

**Frenchtown Planning Board  
Regular Meeting  
July 22, 2015**

Chairman Eckel called the Regular Meeting to Order at 7:30 P.M. and stated that all the requirements of the “Open Public Meeting Law” have been met. The meeting has been advertised, the Agenda has been posted in the Borough Hall and copies distributed to the designated newspapers.

**ROLL CALL**

Present:	Absent:	Musolino
Case		
Cooper		
DenBleyker		
Dougherty		
Dragt		
Eckel		
Scott		
Sullivan		
Suttle		
Weeks		

**APPROVAL OF MINUTES**

**Regular Meeting – June 24, 2015**

Gerry Case moved to accept the minutes of the June 24, 2015 Regular meeting as amended. Gordon Dragt seconded the motion. The minutes of the June 24, 2015 Regular meeting were approved as amended (page 5, last paragraph, 15<sup>th</sup> line from bottom, the word both was removed before “as a private studio” and as to page 6, 3<sup>rd</sup> line down, first sentence should read: The gallery was a permitted retail use in that area.) by favorable roll call vote with Cathy Suttle abstaining.

**PUBLIC COMMENTS**

Chairman Eckel announced that before we start the public comment section, comments are welcomed on matters not listed on the agenda. Comments related to agenda items should be held until that specific item comes up on the agenda. Chairman Eckel opened the public comment session. Having no public comments, Chairman Eckel closed the public comments session.

**MEMORIALIZING RESOLUTION #2015-27 - VARIANCE APPLICATION – BLOCK 55 LOT 1, 10 BRIDGE STREET – RICHARD CAHILL (BIG RIVER TATTOO)**

On motion by Gerry Case, seconded by John Dougherty and carried by favorable roll call vote, the Planning Board approved the Memorializing Resolution #2015-27 as follows:

**FRENCHTOWN BOROUGH PLANNING BOARD**  
**RESOLUTION NO. 2015-27**  
**RICH CAHILL STUDIO**  
**BLOCK 55 LOT 1**

**USE VARIANCE FOR MODIFICATION FOR CONDITONS #2 AND #3 OF  
DECEMBER, 2010 USE VARIANCE FOR BODY ART STUDIO AND  
WAIVER OF SITE PLAN REVIEW**

**WHEREAS**, Davon, L.L.C. is the owner and Richard Cahill (the “Applicant”) is a tenant in Suite #3 (the “Subject Property”) of property located at 10 Bridge Street and designated on the Borough tax maps as Block 55, Lot 1;

**WHEREAS**, on December 16, 2009 the Board granted a use variance for a body art studio and waiver of site plan review, such approval being memorialized in Resolution 2010-11 as adopted by the Board on January 27, 2010;

**WHEREAS**, on April 29, 2015, the applicant submitted an application for a use variance to modify conditions #2 and #3 of the 2010 use variance approval and also requested a waiver of site plan review;

**WHEREAS**, the documentation that was submitted by the Applicant in support of this application is on file with the Board and, is part of the record in this matter;

**WHEREAS**, this application was determined complete in conjunction with the grant of certain checklist waivers on June 24, 2015;

**WHEREAS**, after public notice as required by the Municipal Land Use Law was given, a public hearing was commenced and completed on June 24, 2015;

**WHEREAS**, Board Members Warren F. Cooper, a Class I member of the Planning Board and William Sullivan, a Class III member of the Planning Board, recused themselves as required since the application requested a “d” variance;

**WHEREAS**, the Planning Board received and reviewed the following reports from its professional consultants, all of which are part of the record in this matter and are attached hereto as exhibits:

1. May 27, 2015 review memorandum from Board Planner, Elizabeth C. McKenzie, AICP, P.P. (Exhibit A);

2. May 26, 2015 review letter from Board Engineer Robert J. Clerico, P.E. and P.P. (Exhibit B).

**WHEREAS**, the Applicant was represented during the public hearings by William DeSapio, Esq. of the firm of Gaetano M. DeSapio and the Applicant testified on behalf of the application, which testimony is part of the record in this matter;

**WHEREAS**, the exhibits received into evidence by the Board during the hearing which are part of the record in this matter include:

A-1 Document entitled List of Appendixes, including Appendix A through Appendix F;

A-2 Affidavit of Service and Publication;

A-3 Planner's memorandum by Elizabeth C. McKenzie, dated May 27, 2015 (also Exhibit A to this Resolution);

A-4 Rich Cahill Studio, floor plan sketch marked up during hearing;

**WHEREAS**, the Board after considering the application, documents, testimony and exhibits referenced above and given appropriate weight to them, makes the following factual findings and conclusions of law:

A. Factual Findings

1. Proposed Development. The application proposes to utilize 216 square feet of the 576 square foot Suite #3 in the Gem building as a studio and work space for his body art design business in the same manner as permitted under Resolution 2010-11, except for a modification of condition #2 in that resolution, so that appointments for body art would be permitted Monday through Sunday, 12:00 p.m. to 9:00 p.m. and a modification of condition #3 to allow a second body artist to work from the studio. No changes were proposed to the exterior or interior of the building or to parking, signage or other site facilities.

