

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
April 3, 2013

The meeting was called to order at 7:30 PM by presiding Chairwoman, Mrs. Liz Bonis, who then led the assembly in the flag salute.

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

ROLL CALL OF MEMBERS PRESENT: Mr. Correal, Mr. Gardell, Mr. Kopcso,
Mr. Swiss, Mrs. Bonis, Mr. Martinez,
Mr. Lermond

ABSENT: Mrs. Murphy, Mrs. Alexander, Mr. Kell

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

APPROVAL OF MINUTES:

Mr. Kopcso made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for February 6, 2013**. Seconded by Mr. Swiss. All were in favor.

PAYMENT OF BILLS:

Mr. Gardell made a motion to approve the **Franklin Borough Zoning Board Escrow Report for April 3, 2013**. Seconded by Mr. Correal. All were in favor.

OTHER BUSINESS:

In the matter of the Statutorily Mandated Annual Report

Mr. Brady said MLUL requires the Board annually report to the governing body what applications were heard, what they were about, what the relief was, and whether there were any recommendations for the governing body to look at. Because during the year found it to be difficult to understand, presented a problem in a particular zone, whatever it may be. Any sort of concern and we have done that in Franklin; usually by way of Resolution. It's in your packet and the report is on page 5 highlighted or shaded and that's where we make recommendations to the governing body; to take a look at the Zoning Ordinance and see if there should be some changes or we've run into something where we think there's an anomaly. Madame Chair if everybody looks at that, since it's a Resolution, would require a vote by everybody. Mrs. Bonis requested a motion to approve the recommendations.

Mr. Kopsco made a motion to approve the **Statutorily Mandated Annual Report**. Seconded by Mr. Correal.

Upon Roll Call Vote:

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

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NAYS: None ABSTENTIONS: Martinez, Lermond

Mr. Brady advised he will revise an error to page five and forward an amended page.

APPLICATIONS TO BE HEARD:

ZB-09-12-1 Eden Franklin LLC Preliminary and Final Site Plan (Variances Conditional Use); Block 1401, Lots 12, 13 & 14.

Prior to Mr. McDermott presenting his testimony, Mr. Brady advised, the applicant rested but at the Board's request, supplied in writing and marked into evidences for Ms. Nicholson to address a Memorandum marked A-20 from E. F. Bavis & Associates regarding Drive Thru Equipment Noise Level. Mr. McDermott asked if that person is present for testimony prior to the Board viewing it. Ms. Nicholson said it was requested in conformance with the engineer's testimony and is confirmation as requested in furtherance of testimony provided.

Mr. McDermott objected and explained why. Mr. Brady noted his objection, allowed it into evidence, gave an explanation and added it confirms what the engineer said. Mr. McDermott said the engineer was not qualified as an audio specialist. Mr. Brady said he didn't know that there was and doesn't remember what he was qualified as but that was testimony; it goes to weight and he can argue that.

Mr. Brady marked a letter from Dynamic Engineering dated March 19, 2013 in response to the Board's request for sign height in the area as A-21 and A-22 a response to comparisons between the proposed Walgreens and Waldwick's to which there was a lot of testimony, and elaborated on the chart.

Ms. Nicholson said A-23 is a request to amend their application to withdraw the LED Reader Board and would show size and proportion of what the sign would be. Mr. Brady identified it and said it's a rendering without the Reader Board. Ms. Nicholson said the sign is located in the new pulled back location. Mr. Brady said the date is March 13 which Ms. Nicholson agreed. Mr. Brady said for the record, the Reader Board application and associated variances are withdrawn. Ms. Nicholson said, without prejudice and concludes the applicant's primary case presentation.

Mr. Brady said unless any members of the Board or Madame Chair have questions regarding the last couple of exhibits, it will open to the public for testimony. Mr. Lermond said A-21 talks about sign heights and not the proposed sign height. Ms. Nicholson said 25'. Mr. Brady advised Madame Chair of attorney representation protocol.

Mr. Lermond made a motion to **Open to the Public ZB-09-12-1 Eden Franklin, LLC Preliminary and Final Site Plan (Variances Conditional Use); Block 1401, Lots 12, 13 & 14.** Seconded by Mr. Swiss. All were in favor.

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Mr. Brady requested clarification for the record of whom Mr. McDermott represents. Mr. McDermott said Richard and Irene Durina.

Mr. Durina, 263 Lozaw Road, Franklin was sworn in. Mr. McDermott asked Mr. Durina questions regarding his residence in Franklin to which Mr. Durina responded.

Mr. McDermott asked Mr. Durina how he obtained D-1, its filing in the Sussex County Clerk's Office, to read Map 254 into the record, identify it, if the map's street names are different and to identify what's on the map to what the streets are today. Mr. Durina responded.

Mr. McDermott asked Mr. Durina to describe the neighborhood streets as depicted on the map, describe a certain area, describe the neighborhood's existence upon moving there to present, lot improvements, changes from the time he moved in to present, subject property when he first moved in, if it's still there today, how long it's been inoperable and of the Elekes's house being behind it [Gas station]. Mr. Durina responded.

Mr. McDermott offered Exhibit D-2 (23 photos plus a portion of the applicant's Site Plan) into evidence. He asked if Mr. Durina questions of its preparer, if it includes different houses including the subject property, describe each picture, and the photo of the applicant's site plan with a "Post It". Mr. Durina responded. The photo with the "Post It" was discussed. Therein Mr. Brady cautioned the Board regarding the two pictures having signs equivalent to a petition or letter the (Board) not be consider and made the same admonition to another picture depicting signage, but to look where the house is. Mr. McDermott had no objection.

Mr. McDermott proceeded to Exhibit D-3 (Seven pictures of the neighborhood and Franklin Elementary School.). Mr. Correal asked if Mr. Durina took the photographs and how he got them. Mr. Durina said he didn't take the photos and got them from Mr. Dougherty. Mr. Correal commented about Mr. Durina's time there to say it's a fair and accurate representation as the areas are now. Mr. Durina agreed. Mr. McDermott asked if the pictures taken fairly and accurately represent the neighborhood between January 1, 2013 and the present time. Mr. Durina said yes if you remove the signs.

