

Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, February 25, 2009  
355 East Central Street  
Franklin, MA 02038

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

8:00PM-Lincoln St/Daniels St – Franklin Heights Corp

Applicant has requested to change the 18-unit condominium building to apartments. Also requesting the amount of affordable units to change. This is denied without a modification of the comprehensive permit issued by the Zoning Board of Appeals.

The town's hired attorney is running late so the board will open the 8:05pm hearing.

Appearing before the board is Michael Intoccia from Intoccia Construction/Franklin Heights. Right now at Franklin Heights we have the main road that has been put in, first phase and the road going to the 18-unit condo building. The market rate units are selling but the problem is the affordable, we are having trouble getting affordable buyers that qualify. Of the 18 unit building seven of these units are affordable, and eleven are market rate. We can't get a buyer for any either the market or affordable. Proposing to have the 18 unit do some type of rental program and we sell them as we go to keep the cash flow going. We want to try and work out is our affordable in the first phase, we want to try and make them market rate add the affordable in the back phase or donate money to the housing authority as we sell any of the units in the 18-unit building. We are not trying to take away any affordable from the town, we are just trying to make a cash flow work. Attorney Bobrowski states that the proposal when I spoke with Town Administrator Jeff Nutting to see what the reaction was, it was clear that the town wanted a limited amount of rental for a limited period of time. It was a better project if it was consistently home ownership and that rental should not last more than five years but Mr. Intoccia said seven years, but five was the original number that we talked about so I would leave that to the Boards discretion. Financial Consultant Michael Jacobs was brought in at the point to figure out what the ramifications of that would be. If you typically building a rental project under Chapter 40B you need a project eligibility letter from the rental arm of Mass Housing or some other entity like DHDC. This is a LIP so DHDC would have to authorize rental as well. But rental for five years is different, you don't get a rental letter for five years, you get one permanent rental. So that isn't in anyone's interest apparently neither Mr. Intoccia nor the town wants to see permanent rental there. So, the other thing we approached thru Michael is the thought that the 40B LLC would rent the units or some of the units whether they are in the 18 unit building or townhouses, it seems limited to the 18 unit building. That seems to be provided for in the Comprehensive Permit you issued provision 5B of that Comprehensive Permit indicates that upon the permission of the town manager the Town Administrator may authorize temporary rental of such unit at the price of affordable, this applies to the affordable units only at a price equal to 80% of the area median income. This is possible. There is one last remaining problem and that is how do you handle rental income at a 40B, which is set up for home ownership. It's an audit problem. We don't have a definitive answer and we are waiting for the General Council's Office at DHCD to give us that and I wouldn't sign off on this till we got it even if you were inclined to do so. Michael Jacobs with MHJ Associates states he has had some initial conversations with the DHCD General Council this is somewhat a unique situation. Typically, on a condo project you would cost certify the cost, you would look at the profit from the for-sale units and if they were over the 20% a certain amount would go to the town. Here is you are having a rental for five years that process is a little different, on a rental they would be auditing the project every year to determine whether there was cash flow within the limited dividend. On a five year bases one thing we suggested and discussed with DHCD the possibility of during that five years if there is profit over that five

