

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
February 6, 2013

The meeting was called to order at 7:26 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, Mrs. Bonis, Mr. Gardell
Mr. Kopcsó, Mr. Swiss, Mr. Martinez

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

ALSO PRESENT: Mr. Thomas G. Knutelsky, P.E.
Mr. Ken Nelson, Planner
Mr. James Kilduff, Borough Administrator

APPROVAL OF MINUTES:

Mr. Kopcsó made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for December 5, 2012**. Seconded by Mr. Correal.

Upon Roll Call Vote:

AYES: Correal, Gardell, Kopcsó, Swiss, Bonis

NAYS: None ABSTENTIONS: None

Mr. Kopcsó made a motion to approve the **Franklin Borough Zoning Board of Adjustment Reorganization Meeting Minutes for January 2, 2013**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Gardell, Kopcsó, Swiss, Bonis, Alt. #2 Martinez

NAYS: None ABSTENTIONS: None

APPROVAL OF RESOLUTIONS:

There were no resolutions to approve.

APPLICATIONS FOR COMPLETENESS:

There were no applications for completeness.

ADJOURNED CASES:

There were no adjourned cases.

APPLICATIONS TO BE HEARD:

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

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Mrs. Bonis requested Mr. Nelson to provide an overview (of the application). At this time Mr. John McDermott, Jr. presented himself as attorney on behalf of Richard and Eileen Durina for the application's duration.

Mr. Nelson talked about the Borough's Zoning map, gave a brief history to the 2009 Master Plan update along with his recommendations which the Planning Board followed. He explained the municipality's current planning policy does not include the deed restriction issue. He said it's the municipality's decision through the Planning Board and Borough Council that established the policy. Mr. Nelson said the applicant's proposed commercial development with appropriate buffers and safeguards are appropriate for this site and the applicant's are to prove their case. He wanted it clear it's not a question of the property being seen by the Borough as the future commercial development site, but how can the site be developed commercially without seriously impacting the adjoining residential area.

Regarding the connectivity issue, Mr. Nelson said the Borough's general planning policy is to connect properties along Route 23 and minimize traffic usage. Mr. Nelson stressed the connectivity issue is separate and apart from whether this property is suitable for commercial use and urges the two issues not be combined.

Mr. Correal referred to Mr. Nelson's report on page 3 regarding the "Area of Influence" and questioned it addressing the connectivity issue and it being smaller than depicted. Mr. Nelson said he didn't touch on something in his report dealing with the subject property referred to as the Area of Influence. He said the property is, as being a transition property and explained. Mr. Nelson also explained the area of influence with respect to bigger or smaller.

Mrs. Bonis advised the on-going protocol for this application will be followed.

Mr. Gardell made a motion to **Open to the Public** regarding Mr. Nelson's statements. Seconded by Mr. Swiss. All were in favor.

Mr. McDermott asked Mr. Nelson questions pertaining to a statement from the June 17, 2009 Planning Board meeting, the Gulf Station and the lots behind it, Zoning, the Area of Influence, Zone change and a 2009 study. Mr. Nelson responded and Mr. Brady provided appropriate counsel.

Dan Dougherty 26 Auché Drive came forward. Ms. Nicholson said he's previously presented testimony and asked if this is his residence. Mr. Dougherty said he owns it (26 Auché Drive). Ms. Nicholson requested clarity for identification and contact purposes. Mr. Brady clarified Mr. Dougherty owns the 26 Auché Drive residence and lives on 283 Wildcat Road. Mr. Dougherty questioned Mr. Nelson's reference of the property's location and if there are plans in the Master Plan to open it back up to Route 23. Mr. Nelson said the property is on the corner of Washington and Route

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23. Access from Route 23 is via Washington and not Auche Drive and there are no definitive plans to open it up.

Dawn Pfeil, Frankford Township has children who stay w/grandparents on Lozar Road within the area of redevelopment. She asked the Board if there's a plan to open both roads to access Route 23 and if it's been decided. Mr. Nelson said "no". She asked who decides and Mr. Nelson said this Board. She addressed the Board making an appeal to consider children's safety. Mrs. Bonis stated questions are being taken on Mr. Nelson's testimony and will open for general questions later.

John McNamara gave his opinion in opposition of access from the back of the property. Mr. Brady advised at this point questions are being asked about Mr. Nelson's testimony. Mr. Brady advised Mr. McNamara will have an opportunity under oath to state his position later.

Mr. McDermott asked Mr. Nelson questions regarding the Auche Drive connectivity issue, the impact to the neighborhood and of the traffic engineer's testimony. Mr. Nelson responded.

