

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
January 7, 2009

The meeting was called to order at 7:30 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, Mrs. Bonis, Mr. Gardell
Mr. Kopcso, Mr. Swiss
Mrs. Murphy, Mr. Kell

ABSENT: Mrs. Alexander

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 December 3, 2008**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

APPROVAL OF RESOLUTIONS:

There were no resolutions approved.

APPLICATIONS FOR COMPLETENESS:

There were no applications for completeness.

ADJOURNED CASES:

APPLICATIONS TO BE HEARD:

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

Mr. Kell said their attorney Mr. Kelly is sick and is unable to attend tonight. Mr. Kell said Mr. Kelly asked that the application be carried to the next meeting in February. Mr. Kell said if there is anyone here for the Garrera and Millier application this application will be heard next month, February 4, 2009, at 7:30.

ZB-08-08-1 Damoa LLC. Preliminary and Final Site Plan, "C" and "D" Variances, Block 54 Lots 1, 22.01 and 22.02.

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Mr. Carl Nelson, attorney for the applicant stepped forward. Mr. Nelson said the project is for five stores and a restaurant. Mr. Nelson said they have been planning this with the Borough consultants since the fall of 2006. Mr. Nelson said they originally had applied to the Planning Board for site plan approval. Since they (now) included the property on Taylor Road they had to come here (before the Zoning Board) for the use variance. Mr. Nelson said he would like to address the use variance first so we know whether to proceed with the design already proposed.

Mr. Brady said you noticed everyone on the tax list, we had asked you to notice lot 16. Mr. Nelson said he did. Mr. Brady said Lot 16 Block 55, addressed to Struble. Mr. Nelson said that sounds right.

Mr. Moon Kim, architect for the applicant, was sworn in at this time. Mr. Nelson asked Mr. Kim where he received his degree. Mr. Kim said from Cornell University. Mr. Kim said he practiced in New Jersey for over ten years. Mr. Nelson asked if he testified before Planning and Zoning Boards before. Mr. Kim said yes.

Mr. Brady explained to Mr. Kim how to mark the exhibits. Mr. Kim said he has two pictures, exhibit A-1, 01-07-09 commercial farm stand structure on Rte. 23. Mr. Kim marked A-2, 01-07-09, showing the residential building, lot 1 and the other residential lot.

Mr. Nelson said we have a display of pictures, do we mark them as A-3 or do we mark them individually? Mr. Brady said his concern is if we mark them as a group and we talk about them it would be difficult to know which picture they were referring to. Mr. Nelson said we will call it A-3 and mark each drawing A, B, C etc. Mr. Brady said for the record A-3 01-07-09, is a display board containing color renderings, profiles and elevations. Mr. Brady asked Mr. Nelson if those drawing were the same as the supplementary drawings that were submitted to the Board. Mr. Nelson said yes.

Mr. Kim explained what was proposed for the property. Mr. Kim said about 11,000 sq. foot coverage, one restaurant and five retail stores. Mr. Kim explained the building layout using exhibit A-3.

Mr. Nelson said the primary purpose tonight is to present the planning testimony before we got into the details of the site plan to give an overview of what was proposed. Mr. Kim said he designed two different shapes for the roof, one is a flat roof and one is a sloped roof. Mr. Kim said he prefers the flat roof. Mr. Knutelsky said they prohibit flat roofs unless there is justification as to why a flat roof has to be proposed. Mr. Knutelsky said if the span is large and you can't do a sloped roof, a flat roof maybe be permissible. Mr. Brady said this has to be addressed but it is not part of the use variance.

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Mr. John Peel, planner for the applicant was sworn in at this time. Mr. Peel gave his qualifications. Mr. Peel said he was a licensed professional planner in the State of New Jersey for 15 years. Mr. Nelson asked the Board to accept Mr. Peel as the professional planner. No one objected.

Mr. Peel said there are three lots on the site, two in the commercial zone and the third lot is lot 1 which is the residential lot that fronts only on Taylor Road. Mr. Peel said there are a number of non-conforming issues on the existing commercial zone lot. Mr. Peel said that lot is irregularly shaped and it is difficult to design. Mr. Peel said he doesn't think there is anything you can design that conforms with the HC zone and the ordinance requirements, that is the catalysts for all of the variance relief.

Mr. Peel said he reviewed the Borough Master Plan for consistency, and it appears that the overall use of the property is consistent with the master plan goals to the Rt. 23 corridor. Mr. Nelson asked Mr. Peel to describe the surrounding area. Mr. Peel said they prepared a small environmental report about a year ago that shows the existing character of the region. Mr. Peel said he believes it was submitted. Mr. Knutelsky said, for the record, our report states Stephen Kesnter environmental report prepared for the project dated November 23, 2007, and the supplemental PK Environmental Analysis report is attached. Mr. Brady said he found it in his packet so if everyone else has it we don't need to mark it.

