

**TOWNSHIP OF FRANKLIN  
PLANNING BOARD  
COUNTY OF SOMERSET, NEW JERSEY**

**REGULAR MEETING  
September 26, 2023**

The regular meeting of the Township of Franklin Planning Board was held at the Board of Education Building located at 2301 State Highway 27, Building 1, Somerset, NJ, and was called to order by Chairman Orsini, at 7:30 p.m. The Sunshine Law was read, the Pledge of Allegiance said, and the roll was taken as follows:

**PRESENT:** Councilman Anbarasan, Sami Shaban, Theodore Chase, Erika Inocencio, Robert Thomas, Meher Rafiq, Rebecca Hilbert, and Chairman Orsini

**ABSENT:** Mustapha Mansaray, Charles Brown, and Jennifer Rangnow

**ALSO PRESENT:** Mr. Eric Bernstein, Special Board Attorney, Mark Healey, Planning Director, Darren Mazzei, Township Engineer, and Christine Woodbury, Planning & Zoning Secretary

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**MINUTES:**

- **Regular Meeting – June 21, 2023**

Chairman Orsini made a motion to approve the Minutes, as submitted. Mr. Shaban seconded the motion, and the roll was called as follows:

FOR: Mr. Shaban, Dr. Chase, Ms. Rafiq, Ms. Hilbert, and Chairman Orsini

AGAINST: None

- **Regular Meeting – July 5, 2023**

Chairman Orsini made a motion to approve the Minutes, as submitted. Mr. Thomas seconded the motion, and the roll was called as follows:

FOR: Councilman Anbarasan, Mr. Shaban, Dr. Chase, Mr. Thomas, Ms. Rafiq, Ms. Hilbert, and Chairman Orsini

AGAINST: None

## **PUBLIC COMMENTS:**

Chairman Orsini explained to the public how the meeting would be run that evening, giving everyone who wanted to speak 5 minutes, which would be adhered to. He then added that the Board and attorneys would respond to comments after the public has completed their comments and/or their 5 minutes were up.

Mr. Bernstein, Special Counsel to the Planning Board, then indicated that comments would need to be made in relation to the Application before the Board that evening, B9 Schoolhouse Owner, LLC. He reminded the public that there would be no cross examination of witnesses or a back and forth between the Applicant, the Objector, the Board, or anyone else. He added that he would like to have the public come up and describe why they were for or against the Application and that they would have 5 minutes to speak but were not required to take all that time if they did not need it.

He then explained that the order of the meeting would be first to give the public a chance to speak, a representative, if there was one, from the Canal Walk Association, the Board, then Mr. Lieberman, then counsel for the Applicant. He went on to explain that the matter would then be closed to the public, subject to Board deliberation, and a vote would be taken that evening on the matter.

Mr. Bernstein then told the public that there was a stenographer present that evening and asked them not to call from the audience, comment, whistle, applaud, boo, or make any other noises.

Chairman Orsini then asked the public, when they came up to the podium, to state their full name, spell their last name and give their address.

Chairman Orsini then made a motion to open the meeting up to general Planning comments not related to the Application before the Board that evening. Mr. Thomas seconded the motion, and all were in favor.

Seeing no one coming forward, the Chairman made a motion to close the meeting to the public for general comments. The motion was seconded, and all were in favor.

## HEARINGS:

- **B9 SCHOOLHOUSE OWNER, LLC / PLN-22-00011**

Chairman Orsini then made a motion to open the meeting for any public comments on the Application, B9 Schoolhouse Owner, LLC. The motion was seconded, and all were in favor.

Mr. James V. Solomos, 7315 Minuteman Lane, Somerset, NJ, came forward. Mr. Solomos indicated that he was a lifelong resident of New Brunswick and was used to trains and city noises, but that he had moved to Somerset with his wife and had experienced the explosion of the warehousing that has begun to surround the Canal Walk development over the past several years, including Amazon, that he stated had affected his quality of life exponentially for the worse. He stated that the 24/7 operation with trucks backing up at all hours of the night with their beep, beep, beep. He also stated that the additional truck traffic added additional time onto every trip made from their home. Mr. Solomos stated that the additional proposed warehouse directly across from Canal Walk would “double -down” on the existing noise and traffic issues in the area. He added that he did not know that they were moving into a mega warehouse site seven (7) years ago vs. a residential 55+ community in the beautiful Franklin Township on the historic Delaware & Raritan Canal State Park. He then then explained how he had learned about Municipal Planning structure, governance, Planning Board and Master Plans. He stated that the inclusion of a mega warehouse across the street was a health and safety situation affecting thousands of residents, not just in Canal Walk, but other surrounding communities such as Somerset Run, Sterling Pointe, and Renaissance. He asked the Board to do the right thing by denying the Application.

Mr. Daniel Robinovitz, 67 Bayard Road, Canal Walk, Somerset, NJ, came forward and stated he was not a member of the Citizens Warehouse Action Group (CWAG), but was proud of the members and what they had done. He stated that he has lived in Franklin Township for 18 years and moved there because it was listed as one of the Top 5 Places in NJ to Retire. He stated that he was outraged by the many warehouses that were being built around residential areas, especially having to share the road with tractor trailers just to go out and get gas, go the Shop Rite, or get on Rte. 287 to visit their kids. Mr. Robinovitz stated that it was an affront to their health and wellbeing with the truck noise and pollution. Mr. Robinovitz stated that his wife had lung issues, and he then asked the Planning Board to deny the Application and protect the health and well-being of the people.

