

Frenchtown Planning Board  
Regular Meeting  
November 9, 2016  
7:30 P.M.

Chairman Randi 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:
Case	
DenBleyker	
Dougherty	
Dragt	
Eckel	
Myhre	
Musolino	
Scott	
Sullivan	
Suttle	
Weeks	

**APPROVAL OF MINUTES**

**Regular Meeting – October 26, 2016**

Gerry Case moved to accept the minutes of the October 26, 2016 Regular meeting as amended (Page 7, Line 2, should read parking not paring and on Page 9, first paragraph under correspondence should read bubbling not bumbling). Brad Myhre seconded the motion. The minutes of the October 26, 2016 Regular meeting as amended were approved by favorable roll call vote with John Dougherty, Sarah Scott and Randi Eckel abstaining.

**PUBLIC COMMENTS**

Chairman Randi 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 comments, Chairman Eckel closed the public comment session.

**AMENDED PRELIMINARY SITE PLAN APPLICATION AND FINAL SITE PLAN APPLICATION, STAGE I - BLOCK 59 LOT 4, 62A TRENTON AVENUE – ART YARD, INC. (COMPLETENESS REVIEW AND POSSIBLE PUBLIC HEARING.)**

Mayor Myhre and Councilman William Sullivan stepped down until it is determined if a “D” variance is required on the application. Sarah Scott stepped down on this application due to proximity.

Chairman Eckel noted that the application must be reviewed for completeness first. If the application is deemed complete, the Board will continue with a public hearing on the application.

Engineer Clerico noted that his November 8<sup>th</sup> memo provides a summary and history. Page 2 describes what they are proposing and what they are requesting as modifications of the conditions of the preliminary approval. Checklist C was reviewed for completeness. The applicant subsequently withdrew the variance request so Checklist D will not apply. As to page 3, Engineer Clerico noted that he defers the administrative items to Brenda Shepherd. Brenda Shepherd confirmed that the administrative items are complete. Engineer Clerico noted that as to items 3, 5, 6 & 8, there were two items that were not submitted, a fire department letter and valet parking details. The Board could grant waivers as the valet parking would be for the theatre which would be part of Phase 2. The fire department issued a letter this evening. Water improvements could be part of Phase 2 so the Board could grant temporary waivers for Items 5, 6 & 8. John Dougherty commented that we should proceed on the assumption that Phase 2 may not happen. Will fire safety be acceptable under Phase 1? Chairman Eckel noted that there will be testimony as part of the public hearing. The Board must determine completeness first. The Engineer recommends a temporary waiver for completeness. Attorney Hirsch noted that the Board is granting a temporary waiver for completeness. If during the public hearing, the Board does not believe that the fire department letter adequately responds, the Board may need more details and will not make a decision until it is provided. The waivers are for completeness only.

On motion by Gordon Dragt, seconded by John DenBleyker and carried by unanimous favorable roll call vote, the Planning Board deemed the amended preliminary site plan application and the final site plan, Stage 1, application complete granting temporary waivers for Items C5, C6 & C8.

Chairman Eckel noted that the Board will need to decide if a use variance is required prior to commencing the public hearing.

Attorney Hirsch noted that she has the legal notice that was published in the Hunterdon County Democrat and the affidavit of publication submitted by Attorney Mongelli. The notice is in order. This was marked as Exhibit A-1. The Board can move forward with the public hearing.

Attorney Hirsch noted that when a use variance is being considered by the Planning Board, the Class I and Class III members, being the Mayor and Council member, they have to step down on the application. That is required by State Statute. In this case, there is a question about whether the change in use for Phase 1 creates a new use. Is it the same use or a variant of the original approval or it is something totally new? The Board has advice from Planner McKenzie. She notes that the film screening use is not a new use but a variant of the black box theatre. Attorney Hirsch recommended that the Board hear a small amount of testimony on that specific use. Listen to the testimony and make a decision also known as an interpretation of the prior resolution of approval to allow or not allow the film screening room as part of the previous approved use. If the Board determines that the use is part of the previously approved use, the Board would only be dealing with an amended preliminary site plan application and a final site plan, Phase 1, application. If the Board does not require a new use variance, the Mayor and Council could come back for the public hearing.

Attorney Mongelli noted that he is present this evening on behalf of ArtYard. In attendance is Architect and Planner, Michael Burns, Architect Courtney Haviland and Jill McDonald and Geraldine Dougherty of ArtYard. Attorney Hirsch swore them in as well as Planner McKenzie and Engineer Clerico.

