

**PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – March 12, 2020
PUBLIC MEETING**

- 1. Statement of Adequate Meeting Notice:** Read by Chairman Graham.
- 2. Oath of Office:** Class II – E.C. Member: Graham Macmillan, (*same as E.C. term or 1 yr.*) – Administered by Board Member Terry Thompson, Esq.
- 3. Roll Call:**

Present – Members Gardner (by phone), Graham, Horowitz, Macmillan, McQueen (by phone), Paluck, Simoff and Thompson.
Absent – Ms. Kellogg.
Board Professionals present: Mr. Szabo.
Also present: Downtown redevelopment subcommittee member, Sam Maddaluna.
- 4. Minutes:** Review of 2/13/20 draft meeting minutes.

Upon review; motion to approve the minutes as presented: Mr. Simoff. Second: Ms. Paluck.
Voice vote:
All eligible members voted in the affirmative.
- 5. Communications:** The following were distributed, acknowledged and/or discussed by the Board:
 - A. 2/14/20 F. Zelle, Esq. letter re Kane minor subdivision extension request. (see #7A)
 - B. 2/26/20 Ferriero Engineering notice of NJDEP freshwater permit application.
 - C. 3/3/20 J. Szabo, Jr., P.P. Draft Downtown Zoning Ordinance transmittal memo. (see #8)
 - D. 3/4/20 J. Szabo, Jr., P.P. revised draft Sign Ordinance transmittal email. (see #7B)
- 6. Business of visitors not related to agenda:** None.
- 7. Old Business:**
 - A. Request for Filing Extension #653E KANE – Minor subdivision w/ variances; 74 Ballantine Rd., B:17 L:38, Zone: R-1; Approved 5/23/19, Memorialized 6/27/19; Discussed 2/13/20.

As requested by the Board at its 2/13/20 meeting, the applicant's attorney, Frederick Zelle, provided a letter, dated 2/14/20, explaining the reasons a filing extension became necessary for this approved subdivision. A draft resolution in favor of granting the requested extension had been prepared by the Board Attorney's office. Mr. Mottola read the letter to the Board and into the record because although Mr. Zelle's 2/14 letter had been emailed to the Board prior to the meeting, hard copies of his 2/12 letter had been instead provided for the meeting. Upon consideration, the Board found the requested extension to be justifiable.

A motion to grant the requested 30 day subdivision filing extension was made by Ms. Thompson and seconded by Mr. Simoff.

Roll call vote:
All members voted in the affirmative.

B. Review of revised draft Sign Ordinance by John P. Szabo, Jr. PP.

The Board did not review the draft sign ordinance in favor of Mr. Horowitz coordinating other Board members comments with Mr. Szabo in time for the next meeting.

8. New Business: Review of draft Downtown Zoning Ordinance by John P. Szabo, Jr. PP.

The draft ordinance before the Board was prepared by Mr. Szabo from the Common Ground document commissioned by and presented to the Council. He made no changes to the standards proposed by Common Ground. His changes are mostly organizational to put the ordinance into codified form as it would appear to end users. It is numbered to coincide with the existing zoning ordinance and is organized into three parts for better flow and enforcement purposes: Administrative, Zone Standards and Design Standards. He inserted comments in red at points needing attention and discussion by the Board, such as the introduction of multifamily housing into the downtown in a more formalized manner. He said he received a comparative analysis of the existing and proposed zoning from Mr. Horowitz which he will comment on, put into presentation form and deliver to the Board at a later date. Mr. Szabo has also prepared initial drafts of the reexamination and master plan land use element amendments he believes need to accompany the zoning changes.

Definitions relative to the downtown zoning were placed at the beginning of the downtown section of the zoning ordinance rather than combining them with the existing definitions at the beginning of the entire land use ordinance (LDO). The proximity makes it easier for end users. He agreed with Mr. Simoff that a statement should be added to clarify that the definitions within the downtown zoning section supersede other definitions in the LDO. Mr. Szabo commenced with the Board a review of his draft. The Board's comments will be added to and identified by underlined text in a revised draft. Substantive comments by the Board, not including wordsmithing, included the following:

Add a conflict statement at the beginning of the definitions per Mr. Simoff's suggestion. Capitalization and spacing should be made consistent throughout the document. Ms. Thompson will send Mr. Szabo her markup with those corrections. Mr. Szabo will confirm that the new definitions are consistent with those in the MLUL. Mr. Szabo will draft a hierarchy of streets list to clarify the definitions of *STEET, PRIMARY* and *STREET, SECONDARY*. Use Mr. Szabo's suggested language for the definition of *New Development*. Change the imperative *must* to *shall* throughout. In 12-12.3d)5 change *retained* to *repaired to code*. The Board felt the zoning officer should be made aware of the extent to which he has discretion to review and approve applications, especially those involving compliance with new architectural standards. Mr. Szabo will return with recommendations that expand upon and better define the list of permitted uses for clarity. Density limits have been omitted from the permitted residential uses, which instead rely on performance based constraints. Redevelopment plans currently being considered should dovetail with these new zoning regulations, which are derived from the Common Ground standards. The zoning officer should be brought into the loop regarding review and approval. *Drive-throughs for Financial Institutions* should be deleted in the *Building Articulation* section 12-12.19 b)10.iii. The limitation on drive-throughs is to increase walkability. The Board agreed that *Sidewalk Sales* should not be listed as a conditional use but separately listed as section 12-12.8 per Mr. Szabo's recommendation. This section should be referenced as a permitted use in all of the downtown sub-district sections as applicable. The clear sidewalk area in front of merchandise displayed outdoors should be increased to 48" to comply with the ADA. Allow outdoor dining to midnight only on Thursdays, Fridays and

Saturdays, with entertainment having to stop every night at 10:00 pm. The Board decided not to keep Outdoor Dining as a conditional use. Mr. Szabo opined that prohibited uses should not need to be listed when the ordinance states that unless a use is specifically permitted it is prohibited. The Board chose to add the word "specifically" to section 12-12.10's title, *Prohibited Uses*. Mr. Szabo will craft language that is more flexible for 12-12.10.b) regarding outdoor bulk storage vs seasonal displays of merchandise, which the Board felt should be limited to the fronts of buildings. An exception for propane tanks was requested under 12-12.10.d). Remove the prefix *Coin-operated* from vending machines in 12-12.10.e). Mr. Szabo will better define 12-12.10.g) *Dependent living facilities*. Reference the adopted borough ordinance in 12-12.10.k) *Marijuana dispensaries*. Mr. Szabo will expand the definition of Motels to include the standard language, *transient housing with individual doors exposed outside*.

9. Board Reviews/Public Hearings/Pending Applications: The Board acknowledged and/or commented on the following pending matters:
Application #655 STIDWORTHY – Preliminary and Final Major Subdivision, 42 Garibaldi Street, B:112, L:11 and 9 Liberty Road, B:112, L:11.01; Rec'd 10/11/19; Deemed incomplete 11/25 19; Supplemental documents rec'd 2/7/20; Scheduled to be heard 3/26/20.

10. Evaluation Committee Report: None.

11. Subdivision & Site Plan Review Committee Report: None.

12. Business of Visitors, Second Opportunity: None.

13. Executive Session: None.

14. Emergent Matters: None.

15. Adjournment: Chairman Graham adjourned the meeting at 10:38 pm.

Respectfully submitted,



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

Keywords: oath-Macmillan-downtown-zoning-ordinance-Kane-subdivision-extension-Zelley.