

## FRANKLIN BOROUGH PLANNING BOARD MINUTES FOR THE NOVEMBER 1, 2017 MEETING

The meeting was called to order at 7:36 PM by the Chairman, Mr. Nathan Foulds, who then led the assembly in the flag salute.

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

ROLL CALL OF MEMBERS: Mr. John Christiano (Present)  
Ms. Dawn Fantasia (Present)  
Mr. Nathan Foulds, Chairman (Present)  
Mr. Nick Giordano, Mayor (Present)  
Mr. Jim Nidelko, (Present)  
Mr. Wes Suckey, Vice-Chairman (Present)  
Mr. Jim Williams (Present)  
Mr. Steve Zydon (Present)  
Mr. Floy Estes, Alternate #1 (Present)  
Mr. Sean Kidd, Alternate #2 (Present)  
Mr. Richard Knop, Alternate #3 (Present)  
Mr. Ted Bayles, Alternate #4 (Present)

ALSO PRESENT: Mr. Dave Brady, Board Attorney  
Mr. Ken Nelson, Board Planner

### **APPROVAL OF MINUTES:**

There were no minutes for approval.

### **APPROVAL OF RESOLUTIONS:**

There were no resolutions for approval.

### **APPLICATIONS FOR COMPLETENESS:**

There were no applications for completeness.

### **ADJOURNED CASES:**

There were no adjourned cases.

### **APPLICATIONS TO BE HEARD:**

There were no applications to be heard.

### **OTHER BUSINESS:**

### **PAYMENT OF BILLS:**

Mr. Zydon made a motion to approve the **Franklin Borough Planning Board Escrow Report** for October 16, 2017. Seconded by Mr. Christiano.

Upon Roll Call Vote:

AYES: Christiano, Foulds, Nidelko, Suckey, Williams and Zydon

NAYS: None                      ABSTENTIONS: Giordano & Fantasia

### **DISCUSSION:**

Mr. Christiano asked why there was so much activity with the Zinctown property when the sub-division was completed some time ago, but he withdrew the question in anticipation of speaking to Mr. Knutelsky's.

Mr. Foulds called a recess at 7:42pm to await the arrival of Board Attorney David Brady.

Meeting resumed at 8:04pm and Mr. Brady gave an overview of Ordinance 17-217, which was introduced for consideration by the Borough Council to change some aspects of the MAAH zoning. When the Council considers an ordinance change

pertaining to zoning, that then gets forwarded to the Planning Board to see if it's in keeping with the Master Plan for the town. The Board has a 35 day time period to respond if the ordinance is consistent with the Master Plan and any additional comments the board may have. Given the sequence of the meetings of this board and of the council, we decided to have this meeting so that we could give our input to the Council who is the body who has the authority to create zoning ordinances and implement them. They look to the Planning Board to get our input to help them make informed decisions.

Mr. Foulds introduces Mr. Ken Nelson for comments. Mr. Brady interjects that before Mr. Nelson begins, there was a request from Mr. Kevin Kelly, the attorney for JCM, that certain members of the Planning Board had had interaction with the council members at a recent council meeting, and therefore, Mr. Kelly would like those members to recuse themselves. Mr. Brady has researched case law and come to the conclusion that Mr. Floy Estes and Mr. John Christiano should recuse themselves and leave the room and not participate nor vote on the matter at hand (Ordinance 17-2017). At 8:11pm, Chairman Foulds reported that Mr. Estes and Mr. Christiano have both stepped out of the room.

Mr. Nelson begins an overview of his previous report 10/25/17 on this matter and all members have received a copy of the 8 page report which is divided into 7 sections. This is a complicated issue, which is partially a legal issue concerning the scope of the board's review which Mr. Brady will explain. Brief discussion on what the 2016 Master Plan Re-Examination Report says about this property and the MAAH zone. The newly proposed ordinance would change the name of the MAAH to the MPR (Munsonhurst Planned Residential) zone. The re-exam report talks about two items and two items only – the removal of age restriction and a potential density increase. The proposed ordinance change given to the board from the council significantly changes the MAAH zone and it seems to include more than just the two recommendations in the Master Plan re-exam and Mr. Nelson details that on page 5 of his report. Mr. Brady then interjects about the legal matter. He says that because there has been an amendment to the settlement document by the council, the planning board does have the ability to comment beyond the changes proposed in the ordinance introduced by the council. Mr. Foulds recounts the timeline for comments to be crafted and sent back to the council. Mr. Nelson reviews page 5 which are the proposed ordinances amendments 1) removal of age restriction provision; 2) issue of the adjoining property that has been sold to the State of NJ and in the proposed ordinance it would be in the MPR. Mr. Nelson's recommendation is to put that property in the OS/GU (Open Space/Government Use zone which would be consistent with how other public properties are zoned in Franklin; 3) density and number of 565 (300 for the former Beazer property and 265 for the former Hovnanian property) and therefore the 265 units should be removed, now that the property is state owned. The 20% increase, as mentioned in the Master Plan Re-exam written by Mr. Nelson, was meant to be a potential maximum not a guarantee. Mr. Nelson will confer with the board engineer to determine whether in his opinion if the full density increase of 20% is reasonable for this property. 4) Also related to density/dimensional requirements, the distance between buildings changes in the settlement amendment. Previously, the requirement was 1 ½ times the building height and now it would be the actual size of the building. (Old agreement the space between buildings would be approximately 87 ½' and under the new amendment, the distance would be 55' or less. The maximum height is 55'.) 5) There is still a COAH requirement, but we don't know the actual number, so may be should set up the age restriction as an option, that some of the units should be age restricted if the Borough so chooses or all of them will be non-age restricted. At this point, it appears for 300 units, there would be 60 COAH units with half age restricted and half non-age restricted. There may be an error (sub section 19) of the proposed ordinance where it says the COAH requirement should be 10% of the total number of units. 6) Subsection 14 of the proposed ordinance is a significant change concerning the slope disturbance that is permitted. Under existing categories, 15-20% existing allows 10% can be disturbed and under the proposal 40% can be disturbed; under 21-25% category, existing allows 5% disturbance of slope and proposal allows 30% to be disturbed; and category over 25% currently allows 2% to be disturbed and the proposal allows 30% to be disturbed. The last item is 7) the boulevard road coming

