

**FRANKFORD TOWNSHIP LAND USE BOARD**  
**OCTOBER 17, 2007 – 7:00 P.M.**  
**MINUTES OF THE REGULAR MEETING**

**CALL TO ORDER**

The meeting was called to order by the board Chairman, Mr. Romania, by announcing that notice appeared in the New Jersey Herald and the New Jersey Sunday Herald in accordance with the requirements of The Open Public Meetings Act.

Flag Salute

**ATTENDANCE**

Those Present were: Mrs. Kristensen, Mr. Risdon, Mr. Zappile, Mr. Gstattenbauer, Mr. McDowell, Mr. Martin, Mr. Larson, Mr. Romania, and Mr. Dolan. Also present were Mr. Clark, the board attorney and Mr. Pellow, the board engineer.

Those absent: Mr. Ayers (excused) and Mr. Risdon (excused).

**BOARD BUSINESS**

**Plan Endorsement Process:**

Mr. Clark gave a summary as to the meeting that took place at the Office of Smart Growth regarding the Plan Endorsement Process on October 2, 2007. He indicated that when the sub committee went to Trenton, they thought it would be a status conference on the Plan that was previously submitted. At this meeting the township was informed that there are new rules for submittal for the Plan Endorsement Process. He noted that the rules are in draft form and have not been published. The state indicated that this is a faster way of obtaining Plan Endorsement and a more defined goal of what benefits the township would get when they obtain Plan Endorsement. He indicated that most, not all, of the benefits are set up for more urban centers. He indicated that the primary benefit of Plan Endorsement is to get DEP endorsement for sewer and water systems. One of the regulations of the new process is to have a committee formed by the Mayor of municipal officials and 2 people from the public not directly related to the Municipality. The committee should be at least between 5 and 10 people total to interact and look at the vision for the municipality. Mr. Clark stated that what has been submitted to date from the township should count as part of the new plan endorsement process. He indicated that the Office of Smart Growth wants to have the ordinances in place before giving plan endorsement, which he feels is a problem. To put ordinances in place before getting the benefit, the township may not want to do this. There will have to be further discussion on this issue. He indicated that the Plan Endorsement process is not just the town center, it involves the entire township. It also includes TDR, sewer service area; builders remedy suits for COAH, etc.

**Echo Housing Ordinance:**

Mr. Clark indicated that Echo Housing has been around approximately 30 years. He indicated that it is really like a contract. It is for related people for a residence on a lot with an existing principal residence. When the elderly relative passes away, the 2<sup>nd</sup> residence has to be removed. Basically, this is increasing the density allowed. Mr. Martin indicated that he is in favor of this and it will help with the low income housing for elderly citizens. Mr. Clark indicated that it would not qualify for COAH because you would need a 30 year deed restriction and this is a temporary situation.

A Motion was made by Mr. Martin and seconded by Mr. Larson to have Mr. Clark draft an Echo Housing Ordinance to be submitted to the board for review. All were in favor. The Motion was carried.

**BOARD BUSINESS CONT.**

**Subcommittee Reports:**

**Technology Committee:**

Mr. Zappile indicated that the Technology Committee had nothing to report to the board.

**TDR Committee:**

Mr. Gstattenbauer indicated that there was nothing on behalf of the TDR Committee to report, however, one of the things that came through loud and clear at the meeting at the Office of Smart Growth in terms of what they are looking for as far as the sending districts are concerned, the 2 things that they do not want to include is woodlands and campsites. What they are looking for is prime agricultural tillable land, preferably contiguous. They do not have a problem with a lot less than 100 acres. He further indicated that even if they exclude the campsite and the woodlands, we still have enough in the sending district to satisfy the demand that is going to be created at the town center. The committee will have to review the TDR map and refine it.

**Correspondence:**

The correspondence was reviewed. No formal action was taken.

