

Florence, New Jersey 08518-2323
May 18, 2009

The regular meeting of the Florence Township Planning Board was held on the above date at the municipal complex, 711 Broad Street, Florence, NJ. Chairperson Hamilton-Wood called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Chairperson Hamilton-Wood then 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 given to the official newspapers and posted in the main hall of the municipal complex."

Chairperson Hamilton-Wood asked Member David Woolston to act as secretary in the absence of Member DeAngelis.

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

Mayor Bill Berry	David Woolston
Mildred Hamilton-Wood	James Molimock
Timothy Lutz	Paul Ostrander
Council Member Sean P. Ryan	

ABSENT: Gene DeAngelis, Wayne Morris

ALSO PRESENT: David Frank Esquire
James Priolo, Conflict Engineer (LATE)
Joseph Petrongolo, Board Planner

Chairperson Hamilton-Wood stated that Board Engineer Dante Guzzi had been excused from this evenings meeting.

ELECTION OF VICE CHAIRMAN

Chairperson Hamilton-Wood stated that due to the resignation of Craig Wilkie the Board needed to elect a member to fill the position of Vice Chairman.

Motion of Woolston, seconded by Berry to nominate Tim Lutz as Vice Chairman.
Motion unanimously approved by all members present. Mr. Lutz accepted the position and thanked the Board.

RESOLUTIONS AND MINUTES

Chairperson Hamilton-Wood stated that since there were no resolutions to be approved the Board would move onto the Minutes.

71.

Motion of Ryan, seconded by Lutz to approve the Minutes from the April 20, 2009 meeting of the Board as submitted. Motion unanimously approved by all members present.

CORRESPONDENCE

Motion of Berry, seconded by Woolston to receive and file Correspondence A through I. Motion unanimously approved by all members present.

Engineer Priolo arrived at 7:35 p.m.

Chairperson Hamilton-Wood called for application PB#2008-18 for NFI Real Estate. Applicant is requesting Preliminary and Final Major Site Plan with bulk variances for a proposed warehouse site located at Route 130 North, Florence Township. Block 160.01, Lots 2.01, 8, 9, 10.01, 10.02, 20, 21 & 22.

Vice Chairman Lutz stated that he had a conflict, recused himself and left the dais.

John Gillespie, Parker McCay, attorney for NFI Real Estate said that this applicant was here for Final Site Plan approval for the 1,600,000 sq. ft. of space that the Board granted Preliminary approval for in March. The Final was continued until this meeting to allow sufficient time to address some of the issues that were raised during Preliminary.

Attorney Gillespie stated that they have reviewed the reports submitted by the Board's staff and professionals. He said that in particular they have reviewed Director of Water and Sewer, David Lebak's memo dated May 11, 2009 and will comply with the comments. They will also comply with the requests of Fire Official Brian Richardson outlined in his memo dated May 14, 2009.

Attorney Gillespie stated that he would like to go through the items in Planner Petrongolo's review letter of May 14, 2009.

Planner Petrongolo stated that revised architectural plan were submitted this evening and they satisfied Item 1 on page 7 of his report.

Attorney Gillespie stated that Item 2 refers to revising the landscape plans to show the plant quantities proposed and the planting schedule and Item 3 regarding a definition of an abbreviation listed in the planting schedule. The applicant will revise the plans accordingly.

Planner Petrongolo stated that in Item 4 he had asked that the sign detail, color and illumination be added. Attorney Gillespie stated that lettering and coloring would be the traditional red, white and blue with the NFI logo. The lettering will fit within the sign. Attorney Gillespie submitted exhibit F1 which was a color drawing of the NFI logo.

The applicant's engineer, Edward Brady, Taylor Wiseman & Taylor, was reminded that he remained under oath from the previous hearing. Mr. Brady stated that the sign would be made of cut faced block in an off white color. There are 2 signs proposed for the main entrance. Both of the signs are 5' high. A smaller sign is proposed for the southerly right in/right out entrance. This sign will be composed of the same material and coloring but will be smaller (4' in height).

Mr. Brady stated that illumination for the signs would be ground lighting upward projecting onto the signs. These are exteriorly lit signs. Planner Petrongolo stated that the Board had granted a variance at the Preliminary hearing for the number of signs and the sign area. Mr. Brady stated that the plans would be revised to show the sign details.

