

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
March 4, 2009

The meeting was called to order at 7:32 PM by the Chairman, Mr. 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."

ROLL CALL OF MEMBERS PRESENT: Mr. Correal, Mr. Gardell
Mr. Kopcso, Mr. Swiss,
Mrs. Murphy, Mrs. Alexander, Mr. Kell

ABSENT: Mrs. Bonis

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

APPROVAL OF MINUTES:

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board of Adjustment Meeting Minutes for February 4, 2009**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Gardell, Swiss, Murphy, Alexander, Kell

NAYS: None ABSTENTIONS: Kopcso

(Motion Approved)

APPROVAL OF RESOLUTIONS:

There were no resolutions to approve.

APPLICATIONS FOR COMPLETENESS:

There were no applications for completeness.

ADJOURNED CASES:

ZB-12-07-1 Garrera and Millier, "D" Variances, Block 40 Lot 35.

Mr. Kopcso stepped down from this application. Planning Board member John Christiano stepped forward to hear this application.

Mr. Kevin Kelly, attorney for the applicant stepped forward. Mr. Kelly said we were asked to do a couple of things at the last meeting; one was to produce a list of equipment. Mr. Kelly marked exhibit A-5, a list of equipment, prepared by Mr. Garrera. Mr. Kelly asked if this was all the equipment used at the property you talked about in your testimony at the last meeting. Mr. Garrera said that is correct. Mr. Brady asked if the tractors were part of the agricultural. Mr. Brady marked exhibit A-6, photo of three tractors. Mr. Garrera described the tractors and what they are used for. Mr. Kelly marked exhibit A-7, two dump trucks owned by Prestige

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Landscaping. Mr. Garrera explained exhibit A-7. Mr. Kelly marked this exhibit A-8, Certification of Formation of Prestige Snow Removal, the filed copy from the Treasure's office. Mr. Kelly marked exhibit A-9, certificate of formation of Prestige Lawn Maintenance a Limited Liability Company.

Mr. Knutelsky questioned the equipment list. Mr. Knutelsky said there was testimony at the last meeting that there could be a potential storage of a trailer with a backhoe for Alan Millier's excavating business. Is that the backhoe on this list or would that be separate. Mr. Garrera said that is separate.

Ms. Marsha Robins Shiffman, Planner for the applicant was sworn in at this time. Ms. Shiffman said she is a licensed professional planner in the State of New Jersey for almost 30 years. Ms. Shiffman told the Board her qualifications.

Mr. Kelly asked Ms. Shiffman if she prepared the formal report in this case which we submitted some time ago. Ms. Shiffman said yes. Mr. Kelly marked exhibit A-10, which is a colored map. Ms. Shiffman said this is the map she prepared; there is an aerial in the report, and we have updated that aerial map. Ms. Shiffman said the aerial in the report is a 2002 aerial; this is a more recent photo, 2007. Mr. Brady said mark that A-10, 03-04-09. Mr. Brady asked the Board if there were any objections to Ms. Shiffman testifying as the planner. Mr. Kell asked the Board members if there were any questions.

Ms. Shiffman said she visited the site and reviewed the Master Plan and Zoning Ordinance. She looked at the site and the surroundings as part of her preparation of her report. Ms. Shiffman described the site. Ms. Shiffman said there are three uses being proposed, commercial, agriculture and residential. Ms. Shiffman said the agricultural and storage of the equipment are interrelated. Ms. Shiffman described the zoning and the permitted uses. Ms. Shiffman said there are four variances being requested. Ms. Shiffman explained the term contractor yard.

Ms. Shiffman said this is in the R-1 zone. Ms. Shiffman said the Master Plan of 2003 discusses the R-1 zone as to provide low intensity and environmentally sensitive development. Ms. Shiffman talked about buffering and screening from the road. Ms. Shiffman discussed the goals and objectives of the Master Plan. Ms. Shiffman referred to her report on page 10. Ms. Shiffman said it talks about reserving the existing residential character. Ms. Shiffman said she thinks it does, the existing residence has been preserved and upgraded.

