

Franklin Borough Planning Board
Meeting Minutes for
February 3, 2014

The meeting was called to order at approximately 7:30 PM by the Chairman, Mr. John Cholminski, who then led the assembly in the flag salute.

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

ROLL CALL OF MEMBERS PRESENT: Mr. Christiano, Mayor Crowley, Mr. Foulds, Mr. Giordano, Mr. Williams, Mr. Zydon, Mr. Cholminski, Mr. Nidelko, Mr. Friend

ABSENT: None

ALSO PRESENT: Mr. David Brady, Esq.
Mr. James Kilduff, Plng. & Comm. Dev. Dir.

APPROVAL OF MINUTES:

Mr. Nidelko made a motion to approve the **Franklin Borough Planning Board Meeting Minutes for December 16, 2013**. Seconded by Mayor Crowley.

Upon Roll Call Vote:

AYES: Crowley, Foulds, Zydon, Alt. #1 Nidelko, Cholminski
NAYS: None ABSTENTIONS:

APPROVAL OF RESOLUTIONS:

There were no resolutions to approve.

APPLICATIONS FOR COMPLETENESS:

There were no applications for completeness.

ADJOURNED CASES:

There were no adjourned cases.

APPLICATIONS TO BE HEARD:

There were no applications to be heard.

OTHER BUSINESS:

PAYMENT OF BILLS:

Mr. Foulds made a motion to approve the **Franklin Borough Planning Board Escrow Report for February 3, 2014**. Seconded by Mr. Christiano.

Upon Roll Call Vote:

AYES: Christiano, Foulds, Zydon, Cholminski
NAYS: None ABSTENTIONS: Crowley, Giordano, Williams

Franklin Borough Planning Board
Meeting Minutes for
February 3, 2014

DISCUSSION:

ORDINANCE #1-2014.

Chairman Cholminski said it's an Ordinance amending Chapter 161 of the Franklin Borough Code. He said there's correspondence relative to the Ordinance from a letter by Dave Brady, Esq. dated January 10, 2014.

Mr. Brady informed the Ordinance deals with drive-thru uses and that the Board of Adjustment has an extensive application. He said in trying to apply conditional use standards applicable to drive-thru's, issues were identified which they want to straighten. Mr. Brady said old numbered conditions didn't do that such as, "traffic and pedestrian circulation shall be designed for safe and convenient movement when using best engineering practices", is subject to debate.

Mr. Brady also mentioned there was language regarding exterior speakers and decibel levels making emitted sounds inaudible at the property line, is also subject to debate. He worked with Mr. Nelson in revising the conditions where speaker volume is referenced by decibel level and further explained. Mr. Brady said decibel levels were derived from the NJ Administrative Code which relieves doubt of audible/inaudible. He questioned Franklin's ownership of a Decibel Meter or of its purchase. Mr. Brady said an applicant can provide a cut sheet, testimony or sound expert verifying audibility which removes that unmarked definition.

Mr. Christiano asked, at what point does sound level measure, if it was one speaker and of its location. Mr. Brady responded at the neighboring property line and anywhere regarding the speaker. Mr. Cholminski said, it doesn't matter it's at the property line.

Mr. Brady said, if you had a drive (-thru) having the speaker at the window from the building or a menu board like McDonald's and a remote speaker; same thing-at the property line. Mr. Zydon questioned the standards being from the State. Mr. Brady said they're State standards.

Mr. Brady said the other thing included was where adjoining property is residential in terms of buffering made it clear, you need a solid fence. He said trees or evergreens are not solid and all the years he's heard testimony about sound, something solid is needed. Other things help but solid is what's important; such as residential areas. Mr. Nelson and he agreed w/solid buffer; not just some greenery.

Mr. Brady had spoken with Mr. Knutelsky regarding safe and convenient traffic and best engineering practices. Mr. Knutelsky had commented, everybody's supposed to design parking lots that way to begin with. The real problem with drive-thru's is you have a drive-thru lane and associated stacking and don't want things going in

Franklin Borough Planning Board
Meeting Minutes for
February 3, 2014

opposite directions right next to each other. Mr. Brady said that's why in (e), they made it clear that everybody had to go in the same direction unless there's some physical separation and further explained. He said this tries to make it clear so everybody; applicant and Board know how to apply them which wasn't so clear in the past.

Mr. Zydon inquired of a facility having a drive-thru and other locations in the State, would know what to expect when coming here. Mr. Cholminski responded that Township or Borough took their Oath. Mr. Zydon agreed.