**PUBLIC PARTICIPATION**

A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to open this meeting to the public. All were in favor. The Motion was carried.

Dave Miller appeared before the board and questioned the board if the township was at the pre-petition stage of the Plan Endorsement. Mr. Romania indicated that the meeting with the Office of Smart Growth earlier this month was the pre-petition meeting and we are just past that stage. Mr. Miller also questioned if a subcommittee has been formed for the review of the Plan Endorsement Process. Mrs. Kristensen indicated that she appointed 5 members to this committee which consist of: Mr. Hahn from the Governing Body; Mr. Romania from the Land Use Board; and Mr. Gstattenbauer from the Open Space Committee; and 2 members of the public which the attorney is reviewing at this time to make sure there are not any conflicts. She indicated that this is strictly an advisory committee which has no power at all. Mr. Clark indicated that there is a reason that the new committee is only 5 members. He indicated that this proposed regulation assumes that there has not been any discussion or review of the plan endorsement and the ordinances. He noted that Frankford has been discussing and planning this process for approximately 5 years.

Mr. Miller asked the board to change their historical precedent of carrying no show applicants to the next meeting without requiring that applicant to reapply with fees and notice to the public. He was concerned with the child care center application that was a no show last month.

A Motion was made by Mr. Zappile and seconded by Mr. Martin to close this meeting to the public. All were in favor. The Motion was carried.

**NEW APPLICATIONS**

**Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance:**

Appearing before the board was the applicant’s attorney, Richard Keiling and their engineer, Owen Dykstra. Mr. Dykstra gave his qualifications to the board and was sworn in by the board attorney.

Mr. Keiling apologized to the board for not appearing as advertised last month. He indicated that he did speak to the board secretary last month and there was problem with getting his client here last month. He did send a fax transmittal to the township at 9:51 p.m. on September 19<sup>th</sup> requesting an adjournment. The reason he could not attend the last meeting was that his client was not available.

Mr. Pellow indicated that he did a report on September 11, 2007. He received a response to that report from Mr. Dykstra on October 16<sup>th</sup> indicating that they will revise the map to comply with the report; however, he never did receive a revised map. He also indicated that a traffic report was not submitted. Mr. Keiling indicated that the traffic report will be sent out federal express to Mr. Pellow and the board secretary by tomorrow. Mr. Dykstra indicated that there is a waiver request for the parking setback. The applicant wanted to get a feeling of the board with regard to this request before making the changes which will be done by the next meeting.

Mrs. Kristensen and Mr. McDowell stepped down from this application because the township owns an adjoining piece of property.

Mr. Clark reviewed the notice submitted by the applicant and indicated it was sufficient. Mr. Pellow indicated that the Compliance with legal notice requirements is the only item for completion and the application is complete.

Mr. Dykstra indicated that this is an 8.1 acre site on the south side of Route 206 at the intersection of East Shore Lake Owassa. The property is a split zone, which the front portion of the property is located in the C1 zone and the rear of the property is located in the AR zone. He indicated that the proposed child care center is a permitted use in the C1 zone. Mr. Clark questioned if any part of the child care center is in the AR Zone. Mr. Dykstra indicated that the septic will be in the AR Zone and all the improvements will be in the C1 Zone. Mr. Dykstra indicated that they meet all the setback requirements for the proposed structure. There is one variance for the frontage along East Shore Lake Owassa Road where 100’ is required and the applicant’s have 95’. The existing site has 730’ of frontage along the State Highway. They have received a wetland Letter of Interpretation which indicates that there is wetlands along the northerly boundary of this site, which have 150’ buffer which forced all the developed to the southerly portion of the site. They are proposing a 9700 square foot day care center which will accommodate 125 students. The entrance is proposed off of East Shore Lake Owassa Road. The reason for this, the New Jersey State Highway does not allow an entrance off of the highway if you have an alternative access. They are proposing 51 parking spaces. He explained to the board the circulation system within the development. The development will be utilizing a septic system and an on site well for water. The drainage will be an infiltration basin and a detention pond to meet the water quality, water quantity and ground water recharge requirements to meet the Stormwater Management rules. They will be placing the sign along the State highway. They have oriented the building towards the intersection of East Shore Lake Owassa Road and New Jersey State Highway Route 206 in order to have the playground areas to the back of the site so they will not be noticeable from the street. The applicant is requesting a waiver on the parking lot. They are proposing the parking lot being located 18’ off the proposed building along most of the frontage and also 3’ feet off of the building in the area of the canopy. Because of this they are asking for a waiver from 20’ which is the requirement to 18’ and 3’ at the area of the canopy. He feels this is