Ms. Shiffman talked about the positive criteria. Ms. Shiffman said you are looking at uses that combine and share the property. Ms. Shiffman said it has limited noise and no customers. Ms. Shiffman said she feels it meets the positive criteria proof as part of the D variance.

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Ms. Shiffman talked about the negative criteria. Ms. Shiffman said in terms of substantial detriment we look at whether this use will have an impact on the neighboring properties and would damage the character in the area. Ms. Shiffman said in her opinion having visited the site she doesn't think it will or has a significant negative impact. Ms. Shiffman said the uses with the barn and the storage area are significantly set back from Wildcat Road and set back from other buildings on adjoining properties. Ms. Shiffman said this use generates very limited traffic, just the employees coming to get their equipment and coming back. Ms. Shiffman said there is no other noise or visual impact other than what you see on the property. Ms. Shiffman said we can talk about additional buffering that the Board may require. Ms. Shiffman said in terms of detriment to the zone plan and zoning ordinance, she doesn't think there will be a detriment.

Ms. Shiffman said the majority of the activities associated with these businesses are not on this property which you need to think (about) as you are looking at the impact of this use. Mr. Kelly asked if this use is not permitted on this property in this zone would it be permitted anywhere else in the Borough. Ms. Shiffman said the Borough does not permit outdoor storage. Mr. Kelly asked in any zone. Ms. Shiffman said yes, that is her understanding. Mr. Kelly asked would there be any benefits as to granting this use to the general public. Ms. Shiffman said it provides an opportunity for this type of service to the community.

Ms. Shiffman said in terms of a use variance you need to look at special reasons. Ms. Shiffman said she thinks it does and that is summarized in her report. Ms. Shiffman referred to the summary in her report.

Ms. Shiffman said in conclusion she thinks the D variance can be granted based upon the criteria she mentioned. Ms. Shiffman said it is not detrimental to the public good or to the neighborhood and doesn't impair the zone plan. Ms. Shiffman said it is consistent with many of the Master Plan goals and objectives for this site.

Mr. Nelson said on page 8 of Ms. Shiffman's report there was a reference to the density of the R-1 zone being increased recently but he thinks it was decreased. Mr. Nelson said to Ms. Shiffman you referenced my report that indicated there were other nonresidential uses that are permitted in the zone. Mr. Nelson said those uses are public purposed uses, correct. Ms. Shiffman said she mention it because those kinds of uses can have a significant activity associated with it and that is why she wanted it mentioned. Mr. Nelson said right, but they are not commercial uses they are public purposed uses. Mr. Nelson said agricultural uses are permitted in the zone but again agriculture is land use that has been treated in a special way in NJ with right to farm and things of that nature. Ms. Shiffman said that is correct. Ms. Shiffman said she feels it is important when you look at this use to look at it as being a combination of uses. Ms. Shiffman said agriculture is one of three activities occurring on the property. Mr. Nelson said he doesn't disagree that there is some relationship between the equipment associated with an agricultural use and this use.

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Ms. Shiffman said some of the equipment that is on the property is to maintain that agricultural use.

Mr. Nelson said the commercial use of this site is concentrated to the front of the property so the 22 acres helps in terms of the properties being on Davis, to the front is Wildcat, it does create an impact on the residences on Wildcat. Ms. Shiffman said when she looked at the property; the use is behind the house. You see very limited use and limited storage from the road. Ms. Shiffman said it is setback 200 feet from the road, she doesn't see it as being close to the road. Mr. Nelson said the point he was making was the bulk of the 22 acres in terms of that being a buffer benefits the people on Davis Road not necessarily the people on Wildcat Road. Ms. Shiffman said they have a greater setback, that is certainly true.

Mr. Nelson asked how much area is being devoted to this commercial use. Ms. Shiffman said about two and a half acres but that included the house, barn and cleared area where they have the storage. Mr. Nelson said at some point they would have to delineate the limits of this. Mr. Nelson asked if Ms. Shiffman had any specific suggestions, would she work with the Borough professionals to develop a landscape plan. Ms. Shiffman said she would if the applicant gave the ok.

