

Franklin Zoning Board of Appeals
For Meeting Held On
Thursday, October 21, 2010
355 East Central Street
Franklin, MA 02038

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

7:30pm – 112 Populatic Street - Paul Patrick Clancy

Applicant is seeking a building permit to construct a SFR home on a non-conforming lot. This building permit is denied without a variance/special permit from the ZBA.

Abutters Present

Appearing before the board is Attorney Neil Roche representing Paul Clancy who is present. Petition for a variance for several dimensional variances concerning a lot located on Populatic Lake. Lot 2 on a 1905 plan was purchased by Mr. Clancy in 1972. Most of these lots which I think there are in excess of 20, the configuration hasn't really change that much since 1905 but most of the lots contain something like 43.5' of frontage on Populatic St. This is one of the principal reasons why we are here is because we can't comply, we might be in position to ask for a special permit but we can't comply with a minimum frontage under the statute of at least 50' of frontage. We do have in excess of 5,000 square feet however. We are looking for a frontage variance, lot area variance and setbacks either side and added in that we can't comply with the circle diameter. A few years back there was a proceeding before the Conservation Commission. At one time there was some sort of a structure on this property, had debris and different branches and different things. There was an Order of Conditions issued by the Conservation Commission based upon a restoration plan that was prepared. I have a copy of the plan, a copy of the Order of Conditions, and the Certificate of Compliance both of which are on record at the Norfolk County Registry of Deeds. Also, with us tonight we have Mr. Clancy's grandson Edward, his wife Jackie and the plan is for them to construct a two-bedroom house on this lot probably with a garage underneath based upon the elevations and the lot layout. At one time these lots could not be very well developed because of lack of enough room for a Title V system plus water. But the recent construction in the street allows a more orderly development and improvement of these lots. At no time has this lot been in common ownership with either lot on the side. No common ownership with Lot 1 or Lot 3 on that 2005 plan. Attorney Roche states immediate abutters are in the audience tonight. We are asking for a variance from dimensional requirement, we are not asking for a variance for use. The use obviously is residential; in that case the proposed use is for a single family. We take the premises as we find them; they can be developed as proposed by us. The board has to make certain findings, the statute does assist us to some extent because we have not only topography situation, we have high and low elevations and we have a different shape lot that is spoken of in Chapter 40A Section 10 in order to justify a variance. Also, another requirement is something that effects the locus and nearby neighborhood, but not necessarily it does not effect the zoning district in which the property is located. In this case the zoning district Residential I is probably ¼ of the land area of the Town of Franklin. The minimum requirement be 40,000 square feet. Those are the more important features of the property, which we had discussed tonight. We have an engineer here if you have any questions. Board-No structure currently on the property?
Response: At one time there was a structure, some type of a summer use or dwelling of sort. We don't depend upon that as a reason for a reconstruction of a dwelling to take it's place. The plan is to put the proposed dwelling in almost the same general area where the engineer discovered remnants. Right now it's a vacant lot. The present assessed value is 1900.00. Board – Evidently they don't value as a buildable lot. Also, you mentioned a couple of other things that were given in the neighborhood before; I have to point out that