Ms. Roberta Henry, 3209 Enclave Circle, Canal Walk, Somerset, NJ, came forward. She thanked the Planning Board for giving the public a chance to speak on the B9 Warehouse proposal. She explained that she was outraged at some of the comments that denied the health and safety effects of the proposed warehouse, to include traffic, increased noise and pollution that had been demonstrated by warehouse facilities and their tractor trailers coming and going. As a former nurse for 60 years, Ms. Henry spoke about the health and long-term effects of noise, air pollution and stress. She brought up

the NJ State Planning Commission policy, established in September, 2022, and discussed the policy that spoke to the emissions, air pollution and green-house gases from diesel-powered delivery vans and tractor trailers having the most substantial environmental impact from warehouse facilities and health effects of the same. Ms. Henry then brought up the empty warehouses on Elizabeth Avenue and Cottontail Lane, but they still face more being built, but this time along a designated Scenic Corridor and across from a 55+ community (Canal Walk) with over 1,200 residents. She then asked the Board to deny the application for the reasons given in her comments.

Mr. Maheshwari, 28 Bryant Court, Canal Walk, Somerset, NJ, came forward and discussed pictures, taken Monday, September 18, 2023, noticing heavy traffic along Randolph Road during non-peak hours and then showing a long line of trucks parked and idling near the warehouse during the day. Mr. Bernstein then asked if the person who took the pictures was there that evening, and Mr. Maheshwari indicated that she was not due to medical reasons. Mr. Bernstein then indicated that the pictures could not be authenticated since the person who took them was not present to testify when/where/how they were taken. He added that for purposes of the record, the Board would accept the pictures, but that they did not have the impact that they would have had if the person who took them were present and could give details related to them. Mr. Maheshwari stated that they called the police, who stated that they would look into it, but did not show up. He then indicated that it was a public safety and public health issue and was concerned about what would happen should the warehouse proposed for across the street from Canal Walk be approved. He stated that he was concerned about the effect it would have on 3,000 residents from Canal Walk and Summerfields. Mr. Maheshwari then described the additional time it took to drive to CVS from the Canal Walk gate due to increased truck traffic from the Amazon warehouse and new warehouse across from Dunkin Donuts (on Randolph Road) that was now operational. Mr. Maheshwari was concerned that the B9 Warehouse would not have enough room to park trucks on the site. He went on to explain how close these facilities were to each other and how their driveways would cause traffic build-up being in such close proximity to each other. He asked that the Board deny the application as the citizens were in danger of public safety and public health issues.

Mr. Subhash Shah, 59 Bryant Court, Canal Walk, Somerset, NJ. Mr. Shah then addressed a water issue in a report from Princeton Hydro, regarding a water spill from the pond on the B9 property onto Mettlers Lane and across to Canal Walk. He noted that there was no mention of the water that was located in that pond, and he noted that even during the hot, summer months, the water level remained relatively the same. He spoke about people going to fish in the pond and wondered how the fish got there. Mr. Shah indicated that it may start with underground springs. He was concerned that the storm water management system, currently proposed, may not solve the issue and he wanted to know who was going to be regulating the dam. He indicated that during Hurricane Ida, many homes and the clubhouse of Canal Walk had their basements flooded. He then brought up Lindy Lake that had not been discussed and was located behind a small house on Schoolhouse Road and Weston Canal Road. He also noted that access to Lindy Lake was accessed by a small road called Lindy Lane, which was

off Weston Canal Road. He passed out pictures that were taken but wanted to know the connection between Lindy Lake and the pond on the B9 Schoolhouse Property. He indicated that he was concerned with additional flooding of the Canal Walk properties.

Mr. Bernstein then asked Mr. Shah where the documents that he provided to the Board came from. He stated that one two(2)-page document with the title of Lindy Lake Connected to pond on B9 property. Mr. Shah stated that it came from an old Somerset County Map. He added that the document showed a copy of an old map (approximately 10-12 years old). Mr. Bernstein then addressed the three (3)-page, double sided document with pictures appeared to be Mettlers Road flooded on April 30, 2023. Mr. Steven Brant, 22 Bryant Court, Canal Walk, Somerset, NJ and not a member of CWAG, came forward indicating that he had taken the pictures on April 30, 2023 where there was a police vehicle blocking the road to prevent cars being caught in the flooded roadway. He noted that the spot photographed was on Mettlers Road between Schoolhouse Road and Weston Road right where the pond comes out.

Mr. John DeLuca, Attorney representing the Applicant, B9 Warehouse, then asked if Mr. Brant had seen flooding on Mettlers Road after April 30, 2023. Mr. Brant answered in the affirmative and indicated that he did not recall the dates. Mr. DeLuca asked if Mr. Brant saw flooding after the Applicant agreed to fix the Township's pipe on Mettlers Lane. Mr. Brant stated that he did notice some flooding, but it was more minor than before.

Mr. Charles Inghileterra, 86 Saratoga Court, Somerset, NJ. He asked the Board to do the right thing and deny the application. He said he was not a member of CWAG.

Ms. Barbara Burns, 79 Haverhill Place, Somerset, NJ, came forward and described the pollution and the noise and the constant beeping when trucks backup, too close to the D&R Canal, the water/flooding issues, etc. as reasons for concerns to her regarding the Application. She then stated that she wondered why the Township could not purchase the land for open space instead of approving the warehouse in that location so close to residents.

Mr. Steven Brant, 22 Bryant Court, Canal Walk, Somerset, NJ, came forward. He stated that he was not a member of CWAG. Mr. Brant stated that Mr. Lanfrit, Applicant's Attorney, tried to imply that a Scenic Corridor did not exist on Mettlers Road because of the homes that exist there between Schoolhouse Rd. and Weston Canal Road. He noted that those homes were completely hidden from the roadway now from conifer trees. He looked at the documents related to the Scenic Corridor regulations, noting that there were exemptions for detached one (1)- or two (2)-unit dwelling buildings were exempt from the scenic corridor. Mr. Brant then discussed the wide sidewalk near 5 Mettlers Road and could see residents of Summerfields or Canal Walk walking in that area, taking in the serenity of the area, which he believed would be ruined by the proposed warehouse and truck traffic. Mr. Brant stated that the last date he was aware of flooding on Mettlers Road was on July 25, 2023. He discussed that the water studies for B9 were not done properly because they were not done in the

spring which was when there were more issues with flooding of the roadway and basements in Canal Walk, as testified to by Mary Goodman