Mrs. Bonis instructed questions are regarding Mr. Nelson's report and not of other professionals. Mr. McDermott said Mr. Nelson brought up the connectivity issue and wants to address it. Mr. Nelson said your (Mr. McDermott) point is if there was no connection, would it detrimentally affect Route 23 in terms of traffic flow increase; it would obviously be negligible. Mr. McDermott asked if it had a negligible effect on Route 23 traffic if the use is granted, would there be no reason to open any Auche Drive exit or entrance. Mr. Nelson said the Planning Board, himself, and the Borough Engineer are looking at it globally; the entire Route 23 corridor. So individually whether there is or isn't a connection, it's not going to have a major effect; but if we do that all the way up and down Route 23 and don't create connections that should be connected then eventually there's going to be substantial impact.

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

Ms. Nicholson said since the last meeting the County determined they're compliant with no further requirements. She also addressed the Board's concern regarding Walgreen's compliance to facilitate a condition of any resolution of approval. She advised the Eastern Division Walgreen's VP submitted a document. Mr. Brady said he saw the document and it is not evidentiary as he's [Walgreen's VP] not under oath to cross-examine. She could at the appropriate time, or now, take what he says and say "we consent to a condition that says...". Ms. Nicholson said they went directly to Walgreens' VP and received written authority to consent to a condition which Walgreen's will facilitate reasonable commercial efforts ensuring vendor deliveries follow designated site plan traffic patterns and engine shut-off during store

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deliveries. They can make that representation and have the support and authority of Walgreen's.

Ms. Nicholson addressed the Board's request for information on other Walgreen's sites. She said if the Board has concern about this developer and Walgreen's, the Mayor of Maplewood, Victor DeLuca welcomes an opportunity to answer Board, professional or public questions.

Mr. Dennis Cieri, founder and a Principal of Eden Property Co. was sworn in at this time. Ms. Nicholson asked him questions about how many Walgreen's projects he's developed, if he constructed the Maplewood Walgreen's and if there is a redevelopment area similar to the residential aspects of this application. He said in the mid 30's, did the Maplewood Walgreen's two years ago and a similar Walgreen's is located at the corner of Springfield and Boyden Avenues.

Ms. Nicholson asked Mr. Cieri questions about his contact with Mayor DeLuca and his thoughts. Mr. Cieri said he recently spoke to the Mayor who said was pleased with his experience with Mr. Cieri and Eden Property. Mr. Brady advised its hearsay. Ms. Nicholson asked Mr. Cieri how the Mayor is willing to assist the Board with information on Mr. Cieri and Walgreen's. He said the Mayor is willing to answer any questions the Board may have regarding the Walgreen's Maplewood project he developed. Ms. Nicholson advised this was a specific request at the last hearing. A brief discussion ensued on the Maplewood Mayor presenting himself to the Board. Ms. Nicholson reiterated this is in response to a Board request.

Ms. Nicholson referred to the correspondence on the Agenda which will have an impact on how they present the remaining proofs. She said as previously discussed upon traffic and engineering testimony conclusion, connectivity and Auch Drive can be addressed. She said Mr. Nelson acknowledged the neighborhood impact and spoke of Mr. Knutelsky's comments regarding all pedestrian access to and from school being more of a concern that evolved from the hearings, and the sidewalk issue being more than the connectivity issue. She thought it important to discuss at this point if the Board would consider it or the public to decide; as they did not propose connectivity.

Mr. Brady gave advice if the Board is inclined to do so, it makes sense as the applicant didn't propose connectivity; it was a Board inquiry due to town policies which Mr. Nelson spoke about, and public concern. He reminded the Planner hasn't yet testified. Mr. Brady said before deciding on that specific issue, they would have to open to the public for testimony on that specific issue, thereby having the benefit of evidence and Ms. Nicholson being sure traffic testimony was concluded.

Ms. Nicholson said they concluded that and perhaps an audience poll can be had if anyone favored connectivity; then perhaps they wouldn't really have a consideration for public testimony on that issue. Mr. Brady said that's an interesting idea on how

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to speed things along. However, the Board would then have in front of it a speculative record and if someone has agreed, whichever side has agreed is going to say that's improper just to take a poll and just go based on that.

Ms. Nicholson said all she's asking is the sole criteria but thinks if they had the audience poll, they would have a sense of where the Board is right now as a poll before a decision, than they could be very productive on this issue. Mr. Brady said his recommendation to the Board is open it up, have people come up and make it clear to people that if it's repetitive, just come up and say I agree with the guy who was in front of me; I don't like it or I do like it. If you have something specific to add, some specific input then you can do that I don't think it would take all that long to have a feeling of what the public testimony is.

