

**Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, July 25, 2013  
355 East Central Street  
Franklin, MA 02038**

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

**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: The applicant is requesting a continuance of this matter. A continuance has been filed as well as an Extension in Time to continue the timeline for the Board to make a decision of the variance. Board: At the last meeting the applicant had agreed to put up some money for a consultant to do a water resource district evaluation and there was some contemplation about maybe trying to get a rezone or an amendment of the zoning by-laws. We would like an update as to what the applicant is feeling. It is one thing to ask for a continuation if there was something concrete but up to this point I don't see that. Atty. Cornetta: Based on your comments the applicant has reviewed all of his options and one of those options is maybe seeking to petition the town for some type of amendment to the by-law. Although as you know it does take some time not only to determine if that is a feasible option but, the process will take some time. Also one of the options is to hire the consultant to address some of the concerns in the bylaw. So the applicant is continuing to deliberate as to what is the best course of action and that is why they have requested this continuance. Board: We can continue to the next meeting of 09/12/13 at 7:30PM and you can update us then. Motion by Robert Acevedo to grant extension in time . seconded by Tim Twardowski. Unanimous by board. Motion by Robert Acevedo to grant a continuation to September 12, 2013 at 7:30PM. Seconded by Tim 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 an Extension in Time to 09/26/13 and we also have a request to continue the meeting to 09/12/13 @ 7:40PM. Motion by Robert Acevedo to grant the extension in time. Second by Tim Twardowski. Unanimous by Board. Motion by Robert Acevedo to grant a continuation of the public hearing to September 12th at 7:40PM. Second by Tim Twardowski. Unanimous by Board.**

**15 Beaver Court (Lot 2) - Town of Franklin**

**Abutters: See attached**

**Applicant is seeking a building permit to construct a home with a lot area of 14,071 square feet where 30,000 square feet is required, 64.43' of frontage where 150' is required, 30.93' of lot depth where 200' is required, 20.32' of lot width (circle) where 135' is required, 18.2' of side yard setback where 35' is required, 33.5' of rear setback where 35' is required, and 25.8% of coverage for structures and paving where only 25% is allowed. This building permit is denied without a variance from ZBA. Jeff Nutting, Town Administrator with me is Chris Veriker, Judy Pfeffer, Maxine Kinhart we are all from the Housing Trust who is the applicant. The Housing Trust was created by the Town Council many years ago to build affordable housing here in Franklin. The Affordable Housing Trust went to the Town Council a while back and asked that the land before you this evening for consideration be transferred to the Towns ownership so that we can create two affordable units. We are here before you this evening to seek that. Under Chapter 40B we are required to have at least 10% of affordable housing in Franklin, we have less than that. Lot 2 is proposed to be built first. We have a pending agreement with the Tri-County Regional Vocational School to actually build the house with assistance from the DPW. Board: I would like to open the other public hearing. They both are connected to each other.**

**19 Beaver Court (Lot 1) – Town of Franklin**

**Abutters: See attached**

**Applicant is seeking a building permit to construct a home with a lot area of 10,323 square feet where 30,000 square feet is required, 30' of frontage where 150' is required, 51.73' of lot depth where 200' is required, 24.58' of lot width (circle) where 135' is required, 17.1' of side yard setback where 35' is required, 20' of rear setback where 35' is required, and 31% of coverage for structures and paving where only 25% is allowed. This building permit is denied without a variance from ZBA. Mr. Nutting: Mr. Chairman as you know this lot sits within a neighborhood that was constructed as a 40B affordable housing development that has existed for many years. We think it is in an excellent location in that it is within walking distance to shopping areas, the downtown and public schools. The plan is to build two homes. The first would be approximately 1300 -1400 square feet, 1 story building. The second one has not been determined at this time. We thought we would seek approval of both lots at once given that they go hand in hand. We are asking for approval so that we can move ahead with affordable units that Franklin is obligated under law to build. These homes would be permanently deed restricted as affordable units. David Hart (Abutter): I am in a market rate home. In this neighborhood the existing homes are two story colonial style homes, modular construction built in 1994. I live right next to what would be #15 Beaver Court. Could you please tell me if the road is going to be extended to accommodate these two homes? I would imagine that somebody would have to pay for paving the extension of Beaver Court. I was also wondering since I am directly beside it would there be another cul-de-sac there or would it be a dead end? I heard that someone had requested this variance in the past and it was voted no. We have lived there for 5 years it is a nice quiet area. The land is home to a lot of nesting birds, squirrels, etc and is quite peaceful there. Mr. Nutting: There would simply be two driveways built. There will be no public extensions to any roadway or public way but the existing entrance and two driveways one to each home and there will be no additional paving. All costs of this will be paid by the Housing Trust. Board: How long has the town owned these lots? Mr. Nutting: 1962, it was bought for entrance to the then new High School that was never used. Board: Does each one of these lots have individual frontage on the roadway somewhere? Mr. Nutting: Yes, The driveway. Board: That is not a roadway. Technically, we can't grant relief on anything that doesn't have frontage on a roadway. Mr. Nutting: Yes it does, if you look at the map. David Hart: On the map that I have it is called a right**

