

**Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, May 20, 2010  
355 East Central Street  
Franklin, MA 02038**

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

**7:30PM – 10 Greensfield Road – Scott Reynolds & Eleanor Conroy**

**Applicant seeking a building permit to construct a porch 35.3' from the front setback where 40' is required. The building permit is denied without a variance/special permit from the ZBA**

**No Abutters Present**

**Appearing before the board is Scott Reynolds and Eleanor Conroy proposing a farmers porch on the front of the property 38' long by 8' wide, the closest point is 36' on the garage side and that's why we are requesting a variance. Proposing a covered porch with no railings across the front of the property. Two foot bump out in the middle. The applicant provides letters from the abutters. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Robert Acevedo to grant a 4.70 foot front yard setback "Variance" down to 35.3' on the northwest corner where 40' is required for the proposed open farmers porch for the property located at 10 Greensfield Road as shown on a plan entitled Plan Showing Proposed Addition in Franklin, Mass. dated April 16, 2010 by Dennis B. O'Brien. Seconded by Bernard Mullaney. Unanimous by the board.**

**7:40pm - 3 Ivy Lane - Robert Moore**

**Applicant is seeking a building permit to construct an addition 25.8' from front setback where 40' is required. This building permit is denied without a variance/special permit from the ZBA**

**Abutters Present**

**Appearing before the board is Robert & Kirsten Moore proposing a two car garage 25.8' from front setback where 40' is now required. Previously, setbacks were 20' but changed in 1999 to 40'. Two car garage to be 24 by 28 with a small mudroom 9' wide by 21' deep. Two story, with a game room over the garage. Board-You provided us some information about flo-well manufacture dry well, explain that? Applicant states his neighbor had a concern of possible water run off from the roof causing more flooding in their backyard. So, I proposed a drywell system to change or help prevent more water into their property. Board-If you are going to put something like that in you should have the engineer show us on the plan how you propose to install it and how it's going to work. Abutter Kristin Kane 1 Ivy Lane, there is a flooding issue and we have spoken with the applicant, hoping not to make the flooding any worse. Applicant we have talked to solve the issue between us. The water problem has been a problem up there; don't think it's going to go away. If we do put a garage in with this ground well system it should eliminate any chance of the roof runoff to get near her property. Board-Did you speak with your engineer about this? Response: I have not. Board-At least mitigate the water that will come off the addition. John Kane 1 Ivy Lane, just here to express concern, the problem is serious; when it floods our entire back yard is in water. Board-you already have the problem, but if they put this addition on and we mitigate the problem from the addition then hopefully it won't get any worse than what it is right now. Board suggest the applicant have the engineer do some calculations and plot out whether he uses these particular dry wells that you show or wants to put in something else, to try to mitigate the runoff from the proposed addition. The board members will visit the site to see what the topography is of the land. It's hard to tell because it does not show topography on the plan. Applicant requests a continuance.**

**Motion by Bernard Mullaney to continue the public hearing till June 10, 2010 at 7:30pm.  
Seconded by Robert Acevedo. Unanimous by the board.**

**7:50PM – 91L Southgate, LLC - 158 Cottage Street**

**Applicant is seeking a building permit to construct a multi family building. This permit is denied without variances/special permits from the ZBA. 1. Variance to construct a multi family in a SFR IV zone. 2. Front setback at 22' where 30' is required. 3. Side setback at 16' where 20' is required. 4. Lot area of 12,028 sq. ft. where 15,000 is required.**