Mr. Kopcso asked Mdm. Chairman if it's possible to have an "up or down" on the actual application whenever that occurs and then discuss Auch Drive. Mr. Brady said if you do it the opposite way you have to finish all the testimony of the applicant, all the public testimony and then make your decision; that's the usual way and I'm not suggesting the Board should not do it that way. It certainly would give you a complete picture; the concern from Ms. Nicholson's point of view is perhaps time is being spent on theoretical possibilities and considering them rather than as going forward putting it on or off the table might focus everybody on other issues. He said he doesn't have an opinion either way, he's legal counsel and the Board can figure out their preferences. Mrs. Bonis said she's inclined the connectivity issue be considered separate of the application as it will change the testimony provided in going forward depending on the outcome. Mr. Martinez, Mr. Gardell, Mr. Correal and Mr. Swiss were in agreement. Mr. Brady said a consensus is recognized; Mr. Kopcso is not in agreement since 5 out of 6 people have spoken in that direction. At this time a brief discussion respectively, was had.

Mr. Brady advised Mdm. Chair to make the record clear, everybody expressed their opinion and to ask for a motion, a second, a vote on which way to proceed. Mrs. Bonis requested a motion on which way to proceed to continue with the application as is or to stop and take a vote at this time regarding connectivity.

Mr. Correal made a **motion to vote for a Separate Preliminary Decision** on Auch Drive. Seconded by Mr. Gardell.

Upon Roll Call Vote:

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

NAYS: Kopcso ABSTENTIONS: None

Mr. Brady wanted to make it clear Ms. Nicholson indicated she's done with Auch Drive traffic generation; all testimony related to the potential connection. Ms. Nicholson agreed and said it's the applicant's position they did not propose connectivity, they didn't change their plans but provided exhibits so it could be seen

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for discussion purposes. It is their traffic expert and engineer's recommendation that connectivity not occurs but will abide by the Board's determination and will amend their plan to reflect it prior to finalizing. Mr. Brady advised they can open to the public for testimony and gave swearing in instructions to the public.

Mr. Gardell made a motion to **Open to the Public** for testimony regarding the connectivity issue. Seconded by Mr. Martinez. All were in favor.

CONNECTIVITY

John McDermott, Durina's attorney said he thinks his knowledge of the MLUL indicates this type of advisory opinion may not be necessarily proper. However, for everyone's sake it's a good idea and isn't suggesting taking the connectivity issue first, and taking it and discarding it or take the application and connectivity issue separate. Either way keep it separate as Mr. Kopcsó said, if you vote for the application then you can address whether there's going to be connectivity or not. If you're going to vote against the application, connectivity doesn't have to be addressed. His clients are totally opposed to any connectivity between this site and Auché Drive.

Lisa Dougherty, 283 Wildcat Road (owns a home on 26 Auché Drive) referred to a two page notice of variances and design waivers for the proposed Walgreen's construction. She asked if the Alternate members have seen it which they said they have. She began to address the word "undersized lot" and Mr. Brady advised she will have a chance later on and are currently talking about the Preliminary issue of connectivity. Ms. Dougherty talked about her family's experience on the impact of Auché Drive's closure to Route 23 and of a neighbor.

Dan Dougherty, 283 Wildcat Road said the roads around Auché Drive are only 22' wide and the Right of Way is bigger. He doesn't think the roads can handle the traffic and is against it.

Steve Simm, 19 Ginter Street said he's totally against it and spoke of drive-thru traffic causing him to put a wall and put trees out front. He said once it was closed, there were no problems and reiterated his objection.

Dawn Fantasia Cunneely, 23 Auché Drive spoke about the reason for moving to the area and of the neighborhood make-up. She also spoke of the projected traffic testimony and is against it.

Debra Sewell, 11 Lozar Road spoke of horrendous traffic and is opposed.

Louise Murphy, 75 Maple Road stepped forward. Mr. Brady asked how close her house is because there's an issue of her being an officer of the Board to testify and while she doesn't give up her rights as a citizen, but when becoming a Board

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member he is very cautious. She said she's not in the notification and is one mile away. Mr. Brady said he prefers, so there's no question regarding decision-making, she not testify as she's a Board Member and a Vice Chairman and cannot keep her from testifying but is advising the Board's ability may be impaired and be seen as impartial. She said okay and left.

Karen Stecher, Washington Avenue on the other side expressed her vehement opposition to the Auché Drive opening and spoke of the projective traffic increase coupled with the school and on-going activities, and people possibly looking for an alternate route.

Helen McNamara, 35 Auché Drive asked if Walgreen's doesn't want it who will make that decision other than Walgreen's to open that road. Mr. Brady said the Board. They're asked to consider what Walgreen's has applied for and what the Borough professionals said are options that should be considered given some of the policies of the Borough as Mr. Nelson testified to. In essence, the Board will essentially make that decision. She hoped the Board will decide in their favor and expressed her opinion regarding children's safety.

Mr. McDermott said he perhaps was a little short-sided when he said the issue of connectivity he addressed on behalf of the Durina's only exit and exit from the premises onto Auché. He made the impression since he wasn't at the other two meetings, that the Board is considering whether or not to open Auché Drive onto 23. A unanimous no was heard.