Mr. Peel said it (the report) has some aerial photos that show Rt. 23, across from Quick Chek and Wal-Mart. Mr. Peel said to the west is the residential neighborhood. Mr. Peel explained the surrounding neighborhood.

Mr. Nelson asked Mr. Peel, if he had reviewed the Master Plan and the Zoning Ordinance relevant to this site. Mr. Peel said that is correct. Mr. Nelson asked Mr. Peel to describe the variances that are required. Mr. Peel said there are a number of "C" variances required, lot area, lot depth, front yard, side yard, and minimum depth of a corner lot. Mr. Peel stated what was required for each variance and what was proposed. Mr. Peel said there are two front yards. Mr. Knutelsky said along the state highway since the state highway is greater than a 50 foot right-a-way it would only be 100 feet along the state highway. Mr. Knutelsky said along Taylor Road since the right-a-way width is only 33 feet you would compensate to try and get close to a 50 foot right-of-way. Mr. Knutelsky said along Taylor Road it would be a 108 and a half foot set back. Mr. Knutelsky said there are two front yards and according to the definition in our ordinance there is no rear yard, it is a side yard in the back.

Mr. Peel said the use variance is the use of a commercial project in a residential zone. Mr. Nelson asked Mr. Peel to describe to the Board what is required to grant a use variance and describe your analysis. Mr. Peel said for a use variance special reasons have to justify beneficial use. Mr. Peel said it was an undersized lot, the "C"

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variances triggers the "D" variance. Mr. Peel said they included the residential lot to improve the dimensions of the other two highway commercial lots. Mr. Peel said that is the special reason. Mr. Peel said the extension of the zone is consistent with the Route 23 commercial district. The inclusion of the Taylor Road lots or the expanded length along Taylor Road allows for ingress into the project off of Taylor Road.

Mr. Nelson asked if this property was not included in this site, what would be the impact of this commercial development, it would be surrounded on two sides by commercial development and the commercial development would have to be built around this lot. Mr. Peel said that is correct, the impact to the project would be negative because it wouldn't allow for a squared off corner. Mr. Peel said he doesn't think the negative impact to the neighbors would decrease in any fashion.

Mr. Peel said with respect to the negative criteria the project is adjacent to the residential neighborhood we are trying to prove that the variance relief is not unreasonable. Mr. Peel said with respect to potential buffering and screening along the residential boundary, that visual impact can be softened in addition to good architectural design. Mr. Peel said the view will be altered but his opinion is it won't be substantial; you will still be looking at a commercial area. Mr. Peel said the existing nature of the lot is not attractive and could be improved with planting, buffering and screening.

Mr. Nelson asked Mr. Peel if he could describe the change in elevation between the existing residences and Rt. 23. Mr. Peel said the homes along Lozar are much higher than the lot in question. Mr. Peel said there is a strong topographic drop off for the southern edge between the residential area and the commercial zone. Mr. Peel said if you are up on Lozar there is nice vista across the valley to the mountain side, that will not change.

Mr. Nelson said in summary the plan works better with the inclusion of the residential lot. Mr. Peel said he believes so. Mr. Peel said with respect to the positive criteria the planning benefits of the proposed project does encourage the appropriate use and development of the property, promoting public safety, general welfare and provide retail and potential jobs. Mr. Peel said it does not conflict with general welfare of the neighboring municipalities, the County or the State plan; it is consistent with highway commercial development. Mr. Peel said it promotes a desirable visual environment when you incorporate the architectural plans that Mr. Kim presented. Mr. Peel said he thinks it will be a nice improvement to the neighborhood.

Mr. Ken Nelson said there is an alternative that you didn't mention, and he isn't suggesting this is an alternative to pursue. Mr. Nelson said one possibility would be to alter the zone line so that the entire property was in the HC Zone. Mr. Nelson said the applicant didn't go in that direction. Mr. Nelson asked them to show the zone line, he said it is unusual that the zone line is drawn that way. Mr. Peel

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explained the zone line. Mr. Nelson said when the zone line was drawn the adjoining residential property was included in the HC Zone and it is not clear why it was done that way. Mr. Nelson said you testified to the positive and negative criteria. With respect to the "D" variance, it is not clear to me if you are asking the Board to vote on that tonight. Mr. Carl Nelson said yes. Mr. Ken Nelson said are you asking the Board to vote on the "C" variances. Mr. Ken Nelson said he believes the "C" variance are directly related to the site plan and his suggestion is if the Board votes on the "D" variance, fine; but he thinks the "C" variances, being directly related to the site plan, should be postponed until we get into the site plan. Mr. Carl Nelson said he agreed and he intended to go with just the use issue tonight because if the Board does not agree that the lot should be part of it engineer revisions will have to be redone. Mr. Ken Nelson said he may have some disagreements about some of the "C" variance proofs. Mr. Nelson said not that the "C" variances shouldn't be granted but possible to what extent they should be granted. Mr. Ken Nelson said we could get into that with the site plan.