of way. I don't know if you call that a road. Mr. Nutting: The right of way was turned over to the Town by the land owner last year and the roads were made a public way by the council. Board: So technically you have like 30 feet on one lot. I see where you have a little bit of frontage on Marks Way and you divided that up to make the two lots work. Mr. Nutting: Yes, and the two driveways. Mr. Nutting: We applied for a building permit and it was denied. Board: Can the Building Commissioner speak on that? What was the conditions of the denial? Mr. Gus Brown (Franklin Building Commissioner): The reason for the denial is because what you have before you. Frontage, depth, lot width, minimum front yard. It has several variances that we are actually applying for. Yes it does have frontage on the road as well. Board: If we were so inclined to grant the frontage requests is it your opinion that it may have to go to the Planning Board to have a definitive subdivision control plan approved? You are not coming in under a 40B you just want to do them as affordables but you haven't applied under the 40B statute. Correct? Mr. Nutting: No but will if required. Mark Connelly: My concern is if this gets approved you will be opening up a pandora's box. The lots are so non-conforming. Every developer, builder in town will be just thinking that this is a wonderful thing now they can build almost anywhere. My other concern is if it is a conflict to try to smooth out something between two boards, it seems tough if you have to make that kind of an exception for another Board. Do we as people in Franklin end up possibly looking at litigation down the road? Board: Anything that the Board approves has an appeal period with it. Any aggrieved abutter has a chance to appeal it. I thought that the town was exempt from this, in that the town likes to be transparent in everything that they do and this is one of the ways to let the neighborhood know what is going on. In my mind they may be exempt and do not have to be here they may be able to build it because they are the town. Abutter: When I spoke with Maxine Kinhart regarding #1 Beaver Court an affordable house that was given back to the town and they had 90 days to find a new buyer and nobody either qualified or applied so now this house is no longer an affordable house and it is the owners responsibility to sell on the open market with the profits going back to the town. If the town has this kind of money and we have a house already in our development that needs a little bit of work it is almost 20 years old. Why not put money into this house that is already there and offer it up as an affordable instead of putting two houses that need outrageous variances in our backyards that none of us want. Board: I know there is a problem finding qualified applicants to apply for these lotteries for the affordable housing. Maxine Kinhart: You have 90 days to find a buyer to purchase that and 90 days is impossible. That property had a deed rider that allowed the unit to be sold off of the program. Anything that the property would get over \$216,000.000 would come back to the housing trust for affordable housing. They had a discount rate. That house is very expensive for an affordable house. Mr. Nutting: We actually did have a member look into that house and between the sales price and extensive amount of work needed we felt it wasn't a good investment given that we believe that we can build this house on Lot 2 for about \$150,000.00 and sell it for approximately that price verses spending \$216,000.00 plus \$20, 30 or \$40,000.00 to bring the other one up to a level that we would feel comfortable as the Housing Trust. It is so much better to provide a new house for a lot less money. The Housing Trust is here looking for waivers that we would hope that the Zoning Board would approve. If not the Housing Trust would file a 40B application which at that point under the laws of the Commonwealth these would be standard waivers that would be granted given the statutes of the law. I think the Zoning Board is well aware of 40B and these are typical waivers of any 40B development of setbacks and side yard setbacks, etc. As you know under 40B they are exempt from zoning for the public process that can be appealed but we are just trying to get this done as easy as possible. Abutter: I ask the Board that before making a decision tonight please drive by and look exactly where these houses are proposed to be built.

Board: I recognize the need for affordable housing in the Town of Franklin. One of the questions that was raised this evening is what makes this applicant any different from a developer or land owner and in my eyes they are no different. Technically speaking we are required to review this application on its own merit applying the variance criteria under the

bylaw and to make our decision based on those criteria not based on the identity of the applicant. So my decision on this application will have nothing to do with who the applicant is but whether or not the application before us satisfies the criteria for us to grant a variance. At this point we have not yet heard the applicant address those criteria's. In order for us to grant a variance the burden is on the applicant to satisfy the criteria. There are a couple things we can do. We can continue the public hearing till September 12<sup>th</sup> @ 7:45PM. Mr. Nutting: That would be fine. Motion to continue public hearing for Lots 1 & 2 Beaver Court, by Robert Acevedo. Second by Tim Twardowski. Unanimous by board.

**General Discussion:**

- Franklin Heights represented by Atty. Richard Cornetta requesting a minor modification of 40B Comprehensive Permit. Motion by Tim Twardowski to approve minor modification. Second by Robert Acevedo. Unanimous by board. Motion by Tim Twardowski to grant to amend modification. (see letter attached) Second by Robert Acevedo. Unanimous by board.
- Reorganization of ZBA. Motion by Robert Acevedo to keep the officers of the board the same. Second by Tim Twardowski. Unanimous by board.
- Motion by Robert Acevedo to approve minutes of June 20, 2013. Second by Tim Twardowski. Unanimous by board.

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

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Signature \_\_\_\_\_

Date \_\_\_\_\_