into the property. A boulevard road is a road separated by a median. This way, if in the event of an accident, at least one road remain open. I recall there was a discussion, during the JCM variance application, there was a discussion of an emergency access road, if relief was given to the applicant (from constructing the boulevard road), that they would provide an emergency road. Mr. Nelson does not see that requirement in the amendment to the settlement document and Mr. Nelson says he will defer to Mr. Knutelsky. Next there was a comment from the Mayor about how the board could go forward with the hearing without the board's engineer being present. Chairman Foulds outlined time constraints the board is faced with and Mr. Brady also mentioned details about the role of the PB and the Council's role and Mr. Brady said maybe in the PB and recommend that the Council have their concerns addressed by the Borough Engineer. Mr. Nelson mentioned that in Sub-section 20b of the amendment/ordinance, the current requirement for a fiscal impact analysis is eliminated. If this is removed, the board will not be able to require this in the PB application when it is presented. Next Mr. Nelson spoke about density requirements as it relates to gross and net density. The prior requirement under the MAAH, was 3.26 units per acre and the amendment changes that to 4.29 units per acre. Also Mr. Nelson states info about other issues concerning buffering, landscaping, potential for different/varying the types of buildings on the property. Wrapping up, in Section 2b, the Fiscal Impact Analysis Study is no longer required in the proposed ordinance. Mr. Nelson had a discussion of slopes, landscaping and building placement. Mr. Nelson also suggested it might be appropriate to take a closer look in creating the zoning regulations for a zoning district, because in this instance the zone is being crafted with a specific property in mind. The zoning regulations are giving the property owner the requirements he has to meet before he does his site plan application. You can't create new requirements when the site plan comes in. Mr. Brady discusses an ordinance being drafted which outlines the parameters, that then drives whether you need variances, whether you don't need variance and what the standards of proof are for certain variances. You can't just do it on an individual basis, you need to have a zone plan and a zone scheme and that's what the parameters in the zoning ordinance do. Ms. Fantasia asked Mr. Nelson for clarification on his language describing the process of the 2016 Master Plan Re-exam (lifting of age restricted zoning) as compared to his report prepared for tonight's meeting, that sounds more cautionary. Mr. Nelson rather he is suggesting that the council should have another discussion about age restricted housing changing in the future based on market changes and demand. There was a lengthy discussion on age restricted units and affordable units and the uncertainty over the requirements the town will be required to comply with. At this time, Franklin Borough is using the 20% of total units as our number. Big discussion over the courts, Franklin's compliance with COAH requirements, the changing face of COAH and speculation on changes pending with the new Governor being sworn in in January.

Mr. Suckey, asked a question about page 4, sections 6, 7 & 8 each one has a different number of maximum units; a different impervious coverage; different set backs and different disturbances. He is confused by this and in the ordinance, it does not make it clear whether the developer can pick from these different options. Mr. Nelson says that he may not have been clear in his memo, but section 7 should be eliminated altogether. Mr. Nelson says Section 6 might also need to be eliminated. Discussion over the second block and lot that is currently in the MAAH zone, and noting that that lot is now owned by the State of NJ and we should now refer to that as OS/GU. Mr. Zydon discusses the COAH requirement should not be tied to the age restricted units, because we don't have a guarantee that those units will give us COAH credits. Mr. Foulds agrees with Mr. Zydon and Mr. Sucky ads that if that is the case, we can then eliminate section 12. Ms. Fantasia and Mr. Nidelko and Mayor Giordano each commented that the age restricted unit is a benefit that is something that is a positive that we should still consider. Mr. Nidelko doesn't want to lose the affordable housing benefit to the seniors, so he supports keeping the 60 units (or 20% of the whole project 10% as COAH and 10% as age restricted. Mayor Giordano says that we should require it now, and the developer can come back to the board later for relief on the requirement if it's not working. Brief discussion on section 9 & 12 and clarifying the numbers in the amendment to the ordinance. Question from Mr. Kidd asking if those slope restrictions are in the settlement ordinance that we can't change, or are the slope requirements set in our zoning, so if