those had dwellings on them already. Response: Attorney Roche—correct. Board—Back in 1905 when this plan was drawn up somebody must have owned all this land in common ownership before zoning? Response: No. Board—In 1905 these were all separately owned lots and I have deeds for them if you would like to have them. Mr. Clancy purchased this in 1972, the previous owner purchased in 1964, owner before that was 1938 and I went back to 1919 to a fellow named Harry Mills who owned the lot for Lot 2. Board what about ownership for Lot 1 and Lot 3? On Lot 1 went back to 1973 Mr. Kelly owned it and I can go back further than that. Went back to 1924 and there was no common ownership at anytime with Lot 2. I believe we went back on Lot 3 beyond 1973 into the 20's and there was no common ownership with Lot 3. If you want those deeds I will be glad to produce them. Board—You also made some representation that there was problems with topography there, the engineer is here maybe he can speak since we have no topography on this partial plan? Attorney Roche has a copy of it and this is in the files of the Conservation Commissioner. This will prepare Mr. McNaulty if you have any questions on it. On this plan Lot 2 shows an existing foundation, everything here shows a house on it. Response: Yes, there was back in the 70's, there was a two family house there that burned down. The foundation currently exists? Response: Yes. Board—Is it there now? Board—We have a plan here—dated 2003 shows an existing foundation. We will probably have to take a ride to the site. Abutters have no comment. Board—Would like to have a better idea as to the existence of that foundation, think that's an important factor to consider. Board—Mr. & Mrs. Huston from Lot 3, how long have you been living there? Response: About five years. Board—How many stories is the proposed house? Response—1 ½ or 2 stories, so it blends in with the other houses in the neighborhood. Abutters Mr. & Mrs. Husten 110 Populatic is in favor of the proposed. Board—Is there remnants of a foundation? Response: Yes. The applicant gives the board permission to walk the property. Members want to look at the lot. Attorney Roche states the plan next to Lot 1 on the other side is Lot 29 Assessors Map 216 that contains a building, think it's in very poor condition. Board—Have you approached the owners to purchase that property? Response: No. Attorney Roche states it's for sale however. He wanted something like 230 something thousand. Motion by Bernard Mullaney to continue the public hearing till November 18 at 7:30pm. Seconded by Robert Acevedo. Unanimous by the board.

7:40pm – 26 Beech St—Donald L Williamson & Donna L Cournoyer

Applicant is seeking a building permit to completely remove existing SFR and build new SFR. This building permit is denied without a special permit/variance from ZBA to rebuild on a non-conforming pre existing lot.

Abutters Present

Appearing before the board is Donna Cournoyer and Donald L Williamson, we are co-owners of the property at 26 Beech Street and here with our builder Jim Thornhill. We are here before the board requesting a special permit to raise and rebuild a single-family residence on a preexisting non-conforming lot that has 100.94 square feet of street frontage where 125 feet is required. The lot is zoned SFR III the lot is 1.94 acres and borders vegetated wet lands. We are proposing to demolish the existing residence and reconstruct a new residence as shown on the plot plan that was submitted. Proposing to construct the proposed new residence entirely outside of all buffer zones. The proposed residence will meet all the setback requirements for a front, side, and rear yard and therefore we are not requesting relief. We believe that the proposed residence will meet the requirements of the zoning by-law for a special permit, specifically we do not plan to build a residence that would be substantially more detrimental to the neighborhood than the existing non conforming residence. The property will remain single family residence, it's Donald and I that are moving into the property and the quality of the home we are planning to build it in a way that it is consistence with the new homes that are being built in that neighborhood. We believe that there is ample parking inside the driveway and will not create any undue traffic congestion or impact the quality of the home or the surrounding homes. The current public water drainage and sewer system is sufficient we believe and that we will not impact quality of the environment. The board is in receipt of a letter from Conservation Commission dated October 20, 2010 and read into the minutes. Abutter Mary Harrigan 31 Beech Street I'm concerned, not opposed to construction on that