Mr. Knutelsky referred to his report dated December 30, 2008. Mr. Knutelsky said in testimony you alluded to the fact of a maintenance yard and how maintenance yards are for storing and parking vehicles. Mr. Knutelsky said fabricating items can be part of the maintenance operations. In your testimony, I didn't hear anything on either of those, so does that mean those uses will not occur on this site. Ms. Shiffman said her understanding was that vehicle repair and maintenance was not occurring on the site. Ms. Shiffman said when she visited the site and went through the buildings with Mr. Garrera he had indicated the vehicles were not even washed on the property.

Mr. Knutelsky said the agricultural vehicles on site are not part of the yard we are talking about or will they be part of the yard. Mr. Knutelsky said that is a permitted use in this zone so we need to separate those vehicles out from the commercial uses. Mr. Knutelsky asked if maintenance of those vehicles will be occurring on site. Mr. Garrera said only minor stuff. Mr. Knutelsky said he wanted to confirm that no maintenance was occurring in the yard.

Mr. Kell asked what kind of lighting was in the back. Mr. Garrera said none. Mr. Garrera said we have lights in the front of the building but we never use them. Mr. Kell asked what are the hours of operation for the landscaping business. Mr. Garrera said 8:00 to 4:30 usually. Mr. Brady asked Mr. Garrera, for the record, you said there were lights on the building but your rarely use them. What kind of lights are they. Mr. Garrera said he wants to say they are mercury vapor lighting; we are not down there much at night. Mr. Garrera said they are not on a sensor they don't come on if you pull in.

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Mr. Corral said you have 12 vehicles, will there be separate fuel storage on the property larger than a small can normally used. Mr. Garrera said no. Mr. Correal asked how would you fuel the vehicles. Mr. Garrera said go to the gas station. Mr. Correal asked about the tractors. Mr. Garrera said usually 5 gallon buckets. There was a discussion about the type of trucks Mr. Millier would be parking on the property.

Mr. Brady said he would prefer to ask questions first and once that is all done if people want to come up and be sworn in they can make statements. Mr. Kell said anyone that wishes to ask questions of Ms. Shiffman you can do that first and then we will proceed with anyone that has comments.

Mr. Gardell made a motion to open to the public application **ZB-12-07-1 Garrera and Millier, "D" Variances, Block 40 Lot 35**. Seconded by Mr. Swiss.

Thomas Markert, 14 Wildcat Road, stepped forward. Mr. Markert questioned the planning report, that there was nothing in it pertaining to roads accessing the property. Ms. Shiffman said it talks about the frontage on Wildcat Road and the driveway access on Wildcat Road. Mr. Markert is concerned that Mr. Millier's equipment is going to be stored there and these trucks will be traveling on Wildcat Road. Mr. Markert questioned the number of employees coming and going. Mr. Market questioned if the applicant would financially be able to do the buffering.

Jim Kilduff, 48 Wildcat Road, stepped forward. Mr. Kilduff said Ms. Shiffman you stated early that outdoor storage is not permitted in any zone in the Borough. Mr. Kilduff said did you know that the ordinance specifically enumerates zones where it is not permitted and there are zones that are not included in that list. Ms. Shiffman asked if that was a question. Mr. Kilduff said I have to ask questions yes. Mr. Kilduff asked did you know the ordinance enumerates specific zones where outdoor storage is not permitted and it is not all of the zones. Ms. Shiffman said she remembers reading it; she can look it up right now. Mr. Kilduff said you told the Board that outdoor storage was prohibited in all zones and that is not the case. Ms. Shiffman said if that is not the case she stands corrected.

Mr. Kilduff questioned the variances that were identified. Mr. Kilduff questioned the number of buildings and structures. There was a discussion. Mr. Brady said then that leaves 6 accessory structures. Mr. Garrera said 6 all together, house, barn/garage, two chicken coops, storage shed and a salt shed.