Suite #3 had previously been used as a beauty salon for approximately ten years with four service stations.

The Applicant testified that his business involved the design and application of personalized body art, by appointment only. He does not and will not accept walk-ins, does not post menus of tattoos but rather personally designs specific products for each client. The average number of clients he would expect if the new hours are approved would be 25 per week. The Applicant does not provide body piercing or other services. The remainder of the Suite #3, approximately 300 square feet in size, would continue to be used as an art gallery for both Mr. Cahill's art and other artists and could be open during the same hours as the body art studio.

2. Zoning and Variances. The Subject Property is located in the R-4A Central Commercial Zone. Frenchtown Borough Zoning Officer John Barczyk previously denied the Applicant's request to use part of the space as a tattoo parlor based on his determination that it was not a permitted use in the R-4A Central Commercial Zone. The Applicant therefore previously filed a request for use variance and site plan waiver, which was approved by the Board, with memorializing resolution adopted January 27, 2010. The Applicant now seeks to add a second tattoo artist and expand operating hours for convenience of clientele.

B. Conclusions of Law Regarding Use Variance and Site Plan Waiver

1. Since the Applicant testified that no renovations to the interior or exterior were necessary for the proposed body art studio, the request for site plan waiver conforms with Frenchtown Borough Land Use Ordinance Section 504C2 and the Board agreed that it was appropriate to grant a waiver from the requirement to submit a site plan.

2. Based upon the description during the hearing of the specific body art design studio operation, and the fact that the body art studio would be within a larger space dedicated to an art gallery, the Board concludes that, even with the additional hours and second tattoo artist, the proposed use can be distinguished from the typical tattoo parlor and that the proposed use is peculiarly suited to the particular location, thus meeting the special reasons

criteria for the grant of a use variance. The proposed use is also particularly suited to the site given its limited intensity, location along the Bridge Street corridor which includes numerous galleries and the entrance to the property along Front Street.

3. The Board is satisfied that the proposed use will not cause any detriment to the public good since very little traffic is associated with the use, and with the expanded hours, the use will continue to be well suited to the area. Additionally, no new signage advertising the body art studio is proposed or will be permitted.

4. The Board is also satisfied that the proposed use will not substantially impair the intent and purpose of the zone plan and zoning ordinance since the facility is not a traditional tattoo parlor but rather a limited body art design studio in the context of a larger art gallery.

**NOW, THEREFORE, BE IT RESOLVED** by the Frenchtown Borough Planning Board by motion duly made and seconded on June 24, 2015 that the use variance to modify conditions #2 and #3 of the January 27, 2010 approval and site plan waiver requested by the Applicant is hereby approved, subject to compliance with the following conditions:

1. No walk-in service will be permitted and sessions shall be booked by appointment. The average number of clients is limited to 25 per week. A second body artist may work out of the studio and no body piercing or other services will be provided. No further increases in the number of body artists shall be permitted.

2. The body art studio may occupy no more than 250 square feet of Suite #3, with the remainder of Suite #3 to continue to be used as an art gallery.

3. No body-art/tattoo menus shall be posted or used. Both tattoo artists shall provide custom designs only.

4. Appointments for the body art studio will be limited to the hours of Monday through Sunday 12:00 p.m. to 9:00 p.m.

5. No additional signage or changes to the exterior of the building is permitted.

6. The Applicant shall obtain and maintain any approvals required from the Hunterdon County Department of Health or other State agencies in connection with his body art business, including body art station #2.

7. The Applicant shall replenish the Planning Board escrow account upon request as required by the executed escrow agreement.

8. Any violation of these conditions shall cause the use variance granted herein to become null and void, it being the intent of the Board to approve the limited body art studio as proposed by the Applicant and to expressly continue to prohibit a traditional tattoo parlor.

C. Voting Record

On June 24, 2015, a motion to grant the use variance and site plan waiver received the following vote:

Those in favor: Case, DenBleyker, Dougherty, Dragt, Eckel, Musolino, and Scott

Those opposed: None

Recused: Warren Cooper, William Sullivan and Jack Weeks

The above memorializing resolution was adopted on July 22, 2015 by the following Board Members eligible to vote:

MEMBER	YES	NO
Eckel	X	
Denbleyker	X	
Case	X	
Dougherty	X	
Dragt	X	
Scott	X	

ATTEST:

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Brenda S. Shepherd, Board Secretary

**VOUCHERS**

Brenda Shepherd, Board Secretary, presented the following vouchers for approval:

**VOUCHER LIST 7/22/15**

Elizabeth McKenzie	Professional Services for Affordable Housing through 6/30/15	\$ 649.89
Archer & Greiner	Professional Services for General Representation through 6/30/15	\$ 857.50

On motion by William Sullivan, seconded by Gerry Case, and carried by unanimous favorable roll call vote, the Planning Board approved payment of the above bills list.

