

Town of Franklin



Zoning Board of Appeals

**Thursday, June 10, 2021
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, Meghan Whitmore, Christopher Stickney. 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 the Governor's Order relating to the COVID-19 outbreak. 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.

11 Michael Road - Sandra Cain

Abutters: None.

7:30 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: Sandra Cain; Rick Goodreau of United Consultants representing the applicant. Mr. Goodreau stated that a Site Plan depicting the existing conditions of the property has been provided. There is currently an existing house with a two-car garage. The proposal is to extend the garage to a third bay and construct the additional dwelling unit to the rear of both the existing and proposed garages. He stated that as part of the project, the applicant has filed for and received approval of a septic system upgrade to accommodate the final project construction. He stated that all necessary materials have been filed with the application. He read aloud the applicant's Supporting Statement for a Special Permit. ZBA members asked questions. Mr. Goodreau confirmed the property is not in a water resource district.

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

Motion made by Philip Brunelli to grant a Special Permit for a second dwelling unit for the property located at 11 Michael Road with the conditions of the Special Permit being that the daughter, Jessica Cain, reside at the property along with the owner Sandra Cain 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 11 Michael Road. 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. And, the septic system as proposed by the applicant must be done. Seconded by Meghan Whitmore. Roll Call Vote: Whitmore-YES; Brunelli-YES; Hunchard-YES. Unanimous by the Board.

23 Conlyn Avenue - Natalie Riley

Abutters: None.

7:35 p.m. Applicant is seeking to construct a two-car attached garage that is 10.2' from the right yard setback where 20' is required. The building permit is denied without a variance from the ZBA. Applicants present: Natalie Riley. Ms. Riley stated that she has discussed the proposal with the neighbor that this project would most affect, and they are agreeable with the proposal. She stated the two-car garage addition is in line with other construction that has occurred in the neighborhood. She stated that she would like to add the proposed construction to allow them to stay in this home for a long time. ZBA members asked questions. Ms. Riley responded and stated that they looked at a one-car garage design, but it was not in line with what they wanted to do. She stated they did not consider using part of the mudroom for the garage to lessen the encroachment as it would make their house smaller. Chair Hunchard stated that the ZBA has had multiple petitions over the years to do similar projects in that neighborhood.

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

Motion made by Philip Brunelli to grant a 9.8' relief Variance for Natalie Riley for 23 Conlyn Avenue to construct a two-car attached garage that is 10.2' from the right yard setback where 20' is required as shown on a plan titled "Certified Plot Plan Located at 23 Conlyn Avenue, Franklin, MA" dated April 27, 2021, prepared by Continental Land Survey, LLC. Motion seconded by Meghan Whitmore. Roll Call Vote: Whitmore-YES; Brunelli-YES; Hunchard-YES. Unanimous by the Board.

920 Washington Street - Mrinal Malhotra

Abutters: Wayne and Kirsten Nordstrom, 916 Washington Street.

7:40 p.m. Applicant is seeking to site a ground mounted solar tracker that is 22' in height where 15' is allowed. The final inspection is denied without a Variance from the ZBA. Applicants present: Mrinal Malhotra; Stephen Kenney representing the applicant. Mr. Kenney stated this is a secluded lot with a shared driveway with one other home. It is in the Rural Residential I zoning district. The property has 5.8 acres. He stated the solar tracker's highest position would be 22'. He reviewed the zoning bylaw section pertaining to ground mounted solar trackers, the history of the building permit application, and building of the solar tracker. He stated that he submitted a memorandum yesterday to the ZBA providing clarification of the situation. He stated that the building inspector approved the original schematic showing a height of 19'. He stated that at this point in time, to modify the structure it would have to be completely rebuilt. The original structure cost \$71,000. The angle cannot be changed as it would defeat the purpose of the structure and would not allow snow to clear from the structure in the winter. He stated that a financial hardship would be created with a literal enforcement of the zoning bylaw. He noted that 60% of the time the tracker would be at 15' or less. It only goes above 15' at certain times based upon the sun's location and the time of the year. At night and in the summer it is in a flat position. He stated that the applicant is willing to plant a row of spruce trees along the property line to shield the structure. As well, the applicant is intending to build a pergola which will restrict the view of the structure. He stated that the topography of the land creates the petitioner's hardship. He stated the applicant's goal is energy independence and elimination of a carbon footprint. He noted two similar projects referenced in recent case law. He requested the granting of the variance.

