

Town of Franklin



Zoning Board of Appeals

**Thursday, December 1, 2022
Meeting Minutes**

Chair Bruce Hunchard called the above-captioned Remote Access Zoom Virtual Meeting to order this date at 7:30 PM. Members in attendance: Bruce Hunchard, Philip Brunelli, Christopher Stickney, Meghan Whitmore. Members absent: Robert Acevedo. Also in attendance: Casey Thayer, Administrative Assistant.

This meeting is being conducted as a Remote Access Zoom Virtual Meeting as allowed by Governor Baker's signing into law An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency. The Zoom meeting link and the Zoom meeting call-in number are provided on the agenda. The meeting is being televised and recorded for the public's information.

71 A North Park Street - Jerry Lawler

Abutters: None.

7:30 p.m. Applicant is seeking to construct a single-family home that is 5.0' from the right-side yard setback where 20' is required. The building permit is denied without a Variance from the ZBA. Applicants present: Jerry Lawler; David Volkin, attorney on behalf of the applicant. Mr. Volkin provided history on the property. He stated that it was originally a co-joined structure/residence with deeds splitting the property down the approximate center of the building. The part that Mr. Lawler now owns was deeded to him in 2005. In 2016, the family members who owned the other half sold their property to the adjoining abutter Robert Glencross who acquired title by virtue of a deed. The home was over 115 years old. The property was destroyed by fire in 2021, and the property is uninhabitable. Those structures have now been razed. Collaterally, there was litigation going on between Mr. Lawler and Mr. Glencross over adverse possession of a 2 ft. x 15 ft. part of the land which was the deck and mudroom of the Lawler side of the residence which was over the border. That case has been decided in court already, but there are still paperwork delays finalizing the language. Therefore, the bump-out shown on the plans is not yet recorded; it is pending and in progress. Mr. Volkin requested that the ZBA not conclude on this issue at this meeting because Mr. Glencross's package was not submitted. He stated that as Mr. Glencross will be submitting a variance on his new residence, it may have some bearing. He stated that Mr. Glencross's attorney, John Powers, was supposed to attend tonight's meeting. Mr. Volkin stated that it is in the best interest of the parties to create two single-family homes. He noted that the area is not zoned for a two-family residence. He discussed the variance requested and explained the proposed driveway. He discussed hardship issues for not moving the property over further including that there is a big slope, old growth trees, and water drainage. The idea is to minimize the costs for the draining issues and engineering that would have to go into that and the landscaping issues for the old growth trees. He discussed that with regard to the existing in-ground pool, it would have to be removed in order to move the house over. He stated that there would be a financial hardship to move the property over. He reiterated that they request a continuance as Mr. Glencross will also be seeking a variance.

Chair Hunchard stated that Mr. Volkin did not mention anything about soil conditions, the shape of the lot is rather square, no elevations were noted but there is a little drop when coming in off Wachusett Street, and the old growth trees are along the street line and not in the middle of the lot. He asked who created the line that divides the property. Mr. Volkin stated that it happened so long ago none of the people who did it are alive. Chair Hunchard stated that there has to be a paper trail. He stated that he did some research and there is a plan that shows Planning Board disapproval on July 9, 1969, and ZBA approval granted on October 2, 1975. Unfortunately, nobody in the Town Clerk's office or Building Department can find anything regarding either of those decisions. He asked how a line was created down the middle of a house; there has to be a paper trail. He stated that someone has to find out where the line came from and who put it there. He stated that there is plenty of room to move the house over or swing the house around and locate it in a different position; he indicated that the 5 ft. off the line is not okay in his mind.

Mr. Stickney and Ms. Whitmore had no questions or comments. Mr. Brunelli stated that he did not understand 5 ft. where there is 64 ft. on the other side. He is sure there is some way that the house can be moved; and if the people do not get along as it is now, being 5 ft. off a property line will bring on more conflict. Chair Hunchard stated that he is not even sure the lot line exists; someone will have to prove that. He noted that if a structure is destroyed by natural causes such as if it burns down by fire, it can be replaced within two years. Mr. Volkin stated they wanted to buy out the other owner; however, those negotiations proved fruitless and they were not able to purchase the property.

