

MINUTES
MT. EPHRAIM LAND USE BOARD SPECIAL MEETING

Borough Hall Court Office
121 S Black Horse Pike, Mt. Ephraim, NJ 08031
Monday, December 12, 2022, 7:30pm

The meeting opened with the Pledge of Allegiance to the flag and stated the special meeting was advertised and notices posted in accordance with the “Open Public Records Act.”

Roll Call – Mayor Tovinsky, Commissioner Gies, Michael Schiavo, Steve Eggert, Thomas Maxwell, Robert Carter, Anthony Stagliano, present. Kim Beebe, Gary Prinski, Michael Marrone, Douglas Morgan, Jason Kerns, absent.

New Business

Application for Use Variance – Berger – 508 W Kings Hwy.

Talbot Kramer – the attorney for applicant opens and explains that the owner of the property will not be present for tonight’s meeting, but TJ Cosetta who is the property manager will be presenting the application.

Joe Nardi – this is an application for a use variance, a D variance.

Talbot Kramer – yes that is correct.

Joe Nardi – I just want to point out so you are aware and we have it on record out of the 7 members present, 2 of them are part of the governing body and will not be able to vote, so the vote would need to be unanimous and I am sure as you may have experienced in the past its pointed out to the applicants so they can make a decision as to whether they want to proceed or perhaps wait for a larger number of members to be present.

Talbot Kramer – I am aware now; can I just have a minute to confirm with my clients.

Joe Nardi – yes, take your time.

Talbot Kramer – we have decided we will proceed.

Joe Nardi – ok good, so if you have anything else to say to open with and then we will swear everyone in.

Talbot Kramer – This is a property that was apparently residential at some point in the very distant future, it was a daycare center for the most recent use, the proposal is to turn it into a single-family residential use. My client has no plans to make any significant changes, obviously it needs to be cleaned up and painted, etc. but there will be no exterior structural changes, on the interior it’s all basically getting it up to code from it to be

appealing. In terms of impact on the community I summarize that there would have been some impact with the traffic when it was a daycare. As the proposal for it to become residential there will become less of an impact with the traffic in the community. Also, while the building is the Central Business District this use is not something unusual in the area. The property to the immediate left if you're looking at it is a residential use, next to it is a convenience store, if it's allowed to go forward, we propose to clean up the property made to look more attractive and have more curb appeal, we believe overall this will be a beneficial use of this property at this time.

Joe Nardi – members of the board, you heard Mr. Kramer sort of suggest what the benefits are so one of your responsibilities is to determine if you feel that granting a use variance the purpose of the zoning ordinance for the borough has been satisfied. So now there needs to be benefits, what's called positive criteria that out way any negative or any detrimental effects on the zoning ordinance, that is why Mr. Kramer mentioned that while it is in the business district or commercial district and is designated as such that there may be good reason for the use of the property for residential as opposed to commercial, and Mr. Kramer please interrupt me if you feel that I am not stating it correctly I just want to make sure that everyone is aware of what the responsibility is, and the burden is on the applicant. Also, I just want to make aware Mr. Kramer you are not filing this as a hardship case.

Talbot Kramer – no we are not.

Joe Nardi – Ok just wanted to make that clear.

Talbot Kramer – just one more thing, I went back to the 2006 study, where they looked at the whole area and the problems with the area and what struck me was while there were problems with various lots and blocks along Kings Hwy the convenience store was identified as one of the properties, but this lot that we are here on had no problems.

Joe Nardi – swears in witness, Thomas Copsetta – 161 Dorado Avenue, Sewell, NJ 08080.

Talbot Kramer – what is your role with Mr. Berger.

Thomas Copsetta – he is from New York, so I manage all his properties in New Jersey.

Joe Nardi – you mean Mr. Berger.

Thomas Copsetta – yes, that is correct.

Joe Nardi – does he own this property individually or an entity?

Talbot Kramer – it's in his name individually.

Joe Nardi – ok.

Thomas Copsetta – as far as the property goes, it already is set up like a house, so there really is not many changes that need to be done. We basically just need to clean it up a lot more then it will be ready to go. We did try and rent it as commercial property and we had no luck I think with the no parking, it was very hard to put business in there.

Robert Carter - how long was it on the market as a rental since the daycare left.