Mr. Gardell made a motion to open to the public application **ZB-08-08-1 Damoa LLC. Preliminary and Final Site Plan, "C" and "D" Variances, block 54 Lots 1, 22.01 and 22.01.** Seconded by Mr. Swiss. All were in favor.

Kevin Lermond, 44 Taylor Road, was sworn in at this time. Mr. Lermond questioned the procedure of comments and questions. Mr. Brady said you are sworn in to ask both questions to the two witnesses and if you want to make a comment you can do that. Mr. Lermond said he is used to hearing the Boards professionals' side. Mr. Ken Nelson said we did not get engineering testimony; the applicant has indicated he wants the application bifurcated and just have the Board rule on the use variance. Mr. Nelson said many time the engineering testimony would be presented about the site plan details, the Board hasn't gotten the full picture of what is being proposed. Mr. Nelson said if the Board votes on the use variance he thinks Mr. Brady would suggest that if it were to rule positively on the use variance the approval would be subject to the granting of the site plan and the "C" variances. Mr. Nelson said if the use variance is approved the Board may decide that the "C" variances and the site plan should not be approved. Mr. Nelson said in this case the whole thing is denied. Mr. Ken Nelson said he is uncomfortable that we didn't get more testimony on the site plan details themselves. Mr. Carl Nelson said he respectfully disagrees that you don't have enough detail to make that decision but that is the Board's call. Mr. Ken Nelson said he doesn't want the Board to be trapped into having to approve the site plan and "C" variances because they have approved the inclusion of the 50 by 100 foot lot into the overall project. Mr. Ken Nelson said for the record; in terms of the over all site what percentage of the overall site is that residential lot. Mr. Peel said the whole site is one and a half acres and the small residential lot is approximately one eighth of an acre 50 feet by 110 feet, that is about one twelfth of the overall acreage.

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Mr. Brady said he shares Mr. Ken Nelson's concern that if any granting of the use variance was given at this point it would have to be conditioned on the approval of the entire site. Mr. Brady said, you as Board members have to decide if the applicant has presented enough site details that you feel comfortable. Mr. Carl Nelson said couldn't you put a condition in the approval? Mr. Brady said if the approval of the site plan doesn't occur then the variance portion of the approval disappears. Mr. Carl Nelson said conditioned upon an approved site plan. Mr. Ken Nelson said if the Board does approve the use variance there should be something in the resolution stating that the use variance approval does not in any way rule on the merits of the site plan and "C" Variance. Mr. Ken Nelson said the site plan may change and the "C" variance may be altered when we get into the detailed discussions about those. Mr. Carl Nelson said that is acceptable. Mr. Ken Nelson said he believes that lot is about 7 percent of the total project.

Mr. Lermond said that discussion made him feel comfortable. Mr. Lermond is concerned that there wasn't enough testimony. Mr. Lermond is concerned about the many different plans that have drastically changed. Mr. Lermond feels there wasn't enough testimony. Mr. Lermond said somebody said it would be better if you had another piece of property, he would like on the record who recommended that this was the right way to go. Mr. Lermond asked why does that seem more fitting. Mr. Carl Nelson explained why they acquired that property.

Mr. Lermond said you are not using that piece of property to improve the buffer situation. Mr. Carl Nelson said we have drawings that show what we think it will look like. Mr. Lermond asked what it would look like from Taylor Road. Mr. Kim showed on the display what this would look like from Taylor Road.

Mr. Ken Nelson said from a planning point of view a good argument could be made to include this 50 by 100 foot lot as part of the project and therefore the use variance could be approved. Mr. Ken Nelson said he feels there is enough testimony provided that can support that. Mr. Ken Nelson said at the same time he doesn't feel that there was testimony provided that would suggest that most of the 50 by 100 foot lot should accommodate as much of the structure as the site plan currently shows, the Board hasn't had enough testimony on that to make that decision.

