

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
August 1, 2012

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

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

ROLL CALL OF MEMBERS PRESENT: Mr. Correal, Mrs. Bonis, Mr. Gardell
Mr. Kopcso, Mr. Swiss, Mrs. Murphy,
Mr. Kell

ABSENT: Mrs. Alexander, Mr. Martinez

ALSO PRESENT: Mr. Thomas G. Knutelsky, P.E.
Mr. Ken Nelson, Planner
Mr. David Brady, Esq.
Mr. James Kilduff, Director

APPROVAL OF MINUTES:

Mr. Kopcso made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for June 6, 2012**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Bonis, Gardell, Kopcso, Swiss, Kell

NAYS: None ABSTENTIONS: None

APPROVAL OF RESOLUTIONS:

There are no resolutions to approve

APPLICATIONS FOR COMPLETENESS:

ZB-07-12-1 Hess Corporation, Bulk Variance, Block 1101 Lot 6

Mr. Knutelsky stated the original signed report of July 19, 2012 was revised on August 1, 2012 and signed by him with changes. He said the report outcome remains the same and recommends the application be deemed incomplete. Mr. Knutelsky made the following recommendations per the August 1, 2012 report:

- Section B; Item 13: When the revised plan is submitted to have appropriate scale of either 1=pen scale or 1=20 for the particular survey provided.
- Section B; Item 15; Setback waiver be granted
- Section B; Item 17C: Signature blocks incomplete for Board professionals, Chairman and Secretary should be on the plan
- Section B; Item 20 Location waiver be granted
- Section B; Item 22 waiver denied and must submit required survey to be deemed complete;

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- Section B; Item 23 waiver be granted;
- Section B; Item 42 waiver be granted;
- Section B; Item 47 waiver denied and submit a survey with signed, sealed certification by a licensed professional
- Section B; Item 49 variance information provided as part of rider, recommend temporary waiver for completeness only with all information from checklist Item 49 provided as testimony
- Synopsis: Checklist items waivers recommend the following items: #15, #20, #23, #42 and temporary waiver granted for item #49. Other checklist items are incomplete for not having an official survey. Mr. Knutelsky recommends the application be deemed incomplete.

Donna Jennings Esq. stated there are no issues with the comments and the applicant will provide requested additional information.

Mr. Correal made a motion to deem incomplete application **ZB-07-12-1 Hess Corporation Bulk Variance Block 1101 Lot 6**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Bonis, Gardell, Kopcso, Swiss, Murphy, Kell

NAYS: None ABSTENTIONS: None

Mr. Knutelsky advised Ms. Jennings to submit their letter to the Community Development requesting a hearing for October 3, 2012.

It was requested she re-notice for that meeting to which Ms. Jennings agreed.

ADJOURNED CASES:

There were no adjourned cases.

APPLICATIONS TO BE HEARD:

ZB-05-12-1 Brian Drost, Use Variance Parking Variance Block 907 Lot 7

Mr. Brady stated he found the service to be proper upon publication.

Ms. Nicholson provided an exhibit to be marked A1 - (Office space). She stated this meeting is for a Use Variance to allow apartments to occupy some of the first floor space, formerly a pharmacy on Main Street. Ms. Nicholson provided her history and personal experience while on Main Street and the witnesses she will present.

Ms. Nicholson brought up a prior resolution with a Sunset Provision on the Parking Variance when Ms. Miller operated a deli. She stated once we get through the Use Variance aspect with the bifurcated application, they would address the Parking Variance which they would need to partially reinstate at that time.

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Ms. Nicholson mentioned Exhibit A1 (Smaller space of how the inside looks) with today's date and introduced Brian Drost. She advised the Board that Exhibits A2, A3 and A4 were in the Board's packets.

Mr. Drost was sworn in at this time. He began with the A1 document demonstrating the office space that's currently bricked up.

Mr. Drost thanked the Board and discussed marketing the site. Mr. Drost said he put poster signs in the window. Ms. Nicholson said that will be A5. Mr. Brady described the sign and its measurement.

Mr. Drost said there were at least six. He explained the different property advertizing approaches which he also used on 91 Main Street. Although he's actively marketing the site, there were only two interests; one went to the saturated Route 23.