Thomas Copsetta – I would need to look it up, I don't know, possibly a year maybe a little longer, we did have some daycares interested out to bring it up to code for that would be extensive and I don't even think it would be possible, I just don't see any type of commercial use that would work, the driveway maybe could hold three cars which would be perfect for a residential use.

Talbot Kramer – how wide is the driveway?

Thomas Copsetta – it is only wide enough for 1 car, but it is long enough, I am sure you all know the area, but there are all the houses around there on our property.

Steve Eggert – is the intention for property to be rented or sell it.

Thomas Copsetta – a rental.

Commissioner Gies – how many units will that be?

Thomas Copsetta – it will be a single-family home; I mean there is an upstairs, but we would make it be a single family.

Anthony Stagliano – does Mr. Berger own any other properties in the area, does he intend to keep it, rent it, and then possibly get rid of it.

Thomas Copsetta – his intentions are to keep it as a rental, we both personally do a lot of rentals but, because it's a rental people do always get afraid of that, but we have had good luck with our rentals.

Anthony Stagliano – my concern was you find a tenant and you leave it alone and they have no stake in the property and then the exterior property gets run down and no one takes care of it.

Thomas Copsetta – we do take care of our rentals; we don't cut corners.

Steve Eggert – there is just this one house that would turn residential in this business area.

Anthony Stagliano – there is one on N. Oak Avenue and then next to the convenience store and that house.

Steve Eggert – the only thing we would have been 1 residential spot in the middle of all commercial.

Robert Carter – any other questions, comments from members of the board, hearing none I will open it up to the public, seeing and hearing none, I will close this portion. Do we have a motion?

Joe Nardi – do you have anything else to add.

Talbot Kramer – no. but there was a question presented about impervious coverage.

Joe Nardi – yes, you presented the documents and was fine and met the standards and was satisfactory. So now members of the board, this is a pretty straight forward application, which in terms of what is being requested, the applicant wants to convert a presently existing and zoned commercial property to a residential property as I indicated on the outset the land use law, municipal land use law required when an application such as this is being submitted and considered by a board and we are not dealing with a hardship, like the shape of the property doesn't allow it to be developed as zoned, what it is, the focus has to be on the weighing from the positive criteria and the negative criteria so that the positive would be that everything which has been promoted to testified to or presented to the board for your consideration that supports the purpose of the zoning and particularly the site is suited for the use and whatever you find being part of the positive criteria has to out weigh the negative criteria which means that it will not impair or substantially impair the intent or purpose of the zoning plan and the zoning ordinance so putting that in plain terms the area has been designated for commercial use so the question is, is the information which has been provided sufficient to deviate from that without impairing the intent of the ordinance at the time it was adopted, again I would remind if there is a motion to either approve or deny that the Mayor and Commissioner Gies can not vote on the application.

Anthony Stagliano – Joe, just to be clear you did say this application does not currently meet the plan.

Joe Nardi - no, I said this is a commercial district, so the intention was for business use so that the question you would have to consider, and resolve is whether the information presented to you advances the zoning ordinance and our weighs any potential negative or impairment of the intent for which the ordinance was adopted. So basically, the good outweighs the bad.

Mayor Tovinsky – well this seems better, doing this than letting the building sit there vacant.

Joe Nardi – no question there are benefits to not having vacant properties but one thing that the case law states is that economic benefit of either the application or the borough should not be a factor.

Steve Eggert – could someone later come back in and convert back to commercial.

Joe Nardi - sure they could.

Thomas Maxwell – but if we approve of this then everyone will want to come in and do this, this was why we did this study. We didn't approve the barber shop to convert.

Tara Weiss – yes, we did.

Thomas Maxwell – well I shot that one down as well.

Steve Eggert made a motion to approve the application, the motion was seconded by Robert Carter.

Roll Call: Steve Eggert, Robert Carter, yes. Thomas Maxwell, Anthony Stagliano, no. Michael Schiavo, abstained from the vote. Mayor Tovinsky and Commissioner Gies could not vote. **The vote was defeated, application was denied.**

Professional Comments – Discussion on implanting the Cannabis Ordinance.

