

Town of Franklin



Zoning Board of Appeals

Thursday, April 13, 2023  
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, Robert Acevedo, Christopher Stickney, Meghan Whitmore. Members absent: None. 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.

**582 Oak Street - King Construction Inc.**

Abutters: Deborah Donovan, 584 Oak Street.

**7:30 p.m.** Applicant is seeking to construct a 24' x 24' one story attached garage that is 10.6' from the right side setback where 25' is required. The building permit is denied without a Variance from the ZBA. Applicants present: Mr. Bill Yadisernia, engineer; Mr. Paul Dellorco, applicant.

Mr. Dellorco stated that he would like to build a 24' x 24' one story attached garage that is 10.6' from the right-side setback where 25' is required. He stated that he has difficulty with the building area because of the shape of the lot. Mr. Yadisernia stated that there is a hardship because of the shape; it is a very narrow lot. He stated that there was a 5' taking because of the sidewalk. He stated that a variance is needed to build a garage. Chair Hunchard confirmed that this is the house that burnt. He confirmed that there would be no room over the garage.

Ms. Deborah Donovan, 584 Oak Street, abutter, stated that there is a rock wall between her and the neighbors. She stated that there used to be trees there for privacy, but they are gone now. She stated that she does not want a garage right against the rock wall; she does not want to look at that and this is too much. She stated that she wants this farther away from her house. She noted that she has a pool. She stated that unless there was a fence put up or very large trees, that would be the only way. Chair Hunchard stated that there is an existing shed that is closer to her lot line than where this new garage would be. Ms. Donovan stated that there used to be trees there, and she did not even see the house for 30 years. She stated that some of the trees were dead, but not all of them were and now it looks terrible. She stated that she does not want a garage that close. She stated that it is not going to look good, and it is not what she wants to look at. She stated that she does not want to see the lights going into the garage either. Chair Hunchard stated that the driveway is on that side so she is going to see the headlights anyway. Ms. Donovan stated that she has an above ground pool and all her privacy is going to be gone. Chair Hunchard stated that it does not show on the plan where her pool is.

Chair Hunchard asked the applicant if he had any objection to putting a fence up. Mr. Dellorco stated not really, but he would like to make a comment that he cleared the trees to make it look better. Ms. Donovan

stated that the fence would be to get her privacy back on the side yard. Chair Hunchard asked if 20 ft. from each corner of the garage would suffice of arborvitaes. Mr. Dellorco stated that he had no problem with that.

Mr. Stickney stated that the lot is constrained and the arborvitaes are a good solution. Ms. Whitmore stated that it sounded like a good compromise. Mr. Acevedo confirmed that the garage would be attached to the home and the garage doors were facing Oak Street. He confirmed that 40' of arborvitae would be planted. Chair Hunchard reviewed the location of the arborvitaes in relation to the garage for 40' in total. Mr. Brunelli stated that 3' tall arborvitaes should be planted 3' apart. Mr. Dellorco confirmed that he was all set with the arborvitaes 20' from the corners of the garage at 3' apart.

***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 Variance for 582 Oak Street for King Construction Inc. to construct a 24' x 24' one story attached two-car garage that is 10.6' from the right side setback where 25' is required, giving relief of 14.4', with the stipulation that the applicant put in 40' of arborvitae, 20' per side of the closest point to that side yard setback, and the arborvitae should be 3' in height and planted 3' apart, as shown on a drawing titled "Proposed Garage Plan of Land, Franklin, MA" with owner King Construction, Inc., 62 Mill Street, Franklin, MA, prepared by Colonial Engineering, Inc., dated February 27, 2023. Motion seconded by Philip Brunelli. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.***

**237 Pleasant Street - St. John's Episcopal Church of Franklin and The Community Builders Inc.**  
Abutters: Gary Danis, 179 Pleasant Street; Christine Apicella, 27 Padden Road.

**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: Attorney Richard Cornetta on behalf of The Community Builders; John Harding of The Community Builders; Attorney Peter Freeman of Freeman Law; Frank Holmes of Langan Engineering and Environmental Services; Rev. Kathleen McAdams of St. John's Episcopal Church.

Mr. Cornetta stated that at the last meeting they went through the decision with Attorney Bobrowski and the issue of waivers came up, specifically with regard to waiving certain building permit fees. He stated that he believes through much communication with Building Commissioner Gus Brown's office they have resolved the issue, and he believes there should be a letter in the meeting packet.

Mr. Harding stated that the letter was through conversations with himself and Mr. Brown and other Town staff; essentially, they came to a good compromise where they have agreed to waive half of just the building permit fee. He stated that was detailed in the letter sent and the waiver list was updated. Chair Hunchard asked if all the other fees were discussed. He reviewed the original waiver request for all municipal fees. Mr. Harding stated that the updated one is just limited to the building permit fee and only half of that. He stated that they would be paying all other Town-required fees. Mr. Brunelli stated that is what it says in the letter.