Mr. Kilduff asked Mr. Nelson if you are allowed two accessory structures in a residential zone is that another use variance for more than two. Mr. Kilduff said he believes the ordinance says you are allowed two accessory structures in a residential zone and there are limitations in square footage; if you have more than that number and you don't have farm assessment is that another use variance. Mr. Nelson said I think you can make that argument. Mr. Brady said it sounds like it very

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well could; he would have to take a look at the ordinance, with Mr. Kilduff mentioning something about square footage. Mr. Brady said if Mr. Kilduff has in fact identified something that requires a use variance then Mr. Kelly can decide to amend the application as necessary.

Mr. Kilduff asked if all the commercial uses can be grouped together in one variance. There was a discussion. Mr. Nelson said your primary question was can all of the D-1's be grouped together and he thinks that they can.

Mr. Kilduff showed Mr. Garrera a copy of his farm assessment application which was submitted in the summer of 2008. Mr. Brady asked the date on the assessment. The date was August 1, 2008. Mr. Brady asked Mr. Garrera if he recognized that document. Mr. Garrera said yes. Mr. Brady asked if that was the application. Mr. Garrera said correct. Mr. Kilduff said there is a line that says there is 21 acres devoted to agriculture proposes. Mr. Garrera said correct. Mr. Kilduff said he believes your testimony last month was about 3 acres devoted to agriculture. Mr. Garrera said when he filled out the application he devotes his whole farm to farming, he mows two and a half acres for hay but the whole farm as far as he is concerned is devoted to farming. There was a discussion on the number of acres being farmed.

Bob Matisko, 26 Wildcat Road, stepped forward. Mr. Matisko questioned what the 18 acres was used for. Ms. Shiffman said you have a large property that is 22 acres but the property is really constrained because of the flood hazard area and the wetlands. Ms. Shiffman said it limits the kinds of use that can occur on the property.

Jeff Hilbert, 101 Davis Road, was sworn in at this time. Mr. Hilbert said he is here to support Mr. Garrera. Mr. Hilbert said he has cleaned the property up and he is a wonderful neighbor.

Wayne Yahm, 9 Davis Road, was sworn in at this time. Mr. Yahm said what was done with the property is 100 times better then when he first moved up here. Mr. Yahm said the comments/questions earlier about whether the Garrera's would maintain or listen to the Board restrictions personally he found that offensive. Mr. Yahm said he supports what they are trying to do.

Thomas Kardos, 113 Davis Road, was sworn in at this time. Mr. Kardos said he lived there for 18 years. He never heard any noise from down there. It is very well kept and the equipment down there is very well kept and clean.

Tim Becker, 64 Wildcat Road, was sworn in at this time. Mr. Becker asked Mr. Kelly what he thought the impact of surrounding residences will be in terms of property value; would it be a positive to selling a house or a negative. Mr. Brady said Mr. Kelly is not qualified to do that. Mr. Becker asked Mr. Kelly if he explored precedence for variances granted on Wildcat Road in the whole presentation. Mr.

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Kelly said yes. Mr. Becker asked what he came up with on that. Mr. Kelly said Marsha (Ms. Shiffman) looked throughout the county and he has a whole section on case law. Mr. Kelly said if you don't have real good conditions like this you don't even try to get a variance. Mr. Becker said so what did you come up with as far as precedence on Wildcat Road as far as commercial variance. Mr. Kelly said he didn't research Wildcat Road with that; he did the legal research in terms of standards. Mr. Becker asked the planner (Ms. Shiffman) if she did the work on Wildcat Road for precedence. Ms. Shiffman said no, because she takes the approach that every case is different and you have to review every case on its own merit. Mr. Becker said the reason he was bringing this up is because his property is two doors from Frank's property and it does have a commercial variance on it. Mr. Becker said he got that in 1997. Mr. Becker explained how he went about getting the variance and the questions that he was asked during his variance process and the questions he was asked about truck activity. Mr. Becker is concerned about the truck activity for this application.

Mr. Becker said he doesn't doubt your (Mr. Garrera) interest in Franklin, in terms of being good heartedness and good nature towards preserving the land, but at some point you (Mr. Garrera) have to accept the responsibility of what you created here. Mr. Becker said if you have residences on Wildcat Road upset, it is because you slide these business operations in under the fence. Mr. Becker is concerned about the effect this will have on the residential area.