Greg Fusco – members of the board, what happened last time we were together, was I had provided a map for everyone to look at all along the Black Horse Pike that we felt could be used or be considered Cannabis Retail only. The state allows for 6 different licenses; you can grow it, you can manufacture it, you can wholesale it, you can distribute it, you can sell it and you can deliver it, and it appears that Mt. Ephraim only wants to sell it. There is also a provision in the law that everyone passed in New Jersey that allows and encourages what they call microbusinesses, and what a microbusiness is, it allows you to do any one of those cannabis activities in a building that provides 2500 square foot of area to grow, or if you are selling or making, or distributing no more than a 1000lbs a month. So, this allows the smaller communities like Mt. Ephraim to participate in the whole cannabis limelight so to speak. I would imagine, to put it in simple terms, if they didn't allow microbusinesses you would have like cannabis Home Depots. The law allows these microbusiness which helps the smaller communities operate, so when we talked a few months ago, we all agreed that the best place to do this would be along the Black Horse Pike, so what I did was I went up and down the pike and looked at all the properties and also looked at all the uses, we have a number of churches, we have schools, we have recreation areas along the pike and the board may or may not want to be sensitive of that fact, keeping in mind that up until a year ago marijuana was a drug, everyone in this office, we were all brainwashed as a kid that it will stunt your growth, fog your brain, etc. So, 60 years later we all woke up and realized it was a lie because it's now legal. So, if it were a drug last year and not this year, do we want to take the sale of cannabis outside the 1000ft drug free school zone, from parks, municipal buildings, and schools. I tried to be conscious of that and on the map that you all have, what I did was provide at least a 250ft buffer to the churches and the schools and recreation facilities, and the municipality, we don't have to but I wanted to show you what it looked like, all

the red areas on the map before you are all commercial properties that could support a microbusiness and we crossed etched in black the commercial properties that would not be permitted if you wanted a buffer. Again, this is just a thought, it's no longer a drug so it's no longer necessary. Some people feel uncomfortable having a liquor store across the street from a park or from a church, because of that some municipalities don't allow liquor stores at all or have a buffer. The other thing that I think you should consider and or maybe this should not be a consideration at all but based on what we seen to date somebody operating a cannabis business they have been very crowded, and when they go and purchase there cannabis they have to wait in a line, and when you are waiting in line the line wraps around the parking lot, in our particular case we don't have a lot of parking lots along the pike so if we have an establishment on a corner street along the Black Horse Pike and we do get a line, the line will go around the corner and down in front of a residential property and in my opinion personally I don't believe that is right, I believe if a business is doing that well and people have the ability to walk and park elsewhere because there is no parking on site and standing in line to wait and buy something they should not be waiting in front of someone's house. I think and what I put in my correspondences you should consider 100ft buffer between the establishments and a residential home, that may not be necessary, if they started issuing licensing which I believe they did like a week or two ago, so the more licenses we get, it's just like liquor stores we may never encounter that issue with lines, but as the professional planner trying to steer you in the right direction, its my job to explain all this to you so you can make the decision. Other then that the sites along the park most of them are 2500 square feet, they all don't have the required parking, I honestly feel that we should do a parking requirement of 6 spaces per 1000 square feet, that will give a site a good 18 parking spaces, you are also going to need parking for employees, this way no one is parking on the street and walking up to the pike and buying it and walking back to the car. They would normally have to comply with all the other site plan requirements if they came onto the Land Use Board, such as lighting, landscape buffering, things like that, and quite frankly that should be the case for anyone. After reviewing everything, I also don't feel that a drive-thru cannabis store should be permitted, I feel that is should be prohibited, its not like you are going to buy a hamburger, I'm suggesting that you not permit it again these are only my suggestions, if you chose to permit it the site would need to be even bigger.

Steve Eggert – do we have to permit it?

Greg Fusco – no you do not need to permit a drive-thru.

Steve Eggert – what is Haddonfield doing?

Joe Nardi – I don't even know if they have done this.

Greg Fusco – they don't even allow liquor.

Steve Eggert – exactly, if I was a resident near there and they came in stating they wanted to put a pot place in, they are going to come in here and shoot us first for approving this.

Greg Fusco – no they wont they will shoot the Governor first.

Steve Eggert – we can say we don't want this permitted in our town, right.

Joe Nardi – well the ordinance already says that, when the law first passed every municipality had about a year to make a choice.

Steve Eggert – the municipality said no at that time.

Mayor Tovinsky – no we did not say no, we were middle ground, right George.