**Abutters Present**

**Appearing before the board is Richard Cornetta attorney on behalf of the applicant, along with Stephen Blonder and Todd Matthews two principals of the applicant 91L Southgate, LLC. The property in question as mentioned this evening 158 Cottage Street located in a SFR IV zoning district. It's a 12,028sq. ft. piece of property on the corner of Cottage and Wachusett Streets. It is the former location of the Cottage Street Grill and the Dugout Restaurant. It has a long history of being a location that was utilized as a restaurant and bar. Located in a predominately residential neighborhood, besides the Agway across the street, it is surrounded by residential properties. We have submitted a plan along with this application for a variance detailing what they are proposing to do, which is eliminate the now existing building as well as the paved parking area and constructing a 3,863 sq ft two story four unit residential condominium building on the location as detailed in the plan. In order to do that we will be seeking a number of points of dimensional relief as well as a use variance for multi family use. In order to construct what they are proposing to do we would be looking for relief from the minimum lot area allowing them to construct within this zone where 12,028 sq ft exist, the requirement is 15,000 sq ft. Also, seeking the minimum front yard setback allowing the building to be a minimum of 22 feet where 30 is required. Refer to the plan but because the property borders along Cottage as well as Wachusett Streets the larger setback requirement, the front yard of 30' is applied to the building. So, where we are talking about relief is along the Wachusett side of the street. Also, seeking dimensional relief for minimum side yard setback to allow the building to be constructed 16 feet from the sideline where 20 feet is required. Last thing we would be asking is to allow the use for multi family residential use more particularly to construct a four family residential condominium, which fronts Cottage Street. Provided a packet tonight showing a general depiction of what the structure may look like. It will show two driveways that enter and egress from Cottage Street and those two driveways will split off allowing cars to park for each of the units so each of the units will have interior garage parking as well as one parking space at the outside of the garage on the driveway. Existing structure is close to the lot lines both along Wachusett Street as well as Cottage Street. The encroachment is much greater than what we would be proposing for this particular construction. Our building as proposed is a little more centrally located on the lot. According to your variance requirements Chapter 40A Section 10 we would argue that the unique location of this locus being at the intersections of both Cottage and Wachusett Streets and the shape and size of the lot result in a substantial hardship to the owner/applicant. The property is located within an older section of Cottage Street and there is already multi family use that is scattered throughout part of town even thou it is not permitted in a SFRIV zone. Existing structure is encroaching although legally non conforming. By removing it we would be not only moving the structure back but we would be creating a much better site distance at the intersection of both Wachusett and Cottage Streets. We believe for these reasons the desirable relief would be granted without any substantial detriment to the by-law in question. Lastly, the use being a multi family residential use verses the current use which is a commercial restaurant use we believe that this partial part of town although there is a rich history of a restaurant being located at this particular spot this is an area being close to town. We believe the introduction of residential use to this particular lot matches what is being used in and around that site as well as some of the existing close neighbors that are also using multi family use in the neighborhood. Will need to go to Planning Board for any site plan approval process. Abutter Larina Vollans 11 Wachusett Street has no objections from commercial verses residential and would look forward to owner occupy. No problem with multi family but issues with multi family rentals, happy with owner occupy. Abutter is in favor of the**

proposed. Board member who lives in the area - looks like we are trying to squeeze a lot into a small area. That whole area is old Franklin; it's all one or two family. There is a big condominium complex down the street but it's behind everything and where it belongs. The parking layout, you are right next to the corner, you are pulling straight in, you have no way to turn your car around and going into a very busy road. Four units in that area are too much for that small area. Board-anything is better than what is there. Board-How far back away does the driveway have to be from the intersection? William Yadisernia Town Engineer - 60 feet from the intersection. Will probably come up under the site plan. Attorney Cornetta states that if the board would entertain we are prepared maybe to come back and will take in the comments that were made and come back with a plan that would address some of these concerns. Board-Not sure that they count the parking space inside a garage as each unit is suppose to have two parking spaces, so is one space inside a garage count as a parking space? William Yadisernia concerned with the pending 5-year moratorium for street opening for connection to water and sewer. Can connect without any problem on Wachusett St. Attorney Cornetta request a continuance to allow time to revisit the plan, try to address the concerns mentioned. Board member states strong concern it should not be more than three units. Motion by Bernard Mullaney to continue the public hearing till June 10, 2010 at 7:40pm. Seconded by Robert Acevedo. Unanimous by the board.