Mr. Drost explained Exhibit A-2, an actual apartment photo he has in Bergen County. Exhibit A-3; a front rendering of 91 Main Street to a potential conversion along with Exhibit A-4 showing different photographs of the residential unit. Mr. Drost explained the apartment content and their inside appearance.

Mr. Nelson inquired if Mr. Negri is working with him. Mr. Drost said Mr. Negri previously worked with the prior owners; but they are in discussions.

Mr. Nelson also inquired of Mr. Drost's promoting efforts and if the property has been officially listed with a broker. Mr. Drost provided his listing efforts and said he gives information as a broker.

Mr. Nelson asked if Mr. Drost's architect would be testifying and also inquired of the current square footage vacancy which will be divided into apartments. Mr. Drost provided it, but stated his architect would know.

Mr. Drost described the current and future space and also explained his plan of not being an absentee landlord as he has a great management staff and has a local office affording the opportunity to closely monitor the properties. He is passionate about his company and wants to build his brand. He thanked the Board.

Ms. Miller, 58 Davis Road, Franklin, New Jersey was sworn in at this time.

Ms. Miller provided the history of her parents owning the building, the pharmacy relocation and her leasing the commercial space. She provided her personal experience of 40 years on 91 Main Street. Her parent's dream was to establish their family in Franklin and her father was a local merchant. They experienced ups and downs of Main Street; 25 years ago, she joined the family business and opened a deli there. She provided the family operation history of the pharmacy.

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Ms. Miller spoke of her experience as a first-time landlord and coming to the realization that commercial tenancy provides a long term lease rather than residential fluctuation. She explained her attempts to rent the property before the building sold and her turning it over to a knowledgeable source.

Ms. Nicholson inquired of Ms. Miller's knowledge regarding Picatinny Arsenal's Policy Change Ad, if she contacted them, and requested she read the Ad. Ms. Miller said she was aware of it, did contact them and read the Ad.

At this time a discussion regarding the 2nd floor apartments was had.

Mr. John Negri was sworn in at this time.

Ms. Nicholson inquired of Mr. Negri's awareness of the 91 Main Street property. Mr. Negri said he was referred by Caldwell Banker Commercial to the Miller's. He listed it and sold it to Mr. Drost two and a half years ago.

Ms. Nicholson asked for his opinion as a commercial realtor renting the vacant space. Mr. Negri explained and added he sought additional tenants. He explained the Miller's marketing efforts and his with hardly any activity.

Ms. Nicholson asked why that is. Mr. Negri stated it's not conducive to a retail location, no retail profit; and the profit is going to Route 23.

Ms. Nicholson asked if Mr. Negri had an interested party coupled with his knowledge of retail space desiring a Main Street location though not listed with him, would he contact Mr. Drost. Mr. Negri said he maintains a list of vacant spaces throughout Northern, NJ and works with landlords. He's aware of the 2 ½ year vacancy with no interested parties.

Ms. Nicholson asked Mr. Negri to explain as a commercial realtor, the fatality of renting an unlisted building and non-utilization of full marketing efforts. Mr. Negri stated Mr. Drost is an experienced property owner; is as knowledgeable and uses the same resources he does.

Mr. Negri was asked questions regarding the property's sale efforts, possible conversion to apartments and the sale date. He said Mr. Drost was aware of his efforts and believes apartment conversion was not the intent nor discussed. He said the sale date was September, 2011.

At this time the rental amount was brought up for appropriateness and responded to by Mr. Brady as appropriate and explained why.

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Ms. Nicholson had Donna Miller return to answer that question. Ms. Miller explained due to the times and vacancies, she requested Mr. Negri bring all offers to the 91 Main Street space. She was willing to get a year lease but no offers and no-one came.

Ms. Nicholson had Mr. Drost step forward. He provided his cost factors, willingness to negotiate, and space reconfiguration marketing efforts. A few more emails and calls came with no serious interest.

A Board member inquired of Mr. Negri's awareness of empty commercial properties along the Route 23 and 517 corridors. He said there is a large quantity of empty commercial properties on Route 23 and at least a ½ dozen properties on Main Street.

