

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

The meeting was called to order at 7:30 PM by the Vice-Chairman, Mr. Nathan Foulds, who then led the assembly in the flag salute.

Mr. Foulds read the Statement of Compliance pursuant to the "Open Public Meetings Act, Chapter 231, PL 1975."

ROLL CALL OF MEMBERS PRESENT: Mr. Christiano, Mr. Foulds, Mr. Giordano,
Mr. Williams, Mr. Zydon, Mr. Nidelko,

ABSENT: Mayor Crowley, Mr. Cholminski, Mr. Friend

ALSO PRESENT: Mr. David Brady, Esq.
Mr. Thomas G. Knutelsky, P.E.
Mr. James Kilduff, Plng. & Comm. Dev. Dir.

APPROVAL OF MINUTES:

Mr. Williams made a motion to approve the **Franklin Borough Planning Board Reorganization Meeting Minutes for February 3, 2014**. Seconded by Mr. Nidelko.

Upon Roll Call Vote:

AYES: Christiano, Foulds, Giordano, Williams, Zydon, Nidelko

NAYS: None ABSTENTIONS:

(Motion Approved)

Mr. Zydon made a motion to approve the **Franklin Borough Planning Board Meeting Minutes for February 3, 2014**. Seconded by Mr. Williams.

Upon Roll Call Vote:

AYES: Christiano, Foulds, Giordano, Williams, Zydon, Nidelko

NAYS: None ABSTENTIONS:

(Motion Approved)

APPROVAL OF RESOLUTIONS:

There were no resolutions to approve

APPLICATIONS FOR COMPLETENESS:

PB-03-14-1 Eden Franklin LLC, Amended Preliminary Site Plan and Amended Final Site Plan, Block 1401; Lots 12, 13 & 14

Mr. Foulds advised he'll be stepping down for this portion of the meeting. Mr. Brady advised Mr. Foulds indicated he has a conflict, will not participate, and requested he proceed with this portion of the meeting.

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

Mr. Brady said it's an Application for Completeness only, not actual case merits. He noted the Board has things in their packet including Mr. Nelson's Report. He said the Board of Adjustment approved the Walgreen's building, not drive-thru use to the building which is a conditional use. He said at the time of the application, the drive-thru ordinance constituted they had five conditions. During the application he made recommendations to look at those conditions which eventually led to this Board recommending the Governing Body review the Drive-thru Ordinance for adoption which then was adopted.

Mr. Brady said the applicant made an application here with addition of the drive-thru which is on the Site Plan. The application seems to indicate the applicant complies with all the conditions. If they didn't comply they would be back before the Board of Adjustment. The applicant complies with all the conditions and is before the proper Board and, the Board of Adjustment decision is under appeal in Superior Court regarding drive-thru use denial.

Mr. Brady advised they're doing Completeness only and can start with Mr. Knutelsky's Completeness letter then Ms. Nicholson, representing the applicant, can address various points.

Mr. Knutelsky referenced his 4/16/14 Report **Pg. 2, Section B. 1** found the following items incomplete or waivers requested for Plans and Report submission.

- **Checklist Item #13;** 1"=50' Scale or as approved by the Board Engineer: Applicant requested item waiver. Submitted plans at 1"=20' Scale is sufficient for application review. No waiver necessary.
- **Checklist Item #14;** Location and width of all existing and proposed utility, drainage and other easements: Applicant requested a waiver. Mr. Knutelsky recommended temporary waiver for Completeness only with all necessary easements provided on the plans which may be required during review.
- **Pg. 3, Checklist Item #18;** Existing and proposed contours 100' beyond property line: Applicant requested a waiver. He found they provided contours within the property and directly adjacent thereto in sufficient detail required for the application. He recommended a waiver be granted.
- **Checklist Item #23;** Location survey of all structures within 200' of the property: Applicant requested a waiver. An aerial plan of the surrounding development shows a clear picture of what structures are adjacent to the property under consideration. That plan was provided as part of the Site Plan package. He recommended a full waiver.
- **Checklist Item #24;** Stormwater Management Report: Applicant requested a waiver. Because it was previously reviewed and approved as part of the ZBA application, are the exact plans approved albeit a different Board, recommended a waiver be granted as the report doesn't change for this application. He recommended the applicant provide a summary of the report during the application's course and recommended a full waiver.

