

**Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, June 23, 2011  
355 East Central Street  
Franklin, MA 02038**

**Members Present**

**Bruce Hunchard  
Robert Acevedo  
Timothy Twardowski**

**7:30pm – 26 Beech St – Jim Thornhill  
(Donna Cournoyer & Donald Williamson)**

**Applicant is seeking a building permit to add an accessory dwelling unit to a single family residence. This building permit is denied without a special permit/variance from the ZBA.**

**Abutters Present**

**Appearing before the board is Donna Cournoyer and Donald Williamson along with Jim Thornhill seeking approval of a special permit for an accessory dwelling unit at the property located at 26 Beech Street. It's a single family residence currently under construction and we have a construction plan to show the board. Proposing a dwelling unit over the garage approximately 1500 square feet and the dwelling unit will be attached to the home. Built a common room so the doors will have access to both sides of the house. We are proposing Donna's sister, husband and child to be living in the home and they were previously living in the home for about 2 ½ years in the previous development that we subsequently demolished, so they will be moving essentially back into the property. We believe that the proposed residence meet the requirements for the zoning by-law for the special permit. Special permit criteria is addressed. Abutter James McAvoy 28 Beech Street is concerned since he vested in his property at 28 Beech Street in a single family neighborhood. I think this proposed secondary dwelling at this property is going to have a severe negative impact on the value of my property, on my own peace and quiet, on my privacy. My property is to the right of the driveway which goes along my fence line. We've had history with this, there were renters in the past and my concern is what's going to happen after their relatives leave. They may say they are not going to rent it out but you can't close the gate after the horses are already out of the corral. I'm trying to stop it before it starts, because it's going to have a serve impact on us. The traffic going back and forth, not to mention if you have driven on Beech Street there is an extremely dangerous curve, very blind and we will have increase traffic coming in and out of that driveway. It's going to be a hazard for me and my family getting out of my driveway with the increase traffic coming out of there, loss of privacy going up and down the fence line. It's going to open up for renters being in there after the fact. It's just going to have a detrimental impact on my peace in quiet, on my privacy and on my investments as well as the rest of my neighbors. My question is where is the benefit? I'm trying to be civil thru this but I'm protecting my rights as a tax payer. We are all being harmed and my question is where is the benefit, who benefits from this? If you say that the tenants benefit and they are really nice people. Board-Are those the people you had problems with before?  
Response: No, not at all. Board-So they have been living there for a couple of years?  
Response: Yes, but after they are gone who knows. Once this is a secondary residence whether it's done under the table, you know this is going to be a rental property. I think this was the intent all along to build a secondary residence. I have a major problem with this, we are all being harmed, we came into this neighborhood with the expectation that we were buying into a single family residence, it's zoned single family residence on the town's zoning map and I think this is grossly unfair to us if this is granted. I think it's a total disregard for the neighbors thru this whole process, nobody cares, and we need to stop this. Board-You made a couple of statements about devaluing your property?  
Response: Yes. Board-Are you a real estate appraiser? Response: No, I'm not. Board-Do you have any documentation? Response: No. Abutter Jeanne Seyfarth of 22 Beech Street feels this public hearing is just a formality, I'm asking the Board to make sure they attach the following conditions to the special permit. First, is that the in-laws must reside**

at the property and that the permit for the second dwelling unit becomes null and void if either party moves or transfers ownership and no separate utilities shall be permitted unless required by the DPW and that this special permit be recorded at the Registry of Deeds. These should be the minimum conditions attached to this permit and this Board should add any additional conditions that are appropriate. These are your usual and customary conditions that you attach to other special permits that are granted in the town.

Abutter Patricia Swift Fulton 24 Beech Street thinks this is a multi family residence and I guess we all purchased with the intent of being in a single family residences neighborhood. I don't think anybody here has been disrespectful, I think they are concerned for the property where they live, and they are concerned for the neighborhood. Question is when does the neighborhood that is zoned single family residence then becomes something different – multi family residents or mixed residential or whatever you want to call it. Nobody is against the development of the property but what they want is that their interest be met as well as theirs, that there is equity and parity in this situation. I don't think it's too much to ask of this Board to treat all of the interest fairly, equitable, and looking at everybody's need not just one developer and one family.

