

**FRANKLIN PLANNING BOARD  
REGULAR MEETING AND PUBLIC HEARING –  
COUNCIL CHAMBERS  
Wednesday, November 12<sup>th</sup>, 2014 at 7:00 p.m.**

**Call to Order:** Acting Chair Veysey called the meeting to order at 7:06 p.m.

- Pledge of Allegiance
- Roll Call

Present: Tim Flaherty, Timothy Stangroom, Ted Starkweather, Powell Glenn, Jo Brown, Brian Sullivan and Planning and Zoning Administrator, Richard Lewis.

Absent: Brian Colburn, Kirk Johnston, Mayor Ken Merrifield, Anthony Giunta, and Michael Freeman.

Member Flaherty was seated in place of absent voting member Mayor Ken Merrifield. Member Veysey was seated in place of absent voting member Brian Colburn.

❖ Approval of Minutes: October 22<sup>nd</sup>, 2014.

**MOTION: Member Starkweather moved and Member Sullivan seconded to approve the minutes of the October 22<sup>nd</sup>, 2014 Planning Board Meeting. All were in favor of approving the minutes as submitted, with the attachment.**

**New Business:**

At this time, the board opted to change the order of the new applications, due to the Adams Boundary Line Adjustment being a quicker hearing.

- P14-10:** Vernal R. and Cathleen J. Adams, Owners/Applicants; Henry Amsden, Agent/Engineer, request a Boundary Line Adjustment to amend the lot lines as follows: 1029 Hill Road, Map/Lot # 026-010-00, would change increasing from 1.840 acres to 1.91 acres; and, 1043 Hill Road, Map/Lot # 026-009-00, would change decreasing from 6.490 acres to 6.41 acres. The property is located in the C Zone (Conservation District) where the minimum requirement is 5.17 acres. The lot frontage is not changing.

**MOTION:** Member Sullivan moved and Member Starkweather seconded to accept the application of Vernal and Cathleen Adams for a Boundary Line Adjustment of parcels located on Hill Road. All were in favor.

Mr. Vernal Adams was present to speak. He stated they are straightening a line that currently cuts across his driveway, so that they could possibly sell one of the lots.

Member Flaherty asked if the houses were already located on the lots and it was indicated that they are.

**Public Comment:** None.

**Board Discussion**

Richard Lewis stated that he gave the board a new plan this evening that showed the location of the houses on the lot and corrected some basic errors. He stated the area being taken away from lot 026-010-00 is 21,260 square feet, but 24,800 is being added, so the lot will be more conforming, rather than less conforming.

**MOTION: Member Sullivan moved and Member Starkweather seconded to approve the application, referenced as P14-10, of for Vernal and Cathleen Adams to adjust the boundary lines between**

**parcels 026-009-00 and 026-010-00, with the conditions outlined in the draft decision reviewed by Board. All were in favor and the motion passed.**

- **P14-09:** New Hampshire National Guard, Owners/Applicants; The H.L. Turner Group Inc., Agent/Engineer, request a courtesy hearing regarding the proposal to construct a 180-foot tall communications tower at the Franklin National Guard Armory facility located at 300 South Main Street, Tax Map/Lot # 099-402-00, B-1 Zone (Low-Density Business and Commercial District). As this is a governmental agency, no formal approvals are necessary.

Mark McLeod, from HL Turner Group of Concord, stated he was present this evening and was representing the National Guard. The property is located at 300 South Main Street. They are proposing to construct a 180' emergency communications tower. He stated initially the tower will be used for emergency communications for the National Guard, but they would allow others to utilize the tower in the future.

He showed a plan of the lot, with the fall zone. He stated the location of the tower is where it will work best with the existing facility and for the fall zone. The fall zone crosses the property line only onto one property, which is the Elks Club vacant land property and the area it crosses into is a much wooded area. Nearly all of the fall zone will be maintained on the National Guard lot. He stated they have received a letter from the Elks Club indicating they are aware of the fall zone and have no problems with this proposal.

