

Franklin Zoning Board of Appeals
Meeting Held at 355 East Central Street, Franklin, MA 02038
Meeting Minutes for
Thursday, May 2, 2019

Members Present: Bruce Hunchard, Robert Acevedo, Philip Brunelli, Mickey Whitmore, Christopher Stickney.

Members Not Present: None.

Chairman Hunchard called the meeting to order at 7:30 PM.

745 Pond Street – Robert and Jennifer Peluso

Abutters: None.

7:30 pm: Applicant is seeking to convert an existing addition into an accessory dwelling unit. The building permit is denied without a Special Permit from the ZBA. Applicants present: Robert Peluso and Jennifer Peluso. Mr. Peluso stated that they are seeking to turn a previously built addition into an in-law dwelling. He and his wife are going to live there; his mother-in-law, Karen Young, owns and lives in the existing house. He read aloud his Supporting Statement for a Special Permit and noted there will be no impact or disruption to the neighborhood or environment and there will be no additional cars. Mr. Acevedo confirmed the plans provided were of the existing structure and the addition. Ms. Peluso confirmed the already built addition to the existing home is a two-story, 3 bedroom, 2 ½ bath addition. She stated that the permit expires May 19, 2019, so they have to ask for an extension. Mr. Peluso stated that on the first floor in the existing kitchen there will be a doorway to the new side. Ms. Peluso stated that she, her husband, and her children will live in the new addition; her mother will stay in the existing home.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Unanimous by Board. Motion made by Robert Acevedo to grant a special permit for a second dwelling unit for the property located at 745 Pond Street with the conditions of the special permit be that the in-law, Karen Young, reside at the property along with the owners, Robert and Jennifer Peluso, and that the special permit for the second dwelling unit becomes null and void if either party moves or transfers ownership. No separate utilities shall be permitted unless required by the DPW, and upon completion of the foundation setbacks checked before continuing construction. The Board also determines that the social, economic and community needs which are served by this proposal will be met. Traffic flow and safety will not be encumbered, adequate utilities and other public services exist. Proposal is consistent with the neighborhood character and social structure as it exists now and that the quality of natural environment will stay intact. There is no potential fiscal impact for the Town of Franklin by the issuance of this special permit and also that this special permit be recorded at the Registry of Deeds. Seconded by Philip Brunelli. Unanimous by Board.

5 Great Pond Road – J. R. King

Abutters: None.

7:35 pm: Applicant is seeking to construct an addition that is 34.1' from the side yard setback where 40' is required. The building permit is denied without a Variance from the ZBA. Applicants present: J. R. King and Emily King. Mr. King stated that they are seeking to build a 28' x 24' 2-car garage with a master bedroom addition above it to their existing home. Mr. Acevedo asked why it would be 28' wide. Mr. King stated that they are a family of five and they need the additional storage space. As well, they have a full-size pickup truck and an SUV. Mr. Stickney confirmed they are increasing the bedroom count by one. Mr. King stated it is rated as a 4-bedroom septic system and they currently have 3 bedrooms. Chairman Hunchard noted that the Board of Health may want to review the plans in regard to the number of bedrooms

and the septic system. Mr. King noted that when the Plot Plan for the addition was done, it was discovered that the lot is 170' wide. Chairman Hunchard stated that there is no lot width requirement; there is a lot frontage requirement.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Unanimous by Board. Motion made by Robert Acevedo to grant the variance to J. R. King for the property located at 5 Great Pond Road to construct a two-story addition, 28' x 24', giving side yard relief of 5.9' bringing the side yard setback from 40' down to 34.1' as shown on the drawing by Continental Land Survey, LLC, 105 Beaver Street, Franklin, MA, titled "5 Great Pond Road, Franklin, MA" dated March 27, 2019. Seconded by Mickey Whitmore. Unanimous by Board.

19 Brushwood Hill – Edward and Kim Foti

Abutters: None.

7:40 pm: Applicant is seeking to construct an addition that is 17.8' from the side yard setback where 25' is required. The building permit is denied without a Variance from the ZBA. Applicant present: Edward Foti. Mr. Foti stated that he has lived at 19 Brushwood Hill for 32 years. He and his wife are trying to make it safer and have one-floor handicap accessible living. They are seeking a variance so they can put in a 12' x 24' addition. It will not impact the driveway or the neighbors. Mr. Whitmore confirmed they are remodeling the first floor, as well. Mr. Foti stated that the architect designed it to be wheelchair accessible.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Unanimous by Board. Motion made by Robert Acevedo to grant the variance to Edward Foti and Kim Foti for the property located at 19 Brushwood Hill to construct a 12' x 24', one-story addition, giving relief of 7.2' bringing the side yard setback from 25' down to 17.8' as shown on the drawing by Continental Land Survey, LLC, 105 Beaver Street, Franklin, MA, titled "19 Brushwood Hill Road, Franklin, MA" dated January 23, 2019. Seconded by Philip Brunelli. Unanimous by Board.

