

Franklin Borough Zoning Board of Adjustment
Meeting Minutes for
April 7, 2010

The meeting was called to order at 7:33 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 3, 2010**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

APPROVAL OF RESOLUTIONS:

There were no resolutions approved.

APPLICATIONS FOR COMPLETENESS:

ZB-01-10-1 Reelcology Inc. Appeal/Interpretation, Block 74 Lot 16.

Mr. Gardell asked Mr. Brady is the purpose of this to interpret the zoning. Mr. Brady said the purpose of this application is to interpret whether or not the zoning ordinance as currently constituted permits outdoor storage. There was a discussion on the purpose of the application.

Mr. Brady said this is a request for an interpretation under the municipal land use law certain applications require notice; generally the applications this Board deals with require notice to the adjacent property owners. Mr. Brady said interpretations do not fall within that category, the land use law allows the local municipality to adopt an ordinance requiring that but we haven't done that, so there is no need to notice to the public.

Mr. Carl Nelson attorney for the applicant stepped forward. Mr. Nelson referred to Mr. Knutelsky's report dated February 24, 2010 section B. item 1. Mr. Knutelsky said

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there is not a checklist for an appeal or interpretation, so the information that was submitted was relevant to the application. Mr. Knutelsky said he recommends that the Board find it complete.

Mr. Correal asked if finding it complete would affect the other issue at all; they have no proof of publication and service. Mr. Brady said none is needed. Mr. Correal said suppose our interpretation we find it doesn't include that use. Mr. Brady said if we find in fact after we consider this, that the correct interpretation of the ordinance does not permit this use then Mr. Nelson's client has several alternatives. Mr. Brady said they could file a use variance, an application for non-conforming existing use or they could go to the Planning Board and/or the Borough Council. Mr. Kell said he needs a motion to deem this application complete.

Mr. Gardell made a motion to deem complete application **ZB-01-10-1 Reelcology Inc. Appeal/Interpretation, Block 74 Lot 16**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

Mr. Kell said with the application being deemed complete we will now go into the hearing.

Application to be Heard:

ZB-01-10-1 Reelcology Inc. Appeal/Interpretation, Block 74 Lot 16.

Mr. Carl Nelson, Attorney for the applicant, stepped forward. Mr. Nelson said Reelcology is a company that refurbishes industrial spools for telephone wire, power lines and cable. They recondition used ones and ship out new ones. Mr. Nelson said the zone is industrial. Mr. Nelson said a function of the Zoning Board of Adjustment is to interpret the zoning ordinance. Mr. Nelson referenced 161-32. Mr. Nelson said this governs outdoor storage in the Franklin Zoning ordinances. Mr. Nelson read "unless it is specifically permitted in a zone then it is prohibited" and that is what the zoning officer looked to, to issue the zoning violation.

Kenneth Smith, owner of Reelcology, was sworn in at this time. Mr. Nelson asked Mr. Smith what his position was with Reelcology. Mr. Smith said he is the founder of Reelcology. Mr. Nelson asked how many employees he had. Mr. Smith said he currently has seven including himself. Mr. Smith gave a history of Reelcology. Mr. Smith explained how the reels are reconditioned and how they are delivered to their customers. Mr. Smith said they usually have an inventory of about 3,000. Mr. Smith said we turn that inventory over between 5 or 6 times a year. Mr. Smith said he currently has seven people working for the company, four people are working inside the plant, they are the people that recondition the reels, load and unload trucks. Mr. Smith said two of the people are the truck drivers that deliver and bring in the reels from our suppliers.

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Mr. Smith said this operation requires a minimum of two acres of space. Mr. Smith said the outdoor storage is an absolute necessity because there is no way these reels can be stored indoors. Mr. Smith said they are wood reels; they are not an environmental hazard. Mr. Nelson asked Mr. Smith how did you happen to end up at this location. Mr. Smith explained to the Board where Reelcology was located and why they moved to Franklin. Mr. Nelson said how did you end up in Franklin without a zoning permit. Mr. Smith said he found Mr. Fletcher that had this facility available and he would be able to lease him a portion of it. Mr. Smith said he [Mr. Fletcher] said there was no problem with ordinances because we were very concerned about that being the problem he had with Hamburg. Mr. Smith said he assured him that Franklin did not have problems with outdoor storage. Mr. Smith said the realtor at the time also insisted that Franklin didn't have a problem with outdoor storage; he would not take him to other towns because he knew they did have a problem with outdoor storage.

