

**Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, April 22, 2010  
355 East Central Street  
Franklin, MA 02038**

**Members Present  
Bruce Hunchard  
Robert Acevedo  
Bernard Mullaney  
Seth Jackson  
Philip Brunelli**

**7:30 PM – 255 Pleasant St – Joseph DiRosario**

**Applicant is seeking a building permit to construct a 2<sup>nd</sup> dwelling unit on an existing SFR. This building permit is denied without a special permit from the ZBA.**

**No Abutters Present**

**Appearing before the board is Joseph DiRosario proposing an in-law addition on the back of house, 38 by 24, single story. Will be for mother and father in-law, Richard and Rita Puorro. Serviced by town water. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Robert Acevedo to grant a Special Permit for a second dwelling unit for the property located at 255 Pleasant Street as shown on a plan entitled Special Permit Plan Inlaw Addition 255 Pleasant Street Franklin, Massachusetts Prepared For Joe DiRosario by GW Site Solutions Inc. Date 3/18/2010 with the condition of the Special Permit be that the in-law Richard and Rita Puorro reside at the property along with Joseph and Joanne DiRosario and that the Special Permit for the second dwelling unit becomes null and void if either party moves or transfers ownership. No separate utilities shall be permitted unless required by the DPW at 255 Pleasant Street and upon completion of the foundation a Certified as Built will need to be submitted and verified to meet the setbacks before continuing construction. The board also determines that the social, economic or community needs, which are served by the proposal, will be met. Traffic flow and safety will not be encumbered, adequate utilities and other public services exist, the proposal is consistent with the neighborhood character and social structure as it exists now and that the quality of natural environment will stay intact. There is no potential fiscal impact for the Town of Franklin by the issuance of the Special Permit. Also, that the Special Permit be recorded at the Registry of Deeds. Seconded by Bernard Mullaney. Unanimous by the board.**

**7:40 PM – 71 East Central St – Leemilts Petroleum, Inc. (Bassam Younes)**

**Applicant is seeking approval to sell and repair motor vehicles in a Commercial I district. This use is not permitted in a Commercial I zone and is denied. If approved would require a use variance.**

**No Abutters Present**

**Appearing before the board is Bassam Younes owner of the Franklin Getty proposing to sell three cars. Asking for a Special permit to sell cars. Need to make a living, auto repair has slowed down, need something to help out. Board – How many cars are you trying to sell? Response: Three cars. Board explains, previously applicant came and the Board gave a Finding but the applicant was directed back to the building commissioner to file for a use variance to operate on the property. Board – A couple of years ago the town rezoned C1 all the way down to Devita's Market. CII is where you can sell cars and we have that down there. No zoning in Town of Franklin where you can sell used cars without a special permit from the Planning Board. They took it out of zoning all together back around 2001. But the applicant is in a CI zone, he's here for a use variance. 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 Bruce Hunchard. Unanimous by the board.**

**During General Discussion – Motion by Robert Acevedo to grant a "Use Variance" to sell motor vehicles on the property with the condition that it be no more than three vehicles for**

the property located at 71 East Central Street, Franklin, MA. Seconded by Bruce Hunchard. Discussion: The Board previously gave a "Finding" and in favor of automotive sales since this has been the same operation since they changed zoning. Member states what I hear is things that happened in the past. The downtown association went before the council and decided to make a zoning change and anyone going into that type of business needs to be in a CII zone. Bernard Mullaney "Opposed".

7:50 PM - 800 Chestnut St – SRA Realty Group, LLC (Adirondack Club)

Applicant is requesting a special permit/variance from the ZBA to increase impervious coverage to 42.2% in a water resource district.