Off Bent Street – James E. Adams, Trustee of Adams Family Nominee Trust

Abutters: See attached.

7:45 pm: Applicant is seeking to create a single buildable lot with 41.22' of frontage where 200' is required and 41.22' of lot width where 180' is required. Compliance with zoning is denied without a variance from the ZBA. Applicants present: Edward Cannon, attorney of Doherty, Dugan, Cannon, Raymond & Weil, P.C., representing the applicant and James Adams, Trustee. Mr. Cannon displayed the Plan of Record dated 1978 showing the lot outlined in red. He stated that the property is 2.43 acres with 41.22' of frontage on Bent Street in the Rural Residential I zoning district. The property was transferred from J. Prescott Adams and Barbara J. Adams into a trust in 1989 for the benefit of their children. In 1984 a variance was granted under the condition that the lot never be subdivided. The children did not realize action needed to be taken; the variance was never recorded in the Registry of Deeds, so it lapsed. The applicant and the Adams' children now wish to move forward and hope to have locus approved as a single buildable lot. They have paid taxes on the property as a buildable for about 40 years. He reviewed the argument for a request for a variance as written in his Memorandum to the ZBA dated April 25, 2019. He noted that the lot is a classic porkchop shape. The other lots in the district are not of this shape and do not have this shape issue. He stated that this also presents a financial hardship as the family has been paying taxes on a buildable lot for decades. If they are denied a variance, they will have an unbuildable lot of little or no value compared to a buildable lot for a single-family home. He stated that the bylaw indicates desirable relief may be granted without substantial detriment to the public good; in this instance, it can be done for a single-family lot. The applicant has no intention of subdividing it and it will keep in character with the neighborhood. He requested, that for all these reasons, relief is granted.

Chairman Hunchard opened the floor to the public. Abutters asked questions and stated concerns. Jeffrey Gabis asked where the house would be located. Mr. Cannon stated that the engineering to locate the home will not be done until this variance is granted. Chairman Hunchard reiterated Mr. Cannon's presentation regarding the property's history. Matthew Nilard asked about the location of the driveway. Chairman Hunchard confirmed there is currently a driveway there. Amanda Briggs stated that it is her driveway; she owns the property that was split from the applicant's property. She noted that the applicant said the property has been in the family for years, but there is currently a for sale sign on the property. She stated that she is concerned about the congestion that will be going across the front of her yard and within her leach field. She pointed out her house on the diagram. Mr. Adams explained the location of the leaching field and where the proposed house would be. Stephanie Rickey stated that people purchased their homes because of the current wooded area. She expressed concern for the animals losing the trails that they travel on. She asked where the house will be built. She stated that it is all rock up there and runoff is a problem; it is likely that water will drain into her yard and be a problem for landscaping and flooding in her basement. The location will interfere with the setup of the neighborhood. Bill McKenzie said that his house is close to the property line. He asked where the house would be built and noted that many people bought their properties abutting this property because they thought it was unbuildable. He is concerned about the impact to the neighborhood. He thinks the property was divided about 15 years ago and they made money off it then when they sold portions of it. He does not want the variance approved. Chairman Hunchard explained that whether a house was built or not, the property owners can do what they want on the property including clear cutting. Mr. Cannon explained there has been no change to the property or subdividing since the 1980s; relief was granted by the ZBA in 1984. Mr. Acevedo stated that he has never seen this much relief requested in his 10 years on the Board. Chairman Hunchard stated that he does not know how it was subdivided previously because the other house has no frontage either. He feels badly that no one acted on the relief that was granted in 1984, but he cannot remember a time when the ZBA granted relief such as this. The applicant does not even meet the circle bylaw. He does not think this would be defensible in court. Mr. Cannon stated that this is a unique lot shape and this is defensible. The family sought relief in 1984. The family has paid taxes on a buildable lot and they want to build a single-family home. Mr. Adams stated that in 1984 when the variance was granted, he never knew that the variance had to be acted upon; it said in the variance that one house could be built. Chairman Hunchard stated that the applicant could seek relief by going to the Planning Board and proposing a private road. They could grant a private road and there would probably be enough frontage. There are other avenues of relief.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Unanimous by Board. Motion made by Robert Acevedo to take this under advisement. Seconded by Philip Brunelli. Unanimous by Board.