**NEW APPLICATIONS CONT.**

**Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance Cont.:**

a better design with the canopy, however, if the board requires the 20' this can be accommodated. They will, however, need the waiver for the 3' from the canopy because they feel a canopy is needed and is appropriate for this type of facility. Mr. Dykstra indicated that they are also requiring a waiver on the lighting. The ordinance requires a 1/2' candle maximum allowed. They feel this is a very nominal amount of light. They feel the 1.28' would provide for a safer situation for this type of facility.

Mr. Romania questioned why the parking facility was in the front and not the rear of the facility. He indicated that they have the playground in the rear of the building which they feel is a safer situation for this facility because you don't want a playground near a highway.

Mr. Larson questioned if the playground area will be fenced in. Mr. Dykstra indicated that it would be.

Mr. Dolan asked Mr. Dykstra to explain to the board the distance between the intersection with the driveway to the child care center and the length of the driveway at the site. Mr. Dykstra indicated that it is approximately 160' to the front of the driveway from the edge of the road and the parking lot is approximately 180' into the site. Mr. Keiling indicated that the original intention of the applicant was to have the access off of Route 206, but as indicated by Mr. Dykstra the state would not allow this since there was an alternative access.

Mr. Romania questioned what the building was just above the parking lot. Mr. Dykstra indicated that it was an existing home, which the applicant has provided for additional landscape buffer between the site's driveway and the existing home.

Mr. Clark questioned what the other uses are surrounding the site. Mr. Dykstra indicated to the North is a big wetland area. The lot on the corner is owned by Frankford Township and it is vacant. There are residential uses to the right. Across the street are commercial uses. Across from Lake Owassa Road is Green Acres property.

Mr. Clark questioned Mr. Dykstra as to who owns the road adjacent to the property. Mr. Dykstra indicated that Frankford Township owns the road.

Mr. Romania questioned if there is anything on the site at the present time. Mr. Dykstra indicated it is a vacant site with an old foundation on it.

Mr. Dolan questioned if there has been any previous commercial activity on this site. Mr. Dykstra indicated not to his knowledge.

Mr. Larson questioned Mr. Dykstra if he anticipates school buses coming into the facility and can the facility handle a bus coming into the site. Mr. Dykstra indicated that there will be buses and he will have to research if the buses can handle this.

Mr. Clark marked the first exhibit as "A-1" which is the colored rendering of the Site Plan which is labeled the Presentation Plan. It is primarily the landscaped plan minus the lighting and it also shows the zoning requirements. They also marked Exhibit "A-2" which is the Architectural Plans, which were submitted to the board. Mr. Dykstra indicated that the colors of the building will be earth tones.

A Motion was made by Mr. Martin and seconded by Mr. Larson to open this matter to the public. All were in favor. The Motion was carried.

**NEW APPLICATIONS CONT.**

**Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance Cont.:**

Appearing before the board was Kirk Perry. He questioned the notice that was given by the applicant. He indicated that at some point in the text of the newspaper notice is a word “possible” was utilized when it discusses the use for the building. His concern by using the word “possible” is the notice for anything that would be allowed in the commercial zone if after day one they don’t want a day care center. Mr. Clark reviewed the notice. He indicated that the notice is adequate in the sense that people know that a day care center is being proposed, which satisfies the statutory requirement as to the use. The second question is, if they get an approval for a day care in 2007, what happens in 2009 when they want to change the use. Mr. Clark indicated that there would be a restriction on this facility to only be used as a day care facility and the applicant would have to come back to the board for a change of use, even though it is an allowed use in the zone.

