

Florence, New Jersey 08518-2323
February 27, 2024

The regular meeting of the Florence Township Planning Board was held in-person and virtually via Zoom on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Pagano called the meeting to order at 7:32 p.m. followed by a salute to the flag.

Secretary Fratinardo read the following statement: “I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex.”

Upon roll call the following members were found to be present:

Councilman John Fratinardo	Fred Gabriele
Bernard Isaacson	Mayor Kristan Marter
Carl Mattson	Chairman John Pagano
Kecia Taylor (virtual)	

ABSENT: Newell Kehr, Planner Michelle Taylor (excused)

ALSO PRESENT: Solicitor David Frank
Engineer Hugh Dougherty

RESOLUTIONS

There were no resolutions.

MINUTES

It was the Motion of Mr. Mattson, seconded by Mr. Gabriele to adopt the minutes of the regular meeting held on January 23, 2024. Motion unanimously approved by all members present.

It was the motion of Mr. Mattson, seconded by Mr. Isaacson to adopt the closed session minutes from January 23, 2024.

CORRESPONDENCE

A. Letter from Burlington County Engineer’s Office re: Land Development Review

Solicitor Frank stated that the letter from the Burlington County Engineer’s office has to do with revisions to their county land development review resolutions. In the land development review, they set standards for the roads, drainage...etc. This is what they apply when the county does their own board reviews of applications for things like site plans & subdivisions. Typically, the changes they want to make are engineering related.

B. Adoption of 2023 Annual Report – Zoning Board

Solicitor Frank stated that the Municipal Land Use Law contemplates a conversation between the three bodies involved in Land Use review and approvals—governing body who adopts the ordinances, Planning Board who adopts the Master Plan & Zoning Board which is where people

go for relief from the typical rules that are in the ordinances. When the Zoning Board departs from the rules that the Governing Body wrote which were recommended by the Planning Board in the Master Plan, the Zoning Board has to send a report up to the Governing Body & Planning Board to show what was done throughout the year. The idea behind this is that the Governing Body and Planning Boards are expected to look at that report and decide if there us anything the Planning Board/Governing Body needs to review about our regulations. If the Planning Board and Governing Body don't get on board with the changes that the Zoning Board made, then that is a statement about policy that they don't intend to change the zoning. This report is at the center of the conversation between these three boards.

Chair Pagano asked if we saw a lot of the same variances on this report, then that is an indication that maybe the regulations are too tight? Solicitor Frank said yes there could mean there is an issue with a particular standard. A lot of what is done at the zoning board is what we call "minor bulk variances for residential uses". There might be an issue with the impervious coverage or maybe they are a little too close to the front yard setback. Impervious coverage is the most frequent exceedance and there is a good reason why we should be concerned about that in our ordinances because we don't want to create drainage problems. Having a tight impervious cover standards allows us to apply the Zoning Board's & Engineer's expertise.

In other cases there could be variances on the report that are more concerning. One of the concerns from the 2022 report was a lot of oversized residential accessory structures. At the time the zoning board asked the planning board and governing body to potentially look at the standards of residential accessory buildings. The relatively low cost for a large pole barn structure as well as people needing more storage space is what drives these kinds of standards. There was a call last year for the Planning Board to look at whether residential accessory building standards continue to make sense. Mayor Marter asked if there was an outcome when the Planning Board was asked to look at that. Solicitor Frank said he doesn't think that there was any outcome. There certainly can be a discussion about what would make sense either with the Governing Body which refers the issue to the Planning Board. Or the Planning Board can decide on its own that it wants to take a look at certain things triggered by the annual report.

It was the Motion of Councilman Fratinardo, seconded by Mr. Gabriele to receive and file the Correspondence Items. Motion unanimously approved by all members present.

At this time, Chairman Pagano wanted to apologize for the delay in welcoming our new Planning Board Engineer, Mr. Hugh Dougherty. Engineer Dougherty thanked the board for the appointment.

APPLICATIONS

There were no applications.

OLD BUSINESS

Council Representative Fratinardo wanted to discuss some of the rules mentioned in the original Planning Board Rules & Regulations document. There is one rule that mentions that meetings are held on the third Monday of the month, and currently that is not the case.

Solicitor Frank stated that the Rules & Regulations need to be gone over completely. It is important to see if the rules still make sense twenty plus years after they were drafted. Solicitor Frank suggested the board members look over the document and email him directly with any

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changes or comments. Then, he will come up with some amendments. Chairman Pagano asked how old these rules and regulations are and it appears they are from 2003. Any amendments would have been done by resolution and there haven't been any that Solicitor Frank can locate.

Chairman Pagano asked what the best route would be for this, possibly forming a small sub-committee. Solicitor Frank said that would be fine and he is also planning on looking at the document himself.

Mr. Mattson suggested that Solicitor Frank goes over the document first from a legal point of view and after that have a sub-committee look over it. Solicitor Frank said that is fine with him, but if anyone sees something on the document they would like to change or question, to please let him know.

