

**Franklin Borough Zoning Board of Adjustment**  
**Meeting Minutes for**  
**December 5, 2012**

The meeting was called to order at 7:31 PM by the Mrs. Bonis, who then led the assembly in the flag salute.

Mr. Bonis 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, Mr. Lermond  
Mr. Martinez,

ABSENT: Mrs. Murphy, Mrs. Alexander, Mr. Kell were absent during Roll Call. Mr. Kell and Mrs. Murphy were acknowledged upon their arrival.

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 August 1, 2012**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Bonis, Gardell, Kopcso, Swiss

NAYS: None      ABSTENTIONS: None

Mr. Correal made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for October 3, 2012**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

**APPROVAL OF RESOLUTIONS:**

There are no resolutions.

**APPLICATIONS FOR COMPLETENESS:**

There are no applications for completeness.

**ADJOURNED CASES:**

There are no adjourned cases.

**APPLICATIONS TO BE HEARD:**

Mrs. Bonis advised Chairman Kell and Vice Chair Murphy have stepped down from the application due to a conflict and Planning Board member, Kevin Lermond will be

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sitting in on the application **ZB-09-12-1 Eden Franklin LLC, Preliminary and Final Site Plan (Variances Conditional Use) Block 1401 Lots 12, 13 & 14.**

Ms. Debra Nicholson stepped forward and introduced herself as the attorney representing Eden Franklin LLC a preferred builder for Walgreens. Ms. Nicholson spoke briefly about the Elekes family's recent tragedy.

Ms. Nicholson acknowledged the public's application sentiments. She said they have a technical use variance. Ms. Nicholson explained the ordinance and its affect on the application. She said if they were able to stay with the Planning Board, they would have had a Concept Hearing opportunity where ideas and concerns could have been forthcoming and revise plans.

Ms. Nicholson commented they met with town officials, obtained information, developed a plan for the Board's review and received their comments and concerns. She spoke of the unavoidable delays which enabled the professional team to return to the drawing board and discussed with Walgreens, items that can be done.

Ms. Nicholson said they have the opportunity to present the evolving application, get input from (the Board) and if there's agreement with the planner and engineer. They want to work collaboratively and partner with (the Board) for the best community site development.

Ms. Nicholson provided a history of the site's deed restriction, the steps leading to Superior Court and her interaction with the affected parties with no objection. The court's entered the order removing the deed restriction which was recorded on September 11, 2009.

Ms. Nicholson said, thereafter, the community was going through Master Plan amendments & revisions. Ms. Nicholson acted on the Elekes' behalf requesting consideration to rezone Route 23 parcels thereby making the application eligible.

Ms. Nicholson said she had an opportunity to speak with Mr. Durina regarding his objection. She thinks it's going to be a procedural difficulty and requested Mr. Brady and Madam Chairwoman address the application presentation procedure.

Mr. Brady explained cross examination and testimony under oath to the public regarding witnesses.

Ms. Nicholson said the application was deemed complete on October 3<sup>rd</sup> with a number of requested waivers granted. She clarified the confusion regarding preliminary and final and said it's a technical situation. Ms. Nicholson addressed the connector road issue regarding the public's concern, the furtherance of the Master Plan, and is prepared to comply and demonstrate their willingness to make it work. She discussed buffering and safety issues and provided positive concept solutions.

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Ms. Nicholson addressed the reserved parking matter. They're willing to listen, adapt to and present the application accordingly. Regarding signage, she reviewed the community's and the Board's desire to her client and are able to collaborate. She requested to present the application with few interruptions on their main testimony.

Ms. Nicholson provided her witness list and available information for audience questions. She commented on people not wanting this in their backyard and stated it's a property zoned for commercial uses on the Route 23 corridor. Ms. Nicholson reiterated their desire to make the application work. She further advised of Mr. Durina's procedural questions or objections for the application proceeding and said she would mention it to the Board. Mr. Brady asked if there was objection to bringing it up now. Ms. Nicholson said it would be appropriate.

Mr. Durina, 23 Lozar Road, Franklin was sworn in. He said he lives 225' from the application and wasn't "Noticed" as he didn't fall within the 200' mark. He spent several hours reviewing the plans and tried to follow the procedure and will reserve his comments on other issues for a later time. Mr. Durina discussed his concern and provided detailed information over the differences in Block and Lot numbers on the Tax Map, Aerial Map, Area Map, Land Title Survey and the Environmental Impact Statement depicting inconsistencies.