Attorney Gillespie stated that Item 5 on Planner Petrongolo's report refers to sidewalk. He stated that the applicant understands that the Township Council has adopted a resolution encouraging the Planning Board to scrutinize more closely requests for waivers of sidewalk requirements and therefore the policy position has been articulated by the governing body. Attorney Gillespie said that the applicant had previously stated their safety concerns regarding sidewalks along a high-speed highway, but they are not interested in becoming embroiled in that policy issue here. They will be bound by whatever the Planning Board votes on in regards to the sidewalk issue.

Attorney Gillespie stated that the applicant asks that whatever the Board requires relief be granted in the following respects. There is an area on Route 130, the Giancola property, which NFI doesn't own so they can't control sidewalks on that lot. Attorney Gillespie stated that if the Board required sidewalks they could install them from the southerly property line up to the proposed jughandle. The applicant requests that if the Board is going to require sidewalks that they be waived at the jughandle for safety reasons. There is no impediment to putting sidewalk north from the jughandle to the Giancola property, but it would seem to make more sense to hold off on installing sidewalks in this area until the Giancola property is developed or if the Board required prior to the issuance of the final certificate of occupancy. Attorney Gillespie stated that the applicant does not want to install sidewalks north of the Giancola property. There is a guardrail that comes up north of the Giancola property and extends over the creek area. Mr. Brady stated that the guardrail is up against the pavement, the creek goes under Route 130 and there is a 6' drop on the other side of the guardrail. He said that they did not feel that it was safe to install sidewalks in this location.

Mr. Brady stated that the wetlands buffer comes right up to the guardrail. The wetlands area extends to the northern property line. Mr. Brady stated that the applicant had agreed to extend sidewalk along the main entrance road from Route 130 into the site.

Attorney Gillespie stated that this was not a dollar issue. The waiver is requested based on the applicant's concern for safety along a high-speed highway. He reminded the Board of testimony that had been given regarding the Scamporino site located a short distance north of the proposed site, where the same safety concerns were testified to and the Board granted the waivers on the sidewalks along Route 130.

Councilman Ryan stated that he recalled the testimony from the previous application and said that the testimony given for this application is similar. He stated that when the sidewalk issue was brought to Council all of the concerns from that previous application and concerns that Board Members had regarding sidewalks on Route 130 were thoroughly discussed. The Chief of Police was also contacted and historic accident data was reviewed for pedestrians and bicyclists. Councilman Ryan stated that there is a noted history and trend of injuries and fatalities along the Route 130 corridor from pedestrians and bicyclists traveling along Route 130.

Councilman Ryan stated that the New Jersey Department of Transportation suggests numerous mechanisms for providing pedestrian safety including providing a physical barrier, providing distance between the pedestrian and the motor vehicle and a pathway or sidewalk. The NJDOT actually encourages this for safety.

Attorney Gillespie stated that he has no doubt that the issue was thoroughly explored and discussed by the Council. The applicant has no interest in presenting any evidence for or against this issue. This is a policy call by the Council. It does fall on this Board, however, based upon the Land Use criteria to give a decision on the requested relief.

Attorney Gillespie said that the applicant is not making this request based on dollars. There is a sincere concern based on the issues that have been presented as well as the wetlands issue, which is a physical impediment. They would ask that if a sidewalk were required then after it is built they would like to dedicate it to the Township. Solicitor Frank stated that this Board does not have the authority to accept the dedication. That would have to be presented to governing body and they are not obliged to accept it.

The last item Planner Petrongolo's report had to with the COAH requirement and as reflected in the Developer's Agreement they will provide COAH as required.

Councilman Ryan stated that before Attorney Gillespie continued he wanted to read the resolution from Council for the record.

