

**Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, January 20, 2011  
355 East Central Street  
Franklin, MA 02038**

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

**7:30pm – 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 the surveyor Chris from Boston Survey, Inc. along with Debra DeFilippo property owner of 14 Corbin Street. The board states the issue before was we were not happy with a two foot line. You provided us with a plan that shows two-foot line with a five-foot wide building maintenance easement. Board members comments: It's what we asked for. Exactly what we asked for, go down past the house, and think it looks great, all set. One-member states at the last meeting he asked for that line to be at least four feet away from the building and we only have two feet there. Board agrees that's what we talked about, then we decided on the five-foot easement and thought the board was all on the same page, but evidentially we're not. The plan shows a total of 7' off the house. No permanent structure can be built on an easement. Board member wants 4 feet, does not care about easement after that. Board explains to the applicant you have two options, 1<sup>st</sup> we can close the public hearing and take a vote or 2<sup>nd</sup> continue the public hearing till next meeting and bring back a revised plan. Surveyor states four feet is a significant amount of square footage. So to confirm the board is looking for four feet and does not care about the easement so you will pickup three feet of land that you can use. Motion by Bernard Mullaney to continue the public hearing till Feb. 3 at 7:40pm. Seconded by Robert Acevedo. Unanimous by the board.**

**7:40pm – 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**

**Bernard Mullaney - Recuse myself from this hearing**

**Philip Brunelli is activated as an acting member as opposed to an associate member  
Philip Brunelli read the minutes and listened to the tape from ZBA meeting of 9/30/10  
Appearing before the board is Attorney Gary Hogan on behalf of the applicant Eastern Management Development LLC along with Gregory Coras and Jason Coras Principals of Eastern Management LLC. Mr. Chairman, here last in December at which point we had concluded the presentation of our material and think there was some abutters comments. At the end of that meeting we raised the administrative issue regarding board member Mullaney and appears that he has recused himself. Frankly, we have no more evidence, we are in a position to have the meeting closed and have this board either vote or take under advisement, whichever it chooses to do under the circumstances, but we have nothing further that I'm aware of. Board ask if any abutters would like to speak?  
Response: No. Motion by Robert Acevedo to close the public hearing. Seconded by Philip Brunelli. Unanimous by the board. Motion by Robert Acevedo to "Take Under Advisement". Seconded by Philip Brunelli. Unanimous by the board.**

**General Discussion: Based on the evidence and the testimony presented at the public hearing, the Board made the following finding that:**

**1. The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located. The board heard testimony to the effect that the site was developed specifically for the shape and size of the buildings as permitted. Four of those structures have been erected which leaves the site, including its shape and topography, adaptable only for completion of the project with consistent shapes and sized buildings. Discussions were had relative to different options at the site, including scaling it back and/or re-configuring the buildings. It was determined that due to the constraints now in place because of the site improvements, the infrastructure and the occupancy of over 15 families in the development this was the only feasible option.**

**2. Desirable relief may be granted without either: a) substantial detriment to the public good, or b) nullifying or substantially derogating from the intent or purpose of the Town of Franklin zoning by-law. The board heard substantial testimony both from the applicant and from other owners of units in the development all of whom were of the opinion that the public good would in fact be served with the approval of the application. The project is located on private ways and does not rely on the town's services for plowing, trash removal and other incidental needs. The fees and taxes generated by the additional units were seen as positive attributes. Moreover, the testimony was that the additional units were unlikely to add any appreciable number of children into the school system and this testimony was uncontroverted.**

**In addition, the board acknowledged that under Franklin Zoning By-law, Section 185-45 D (2)(b) it has the power to grant variances for use so long as the requisite criteria are present. The board has concluded that a literal enforcement of the by-law would be a substantial hardship to the applicant and can be granted without substantial detriment to the public good.**

**That the applicant may apply to the Town of Franklin Planning Board for, and receive, a New or Modified Special Permit for a total not to exceed forty five (45) units to be built in not more than six (6) buildings, half of which buildings, three (3), shall be age restricted and sold to persons who are over fifty-five (55) years of age.**

**That the applicant shall seek a modified site plan approval from the Franklin Planning Board for the relocation of Building #4 and the location of the additional Building #2(6<sup>th</sup> building), as shown on a plan entitled The Villas At Eagle's Nest Site Plan Proposed Buildings #2 & #4 dated 08-27-2010 and drawn by hwmoore Associates, Inc.**

**Last, the board has found that there will be no substantial derogation from the intent or purpose of the by-law.**

**Any person aggrieved by a decision of the Board of Appeals may file an appeal pursuant to General Laws c. 40A §17. Such appeal must be filed within twenty (20) days after the date of filing of the notice of the Board's decision with the Clerk's Office.**

**Motion by Robert Acevedo to approve. Seconded by Philip Brunelli.**

**Discussion: Biggest factor for this was that the applicant came in and agreed to make it over 55 project the additional building or the additional units. Don't see any adverse impacts on the town related to that. Any other further discussion? All those in favor signify by saying "I", "I". All those opposed "None". Unanimous by the board.**

**7:50pm – 516 White Ave - Jean Hoban**

**Applicant is seeking a building permit to construct a sundeck 36.9' from the front lot line where 40' is required. This building permit is denied without a variance/special permit from the ZBA.**

**No Abutters Present**

**Bernard Mullaney is reactivated**

**Appearing before the board is the builder Chris Schmall representing the applicant Jean Hoban proposing a deck on the front of the home. Open deck like a sun deck, no roof. Board ask that Mr. Schmall address the variance requirements criteria. Board-There is nothing there right now? Response: Actually a cement set of stairs right there that are out the front door and the homeowner wants to take out the front stairs and put the deck**

there. Board-How wide is the deck? Response: Between 16' long and 8' out from the house. Board – 36-inch door? Response: No, 32. Board – What's the height above grade for the deck? Response: About three to four feet. Will do a lattice panel to keep it enclosed to keep things out, which will have an access panel that opens. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Robert Acevedo to grant a 3.1 foot front yard setback "Variance" down to 36.9 where 40 feet is required for the proposed 8 by 21 open deck with a set of stairs with no roof for the property located at 516 White Avenue as shown on a plan entitled Proposed Deck Plan Jean Hoban 516 White Avenue Franklin, Massachusetts dated November 22, 2010 by GW Site Solutions Inc. Seconded by Bernard Mullaney. Unanimous by the board.