Abutter Mary Harrigan 31 Beech Street asking if this becomes a two family house does it stay a two family house if the owner continues to own the house but moves out so they can turn it into a two family both unit rentals? My concern is there has been a disregard for doing things the right way. The wetlands were impacted, trees were cut down that never should have been cut down, planting we were told was going to be done, has any of that been done? A portion of it was going to be done in the Fall, didn't take place, then it was better for us to do it in the Spring, has it taken place? My only concern is does this turn into a rental property? Response: The Board explains the special permit rules for a second dwelling unit. Also, if the Board wasn't so incline to give them a special permit for the second dwelling unit that house is going to be constructed one way or the other, they may leave the kitchen out. If the Board grants a second dwelling unit names will be taken and the building commissioner will give them an occupancy permit with the names of the occupants.

Builder Jim Thornhill states that during construction we did set up the entire second area above the garage as truss roofing, there is no supporting walls in the area, every single wall can be taken down and can be converted into bedrooms, living area, anything they want to in the future. We also made doorways within the walls to re-convert it back into a non secondary dwelling area. We did those steps just so that if anything was to happen and the sister decided to move out then they could convert it into a giant room or integrating into the house in the future. Board-You were supposed to replicate some trees? Response: We are complying with all of the Conservation requirements. We did not get our permits till October so clearly we could not plant and they agreed to that. We are working with Conservation. We need everything planted by the end of this year, so the plan is in September/October time frame we will focus on that area once the construction is complete.

Board-How long was the other home in that location? Response: It was built in 1982. Board-Has the driveway moved since you built the new house? Response: We moved it over, we centered it, but it's always been there. Board-I will raise the same issue that was raised last time they were here in September of last year which is I see in zoning by-law this is being processed under Roman VI Subsection 6.3b which describes this as a two family by conversion. As I see it this is new construction which is not allowed by special permit and would follow 6.3a new construction. I would like to hear from the applicants and perhaps the board members could discuss this as well but would like someone to explain how this distinguished from a two family new construction, what is different about this? Donna-are you asking me to interpret the zoning laws? Response: If you can. Donna states it's not a rental property, they are related, it's our home, I guess I don't have that detailed understanding of the Zoning laws to make the distinction between what you are asking me to make. Board-Ok, that's fair, I just didn't know if you had this conversation with the building official when you came in to apply, the distinguished under the zoning by-law is a two family new construction is prohibited in the SFR III zone. Two family by conversion is allowed with a special permit from this board. Donna-And that's what we thought we were trying to do. Board-New construction is new construction whether it's one unit or two or three or ten. The way I intercept two family by conversion is that there is an existing structure with a certificate of occupancy already issued and

