

**Franklin Zoning Board of Appeals
For Meeting Held On
Thursday, November 18, 2010
355 East Central Street
Franklin, MA 02038**

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

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. Saw a memorandum to confirm some of the representation that we made with the application for further information for the Board, which includes a series of deeds on Lots 1, 2, and 3. Locus being Lot 2 is the purpose of showing that there is no common ownership of any of the parties going back to at least 1924 and probably before that time. Also, included a copy of a letter, which I obtained from the Fire Chief to document that on December 8, 1973 there was a fire that damaged an existing house on this property that included the deed, cause of the fire was a space heater in the living room. Fire Chief's letter dated October 27, 2010 with a copy of the log. Also, included as an enclosure a couple of cases before the board one being earlier this year and one of 2008 and permits were granted. To document the matter with the Conservation Commission I also enclosed an Order of Conditions as well as a Certificate of Compliance. You will remember when we were here I gave you a copy of plan that was submitted to the Conservation Commission when the lot was cleaned up to satisfy the conditions imposed by the Conservation Commission. Our engineer is with us tonight and the author of that plan and would like him to give you a little back ground behind the preparation of that plan. The plan is known by the Conservation Commission as the Restoration Plan which is dated November 6, 2003. Only had one copy of the plan. The engineer states that when we started on this project the existing house was gone, we went out and surveyed the entire area and did some digging, there is part of a foundation visible today. Saw stones where the old foundation was. Took that as well as the pictures of the house when it existed from the Building Department. That's how we figured out were the house was before hand. What is proposed here is a two-bedroom home. Some board members visited the site and saw remnant of a foundation. 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 "Variance" for construction of a single-family dwelling with an attached garage on a parcel having a frontage of 41.5 feet where 200 is required, lot area of 7439 sq ft where 40,000 sq ft is required, the northerly side yard distance of 4.5 where 40' is required, the southerly side yard distance of 7.2 where 40' is required, the lot with circle of 41.5 where 180' is required all said requirements as provided in Section 185 Attachment 9 Column 1 of the Zoning By-Law of the Town of Franklin. Seconded by Bernard Mullaney. Unanimous by the board.

7:40pm – Woodlands

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

Appearing before the board is Attorney Robert Galvin and I'm counsel for Scituate Federal Savings Bank with me is Joseph Hayes the Chief Executive Officer at Scituate Federal Savings Bank. Received the Order from the Bankruptcy Court dated October 27, 2010, which does indicate our motion to allow us to receive Comprehensive Permit in our own