“Whereas the Township Council of the Township of Florence in Burlington County, New Jersey has noted that some applications for development approval have requested and received waivers from the design standards that call for sidewalks to be installed along streets, highways, roadways and whereas the Township Council has determined public safety is substantially enhanced when pedestrian traffic is able to use sidewalks rather than walk in the roadway or along the shoulder of the road and that it is a public policy of the Township of Florence to provide safe areas for pedestrians to move in safety from one point to another on the streets and highways including Route 130 and to avoid pedestrian traffic along the shoulders of the highway. Now, therefore be it resolved by the Township Council in the Township of Florence in Burlington County, New Jersey assembled in this public session on the 15th day of April 2009 that the Township Council hereby reaffirms it's commitment to the design standards that call for sidewalks to be installed along the streets of Florence Township including along Route 130 to facilitate

public safety for pedestrian traffic and implementation of that goal by requiring sidewalks be provided by developers of the property and be it further resolved that Township Council has requested that the Planning Board and Zoning Board of Adjustment carry out that vision for development of the properties within the Township specifically including along Route 130 by requiring developers to comply with the application design standards including the provision of sidewalks in order to facilitate safe travel for pedestrians and to keep pedestrian traffic separate from vehicle traffic wherever possible and be it further resolved that a certified copy of this resolution shall be forwarded to the Planning Board and Zoning Board of Adjustment for their information and attention.”

Chairperson Hamilton-Wood said that she understood that Councilman Ryan wants the Board to be aware of this and the Board Members had all read the resolution. She stated that although the Board takes direction from Council they still make their own judgments and they still have the authority to grant a variance. She asked Solicitor Frank what the Board’s obligation was.

Solicitor Frank said that the Planning Board is a subordinate body. The governing body is the preeminent body in the municipality and under the municipal government. The governing body primarily speaks to the Planning Board through their ordinance enactments. They speak to developers in the same way and they tell us what they envision for the town through those ordinances. This body is principally charged with the administration of those ordinances in a very ministerial way. If an applicant comes before the Board with an application that complies with the ordinance standards articulated by the governing body, the Board is obliged as a matter of law to approve them.

Solicitor Frank stated that one of the things that the Municipal Land Use Law (MLUL) says is that when one is involved in the business of zoning one size cannot fit all. This is known as substantive due process or fundamental fairness. This means that when in a particular situation someone comes before this Board and is able to point to conditions that are inconsistent with the generally prevailing conditions that the governing body generally speaks to through its ordinances, then that person can generally get a variance or a waiver.

Solicitor Frank said that this is a little more emphatic or particularized statement by the governing body because it could be said that this zone encompasses areas that don’t necessarily front on Route 130, so it is possible that the ordinance was drafted generally from the zone and maybe didn’t include Route 130. Now the governing body has articulated that their vision, their legislative intent was that it would include the Route 130 frontage in the requirement that there be sidewalks for development in the zone.

Attorney Frank stated that this Board is still charged with hearing the applicant on the question as whether or not a waiver or a variance is appropriate in any particular situation, weighing the evidence before it and making a decision based upon the particularized situation here of whether or not it is appropriate to grant that variance or waiver. The governing body cannot, through its resolutions, take away that statutory

power of this Board or its obligation under doctrines of fundamental fairness and reasonableness to look at these issues. He stated that this Board still has a job to do.

Chairperson Hamilton-Wood asked Attorney Gillespie if he would like to move on to Engineer Priolo's review letter.

Attorney Gillespie said that there was no objection to Items 2a and 2b regarding parking. As the Board will remember as part of the Preliminary approval the Board granted a variance to reduce the car parking from 1627 to 848. They have actually mitigated this variance a little by adding back 7 spaces. Mr. Brady stated that Phase 1 includes slightly over 600,000 sq. ft. with the first building. In meetings with the fire official to make sure that emergency vehicles were able to circulate the site a lane has been placed that will loop both sides and connect them. On the far side of the future section of that building the drive aisle and parking area were manipulated to provide for that loop road and this allowed for the extra 7 parking spaces. The size of the building was not reduced.

Attorney Gillespie referred to Item 3 listing information that was still pending. Item 3a regarding sidewalks has been addressed. Item 3b the interceptor drain will be properly marked and detailed as requested. Item 3c the applicant agreed to conform to the stormwater maintenance plan and repair schedule. Item 4 the applicant would like the executed water & sewer agreement to be a condition of approval. The applicant agrees to conform to Items 5a compliance with the Developer's Agreement, 5b consultation with a sound expert during design and construction of Building B and 5c regarding planting detail for the buffer to the trash receptacle areas.

Attorney Gillespie said that Item D refers to the modifications to the intersection of Route 130 and John Galt Way. The applicant's traffic engineer Deanna Drumm will give an update on the NJDOT status.