Attorney Mongelli noted that we are here this evening with an amended preliminary site plan application and a final site plan, Phase 1 application. We will move immediately into the proofs with respect to the screening room and the preliminary theatre use. Move into proofs with respect to screening room versus the preliminary theatre use. In our view consistent with the Board Planner, the screen filming use is a variant of the original approval. Planner Michael Burns will provide testimony.

Planner and Architect Michael Burns provided a new packet which is a hard copy of the presentation for this evening. The packet was marked as Exhibit A-2. Planner Burns referring to page three of the packet, noted that last time we were here and presented the proposal, the space to the western part of the building would become the theater and the adjacent space was suggested as a black box theatre and would also serve as the backstage to the theater. On the upper part of the image, we are proposing to utilize the same portion of the black box theater and back stage area plus the adjacent space to it to create a film viewing space. The first event proposed for that space was a viewing of a film. The space would be more flexible as it could have poetry readings and other presentations so it functions like a theater space but does not have a formal stage like the original theater. It functions more like a black box theater and serves the purpose of a stage for film viewing, etc. It is essential the same use as a theatre space. Attorney Hirsch stated that the Board must determine if it fits in the category of a theater and black box theater. Planner Burns stated that a black box theater is a theatre type space. in terms of configuration, it is flexible with no identifiable stage, and seating can be flexible as well. In the case of performances that does not require a stage, seating can be arrange anywhere. A stage could be construction but it is a flexible theater space. There is no permanent searing, stage or curtains. Chairman Eckel noted that the Board in the original preliminary site plan application approved the black box theatre use. What the applicant is proposing is increasing the size of the space and using it as a similar use because the black box could have been used for small screenings and as a backstage. Planner McKenzie added that while they are proposing to enlarge the space, they are not going to be using the main theater space. They are proposing to use a different area of the building in Phase 1 but it is not a larger theater. Chairman Eckel noted that the Board previously approved a theater and black box space at 4,900 square feet. They are now proposing to use 1,548 square feet. They are occupying the same space with a similar use. Chairman Eckel noted that the Board must take a formal vote interpreting the black box stage area as the same use as a film viewing use.

On motion by Gordon Dragt, seconded by Jack Weeks and carried by unanimous favorable roll call vote, the Planning Board determined that the film viewing use is similar to the black box theater use and does not require a use variance.

Mayor Myhre and Councilman William Sullivan returned to the meeting for the public hearing on the amended preliminary site plan application and final site plan, Phase 1 application.

Chairman Eckel stated that the Board will commence the public hearing on the amended preliminary site plan application and final site plan, Phase 1, application.

Referring to page 1 of Exhibit A-2, Planner and Architect Burns stated that Engineer Clerico and Planner McKenzie were helpful in aiding us in organizing our drawings that represent what we are trying to accomplish. When we were putting together the presentation for this evening, we thought it would be helpful to combine the sheets in the original application submission. He will point out which sheets were combined. On the first slide, sheets 1 and 2 of the original submission were combined. We have the original site plan and the original plan of the building.

It also has the zoning map. The property is 62A Trenton Avenue know as Block 59 Lot 4 and occupies the R5 low impact industrial zone. The property is located just south of the R4A zone and the village center plan overlay zone. On the existing site plan showing Trenton Avenue to the east, the property is 75,482 square feet and 1.733 acres gross and 71,868 square feet and 1.65 acres net. The existing building is a one story 16,000 square foot building and the existing parking area wraps around the southern and western portions of the building that accommodates about 75 parking spaces. The ingress and egress is off of Trenton Avenue and there is an existing footpath that connects the parking lot to the towpath is along the west that runs along the river. There is an existing trash and gas tank enclosure. The landscaping edges the perimeter of the site along the adjacent properties. There is existing fencing along the entire northern property line and goes along the northern portion of the east property line. There is a fence that runs along the southern portion of the property that was originally restricted in the Two Buttons application and at some point was extended along the southern property lines. There are a number of existing building mounted light fixtures along Lovin' Oven, and along the southern and western walls which lights the entrances and the parking area adjacent to them. On the northern side of the building, there are light fixtures that light the exits on the back of the building. There is presently a free standing sign along Trenton Avenue and the sign is also lit. There is an existing fire hydrant located across Trenton Avenue which he will discuss in more detail later in the hearing.

Planner and Architect Michael Burns noted that on the original floor plan, Lovin' Oven is in the eastern part of the building and behind the restaurant is the common service area adjacent with men's and women's toilets and a corridor that provides exiting to the original retail space on the southern end and warehousing space on the western end.