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

- **Checklist Item #33**; Preliminary Floor Plans & Preliminary Elevations: Applicant requested a waiver. Because the item was reviewed and approved as part of the ZBA application and the building hasn't changed from that approval, recommended a waiver for Architectural Plans submission. He recommended the applicant provide a summary of that plan and the previously approved architectural plans regarding drive-thru utilization.
- **Checklist Item #37**; List of licenses, permits or other approvals required by law: Applicant requested a waiver. He recommended a temporary waiver for Completeness only and requested testimony be provided for any approvals required as part of the Application.
- **Pg. 4, Checklist Item #38**; Environmental Impact Statement: Applicant requested a waiver. As it was reviewed as part of the previous application, he recommended granting a waiver for EIS Report submission and recommended the applicant provide a report summary during the public hearing.
- **Checklist Items #43-47**; Applicant requested temporary waivers. He recommended temporary waivers granted with any applicable information provided as condition of Board approval.

In summary, he recommended temporary waivers for Checklist Items #14, 37 & 43-47 and full waivers for Checklist Items #18, 23, 24, 33 & 38.

Mr. Brady asked if Ms. Nicholson would like to address any of it. Ms. Nicholson representing Eden Franklin said Walgreen's hopes to construct shortly in the community, is an unusual situation begun in the Zoning Board, and have approved Site Plan without the drive-thru. She inquired of the Board's presentation desire for the record and restated Walgreens' approval without the drive-thru.

Ms. Nicholson said the Ordinance changed since they were before the Zoning Board demonstrating they meet conditional use criteria which the Ordinance now affords. They only need to address drive-thru speaker sound emission whereby expert testimony is planned. Perhaps some traffic circulation already submitted that doesn't change with/without the drive-thru, and the driveway is status quo.

Ms. Nicholson said she posses and can drop off all testimony transcripts or have Mr. Dougherty their professional engineer summarize each point, or Mr. Brady can advise. Mr. Brady informed it's a Board decision and Ms. Nicholson agreed.

Mr. Brady informed of having attended all Board of Adjustment hearings, transcripts would be lengthy and its use wouldn't be helpful to this Board as their decision is limited to the application before the Board.

Mr. Zydon said essentially they have to worry about the drive-thru; everything else has been approved. Mr. Brady said, "everything else except," and proceeded to explain. He said there may be some concerns over the entirety of Site Plan which they may want to see and hear basic summary/testimony about. He thinks they

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

shouldn't be concerned about every detail as it was already gone through. Mr. Brady thinks the bringing of Mr. Dougherty, the sound engineer, and plans to exactly explain distances and topographic differences between adjoining residential properties, this property, and things of that basic nature (be) put on for this limited case and not retry others.

Ms. Nicholson said she doesn't think they need a traffic expert back but the engineer can discuss circulation, landscaping and buffering. Mr. Brady suggested they bring someone from the operational side to discuss how the drive-thru works, operation hours, and use as there may be questions to that effect. Ms. Nicholson agreed.

Mr. Zydon asked if the drive-thru would be like McDonald's or quiet like a bank, and Mr. Nidelko commented on a Rite Aid in Wantage.

Mr. Brady said that's why an operational person may be approved to discuss usage level. Mr. Nidelko commented on Walgreens' in Bergenfield with parking lot traffic. Mr. Brady said expert testimony is needed on the record. Ms. Nicholson agreed.

Mr. Knutelsky said he indicated in the Completeness Report-the EIS, Stormwater, and the Traffic Impact Statement were all testified to, reviewed and approved with changes made during the application's course. He said the Traffic Impact Statement which typically discusses traffic amount to and from the site, was reviewed and the actual permit is under the NJDOT and believes it's in hand.