Ms. Enid Doyle, 37 Bryant Court, Canal Walk, Somerset, NJ, came forward and stated that she was not represented by CWAG. She discussed the distance of the meeting space as a detriment for more seniors coming out to the meetings. She also indicated that the negatives of the Application most certainly outweigh the positives. She added that a 3D board was supposed to be made to see the size and scale of the proposed warehouse, which was not done. Ms. Doyle believed it was because they did not want anyone to see how large in scale the building would be. She also stated that showing the landscaping plan in the views that were shown gave the wrong perspective as to what the landscaping would do to shield the building. She then spoke about the roadways being too narrow to accommodate large tractor trailer traffic. She then spoke about traffic, noise, road erosion, flooding, air pollution, etc., were just a few of the negatives. She said that there were already warehouse buildings in the general area that did not have tenants as yet and stated that it was the wrong place to build warehouses.

Nancy Beirne, 26 Bryant Court, Canal Walk, Somerset, NJ, the property closest to the proposed warehouse, and stated that she was not represented by CWAG. She explained that she would be constantly barraged with the noise of trucks backing up and constant 24/7 operation of a warehouse practically in her backyard, ruining their quality of life. She also stated that the roads were inadequate to manage the large tractor trailer trucks that are already causing accidents and massive delays. She then showed a picture, taken by her husband, of a signpost at the corner of Mettlers and Schoolhouse Road, where she indicated it didn't seem to be standing upright any longer, a picture, taken by her neighbor, of a truck attempting to turn a corner from Weston Canal Road and having to go into the next lane to do so. She then spoke about the flooding in the area and felt that an already existing problem would be exacerbated with the construction of a huge, concrete structure replacing grasslands. She is concerned about more flooding of basements. She then asked the Board to deny the Application. Mr. DeLuca and Mr. Lieberman made their way to the dais to look at the photos that Ms. Beirne presented to the Board.

Mr. Nick Ceiampa, 38 Freedom Lane, Canal Walk, Somerset, NJ. He indicated that he was not represented by CWAG. Mr. Ceiampa discussed a possible 1-2 ft. snowstorm and the difficulty of removing that snow from the closed-in truck court. He then discussed the County needing to widen roads where they intersected with the warehouse entrance.

Mr. Vikram Bhargava, 83 Constitution Way, Canal Walk, Somerset, NJ, came forward. Mr. Bhargava described the quality-of-life issues with the construction of the warehouse in the subject location. He described what the Applicant indicated was tall trees blocking the views and insulating the residents from sounds of trucks on the property. He then discussed the amount of time that it might take to accomplish what the Applicant envisioned, and it may take up to 5 years or more for the trees to mature to

that level of coverage. He noted that many residents were in their 80's or even 90's and may not live to see the day that this vision comes into existence. He then spoke about the possibility of needed industrial sized air conditioning units for the whole warehouse that would run night/day and the noise they would bring. He asked the Board to discourage the allowance of a whole warehouse air conditioning system. He then discussed the possibility of fires/explosions depending on what was stored in the warehouse and what evacuation plan would be put in place to get seniors out of multi-story condominium buildings. He asked the Board to do the right thing and deny the approval.

Mr. Ken Koping, 43 Bennetts Lane, Somerset, NJ, came forward. He discussed the noise levels he hears from his property that he's lived in for 41 years, noting that there is extreme noise from air handlers coming from the buildings along Veronica Avenue from 75 ft. away.

Mr. Alex Kharazi, 14 Margaret Drive, Somerset, NJ, came forward. Mr. Kharazi stated that he was President of the Franklin Township Interfaith Council, a member of the Human Relations Commission, Dr. Martin Luther King Foundation, and he ran a private school in town. He then stated that he is a 37-year resident of Franklin Township and planned to live here for the rest of his life. Mr. Kharazi then told the Board that B9 Schoolhouse was not a good project for the town. He then spoke about the message of "love your neighbor and care for them, which he felt that B9 Schoolhouse have not followed and do not seem to really care about the quality of life and wishes of 70,000 residents of the Township. He then asked the Board to think about those residents, the seniors in particular, who will be very directly affected by the decision that will be made here tonight.

Mr. Michael Hampton, 319 Shilling Drive, Somerset, NJ, came forward. Mr. Hampton was supporting the warehouse because he indicated that jobs are needed to support those in the Township living at the poverty level.

Mr. Arnold Schmidt, 134 Hickory Road, Somerset, NJ, came forward. He spoke about the types of vehicles that would be coming and going to the property as indicated in the Applicant's own Traffic Impact Statement and Environmental Impact Study, to include large wheel-based vehicles as delivery trucks, refuse trucks and emergency vehicles as well as tractor trailers. Mr. Schmidt then stated that on page 10 of the noise section within the Environmental Impact Statement, it indicated that delivery and trash collection trucks would unload and pick-up during daytime hours. Mr. Schmidt indicated that these large vehicles would clog up our roadways and cause air pollution within the daytime hours. He added that they could not expect the Board to approve something that was so undefined. Additionally, he stated that the Traffic Impact Study only addressed traffic on the site and not what impact would occur off the site on the local surrounding roadways. He then added that their Environmental Impact Statement indicated that the ambient noise from their operations would not adversely affect the quality of life to the residents who live nearby. Mr. Schmidt indicated that they had not seen/heard about any analysis/modeling to prove this point and needed to back up their subjective opinion with facts and analysis unresolved questions in the Application related to traffic,

landscaping and noise and implored the Board to reject the Application by not voting to approve it.

Mr. DeLuca then asked Mr. Schmidt if he was on the Environmental Commission, and if he was aware of the two (2) reports that the Environmental Commission had submitted. Mr. Schmidt answered in the affirmative but that his comments were not being made by any committee/commission that he was on, but his own opinion as a resident.