Mr. Burns noted that the second slide is a combination of sheets 3 and 4 of the original amended preliminary site plan application submission. The site as on the previous drawing does indicate the phasing aspect of the proposal and is indicated in the footprint of the building. The western portion of the building will become Phase 2. To the east is what we are proposing as Phase 1 including maintaining the existing restaurant, Lovin' Oven. We also indicated and as previously indicated on the Two Buttons application the twenty foot fire lane through the parking area and the organization of the parking on the site. We did verify the landscaping and it is what is represented on the plans although it does deviate from the previous approval for Two Buttons. We also verified the lighting on the building. Attorney Hirsch asked how the landscaping deviated from the Two Buttons approval. Mr. Burns responded that in the Two Buttons application, there were two stages of landscaping, a series of trees and series of low shrubs. It seems that all the trees were installed but very little of the low shrubs were installed with the exception at the Lovin' Oven area. In terms of the floor plan, this is the floor plan we presented initially with the Lovin' Oven space, the common areas remaining, the gallery space, museum, classroom and work spaces, the black box, theater and lobby with new toilet spaces. Responding to John Dougherty, Mr. Burns noted that the outside enclosure is a natural gas propane storage tank above ground.

Planner and Architect Burns stated that the zoning data indicated on the sheet shows the original building and site meet the building requirements with a few exceptions. The minimum front yard setback is 50 feet and the existing building is 48.86, the minimum side yard setback requirement is 25 feet and the north side of the building is setback 9.75 feet, the maximum impervious coverage is 70 percent and the existing impervious coverage is 70.88 percent. The building is almost all metal which is not allowed in this zone and the parking area is crushed

stone except for pavement in the front. These are all existing conditions in the Two Buttons approval and we are not proposing to alter that in anyway.

Mr. Burns noted that sheet 3 is sheet 5 of the original 11 submitted, the comparative floor plan and the difference on what we are proposing is on the upper portion and what we are proposing in Phase 2 is below. In Phase 1, Lovin Oven remains as well as the toilets and the common area adjacent to Lovin' Oven. The gallery spaces, proposed film viewing space and workshop and small office area are indicated in Phase 1. The theater area will remain unoccupied in Phase 1. The original preliminary approval is shown on the bottom.

Mr. Burns noted that Sheet 4 is sheet 6 of the original 11 which is the site plan for phase 1. We will maintain the site the way it is presently with the exception of replacing the existing sign which he will provide details later on and a few wall mounted banners on building. The Fire access is indicated and we will maintain that access. Zoning data remain the same and the exiting non conforming conditions are the same. We have included parking calculations and how we calculated the demand for phase 1 for the various uses and we have showed the use and occupancy alternative option charts. Option 1 includes the gallery use, office use and workshop/storage and they would be in operation when nothing else is operating in the building and that demand is 25 parking spaces. That is also without the restaurant operating. The current hours of the restaurant are listed on sheet 2, lower left hand corner. It is Tuesday from 9 am to 3 pm, Wednesday through Saturday from 9 am to 9 pm and Sunday from 8 am to 2 pm.. Under option 2, when the film viewing is operating and the rest of the building is not, the occupancy could be 220 seats which would equate to 73 parking spaces and the other uses would not be in operation. Under option 3, when the gallery, office, workshop and restaurant are in use which represents an average day, 63 parking spaces are needed. Under Option 4, when the filming viewing use and restaurant is in operation, the seating in the film viewing would be limited to 111 seats which would require 75 parking spaces and we have 75 parking spaces on site. It also indicates how we are responding to conditions of the previous resolutions.

Attorney Hirsch asked if these are alternatives or options available to the applicant? If so, how will those options work? Mr. Burns responded that are options that the applicant would like available to them. When the film viewing area is operating and the restaurant is operating, the number of seats will need to be limited so we do not go beyond the available parking for the demand. When the film viewing is operating on its own, we could have 220 seats although we may not be able to seat 220 anyway. When the restaurant is open with the film viewing, seating would be limited so we do not exceed the available parking. Planner McKenzie noted that the constraints on use relative to the parking availability needs to be reflected in a resolution. She asked that Mr. Burns spell out on a day to day and hour to hour basis the use and occupancy. For example, on Monday, when the restaurant is closed what would be the maximum usage and how you would arrange it when the restaurant is open. This needs to be put in a resolution.