name. That has not been appealed and is now a final order of the Bankruptcy Court and we are authorized and have the right to make this request to the Zoning Board of Appeals. So, we would ask under the provisions of 760 CMR 56.07 (4) that the Zoning Board of Appeals approves the transfer of the Comprehensive Permit into our name. We do not intend to seek out of the Regulatory Agreement; there is a possibility that someone may come forward to buy the property from the bank. The bank is not necessarily in the business of building things, if that happens you will know about that soon. Board-What is the actual name you want to transfer to? Response: Scituate Federal Savings Bank. Board-How does that fall under the limited dividend company? We become a limited dividend organization as it relates to this project because we agreed to be bound by the Regulatory Agreement provision that limit our profit on this project. Over the course of the summer Mr. Hayes, myself and the loan officer met with the Department of Community Development because we were concerned about when it comes down to rendering accounting of this project how the bank is to treat prior activity. We actually got a definitive ruling from the Department of Housing and Community Development with the Town Administrators office. We are a limited dividend organization for this project by virtue of the fact we've agreed to be bound and not have a greater than 20% profit. Board-Is the bank prepared to post a surety bond? Response: It's my understanding that hopefully last week or this week getting from the town written indication that the only substantial work left to do there is the finish coat on the asphalt of the roadway including some moving or changing of some of the catch basins which were incorrectly installed. That and the final coat also on the sidewalks that another coat has already been done. That and a question relative to fencing. Some fencing required under the Special Permit that there are some negotiations with the Conservation Commission that they don't want all the fencing, they want half the fencing. We are waiting to hear from them. Other than that everything is done in that subdivision. Board-Do you have sidewalks? Response: Again, the sidewalks were installed last summer and then a coat of loam was put over them. We did not put in the sidewalks in until we knew exactly where the houses would be located. We will probably either complete the work ourselves so there wouldn't be a necessity for a bond or we would then bond it if necessary. We would probably finish but if not we will post a bond. Board-We will have the town engineer come up with a new bond estimate. Motion by Bernard Mullaney to consider this a Minor Modification for the Comprehensive Permit known as the Woodlands to be able to change the name from Arcadia Enterprises to Scituate Federal Savings Bank with the condition that Scituate Federal Savings Bank obtain an updated cost estimate from the Engineering Department for the completion of the roadway and info structure with the project before they commence and post that bond. However, the town requires with the condition that they get a new updated cost estimate and they post surety necessary to cover that bond estimate generated by the Town of Franklin. Seconded by Robert Acevedo. Unanimous by the board. Discussion-Scituate Bank states it's important to us we've been involved in this for over a year and stuck at ground zero for 9 to 10 months either the bank or someone who buys it and wants to put in a foundation right away, we have a building permit that was already issued on one lot and we have the building permit on another lot ready to file. Your saying this won't happen till we get this estimate in and we post the bond, how long? Board-How long for you to change the name and however long it takes you to contact the town engineer to come up with a new bond estimate and you post it. Response: The trees have already been put in. Board-He will cross items off the list and come up with a new amount. If the Building Commissioner sees fit to issue you a building permit, I know he issued one and requested that you didn't do anything with it until this was done, but if he allows you to go forward that's his decision. Motion made and discussion is over. All those in favor signify by saying "I" all those opposed none. General Discussion-Attorney Bob Galvin wrote asking if the board would revote to exclude the condition? Boards response-The Board stands on the decision that was made previously.

7:50pm – 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

Before we begin discussion just in case someone heard that representation on what was requested you have changed the application to make the additional building age restricted 55 and over? Response: Correct.

Appearing before the board is Attorney Gary Hogan with the principals of Eastern Management Development LLC, Greg and Jason Coras. They are the owners and developers of the property known as the Villa's At Eagles Nest. A condominium project located on Eagles Nest Way. We are here to add a total of nine units to this project, which is about 40% built and maybe 25 to 30%, sold out. We offered at previous hearings sufficient evidence, we had the engineer here on two occasions, went over the proposed site plan on the Modified Site Plan, talked about the topography and other features of this property that we believe necessitated an application before this board for a variance. There were some concerns raised at the last meeting about whether or not this partial application should go back to the Planning Board for purposes of a new special permit. We agreed to essentially review that prospect and having done prior legal research I had uncovered an inability and I think it's been confirmed from another different source but frankly an inability to have the Planning Board grant us what we are asking for. This project started as an over 55 senior district project back in 2004. It was a couple of years later it was modified by this board and conformed into a multi unit condominium hybrid project. Was under the senior by-law permit but it has been transformed by various variances from this board and by the vesting rights we have, into something that is unique. There is not another similar development in this town. There maybe others in other towns but frankly it does stand alone in a sense that it started and got its life as a senior village but it has transformed into something different. Legally, thru the appropriate channels and thru the appropriate variances from this board. There is no question we have to return to Planning Board. We clearly have to have the site plan modified to include the extra building and to incorporate the additional utility requirements and so on and so forth. Our engineer spoke at the prior public hearings and I think testified and there is evidence in this record that there is minimal impact to the site as a result of the addition of this building and the extra units. With respect to going back to my statement that we are certain that the Planning Board is incapable of granting us what we are asking for. Frankly, because number one the zoning by-law does not provide for modifications of special permits. Secondly, Mass General Law 40A does not provide for modification of special permits. So, their opinion or others may have the opinion that well if that's the case, then you need to get a brand new special permit. So, if you can't modify one the alternative is I guess, that you get a brand new one. I don't think we can get a brand new one. In light of the fact that one there are restrictions against senior permit projects now based on volume of affordable and other variables in the by-law. Number two the density amount is max'd out based on the existing by-law. In fact it's probably worse because this by-law has been scaled back a little the last several years and the density calculations have changed. So we would be walking into a brand new world and they clearly based on the size of this project and the development of it at this stage could not give us an extra building. Consequently, we are here because we think that only the Zoning Board has jurisdiction to grant the additional units in this project. That's our position both from a legal stand point and both from a partial stand point. You have in the record Mr. Taberner's communication from last meeting that made some assertions based on my opinion total hear say. Went over this the last time but things about not having the appropriate hardship levels, well frankly he wasn't here he did not hear the engineer so I would ask this Board not to put a lot of faith or credence in that letter. Nobody that has different opinions on that project has offered any support for the argument that we need to go to Planning Board. Nobody has been able to show me or anybody that I'm aware of from a legal standpoint why this board can't give us what we are asking for. I don't think frankly that it exists. We will be back there, clearly back there. If it's there prerogative at whatever point to deny our site plan modification because they think that there power has been served I guess we will have to deal with that in court. But we believe we are entitled to a variance from this board and we believe we are entitled to a site plan modification