Mr. Negri was asked about 517 through Ogdensburg and Route 23 commercial business becoming the more commercial corridor. Mr. Negri said vacancies in commercial properties are in the 20% range and residential vacancies less than 5%.

He was asked what the typical commercial rent property on Route 23 would go for, such as an empty restaurant. Mr. Negri said between \$18 - \$25 a square foot.

Mr. Drost was asked to respond according to his knowledge. He said the current competitive Route 23 market has many spaces, and expressed the competitive difficulty with Route 23's exposure.

Mr. Ken Wentink was sworn in at this time.

Ms. Nicholson asked Mr. Wentink knowing this application was bifurcated, could he direct his testimony to the issues which will enable the Board to decide on the Use Variance; especially parking. Can the parking that is on the site, how much there is and how would the need for parking differ from the residential if this conversion occurs, or the retail and the parking that goes with what is now in place.

Mr. Wentink said the commercial should be in front. He surveyed the angle parked spaces on the Main Street store front. In sheet 2 of his parking summary, he described the parking spaces, their angles, location aspects and traffic perspectives. He said there are a total of 27 spaces; the grading is level, may need minimum work performed, and have little or no drainage issues.

Ms. Nicholson continued her questioning regarding parking space footage for retail vs. residential. Mr. Wentink referred to RSIS and further defined apartment/space ratios under RSIS.

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Ms. Nicholson asked if this would improve the situation and reduce the parking variance that currently expired and would need to be reinstated. Mr. Wentink said yes.

A discussion was had regarding the proposed apartments, store front, guest parking stall utilization and placement.

It was said, regarding the use and being the application is bifurcated, it's tough from an engineering standpoint. He wants the Board to understand if the use is approved, parking is integral at that point.

The parking's current status, future usage, commercial and residential use were discussed. Parking allowances, purposes, signage and accessibility were further discussed.

It was suggested the Board should require making parking for the residential aspect of the site be done in the rear of the property which is the current status-quo, should approval be granted.

Ms. Nicholson said they currently have all existing apartment access. Mr. Drost was aware of the parking situation and had an alternate plan. It wasn't revised as they were returning for the Site Plan.

Ms. Nicholson discussed the 1986 Resolution. She said she wasn't representing Mr. Drost at purchase time and it wasn't brought up then. She's aware if turned down, they must return to re-establish parking for the existing building and hopes denial is not the Board's mindset. Ms. Nicholson wanted it on record that she and Mr. Drost will return to address it as soon as they can.

Michael Kauker, 356 Franklin Avenue, Wycoff, NJ was sworn in at this time.

Ms. Nicholson asked of his familiarity with 91 Main Street and his report submittal in conjunction with the application.

Mr. Kauker divided his testimony into four major parts. 1st: A historical perspective regarding set criteria in the B1 district for which they'll need a Use Variance; 2nd: Land Use Mix existing in the B1 district; 3rd: Testimony to enlighten the Board on the extent and nature of the Use Variance and 4th: Visual, documentable support proofs for the Use Variance.

Mr. Kauker provided his historical zoning view perspective of the B1 district. He made note of a similar periodical 1994 application. Mr. Kauker said the mix of land uses that existed during that time, established the Board that picked the Main Street community. In 1988, the town's forefathers and Planning Board sought ways to

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stimulate the decline by placing the commercial (use). Since then, there has not been much activity and the decline is continual.

Mr. Kauker thinks time suggests a new approach of land use and planning and zoning regarding Main Street's problems are appropriate at this time, to wit Mr. Nelson's report. Since then, commercial development has evolved in pursuit of the Route 23 corridor.

Mr. Kauker broke down the 46 properties use mix and said there would be no adverse effect by adding residential density. Nine of the 42 properties are reasonably compliant and continued to elaborate the area's land use mix and percentage comparisons.

Mr. Kauker presented the land use mix information as a perspective to understand the relationship of the site to the existing Land Use mix within B1. He said there are 15 one family homes on several lots to the north, making it a balanced land use mix within the zone. In the past, commercial land use was the Borough's focal point. Currently, with market demands and preset practices, the property faces challenges.

