

BOROUGH OF RARITAN
Planning Board Regular Meeting
MINUTES
Wednesday, May 25, 2016

CALL TO ORDER

Chairman Miller called the meeting to order at 7:30 p.m. in the Raritan Municipal Building. He read the Open Public Meetings statement as follows: This meeting is called pursuant to the provisions of the Open Public Meetings Act. Notice of this meeting was published in the Courier News on January 30, 2016. In addition, copies of the notices were posted on the bulletin board in the Municipal Building, on the Raritan Borough website and filed in the Office of the Borough Clerk. They were also sent to those people who have requested and paid the cost for mailing same. Notices on the bulletin board have remained continuously posted. Proper Notice having been given, the Board Secretary is directed to include this statement in the Minutes of this meeting.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Chairman R. Miller
Vice Chairman Brown
Mr. R. Zack
Ms. D. Thomas
Mr. E. Wilde
Mr. W. Cunningham
Mr. D. Fortkus
Mr. N. Carra

Also Present: S. Rubright, Esq.
S. Schrek, VCEA
L. Gara, Zoning/Construction

Absent: Mayor McMullin
Councilman Bray
Mr. M. DiCicco
Mr. J. Gausz
Mr. J. Krajewski

APPROVAL OF MEETING MINUTES

- April 27, 2016 Meeting Minutes

The correct address for the First Aid Squad Building was noted as 57 LaGrange Street. Mr. Brown pointed out that the addresses for both lots are 57 and 59 (abandoned factory) LaGrange Street.

Motion by Mr. Brown, **seconded** by Ms. Thomas to approve the Minutes of April 27, as amended.

ROLL CALL

Aye: *Chairman Miller, Mr. Brown, Mr. Zack, Ms. Thomas, Mr. Wilde, Mr. Cunningham, Mr. Fortkus, Mr. Carra*

Nay:

Abstain:

ENGINEERING & ZONING REPORTS

Mr. Gara advised that the building on Route 202 had been razed and that the garage had been removed on Anderson Street. He related that he understood the owner would be making application for a new shopping center at some point. He confirmed that the brick house (Second Ave./Anderson Street) would come down as well if the plan comes to fruition.

Mr. Gara advised that the property behind the post office was close to receiving a construction permit. Mr. Schrek confirmed that a new performance guarantee was in place as a result of a change in ownership.

TRC MEETING UPDATE

Mr. Schrek advised that there were no TRC meetings scheduled as there was no new business for the Committee to conduct.

MISCELLANEOUS

Chairman Miller related that the ordinance amendment exempting the Borough from submission of Planning Board applications/fees passed as originally presented, without the courtesy review/notice requirement that the Board had recommended.

RESOLUTION PB-2016-09

Confirming by preliminary investigation that the Board recommends that the Raritan Borough Council designate Block 81, Lots 1, 2 ,3, 3.01, 4, 5, 6.01, 6.02, 6.03, 7, 8, 9, 9.01 and 10 as an Area in Need of Redevelopment.

The Board Attorney provided a recap of the events preceding and during the special hearing regarding the designation. She advised that the resolution sets forth facts and findings from the hearing and includes the Board's recommendation that Block 81 be designated as an Area in Need of Redevelopment.

Motion by Mr. Zack, **seconded** by Chairman Miller to adopt resolution # PB-2016-09 recommending the designation of Block 81 as an Area in Need of Redevelopment.

ROLL CALL

Aye: Chairman Miller, Mr. Zack
Nay:
Abstain:

There was a discussion about the timeline for action post resolution as it related to Council's ability to take formal action with respect to the designation.

OLD BUSINESS

Viktor & Ruta Buchholz (Block 2, Lot 21 – 1126 Route 202)

Appeal of "d" variance and any other associated relief for replacement of professional office with single family residential use contrary to zoning.

Viktor and Ruta Buchholz appeared with a request for a one month continuation due to a miscommunication with their Planner. The Board concurred after a brief discussion that the application could be carried one additional month without further Notice. The applicant consented to granting an extension to act until June 22, 2016.

Motion by Ms. Thomas, **seconded** by Mr. Cunningham to carry the application until June 22, 2016 at 7pm without further notice.

ROLL CALL

Aye: Chairman Miller, Mr. Brown, Mr. Zack, Ms. Thomas, Mr. Wilde, Mr. Cunningham, Mr. Fortkus, Mr. Carra

Nay:

Abstain:

NEW BUSINESS

**MadVapes at Raritan Crossing Retail Shopping Center (Applicant/Owner – Raritan Crossing LLC)
Block 116.01, Lots 25, 26.01, 27 & 27.01 & Block 112, Lot 3 (90 East Somerset Street & Route 206 South)
Site Plan, Use Variance, Bulk Variances and any other associated relief necessary for lease of retail space to tenant, MadVapes.**

Attorney Marcia Zalewski appeared on behalf of the applicant. Prospective tenant and principal of MadVapes, Robert Koch (32 Lehigh Road, Neshanic Station) was sworn in. He described the nature of his business at length. Mr. Koch spoke about the MadVapes store that he currently owns/operates in Green Brook. He provided details about the floor plan, size and hours of operation.

Exhibit A-1 which was identified as a photograph of the Green Brook store was marked into testimony. He indicated that the Raritan store would be set up in a similar fashion and spoke to the procedures for purchasing products. An extensive discussion ensued about minimum age requirements and licensure/regulation of this type of business. Mr. Koch related that while the state had classified the sale of electronic cigarettes under tobacco in 2009, that it was not a regulated industry under state or federal guidelines/FDA so no license was required.