Mr. Joseph Danielsen, Block 473, Lot 16, Somerset, NJ, came forward. He explained that he believed that the Environmental Impact Report was grossly incomplete. Mr. Bernstein explained the difference between the Planning Dept. deeming the Application complete and the Board determining that the information provided was sufficient is a different issue. Mr. Danielsen stated that the Township and Planning Board needed to hold their ground, regardless of what a judge might say later. He mentioned the fact that the Environmental Impact Report or the lack of a Noise Study, the Traffic Report, and the Site Plan all brought up more questions than a reasonable, prudent application should ever be coming to a Planning Board. He added that even when they asked their sworn, licensed professions, they refused to answer a question. Mr. Danielsen indicated that the Environmental Impact Report included comments about the Township's taxes and the Board of Education. He then stated that if he were on the Planning Board, based upon the evidence or lack thereof, he would vote no.

Chairman Orsini asked Mr. Danielsen if their Special Counsel Attorney to explain what goes into deeming an application complete. Mr. Bernstein, for the purposes of the record, wanted to clarify the issue of what was involved in deeming an application complete. He noted that there was a checklist that the Township follows as there is in most every municipality in the State that has land use. He indicated that it required an Applicant, whether it is a single-family home or a 200,000+ warehouse to meet in terms of obligation to provide materials to the Planning Dept. to review. He added that the documents did not have to be accurate, but they do have to be compliant. Mr. Bernstein noted that an Environmental Impact State was apparently provided to the point that the Planning Dept. believed it complied with the checklist. He continued by saying that complying with the checklist only meant that an Applicant has the right to come before the Board, but still had to make proofs to the Board through witness testimony, contradicted by objector testimony and the public, as to whether the proof of the underlying statement or the plans or the reports or the testimony were in fact accurate and meet the requirements. He noted that the bar was exceedingly low to determine completeness and for the Township staff to make sure that the Applications were marginally compliant. Mr. Bernstein then stated that the Environmental Impact Statement really did not become an issue until testimony was given by the author of the statement, who indicated that there were problems in it raised by Mr. Lieberman, at which point it was determined that they would "strike" pieces of the statement out that did could not necessarily be supported. He added that obviously the Board would take that into account when it makes its determination.



Mr. Danielsen stated that the Board did not have the list of authors of the Environmental Impact Statement or the criteria or qualifications of the authors of that document nor can they examine them. Chairman Orsini indicated that the Environmental Impact Statement was signed by the gentleman who testified on behalf of it. Mr. Danielsen indicated that the witness signed the report but said he had no environmental qualifications. The Chairman then indicated that that was why they struck some of the testimony because that witness could not defend the statement that he made. Mr. Danielsen then stated that the Chairman had seen better, more professional applications that did not show up with such deficiencies and arrogance.

Mr. DeLuca objected to the line of discussion and said that the commenter had gone back and forth and got his answer.

Mr. Bernstein indicated that the commenter had made his comments, and the Chairman stated that they have given him an answer.

Chairman Orsini agreed to a 5-minute break and would resume the hearing at 9:10 p.m.

The Chairman then brought the meeting back to order after the break.

Mr. Alex Straus, 285 Hazlitt Way, Quailbrook, Somerset, NJ came forward. Mr. Straus stated that he was not part of CWAG or any other attorney. Mr. Straus mentioned that a member of the public who came up to speak and who lives in his neighborhood came up to speak in favor of warehouses to provide employment. However, Mr. Straus indicated that there were zero warehouses being proposed in their neighborhood and it was easy to speak in favor when it did not affect your quality of life. Mr. Straus also brought up the fact that Mr. Lanfrit, Applicant Attorney, indirectly benefitted from the various housing developments and the Central Jersey College Prep School that were all built on Mettlers Road, a designated Scenic Corridor. Mr. Straus also indicated that now Mr. Lanfrit wanted to chip away that very Scenic Corridor for the B9 Warehouse client. He asked all of the members of the Planning Board to vote "No."

Mr. Brian Levine, Fusillo Lane, Somerset, NJ, came forward. Mr. Levine then discussed the reports that were issued by the Applicant related to the noise, the lights, and the traffic, indicating that he found them extremely deficient and blamed the legislature for not having stronger criteria for how applicants should submit reports that were more all-encompassing, and then the Planning Board would have gotten that. Mr. Levine stated that he felt that there would be more requests for air conditioning in the warehouses, more trucks, more delivery trucks, refuse hauler trucks, etc. He then discussed if the Board should deny the application, and he felt that they should, that there would be a very large sum of money needed to be spent in legal fees to defend their actions when the Applicant takes them to court.

Seeing no one else coming forward, Chairman Orsini made a motion to close the public portion of the hearing. Mr. Shaban seconded the motion, and all were in favor.

Mr. Howard D. Cohen, Special Counsel to the Canal Walk HOA. He indicated that he was engaged by the Association's Board on July 27, 2022 and memorialized through a retainer agreement on July 28, 2022. He noted that the Canal Walk HOA was comprised of 1,251 residential units and had a population of approximately 2,000+ residents. He stated that no one in Canal Walk wanted two (2) warehouses comprising 215,400 sq. ft. directly across from where they live. From the time when B9 filed their Application for Site Plan approval and throughout the course of the proceedings, Canal Walk HOA followed, what he submitted was a legally realistic approach to the Site Plan Application. He added that the root of the problem stemmed from the misguided decisions of the Township's governing body who years ago adopted ordinances that zoned the property in question commercial business and industrial and included warehouses as permitted uses. He noted that the subject Application was far from a routine case given the presence of the Scenic Corridor Overlay zoning. Given the zoning and the legal constraints, the focus of the Canal Walk HOA, beginning in June 2022, and over the course of the ensuing 16 months has been to negotiate mitigation, both onsite and offsite, to reduce the undeniable and enormous adverse impact that the proposed warehouse development would have upon its residents if the Planning Board approved the Application. He continued by stating that the onsite and offsite mitigation obtained by the HOA was the result of months of discussions and meetings with representatives of B9 and the Township and their respective professionals. The end result was the incorporation of the following mitigation in the plans in evidence before the Planning Board and in ordinances adopted by the Township. He continued by stating that the mitigation included:

1. Grading along the frontages of Schoolhouse Road and Mettlers Road to maximize preservation of existing mature trees.
2. Construction of high berms along Schoolhouse and Mettlers Roads to the rear of the graded frontage designed to provide a buffer to meet the requirements of the Scenic Corridor Ordinance.
3. Dense plantings on the berms of deer resistant, fast-growing evergreens, deciduous trees, and shrubs, with the emphasis on evergreens to serve as a buffer to the Canal Walk residences and furthering the Scenic Corridor Overlay.
4. Construction of a weather-resistant 6ft. fence running along the top of the berms located to the rear of the landscaping to further enhance the buffer consistent with the requirements of Schedule 6 of the Township regulations and the Scenic Corridor Overlay.
5. Revision of the plans to meet the dimensional requirements of the Scenic Corridor Overlay.
6. Elimination of Walpack lighting on the western and rear walls of Building 1, the larger proposed warehouse, facing Mettlers Road to reduce lighting impact on Canal Walk residences.
7. Reduction in the height of light poles from 25 ft. to 15 ft. in the employee parking lot located on the western side of proposed Building 1 facing Mettlers Road and the Canal Walk residences to reduce adverse light impact.

8. Use of Go Away Green color instead of white on the façade on the entire western and rear walls of proposed Building 1 facing Mettlers and Canal Walk residences to reduce adverse impact.
9. Installation of signage prohibiting left-hand turns out and right hand turns into the truck driveway on Schoolhouse Road to bar truck traffic from travelling on Schoolhouse Road in front of Canal Walk and Summerfield developments.
10. Installation of on-site signage barring truck parking, storage, idling and queuing in the employee parking lot on the western side of proposed Building 1 facing Mettlers Road and Canal Walk residences.

In addition, Canal Walk HOA successfully obtained recommendations from the Township Engineer for installation of a concrete island at the proposed truck driveway entrance and exit on Schoolhouse Road to physically prevent exiting trucks from turning left onto Schoolhouse Road as well as a separate third driveway for employee vehicles using the parking lot for Building 2, the proposed smaller warehouse. These recommendations are contained in the Township Engineer's report, dated May 23 and June 26, 2023. The rationale for these recommendations in the Township Engineer's report of June 26, 2023 is to enhance site operation safety by separating the truck and passenger vehicle uses, allow employee vehicles to make both right and left turns out of the third driveway and make the restriction against left turns out of the truck driveway self-enforcing given the limitations of the Township Police Department in terms of personnel to oversee compliance. Also included in the Canal Walk's mitigation list, but refused by B9 was a limitation on operating hours to lessen the negative impact on Canal Walk and Summerfield residents. Mr. D. Cohen indicated that the governing body had since adopted Ordinance 4414-23, which included provisions prohibiting specified operations between the hours of 10 p.m. and 7 a.m. While B9 had sued the Township to invalidate the ordinance, it nonetheless presently governed the B9 Application. He added that offsite mitigation measures were also successfully negotiated with the Township by the HOA to include:

1. Restrictions against stopping and standing along Schoolhouse and Mettlers Roads, Section 226-10, of the Township code.
2. Restrictions barring trucks over 4 tons on Schoolhouse and Mettlers Roads.in Section 226-17.
3. Prohibition over overnight parking by vehicles having a gross weight rating of 12,500 pounds and trailers and semi-trailers between the hours of 12 midnight and 6 a.m. on all Township roads in Section 226-15.

Mr. D. Cohen stated that he had also been informed that the governing body had also agreed to include purchase and installation of monitoring cameras in the 2024 Municipal Budget to aid in enforcement of these restrictions. Additionally, he indicated that the onsite and offsite measures were designed to achieve a realistic legal approach to addressing the Draconian impact of warehouse development on property directly across from Canal Walk and Summerfields if the Planning Board approved the Application. Case law under the Municipal Land Use Law (MLUL) recognized that the Planning Board had discretion to impose reasonable conditions should it decide to approve the

B9 Application, with such conditions to include, among others, the requirement of a third driveway and the requirement of a concrete median. He continued by stating that while much of the onsite and offsite mitigation described today was contained in a Resolution adopted by the Board of Directors on December 22, 2022, the Resolution pointedly and very clearly stated that “adoption of the Resolution shall not be construed as interpreted or as endorsement of the B9 Application and the B9 was left to its proofs in its application and as a matter of law.

Finally, he indicated that all of what he presented today had been reported to the Canal Walk residents in three (3) open meetings and two (2) comprehensive reports. He then stated that, bottom line, no one in Canal Walk wanted these monstrous warehouses – let there be no doubt that regardless of the mitigation, the Canal Walk community will feel relieved if the Planning Board concludes that B9 had not met its burden of proof and denies the Application.

Mr. Stewart Lieberman, Objectors’ Attorney with the law firm of Lieberman, Blackenridge Sinkovich. At the conclusion of all of these hearings, he felt the Application should be denied based on what occurred during the various presentations. He then enumerated those reasons, and they are that Mary Paise Goldman provided testimony and is a groundwater specialist and a hydrogeologist. He indicated that the data that was used to determine the seasonal high-water table was improperly generated. He continued to state that under the NJDEP regulations that she cited, that data had to be taken between January and April and it was not. He also added that nothing was rebutted and that there was nothing on the record that explained why what had to be done was not done. Mr. Lieberman explained that the reasons the data had to be taken between January and April was because that is the rainy season. He went on to state that they had not heard from the Applicant with a reason the law was ignored, and because of that, the stormwater system that was designed predicated on that was worthless and there was a flooding concern with a storm water system that was not designed properly. He added that it was even more concerning since there were existing concerns about flooding conditions and about water in basements. Mr. Lieberman then stated that it was the reason, respectfully, the Application should be denied. In addition to that, He stated that Mary indicated that one of the storm water basins qualified as a dam under the Dam Safety Act and there should not be trees planted on that. He then stated that Mary also indicated that the runoff curve failed to designate the existing land as woods in good condition and was part of what needed to be done to design a stormwater system. Mr. Lieberman then stated that it determined what the existing conditions were so one would know what had to be met after development. He continued by stated that by not using the proper designation, which was woods in good condition, the Applicant artificially deflated its obligations post-construction and, in so doing, it really materially misled the Board about how effective and robust the storm water system needed to be. He indicated that that was another reason why the Application should be denied and was explained by Gene Bove, their Noise Expert, and that the EIS was materially defective, and that the Applicant did not anticipate that the facility would exceed the daytime or nighttime limits listed on page 10 of the Environmental Impact Statement. Mr. Lieberman then asked how the Applicant

