

**Franklin Borough Planning Board**  
**Meeting Minutes for**  
**July 15, 2013**

The meeting was called to order at 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: Mayor Crowley, Mr. Kilduff, Mr. Lermond,  
Mr. Zschack, Mr. Zydon, Mr. Cholminski,  
Mr. Foulds, Mr. Nidelko

ABSENT: Mr. Christiano

ALSO PRESENT: Mr. David Brady, Esq.  
Mr. Ken Nelson, PP/AICP

**APPROVAL OF MINUTES:**

Regarding the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for May 20, 2013**, Mr. Cholminski advised Board Members the Minutes were incorrectly copied and passed out. Discussion and approval of the May 20, 2013 Minutes was postponed until the next scheduled meeting date.

**DISCUSSION:**

**HC Zone and Drive-thru conditional uses**

Chairman Cholminski said that brings us to continuation of the HC Zone and drive thru Conditional uses begun at the last meeting.

Mr. Brady said in reviewing Mr. Nelson's draft he recalled about making it clearer. 1) Keep the jurisdiction with the Planning Board if we can and; 2) Make it clear as to what Board the applicant's need to come to. In looking through Mr. Nelson's draft of some of it with regard to splitting to an HC1 and HC2, all made sense.

Mr. Brady said they talked considerably about the revised intersection and conditions. If they get into the 50,000' approach, they'll get into things like Master Plan changes that may be examination, first. They're costly, time consuming, and not sure the Borough needs to spend money on that to solve it. He said the immediate issue is the conditions from the drive-thru and therefore concentrated on drive-thru related conditions. Mr. Brady referred to the copy with red markings.

Regarding the attachment, after speaking to Mr. Knutelsky over engineering concerns, Mr. Brady said condition "e" was slightly changed and suggested they concentrate on that for the time being. He explained if the Board or Borough wants to get into something bigger considering all the cost would be a longer term project. Mr. Brady said splitting it into two zones and changing the map have many associated costs and further elaborated. Mr. Lermond commented the first page still talks about two changes. Mr. Brady agreed and said for the time being, concentrate on the second page which they need to change and is not very costly.

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Mayor Crowley said if they re-do the Master Plan, it would include notifying all the zones which would be very costly. Mr. Brady said it's actually two processes. If you re-do the Master Plan you don't necessarily have to notify everybody and explained. He said if they don't do the Master Plan Re-exam, then they have to notify everybody in the zone within 200' having its own set of costs. All of which aren't necessarily to cure the "in your face" sort of problem you have now.

Mayor Crowley asked what's the current law to re-do the Master Plan. Mr. Brady said it was just changed to ten years, not quite due, and can do an interim Re-examination; there's no provision of doing it more frequently but it's got to be part of the general Re-examination and further elaborated.

Mr. Zschack asked what year the Master Plan was done. Mr. Kilduff said '09. Mr. Nelson said the Master Plan was done in 2003 then re-examined in 2009 and also amended it. Mr. Zschack questioned the timeline (count). Mr. Nelson said 2009, the next time you do a re-exam, you need to address redevelopment areas studied, in some cases designated, and in one case, a redevelopment plan adopted. He said when Mr. Brady and he talked whether to do the re-exam; he knew they had to do it every ten years but can do it more often. If so, it could be a limited re-exam. Mr. Nelson said unfortunately the language and statutes specifically say a general re-exam.

Mr. Brady said at this point, bang for the buck in terms of changes and just deal with Page 2 that deals with specific conditions of the drive-thru. Mr. Lermond questioned Page 2; Sections, 4, 5, 6 and 7. Mr. Brady said he eliminated (Section) 6 and (Section) 7 is Severability. A brief discussion followed. Mr. Zschack asked if the other sheet replaces Section 5 (c). Mr. Brady agreed and said (a), (b), (c), (d) and (e) stay. The reason for (c), (d) & (e) are conditions currently written into the Ordinance. The idea with conditional uses is you set conditions that specifically relate to impacts associated with that use; not just general conditions. The condition's already in the Ordinance, and also should have conditions you can tell when you look at objectively, you meet them or not.

Mr. Brady said things previously written such as "using best engineering practices"; everybody will say they meet that condition. Mr. Brady said Mr. Knutelsky, Mr. Nelson and he walked through and said what are the things specifically associated with the drive-thru use and how do they make them something that's measurable and objective from the beginning. He said the first two were easy, already in the Ordinance and further explained (a) and (b). Mr. Brady said the (c), (d), and, (e) that were added; the prior version said "inaudible at the property line". They thought it was easier to go with something measurable in decibel and went to the State statute for DEP Regulations and pulled hours and operation. Mr. Brady talked about abutting residential/commercial regarding (noise/decibel). Mr. Brady also spoke of

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his discussion with the professionals regarding buffering and (fence) height limitation which were further discussed.