Donna Arrigo, 33 Ben Franklin Drive, was sworn in at this time. Ms. Arrigo is concerned about Frank's (Garrera) character. Ms. Arrigo said if something was done wrong then he is here to make it right. Ms. Arrigo is concerned about other businesses wanting to come to Franklin and being scared away.

Jim Kilduff, 48 Wildcat Road, was sworn in at this time. Mr. Kilduff talked about the history of the property, the farm and farm animals that were there. Mr. Kilduff said he wanted to tell the Board about the violations on the property. Mr. Kelly said objection. Mr. Brady said what is the reason for the objection. Mr. Kelly said it has nothing to do with this case; we are here to decide whether or not a variance should be granted. Mr. Kelly said if there are violations he doesn't know what happened to them; he hasn't been given them and what could they possibly have to do with the issues in front of the Board. Mr. Brady said were the violations issued to Mr. Garrera. Mr. Kilduff said he thinks they were addressed to Mr. Millier the co-owner. Mr. Brady said he would like to see what Mr. Kilduff purposes to show and have a conversation with Mr. Kilduff and Mr. Kelly if we may. I don't want to go over violation notices that haven't been proven. Mr. Brady said Mr. Kelly I do recall you saying there were no outstanding violations perhaps you said there were no violations period, and perhaps something in that package is relevant. Mr. Brady said he would like to take a short recess to look at the violations Mr. Kilduff has in his hand. Speak with Mr. Kilduff and Mr. Kelly. Mr. Kelly asked to include Mr. Garrera in this. Mr. Brady said sure.

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Mr. Kell asked for a motion to adjourn for five minutes. Mr. Correal made a motion at 9:45PM for a 5 minute break. Seconded by Mrs. Murphy. All were in favor.

Mrs. Murphy made a motion to reconvene at 9:54PM. Seconded by Mr. Swiss. All were in favor.

Mr. Brady said we had a discussion off the record and reviewed some documents that Mr. Kilduff wanted to put into evidence. Mr. Brady said his initial reaction was while I would inform the Board generally of what the documents are, which are letters from 2004 through 2006 from the Borough zoning officer to either Mr. Garrera or to his partner Mr. Millier. These documents indicated that the zoning officer was of the opinion that some of the activities on the property were not permitted under the zoning ordinance including some of the activities that the applicant is seeking approval for here. Mr. Brady said he was going to let Mr. Kilduff make some comments relevant to what the decision making process was tonight. Mr. Brady said Mr. Kilduff would like to submit these into evidence and Mr. Kelly has now requested that they be submitted into evidence. Mr. Brady said he wants that in the record that Mr. Kelly wants them put into evidence. Mr. Kelly said absolutely. Mr. Brady said he is going to mark them all into evidence; however, having been marked into evidence, he is of the opinion that it is improper to go through each one and have a mini trial or to have testimony about each one. Mr. Kelly said we are either going to deal with this issue or we are not and apparently we are. Mr. Brady said there were no summonses issued as he understands. Mr. Kelly said they are to prejudice this case; there is no other reason for them and that is why they are irrelevant. Mr. Kelly said if they are going to be in the case we are going to have to deal with them, there is going to be cross examination and there is going to be rebuttal. Mr. Brady said he will have to make a lot of ruling as to the proper examination and the proper scope of rebuttal.

Mr. Kell reminded the public they cannot make comments to the Board unless they address the Board.

Mr. Brady said he is marking the documents K for Mr. Kilduff with today's date and he will identify for the record what they are. Mr. Kilduff said he wants to make it clear he didn't ask that they be submitted into evidence that was Mr. Kelly; he only wanted to talk about them. Mr. Brady said Mr. Kelly has now asked them to be submitted. Mr. Brady said do you have any objections on them being submitted. Mr. Kilduff said no.

Mr. Brady said:

K-1, letter from zoning officer at that time Joseph Butto to Mr. Millier, dated November 30, 2004.

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K-2, is a copy of an application for a zoning permit, two pages, one is the application, the application is dated March 29, 2005. The denial is the second page which is dated April 6, 2005.