Mr. McDermott asked questions regarding location of the pictures with respect to the application site and home ownership identification. During testimony Mr. Durina advised Mr. Dougherty took the pictures, not him. Mr. McDermott asked him if the pictures fairly and accurately depict what's shown between January 1, 2013 and present date. Mr. Durina agreed.

Mr. McDermott opened the bottom right hand corner picture and asked Mr. Durina to identify it. Mr. Durina said Walgreen. Mr. Brady said behind the picture of the Elekes' house you can identify because you lived in the neighborhood for 42 years. You have some other picture we have no background at all for that photograph; tell

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us what that is, how it was prepared, etc. before we let this into evidence. Mr. McDermott asked if Mr. Durina is familiar with the Newton Walgreen's. Mr. Durina said he is.

Mr. McDermott asked questions about the picture with the Walgreen's truck showing the rear of the Newton Walgreen's store, if Mr. Durina was present there to observe it and when. Mr. Durina responded. Mr. Brady gave advice why it may not be allowed into evidence. Mr. McDermott said he wanted to lay a foundation for it. Mr. McDermott asked if Mr. Durina observed a Walgreen's truck of the same size in the same location in the Newton Walgreen's rear. Mr. Durina said not in the exact location; it was backed in a different way. Mr. McDermott advised he'll use the other person at the appropriate time. Mr. Brady said if we're going to put this into evidence and hand it around, I'm going to admonish everybody not to look at that until we have the proper foundation; we only can consider it. If we don't get the proper foundation we're not going to consider it. Mr. McDermott requested to bring Mr. Dougherty forward. Mr. Brady advised he conclude with Mr. Durina.

Mr. McDermott asked Mr. Durina questions of other pharmacies in Franklin Borough; provide their names, location and Weiss's, Wal-Mart's, and Shop Rite's distance from the applicant's property. Mr. Durina responded. Mr. McDermott asked if he's aware of any pharmacy open 24 hours in the area and for its distance from Franklin Borough. Mr. Durina responded.

Mr. McDermott asked Mr. Durina to describe the neighborhood topography in D1, topography, topography between residences on Lozaw Road and 23 and if there's accessibility to Route 23 from those residences due to height difference. Mr. Durina responded. Mr. McDermott asked questions about the neighborhood's description and of the houses on D-2 and D-3's elevation to which Mr. Durina responded.

Mr. McDermott asked Mr. Durina about the path his children took and neighborhood children take from their homes to school. Mr. Durina talked about his observance of neighborhood children's path en route to school. He said 20-30 children stand at the intersection with crossing guards. Mr. McDermott requested he use D1 to indicate their path. Mr. Durina responded.

Mr. McDermott requested Mr. Durina describe property use north of Washington Avenue. Mr. Durina described properties from High Street to Rumors (Salon).

Mr. McDermott asked of Mr. Durina's familiarity with the Katzenstein Farm portion where Shop Rite's parking lot is. Mr. Durina provided its history. Mr. McDermott asked Mr. Durina based on his knowledge and experience, have most of the commercial development in applicant's area taken place on Route 23 East. Mr. Durina agreed and provided a history.

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Mr. McDermott asked Mr. Durina questions about the gas station's existence upon moving to Lozaw Road, if he went past it prior to Auché Drive's closure, his use of the gas station, adverse deaths during its operation, and if he had a problem with it. Mr. Durina responded.

Mr. McDermott asked Mr. Durina for adverse effects of application approval to himself, the residential neighborhood and traffic effects to the site in respect to school children. Mr. Durina responded and will have a sidewalk presentation.

Mr. McDermott asked of his observance of school children attempting to cross Route 23 by McDonald's within the last couple of months, of crossing guard presence and how many children he observed crossing Route 23 East to West to go to school. Mr. Durina responded.

Mr. McDermott asked Mr. Durina if he visited the Newton Walgreen's, approximate dates, if he saw Walgreen's trucks backed up unloading during those occasions, and if the engine was running. Mr. Durina responded.

Mr. McDermott asked Mr. Durina if there are other convenience stores open many hours offering the same service Walgreen's proposes, which they are, their location, and if he knows of others in Franklin Borough. Mr. Durina responded.

Mr. McDermott referred to D-4 (Walgreen's Internet Photo) and asked Mr. Durina if it's similar to the proposed site, believes it fairly and accurately depicts Walgreen's night time lighting, and if it's essentially the same as the one proposed. Mr. Durina said it looks pretty close; doesn't know if the other Walgreen's has an awning as it's the first time he's seen one and is the same from renderings he saw.

Ms. Nicholson asked if the witness has the capacity to testify about light emission. Mr. Brady said he thinks (Mr. McDermott) is trying to establish there's a picture of a Walgreen's and assumes it's similar in design and believes may show how this looks. Mr. Brady's said he's not inclined to say he can't put it into evidence, but will caution the Board (Mr. Durina's) not a light expert; there's no testimony directly linking it to this site, but it may have some relevance to what it will look like from whatever angle it was taken.

Mr. Knutelsky questioned the photo's location, advised the Board about the logo difference, lighting output and types and doesn't think the Board can hear it's an exact duplicate of what the proposed Walgreen's will have. A discussion was had regarding lighting and signage aspects. Therein, Mr. Knutelsky cautioned the Board from an engineering standpoint the lighting plan isn't exactly the same. Mr. Brady said his inclination is to let it in with that qualification and the Board can put what weight they want noticing the difference. Mr. McDermott said he's not representing it to be exact but is the best they found and the applicant didn't submit any connection with photographs. Mr. Nelson asked Mr. McDermott to clarify the photograph's

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purpose. Mr. McDermott explained using the photograph. Mr. McDermott asked Mr. Durina if he's opposed to Walgreen's. Mr. Durina said no.

Mr. McDermott introduced D5 Internet picture of a Walgreen's Egg Harbor Township. Mr. McDermott's questioned Mr. Durina regarding objection to a Walgreen's shown on Exhibit D-5 which was discussed and clarified.