lot but I am concerned. Was at the Conservation Commission hearing and getting some conflicting stories of what is being built or not being built. Previous an in-law now a resident with two full kitchens, have not seen plans for a new home, but concerned with the impact to the neighborhood. Who will address where the run-off goes from a new home? Response: The Building Commissioner will have final say on the final grading for the topography around the house. Is an impact study required? Board-No. Board-visited the site and did not notice any problems that would affect neighbors. Abutter Jim McAvoy 28 Beech Street confused so the board explains they are here for a single-family residence. Patricia Swift Babcock 24 Beech Street questions the plan as a multi family dwelling? Applicant states there is a building permit that was issued to raise and build a new structure by keeping a section of the wall up showing one kitchen. It is our plan to come back and ask for it but we are trying to decide what we are going to do, that's why we are not here asking for an in-law today. We have to get the structure built. We want to live in that home and that's our first concern right now. Contractor confirms there is a building permit issued, the dwelling does not show two kitchens and that information is available in the Building Department. Mary Ellen Santelices 32 Beech concerned about water tables, wants drainage out back. Board-The property is above and some of it slopes your way, most slopes towards the back, if you have a water problem now I don't think they are going to aspirate it. Sure that the Building Commissioner is going to look at their drainage, they will have to do a final topography and he will have to approve it before they receive their occupancy permit. If it all falls in the buffer zone the Conservation Commission wouldn't have them mitigate anything in that area anyway. Motion by Robert Acevdo to close the public hearing. Seconded by Bernard Mullaney. Unanimous by the board. Motion by Robert Acevdo to grant a "Special Permit" to remove and rebuild a new single-family residence at 26 Beech Street as shown on a plan entitled Proposed Addition Plan Located In Franklin, Massachusetts dated September 28, 2010 by Dunn.McKenzie, Inc. Seconded by Bernard Mullaney. Unanimous by the board.

7:50pm – Woodlands

**Minor Modification of Comprehensive Permit
Woodlands Subdivision-Stonehedge Lane
No Abutters Present**

The board is in receipt of a letter dated October 20, 2010 from Galvin & Galvin requesting a continuance till late November. Motion by Bernard Mullaney to continue the public hearing till November 18, 2010 at 7:40pm. Seconded by Robert Acevdo. Unanimous by the board.

8:10pm – Eagles Nest Way - Eastern Management & Development, LLC

**Applicant is seeking a building permit to construct an additional building of eight units with no age restrictions and to increase the number of units from 36 to 45 with one unit added to Building #4. This building permit is denied without a variance/special permit from the Zoning Board of Appeals and a Site Plan Modification from the Planning Board.
Abutters Present**

Appearing before the board is Attorney Gary Hogan with the principals of Eastern Management Development LLC, Greg and Jason Coras. We were here on September 30, and presented our case seeking a use variance for the site identified as The Villas At Eagles Nest. Simply put seeking to add an additional structure containing eight units and adding a single unit to one of the buildings that has been previously permitted. There were a couple of questions raised at the last meeting that I don't think we had sufficient answers for. One of which I recall was the difference that the additional structure would make in open space. Submitted today is a letter dated October 20, 2010 from the engineer Todd Undzis who concludes that the open space would be reduced from 51% of the entire parcel to 49% of the entire parcel, which is 2%. Board-the question was the impervious coverage, not the open space coverage? Response: The impervious net increase of a quarter of an acre. Jason Coras-the building total impervious of the site with the proposed addition of Building 2 is now 21%, which represents a slight increase from the 19% impervious coverage as shown on the previously approved plan below the 35% limit. The board is in receipt of a letter dated October 21, 2010 from Bryan W. Taberner, Department