Mr. Brady explained the 200' requirement for Notice established by MLUL and said it's not unusual; particularly if there were changes in tax, lots and block numbers which Franklin recently had, for a professional to put in wrong information. Mr. Brady said it doesn't deprive the Board of jurisdiction and sees no reason to grant the adjournment request. He advised ample research time would be available due to the application.

Ms. Nicholson said this application type requires many months to put together. She said during that period they went through tax, lot and block number designation which may explain Mr. Durina's quandary. Mr. Durina said he's one against many professionals. He may be slower or take longer and felt they weren't fair statements.

Daniel Dougherty, Dynamic Engineering, Lake Como, was sworn in and provided his educational background, professional licensures and oversight of various Walgreen applications and projects including this one. He directly oversaw document preparation for this application.

Mr. Dougherty presented the following exhibits and said A1, A2 & A4 are part of Board's package; A3 was not in the Board's package.

- A1: Aerial Exhibit; sheet 1 of 1, a color version of the aerial plan;
- A2: Site Plan Rendering; sheet 1 of 1 dated 11/6/2012; a color version with landscape images portraying proposed improvements on the site;
- A3: Alternate Driveway Exhibit; sheet 1 of 1 dated 11/7/2012;
- A4: Truck Turning Exhibit; sheet 1 of 1 dated 11/7/2012; colorized version

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- A5: Architect's Exhibits: Walgreen's Exterior Rendering-12/5/2012. Mr. Brady asked if A1-A4 were done by his office and if A5 was prepared by the architect. Mr. Dougherty agreed;
- A6: Exterior Elevations; 12/5/2012. Mr. Dougherty said Exhibits A5 & A6 were prepared by RSC Architects.

Mr. Brady requested Mr. Dougherty maneuver the exhibits for the public and Board to view. Ms. Nicholson requested Mr. Dougherty orientate the site. He began with Exhibit 1 and explained property Block 1401 Lots 12, 13 & 14 (new lot designation) and apologized for the new lot assignment as they were changed during the application document preparation. Mr. Brady requested Ms. Nicholson or Mr. Dougherty resolve the inconsistencies.

Mr. Dougherty briefly defined the three street frontages and discussed the property size and its standing with the HC zoning criteria.

Ms. Nicholson discussed the surrounding parcels. She said The Borough and Board of Education were approached for possible acquisition of the deed restricted lot but wasn't feasible. She then spoke of the Auche Drive border, bringing forth the isolated, undersized lot.

Mr. Dougherty said in addition, the parcel is completely surrounded or is the only portion of the parcel in the HC zone on a side of Route 23. He provided their lot width dimensions compared to those required. He referred to Exhibit 2 discussing drive-thru operations. Mr. Dougherty said the pharmacy is a permitted use in the HC zone which has conditional use for the drive-thru as a separate or accessory use.

Mr. Dougherty said the drive-thru use has the conditional use criteria set forth by the Ordinance's five basic criteria:

- First: Lot size requirement which they meet supporting turning lanes, queuing, etc. for drive-thru. It doesn't represent drive-thru's; ordinances may be trying to tightly restrict. The pharmacy drive-thru is low intensity unlike fast food which may present challenges. Mr. Lermond questioned customer drive-thru usage. Mr. Dougherty said it's for prescription drop off and pick up; not photographs or other use. He explained its strict usage with the architect's interior perspective.
- Next, building size; theirs is a minimum size. It seems the ordinance is trying to restrict smaller type buildings having intensive drive-thru use from being permitted in the zone.
- Next, pedestrian and vehicle circulation and connectivity; an important element ensuring pedestrian traffic; circulation and safety aren't hampered by drive-thru's; which they meet.
- Fourth, outdoor speakers for conversation and drive-thru window customer order placement. They have no menu board; it's similar to a bank drive-thru with face-to-face interaction. The speaker frequency is drowned out by the vehicle sound, thereby meeting the fourth element.

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- Fifth, parking and loading requirements of the chapter. At first glance, it seems simple; meet the parking requirement or the stall count. He felt it was met on the first visit. After discussions with Borough staff members, a more conservative look was most likely required because it can be arguable that all parking requirements, design elements, and design requirements for parking in the ordinance have to be met per the chapter. Mr. Dougherty said in this case, they provided the required count as it's the higher most important element for a parking standard; but there's lesser elements they're unable to meet and will get into more detail. He said it has to do with landscape coverage percentage within the parking area. Mr. Dougherty said he will discuss parking and maximum grades in his parking testimony.

Mr. Dougherty discussed employee day and night time counts. The store will be open 24 hours. Mr. Lermond asked if during that shift (night) the building is open and accessible. Mr. Dougherty said yes, the drive-thru and pharmacy are both open.

