

**BERGENFIELD PLANNING BOARD
REGULAR MEETING MINUTES
TELECONFERENCE VIA ZOOM
February 28, 2022**

Chairman Robert Rivas called the meeting to order at 8:00 P.M.

OPEN PUBLIC MEETING STATEMENT

In compliances with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on two municipal public notice bulletin boards and published on the borough website. Notice of this meeting via the February 7, 2022 Sunshine Notice has been sent to the Record, Star Ledger, and Cablevision, posted on two municipal bulletin boards and the Borough website.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on this matter.

ROLL CALL

Present: Mayor Amatorio, Robert Byrnes, Jr., Councilman Lodato, Robert Rivas, Ernesto Acosta (joined at 8:05pm), Jason Bergman (joined at 9:00pm), Ben Cabrera, and Miguel Vasquez

Absent: Mr. Abenoja and Councilman Rivera

Also Present: Gloria Oh, Planning Board Attorney, Carlos Fuentes, Planning Board Engineer and Hilda Tavitian, Planning Board Clerk

PLEDGE OF ALLEGIANCE

Led by Councilman Lodato.

APPROVE MINUTES OF PREVIOUS MEETING – January 24, 2022

Motion By: Mr. Cabrera

Second By: Mayor Amatorio

All ayes. None opposed.

CORRESPONDENCE

Soil erosion and sediment control approval of application for 134 Fairview Avenue, Block: 298 Lot: 9. The plan has been approved. No action needs to be taken by the Planning Board.

VERBAL COMMUNICATIONS

Any resident may comment or question any subject not on the agenda.

Motion from board members to close verbal communications.

Norman Schmelz, 94 Deerfield Street, stated he noticed there are resolutions for Areas in Need of Development on the agenda. He inquired if they will get a chance to speak about them before they are voted on.

Chairman Rivas stated three of the resolutions were already voted on at the last meeting. There will be some more at the March meeting.

Mr. Schmelz stated he was trying to figure how what areas in town was determined in looking to redevelop. He had completed a OPRA request to find all correspondence concerning redevelopment. He found there were discussions with a builder back in April and the builder came up with three giant plans they gave to the borough. He didn't hear anything about it at the council meetings or here at the Planning Board meetings. Mr. Schmelz stated all of a sudden Neglia was hired to study areas of redevelopment and it's interesting the first three areas they were to look at were the three areas that a builder had already met with the borough to discuss. An offer was made for one of the properties next to the Wagon Wheel. He thought that had to go out to bid. There is a lot of concern in town with us voting for those areas in need of redevelopment and nobody understands how these areas were picked. It seems the developer had made mock up plans for the first three areas submitted for 504 units of housing. Mr. Schmelz stated the Planning Board already passed these areas and he is not sure if anybody on the Planning Board knows about it. Once you put an area of redevelopment, the rules change. He is wondering if the little, quaint town of Bergenfield is going to look like Hackensack at some point.

Chairman Rivas stated they first hired a planner and then the planner had to do the studies and present their reports. The board is not voting on anything yet as there has been no applications. Mr. Rivas explained if there are offers that have been made, inquiries are best directed to the administrator or the governing body.

Mr. Schmelz stated he wanted the Planning Board to be aware when it comes to areas of redevelopment a lot of the rules change the power of the Planning Board.

Barry Doll, 97 Highgate Terrace, inquired what the rule is for voting on the items on the agenda tonight and inquired if a majority is required.

Chairman Rivas stated there are 9 board members. At least, 5 board members are needed to run a meeting. There are 7 members present right now. A majority is required.

Kathy Sahlberg, 32 Merritt Avenue, inquired when the Planning Board gets offers, like 504 housing units, does the board taken into consideration infrastructure, the schools, or the water/sewer system. She inquired if the town can continue to handle the infrastructure. Mrs. Sahlberg inquired if the board knows ahead of time the number of students the schools can handle or how much more garbage can be picked up by the DPW.

Chairman Rivas stated, by law, the board is obliged to hear all of the factors that go into an application. If it is covered by the town ordinance, the board applies what the ordinance is to the application. The board is a quasi-judicial body that hears evidence and testimony from the experts and call for a vote. Mr. Rivas stated yes, all those things will be considered. Mr. Rivas stated that is the administration's job to see that all garbage is picked up.