Mr. Koch testified as to the manner in which the electronic liquid is received and dispensed and how the equipment works. Describing it as “pharmaceutical grade,” he spoke to the availability of various nicotine strengths which can be gradually decreased for those using the product as a quitting aid. A discussion ensued about whether nicotine was a regulated substance. Mr. Koch advised that a customer could purchase it online and conceivably mix it themselves. Maximum dispensary levels and absorption rates were discussed as well as product grade and pricing.

In response to a question from the Board Attorney confirming that the fluids were pre-filled but mixed by the store, Mr. Koch testified that the recipe of flavoring is done through the manufacturer and that the fluid he puts the nicotine in is what is actually mixed.

The manner of delivery for product was discussed. In response to a question from the Chairman about other items sold on the premises, Mr. Koch testified that bong and hookahs were not and that they could not be retrofitted for vapor use.

Customer demographics were discussed. Mr. Koch testified that approximately 35% of his customers were between the ages of 40-60. Foot traffic was discussed as well. Mr. Koch testified that upon opening the Green Brook location, he saw approximately 20 customers per day and now (3 years later) sees about 60/day. He offered that there really was no peak time for his consumers.

Staffing levels and training for employees was discussed. Mr. Koch indicated that the number of employees on site is normally two at once.

Exhibit A-2 was identified as a photograph of the exterior of the Green Brook MadVapes location and marked into testimony.

Mr. Koch testified that this client base was local/from the immediate and surrounding communities in response to a question from Mr. Brown. He testified that the majority of his customers were people who wanted to quit smoking/former smokers and he spoke to the success rate with respect to same. In response to a question from Mr. Zack about the presence of a lounge, Mr. Koch testified that there would be no lounge on site.

Prospective FDA regulation was discussed and Mr. Koch explained how he deals with underage customers who attempt to purchase product.

Mr. Schrek explained that the zoning ordinance is silent on vapor stores. A brief discussion ensued as to whether this is a permitted use in the B3 or B2 zones.

Frequency of deliveries was discussed. Mr. Koch testified that he receives deliveries every other day.

The Board Attorney spoke to the question of whether a use variance would be necessary. The idea of substances being mixed on site was discussed again. Mr. Koch clarified that the vaping "juice" is premixed and that he just adds the nicotine with a digitally rated pump. He testified that health department approval was not necessary.

The Chairman opened the floor to public comment. There was none.

Planner, John Chadwick requalified himself before the Board. He explained that the dilemma was whether this use could be interpreted as permitted under the ordinance. He identified the proposed location on the site map as well as the zone boundary, explaining that the store itself falls in the B-3 zone.

Exhibit A-3 was identified as a color rendering of the variance plan dated May 2, 2016 and marked into testimony.

Mr. Chadwick offered that the use fell within the gambit of uses for the commercial zone by virtue of being a small niche, single purpose specialty store with limited hours. He clarified that while the store is located within the B-3 zone that the shopping center itself is in the B-2 zone. He likened the use to an electronic/computer store which there is one of in the B2 zone.

Mr. Chadwick confirmed that the store is 1000 square feet in size and that there would be two employees on site. He offered that the applicant had three years experience with another successful store and that this was an appropriate location for the use. He asserted that a use variance was not necessary as it relates to permitted uses [electronic store specifically] in the B2 zone. In response to a question from the Chairman as to whether the test would be the same for a "head shop," Mr. Chadwick indicated that it would not be since that is a more varied use which he likened to a bar. The Board Attorney clarified that there would be no lounge. Mr. Chadwick offered that the Board could condition the approval as they saw fit.

There was an extensive discussion regarding interpretation of the ordinance. The Board Attorney offered that the Board could make the finding that the use falls within the purview of permitted as presented

barring any change in that use. Mr. Chadwick offered that the Board would make the finding based on the definition of the use and that the boundary lines are consistent with the owner's testimony. The Board Attorney offered that with respect to case law, specific provisions overrule general ones. Mr. Chadwick asserted that in a check of prohibited uses, this one was not addressed. Mr. Schrek offered that his interpretation was that it would be allowed as a specialty shop. He offered that he had no reservations about it.

Jay Troutman of McDonough & Ray requalified himself before the board. He provided testimony on parking with respect to the number of employees, anticipated traffic and length of stay. Calling parking "convenient," he offered that there were 33 spaces within walking distance for this business which has low employee count and no peak time.

The Chairman opened the floor to public comment. There was none.

There was a brief discussion about the current/prior use. Victor Kelly [1250 Route 28, Branchburg] identified himself as one of the owners of the shopping center and advised that the former tenant was D&B Pools.

The Board Attorney indicated that the findings of fact in the resolution would be very specific to include no manufacturing, chemical processing or lounge and that it would be classified as a specialty, owner operated one of a kind shop/service. She offered that the Board could make a determination under the Municipal Land Use Law that this use falls within the gambit of the ordinance [B3 Zone] because it is the retail sale of electronic cigarettes and supplies with no smoking on site and no sales of any other smoking devices. Ms. Zalewski made a distinction between vaping and smoking.

Motion by Mr. Cunningham, **seconded** by Mr. Fortkus to grant the relief requested, as articulated by the Board Attorney.

ROLL CALL

Aye: *Chairman Miller, Mr. Brown, Mr. Zack, Ms. Thomas, Mr. Wilde, Mr. Cunningham, Mr. Fortkus*

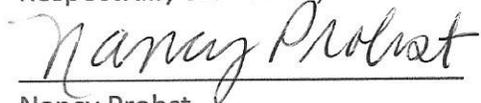
Nay:

Abstain:

ADJOURNMENT

Motion by Mr. Fortkus, **seconded** by Mr. Carra and unanimously carried to adjourn the meeting at 8:49

Respectfully submitted,



Nancy Probst

Planning Board Secretary

APPROVED 06/22/16