Chair Hunchard stated that a letter was received from Mr. Gary Danis, 179 Pleasant Street, abutter. Mr. Danis was present at the meeting and stated his concerns, which were outlined in the letter which was provided in the meeting packet, regarding traffic, sewer, noise, pump station, pumps running overnight, and the loss of woodlands. Chair Hunchard stated that the Town is aware there is some sort of problem at that sewer station, and they are already having someone take a look at it and they are looking at a proposal to have it fixed. Mr. Harding stated that he is working with the Town's consultant to get them out to the site to do a study of the existing sewer system there. He stated that we agree with the ZBA decision to either build a tank on our site to store sewage until low flow times or to improve the town system to address our impact on the sewer system.



Ms. Christine Apicella, 27 Padden Road, requested to share her screen to show a slide from an Economic Development Committee (EDC) presentation but said it was disabled, so she would read the slide. She stated that in February the EDC held a meeting to talk about 40Bs. The slide she wanted to read into the record was from Franklin's Friendly 40B Project Review process under the Local Initiative Program (LIP). Franklin is above the 10 percent affordable housing threshold. It is therefore not under pressure to accept 40B projects; however, it can permit Friendly 40B projects to build mixed income housing under the 40B LIP. A Friendly 40B project is a project that has local support because of a contribution the project can make to the community's need for more diverse housing options, which she agrees this project does. She stated that my position and concern continue to be the second bullet that a Friendly 40B has local support because of contributions that the developer agrees to make to meet local needs for infrastructure, public safety, and land protection. Unlike traditional 40B projects, this allows municipalities to remain in control of most aspects of project design and construction. She stated that there is no reason why this project needed to go through a comprehensive permit for a 40B; it should have gone through a process which allowed for more public review and transparency of process with agencies such as the Planning Board which typically do site plan review. She stated that she understands we are at the end of a several month's process for this 40B, but for the record she wanted to enter this in that there was no reason that this could have not been a Friendly 40B project to truly provide benefits to the community.

Chair Hunchard stated that he is sure Ms. Apicella knows that this is not a Friendly 40B. He stated that this property is 100 percent affordable. He stated that this project developer had already talked to the Town and received their letter from the state before that Friendly 40B process was initiated. Ms. Apicella stated that the Town was above the 10 percent threshold. She stated that she continues to feel strongly that the Town should have had more of an involvement process in the development review than just going before this board.

Ms. Colleen Bond, resident, stated that like her neighbor Ms. Apicella, she learned a lot about the 40B process during the EDC meeting and what is considered friendly and not friendly. She stated that this project is not friendly and the Friendly 40B process was initiated after this project had submitted plans to the Town. She stated that with the 10 percent that we are over, she understands that the Town is planning for the future, but she continues to state that she does not agree that this particular project is in the best interest of our neighborhood as there are traffic issues, the pump station has concerns, and lack of green space for wildlife. She stated that they learned that this project skipped the normal process by going to the state first and getting it approved and then coming to the Town Administrator having the project approved before ever getting to the ZBA. She stated that she has learned from this process that as a developer you can skip some steps and get it approved. She stated that she does not think this is the right project in this neighborhood at this time.

Chair Hunchard stated that this is the only true 40B project he has seen come to the town. Mr. Freeman reviewed the process. He stated that he did not see the EDC presentation. He stated that from a legal standpoint, there is no nomenclature that says friendly or not friendly. He stated that what typically happens is that in order for the zoning to be waived, if it needs to be, an applicant even under a friendly process, whereby it is true that a developer first has to have a municipal support letter and the Town has every right to do their own initial process, and then the Town Council would approve a proposal for a LIP 40B, and then the applicant would still have to go to the state under the LIP program to obtain the project eligibility letter and then come to the ZBA as we have done. He stated it is certainly not a LIP. He stated that they had thought about applying that way, but the state DHCD because this is a tax credit project for the financing insists that we get a project eligibility letter under the low-income housing tax credit program. He stated that in no way were they trying to not work with the Town. He stated that they met with officials and met with staff before they applied. He stated that we agreed to do the mitigation related to the Pleasant Street road situation. He stated that it has been a very good process. Mr. Cornetta stated that he echoed Mr. Freeman's comments. He stated that he feels they have the support of the administration in going through this process. He asked the ZBA to recognize that.



Ms. Nancy Jenson stated that only four acres of the conservation area will be used for the affordable housing; 16 acres will remain natural and intact and there are proposed nature paths as well as public parking. She stated that she hopes that will lessen some of the fears of that. She stated that in regard to traffic, St. John's has been working with the Town and they have agreed on some traffic calming. She stated that there have been some traffic studies and there will be islands installed to mitigate some of the traffic flow and there will be some signage.

Mr. Stickney stated that the addition of the traffic islands and the street signs will hopefully mitigate some of the traffic concerns. Ms. Whitmore, Mr. Acevedo, and Mr. Brunelli had no comments.

