

Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, October 30, 2008  
355 East Central Street  
Franklin, MA 02038

Members Present  
Bruce Hunchard  
Bernard Mullaney  
Robert Acevedo  
Todd Alexander  
Seth Jackson

**7:30pm 45 Southgate Rd—Applicant is seeking a building permit to construct an addition. This building permit is denied without a special permit/variance to extend a non conforming structure**

Abutter Present

Appearing before the board is David Harris contractor for Marsha Cadogan proposing to add on to existing bedroom and bathroom, 12' to the rear of the house and stay in line with the side of the existing house. Board-Deck in the back existing? Response: It's a three-season room already existing. It's a split entry home. Abutter Brian Thayer from 47 Southgate Rd left of the property concerned about water runoff from the property. My property is totally dry and I'm concerned with the wetlands behind that property and there is a culvert. Board-you do not show any topo. The plan does not show the three-season room. Board-Is the pool still there? Response: No, it's gone. Board-**Provide a plan showing topo, three season room and show drainage so it doesn't run on the abutting property.** Motion by Bernard Mullaney to continue till Nov. 20 at 7:35pm. Seconded by Robert Acevedo. Unanimous by the board.

**7:40pm 98 Jordan Rd-Applicant is seeking a variance/special permit to allow two dwellings on one lot. The applicant has converted a barn into a second dwelling unit.**

Abutter Present

Appearing before the board is Bruce Wilson a surveyor with GPR Engineering representing the applicant. We have a unique situation where there are two dwellings on the property and at some point in time in the early 80's the second building had been converted from a garage to a dwelling unit. Wife resides in the house and husband resides in the garage. Proposing by conversion to convert the second dwelling garage to allow for a two bedroom or two family use on the property however it's one family that lives here. Floor plans were submitted. Still functions as a garage, still overhead doors. Bruce Wilson reviews the Special Permit criteria. Dave Roche Building Commissioner-never been in the building. Back in 80's a three-car garage. Nothing on record with BOH or the building department for any apartment, any secondary kitchen, no plumbing or gas permits that go along with that building and there is a kitchen. Not sure if there are any smoke detectors, etc. No abutter comment. Converted early 80's, three-car garage with storage above. Applicant would like to have the option to rent it possibly down the road. The two property owners live there. If approved proper permits would need to be applied for and inspected to see that everything is up to code. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to "Take Under Advisement". Seconded by Robert Acevedo. Unanimous by the board.

**General Discussion:** Motion by Robert Acevedo to grant a "Special Permit for a second dwelling unit at 98 Jordan Road with the condition that the applicant comply with all building regulations required by the Town of Franklin, as shown on a plan entitled Special Permit/Variance Plan by GPR Engineering Solutions for Land & Structures for the property located at 98 Jordan Road, Franklin, MA. dated 09/23/2008. Seconded by Bernard Mullaney. Unanimous by the board.

**7:50pm 887 Lincoln St–MetroPCS Massachusetts, LLC - Applicant is seeking a special permit to remove & replace an existing wireless communication tower & ground equipment in a wireless communication district. The applicant is also seeking a variance to install a 97' tower where 90' is permitted under the by-law.**

No Abutters Present –Appearing before the board is Joe Giammarco attorney with Prince, Lobel, Glovsky & Tye representing the applicant MetroPCS Massachusetts, along with Gerry Squires Site Acquisition Specialist and AJ Radio Frequency Engineer for MetroPCS Massachusetts. Proposing to replace one leg of a wooden stanchion and replace it with a pole, which will be slightly higher than what is there already. The current height of the stanchion leg is 83.8 feet and proposes to replace with another wooden pole, which would extend to a height of 92.5'. The antennas would be connected to the pole of centerline height of 89.5 and the tops of the antennas would not exceed the height of the new pole at 92.5'. Equipment would be located at the base of the pole. Antennas would be connected to the pole by a ring mount, which would wrap around the pole and bracket able to hold 2 antennas apiece be a total of 6 antennas on that mount. The antennas would stick out all around the pole with a distance of approximately 27 inches off the face of the pole. The facility once constructed will not produce smoke, odor or waste, trips to and from the facility will be one or two trips a month by maintenance personnel. Board-What time of the day will those trips take place? Response: Routinely during business hours unless an emergency. Board-Why did you pick that transmission tower so close to the street? Response: We looked at the existing stanchion that has a couple of carriers on it but no ground space available for that unit on that stanchion. The next closest had animals and no access into that next stanchion so that brought us to the one by the street. Ground space was a problem. When we drove the area they did not want us in that area because of animals. **Board- Provide documentation as to why you can't do it, a letter stating the existing tower if full. Will provide site photos and some information in terms of which stanchions are available and will get a letter from Nstar.** Board-Check across the street. Howard-It's not a cell structure and it's close to the street and alternate should be looked at. MetroPCS Massachusetts has no coverage in the town. Board-What about equipment on site? Response: Gerry-four equipment cabinets at the base in a 10 by 16 foot area, gps antenna, fencing chain link with privacy slots. Abutter-Deric Peterson 150 Brandywine Rd interested in the impact to the town of Franklin, sounds like it's more for Medway? Board-Metro is an up and coming facility and with FCC is they are entitled to coverage. Motion by Bernard Mullaney to continue the hearing till Nov. 20, 2008 at 7:45pm. Seconded by Robert Acevedo. Unanimous by the board.

