

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

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

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

Mr. Kell informed meeting order will be done differently as the Board must enter into Executive Session then read the Open Public Meeting Act. Mr. Kilduff announced they'll adjourn in the Conference Room.

ROLL CALL OF MEMBERS PRESENT: Mrs. Bonis, Mr. Kopcsó, Mr. Martinez,
Mrs. Murphy, Mr. Swiss, Mr. Soules,
Mr. Estes, Mr. Kell

ABSENT: Mr. Mark Correal

ALSO PRESENT: Mr. David Simmons, PE,PP, Leed AP
Mr. David Brady, Esq.
Mr. James Kilduff, Plng. & Comm. Dev. Dir.

APPROVAL OF MINUTES:

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board of Adjustment Reorganization Meeting Minutes for January 15, 2014**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Bonis, Kopcsó, Martinez, Murphy, Swiss, Kell

NAYS: None ABSTENTIONS: None

Mr. Kopcsó made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for January 15, 2014**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Bonis, Kopcsó, Martinez, Murphy, Swiss, Alt. #1 Soules, Kell

NAYS: None ABSTENTIONS: None

APPROVAL OF RESOLUTIONS:

There were no resolutions to approve

APPLICATIONS FOR COMPLETENESS:

ZB-02-14-1 CM Franklin LLC Amended Preliminary and Final Site Plan with C & D Variances; Block 606, Lot 31.

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Janet Lucas Esq., Lucas & Gaus presented herself for the record on behalf of the Plaintiff in the underlying litigation.

Michael Piromali, Gaccione & Pomaco, 524 Union Ave, Belleville on behalf of CM Franklin LLC inquired of making his opening statement or Completeness review first.

Mr. Kell responded Completeness first then asked Mr. Kilduff if the applicant is administratively complete. Mr. Kilduff stated they are. Mr. Kell asked Mr. Simmons of the Engineering Report.

Mr. Simmons advised the February 26, 2014 Engineering Report was prepared by Mr. Knutelsky. He referred to **Pg. 2, Item B, 1** whereby Mr. Knutelsky recommended completeness and public hearing based on revised plans et al received from previous hearings.

Mrs. Bonis made a motion to deem Complete, **ZB-02-14-1 CM Franklin LLC Amended Preliminary and Final Site Plan with C & D Variances; Block 606, Lot 31**. Seconded by Mr. Martinez.

Upon Roll Call Vote:

AYES: Bonis, Kopcsó, Martinez, Murphy, Swiss, Alt #1 Soules, Kell

NAYS: None ABSTENTIONS: None

Mr. Brady noted the applicant provided Proof of Notice/Publication and of the application being properly noticed.

Michael Piromali, Esq. on behalf of CM Franklin LLC stepped forth. He requested granting approval along with associated variances and waivers to modify the previous approval which facilitates settlement with DFS Partners LLC, who filed a Complaint in lieu of Prerogative Writs against the Board and CM Franklin appealing prior approval. Mr. Piromali said the Complaint and other materials were provided to the Board in support of the current application including Board's awareness of two prior approvals and Memorialization Resolution – also provided.

Mr. Piromali said the second approval is the current pending litigation with DFS. He noted the only changes to the Site Plan since prior approval are due to the Settlement Agreement and wanted to explain changes made to facilitate it. At this point Mr. Piromali discussed the proposed changes. Therein he explained the proposed easements, curbing and NJDOT. He further talked about previous relief granted, the outline list and, since they meet the parking requirement, are not requesting a parking variance.

Mr. Piromoali said pursuant to the Settlement Agreement terms should approval be granted, DFS will dismiss their complaint against the Borough of Franklin Zoning

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Board and the applicant. If not be approved, it will be invalidated and the pending litigation will continue.

Mr. Piromali advised he'll call Eric Keller of Omland Engineering to testify as a professional planner and engineer, to explain change details accommodating DFS' litigation settlement and granting additional variances. They'll focus on requested variances and Site Plan changes. Mr. Piromali requested Board consideration of incorporating previous testimony and requested Mr. Keller to provide testimony.