**No Abutters Present**

Appearing before the board is Craig Ciechanowski counsel for the applicant, Bob Hinrichs the owner and operator of the Adirondack Club and their engineer. The property has been before you on a number of occasions. The property is located in a water resource district which requires us to appear before you requesting a special permit any time we seek impervious coverage on the site in excess of 15% and less than 60%. We are now proposing to increase approximately 4600 square feet of impervious coverage for a spray ground, in the rear of the property, which will not be visible from the street or parking lot. Only available for the patrons, not open to the general public. End result we would be increasing the impervious coverage by less than 1%, previously at 41.3 to 42.2%. Bob Hinrichs explains we are looking to add an amenity for our existing members, which will allow them further value added opportunity for their kids. No standing water, surface mounting. Board-This is an area that's down pool level going toward Norfolk side of the pool? Response: Correct, toward the parking lot. Board-There is a slope there, are you going to do anything with that slope or does this fit with what's there now? Response: It all fits, there is a small section of slope that will have a small retaining wall but other than that it fits. We have a number of different features, we have a water table feature, we have a spray out of the ground features, and buckets that fill with water and when they are full they tip and the water sprays. Each of the features has it's own recapturing and drainage system that will chlorinate the water and circulate and filter it. None of the features run continuously, we have complete control of the system. Limited hours of operation and summer only. Board-Is this under cover? Response: No. Board - how deep? Response: Talking inches no more than 6 inches (closer to 3 to 4). Board - usually we hire an outside consultant but because it's less than 1% no outside consultant was hired. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney that based on the evidence and testimony presented in the application and at the public hearing, the Board made the following findings:

1. By decision dated May 18, 1999, the Board granted the applicant a special permit for not more than 38% impervious coverage of the property.
2. By decision dated September 13, 2007, the Board granted the applicant an additional special permit to increase the impervious coverage to 41.3%.
3. The present application seeks to increase the impervious coverage by less than 1%.
4. Groundwater quality resulting from on-site waste disposal, other operations on site and natural recharge will not fall below federal or state standards for drinking water.
5. Proposed control and response measures adequately and reliably mitigate risk to groundwater quality resulting from accident or system failure.
6. The proposed use is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site.
7. Artificial recharge has been provided so as not to degrade groundwater quality.

Therefore, the Board voted:

To grant a Special Permit for not more than 42.2% impervious coverage to the property located at Chestnut Street, Franklin, MA owned by SRA Realty Group, LLC as shown on a plan entitled "Submission to the Zoning Board of Appeals and the Planning Board

Adirondack Club,” subject to the conditions contained in the Special Permit previously granted by the Board with respect to this Property dated March 18, 1999.

**Seconded by Robert Acevedo. Unanimous by the board.**

**8:00 PM – Stonehedge Lane (Woodlands Subdivision) Pentad Realty Trust & Arcadia Enterprise, Inc.**

Applicant is appealing the issuance of a building permit. If approved would require modification of a previously approved special permit.