Mr. Kauker said they are not proposing to dominate with residential apartment use. A portion of the property is compliant and as an example, referenced the packet prepared by their architect and engineer. He referred to the occupied and occupiable space within the structure as a Landmark building. He said in Mr. Nelson's report, it's viewed as a rich man's property. Mr. Kauker said from that point of view, if variance is granted, it would be another nail in the coffin as it relates to the demise of Main Street.

Mr. Kauker takes the opposite view; if they could provide appropriate foundational proofs they need for approvals, the partial Use Variance application can bring them a step forward, fostering the beginning of modernization.

Mr. Kauker spoke of square footage and its compliance. He said 28.5% represents the total gross area of the apartments which would be non-compliant. They are applying for partial relief as making completeness of the property for zoning purposes is very difficult coupled with the economy.

Mr. Kauker said revitalization would be beneficial and explained the variance.

Mr. Nelson said there are some things in Mr. Kauker's report not included in his testimony and believes the report will be considered part of the record and wanted to clarify a couple of things.

Mr. Nelson referred to Page 1 regarding the elderly and handicapped residential apartments and doesn't recall Mr. Drost's commitment or indication of the tenancy. Mr. Kauker said that might be a misunderstanding between himself and his client.

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He doesn't think it was proposed they be constrained in any way; they're non-age restricted.

Mr. Nelson questioned the multi-family property numbers in Mr. Kauker's existing land use conditions analysis. Mr. Kauker said he took a recount and wants to replace and correct the data in the table with his testimony.

Mr. Nelson said the numbers weren't critical, it's way the Board interprets them and proceeded to review the list.

Mixed use property numbers were discussed. Mr. Nelson said many inappropriate conversions occurred in the multi-family dwellings with a large percentage of them to the south. He said 17 out of 50 plus are conforming with the zone. Mr. Kauker said they're approximate to the subject property and kind of clustered.

Mr. Nelson referred back to commentary on page 1 referencing a residential neighborhood and felt it wasn't an accurate representation. Mr. Kauker said it was the immediate surrounding as opposed to the entire length.

Mr. Nelson said also on page 1, the description of property in question is occupied by a two-story vacant office building. He said for the record, it's substantially occupied and a small percentage of the building is vacant. Mr. Kauker agreed.

Mr. Nelson said 28% of the building would be non-conforming. Although Mr. Kauker agreed, he said the focal point is the Use Variance.

Mr. Nelson discussed the building's façade saying it appeared 90% would have a residential appearance if the application is approved. Mr. Kauker said a substantial portion of that 90% is on the 2nd floor which is compliant.

Mr. Nelson said he was talking about the ground floor. Mr. Kauker said the deli increases in width. The façade's residential percentage was further discussed.

Mr. Nelson asked if Mr. Kauker discussed available zoning recourse with his client which would allow apartments on the ground floor. Mr. Kauker said he had not and provided his reasoning. He feels this is the right Board for such a relief.

Mr. Nelson referred to the report's commentary of the proposal's consistency with the Master Plan. Mr. Kauker said it can be reconciled with the Master Plan and market changes cannot be ignored.

Mr. Nelson said the changing conditions have not occurred since the Master Plan's adoption. Mr. Kauker spoke of the continual changes and their effects on the community.

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Mr. Nelson said if the strict application of the requirements of the zoning ordinance and the planning policies enunciated with the Master Plan can be waived in connection with this important building, how can you reconcile not waiving them for other buildings along the way. Mr. Kauker said he doesn't speak to that nor studied that; each application stands on its own merit and personality.

Mr. Nelson read into the record, Hyer & Gruel's Main Street Revitalization Study for Mr. Kauker's comment. Mr. Kauker said in most cases that's a valid planning concept; doesn't disagree with it, but it's not realistic for this neighborhood. A 54 year decline shows otherwise.

Mr. Nelson said: "to this building." Mr. Kauker said: "to the whole zone itself." He respects and thinks it an idealistic planning concept and objective but doesn't believe it could be fairly applied to this zone.