**8:00pm - 101 Forge Hill Rd – Crown Atlantic Co., LLC and LightSquared LP**

Applicant is seeking a building permit to mount wireless communication equipment to an existing cellular tower. This building permit is denied without a special permit/variance from the ZBA.

**No Abutters**

The Board is in receipt of a letter dated January 17, 2011 from Duval, Klasnick & Pastel LLC requesting a "Withdrawal Without Prejudice" for the application 101 Forge Hill Road, Franklin, MA. Board-Just for clarification the town never took or voted to take any money to hire an outside consultant. The consultant begun review and the applicant has agreed to pay the invoice directly not thru the Town of Franklin. Member of the board Tim Twardowski states for the record one of the co-applicants Crown Atlantic is a client of my firm and on that basis thou I don't think it would in any way reflect or impair me from being an unbiased member of the board on this matter in the interest of not creating any appearance of impropriety I will recuse myself from voting in anyway on this application. Motion by Bernard Mullaney to allow the applicant Crown Atlantic Company LLC Co-Applicant LightSquared LP for 101 Forge Hill Road, Franklin, MA to "Withdraw Without Prejudice". Seconded by Robert Acevedo. Unanimous by the board.

**General Discussion:**

**39 Schofield Drive –** Appearing before the board is Dave Constantino a local contractor representing the Williams property owners at 39 Schofield Drive. Proposing to construct an addition to their existing carport, the addition would be an extension of the carport. Surveyor went to property and provided a proposed plot plan with addition and there is an existing foundation. Foundation was put in 1995 with a poured slab on top of it. Board-With permit? Response: Yes, with permit, that's correct. Will not be doing any type of excavation I will be extending that carport on the existing foundation. Board-If the existing carport only needed to be closed in I probably wouldn't have a problem with that but where you are adding something considerable in nature on top of a slab that could have been considered a patio. You need a variance with dimensional relief – you want to build on top of it you need relief. You don't meet the setbacks. The board suggest they file an application with the Zoning Board of Appeals.

**10 Michelle's Way –** Appearing before the board is resident of 10 Michelle's Way proposing to transform the existing 24 x 22 garage into a family room then construct a new 10' breezeway with a 24 by 24 garage added on and that's what results in us needing a 15' variance. Board-You need a 40' setback, you don't show that line, there is a line on this plan that he shows that he never marked from the point of the garage to the cul-de-sac. There is no measurement and he should show that. You will need dimensional relief, you will need a variance. I'm here looking for guidance before I go forward. The board explains the variance criteria. Member feels they are asking a lot and wants some compromise. It's the sideline were you need relief that you need to keep at the minimum but the depth is not a problem. Board suggest 8' breezeway and 22' garage.

**Return Unused Funds:**

**To return unused funds:**

- **Motion by Bernard Mullaney to return unused funds of 4,967.48 to Joseph Pereira for an application for 60 Earl's Way. Seconded by Robert Acevedo. Unanimous by the board.**
- **Motion by Bernard Mullaney to return unused funds of 450.00 to Bryn Smith for Nice Enterprises Inc. at 76 Grove Street. Seconded by Robert Acevedo. Unanimous by the board.**
- **Motion by Bernard Mullaney to return unused funds of 450.00 to Lajero LLC for an application for 704 Washington Street. Seconded by Robert Acevedo. Unanimous by the board.**
- **Motion by Bernard Mullaney to return unused funds of 3762.50 to Sprint Nextel for an application for 1000 Franklin Village Drive. Seconded by Robert Acevedo. Unanimous by the board.**
- **Motion by Bernard Mullaney to return unused funds of 3762.50 to Sprint Nextel for an application for 82 West Central Street. Seconded by Robert Acevedo. Unanimous by the board.**
- **Motion by Bernard Mullaney to return unused funds of 3866.24 to General Dynamics Network Systems, Inc. for Sprint at 855 Upper Union Street. Seconded by Robert Acevedo. Unanimous by the board.**
- **Motion by Bernard Mullaney to return unused funds of 560.00 to Franklin Sports Mall, LLC at Washington Street. Seconded by Robert Acevedo. Unanimous by the board.**

**Motion by Bernard Mullaney to accept the minutes of December 9, 2010. Discussion: Robert Acevedo notes that the minutes of 12-9-10 states that 14 and 18 Corbin Street is to return to the board showing that the applicant was to return with a plan showing a five-foot easement past the corner of the house. Board states they talked about different scenario but when the applicant left we sent him to revise the plan for a five-foot easement. Bernard Mullaney states he did not care where the line went in the back as long as it was four feet off the house. Board we made it seven with the easement. Bernard Mullaney states he did not want the easement. No second on the motion the board will have the secretary review the minutes.**

**Motion by Philip Brunelli to adjourn. Seconded by Robert Acevedo. Unanimous by the board.**

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**Signature \_\_\_\_\_**

**Date \_\_\_\_\_**