K-3, is a letter from Cynthia Collins attorney at law dated September 14, 2005, to the Borough of Franklin.

K-4, is a notice of violation from the Borough of Franklin to Mr. Millier dated March 18, 2005.

K-6, is a notice from the zoning officer of the Borough of Franklin dated January 25, 2006, to Mr. Millier. (On the exhibits that were handed in this is marked K-5)

K-6, is a certificate dated 9/14/06 for a renovation of the barn.

Mr. Kelly said he doesn't get the same numbers. Mr. Kelly and Mr. Brady discussed the exhibits that were just marked.

Mr. Kelly said he wanted to talk to his client. Mr. Brady said are you asking for the meeting to be carried. Mr. Kelly said he just wants to talk to his client to see how he wants me to handle this. Mr. Kelly consulted with Mr. Garrera. Mr. Kelly spoke to Mr. Garrera and he wishes to finish his application tonight.

Mr. Brady said Mr. Kilduff is back before the microphone and he is still under oath. Mr. Kilduff said one of the checklist items in an application is that copies of all zoning officer activities be distributed or attached to the application. Mr. Kilduff said he would think most if not all of these documents you would already have. Mr. Brady said he believes that is the case. Mr. Brady said we have marked them into evidence, he thinks it is fair for you to comment on whether these give some concern on how it effects this Boards activities tonight. Mr. Brady said he is not going to allow us to try notice of violations from two, three or four years ago. Mr. Kilduff said his intent was to summarize the violations; he thought it was important that the Board know. Mr. Kilduff said there was a lot of testimony that there were no violations outstanding on the property and he is saying that is not so. Mr. Kelly said objection that is not so. Mr. Brady said he takes it the basis of the objection is there has been no charge against Mr. Garrera. Mr. Kelly said let along a conviction or a charge. Mr. Brady said Mr. Garrera or Mr. Millier had received over a period of three or four years some notices from the zoning officer at the time, that the zoning officer felt some of the activities were not permitted under the zoning ordinance. Mr. Brady said you can ask Mr. Garrera if he would say this or not, but that is the reason why the application is here in order to receive approval from this Board for the activities the zoning officer had a problem with. Mr. Kelly said yes. Mr. Kilduff said it is a concern to him that there are violations on the property and these have been going on for a long time; that is a problem and a concern.

Mr. Kilduff had a Google picture of a track for ATV and recreation vehicles that once was a pasture. Mr. Kilduff asked if they wanted that submitted so he can pass it around to the Board. Mr. Kelly said he wants it in the record. Mr. Kilduff said it is a Google satellite shot of the property showing the ATV recreation vehicle track. Mr.

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Brady asked if Mr. Kilduff knew when the picture was from. Mr. Kilduff said he doesn't, he thinks it is 2008 Google but he couldn't be sure. Mr. Brady said he doesn't think this has been properly verified. Mr. Brady said he is going to rule it is inadmissible. Mr. Kilduff read a statement to the Board.

Mr. Kelly asked Mr. Kilduff what his position was with the municipality. Mr. Kilduff said he is the Planning and Community Development Director. Mr. Kelly asked you have been in that capacity throughout the period of time from 2004 until now is that correct. Mr. Kilduff said right. Mr. Kelly asked the documents that you introduced tonight, where did you get them from. Mr. Kilduff said he obtained them by requesting and paying for copies for OPRA requests. Mr. Kelly asked Mr. Kilduff if he had the OPRA requests. Mr. Kilduff said he may have some with him. Mr. Kelly asked if he would produce them. Mr. Kilduff said he has receipts for copies, he has a public records request for the zoning application, and he did another request for the farmland assessment application. Mr. Kelly said he would like to make those as the applicant exhibits. Mr. Brady asked Mr. Kelly what (exhibit) we were up to. Mr. Kelly said A-11. Mr. Brady said A-11, 03-04-09. Mr. Kelly said there are two of them. Mr. Brady said he has one request of two pages and various receipts. Mr. Kelly said do you want to mark them separate or all together. Mr. Brady said mark them all as one. Mr. Kelly said A-12. Mr. Brady said A-11, I think. Mr. Kelly said no. Mr. Brady said A-12.