Mr. Brady said prior to that, he wanted clarification as (Mr. Piromali) indicated the Revised Site Plan was approved with pending litigation being dismissed. The document regarding DOT permit and curb removal, provides the settlement stay in place even if the portion of the proposed plan is denied by either the Board or DOT. He talked about the side easement stipulation and said the settlement agreement does not bind the Board to approve anything they hand in and further explained.

Mr. Piromali inquired of re-qualifying Mr. Keller as engineer and planner for continuity. Mr. Brady advised Mr. Keller did so at the last hearing, accept it's stipulated he's testified on the Board and of his qualifications.

At this time Mr. Keller was sworn in. He referred to a plan included in the package to which Mr. Brady informed if it's the same, we don't have to (mark it). Mr. Keller said as Mr. Piromali discussed, there's limited changes resulting from the Settlement.

Mr. Keller wanted it clear when approval was received in October, 2013 in accordance with Board adopted and memorialized Resolution, there were a variety of conditions and plan changes reflect the Resolution. If the need arises, he has those plans which went to sign location, parking layout and a variety of things which Mr. Knutelsky's Office was in the process of doing a compliance review; but held off till litigation was finished or knew where they would end up.

Mr. Keller explained relocation changes made and its affects regarding compliance, green space, the handicap area and parking spaces. He said easements have been an evolving process with the settlement discussions. Mr. Keller further explained properties' easements, ingress/egress, pavement area and curbing. Regarding the pedestrian way, he said functionally, it will be maintained in the sense that it was going to be in the last one.

Mr. Keller said minor landscape issues resulted from access easement and front yard changes. They added five shrubs along the parking lot for buffering between the parking area and street. He further explained planting loss and possible minimal addition in the back of STS' building should the Board desire.

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Regarding lighting, Mr. Keller explained due to building location changes, they show light level excess and have relocated STS's wall mount light over one bay thereby bringing it to compliance.

Mr. Keller said prior to review letters received, he went back through the October 2nd conditions of the prior approval memorialized on November 6th. He wanted to touch upon three conditions and thinks they've addressed all the engineering items. Though they're going away from Mr. Knutelsky's confirmation believes the plans addressed those items.

(Memorialized Resolution: November 6, 2013)

N^o. 20) Mr. Keller said they're ok going south of the property to the next driveway but as a result of the Settlement, they're left 25' short;

N^o. 21) Mr. Keller said on the Site Plans, Sheet 4, show a 25' wide access easement and 25' wide gate for Borough access to the ditch. He's unsure if there was a misunderstanding/miscommunication whereas the Resolution states they're to provide a 25' easement along the western boundary line. He expressed their concern – not to negate Borough access for ditch maintenance but it's not on their property; a portion of the embankment is. He further explained on the plan and said they don't want to have a defined width that may conflict with structures that are part of this plan and;

N^o. 26) Regarding light fixtures, by adjusting location, they'll be compliant. As for the remaining ones, they've addressed and will continue to comply with.

Regarding the Board's professional review letters, Mr. Nelson had no issues, made commentary about sidewalk changes and has no substantiate issues. In Mr. Knutelsky's February 26, 2014 letter under **C, 1, b, Conditional Use Standards**, all conditional use tables were repeated. He said as a Planner, all that testimony was provided at the last hearing with no significant or substantial change.

Mr. Keller said two items that change which he previously discussed are the 25' front setback which they now comply with and are negligibly changing the tire building's rear setback from 4.8' to 2.2'. In his opinion, lines to the west are wooded and the ditch is there. The 2.6' difference does not materially impact or change development on the neighbors. From a planning perspective, he doesn't believe 2.2 or 4.8' is material nor have greater impact on the neighbors or the area's built environment. Building size and provided parking amount are the same, all access is the same and is providing shared access with Shell. In his opinion, prior testimony on Conditional Use Standards stands valid for this.

Regarding Mr. Knutelsky's letter in the **C,1, a** table, two variances were identified as new. One is the approved 17' front yard setback for STS of which they're now at 25'. In his opinion, while it's still a variance to the 100', they're moving it closer to conformance and making it better. Though the variance was granted, it's technically reduced and still needs a variance for 25'. The other is the rear yard setback which

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

admittedly is a greater variance from before, is to allow the building placement the way it is. He noted the STS building rear is now 6.8' off of the property line from 4.8' which actually increased the setback because the tire building was moved south. Mr. Brady asked what the new number was. Mr. Keller responded 6.8'.