Joan Gaba, 29 Auché Drive said she's been there since 1958 and is opposed to the Auché Drive opening.

Tim Graepel, 20 Auché Drive came forward. At this time Mr. Brady advised everyone who has been up to testify thus far will be sworn in regarding the testimony provided. Mr. Graepel was sworn in. He said he has 3 kids who play outside, is in sight distance, 50' short of the notification and is opposed to it.

Dawn Phiel lives in Frankford Twp., grew up on 23 Lozar Road and her children are with her parents as caregivers from birth till now. She addressed her concerns of the potential traffic and accessibility to Route 23 possibly providing abduction potential. She also addressed her concerns of unknown cars and people, traffic flow increase and requested consideration be given to limit access.

Mr. Simm came forward and advised he was still under oath. He said she brings up a good point as it's a proposed 24 hour Walgreen's. He gave his opinion that night time would invite more people through their development, cause mischief and said there's something to consider.

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Floy Estes, Taylor Road said he's been there since 1985 and has seen traffic flow both open and closed. He said people have a legitimate complaint which may exist on Auche and his road is also a through street. He sees child safety as a risk but not a major one. He does not agree and personally believes as a through street it could be effectively managed from an adult, parent, grandparent and police perspective. Mr. Estes is in disagreement of road closure. He's walked through that street, agrees there's going to be traffic, but doesn't think it unsafe nor a proposed 24 hour commercial building will make it additionally unsafe. It's his opinion; town folk may not like it but thinks they could co-exist with minimal repercussions.

Dan Dougherty while still under oath said that brought up something and heavily disagreed. He spoke of children going to and fro the pond, cutting through neighborhood to get to it and of sports activities. He said hearing that kind of testimony, in his opinion, is a joke.

Dawn Cunneely, 23 Auche while still under oath said to refute (Mr. Estes') opinion, Taylor Road has always connected to Route 23. When she purchased her home on Auche it wasn't a Route 23 connecting street. She has three small children and for him to say from an adult, police, grandparent or parent's perspective sounds perfectly logical but they're talking it from a child's perspective.

Mr. Kopcsó made a motion to **Close to the Public** regarding testimony on the connectivity issue. Seconded by Mr. Swiss. All were in favor.

Mrs. asked if there's any discussion regarding the vote on the testimony.

Mr. Correal said as previously mentioned, the applicant nor do neighbors want it. He said opening Auche Road is opening a driveway allowing traffic and talked about connectivity on the east side of 23 being a plaza with connectivity within the shopping area itself and doesn't open connectivity into an adjacent neighborhood; it's contained. He said he always felt it unsafe putting connectivity from that neighborhood directly there. It will cause a hazard and won't benefit the store keeper, the business, the school, Route 23 or people from that neighborhood. It might be the quickest way to the traffic light to go north and thinks it unsafe and deceptive.

Mr. Gardell said there have been mistakes in closing roads but thinks it's not our place to start fixing them. Mrs. Bonis commented it felt like we were talking about driveway connectivity to a neighborhood and not necessarily opening a road but opening a parking lot to a road and want to keep that in mind as well.

Mrs. Bonis inquired about a motion for a roll call vote. Mr. Brady explained the procedure, and said the application is being treated as bifurcated and provided an explanation why as well as advice for a vote. Mr. Kopcsó asked if the motion should

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be words in a positive or negative form. Mr. Brady advised he's not the one who forms the motion. Mrs. Bonis said however you think it is.

Mr. Martinez made a **motion to not allow access to Auche Drive**. Seconded by Mr. Kopcsó. Mr. Brady said a yes vote is no connection to Auche Drive.

Upon Roll Call Vote:

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

NAYS: ABSTENTIONS: None

Mrs. Bonis thanked the applicant for their work in addressing the concerns of the Master Plan and of the Board's questions and concerns which took energy from the application and appreciated their willingness to pursue with the Board.

Ms. Nicholson presented Kenneth Mihalik, their architect to review the façade and signage. Mr. Mihalik was sworn in at this time providing his credentials and experience. Mr. Mihalik presented Exhibit A5 dated 12/5/12 a rendering of the proposed store and described the brick color theme and their locations as well as details pertaining to the building and lighting.

Ms. Nicholson asked Mr. Mihalik questions regarding lighting, rooftop mechanicals, parapet wall and their affects to the adjoining residences or property owners. Mr. Mihalik said the low cutoff fixtures are directed downward with no light pollution or glare to adjacent residence as foot candle levels are nothing upon reaching the property line. Regarding the rooftop mechanicals he said the parapet wall around the building effectively provides screening. If someone were standing at ground level or away from the building, they may only see the very top.