Mr. Kelly said in all of the documents you sought you have not found one violation issued by this Borough to his clients, is that correct. Mr. Kilduff said he doesn't know. Mr. Kilduff said you asked if any summonses have been issued; I don't know if any have been issued. Mr. Kelly asked if his clients were convicted of any zoning violations in this Borough with respect to any of these uses of the property. Mr. Kilduff said he doesn't know that he has, he hasn't seen any convictions. Mr. Kelly said did you look. Mr. Kilduff said he didn't see them in the documents he got from his request.

Mr. Brady reminded Mr. Garrera he was still under oath. Mr. Kelly asked Mr. Garrera if he saw all the documents that were produced tonight by Mr. Kilduff. Mr. Garrera said that is correct. Mr. Kelly asked if he had seen them before. Mr. Garrera said yes he has. Mr. Kelly asked if any of those were accusing you of zoning violations. Mr. Garrera said yes. Mr. Kelly asked if he was ever charged with any. Mr. Garrera said we have never been charged with anything. Mr. Kelly asked what you did in response to those letters. Mr. Garrera explained the process they went through to fix the problem.

Hector Acevedo, 8 Wildcat Road, was sworn in at this time. Mr. Acevedo said he likes the town and the neighborhood. Mr. Acevedo said we need to find a solution; it is a good town, let's make it work.

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Tom Markert, 14 Wildcat Road, was sworn in at this time. Mr. Markert said he doesn't have a problem with this as long as the Board thinks it is the correct thing to do.

Mrs. Murphy made a motion to close to the public application **ZB-12-07-1 Garrera and Millier, "D" Variances, Block 40 Lot 35**. Seconded by Mr. Swiss. All were in favor.

Mr. Kelly gave a summary of the application. Mr. Kell said he has 4 "D" variances, one for non-conforming use, one for more than one permitted use on the property, storing material, equipment and vehicles, and another one for storing commercial vehicles. Mr. Brady said there is possible a fifth, which is more than two accessory structures that may require a variance.

Mr. Christiano said he is concerned about the missing testimony from Mr. Millier. Mr. Christiano said the items Mr. Garrera is putting on the property are small items but a tandem dump truck is a big piece of machinery. Mr. Brady said that can be addressed separately. Mr. Christiano asked about the wetlands and the relocation of the salt shed. Mr. Knutelsky said it was more demarcation of the disturbed area to avoid creeping from that area that is maintained and plowed. Mr. Knutelsky said we need to demarcate the disturbance as part of this application with a fence, landscaping, some way to avoid it creeping any further than it is right now. Mr. Christiano said he doesn't know if a fence would be appropriate. Mr. Knutelsky said maybe a split rail fence, some physical barrier that can't be moved. Mr. Knutelsky said there were some ideas of screening along that area that would be a way to demarcate it as well. Mr. Kelly said we agreed to those. Mr. Christiano asked about the relocation of the salt shed. Mr. Knutelsky said Wade Wander Ecological in his letter recommend that the salt shed be removed. Mr. Knutelsky explained why. Mr. Knutelsky said you can have a condition any storage on site should meet NJDEP criteria.

Mrs. Murphy said she passes there every day and nothing stands out and she knows other contractors in town that park their vehicles on their property. Mrs. Murphy said she didn't think there was anything wrong with that. Mrs. Murphy said as far truck traffic, she is on the corner of Mabie and Hemlock and there are tractor trailer coming around the corner and are going to flip over some day. Mrs. Murphy said she is more concerned with that than trucks going down Wildcat Road.

Mr. Correal said the improvements that are there have been a relief. Mr. Correal said Mr. Kilduff had no problem with the farming aspect; it is the commercial end and truck traffic that seemed to cause concern. Mr. Correal said we haven't heard from Mr. Millier as to what type of trucks would be there. Mr. Correal said they are not going to have a retail operation.

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Mr. Kell said the one family residence does block a lot of the buildings on the property; he has not seen any of Mr. Millier's trucks parked there. Mr. Kell said he doesn't know what they look like but in the last two months he hasn't seen any other trucks other than the ones in this application.

