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TOWN OF FRANKLIN

Nov 6, 2023

INSPECTION DEPARTMENT

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Date: November 6, 2023

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TOWN CLERK

To: Zoning Board of Appeals 2023 NOV -7 A 9:23  
Town of Franklin, Massachusetts  
355 East Central Street  
Franklin, MA 02038

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and

Lloyd Brown, Building Commissioner and Zoning Officer  
Town of Franklin, Massachusetts  
355 East Central Street  
Franklin, MA 02038

From: Michael M. MacLean, Trustee of the David MacLean Irrevocable Trust of  
106 Jefferson Road, Franklin, MA 02038  
and  
Michael M. MacLean, Trustee of the Judith L. MacLean Irrevocable Trust of  
106 Jefferson Road Franklin, MA 02038

In re: Abutter's opposition to application for a Special Permit submitted to the  
Zoning Board of Appeals on or about October 10, 2023 by Richard, Erika  
and Jason Keen, owners of the property located at 72 Jefferson Road  
Franklin, MA.

I, Michael M. MacLean, trustee of the above-identified irrevocable trusts state that my father and mother, David and Judith L. MacLean purchased the single-family home at 106 Jefferson Road, Franklin, Mass. in 1993. That property is within the plat known as "Dianna Estates". In 2007 they deeded the residence to the trusts and appointed me as the trustee for both. The trust property directly abuts the Keen property that is the subject of the Zoning Board (ZBA) appeal of the Keens.

It is my opinion and that of the beneficiaries of the trusts, David and Judith MacLean, that the ZBA approval of the special permit and construction of the proposed addition to the Keen's property will have an adverse effect on the trust's property value. In addition, it is believed that approval of the permit may also set a precedent for other builders that will adversely affect other property values in Dianna Estates.

On 10/23/2023, David MacLean met with Commissioner Brown (Mr. Brown) and discussed the proposed addition to the Keen residence. During that meeting, Mr. Brown confirmed that, if constructed, the addition would be considered an entirely separate residence in that it could be occupied and/or rented to related or unrelated persons. Thus, it would become a two-family house. He further confirmed that he had not met Richard Keen but did talk to him by telephone. He also stated that he did not know the names and relationship of the individuals currently occupying the home and had no obligation to obtain that information, either now or after the addition was completed. Mr. Brown did provide additional information concerning Dianna Estates during this meeting.

### **Character and Description of Dianna Estates Neighborhood**

In 1988, the developers of Dianna Estates executed a Declaration of Restrictive Covenants which defined Dianna Estates as consisting of "189 lots", that are "not to be used except for a single-family dwelling". The document further restricts dwellings to size, use and other factors. The restrictions were to remain in effect for a period of thirty years. (Exhibit 1)

David and Judith MacLean state that the restrictive covenants were the primary reason that they decided to purchase their home in 1993. They believed that the nature and character of the neighborhood would be defined by the restrictions. They continue to believe that the value of the homes is directly affected by the homes in Dianna Estates being single-family residences. As, trustee, I agree that continuing to build additions that change the nature of the homes will certainly have adverse effects on the financial value and marketability of the homes in this neighborhood.

On 10/23/2023, Mr. Brown stated that approximately nine or less ZBA special permits have been approved for additions in Dianna Estates. He did not state that those permits were for exactly the same design as the plans proposed by the Keens.

If Mr. Brown's estimate is correct, the number of ZBA permits previously approved would be 5% or less than the total number of homes in Dianna Estates.



Review of the Keen's ZBA Application Form and Supporting Statement for a Special Permit (the application) shows the entry as answer for item 4 is self-serving and non-responsive at best. The answer indicates the "current family structure" is "in keeping with the neighborhood". The documents do not define the "current family structure" and the family structure of the other residents in Dianna Estates. The only occupancy details listed on the application is that the Keens report the current occupants of the home are 4 adults and 2 children. In items 2 and 7 of the application, the Keens indicate that the "current occupancy will not change". That also appears to be a self-serving statement. (Exhibit 2)

On 10/27/2023 an employee of the Franklin Town Clerk's office told David MacLean that during the period of 5/23/2023 to 10/27/2023 there was no record of any residents and/or registered voters being listed at 72 Jefferson Road in Franklin, Mass.

#### **Purchase of 72 Jefferson Road, Franklin, MA**

On or about 5/23/2023, Richard, L. Erika and Jason Keen purchased the property at 72 Jefferson Road in Franklin, Mass.