Wayne Nordstrom, direct abutter at 916 Washington Street, addressed the ZBA. Mr. Nordstrom stated that Mr. Kenney said that no trees were cut down to make way for the original structure. He stated that is not true. He explained that he has photographs of 10 extraordinarily large trees that were at least 300 years old that were cut down by a crane and taken out by a truck. That was harm to the environment and the abutters. He discussed that when the original permit was submitted, there were no dimensions on it.

Tel: (508) 553-4856

The contractor was not transparent with what he had in mind. The contractor should know what the laws are. It is not an obscure law that states the height can be a maximum of 15'. He stated that he has seen the structure go to its full height during testing. It is not safe as a large gust of wind could potentially break loose a panel. The zoning bylaw is clear that the maximum height allowed is 15', and the general contractor chose to ignore that. He stated that he does not see how the use of a solar structure can offset the removal of the 10 large trees to the environment. He is just asking that the applicants stay within the zoning bylaw of 15' off the ground when in operating position; it is not in the best interest of the community. He stated that to make the argument that they were harmed through the permitting process and that the Town owes them an exemption by way of a variance does not hold water. He stated that he has no problem with the structure as long as it stays within the zoning bylaw that it cannot be raised above 15'.

Mr. Malhotra stated that he has saved over 60,000 lbs. of carbon dioxide from going into the atmosphere. He stated that he told Mr. Nordstrom over one year ago that he was doing this project. Valentina Djaleva-Malhotra, applicant, discussed text messages with Mr. Nordstrom. Mr. Kenney discussed issues raised by Mr. Nordstrom. He stated he was not aware trees were removed. He stated planting of trees is proposed. Chair Hunchard noted that possibly Mr. Nordstrom congratulated Mr. Malhotra on his solar project before he knew Mr. Malhotra was in violation of the zoning bylaw. Mr. Kenney stated that he wanted to keep on track with the reasons regarding the granting of the variance. Chair Hunchard stated that he discussed with others in the Town the suggested hardship of the topography, and it only relates to building a house, not an accessory structure. Chair Hunchard stated he conducted a site visit and saw the project. Mr. Kenney suggested that Mr. Malhotra's frustration is that they submitted to the building inspector and the specification panel height is shown as 19.5'. He stated they have the grounds for a variance. The request is for 7' relief and that is not all the time, only some of the time. Mr. Brunelli stated that the person the applicant hired should have done their homework. He should have had more elevations on the plans. It is not the Town of Franklin's fault. He asked about the number and size of the proposed trees. Mr. Malhotra stated they have planted 12 fruit trees growing to 10' to 12'. He stated they are looking at spruce trees of about 6' to 8' growing to 14' to 15' when fully matured. Mr. Brunelli stated that he does not agree with 6' trees; a person can visit any nursery and buy 12' and 14' trees. Mr. Malhotra stated he could buy 14' trees, if necessary. He described where the pergola would be located. He described the shared driveway and explained where the trees could be located. Mr. Kenney stated they would be happy to have the height of the trees and the location as a condition. He noted that a plot plan was submitted.

Chair Hunchard noted that Mr. Kenney mentioned the cost of \$71,000; however, the applicant could have spent less money if it were a smaller unit complying with the 15'. Mr. Malhotra stated their decision was based on their yearly calculation of electricity use to run the house. He stated that he needed a unit that created 8 megawatts; the 24-panel unit would make the required amount. If the panels were not raised more than 15', they would only produce about 5.6 megawatts. Mr. Malhotra stated that height was never mentioned when he started this; no one mentioned height until he was asking for final permission. Chair Hunchard asked how long the unit would be raised higher than 15'. Mr. Malhotra stated that it would only be raised higher than 15' in the winter during the day from about 8 AM to 4:30 PM. He stated that the system has protections against high winds. He stated that calculations indicate that approximately 60 percent of the time including night it would be within 15'. Excluding the night hours, it would be approximately 50 percent of the time at 15' and 50 percent of the time over 15'. Mr. Malhotra stated that he can provide reports on the amount of time the solar tracker is at each height. He stated that he does not know why Mass Renewables Inc. did not attend this hearing.

Chair Hunchard stated that he asked the building commissioner if there were any height elevations on the plans; he stated they were not. He stated that at the last meeting he asked Jeffrey Herman of Mass Renewals Inc. if the elevations were on the plans; Mr. Herman stated they were not. Chair Hunchard stated that he does not blame the applicant for this. However, what the ZBA does has to be defensible in

court. He noted that there were abutters present at the last hearing and at this continued hearing. Mr. Kenney reviewed reasons why the variance should be granted.

Chair Hunchard confirmed Mr. Nordstrom shared the driveway and was the closest abutter. He asked Mr. Nordstrom about the proposed mitigation of the trees. Mr. Nordstrom stated that if the applicant is willing to take those steps, he is willing to accept that as a compromise. Mr. Kenney stated that he could prepare a set of conditions to go along with the decision.

