations. The substantive changes being proposed warrant preparing a short report that recommends amending the land use element to reflect the proposed zoning changes and concurrently adopting an amended land use element. Mr. Szabo suggested a methodology for reviewing the package of ordinance changes that would necessarily result from the Common Ground study recommendations. To incorporate the recommended commercial districts design standards into the Land Use Ordinance, conflicts and inconsistencies with the current zoning regulations will need to be identified. It will also be important to look at how the ordinance works, i.e., what's a variance, what's a waiver, what's a design standard. What will be the requirements for needing only a zoning permit versus needing Board approval, such as for a change of use. The proposed design standards need to be vetted. Are they realistic? Do they create too many nonconformities for existing properties? The new ordinance needs to be clear to all users. Mr. Szabo explained what constitutes an existing nonconforming use. He also explained that the study proposes different subzones within the CBD that reflect the different characteristics of the various areas of town as one moves through them. He will put the study that's before the Board into draft ordinance form and also prepare a comparative summary of existing vs proposed regulations.

Mr. O'Dea stressed the importance of striking the right balance with regard to parking requirements. Mr. Szabo feels the Borough's current parking requirements are too demanding. There needs to be a balance between parking and landscaping. It is possible to have a zero parking requirement if metered spaces are available that will create turnover. Over 40 spaces have been opened up in the Amerman lot. Mr. Horowitz said he created for his own use a section by section comparison of existing vs proposed zoning that he said he would provide to Mr. Szabo. Ms. Kellogg said she also marked up a downtown map with zoning comparisons that she will circulate. Mr. Szabo said he would prepare an analysis of the proposed changes for the Board to discuss at the regular October meeting.

The Board reviewed and commented on the 9/23/19 revised draft of the sign standards proposed by Common Ground. Mr. Horowitz stated that there is a more current version of this draft, which he will further update with tonight's comments and then distribute. Ultimately, comments and corrections will be incorporated into a draft sign ordinance that Mr. Szabo will compose for the Board's review. Board comments included the following:

Section a - General Sign Provisions: **a5)** include laser lighting; **a7)** it is unclear why silhouette signs are prohibited; **a10)** signs over rights-of-way should require relevant governing body authorization; **a13)** increase driveway signs from one to two S.F.; **a16)** delete limitation to only 3-color signs; **a17)** may be unenforceable, but do not remove.

Section b - Temporary Signs: **b1 (a)~(f)** for commercial properties only the buildings' directory or master signs should indicate vacancies; how do other towns regulate real estate signs; a time limit on real estate signs may be unenforceable; **b2)** and **b5)** seem to overlap; **b5(b)** correct "great" to "grade"; **b7)** needs better enforcement.

Section c - Signs in the Residential Zone District: no changes.

Section d - Signs in the Downtown District: **d2(c)(3)** correct to read that the required set back shall be from the *lot line of* the primary or secondary street lot line; **d2(d)** maybe limit the size based on the size of the property or its frontage; **d2(d)(3)** add a minimum street frontage requirement of 100 linear feet; **d2(e)(1)** correct typo "2sides"; **d2(e)(2)** change "may" to "shall" and end of sentence to read "...with appearance similar to wood or metal; **d2(f)(3)** change "may" to "shall".

The Board reviewed and commented on the draft Conditional Use standards proposed by Common Ground. The Board generally agreed with the entire draft except that the mandatory closing time for outdoor dining on Friday and Saturday nights should be 11:00 pm instead of 10:00.

C. Review of 9/26/19 Bills List for Payment

A motion to pay invoices in the amount of \$1,187.00 was made by Ms. Thompson and seconded by Mr. O'Dea.

Voice vote:

All members voted in the affirmative.

8. Evaluation Committee: None.

9. Subdivision & Site Plan Review Committee: None.

10. Business of Visitors, Second Opportunity: None.

11. Executive Session: Matters of ongoing and/or potential litigation.

Motion to close the public meeting and reconvene in executive session at 9:56 pm: Ms. Thompson.

Second Ms. Gardner.

Voice 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.

Motion to close the executive session and reopen the public meeting at 9:57pm: Ms. Paluck.
Second: Ms. Thompson.

Voice vote:

All members voted in the affirmative.

12. Emergent Matters: Ms. Kellogg reminded the Board of the need to discuss at a future meeting the addition of a checklist requirement for the Fire Chief's sign off on site plans and also discuss water companies requirement for hot boxes in front yards, like that which appeared on the Conti project site, and how best to require screening.

13. Adjournment: Chairman Graham adjourned the meeting at 10:00 pm.

Respectfully submitted,



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

Key words: ordinance-vape-shop-sign- master-plan-sign-conditional-dining-outdoor