Ms. Nicholson said those reports were done with the drive-thru calculation. Mr. Knutelsky agreed and said the entire application as presented to the Board, had the drive-thru the entire time until the last 20 minutes was voted to not have. From an engineering standpoint, all testimony was provided during the application's course, provided on the plans and reviewed and approved by his office for the Board when presented at that time. A lot he asks for in his letter is a summary the applicant can highlight to the Board what was discussed, the final result, and not get into question/answer as it was fully reviewed. Mr. Nidelko withdrew his (comment).

Mr. Brady said the facts to the degree you want to rely on an actual report is already in evidence and based on Mr. Knutelsky, don't need to hear the whole thing; maybe just an explanation from (Ms. Nicholson's) office and further elaborated.

Ms. Nicholson was in agreement and said she wanted to ensure she had the right information and people they (Board) want to testify, and would hate to revisit what was done in the Zoning Board.

Mr. Brady asked Mr. Knutelsky if it makes sense to have a summary from Ms. Nicholson's office. Mr. Knutelsky said it's what he recommends for the Board. Mr. Brady said the same thing on the EIS. Mr. Knutelsky said he would like to see that on the record for this Board. Mr. Brady said maybe submit the EIS so it's in the

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

record if anyone wants to read it. Ms. Nicholson said it's in. Mr. Knutelsky asked if they would have to resubmit that record since its part of the original approval record. Mr. Brady advised it's not part of record before this Board, its record for the other Board with other Board Members.

Mr. Giordano said he's interested in knowing the drive-thru volume level and are basically only approving the drive-thru, thinks volume is worth visiting. Mr. Brady provided examples of cars per hour. Mr. Giordano said it's of value to him because they're just approving the drive-thru. Mr. Brady informed they have to look at the potential drive-thru impact as it radiates throughout the site, see the Site Plan, and don't have to know every detail or drainage.

Mr. Giordano addressed his concern should 100 cars an hour going through, the neighborhood next to it would be impacted to a greater extent than if one car every two hours. He realized it may have been in another Board but were chosen to look at it again. Mr. Nidelko commented all the numbers are in.

Mr. Kilduff said all the numbers should be in this Traffic Impact Statement. Mr. Brady said it's already in the report. He suggested their attorney pick points pertinent to the drive-thru and not the entire Site Plan, and someone from operations could answer questions Mr. Knutelsky addressed.

Ms. Nicholson respectfully requested they be deemed Complete to advertize their appearance at next month's meeting and hopefully present their entire case.

Mr. Knutelsky recommended Completeness with waivers granted. Mr. Brady said so everybody's in accord with that, we need a motion. Mr. Christiano asked Mr. Brady if they're foregoing Mr. Nelson's report. Mr. Brady advised he doesn't think Mr. Nelson addressed Completeness; Mr. Knutelsky usually does. Mr. Knutelsky said that's (Mr. Nelson's) technical report on the matter, they're not open for public presentation which is for next month. Mr. Brady said (Mr. Nelson) had landscaping concerns and they'd probably need to see the whole site.

Mr. Kilduff said on the administrative side, Proof of Publication and Affidavit of Service should be supplied prior to the next meeting. Mr. Brady agreed. Mr. Zydon asked for the next step. Mr. Brady responded, a Motion for Completeness.

Mr. Christiano made a motion to **Deem Complete, PB-03-14-1 Eden Franklin LLC, Amended Preliminary Site Plan and Amended Final Site Plan, Block 1401; Lots 12, 13 & 14** pending Mr. Knutelsky's report.

Upon Roll Call Vote:

AYES: Christiano, Williams, Nidelko, Zydon,

NAYS: None ABSTENTIONS: Giordano

(Motion approved)

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

Mr. Foulds returned to chair and said there are no adjourned cases or applications to be heard.

ADJOURNED CASES:

APPLICATIONS TO BE HEARD:

OTHER BUSINESS:

Mr. Kilduff said Councilman Nicholas Giordano and Board Member, Mr. Friend received certificates for training in Basic Land Use Law & Planning. He thanked and presented Mr. Giordano his certificate and said Mr. Friend wasn't present. Mr. Foulds congratulated Mr. Giordano.