Mr. Keller said in ¶ C 1 c there are design waivers for buffering. The proposed side yard is 5.6'. In Mr. Knutelsky's prior letter before the October hearing said, we had a 2.6' buffer thereby increasing it. Essentially, the previous buffer we had for both buildings to the side yard is the same we have today. He said they slid STS away from Route 23 and the northerly setback to the property line is the same as it was before. In the rear yard they reduced buffer where the tire building is and maintained other buffer areas on the westerly side.

Mr. Keller said C 2 and C 3 are statements; in C 4 they're providing 58 spaces where 55 are required and conform to parking as before.

Regarding Approvals, Mr. Keller said the County Planning Board can't say approval as they deemed it exempt, reviewed it and had no comments. It was affirmed today via telephone by Eric Snyder and presumes a new letter is forthcoming. He said they have Soil Conservation certification which they'll re-submit for any modification, have Storm Water Construction Activity permit and no request for authorization which is a certification companion from SED. They received DOT approval on September, 2013 and will work with them addressing the plan changes

Mr. Brady questioned, when he said the 12' easement is going to be modified, does he know the location to indicate to the Board where on the building or approximately how many people to get a better feeling of what's proposed?

Mr. Piromali read from Pg. 4 of the Settlement Agreement N^o.6 (Access Easements), 5th sentence. He said it's their concern as it was on-going till after the applications submission where easement would end. To his understanding, the current metes and bounds description leaves it half way, then re-read a portion of the 5th sentence then said, it doesn't go all the way to the rear lot line to the westerly lot line of CM. Mr. Brady queried the setback figure of 6.8' Mr. Keller said, and 3' from the rear property line. At this time a brief discussion followed. Therein Mr. Keller marked the plan whereby Mr. Brady requested it be marked A-1 with today's date. Mr. Keller informed it was **Sheet 4 of 10 Layout Dimensioning Plan; Kulsar Court dated 8/20/11 last revised 2/5/14.**

Mr. Brady said, depicted on there and verbally described, is approximately 40' short of the westerly property. Mr. Keller agreed and said they submit it for final compliance with Mr. Knutelsky's Office and will correct the easement on the plan.

Mr. Piromali had no further questions and said if the Board is through, will turn it over to Ms. Lucas.

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Mr. Kell asked if the stream runs along the whole back of the property. Mr. Keller said from mid point and referred to Sheet 5 indicating flows towards High Street and Mabie Street. To recollection from his walks, is the deeper part being behind the old garage. Mr. Brady asked on the access easement off of Route 23-now the existing driveway; if that pavement will remain as is. Mr. Keller said that's his understanding.

Mr. Brady asked if additional pavement will be put in either of these easement areas or surface so they won't become a rutted trail, or what's the plan. Mr. Keller said he didn't recall what the details were. Mr. Piromali said from his understanding they'll remain as historically used. There'll be no paving, no grading, nor improvements, except curbing for Route 23 vehicular access.

Ms. Lucas, Esq. requested to respond. Mr. Brady informed they normally finish but is more efficient, given its incorporating Settlement Agreement.

Ms. Lucas, Esq. explained her understanding of the agreement is if the Board requires improvements to that part of the site, it's her client financial responsibility to his property. If costs are too high, he can waive the particular modification which then reverts to the original plan. If the Board or DOT determine improvement is needed regarding the entryway, her client's fully financially responsible, maintains the right to waive, thus returning to the original plans per the agreement.

Mr. Brady said the reason he asked whether they were doing any improvements is because the access easement is not just the current macadam that eases into the Shell Station and the access easement; the back of course, is not currently there. Maybe Dave Simmons wants a part this whether that means there's something to protect the dirt in case it's used, cars get stuck, if somebody removes snow or digs up sod. If you're going to have access on-going, are there certain improvements that should be made, what should the improvements be, given the anticipated level of use; things of that nature.

Mr. Keller said let me just address that Mr. Brady and to the point. The area from 23 to a point on this plan where we have the cross hatching is paved today. The paving comes back behind the face of the Shell building. The area from that point to the back behind the old Kulsar Garage is gravel today. It's used at some level of frequency by both property owners and more recently by DFS Partners because there's nobody in the applicant's property other than when he did roof repair. It's all gravel so it's a stabilized surface that's been there for long time. As far as maintenance, he thinks it's covered under easements in the agreements.