Mr. McLeod handed out pictures showing the tower from the balloon test that took place on October 28<sup>th</sup>, 2014, showing the height of the tower. The balloon was a 5' in diameter balloon. The tower was superimposed onto the pictures with the top of the tower being where the balloon was. The pictures were taken straight on to the property, from the Plantation Apartments just northwest of this property and the third picture was from the Blue Rock Property and Elks Property just south of this lot. Other pictures were taken from other locations within Franklin, but there were not many other direct sight lines to the balloon.

Member Flaherty asked if the tower was used for alternative locators, would these be Franklin Police and Fire or other communications companies such as Verizon, ATT or another. Mr. McLeod stated it could be for either. Captain Logan Kenney, of the National Guard, stated they do not have any plans for any co-location by private companies right now; but have looked at allowing Franklin Police and Fire to utilize the tower.

Member Flaherty asked if the co-locator was Verizon, if they would have to come back to the board for approval. Richard Lewis stated that the city has carriers on their water towers, as well as the carriers on the CN Brown facility. He stated there was a recent statute change that gives more flexibility for colocation and only a building permit is needed. He stated the only time they have to come back to the board is for a new tower or if the size of the tower is being increased by over 10%. Member Flaherty stated he was asking because the Federal Government will be making money off the proposal but the city would not be.

Mr. McLeod stated the primary intention is for National Guard use only.

Member Starkweather asked about whether there would be a light on the top of the tower. Mr. McLeod stated that there aren't any landing locations within 20,000 feet. It was pointed out to him that there is a heliport at the Franklin Hospital and there are also some residents of Franklin that own small airplanes. Mr. McLeod then stated that they would definitely have to put a red beacon light on top. There were questions about the light and it was determined that the light is regulated by the FAA and that they would have to meet all FAA requirements. It was stated the light would point up to let planes know of the tower and wouldn't be a light like at Thompson Hall tower where the light shines on the flag, as that was a flag pole tower.

It was asked of Mr. McLeod if there would be a generator. Mr. McLeod stated he is not sure if the generator would be housed within the base, but they feel it would be inside the building. If there was one outside, it would be enclosed and sound proofed.

Member Starkweather asked about the construction start time and how long it would take to build the tower. It was stated they are uncertain of when they will begin construction and that it should take 2-3 months to build once they start.

Public Comment: None.

### Board Discussion

Richard Lewis stated that he wasn't able to view the balloon test. He asked if anyone had called the National Guard about the balloon. Captain Logan Kenney stated they didn't receive any calls and Mr. Lewis stated his office also did not receive any calls.

Richard Lewis stated that there are no approvals needed by the board this evening and that this is a courtesy hearing.

Angie Carey asked if a building permit would be necessary, but no fees charged for the permit. Captain Logan Kenney stated they have pulled all permits in the past as a courtesy, but they are not necessary. He stated they will most likely pull permits for this project and have the City inspector come out and do inspections, even though this is not necessary. He stated they are our neighbors and they want to keep a good relationship with the City.

### Old Business

It was stated that the discussion on the proposed setting of the public hearing for the zoning changes would take place at this time. After a brief discussion, it was determined that the board would take public input first before the discussion.

### Public Comment

Paul Morrissette was present to speak. He stated that he has been a businessman in Franklin for 30 years. He owns the Regal Auction and is a Real Estate Investor. He stated from bridge to bridge he owns approximately 40% of the buildings. He stated it is no secret that there are problems downtown, which include fires, vacancies and the condition of downtown; no one is happy with the conditions of the downtown. Todd Workman has also picked up a bunch of properties downtown and between the two of them and the owner of the Business Center they own approximately 70% of the buildings downtown.

He stated the way the business owners are treated and the way the town treats new businesses is not good. The owners try and fix buildings and motivate change, but they don't get any help from the City. He stated he is ready to sell and get out as there is no cooperation from the City.

He stated Todd Workman came in and thought the city would get behind his ideas for fixing up the city. He was looking at investing \$25,000 into a bike trail, but he received open hostility from the City Manager. He stated all the business owners face an almost open hostility from the city and receive no help or cooperation.