345 Lincoln Street – James and Carol Dacey

Abutters: None.

7:50 pm: Applicant is seeking relief from the following on Lot 1: 19,461 sq. ft. of lot area where 40,000 sq. ft. is required, 9.7' of right side yard setback where 30' is required, 25.2' of left side yard setback where 30 ft. is required, 39.5' of front yard setback where 40' is required, 94.56' of frontage where 175' is required and 94.56' of lot width where 157.5' is required. Applicant is seeking relief from the following on Lot 2: 32,017 sq. ft. of lot area where 40,000 sq. ft. is required, 9.6' side yard setback where 30' is required, 151.56' of frontage where 175' is required, 151.56' of lot width where 157.5' is required. Compliance with Franklin Zoning Code is denied without a Variance from the ZBA. Applicants present: Michael Doherty, attorney of Doherty, Dugan, Cannon, Raymond & Weil, P.C., representing the applicant; James Dacey, applicant; and Jake Patel, current tenant at Dacey's Market. Mr. Doherty stated that the house had been there since 1942; the market has been there since 1947. He spoke about relief under Chapter 40A, §6. He stated that this is a unique parcel in a unique circumstance. He stated that precedent should not be a

concern of the Board. The applicant has already been to the Planning Board. There are two structures on a single lot that preexisted zoning. He stated that they were able to have the line drawn on the plan to separate the two lots, but that does not comply with zoning. He stated that is why they are here to get the relief that they are seeking. He is not asking to build any new buildings or expand any structure. All the applicants seek to do is to legally separate the two lots so that the market can be sold to the current tenant and the house can be separated and sold separately someday. He stated that this will not harm the neighborhood in anyway. Nothing is going to change from the way it has been since 1947. There will be no additional traffic or runoff. There is no change and no harm done to anyone. There will be hardships done if the ZBA denies this relief. If the lot cannot be separated, Mr. Patel will not be able to afford to buy the entire lot and he will lose his business; the Dacey's are trying to sell the building to him so he can continue to run the business. The Dacey's have tried to sell the parcel as a unified parcel with no success. He noted the fact that there are no neighbors present at the meeting complaining which is further evidence that it is not harming anyone. He reiterated the uniqueness of these circumstances and requested the relief be granted. Chairman Hunchard stated that the lot was changed to Commercial II around the 1950s or 1960s. He noted that this is a conforming use in CII. There can be two buildings on a property. He suggested making the property a condo with unit 1 and unit 2. Mr. Patel stated he wants to buy the property and wants to continue his business. He has been leasing the property for 10 years and his lease expired. He wants to buy the property to keep his store. Chairman Hunchard confirmed that Mr. Patel knew he was leasing the property when he took over the business years ago. Mr. Cannon stated that Mr. Patel has invested 10 years and a great deal of money. Chairman Hunchard confirmed the lease expired and noted that it is not the problem of the ZBA as applicant could have renegotiated lease or had terms to continue with his business. He stated that nothing is stopping Mr. Patel from continuing his business unless Mr. Dacey wants to throw him out. Mr. Cannon explained why this is currently a non-conforming lot. Chairman Hunchard reviewed the dimensions of the lot on the plan in regard to Commercial II. The lot itself is preexisting non-conforming. If some relief were needed to put an addition on the store or the house, the Board would probably not have a problem. However, he has concerns about dividing the two lots which already has a right of way on it to get to the back. Mr. Acevedo asked about the easement. Mr. Dacey stated it is for a house in the back that his brother lives in. Chairman Hunchard stated that for the reasons he has mentioned, his position on this is known.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Unanimous by Board. Motion made by Robert Acevedo to take this under advisement. Seconded by Philip Brunelli. Unanimous by Board. Chairman Hunchard stated that the applicant would receive a clear decision from the Board by the end of tonight's meeting.

13 – 15 Edwards Street – Vertex Tower Assets, LLC
Abutters: See attached.

7:55 pm: Applicant is seeking a building permit to install a 116' tall cell tower within a wireless communication facility. The building permit is denied without a Variance from the ZBA.

Mr. Brunelli recused himself.

Chairman Hunchard appointed Mickey Whitmore to vote.