Mr. McDermott asked Mr. Durina if there's any other reason for his opposition. Mr. Durina said a covenant on his deed saying residential use only. Ms. Nicholson objected. Mr. Brady sustained. Mr. McDermott asked for the basis. Mr. Brady said he doesn't know what the covenant in Mr. Durina's deed about residential use has to do with the site which is a different property than his, zoned commercial.

Mr. McDermott asked Mr. Durina if the subject property had a covenant prohibiting commercial use. Ms. Nicholson objected. Mr. Brady allowed the question. Mr. Durina said yes. Mr. McDermott asked if the entire neighborhood shown on D-1 with the exception of the front lot where the gas station is now, have restricted covenants prohibiting anything other than residential use. Mr. Brady said, Ms. Nicholson your objection continues I'm sure. Ms. Nicholson agreed. Mr. Durina said yes.

Mr. McDermott asked if litigation of the two covenant lots on his behalf began. Ms. Nicholson said, objection; relevance. Mr. Brady said he'll let Mr. Durina answer the question but once he answers the question, he's going to cut it off because there is no relevance to this application. There's a private dispute between him and other parties. Mr. McDermott asked Mr. Durina if litigation has been instituted on his behalf with respect to the two lots. Mr. Durina said he believes it has.

Mr. Brady advised the Board he would stop questioning at that juncture and said whether there is any restriction, doesn't know of any incident and believes we have documents indicating restrictions on the lot have been lifted. He said if there's a dispute going on, it's not the Board's prevue and is Mr. Durina's private matter and does not affect (Board) deliberations. Mr. McDermott said he understood and agreed with Mr. Brady but wanted to bring it out as other things were said.

Mr. McDermott asked Mr. Durina if there is anything else he would like to tell the Board not covered. Mr. Durina said he has a sketch of Route 23 and sidewalks in relation to the applicant. Mr. McDermott presented D-6 and requested Mr. Durina inform the Board what it is and represents. Mr. Durina responded. Mr. McDermott asked for its purpose. Mr. Durina said sidewalks and children's' travel to go to school. Mr. Brady advised there were different versions of the Site Plan and asked if Mr. Durina knew what version it's reproduced from. At this time a discussion regarding Exhibit D-6's version was had. Mr. Brady allowed Exhibit D-6 requesting Mr. Knutelsky explain to the Board later when it goes into discussion what the changes are, and the Board keep in mind it's not the latest version in the sense

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there was oral representation at the last hearing that additional sidewalks requested by the Borough will be installed subject to engineering details.

Mr. Brady addressed Mr. Durina saying it appears to be a photocopy of a portion of the Site Plan set from 12/21/12 and other than having added colored items is an accurate reproduction of that. Mr. Durina agreed and said he colored the sidewalks.

Mr. McDermott requested Mr. Durina explain to the Board what he wants them to understand. Mr. Durina said to understand the children's flow walking from their development to school. Before that, he'd like to read from Franklin's 2009 Master Plan Re-examination Report dated 10/6/2009. Mr. Brady asked if there was a section or page. Mr. Durina said page 18, 3rd paragraph and read a portion of the (2nd sentence, read the 4th sentence, and ¶4, 1st sentence.) He asked Mr. Knutelsky to explain Level "F". Mr. Knutelsky said it refers to a delay when it comes to intersections, where a delay in turning movement exceeds a certain amount of time.

Mr. Durina said traffic congestion is a serious concern where delays have become routine and is unacceptable. Mr. Durina talked about his observance of Route 23's evening traffic back up from his deck or Dining Room window. He referred to (Exhibit) D-6 describing traffic crossing in striped yellow, removal of the concrete island's effects, an arrow indicating crossing guard to stop traffic, path a school child will walk, of snow on a sidewalk and showed the path children will then take. Ms. Nicholson advised that area was consented to provide a sidewalk area.

Mr. Brady said, we can clarify we understand Mr. Durina's understanding is based on the plan but apparently there's a change to that, a proposed change that's been consented to and Mr. Knutelsky can tell the Board that. Mr. Durina asked what happened to the proposed sidewalk designed for the rear of the building. Mr. Brady said he believes it's not on the plan. The town and the applicant discussed sidewalks on this site and come up with a plan the applicant consented to additional sidewalks per the town's request. Mr. McDermott told Mr. Durina nevertheless, as Mr. Brady pointed out, instead of crossing along 23 the sidewalk is going to go up in a westerly direction. Mr. Durina agreed. Mr. McDermott said then they'll have to cross the entrance to the parking lot; there will still be something there to go across that driveway. Mr. Durina said according to this plan that's what it looks like and wouldn't let his child do that.

Mr. McDermott asked if the red arrows indicate different traffic movements around the site and are the effects Mr. Durina thinks will have on the children. Mr. Durina agreed and said he wouldn't let his child walk the sidewalk to school. Mr. McDermott asked why. Mr. Durina said safety first. Mr. McDermott asked if there's anything else about the document he'd like to bring out to the Board. Mr. Durina said no, he just wanted to make them aware of the potential situation.

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Mr. McDermott asked if there's anything else he wants to tell the Board about the application. Mr. Durina said he has a couple of remarks. Mr. Brady advised he has an attorney who summarizes, opens, closes, etc., you're the witness who gives testimony so it's improper for you to act as the attorney in the ending of testimony if that's what you mean by you have some remarks. Mr. McDermott has some questions of you, we can have more testimony; there's nothing objectionable like that. At this time a discussion regarding Mr. Durina giving comment as a member of the public, Mr. McDermott rephrasing his questioning, and Mr. Brady providing legal advice regarding counsel representation ruling were had.

Mr. McDermott asked Mr. Durina if he received a phone call from Ms. Nicholson at some point after he made known his objecting the application. Mr. Durina said December 5, 2012. Mr. Brady requested Mr. McDermott allow Ms. Nicholson come to the dais. A brief side bar was had.