Mr. Nelson asked if Mr. Kauker would agree that 90% of this building façade or whatever it proves to be will be dead space. Mr. Kauker agreed and said that's not dispositive of the application.

Mr. Nelson asked if square footage is more important than the building façade. Mr. Kauker said it's the totality of the use; they propose 28%. He said they're maintaining a property for 70% of the total area in respect for the ordinance and continuance of that land use mix and are asking for 28% partial relief.

Mr. Brady inquired about the first floor percentage. Mr. Kauker said the data says 56.9% would be non-compliant and 43.1 or 2,810 square feet would be compliant which represents the deli and the small office. .

Mr. Nelson referred to the architectural plans and asked for Mr. Kauker's opinion of the building's façade. Mr. Kauker said he observes that brick would be more consistent.

Ms. Nicholson presented Exhibits A-5 and A-3, and asked for Mr. Kauker's professional opinion if the 1st floor façade would appear to be more pleasant, pleasing and helpful to revitalizing downtown. Mr. Kauker said it's preferable and represents revitalization. A-3 represents a challenge facing Main Street properties.

Ms. Nicholson concluded her presentation. She knows the professionals have submitted reports in the Board's packets for review. She requested the meeting be open to the public instead of the professionals reading their reports and any closing remarks; then she can do her closing statement.

Mr. Brady said he would like to get the professionals reports on record prior to opening to the public. Ms. Nicholson said except they're a part of the record having been submitted, they are a part of the evidence to file the actual record. Mr. Brady

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explained the Board's procedural prerogative and recommended not to deviate from standard procedure. Ms. Nicholson expressed concern over time restraints.

Mr. Knutelsky reviewed his July 19 report. He's aware the architect is not present and perhaps Mr. Drost could respond to the spillover of residential use onto the sidewalks due to 2nd floor window air conditioning units affecting the bottom floor residential use. He asked if there are internal mechanical systems to negate the need for window air conditioners. Mr. Drost said he's planning on putting vertical AC units internally, no window units in any 1st floor windows and no window units in the rear.

Mr. Knutelsky said in terms of the proposed one bedroom apartments, was thought given to 3 bedroom apartments; he wants to avoid excess dwelling use spillage and if this is part of Mr. Drost's marketing scheme during the tenant interview process. Mr. Drost said they receive a large application flow and are selective in considering an application. They typically have a single person or couple limit. Should children be seen, depending on age, additional bedroom necessity is advised; they only offer one bedroom.

Mr. Knutelsky asked if the apartments will be ADA accessible. Mr. Drost said yes and they can check with Charles Schaeffer for details.

Mr. Knutelsky said he wants to reserve the right to read comments into a possible favorable resolution. Although it's Site Plan, he wants it on record and asked what the sign will be used for. Mr. Drost said they may remove the sign and wants to replace it with a smaller wooden historic sign saying The General Store to dress up the building.

Mr. Knutelsky referred to it being more an aesthetical architectural sign, to which Mr. Drost agreed.

Mr. Knutelsky reserved his right to enter these at a later time.

Mr. Nelson reviewed his report. He said at the end of his report the applicant can attempt to show that the proposal can meet the positive and negative criteria test. In his opinion, the testimony provided does not suggest the test has been passed. There is no hardship as the building is $\frac{3}{4}$ occupied.

Mr. Nelson said no purposes in zoning are being advanced. It suggests if the application is not approved, the building may deteriorate further. He does not believe occupying the proposed space with residential units advance any zoning purpose and is inconsistent with the Borough's Master Plan. He said continual efforts are focused on Main Street's problem and its resolve.

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Mr. Nelson read two things for the record which supplement his report: One from the Master Plan and one from the Main Street Revitalization Plan. He read page 16 of the Master Plan under Main Street Retail. He also said it was in the Zoning Ordinance for many years and the Council has chosen not to change that.

The other important statement Mr. Nelson read for the record was from the Main Street Revitalization Plan. He said this plan recommends that when opportunities exist, the Borough encourages conversions from residential back to commercial. This proposal is in direct contradiction to the Master Plan's recommendation. In summary, the applicant wants to maximize his property income. It will not benefit the Borough or Main Street.

