

**Franklin Borough Planning Board**  
**Workshop Meeting Minutes for**  
**February 1, 2023**

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

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

**ROLL CALL OF MEMBERS:**

Mr. Wes Suckey, Chairman (Present)  
Mr. John Christiano, Vice Chairman (Present)  
Mr. John Sowden, Mayor (Present)  
Mr. Concetto Formica, Council liaison (Present)  
Mr. Floy Estes (Present)  
Mr. Jim Williams (Absent)  
Mr. John Friend (Absent)  
Mr. Michael Raperto, (Absent)  
Ms. Sharon Schultz, Alternate #1(Present)

**ALSO, PRESENT:**

Dave Brady, Planning Board Attorney

**APPROVAL OF RESOLUTION:**

***Resolution Authorizing Contracts for Professional Services***

Mr. Suckey asked if everyone received the resolution.

Mr. Suckey asked if there were any questions.

Ms. Schultz asked how the board could vote on something if there were no other bids submitted other than Mrs. Caldwell' Dykstra.

Mr. Brady stated because its for professional services.

Mr. Brady explained that they do not have to go out to bid because of the unique relationship between professionals and their clients.

Mr. Christiano stated that he also had a question regarding Mrs. Caldwell' Dykstra's new relationship to the Dykstra family.

Mr. Christiano explained that he knows that there have been numerous applications that have become before this board with the Dykstra name attached to it.

Mr. Brady stated that yes, Jessica has recently married Owen Dykstra.

The board had a lengthy discussion on what would happen if there was a conflict with our new planner Jessica and an application.

Mr. Brady stated that he does not believe that there would be a huge issue.

Mr. Brady stated that he would look into it to be 100% sure.

Mr. Brady stated that it would be a case-by-case issue if something should come up.

Mr. Brady stated the long and short of it is that there is no definitive answer at this moment.

Mr. Christiano stated that what would happen if there comes a case that there is a conflict. Who would be our go to planner if Jessica has to recuse herself, would that planner be able to stay with the application through the entirety of the application.

Mr. Brady explained that he does not have an answer for that right now.

Mr. Brady stated that worst case scenario, there comes a time where there is a conflict that there would need to be a planner that was a complete third party that did not have any conflicts with both the borough and the Dykstra firm.

**Franklin Borough Planning Board**  
**Workshop Meeting Minutes for**  
**February 1, 2023**

Mr. Christiano asked if that would be an additional cost to the board.

Mr. Brady explained that it would not cost the board it would be charged to the escrow like any professional would be charged.

Mr. Brady stated that it would not be an extra cost to the borough or the applicant.

Mr. Christiano asked if Ms. Caldwell would be available to attend our meetings every month.

Mr. Brady stated he does not have an answer for that.

The board went on to discuss the concerns that they had with how busy Mrs., Caldwell 'Dykstra is with already having 10 towns between Sussex and Morris County.

Ms. Schultz asked if there was a limit of missed meetings before there was consequence.

Mr. Brady stated that he has not seen her contract but would have to assume it would be the same as his. If the board is not happy with a professional, they give the professional thirty days' notice and they replace he or she.

Mr. Suckey asked if there were any other questions or comments.

**Mr. Suckey** asked for a motion to accept the Resolution.

Mr. Estes made the motion. Seconded by Mr. Christiano

**Upon Roll Call Vote:**

AYES: **Christiano, Estes, Formica, Sowden, Suckey, Raperto, Schultz**

NAYS: ABSTENTIONS:

**DISCUSSION:**

Mr. Suckey stated that he would turn the meeting over to Mr. Brady who would be leading the board in tonight's discussion. The overview of the powers, responsibilities and procedures of the Franklin Borough Planning Board.

Mr. Brady asked the board if they received the correct document titled 2/1/23 with final under the date.

Mr. Brady stated that he would go through the document hitting the major points

Mr. Suckey stated that to keep the meeting informal the members could ask their questions as they come up.

Mr. Brady stated that he would start with the first sentence written.

The power of municipalities to regulate land use is derived from the Municipal Land Use Law (MLUL), which authorizes a municipality to enact a master plan and zoning ordinances.