On the ZBA application form, item 1, the Keen's response is "yes" to the subject concerning the "...proposed project addresses or is consistent with the neighborhood or Town need". (Exhibit 2).

I believe that the above-information clearly shows that the proposed addition is not consistent with the character of the neighborhood of Dianna Estates.

The Keen's response to item 1 does not include a showing that the addition has any relation to the needs of the town.

In a narrative attached to the application, the Keens state that "parents and son purchased the home jointly with the hope of adding a parent's unit to create a multi-generational home".

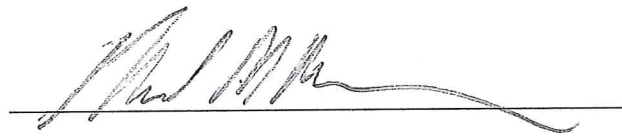
It is my opinion that statement is irrelevant to the matter at hand and should not be considered by the ZBA.

I believe that the Keens, prior to purchasing the property, knew or should have known that the property was not zoned for what they wanted unless they were able to obtain a special permit. Jason Keen, aka Jason T. Keen, should have been aware of the need for a special permit as from 2011 through 2019 he held a Massachusetts license as a "Construction Supervisor". (Exhibit 3)

The fact that the Keens took the risk of not being able to obtain a special permit should not be given any weight by the ZBA in making a decision on the Keens application.

### Conclusion

The beneficiaries of the trusts and I believe that based on the facts presented here, the pending application by the Keens for a special permit should be denied. We appreciate the members of the ZBA in taking the time to consider our position that approval of the permit is not in the best interests of the trusts or of other residents in Dianna Estates.

A handwritten signature in dark ink, appearing to read "Michael M. MacLean", is written over a horizontal line.

Michael M. MacLean, Trustee of the David MacLean Irrevocable Trust,

and

Michael M. MacLean, Trustee of the Judith L. MacLean Irrevocable Trust

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DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, NEBCO, a Partnership having its principal place of business at 58 Main Street, Franklin, Massachusetts, (hereinafter called the "Owner"), is the owner of a certain parcel of land situate in the Town of Franklin, County of Norfolk, Commonwealth of Massachusetts, and more particularly described in Exhibit "A" annexed hereto; and

WHEREAS, the premises described in Exhibit "A" are shown on a definitive subdivision plan entitled, "Dianna Estates", dated February 12, 1987, prepared by Guerriere & Halnon, Inc., Franklin, Massachusetts, which plan is filed with Norfolk Deeds as Plan No. 1352 of 1987 (21 sheets), Plan Book 361;

NOW, THEREFORE, the Owner does hereby declare, make known, covenant and subject the building lots described herein and shown on said plan to the following covenants and restrictions. These restrictions and covenants are to run with the land and shall be binding on all grantees claiming under them for a period of thirty (30) years from the date of recording of this instrument, and may be extended pursuant to Massachusetts General Laws, Chapter 184, Section 27.

1. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

EXHIBIT:

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2. TEMPORARY STRUCTURE. No structure of a temporary character, trailer, tent, boat, boat trailer, camper, shack, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

3. LIVESTOCK AND POULTRY. No animals, livestock, poultry or reptiles of any kind shall be kept or bred on any lot, other than one dog or one cat as a household pet.

4. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

5. GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber, metal, scrap, garbage, or other waste, and such material shall not be kept except in sanitary containers which shall be kept in a clean and sanitary conditions. Such containers shall not be placed outside the dwelling at its front or sides except on collection days and in accordance with the regulations of the collecting agency and such containers shall be placed in the rear or inside the dwelling unit promptly after garbage, trash, and rubbish is removed.



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6. SIGNS. No signs of any kind shall be displayed to the public view on any lot except a real estate "For Sale" sign and a sign indicating the name of the owner thereof, and any such sign shall not exceed a dimension larger than six (6) inches by twenty-four (24) inches.

7. MOTOR VEHICLES. No commercial vehicles, recreation vehicles, trailers, trucks, boats or non-operative or unregistered automobiles shall be stored upon any lot. Parking of automobiles owned by persons residing on any lot shall be restricted to each such lot, and the streets and ways shall not be used for parking of automobiles of such residents so long as the streets and ways are privately owned.