Mayor Amatorio stated they are discussing things that is not apparent and has not happened yet. There are some developers interested to come to Bergenfield, but it doesn't mean there is a set plan that is being accepted. The redevelopment areas designated by the planner is only to allow the redevelopment of those areas. As of this time, there are no applications yet. Mayor Amatorio stated any developer can propose 500 units, it doesn't mean it is going to happen. He stated just like any other application that goes before the Planning Board or the Zoning Board, it doesn't mean it will be approved. There will be a time for discussion on that matter once the application has been presented. The worry about infrastructure, students, and all other things will be dealt with once an application is before any board. Mayor Amatorio stated, right now, they are only discussing redesignation. They don't know yet whether there will be an applicant for a certain area. The vision of the Mayor and Council is for the redevelopment of the avenue that is in the parameters of the master plan.

affordability controls regarding compliance. It specifically talks about inclusionary zoning amendment in paragraph E. Ms. Oh read the paragraph into the record and reviewed the provision.

Chairman Rivas stated the meat of the ordinance was presented and explained to the board at a previous meeting. The Affordable Housing requirements were explained to the board previously.

Ms. Oh stated she didn't recall.

Mayor Amatorio stated this ordinance is based on the negotiation pursued by the borough attorney with the state. It's been discussed thoroughly with the Mayor and Council and was sent to the Planning Board as part of the process. It involves land development.

Chairman Rivas remembers presentations made to board regarding the negotiations. It may have predated Ms. Oh's time on the board as board attorney.

Mr. Fuentes stated the initial presentation was done prior to his and Ms. Oh's time on the board.

All ayes. None opposed.

2. Ordinance 22-2593 – An Ordinance to Amend, Supplement and Revise the Code of the Borough of Bergenfield, Land Use, Chapter 186 Entitled “Land Development Ordinance of the Borough of Bergenfield”

Board attorney Oh stated the ordinance is to revise the code of the Borough of Bergenfield land use, chapter 186, to include the language pertaining to the set aside requirement for the rental and sale. It's similar to the first amendment the board voted on. Ms. Oh reviewed the amendments in the ordinance with the board.

All ayes. None opposed.

3. Ordinance 22-2594 - An Ordinance to Amend, Supplement and Revise the Code of the Borough of Bergenfield, Chapter 186 Entitled “Zoning”

Ms. Oh stated the ordinance is being amended to add inclusionary housing zone to the current zoning list. It recommends adding Block: 154 Lot: 2 to the inclusionary housing zone.

Board member Cabrera requested inclusionary housing zone be defined. Mr. Cabrera inquired if they vote yes on this ordinance, what's able to be done or not done that is different than before.

Ms. Oh stated going back to the first amendment, it states “inclusionary zoning” includes every town house complex, apartment complex, mixed use development, or other multi-family residential development including subdivision consisting of single-family dwellings approved by the means of the zoning use variance application or a redevelopment designation containing five or more additional dwelling units. This amendment includes Block: 154 Lot: 2 to the inclusionary housing zone. This property is being designated as inclusionary housing zone.

All ayes. None opposed.

4. Ordinance 22-2591 – An Ordinance Amending Chapter 186 of the Code of the Borough of Bergenfield Entitled “Land Development” to Permit One Each Class 1 Cannabis Cultivator

Mrs. Sallberg stated the ordinances are set. She inquired if a builder comes and wants to change it to six stories, is that going to be entertained and changed.

Mr. Rivas stated the board is obligated to entertain any and all applications. He stated whether or not they will be granted is why there is a hearing. This board does not have the authority to change anything. This board simply listens to the application and determines if the ordinance allows it.

Motion to Close Verbal Communication

Motion By: Mayor Amatorio

Second By: Mr. Vasquez

All ayes. None opposed.

