

**Franklin Zoning Board of Appeals
For Meeting Held On
Thursday, December 9, 2010
355 East Central Street
Franklin, MA 02038**

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

7:30pm – 28 Skyline Drive – Susan and William Mallender

Applicant is seeking a building permit to construct a sundeck 35.46 from sideline where 40' is required. This building permit is denied without a variance/special permit from the ZBA.

No Abutters Present

Appearing before the board is Susan and William Mallender would like to replace the deck with the exact dimensions. Board–Is it covered? Response: No. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Robert Acevedo to grant a 4.54 front yard sideline “Variance” down to 35.46 where 40 feet is required for the construction of a sundeck as shown on a plan entitled (Proposed Deck) Plan of Land in Franklin, MA for William & Susan Mallender dated September 14, 2010 by Colonial Engineering Inc. for the property located at 28 Skyline Drive. Seconded by Bernard Mullaney. Unanimous by the board.

**7:40pm – Boston Survey, Inc. - 14 Corbin St–Debra and Richard DeFilippo
18 Corbin St-Gail and Brian Jabbour**

Applicants are seeking a special permit/variance to subdivide a lot with two existing dwelling units.

No Abutters Present

Appearing before the board is Richard DeFilippo and Brian Jabbour property owners from 14 & 18 Corbin Street and the surveyor. Basically we have two lots that have deed restrictions. Board-You have two feet between there. No. 14 Corbin because of the overlay we have a lot line thru a building. No. 14 goes thru 18 Corbin so we want to rectify the situation. Both parties are anxious to get this fixed. Board suggests leaving the line but granting an additional ten-foot easement in case they have to work on the house. The board suggests some other alternatives. The applicant will come back with a plan showing a five-foot easement past the corner of the house then jog it, not all the way to the lot line.

ZBA secretary reviewed the tape and added: Bernard Mullaney to soft spoken for tape. Bruce Hunchard states–What Tim Twardowski suggested was that they leave the line there but they grant an easement an additional 10' easement in case they have to work on the house. Bernard Mullaney would rather see the line moved up. Bruce Hunchard apologizes if it was you that I spoke to but I think I mentioned whomever I spoke to at Boston Survey that they might have an alternative plan. Discussion over the 10' and the driveway, the board sees that. Bernard Mullaney suggests you make a line just off his driveway. Or a foot or two off it. Applicant-that's a lot of land, more to lose. Bruce Hunchard explains to Bernard Mullaney what we are talking about is that they are going to come back with a plan showing a five foot easement and you only have to go to the back of the house, don't think you have to go all the way to the back, five feet past the corner of the house then jog it. You can have that done by January 20th? Bruce Hunchard–That may work. If you're willing to do that we can reschedule for January 20th. Response: ok. Motion by Bernard Mullaney to continue till January 20, 2011 at 7:30pm. Seconded by Robert Acevedo. Unanimous by the board.

Note-Zoning Board of Appeals meeting of February 3, 2011 motion by Philip Brunelli to accept the minutes of December 9, 2010. Discussion: The board discusses approving the

minutes of December 9, 2010 but Bernard Mullaney request that the public record state that he had mentioned and requested a four foot setback for 14 and 18 Corbin Street. Seconded by Bernard Mullaney. Unanimous by the board.

7:50pm – 16 Bent Street – Linda Smith/Victor Conza

Applicant is seeking a building permit to construct a covered front porch 26.3' from front lot line where 40' is required. This building permit is denied without a variance/special permit from the ZBA.

No Abutters Present

Appearing before the board is Mr. Conza proposing a covered front porch. The steps already exist but we will add a railing. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Robert Acevedo to grant a 13.7 foot frontyard setback "Variance" down to 26.3 where 40 feet is required for the proposed roof to go over an existing set of stairs as shown on a plan entitled Proposed Addition Plan for Victor Conza dated 11/10/10 by GW Site Solutions Inc. for the property located at 16 Bent Street, Franklin, MA. Seconded by Bernard Mullaney. Unanimous by the board.