Mr. Brady said just for the record, he was concerned about where it may be headed because he had an attorney speaking to someone who at the time didn't have an attorney who now has an attorney, and sometimes conversations that are off the record between attorneys are not admissible. In this case he had a proffer from Mr. McDermott as to what the testimony would be and finds it inadmissible and will not allow the question. He said Mr. McDermott obviously is reserving his rights if he wants in that issue but he's not letting it into the record. Mr. McDermott said he is an thinks if it goes further, he and Mr. Brady can agree with what he was proffering without putting on the record. Mr. Brady said that's true.

Mr. McDermott asked Mr. Durina if there is any other testimony he wants to give. Mr. Durina said not at this time. Mr. McDermott said he has another witness he's presenting on behalf of Mr. Durina regarding the photographs. Mr. Brady said he has a note (Mr. McDermott) wanted Mr. Dougherty to talk about D-2. Ms. Nicholson said she objects. Mr. Brady said before that starts, Mr. Durina is subject to Board, Ms. Nicholson and the public's questions. Madame Chair requested to begin with Ms. Nicholson

Ms. Nicholson asked Mr. Durina if he needs to travel Auché Drive adjacent to the subject property to access Route 23 or any part of town. Mr. Durina said no. Ms. Nicholson asked if he could see Walgreen's from his home or yard and what portion he would see. Mr. Durina said he would see the south side of the building. The location was discussed. Ms. Nicholson asked what lies between that boundary and that side of the building and his home. Mr. Durina said it changes to Ginter Street.

Ms. Nicholson asked how many homes. Mr. Durina said two but not in his sight view. Ms. Nicholson asked how he's able to visualize them from his home. Mr. Durina said they're not in his vision, but block his view and be looking northwest 15° into the side of the Walgreen's. Ms. Nicholson asked if he's an engineer, appraiser, professional planner or traffic expert. Mr. Durina replied no to all.

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Ms. Nicholson said the testimony you've given is based on your personal beliefs and observations; that no, the testified level of training or degrees that would entitle you to give distances, but are based on your personal observations. Mr. Durina said he has a two year certificate in design and worked with engineers for 52 years. Ms. Nicholson asked if he's a licensed engineer. Mr. Durina said no.

Mrs. Bonis asked if any Board members have questions for Mr. Durina. Mr. Correal asked if the orange arrows on the sidewalk depict pedestrian access to the school and if it's that way now. Mr. Durina said the sidewalks are proposed. Mr. Correal asked how the (children) get there now. Mr. Durina said they cut through the property. Mr. Correal asked about the gas station driveway to go through. Mr. Durina said some go through there, some go to the rear of the building between the home and the gas station.

Mr. Knutelsky said he'd like to (discuss) the two sidewalk stubs with the Board where they occur on Mr. Durina's plan. He said from Auch Drive across to the front sidewalk and from Route 23 along the southerly side of Washington, again, two additional spurs for the overall sidewalk.

Mr. Durina asked Mr. Knutelsky if a school child be would able to leave Auch Drive via Ginter Street, while showing a path on the exhibit. Mr. Knutelsky said any pedestrian would be able to access the sidewalk, walk along Auch, along Route 23, and along Washington or cut into the site, walk along the front of the building around and use the existing on-site circulation sidewalk. He said there's two individual loops; an outer and inner loop for pedestrians to follow.

Mr. Durina said a fence is proposed and asked if a gate will be on the fence. Mr. Knutelsky said there would be an (approximate) 8' opening and the sidewalk would be centered within that opening.

Mr. Brady requested Mr. Knutelsky mark the exhibit as B-1 with today's date, and to describe it for the record. Mr. Knutelsky marked it and said it's an untitled photocopy of the applicant's December Site Plan submitted to the Board showing two specific areas highlighted in pink referring to it as a supplemental sidewalk. Mr. Knutelsky described on the exhibit, discussing and explaining the highlighted areas, the Stop Bar, sidewalks and pedestrian ways.

Mr. Durina asked Mr. Knutelsky if putting the sidewalk in the rear along the property line in his opinion, be a safer approach than what he just proposed. Mr. Knutelsky said he's reluctant to talk about things being safe and unsafe in terms of sidewalk locations on the plan. Mr. Knutelsky proceeded to explain the 35 mph roadway with sidewalk setback, shoulder width and said the access way along Route 23 itself is a sufficient distance away from the traveled way in his opinion. Mr. Knutelsky continued his explanation from a safety standpoint including commentary made to the DOT application. Mr. Knutelsky also discussed the current children's travel path

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and of the rear sidewalk being a larger effort to the applicant; whereby front sidewalks were requested. Mr. Durina questioned larger effort meaning more expensive. Mr. Knutelsky said and more site disturbance and said apparently, children are walking through that parking lot now and a sidewalk is being provided for them to cross rather than walking through a parking from a safety standpoint.

Mr. McDermott asked if Mr. Knutelsky is saying there would be an opening, or the sidewalk from Auch Drive be an in. Mr. Knutelsky said no, it would be further back and explained on the drawing and where they'll be adding an additional sidewalk stop. Mr. McDermott commented it makes it attractive for children walking to school from Auch Drive and be a shortcut for them to go right through the parking lot. Mr. Knutelsky said on the proposed sidewalk, yes. A discussion on this matter followed. Mr. Knutelsky said he believes logic prevails, and they would stay on the sidewalk.

Mr. Durina asked Mr. Brady if he's excused. Mr. Brady advised it's up to his attorney who said he was done; except members of the public may have questions.

Mr. Lermond commented to Mr. Knutelsky saying there's no Stop Bar at the spur he described on the north side. Mr. Knutelsky said there's no Stop Bar directly at that location, but there are two Stop Bars within the parking field itself. It's not a roadway; it's a driveway; can place it at that location, felt it's a safe location and further explained. Mr. Lermond said there's no stop control leading in from Washington. Mr. Knutelsky said not leaving from, but the benefit of site distance acts as a safety control there.

Mr. McDermott asked Mr. Knutelsky if he's trying to explain it's a Stop Bar in the photograph. Mr. Knutelsky said it's a Stop Bar and a painted yellow sur line needing re-painting. At this time a discussion regarding the Stop Bar's paint status, paint type and Borough striping requirements were had during which Mr. McDermott offered Exhibit D-7.