Mr. Kell asked if anyone had any questions for Mr. Smith. Mr. Correal asked were you specifically told there was no ordinance governing outdoor use by your landlord and the realtor. Mr. Smith said yes sir. Mr. Brady asked did you speak to anyone in the Municipality. Mr. Smith said no I didn't. Mr. Brady said when you said you required two acres of space that means you need two acres of outdoor storage. Mr. Smith said yes sir. Mr. Brady asked you have 3,000 reels on the site now. Mr. Smith said approximately yes. Mr. Brady asked how much space do they cover now. Mr. Smith said approximately two acres. Mr. Brady asked Mr. Smith to describe how they are stored and where they are stored.

Mr. Nelson referred to a map dated 1997. Mr. Brady asked is this the map that was submitted with the application package. Mr. Nelson said yes. Mr. Smith explained the site using this map. Mr. Smith said when they first moved in they spent \$8,000 laying down a gravel top. Mr. Brady said when you say all through this property here, it is hard to get on the record. Mr. Brady said he is going to describe it to the left of the end of pavement, the north side of the building and along the back of the building. Mr. Smith said yes. Mr. Knutelsky said he doesn't believe based on the Beardslee mapping that the road that was placed, the gravel drive, was placed in the wetlands. Mr. Knutelsky said from pacing 65 feet from the edge of the building the roadway is probably estimated 12 feet to 15 feet wide. Mr. Knutelsky said correct him if he is wrong. Mr. Knutelsky said the gravel drive is more for access; the reels are placed off the gravel drive. Mr. Knutelsky said the gravel drive is right against the building and the reels are placed off the driveway. Mr. Smith showed on the map the driveway and where they have storage.

Mr. Brady asked do you know how many square feet was graded. Mr. Smith said no. Mr. Brady asked do you know if there was a permit from the town to do site plan renovations. Mr. Smith said he did not get a permit. Mr. Brady asked if the storage was fenced in any way. Mr. Smith said he believes there is a fence on the right hand side. Mr. Smith showed this on the map. Mr. Brady said there is a fence along

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the northerly property. Mr. Smith said yes, he doesn't know how far back it goes. Mr. Smith said he believes there is another fence along this side. Mr. Brady said the southerly property line.

Mr. Knutelsky asked how are the spools placed in terms of storage. Mr. Smith explained how they are stored. Mr. Knutelsky asked how do you stop them from rolling. Mr. Smith explained how the reels are stacked.

Mr. Ken Nelson asked if there was anything else that you store outside other than the reels themselves. Mr. Smith said we have tractor trailers that are stored out there. The forklift is mostly kept indoors. Mr. Smith said they don't have any drums or chemicals; it is strictly wire and cable reels. Mr. Ken Nelson asked is the refurbishing material kept inside. Mr. Smith said yes. Mr. Ken Nelson asked if any waste associated with this is stored outside. Mr. Smith said no waste outside, they have a contract with environmental renewal, they keep a container backed up to the loading dock, and waste is thrown into this container.

Mr. Correal asked if customers come into the yard to pick out spools they want, how do they make the selection. Mr. Smith said he sends out a list on a weekly basis as to what is available. Mr. Smith said they don't come in to inspect the reels they don't have to pick out reels many customers order by cubic foot capacity of a reel. Mr. Correal asked no one actually has to come to the plant and look in your yard. Mr. Smith said no unless someone wants a picnic table something like that. Mr. Kell asked the two tractor trailers that you mentioned, they are the ones that deliver and bring back the reels. Mr. Smith said yes.

Mr. Brady said for the record there are no members of the public here to ask any questions.