Mr. Dougherty touched upon access and circulation. He said there are two proposed driveways for the site and proceeded to provide entrance and exit information for the drive-thru operation and discussed circulation maneuverability.

Mr. Dougherty addressed the review received from the (town) planner and stipulated it wasn't conceived by Walgreen's, Eden, his office or the traffic engineer's office. They presumed access wasn't desirable at that location and said connectivity was mentioned as being a neighborhood improvement. An alternate driveway exhibit was presented. Mr. Lermond asked if the shading added on the site plan was for circulation. Mr. Dougherty advised it's the difference between normal and heavy duty paving.

Mr. Dougherty explained Exhibit A3 (Alternate driveway) to the public and the Board. Mr. Correal asked about current traffic studies & safety engineering reports to which Mr. Dougherty said it's purely an exhibit for the Board's consideration from the request and suggestion of another driveway on Auché Drive. The suggested driveway was further discussed.

Mr. Knutelsky advised the Board the separate ingress and egress idea stemmed from a report by Urban Engineering. Mr. Knutelsky discussed ingress and egress.

Mr. Brady requested Ms. Nicholson to have her traffic engineer address Mr. Knutelsky's (comments) when they return. Ms. Nicholson said all the requests are written down. Mr. Lermond requested to be refreshed of the Urban Report. Mr. Nelson said it was adopted as part of the Master Plan and is summarized therein.

Mr. Knutelsky said comments to interconnect sites and streets off Route 23 are always made. The applicant needs to demonstrate its willingness towards the Board's and public's benefit. He said overall planning can be addressed in January.

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A brief discussion regarding submission of the alternate driveway exhibit being part of the site plan set was discussed. Mr. Brady requested it be forwarded.

Mr. Dougherty discussed the parking requirement ratios resulting in Walgreen's needing 74 stalls and said Walgreens target is around 50 stalls. They do not generate the stall demand even during peak shopping hours. Their goal is to meet the parking criteria included in the conditional use

Mr. Dougherty said storm water management and impervious coverage numbers, assuming all stalls are built, are pavement. However, they just don't get built, they're put at the edge of where the stalls are; an isle ends there until such time the Borough or Zoning Officer have a parking issue with the site and can enforce the applicant construct those stalls.

Mr. Gardell asked if they will be Bonded to build additional stalls should Walgreen's move out and "Jack in the Box" moves in and questioned deed recording. This issue and the Bonding matter were further discussed. Mr. Brady provided explanation regarding the banked stalls and the recording issue. Mr. Knutelsky and Ms. Nicholson provided input on that subject.

Mr. Dougherty said it's important to talk about green banked parking for later in his description and testimony and in response to Mr. Knutelsky's comments, he's going to talk about the possibility of banking more stalls and possible landscape area.

Mr. Dougherty referred to Exhibit A4 (truck turning WB50) and discussed loading and deliveries. He said it comes once a week and explained the route it will follow. Mr. Dougherty said smaller vendor delivery trucks would use the same path and may come multiple times a week; parcel delivery trucks might use passenger stalls but are urged to use the loading area. The FedEx delivery truck comes and goes quickly.

Mr. Knutelsky said he heard a number of delivery times and asked if there's an actual delivery time. Mr. Dougherty said they're typically made during the day and no set routine schedule. He will inquire. Mr. Knutelsky addressed his concern of the WB50's entrance and exit route encroaching the opposing lane and peak usage. Mr. Dougherty said they stay away from peak usage and said parking lots are laid out adequately and appropriately for primary vehicle's passing.

Mr. Knutelsky asked about the southerly entrance and requested a capture of it for the next meeting. Mr. Dougherty agreed.

A discussion regarding the truck backing into the loading area was had. Mr. Lermont asked if Mr. Knutelsky was in agreement. Mr. Knutelsky referred to a similar situation in Hampton saying it's the typical route of travel.

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Mr. Knutelsky said it's a dedicated loading area in accordance with the ordinance and doesn't have a problem with that. Mr. Lermond asked if it's 10AM or 2AM. Mr. Dougherty said he can get more delivery information.

Mr. Dougherty said the Board engineer made comments and requests regarding dimensional criteria and site reduction. Mr. Dougherty said his goal is to increase Auche Drive's buffering. He explained the current and projected dimensions and features for the building, parking and truck circulation and buffering to Auche Drive, while maintaining requirements and the Board engineer's requests.

Mr. Lermond asked if their plans and dedication to do this is what's being heard. Mr. Dougherty said yes. Mr. Lermond commented to have modified plans indicating the on-goings on the back side of Auche Drive for plant height visualization to the building perspective. He said their rendering needs to support their design aspect testimony and requested it be with and without the driveway. Mr. Gardell requested to add sidewalks and front yards. Mr. Gardell requested they be made 5' as are other town sidewalks. Mr. Dougherty agreed.