Mr. Perry stated that in Frankford Township a day care facility is allowed in the C1 Zone and not in the AR Zone. He questioned the board about inherently beneficial uses. He read a statement from the NJ Planner which states “The New Jersey Legislature has taken away local control when an application involves a home day care, day care center or group home.” He stated that therefore, when you decide this is an inherently beneficial use, it could be allowed in any zone. He questioned if this is really a zone issue or not, because he just heard it was represented as one. Mr. Clark indicated that there is a section in the statute, 66.6, that talks about child care centers which states “Child Care Centers for which upon completion, a license is required from the Department of Human Services. Pursuant to the Statute, shall be a permitted use in all non-residential districts of a municipality. The floor area occupied in any building or structure as a child care center shall be excluded in calculating any parking requirements other applicable to that number of units or amount of floor space as appropriate under state or local laws or regulations adopted there under. 2. The permitted density allowed for that building or structure under any applicable municipal zoning ordinance.” Mr. Clark indicated that in this case state law has spoken over any municipal land use law that overrides any ordinance that the township could adopt or say otherwise. This is controlling because the legislatures have identified day care centers as something that is very important. Mr. Clark further indicated that in this case, the use is permitted; therefore, the board does not have to get into the inherently beneficial discussion.

Appearing before the board was Darcy Harris. Ms. Harris was sworn in by the board attorney. She indicated that she has lived on the street that the day care center is proposed for 20 years and there has been moderate growth during that time. She also teaches at Frankford Township Schools so she deals with children coming in from the day care centers in the local area. She did some research on the capacities that Frankford Township has for day care centers in the area. She indicated that there are 7 day care centers either under construction or in existence at the present time: 1) Acorn Landing with a capacity of 27-30 children and are running just under capacity; 2) Stepping Stone with a capacity of 30 children and are not at capacity at the present time; 3) Second Home with a capacity of 90 and they are running at 70-80 children right now; 4) Rainbows of Learning with a capacity of 125 children and as of today they have 4 children enrolled; 5) For Children Only and she was not able to obtain numbers for this day care center; 6) Little Children’s World which closed 2 years ago because of dropping enrollment. She indicated that there are many facilities outside of Frankford Township. Mr. Romania questioned Ms. Harris if her data was capacity only because he feels that cost, what they provide, what they are geared for is also a factor that parents decide on a day care center. Ms. Harris indicated that her point is that the existing day care centers are not at capacity and there is not a demand for day care facilities. Mr.

**NEW APPLICATIONS CONT.**

**Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance Cont.:**

Clark indicated that this board is not dealing with a Use Variance; this application is a permitted use, permitted by State Law. Therefore, the board can not turn it down because it thinks that there are enough day care centers in the area. Ms. Harris indicated that her concerns here were that if, in deed, they build this facility and we have an excess number of openings in the township for child care, this business may not make it and then what happens to the building and what happens to this business if it is changed over to some other type of permitted use. She also indicated that she was concerned with the traffic in this area. Mr. Clark indicated that the traffic issue will be discussed at another meeting. Ms. Harris indicated that she was concerned with the wells and the septic in the area if this facility is built. Mr. Romania indicated that this is not a Land Use Board issue; it is a County Board of Health issue. Ms. Harris is also concerned about the property across the street which is used as hunting grounds.

Barbara Kelly appeared before the board. She questioned since the state requires access to this site off of the township road, is there a process for a variance that can be applied for by the applicant. Mr. Keiling indicated that they have tried this. In fact, they hired an outside law firm who specifically deals with the DOT.