Mr. Brady inquired if that area will stay gravel than, to the 12' easement. Mr. Keller agreed and said what's paved today to the limits shown on this plan. They'll remove pavement to the south of the Ingress/Egress easement and where the building is going. There'll be some grass or open area between the rear of the STS Building and the 12' wide easement. There's about a 5-5 ½' unencumbered open space not

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

used for access and assumes will be mulch, lawn or something low maintenance because it's in the back of the building.

Mr. Brady asked if it will be green, mulch or empty space. Mr. Keller said it may be, or just stone the rest of it. With gravel, they don't want to create a roadway or anything that bleeds out the edge, it's up against the building and may be better just to have stone and further explained. Mr. Brady asked if it was going to be lawn or what the plan is so the Board knows what it's approving. Mr. Keller responded lawn unless the Board says otherwise.

Mr. Kell requested the Shell Station's attorney step forward. Ms. Lucas commended and was grateful for the professional and courteous attention the matter was given by Board professionals. She commented it's never easy when adjoined owners have disparate interests. Much work was involved and professionals came to a meeting of the minds in complying as much as possible with the Master Plan, keep continuity to Route 23's face, open green space, and both properties being used to service Franklin to the owners' best ability. Her client is prepared to testify to the historical building usage regarding access for the Board's approval consideration.

Mr. Brady addressed the Chairman saying it may be helpful as he doesn't believe the 12' wide access is for traffic in and out of the Shell Station. It would help the Board understand the historical and anticipated use-the purpose of that easement.

Edward Fears, Managing Member of DFS was sworn in. Mr. Fears explained he and the previous owners had a 10-15 year business relationship and how their properties were used. He said previous tenants used it quite a bit but his current tenant doesn't. Mr. Fears wants to maintain access to the back of his property.

Mr. Brady asked how often it's used and what vehicles go through there. Mr. Fears said currently not as often as it used to be, but his previous tenant used it all the time and he and his employees parked back there. Mr. Brady asked if it was previously used daily. Mr. Fears said it was used daily and is not currently used. He said a Kerosene tank exists and should a potential tenant want to sell Kerosene, access is needed. Ms. Lucas asked if access would be by the public or by the tenants provided to a customer. Mr. Fears responded tenant.

Mr. Brady said the reason he's asking and is up to the Board, Settlement provides it's acceptable if any approval, includes a condition requiring DFS to file its own future Site Plan Application if the intensive use of side yard easement substantially and materially increases beyond the historical intensity being described by a representative of DFS, and the reason that was put in there is because making this essentially another access way in the future.

Mr. Brady provided a hypothetical situation should another use come, become a heavily used access road to the rear. When negotiating, approving that sort of

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

layout was a concern whether that would change to something that would be lightly used/intentionally used. He wanted to give Mr. Fears the opportunity to put on record exactly how it's used in order to put something in the resolution to describe what it is, what they anticipate; so if it changes a lot in the future, it may implicate an array of planning consideration if not dealing with it at the moment. Ms. Lucas said which we understand is current settlement. Mr. Fears said sure.

Mr. Brady questioned (Mr. Fears) describing it as something used by his current tenant. Mr. Fears said, the current tenant-not as often but previous tenants and the previous owner, fairly often. Mr. Brady said from what you said, it was used by the previous owner for himself and his employees. Mr. Fears said a lot and parked their own vehicles back there. Mr. Brady asked, essentially someone parking it in the morning; parking a vehicle. Mr. Fears agreed. Ms. Lucas said, then left in the evening and would be a tenant not a public invitee. Mr. Brady queried, it wasn't customers going back there, it was employees and owners. Mr. Fears concurred.

Mr. Brady asked if generally it was in and out a few times a day depending on where they went and if it was otherwise constant. Mr. Fears said no, absolutely not. Mr. Brady asked if he had an idea of approximately how many employees or trips may have been generated. Mr. Fears said maybe six. Ms. Lucas said you need to understand he was never physically present; it was a tenant doing this operation so while he knew what the operations were generally, he wasn't physically there. Mr. Brady said it's important for the record to establish whether it was used by customers. Mr. Fears said not by customers. Mr. Brady queried, passenger sized vehicles or heavy equipment. Mr. Fears said passenger size and recalls the largest being back there is a pick-up truck.