***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 Philip Brunelli to accept the proposed decision presented to the ZBA at the last meeting by Consulting Attorney Bobrowski with the exception of the last page waiver requests with the redone waiver requests that were presented this week as a final after they were worked out with the Town. Motion seconded by Robert Acevedo. Discussion: Chair Hunchard stated that for all the people who think this is not transparent, this does not all happen in a vacuum. There is a lot of discussion that goes on. There are a lot of people who represent the town and everyone gets to comment. Everything does not happen during the public hearing and we get letters from the different departments and that is how we end up with this. He stated that we have our consulting attorney draw up the proposed decision and he stated that he is happy with what we came up with. Building Commissioner Gus Brown stated that he wanted to echo what everyone else has said. He said that the process has been transparent, and we will continue to pursue the right way to do this project which we have done from the get-go. He commended everyone for their hard work. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.***

#### **General Business:**

##### **261 Daniels Street - Kyle and Kelle Bertram: Revised Plot Plan Request**

Kyle and Kelle Bertram were present at the meeting. Mr. Kyle Bertram stated that when they originally submitted the plot plan, they forgot to include a front porch to get entry into the house. He stated that the plan has been redrawn, and they decided to go from 28' depth to 30' depth, but it does not change any setbacks. There were no questions or comments by the ZBA members.

***Motion made by Philip Brunelli for a finding for approval of the proposed layout for 261 Daniels Street for Kyle and Kelle Bertram on the revised plot plan request dated March 29, 2023, and stamped as received on April 11, 2023, that they requested to add a farmer's porch and change a small dimension on the rear of the building that does not encroach any more than what the ZBA originally approved in the decision to replace a house that was destroyed by fire. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.***

##### **0 Bent Street - Stephen Kelleher: Request for Tower Relocation**

Chair Hunchard stated that the ZBA approved the tower about one and a half years ago; there were some wetland concerns with the road going up to the tower. He stated that the applicant acquired some more property adjacent to the site. Mr. Stephen Kelleher, applicant, stated that they were approved in December 2021, for the tower; the top 40' is for municipal government use. He shared his screen and showed and reviewed the original submitted plans. He stated that they were coming in off Bent Street. He stated that the Planning Board approved it in October and the ZBA approved it in December. He stated that it was recorded in February 2023 and then he was able to purchase another property in March. He showed a comparison of the original plans and the new plan. He stated that they were in the 100 ft. buffer. He stated that he spoke to the conservation agent and the building commissioner. He stated that he explored the opportunity to do a wetland crossing, but it would have caused significant disturbances to some of the wildlife and vegetation.

He stated they are contemplating moving 100'. He explained the proposed drainage features. He stated that the tower height is going to stay the same. He stated that everything is going to stay the same; it is just going to move up a little bit. He stated that it will also allow them to not cut down as many trees. He stated that they have been working diligently and got the six-month extension. He reiterated that there are slight changes in the road access and tower location.

Building Commissioner Gus Brown stated agreement with Mr. Kelleher. He stated that it moves 100' closer to Bent Street and the road straightens out slightly, other than that he does not see many modifications that will upset the applecart on this one. He asked Mr. Kelleher if he was in contact with the neighbors about this new process. He stated that there is a new resident at 99 Bent Street. Mr. Kelleher stated that he has been emailing an abutter whose fence is over on his land by 17.5'. He stated that he has been working with her to mitigate the impact. He stated that he spoke with her about moving the fence and putting up some arborvitaes. He stated that she just purchased the property.

Mr. Stickney noted that it was reviewed that the mitigation would help with drainage; therefore, he has no issue. Mr. Kelleher stated that he has to go through the NOI process with Conservation to determine the type of system to put in; that will be an ongoing conversation with the Conservation Commission and Mr. Brown. He stated that the design will get vetted out and approved with the NOI and Order of Conditions. Ms. Whitmore stated that it seems like good decisions were made with this. Mr. Acevedo asked for the last revision date of the engineered plot plan. Mr. Kelleher stated March 24, 2023. He stated that they will get updated before construction. Mr. Brunelli stated that it looks like a lot better plan.

***Motion made by Bruce Hunchard for a finding for approval for 0 Bent Street for Stephen Kelleher for Request for Tower Relocation as presented on a revised plan dated March 24, 2023, to show the layout with both the tower and road moved slightly to mitigate less disturbance to the wetland than originally proposed. No Second Made. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.***

#### **Meeting Minutes March 30, 2023**

***Motion made by Robert Acevedo to approve the Meeting Minutes as presented for Thursday, March 30, 2023. Motion seconded by Philip Brunelli. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.***

#### **Comment**

Mr. Brown stated that during the process for the 40B on 237 Pleasant Street the professionalism that the ZBA showed during this hearing and over these eight months is looked at as something that was in my eyes a favorable decision, so I commend you for what you did.

***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 8:32 PM.***

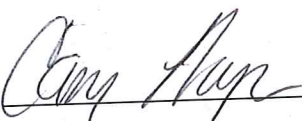
Respectfully submitted,

Judith Lizardi  
Recording Secretary



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Signature 

Date 5/23/23