

**Franklin Zoning Board of Appeals
For Meeting Held On
Thursday, June 20, 2013
355 East Central Street
Franklin, MA 02038**

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

8 Taft Drive – Meredith D. Baguma

Applicant is seeking a building permit to construct a two-story addition and a farmer's porch 35.4' from the front setback where 40' is required and a sideline setback of 22.4' where 25' is required. The building permit is denied without a Variance from ZBA.

Abutters Present – See List

Meredith Baguma: I am requesting permission to add a two-story addition with the intention of converting to an in-law. Board: Kitchen and bath? Meredith: Eventually, we will not put in kitchen until we get approval for the in-law. Board: You have some problems with the shape of the lot the topography of the lot you have that easement line there that limits where you can go. Looks like most of the neighborhood has already done what you are requesting. Motion by Robert Acevedo to close public hearing. Seconded by Tim Twardowski. Unanimous by board. Motion by Robert Acevedo to grant a 4.6' front yard setback variance down to 35.4' where 40' is required. A 2.6' sideline setback down to 22.4' where 25' is required for the proposed two story addition located at 8 Taft Drive as shown on a drawing dated 05/03/2013 entitled "Variance Plot Plan" by Guerriere & Halnon Engineering. Seconded by Timothy Twardowski. Unanimous by Board.

53 A Anthony Road – Donna White-McGill and Kenneth McGill

Applicant is seeking a building permit to construct a two- story addition 19.5' from the side line setback where 20' is required. The building permit is denied without a variance from ZBA.

Abutters Present: None

Appearing before the Board is Donna White-McGill proposing to construct a two-story addition with a three car garage. Donna: Our driveway is the paper road that says Conlyn Ave, in the middle of Anthony Road. Board: You have some kind of a dead circle in there right? Donna: Yes we are three houses before the end of the circle.

Motion to close public hearing by Robert Acevedo. Seconded by Tim Twardowski. Unanimous by Board. Motion by Robert Acevedo to grant a 6" sideline setback variance down to 19.4' where 20' is required for the proposed two-story addition at 53A Anthony Road on a drawing dated May 1, 2013 and Revised May 8, 2013 drawn by Carlson Surveying Co. on a "Proposed Addition Plan" for 53A Anthony Road. Seconded by Timothy Twardowski. Unanimous by Board.

58 Elm Street – Thomas & Angela Fleischer

Applicant is seeking a building permit to construct a family room 36.5' from the rear lot line where 40' is required and a garage 5.6' from the side lot line where 40' is required. The building permit is denied without a Variance from ZBA.

Abutters Present - See List

Angela Fleischer: We have taken the proposed attached garage addition off of the plan as recommended by the board. Board: Has the abutter seen this? Angela Fleischer: No. Board: By way of recall you proposed the garage on the right side of your house and you have eliminated that. You had a proposed addition in the back and you have made it bigger. Is that a two story? Angela Fleischer: We are considering two-stories, we haven't decided yet. Board: With this you would need some rear setback and side set back relief. The proposed addition is? Angela Fleischer: Increased living space. Motion by Robert Acevedo to close public hearing. Seconded by Timothy Twardowski. Unanimous by Board. Motion by Robert Acevedo to grant a variance for a rear setback of 3.5' to 36.5' where 40' is required a sideline setback variance of 10.4' to 29.6' where 40' is required for the proposed addition as shown on a plan dated March 26, 2013, Revised June 17, 2013 by Colonial Engineering Inc., Medway Ma. Seconded by Timothy Twardowski. Unanimous by Board.

366 Mucciarone Road – Stephen & Eileen Mellor

Abutters: None

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

Public hearing had been continued so that the board members could go look at the deck if they so chose. Board: Has an application been filed for the deck already? Mr. Mellor: I think I filed. Board: Were you charged a penalty? You are suppose to be charged three times the fee. Mr. Mellor: No, I haven't been charged. Motion by Robert Acevedo to close public hearing. Seconded by Tim Twardowski. Unanimous by board. Motion by Tim Twardowski to grant a variance for 366 Mucciarone Road to allow a previously constructed deck that is 23.33' from rear lot line where 35' is required for a variance of 11.67' from the rear lot line as shown on a plan dated April 5, 2013 prepared by Colonial Engineering, Medway, MA plan entitled "Variance Plan of Land." A penalty may be charged at the Building Commissioners discretion. Seconded by Robert Acevedo. Unanimous by Board.