Mr. Brady had no further questions and it will help to describe in the resolution. He advised the Board take advantage of what the stipulation says in the event there's a material change in this in the future, they could be asked to come back because any changes to maybe that gravel, occasional use of somebody in the mornings and at night, maybe you get a different thing if there's a future use of this property and want to use this access on a more regular basis; in Site Plan consideration. Ms. Lucas said she has physical writing of the testimony and can email it. Mr. Brady agreed.

Mr. Soules asked if there's any access to the building and if there are any bays back there. Mr. Fears said there's a back door from the bay area. Mr. Soules asked if there was vehicle access to back of the building. Mr. Fears said no and asked if he meant another bay to drive through. Mr. Soules agreed and Mr. Fears said no.

Mr. Kopcsó made a motion to **Open to the Public Professional's Testimony**. Seconded by Mr. Swiss. All were in favor.

Paul O'Patik, 316 Rutherford Avenue was sworn in. He expressed his concerns regarding run-off water to the ditch, desire to present pictures into evidence, snow

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

and gravel. Therein he described pictures regarding run-off and disagreed with Mr. Keller about impervious reduction. Therein Mr. Brady advised Mr. O'Patik questions are being asked and not testimony. He may enter pictures into evidence later and provided him question format to Mr. Keller.

Therein, Mr. Keller responded run-off will sheath as it does today, explained broken asphalt and impervious surface and reduction. He said discussions were had in the first approval. Mr. Knutelsky had agreed the site is impervious and are reducing it to 83.6% an approximate 1,400sf.

Mr. Brady said noted, Mr. Keller is correct discussions were subject to the approval last time and tonight they're considering changes to the Site Plan and that's not being changed (run-off). The Board already decided approving development of the site including the drainage cavity. This amended plan does not change that drainage cavity and to go back and rehash the drainage design is somewhat problematic.

Mr. O'Patik said he can still enter this in evidence and is afraid it's going to be an issue. Mr. Brady said he understands that but the question is whether it's relevant to what they're considering tonight. They're concentrating on changes in the Amended Plan; there's no change to that portion of the design as he understands it. Mr. Keller agreed and said impervious didn't change, pushed the building back, and reduced impervious and further elaborated.

Mr. Brady advised to defer dealing with whether it's relevant is not something they need get into until they finish with questions.

Mr. Brady said in looking through the settlement document. One of the portions of the settlement document indicates there'll be a sidewalk. From the Settlement Agreement, he read and noted Pg. 4 ¶6 (5th Sentence) then said to Mr. Keller the plan shown doesn't include a sidewalk-it goes from sidewalk to pavement. Mr. Keller agreed and said as an engineer, it makes no sense to cut existing pavement.

Mr. Brady asked Mr. Simmons if there's any reason from the Board's point of view, to have a sidewalk in the middle of the pavement to provide access to the Shell Station or have a sidewalk end at the driveway for people to walk across it.

Mr. Simmons provided details if the site were a developed commercial area. He said if they pushed across all the way to the northerly property line, it would still end up flushed and any curb in that area as opposed to a 4" or 6" reveal on the curb face which DOT normally requires and further elaborated. Mr. Simmons thinks it could be done. He suggested if the adjoining property owner came with a site plan and the Borough follows through with sidewalk recommendations, the applicant could agree to complete the sidewalk across.

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Mr. Keller said it's no different than what the Board asked us to do in the first application. He said they had the sidewalk end at their property line and (the Board) said it's silly, just carry it to the driveway. My client agreed and we (complied).

Mr. Keller said he understood what Mr. Simmons said; which they could do but engineering wise is silly. He said in doing something now; since they've been in discussion so (DFS) continues enjoying access and movement as they've had for a number of years. It's his position it would stick out like a sore thumb and further elaborated. Mr. Brady said it's up to the Board and wanted to point that out. He wasn't sure how it would be implemented or whether it was necessary to be implemented and now the Board heard both sides.