Ms. Nicholson asked Mr. Mihalik about lighting and the drive-thru possibly stopped and the back area lighting where cars would likely be traveling later in the evening. Mr. Mihalik said the fixtures are for safety and does not want to lose or reduce as it provides minimum light to the site for people accessing the drive-thru and working their way around the building.

Ms. Nicholson asked questions regarding lighting spillage/impact to property owners in the rear of the drive-thru side and of the fencing's construction and buffering. Mr. Mihalik said it's the same type lighting with no concern for light pollution filtering to the neighboring properties west. He said the 6-8' fencing creates privacy from site activity, provides effective screening to neighbors across the street and in combination with the landscaping, will only see the upper half of the brick façade making it fairly innocuous.

Ms. Nicholson asked him to talk about the building's visual aspects in the back for the closest adjoining property owners' view looking towards Walgreens and of the negative visual from the adjoining neighbor's perspective. Mr. Mihalik said the

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fencing provides a good deal of screening. Regarding the negative visual, he said there really isn't as they'll be seeing the fence, landscaping and may see the building's top which is a fairly innocuous neighbor's vantage point.

Ms. Nicholson requested he address signage. Mr. Mihalik explained the North and East elevations have Walgreen's 24 Hour Pharmacy spelled out, gave their location and said both façades have Walgreen's "W" logo with no other signage. He said the free-standing sign is as previously discussed. Ms. Nicholson asked for the signage components. Mr. Mihalik thinks they're backlit to his recollection.

Ms. Nicholson referred to (Exhibit) A6 dated 12/5/12 depicting the building's four elevations to which Mr. Mihalik described. He said all the elements are fairly low compared to the building height that will be shielded with the screening, fencing and landscaping as previously discussed.

Mrs. Bonis requested to return to the previous (Exhibit), as she noticed coloring differences and asked if the material would be different. Mr. Mihalik said there's an elevation study for brick color determination. Ms. Nicholson said the coloration was presented aesthetically for Board preference of the community look which can be addressed. Mr. Brady asked if it means should the Board decide they want a red brick, would Walgreen's go with it. Ms. Nicholson said no. Mr. Brady said, (you're) talking about the tones or family of tones. Mr. Mihalik said the multi-color idea is to break up the façade and create interest with the building's various elements.

Mrs. Bonis asked (Mr. Mihalik) to speak about the actual combined building's signage square foot total. Mr. Mihalik provided the Walgreen's spelled out "24 Hour Pharmacy" and "W's" individual and total square footage measurements. Mrs. Bonis asked if the Washington Street signage has the Walgreen's 24 hour signage. Mr. Mihalik said it does and is basically the same size. At this time a discussion regarding signage footage was had. Ms. Nicholson said it's a rendering providing signage proportionality of the building's size and massing. The plan submission has specific details.

Mr. Knutelsky said he has general questions for the building and signage and referred to his 11/6/2012 report:

- Section B Item 3; Building Layout and Design; **Item "f"**. Mr. Knutelsky agrees to testimony alluding to rooftop mechanical structures not being visible from the ground looking up; but westerly elevated properties along School Plaza and Washington Avenue almost look down on the site. He's aware of proposed plantings and asked how much will the elevated homes see of the roof top. Mr. Mihalik said he believes Mr. Knutelsky is correct and folks sitting higher will have more of a view down onto the roof. Mr. Knutelsky commented on mechanical roof top placement that may need to be met for possible future testimony.
- (Section B; Item 3) **Item c**; Mr. Knutelsky asked if anything could be added to the elevations to avoid a common wall look. Mr. Mihalik said they can look into

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possibly adding bands or continuing the multi-color brick pattern on that side. Mr. Knutelsky said for the Board's sake, it's in the ordinance regarding blank screened walls and knowing there's still some visibility through landscaping at certain times, he requested the applicant look into it.

Mr. Knutelsky asked if the building's dimensions are a stock or custom site plan and if smaller layouts were investigated which could have met the building area. Mr. Mihalik was unsure he could answer but perhaps other Walgreen's representatives could. He knows it's a floor plan that works and a reduction would compromise their operation. Mr. Knutelsky asked even if another site or building plan might show minor modification to reach Borough Ordinance, it could have a detrimental effect to the applicant. Mr. Mihalik agreed and said 900 sq. ft. is a significant cut. Mr. Brady inquired if Mr. Mihalik recognizes 900 sq. ft. is the amount being talked about. Mr. Mihalik agreed.

Mr. Knutelsky said that was (Section B; Item 3) **Item "b"** in the report. He asked Mr. Mihalik questions regarding the color scheme, enclosed trash compactors usage and screening on the Auche Drive side per the rendering. Mr. Mihalik explained one is for garbage and the other for recycling which will be open during garbage pick-up. It will be constructed with the brick masonry to blend with the building. He said the screening is for both visual and sound.