Mr. Lermond said he understood the goal was to try not to promote the super majority and Board of Adjustment. By changing, opening or finding things definitively, you bring them to this Board or to a no Variance situation. Mr. Brady said the idea on the conditions applicable to the conditional uses is we should identify, secure impacts (for) that type of use; and makes it different than in a HC Zone. There are all kinds of HC uses but are making it a conditional use and gave a scenario. At this time a discussion was had.

Mr. Cholminski said in general you don't want to force variances to the Zoning Board or applications to the Zoning Board for Variances; it's a more expensive proposition. Mr. Brady said the theory is if we identify the right ones than they'll comply and don't need to go there if we don't identify and further elaborated. The Board continued this discussion. Therein, prior traffic and pedestrian circulation, drive-thru, queuing and circulation were discussed. Mr. Brady spoke of his discussions with Mr. Knutelsky and Mr. Nelson regarding sound board and buffering. At this point a discussion was had.

Mr. Nelson said to Mr. Lermond's point regarding leverage, if it gets forced to the Board of Adjustment there's more leverage because of super majority. The reality is as long as the HC Zone continues to have the minimum five acre lot size, all those other fairly large dimensional requirements, this Board will have leverage. If the drive-thru comes to this Board, there undoubtedly will be some dimensional variances separate and apart from the drive-in that will accompany that application. That's going to continue to give you some leverage, but in fairness to the applicant, the applicant will then only need the simple majority rather than the super majority.

Mr. Brady referred to and read §161-23 F (1) Buffering. At this time a discussion regarding buffering and the drive-thru were had.

Mr. Cholminski said he'll give everyone time to absorb their discussion and go around for (Board input). Mr. Nidelko said he's good. Mr. Zydon asked (if it's) about the drive-thru. Mr. Cholminski said about the discussion on the Drive-thru Ordinance change with the decibels, Section [5] (a), (b), (c), (d) and (e). Mr. Zydon said it sounds fine to him. Mr. Lermond said the practical problem becomes on most applications. Going back to the colorized map, they don't have enough room for fences, berms and landscaping. Mr. Cholminski said some may and may not, and will review them one at a time. Mr. Lermond referenced a coffee shack and its square footage to which a discussion was had.

Mr. Cholminski brought to recall a past conversation about the drive-thru discussion which got them here. He asked for Mr. Foulds, Mayor Crowley's and Mr. Zschack's (input). Mr. Zschack said he wasn't at the last meeting and inquired of the reason

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for this (discussion). Mr. Lermond said he wasn't at the last meeting. Mr. Cholminski said we were waiting for this to discuss it. Mr. Nidelko thought it was the five acre lot and the HC Zone and further elaborated.

Mr. Cholminski said at the beginning of this conversation today, we said that to be minor. He said they have to wait till they revisit the Master Plan and the Borough have money to do that and this is the one that will at least solve this whole discussion around drive-thru which we left out last time which was a conversation Mr. Lermond had; the Zoning Board should be on the Walgreen's application. Mr. Lermond said the conditional use was the reason and expanded upon it.

Mr. Cholminski said the point is they don't have a drive-thru. Mr. Zschack inquired where they regulate. Mr. Brady explained and said one of the conditions that used to be there was you will comply with every single parking stall and gave an example. Mr. Lermond said it was something about parking lot slopes and landscape. Mr. Nelson said which really had nothing to do with the drive-thru driveway. To refresh everybody's memory or newer members, there's something in the 2009 Re-exam that talked about the drive-thru issue. At one time, one of the conditions was you had to have five acres to have a drive-thru. He said it seemed ridiculous and said you don't need five acres to have a drive-thru. A couple of years ago, drive-thru conditions were amended to reduce to one acre but didn't touch the rest of the conditions. When Walgreen's came, they realized some conditions didn't make sense and prompted them to try to make it more definitive and legally supportable.

Mr. Cholminski commented that "things" being moved and tried begin to not make sense. Mr. Zydon made reference to splitting HC1 and HC2 to which the response was it's taken off the table. Mr. Zydon asked if the five acre will stand and was responded to as yes. When he asked of taking the whole HC Zone down, Mr. Cholminski advised it's getting into Master Plan revision, but would be easier to zone it. Mr. Zydon suggested replacing the standards. Mr. Nelson said it would be considered a subset of change and explained. He said if they split it into HC1 and HC2, it might make a lot of sense to require one acre as the minimum lot size in certain areas; basically the west side of Route 23. A discussion was had regarding subdividing, lot sizes, Board jurisdiction, variances, compliance, and abandoned property.