An audience member stepped forth to comment. Mr. Kell advised if it's a comment regarding the entire application, they can return for general comments when it's opened to the public. Currently they can only ask questions of the professionals.

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

Mr. Swiss made a motion to **Open to the Public ZB-02-14-1 CM Franklin LLC, Amended Preliminary & Final Site Plan with C & D Variances; Block 606, Lot 31**. Seconded by Mr. Martinez. All were in favor.

Debbie Allen, Jenkins Road, Franklin was sworn in. Ms. Allen talked about areas in town experiencing changes which are either vacant or demolished. She opionated about developers and of Walgreen's. Ms. Allen commented it's happened many times and commented on her preference to having an Outback Steakhouse instead. She also talked about being discouraged at developers coming with promises and don't necessarily do what's best for the town, and also talked about revitalization. Ms. Allen hopes it will be a good project.

Jim Kilduff, Planning & Community Development Director and Borough Administrator was sworn in. He credited both sides in reaching an agreement and coming forth with a revised plan which would have otherwise gone on for a long time. Regarding the sidewalk discussion, Mr. Kilduff said it's a particular issue of his to try to get completed as projects go forward in the Borough and eventually have linkage from one site to the other. He said if the sidewalk isn't built with this project, when DFS inevitably comes in someday with their site plan, sidewalk will be part of that so that pedestrians will eventually be able to walk along Route 23.

Paul O'Patik, 316 Rutherford Avenue was sworn in. He wanted on record and has nothing against developers, seem to say they'll paint or blacktop is of no effect yet a resident sees. Mr. O'Patik said he saw that with the firehouse paving, the school parking lot and the state bank. He said they blacktop, we sidewalk and they put it all into two catch basins which goes through Borough ditch that hasn't been improved

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

in 50 years. He said he has photos to show what he's talking about. Mr. O'Patik continued to discuss his fear of possible flooding and its affects.

Mr. Kell said he understands what Mr. O'Patik said but was dealt with in the initial application. He doesn't know if that would be fair to the applicant based on the testimony they're giving now they're not changing that sheathing. Mr. O'Patik commented, perhaps it's a simple fix or he's over-estimating and reiterated his fears.

Mr. Brady agreed with the Chairman that they went through drainage testimony at the first hearing and the applicant's back tonight making certain changes. If they change their previous testimony, (the Board) will be fair to open and consider that. He understood from what Mr. Keller said earlier, the only change is impervious coverage reduction. Mr. Keller agreed. Mr. Brady noted in accordance with comments from the Board and Mr. Knutelsky, they're providing the Borough with a legal means to access the ditch through the property which does not exist today.

Mr. O'Patik asked, how sure they are it's not going to impact and all agreed. Mr. Kell said he thought there was testimony in the initial application regarding drainage. Mr. Brady said it was looked at. The applicant's testimony and Mr. Knutelsky, Board Engineer, looked at it and recalls it concurred with that testimony. As (Mr. O'Patik) said, drainage is engineering/technical. We look to and rely on our professional. Our professional agreed with their professional.

Mayor Crowley was sworn in. He thanked everyone in reaching settlement and wants to see it go forward. Mayor Crowley said testimony previously given by Mr. Knutelsky was it's less of an impact. He thinks the ditch is a problem and unfortunately, is on town property which needs to be looked at from the town's perspective to see what the problem is.

Mr. Martinez made a motion to **Close to the Public ZB-02-14-1 CM Franklin LLC, Amended Preliminary & Final Site Plan with C & D Variances; Block 606, Lot 31.** Seconded by Mrs. Murphy. All were in favor.

Mr. Piromali thanked the Board for its time. He said CM Franklin LLC came before the Board requesting it grant Amended Site Plan Approval Preliminary & Final with associated variances and waivers which are new and changed from the prior application. He said only minor changes were made to the Site Plan since the previous approval and no changes are proposed aside from easements granted to accommodate DFS.

Mr. Piromali said we heard from Mr. Keller as engineer and planner regarding the proposed site plan changes. Mr. Keller stated changes are minor modifications to the previously approved plans and approve set forth, justify granting of the variances requested. Regarding modification of the conditions of the prior resolution, specifically condition N^o.s 20 and 21, the requested modifications are minor and are

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

only requested as the applicant factually cannot comply, to no fault of its own or as a result of the Settlement Agreement. With all this in mind on evidence presented and materials previously submitted in support of this application, believes they've presented the Board sufficient proofs to justify granting relief and respectfully requested granting CM Franklin's present application.