Mr. Morrissette stated he has always been a conservative; however, marijuana is evolving. Recreationally it is still not accepted. There will be four Medical Marijuana Dispensaries in the State of New Hampshire. He stated towns cannot say no, as this is something the State wants.

Mr. Morrissette stated he is concerned about the downtown and the City has vilified the downtown property owners. No matter what property owners try to do or how they try to help, they are treated like the bad guys. He has studied Medical Marijuana Dispensary's very carefully. He stated this is medicine, people need medical cards to be able to obtain it and the state controls everything, right down to the name. The state is only going to license four people to cultivate. He stated it is no more than going to CVS to get a prescription for Percocet. The annual license fee is \$80,000. This would be the opportunity the city has been looking for to bring other businesses and life to the city.

Mr. Morrissette indicated he owns the Odd Fellows building and has spent \$10,000 to advertise the vacant store front space and hasn't had any calls. He is paying taxes, water and sewer bills, and money to upgrade the buildings and struggles to pay his bills. A change needs to be made to the downtown. This business would bring in patients from out of town who will give their business to Franklin.

Four months ago, Mr. Morrissette called the Mayor. He stated since that time he has spent valuable time and money looking into this process. The Mayor is against Medical Marijuana Dispensary's and even went to the state to speak against it when it was going through the legislature.

Mr. Morrissette stated he has been looking into the old Advanced Circuits property that he previously owned. He is looking to see about doing the cultivating here and the selling downtown. He stated the cultivation center needs approximately 40-50 thousand square feet and would bring in millions of dollars to the City. The security plans alone would be a major investment.

He stated that upfront he needs good partners and has allied himself with a premiere company in USA that does the permitting for Medical Marijuana. He stated he needs to make the decision whether to go ahead, within the next few days, and pay the \$100,000 consulting fee. He stated he could even lose as his odds are not even 50/50. He is willing however to take the risk to help the whole town. The RFP is going to go out on the 20<sup>th</sup> of November, and they need a letter that the building is located within the property zoning and meets the zoning guidelines.

He stated one of the conditions and part of the application is receiving a letter from the city that the location of building to be utilized meets the current zoning, and it cannot be within 1,000 feet of a school and the Regal building is located 1,800 feet from the high school. Also the security of the building is always a concern and Mr. Morrissette explained that the Regal building is like a bunker. The Police Station is within the line of sight of the Regal building. The hospital is less than a mile away.

He stated that there is going to be a seminar in Rochester regarding how to bring businesses where these Dispensaries will be built.

Mr. Morrissette stated that when he spoke with Richard Lewis he was informed that the building meets the current zoning for this type of business, as the definition of retail includes the sale of drugs. He then went forward and spent time and money looking into this. He stated that as of last week, the last step for him to submit the RFP and the \$100,000 check was just getting the letter from the City on the Zoning. He then brought a letter into Dick on Friday and was given the memo from Richard on the Zoning Change. The language is to strike the word Drug from the Retail Businesses and add a definition for Pharmacy's, which would be allowed in the B-1 and B-2 Zone, so he thought he had the backing of the city, until he learned that Pharmacy's however would not be allowed in the Downtown Overlay District. This makes the dispensary illegal in the downtown. He stated it makes no sense that currently the downtown Overlay district makes a restaurant receive a special exception. The downtown overlay district runs from bridge to bridge. Mr. Morrissette stated that Todd Workman wanted to be here tonight, but has submitted a letter. He stated Dick then wasn't in the office on Monday for him to speak with. He finally touched based with Richard this morning and this is when he found out that the medical marijuana dispensary would not be allowed.