Mr. Knutelsky said he heard two questions about Mr. Millier and his equipment that is going to be stored on site. Mr. Knutelsky said if we are talking about conditions, he thought there was testimony from the applicant that there is going to be one truck with a trailer; there wasn't going to be multiple trucks. Mr. Brady said in terms of Mr. Millier's operation he thinks there was testimony that once in a while he would bring over a truck. Mr. Brady said this can be separate, the snowplowing and landscaping go together. Mr. Kelly said he thinks you have every right to get more detail there and he agrees with Mr. Brady's idea of separating that; maybe he will be back before the next meeting in his own words. There was a discussion on this. Mr. Kelly said vote on the application tonight and limit Mr. Millier to one truck. Mr. Knutelsky asked a truck with a trailer. Mr. Brady said with a trailer and a piece of equipment.

Mrs. Murphy made a motion to approve application **ZB-12-07-1 Garrera and Millier, "D" Variances, Block 40 Lot 35**, four "D" variances, with some conditions as far as buffers. Mr. Knutelsky said you want to make sure they are in compliance with NJDEP rules and regulations for disturbance area and stock piles on site. Mrs. Murphy said the neighborhood buffers, no more than 48 hours parking and look at the lighting.

Mr. Brady said a demarcation that physically keeps expansion. Mr. Brady said no flashing light. Mr. Brady said idling of engines on site, how would we word that. Mr. Knutelsky said idling of engines you usually see ten minutes maximum time frames. Mr. Brady asked Mr. Knutelsky about item number 12 of his report, maintenance of the driveway. Mr. Knutelsky said because it is a commercial use on a residential driveway he would like to see some type of maintenance to make sure the residential access to the site is always maintained. Mr. Nelson said there needs to be some clarification to the scope of the landscaping. Mr. Brady said he would suggest that one of the conditions be on lighting, consult with Mr. Knutelsky and on landscaping, consult with Mr. Nelson. Mr. Brady asked Mr. Kelly if that was ok. Mr. Kelly said yes. Mr. Nelson said there was an issue if the landscaping was to be installed all at once or over a period of time. Mr. Brady said have an agreement with Mr. Nelson on phasing of installation. Mr. Brady asked about the specific hours of operation. Mr. Brady said no retail, chips come from a tree company not on site, no storage of pesticides on property, no fuel tanks other than 5 gallon residential size, a revised map showing what the limits of the operation are and where the various structures are located. Mr. Brady said he takes it from Mrs. Murphy's motion if it is necessary for a variance for extra accessory structures like sheds that is included in the approval you made. Mr. Brady said the outhouse is gone and will remain gone. Mr. Brady said the shed will be relocated in accordance with DEP and won't be

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enlarged. Mr. Kelly said correct. Mr. Brady said the motion would include all those conditions, if someone would like to second that. **Seconded by Mr. Gardell.**

Upon Roll Call Vote:

AYES: Correal, Gardell, Swiss, Murphy, Alexander, Christiano, Kell

NAYS: None ABSTENTIONS: None

(Motion Approved)

Mr. Christiano stepped down. Mr. Kell thanked Mr. Christiano for coming and sitting in on this application. Mr. Kopcsó returned to the dais.

APPLICATIONS TO BE HEARD:

OTHER BUSINESS:

PAYMENT OF BILLS:

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board Escrow Report for March 4, 2009.** Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Correal, Gardell, Kopcsó, Swiss, Murphy, Alexander, Kell

NAYS: None ABSTENTIONS: None

(Motion Approved)

DISCUSSION:

Mr. Kilduff briefly summarized Sewer Service Area and Highlands Plan Conformance Grant.

CORRESPONDENCE:

Mr. Kell said there was some correspondence about soil erosion. Mr. Kilduff said that was in the packets.

OPEN PUBLIC SESSION:

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

No one from the public stepped forward.

Mr. Swiss made a motion to Close to the Public. Seconded by Mr. Correal. 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. Swiss. All were in favor. Meeting was adjourned at 11:10 PM.

Respectfully Submitted,

Robin Hough
Secretary