years that would be added to the profit once they sell those units. If there is losses during those five years from the rental they would be included in the cost. A final cost certification to determine profit at the end of the five year period when the units are hopefully sold. DHCE is willing to consider that option, they want to think about it more and obviously want to have more information about any other changes in the project as well. Board – Michael you have not sold any of the 18 unit building? Response: Have not got finance either. Attorney Bobrowski ask Michael Jacobs what he thinks about the desegregation with DHCD? Response: Michael Jacobs states he would have to look at what it does to the percentages, think we should see what a new plan would be and how the distribution would occur in the back phases. Attorney Bobrowski states that it is a requirement that the affordable units cannot be segregated. Also, this project was originally top heavy on affordable at 35%, 10% more than usually. Michael Intoccia states he needs the cash flow to keep going; I have market rate customers now I have no affordable customers. The first phase had 30 market and affordable excluding the 18 unit building. Present at the hearing is Maxine Kinhart from the Administrator's Office stating they want them to remain condominiums but allow him to rent them for up to five years. As far as moving some of the affordable to the back phase I don't think we have a problem with that either. Building Commissioner Dave Roche has concern that at the end of five years how do you deal with if they are all rentals at the point to try and flip them into condo's, you have 18 families in there. Attorney Bobrowski states we would have to approve leases and reserve the right to look at leases so that they expire at the end of whatever time the town was willing to give them. Michael Intoccia states they only do one-year leases. Maxine Kinhart refers to her email in regards to the townhouses stating they are double the size of the garden style and don't know how you are going to sell them at the same price. Attorney Bobrowski states that Mr. Intoccia has to demonstrate to you that the project is uneconomic and Michael Jacob has been hired to review and to verify that. He, in his proposal has one of two options: his proposal makes the project economic verses uneconomic and that would be satisfactory under the Cohasset test. What I think you will find in this case is he has the second option: which the original project was uneconomic and this proposal is less uneconomic, they are both uneconomic if you will but this one is better for him than the other proposal. Is it uneconomic today and economic tomorrow or is it uneconomic today and less uneconomic tomorrow. That's the standard that the HIC has imposed in these cases. The question becomes policy questions for the board. One of them is do you want to let him rent the 18 unit building and if so for what period of time and if so can he either defer as long as possible or as long as financially necessary but construction of the affordable units in the townhouse phase of Phase I and are you comfortable with what is likely to be more segregation of the affordable units in Phase II. Abutters have an opportunity to speak. Concern with the property becoming rental property. Other suggestion from abutter was to delay the second phase of the project and sell Phase I. Board and Attorney Bobrowski discuss continuing the hearing and hope to have some answers prior to next meeting. Motion by Bernard Mullaney to continue the public hearing till March 26, 2009 at 7:50pm. Seconded by Robert Acevedo. Unanimous by the board.

8:05PM – Plain St-Franklin Housing Authority

Applicant is seeking a comprehensive permit to construct D.M.R. Group Housing.

Members of the 8:00pm hearing are late so the Board at 8:05pm opened this hearing.

Appearing before the board is Dana Litre from Winter Street Architects, Kathryn Giardi, George Danello Chairman of the Franklin Housing Authority, Lisa Collins Executive Director of Franklin Housing Authority and Charles Shepard from CDW Consultants. We left off from the previous meeting so you may mitigate some issues. In the meantime you went to Design Review Committee? Response: Yes, we got approval from the design review committee last evening for the building and landscape. We propose a six-foot wooden fence with lattice. Abutter David Patterson still stresses his concern in regards to the location of the building, the parking, and the fence to mitigate the noise, sound and lights. Asked that they consider relocating the last three parking spaces. Response: It's not desirable to relocate the parking. Abutter Frank Cadillac 3 Plain Street concerned about fence, landscaping and concern with vehicle headlights. Abutter Anthony Wong 22 Plain Street concerned with the driveway and questions changing the location of the driveway. Present at the meeting is Building Commissioner Dave Roche who mentions the letter from the town engineer and the parking spaces. The Board states that one of the

conditions will be that they have to come back to get all approvals from the town before they can commence construction. This is more or less a concept plan for the Comprehensive Permit, which they propose. The site plan will be approved by the Zoning Board of Appeals. The building commissioner states why the rear wing of the building be angled to get it off the property line? Motion by Bernard Mullaney to continue the public hearing till after the 8:00pm hearing.

Seconded by Robert Acevedo. Unanimous by the board.

Board reopens the hearing:

Board discusses tweaking the rear part of the building further away from the existing property. But there will still be parking spaces on that side of the building. Board discusses the height of the lights either 6' or 8'. They don't have measurements for 6' because they always set them at 8' for this type of fixture. Motion by Bernard Mullaney to continue the public hearing till March 26, 2009 at 8:00pm and direct the town attorney to draft the decision for approval as submitted with modifications by the Board. Seconded by Robert Acevedo. Unanimous by the board.

General Discussion:

Motion by Bernard Mullaney to approve the minutes of February 5, 2009. Seconded by Robert Acevedo. Unanimous by the board.

Motion by Robert Acevedo to adjourn. Seconded by Bernard Mullaney. Unanimous by the board.