Mr. Burns noted that the film viewing area is a special space and will only have limited use throughout the year. There will be special events where it will be advertised and ticket will be sold which would allow control. Option 3 would be a daily average use of the building. Based on the size of space and the allowable number of people allowed in the spaces based on the building codes under that scenario that is what generates a parking demand of 63 spaces, the building completely in use with the exception of the film viewing room. When the film viewing is operating on its own, there could be 220 seats. If the restaurant is in use with the film viewing area, the seats will be limited in the film viewing area. Planner McKenzie noted that all uses except for the film viewing area can operate together and it will not exceed the available parking.

The film viewing use for certain days and hours is limited to not more than so many seats but on certain days such as Sunday night, you could have 220 seats. You will have to figure out what would be appropriate conditions so it can go into a resolution. There would be no restrictions except when the film viewing area is in use. Gordon Dragt stated that restricting it day by day would lock the applicant in. William Sullivan commented that the maximum capacity of the film viewing area when the restaurant is in use is limited to 111 seats when the restaurant is open and all other uses are closed.

Mr. Burns added that in Phase 1, we are not proposing any alterations. That part of the building is an open space. It would be virtually impossible to have the gallery and film viewing spaces open together. The rest of the building will be shut down during the film viewing. Cathy Suttle asked what happens if the restaurant changes the hours? Planner McKenzie responded that it would not be a problem on a day to day basis. The film viewing cannot operate with the other uses. Engineer Clerico noted that it is not much different to condition 6 of the original resolution. Planner McKenzie added that they are not doing valet parking. There is a concern of limited seating when the restaurant is open. Parking works as long as you are not doing film viewing when the restaurant is open and the other uses are going on. When the restaurant is open, seating is limited to 111 seats and when the restaurant is not open, seating is limited to 220. Mr. Burns noted that self park is 75 parking spaces. The next slide shows the site plan that was not included in the submission drawing that goes in tandem with the valet parking scheme which is Phase 2. Phase 2 also includes the street trees and lighting and sidewalks and we would like to defer them to Phase 2.

Mr. Burns noted that sheet 6 is sheet 7 of 11 of the original submission and shows the same site strategy included in the previous sheet and includes valet parking as opposed to self parking, street trees, lighting and sidewalk. The sheet represents all of what we are proposing in Phase 1.

Mr. Burns noted that sheet 7 is sheets 10 and 11 of the original submission which includes the floor plan, proposed free standing sign to replace the existing free standing sign and a pair of banners on the building. The sign will read "Lovin' Oven and ArtYard. The free standing sign exceeds the height limitation. The sign height limitation is 5 feet. This sign would be six feet high and there is no increase from the current sign. The banners require relief from the ordinance. It must be 8 feet from the sidewalk which is for public sidewalks. This is a private sidewalk and we are proposing 7 feet from the sidewalk and it meets all codes and ADA requirements. The other requirements do not allow banners to exceed the eaves of the building if there is no second story according to the ordinance. Because of the height of the building and the need for reasonable head room the banners are above the eaves. There are some other requirements in terms of bracketing off of the building of 90 or 60 degrees. In this case, 45 degrees is more appropriate. We will need some relief on the signs. Responding to Chairman Eckel, Planner MckKenzie noted that the sign approval can be part of the site plan. The first exception is the 8 foot clearance and they are proposing 7 feet.

Mr. Burns added that the sheet also includes occupancy code issues requested from the Fire Department. The issues are that the Fire Department wants to be sure that we had adequate exiting from the building. At that time, the concern was specific to the theater area. We would need to provide it if that happens. Currently, there are a series of exits of the south side of the building, one that serves Lovin' Oven, one that serves the theater and another one that serves the main gallery. There are also exits off the rear of the building and there is also one off the common area. We have more than adequate exits to accommodate the population of the building. Planner McKenzie asked if the applicant showed the fire company the Phase 1

proposal, particularly the film viewing room? And if you might have 220 seat in the film viewing area from time to time, will you need the water improvements that the fire company indicated? Mr. burns noted that the fire company did do a letter. He reviewed the plans with the Fire Captain and the Captain provided a letter on the revised plan and he is satisfied with the exiting from the film screening room. There is one remaining issue and that was the fire hydrant. We discussed the fact that there is a fire hydrant immediately across the street and that the code requirement is that a fire hydrant be within 400 feet of the building and the one across the street is within 400 feet. We discussed the fact that when they pull the lines across the street and would have to closed Trenton Avenue. He is comfortable with the hydrant across the street for the film viewing room. In the case of the larger theater space, he would prefer that a hydrant be on site. We will defer that to Phase 2.