Mr. Brady said Mr. Chairman, the Board should talk about where it's headed, if there are any specific concerns, if there's a motion he can go through and note concerns raised by the Board, and stipulations that can be placed on the record.

Mr. Kell said he wanted to comment on what Ms. Allen said. He noted in the initial application regarding the Kulsar Building, (Mr. Maino's) request was to keep the building intact and tried to build stores within that building to maintain its unique aspect to the Borough but was unsuccessful in bringing renters. He's not saying he tried to get anybody else, but his initial application was to maintain its integrity which wasn't feasible. Ms. Allen commented, you can go all the way down Route 23 in both directions and have another building like that. Mr. Kell said the applicant did try to maintain the building as it was, and was unable to obtain anyone.

Mr. Martinez asked Mr. Brady of putting in something should DFS doing anything to the site to add the sidewalk. Mr. Brady agreed. Mr. Martinez also asked about a walkway between the two easements and of inserting a stipulation it's for employee use only and no public access. Mr. Brady said he would describe in detail what the testimony was, it would not be for public use and for employees described as daily but not constant. In going forward, a description is had and should impact change, the ZO or enforcement people can review the use and intensity described and act accordingly.

Mr. Brady said rather than just putting a strict prohibition on customers as he doesn't view one customer going there one time, now have a technical breach. He said he did something similar in another town and further elaborated. Therein he said they gave some leeway but had a good description of all pertinent factors for the decision, and provision should the ZO find a relevant material change in those factors, an application would have to be made for variance to the Board. He also said his thought was to describe it particularly then indicate "any material change in that, is determined by the Zoning Officer and have them come back".

Mr. Brady said a motion is needed, then they'll go through the conditions.

Mrs. Bonis made a motion to approve application **ZB-02-14-1 CM Franklin LLC Amended Preliminary and Final Site Plan with C & D Variances; Block 606, Lot 31**. Seconded by Mr. Martinez.

Mr. Brady said the conditions noted are: ■ Delineation per Mr. Keller's testimony the 12' easement will end approximately 40' from the rear of the property line ■ All

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

conditions in the prior resolution are going to continue with the exception of ones they have change based upon this evening's testimony and specifically talked about two: N^o.s 20 & 21 ■ N^o. 20 had the sidewalk going the entire frontage and will now stop at the edge of that pavement. However, language will be put in everybody's agreed with that indication at the time there's a site plan application for the Shell Station property, it will generate an application to change to a concrete apron ■ Going to be a change where the light is located on the southwest corner of the STS Building of a .1 candle limitation at the property line. Typically whenever there's an easement we make it subject to review by myself and Mr. Knutelsky and put that into the conditions ■ The rear 40' of that 12' easement will be lawn. Those are the special conditions recorded.

Mr. Kilduff asked if Mr. Brady had a condition whereby the other company could start construction on their (other) half. Mr. Brady informed he usually doesn't put a construction condition and usually does for the Construction Department should someone want to pull a permit before the 45 days expires at their own risk; unless the Board wants to weigh in, and doesn't know if this Board controls that. Mr. Kilduff said no, he was thinking in terms of the existing Site Plan allow AutoZone begin construction, and the one for tonight if there's a favorable vote; then the waiting period. A discussion followed.

Therein, Mr. Brady said if the Board is inclined given Spring is here and the matter was help up during the process in ultimately reaching a settlement, language can be put in that indicates the Board has no objection to building permits being issued prior to 45 days running as long as the applicant recognizes the risk.

Mr. Kilduff said he knows AutoZone is anxious to begin and may be ahead of STS at this point. Mr. Brady said if the Board is so inclined, he can include it's advisory to the Building Department-it's not binding. It was asked of the Board and responded to as no problem.

Mr. Simmons addressed the Chairman saying Condition No. 21 may have been missed regarding drainage easement along the westerly property line. Mr. Brady said that was one he said had to be changed based on tonight, and his office will work on the language whether they would state it's an indeterminate amount with this intent or it's 25' subject to the existence of buildings and they will not be torn down.