Mr. Kopsco asked Mr. Drost why residential is in his future for 91 Main Street. Mr. Drost said he's seen the trend throughout the years from people and what he's heard. When they purchase a property they enact a huge marketing campaign and pursue every avenue.

Mr. Kopsco asked what he has heard to pursue this now. Mr. Drost said he thinks it's the best use, has seen it around Main Street in the past, and is his only option at this point.

Ms. Nicholson asked Mr. Drost with his ability, contacts and experience, does he believe he could easily rent out the commercial space and be more successful than the Millers. Mr. Drost agreed and said their initial approach was to utilize what they had. They did mailers and spent money on a marketing campaign. It would have been easier to keep it commercial vs. a long-term tenant. He said that's not the case and have exhausted their resources.

Ms. Nicholson asked how many vacancies are in the upper floor apartments and if renters are seeking his apartments on Main Street. Mr. Drost said he is fully occupied in all his buildings and has a renter's waiting list.

OPEN PUBLIC SESSION:

Mrs. Murphy made a motion to Open to the Public **ZB-05-12-1 Brian Drost, Use Variance Parking Variance Block 907 Lot 7**. Seconded by Mr. Swiss. All were in favor.

Donna Miller, 58 Davis Road, Franklin, NJ while still under oath came forward. She said she's been involved with Main Street for over 40 years and considers herself an expert on Main Street. She referred to Mr. Drost's rendering of returning the building to its original integrity. She referenced the zinc company's disrepair and marked eyesore for Franklin. With regards to air conditioning, she mentioned those on Main Street as it is today. She said the rules of Main Street should be enforced for everybody thereby making it a pleasant eye pleasing place.

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Karen Folkerts, 113 Main Street, Franklin, NJ was sworn in at this time. She said she has a vested interest because she lives there and wants Mr. Drost to succeed. She said one thing not considered by the forefather's decisions was unintended consequences. Ms. Folkerts said Mr. Drost seems like a great guy, a responsible landlord and doesn't know how the Zoning Board is going to say no to future landlords. She commented on an uncaring property owner. Ms. Folkerts asked if it is possible for the Zoning Board to weed out irresponsible landlords.

Mr. Kell said it's not possible for us to do that. Ms. Folkerts felt it needs serious consideration. She commented it's a great plan and would rather look at windows than depressing signage. She spoke of apartments on the other end allowed to turn business into 1st floor apartments as inappropriate and uninhabitable. She asked if the Zoning Board has the ability to say this plan is inappropriate and is going to further bring down living on Main Street.

Mr. Kell said they can offer their comments for or against and asked Ms. Folkerts if she meant enforcement. Ms. Folkerts said not enforcement, but should an applicant come before you who doesn't have this kind of a plan but wants to turn the downstairs into apartments and not necessarily neighborhood improvement.

Mr. Kell said that will be on a case by case basis. Ms. Folkerts said, so you can look at things on a case by case basis? Mr. Kell said an applicant would come before the Board and be evaluated on a case by case basis.

Ms. Folkerts asked if approved, what kind of can of worms does this open. Mr. Kell assured Ms. Folkerts should the application be approved, it does not set a precedent.

Mr. Brady said it sets a limited precedent because every property in a Variance application is unique. When you grant variances you can generally put conditions on; hope to mitigate some of the impacts of the variances as heard in Mr. Kauker's presentation. When saying while it's not a precedent per se, it provides more rationale to future applicants.

Mr. Kell said they have similar applications come before the Board; some are denied and some are approved; it's a case by case basis.

Ms. Folkerts said she respectfully disagreed with needing more density on Main Street-it's the kind of density that needs to be different; not only for this application, but for future ones. The applicant is committed to the density quality of Main Street.

David Fanale, 59 Liberty Lane, Franklin, NJ was sworn in at this time. He said he became an EDC member seven months ago. He spoke of Hackettstown and the business improvement district's reduction of ground level residency and kept

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commercial space on the ground, apartments above, and curtailed loitering. Traffic is difficult as it is on Main Street.

