

**FRANKLIN ZONING BOARD  
REGULAR MEETING AND PUBLIC HEARING  
CITY COUNCIL CHAMBERS- CITY HALL  
Wednesday, October 6<sup>th</sup>, 2010, at 7:00 p.m.**

**MINUTES**

**Call to Order:** The meeting was called to order at 7:05 p.m.

- ❑ **Salute to the Flag**
- ❑ **Roll Call**

**Present:** Marty Russo, Kathlene Fleckenstein, Floyd Sargent and Don Gagnon.

**Absent:** Cynthia Styles, Donna Tully and Chuck Farmer.

**Acting Chair Styles sat Member Gagnon in place of absent voting Member Styles.**

- ❑ **Approval of Minutes: of the September 1<sup>st</sup>, 2010 Zoning Board Meeting**

**MOTION:** Member Sargent moved and Member Gagnon seconded to approve the minutes of the September 1<sup>st</sup>, 2010 Zoning Board regular meeting. All were in favor and the motion passed.

**New Business**

- ❑ **Z10-13:** Diane Ball, Owner; Diane Ball and Gerald Cushing, Applicants, request an Agricultural Waiver per 674:32-c, regarding the placement of a horse barn that does not meet the Zoning Ordinance setback requirements. The barn was built in 2006, have acquired a building permit and a Certificate of Use Permit. The property is identified as being located on A Street, Tax Map/Lot # 083-006-00 and the house lot is identified as 083-007-00, C Zone (Conservation District). If this application is denied, then the applicant will request an Equitable Waiver of Dimensional Requirements or a variance.

Diane Ball, of 49 A Street, was present to speak for her application.

Acting Chair Russo indicated to Ms. Ball that there were only four voting members this evening on her application and that she would need three affirmative votes for the action to pass. He asked if she would like to proceed and she stated that she would.

Diane indicated that she pulled her building permit in 2006, and upon getting the permit approved she took out a loan to build the barn. She stated she would not have taken out the loan if the permit had been denied. She then received her Certificate of Use/Occupancy Permit in November of 2006. She stated she was working on good faith and submitted the permits as she had been indicated to do. She added that she has been paying taxes on the property for four (4) years.

Richard Lewis stated that he gave everyone a copy of his August 26, 2010 letter. This letter outlines the violation, the background, the ordinance and the remedies. Ms. Ball has focused first on the agricultural waiver, then the variance or the equitable waiver.

Mr. Lewis stated this remedy, Agricultural waiver, is a fair remedy for the use. In the memo he stated he provided the RSA regarding Agricultural waivers, and brought the boards attention to the

second paragraph, at the end, which outlines the criteria that need to be met for the applicant to be eligible.

The board asked for verification on their options. Richard Lewis stated that if the Agricultural Waiver was approved then no other approvals would be necessary and the applicant would just withdraw the other two applications. These other two applications were filed, with one filing fee and abutters notification, to cover all the bases. Richard also clarified that the approval is for what is there now, if the property transferred hands then the approval for the barn and the horses would be carried over, but anything new would need approvals.

It was indicated to the board that the use is allowed and the discussion is regarding the setbacks and not the use.

### Public Comment

Diane Kozak indicated that she resides at 15 A Street. She stated she has lived there 17 years. She stated that if she didn't know the applicants, she would never know that there were horses on the property as there are no noises or odors. She stated that the animals at Diane Ball's residence are not a problem.

Ray Emerson indicated that he owns property on A Street, however he resides on Punch Brook Road. He stated he has no problem with the barn or the horses, they are not obstructive and the board should approve the application.

There were no further comments.

### Board Discussion

Richard again indicated to the board that if this approval is granted then no further approvals are necessary.