Responding to John Dougherty, Mr. Burns noted that the white symbols on the plan are the small pads that house air conditioning units or landing pad outside. The film viewing area has an exit through the space adjacent to it to the exterior on the south. There is an exit through the common area and there are three exits out the back of the building. The building code requires 2 exits for up to 500 occupants and we have more than 2 exits. Planner McKenzie asked if the building will be divided by temporary walls and curtains? Mr. Burns stated that it will be divided with temporary walls and curtains with clear access to the exits by the way the temporary walls and curtains are arranged. Responding to John Dougherty, Mr. Burns noted that the dash lines between the film viewing room and gallery is the main structural beams and curtains will be used. We will probably have to provide an exit sign there between the curtains. The Captain of the Fire Department wanted to make sure that the fire subcode official was okay with what we are proposing and Mr. Burns spoke with the fire subcode official and he is okay with what we are proposing. The fire subcode official will have to review the drawings prior to issuing a certificate of occupancy.

Attorney Hirsch asked the applicant to go through the conditions and indicate whether they are satisfied or being deferred to Phase 2. Attorney Mongelli stated that Planner and Architect Burns was previously accepted as an expert witness and asked the Board to accept him as an expert witness again. The Board accepted Mr. Burns as an expert witness as he is a licensed professional planner.

Planner Michael Burns noted that as part of the prior approval, there were conditions in the resolution. Condition #1 speaks to the use variances and that we would be required to come back for any further uses that we would be proposing. We terminated the prior uses and he believes we have satisfied that condition. Condition #2 states that we would be required to obtain other municipal, county and state approvals and we have obtained a conditional approval from the Hunterdon County Planning Board and we have received a letter from the Delaware River Basin Commission that they have no interest in the application. And, we agree to make any other application if necessary. Condition #3 speaks to the steel panel finish on the building. If the property was to be replaced or the building be demolished, then the prohibition of metal panels in the ordinance would be applicable. We will have no changes to the building in Phase 1 so that condition is satisfied. Condition #4 stated that prior to any construction on the site, proof of adequate sewer and water capacity be supplied. We did submit "will serve" letters which satisfied this condition. Condition #5 speaks to the lighting and landscaping plan and signage. We are proposing a free standing sign and banners and we have provided those details. We are also requesting to defer any additional lighting and landscaping to Phase 2. Cathy Suttle asked about sound attenuation? Mr. Burns stated that the sound attenuation is directly connected to the theatre use. We would prefer to defer that to Phase 2. Chairman Eckel asked about

performances in the black box space? Mr. Burns noted that the description of the film viewing area is related to the black box space. The anticipation is that performances would not be in that space but film viewing, poetry readings and lectures. Chairman Eckel noted that the concern is that most films have sound tracks and sound could be an issue. Mr. Burns stated that in previous applications we have had before Board for theaters, the resolution is that once it is up and running, if sounds becomes a problem, we would be happy to have a condition that discusses and resolves the issues at that time. Planner McKenzie asked if there are plans for musical events? Mr. Burns noted that there may be small musical events. Planner McKenzie stated that sound could be an issue and it is reasonable for us to ask that it be addressed as part of Phase 1. We need to make sure that if Phase 1 is the only thing that happens here, that sound and any other issues be addressed in Phase 1. We also need to make sure that as Attorney Hirsch asked about the landscaping plan, if the Board is satisfied with it now although it is not what was approved for Two Button. You have to make sure you are comfortable with it. Mr. Burns stated that the difficulty with the noise issue is that there are precise ways to deal with noise issues inside the space and it is not easy to predict what noise will leak out of the space. We have always resolved the issue with a condition that if the noise becomes a problem, we will deal with it. Attorney Hirsch asked what the potential solution would be? Mr. Burns noted that we would insulate the exterior walls and roof so that the sound gets mitigated. Planner McKenzie noted that the applicant has to comply with the noise ordinance, 65 decibels during the day and 60 decibels at night. Sound attenuation would be part of Phase 2. Chairman Eckel stated that she understands that they are not making any changes to the building and want to get operations off the ground. She is concerned that as a performance art space, there are houses next to the parking lot. Mayor Myhre asked that if the Board could impose a condition that if complaints are filed, they come back to remedy the situation. Attorney Hirsch stated that the Board can require noise measurements in compliance with the noise ordinance and mitigation if the noise exceeds the threshold. Attorney Mongelli stated that in West Amwell, we received approval for a 12,000 square feet performing art center and it is adjacent to a single family residential area and the same issues were raised. The Board felt that the best way to address it was that if the neighbors raised issues, the zoning officer would say that it needed to be addressed and then we would do the testing at that time and mitigate if necessary. It was addressed the same way in Lambertville when we got approval for 130 seats in the music hall on Bridge Street and adjacent to a line of single family homes. Chairman Eckel commented that attenuating noise in a metal building could be tricky. Planner McKenzie asked that if there are temporary noise attenuation items that you could move around in a building to block noise from escaping from a particular area? Mr. Burns noted that the easiest way to do that is with curtains. We have no objection if it is necessary. The curtains are heavy enough to accomplish that. Chairman Eckel stated that if there are complaints, you will have to deal with it at that point.