from the Planning Board. Board-It's your position that you don't need a special permit or a modification of a special permit? Response: That's correct. Greg Coras states we have been to the Planning Board previous to this; they had issued a limited site plan for us and at the same token have not issued a new special permit. So that's been done before. Board-Was basically the same project but the limited aspect was driveway location? Response: It was easement, drainage, dumpsters, and stuff like that. That was the limited site plan modification. They didn't feel you needed a new special permit at that time. Maybe they will feel that you won't need one again. Response: Well we hope so. Board member has had discussions with the town attorney, the planner, obviously someone must of had a change of heart because I see a letter to you from the Director of Planning and Community Development that he was going to give us a follow-up letter after the 1st letter. I agree 100% he wasn't at the meeting, he doesn't know what was said, he doesn't know what was presented and I find it strange he would write a letter like he did but he works for the town and he has a right to write whatever he wants. He had a representative here from his department at the last meeting that made some assertion that you could go back to the Planning Board and get that. Well, I guess the ruling they all decided on is you're here for density and this board is the only one that has the right to grant the density relief that you need. It's the feeling of a lot of people that you have to go back to the Planning Board for the special permit, I don't know what happens, there is legal recourse if they turn you down on it, an appeal process, even if they did something with your site plan we don't have any right to do anything with the Planning Board Site plan. It's also my understanding that Planning Board can't turn down a site plan. I've also had discussions with the Zoning Enforcement Officer who is actually the Building Commissioner in Franklin cause it's one in the same and he said even if we were to grant you the density without you going back to the Special Permit Process thru the Planning Board he is not going to issue you a building permit. Suppose that would be an application and then come back to this board as an appeal of the building commissioners decision. Sure there are a lot of different avenues to do that. Abutter James from Cotton Tail Lane speaks about the density for this property. The board states you are looking at a zoning regulation that was adopted after this was approved. Abutter states I understand that, from what I read he is way above the current regulations. Board-Then you could call it pre-existing, non-conforming to get the necessary relief that they are seeking this is where they have to come. We know that the lot has some topography issues with it, shape of the lot and obviously the lot is not rectangular, you have a small area to go in and soil conditions. A lot of ledge on the property that had to be blasted and moved. So if you want to go by the hardship criteria they meet that. Board-We have not had anyone from the administration come against it. Board member states to the attorney that you made the statement that you are entitled to this building and you also made a statement that you are max-out on this property as it is according to the by-law so my concern is we have six of these 55 and older projects in this town, we have four that are active right now, one in court and the other one hasn't got started. If this board gave you another building what would prevent those people from coming before this board and asking for more. Attorney Hogan states he can emphasize with that concern and nothing would prevent any other applicant from bringing an application before this board for anything. You know that every application in front of this board turns or falls on it's own merit, the testimony, the engineer, the evidence, the hardship, the location, the partner, everything is unique. Somebody may come forward, somebody may be able to prove all those things and somebody may not but you can not make this decision week to week whether it's this application or any other application based on what might happen down the road because you have presidential value is in my opinion relevant for Zoning Board to consider. Because, they have to consider the testimony and the evidence of every case. Board-Here is the difference in what you are saying about precedence, we take each one on it's on merit. Board member states you came before and we granted a change in 55 and older age restriction and also the affordable units. You have three buildings up and finished and your on your fourth one with one more to go and the project is moving along good so you must be making something if the bank is giving you money. Jason Coras – We were permitted for 36 age restricted units originally and by adding more units now we are still not achieving or going beyond what that maximum number of age restricted units was at