Jeff Fletcher, was sworn in at this time. Mr. Carl Nelson asked Mr. Fletcher what his roll was here. Mr. Fletcher said he is the vice president of Transbanc Corporation; Transbanc is a division of Technology General which they have on Corkhill Road; this is a rental property for their company. Mr. Carl Nelson asked how long did your company own that. Mr. Fletcher said they bought that building he believes it was the very late 70's or maybe around 80 at the latest. Mr. Fletcher gave the history of the different tenants that were in the building in the past.

Mr. Fletcher said Mr. Smith talked about the area that was graveled back there, that area has always been graveled. Mr. Fletcher said for years, there was not a lot of activity back there; when Mr. Smith came in he needed something that was going to be stable to work on. Mr. Fletcher said what we did is first cut it all down, some weeds and different things coming in through the gravel and we were very careful to follow the exact line where the existing gravel was that went right back behind the building. Mr. Fletcher said you can still see the existing drop off area when the building was built years ago we didn't disturb anything. Mr. Fletcher continued to

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explain previous tenants that were in the building. Mr. Fletcher said he never had any issues with the other people that were there.

Mr. Carl Nelson said what you are testifying is that there has always been outdoor storage there as far as you can remember. Mr. Fletcher said yes. Mr. Fletcher said it is all complimentary to whatever was going on with the operation; there was always some type of outside storage. Mr. Nelson said you never had a zoning violation. Mr. Fletcher said no we have not. Mr. Fletcher said this was a surprise to us when I was told by you that the ordinances said there was no outdoor storage allowed anywhere in Franklin.

Mr. Correal asked did you advise your tenant Mr. Smith that he could use the outdoor storage. Mr. Fletcher said yes he did. Mr. Correal asked based on the fact that you have never received any violations. Mr. Fletcher said correct. Mr. Correal asked did anyone else in your company advise that also. Mr. Fletcher said no. Mr. Correal asked how long have you been in business. Mr. Fletcher said he has been working in Franklin for this company since 1973. Mr. Correal asked do you have people that also work in your company. Mr. Fletcher said no, he handles the real estate. Mr. Correal asked do you check with the town on a yearly or semi yearly basis as to what ordinances were approved that would affect your tenants. Mr. Fletcher said no, I have not. Mr. Correal said you told him outdoor storage was permitted. Mr. Fletcher said absolutely, what I told him was in good faith and for what we had done for many years.

Mr. Ken Nelson asked this site plan do you know when it was prepared he doesn't see a date on it. Mr. Ken Nelson said there is no indication of outdoor storage at this point in time, he was wondering when this was done. Mr. Carl Nelson said this Beardslee Map is 1997. Mr. Ken Nelson said your testimony was that there has been outdoor storage here. Mr. Fletcher explained what was going on at the property at the time.

Mr. Brady said Mr. Smith said he did not get a zoning permit or talk to anybody in town when he moved in about outdoor storage, did you do anything in that regard. Mr. Fletcher said no, I have not. Mr. Brady said do you know if any zoning permits have ever been issued for this building that included on the description of proposed use of outdoor storage. Mr. Fletcher said he doesn't believe so. Mr. Fletcher said up until several years ago he wasn't aware that there were CCO's, we had tenants come and stay a couple of years and we just always leased it out and hope they stay. Mr. Fletcher said he was unaware that these requirements existed other than what we learned a couple of year's ago.

Mr. Brady said for the record there is no one here from the public.

Mr. Knutelsky asked how wide is that area before it drops off into the wetlands. Mr. Knutelsky said from his site inspection there is a flat area into the building which now

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has a road on it and then it does drop off into the wetlands. Mr. Fletcher said directly behind most of the back of the building that area is probably 15 to 20 feet wide and that drops. Mr. Fletcher showed this area on the map.

Mr. Knutelsky referred to his report dated February 24, 2010. Mr. Knutelsky said the majority of the information in his report really was in support of his recommendation of the site plan waiver not be granted at this time. Mr. Knutelsky said it is not really part of whether an interpretation should be made whether outdoor storage is appropriate for the site. Mr. Knutelsky said there are places on the property where if outdoor storage was allowed, outdoor storage could be placed. Mr. Knutelsky said there is pavement on site and a grass lawn area that could be graveled on site that might be appropriate for outdoor storage. Mr. Knutelsky said in the rear of the property it doesn't seem appropriate for that type of storage. Mr. Knutelsky said the one item that was part of outdoor storage is the securing of this stored items. Mr. Knutelsky said Mr. Smith's explanation how it is secured does seem rational as long as they are not on a steep slope. Mr. Knutelsky said there are items that should be addressed for the applicant to go forward with the use of the site.