Applicants present: Francis Parisi, attorney of Parisi Law Associates, P.C., representing the applicant, Vertex Tower Assets, LLC; Stephen Kelleher, site acquisitions specialist for the applicant; and Marlon DePaz, radio frequency engineer. Mr. Parisi provided a slideshow presentation and stated that they are here tonight for use and dimensional variances to construct a wireless telecommunications facility at 13-15 Edwards Street. Currently, on the property is a two-unit condominium building. The cell tower will be built behind the condominium building on land owned by the condominium association. He explained that Vertex Towers is a telecommunications infrastructure developer. They have been very active in the New

England market. He reviewed that wireless communication is not just a public convenience; it is a public safety necessity. In addition, with respect to telecommunications, it was originally thought that they would be used for mobile communications, but it has been found that people are using their phones inside of dense buildings and schools and it takes a stronger signal to penetrate the building. The applicant has chosen Edwards Street although it is in a residential area because of the location near Rt 140 which is all built out, the municipal use of the Police Station, and the high school. This is the only available site in this area. He noted there is a great deal of technical data in the application demonstrating the need for this site. He noted that they were able to site the location so there was no impact to the wetlands. He reviewed the location and stated it is immediately behind the strip plaza on Rt. 140. For the most part, it is a commercial/mixed use neighborhood. He described the facility and stated that it will be a 50' x 50' fenced compound housing the telecommunications equipment; they will extend the current driveway slightly to bring access to the back of the lot. The tower will be 110' tall; there is a small lightning rod at the top bringing it to 116' tall. He showed a picture of the proposed design. He stated that a chain link fence was proposed; however, that can be discussed. He reviewed their compliance with the variance criteria and explained that the hardship is really with the telecommunications company due to the lack of existing infrastructure in this area that could be used. He noted that many Massachusetts courts have found that it is a hardship. He described the federal government's involvement with laws requiring zoning boards to have significant and strong reasons for the telecommunication facility being denied. He noted the Telecommunications Act of 1996. He stressed the need for coverage in the area and that there is no alternative. He explained they are requesting a use variance as they are not in the wireless overlay district; the town put in an overlay district about 20 years ago with specific locations where such facilities could go. As well, they need a dimensional variance as the height will be over 35'.

Chairman Hunchard opened the floor to the public. Abutters asked questions and stated concerns. Ken Maguire stated that this will be directly behind his house as he abuts the property. He asked how many beacon lights are going on top of the tower. Mr. Parisi stated none; no lighting will be required. Mr. Maguire expressed concern about the wetlands and stated that this is not a good place for the tower. He stated that he speaks for the neighbors and requested this tower not be built there. Lucille Vandervelde asked that this not be allowed to happen. She is very upset. It is terrible to look at, it devalues property, and for decades there have been links to health concerns. Chairman Hunchard stated that per the FCC, he is not allowed to consider health issues as a reason for denial. He has spoken with consultants over time and has asked them about the health issues; the experts have said that there would have to be 64,000 of these antennas in the area in order to pose a health risk. Diane JohnsonLandolphi asked about the research previously spoken about regarding that people in the area were not getting signal, the activity on the access road, and health issues. She stated that the tower is not art for the Sculpture Park. Chairman Hunchard explained the signal that people rely on. He stated that maintenance on the tower is usually done about once a month to check the equipment. There is not a lot of traffic. He said that he does not know about the health issues, but the FCC stated that health issues cannot be considered. Trudy Remissong asked what the advantage for the neighborhood to have the cell tower is. She is concerned about her property values dropping and asked how much money the property owner was going to make from the cell tower. Would the property owner want it in his backyard? If it is helping the high school, why is it not located at the high school? Chairman Hunchard stated that he does not think property values will go down. It is not his concern how much money the property owner will make. Mr. Acevedo confirmed the reception is bad on Maple Street. He noted that for the ZBA to deny this, they would have to come up with a very strong reason as the FCC is promoting this. He thinks there is a need for this. Mr. Parisi stated that wireless technology is subject to many variables; they are trying to provide a very reliable signal for the coverage area. He reviewed the many other facilities in Franklin and everywhere; there is a lot of data to support that there are no health effects. He reviewed research on property values with cell towers nearby; there is data now about existing real estate in proximity to cell towers and there is no data to support the prices are lower. He stated it is a benefit to the town to have cell towers. Chairman Hunchard stated that the police station has a public communication tower already there. He asked if there is going to be the ability for the town to plug into the proposed facility. Mr. Kelleher stated that typically the town is offered use for public safety.