Ms. Nicholson objected saying it's not representative of what's going to be on the site. Mr. McDermott said when it's new it's not because it will be bright paint. Mr. Brady said Mr. Knutelsky just said that's a typical Stop Bar. The paint quality and Borough requirement were further discussed. Mr. Knutelsky asked where that Stop Bar was constructed. Mr. McDermott said Newton Walgreen's. Mr. Knutelsky said it shouldn't have that type of wear with Thermoplastic paint, roughly two years into the paint cycle. Mr. Brady allowed the exhibit with Mr. Knutelsky's comments and said we have the proper context for what that is. Mrs. Bonis asked Mr. Knutelsky if it would include a Stop sign. Mr. Knutelsky agreed.

Mr. Martinez said a comment was made regarding additional crossing guards needed because of Route 23's opening for Walgreen's and asked if one would be needed at Shop Rite due to that opening and traffic. Mr. Knutelsky said he can't answer about crossing guard need. The difference at that location vs. the crossing

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from Washington Avenue to McDonald's is you're crossing a State Highway at the Shop Rite location. At this location you're crossing a drive opening. He thinks there's a difference in terms of traffic volume into those sites and doesn't know if one is needed at Shop Rite. Mr. Correal asked who would make that decision. Mr. Knutelsky said he believes Traffic Enforcement and the school in a combined effort.

Mr. Correal asked about buffers and clear visibility for pedestrians on the sidewalk to the entrance/exit on Mr. Durina's diagram. Mr. Knutelsky asked if he was talking about the southerly entrance location. Mr. Correal said yes. Mr. Knutelsky said you have a stop control, a raised island and talked about the travel lane and shoulder as per previous testimony. Mr. Correal commented there will be clear visibility either from ingress or egress. Mr. Knutelsky said there's no obstruction along the highway at that location.

Mr. Martinez commented about D/F grades regarding a particular intersection and testimony provided by Walgreens' traffic expert of possibly adding ten vehicles per hour. Mr. Knutelsky said he believes the testimony was during peak hour. Mr. Martinez said but it's already a D or F during those times. Mr. Knutelsky said he's not sure, he's relying upon the Master Plan information Mr. Durina read and doesn't know the exact classification of the intersection. He knows the Traffic Report indicated there are different levels at all those different legs. He believes individual turning movements were quite high on the existing condition and might have been a C under the proposed condition just because it doesn't have the volume other intersection lights have. He'll default to the applicant if they feel differently.

Mrs. Bonis asked Mr. Durina if what he read from the Master Plan regarding D or F level account for cars turning off Route 23 onto Route 517. Mr. Durina said he took it from the Borough's Master Plan and can vouch it's more than a 1/2 mile. Mrs. Bonis said she's not sure how that traffic would impact traffic that's more than 6/10 of a mile North on Route 23. You said Luke Oil was about 6/10 of a mile away from this proposed location. If we go another 6/10 we're about 6,000' away. How would that traffic at a light and some traffic potentially turning off Route 23; an F factor of traffic might not really be an F by the time it travels 6,000 more feet and several other turn-off's. Mr. Lermond said that's not how he understood it. Mrs. Bonis requested Mr. Durina re-read (from the Master Plan). Mr. Lermond said he understood it to imply there was a back-up all the way to the mountain. Mr. Brady asked Mr. Durina to re-read into the record the portion he found. Mr. McDermott read (Pg. 18, ¶3, 2nd and 4th sentences and ¶4, 1st, 2nd and 3rd sentences). He said from his familiarity with the Master Plan Report, it indicates and will refer specifically to it in his summation, the area on Route 23 between Washington Avenue and believes Rutherford or High Street indicate it's the highest crash rate along Route 23 in Franklin Borough and of that traffic, he believes 5.7% of vehicles are considered heavy traffic.

Mrs. Bonis said she wanted to clarify because it said, key intersections. There are several intersections along the way where traffic could potentially turn off.

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Additionally, to clarify the record (Mr. Durina) talked about commercial properties along Route 23 starting with the Sussex Bank and didn't mention a vacant produce building on Route 23. (Mr. Durina) says between Sussex Bank and Dr. Hrabarchuck's Office, were all residential that had been changed into, with the exception of the garage. She asked if his testimony can be clarified to include the produce building. Mr. Durina agreed.

Mr. Swiss asked who's responsible for maintaining the sidewalks. Mr. Knutelsky said the applicant. Mr. Swiss asked what they're going to do with snow and talked about heavy snow pile up areas and of his concern for sidewalk safety. Mr. Gardell asked if they agreed to keep it clear in snow. Mrs. Bonis said yes. At this time a discussion regarding snow removal was had. Therein, Mr. Brady advised consent is had and would be a condition. Ms. Nicholson informed they have a collection area in the property's rear and they'll submit a plan in conjunction with Mr. Knutelsky's satisfaction. Mr. Knutelsky thinks everything directed towards the property's rear would be sufficient along with all sidewalks cleared. At this time a brief discussion regarding waste water/storm water management was had. During that conversation Mr. Knutelsky said they met storm water management rules and standards.

Mr. Nelson asked Mr. Durina if the subject property was established as part of the File Map or separate. Mr. Durina said he didn't know other than the property shown and is deeded that way. Mr. McDermott said the gas station was not a part of it, but the two pieces in the back were part of the deed restrictions. Ms. Nicholson objected saying it was not the same deed restrictions and their lineage isn't through the Laurel Hill Subdivision. Mr. McDermott said it's through the Katzenstein Estate; the same grantors.

Mr. Nelson asked Mr. Durina as a former Borough official, when did the five acre minimum lot size requirement come into place and if it was always 5 acres when he was Mayor. Mr. Durina said he believes it was. Mr. Nelson asked regarding school children safety, did he have any conversations with anyone from the Board of Education or school employees about his concerns and if they shared them. Mr. Durina said yes.