Mr. Brady explained that we have a combined board with nine members with one alternate. The board is allowed up to three alternates.

Alternates are allowed to vote if there is a missing board member.

Mr. Brady briefly read the next paragraph explaining the powers of the board and how the board functions being that they are a combined board.

Mr. Brady broke down what the board of adjustments has the power to do, such as a bulk C variance and a D variance any of the 6 D variances the board of adjustments has the power to approve or deny.

The board can hear appeals from the administrative officer (zoning officer)

The board can also hear what they call an interpretation.

Mr. Brady stated the important part of the C variance is that it should be remembered as the variances that are dirt related.

Mr. Brady gave a few examples of what a C variance hardship would be. A "c(1)" variance requires proof of the "positive criteria" which are predicated on "exceptional and undue hardship" because the physical characteristics of the lot. What is essential is proof that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the

# **Franklin Borough Planning Board**

## **Workshop Meeting Minutes for**

### **February 1, 2023**

claim of hardship. Hardship personal to the owner of the property that is unrelated to the physical characteristics of the land does not constitute sufficient ground for granting a c(1) variance. However, it is not necessary, for the applicant to prove that, without the variance, the property would be zoned into inutility. Economic hardship arises from the conditions of the lot may be considered only if the hardship is exceptional.

Where the hardship has been created by the applicant or a predecessor in title, the “self-created” hardship should be considered by the Board and may form a proper basis for denying a c1 variance. Special rules apply in the case of an “isolated” lot, defined as a vacant lot that does not meet the area and/or dimensional requirements of the current zoning ordinance for a building lot. In such instances, an applicant seeking variances based upon the c1 hardship standard must demonstrate that efforts were made to bring the property into conformity with the zoning ordinance by attempting to acquire adjacent property or by offering to sell the nonconforming lot to adjacent owners. A hardship will be found if either adjacent property is not available for purchase by the applicant, or adjoining owners are not willing to buy the parcel at a price equal to the fair market value of the parcel, assuming all variances are granted.

Mr. Brady went on to explain the D variances

The board of adjustment has exclusive authority to grant d variances to permit a use or principal structure in a zone restricted against such use or principal structure, an expansion of a nonconforming use, a conditional use variance, an increase in the permitted floor area ratio, an increase in the permitted density, and a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the zone. Per the MLUL, were the Planning Board has been authorized to exercise the powers of the Board of Adjustment, the Mayor and Council Members must recuse themselves from participating in a hearing involving a D variance.

Mr. Brady stated a rule of thumb that should also be followed is if anyone has to recuse themselves from an application they should be leaving the room.

Mr. Brady gave a few different D variance scenarios.

The Planning Board has authority to adopt the master plan, exercise subdivision control and site plan review as to permitted uses, recommend changes to the official map, approve conditional use applications, make recommendations as to the zoning ordinance, and provide input on the municipal capital improvements program.

The MLUL authorizes the Board of Adjustment to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance”. Such an appeal may be taken by any interested party affected by the administrative officer’s decision. The appeal must be taken within 20 days of the decision although that period may be varied depending on actual knowledge of the decision by the appellant. The board’s function in dealing with this type of application is to make a decision as to whether or not the administrative officer’s decision was correct. The board is precluded from offering any variance relief to the appellant unless notice and all other required procedural provisions of the MLUL and the zoning ordinance had been complied with.

Mr. Brady stated the Master Plan should be looked at least every ten years, the Master Plan and the zoning and other land development ordinances must be re-examined by the Planning Board and recommendations made to the governing body as to appropriate changes. Failure to do so undermines the validity of the ordinances based on the Master Plan.

The Master Plan is a report or statement of land use and development proposals that must

# **Franklin Borough Planning Board**

## **Workshop Meeting Minutes for**

### **February 1, 2023**

contain, at a minimum, the following two elements. First, it must contain a statement of the objectives, principles, assumptions, policies and standards upon which the constituent propose for the physical, economic and social development of the municipality are based. Second, it must contain "land use element" that states its relationship to the principles in the first element, to any optional elements incorporated in the plan and to natural conditions within the municipality. must show existing and proposed development and state the relationship of this development to existing and proposed zone plans and ordinances. It must also include a statement of the standards of population density and development intensity recommended for the municipality. Other elements may also be included. The Master Plan acts as an expression of the ultimate planning goals and philosophy of the municipality.