Chairman Hunchard stated that can be put in the decision. Resident asked if there will be noise, and if this variance passes, when will the project start. Mr. Parisi stated it makes no noise or humming. The auxiliary generator goes on and off occasionally as well as a fan for the air conditioning box. Chairman Hunchard noted the applicant may have to go to the Conservation Commission due to the wetlands. Mr. Kelleher stated that most likely the project would start in the fall and continue for about four weeks. Chairman Hunchard asked if a privacy fence and bushes could be installed. Mr. Parisi stated whatever the town wants, and he reviewed the location. Chairman Hunchard confirmed some trees would be cut down for the 50' x 50' area. Christine Maguire stated that everyone in the area owns their homes; this man does not live there. This matters to the homeowners. Residents agreed this is a small area and there are other areas to put this tower in as this is not on a hill. Chairman Hunchard stated that there are areas in town that do not have coverage. Mr. DePaz stated that this tower will use a higher frequency and serve a radius of about one mile; he explained the technology and software used. He noted that lower frequencies cannot handle as much data although they get a further radius than the newer higher frequencies which can handle more data but have a lower radius. Mr. Parisi discussed the public safety benefits of these facilities. Mr. Stickney requested renderings of the designs and shadow studies for the poles. He asked about the new cell tower design that resembles trees. He asked about leases and clarification of the road. He asked if driving over the road gravel will make noise as it is abutting residential neighbors. He asked about security and monitoring. Mr. Parisi did not have a rendering. He stated that as it is a single pole with antennas, it does not create a big shadow. He stated that they could design it to look like trees. He explained that in this case it may not look good; putting fake pine needles on it may make it look worse. He stated that Vertex will own the tower and has ground and antenna leases. Vertex is leasing the land from the condominium association and will maintain the facility. He stated that he misspoke about the road. There is an existing road, but they will be cutting in a new access road with a separate entrance. After building the facility, the road will generally only be used by a pickup truck for occasional maintenance. The equipment cabinets are tamper proof and weatherproof but have monitors if anyone got into them. The tower is not climbable.

Motion made by Robert Acevedo to close the public hearing. Motion seconded by Mickey Whitmore. Unanimous by Board. Motion made by Robert Acevedo to take this under advisement. Motion seconded by Mickey Whitmore. Unanimous by Board.

Chairman Hunchard called a recess.

Mr. Brunelli re-entered the meeting.

Chairman Hunchard called the meeting back to order.

Motion made by Robert Acevedo to deny the variance to James E. Adams, Trustee of Adams Family Nominee Trust, for the property located at Off Bent Street, Map & Lot 215-023-000-000. Seconded by Philip Brunelli. Unanimous by Board.

Motion made by Robert Acevedo to approve the variance to James and Carol Dacey for the property located at 345 Lincoln Street. Seconded by Philip Brunelli. Chairman Hunchard voted No for the reasons he stated during the public hearing; Mr. Acevedo voted Yes; Mr. Brunelli voted No. VOTE: 1-Yes, 2-No.

Motion made by Robert Acevedo to approve the variance to Vertex Tower Assets, LLC, for the property located at 13-15 Edwards Street. Chairman Hunchard added, as discussed during the public hearing for the use variance for the tower and the height variance for the tower at 110' with a 6' lightning rod at the top, the proviso that the tower company build a privacy fence around the stockade/equipment area where they have the equipment, AC units, etc., and that they put some evergreens, as suggested by the building commissioner, at the time of construction, and that the applicant has stated that they are willing to allow the Franklin Police Department to attach an

antenna if needed to the top of the tower. Seconded by Mickey Whitmore. Unanimous by Board. (Note: Mr. Brunelli did not vote on this as he had recused himself; Mr. Whitmore voted on this item.)

General Business

Motion made by Robert Acevedo to approve the Meeting Minutes as presented for Thursday, March 21, 2019. Seconded by Philip Brunelli. Unanimous by Board.

Motion made by Philip Brunelli to approve the ZBA Meeting Dates for 2020. Seconded by Robert Acevedo. Unanimous by Board.

Chairman Hunchard confirmed the next ZBA meeting will be held on June 6, 2019.

Motion made by Robert Acevedo to adjourn. Seconded by Philip Brunelli. Unanimous by Board. Meeting adjourned at 9:45 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary

Signature Rebecca Kewen

Date 6-6-19