**Bernard Mullaney recuse himself for the 8:00pm hearing**

Seth Jackson was activated for the 8:00pm hearing

**Abutters Present**

Appearing before the board is Edward Quinlan attorney from Norwood representing the party Arcadia Enterprises Incorporated and Pentad Realty Trust. Those enteritis are the sponsors under the Regulatory Agreement that was executed by and between them or the two enteritis DHCD and the Town of Franklin in connection with the Comprehensive Permit that was issued for that property. The situation you have before you is that the building commissioner issued a building permit to Scituate Federal Savings Bank to construct a single-family residence. A copy of that building permit is attached that we had delivered as an Executive Summary to the board. The land in question is in an Industrial zone. The only reason anybody can build upon that land is that it's the subject of a Comprehensive Permit that was issued by the Town of Franklin back in 2000 and subsequent to that there was a Regulatory Agreement executed between Arcadia/Pentad, the Department of Housing & Community Development and the Town of Franklin. So far eight of the houses have been built. There was a foreclosure that happened on the property in February of 2009. It is our position that, that was a rush to judgment; there was no default in payments. A tax lien had been put on the property, we informed the bank would be subsequently removed and indeed was subsequently removed but the bank went ahead with the foreclosure. Board – Tell me how they can do that? Response: Under the terms of the note - It was a demand note and one of the conditions was that he be kept free of liens. They exercised their rights to proceed and did so in a very rapid fashion. I've laid out the first notice according to the affidavit that the bank filed, was sent out January 14 and the foreclosure took place on February 9, about 26 days. After that point in time the bank exercised their rights and took over ownership of the property. However, what they failed to do is comply with the requirements of the Regulatory Agreement, which mandated in order to terminate the Regulatory Agreement by a foreclosure your required to give 60 days written notice to both DHCD and the town. That was not done. Arcadia has continued trying to work cooperatively with the bank and as recently as November of last year appeared before this board as the developer seeking a Finding as far as installation of the lights on the street lighting issue. It's our position that the building permit was improperly issued, perhaps because of the confusion with regard to the status of this property. The simple fact of the matter is that the bank does not have any right to a permit to construct anything on that property outside of the confines of the Regulatory Agreement. The Regulatory Agreement as it stands is now in the name of and remains in the name of Arcadia Enterprises and Pentad Realty Trust. Both of those entities has obligations under that and one of the concerns we have is that at the conclusion of the construction process there is a requirement under that Regulatory Agreement that a certified audit be conducted of all the allowable development cost so that at the end of the day these entities are treated for the purposes of the Comprehensive Permit and the Regulatory Agreement, what they call a Limited Dividend Organization. In order to conduct or perform under a Comprehensive Permit you have to have this status and as such the agreement provides you cannot yield or gain more than 20% profit. If there is any excess profit after that audit is done the excess is to be remitted over to the Town of Franklin for purposes of affordable housing. Right now the bank is taking a position that they would be entitled to build remaining housing essentially outside of that regulatory agreement and not subject to the obligations of that regulatory agreement practically as it would relate to those continuing obligations to conduct the audit at the end of the day. The simple fact remains that both Arcadia and Pentad are the only persons or have any

standing to seek a permit under that regulatory agreement and to construct any housing on there and for this reason and again we think that the confusion regarding the status of this property was such, that it could very well have been misunderstood by the building inspector but the fact is the only one who can seek a permit and build under the permit for this location are Arcadia and Pentad. We respectfully suggest that there was an error in issuing this permit and in fact it should be revoked. Board-Who owns it now? The title to the property right now is in the name Scituate Federal Savings Bank because of the fact that they foreclosed on the property. We are the party under the regulatory agreement, we are the sponsors under the regulatory agreement, we are the ones who have the agreement with the town, DHCD, and ourselves that govern the ability to use this property. By them taking the property from Pentad and Arcadia they didn't get the right to the regulatory agreement. The regulatory agreement specifically states if you want to terminate it you have to follow the requirements. That was not done. Scituate would have to come back and negotiate another agreement with the town in terms of responsibility and obligations and somehow of addressing how you would address the responsibility for audit and compliance with the cost limitations with the town and DHCD. Board-Can the town terminate the agreement? Response: No. Bank owns land but claims they own the permit too. Abutter Richard Daly 15 Stonehedge is concerned with the quality of the project.

Speaking next is Attorney Robert Galvin represent Scituate Federal Savings Bank and Kevin McGowan bank loan officer. The bank closed on the property because there was a default, the bank is out of money. Mr. Galvin refers to a letter written April 15, 2010 from Galvin & Galvin. Mr. Galvin states the bank is in control of the property and legal titleholder of the property. In connection with the loan in this case, there was an assignment of permits including the comprehensive permit, all of the rights relevant to the property. The bank was not required to give notice unless it was looking to avoid the obligations under the comprehensive permit. The section of the regulatory agreement is a reference to the option that the bank has to opt out of the terms of the comprehensive permit. The bank has never indicated any desire to do that, nor does the bank believe that if it built this project out that it's profits combined with any profits made by the prior developer here would result in a 20% profit. The purpose of my letter last week was to request that the board approve a minor modification bases, issue the permit into the name of Scituate Federal, which is the titleholder of the property. We take the position that this gentleman has no standing, he's not the owner of the property, the regulatory agreement has several provisions that require him to be the owner of the property in order to have this regulatory agreement. Been in touch with the Department of Housing and Community Development Tony Hall, they want the board to act here first, they will then do whatever is necessary in terms of arranging for the regulatory agreement to be in our name to the extent that is necessary. We are bound to the terms of the regulatory agreement; we are not looking to get out of it. So, again with our request to have the permit issued in our name, minor modification basis which doesn't require public hearing, the bank stands ready to proceed and build up this project. This is an effort by the borrower to delay the bank and delay the completion of this project. There is a pending bankruptcy, there is bankruptcy council, there is another avenue for them to argue this and they haven't done anything of the sort in the bankruptcy proceedings. This is inappropriate request by someone that has absolutely no standing and I request the Board issue the permit in our name. Motion by Robert Acevedo to close the public hearing. Seconded by Seth Jackson. Unanimous by the board. Motion by Seth Jackson to overturn the decision of the Building Commissioner to issue a building permit #BP-2010-0583 dated March 11, 2010 for Scituate Federal Savings Bank applicant Edward McLaughlin for Lot #15 House #59 Stonehedge Road, Franklin, MA until such time that the bank files an application for a minor modification and receives a minor modification for whatever relief they deem necessary from the ZBA. Seconded by Robert Acevedo. Unanimous by the board.