8:00pm – 348 East Central Street - Topsfield Development Associates, LLC  
Applicant is appealing a decision of the building commissioner to send the applicant to the ZBA for a variance/special permit for impervious coverage in a water resource district. Under the current zoning by-law a special permit is required for more than 15% up to 60%. The applicant had a previous decision that was granted at 73.83%. The applicant is seeking the same relief for this new project.

**Abutters Present**

Appearing before the board is Richard Cornetta on behalf of Topsfield Development, LLC. Property in question is 348 East Central Street, it is the property located directly across the street in a Commercial II zoning district and located in the Franklin DEP approved zoned II. The parcel consists of approximately 248,000 sq ft with 412 ft of frontage along East Central Street. Current use of the locus is a vacant 15,000 sq ft one story wood framed building. Currently, an application is proceeding through the town agencies for the redevelopment of this property for a Big Y supermarket. The plan calls for removal of this building as well as the athletic court and the broken pavement that currently exist out on the site and the development of a 56,925 sq ft commercial retail shopping center with a parking area to facilitate 233 motor vehicles. Construct new drainage facilities, utilities, landscaping, and currently seeking special permit approval from the Planning Board for the construction of a shopping center as well as site plan approval from the Planning Board. Atty. Cornetta reviews the history for this property. Here again because the current proposed construction would require impervious coverage up to but not to exceed that 73.83% impervious coverage that was previously granted in 1996. Should note that between the 1994 original grant of a special permit for coverage exceeding 40% and the second appearance by the owner before the ZBA seeking what was a clarification of that previous order. In the interim the bylaw in Franklin changed. In October of 1994 the by-law amendment 94270 amended what our water resource district coverage by-law which is the current by-law that exist today which calls for an appearance before this board industrial or commercial property seeks to have coverage any where between 15% and 60% of the lot area. That by-law was in place prior to the second appearance by this owner/applicant when the ZBA granted the relief in excess of 60% or not to exceed the 73.83%. Our position that the 96 decision by this board granting that coverage could not have been a modification of a special permit or a clarification of a previous special permit because the boards power under the by-law is limited to granting coverage up to 60% under a special permit of 40. So, in granting it's relief in 96 up to 73.83% even thou the decision said special permit it had to have been a variance because under your own by-law it states that any grant of impervious coverage by this board in excess of 60% under the current by-law requires a variance. So, when we have been going through our