He stated he had given information to Richard, Elizabeth, the Mayor and is now finding out that the City is trying to Spot Zone against him. He then read the definition of spot zoning from Wikipedia, which states:

*Spot zoning is the application of [zoning](#) to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with a city's master plan and current zoning restrictions. Spot zoning may be ruled invalid as an "arbitrary, capricious and unreasonable treatment" of a limited parcel of land by a local zoning ordinance.<sup>[1]</sup> While zoning regulates the land use in whole districts, spot zoning makes unjustified exceptions for a parcel or parcels within a district.<sup>[2]</sup>*

*The small size of the parcel is not the sole defining characteristic of a spot zone. Rather, the defining characteristic is the narrowness and unjustified nature of the benefit to the particular property owner, to the detriment of a general land use plan or public goals. The rezoning may provide unjustified special treatment that benefits a particular owner, while undermining the pre-existing rights and uses of*

*adjacent property owners. This would be called an instance of spot zoning. On the other hand, a change in zoning for a small land area may not be a spot zone, if it is consistent with, and furthers the purposes of the general area plan.*

*When the change in zoning does not advance a general public purpose in land use, courts may rule certain instances of spot zoning as illegal. The [Standard State Zoning Enabling Act](#) states "all such regulations shall be uniform for each class or kind of building throughout each district."<sup>31</sup> It may also be an invalid exercise of authority, if spot zoning is not a right conferred upon the body by the state's zoning enabling statute, because it deviates from the plan set out by the enabling statute."<sup>32</sup>*

He stated that if the board gives their stamp of approval, they are allowing spot zoning and he is going to sue to the City and so is Todd Workman. He stated not allowing it because where he has requested, but allowing it in the same zone on the top of the hill, is spot zoning.

He stated the city has vilified himself and Todd Workman and continues to do so. He stated this is generally what happens at city hall and they could tell the board story after story regarding how anti-business the City is.

Mr. Morrissette stated he was going to call the papers to have them come to the meeting tonight, but didn't want to bring any bad publicity to the City. He stated he is tempted to release the materials that he has. He stated he has paid over a million dollars in taxes in the last 30 years and now the City is trying to spot zone against him. Mr. Morrissette stated he doesn't understand why the City would want to spot zone from Bridge to Bridge in this ugly town, keeping good businesses out. He stated the town wants to dictate to businesses what can be done and wants the facades redone; when the business owners are having a hard enough time paying their bills. Until the City or someone takes a position to be business friendly, more things like what happened at Packer's is going to continue happening.

Richard Lewis stated that he put on the board members desks this evening the letter from Todd Workman.

No further discussion- Public Comment was closed.

### **Old Business**

- Discussion on Setting Public Hearing on Zoning Amendments.

Acting Chair Veysey stated the decision before the board is whether to schedule the public hearing. He stated having the public hearing would allow for public comment like what was received this evening. Member Flaherty asked if the board is just scheduling the public hearing.

Mr. Morrissette was permitted to outline that the problem he has is the bid needs to be in at the end of the month. If a public hearing is scheduled for December and then this goes to the City Council for a public hearing and approval it wouldn't be completed until January or February, and the window of opportunity would be closed by that time.

Member Brown asked if a public hearing could be scheduled in the next few days and she was informed that the notice needs to be in the paper at least 10 days prior to the meeting and as the number of affected property owners is under 100 each property owner needs to be sent a notice by first class mail and so the time is still off for the submission.

Member Flaherty asked when and why this zoning change was brought forward. Richard Lewis stated that it came up about 6-8 weeks ago when Paul came in and spoke with City personnel in relation to this. He stated he learned of the proposal from Paul approximately six weeks ago. The idea of the zoning change has surfaced in the last week.

Member Flaherty asked who generated the information and Mr. Lewis stated the City Attorney. He stated that City is in opposition to this type of facility, specifically in the downtown area, and this was outlined by the Mayor's Drug Task Force and the Police Chief.

Member Brown asked if the legislation has been passed and Richard Lewis stated it has. Member Brown indicated the City's position concerns where this use should or should not be allowed at and Richard Lewis stated that is correct. He

stated there is expected to be 30-40 responses or RFP's submitted and he agrees this is uncharted territory. Mr. Lewis stated that as Paul Morrisette stated, medical cards will be provided and permitting and fee scheduling will be done by the State. Rules will be set and approved by DHHS soon.