Mrs. Bonis asked if he concluded his testimony and Mr. Mihalik agreed. Mr. Nelson said no view analysis was received for the surrounding neighborhood making it difficult to anticipate building coverage despite massive plantings and building portions being seen for some time. He inferred to the building's height of approximately 25' to which Mr. Mihalik agreed. Mr. Nelson asked if Mr. Mihalik estimates portions of the building from the surrounding neighborhood can be seen. Mr. Mihalik agreed and explained with height and grade and said there are still 15 more feet providing a good amount of screening.

Mr. Nelson asked if the lighting design was collaborative between him (Mr. Mihalik) and the engineer to which Mr. Mihalik agreed. Mr. Nelson asked questions about possible lighting on/off at different times, separate circuit, minimal lighting, 24 hour lighting and glare spillage. Mr. Mihalik said their lighting is meant for security and safety and wouldn't want lights off throughout the night. Regarding minimal lighting, he said when looking at the lighting plan, foot candles drop to nearly zero towards the property line. Mr. Mihalik said he couldn't disagree with some glow onto adjoining properties.

Mr. Brady said asked if the drive-thru weren't to operate 24 hours, would the same level of security lighting along the back of the side of the building be needed. Mr. Mihalik said he thinks a great deal of security lighting would be wanted. Mr. Brady said, that wasn't the question, the question was would you need the same level. Mr. Mihalik said you might be able to turn off a few fixtures but the majority will be on as

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people will be driving around the building. At this time a discussion on lighting was had.

Mr. Gardell commented about his concern of the LED Reader Board sidewalk proximity affecting pedestrian safety and of the amount of signage. Mr. Mihalik said if you were to look at what zoning requires, it's over the requirement but appropriate for the building's size. Mr. Gardell disagreed. Ms. Nicholson said they welcome Board input on the type and signage size keeping in mind there are three property frontages. At this time a discussion regarding LED signage was had. Mr. Mihalik said they would study it.

Mrs. Bonis said you've proposed four signs; we allow two and asked if it's possible to combine their Washington Street facing side to pull the Walgreen's piece on the brick over and work with the "W" which is recognizable and will be cut down by one sign. Ms. Nicholson agreed. Mr. Mihalik said it looks like we'd be willing to lose the Walgreen's on the front Washington side but keep the big "W" on the Washington side. At this time a discussion regarding Walgreen's signage dimension, placement, conformance and type was had. Ms. Nicholson said they'll come with a rendering showing what that option would look like and where it would be located to help visualize that option.

Mr. Knutelsky referred to the November report and read **Section B; Item 5; Signs: b, ii**. He said the LED board suggests additional advertising on the free standing sign and believes is not allowed by ordinance and it's something the applicant may look at. Ms. Nicholson said a Variance was requested. A discussion on the sign variance was had.

Mr. Brady asked Mr. Knutelsky for the section of his report. Mr. Knutelsky said 161-24S(4)(c)[1] and read it. Ms. Nicholson said they have language for any and all other variances. Mr. Brady said he thought it would be sufficient to cover it because the reason for this application identifies something during the processes but will have to think about but his initial reaction is that's a type of sign not permitted, hence it's a use variance. There'd have to be testimony as to the negative and positive criteria. Ms. Nicholson said and in our Planner's testimony we will address those criteria relative to the sign variances.

Mrs. Bonis requested a motion to Open to Public for specific comments of the architect's testimony. Mr. Gardell made a motion to **Open to the Public**. Seconded by Mr. Swiss. All were in favor.

Dan Dougherty, 283 Wildcat Road owning a home on 26 Auchee Drive questioned the scale rendering and spoke of issues regarding the loading zone area on Walgreens stores he visited. Mr. Mihalik said it's a perspective to scale drawing and gave responses to Mr. Dougherty's questions. In regards to Mr. Dougherty's query of the steps, Mr. Mihalik said as far as he knows there will be no steps at the doors

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and will check. Engineer Dougherty, Dynamic Engineering said there's no steps into the building in any location; it's one of Walgreen's standard design criteria especially at loading zones and explained. Mr. Dougherty said two other Walgreens aren't like that. Engineer Dougherty said they may have been historically built, are older stores or had design criteria; but goes against their standard design criteria which they follow. At this time a discussion regarding elevation, fence and finished floor elevations were had.

Mr. Dougherty asked about water flow away from the building. Engineer Dougherty said he'd be happy to address it but doesn't have to do with the actual testimony. He said the grading design performed is to get the water run away from the building towards storm water collection systems collected and discharged off-site per his previous testimony. Mr. Dougherty asked if a rendering of the building to scale can be had and spoke of a 130' grade at Walgreen's he went to. Mr. Mihalik said they're to scale.

Mr. McDermott questioned Mr. Mihalik regarding elimination of the LED sign, its usage and thereby making it aesthetically better meeting ordinance compliance. Mr. Mihalik said he'd confer with Walgreens' but is part of advertising, public messaging and their business. Aesthetics and compliancy can be taken under review.