Mr. Brady said they tried to step away from making something unique and felt the State regulates it, apply the standard everybody knows and can deal with it. He gave examples of conversational decibel levels he downloaded. Mr. Foulds said other towns have more stringent standards. A brief discussion followed.

Mr. Christiano queried about the referenced fence. Mr. Brady said the state standard only regulates decibels not things you can use. Mr. Cholminski said along with buffering you get into landscaping.

Mr. Brady said in working with Mr. Knutelsky and Mr. Nelson, they thought if it's against a residential use, have something solid which blocks sound thereby avoiding trees and their potential growth and leafage issues. He's been involved in sound testimony cases from sound engineers as to the efficacy whether greenery blocks sound. Mr. Cholminski said the Ordinance they're thinking of applying, especially the solid fence would prefer, not in all cases, dependent upon restrictions, there be some landscaping. Mr. Brady agreed and said it's just a minimum.

Mr. Giordano asked how amending this Ordinance affects the application in the Zoning Board case. Mr. Brady said the Ordinance is not under litigation with the Zoning Board; the case he's referring to is under litigation. The Ordinance applied in that litigation is the Ordinance in effect at the time of the case and is trying to change it going forward.

Mr. Giordano said he understands completely and asked about the case being undermined via a potential Ordinance transition. Mr. Brady said the Ordinance is not being defended in the original part and there's been no challenge of the Ordinance itself. Mr. Zydon said it wasn't about noise level but about putting a drive-thru.

Mr. Cholminski commented from his perspective, they have an Ordinance that wasn't clear and was difficult to have an applicant come in and converse as to what's legal. They're trying to clear up the Ordinance so when an applicant comes in, allowances aren't debated.

Mr. Christiano made a motion to **Open to the Public Ordinance #1-2014**. Seconded by Mr. Nidelko. All were in favor.

Franklin Borough Planning Board
Meeting Minutes for
February 3, 2014

Dick Durina, 23 Lozaw Road, stepped forward and suggested fence height specification. Mr. Brady said when the professionals were looking at it, (height) was discussed and decided based on the circumstances different heights may be had and further elaborated. He said the Board has the ability to require buffers; this says it will include at minimum, a fence and can include other things too. They figured they would leave it to discretion based on the particular application and issues.

Mr. Zydon asked if there was an Ordinance on fence heights due to location. Mr. Cholminski said there are lots of debates on fences and thinks what Mr. Brady suggested is you probably want some flexibility based on the situation.

Mr. Williams asked Mr. Brady if it says a fence is required and fence height may be determined. Mr. Brady said no and read Section 2 – Chapter 161-34B (6) (d) and said they also tweaked the buffering definition and read Section 1 – Chapter 161-3 Definitions; Buffering and Screening. He said the intent was to make it clearer. It's not required that you can't see a building or use that has a drive-thru, but we have to buffer it; you have to mitigate it. Because it's a drive-thru, and a drive-thru has a speaker, you have to have a solid fence and further elaborated. A brief discussion on fence heights and conditional use was had.

Mr. Williams made a motion to **Close to the Public Ordinance #1-2014**. Seconded by Mayor Crowley. All were in favor.

Chairman Cholminski requested a motion to return the Ordinance back to Mayor and Council for review of approval whereby the new Council Member can represent the Board. Chairman Cholminski commented there were some problems and wants it to be more reasonable. Mr. Brady said it's not so much being reasonable as to be clearer, Mr. Chairman. From our point of view; applying it, and from an applicant's point of view, looking at something.

Mr. Christiano made a motion to recommend (Ordinance #1-2014) to the Mayor and Council. Seconded by Mr. Zydon.

Upon Roll Call Vote:

AYES: Christiano, Crowley, Foulds, Williams, Zydon, Cholminski

NAYS: None ABSTENTIONS: Giordano

Mr. Kilduff informed of possibly rescheduling the upcoming February 18, 2014 meeting since it's only two weeks away and doesn't expect an application to come forth. A brief discussion followed with Mr. Brady providing cancellation advice.

CORRESPONDENCE:

Franklin Borough Planning Board
Meeting Minutes for
February 3, 2014

OPEN PUBLIC SESSION:

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

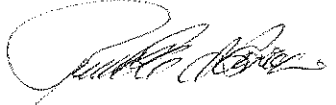
Dick Durina, 23 Lozaw Road stepped forward and expressed his opinion to have the agenda made clearer when notifying the public. Mr. Cholminski acknowledged his request.

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

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at approximately 7:50 PM on a motion by Mr. Foulds. Seconded by Mr. Williams. All were in favor.

Respectfully submitted,



Ruth Nunez
Secretary