Deanna Drumm, principal with the firm of Horner and Cantor Associates, was sworn in by Solicitor Frank. Attorney Gillespie state that Ms. Drumm had been previously qualified by this Board, but asked her to relate her background for the record. Ms. Drumm stated that she has been an engineer for 15 years. She is a licensed professional engineer in the state of New Jersey specialized in traffic transportation engineering. She stated that she was Board certified by the Institute of Transportation Engineers (ITE) as a professional traffic operations engineer. She stated that she was a member (and a former officer and Board Director) of the American Society of Highway Engineers. Ms. Drumm stated that she was also licensed in Pennsylvania. Ms. Drumm stated that she has a Bachelor's of Science in Civil Engineering from Rutgers University, a Masters of Science in Transportation Engineering from New Jersey Institute of Technology.

Ms. Drumm stated that she has prepared over 1,000 traffic studies over the past 15 years. She stated that she has testified before many Boards throughout the state of New Jersey as an expert in traffic and transportation engineering. Ms. Drumm stated that she has worked for Horner and Cantor for 15 years and she is personally familiar with the project that is before the Board this evening.

Attorney Gillespie stated that in the resolution of approval that was adopted in April one of the items in the record was the Traffic Impact Report prepared by Horner and Cantor. Ms. Drumm stated that she had prepared this report and all opinions expressed in that report were hers. She stated that she relied upon existing traffic volumes along Route 130 primarily at the intersection of John Galt Way. She also relied on the Institute of Transportation of Engineers trip generation manual as well as independent data that her firm has collected for this type of development. She stated that she also relied upon reviewing a 2004 traffic engineering study that Horner and Cantor completed for the Haines Industrial Center. She stated that she referred this report because there is potential expansion to the Haines Center.

Ms. Drumm stated that Horner and Cantor has prepared traffic studies for the proposed Scamporino shopping center, the Wawa on Route 130 and Cedar Lane and Mallard Creek further north on Route 130.

Attorney Gillespie said that in testimony on March 16th a representative of one of the opponents made this statement (quoted excerpt from Minutes of March 16, 2009 meeting). "NFI is proposing to eliminate that left turn lane and replace it with a jughandle."

Attorney Gillespie asked if this was NFI's proposal? Ms. Drumm stated that this was not NFI's proposal but was a requirement by NJDOT. She stated that when the applicant first met with NJDOT several years ago their first statement was that the access code requires a jughandle be installed. NJDOT, as part of their policy, has been trying to eliminate any left turn lanes.

Ms. Drumm stated that the left hand turn lane would be discontinued after the jughandle is constructed. Access will have to be provided to John Galt Way as part of the NJDOT approvals through the design plans they will have to phase the construction. Part of the phasing of the construction is that the jughandle will have to be constructed and open for operation before the left turn lane is closed down. She stated that Horner and Cantor had been involved in assisting NFI with the NJDOT process for almost 4 years.

Attorney Gillespie stated that Item 5d in Engineer Priolo's report asks for a status update on the NJDOT approval. Ms. Drumm stated that since the preliminary hearing in March they had received preliminary comments from NJDOT. Based on those comments there has been a verbal agreement that NJDOT will be issuing a concept approval probably within the next week or two. She stated that the comments were technical in nature, but did provide recommendations on some minor changes that they wanted at the intersection. For example there is a right turn lane coming out of the site that is channelized. NJDOT said they don't want this channelized; they want it under signal control. Clearly NFI will have to go through the formal review process reviewing geometrics, striping, etc. NJDOT has conceptually approved the right in/right out as well as the jughandle.

Ms. Drumm submitted exhibit F2 entitled Proposed Highway improvements dated 3-16-09. These are the improvements that were submitted with the plan for preliminary approval. It showed the fourth leg across John Galt Way, the jughandle as required by NJDOT and the extension, the addition of a third lane along northbound Route 130 as well as the right in/right out. This was the plan that was submitted to NJDOT and commented on by them. Since the preliminary meeting, the project team has taken a closer look at the jughandle.