**8:00pm – Eagles Nest Way-Eastern Mgt Dev LLC - Applicant is seeking a variance to convert the special permit for a senior village to allow multi family buildings in a residential zone.**

Abutters Present- Eagles Nest Appearing before the board is Gary Hogan an attorney with Gilmore, Rees & Carlson with principal of Eastern Management and Development, LLC. owner and developer of the property located on Silver Fox Road and Villa Drive known as the Villas. Here seeking a special permit, seeking to alter or change a prior special permit issued by the Town of Franklin Planning Board. This site was the subject of over 55 passed in 2004. The special permit was granted on June 21, 2004. The project was approved as over 55 project under the Town of Franklin Senior Village zoning by-law. Consist of 36 units in five buildings. The applicant have constructed two of the five buildings in which one has been fully completed and one of the models is completely done and furnished for a little over a year now. We are here because of the economic downturn in the real estate market and some other issues that have surrounded the economy the applicant has had zero luck in marketing this project to those folks over the age of 55. With respect to the application before this board tonight there is some concern and dispute to which is the appropriate board to grant the relief we are seeking and whether or not this particular board has the jurisdiction or the authority to grant a special permit altering the use. I would submit to the board that under Mass General Law Chapter 40A Section 6 along with our zoning by-law in the Town of Franklin Chapter 185 that this board does have the authority to grant a special permit that alters or changes a previous non conforming use. Once this project was permitted by the Planning Board in 2004 those rights with that special permit were vested, they were vested when the applicant took out building permits and began to construct the appropriate dwellings up there that site became a non conforming legal use. We are asking this board to look at this as they would any other legal non conforming use in the town. We are

asking for that use to be changed. The request before the board is to remove a portion of the requirement that people be 55 or older in order to buy a property and move into this particular project. We are inclined to break that up and dedicate Building I which is ready for occupancy we are prepared to leave that as a 55 and older building. With respect to Building II that has been constructed but the finish work is not complete. Thereafter our discretion as to which of the final three buildings we would dedicate to open. We would like to keep 2 of the 5 at over 55 and the three non-55. Board-Does your buildings break down to equal number of units in each building? Response: You notice it's an even number and five buildings so no the final building would need to contain eight units, the first four buildings contain seven units. The units are state of the art construction, is extraordinary. They are all two-bedroom units. What board is the appropriate board? The courts have held they will look at the strict interpretation of the authority and under that provision the Zoning By-law states that the Planning Board has the power to grant or approve a Special Permit but it does not give the Planning Board the power to modify that Special Permit. **Will submit the case for your record Walker v. Board of Appeals of Harwich.** Greg Coras one of the developers and owners of the Villas. As you know we have been working on this project for four years and spent a ton of money for construction and site work in developing units we think are exceptional. We have no sales and in order to make this project successful we need to do whatever we can do to take some of the financial burden because we have a tremendous amount of money vested in this project. We have obligations not only to the bank and ourselves to see it thru but to the town in money the town is to receive. As stated nothing in the project changes, the units are the same, the buildings are the same, what we are trying to do is get the sales going. Not likely to attract families, probably professionals. Pricing of units will be the same. All traffic and safety has been addressed. Utilities in place, running water, heat, character will not change and buildings will go up. Planning Board does not have the authority, no expressive language in your by-laws. Gives the Planning Board power to approve but not to modify. Board-Your intent to sell these as condo's not rental units? Response: No, our obligation to the bank we are not renting them. Board-Speaks about impact to the school system, school buses and expense to the town. Janice Kocis from 157 Brandywine about the property and concern with impact to the neighborhood. Deric Peterson from 150 Brandywine I have site of the project, one thing to point out is the we have over 50 children in Brandywine Village under 15. The town be aware of the traffic, the speed through the area, the impact to the schools and the town needs to consider that. Is there a variance to stop from having them rental? Board-You can't stop from having a purchase then they rent it out. The board can make a condition no more than two bedrooms but they have not proposed any change. Tom Lacouture from 103 Populatic Street has concern it's not the only 55 and over in town and there are four. Greywolf, Lawrence, Oak Hill, Hidden Acres, they have been sold. Concern about the other four that they come before this board and ask for that relief. Do think it will have an impact on school. Board – After the 1<sup>st</sup> unit sold they are committed to the Master Deed and Covenants to the project. Brian Kudish 70 Charles Dr. what are the tax implications to the town, these 36 units? Response: Potential tax base average of 4,000.00 per unit. Mr. Padula speaks in regards to non conforming. Bruce explains how it becomes non conforming. It's approved by the Planning Board and once it's approved the senior village overlay it does not change the zoning, the underline zoning in the district is still RRI. Once the first building went up that building is non compliance with the by-right zoning in the RRI so now it becomes a pre existing non conforming structure and use for the use that the Planning Board approved. So now the whole property is non-conforming. Attorney Hogan states this is a fine line but the case law is clear if this zoning ordinance does not provide the Planning Board with the authority to modify a previously granted Special Permit then this is the Board that has to do it. Larry Benedetto from 211 Chestnut St feels it's in everybody's interest to have this project survive. This town needs the revenue. Mr. Padula ask do you want to throw all our by-laws out the window because we are in hard times right now, then in two years when everything comes back we are suppose to say ok go back to the old by-laws. Bill Ronca wants to speak in favor, I about Mr. Coras's project and in favor of the changes, I know the quality of the project and it would be a sin to see a project with such foresight to have a problem financially. If this wasn't built, what would go in there, it just makes since. It's my road he uses to enter, I've been involved since the beginning. The density issue on the senior village has changed since Mr. Coras's project was approved. It's no longer viable because of the density issue. Dave Roche Building Commissioner, my concern about the project is not completing it and what we do with these buildings after the fact, I'm not for or against it but it's the finest construction I've seen and don't know what the answer is but would like to see it move forward. Board-has concern since we have six or seven of these projects in town and if approved rest assure we will have six or seven coming before this board. Everyone knows the economic conditions are and originally when the proposal came in there was no split they propose a 60/40