Mr. Fanale expressed his opinion of the signage not working and is an eyesore which should be removed. He also conveyed his concern over the current degradation atmosphere along the vicinity, his concern over a precedent being set regarding commercial owners turning buildings to residential and applauded the Miller's. Mr. Fanale requests disapproval and work be continued on Main Street. He thought the storefront ideal.

Joann Tatka, 151 Maple Road was sworn in at this time. She said setting precedent is exactly what happened when the Council decided they would start dropping sewer EDU charges. She's aware of two people wanting to turn their commercial bottom floors into residential who were denied. She said revitalization means more commercial office, not residential on Main Street.

Betty Allen, 24 Jenkins Road, Franklin, NJ was sworn in at this time. She said Mr. Drost showed her what he was doing. Ms. Allen was thankful someone came to town and bought the building. She wondered how he was going to get quality tenants considering what's up the street.

Ms. Allen was an EDC member and is on the Main Street Committee. She spoke of change recommendations and signage for Main Street. Ms. Allen stressed signage importance and provided an example. She briefly commented over Hyer & Gruel's proposal and expressed her thoughts over Mr. Drost's investment and intentions as being the catalyst to bring change to the area. Ms. Allen mentioned the area from the traffic light to the theater requiring repair and of the building's historic value.

Steve Zydon, 346 Rutherford Avenue was sworn in at this time. He addressed the housing idea as the main concern and mentioned the Section 8 house. Mr. Zydon provided his view of the street's condition and spoke of the design style not being supported by the demographic area.

Ms. Nicholson asked if Mr. Drost has Section 8 tenants in his portfolio. Mr. Drost said he does not.

Ms. Nicholson asked for the rent charge and if it prevents what happened on North Main Street from occurring in his building? Mr. Drost said at 91 Main Street, they range from \$875 - \$925 and will start within the \$950 range. He wants a great community with great people; that's his business.

Mr. Zydon said although that's one of his concerns, if apartments are put there, it doesn't seem to be a good fit for the area. He referred to the Master Plan and Zoning having preset standards whose requirements need to be abided by the town.

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Renee Smith, 268 Corkhill Road, Franklin, NJ was sworn in at this time. She said she's a member of the EDC and was on the Main Street Committee with Mrs. Allen and is in agreement. She said the Main Street plan's in place, and have diligently tried to make progress to no avail. They did get signage, garbage cans and park benches installed. She commented on the building's design appeal and feels it would help the Main Street Revitalization, but it has 3 apartments.

She felt what happens in that building determines Main Street's future and also commented on the building's façade. Ms. Smith acknowledged Mr. Drost's efforts and mentioned the abandoned zinc mine's questionable potential. She appreciated Mr. Drost's presentation and asked where he lives and how often he visits Franklin. He said he lives in Franklin Lakes and comes at least every weekend checking his building, reviewing things and meets contractors. He's set on commercial space, used different avenues, and this is his last resort.

Ms. Smith questioned his property purchase date, website and local advertisement. She said she & Ms. Miller never heard of the websites mentioned. Mr. Drost said he purchased the property in September, used the same avenue of advertising previously effective for him and said local advertising is obsolete.

Ms. Smith said it's been empty for a long time and hopes any change to the building spurs interest along Main Street. She said it has only 3 apartments and what happens in that little space is important to rest of people living in town.

James Kilduff, Borough Administrator was sworn in. He wanted to clear up a couple of things. Mr. Kilduff said after the Board packets were sent, he found three resolutions pertaining to the property. He forwarded them to the professionals and copied Ms. Nicholson and proceeded to discuss the Resolutions.

Mr. Kilduff commented Mr. Drost performed due diligence by meeting him prior to the property purchase. He was impressed with Mr. Drost as an individual and as a credible landlord. Mr. Kilduff said there is no substitute for a good landlord or good property owner on any piece of property; and is very important.

He said tonight you have to decide on something that will impact the property forever. In deciding, look at what the Master Plan says, the ordinances and criteria for a D Variance. You heard from our planner and Mr. Kauker. The ordinance is clear about B1 and you are being asked to allow that. Then look at the criteria for a Use Variance and Mr. Kauker's explanation for granting it and inherently serving the public good.