Mr. McDermott said the sign above the white sign with Walgreen's, exceeds ordinance and square footage. Mr. Mihalik agreed. Mr. McDermott asked for reduction to conform to ordinance. Mr. Mihalik said the size for this project and building, it's appropriately sized; going smaller risks losing the signage impact and relevancy at that point.

Mr. McDermott asked if the impact expected is people may not see Walgreen's on the side, to which Mr. Mihalik agreed. Mr. McDermott asked how it would harm Walgreen's. Mr. Mihalik said business relies on marketing and advertising. Mr. McDermott said he understands and they have circulars in which they advertise. Mr. Mihalik said correct; it's a different kind of advertising.

Mr. McDermott said you have Walgreen's on the front of the building directly facing Route 23. Mr. Mihalik said the sign faces 90°, is perpendicular to a driver on Route 23, Walgreen's facing east is meant for someone who may be across the street interested in looking for a Walgreens, and (they) are aiming for different audiences.

Mr. McDermott commented, once the building is constructed it's proof people will know it's Walgreen's and a bigger sign is unnecessary. Mr. Mihalik said you could say that about any store; most have street and building signage. Mr. McDermott commented size reduction would conform to the ordinance. Mr. Mihalik said they could look at it but suspects it's going to be too small. Mr. Brady said are you saying if you met the size of the ordinance for I'll call it the white sign, the top sign which is 80 sq. ft. instead of being 84.7 sq. ft. would be disproportionate and too small. Mr.

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Mihalik agreed. Mr. McDermott questioned the difference of 4 sq. ft. Mr. Mihalik said they could and will look at it.

Mr. McDermott asked questions regarding total square footage, their usage percentage and of storage area for deliveries and of delivery. Mr. Mihalik provided the information accordingly.

Mr. McDermott asked Mr. Mihalik questions regarding light being on at the rear of the building facing west, the drive-thru window and its overhang to which Mr. Mihalik agreed. Regarding the overhang, he's unsure and would have to check the drawings.

Mr. McDermott asked question regarding light visibility from the Stecher and Gaba residences, and of sky and snow reflection to which Mr. Mihalik responded. Mr. McDermott asked if the metallic at the top will overhang the building and its purpose. Mr. Mihalik said it will and is an aesthetic design with no function. Mr. Brady asked if it doesn't provide sidewalk coverage. Mr. Mihalik said it actually provides some shelter but is so far up, it will not have much effect.

Mr. McDermott questioned and asked for a reason regarding Mr. Mihalik's security and safety night lighting statement. Mr. Mihalik said it's a 24 hour operation with cars circulating the parking lot and for general safety and security as with any building, residence and for surveillance.

Mr. McDermott asked if it didn't operate 24 hours, people weren't driving through there. Mr. Mihalik said it's still needed and is a security and surveillance issue. Mr. McDermott asked security and surveillance and what and for what purpose. Mr. Mihalik said of the property and of people hanging out and shouldn't be there; police surveillance. Mr. McDermott continued questioning this. Mr. McDermott asked if it wasn't open 24 hours could a gate or barrier placed across the parking lot to deter cars from entering. Mr. Mihalik supposed you could consider that.

Mr. McDermott inquired of the houses at the bend of Auch Drive's elevation having a view more than half the building's height and asked of the building's height and reduction of it from 25' to 8-10'. Mr. Mihalik said half of the building may be seen, it's 25' and reduction is impractical and explained why.

Mr. McDermott questioned Mr. Mihalik's knowledge of elevation differences to visible lighting from homes on Auch Drive bend. Mr. Mihalik said he didn't know if he could respond.

Mr. McDermott questioned Mr. Mihalik regarding the trash compactors, pick up frequency and noise. Mr. Mihalik provided answers and said he can't attest to nor has information on noise. Ms. Nicholson advised Mr. McDermott that he wasn't in attendance during the engineering testimony.

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Mr. McDermott asked if there's anything he designed in the building to deter noise being apparent to i.e.: Gaba residence. Mr. Mihalik said as mentioned earlier, the screened dumpster is masonry constructed with a roof for noise containment. Mr. McDermott asked questions regarding noise during and per garbage pick-up. Mr. Mihalik said noise is expected for about 5 minutes and is just like any residential garbage pick-up.

Lisa Dougherty, 283 Wildcat Road, (owner of a home on 26 Auché Drive) asked about the monument sign possibly causing obstructions while students leave the school. It was heard saying students use the sidewalk. Ms. Nicholson advised at the next meeting a rendering will be shown thereby providing understanding.