Steve Simm, 19 Ginter Street, Franklin asked Mr. Knutelsky if guard rails are proposed. Mr. Knutelsky explained how placement is warranted and would be considered an obstruction (here); the answer is no. Mr. Simm talked about the rear sidewalk. Mr. Knutelsky explained why the sidewalk was brought to the front. Mr. Simm questioned children's safety hugging the building. Mr. Knutelsky said technically, the proposed sidewalk just indicated during testimony, will hug the building and further explained. Mr. Simm said they would then have to cross the 24 hour drive-thru. Mr. Knutelsky said yes, that's a stop bar location which is a stop controlled intersection where pedestrian access is typically placed.

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Bernie Skjevland, 10 Ginter Street advised he has a petition to present. Mrs. Bonis advised questions are open to Mr. Durina, his counsel, Mr. Knutelsky and Mr. Nelson. General statements from the public will open later.

Mr. Swiss made a motion to **Close to the Public ZB-09-12-1 Eden Franklin, LLC Preliminary and Final Site Plan (Variances Conditional Use); Block 1401, Lots 12, 13 & 14.** Seconded by Mr. Gardell. All were in favor.

Mr. McDermott advised he wants to clarify he represents Mr. Durina and is presenting Mr. Dougherty as a fact witness but doesn't represent Mr. Dougherty and doesn't want him precluded from saying whatever he's going to say. Mr. Brady said that's fine. Mr. Durina was excused.

Dan Dougherty, 283 Wildcat Road owning the property at 26 Auch Drive was sworn in. Mr. McDermott presented (Exhibit) D-3 and asked if Mr. Dougherty questions if he took the pictures and if they accurately depict the neighborhood as shown since January 1, 2013. Mr. Dougherty agreed.

Mr. McDermott showed a photograph within the board showing a truck and asked Mr. Dougherty where that picture was taken, when, if he observed that condition, if he heard noise coming from the truck, if the motor was running, how long and if anyone shut it off. Mr. Dougherty responded.

Mr. McDermott asked Mr. Dougherty questions about the turn driveway and if it's a fair and accurate depiction of what he saw that day. Mr. Dougherty responded. After some discussion (to Mr. Dougherty's testimony) Mr. Brady advised Mr. McDermott the two pictures are to be removed, explained why, found it's not enough to admit into evidence and allowed the picture of the truck as D-8. Mr. McDermott asked about the other pictures. Mr. Brady said he had no problem with them, Mr. Durina testified and the Board may make its own conclusions. Mr. Correal requested clarification of D-3 and D-8 for his records. Mr. Brady responded.

Mr. McDermott showed Exhibit D-9, the Maplewood location, and asked if Mr. Dougherty visited it. Mr. Dougherty said he did. Mr. Correal asked if it was separate testimony. Mr. McDermott advised Mr. Dougherty is a fact witness. Mr. Brady advised for the record it's a board having 9 pictures. Mr. McDermott added, and a hand drawn sketch on the upper right hand corner.

Mr. McDermott asked Mr. Dougherty when he took the pictures, if they fairly and accurately depict what he observed; to describe the handwritten drawing and who prepared it. Mr. Dougherty responded. Mr. Brady asked if it was a fair representation of orientation to which Mr. Dougherty agreed.

Mr. Brady asked if Ms. Nicholson objects any of it. Ms. Nicholson said it doesn't show the store or where it's located. The sketch was deleted as noted by Mr. Brady.

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Ms. Nicholson asked what the exhibit is being used to illustrate. Mr. McDermott explained it had to do with much talk about Maplewood's Walgreen's. Mr. Brady said he's not sure the testimony was it was similar, but much testimony was had. Mr. Dougherty said a ton of testimony by Ms. Nicholson; he visited it, took pictures and was surprised at being compared to a town less than a mile from Newark.

Mr. McDermott asked Mr. Dougherty questions about the photographs in exhibit D-9 to which Mr. Dougherty described and responded. During Mr. Dougherty's photo description, Ms. Nicholson objected and clarified the Maplewood testimony. Mr. Brady provided advice.

Mr. McDermott introduced D10 (Newton Walgreen's; 8 pictures) and asked Mr. Dougherty if he took them and when. Mr. Dougherty responded. Mr. McDermott asked questions about their depiction to which Mr. Dougherty responded. During his testimony, Mr. Dougherty brought up a statement from Ms. Nicholson regarding a Walgreen's executive's response to idling. Ms. Nicholson clarified it was not raised by Newton but from members of the public to which the executive indicated training, protocol, and enforcement for that location as it's a community standard.

Mr. McDermott presented Exhibit D-11 (Haledon Walgreen's; 6 pictures) D-12 (Oakland Walgreen's; 5 photographs) D-13 (Dover Walgreen's; 5 pictures) and D-14 (Paterson Walgreen's 5 pictures). He questioned Mr. Dougherty on each individual photograph relevant to their depiction. Mr. Dougherty responded.

Mrs. Bonis inquired if the Board had questions for Mr. McDermott and the testimony received thus far. Mr. Brady asked Mr. Dougherty if the photos are date and time stamp accurate. Mr. Dougherty said the date stamp is accurate; not the time. Time and stamp differences were discussed.

Mrs. Bonis asked if he was providing testimony as a public member. Mr. Brady provided legal advice.

Mr. Swiss made a motion to **Open to the Public on Mr. Dougherty's testimony.** Seconded by Mr. Martinez. All were in favor.

Steve Zydon, 346 Rutherford Avenue, Franklin was sworn in. He asked Mr. Dougherty questions regarding his truck idling statement if he had truck or heavy duty truck experience and of the truck's idling sound's source. Mr. Dougherty responded. Mr. Zydon asked Mr. Dougherty questions regarding his permanent residence and how Walgreen's affects his rental to which Mr. Dougherty responded. Mr. Zydon commented about those opposed is because it's their private residence and Mr. Dougherty's is on Wildcat Road. Mr. Dougherty said he doesn't dispute that, will hurt his property value and if he decides to return to the rental in the future, he doesn't want to look at Walgreen's.

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Ms. Nicholson had no questions.