**MOTION:** Member Sargent moved and Member Fleckenstein seconded that the Zoning Board of Adjustment, under the authority of RSA 674-32-c, move to approve and grant a waiver to Diane Ball, Owner; Diane Ball and Gerald Cushing, Applicants, from the provisions of the Franklin Zoning Ordinance, Section 305-26.A which require a setback of 200-feet from all property lines for any building housing animals, and any other applicable zoning restrictions in order to allow the applicants to keep and maintain the existing 36 ft x 36 ft barn in its current location and allow the keeping of the horses which utilize said barn. The property is located at 49 A Street and is identified as Tax Map/lots 083-006-00 and 083-007-00; the application is referenced as Z10-15. In support of the waiver the Board finds the following:

- 1) The property is located in the Conservation zoning district, which allows for low density residential use, as well as agricultural activities.
- 2) The barn is located on tax map/lot 083-006-00; the owner of this lot also owns the abutting lot [tax map/lot 083-007-00]. The Board does recognize that these two lots are separated by a right-of-way which is owned by the regional solid waste cooperative and which leads to the PSNH power line easement area, but the right-of-way is not actively and regularly used and for all intents and purposes the two lots of the owner function as one. Together the two lots are approximately 2 and ¼ acres in size. A significant portion of the barn lot is generally level, with some sloped areas falling off towards A Street.
- 3) The existing agricultural activities do not, in the opinion of the Board, have a demonstrated adverse effect on the public health or safety, of the value of the adjacent property for the following reasons:

- a. A 9/22/10 site visit by the Planning and Zoning Administrator revealed that the barn and the surrounding area is well kept and maintained, with no problematic manure management problems or other site management issues or concerns.
- b. The barn housing the horses is approximately 212 feet from the residential structure of the owner thus reducing any health or safety issues that might result from having the building housing the animals too close to the home.
- c. The subject property is bounded by property owned by the regional waste cooperative, a power line easement area, a private dead-end road, an undeveloped parcel to the west, and the Winward/Flanders property to the south. The barn is approximately 229 feet from the property line between the applicant and the abutter to the south; thus this dimension meets the setback requirements in the Franklin Zoning Ordinance.
- d. The applicant has provided evidence to the Board that horses have been kept on the property since 2001, and there is no evidence that any health or safety issues or problems have been identified since that time.

Members Fleckenstein, Sargent and Russo were in favor of this motion and Member Gagnon was not in favor. Motion passes on a vote of 3-1.

Diane Ball indicated that she would like to withdraw her application for the variance and the Equitable Waiver of Dimensional requirements.

- **Request for a Rehearing: Z10-10:** Bronwyn Asplund-Walsh, Owner/Applicant, requests a Rehearing on the action of the Board to uphold the Decision for the denial of a seasonal conversion for a unit within an existing structure, on property located at 296 Webster Lake Road, Tax Map/Lot # 035-402-00, LP Zone (Lake Protection District).

Member Russo recused himself as he is an abutter. Member Sargent also recused himself.

There was a lengthy discussion on the action to take place this evening. It was indicated that there are four members here, but two have had to recuse themselves. A quorum is three members and thus this application cannot be discussed this evening. Richard Lewis stated that the board not taking action allows the applicant to proceed in Superior Court. Two members of the board sent emails just today indicating they were sick.

Angela Carey indicated it would be as if only two members had shown up for the meeting and the meeting would not have been opened and would not have taken place.

Mrs. Asplund-Walsh indicated that for the record she would like to object to the comment that this is as if there was no quorum and the meeting was not taking place. She stated the meeting would be rescheduled.

Member Gagnon stated that he would like the record to reflect that based on there being a lack of a quorum, no discussion could take place and no decision could be made on this application. Member Fleckenstein agreed.

**Old Business:** None.

### **Planner's Update**

Richard Lewis stated that Angie had sent an email out with the information on the fall OEP conference, in Whitefield NH. He stated that if any member would like to go, they can register on line and that the city has some funds for these conferences. He stated the packets and power points that are used at the conference are available on line after the conference and the members of the board could let him know what questions or issues they would like him to focus on and they could

do a workshop meeting for about 1-1 ½ hours. He indicated they would be looking at January or February for this workshop meeting.

**Other Business:** None.

It was indicated to the board that the land use and planning books need to be ordered and that two emails have been sent, but not everyone has responded. The members that were at this meeting indicated they did not want a land use book.

**Public Comment:** None.

**Adjournment**

**MOTION: Member Sargent moved and Member Fleckenstein seconded to adjourn the October 6<sup>th</sup>, 2010 meeting of the Zoning Board of Adjustment, at 7:45 p.m. All were in favor and the motion passed.**

Respectfully submitted,

Angela M. Carey  
Planning and Zoning Administrator