Mr. Nidelko said the only thing we're addressing tonight is this drive-thru. Mr. Zschack said it was a reaction to a recent decision. Mr. Brady said part of what this Board does is as things come up, you see things and you're supposed to react. Mr. Brady said that started the thought process and about the whole zone. He said now we're going back to the original thing that gave our attention to, the easier and inexpensive to fix, and talk about fixing the others more long term.

Mr. Cholminski inquired of the Zoning Board Report. It was advised he wasn't present when the report was. Mr. Brady said it's worth cleaning this up. Mr.

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Lermond asked if by cleaning, it changes anything with that applicant. Mr. Brady said no, and the hearing is already done. Mr. Lermond said they were denied, they could re-apply and this could pave the way for them. Mr. Brady said they have the fence, traffic circulation, and no decibel testimony (was had). Mr. Nidelko said it's not on the ordinance now to worry about. Mr. Brady said this isn't driven by that, it's driven by Ordinance which the Board needs to clean up.

Mr. Lermond addressed his concern of Mr. Brady's proposal and part of Section 5, (e) and read a portion of it. He wants deeper wording in the parking and in the queuing entry. He said one where they specifically fixed that was Dunkin' Donuts and McDonald's doesn't have a good model to which he elaborated and a discussion followed. Mr. Lermond said his other note was consideration on site conditions to which a discussion was had.

Mr. Kilduff asked Mr. Nelson if there were four conditions in the existing ordinance. Mr. Nelson said he believes so. Mr. Kilduff said what we're proposing then is a revised Ordinance for drive-thru uses. He briefly reviewed (a) through (e) with the changes and additions. Mr. Kilduff said you now have greater specificity for a conditional use, it is very clear to any applicant what's expected and to which Board.

Mr. Nelson said, from his point of view it strengthens that provision in terms of protecting adjoining properties, and at the same time makes it fairer to the applicant to understand exactly what he has to do. Mr. Cholminski said we're guaranteeing what they do for their case, making it clear what they need to do and what Board.

Mr. Brady referred to and read § (c) (i). Mr. Cholminski thought he read it in the negative and said it's where the abutting property is zoned or used for residential purposes. Mr. Lermond said it's non-residential. Mr. Brady said (ii) should be "only where it's zoned non-residential". At this time the Board had a discussion on this matter and decibels.

Mr. Lermond questioned the removal of Section 6. Mr. Brady asked how about Section 4. Mr. Lermond said he's okay with the changes of (Section) 4; but thinks (Section) 6 should stay. Mr. Brady clarified §161-3 and §161-34 B. Mr. Nelson requested to explain from his point of view and said the Ordinance language he was trying to put in is to what he's seen on occasions which is the balancing act between protecting residential areas while encouraging Economic Development. At the end of the day, both Boards need to consider what the Borough's economic goals and objectives are to ensure everyone understands this balancing act.

Mr. Cholminski said without being rude, agrees with Mr. Brady and explained. Mr. Nelson was in agreement and said this is almost Master Plan Language rather than Ordinance language and thought to throw it on the table and see the reaction. Mr. Lermond addressed Mr. Cholminski saying one of the things he thought was good and wasn't sure if Redevelopment meant this, on the second line, "whenever

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property and various zones is proposed to be developed or redeveloped the applicant and the Board with jurisdiction shall consider the proximity existing.” He said now you have a drive-thru, is some kind of low use in the back and all of a sudden say, “I’m going to flip this building. Out goes the bank and I’m going to flip this into something else that is drive-thru HC.” Mr. Cholminski said he doesn’t even know if that application would come here nor thought it would go to any Board. Mr. Lermond said you just get a zoning permit and that’s not what you want. Mr. Brady said unless one of the conditions of the prior approval was something like, in the event of a change of use that duplicates certain things, it’ll have to go back to the Board. At this time a discussion was had.

Mr. Cholminski asked if they have a motion and inquired of word changes. Mr. Brady said the only word change was the one he suggested. Mr. Lermond said we took (Section) 6 out. Mr. Brady said Sections 1, 2, & 3 are gone. Mr. Cholminski said there’s only Section 4 which is limited to the first couple sentences about buffers; Section 5 which now has (a), (b), and when you go to the new page (c), (i), (ii) then (d) & (e). Mr. Foulds said (Section) 7 & (Section) 8 no change. Mr. Cholminski said (Section) 4 has some sentences and read it. Mr. Nelson said he realized they have no definition for buffering and screening and thought it good to define as many things as you can define.

Mr. Lermond said, we have a buffering bulk standard but don’t have any other standard. Mr. Nelson said you have many pages of buffering and screening requirements and standards, but there is no general definition of what a buffer is supposed to be. A brief discussion was had. Mr. Brady said and you just say Buffering standards are set forth elsewhere in this ordinance. Mr. Nelson agreed.

