

**Franklin Borough Zoning Board of Adjustment**  
**Meeting Minutes for**  
**November 2, 2011**

ORIGINAL

The meeting was called to order at 7:38 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, Mrs. Alexander, Mr. Kell

ABSENT: None

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 October 5, 2011**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

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

NAYS: None      ABSTENTIONS: None

(Motion Approved)

**APPROVAL OF RESOLUTIONS:**

There were no resolutions approved.

**APPLICATIONS FOR COMPLETENESS:**

There are no applications for completeness.

**ADJOURNED CASES:**

**APPLICATIONS TO BE HEARD:**

**ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30.**

Mr. Robert Gaccione, attorney for the applicant, stepped forward.

Mr. Brady referred to his memo dated October 26, and a draft of the resolution dated October 26. For discussion tonight everyone should work off the October 26 draft.

Mr. Kilduff said there was a question regarding fire access at the last meeting. There is a memo in the packet from Wes Suckey, the fire safety officer. Mr. Suckey

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concluded the concerns had been addressed. Mr. Brady said it is memo dated October 28, 2011 from Wes Suckey.

Mr. Gaccione referred to the draft resolution page 3 third paragraph from the bottom temporary waivers. He was looking to have the word temporary eliminated.

Mr. Knutelsky referred to page 3 of the resolution the first item temporary waiver to storm water management plans and construction details. They provided the appropriate reports for that so no waiver is required for that number.

Mr. Knutelsky referred to item 28 plans and profile of potable water and sanitary sewer as part of the Board of Public works application. They will have to provide that at a later date.

Mr. Knutelsky said item 33, a list of licenses and permits and other approvals. They did in testimony indicate they will provide a soil erosion permit and a DEP permit would not be required. Mr. Knutelsky said item 39 traffic impact statement he would recommend a waiver be granted for that at this point.

Mr. Knutelsky referred to items #43-47 we provide a standard condition that those items are required as part of final site plan.

Mr. Gaccione referred to page 5 of the draft resolution number 11. Mr. Gaccione said his client would like to make this beige and burgundy as long as the Board is satisfied that beige is an off white and burgundy is a shade of red. He wants it to be on record to make that clear. There was a discussion on the color.

Mr. Gaccione referred to page 7 number 22; his traffic expert didn't think a speed bump was necessary; he is here to explain that. There was a discussion on the speed bump and stop sign.

Mr. Gaccione referred to paragraph 64 and 67 he believes would apply to phase two only if there was a drive thru. His understands if there was no drive through we wouldn't have to come back for anything. There was a discussion on paragraph 64 and 67.

Mr. Gaccione referred to page 13, number 3. The Board reserves the right to withdraw the instant approval and all variances granted today. Mr. Gaccione said he has never seen that before; he doesn't think it is permissible to do that. The Board can impose reasonable conditions and they can reopen a case under certain conditions but the Board is a review body not an enforcement body. Mr. Gaccione said he objects to that and he would like that language removed.

Mr. Brady said this is a standard condition in all five Boards that he represents. He understands why he has an objection to it. There is very little case law on this there

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is very little guidance on this; he would rather have the Board have the right and be challenged. There was a discussion on leaving this condition in the resolution. Mr. Brady said he would prefer it to stay.

Mr. Gaccione referred to number 19 he doesn't think the adjacent properties access is required to use our access he would like that one removed; he did discuss this with Council and it was modified. Mr. Gaccione doesn't think it should be there. Mr. Brady said his legal opinion is you can't impose on one property owner requirement to address the safety issues of a neighboring property owner; that is his own issue. Mr. Brady referred to Mr. Suckey's report as the fire safety official; in fact vehicles would not go back into that northerly drive because then wouldn't want to be next to a burning building perhaps this can come out because it is not necessary. There was a discussion on number 19.

Mr. Gaccione said his client pointed out that there could possibly be a restaurant use in the first building. The way this is worded it looks like it would have to be in the second building. Mr. Gaccione informed the Board that the applicant would like not to be restricted to restaurant use in the second building if somehow it was going to be in the first building.

Mr. Gaccione stated the last issue he had number 29; for the record that the amended application would only have to be filed if there was a drive thru use in phase two.

Mr. Gaccione said the one key issue he is concerned about is the variance for parking. Mr. Brady explained a memo that he had sent to the Board with the draft resolution.

Todd Maino, applicant stepped forward. He asked could it be an either/or; if you grant an additional parking variance the number of seats would stay the same, it wouldn't be restricted to that single building.

Mr. Gaccione said he thinks the Chairman's concern is that it would be two restaurants. The concern is the restaurant [could] be in one or the other building. Mr. Maino said correct.