8:00pm – 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 on behalf of the applicant Eastern Management LLC along with Gregory Coras and Jason Coras Principals of Eastern Management LLC. Mr. Chairman we were here most recently on 11-18-10 at which point the meeting was continued till this evening. It was my impression but correct me if I am wrong but it was my impression that the public hearing was actually closed on Nov. 18th. Board-No, it was continued to have the ability to take the draft that you sent us to have myself and the town attorney collaborate on a decision that would ultimately be voted by the board hopefully tonight. With that said we have nothing more substantive of nature to offer into evidence. We do have administrative issues we would like to deal with, perhaps you would like to hear from the abutters first or do you want me to raise my argument in respect to housekeeping/administrative issues first. Abutter Jim Lyons 4 Cottontail Lane can the board explain how this variance request is relevant to Mass General Law Section 40A? Board-Anyone has the right to file an appeal. The board explains the criteria. How many days to appeal? Board-The board explains the appeal process. Sandra Fredrick from Cottontail Lane as an abutter reviews the previous Planning Board and Zoning Board of Appeals hearings regarding Eagles Nest. In final comment this may be density but it does not make sense to me that first you say we are having trouble selling to the seniors, its saturated and now we want to put in a 6th unit, we don't want it age restricted oh but now we want it age restricted because that will look better. But you just said your not selling to the seniors so who are you going to sell these to. Is there ever a time when the board says halt, lets stop here, lets fill what we've got, make use of that. It doesn't make sense to keep perpetuating and ongoing. So they borrow more money, they will apply it to the debt they perhaps have now, it will be here again in a year or two years or a partially built building and they have issues with it and now we will be in the same predicament that they were preaching out about in 2008. Where does it stop, where does the line get drawn and where does it say ok you folks are accountable and don't come to the town, we have been very accommodating. John Lane Eagles Nest Way, we have never had any negative comments, it's always been positive and it's a win, win for the town. You will get taxes out of this for the extra units and no real expense to the town. Attorney Hogan-at this point not sure if any of the particular points raised by the abutter needs to be addressed directly, 90% of what she testified to are already in your records. One thing she did have wrong is this special permit was actually granted in June 2004 and there is a Limited Site Plan Modification granted by the Planning Board on November 2005. At this point I need to bring up a serious issue in regards to the travel of this case. It has come to my

attention just most recently we think Mr. Chairman that you should ask Mr. Mullaney to recuse himself from any vote on this particular application. The reason for that request is I learned and did not know this prior when this case started that as a part time municipal employee Mr. Mullaney does the wire inspection at this particular project. Under Mass General Law 268A which covers Code of Ethics for municipal employees in an effort to avoid perception of public conflicts, one who holds a position as a municipal employee needs to file a certain disclosure with the town clerk. What the disclosure does is it lays out the facts of the particular special municipal employee and whether or not there are sufficient facts to cut against the perception the presumption of a conflict of interest. Mr. Mullaney has recorded such a disclosure, which I have a copy of, but unfortunately it was filed too late. It was filed on October 26, 2010, which is a month after this meeting/application started and after we had two public hearings. He did the right thing, he filed the disclosure, but my position is that it wasn't filed timely and that I think he is tainted as a consequence of that and as a result the perception of a violation of the rules of conflict. So, I would ask that he recuse himself or at the very least seek an opinion from the State Ethics Commission that he can in fact as a consequence of being a special municipal employee doing work at this site for them at this project. This is not a personal attack. I am not calling your character into question at all, I know you are a respectable man; you worked hard for this town for many years, and years and years. The purpose is the Code of Ethics and we crossed over it here. I think that the decision with this board if it votes tonight could be subject to being tipped over with an ethics complaint. That's what I am submitting to you. Mr. Mullaney does not see any monetary value; I get paid an hourly rate. I will consult with the town attorney. The board requests an extension in time. Response: No problem. Motion by Bernard Mullaney to grant an extension in time till February 24, 2011 for Eagles Nest Way. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to continue the public hearing till January 20, 2011 at 7:40pm. Seconded by Robert Acevedo. Unanimous by the board.

General Discussion:

Appearing before the board is Pam Reardon from 38 Crescent Street owner/occupied, purchased property 30 years ago. Previously were apartments for Dean College professors so they are all one bedroom. The garage goes along with the big house. Raised our children, one son resides in Franklin the other son would like to move back. Thought was for the three-car garage to be made into a two-bedroom apartment. House is six-multi family and owner occupied, five apartments. Just looking to add another apartment. The board suggests when ready apply to ZBA for another unit but be prepared that you will be directed to the Planning Board for site plan approval, show the parking.

Motion by Bernard Mullaney to accept the minutes of November 18, 2010. Seconded by Robert Acevedo. Unanimous by the board.

The board is in receipt of a letter dated November 23, 2010 from The Conservation Commission Re: The Woodlands which is read into the minutes in regards to the fencing. Also, in receipt of a letter from William Yadisernia Town Engineer dated December 6, 2010 in Re: Woodlands, Bond Estimate. Motion by Bernard Mullaney to set a bond as recommended by Town Engineer William Yadisernia of \$87,940.00 for the project known as the Woodlands. Seconded by Robert Acevedo. Unanimous by the board.

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

Signature _____

Date _____