Mr. Foulds made a motion to **Open HC Zone and Drive-thru conditional use discussion to the Public**. Seconded by Mr. Zschack. All were in favor.

No-one from the public stepped forward.

Mr. Foulds made a motion to **Close HC Zone and Drive-thru conditional use discussion to the Public**. Seconded by Mr. Zydou. All were in favor.

Mr. Cholminski said we now need a motion. Mr. Kilduff made a **Motion** to lineate Section 1 and Section 2 because it’s the same as the Ordinance. This is an ordinance.

Mr. Kilduff made a motion to recommend to the Mayor and Council an Ordinance amending Chapter 161 of the Franklin Borough Code in the Borough’s Land Development Ordinance with changes as follows:

- **Section 1:** §161-3 Buffering and Screening – The use of various natural and manmade elements to shield lower intensity land uses from higher intensity ones. Buffers and screens may be acceptable even though they may not completely

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conceal or obscure one land use from another, the goal being to mitigate the impact upon the lower intensity use in a practical manner. Buffering standards are set forth elsewhere in this ordinance;

- **Section 2:** §161-34B (6) Drive through uses – The existing language in paragraphs (a) and (b) shall remain. Paragraphs (c), (d) and (e) shall be deleted in their entirety and replaced with the following: (c) The maximum volume of any exteriors or speakers will meet the volume standards at the property line. (i) Where the abutting property is zoned or used for residential purposes:
  - (a) 65 db between the hours of 7:00 a.m. and 10:00 p.m.;
  - (b) 50 db between the hours of 10:00 p.m. and 7:00 a.m.;(ii) Where the abutting property is zoned for non-residential purposes: 65 db
- (d) Where adjoining property is zoned or used for residential purposes, the buffering along the common property line shall include a solid fence.
- (e) The traffic circulation design shall provide for one-way only circulation in the area directly adjacent to the drive-thru lane and queuing aisle, unless the drive-thru lane and queuing aisle are physically separated from the circulation elements.

A Board member questioned elimination of a certain use. Mr. Cholminski said he did when he read it. Mr. Lermond said they're leaving (Section) 7 which would then become (Section) 3. Mr. Cholminski and Mr. Brady agreed. Mr. Lermond said then (Section) 8 would become (Section) 4. Mr. Cholminski advised Mr. Kilduff, to finish his Motion, change Section 7 to (Section) 3; Section 8 to (Section) 4. Mr. Kilduff said Section 3 – Severability, to add to his motion. Mr. Cholminski said he doesn't have to change it just as is; just change Section 7 to Section 3 and leave already as is. Mr. Kilduff said Section 8 shall become Section 4 – Effective Date of the Ordinance. Seconded by Mr. Foulds.

Upon Roll Call Vote:

AYES: Crowley, Kilduff, Lermond, Zschack, Zydon, Foulds, Cholminski

NAYS: None                      ABSTENTIONS:

**PAYMENT OF BILLS:**

Mr. Nidelko made a motion to approve the **Franklin Borough Planning Board Escrow Report for July 15, 2013**. **Seconded** by Mr. Zydon

Upon Roll Call Vote:

AYES: Lermond, Zydon, Foulds, Nidelko, Cholminski

NAYS: None                      ABSTENTIONS: Crowley, Kilduff, Zschack

Mr. Cholminski reminded to have the May 20, 2013 Meeting Minutes for the next meeting.

Mr. Brady explained the Santé Bus Resolution wasn't finalized due to vacations, holidays etc.

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Mayor Crowley said the person who rented Hooters was aware of the condition. They [owners] did not tell the new renter about the condition but were told by the Borough of that condition before he opened and was aware of it. Supposedly, he was going to get it to the lawyer. Mr. Kilduff advised (documents) came in today which are being reviewed. Mr. Lermond asked if it's the owner or applicant. Mayor Crowley said he's unsure who's supplying the change but were well aware before they opened they would need to come forward. Mr. Cholminski said he was glad to be aware of the facts.

Mr. Lermond asked what's going on with the Nardella property. He said they put a silt fence around the building and dug other areas. Mr. Nidelko said it was staked out. Mr. Cholminski said he'll leave that to the building inspectors in town. A brief discussion was had.

**APPROVAL OF RESOLUTIONS:**

**APPLICATIONS FOR COMPLETENESS:**

**ADJOURNED CASES:**

**APPLICATIONS TO BE HEARD:**

**OTHER BUSINESS:**

**CORRESPONDENCE:**

**OPEN PUBLIC SESSION:**

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

No-one from the public came forward.

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

**ADJOURNMENT:**

There being no further business to come before the Board, the meeting was adjourned at 8:51PM on a motion by Mr. Zschack. Seconded by Mr. Lermond. All were in favor.

Respectfully Submitted,



Ruth Nunez  
Secretary