COMMITTEE REPORTS

1. Site Plan – No report
2. Parking Legal -Mayor Amatorio stated since borough hall had begun construction, some of the parking lots have been moved to Staples and the Stop & Shop area. There are limited spots. Mr. Byrnes stated there are some spots in the parking lot on the side of borough hall that are for borough business.
3. Capital Improvements – Mayor Amatorio stated the utility work for the borough hall has begun. There will be a shovel in the ground soon for the construction of the building.
4. Master Plan
5. Liaison to Board of Adjustment – Councilman Lodato stated the board will meet next Monday night for their reorganization. He will be attending it. There are several applications on the agenda including the Dunkin Donuts application.

OLD BUSINESS

Resolutions:

1. Area in Need of Redevelopment for Area D (45 W. Main Street)

All ayes. None opposed.

2. Area in Need of Redevelopment for Area E (Area within vicinity of Portland Avenue, S. Washington Avenue, and West Clinton Avenue)

All ayes. None opposed.

3. Area in Need of Redevelopment for Area F (Area along W. Church Street frontage, Veterans Plaza to N. Washington Avenue)

All ayes. None opposed.

NEW BUSINESS

1. Ordinance 22-2592 – An Ordinance Amending Specified Portions of the Existing Affordable Housing Ordinance of the Borough of Bergenfield to Address the Requirements of the Fair Housing Act and the Uniform Housing Affordability Controls (UHAC) Regarding Compliance with the Borough's Affordability Housing Obligations

Board attorney Oh stated this ordinance pertains to the amendment of certain portions of the existing Affordable Housing ordinance. It addresses the requirement of the Fair Housing Act and the uniform

Mayor Amatorio stated yes, there will be regular inspections. It is highly regulated by the state. Only those allowed by statute can enter the facility. Mayor Amatorio responded yes, there are strict compliances that need to be adhered to. There is technology that needs to be installed for them to be compliant with the operations. Mayor Amatorio's response was no. He explained even workers there are vetted and under surveillance 24/7. Every item will have a bar code. It is big revenue, not just for the town, but for the state also.

Board member Cabrera inquired what discretion does the master plan have with the building and manufacturing of goods.

Board engineer Fuentes stated it is consistent with the master plan in that it allows for the manufacturing of goods in those areas. There are state regulatory requirements for cannabis production. Any bomb manufacturing would have to comply with strict state and federal regulations. The same would apply for a cannabis manufacturing facility. Right now, there aren't any federal regulations in place. The state has regulations the applicant needs to meet in order to proceed.

Mr. Cabrera stated it's illegal according to federal laws. State regulations do not supercede federal regulations. Federal regulations always take precedence over state regulations. He inquired if the master plan is required to follow state and federal regulations. At the federal level, this is illegal and should not be done. Mr. Cabrera inquired if the facility was opened, what would prevent the facility from selling the product 2-3 years from now.

Board engineer Fuentes stated yes, it's the same thing they were just discussing.

Mayor Amatorio stated the unanimous decision of the Mayor and Council is that they do not want point of sale or distribution in the borough. He, personally, opposes point of sale or distribution if it would happen in the borough. The present council will entertain the growing and manufacturing, especially for medical marijuana, but anything more than that, the council will not entertain. Mayor Amatorio stated even if they allow the manufacturing and growing with the present council and is legalized by the state, the next council could approve the distribution. He will not allow any kind of point of sale or distribution. Mayor Amatorio explained even if they disallow the manufacturing and growing of cannabis, these activities will be next door. Teaneck, Englewood, Hackensack, and other communities are entertaining it. Mayor Amatorio stated they lose the chance of getting the revenue if it goes next door. It can be done responsibly, the proper way, and will be monitored. The application at the next town has nothing to do with ours. There are only 37 licenses to be issued in New Jersey. During the presidential election, the results of the referendum were that 65% of the residents approved for this kind of operation. Mayor Amatorio stated they are not sure if the applicant will even be granted the permit as there are hundreds of applications.

Councilperson Lodato stated he had vote yes on the introduction and he agreed to explore it. It is moving faster than he expected. He knew they had to introduce it so the applicant could make his application for his license to the state. The adoption of this ordinance does not guarantee the applicant will get his license. He is concerned that if they move too quickly and adopt the ordinance, it will create an issue. No one wants or will agree retail sale in town. Councilperson Lodato explained that will not stop marijuana from coming into the town. Anybody who wants to buy marijuana will go to retail establishments and bring it to Bergenfield, just like guns. Guns are not manufactured in Bergenfield. If someone is granted a gun permit, they can go buy it and then bring it to Bergenfield. There is a lot of misinformation that is creating controversial issues among residents.