Mr. Ken Nelson referred to his report dated February 19, 2010. Mr. Ken Nelson said there is no question that there is a big whole in our ordinance and there should be something done to rectify that but that is beyond this Board's jurisdiction. Mr. Nelson said it is unfortunate for the applicant and the property owner [who] are caught in the middle of this now. Mr. Nelson said this situation needs clarification.

Mr. Brady referred to his memo to the Board dated February 24, 2010. Mr. Brady said we are being asked to step out of our jurisdiction. Mr. Brady said he points out the ordinances say if it isn't permitted it is prohibited and this outdoor storage isn't permitted in an Industrial Zone. Mr. Brady said in regards to outdoor storage specifically it says unless expressly permitted in the zone. Mr. Brady said it isn't expressly permitted. Mr. Brady said he thinks this is a jurisdictional problem here and it would be such an interpretation that you would be really stepping over an interpretation and into a legislating function which isn't your function. Mr. Brady said he thinks Ken asked if we did permit it could a site plan be required; he thinks it could. Mr. Nelson said his question was he doesn't think this Board could require it; it would have to be the Zoning Officer to step in and require it. There was a discussion on outside storage and outside storage in Franklin.

Mr. Carl Nelson said it is up to the Board; you have the power to interpret the ordinance. Mr. Nelson gave a summary of the application.

Mr. Kell asked if the Board had any comments. The Board had a lengthy discussion on the ordinance, the application and interpreting the ordinance as to whether outdoor storage is permitted in the industrial zone. Mr. Kell said he walked through the site and the amount of outdoor storage is huge. Mr. Kell said there are reels all over the place, he walked the site and he saw these huge reels stacked one on top

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of each other and small reels here and there. Mr. Kell said he has a problem with trying to interpret the ordinance and in essence we are changing it, we are doing something that really the Planning Board or the Council should be doing. Mrs. Murphy said she thinks it should go back and be revisited. Mrs. Murphy said they should stay; you don't want to have somebody move their business because we have loop holes in our ordinances that isn't fair to them. This is someone that is doing a good thing; they are recycling. Mr. Correal said it seems a use variance is the remedy. Mr. Brady said a use variance or a change in the zoning ordinance by the Council.

Mr. Brady said you would have to have a motion to either approve the application for an interpretation that outdoor storage is permitted in the industrial zone or a motion to deny that application based on what has been said here. Mr. Brady said if there is a motion to deny the application that it includes a recommendation that the applicant either apply for a use variance or a zoning ordinance change and if the applicant is pursuing that, we recommend no violations be issued. Mr. Kopcsó asked why are we putting the burden on the applicant. Mr. Brady said because the applicant did not obtain a zoning permit. Mr. Brady said it doesn't cost anything to go to the Council or Planning Board. Mr. Kopcsó asked does the Planning Board make the decision or does the Planning Board change the ordinance. Mr. Brady said ordinances can go in two directions; the Planning Board can make recommendations to the Council and the Council then looks at it, adopts a draft ordinance and the Planning Board comments on it. Mr. Brady said the Council can decide to draft its own and have the Planning Board look at it. Mr. Kilduff said the Planning Board is currently working on a package of ordinances that reflects the changes from the Master Plan reexamination report. Mr. Kilduff said he is sure this is going to be part of that package. Mr. Kilduff said the process is now going to take effect in a package of ordinances being developed by the Planning Board and recommended to the Council. Mr. Kilduff said the Council would review, make any changes and hopefully [it will] be passed into law.