Building Commissioner Gus Brown stated that he met with both Mr. Volkin and Mr. Powers during the beginning of the summer. He stated that having the property rebuilt was not ever on the table due to what Mr. Volkin just said. He stated that as it is not a condominium, they would have to meet the setbacks for a single-family home if the lot line exists.

Chair Hunchard stated that this item will be continued until the abutter gets his paperwork in order and it gets advertised to have a proper hearing. He stated that the 5 ft. off the line will most likely not be okayed by the ZBA.

Mr. Brown stated that he would be willing to meet Mr. Lawler at the property to see what he wants to do with possibly moving it and he will walk the lot with him. He noted that he understands that there is still the issue with the lot line.

Chair Hunchard asked if the lot line does not exist, what is the future of the two houses. Mr. Volkin stated that this is recorded in the Registry of Deeds regarding the lines. He explained that if it were not so, it would nullify Mr. Glencross's property as he would have bought something that does not exist. Mr. Volkin stated that he thinks Mr. Glencross has a claim against his title insurer, but he cannot speak to that. He stated that he was not aware of the 1969 and 1975 decisions that Chair Hunchard noted. He stated that he would go through the town records to see if there is anything more and try to match that with the title records. He stated that when they were before the Land Court this was not brought up.

Motion made by Philip Brunelli to continue the public hearing to January 5, 2023, at 7:35 PM. Motion seconded by Meghan Whitmore. Roll Call Vote: Brunelli-YES; Whitmore-YES; Hunchard-YES. Unanimous by the Board.

237 Pleasant Street - St. John's Episcopal Church of Franklin and The Community Builders Inc.
Abutters: None.

7:35 p.m. Applicant is seeking a building permit to construct a 64-unit multi-family development. The building permit is denied without a comprehensive permit from the ZBA. Applicants present: None.

Chair Hunchard stated that the ZBA is in receipt of a letter dated November 28, 2022, from the applicants' attorney requesting a continuance to the ZBA's meeting on December 15, 2022.

Motion made by Philip Brunelli to continue the public hearing to December 15, 2023, at 7:35 PM. Motion seconded by Meghan Whitmore. Roll Call Vote: Brunelli-YES; Whitmore-YES; Hunchard-YES. Unanimous by the Board.

General Business: Email Letter from PLAPC for a Variance Extension for KJS Realty, Inc. for a Wireless Communications Facility at Bent Street, Franklin, MA

Chair Hunchard stated an email letter was received from PLAPC for a variance extension for KJS Realty, Inc., the applicant, to construct and operate a wireless communications facility at Bent Street. The ZBA approved this communications tower on December 2, 2021.

Mr. Stephen Kelleher of KJS Realty, Inc., addressed the Commission. He stated that their biggest hold up has been that to move forward they needed a paying customer; they have been working with Verizon over the past year to finalize an agreement which they have done. There are also some federal obligations that they have to finish up prior to putting a shovel in the ground. He stated that he thinks they anticipate having a shovel in the ground in late spring and having it be done in the July/August timeframe.

Chair Hunchard stated that the applicant is within his rights to request an extension.

Motion made by Philip Brunelli to grant the variance extension for KJS Realty, Inc. for the wireless communications facility at Bent Street, for six months from the previous approval. Motion seconded by Meghan Whitmore. Roll Call Vote: Brunelli-YES; Whitmore-YES; Hunchard-YES. Unanimous by the Board.

Meeting Minutes November 3, 2022

Motion made by Philip Brunelli to approve the Meeting Minutes as presented for Thursday, November 3, 2022. Motion seconded by Meghan Whitmore. Roll Call Vote: Brunelli-YES; Whitmore-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Philip Brunelli to adjourn the Remote Access Zoom Virtual Meeting. Motion seconded by Meghan Whitmore. Roll Call Vote: Brunelli-YES; Whitmore-YES; Hunchard-YES. Unanimous by the Board.

Meeting adjourned at 8:07 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary

Signature Cory Hays

Date 12.19.22