Board member Cabrera stated it has to be based on the master plan. Mr. Fuentes made a distinction that is important. The master plan has to adhere to both state and federal laws. The board's decision, if based

License and Class 2 Manufacturer License and Enacting New Chapter 127 to Establish a Cannabis Transfer Tax and User Tax

Board attorney Oh stated this ordinance pertains to the cannabis cultivation and manufacturing licenses the Mayor and Council approved at their last meeting and are looking to adopt it at their next week. This change from the previous borough ordinance is that the Mayor and Council decided to allow Class I & Class II licenses for the cultivation and manufacturing of cannabis. The Planning Board needs to review the ordinance and decide whether it is consistent with the master plan. Ms. Oh stated the board is not here to decide whether the Planning Board wants the borough to have the cultivation and manufacturing of cannabis license.

Chairman Rivas stated the master plan follows the borough ordinance. The status quo right now is that this is not allowed. Mr. Rivas stated they passed it on their first reading and tomorrow they are going to have a second reading and adoption. The Planning Board is being asked to give a recommendation to the governing body as to whether this is a good idea. Mr. Rivas inquired if the board has to consider the best interest and welfare of the community.

Ms. Oh stated the Mayor and Council passed a resolution at their meeting to allow this. Ms. Oh stated the board is here today to see if the ordinance is consistent with the master plan. The area the Mayor and Council is recommending for cultivation and manufacturing is in the commercial/business B-2 zone and automotive M zone. Ms. Oh stated if that is the goal within the master plan, then it can be viewed that way. The board should adhere to what is written in the master plan and determine whether the ordinance is consistent with the master plan.

Board engineer Fuentes stated the cannabis ordinance proposed by the Mayor and Council would permit the growing of cannabis either in the B-2 or M zones. Per permitted uses schedule A, some of these uses are permitted, not specifically to cannabis, but for the growing and manufacturing of goods in general. Mr. Fuentes stated, in that sense, it is consistent with the master plan.

Mayor Amatorio stated he understands the question of whether it is consistent with the master plan is before the board right now and was answered by Mr. Fuentes. The question of whether it is good or bad for the community is not before this board. He understands the public is interested with this issue whether it's with this board or the Mayor and Council. Mayor Amatorio explained this ordinance has been passed for the purpose of exploring the possibility of manufacturing and growing of cannabis at that particular location. It doesn't mean the borough is already set to approve it and is just a preliminary stage. One of the requirements for the applicant with the state is this kind of ordinance. The state will not permit a license if the borough does not allow the particular applicant to house their operation. Even if the board says it is consistent with the master plan, it goes back to the Mayor and Council for approval. The only thing that will happen, if it happens, is the growing and manufacturing. The operator will not allow residents or any entities to distribute the cannabis in our community. Mayor Amatorio stated the only thing that will happen is to grow the cannabis, throw it in the machine, extract the product, and ship it out from the Borough of Bergenfield. There might be ten trucks to pick up the products from one harvest. All of the cannabis will be bar coded, audited, and secured. No one will be allowed to enter the facility without permission from the operator. It is a secure area and a highly regulated industry. The reason it is being considered is because of the amount of revenue it will bring to the community.

Chairman Rivas inquired if the fire department will have access to the facility. Mr. Rivas inquired about noxious fumes or odors emanating from the facility and whether it is subject to the town's control. Chairman Rivas requested clarification that no member of the general public would be able to knock on their door and buy cannabis.

accordingly to the master plan, has to adhere to the constitution and that federal law takes precedence over local law. This is an illegal activity at the federal level.

Mayor Amatorio stated Mr. Cabrera brought up an interesting question before the board. This has been challenged with the state and is not a novel idea. The federal issue has been raised with the state of California, Colorado, and several other states.