PAYMENT OF BILLS:

Mr. Zydon asked who Marble Arch was. Mr. Kilduff advised they're a developer who's looking into a possible project.

Mr. Williams made a motion to approve the **Franklin Borough Planning Board Escrow Report for March 17, 2014**. Seconded by Mr. Giordano.

Upon Roll Call Vote:

AYES: Christiano, Foulds, Giordano, Williams, Zydon, Nidelko

NAYS: None ABSTENTIONS:

(Motion approved)

Mr. Christiano said somebody asked a question about Marble Arch and didn't hear what the answer was. Mr. Kilduff said it's a developer who had a meeting at Borough Hall who posted escrow for our Engineer and Planner.

Mr. Nidelko made a motion to approve the **Franklin Borough Planning Board Escrow Report for April 21, 2014**. Seconded by Mr. Zydon.

Upon Roll Call Vote:

AYES: Christiano, Williams, Zydon, Nidelko, Foulds

NAYS: None ABSTENTIONS: Giordano

(Motion approved)

DISCUSSION:

Statutorily Mandated Annual Report

Mr. Brady informed the Statutorily Mandated Annual Report under Land Use Law requires the Board of Adjustment to generate annually. It's a review of cases and issues the Board of Adjustment addressed. The report goes to the Council and Planning Board. The report's purpose is to let everybody know what the Board of

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

Adjustment has had to adjust. If there's a pattern sought, if they've seen or a particular issue was raised, give the Planning Board and Council a chance to say they see there's an issue with something and maybe should consider an amendment to ordinances. There's no official business to take on it; something to take home, look at, and in the future if anybody thinks something arose, bring it up in the future.

CORRESPONDENCE:

OPEN PUBLIC SESSION:

Mr. Williams made a motion to **Open to the Public**. Seconded by Mr. Christiano. All were in favor.

Steve Simm, 19 Ginter Street, Franklin, NJ said he knows it (application) was already gone through, voted on, ordinance changed and are back to reprove. He said a question arose on how it affects Walgreen's denial. The answer was it didn't, but is back.

Mr. Brady explained the ordinance was inapplicable to the prior application. The prior application was heard, decided and a resolution was adopted. The fact there was an amendment to the ordinance several months ago, doesn't mean automatic approval under the old application and further explained. He said the new ordinance affords any property owner to come in and make an application for the new ordinance. Mr. Brady said the old resolutions hasn't changed, is still effective and is in court. With the new ordinance in place they have the opportunity to come back, potentially with slight change to their plans or with new testimony. Now that conditions are more specifically articulated and have the opportunity to prove they meet these conditions, they're entitled to add to their previously approved site plan for the generic Walgreen's. Mr. Simm agreed.

Mr. Simm questioned it being open to the public to rehash why they don't want it there. Mr. Brady said yes, as with any zoning application, they come in, present their testimony, the Board asks questions and is open to the public. The public asks questions and for the public to give testimony. Mr. Simm said he's still against it.

Verner Skjeveland, 10 Ginter Street, Franklin, NJ said the Zoning Board voted against the drive and suddenly seems there's a new ordinance and asked why. He opinionated certain individuals in town would like to see the drive-in. Mr. Brady advised Mr. Skjeveland to be clear on something prior to making accusations.

Mr. Skjeveland said he's not making accusations; the accusation's already come out. Mr. Skjeveland said they already said they'd like to have Walgreen's in. Mr. Brady advised, before Mr. Skjeveland puts it on the record, Mr. Brady wants to make it clear recommendation came to his office and Mr. Nelson's office. After looking at the conditions, it needed further clarification to clearly articulate standards.

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

Mr. Skjeveland asked how you can do this if it's already down. Mr. Brady said it was an ordinance; we're not voting on an application. Mr. Skjeveland said no, but you voted for Walgreen's and voted down the driveway. He said it was voted down and sees the Zoning Board is dissolved. Mr. Brady disagreed.