Mr. Lermond said he is concerned about what is going on at the site. Mr. Lermond said we enjoyed the small farm market, the small oil company, this is a little neighborhood. Mr. Lermond said there were plans that other things fit on there and in his opinion was less development than this one. Mr. Lermond explained his view from Taylor Road. Mr. Lermond is concerned about the change. Mr. Lermond said there were some meetings outside the activities he either missed the invitation or wasn't invited.

Mr. Carl Nelson said there was a question as to the height of the building from Taylor Road. Mr. Kim asked do you want me to designate this A-4. Mr. Kim said

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this is the residential house on Taylor Road site plan showing the location of the building. Mr. Brady marked exhibit A-4, existing residential building, Lot 22.02. Mr. Kim explained exhibit A-4. Mr. Kim explained the height and view for the building from Taylor Road. Mr. Brady said since we colorized that document let's mark it as A-5, 01-07-08. Mr. Nelson said it is sheet A-2 for plans prepared by Moon Kim, Preliminary Elevations, latest revision date August 31, 2008.

Mr. Knutelsky said in relative elevation, the roof of the residential building that will be demolished as part of the application, the roof line is higher then what you are proposing as part of your building, is that what you are saying. Mr. Kim said yes it is higher then the building. Mr. Knutelsky said when you look at the site plan and the homes on that side of Taylor Road, the height of that roof line is now acting as a solid buffer to the homes on the opposite side of Taylor Road as they look up Rt 23. Mr. Knutelsky said the new building you are proposing is further to the west so it is not acting as a buffer that was there before. Mr. Lermond said then your testimony is that it is less of a buffer. There was a discussion on the buffer between residential and commercial. Mr. Knutelsky said you (the Board) heard a couple of times there are other plans, in our meeting with the applicant, the applicant did come to the professional to see how it could be developed. Mr. Knutelsky said there were multiple drawings; they actually made an application to the Planning Board with a set of drawing that would fit on that property. Mr. Knutelsky said those plans are not before the Board those are not the ones that you have seen so when you hear 5 foot off the property line that is not something this Board has seen and that is something you should keep in mind. Mr. Knutelsky said we should stick to what is before us now.

Jim Kilduff was sworn in at this time. Mr. Kilduff provided some back round information to the Board. Mr. Kilduff said when an applicant comes in before the Planning Board they can have concept meetings; the Zoning Board does not have that ability. Mr. Kilduff said during those meetings someone made a comment that it was too bad you don't have that lot to make it square off and that isn't an exact quote but that is the basis of how the conversations went. Mr. Kilduff said that is why they are here tonight. So there were changes in the plans until this became a Zoning Board application. Mr. Kilduff said, as to how the zone line was drawn, he was the Planning Director in 2003, as best as he can recall, the residential house that is adjacent to this property was owned by the Franklin Farm Market, it enlarged the lot and made the lot better for commercial use and potential future commercial development. Mr. Kilduff said the Board agreed with that, when the zoning was done that one house was added into the commercial zone.

John Heller, 3 Lozaw Road, Franklin, was sworn in at this time. Mr. Heller said from his view he doesn't see much, only roof tops. Mr. Heller is concerned about the light and the noise.

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Mr. Lermond stepped forward. Mr. Lermond said there was a question about over utilization, his response is yes, previous burden is similar, his response is no it is not. Mr. Lermond explained the previous burden the proposed use. Mr. Lermond said he encourages you to bring this all together, he is ok with the idea if you do go for the use variance you tie it to the project and if the project can't get a site approval that is a great compromise.

Mr. Gardell made a motion to close to the public application **ZB-08-08-1 Damoa LLC. Preliminary and Final Site Plan, "C" and "D" Variances, Block 54 Lots 1, 22.01 and 22.02.** Seconded by Mr. Swiss.

Mr. Carl Nelson said what we want to accomplish tonight is get an answer from the Board as to whether or not the Board is going to approve the use variance. Mr. Nelson gave a review of the testimony.

Mr. Kell asked the members of the Zoning Board if they had any comments. Mr. Gardell said he doesn't have any objections to including the lot. Mr. Gardell said he thinks it would be a mistake to vote on that tonight, there could be other negative and positive criteria we haven't seen or heard yet.

Mr. Kopsco said they have a large retail area, using Ken's words from the zoning report, he said over utilization of the site. Mr. Kopsco said something should be downsized. Mr. Kopsco said concerning voting tonight I would be extremely uncomfortable voting tonight without any more information.

Mrs. Murphy said she would like to hear some engineering testimony. Mrs. Murphy said she wished he was here tonight.