that time. We are moving forward because everyone is helping us to get thru it. Board member feels that this board has helped your project and it's moving and I don't feel you need that 5th building. Joel D'Errico from Franklin would just like to bring up as a life long residence this community is looking for every tax dollar it can get, this next building is 55 and older that is not going to have any impact on the school, all pure revenue for the town. Greg Coras states there is very little impact to the town, no plowing, no sanding, or maintenance, on schools, revenue to the town, it helps the town, there is no negative other than allowing another building which takes up 2% of the site. The Chairman attended a meeting the other day with the Building Commissioner, Town Attorney, Director of Community Planning and Development and I didn't really hear any objection to the approval of this, it was more or less their only concern was that they follow the procedure and go back before the Planning Board for a Special Permit either a new or modified and a site plan approval. We have not voted on anything yet but I would like the Board to vote to continue this till December 9th and to direct the Chair to collaborate with the town attorney to come up with either a favorable decision or a negative decision. Motion by Robert Acevedo to sign the Extension in Time out to January 20, 2011 if the need be. Seconded by Bernard Mullaney. Unanimous by the board. Motion by Robert Acevedo to continue the public hearing till December 9, 2010 at 8:00pm. Seconded by Bernard Mullaney. Unanimous by the board.

General Discussion:

Appearing before the board is Joel D'Errico who never requested to be listed on ZBA agenda under General Discussion and never filed an application with the Zoning Board of Appeals.

Joel D'Errico has a question concerning a determination on stairs regarding Bylaw 185-13 on the exceptions for setbacks. I have some plans here I would like to show the board. Have a site plan that was drawn by Guerriere & Halnon here in Franklin. I own property at 47 Summer Street. Board-That's the property we are talking about? Response: Yes. Guerriere & Halnon drew the site plan and Michael Konosky drew the building plan. We conform to all the setbacks on the lot and the building but there is a set of stairs in the rear of the building that follow the guideline, this is how we drew our building plan. A set of stairs in the rear of the building for those one bedrooms that go up to four feet and under 185-13 it tells me that they are accept on the setback under uncovered stairs up to four feet in width. So, I was looking just for a determination or confirmatory vote based on what you see there, I'm in compliance with 185-13 Item #4. Board-The reason you are here is or who suggested that you come? Response: The Building Commissioner suggested that I see you cause he wanted you folks to confirm it, that based on zoning that these conform to that exception. Board-Your reading this 185-13 exceptions to height limitations and minimum yard setback mended 10-16-1996, by Bylaw Amendment 96-319; again on 11-6-1996 by Bylaw Amendment 96-318; again on 7-23-1997. Board-As far as uncovered without a roof stairs up to four feet. Board-On the left hand side it shows that it's 15.6 dimensions but you failed to put on the right hand side. Mr. D'Errico says it's a little bit more. Board-But you didn't show it, but you know and I know it doesn't show it. Mr. D'Errico states we are within, we are not encroaching. Board-He is in GR V that allows him one unit per 1,000 square feet; we did not give him any relief for that or determination on that. Motion by Robert Acevedo that the board grant a "Finding" that the four foot uncovered stairs as shown in a plan entitled Summer Place At 47 Summer St. dated October 18, 2010 by Guerriere & Halnon comply with zoning as shown on a plan that meets the Exceptions under 185-13 Paragraph B Sub Section 4. Seconded by Bernard Mullaney. Unanimous by the board.

Motion by Bernard Mullaney to accept the minutes of October 21, 2010. Seconded by Robert Acevedo. Unanimous by the board.

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

Signature _____

Date _____