the developer wants to change it, they would have to get a variance? Mr. Brady answers yes and summarized what is in the amendment to the settlement only includes the maximum number of units, affordable housing requirements and age restrictions, density and the 36' wide cart-way for a non-boulevard road for the development. Discussion between Chairman Foulds and Mr. Brady had a discussion on slopes staying as was and be addressed during the individual planning application process. Chairman Foulds announced at 9:33pm, that Councilwoman Fantasia left the meeting. There was a discussion on height of buildings and length of buildings as mentioned in the settlement amendment. 55' and 4 stories has not changed as mentioned by Mayor Giordano. Discussion of fire response, building heights, discussion of fire escapes from Mr. Williams and others. Mayor Giordano suggested the Planning Board to ask the Council to look into updating the existing ordinance to address fire safety, height requirements, building spacing requirements as related to fires. Mr. Foulds said leave the 1 ½ times the height of the building for the spacing between the buildings. Leave the density, leave the relief from the boulevard but there was a bit of a discussion on safety for a secondary access road for emergencies. Mr. Suckey mentioned in the former Beazer application, there was a secondary access behind the Sterling Plaza that he said is still there and a gate can be seen through the brush. Mr. Kidd suggests changes the wording to say, they should have to do the boulevard unless the boulevard is refused by DEP, then they don't have to do it. There was also mention of maintenance of the road. Mr. Nelson talks about adjusting the standards to be based on the buildable lot area rather than the whole lot. That should impact impervious coverage and building coverage and the percentage of common open space area. Alert the council that the planning board is suggesting that those calculations, they should be changed to be based on only the buildable portion of the lot rather than on the whole lot. A bit of a discussion on the need for the fiscal analysis to be included rather than excluded. Discussion on the time line for Dave Brady to prepare the response from the planning board to the council. Mayor Giordano makes the motion to authorize Mr. Brady to draft a document to the Council summarizing the opinions of the board members with the memorializing of the document to be held at the next planning board meeting. Mr. Zydon seconded the motion. Roll call as follows: Mr. Christiano-not present; Ms. Fantasia – not present; Mayor Giordano – yes; Mr. Nidelko – yes; Mr. Suckey – yes; Mr. Williams – yes; Mr. Foulds – yes; Mr. Estes – not present; Mr. Kidd – yes and Mr. Knop – yes. This document will be prepared and forwarded to the Council for their meeting on December 14<sup>th</sup>.

**OPEN PUBLIC SESSION:**

Mr. Williams made a motion to open the meeting to the public. Seconded by Mr. Nidelko. All were in favor.

Ms. Gail Adrian of Stockholm asked if this plan for development of the parcel on 517 has already been approved and she admitted this was her first meeting on this and it seems like the board is in favor of the plan. Mr. Foulds and Mr. Nidelko explained that there is no planning board application yet for this project and the purpose of this meeting is for this board to make recommendations to the council on their action to make an amendment to a previous settlement and this will become changes to an ordinance. A brief history of the project was discussed.

Ms. Cheryl Krouse, 160 Munsonhurst Road, Franklin. Our property is directly in front of the proposed development, and to have a building higher than 36' is completely irresponsible to the residents of this town. I will be going to the Council meetings to express my opinions to them as well.

Mr. Greg Gorman, a resident of Hamburg and a representative of the NJ Northwest Chapter of the Sierra Club, and I emailed this morning correspondence for you, but not sure if the secretary received it. Two issues: confusion of the open space issue and there is also a strip of land identified as a greenway between Black Pegasus's land and the project. We don't believe this project or any project should be built. This land is also a Natural Heritage Priorities Area. Please read my correspondence.

Ms. Sylvia Sloan, a resident of Sparta echoed Mr. Gorman's feelings and was concerned about plant life, wet lands. Also she asked why a traffic study wasn't mentioned tonight. Plants and trees should not be removed because they support the soil.

Mr. Dick Durina, 23 Lozaw Road, Franklin. The question was raised about why the two planning board members were asked to leave and Mr. Durina also asked if they would be precluded from voting on the planning board application regarding this project in the future. Mr. Brady said he had not fully formulated his decision on that matter, but the two members were excused from this meeting because they attended a meeting of the mayor and council when the ordinance was being discussed before that body and because they spoke and may have expressed their opinions before that body, they were not permitted to participate in tonight's planning board discussion on the same ordinance.

Motion to close the public made by Mr. Nidelko and seconded by Mayor Giordano and the meeting was closed to the public.

**ADJOURNMENT:**

Seeing not further business, Mr. Nidelko made a motion to close the meeting and Mr. Zydor seconded the motion. All in favor and meeting was closed at 10:42pm.

Respectfully submitted,

Alison Littell McHose  
Interim Planning Board Secretary