340 East Central Street – Franklin East Central LLC represented by Atty. Richard Cornetta

Abutters: None

Applicant is seeking a variance to allow for motor vehicle service and repair within a Water Resource District. This use is denied without a variance from ZBA.

Atty Cornetta: I am joined by Mr. Michael Coffman, who is the principle of Franklin East Central LLC, Mr. Don Neilson of Guerriere and Halnon and Mr. Barry Steinberg of Direct Tire and Auto. Atty Cornetta: This is the former site of Keigan Chevrolet it is a 6.5 acre site that is located in the Commercial II Zoning District and it is also located in the water resource district zone 2. It has about 450 feet of frontage along East Central St and bordered to the West by the newly constructed Big Y Shopping Center to the East by Ficcoss Bowladrome and in the rear to the South is one of the town wells. The site for about 70 years was used as an auto dealership that did engage in the activities of auto

repairs and maintenance. Don Neilson: Overview of site plan. Proposal is three buildings the larger being Direct Tire, the center core would be restaurant, retail office and the other building would be another supply store as well. As a general layout we have 162 parking spaces proposed, we have approximately 28,500 sq ft of building. There is a restriction of what we can do around the easement and we will be working out those issues with the DPW and the Town. Board: What are you proposing to do with the building that is up there? Don Neilson: Yes, the intent is to raise the existing building from the ground up and then we will provide the three new buildings. The elevation of the site will probably be raised 2, 3, 4 feet in places. The purpose is to maintain the level above ground water. Board: Where is ground water now? Don Neilson: In the back it is about 5-6 feet from the surface. Mr. Barry Steinberg (Direct Tire): We have 4 locations Watertown, Peabody, Norwood and Natick we started in 1974. About 55% of our business is auto repair. The only use of any hazardous waste is motor oil. In business for 38 years we have never had a spill. A spill in the Commonwealth is considered 5 gallons or more. We do have a system in place in case that would happen. Board: How many other facilities that you operate are in a water resource district? Barry Steinberg: I don't believe so. Board: All your other sites were built by right or did you have to get relief to build these buildings? Barry Steinberg: Natick was the only location. Board: what is the plan on the building to the left as you are coming into the property? Will you be looking for relief on that building too? Atty. Cornetta: Not presently this evening but, we intend to. Advanced Auto Parts is the proposed user of that other building and we plan to come before the board for a special permit for that use. Atty Cornetta: At this time we would defer to the board as to how you would like us to proceed. We realize that under your code this is not a permitted use. If you were to allow this use to occur we expect that under the special permit criteria within the water resource provision that you may want us to hire a consultant for your input in making this decision and we are prepared to do that. If the Board is so inclined to grant this point of relief it would not violate the water permit issue by the Commonwealth of Massachusetts. Board: The zoning for this area has changed the Town of Franklin has eliminated almost every use that was permitted by right in Commercial II. One of the rights that was eliminated is the Auto Repair business. Did you consider requesting from the Town to amend the Zoning bylaws to incorporate this type of business in that zoning? Atty Cornetta: Given the history and condition of the site what we are proposing and what may not be permitted by right we believe it to be a much better alternative both from a commercial perspective and also environmentally. The Town did not want a diesel generator for the Big Y they made them put in a natural gas generator. I have a letter dated June 20,2013 from administration in favor of this (see attached) My final comment would be that I haven't heard anything about hardship yet. Atty. Cornetta: It is very difficult to demonstrate a criteria and satisfy the statutory criteria contained within our general laws for a use variance. Tying it to the topography, shape, size of lot the geometry of the property but we made our best effort to do so. If you look at that site it is not as deep as the sites around it. It is rather abbreviated and what further abbreviates that site is the predominant wetland areas in the south portion of the property. You are limited with very limited footprint of developability toward the North side of East Central St. We are not talking about a property that is foreign to this kind of use. We believe this site to be very unique and by granting this variance you would not be setting a great precedent and I think if you look around the area it is a commercial area. Atty. Cornetta: Zoning changes can be very time consuming, very polarizing, and often times projects tend to die in the vine because you are waiting for the process to take effect. Board: Is the center building fully leased at this point? Applicant: No not fully. Board: The reason I ask is again this ties back into the hardship argument under the variance. Essentially what I am looking for is some evidence in the record that despite best efforts you can not lease and occupy these buildings with users that do not require a variance. How much of Building # 2 is leased at this point? Applicant: Of the 12,000 feet approximately 4,000 feet is leased. If I was able to find a tenant that did not require a use variance and who would occupy as much square footage and pay as much as Direct Tire, I would probably opt that route. Board: I would suggest that we get a check from the applicant for minimum \$5,000.00 and we will contact

