

Town of Franklin



Zoning Board of Appeals

Thursday, April 21, 2022
Meeting Minutes

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

Chair Hunchard called a roll call vote to confirm members present. Roll Call Vote: Brunelli-HERE; Acevedo-HERE; Whitmore-NOT PRESENT; Stickney-NOT PRESENT; Hunchard-HERE.

Parcel 219-178-002-000 - Bruce Wheeler

Abutters: None.

7:30 p.m. Applicant is seeking to modify a previously approved comprehensive permit. Applicants present: None.

Chair Hunchard stated that an email was received from the applicant's attorney requesting a continuance.

Motion made by Philip Brunelli to continue the public hearing for Parcel 219-178-002-000, Bruce Wheeler, to May 5, 2022, at 7:40 PM. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Meeting Minutes April 7, 2022

Motion made by Robert Acevedo to approve the Meeting Minutes as presented for Thursday, April 7, 2022. Motion seconded by Philip Brunelli. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Robert Acevedo for a five-minute recess. Motion seconded by Philip Brunelli. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

22 Doe Drive – David and Amy Hohmann

Abutters: None.

7:40 p.m. Applicant is seeking to construct an addition with an accessory dwelling unit. The building permit is denied without a Special Permit from the ZBA. Applicants present: David and Amy Hohmann, homeowners. Mr. Hohmann stated that they would like to add an in-law addition for his mother Linda Hohmann and his handicapped sister Tammy Hohmann to their existing home to properly care for his

mother as she ages and to help with the care of his sister. He stated that this would be a one-story addition; they will be using and adding a slight addition onto the existing garage and building a new garage on the front. He reviewed his Supporting Statement for a Special Permit provided in the application submittal.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Robert Acevedo to grant a Special Permit for a second dwelling unit for the property located at 22 Doe Drive with the conditions of the Special Permit being that the in-laws, mother Linda Hohmann and sister Tammy Hohmann, reside at the property along with the owners David and Amy Hohmann 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 at 22 Doe Drive. Completion of the foundation certified as-built need to be submitted and verified with setbacks 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, the proposal is consistent with the neighborhood character, and social structure as it exists now and the quality of natural environment will stay intact. There is no potential fiscal impact for the Town of Franklin by the issuance of the Special Permit. Also, the Special Permit will be recorded at the Registry of Deeds. The proposed accessory dwelling unit addition is shown on the Plan titled "Certified Plot Plan Located at 22 Doe Drive, Franklin, MA" prepared by Continental Land Survey, LLC, dated March 21, 2022. Seconded by Philip Brunelli. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

19 Dean Avenue - Dean Development Partners LLC

Abutters: Mr. Kevin Goffe, President of Dean Bank.

7:40 p.m. Applicant is seeking to construct a mixed-use building that needs a Special Permit or Variance for up to 50' in height. Needs a Special Permit to demolish a preexisting non-conforming building and reconstruct. Needs a Special Permit or Variance to waive the 15' setback on frontage. Needs a Special Permit or Variance to construct residential units ½ story above street level. Variance or other relief to allow usage without off-street parking. Needs Variance, Special Permit, or other relief to reduce rear setback to 1.2'. Applicants present: Mr. Michael Khoury, applicant's attorney. Mr. Khoury stated that in July of last year they filed an application seeking various dimensional relief, a waiver of the entire parking requirement, and the ability to build and have residential units in the mixed-used halfway between the first floor and second floor. He stated that in January 2022 they withdrew the requests for deletion of the parking and are now ready to revise the development to have the standard requirement for mixed-use with purely commercial on the first floor and residential on the higher floors. He stated they were last before the ZBA in December. He explained that with the withdrawal, they are looking for strictly dimensional relief which he believes is fairly standard. He reviewed the requests to allow for up to 50' in height, to demolish a preexisting non-conforming building and reconstruct, to waive the 15' setback on frontage, and to reduce the rear setback to 1.2' where 15' is required. He noted the building is 120 years old; it predates zoning as well as most of the neighborhood. It is not in good shape and needs to be repaired and rehabilitated. He stated to do that they need this relief. He stated that in prior ZBA hearings, there was discussion about reconstructing the building in tight proximity to the neighbors. He stated that the applicant said they would ensure the safety of the buildings and people in the surrounding area. He noted the ZBA has a copy of a letter from New Boston Construction Services, an established Boston-area contractor, that confirms the project can be built as designed without risk to neighboring properties. He stated the ZBA had concerns about stormwater runoff. He stated that they presented the ZBA with information from an engineer confirming the absence of stormwater issues. He stated that

DPW Director Brutus Cantoreggi provided a letter indicating that as long as the project does not increase stormwater runoff rate or volume and meets design criteria, the applicant can connect to the Town's drainage system. Mr. Khoury requested the ZBA approve the application as amended.

Mr. Kevin Goffe, President of Dean Bank, asked if the construction firm New Boston Construction went to the site and examined the property and determined they could do this project based on the property lines as it does not say in their letter that they went to the site. Mr. Khoury stated that the construction firm came out and examined the site and the plans, and the property has been surveyed. Mr. Goffe stated that at least three months ago Dean Bank raised concerns about the proximity of the development to their shared property line. They remain concerned about the removal of the existing structure and the removal and pouring of the foundation which is only 8" to 9" from the shared property line. He stated that he would assume a project such as this would have a surround fence around it for safety. He questioned that the applicant would be able to install a fence, excavate, install forms, and do required work all within their 8" to 9". He stated the bank has a parking lot and a gas line that feeds their generator on the property line. He does not think 9" is enough room to prohibit any damage to the bank property. He does not think it is unreasonable to suggest that this project is going to be done with some encroachment and erosion to the bank's land. He stated that the applicant is not giving themselves any room to work. He discussed the current and planned foundation for the proposed project. He stated that he does not think the applicant has given proof to the ZBA that this can be done safely. Mr. Khoury stated the construction is done in a number of urban settings on zero property lines; this can be done. He stated keep in mind that the building will be taken down and then be rebuilt. He stated that what we need is some basic relief to allow the owner to work on the property. He stated that the construction plans will be fleshed out at the site plan level; we just need some basic dimensional relief at this time.