Chair Hunchard stated that he assumes the ZBA will come to a vote on June 24th; he requested Mr. Kenney draft a proposed decision with a full mitigation plan that the ZBA could review.

Motion made by Philip Brunelli to continue the public hearing to June 24, 2021, at 7:35 PM noting that Mr. Kenney agreed to provide a 14-day extension. Motion seconded by Meghan Whitmore. Roll Call Vote: Brunelli-YES; Whitmore-YES; Hunchard-YES. Unanimous by the Board.

33 Madison Ave – Timothy M. Bliss

Abutters: None.

7:45 p.m. Applicant is seeking to construct a family room addition that is 18.2' from the left side yard setback where 35' is required. The building permit is denied without a variance from the ZBA. Applicants present: Tim Bliss. Mr. Bliss reviewed his proposal to build a 20' x 20' wood frame family room addition to the existing single-family home. The home is located in the Rural Residential II zoning district. The septic system is directly behind the house creating a location hardship requiring that the addition be placed on the side of the house. He stated that he has an as-built showing the septic system.

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

Motion made by Philip Brunelli to grant a 16.8' relief Variance for Tim Bliss for 33 Madison Avenue to construct a family room addition that is 18.2' from the left side yard setback where 35' is required as shown on a plan titled "Variance Plot Plan, 33 Madison Avenue, Franklin, MA" dated April 29, 2021, prepared by Guerriere & Halnon, Inc. Motion seconded by Meghan Whitmore. Roll Call Vote: Whitmore-YES; Brunelli-YES; Hunchard-YES. Unanimous by the Board.

16 Maria Circle - Bruce Johnson and Danielle Johnson

Abutters: None.

7:50 p.m. Applicant is seeking to construct a two-car garage and breezeway that increases the impervious area of the lot to 24.5% where 15% is allowed. The building permit is denied without a Special Permit from the ZBA. Applicants present: Bruce Johnson.

Chair Hunchard stated that the provided plan shows the proposed mitigation including the proposed infiltration system. Mr. Johnson confirmed Chair Hunchard's statements.

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

Motion made by Philip Brunelli to grant a 9.5% relief Special Permit for Bruce Johnson and Danielle Johnson for 16 Maria Circle to construct a two-car garage and breezeway that increases the impervious area of the lot to 24.5% where 15% is allowed as shown on a plan titled "Addition Plot Plan, 16 Maria Circle, Franklin, MA" dated March 12, 2021, with latest revision date of June 2, 2021,

prepared by Guerriere & Halnon, Inc. Motion seconded by Meghan Whitmore. Roll Call Vote: Whitmore-YES; Brunelli-YES; Hunchard-YES. Unanimous by the Board.

18 Northern Spy Road - Sarah K. Hunter and David C. Hunter

Abutters: None.

7:55 p.m. Applicant has constructed an inground pool and patio which has created impervious lot coverage area totaling 17.9 % where 15 % is allowed. The approval is denied without a Special Permit from the ZBA. Applicants present: Brain Sullivan, attorney on behalf of Sarah and David Hunter. Mr. Sullivan stated that he submitted a supplemental letter dated June 7, 2021, from Colonial Engineering, Inc., which states that the roof runoff will provide for 1,268 sq. ft. or 2.94%; current percentage is 17.9% less 2.94% equals 14.96%, which is under 15% permitted. Chair Hunchard stated that the approval will be based on the mitigation as shown on the plan.

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

Motion made by Philip Brunelli to grant a 2.94% relief Special Permit for Sarah K. Hunter and David C. Hunter for 18 Northern Spy Road to construct an inground pool and patio which has created impervious lot coverage area totaling 17.9 % where 15 % is allowed as shown on a plan titled "Proposed Roof Infiltration, Plan of Land in Franklin, MA" dated March 29, 2019, prepared by Colonial Engineering, Inc. Motion seconded by Meghan Whitmore. Roll Call Vote: Whitmore-YES; Brunelli-YES; Hunchard-YES. Unanimous by the Board.

General Business: Meeting Minutes May 13, 2021

Motion made by Philip Brunelli to approve the Meeting Minutes as presented for Thursday, May 13, 2021. Motion seconded by Meghan Whitmore. Roll Call Vote: Whitmore-YES; Brunelli-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: Whitmore-YES; Brunelli-YES; Hunchard-YES. Unanimous by the Board. Meeting adjourned at 9:02 p.m.

Respectfully submitted,

Judith Lizardi
Recording Secretary

Signature

Casey Dwyer

Date

6/28/21