Mr. Ted Morine, the Town Hydrologist. We will give any monies left over back to the applicant. Motion by Robert Acevedo to hire consultant, the Towns Hydrologist and for applicant to deposit a check for \$5,000.00 with the Board for the intent of hiring a hydrologist to review the application and make comments back to the board. Seconded by Tim Twardowski. Don Neilson: Can this be coordinated through the DPW as far as they are going to want to be involved. Board: The Town Engineer can get involved also. We will hire a hydrologist that is acceptable to the Town. Unanimous by Board. Motion by Robert Acevedo to continue to the public hearing to July 25, 2013 @ 7:30PM. Seconded by Timothy Twardowski. Unanimous by Board.

16 Dean Ave – 16 Dean Ave., LLC

Abutters: None

Applicant is seeking a use variance to allow a parking facility. The use is denied without a variance from Zoning Board of Appeals.

The Board is in receipt of a letter from 16 Dean Ave., LLC dated June 19th, 2013 addressed to the Franklin Zoning Board of Appeals requesting a continuation on the change of use variance for property at 16 Dean Ave until the next scheduled meeting on July 25, 2013. Motion to continue public hearing to July 25th at 7:40 PM by Robert Acevedo. Seconded by Timothy Twardowski. Unanimous by board.

14 Ruggles St – Franco Ruggles Street Realty Trust

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 dated June 20, 2013 requesting a "Withdrawal Without Prejudice" Motion by Robert Acevedo to allow withdrawal without prejudice. Seconded by Tim Twardowski. Unanimous by board.

485 East Central St – Patrick Doherty representing Lenity Architecture, LLC

Abutters: See List

Applicant is seeking a special permit to remove in excess of 1000 cubic yards of earth material. This request is denied without a special permit from ZBA.

Patrick Doherty: We had initiated a development plan located at 485 East Central Street and was stopped and now is currently in a state of partial construction. There is excavation of the existing steep rock faces that is required. In total the excavation will be about 30,000 yards of material that will need to be excavated, about 15,000 yards of material would be processed and remain on the site and another 15,000 yards would leave the site. Board: On the North side you will have to do some rock face excavation. Do you plan on blasting that? Patrick Doherty: What has been recommended in the geotechnical report is controlled blasting or pre split rock face. We plan to do this in normal working hours. Board: The Board will set the conditions of approval consisting of hours of operation, weekly engineers reports when work is preformed, direction of travel and the erosion control. Patrick Doherty: We would be disturbing about five acres. Board: What was the blast ratio that was offered? Patrick Doherty: 500 feet. Board: We can put that as a condition. Pat Doherty: part of the conditions of the earth removal are that you have to stay 50 feet from property lines. We would ask that we would be able to come within 35 feet of the easterly property line and 45 feet of the Northerly property lines and that is at

the closest point. Motion by Robert Acevedo to close public hearing. Seconded by Timothy Twardowski. Unanimous by board. Motion by Robert Acevedo to grant the special permit for the earth removal at 485 East Central Street, with the conditions that a certified engineers report is done weekly recording the amount of earth excavated. The hours of operation will be between 7 AM to 5 PM, Monday through Friday, 8AM to 4:00PM on Saturday. The direction of travel off the site is to proceed to the access road out to East Central St., Route 140, also to be allowed to excavate within 35 feet of the Easterly side line and 45 feet of the Northerly side line, pre blast surveys will be conducted twice the normal distance as required by law that currently exists or 500 feet whichever is greater. A \$25,000.00 cash bond is to be deposited with the Town of Franklin, and the Earth removal is consistent with the approved Site Plan approval and approval from the Franklin Conservation Commission with the understanding that the bond will not be replaced until the site is fully developed and vegetation re-established. Seconded by Timothy Twardowski. Unanimous by board.

General Discussion:

- Motion by Robert Acevedo to approve minutes of May 23, 2013. Second by Tim Twardowski. Unanimous by Board.

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

Signature _____

Date _____