At this time there was a discussion to Mr. Skjeveland's opinions of hearing the Zoning Board was dissolved, the application being before the Planning Board and of the town voting. Mr. Brady responded therein providing legal counsel.

Mr. Skjeveland said he'd like to say one thing and to keep off the record as they won't like what he's going to say. He said he personally doesn't like to see (Ms. Nicholson) come in seeming very close to individuals. Mr. Brady said he's a fellow lawyer and fellow lawyers discuss (things).

Mr. Skjeveland continued expressing his opinions regarding amicability amongst professionals and how it appears to the public. Mr. Brady appropriately responded to Mr. Skjeveland's commentaries, as did Mr. Knutelsky respectively.

Mr. Zydon asked if Mr. Skjeveland is implying too chummy and that corruption is involved. Mr. Skjeveland said he did not say that. Mr. Zydon said that's what it seems he's implying, accusing, and pointing out (individuals). Mr. Skjeveland said because they're the ones that smile. A relative discussion including hearing that the Zoning Board was dissolved followed.

Mr. Nidelko said the town cannot run without have the Planning and Zoning Boards. Mr. Brady said they could actually collapse one into the other. Mr. Skjeveland queried of the Zoning Board still being in operation. Mr. Brady said yes. Mr. Skjeveland apologized if he sounded too brash on how it looked to him.

Mr. Foulds said he understands Mr. Skjeveland has emotion into what he's saying. The Board are volunteers who take emotion out and look at it similar to a judge looking at a case. They look for compliance, not whether or not they like a Walgreen's in town; but if Walgreen's complies with the Master Plan, are within ordinances, all restrictions and guidelines set up, it's their job to rule in the sense they're compliant. Mr. Skjeveland said he didn't imply to say they'd consider a Walgreen's.

Mr. Foulds said when the Zoning Board heard the case and ruled on it, they ruled under the laws and ordinances that were at that time. Now our ordinance has changed because we addressed an issue and had to update our ordinance. Mr. Skjeveland asked why. Mr. Foulds said they were too vague in some places and revised to make them more specific instead of leaving things to interpretation. We wanted to put in writing what we required in certain circumstances and further elaborated.

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

Mr. Brady said let me give you an example and I don't want to get into a long explanation of this-we're already in litigation. Mr. Skjeveland said he's aware. Mr. Brady explained "audible" regarding the old and new ordinance.

Mr. Zydon said in having Walgreen's, the weakness in zoning was found. Mr. Brady said not so much found-but identified.

Mr. Skjeveland commented it seems ironic Walgreen's walked in with plenty of places in Franklin; why a residential area that will disrupt the neighborhood. Mr. Brady advised of being careful how much they let him talk about those issues because Walgreen's isn't here, is not a public hearing and heard his concerns about the appearance of Mr. Knutelsky and him being cordial with fellow professionals.

Mr. Skjeveland said he appreciated them letting him talk so long and as far as making accusations, it's the furthest from his mind whether it looked that way or not. Mr. Zydon said that's what it looked like. Mr. Skjeveland said he has things to say about the town which everybody else does right or wrong but he never accused anybody of (corruption). If he did then he'd get his own lawyer. As a layman, it seems that one committee says no and suddenly they're here again.

Mr. Foulds explained they ruled and voted on the issue with laws and ordinances at that time though the ordinance has now changed and further elaborated. Mr. Skjeveland questioned why now not three years ago. Mr. Foulds responded there was a degree of vagueness, it was addressed, and recommendations were made to Council, and further explained.

Mr. Skjeveland said, so it's not a done deal. Mr. Brady said they have to come in and present an application just as any applicant has to. Mr. Skjeveland said we have to come back again.

Mr. Foulds said Walgreen's is approved to put their Walgreen's, right now they're talking about a window on the side of the building for prescription pick-up from their car and doesn't see it as a McDonald's drive-thru. Mr. Brady advised Mr. Foulds can't comment as he stepped down.