Paul Morrisette stated the approval will be done November 20<sup>th</sup> and then the RFP will be sent out. He stated it is \$100,000 just to apply and this doesn't guarantee that he will get approved. He stated he could bring in 300 people to speak in favor of this. If the board holds a public hearing and then the zoning change is sent to the City Council it will be months until this is resolved and it would be too late for him to file the RFP.

Member Brown asked why there is a resistance. She stated she can't imagine that the city is not interested in encouraging business opportunities. She asked if the board holding this hearing is an ideological decision. The State has gone through great lengths to set rules and asked what the City is afraid of. She asked if the City was afraid of the image and asked what that image would be, that the city has a State sanctioned business downtown? She stated the city is not looking at this from a business point of view. She stated this is not going to be the same as Lazy Daze and the City needs to take the emotion out of the decision making as the City is overreacting.

Member Stangroom stated that the City of Concord is taking up the same issue, as well as other communities. Member Stangroom asked if by changing the ordinance this doesn't allow any businesses in the downtown area, bridge to bridge, to sell aspirin.

Acting Chair Veysey stated that the board doesn't have enough information on what the rules are going to be to make a determination. Member Brown stated that in the past there have been drug stores.

Member Flaherty stated the city has dealt with drug issues and the concern with this business is the concern of the unknown. He stated other communities, in other states that allow Medical Marijuana Dispensary's, should be asked about any problems that they have had. Paul Morrisette stated recent poles show that 72% of the public are in favor of the bill.

Acting Chair Veysey stated the board needs to take a serious look at the regulations and not make a hasty decision and pass an ordinance without background information or the board will find themselves dealing with issues like the cell towers. The cell tower ordinance was passed hastily and ultimately the city lost money on court cases as they lost the cases. He stated the questions should not be asked of those states that allow recreational marijuana use. Member Brown stated the key issue is this is medical marijuana and not recreational.

Member Flaherty stated that this meeting was pushed fairly quickly. He stated all parties, including police, fire, Mayor, City Manager, Drug Task Force and Planning need to meet and discuss this issue to see what the driving force really is for the ordinance changes. He did however state that it appears that December 1 is too late for the groups to meet as Mr. Morrisette needs a decision. Member Flaherty stated the other option is for the board to not address this issue at all.

Mr. Morrisette stated if this change is made, he will be getting a lawyer and suing the city.

Member Starkweather stated he is torn. If this is passed, then this would prohibit Dan's Pharmacy from coming back into the downtown if they wanted to. He stated this is being pushed way too quickly. He stated he understands Paul's point and though he may not agree with him 100%, he wouldn't be a good business man if he wasn't adamant about his point. There are a lot of unknowns as this is so new. People would have to get prescription cards, go to an approved place to get the items and this place would be approved and regulated by the State. There would only be four in the state. He stated this is not much different then someone going to the doctors and getting a prescription. He stated if they have a prescription it isn't any different then Percocet or any other drug.

**MOTION: Member Starkweather moved and Member Sullivan seconded to table the setting of a public hearing for the Zoning Amendments regarding Pharmacy's and Retail Businesses.**

At this time, there was a lengthy discussion by the board. The key points for the tabling of the setting of the public hearing were as follows:

1. Board has been too hasty in the past making reactive zoning changes that have cost the city in legal expenses;
2. The board is in a precarious situation and without more information this decision should not be made and this should not be rushed and should be reviewed at workshop meetings.
3. The board is unsure how restrictive the State is going to be and should have the rules and regulations prior to having the hearing; and,
4. The city should not act hastily and emotionally on a zoning change like this and more information should be gathered, a meeting should be scheduled with Police, Fire, Manager, Drug Task Force, Mayor and Planning and other City Staff to review this prior to putting it forward.

It was stated that if the board tables this and does not schedule the public hearing then Mr. Morrisette could submit his RFP under the current zoning regulations, where this is an allowed use. Mr. Morrisette's concern was what creates vesting rights and if he applies and gets approved and in the meantime the City holds a hearing in a few months and the regulations have changed what then. Mr. Morrisette stated the board should review the regulations on Therapeutic Cannabis, as this is very restrictive. The state is going to regulate what the business names can be, that there will be no blinking lights on signage and added security is needed. The rules are very tough.