Mr. Swiss made a motion to **Close to the Public Mr. Dougherty's testimony.** Seconded by Mr. Martinez. All were in favor.

Mr. Brady advised summations typically come when everybody's concluded and the public hasn't given their testimony and thereafter, attorneys make their summation. Mr. Brady noted the late hour, Mr. McDermott rested, opening to the public remains, and the Board to decide whether to finish or proceed to the next meeting.

Ms. Nicholson respectfully requested to go forward to get it done. Mrs. Bonis polled the Board, it was discussed, and decided to briefly recess then continue.

A brief recess was taken and reconvened.

Mrs. Bonis advised the public was invited to individually speak knowing that at the next meeting the attorneys will summarize and the Board will deliberate and render its decision on May 1. Mrs. Bonis provided instructions to the public regarding time efficiency and repetitiveness.

OPEN PUBLIC SESSION:

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

Bernie Skjeveland, 10 Ginter Street, Franklin stepped forward, was reminded he was previously sworn in and presented his petition. Mr. Brady advised it's inadmissible to the Board as they have no way of verifying signature accuracy, allow cross examination, why they signed, what they meant to sign it and test their veracity. It's perfectly acceptable if he wants to testify his position, he'll be sworn in and go from there but the petition is inadmissible. Mr. Skjeveland questioned and offered he collected the signatures, petition could be important, and gave reasons for the signors' absences. Mr. Brady reiterated due process protection advice and said if it's admitted into evidence it could jeopardize any decision the Board can make; which they can't do. He informed Mr. Skjeveland it's acceptable if he wants to testify his position. Mr. Skjeveland said he testifies he's against it. Mr. Brady swore him in. Mr. Skjeveland said Walgreen's sidewalks are wonderful, expressed his concern of Route 23 traffic provides people access through their residential area for an unknown reason, mentioned an incident and said it wouldn't be good.

Steve Simm, 19 Ginter Street was sworn in. He wanted to read his opinions, facts, and clarify Franklin residents aren't against Walgreen's; but its location and further defined it. Mr. Simm addressed his concern of crimes regarding Walgreen's which he researched, divulged the sources and provided examples. Regarding his examples, Mr. Brady advised they're hearsay to which Mr. Simm disagreed. Mr.

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Brady said the Board doesn't have details, sources provided aren't always accurate, and Mr. Simm made his point to the Board.

Mr. Simm talked about telephone robberies, certain officials and the National Association of Chain Drug Stores who addressed the issue, criminals targeting children, his opinion of Walgreens' location and of a situation in Freehold Township. Therein, Ms. Nicholson noted her objection regarding Freehold Township and Mr. Brady provided legal counsel respectively.

Mr. Simm said he wants the (Board) consider the kids, drugs, the ease for criminal activity, kidnapping, and his opinion of Walgreens' location. He said everyone thinks they're against it for ratables which they want but not over his kids' safety. Mr. Brady said from a Land Use point of view; from this Board's point of view, ratables do not enter into the calculations. It's the site, compliance with zoning, proof of whether variance should be granted; and ratables; we're not up for sale. Mr. Simm talked about it being for the kids, invitation of crime and drugs due to its location, his opinion of allowing a company intrude their neighborhood and its construction, store relocation to lessen impact to family and safety, of it being a convenient store for drugs, crimes and children accessibility, and asks the Board consider voting no.

Pilar Betancourt, 11 Ginter Street, was sworn in. She wants to add to and agrees with everything Mr. Simm said. Ms. Betancourt talked about traveling to Newton Walgreen's to obtain her husband's medication and if it's unavailable, they travel to other towns. Her concern is, the same way they travel, people from other communities not only go to Walgreen's, but their residential area where their homes, children and privacy are. Ms. Betancourt explained why they left New York City, get everything from and love Walgreen's and said it's not the right place.

Karen Stecher, 60 Washington Avenue was sworn in. She talked about her family, the reason for being in this community, her children growing up here, her involvement in leadership activities, her careers, studies and pursuit of it. Ms. Stecher said she has two different perspectives; theory and reality and elaborated on it regarding this site. She talked about her visits to other locations, what she saw, and doesn't want to see it happen to the area she loves and considers home.

Ms. Stecher spoke about her concern of how it will affect being across from the school including people hanging out there and at Quick Check, and illegal turning subjecting her to the possibility of an accident. She talked about living on a Cul-de-sac, its affects and of the school which is a community area. Ms. Stecher concurs with Mr. Simm she's not against Walgreen's, but its locale. She understands why this location was chosen via her research of Eden and thinks it a redundant business and isn't worried about that. Her problem and concern are its inappropriate location, provided a metaphor about squeezing into something that doesn't fit and is looking further down the line.

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Floy Estes, 13 Taylor Road, was sworn in. He said he hears the community's issues. Mr. Estes talked about Walgreen's Corporation, what they offer across the U. S., community benefits, its employees, and of their Community Corner programs. Mr. Estes also talked about the children issue and of his use of Walgreen's. He said he finds more value propositions than negative and doesn't see any negative in having them established in town and welcome them like all new businesses.

Vinod Patel, 66 Route 23 was sworn in and made mention of the lot's size, 200' within the school, children's walk path, additional traffic to Route 23, 24 hour pharmacy, robberies and is in agreement with Mr. Simms. He talked about the narcotics issue and how it's handled in his store; of possible prescription check-up oversight due to volume; 24 emergency services; method people use to obtain more narcotics; sufficient prescription provision from emergency care; 24 hour pharmacy unnecessary as one is only minutes away; hanging out requiring additional police thereby creating a tax burden and of signage, to which Mr. Brady clarified was withdrawn. Mr. Patel discussed community services, drive-thru complaints/rewards, and said he understands ratables; but at what cost.

Mr. Patel said in his opinion, it's unnecessary and explained; the substantial reduction affords focus of the pharmacy's operation and all variances need not be granted. Mr. Correal questioned his phone call response of not having (narcotics). Mr. Patel explained it enables them to immediately know its viability coupled with the State's reporting system. Mr. Correal understands Mr. Patel's caution but expressed concern for an ill person having a legitimate need, go out of town to find a pharmacy. Mr. Patel was confident of her going to any pharmacy using the computer (program), would fill it as he would; whereas a chain store may not due to volume.