Mr. Brady went on to explain site plans and subdivisions.

A "subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. Under the terms of the borough code, a "minor subdivision" contains not more than 3 new lots plus the remainder lot and does not involve a planned development, any new street, or the extension of any off-tract improvements. The requirements for minor subdivisions are less complex than those applicable to major subdivisions. When the applicant's case is completed, the public will be invited to offer relevant comments and factual information. Each member of the public who wishes to testify will be sworn in as a witness. The public's statements should be supportable as facts, not hearsay. Petitions are generally, not accepted. The chair may close the public portion of a hearing if the chair feels comments are repetitive or irrelevant.

At the conclusion of the hearing, after all parties have presented all of their testimony and the Board members have had an opportunity to ask all of their questions, the Board is required to make a decision based upon the evidence presented. The basis for the Board's decision should be articulated for the record by the Board members during its deliberation.

Every decision rendered by the Board must include findings of fact and conclusions of law and must be reflected in a formal resolution adopted by the Board. Generally, the Board members cast their votes after deliberations conducted at the conclusion of the hearing and a memorializing resolution prepared by the Board's attorney is adopted at the next succeeding meeting. As an alternative, the Board may only vote to authorize the drafting of a resolution with the actual decision being deferred until the written resolution can be reviewed. A majority of the members present at the meeting is required to approve an application, except where a "d" variance is requested, in which case five affirmative votes are required. A tie vote results in a denial of the application as does failure to receive 5 yes votes for a "d" variance. Only those board members who have been present for all meetings at which testimony on the application was given may vote on the matter; provided, however, that a member who was absent from one or more hearings will be eligible to vote if the member certifies to the board that he or she has read a transcript or listened to a recording of each meeting from which he or she was absent.

Generally, the MLUL requires a brief notice of the board's decision to be published in the official newspaper of Franklin Borough or a newspaper of general circulation in the township. Any appeal to the court must take place within forty-five days thereof.

Mr. Brady and the board members briefly discussed TCC meetings and what the purpose of those meetings are.

The board members asked questions in regards to what is discussed in a TCC meeting and if those conversations can be brought up during an application hearing.

Mr. Brady stated that the TCC meeting is entirely separate from the hearing.

**Franklin Borough Planning Board**  
**Workshop Meeting Minutes for**  
**February 1, 2023**

Mr. Brady did state that questions that were asked at the TCC meeting can be brought up at the hearing but cannot cloud judgment during the hearing.

Mr. Brady briefly gave an overview of everything that was mentioned.

Mr. Brady stated that the board should keep the document that was read and reviewed this evening as a resource for whenever a question should pop up and you need a refresher.

The board thanked Mr. Brady.

Ms. Schultz stated that she thought the workshop was very helpful as Mr. Suckey also stated.

Mr. Suckey thanked Mr. Brady for all the time he put into this workshop and stated that Mrs. Babcock should email the members who were not in attendance tonight to ask them if they would like a CD of this meeting.

Mr. Suckey stated that he thought this workshop would be beneficial for all members.

Mrs. Babcock stated that she would reach out to the members who were not in attendance tonight and make them CDs.

Mr. Suckey stated that he would continue with tonight's agenda and move on to opening the meeting to the public.

**OPEN PUBLIC SESSION:**

Mr. Suckey stated at this time he would open the meeting to the public.

Not seeing any one in the room. Mr. Suckey closed the meeting to the public.

**OLD BUSINESS:**

Ms. Schultz asked if anyone has heard anything in regards to the Mexican restaurant property.

Mr. Suckey stated that he spoke to Mr., Knutelsky earlier and he did in fact state that they have been approved they are just waiting on their permits which should be released sometime this week or next.

Mr. Suckey asked if there was anything else under old business. Not hearing any Mr. Suckey moved on to New Business

**NEW BUSINESS:**

None

**ADJOURNMENT:**

Mr. Suckey asked for a motion to adjourn.

**Mr. Friend** made a motion. Seconded by **Mr. Estes**.

Meeting adjourned at 9:45