It was determined by the board that before this issue is taken off the table, a lot more information is necessary.

Mr. Morrisette asked for clarification regarding the tabling of the setting of the public hearing. Member Sullivan stated no public hearing is being set tonight. Mr. Morrisette asked if he could get a letter indicating the use is allowed in the zone. Member Sullivan stated that Mr. Lewis can write a letter indicating that under the current zoning regulations the use is an allowed use. Member Starkweather stated that by tabling this, the Board is leaving the regulations as they currently are, and it could come off the table, but once Mr. Morrisette starts the business he would be grandfathered.

Mr. Morrisette asked if this could be brought off the table and Member Veysey stated that it could, but the board could again vote to table it.

Richard Lewis stated that grandfathering is based on vesting. There are clear regulations as to vesting for well established site plan and subdivision projects, but for this new 2013 law there is no clear legal guidelines.

**All were in favor of tabling this matter. Motion passed.**

Richard Lewis stated that a public hearing will not be held and this will not be sent to the City Council for approval.

### **Other Business**

- ❖ 2015 Meeting Dates: Acting Chair Veysey stated the 2015 Meeting Dates were put in the package.

### **Planner's Update**

Richard Lewis stated he has been very busy and hasn't been able to spend a lot of time on the Master Plan. He stated that there is a group from Colby Sawyer who are focusing their energy on the downtown and some options. He stated it would be good to get the information from them before focusing on the Economic Development and Downtown. Member Flaherty asked if they were talking to the downtown property owners and Richard Lewis stated he believes they are.

Member Brown stated the board should hold off on any more meetings on the Master Plan until the CIRD program, which is in March. Richard stated the preliminary workshops will be in February and then the CIRD would be in

March or April. Member Brown stated that the City was fortunate to be chosen for the CIRD and this information should be incorporated into the Master Plan. Richard Lewis stated the information should be received by May or June and then discussion on the Master Plan can be picked back up.

Brian Sullivan stated that Richard Lewis won't tell you this, but he has been working with Elizabeth and Brian on a number of projects, that should be tied into the master plan. He is working on the following:

1. Hazard Mitigation Plan for Haynes Brook;
2. Brownsfield grant finishing up for South Main Street;
3. Brownsfield grant application process for Lucky Lenny's and Ciao Pasta; and,
4. Brownsfield cleanup project for a property on Chance Pond Road.

Brian stated this is just some of the things Dick has been working on and the Master Plan discussions should be delayed until this information is done.

Member Stangroom asked about the drainage at the Family Dollar Store. Richard Lewis stated that there have been no resolutions between the abutter and Family Dollar. Several items are needed before a CO will be issued. Member Flaherty asked if the drainage was worse, the same or better. Richard stated the approved plan showed different grading with a swale that would take water from the parking lot and the building back to the detention basin. Accomplishing the grading within the approved plan cannot be done with the current grades. Sign off by all parties is needed.

Brian Sullivan stated the problem here is that the board has allowed waivers for businesses such as, CVS, McDonald's and other properties from the requirement of onsite engineers. This is a risk the city has taken and this is the first time it has backfired. It was indicated that future development of this magnitude need to have a third party engineer involved. It was indicated the building and paving are already done on the site.

Richard Lewis stated the Family Dollar is suppose to be submitting an application for a subdivision, subdividing off the back portion of land that would be deeded to Feuerstein and merged with their lot.

Member Starkweather asked about the garage on South Main Street, across from the LRGH property. Richard stated they have done work on the building and the lot was paved. The business is going to be a used car business.

Richard stated he sent an application in for Brownsfield clean up for the Ciao Pasta and Lucky Lenny site at the end of October. He stated it was a good viable application and he is hoping it will be approved.

### **Adjournment**

**MOTION: Member Sullivan moved and Member Starkweather seconded to adjourn the meeting of November 12<sup>th</sup>, 2014 at 9:05 p.m. All were in favor and the meeting was adjourned.**

Respectfully submitted,  
Angela M. Carey  
Planning and Zoning  
Assistant to the Administrator