Kim Hawk appeared before the board. She is concerned about the wells in the area and the increased traffic. She asked the board to consider all the factors in this application before making a decision.

Steve Stempert appeared before the board. He questioned the applicant as to the reason the State said no to access off of Route 206. Mr. Keiling indicated because they have access off of East Shore Lake Owassa Road and there is a provision in the state rules if you have access to a township road, you must obtain access through that road. Mr. Stempert questioned if the State considers the dangerous corridor. Mr. Clark indicated that they do not consider this.

Gordon Shehab appeared before the board and suggested that the applicant donate a portion of the property to the township along East Shore Lake Owassa Road, then they would not have road frontage on the township road. Mr. Keiling indicated that the state would say that they would have created their own hardship. Mr. Dykstra indicated that the State has jurisdiction over a subdivision along the State Highway.

Walter Winkler appeared before the board. He questioned the applicant if they researched coming off of Mill Street rather than East Shore Lake Owassa Road. Mr. Dykstra indicated they do not own road frontage on Mill Street. Mr. Winkler indicated that he feels the owner of that property would grant them access across his land to this lot. Mr. Dykstra indicated that there are wetlands that they would have to cross which would be another issue with the DEP.

Dave Miller appeared before the board. He was concerned about the access on East Shore Lake Owassa Road. He also asked that the applicant submit copies of the denial from the State as to the access from Route 206.

There being no further public participation, a Motion was made by Mr. Martin and seconded by Mr. Zappile to close this matter to the public. All were in favor. The Motion was carried.

Mr. Dykstra questioned the board if the requested waivers for the foot candles and the parking lot setback are acceptable. The board indicated that the parking lot setback should be met to meet the township ordinance.

**NEW APPLICATIONS CONT.**

**Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance Cont.:**

A Motion was made by Mr. Dolan and seconded by Mr. Gstattenbauer to carry this application without further notice to the November 28, 2007 Land Use Board meeting. All were in favor. The Motion was carried.

A Motion was made by Mr. Larson and seconded by Mr. Martin to take a 5 minute recess at 9:00 p.m. All were in favor. The Motion was carried.

A Motion was made by Mr. Martin and seconded by Mr. Larson to reconvene the meeting at 9:05 p.m. All were in favor. The Motion was carried.

**BOARD BUSINESS CONT.**

**Wykertown Road:**

Mr. Smolen questioned the board about a barn being built in front of a house on Wykertown Road. Mr. Romania asked the board secretary to check with Mr. Paterson to see if a permit was taken out for this.

**Frankford Plains Cemetery:**

Appearing before the board was William Haggerty, Esq. on behalf of Frankford Plains Cemetery. He indicated that they acquired a 5 acre tract of land and they would like to extend the cemetery into the new tract. They had a drawing prepared by a company in Buffalo that specializes in cemeteries. He indicated that the new proposed entry is a gated entry off of Plains Road. They would like to have this new entry as the entry to the site because the current gated entry does not have good site distance. The Cemetery is concerned with the site plan application. There is no lighting proposed, it is relatively level, they have never had trouble with water run off. They are also concerned with the application fees for this process.

A Motion was made by Mr. Martin and seconded by Mr. Larson to write a letter of recommendation to the Township Committee requesting that they waive the application fees for the Frankford Plains Cemetery site plan application. All were in favor. The Motion was carried.

**FAR Ordinance:**

Asked the board to review the FAR Ordinance to include a waiver if the applicant increases the FAR by a small percent, but the footprint is the same. Mr. Clark asked Mr. Haggerty to submit to the board some suggestive language with regard to the requested change.

**ADJOURN:**

A Motion was made by Mr. Martin and seconded by Mr. Zappile to adjourn the meeting. All were in favor. The Motion was carried.

Respectfully submitted,

SHARON M. YAROSZ  
Land Use Administrator