Commissioner Gies – we said no, because we could change it and if we didn't vote we would be completely out.

Steve Eggert – so we are deciding where to put it before we decide if we allow this.

Joe Nardi – that was the whole purpose of this.

Commissioner Gies – whatever comes out of this meeting, say we agree with a certain area, then it goes back to us the Governing Body for us to discuss at Caucus in January and February.

Steve Eggert – I misunderstood; I thought that part was already done.

Commissioner Gies – well technically it is.

Robert Carter – we are just recommending where the zoning should allow it, and that if any of these properties were proposed for the retail pot business, they would still need to come in for site plan approval.

Steve Eggert – but if we say it's not permitted then they just don't come into us.

Joe Nardi – well then, the existing ordinance would not change. As the Commissioner stated the reason why it was done back then was so then they would have more time to study all of this, because if you didn't pass it, then it could just be free for all.

Steve Eggert – right.

Joe Nardi – also, you would be prohibited for 5 years purposing restriction.

Anthony Stagliano – does the act or the regulation stipulate what the buffer zone must be or is it arbitrary.

Commissioner Gies – I believe it states how many feet from churches and schools and all.

Greg Fusco – no that is just a suggestion that I am making, you don't have to do the buffer at all.

Joe Nardi – you could be right next door.

Greg Fusco – exactly, you could be right next door.

Commissioner Gies – I thought you had to be a certain amount of feet away.

Joe Nardi – no that is all zoning issues. Now most people that are doing this will have a buffer in place.

Commissioner Gies – exactly, common sense to me would be you would not want it next to a school.

Joe Nardi – I think someone told me that the vote on having a cannabis store in town passed by like 87%.

Commissioner Gies – yes that is correct.

Joe Nardi – that was people in favor of it.

Commissioner Gies – the guy who approached Tara and Borough Clerk, is supposed to have his license, he apparently has 4 towns that are interested in it, he already has one that sells medical marijuana, and with that now he can have a retail license.

Mayor Tovinsky - we did talk, when me and George went to the League, we talked to the cannabis people, they stated he don't have 6 licenses no one has them yet.

Commissioner Gies – it was a misunderstanding, what happened was that he has all these towns that are approaching him, and he was in this office I believe last week, he is running out of time.

Thomas Maxwell – is someone already interested in coming in.

Commissioner Gies – yes, he would like his business to come to Mt. Ephraim.

Mayor Tovinsky – maybe he should put some feelers out there to the residents to see how they feel.

Steve Eggert – you put it down by the Exxon, I wouldn't care. If you put it near me, I would care. So, it all depends on the people you ask.

Anthony Stagliano – well we also must take into consideration that we have limited buildings that are vacant on the Black Horse Pike.

Mayor Tovinsky – well they may be able to come in and buy someone out.

Greg Fusco – the other issue, is when they come in, if they need 18 parking spaces and they only have 15 don't grant them the variance, don't feel bad for them. They can find another site to comply.

Steve Eggert – a 1000 square foot building would only need 6 spaces; I mean there are some small places like that.

Greg Fusco – right but they would need to have spaces for employees as well.

Anthony Stagliano – so whomever comes in, they will not be growing it on site.

Greg Fusco – they are just going to be a retail store.

Anthony Stagliano – the one in Bellmawr, do they grow there?

Tara Weiss – yes, they grow there.

Anthony Stagliano – is that why you smell it the way you do in Bellmawr?

Robert Carter – yes.

Joe Nardi – that has been a big issue, in a lot of places because of the smell.

Tara Weiss – the one in Deptford that opened, if you drive by there you cannot smell it from the outside at all.

Greg Fusco – most places its all sealed so you won't smell it, unless you go into the parking lot and crack it open.

Commissioner Gies – DAC ventilation they have.

Steve Eggert – is there a difference between medical marijuana and marijuana.

Joe Nardi – well yeah, the retail, it's different. They have different licenses.

Greg Fusco – it doesn't matter now, it's all legal.

Commissioner Gies – Barrington is getting a place as well, near the ice cream parlor.

Anthony Stagliano – they have a daycare place right across the street.

Tara Weiss – Barrington has a 100ft buffer from that.

Anthony Stagliano – oh ok.

Joe Nardi – the Commissioners passed a resolution, referring the question to the board.

Thomas Copsetta – I just have two questions if I can ask them.