Mr. Burns noted that Condition #6 speaks to large events related to the theater. We are not proposing the theatre as part of Phase 1 and would like to defer that issue to Phase 2. Condition #7 speaks to valet parking which is related to the theater and we would like to defer that to Phase 2

Mr. Burns noted that Condition #8 speaks to providing the missing fencing and landscaping pursuant to the Two Buttons approval. We did verify that there was more fencing installed than required. We would like to defer the landscaping that was not installed by Two Buttons to Phase 2. This is the shrub layer. Responding to Chairman Eckel, Mr. Burns noted that all the landscaping was installed on the north side and there is also a fence along the entire property line. Responding to Chairman Eckel, Mr. Burns stated that his observation on landscaping along the western and northern edges is that it bleeds into the natural landscape. It would be

unfortunate to randomly install landscaping that is not appropriate. Chairman Eckel asked if anyone looked at that to determine if the natural landscaping there is indeed natural landscaping or invasive species. Mr. Burns responded that it could be and that is the reason they would like to defer it to Phase 2 because it would give them an opportunity to really look at it and do it right when we do it.

Mr. Burns noted that as to Condition #9 referring to installation of the sidewalk on the adjacent property, that is the area to the north that would cross the Blue Fish property. We purposely did not put the sidewalk in the right of way for a few reasons. One is because it triggers another application to the NJDOT and more importantly, it would provide a buffer between the edge of the roadway and the sidewalk itself. It provides a better sense of security. It keeps the snow away from the sidewalk. We kept it out of the right of way and would need to get an easement from the property owner. At this stage, it will be very difficult to get that easement. We would be happy to do it if we can reach an agreement with the property owner. Otherwise, we would have to take the sidewalk and bend it so that it goes into the right of way which puts the sidewalk along the edge of the roadway. We would be happy to put the sidewalk on our property. Engineer Clerico noted that Trenton Avenue is a Borough street and is not a State Highway. That eliminates a DOT application. Chairman Eckel stated that the sidewalk is included in the Downtown Revitalization Plan. Planner McKenzie added that it is important to have the sidewalk once the theater is in because it is a way that people can come in from town. Mr. Burns added that it is proposed in the original submission, with street lighting, street trees etc. We are happy to do it. Planner McKenzie noted that street lighting is being proposed as well as site lighting. Mr. Burns stated that there is site lighting that currently exists on the southern and western edges providing lighting for the parking area. It is the same lighting that was installed for Two Button in 2009. Responding to John Dougherty as to the cross hatch area, Mr. Burns noted that it is a site easement that runs in front of the row of trees in the front of the property. Chairman Eckel stated that the sidewalk and street lighting is part of the downtown revitalization plan. Mr. Burns stated that Condition 10 requires additional details on traffic and noise, if any. We believe that is primarily attached to the valet parking and the additional traffic generated by that. We would defer that to Phase 2. Condition #11 requires confirmation of the Flood Hazard Elevation. We have submitted a clarification from the survey on the Flood Hazard elevation. Condition #12 was the fire department review letter which has been addressed. Condition #13 requires the escrow account to be replenished as required. The escrow account is up to date.

Responding to John Dougherty on the confirmation correcting the flood hazard elevation, Mr. Burns noted that when we submitted our application, we requested that the surveyor provide a new flood elevation certificate. The Two Button certification was different. Engineer Clerico asked that the surveyor clarify it. The surveyor clarified it. The flood elevation has changed and an error was found in the previous elevation. The surveyor is certifying that his is correct.