Mr. Knutelsky said if the concern is one or the other as long as the Board is comfortable with the number of parking you are giving a variance for and the applicant is willing to make the site work with that number of parking without any modification; then it wouldn't matter if there were restaurants in both. Because the parking is fixed, it would be a disservice to the applicant to fit two restaurants because you would be limiting the amount of space in that bigger building if you did have two. Mr. Knutelsky said as long as the Board is comfortable with the parking on site he doesn't think it would matter whether the restaurant was in one building or the other. However, part of the application and some of the testimony was for this

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drive thru; he doesn't believe the way it is currently designed works for a drive thru in the bigger building. There was a discussion on the parking, number of seats and variance needed for parking.

There was a discussion on who was responsible for enforcing the resolution and the wording on page 13; the Board reserves the right to withdraw the instant approval and all variances granted today. Mr. Brady recommended keeping the language in the resolution along with Administrator Jim Kilduff. Board members gave their comments. There was a discussion on changes that had been talked about.

Mr. Kell recommended keeping the language in for page 13 # 3.

Mr. Gardell asked about signage. Mr. Brady said the variances that were requested for signage is for 2 free standing signs on one site. We granted the variance for having the sign on the canopy which he thinks required a variance also. Mr. Gaccione said location of the freestanding sign was the setback. Mr. Brady referred to bottom of page two and top of page three. Any signs for the second building other than a freestanding sign would need an approval.

Mr. Gardell gave his opinion on having two freestanding signs. Mr. Gardell said they don't need two of them. There was a discussion about signs.

Mr. Gaccione asked to bring his engineer up to explain the need for two freestanding signs.

Eric Keller, engineer for the applicant stepped forward. Mr. Keller said there are two components one is if it is a national tenant in the building the need for that building to have a sign of their own. We talked about modifying the freestanding sign at the main building that it would not have the use of the second building on there. It would have the name of the project and it would have the directory sign underneath for the tenants in that main building.

Mr. Keller said the other fact is that the billboard that is there as you come north on Rt 23 blocks the building. If there is no freestanding signage at that point it is to identify that building. The other sign serves two purposes one is to identify the drive way where you get into the site and to what the other uses are in there. Mr. Keller said the way we had it structured was it was the name of the project and then the individual stores were smaller underneath. We are not duplicating it we are placing it there for attraction, identification of the specific use and for the driveway itself. They are serving two purposes.

Mr. Gardell said he thinks you will be able to see the building underneath that pylon sign. Mr. Keller said the billboard sign is low. There was a discussion on the signs.

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Mrs. Bonis made a motion to open to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30**. Seconded by Mr. Swiss. All were in favor.

Joann Reder, Sussex County Real Estate, was sworn in at this time. Ms. Reder commented on the importance of signage and that tenants want their own sign.

Mrs. Bonis made a motion to close to the public application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30**. Seconded by Mr. Swiss. All were in favor.

Mr. Kell said we have two freestanding building here and he understands the logic of having your own sign. He recommends keeping the language in the resolution that states a second freestanding sign for that proposed pad site. Board members gave their opinions on this issue.

Mr. Brady said we should have a motion to approve or deny and if it is a motion to approve it is a motion to approve with all the conditions and all the [discussion] we had tonight. Mr. Kell said we would finalize and memorialize the resolution at the next meeting. Mr. Brady said it would be an approval or denial tonight.

Mr. Kell said he needs a motion to approve the application with the comments that were made.

Mrs. Murphy made a motion to approve application **ZB-08-11-1 CM Franklin LLC. Preliminary and Final Site Plan, C Variances, Block 29 Lot 30**. Seconded by Mr. Swiss.

Upon Roll Call Vote:

AYES: Bonis, Swiss, Murphy, Alexander, Kell

NAYS: Gardell, Kopcso                      ABSTENTIONS: None

(Motion Approved)

**OTHER BUSINESS:**

**PAYMENT OF BILLS:**

Mr. Kell asked what the bill was for Luba. Mr. Kilduff explained that is was for an application that was administratively incomplete for a sign variance.

Mrs. Murphy made a motion to approve the **Franklin Borough Zoning Board Escrow Report for November 2, 2011**. Seconded by Mr. Correal.

Upon Roll Call Vote:

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

NAYS: None                      ABSTENTIONS: None

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**DISCUSSION:**

**CORRESPONDENCE:**

Mr. Kell referred to a letter in the packets from Cynthia Collins, Esq. regarding Irish Cottage. Mr. Brady explained the letter.

**OPEN PUBLIC SESSION:**

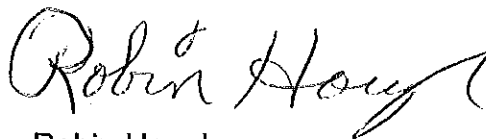
Mr. Correal made a motion to Open to the Public. Seconded by Mr. Swiss. All were in favor.

No one from the public stepped forward.

Mrs. Bonis 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 Mr. Swiss. All were in favor. Meeting was adjourned at 9:08 PM.

Respectfully Submitted,



Robin Hough  
Secretary