split and feel it's a viable alternative for this project and see no problem with it. Abutter Joe Amante from 133 Brandywine if density was put back in place the project would not be viable? Something about them is not desirable. Why won't the project be viable? Response: Attorney Hogan states the project was purchased, designed, permitted, and constructed under 2004 economic conditions. Ron Calarase-about the buy back on affordable, what's the applicants proposal? Response: There has been no request to release the payments. Motion by Robert Acevedo close the public hearing. Seconded by Bernard Mullaney. Unanimous by the board. Motion by Bernard Mullaney to "Take Under Advisement". Seconded by Robert Acevedo. Unanimous by the board.

**General Discussion: 15 Vine St** – Justin Lapham representing the owners of 15 Vine Street. Been before the Conservation Commission, we have been attempting to get this permit thru. The proposed garage on the right side of the building. We have been asked to come before you to get your opinion on a variance to the sideline setback which is 40' reduced to 24'? Board-The board would not consider this, there are alternatives.

**80 Dean Ave** - Appearing before the board is Dave and Connie Ronci from 80 Dean Ave. which is a three-bedroom house out front and a 30 by 60 two story classic barn on the backside of the property. Since 1988 we're had a 20' by 30' office there for Ronci Construction with storage. Proposing to put a kitchenette in the commercial space also to be able to sleep out there. At this point we do have a permit but was advised to come to the ZBA to get approval. Would like to put one four-bedroom apartment in the upstairs of the barn but due to economy situation now we would like no deadline to complete the project and if the board would be in favor of this proposal? Board-Speak with Dave Roche in regards to the second dwelling unit and apply to the ZBA.

**60 Earl's Way**- MetroPCS Massachusetts - Seeking a building permit to install additional antennas and ground equipment to an existing tower used for wireless communication. Motion by Bernard Mullaney to grant a "Variance" as submitted. Seconded by Robert Acevedo. Unanimous by the board.

**Upper Union St** (Town Water Tank)–New Cingular Wireless PCS, LLC- Seeking a building permit to install new cellular communication equipment on the town water tank. Motion by Bernard Mullaney to grant a Special Permit for AT&T to change out the equipment as proposed and as stated in the decision at Upper Union Street water tank tower as submitted. Seconded by Robert Acevedo. Unanimous by the board.

The board votes to pay the consultant Consolidated Spectrum Services and return unused funds to the applicants. Motion by Robert Acevedo. Seconded by Bernard Mullaney. Unanimous by the board.

Motion by Bernard Mullaney to obtain a check in the amount of \$5,000.00 from MetroPCS Massachusetts for the application in regards to Upper Union Street (town water tank). Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to hire Consolidated Spectrum Services to review the application for MetroPCS Massachusetts at Upper Union St (town water tank). Seconded by Robert Acevedo. Unanimous by the board.

Motion by Bernard Mullaney to obtain a check in the amount of \$5,000.00 from MetroPCS Massachusetts for the application in regards to 121 Longhill Road. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to hire Consolidated Spectrum Services to review the application for MetroPCS Massachusetts at 121 Longhill Road. Seconded by Robert Acevedo. Unanimous by the board.

Motion by Bernard Mullaney to obtain a check in the amount of \$5,000.00 from New Cingular Wireless PCS, LLC (AT&T) for the application in regards to 121 Longhill Road. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to hire Consolidated

Spectrum Services to review the application for New Cingular Wireless PCS, LLC (AT&T) at 121 Longhill Road. Seconded by Robert Acevedo. Unanimous by the board.

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Motion by Robert Acevedo to accept the 2009 Meeting Schedule for the Zoning Board of Appeals. Seconded by Bernard Mullaney. Unanimous by the board.

Motion by Bernard Mullaney to approve the minutes of Sept. 25, 2008. Seconded by Robert Acevedo. Unanimous by the board.

Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board.