Attorney Mongelli asked that Mr. Burns provide brief proofs of the variances. Mr. Burns confirmed that he is familiar with the Municipal Land Use Law, the Borough's Land Use Ordinance, the Borough's Master Plan and the Borough's Downtown Revitalization Plan. Attorney Mongelli asked Mr. Burns in his opinion if the variances advances these purposes. Mr. Burns stated that under the Municipal Land Use Law, subsection 45:25, subsections a, d, e, f, b and c would advance the purposes. As to a-f, the adopted 2009 Master Plan recommended that the zoning of this property be changed to R4A or R4B zone which permits a broad variety of retail and commercial spaces aligning all those uses with those permitted in the zone districts. The proposal meets all the ordinance standards in Section 308 of the zoning ordinance which is the environmental performance standards. The Downtown Revitalization Plan specifically

recommends the establishment of arts and community centers and elaborates on benefits of such uses. We believe we are uniquely suited for this particular property. The use variances were granted by Resolution #2016-09. As to B and C, the existing structure meets all the setback requirements except for the north side yard and the front yard setbacks which are both existing non-conformities that will remain unchanged and will maintain the buildings accessibility and exposure to light and air. The site is in the flood hazard zone, however, the finished floor is above the 100 year flood line. As to advancing the purposes of the 2012 Downtown Revitalization Plan, the planning committee concluded that an arts and cultural center was an appropriate thing to enhance the town's residents and retail, and would encourage economic growth. The Village Center Plan recommended to revitalize the commercial district, provide a mixture of land uses, provide a pedestrian environment, undertake infrastructure improvements involving streets, curbs, sidewalks, parking and sewerage and ensure a long term productive reuse of the existing redevelopment parcels, replacement or reuse obsolete industrial buildings, and introduction of street trees and street lights. Our proposal speaks to all of that. He also agrees with the Board Planner's conclusion that the banners are appropriate and the building is unique enough and far enough removed from other commercial uses so that unusual signage is appropriate for the site. The Board could grant these variances without substantial detriment to the public good because there are no detrimental impacts on the neighbors or neighborhood since we are aligning with the uses in the R4A zone as recommended in the 2009 Master Plan and it also satisfies 6 of the purposes of the MLUL, it is in line with the goals and objectives of the 2012 Downtown Revitalization Committee's recommendations, and it is in line with the goals of the Village Center Plan and by extension of the Hunterdon County Master Plan and the State Development and Redevelopment and section 308 of the zoning ordinance. The benefits outweigh any detriment to the public good because the benefits were outlined previously and there are no determinants as concluded by the Revitalization Committee that an arts and community center would enhance the town and support existing restaurants and retail and encourage economic growth. The use variances for the uses was granted in Resolution 2016-09. These variances would not impair the intent and purpose of the zone plan and zoning ordinance. These reasons are as just previously outlined.

Chairman Eckel noted that the applicant can put signs on both sides of the building because they have a side parking lot which qualifies as a rear entrance. They can have 10 items of information per use on each side of the building. On the front sign, there is 8 items of information. On the side of the building, there is 4 items of information on the Lovin' Oven sign and 6 items of information on the ArtYard sign for a total of 10 items of information. The front sign is a wood sign. She does recall that the Board allowed Two Buttons to have a sign slightly higher than what the ordinance requires and the applicant is replacing what is already there. The banners on the side of the building will be black and white in color. Chairman Eckel added that she concurs with Planner McKenzie that the banner signs fit well on that style building which is non traditional and away from the downtown. The sign by the road must be affixed so that they do not swing. The light on the front sign is a ground mounted light which is existing. The lighting cannot exceed 75 watts or lumen equivalent.. Planner McKenzie noted that a variance is required on how the banners are mounted as well. It is the only way to mount the banners because the building is low.

Chairman Eckel noted that we will need to deal with the issues of deferral. Planner McKenzie noted that the Board has to make sure that they are comfortable with deferring certain items to Phase 2 with the possibility that Phase 2 may never happen. There was landscaping that Two Button's was to do that they never did. The Board must decide if it wants that done now or are you comfortable deferring it. Chairman Eckel stated that her opinion is that the reason for the

shrub layer landscaping along the parking lot was to buffer the parking lot from the neighbor. She does not believe that we have every received complaints about headlights, etc., from the neighbors as long as Two Buttons was there. She agrees with Mr. Burn's suggestion that the applicant should look at it carefully and do it right as opposed to slapping in a shrub layer. It would be in the applicant's interest to address that somewhere along the line. Responding to John DenBleyker, Mr. Burns noted that there is a fence along the parking lot about two thirds of the way and does block the house. Chairman Eckel stated that we will want a landscape architect to review what they are proposing when they come back with a landscape plan.