At this time, a discussion regarding sidewalk placement and dimensions, student accessibility, snow maintenance and banked stalls were addressed. Mr. Knutelsky commented on the sidewalk and asked if the Board was looking for sidewalks across the property for connectivity. He asked Mr. Brady if an easement is required and questioned liability and spoke of connectivity. At this time, a discussion regarding connectivity was had.

Mr. Dougherty discussed the 15% landscape element and asked the Board for a waiver. Mr. Dougherty continued to provide his explanation for this request and said if the Board deems it's not necessary to mitigate the waiver, they would proceed with the plan as is. He said they could propose that on a revised plan and the Board can decide on it later.

Mr. Dougherty discussed and explained the parking lot grading requirement and requested a waiver from that which drives them into the conditional use criteria. He briefly touched on storm water management and discussed the site's elements and filtration. Mr. Dougherty requested a waiver from the recharge requirements for the storm water management ordinance and said he believes Mr. Knutelsky gave positive opinion on that request and from the other two elements required by Crystal Water Management. He provided the proposals to meet the run-off requirements of the ordinance and for water quality.

Mr. Dougherty responded to Mr. Knutelsky's comment on the 100 year storm discharge from their basin into the DOT system. Mr. Lermond asked where they're putting the waste water. Mr. Dougherty explained its route. Mr. Knutelsky said they reviewed the storm water management report and re-calculations are needed. He said regarding the specific waiver Mr. Dougherty mentioned, storm water management rules allow a municipality to grant the waiver for specific items in storm

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water management recharge and gave further explanation. He provided his recommendation that a waiver for recharge take place.

Mr. Knutelsky said be that as it may, they still are meeting the idea of water quality in order to cleanse that storm water that's being collected as well as quantity mitigation and they still meet storm water management rules and need calculations to ensure correct drainage design. Mr. Lermond said to make sure whatever it's going into can handle it. Mr. Knutelsky said yes, other than the one discharge pipe he mentioned but, we'll wait and see the revised calculations to make sure but that would be a condition met later on.

Mr. Dougherty addressed the received landscape comments which they intend to comply and gave an overview of the intended landscaping and buffering.

Mr. Dougherty discussed Walgreen's lighting standards which were also based on the municipal comments received and appropriate adjustments were made. He also discussed Mr. Knutelsky's comments on lighting intensity design, spillage, fixture height, and gave further explanation of placement, its affects, and left lighting styles for the Board's consideration.

Mr. Dougherty discussed the proposed signage, their placement and setbacks in connection with the ordinance. He explained their proposed requests. The LED sign was discussed.

Mr. Lermond requested comparable built Walgreen sites having the discussed design elements. Mr. Dougherty asked to introduce another exhibit (A-7), a Union, NJ Walgreen's photograph which was distributed. Mr. Lermond requested similar Walgreen site locations. Mr. Dougherty said he will forward it along. Mr. Brady requested Mr. Dougherty or Ms. Nicholson submit it in advance for the professionals to review beforehand.

Mr. Nelson said since this property doesn't meet the required lot size and can fit on that size property; he wanted to know typical Walgreen's lot size. Mr. Dougherty said an acre and a half. He said the reason for mentioning the site characteristics is the zoning criteria are set based upon the HC Zone which they're unable to meet.

Ms. Nicholson asked if there is anything else the Board members would like them to come back with or submit. She provided a list of requests as follows:

- Exhibit A3 (Alternate Driveway to be circulated)
- Traffic expert prepared to describe neighborhood impact and evaluate ingress, egress, ingress/egress on Auch Drive
- WB50 corporate delivery schedule due to noise issue
- Engineer needs capture of vehicle to be addressed on turning



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- New colored rendering depicting sidewalks, proposed buffering and banked parking (Concepts using banked spots within parking areas, trees and landscaped islands in those spaces) for better visualization
- Bigger site map showing area sidewalks and placement for school children facilitating safe travel
- Immediate list of similar Walgreen's having similar site issues

Mrs. Bonis asked Mr. Knutelsky regarding the two captures he requested. He said he wanted a capture of the truck body's orientation at the southerly entrance when making a turn and the car entrance to avoid getting stuck on Route 23. The other was the overall sidewalk map.

