

**Franklin Zoning Board of Appeals
For Meeting Held On
Thursday, May 9, 2013
355 East Central Street
Franklin, MA 02038**

**Members Present
Bruce Hunchard
Robert Acevedo
Timothy Twardowski
Sean Slater**

366 Mucciarone Road - Stephen and Eileen Mellor

Applicant is seeking a Variance to leave a previously constructed deck that is 23.33' from the rear lot line where 35' is required. This building permit is denied without a Variance from ZBA.

Abutters Present – Herniette & Philip Gelineau

Mr. Mellor: The reason that I am here tonight is because I took apart an existing deck and built an expanded deck in the backyard. I did not pull a permit. As soon as I was informed that I did need a permit I went and pulled one. I was told that I had to get it surveyed and got that done. At that point I was informed that I was out of compliance. To be honest I do not have a hardship, it accentuates the property, the deck has raised the value of the property. I would like to leave it as is and get the variance. Board: So a deck was started without a permit. How did you get caught? Mr. Mellor: Yes, we were doing work in a bathroom and the building inspector came for an inspection and said you don't have a permit for the deck. He explained what needed to be done. Board: You did all the construction yourself? Mr. Mellor: Yes. Abutter: Spoke in favor of the neighbor's deck. Mr. Mellor: The building inspector had two concerns first concern was the step off he measured it and said it was too high. I am going to put pavers where you step down. It is going to be 3" higher so I think that would be fine. The other concern was that I put in built in flower boxes that are about hip high. They are not meant to be walked upon but there is an area that you could get up on it. He said he wants us to put a railing on that. It is not meant to be walked on so I would argue with that. Board: It is code. Anything over 30" needs a railing. Board: I think I would like to take a drive up there and see what the area looks like. Mr. Mellor: You are welcome to do so. Motion by Timothy Twardowski to continue public hearing to May 23, 2013 @ 7:45 PM. Seconded by Robert Acevedo. Unanimous by board.

Lawrence Drive – Kamy Corp/ Paul Dellorco, represented by Atty. John Vignone.

Applicant has amended agreement with the Town of Franklin dated 12/27/05 to "buy out" from having to provide four affordable units. Applicant seeks to amend decision of 12/15/05 to do so. The building permits are denied without a variance from ZBA.

Abutters present: None

Appearing before the Board is Paul Dellorco and Atty. John Vignone.

Board: This is a continuation of the meeting of April 25, 2013 and we were waiting on a memo from administration. We have received an Amended Memorandum of Agreement: Palladini Senior Village, dated May 6, 2013 from Maxine Kinhart, Assistant to the Town Administrator/Member Housing Trust (see attached). Motion to close public hearing by

Timothy Twardowski. Seconded by Robert Acevedo. Unanimous by Board. Motion by Timothy Twardowski to grant the application to amend the agreement with the Town of Franklin, in which the developer, Paul Dellorco asked the Trust members if they would amend the Agreement to lower the payment to the Town of Franklin to reflect the lower sales price of \$400,000.00. Trust members were not opposed to this. The amended Memorandum of Agreement guarantees that the payment will not be less than \$200,000.00 per unit or a total of \$400,000.00. The Trust voted unanimously to support the requested amended Memorandum of Agreement. Seconded by Robert Acevedo. Unanimous by Board.

14 Ruggles Street – Franco Ruggles Street Realty Trust – Dana Franco

Abutters: None

Applicant is seeking a variance to construct a multi-family dwelling on a lot that has 50' of frontage where 100' is required. The building permit is denied without a variance from ZBA.

The Board is in receipt of a letter from Dana Franco dated May 9, 2013, (See attached) Dana Franco requests a continuance to May 23, 2013. Motion by Timothy Twardowski to continue to May 23, 2013 @ 7:50PM. Seconded by Robert Acevedo. Unanimous by board.

462 Pleasant St, Lot 17 & 16 – Sophie K. Swenson, represented by Atty. John Vignone.

Abutters: None

- Applicant is seeking relief for existing dwelling on Lot 17 to have 100' of frontage where 125' is required, a sideline set back of 15.6' where 25' is required and a lot width of 100' where 112.5' is required. The relief is denied without a variance from ZBA.
- Applicant is seeking a variance to construct a dwelling on Lot 16 with 100' of frontage where 125' is required and with a lot width of 100' where 112.5' is required. The building permit is denied without a variance from ZBA.

Board: We were looking for some input from the Assessor's Office and we did get a note from Kevin Doyle, Director of Assessing, dated May 6, 2013 (see attached). Susan Luccini: My father purchased the property as an investment for his family's future. Board: There is no doubt in my mind and I will state it for the record that these are two separate lots that were deeded out back when. But, because of a zoning amendment I am not sure when Franklin changed. I think it was in 1960, and there was another one subsequent I think in 1967 that rezoned all these parcels. Before the rezoning there is no doubt that the lots probably met zoning requirements at that time. After the zoning change went into effect your father was grandfathered for 8 years. I think that was the case on residential rezoning that they could have built on that other lot at the time within the 8 year period, or they could have sold it. These lots were held in common ownership. Atty. John Vignone: I ask that you also consider the number of abutters that showed up at the original meeting and at this one. There was just one abutter concerned that it was going to be a commercial building. It is obvious that the neighbors believe that something like this would fit into that neighborhood due to the spacing of all the houses. Susan Luccini: I am sure that there are a lot of people in this predicament. It is scary that you invest in something and it is practically taken away from you. Board: The problem is there are a lot of lots like this all over town. There are a lot of people in the same situation. We have turned a lot of people down who have come up to do this. Board: The merger doctrine is common law. But the five year exemption, Board: Is it 5 years or 8? Board: It is 5 years for single family. That is statutory under the Zoning Act. Individual lots are 5 years from

the time the amendment passed. Board: I have been on the board a very long time and since the early 2000's when the population crunch hit the Town of Franklin we haven't approved any lots that don't meet zoning. The only thing that we have granted to make a lot a lot that didn't meet actual zoning was the circle by law that came into be maybe 10-15 years ago. Board: I am very sympathetic but I think that the towns approach with these lots has been consistent over the years. I don't see anything in this application that sets it apart other than a lot itself being undersized. I think that the grounds for granting the variance are lacking.

- Motion to close public hearing by Tim Twardowski. Seconded by Robert Acevedo. Unanimous by Board. Motion by Robert Acevedo to Deny the relief of 25' of frontage and 9'4" on the sideline for lot # 17 as shown on a drawing dated Jan. 4, 2013, Plot Plan of Land in Franklin, Ma by GLM Engineering Consulting Inc. Seconded by Tim Twardowski. Unanimous by Board.
- Motion by Robert Acevedo to Deny the application of Lot 16, 462 Pleasant St., to construct a dwelling as shown on a drawing dated January 4, 2013 on a Plot Plan of Land in Franklin Ma, by GLM Engineering Consultants. Seconded by Tim Twardowski. Unanimous by Board.

General Discussion:

- Motion by Timothy Twardowski to approve minutes of April 25, 2013. Second by Robert Acevedo. Unanimous by Board.

Motion by Tim Twardowski to adjourn. Seconded by Robert Acevedo. Unanimous by board.

Signature _____

Date _____