permitting process this issue has been nagging at us by not only us but the various agencies within the town. We felt it important to come back before this board for a third time seeking clarification or variance but we are again here seeking the coverage not to exceed 73.83%, which was granted in 1996. The proposed development that is being moved thru the town involves the most state of the art storm water system under the current regulations. Should the development go forward it would be a dramatic improvement to the site for storm water treatment close to gravel well #9, which is very close to this site. The developer hired a hydrogeologist to take a look at the site to make sure the well and the water recharge would be protected. A report from DL Maher, which indicates and confirms the topography of the site and how the design of the storm water management system is designed for flow from south to north. Also, a letter from William Yadisernia Franklin's Town Engineer which would also echo what I am indicating this evening with regards to the storm water management and treatment for this site and how it is consistent with what has been determined by the hydrogeologist for that site. Would like to conclude by saying the Town of Franklin thru it's Zoning Board of Appeals has heard from the site over the last 15 years and the owner/applicant has been before the board on a number of occasions. We believe in 1996 the most recent of which the board at that time felt so incline to grant the relief that they did allowing coverage of 73.83% not to exceed that and we are here this evening again asking for this same relief and not looking to increase that relief. We are only asking that this board be consistent with it's past decision and grant the relief that we request to allow this development to go forward and to improve what we believe to be a desperately needed site for improvement and a very critical site within the Town of Franklin being located where it is along East Central Street commercial corridor. Peter Barbieri counsel for Matthew Smith resident of Jordan Road, presents a packet to the board dated May 20, 2010 Re: 348 East Central Street/Topsfield Development Associates, LLC. Question, here is not the sophisticated nature of the proposed improvement to the site, the question simply before the board is the ability for the board to issue a clarification of the 1996 decision. That is the requested relief. It's our premise that the 1996 decision should be based upon the facts in 1996. The applicant in 1996 and the memorandums submitted with that application, which is attached, clearly identifies the request in 1996 that was to modify a special permit. Abutters and parties of interest at that time would have been notified that, that was the specific request, a modification of the special permit. It was not a variance, a variance was not asked for at the time, so I don't think you can come now and say or request the board to modify its previous decision, including not a clerical error. It's not a clerical error when you file a memorandum of two and three pages asking for specific relief. We don't believe you have the authority to reconstruct and issue now a variance when what was requested was a special permit. Had they asked for a variance maybe you could argue that now. But our position is that was not clerical error and as a result we don't believe the board has the right to amend that. The major retail facility they are talking about now is a change in use under your by-law. Board-You are retained by Matthew Smith of 208 Jordan Road? Response: Yes. Board-Is he a direct abutter or person of interest. Response: I don't know, I'm not familiar with your town. Board-He is in the audience, you may want to ask him. Response: No, he is not a direct abutter. Board-It's their understanding they are not crossing the thresholds of what was granted before. Present at the meeting is Dave Roche Building Commissioner/Zoning Enforcement Officer – We are here to clarify this and I believe the way it was advertised was to advertise and approve a variance. Town Attorney Mark Cerel is present here tonight representing the town to protect the town's wells to the maximum and issue a new variance with those conditions attached. We are very concerned that there be a valid current decision on record today that protects the town wells to the maximum, that all those conditions are on record at the Registry and binding on this developer and anybody else that comes after. Attorney Cornetta states that the public hearing for the Special Permit Site Plan approval is still open and the conditions that they are proposing although we have no objection to them they may be more appropriately be addressed in the decision for the special permit where that would run if the project were to go forward. Dave Roche understands this is going to be a land lease as well, whatever is rendered tonight as a variance want to make sure that the owner of the property is listed as on the variance so if for some reason this does not go thru we

don't have to go thru this again. William Yadisernia Town Engineer states we did seek Ted Morine thru the Planning Board and the letter you have in your file states the recommendations for protecting the well and where to put the water based upon the proposed project. What that does is bring the water into the areas and puts it into the ground in the area that are recommended by Mr. Morine, also protection for oil, gasoline spills and we had made one request to use propane or natural gas. The board read letters into the minutes from the Technical Review Committee dated May 17, 2010, William Yadisernia Town Engineer dated May 18, 2010, Denis L. Maher Senior Hydrogeologist dated March 30, 2010 and Planet Chrysler Jeep Dodge LLC dated May 17, 2010. Board member feels it's a plus for the neighborhood and no problem with the coverage since it was voted on in 1996. Doing a better job with the coverage and just amend and make it right and issue it. Abutter would like to review the report by DL Maher so Bill Yadisernia will have the info for review. 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.

During General Discussion motion by Bernard Mullaney to:

#### **IV. Decision**

Based on the foregoing documentary evidence, other evidence submitted during the public hearing and the foregoing findings, the Board hereby grants a variance, which shall run with the land, to allow for impervious coverage in excess 60% upon the subject property located within Franklin DEP Approved Zone II pursuant to §185-40 (D)(2) and M.G.L., Chapter 40A, §10, however, such impervious coverage shall not exceed 73.83%. The Board finds that owing to circumstances relating to the existing soil conditions and topography of the property, a literal enforcement of the provisions of the bylaw would involve a substantial hardship to the petitioner in its efforts to re-develop the existing site, and that such relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such by-law.

Further, the Board determines and confirms that the Detailed Record and Decision dated August 22, 1996 was in error in referencing a special permit as the relief being granted, and affirms that the accurate relief was a grant of variance by the Board for impervious coverage in excess of 60% within Franklin DEP Approved Zone II pursuant to §185-40 (D)(2) and M.G.L., Chapter 40A, §10.