## **CORRESPONDENCE, COUNCIL REPRESENTATIVE REPORT AND OTHER RELATED ITEMS**

Mayor Cooper reported that he is having breakfast with George and Paul Michael. He added that the adjacent property owner, Robert Haver, wrote a letter of his concerns. He has forwarded the letter to Paul Michael. Chairman Eckel commented that Mr. Haver has expressed concern from the beginning and construction has been an issue for him. William Sullivan added that there is an end date for construction in the redevelopment agreement. Mayor Cooper stated that it is one year and one month away from the expiration date. The sewer plant will be completed by then.

Chairman Eckel reported that the sign subcommittee met and is moving forward. They have accumulated all the notes, post it notes and issues that have come up over many years and have created a general outline. She will verify the process. They will try to propose a redlined version of the entire sign ordinance and replace it with a new one. They will bring it to the Planning Board for input and suggestions. She will find out what the procedure is to recommend changes to the Council. Once we have something concrete, we will present it to the Business Community. There will be a public hearing in front of Council. Cathy Suttle noted that the general outline is divided into two categories, structural recommendations and process. She will send it to the Planning Board members for input and recommendations.

Responding to Sarah Scott as to the Frenchtown Wine and Liquor's open sign, William Sullivan noted that they serve food so they can have a sandwich board. Chairman Eckel noted that we did approve a flag to indicate open. He has the flag on order.

John Dougherty reported that he went to the Eminent Domains presentation for the PennEast Pipeline. The pipe line is coming. It is going to be built. The question is the exact route. They are in the process of a Certification of completion. The main regulatory body is FERC, Federal Energy Regulatory Commission, that has the authority over pipelines across interstate lines. Things are set up under federal law that enables the construction. What is happening now is that they plan the route and they are contacting property owners to survey. Property owners can say "yes" or "no". People have denied them access. It does not mean the pipeline will not go through your property. They may decide to go around it or not. Refusing to cooperate does not mean it will not go through. Your property. Once a certificate of completion is issued, they will contact a land owner to try to reach an agreement. The lawyer's advice was to cut the best deal. Present the best argument you can about the loss of use, revenue of the property, the effect of marketability, etc. and try to get as much compensation as you can. If they do not reach an agreement with a property owner, they will sue you in court and get injunctive relief. They will be granted the injunction to proceed so it does not delay the project. They cannot wait for a lawsuit to go through the process. If you want to hold out and wait for court. The likeliness is that you will lose and the property will be condemned. Responding to Cathy Suttle in reference to preserved land, John Dougherty noted that they did not get into preserved property. Mayor Cooper stated that he understands the right of ways are on properties in Frenchtown but the actual pipeline was going to go through Kingwood Township. Chairman Eckel commented that as a private concern as a resident on Everittstown Road that effects a lot of people, the pipeline will come through the nursing home property and people on top of that hill are on well water with a shale bed. What is the recourse? We need to communicate to people in Frenchtown that if it does not go through your property, you have no recourse. She recommended getting a good

well report done before the pipeline comes through so that if your well is destroyed and your water is contaminated, you have a well report to start a law suit. They use a boring machine. John Dougherty noted that the lawyer did not talk about the route. Nominally, the trench will be six or eight feet deep. Chairman Eckel added that it will have to go down a 30 foot cliff and go underneath the creek. It will not be elevated. John Dougherty commented that it could potentially affect people's well water depending on how they seal the boring. Chairman Eckel stated that she also has concerns about the C-1 stream. Gordon Dragt stated that after that meeting, he talked to three property owners and they were frustrated. The message they got was that the pipeline is going to go through. The Federal government will approve it. The property owners do not have a recourse other than negotiating when they knock on your door. The only positive thing, although they will disturb a lot of properties, is that once it is all back together, you will still have grass. Landowners were discouraged. They thought they were going to come away with more positive things. William Sullivan noted that the information provided was that the pipeline is going through and this is the way to get the most money. Sarah Scott noted that the majority of municipalities have passed resolutions opposing the pipeline. If the majority of municipalities do that, it puts pressure on the Governor. The Governor then talks to FERC. William Sullivan responded that there are hundreds of pipelines in this country and no one wants a pipeline in their backyard but there are laws that enable the pipelines to go through. There is one going through Readington right now. There are laws that allow them to do it and do it quickly. Chairman Eckel added that the original pipeline path and the amended path for the pipeline specifically tries to avoid congestive population centers and is going through preserved land, forests and farmland. The various groups, municipalities and Land Trust that preserved the land believed the lands were preserved. If they cut through forests, it is a funnel to add invasive species to the forest and you have not fragmented the forest. Gordon Dragt commented that people would understand it better if they were benefitting from the gas line. This gas line is for export, not consumption. Chairman Eckel stated that the pipeline will carry gas for only 15 years. FERC and PennEast said that. People were concerned for how long the lines are good for fearing that the pipeline would start to break down. They said they would not use it for more than 15 years and there will only be 15 years of gas. Gerry Case noted that over six weeks ago, the sewer department received a request for a mark out for the PennEast Pipeline to go 4,400 feet from the center line of Kingwood Avenue up Creek Road. William Sullivan noted that you have to yield to State and Federal laws.

## **ADJOURNMENT**

Gerry Case moved adjournment at 8:10 PM, and William Sullivan seconded. The motion passed on favorable voice vote.

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Brenda S. Shepherd  
Planning Board Secretary