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

Dick Durina, 23 Lozar Road asked about a sprinkler connection for the fire department's access to the building. Mr. Dougherty said sprinkler systems have yet to be determined; but most Walgreen's of this type have them. The design hasn't been designed to that extent and said it's typically on the back side of the store. Mr. Durina asked if it will have a striped fire lane. Mr. Dougherty said he expects comment from the Fire Official and will comply. Mr. Durina asked if it was going to be a 24 hour store. Mr. Dougherty said yes.

Helen McNamara, 35 Aucho Drive was sworn in at this time. She addressed the 24 hour store operation and addressed her issue regarding headlights. Mr. Dougherty explained the storefront location allowing headlight restriction and buffering to minimize headlight viewing.

John McNamara, 35 Aucho Drive was sworn in at this time. He said the action is where residents live and asked why it wasn't put on the other side. Mr. Dougherty explained the action is in the parking area. Occasional loading is not nearly the intensity of the customers using the parking area and front door. It is not a fast food drive-thru with intense use. Mr. McNamara asked why it wasn't conceived the other way (truck loading/unloading area). Mr. Dougherty said they wouldn't have the access and described it.

Dawn Fantasia, 23 Aucho Drive questioned the proposed development with respect to a project in Oradell. Ms. Nicholson clarified the difference and explained the Master Plan revision.

Pilar Betancourt, 11 Ginter Street questioned the store's daily deliveries, connection to Aucho Drive and banked parking spaces. Mr. Dougherty advised deliveries are dependent on individual supplier schedules. He said they don't want that connection but are responding to a professional's comment and the 18 stalls will remain a grass and lawn area until future use becomes necessary.

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Karen Stecher, 60 Washington Avenue asked how the truck will make deliveries. Mr. Dougherty showed her the vehicle path on the Exhibit. She asked what configuration plans are in place for that intersection. Mr. Dougherty said his traffic engineer will provide detail and explained the area.

Ms. Stecher asked about a turn signal. Mr. Dougherty said there's no proposed turn signal and will leave that for the traffic engineer. She asked about emergency access. Mr. Dougherty advised it will be maintained open. Ms. Stecher addressed the issue of people cutting through. Mr. Dougherty said the connection is going to be better defined.

Lisa Dougherty, 26 Auchte Drive asked why Auchte Drive was closed off. Mr. Knutelsky said it was due to the Wal-mart light and the access drive into it. He stated it was before his time. She asked who conceded to the Auchte Drive access. Mr. Knutelsky said it was one of Urban Engineer's recommendations.

Dan Dougherty, 26 Auchte Drive, asked about the store's dimensions and buffering. Mr. Dougherty provided them and explained setbacks. Mr. Dougherty asked about a timeline for public information availability. He was advised 10 days before the hearing.

Ms. Stecher asked if that was 10 calendar or business days. It was said calendar days.

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

Mr. Brady addressed the public saying re-notice is not necessary and the continuation meeting is scheduled for January 2, (2013).

Madame Chairman acknowledged the arrival of Mr. Kell and Mrs. Murphy and thanked Mr. Lermond for his service, which then left.

**PAYMENT OF BILLS:**

Mr. Kell made a motion to approve the **Franklin Borough Zoning Board Escrow Report for November 7, 2012**. Seconded by Mrs. Murphy.

Upon Roll Call Vote:

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

NAYS: None            ABSTENTIONS: None

Mr. Kell made a motion to approve the **Franklin Borough Zoning Board Escrow Report for December 5, 2012**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

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NAYS: None      ABSTENTIONS: None

**CORRESPONDENCE:**

Mr. Correal made a motion to accept the correspondence. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

NAYS: None      ABSTENTIONS: None

**OPEN PUBLIC SESSION:**

Mr. Kell made a motion to Open to Public. Seconded by Mrs. Murphy. All were in favor.

No one from the public came forward.

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

**OTHER BUSINESS:**

**DISCUSSION:**

**ADJOURNMENT:** There being no further business, Mrs. Bonis inquired of the meeting adjournment and Executive Session process. Mr. Brady said we have done things like this before where we have announced that we are adjourning into Executive Session for the purpose of discussing I think tonight's contract, personnel and litigation and we announce now, that we will adjourn out of the Executive Session with no continuation of tonight's meeting. Once we announce that, we cannot come back in. Mrs. Bonis requested a motion to adjourn this portion of the meeting to go into Executive Session; the purpose of that meeting will be to discuss contracts, litigation and personnel. Once we adjourn that meeting we will not be reconvening for public session. Mr. Kell made a motion to adjourn the meeting of the Franklin Borough Zoning Board of Adjustment. Seconded by Mr. Swiss. All were in favor. Mrs. Bonis read the Executive Session Resolution. Meeting was adjourned at 10:09 PM.

Respectfully Submitted,



Ruth Nunez  
Secretary