of Planning & Community Development and read into the minutes. The board reviews the history of this site and situation. The board is not here to amend their special permit, we are not here to approve their site plan, we are here to grant them the density request that they are asking for and that's all we are here to do. With that being said we will move on from that point. Nick Alferi Conservation Agent is at the hearing and states according to the language in the special permit it is tied directly to the site plan so any change in the site plan would require a new special permit. Board ask Mr. Alferi do they have the right to go before the Planning Board or does the Planning Board have the right to grant them the number of units that they are requesting? Response: If they request as part of the special permit and it meets the qualifications in the permit then the Planning Board does have that right to grant them that density. Attorney Hogan states for the record while I don't disagree that there is language in the special permit tying it to the site plan I would submit to you that was a mistake and it runs expressly contrary to the Senior Village Overlay By-law which says that a special permit issued under this provision shall run with the land and not with the site plan. So there was a mistake in drafting that got thru. There are two special permits issued, the first one did not say that and was correct and it said that the special permit shall run with the land. The second one that was drafted in an amendment had this language about tied to the site plan. That's general language that suggest as so long as you have a permitted project that's true but the minute you shove a shovel in the ground it's my position that you're vested. Whatever you received you are now vested with and the Planning Board has no power or ability at that point to undo that. You got what you got. If you want more or you want to take away you can do that thru modifications but to say that any change in the site plan requires a brand new special permit that's ridiculous that runs contrary to every principal in zoning in real estate law. It undoes the vesting of which you already have. I have to go on the record and suggest that I find this letter entirely unprofessional for somebody to suggest that we have not met the criteria, we are not on television, he wasn't here, he heard zero evidence of what was presented at the last meeting and to write a letter like this. It's political and not professional. A board member thinks the problem with this application is in terms of being able to make a case for a hardship I don't know how they can do that unless they first go to the Planning Board ask for additional density thru this provision and get a denial. Where's the hardship if they haven't even asked for additional density thru the special permit modification. Attorney Hogan states there is no express provision in either state law or your zoning by-law to permit a modification of a special permit, at the same time there is nothing in there that prevents it either. I don't think it's ever been brought up, it's neutral. Nick Alferi states it's his understanding that the old special permit stays in effect until a new one is issued. Can't lose the old one unless a new one is issued in its place. Board ask if the applicant would be willing to continue the hearing and allow the applicant to apply to the Planning Board since you have to go for site plan anyway? Response: Attorney Hogan states his concern has been what we are dwelling on right now like the modification of a special permit there is nothing that expressly states that we're not running the risk of losing everything by essential starting from scratch. Board does not feel you will lose the special permit; you are not given up any rights that you have already been granted under the old special permit. Mr. Coras ask if the town attorney submitted any type of letter? Response: No. Mr. Coras states I don't know where he got his information, why wasn't he here so we would have a clear understanding. Jason Coras request a five-minute recess to discuss this matter outside? Board-Yes. Motion by Bernard Mullaney to allow the applicant a five-minute recess to discuss the matter outside. Seconded by Robert Acevedo. Unanimous by the board. The hearing continues with Attorney Hogan stating he has the right to go forward and ask for a vote but thinks in an effort to get some clarity to this project we should probably continue this hearing and revisit whether or not Planning Board in form of a Special Permit or Modification or something like that is in order. The board asks abutters if they would like to speak? Abutter Jim Lyons 4 Cotton Tail Lane ask what is the current amount of units sold of the base 36? Response: To date 14 sales of the 36. Motion by Bernard Mullaney to continue the public hearing till November 18, 2010 at 7:50pm. Seconded by Robert Acevedo. Unanimous by the board.

General Discussion:

The board is in receipt of a letter dated October 6, 2010 from Builders Land Co., LLC requesting the release of a 15,000.00 earth removal bond for the project known as Hidden Acres Village. The board is in receipt of a letter dated October 15, 2010 from William J. Yadisernia, Town Engineer who recommends release of the bond for Hidden Acres Village. Motion by Robert Acevedo to return the 15,000.00 earth removal bond. Seconded by Bernard Mullaney. Unanimous by the board.

Motion by Bernard Mullaney to accept the minutes of September 30, 2010. Seconded by Robert Acevedo. Unanimous by the board.

The board is in receipt of a memo from Town Administrator Jeff Nutting in regards to outstanding balances. The Zoning Board of Appeals is voting to return funds. Motion by Bernard Mullaney to have Chairman of ZBA sign a voucher to return 100.00 to Gilmore, Rees, Carlson & Cataldo, P.C. for Moore Ave. Second by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to have Chairman of ZBA sign a voucher to return 685.00 to Bainbridge Realty Trust for Hidden Acres. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to have Chairman of ZBA sign a voucher to return 107.50 to Calarese Properties, Inc. for 300 East Central Street. Seconded by Robert Acevedo. Unanimous by the board.

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

***Philip Brunelli arrived during 7:30pm hearing**

Signature _____

Date _____