came up with that conclusion. He stated that Gene Bove indicated that one way it would likely exceed the limits was by doing modeling. Mr. Lieberman indicated that the Board did not require modeling, but what the Board did require and what the case law required was that an assertion by an Applicant before a Planning Board be supported by facts in the record and it was not. He noted that they were going to have those back-up sounds that drive everybody crazy, sounds of air brakes and something that someone referenced that evening. He noted that the New Jersey Planning Commission, in 2022 indicated that noise could be very intrusive from warehouses and was a known fact that it could be a real problem. Mr. Lieberman then stated that the residents who were at the meeting that evening have the right to be able to open their windows and be able to live in peace and to enjoy the serenity that they anticipated that they would enjoy when they bought their home. He then indicated that the B9 proposal would take away from it in a very, very serious way. Mr. Lieberman told everyone in the room that Mr. Rodriguez testified that the proposal was inconsistent with the Scenic Corridor Ordinance. He noted that most importantly, Section 112-188 of the Municipal Code here in Franklin Township provided that the Board could deny a Site Plan Application if in some way the Application was inconsistent with the preservation of natural resources (Letter b) and if the Board found that it was not in harmony with the surrounding community (Letter b), and in this case a constant noise source from two (2) warehouses. He added that they would now have trucks on the roadway, diesel emissions on the roadway, risks to anyone on a bicycle or parents/grandparents taking their children/grandchildren to a park with this much tractor trailer traffic. Mr. Lieberman stated that he thought the Board would have enough to conclude that this Application was not harmonious with the surrounding community in such a significant and material way that he would respectfully submit that the Board should invoke the provisions of Section 112 188 and find that you would be denying it based on a failure to be harmonious and with the destruction of natural resources with over 500 trees having to come down. He added that these mature trees would be being replaced by very small trees and that it was only one more mature tree that was being included in the replacement plan. Also, it went against the Scenic Corridor ordinance as well as a flooding issue, and without trees, that situation gets exacerbated because trees take a tremendous amount of water. Mr. Lieberman then respectfully reminded the Board that the Environmental Commission in March of 2023 properly acknowledged that the project failed to meet the protective qualities of the Scenic Corridor Ordinance. He then respectfully asked that the Planning Board make the same finding from Section 112-188 that it was consistent with the preservation of natural resources, inconsistent with the qualities of the neighboring developments and that they reject the Application.

Mr. John DeLuca, Applicant's Attorney, came forward and noted that they were seeking a Minor Subdivision approval with a fully conforming Application with the ordinance and a Site Plan approval for the construction of two (2) warehouses, which was also conforming to all Township ordinances. He told the Board that on June 22, 2022, the Township's Planning Dept. deemed the complete Application for development and, under the existing zoning regulations of that time, his stated that his client had a legal right to develop the property as proposed. He then told the Board that in September of 2021, his client closed on the purchase of the subject property only after following due

diligence that the site was properly zoned and could be developed, as proposed, and had been paying taxes on the property in order to carry out that investment. Mr. DeLuca indicated that that evening was the 8<sup>th</sup> hearing on the matter, and based upon the voluminous record, his client had granted the Board an extension to act on the matter on at least three (3) occasions. He added that they apologize for their inability to extend the vote any further, but with the new ordinances continued to be passed by the Township Council, he indicated that his client's rights were being infringed upon and they needed to move the process forward. Mr. DeLuca then stated that his client had received approvals from all outside agencies, including an NJDEP Letter of Interpretation (LOI), stream encroachment permits, Soil Conservation approval and County approval. He then noted that the DRCC (Delaware & Raritan Canal Commission) had reviewed the project subject to the Planning Board's approval. He then noted that the review was very compelling because he believed they received numerous letters from objectors (over 200) all of which were dismissed by the DRCC. He then went on to state that at the first hearing, the Board stated that they were not inclined to approve the Application with any variances attached to it and that they initially were seeking two (2) variances. Mr. DeLuca indicated that they amended their plan to reduce the square footage of the buildings by over 30,000 sq. ft., thereby eliminating all variances and had made every effort to do the right thing and be a good neighbor while protecting its investment. He added that those actions included repairing the Township pipe on Mettlers Road, which resolved the flooding issue in that area as well as designed and redesigned and reduced the project size to minimize any and all impact on the development as may have on the surrounding areas. He went on to state that before making the Application, his client engaged in six (6) months of community outreach that included meeting with the Township members, members of the Canal Walk HOA and asked CWAG to meet with them, which they declined. Mr. DeLuca then noted that the Canal Walk HOA had a very lengthy list of requests and that they incorporated absolutely every suggestion that they possibly could and noted that some of the suggestions that they could not incorporate would have created further variances. He then noted that Canal Walk consisted of 1,262 units and at least 2,000 residents. He added that those residents who have shown up to the hearings represent only a small portion of that whole community. He mentioned that many residents stated that they had purchased their home within the last five (5) years, and within that time his client's property was zoned for industrial use specifically permitting warehouse development. He stated that it was his opinion that those residents either knew or should have known that they were buying homes adjacent to an industrial zone, and, therefore, the Board should discredit and disregard completely the testimony of the objector's Planner, Mr. Carlos Rodriguez. Mr. DeLuca indicated that he was questioned adequately by Mr. Lanfrit and by the Board and could not produce answers that he was familiar with the area. Regarding the objectors' Noise Acoustic Consultant, Mr. Gene Bove, he never testified that there would in fact be a harmful noise issue generated by the development and recommended that a study be conducted, but not required by the Township ordinance. He then noted that if any noise violated the Township ordinance, that activity would have to stop until the violation could be corrected. He stated that that included an impulsive noise like a bang periodically or a continuous noise like a constant humming. Mr. DeLuca indicated that either way, the operator on the property