William Sullivan stated that he would like to see the occupancy clearly marked and well defined with 111 being posted and the exception printed down below. Mr. Burns responded that there is a code requirement to post the occupancy level. We will post the 111.

Engineer Clerico asked for clarification on the site easement. The Plan notes that it is dedicated. Is it dedicated? Was a deed recorded? Mr. Burns stated that he took it from the old site plan. Attorney Mongelli stated that they can do a site triangle easement if the dedication was not recorded. .

Responding to John Dougherty, the letter from the fire department was marked as Exhibit A-3.

Having no other commented or questions from the Board, Chairman Eckel opened the floor for public comments on the public hearing. Having no public comments, Chairman Eckel closed the public comment session of the public hearing.

Attorney Hirsch noted that the Board will take a vote on the amended preliminary site plan application to provide for phasing and to approve the first phase granting approval for the finals site plan, Phase 1 application. There are a number of conditions that we discussed that the approval will contain and they are listed as follows:

- 1) There is a combination of uses with the parking calculations with Option 3 being a typical day. Under Option 2, when the film viewing area is open and the restaurant is open the occupancy will be limited to 111. Under Option 4, when the film reviewing is open and the restaurant is closed, the occupancy is limited to 220. The occupancies per the limitations will be posted.
- 2) Prior conditions continue to apply with the substitution of the film viewing in the black box area and as discussed in detail this evening.
- 3) Sound attenuation will be addressed in Phase 1 if it becomes an issue as a result of a complaint from a neighbor or as a results of a review by the zoning officer and the sound levels violate the ordinance.
- 4) Site triangle easement to be dedicated or demonstrate that the site triangle easement has been dedicated.
- 5) Limitation of 75 watts or equivalent lumens on the he ground lighting
- 6) Sign variances granted for the height of the banners where 8 foot is required and 7 foot is approved, the banners must not exceed the eave of the building and the banners will exceed the eave of the building, the angle should be 90 degrees and 45 degrees is approved, the free standing sign should by 5 feet and 6 feet is approved since the existing sign is 6 feet.

On motion by William Sullivan, seconded by Gordon Dragt and carried by unanimous favorable roll call vote, the Planning Board approved the amended preliminary site plan application for phasing and the final site plan, Phase 1, with sign variances subject to the conditions listed and discussed this evening which will be detailed in the memorializing resolution.

Sarah Scott returned to the meeting.

**OLD BUSINESS:**

**a) Payment of professionals' bills for the Cretella application**

Chairman Eckel noted that she spoke with Secretary Shepherd and we are still trying to collect outstanding delinquencies on the Cretella application which Attorney Hirsch cannot represent us on due to a conflict. The Borough Attorney, Albert Cruz, is looking at it. The Planning Board has money left in its budget and she would like to pay our professionals bills with the money left in the budget until the issue is resolved with Attorney Cruz. The Council will have to approve it. The Board must agree to send it to the Council for approval to pay these from the Planning Board budget. Responding to Mayor Myhre, Brenda Shepherd noted that the delinquency is approximately \$5,500.00. Chairman Eckel stated that they did not have enough money in their escrow for the last meeting. The Board consented.

Planner McKenzie commented that she would like to have a meeting with the affordable housing subcommittee in the very near future as she needs guidance and input. Sarah Scott, John DenBleyker, William Sullivan and Randi Eckel will schedule a time to meet with Planner McKenzie.

**VOUCHERS**

Brenda Shepherd, Board Secretary, noted that there were no vouchers for approval.

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

Mayor Myhre reported that Eleventh Street has been repaved and Seventh and Twelfth Streets were repair by the water company. The Ridge Road construction is underway. Third Street will be improved by the developer. The Police porch repair has started and within 3 weeks, the drainage pipe will be repaired in the park.

Mayor Myhre also reported that the Borough has put in an application for a \$980,000.00 grant for the downtown revitalization under the Transportation Alternative Program. We also submitted a \$450,000.00 grant application for the Safe Routes to School program to redo/reset the pavers and put in new cubing on Harrison Street from Second Street to the school on both sides and for new sidewalks on Second Street.

Mayor Myhre noted that the Borough is putting in a preapplication to USDA to see if the Borough will qualify for funding and if they will consider our project to install sewer lines on the hilltop streets.

**ADJOURNMENT**

Gerry Case moved adjournment at 9:45 pm, and William Sullivan seconded. The motion passed on favorable voice vote.

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Brenda S. Shepherd  
Planning Board Secretary