Mr. Brady said the logical progression is if they don't get permission or solve the storage problem then the next step from the Zoning Officer's point of view is to issue a summons. Mr. Kopcsó asked what if we explain the situation. Mr. Brady said we don't control the Zoning Officer. Mr. Gardell asked if the Zoning Officer enforces rules with an application open. Mr. Brady said you have to remember they were in there without a zoning permit. Mrs. Murphy asked when was this ordinance [written]. Mr. Kilduff said 2004. Mr. Correal asked was this part of the Master Plan. Mr. Kilduff said the 2003 Master Plan. This ordinance on outdoor storage was completed and passed in 2004. Mr. Correal said was there any State requirements that they had to go this strict with it. Mr. Kilduff said the ordinance is the matter of what the town decides. Mr. Kopcsó asked the applicant if we go back to the Council or Planning Board are you comfortable with what you heard today. Mr. Brady said while we would recommend that nobody do any enforcement action as long as you are diligently pursuing them but we can't guarantee that isn't going to happen. Mr.

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Carl Nelson said he understands the discussion. Mr. Nelson said are you asking are we comfortable with that, no, how could we be that is the unknown.

Mr. Kell said he is not comfortable making a legislative change to the ordinance. Mr. Kell said he thinks that should be left to the Planning Board or the town Council. Mr. Correal said you did say they could get a use variance without having to change any ordinances or anything else. Mr. Brady said they could make the application that is one avenue the other is because there is a problem that we all recognize in this ordinance that we go ask the Governing Body to straighten it out.

Mrs. Murphy said she would make a motion to what Mr. Brady said. Mrs. Murphy made a motion not to accept **ZB-01-10-1 Reelcology Inc. Appeal/Interpretation, Block 74 Lot 16** but to suggest that they go to the Planning Board or Town Council and have the ordinance looked at and recommend that they can stay. Mr. Kell said that during this process the Zoning Officer allow them to rework the ordinance give the Council or Planning Board time to [rework the] ordinance. Mr. Brady said so we have it clearer; it is a motion to deny the favorable interpretation and to suggest further that the applicant make an application to either this Board for a use variance or apply to the Planning Board and/or the Governing Body for this ordinance to be reworked and that we will strongly suggest that no enforcement action be taken so long as they are diligently pursuing this. Seconded by Mr. Kopcso.

Mr. Brady said voting yes means saying no to the applicant's interpretation. Mr. Brady said voting yes for the motion means turning down the applicant's application and sending them off [what he just explained]. Mr. Brady said with those stipulations.

Upon Roll Call Vote:

AYES: Correal, Kopcso,

NAYS: Gardell

ABSTENTIONS: None

Mr. Swiss was called for roll call. Mr. Swiss said he didn't know. Mr. Swiss said the way this is written; he asked if he could say something at this time or not. Mr. Brady said typically there is a motion on the floor and that kind of closes the discussion but it is up to the Chairman. Chairman Kell said go ahead. Mr. Swiss said he has always seen that place as an industrial area, when you say an industrial area you have outdoor storage. Mr. Swiss said he doesn't want to halt them he wants them to go in the right direction; if he says no than that means I'm not in an agreement but if I say yes it is denying them there application which puts them more at risk if they go forward.

Upon Roll Call Vote, continued:

AYES: Swiss, Murphy, Alexander, Kell

NAYS:

ABSTENTIONS:

(Application Denied)

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ADJOURNED CASES:

There were no adjourned cases.

APPLICATIONS TO BE HEARD:

See application for completeness.

OTHER BUSINESS:

PAYMENT OF BILLS:

Mr. Swiss made a motion to approve the **Franklin Borough Zoning Board Escrow Report for March 3, 2010**. Seconded by Mr. Correal.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board Escrow Report for April 7, 2010**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

NAYS: None ABSTENTIONS: None

(Motion Approved)

DISCUSSION:

Mr. Kilduff briefly discussed an article Inherently Beneficial Uses with the Board. There was a discussion on Inherently Beneficial Uses.

CORRESPONDENCE:

Mr. Kell said there was a letter from Elizabethtown Gas regarding safety and a letter about the application we heard tonight.

OPEN PUBLIC SESSION:

No one from the public was present.

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. Kopcso. All were in favor. Meeting was adjourned at 9:53 PM.

Respectfully Submitted,

Robin Hough
Secretary