#### **V. Conditions**

The following conditions only apply to Topsfield Development Associates, LLC, its successors and/or assigns, if and when the proposed redevelopment of a 56,925 square foot commercial/retail supermarket, bituminous paved parking area to facilitate the parking of 233 motor vehicles, the construction of new drainage facilities, utilities and landscaping, that is currently seeking approval of a special permit for construction of a Shopping Center and Site Plan Approval from the Franklin Planning Board are granted.

1. Compliance with the Correspondence of DL Maher dated March 30, 2010 to Wm. Yadisernia Town Engineer, Re: 348 East Central Street, Franklin, MA, reference utilize surface run-off for effective aquifer recharge.
2. Compliance with the Correspondence of Town of Franklin Technical Review Committee dated May 17, 2010.
3. Compliance with the Correspondence of Town of Franklin Department of Public Works, William J Yadisernia, Town Engineer dated May 18, 2010 Re: 348 East Central Street, Site Plan.

4. **Subject to Site Plan and Special Permit approval by the Town of Franklin Planning Board.**
5. **Subject to approval by the Town of Franklin Conservation Commission.**

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

**General Discussion:**

**Appearing before the board is Peter Padula representing Dan VanRoon, along with Rick Goodreau from United Consultants. Town Planner had suggested that we return to the ZBA to receive a modification to the variance to reference a plan that was submitted to the Planning Board. Rick Goodrea explains that we previously went before the ZBA and the original plan showed the two existing driveways that are located on the property both of which were going to be modified for the additional parking spaces. The Planning Board made some suggestions so we modified the plan to eliminate the second driveway and reconfigure the parking spaces but still keeping 10 parking spaces. The Planning Board felt a modification of this boards decision was necessary to make reference to the revised plan. Motion by Bernard Mullaney to grant a "Finding" for Minor Modification to recognize the new site plan entitled Site Plan 691 East Central Street Prepared For Dan VanRoon dated February 18, 2010 Revised 4/26/10 three pages which is before the Planning Board for site plan approval. Pending final approval from the Planning Board as maybe amended in their site plan process. Seconded by Robert Acevedo. Unanimous by the board.**

**Appearing before the board is Attorney Robert Galvin requesting a 45 day extension to allow Scituate Federal Savings Bank to go back before the bankruptcy court and get what we believe is our rights today confirmed, then we will request the minor modification. The board discusses a possible bond request. Present at the meeting is Dave Roche Building Commissioner/Zoning Enforcement Officer states we have eight houses left; as long as the bank is willing to work out an agreement on the completion of the subdivision in conjunction with the building permits and the occupancy permits. William Yadisernia Town Engineer provided a bond estimate for completion of the project dated May 20, 2010 for the Woodlands that will assist Dave Roche as a punch list. Board will continue the General Discussion with Scituate Federal Savings Bank till July 8, 2010 at 7:30pm.**

**Willaim Yadisernia Town Engineer is working with Eaton Place in regards to a previous bond and will come up with plans to correct the situation at the site. Will place Eaton Place under ZBA General Discussion July 8, 2010.**

**Motion by Bernard Mullaney to allow the applicant for Lot 6A Miller Street to "Withdraw" the earth removal application. Seconded by Robert Acevedo. Unanimous by the board.**

**Motion by Bernard Mullaney to accept the minutes of April 1, 2010. Seconded by Robert Acevedo. Unanimous by the board.**

**Motion by Bernard Mullaney to accept the minutes of April 22, 2010. Seconded by Robert Acevedo. Unanimous by the board.**

**Appearing before the board is Tom Childs and Lisa Vicario from 473 Coronation Drive, which is a corner lot with Baron Road. Looking for some guidance from the ZBA. The board suggest you keep the addition 20' off the front, work out lines, make the cars fit keep it 20' and apply to ZBA for relief.**

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

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