8. LAND USE. No lot shall be used except for a single family dwelling; except that the foregoing shall not prohibit any lot from also being used for a professional (such as a doctor's or lawyer's) office, provided that such office shall be situated in the dwelling of such practitioner, shall have no more than one assistant regularly employed therein, shall comply with the Zoning By-Laws of the Town of Franklin, and shall not be used by any colleagues or associates. In addition, a tool house, or similar building appurtenant to the single-family dwelling, may be erected.

Such single-family residence shall conform at a minimum to the following standards: living square footage of at least 2,000 square feet, three (3) bedrooms, two (2) full baths, a two-car

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garage, and vinyl, aluminum or exterior siding of natural materials (wood, stucco, brick, stone, etc.), and a lot either graded and seeded in disturbed areas, or with an obligation to grade and seed in disturbed areas.

9. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plan. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which the Town of Franklin, other public authorities or utility companies are responsible.

10. GRADING/DRAINAGE. Reserving unto the Owner herein, its successors and assigns, the right and privilege from the date hereof to enter upon the grantees' property at any time to change the grade of the ground and/or install drainage control devices on the herein above described premises so as to alleviate any possible drainage and/or run off problems incurred in the development of real estate of the Owner herein, its successors and assigns.



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Drainage swales which have been constructed to facilitate the

drainage of one or more adjoining building lots, shall have no structures or planting thereon. Modifications to the grade of said swale is prohibited. The drainage swale shall be maintained continuously by the owner of the lot.

11. FENCE, POOLS, TENNIS COURTS, STORAGE BUILDINGS, OUTBUILDINGS, ADDITIONS. Grantees shall not erect nor permit to be erected on the premises any fence, tennis court, storage building, out-building or addition to the property for the period of this Declaration of Restrictive Covenants without the prior written consent of the Owner. The purpose for this restriction is to ensure that all property within the area described by this restriction shall be compatible and asthetically appealing. Grantees shall act to provide and insure that the premises remain open to light and air. As an example without limitation, Owner will not permit any stockade fence or similar fence that blocks one's view or other structures that will in any way prohibit a free view of the entire property. No above ground pools are permitted to be erected under any circumstances. The grading of any lot is not to be changed in any manner that will cause an adverse effect of the adjacent lots. Under no circumstances will any grantee permit any fences, hedges or mass plantings of any type to be erected or planted in front of the front wall line of the main house structure.

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12. SIGHT DISTANCE AT INTERSECTION. No wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the road way shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at a point 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of the street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

13. TELEVISION AND RADIO TOWERS OR ANTENNA. No radio, television or other tower, pole or antenna, or similar structure shall be erected on any part of any lot covered hereby, except that radio or television mast or antenna may be placed upon the roof or other part of any dwelling for the reception or transmission of radio or television, provided it does not protrude more than ten (10) feet above the highest part of said roof.

14. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violations or to recover damages.

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Nothing herein shall impose any restrictions or covenants on any land owned by the Owner in the Town of Franklin, Norfolk, County, Massachusetts, other than the land described in Exhibit "A" attached herein.

The Owner being the original Grantor reserves for itself, its mortgagees, its successors and assigns, its contractors, its agents and servants, the right not to be bound by any or all of the terms of this Declaration of Restrictive Covenants during the construction on the subdivided building lots more particularly described in Exhibit "A" annexed hereto, and to amend any such restrictions on any lots not yet conveyed.

15. SEVERABILITY. Invalidation of any covenant or covenants by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

16. WAIVER, CONSENT OR APPROVAL. Any consent, approval or waiver given hereunder shall be in writing and shall be executed and acknowledged so as to be in recordable form.



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IN WITNESS WHEREOF, the said Owner has caused this Declaration  
to be duly executed under seal this 22<sup>nd</sup> day of January, 1988.

NEBCO  
BEN FRANKLIN CO., INC. (Partner)

By: *Kenneth B. Osborn*  
Kenneth B. Osborn, President

COLBELL CORP. (Partner)

By: *John C. Colella*  
John C. Colella, Treasurer

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS:

January 22, 1988

Then personally appeared the above-named Kenneth B. Osborn, President, and John C. Colella, Treasurer, and acknowledged the foregoing Declaration by them signed to be the free act and deed of NEBCO, BEN FRANKLIN CO., INC. AND COLBELL CORP., Co- Partners, before me

*Neil J. Roche*  
Neil J. Roche, Notary Public  
My Commission Expires: 5/27/88

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EXHIBIT "A"

One Hundred Eighty-Nine (189) lots of land situated on the Easterly side of South Street, the Southerly side of Washington Street and the Westerly side of Forest Street, in Franklin, Norfolk County, Massachusetts, shown as Lots 1 through 83, inclusive, and 85 through 190, inclusive, on a Definitive Subdivision Plan of Land entitled, "Dianna Estates," prepared by Guerriere & Halnon, Inc., Franklin, Massachusetts, which plan is filed with Norfolk Deeds as Plan No.1352 of 1987 (21 sheets), Plan Book 361.