Public Comment:

Barry Doll, 97 Highgate Terrace, read the borough code, paragraph 186-41, regarding marijuana establishments into the record. He also read the mission statement that is part of the master plan into the record. He stated that this is not an asset and is not a desired quality of life in the community. Mr. Doll stated he read a Rutgers University study that discussed the hazards of marijuana. The federal law puts marijuana on its schedule 1 list, which states it is a dangerous substance and is not to be sold for cultivating. Mr. Doll stated the proposed location of the facility is within 500' of a music school, O Di Bello, for children, which is a violation of the requirements of the application. The proposed location is also within 500' of the Armory, a government building. Mr. Doll stated it can't be dismissed by simply saying it's not going to be sold in town. There are municipalities in California being sued because of the hazardous materials discharged into the air.

Norman Schmelz, 94 Deerfield Street, stated Mr. Doll, Mr. Cabrera, and Councilman Lodato made some great points. There are a lot of lawsuits in town already and they don't need another one. He inquired if someone wanted to open a winery in that location and grow grapes, would they be able to manufacture wine in that location. He doesn't remember anywhere in the master plan that states you can open a farm and manufacture. The word "manufacture" is being used loosely. It is actually growing it. He inquired if it states in the master plan if anything can be grown in that area.

Mr. Fuentes stated schedule A of the zoning ordinance, under permitted uses for B-2 zone, states any B-1 principal permitted use is allowable in a B-2 zone. There are several uses that are related to manufacturing and growing of goods in the B-1 permitted zone. There are liquor packaging stores and other relatable uses. That is what his assessment was based on. Mr. Fuentes stated he's not sure if it's going to be farmland for manufacturing marijuana.

Mr. Schmelz inquired if there is anything about growing in B-1 and B-2 zones. It's going to be like farmland. It's a plant, a weed. Weed grows in the ground that would be growing. He would be worried about the manufacturer coming back, saying it's farmland, and request taxes to be lowered. Mr. Schmelz stated the referendum was for all five types, growing, selling, cultivating, manufacturing, and distribution. Mr. Schmelz stated this is all about greed. They are comparing themselves to Englewood, Hackensack, and Teaneck. He is a homeowner and would rather have Bergenfield compared to Old Tappan, Cresskill, Demarest, or Rockleigh. He doesn't want to be compared to a city and wants to be in a rural community.

Pat Noseworthy, 215 New York Avenue, stated this is a terrible idea. This is a friendly town. The space can be used for the children, like having ping pong or pool tables. People are going to be selling their houses because they are not going to want to be associated with a town that sells pot.

Sandy Borrero, 39 Carlisle St, stated the Mayor had said this would be a minimal disruption and this something that can't be predicted. She grew up in New York, in an environment where she was around a lot of weed and it leaks. There is no way there is a filter so powerful that will prevent the stench from coming out of it. Ms. Borrero stated she is asthmatic and is concerned the effect it's going to have on residents who may have breathing difficulties, water resources, and the negative effects on wildlife. The statement of the developer hiring 80% minority women is not comforting or appealing to her. She stated

Board attorney Oh stated the board is here to review the ordinance approved by the Mayor and Council on their first meeting and to vote to determine it is consistent with the master plan. Ms. Oh stated that it is not clear depending what state you are in. Ms. Oh explained it is legal in New Jersey. Ms. Oh stated voting yes means members of the Planning Board have reviewed the ordinance and are stating it is consistent with the master plan.

Mr. Rivas stated a board member had indicated voting yes would break a federal law and inquired if that is true.

Mayor Amatorio stated voting here doesn't mean they are in agreement with the ordinance. It just means they agree that the ordinance is consistent with the master plan. The decision is for the Mayor and Council to make. The Planning Board's vote is not endorsing the growing and manufacturing of cannabis in that location.

Board member Vasquez inquired if the entire board is in agreement that the ordinance is consistent with the master plan. He inquired if they will provide the governing body the number of yes/no votes in favor of the ordinance.

Board member Cabrera stated that is why they are going to vote.

Ms. Oh stated she will provide a report to the Mayor and Council, after the vote, whether the Planning Board voted yes or no. The majority vote is reported, whether it is passed or didn't pass.

Board member Acosta inquired if his vote will have an impact at tomorrow's meeting.