Mrs. Bonis said she is interested to understand, that although it is only 7% of the property that probably about 50 percent of the building is on that piece of property. Mrs. Bonis said this probably speaks from not having a site plan or an engineer, perhaps one of those retail stores could be moved to the other side of the restaurant offering more of a buffer for that not permitted use property, to create more of a green space between the commercial property and the residential pieces. Mrs. Bonis said she wondered about traffic on Taylor Road, getting in and out, it is a tough slope for a low to the ground car, and it might not be a great use for that road. Mr. Knutelsky said one of the things we requested of the applicant in regards to access to Taylor Road was to provide no access to Taylor Road, it is ingress only. Mrs. Bonis said we were doing no cross traffic turns on 23. Mr. Knutelsky said as part of the engineering drawing, although it is a DOT issue there is a left turn into the site now and we requested that the entrance to the site be placed exactly were it is now to take advantage of the left hand turn slot. Mrs. Bonis asked about exiting the site. Mr. Knutelsky said that would be onto 23 only from the site. Mr. Knutelsky said however DOT would handle that, they will need a major access permit for this

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property which will be reviewed down in Trenton. There was a discussion on the traffic and turning lanes on 23.

Mrs. Bonis said most of her questions are site and engineering related so she has some concerns about granting it carte blanche. Mr. Carl Nelson said we are not asking for a grant carte blanche we are asking for a grant subject to all these concerns that you have being addressed and approved by you. Mrs. Bonis said she was under the impression you wanted to know, is it worth our efforts to continue with this. Mr. Nelson said we are going to continue but the question is to lot 1 included or not.

Mrs. Murphy said she believes there was a question to approve the use variance subject to the approval of the site plan. Mr. Brady said this has been bifurcated, the site plan and use variance is together, the applicant is asking to decide on the use variance itself understanding, if you grant the use variance, that approval does not mean you are approving the site plan itself and it is not a use variance that stands alone from this site it is being done in the context that there is a total application here.

Mr. Kell said originally there were two applications before the Board tonight, so out of fairness to the applicants, members of the public and the Board, he said he would give them each an hour and fifteen minutes for testimony to end at 10:00. Mr. Kell said one application was postponed until next month. The engineer for this application had another meeting so we said go ahead and we will do the use variance tonight. Mr. Kell said if we had known they would have all this time tonight it would have been a good idea to have the engineer tonight. Mr. Kell said he does like the idea of conditioning the use variance based on what comes out of the site plan testimony.

Mr. Kell said he needs a motion based on what was heard tonight to approve or deny the use variance.

Mrs. Murphy made a motion to approve the use variance subject to approval of the site plan. Mr. Brady said if the use variance is approved it does not mean that the motion includes an automatic approval of this particular site plan. Mr. Gardell asked what was the advantage of them voting tonight. Mr. Brady said if the Board denies the use variance of lot 1 then the applicant will not proceed with these drawing and go back to the Planning Board.

Mr. Ken Nelson said to clarify the condition; it would be helpful to include language that the approval of the use variance does not sanction the size or the location of either the building or the parking lot, thereby giving the Board the maximum flexibility to shape the project when it comes back for site plan approval.

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Mr. Kell said we have a motion (by Mrs. Murphy) based on the consequences that the site plan testimony goes along with that approval.

Seconded by Mrs. Bonis.

Upon Roll Call Vote:

AYES: Bonis, Swiss, Murphy, Kell

NAYS: Correal, Gardell, Kopcso

ABSTENTIONS: None

(Motion Denied)

OTHER BUSINESS:

In the matter of the Statutorily Mandated Annual Report

Mr. Kell said in your packet was a report with the applications that were acted upon last year in 2008. Mr. Kilduff said this year there are some recommendations that result from applications that were before the Board. Mr. Kilduff said the recommendation is when the Planning Board does the Master Plan reexamination that they look at the ordinances with respect to two family housing, to consider whether the ordinance should be amended to include provisions for that. There was a discussion on two family structures in the Borough.

Mrs. Murphy made a motion to approve the **Statutorily Mandated Annual Report**.
Seconded by Mr. Kopcso.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

PAYMENT OF BILLS:

Mr. Correal made a motion to approve the **Franklin Borough Zoning Board Escrow Report for January 7, 2009**. Seconded by Mrs. Bonis.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

DISCUSSION:

CORRESPONDENCE:

OPEN PUBLIC SESSION:

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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. Correal made a motion to Close to the Public. Seconded by Mr. Swiss. 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 Mrs. Bonis. All were in favor. Meeting was adjourned at 9:46PM.

Respectfully Submitted,

Robin Hough
Secretary