Steve Simm, 19 Ginter Street asked questions regarding the compactors' decibel levels while in operation and of the HVAC units. Mr. Mihalik said he doesn't have that information and HVAC hasn't been put on yet. Mr. Simm inquired if they'd be the same as other Walgreen's. Mr. Mihalik said he could obtain the information. Mr. Simm asked questions regarding the free-standing sign. Mr. Mihalik said yes to the upper part being lit and the scrolling section contains a fixed message. Mr. Brady asked if it's set once a day. Mr. Mihalik said it changes but there's no movement. Ms. Nicholson compared it to a gas station sign that's changed and is immovable. Ms. Nicholson said she'll obtain verification from Walgreen's. Mr. Simm asked about the LED's brightness.

Karen Stecher, Washington Avenue said she gets to see a brown wall, a door and a drive-thru window. She talked about her issues regarding property line distances, footage and height view, drive-thru window noise, back door usage, people hanging out, lighting and security cameras. Engineer Dougherty and Mr. Mihalik provided respective answers.

Steve Simm asked Ms. Nicholson questions regarding the condition of deliveries, circulation patterns, idling trucks and employee smoking policy. Ms. Nicholson advised the problems addressed reached the VP level and received commitment from Walgreens that training will be provided. The issues are being addressed regionally as it's not their protocol to violate site plans as a company and corporation. Therefore, operational changes will occur district-wide. Regarding the smoking policy, Ms. Nicholson will inquire.

Mr. McDermott asked questions regarding store size reduction, display, products and shelving reduction and buffering. Mr. Mihalik provided answers and advised when questioning was pertinent to engineering. Ms. Nicholson advised the Planner had not yet testified. In regards to architectural redesign, Mr. Mihalik said it's a suited model and store operations.

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Steve Simm, 19 Ginter Street commented on Mr. Mihalik's response to interior store reduction.

Dawn Pheil is a Walgreen's customer, talked about her location preference and spoke of light, noise impact on the neighborhood and if engineering studies were done to address the fence, shrubbery, noise and light issues. Mr. Mihalik said screening is a visual shield and for glow overflow. She wanted to go on record she disagrees. She spoke of potential noise and pollution, LED and signage lighting and screening to which Mr. Commorata and Mr. Mihalik responded.

Dan Dougherty asked Ms. Nicholson about when and who she spoke to at Walgreen's regarding noise and truck idling. She said after the last meeting they reported to Walgreen's the public and Board's concerns which they wanted to immediately address operationally. She spoke to Mr. Robert M. Silverman, VP Walgreen's Eastern, Inc. Mr. Brady advised Mr. Dougherty as he previously stated, Mr. Silverman isn't here to testify and is not under oath and what has been said was Walgreen's will consent to a condition it will comply with, it will instruct everybody to comply with the circulation pattern; not to idle their vehicles. The issue isn't when Ms. Nicholson talked to him or what he said it's inadmissible, it's hearsay. The important thing is, it will be a specific condition in the Resolution and being specifically called out, can be enforced specifically by the Zoning Officer or the Police Department."

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

Mrs. Bonis acknowledged Ms. Nicholson wanting Planner testimony. Due to the hour, testimony length and public questions, it can be saved. Ms. Nicholson requested the application be carried to the next meeting with no further notice and provided her summary. Mrs. Bonis requested she also address banding of the walls. Ms. Nicholson said she would and it could be a condition of Resolution including color shading within the earth tone preference as a condition they will consent to.

Mr. McDermott requested Ms. Nicholson contact Walgreen's for store size reduction to meet the ordinance for maximum coverage and therefore meet buffering and setback requirements. Ms. Nicholson advised they'll have operational testimony available for viability.

Mrs. Bonis advised the next meeting is March 6, 2013, 7:30 and those who were noticed will not be re-noticed.

PAYMENT OF BILLS:

Mr. Swiss made a motion to approve the **Franklin Borough Zoning Board Escrow Report for** February 6, 2013. Seconded by Mr. Martinez.

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Upon Roll Call Vote:

AYES: Correal, Gardell, Kopcsó, Swiss, Bonis, Alt. #2 Martinez

NAYS: None ABSTENTIONS: None

OTHER BUSINESS:

CORRESPONDENCE:

Mr. Kilduff said there were two letters. One was discussed earlier and the second is from the County Engineering Department regarding a letter of no interest for this application.

DISCUSSION:

Mrs. Bonis asked if Mr. Brady's memo can be discussed. Mr. Brady said since it relates to the application it should be done as part of the application.

Mr. Brady discussed the current method of opening to the public and how it may be handled in proceeding forward. He left it for the Board to consider and decide at a later time.

OPEN PUBLIC SESSION:

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

Karen Stecher stepped forward said it's an emotional time period and provided her opinion of the process and thanked the Board for listening.

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

ADJOURNMENT: There being no further business Mr. Martinez 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 10:35 PM.

Respectfully Submitted,



Ruth Nunez
Secretary