what's happening is the existing living space is being converted to a second dwelling unit. Perhaps it's not even existing living space maybe a space over a garage or a basement that's going to be finished and made into an accessory apartment. I don't see that being the case here, I see this as new construction two family. Donna-When that issue was raised last September we were advised that previous permits were issued consistent with what we were applying for and this was the way we were advised to go. Spoke with an attorney in town and this was the path we were told to take, that there were other permits approved in this fashion, so at that point I did not look for distension and didn't go down that path. I hear you but not sure what you are saying, is this new or has permits ever been issued for new construction in this manner? Response: Not since I was on this board, we issued a number of special permits for two family by conversion basically what you're proposing here but in each case it's been a conversion of existing structural space as opposed to construction of new structure. Donna-should we build it first then come back by conversion? Response: I can't advise you as how to approach this but you see my position on this that I don't see how this is distinguished from two family new construction. Question: If they had an occupancy permit for the dwelling then came in is that by conversion, and don't forget there was a house there that they came in and was going to do something with but because they are adding space doesn't necessarily mean it's new. I understand and not sure if your taking the whole tearing down a house and building a new house as new or are you considering if someone comes in with a unit and adds a garage with a unit over the top is that considered new or by conversion. Our original permit to build a house was for a remodel but because of the issues with conservation the decision that the homeowner made was to move the house out of the conservation area and become a new dwelling but it wasn't the intent. The intent to add to this property was original; we were going to leave the first floor and build off of the foundation and expand up and out. That was the whole intent. The question you are asking in reference to is it conversion it is from our original intent but because of the events that have taken place to this point it has become a completely 100% new construction. If you are suggesting they should have an occupancy permit and be in the property before they install a second kitchen the dwelling will still be built as planned without the kitchen. I'm sure they will be more than happy to come back and address it if it's a formality but in realty it is a remodel. Abutter states you made this point the last time and you asked the same question, where is the part of the existing structure and there was none so I don't see how any things changed so I agree with you, it looks like a clear violation of the zoning law, this is clearly new construction. Homeowner states it's new construction but the building permit is under a single family home and we had the space and we are going to build over the top of the garage as it was anyway and we are now seeking to put a kitchen in there. As you said before kitchen or no kitchen we are all going to live there. Board member states the zoning by-law draws a distinction between two family new construction and two family by conversion and I haven't heard anybody tonight explain to me how this could qualify as two family by conversion when everyone here knows that this was new construction from raw land, understanding that there was a structure on this land previously that was taken down. I cannot apply the Zoning by Law to what was intended, I can only apply it to what exist and what's been approved and what the plan shows. In the meantime Board will talk with the Zoning Enforcement Officer along with the town attorney in regards to what new construction is and by conversion, at least give us some guidance to that fact. Also, the board states they are not completely happy with the design you have with the weight room or workout room and one of those bedrooms there probably what you should of done was to make a wall and make a passage way between the two units with a door. The way you have it this way in the second floor where the bedroom and the work out room is you have to make a left hand turn into the workout room and take a right hand turn into a another room then go through someone's bedroom to get there and I don't consider that a second dwelling unit in the context of what we do here, so you might want to look at that, maybe come up with something different. We haven't even got to that point yet but while we are going to continue it till next month it's something for you to look at. Motion to Robert Acevedo to continue the public hearing till July 21, 2011 at 7:35pm. Seconded by Timothy Twardowski. Unanimous by the board.

**7:40pm - 440 East Central St - Dermatology Associates, PC**

**Applicant is seeking permission to conduct a business that involves cosmetic tattoo procedures. This use is not permitted in the CII zone. This use will require a use variance/special permit from ZBA.**

**No Abutters Present**

**The board is in receipt of a letter dated June 20, 2011 from Dermatology Associates, P.C. requesting a "Withdrawal Without Prejudice" seeking permission to conduct a business that involves cosmetic tattoo procedures for the property located at 440 East Central Street, Franklin, MA . Motion by Timothy Twardowski to allow the applicant to "Withdraw Without Prejudice" the application for a variance to conduct a business that involves cosmetic tattoo procedures. Seconded by Robert Acevedo. Unanimous by the board.**

**7:50pm - 126 Washington St – Anthony Catalli**

**Applicant is seeking a building permit for an additional dwelling unit to an existing two family. This building permit is denied without a variance/special permit to allow a multi dwelling in a SFR III zone**

**Abutter Present**

**Mr. Catalli was aware of the hearing and did not appear, no extension in time. Mr. Catalli is not the owner of the property and the owner of the property never signed the application. Motion by Robert Acevedo to "Deny" the application for a special permit for the property located at 126 Washington Street for an additional dwelling unit to an existing two family. Seconded by Timothy Twardowski. Discussion: Grounds for denial is that the applicant Anthony Catalli is not the record owner of the property and therefore lacks the authority to make this application. Unanimous by the board.**

**General Discussion:**

**Appearing before the board is a homeowner from 6 Northgate Road and a contractor that lives at 7 Northgate Road. Here basically to see if there is any objection to constructing two porticos one at 6 and one at 7 Northgate Road, we do not fall within the setbacks? Board-None of these houses fall within the setback. Ok, so all I'm trying to do is cover both stoops that are existing with a portico. Board-Did you talk with the Building Commissioner? Response: No. Board-You should really go see the Building Commissioner first and see what he says. Board-You will need an engineer to show on a plan the proposed portico since you need relief from front yard setback to make it work. Will need to apply for a variance unless you receive a special permit to add something to a pre-existing non conforming structure.**

**Motion by Timothy Twardowski to accept the minutes of June 2, 2011. Seconded by Robert Acevedo. Unanimous by the board.**

**Due to vacations and lack of quorum the Zoning Board of Appeals will reschedule the July 14<sup>th</sup> meeting to July 21, 2011.**

**Motion by Timothy Twardowski to adjourn. Seconded by Robert Acevedo. Unanimous by the board.**

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

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