Ms. Betancourt explained substance control regarding contract specifics which in their case happen to be Walgreen's. They usually go to Newton and travel elsewhere due to unavailability. Though she loves Walgreen's, she doesn't want it in her neighborhood and prefers to travel.

John McNamara, 35 Auchte Drive was sworn in. He said if they approve the project, think of their quality of life and said to put lights off at a reasonable time; nothing good happens after midnight.

Wes Caparotta, 24 Auchte Drive was sworn in. He said they've all heard the issues with the children and driveways. He thinks the Board should observe the intersection to watch traffic and chaos. Mr. Caparotta thinks it would be adding to Washington Street and the school and further explained. He said he lives in a nice quiet neighborhood where kids are heard playing, the building's placement within the neighborhood and the school as unsafe, and spoke of other property which the Board could look into. He talked about the Board of Education property on the north of Washington Street and of his preference they build on the opposite of Route 23.

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Dan Dougherty, 283 Wildcat Road owning the house on 26 Auche Drive while still under oath said everyone made good points about Walgreen's including Mr. Estes. He said they're not against Walgreen's but its location, is definitely against the application and felt it's based on deception. He mentioned they were told one tractor/trailer and found there's more, 700 cars a day have no impact, and of Eden not wanting a driveway entrance/exit on Auche Drive which further complicates a bad situation. Mr. Dougherty added if the application is passed, the driveway will be Phase II. He talked about Ms. Nicholson's statement regarding a Walgreen's official on delivery enforcement and further elaborated, of the engineer's testimony at the first meeting saying the undersized lot is a unique situation then saying it's not, now are back to it being an oversized building.

Mr. Dougherty talked about the close proximity near his home should the application be approved, comparisons to other towns, of poor loading zone design and it's affects. He commented the oversized store will steal their quiet enjoyment, Auche Drive experience more traffic, and expressed his opinions of Eden and other people. Mr. Dougherty said the building doesn't belong there and is looking for a no vote.

David Fanale, 59 Liberty Lane was sworn in said he's going to look at things from a different perspective and supports the project. Mr. Fanale talked about his time as a registered paramedic regarding drug seekers, medical professional awareness, their response and his thoughts on hypothetical scenarios and what if's. He further talked about drugs in the county, of it having nothing to do with pharmaceuticals, and of children in inner cities getting out of school crossing intersections. He believes Franklin or Sussex County kids are at least as intelligent as inner city kids and talked about an accident. Mr. Fanale discussed if our culture as Americans were afraid of what if's and the like, new business that came in or growth that happened, we would never have had things like the Morris Canal, railroads or zinc mines. He offered his opinion about posterity and children traveling out of county in pursuit of jobs-there really wouldn't be opposition. Mr. Fanale said life comes with risks; some benefits outweigh risks and believes it would be a disappointment for not just the community, but to posterity to not allow growth in our community and bring in jobs in the process.

Mr. Simm commented its great people made things in history; the point was children's safety, are not opposed to Walgreen's but the location; stop talking about all they can do for us it's not a warzone and will not accept kids' casualty.

Lisa Dougherty 283 Wildcat Road owning a home on 26 Auche Drive was sworn in. She said setback variances for all three streets are sought and explained why there's setbacks. Mrs. Dougherty said the store will negatively affect their quality of life and commented on Route 23's abandoned buildings needing revitalization. She said time, money and efforts are wasted in destroying the neighborhood to accommodate a building that doesn't fit. Mrs. Dougherty further talked about comparisons made with other stores, 24 hour store comparison to Newton hospital and of five other pharmacies in Franklin. She talked about effects it will have on Mr.

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Patel thereby adding another empty building, crime Googling, and their property taxes. She said if anyone wants ratables and revenue it's them but not at the expense of safety and quality of life. She requested the Zoning Board vote no.

Joan Gaba, 29 Auch Drive was sworn in and said she opposes Walgreen's. She said it's a glorified supermarket and Wal-Mart. Ms. Gaba asked how Walgreen's knew of the property's sale. Mr. Brady said he doesn't know; it's irrelevant. Ms. Gaba continued insistence on knowing and Mr. Brady gave advice respectively. Therein, he advised testimony was closed, nobody asked the question and is irrelevant. Ms. Gaba commented, it's not worth being there, is 50' from her front yard, will have snow and debris, and mentioned the 6' fence.

Vincent Colpaert, 20 Ginter Street was sworn in and said he's in agreement with most his neighbors. He expressed his concern is safety, southbound Rt. 23 traffic having an arrow lane into Wal-Mart but the traffic expert said they weren't going to put one to go into Walgreen's, will cause a huge mess and votes no.

David Fanale talked about people appearing at Council meetings to understand when the Borough's Administrator conveys budget, tax collection and hear facts. Mr. Brady advised it's not about ratables.

Joan Gaba was reminded she's still under oath and talked about her observance regarding a McDonald's truck, Wal-Mart truck and Entenmann's truck maneuvers and said something has to be done with traffic. A brief discussion regarding what theoretical establishment type Ms. Gaba prefers was had with Mr. Lermond. She commented about the building's size to which Mr. Lermond responded.

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

Mrs. Bonis addressed the Board needs to discuss a professional's unavailability on May 1 and of a special meeting date for all Counsel summaries. It was discussed and determined to maintain the May 1, 2013 date. Mr. Brady said at that time, Mr. McDermott, followed by Ms. Nicholson will close and the Board will deliberate.

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

OTHER BUSINESS:

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DISCUSSION:

CORRESPONDENCE:

ADJOURNMENT: There being no further business Mr. Swiss made a motion to adjourn the meeting of the Franklin Borough Zoning Board of Adjustment. Seconded by Mr. Correal. All were in favor. Meeting was adjourned at 11:58PM.

Respectfully Submitted,



Ruth Nunez
Secretary