Mr. Piromali said it sounds like he's on the correct path. Mr. Brady said they'll work between their two offices and Mr. Simmons Office to make sure they're comfortable with that. We'll put an advisory statement that from the Board's perspective, the applicant proceeds at its own risk before resolution adoption.

Mr. Piromali said Mr. Brady, there was Borough access for the Borough. Mr. Brady said that was N^o. 21.

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Upon Roll Call Vote:

AYES: Bonis, Kopcso, Martinez, Murphy, Swiss, Alt #1 Soules, Kell

NAYS: None ABSTENTIONS: None

Mr. Piromali thanked the Board for its time and professionalism in facilitating the Settlement Agreement. He requested that proven the applicant was delayed and Spring is coming, requested a special meeting to memorialize this resolution noting the whole Board need not be present merely a quorum, be considered.

Mr. Kilduff advised there's a \$1,000.00 fee for a Special Meeting and March 19th is open on the calendar. If Mr. Brady can have the resolution ready and the Board is of mind it can be done and must notice it. Mr. Brady said it's essentially the old resolution and they're describing the recent changes. He can commit to having it done if the Board desires. It was briefly discussed and agreed to for March 19, 2014.

ADJOURNED CASES:

APPLICATIONS TO BE HEARD:

OTHER BUSINESS:

PAYMENT OF BILLS:

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board Escrow Report for February 5, 2014**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Bonis, Kopcso, Martinez, Murphy, Swiss, Alt. #1 Soules, Kell

NAYS: None ABSTENTIONS: None

Mrs. Bonis made a motion to approve the **Franklin Borough Zoning Board Escrow Report for March 5, 2014**. Seconded by Mr. Martinez.

Upon Roll Call Vote:

AYES: Bonis, Kopcso, Martinez, Murphy, Swiss, alt. #1 Soules, Kell

NAYS: None ABSTENTIONS: None

DISCUSSION:

Statutorily Mandated Annual Report Voting

Mr. Kilduff said a couple of issues transpired without the benefit of Mr. Brady's presence and there was no meeting last month. A question arose regarding vote because the bulk of the report pertained to one application and several members stepped down or weren't available.

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 5, 2014

Mr. Brady advised whether you recused from that application or not doesn't matter. It's a report whose function is to historically document what the applications were about, then sent to the governing body to see what they had to deal with. The secondary or main function of the report is to say, we recommend Town Council look at the ordinances that deal with certain issues because we wrestled with and had a problem in a particular case. This is the 3rd case we've seen it in and is time we try to reconcile it. Because you recused yourself from a certain application because of conflict or live within 200' or something, this historical recitation came before us or from a planning point of view recommend you think about it. He said those, except in most extreme circumstances, reasons for recusal does not cause you to step down and vote on that particular issue.

Mr. Kilduff said he wanted to clarify for the record the actual voting as it was confused as not all names were called. Whenever there's a full Board or quorum, when a vote's taken, every name is called and the vote should be yes, no or abstain. When I asked for confirmation of the three abstentions: Mrs. Murphy, Mr. Kell and Mr. Martinez, Mrs. Murphy said yes, but didn't hear on the record when we played the tape spoke for the other two and need to confirm for the record. Mrs. Murphy, Mr. Kell and Mr. Martinez abstained on that vote. I want to clarify for the records tonight so we can circulate that report to the Mayor and Council and the Planning Board and be sure we had the correct vote. On any voting situation and you're all familiar with Alternates, as a member is absent tonight, then Alternate No. 2 if two regular Board members are absent. When the vote is taken, all their names would be called. Mr. Brady agreed.

CORRESPONDENCE:

OPEN PUBLIC SESSION:

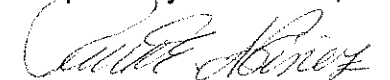
Mr. Swiss made a motion to **Open to the Public**. Seconded by Mr. Martinez. All were in favor.

No one from the public stepped forward.

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

ADJOURNMENT: There being no further business Mrs. Murphy made a motion to adjourn the meeting of the Franklin Borough Zoning Board of Adjustment. Seconded by Mr. Martinez. All were in favor. Meeting was adjourned at 9:25PM.

Respectfully Submitted,



Ruth Nunez
Secretary