would have to comply with the noise ordinance. He added that there was not testimony provided that the operator would not or could not also concerning the issue of noise. On the other end of Canal Walk, Mr. DeLuca testified was the Central Jersey Airport that had planes taking off and landing with a flight pattern over Canal Walk as well as a railroad in Manville, where residents of Canal Walk could hear train whistles at all hours of the day or night. As to the objectors' Engineer, Ms. Mary Goldman, he said that they would be agreeable to relocating the trees around the detention area, as she recommended, and would also be willing to swap out the deciduous trees for evergreen trees to provide more screening in the winter months. Mr. DeLuca then indicated that all the other objectors and commenters provided conclusory statements unsupported by fact testimony, and as they were not sworn in to provide testimony under oath, any and all of those factual assertions should be disregarded by the Board. He then wanted to discuss the inconsistencies of the Scenic Corridor and the B-I Zoning District regulations. He added that the Board weighed in on its references in dealing with those inconsistencies and incorporated those changes into the Application. He then indicated that the only objective standards that the Scenic Corridor ordinance had was a 100 ft. setback, which they complied with, as well as the 12 ft. driveway width, which clearly did not apply to the project as that regulation contemplated a residential driveway. He then noted that any Township ordinance that was effective after June 22, 2022 that amended the Franklin Township Municipal code, Chapter 112-Land Development were not applicable to the subject Application and was based upon the time of the Application rule set forth in NJA 40:55d-10.5. He then noted that the time of the Application rule was discussed at length in the case of Dunbar Homes Incorporated v. The Zoning Board of Adjustment for the Township of Franklin. Mr. DeLuca stated that that case went all the way to the New Jersey Supreme Court, and while the Township was successful in defending against the developer in that case, it was only because the court determined that the developer's application was not determined to be a complete application for development. He noted that their client's Application was deemed complete on June 22, 2022 under the regulations that existed on that date, and that Application was in perfect compliance, which was why they were seeking no variances. He added that the authority to determine whether the Application required a variance was not vested in the Planning Board, but vested in the Zoning Officer who made that determination. Mr. DeLuca noted that the Zoning Officer did so and found no variance relief was required for the project in such an application. Mr. DeLuca added that under the case law, it was clear that the Township Planning Board, quoting from case law, "was without authority to deny Site Plan approval because of off-site tract conditions (Dunkin Donuts of New Jersey v. North Brunswick Planning Board. He stated that Planning for traffic patterns was an exercise of the zoning power vested in the Township Council. He added that the Planning Board may go no further than to give a condition of approval on improvements to on-tract entrances and exits and to contribute to off-tract improvements made necessary by the on-tract development. He added that the case law went even further to state a Planning Board's authority in reviewing an Application for Site Plan approval was limited to determining whether the development plan conforms with the zoning ordinance and the applicable provisions of the Site Plan ordinance. He noted that that was from a case called Pizzo Mantin Group v. Township of Randolph, which was also heard by the NJ Supreme Court. Mr. DeLuca reiterated

that the Application was in perfect conformance with the zoning ordinance and the site plan ordinance and that they comply with all other State statutes in effect at the time of their application. For all those reasons, Mr. DeLuca respectfully requested that the Planning Board voted to approve this project as they were only asking that the existing zoning regulations be enforced.

Mr. Mazzei, Township Engineer (CME), gave a synopsis of the driveway plan that he would recommend. Mr. Mazzei then showed on the screen that he had done a B9 Schoolhouse Site Plan and created an overlay over it. He showed the proposal in which he was recommending adding a 22 ft. wide driveway to the east of the proposed truck driveway that would be for the warehouse staff of 33 passenger vehicles. He then showed areas on the plan that were proposed for asphalt cover that he could recommend become landscaped islands to block off the traffic. He also stated that they could potentially have the Applicant look to screen the building more and add some more landscaping. In terms of the truck driveway, he stated that he was recommending a six (6) ft. wide minimum concrete island in the middle that they raise six (6) inches from grade and include four (4) to five (5) bollards in that area that would prevent trucks from turning left. He then noted that he kept the driveway curb cuts the same but did have to widen out the radii just for the turning movements of the trucks which he also showed on the next exhibit. Mr. Mazzei then stated that the only difference to the plan versus what they would recommend potentially from the Applicant was that they agree to put a sidewalk along Schoolhouse Road so that there would have to be a handicap ramp across the driveway for ADA compliance. He stated that he did not show that because they had not received any new Site Plans showing that improvement, but it is something that has been agreed to. On the next screen, Mr. Mazzei stated that he showed three (3) turning exhibits and noted that they were showing a WB67 (63.5 ft. truck) that would be exiting the site. He indicated that the first turning movement showed a truck taking a right-hand turn and travelling eastbound along Schoolhouse Road. The next Turning movement was very similar to what the Applicant had shown, which was a truck travelling eastbound and taking a right into the site. Aside from the separation of traffic, the key to the next exhibit and reason for recommending this was so any vehicle leaving the site and trying to make a left out of the site and travel westbound would not be able to get over the median and bollards to prevent any trucks from ending up going westbound from the site to Weston Canal Road. Mr. Mazzei indicated that that was generated from comments that they received with concerns for truck traffic in front of the Canal Walk residences.