Ms. Drumm submitted exhibit F3, also entitled Proposed Highway Improvements, 05-18-09. This plan is very similar to the other plan. There are 2 major changes. Per the request of the NJDOT the channelized lane was replaced by a signal/stop controlled lane. The other change was to the jughandle. In exhibit F2 the jughandle connects into the internal roadway circulation of the NFI site. In exhibit F3 the jughandle has been revised to be a stand-alone jughandle. The internal circulation has been moved farther to the east. There will be no mixing of jughandle traffic with internal traffic along that section.

Attorney Gillespie stated that this concludes the testimony.

Motion of Berry, seconded by Woolston to open the meeting for public comment. Motion unanimously approved by all members present. Seeing no one wishing to comment, motion of Ryan, seconded by Berry to close the public portion. Motion unanimously approved by all members present.

Member Woolston asked for the Board's professional staff to comment on the proposed jughandle. Councilman Ryan stated for the record that the Board was not being asked to approve this jughandle. That approval would come from the NJDOT.

Attorney Gillespie stated that this was brought to the Board's attention in order to respond to questions that were raised at the March 16, 2009 meeting.

Councilman Ryan said that the process of the Planning Board with regard to presentation and plans is that the plans are received with ample opportunity and time for the professionals to review and make comments to assist the Board in making an informed decision. This evening we have heard some reasons as to why sidewalks cannot be installed in certain areas along the frontage of Route 130. The professionals have not had the opportunity to review what has been presented to the Board this evening. In order for the Board to make an informed decision he stated that the professionals should be given the opportunity to look at those matters in detail and then report back to the Board. Councilman Ryan said that the Township Council as stated in the resolution is resolved in their long-term vision for the Route 130 corridor. He stated that the Council is also seeking grant opportunities on the Route 130 corridor to further express the level of seriousness for these sidewalks to be installed.

Councilman Ryan stated that he would like the Board's Professionals to have the opportunity to review what has been presented and report back to the Board so that the Board can make an informed decision.

Chairperson Hamilton-Wood stated that the members of the Board have had the opportunity to review testimony, to review what the professionals have told them and that they have the ability to determine whether or not it is practical and in their own opinion what is best for this particular project. She said that Solicitor Frank was very clear in what the Board's role is and what they have the ability to do. She said that she doesn't know what good would come from further review from the Board's professionals.

Engineer Priolo said that anything is possible. If cost was not an issue sidewalks could be engineered and built along Route 130. The only thing that could prevent it would be the NJDEP refusing to allow crossing of the wetlands.

Councilman Ryan stated that the Board was not allowed to take economic matters into account. He also said that it is appropriate for the Board's professional staff to review the information and report to the Board.

Attorney Gillespie stated that the only issue left open from the Preliminary hearing was the issue of sidewalks. The wetlands were shown on this plan from the beginning. The idea that sidewalks should not go through a jughandle is not new. NFI did not want to get in the middle of this policy concern. The governing body can't deny a Board the right to grant relief from ordinance requirements. That's why the Land Use Law exists.

Attorney Gillespie stated that he did not think it was unreasonable to request, if the Board was going to require sidewalks, relief from putting the sidewalk through the jughandle. He stated that they could put more testimony on the record if that is what the Board desired. Councilman Ryan said that he is just asking that the Board's professionals be given the opportunity to investigate this and advise the Board of their findings. These matters that were presented tonight regarding the inability for sidewalks to be installed in certain areas have not been heard by the Board before tonight. In his opinion the professionals might be able to guide the Board better if they are able to substantiate what has been presented this evening. They have not been given the opportunity to do this.

Attorney Gillespie stated that most variances and waivers are granted based on testimony that is presented at the hearings. This is no different than any other application where witnesses are brought up and testimony is presented and decisions are made based on that testimony.

Councilman Ryan said that in his opinion the Board would be better informed if their professionals were given the opportunity to look at that information and guide the Board in making the decision.

Chairperson Hamilton-Wood asked for a short recess. The Board returned to the regular order of business.

Chairperson Hamilton-Wood asked if any member of the Board had further questions regarding this application? Mayor Berry said that he understands the concerns that were

raised by Council. If the sidewalks could continue from this property down to Cedar Lane would be a safety benefit to the Township. He said that his concern is building a sidewalk now and having a sidewalk to nowhere. You would be encouraging people to walk on this sidewalk and then force them out into the highway. He asked if it would be feasible to estimate what it would cost to put the sidewalks in and then put money into escrow to cover the construction of sidewalks at a later time.