Board member Cabrera stated it is important to vote for what we believe. The council can ignore the vote even if it's 4-3 and can turn it all down.

Mr. Rivas stated their function is advisory, unless it has to do with an application or subdivision that requires variance. The only question the board is being asked is whether the ordinance is consistent with the master plan. The master plan is approved by the Mayor and Council. Ordinances are made by the Mayor and Council. Policies are set by the Mayor and Council. You can't go according to your personal feelings. In some cases, federal law trumps state law, but not all.

Mr. Vasquez inquired of the Planning Board how this is going to help their children, their families, and the community. It seems the board members are not in sync. It sounds horrible if the reason for doing this is to make money.

Motion to Deny Ordinance (yes to deny ordinance/no to approve ordinance)

Motion By: Mr. Cabrera

Second By: Mr. Vasquez

Mayor Amatorio:	No	Mr. Acosta:	Yes
Mr. Byrnes, Jr.:	No	Mr. Bergman:	No
Councilman Lodato:	No	Mr. Cabrera:	Yes
Mr. Rivas:	No	Mr. Vasquez:	Yes

MOTION TO ADJOURN MEETING

Motion By: Mr. Bergman

Second By: Mr. Vasquez

All ayes. None opposed.

the business development people should do their job and bring a Walmart or Target. The residents would benefit more from having a trampoline park put in that location than having a cannabis farm.

Jenny Susana, 122 Harrington Street, stated she moved to Bergenfield because it was a family town. She is thinking about moving out of town as it is not the same town her kids grew up in. Ms. Susana stated the increase in revenue sounds nice, but we really don't know if this is going to help in the future and lower taxes. This is a small town being compared to Paramus, Hackensack, and Englewood. They are big towns and can't be compared to Bergenfield.

Diana Flagg, resident, stated the roots of Bergenfield is not to have a cannabis farm. 65% of people might have voted for marijuana, but what they voted for was the ability to have 6oz. of it on their body. They did not vote to have a farm, store, or manufacturer. Ms. Flagg stated if you are concerned about the people they are going to hire, Sunday's Record, from Murphy's office had a very interesting article. Priority would be given to hiring people that were arrested for drugs. She stated she is horrified the governing body would consider doing this. It's time for the governing body to listen to the people.

Fred Sahlberg, 32 Merritt Avenue, stated to work in a bar, you have to be fingerprinted and a criminal background check be done. If they are going to bring people, there isn't going to be a background check done on them. They may be bringing the wrong type of people to work in Bergenfield. Mr. Sahlberg stated a liquor store can not open up within 500' of a school. Mr. Doll was right. There is no security here with no background checks done and not knowing how many people are coming in. The Planning Board's job is to ensure the safety of Bergenfield. An oath was taken to uphold the constitution. Mr. Cabrera was right in stating it is against the law and you can't have it both ways. The federal law supercedes what is being planned to do. It's a mistake.

Mayor Amatorio stated they respect the sentiments of the public and the residents. He stated the board is voting on whether the ordinance is consistent with the master plan. Mr. Fuentes' statement is based on the ordinance that is before him.

Board engineer Fuentes stated there are other issues. His assessment is limited to the ordinance and the master plan in place. He can't comment on other legal issues and procedures. Mr. Fuentes' response was yes.

Chairman Rivas inquired if it is the governing body that passes procedures, not the Planning Board.

Board member Byrnes, Jr. requested clarification that someone had mentioned there wouldn't be background checks done on the people hired.

Chairman Rivas stated that was opinion. He didn't believe anybody would get hired without a background check. The police department would be involved.

Board member Acosta requested clarification on what they are voting for tonight.

Chairman Rivas stated the Mayor and Council introduced an ordinance and wants the Planning Board's recommendation as to whether or not the board endorses them in adopting the ordinance. The ordinance has to do with the master plan and development. The Planning Board makes a recommendation based only on whether it complies with the master plan.

Board member Cabrera stated the master plan needs to adhere to both federal and state requirements as stated by Mr. Fuentes.

Meeting was adjourned at 10:28 pm.

Respectfully Submitted,

Hilda Tavitian

Hilda Tavitian, Clerk
Planning Board