Chairman Orsini then stated that at that point in time, it was his suggestion that there was probably not much to be gained from Board deliberation beyond which was already heard and that the Board had already put on the record through the many long hours of testimony. At that point, the Chairman called for a motion.

Mr. Thomas asked that he wanted to put a motion on the floor that they deny the Application because there were several areas that he personally have questioned about after all the months and all these hearings. He stated that he believed that there were more questions in some areas that were left unanswered than they had answers for.



He said that he heard a tentative agreement on the hours of operation, but that he indicated that he never heard it completely agreed upon at all. He added that it was a necessary thing but was open for discussion. Mr. Thomas stated that at one hearing, the Applicant's Attorney said that we had no right to ask for that information. Another issue he had was storm water management and that their main system is a dam that could breach. He added that normally the Board wanted landscaping, and her recommendation was to take it away and he indicated that they never got a chance to discuss whether it all should be removed or not, whether certain types of plants should be left, and others should be included. Mr. Thomas stated that it was more about the information that they did not get than what they did get. He then spoke about the Scenic Corridor and there was an opportunity to discuss having a green wall on the Mettlers Road side that would help mitigate some of the Scenic Corridor issues. He added that there were more questions about the need for more landscaping that would be appropriate to do a better job of screening in the winter, such as evergreens. Mr. Thomas then brought up the fact that the third driveway was just being discussed that evening and was a discussion that should have been open in any number of previous meetings and that the Board still did not know how the Applicant felt about it. Mr. Thomas then stated that replacing trees was another issue, and the Applicant said that the property had been a Christmas tree farm up until two (2) years ago. Mr. Thomas indicated that he had lived in the Township for over 50 years and never saw a Christmas tree sold from that property. He went on to state that to think that evergreens that were 40-50 ft. tall should be considered part of the Christmas tree crop so it was exempt from a tree replacement requirement was absurd. He felt that those trees the Applicant believes were part of the Christmas tree lot would make a bigger deficit than what might exist. Mr. Thomas then spoke about the Environmental Impact Study and there were questions about that that were not answered. He then discussed the issue of noise that he was concerned about, with the Applicant's comment being that they would meet the State's standard. He added that they needed to know what the impact the noise would be so they could decide, as a Board, whether they were considering the proper noise mitigation measures. Mr. Thomas also stated that it was not enough for the Objector's expert to say that a truck makes 72 decibels of noise five (5) feet away. He added that he cared more about 150 feet away from where the houses were. Mr. Thomas then stated that none of the experts ever stated what a 40 ft. high building would have on the noise if it stood between the origin of the noise and the property line on Mettlers Road. He stated that all of these items he just discussed he would need to consider in order to think about whether there was a mitigation that they would need to apply. Mr. Thomas indicated that they did not get that kind of information, just wishy-washy answers, and actual refusal to answer from experts on both sides of the fence. Mr. Thomas stated that he did not feel he had enough information than to do anything other than vote "No" for the Application. Councilman Anbarasan seconded the motion to deny the Application for all the reasons Mr. Thomas mentioned. The Councilman indicated that he was an elected official and he stated that he listens to the people and heard their call. He stated that he felt it was his duty and responsibility to listen to their call. The Councilman stated that he also lived in a 55+ Adult Community and that he hears from the people in his own community and was a big factor in making a decision, apart from other reasons heard. Mr. Bernstein, Special Council, asked if he could add

the potential of various violations or failures to complete the provisions of 112-188 of the Township Code. The motion was then amended to include that in the motion.

FOR: Councilman Anbarasan, Mr. Shaban, Ms. Inocencio, Dr. Chase, Mr. Thomas, Ms. Rafiq, Ms. Hilbert, Chairman Orsini

Mr. Shaban indicated that he found the Application wholly incomplete, whether it was around noise concerns or around Environmental Studies where their overreaching statements of saying that there would be no impact to the neighbors or the community. He also included flooding on the streets based on the water table and whether there was a dam there. He stated that there were a lot of questions that produced not a lot of complete answers and did not feel he could legitimately approve.

Ms. Inocencio agreed with some of the issues already stated and mainly feeling like there was more information she would have liked to have heard aside from whether or not it was something that was required. She added that she thought it was pretty clear that it would have been helpful to the Board to have received especially information and studies regarding noise and was the most concerning.

Dr. Chase voted "Yes" do deny the Application primarily on the issue of noise and that the Applicant had refused to entertain a restriction by which trucks should not operate on the property between 10:00 p.m. and 6:00 a.m. He said that he would have like to request that any on-site vehicles, such as fork-lifts which had back-up signals that they not use the standard "beep" but instead utilize other ways of warning pedestrians that they were backing up. He also indicated that the Applicant had given no consideration of air pollution by heavy truck traffic.

Ms. Rafiq indicated that the Applicant had failed to answer satisfactorily to the issues that Mr. Thomas went into detail about, i.e., the noise, the air pollution, the landscaping.

Ms. Hilbert indicated that she agreed with her colleagues and the lack of information around noise, the EIS, Scenic Corridor, and other numbers of things that were already expressed.

Chairman Orsini was most concerned about the invalid statements in the Environmental Impact Statement and did not believe that the burden of believability of their responses to the Board with satisfaction to their concerns even after very specific direction from the Board. He added that he simply did not feel that it met the standard outlined legally and by case law and Municipal Land Use Law. for the Board to support.

Ms. Woodbury, Board Secretary, indicated that the final vote was as follows: eight (8) in favor, and zero (0) against to deny the Application.

**COMMITTEE REPORTS:**

There were no Committee Reports discussed.

**WORK SESSION / NEW BUSINESS:**

There was no Work Session or New Business discussed.

**EXECUTIVE SESSION:**

The Board did not enter into Executive Session.

**ADJOURNMENT:**

Chairman Orsini made a motion to adjourn the meeting at 10:00 p.m., and the motion was seconded. All were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
December 3, 2023