Chair Hunchard reviewed that the applicant is requesting a special permit to tear the building down and replace it, waive/provide relief of the setback requirements, and allow for up to 50' in height. He stated that if the building were to burn down, the Building Commissioner would give them a building permit to replace the building on the same footprint that is there now, and they could tear the foundation out probably and redo it. Building Commissioner Gus Brown stated that is correct. He confirmed that a fence around the building while they are doing the work would be required. He noted M.G.L. that protects abutting properties for being able to encroach or get on an abutting neighbor's property.

Mr. Brunelli stated that he does not see how the applicant is not going to encroach on the abutting property with only 15". He stated that the applicant is asking for a lot of relief. He stated that the applicant will be on Dean's property; a person cannot even walk around the building with only 15". He stated that he is not going to vote for 15". Mr. Khoury stated that they cannot and will not go on Dean Bank's property; he stated that it can be done. Mr. Brown stated the M.G.L. allows for a bond to be created and given to the police chief for him to oversee that everyone plays nice in the sandbox if someone has to get on someone else's land. Once the bond is created with the police chief, they are allowed to get on someone else's property. With the law, the abutter has no choice but to allow someone on their property.

Chair Hunchard confirmed that if the applicant were given relief on the 15' setback, the applicant would not need relief on the 50' height as it is already a bylaw in place. Mr. Brown stated yes. Chair Hunchard asked Mr. Brown if he had safety measures that must be in place. Mr. Brown stated they would ask for a third party to give an overview of what they feel would be safety measures to protect the neighbors; it is incumbent upon the applicant. A building permit will not be issued until that is received.

Mr. Goffe asked about the law that allows the abutter to go on the property. He stated that it does not give the abutter the right to erode, undermine, or damage the property. Mr. Brown stated that there is M.G.L. about that also.

Mr. Brunelli stated that he is still waiting for information on stormwater and runoff. He stated that he read the letter from DPW Director Brutus Cantoreggi. Mr. Khoury reviewed the letter from their engineer explaining how stormwater management was going to be improved with this project. Chair Hunchard stated that the Planning Board does stormwater.

Mr. Hazen Dani, applicant's engineer, addressed stormwater runoff. He stated that there is currently 93 percent lot coverage of impervious. In the proposed project, it will be 90 percent lot coverage of impervious. So, the proposed plan will reduce the runoff to Dean Avenue and the abutting properties. He reviewed the proposed connection with the Town's drainage pipe in the right of way.

Mr. Khoury stated that in the end there will be a smaller safer building, less stormwater runoff, and more space between the abutters. He stated that if this is denied, they are stuck with an aging beast which is not appealing to abutters or the applicant. He stated that at the site plan approval process, this will be discussed between engineers. Right now, they are only looking for dimensional relief. Discussion commenced regarding stormwater and runoff. Chair Hunchard confirmed the applicant is going to reduce the impervious coverage and tie into the drainage system on Dean Avenue. He stated that he did not have any problem with the drainage. He stated this will be reviewed by the Planning Board, the Town Engineer, and the peer reviewer BETA Group. Mr. Brown stated that there is a pre-construction meeting that goes over the safety features that need to be in place such as fencing.

Mr. Khoury stated that the plan presented substantially improves some conditions that need to be addressed. He stated that there is no way to do this without a knock down and rebuild. Everything they are looking to do improves the situation. If the ZBA denies that, they are left with an unsafe building.

Chair Hunchard asked Mr. Brown if he is comfortable with the ZBA skipping the 50' height if we grant them the 0' setback. Mr. Brown said he was. Mr. Brown stated that this is an older building that is going to sit dormant. We are all for downtown revitalization. He stated that he thinks the proponent has tried to make this project more palatable for everyone. This shows to him that they are trying to improve something that is a tough looking building with no fire protection.

Motion made by Philip Brunelli to close the public hearing. Motion seconded by Robert Acevedo. Discussion: Chair Hunchard stated that no matter what the ZBA does, the applicant still has to go to the Planning Board for site plan approval and the Building Commissioner for a building permit. ZBA is just one step in the process. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Bruce Hunchard to grant a Special Permit to demolish and redevelop 19 Dean Avenue as proposed by the applicant. Motion seconded by Robert Acevedo. No Discussion. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Bruce Hunchard to grant a Variance to waive the requirement that there be a 15' setback from the street for a building that is 50' in height in the downtown commercial district as presented by the applicant. Motion seconded by Robert Acevedo. No Discussion. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Bruce Hunchard to grant a Variance to reduce the rear setback from 15' to 1.2' giving 13.8' relief, understanding that the setback as currently exists is 0.8'. Motion seconded by Robert Acevedo. No Discussion. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Chair Hunchard requested that Mr. Khoury provide a draft to Ms. Thayer so she can add to it as required. Mr. Brown stated that this has been a tough several months on this. He stated that if this building were to be rebuilt, there would be more time and disruption than if it were torn down. He stated that Mr. Goffe can be assured that as this project moves forward, he will work heavily with Mr. Khoury and the developers to make sure and possibly have meetings with you if this does proceed to address your concerns as well. He thanked everyone for their hard work and comments.

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

Meeting adjourned at 8:49 p.m.

Respectfully submitted,

Judith Lizardi
Recording Secretary

Signature 

Date 4-11-20