OTHER BUSINESS

JIF Land Use Liability Training for Board Members

JIF is a Joint Insurance Fund that was created because it became very difficult for municipalities to obtain insurance due to the insurance market collapse in the 1980s. Municipalities banded together to create cooperatives for collective self-insurance. The JIF sends out guidance and support to municipalities because they have an interest in reducing loss ratios.

What happens sometimes is boards and board members can be sued, in general we have very broad immunities from suit as board members. Liability arises when you do something that violates somebody's civil rights, rules are broken or a board member acts in matters where there is a conflict of interest...etc. Florence Township does have an ordinance that indemnifies and defends members of its boards & governing body. The JIF also provides this if the members have this liability training.

The Planning Board is a quasi-judicial body, it weighs people's rights and facts and making decisions that affect those rights & property interests. Under the local government ethics law & under the Municipal Land Use Law board members are not supposed to act on anything where there is a personal or financial interest.

The basic standards are that a board member cannot have an interest in business organization or engage in a business transaction or professional activity which is in conflict with the duties here at the Board. No government officer shall use or attempt to use his official position to secure advantages for himself or others.

Mayor Marter asked how it is handled if a member of the board purchased some property and had to come before the board. Solicitor Frank stated that government ethics law and common law says is that just because you sit on a municipal body, doesn't mean you give up your own individual rights. A member of the board who has an application being heard at a board meeting cannot sit on the board for that application or the application of a relative or business partner as a member of the board. Your own personal interests can come before the board, that is legitimate.

As a quasi-judicial body, we are obliged to make our decisions based upon competent credible evidence in the record meaning evidence presented to this board in a public meeting. There are

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rules for how meetings are held and they can be found in the Open Public Meetings Act. They say that whenever we discuss any application that is pending before the board, we have to do it here in a meeting, recorded, with the public. There are some limited exceptions pertaining to the board which would be discussions about personnel, litigation, and attorney-client matters.

We have two kinds of evidence presented at the board: document evidence and testimonial evidence. If the evidence is a photograph, we would need to know who took the photo, when it was taken. There are also two kinds of witnesses: lay or fact witnesses and expert witnesses. The difference between the two, the fact witness can say "I saw something". An expert witness can tell us what the data means, not just what the fact is.

Mr. Isaacson asked if the board determines if a witness is competent and credible or are there are specific standards? Solicitor Frank explained that the process of qualifying an expert is listening to the expert's qualifications and then it is up to us as a board to determine the credibility. It is very rare to have an expert witness who turns out not to be an expert, and that would be for the board solicitor to determine by cross examination.

There are situations more sensitive such as RLUIPA (Religious Land Use and Institutionized Persons Act). The statute says that we cannot impose any undue burdens on people's exercise of religion. If we were to receive a site plan for a church/mosque/house of worship, and it conforms with standards in our ordinance, we have an obligation to approve it.

Mayor Marter asked what zone in the township churches fall under? They are a permitted use in the Residential-Low Density Zone as well as Office Park zone by right. But the beneficial use could be argued at the Zoning Board for any zone.

Findings of fact and conclusion of law are another area of liability. During the duration of a hearing, we arrive at a conclusion about whether we want to approve or deny an application. When it comes to site plans or subdivisions that meet all of our standards, we are obliged to approve that. We are also able to grant some "smaller" C variances such as impervious coverage, setbacks and some small height variances. We can also grant relief from design standards which are about things like landscape buffers, number of parking stalls per square foot, curbs, pavement, and stormwater management. Most applications that come before the Planning Board are also going to need a bulk variance or design exception.

Once the decision is made, the Board Solicitor takes all this information and creates a memorializing resolution that carries the decision.

Regarding Land Use Board meeting conduct, it is important to afford due process to everybody—the applicant, members of the public, the neighbors..etc. They have notice of the hearing and have the opportunity to be heard and be aware of all of the evidence in the hearing. It can be a challenge to stay on course and provide mandated due process when there is an application that is contentious.

Land Use lawyers used to tell their board members to go have a site visit. Solicitor Frank said he doesn't think board members should become "witnesses" by going to the site. Instead he recommends the board members reach out to the Board Engineer or Planner to request photos of

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the site. It is also important to avoid interaction with the applicant or any concerned neighbors. If there is a concern, one of the board's professionals can generate evidence or demand it from the applicant.

Chairman Pagano thanked Solicitor Frank for this training session. Engineer Dougherty added in that sometimes in the past he has seen emails between board members with a "Reply All" and that is not allowed.

PUBLIC COMMENTS

It was the Motion of Mr. Mattson, seconded by Councilman Fratinardo to open the meeting for public comment on any item. Motion unanimously approved by all members present.

It was noted there are no members of the public in person and no members of the public on Zoom.

Seeing and hearing no one wishing to speak, it was the Motion of Mr. Mattson, seconded by Councilman Fratinardo to close public comment. Motion unanimously approved by all members present.

ADJOURNMENT

Chairman Pagano adjourned the meeting at 8:54PM, which was unanimously approved by all members present.

John Fratinardo, Secretary

JF/ah