Joe Nardi – go ahead.

Thomas Copsetta – the top can be residential.

Joe Nardi – yes.

Thomas Copsetta – so we can still rent that portion out.

Joe Nardi – yes that is correct.

Robert Carter - before we discuss anything else, let's have Joe finish what he was going to say.

Joe Nardi – So Anthony asked what the purpose is here or what's the goal, this discussion is good, so what does the board have to do tonight because the Commissioners have passed a resolution asking us to study this and look at everything, discuss it and then make recommendations, that will either accept or reject retail cannabis store. So, I think what the objective is, what everyone will do if they are all in favor, we would prepare a report by letter or resolution, but presumably by letter because we want to get this done sooner rather than later and set some ground rules. Greg has already provided us with information about these properties, so we would need some type of general description as to where their locations would be, probably by block and lot, run the distance along the Black Horse Pike and some other requirements. One of the questions I had for Greg was, if 2500 square foot of building minimum that would require 18 parking spaces and then another 6 for employees.

Greg Fusco – well it would depend on how many employees they have.

Joe Nardi – ok, but your recommendation is with a building at 2500 square feet, they would need about 24 parking spots.

Greg Fusco – yes that is correct.

Joe Nardi – so now the question is how big the parking lot is and will it allow 24 spots.

Mayor Tovinsky – the other question to is, we have given variances to people for not meeting parking requirements before, so what happens if they decide to look back and see that we have given breaks to other people before.

Joe Nardi – that could be, but what we want to do is make sure that the ordinance that will be passed isn't going to make someone need to come in for a variance for that.

Greg Fusco – it's real there is a site on the Black Horse Pike that it can work.

Mayor Tovinsky – I am just saying we may get some slack for this since we have cut breaks for a lot of other places.

Joe Nardi – so I think what we really want to do is make sure that there are enough 2500 square foot buildings to keep the market.

Mayor Tovinsky – well they could buy more than one building and put it together.

Joe Nardi – exactly.

Mayor Tovinsky – does the bank still own that big area.

Tara Weiss – yeah.

Joe Nardi – so it sounds like there are enough spots.

Commissioner Gies – my main thing is, everything is getting expensive now and these days, the bottom line is the Municipality will get 2% of total sales on whatever they sell.

Steve Eggert – we can't move on that we don't care if it will bring in revenue.

Commissioner Gies – commercial properties, you want commercial properties coming into town. Lidl store being there will make properties more valuable in town.

Steve Eggert – so you say we get a percentage of what they sell, where does that go, to the school or like what.

Commissioner Gies – No, it is all split out.

Anthony Stagliano – so what does the Borough have to act on.

Joe Nardi – we can have an interim report, and the engineer can put it together, state that the board is still considering all of this. We also need to really emphasize this is ultimately the Commissioners decision. The Commissioners have asked the board whether the board agrees, they have asked if this is adopted, what would need to be done, what requirements, etc. when someone comes before the board.

Robert Carter – to add to what Joe is saying this map was discussed and it reflects the marijuana sub-committees' recommendations.

Joe Nardi – while all your questions and concerns are valid, it is up to the Commissioners to decide if people will agree if they won't, will they like this idea or won't they.

Greg Fusco – just like my recommendations you may not all agree with, the same goes with the Commissioners they may not agree with whatever you say either.

Joe Nardi – that is a good point to make, what comes out of this body is not binding, they are just recommendations.

Anthony Stagliano – what are the other towns that are similar doing.

Greg Fusco – they want the 2% in the worst way.

Robert Carter – are we going to make a motion.

Anthony Stagliano – the only issue I see is with that 250ft buffer from schools, churches, recreation area, you're really taking away a lot of places, some which may have the correct requirements that we are recommending.

Greg Fusco – the buildings are more than 2500 square foot. We are looking at the entire property.

Anthony Stagliano – so we must make a motion.

Motion to approve the designation of a zone on the Black Horse Pike that would be suitable for zoning of a cannabis retail operation, and it will comply with all other requirements under the present code.

Commissioner Gies made a motion, 2nd by Thomas Maxwell.

Roll Call – Mayor Tovinsky, Commissioner Gies, Michael Schiavo, Steve Eggert, Thomas Maxwell, Robert Carter, all voting yes.

Motion to adjourn meeting, all voting in favor.