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## Licensee Details

### Demographic Information

Full Name: JASON T KEEN  
Owner Name:

### License Address Information

City: FRANKLIN  
State: MA  
Zipcode: 02038  
Country: United States

### License Information

License No:	CS-090523	License Type:	Construction Supervisor
Profession:	Building Licenses	Date of Last Renewal:	1/19/2017
Issue Date:	1/17/2011	Expiration Date:	1/17/2019
License Status:	Null and Void	Today's Date:	10/23/2023
Secondary License Type:			
Doing Business As:			
Status Change Reason:	Terminated		

### Prerequisite Information

No Prerequisite Information

No Available Documents

JASON T. Keen  
Franklin

Issue 1/17/11

Renewal 1/19/17

Expire 1/17/19

(3)





ZBA APPLICATION FORM  
SUPPORTING STATEMENT FOR A SPECIAL PERMIT

Please describe in complete detail how you meet each of the following criteria in accordance with Zoning Bylaw Section 185-45(D)(2)(a) referring to the property and proposed changes or uses which are requested in your application. Attach sheets with additional information for special permits for which additional criteria must be met under the Zoning Bylaw.

185-45(D)(2)(A) BOARD OF APPEALS: TO HEAR AND DECIDE APPLICATIONS FOR SPECIAL PERMITS UPON WHICH THE BOARD IS EMPOWERED TO ACT UNDER THIS CHAPTER. SPECIAL PERMITS SHALL BE GRANTED BY THE BOARD OF APPEALS ONLY UPON ITS WRITTEN DETERMINATION THAT THE PROPOSED USE WILL NOT HAVE ADVERSE EFFECTS WHICH OVERBALANCE ITS BENEFICIAL EFFECTS ON EITHER THE NEIGHBORHOOD OR THE TOWN, IN VIEW OF THE PARTICULAR CHARACTERISTICS OF THE SITE AND OF THE PROPOSAL IN RELATION TO THAT SITE. THIS DETERMINATION SHALL BE IN ADDITION TO THE FOLLOWING SPECIFIC FINDINGS:

(1) Proposed project addresses or is consistent with neighborhood or Town need.

*Yes, see Attachment*

(2) Vehicular traffic flow, access and parking and pedestrian safety are properly addressed.

*No Impact; current occupancy will not change.*

(3) Public roadways, drainage, utilities and other infrastructure are adequate or will be upgraded to accommodate development.

*No Impact; current infrastructure is adequate.*

(4) Neighborhood character and social structure will not be negatively impacted.

*No change since the current family structure is in keeping with the neighborhood.*

(5) Project will not destroy or cause substantial damage to any environmentally significant natural resource, habitat, or feature or, if it will, proposed mitigation, remediation, replication, or compensatory measures are adequate.

*No Impact to environmental resources or habitats.*

(6) Number, height, bulk, location and siting of building(s) and structure(s) will not result in abutting properties being deprived of light or fresh air circulation or being exposed to flooding or subjected to excessive noise, odor, light, vibrations, or airborne particulates.

*No Impact; proposed addition is well within zoning setbacks.*

(7) Water consumption and sewer use, taking into consideration current and projected future local water supply and demand and wastewater treatment capacity, will not be excessive.

*No Change; current occupancy will not change.*

EXHIBIT:

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## Licensee Details

### Demographic Information

Full Name:	JASON T KEEN
Owner Name:	

### License Address Information

City:	FRANKLIN
State:	MA
Zipcode:	02038
Country:	United States

### License Information

License No:	CS-090523	License Type:	Construction Supervisor
Profession:	Building Licenses	Date of Last Renewal:	1/19/2017
Issue Date:	1/17/2011	Expiration Date:	1/17/2019
License Status:	Null and Void	Today's Date:	10/23/2023
Secondary License Type:			
Doing Business As:			
Status Change Reason:	Terminated		

### Prerequisite Information

No Prerequisite Information
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No Available Documents
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**EXHIBIT:**

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