Chairperson Hamilton-Wood asked what was adjacent to the north of the site? Joe Knapp, NFI who had been previously sworn stated that there was the Trump property and then Burlington Coat Factory. Neither of these sites have sidewalks.

Chairperson Hamilton-Wood stated that she does not speak for the Board or for Council but in her opinion sidewalks along Route 130, through jughandles, over culverts, or on wetlands are a bad idea. She stated that she does not think that this project warrants sidewalks. She stated that this is her opinion and every Board Member can have his or her own opinion. The only way to resolve this is for the Board to have a vote on whether or not there should be sidewalk required as part of this application. She said that she doesn't think that there is any benefit to having more testimony as to whether it is possible to build sidewalks. She stated that Township Council has attempted to write a resolution that is very strong so the Board understands their strong concerns and their policy on this. She stated that she has strong concerns also and as a Board Member has the right to indicate her concern and to look at this project and say that this project does not warrant sidewalks in her opinion. She does not feel that there is any reason to delay this.

Member Woolston stated that he would back up Chairperson Hamilton-Wood on this issue and made a motion to waive the sidewalk in its entirety along the Route 130 frontage of the site.

Councilman Ryan again stated his preference for sidewalks to enhance safety for pedestrians walking along Route 130. He stated that if the Board votes to waive sidewalks he will accept that, but he stated on the record that he is strongly against waiving the sidewalks.

The motion was seconded by Member Ostrander.

On the Question:

Mayor Berry again asked about having money put into escrow to pay for the sidewalks installation at a later date. Chairperson Hamilton-Wood asked Attorney Gillespie if the applicant would agree to escrow some money for the sidewalk.

Attorney Gillespie stated that over the last 3 years NFI has been working with Florence Township on this project. They have made more concessions and agreed to more conditions than normally required. If the Council were to approach NFI and ask them if they were willing to make a contribution somewhere down the road to improve our

80.

sidewalk vision somewhere in the town, NFI would be happy to talk to Council about that. Attorney Gillespie state that he would never recommend that sidewalks be installed from one end of the site to the other because he doesn't want to put a sidewalk across the jughandle. He also stated that the vision to have sidewalks continue from the NFI site to Cedar Lane would not happen because the Board already waived the sidewalk requirement for the Scamporino site.

Councilman Ryan stated that he has already said that the Township through the use of grant dollars is moving forward on their vision for sidewalks on Route 130. Secondly, providing safety with sidewalks along a road doesn't necessarily have to be across the frontage of the site. There is the ability to have a continuous sidewalk that enters into a site and then exits out near the adjacent property. Attorney Gillespie answered that if Florence Township were successful in securing grants then NFI would happily grant an easement for sidewalks.

Chairperson Hamilton-Wood stated that there was a motion and a second on the table and asked for a roll call.

Upon roll call the Board voted as follows:

YEAS: Berry, Hamilton-Wood, Woolston, Molimock, Ostrander
NOES: Ryan
ABSENT: DeAngelis, Morris

The motion to waive sidewalks along the Route 130 frontage of the site was approved by the Board.

Solicitor Frank stated that the conditions would be compliance with the items set forth in the professional's review letters that were agreed to on the record of this evening's hearing. Among them on page 3 of Engineer Priolo's letter Item 3c strict conformance with the stormwater maintenance plan and executed water and sewer agreement as well as the other plan details items that were discussed in the course of the hearing.

Motion of Berry, seconded by Ostrander to grant Final approval to Application PB#2008-18 for NFI Real Estate.

Upon roll call the Board voted as follows:

YEAS: Berry, Hamilton-Wood, Ryan, Molimock, Ostrander
NOES: None
ABSENT: DeAngelis, Morris

Member Lutz returned to the dais.

Motion of Berry, seconded by Ryan to open the meeting to public comment. Motion unanimously approved by all members present. Seeing no one wishing to comment,

81.

motion was made by Lutz, seconded by Ryan to close the public comment. Motion unanimously approved by all members present.

There being no further business motion was made by Ryan, seconded by Berry to adjourn the meeting at 8:40 p.m.

Gene DeAngelis, Secretary

GD/ne