Mr. Skjeveland commented he still doesn't want it to happen. Mr. Brady said again, we can't get into that right now. He understands his concern over the process, doesn't mind addressing that, but if we get into how you feel and whether you disagree or agree will be allowed; we can't do that here. Mr. Skjeveland said he understands.

Mr. Williams said you'll be allowed to come back, tonight was Completeness and next month they'll hear the application. He informed Mr. Skjeveland of the opportunity to ask questions as required when testimony is open to the public. Mr. Williams said what Mr. Zydon said is when this application is presented they'll

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

summarize it and will concentrate on the drive-up window. The reason it was dealt with by Mr. Brady's office was because the drive-up window criteria was very vague. He said an ordinance now says that.

Mr. Skjeveland said the vote was against the drive. Mr. Brady disagreed and said there was testimony why there was concern about the noise. Mr. Skjeveland asked, there was and said as far as the building with trucks. Mr. Brady said there was concern about that but there was also concern about the drive-thru itself.

Mr. Skjeveland said he was at most of those meetings and thinks there wasn't much concern about the drive-in noise. Mr. Brady said there was concern about that and from a legal point of view. He had greater concerns about the conditions and how they were articulated in the old ordinance.

Mr. Zydon said they can put their building but less the drive-thru. Mr. Williams said the only thing they cannot do right now, whether anyone in Franklin likes it or not, is start construction without a drive-thru. They want that drive-thru; that's why they're here.

Mr. Brady said he could understand as a person and explained a situation of an attorney he dealt with years ago. He can understand while Mr. Skjeveland sits there seeing (Ms. Nicholson) walk over to Mr. Knutelsky and starts talking to him. It kind of gives the appearance there's something going on and let me tell you, he's a professional and so is he; like he said before, Mr. Knutelsky could care less whether the application is approved or denied. He's here to just give you the tools you need to make that decision and if (Ms. Nicholson) asks him a question, he's to answer it. I can understand when you're sitting back there, it looks like, gives the appearance there's back slapping and don't worry, we'll take care-that's not happening.

Mr. Skjeveland said that's why he said he wants it on the record when he had to get it out-he just doesn't like the way it looked to him. Mr. Williams said he could understand his point. Mr. Skjeveland said, "Nobody else, just me", and he didn't think to be on the record because it could be just him.

Mr. Foulds said but you are speaking to us in open session to the public. We understand your concerns and heard you're coming back next month and I would hold this the correct way and you will be able to speak next month the exact same way. There will be a public session where you can make your comments.

Mr. Brady said I know there's some economic implications; but just as they will have experts, if you're perturbed about sound, bring your own sound expert. You can put in not only your own testimony, but you can put expert testimony on your behalf.

Franklin Borough Planning Board
Meeting Minutes for
April 21, 2014

Mr. Williams said there's nothing wrong with walking up and asking a question. Mr. Skjeveland said he tends to get excited, tries to keep himself down and thanked the Board.

Steve Simm, 19 Ginter Street commented to having a different set of people than the last time. Mr. Brady advised it's a different Board. Mr. Ginter commented to having spoken to a few who said no one actually went to sit (in the neighborhood). He asked that when the application comes up for review, take the view of people who live there. He further addressed his concern of the children's path to Route 23 and while they're playing, to get an idea of the location as it's different when standing there. He said he wouldn't blame people as he would do the same if he didn't live there and further commented.

Mr. Brady said the idea of encouraging Board Members to visit is perfectly ok. Mr. Simm queried of being informed. Mr. Brady said if you're within 200' you'll get a written notice. Mr. Simm said he's 20' short.

Mr. Foulds said he could come back. Mr. Simm said he'd be back for the next one a lot of people didn't realize they were doing this. Mr. Williams said, "Third Monday of every month."

Mr. Williams made a motion to **Close to the Public**. Seconded by Mr. Nidelko. All were in favor.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 8:27PM on a motion by Mr. Williams. Seconded by Mr. Giordano. All were in favor.

Respectfully submitted,

Ruth Nunez
Secretary