8:10pm 56 Pine St – Hope Hotchkiss and John Shea

Applicant is seeking building permits for three additions to a SFR home. The building permits are denied without variances from the ZBA for constructing an addition on the

front of the house with a side setback of 20.1 where 25' is required and a front setback of 36.5 where 40' is required. Construct an addition on the side of the house 23.7' from side setback where 40' is required. Construct an addition on rear of house 37.6' from front setback where 40' is required.

**No Abutters Present**

Appearing before the board is Hope Hotchkiss and John Shea. At the previous hearing the board requested some elevation drawings. The applicant provided the requested information. All question were answered. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Robert Acevedo to grant a 5 foot front yard setback "Variance" down to 20' where 25' is required, a 3.5 foot front yard setback "Variance" down to 36.5 feet where 40 feet is required, construct an addition on the side of the house 16.3 foot side setback down to 23.7' where 40' is required and to construct an addition on the rear of the house 2.4 foot front setback down to 37.6 feet where 40 feet is required for the proposed construction additions as shown on a plan entitled Certified Plot Plan Located at 56 Pine Street Assessors Parcel #223-99 dated February 23, 2010 by Continental Land Survey. Seconded by Bernard Mullaney. Unanimous by the board.

**In regards to Lot 6A Miller Street the board states the public hearing was closed on April 1, 2010. Motion by Bernard Mullaney to grant the following:**

1. To grant a 15.81-foot frontage variance down to 109.19 feet where 125 feet is required for the construction of a single-family residential house.
2. To grant a 56.5-foot lot width variance down to 56 feet where 112.5 feet is required for the proposed construction.

**CONDITIONS**

The Variances requested are granted upon the following conditions:

1. There shall be no further subdivision or further development of the subject parcel.
2. Both sides of the driveway to the proposed house will be landscaped, subject to a landscape plan satisfactory to the Building Commissioner.
3. Upon the issuance of a building permit for the proposed house or upon sale of the subject parcel, whichever first occurs, Applicant will cause to be recorded in the Norfolk County Registry of Deeds Extinguishment of Easements for the (a) Temporary Construction Easement on property known as 35 Miller Street owned by John & Karina Thompson and shown as Lot 4 on a plan recorded with said Deeds at Plan Book 321, Plan No. 446; and (b) Access & Utility Easement on property known as 39 Miller Street owned by Michael & Paula Gaffney and shown as Lot 6B on a plan recorded with said Deeds at Plan Book 523, Plan No. 27.
4. After the expiration of the applicable appeal period for said issuance, Applicant will withdraw with prejudice his Application for an Earth Removal Permit currently pending before the Board of Appeals.
5. Applicant agrees to have a detail officer at the entrance to the site anytime there is a vehicle larger than a pickup truck entering on to or exiting from the site during construction.
6. Prior to issuance of a building permit this decision will need to be recorded at the Registry of Deeds.
7. As shown on a plan entitled Site Plan Lot 6A Miller Street Franklin, Massachusetts for Miller Street, Realty Trust Date Jan. 26, 2010 by United Consultants Inc.

**Seconded by Robert Acevedo. Unanimous by the board.**

**Next Zoning Board of Appeals meeting is May 20, 2010.**

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

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_