Mr. Swiss made a motion to Close to the Public **ZB-07-12-1 Hess Corporation, Bulk Variance, Block 1101 Lot 6**. Seconded by Mr. Correal. All were in favor.

Ms. Nicholson stepped forward and provided her summary.

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Mr. Brady said it's a bifurcated application, have had some site plan information but it's a D Variance requiring a super majority of 5 out of 7. Mr. Brady provided his summary to the Board. He said with reference to the D Variance criteria, some of the applicant's presentation is in the nature of the hardship in difficulty renting the property. Mr. Drost's landlordship is unquestionable. He said variance relates to property not to applicants or people but with the land and further defined it.

Mr. Brady said the Board has to consider and weigh what has been testified. He said the Board has to equally take into consideration the negative criteria. Mr. Brady said the Master plan still contains the same goals and zoning recommendations. He said the applicant has not shown it meets the negative criteria.

Mr. Kopsco mentioned hardship was expressed but not by the applicant. Mr. Brady said the testimony with emphasis on inability to rent commercial space is in the nature of the argument for a hardship.

Mr. Kopsco said that could lead to timelines; one year vs. five years. Mr. Brady agreed and gave timeline examples. Mr. Brady said the Board has to review the testimony, rental attempts, contacts and the property's usability. The Board must weigh all the facts.

Mr. Correal said three issues were brought up. He spoke of the landmark issue which goes back to the zinc mine commercial property, the pharmacy and the apartments. He said landmark is traditionally a commercial property. Mr. Correal said commercial rental difficulty is state and nationwide. He understands hardship for retail such as a dental office. Mr. Correal spoke of the density of Franklin and this would add to it.

Mr. Kell spoke of the rental signs and in turn seeing the future plans, it's an improvement. Mr. Correal said the Council, Planning Board and the Economic Revitalization Board took Main Street into consideration when upgrading. He questions the apartment rent considering the locale.

Mr. Kell said okay so then I need a motion to approve this application and your vote being yes; would mean yes you're approving the application, the application to the D Variance and then the applicant will come back with the site plan at another meeting. A No vote means that you're denying the D Variance. Mr. Brady said or actually Mr. Chairman, it could be a motion made to deny it if somebody so inclined. Whoever wants to move in either direction is free to vote.

Mr. Kell said okay so at this time I need someone to make a motion; either for or against. Mr. Brady said right; it being consistent with what I usually do things I'll make a motion for it. Mr. Kell said "for it"; Mr. Brady stated that's the motion I make.

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Mr. Gardell made a motion to approve **ZB-05-12-1 Brian Drost, Use Variance Parking Variance Block 907 Lot 7**. Seconded by Mrs. Bonis.

Mr. Kell said so I guess a yes vote is we approve the Variance and no, we do not approve the Variance.

Mr. Brady said the only condition that I can pull out of all of this is that the it's a site plan related issue but I think it was important is that the attributes; 24 hour emergency response/video surveillance I got the feeling there was something important to the Board based upon what was said. Don't know that I've identified any other conditions or not.

Mr. Kell said can I have a Roll Call:

Upon Roll Call Vote:

AYES: None

NAYS: Correal, Bonis, Gardell, Kopcso, Swiss, Murphy, Kell

ABSTENTIONS: None

OTHER BUSINESS:

PAYMENT OF BILLS:

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board Escrow Report for August 1, 2012**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Bonis, Gardell, Kopcso, Swiss, Murphy, Kell

NAYS: None ABSTENTIONS: None

OPEN PUBLIC SESSION:

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

No one from the public came forward.

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

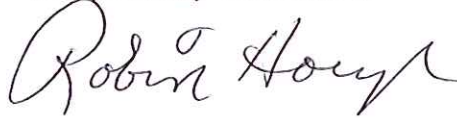
DISCUSSION:

CORRESPONDENCE:

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ADJOURNMENT: There being no further business Mrs. Murphy made a motion to adjourn the meeting of the Franklin Borough Zoning Board of Adjustment. Seconded by Mr. Swiss. All were in favor. Meeting was adjourned at 10:40 PM.

Respectfully Submitted,



Robin Hough
Secretary



Ruth Nunez
Secretary