

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, November 3rd, 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: Cynthia Styles, Chuck Farmer, Marty Russo, Kathlene Fleckenstein, Floyd Sargent and Don Gagnon. Donna Tully arrived at 8:25 p.m.

- ❑ **Approval of Minutes: October 6th, 2010 Zoning Board Meeting**

It was indicated that Member Sargent was present at this meeting and the minutes would be amended to reflect that he was present.

MOTION: Member Sargent moved and Member Fleckenstein seconded to approve the minutes of the October 6th, 2010 Zoning Board regular meeting as amended. All were in favor and the motion passed.

New Business

- ❑ **Z10-14:** Francois P. Pellerin, Applicant/Owner, requests an Equitable Waiver of Dimensional Requirements, per RSA 674:33-a, for a shed that was built with all permits in place to be located 10' off of the property lines. The shed was constructed in 2006 and a survey was done on the abutting property in 2010 that showed that the shed was 7' from the property line instead of 10'. The property is identified as 9 Upland Drive, Tax Map/Lot # 100-060-00, R-1 Zone (Low-Density Residential District). If this application is denied, then the applicant will request a variance.

Francois was present to speak. He stated that he put in a permit for a shed at the same time that his garage was built, in 2006. He stated as he measures it today one corner is 7' from the property line and the other corner is 10'5" from the property line. The rest of the setbacks are met. He stated the shed is nice with vinyl siding and a white aluminum wrap. The shed is not a non-conforming use. He then gave the board an estimate of the cost to move the shed, breaking the shed down, removing the concrete, pouring new concrete and reconstructing.

Heather Leavitt was also present. She stated she presumes the board has all the paperwork that was turned in with the permit. She stated they were under the impression that the shed was at least 10' from the property line, until the survey by the abutter was completed. She stated the cost to move it outweighs any harm that the shed may cause by being 7' from the property line. There is no risk to any abutters and the shed does not decrease abutter's property values. The shed is used for storage.

Francois stated the distances given are from the slab.

Board Questions

Member Russo asked what the dimensions of the shed are and Mr. Pellerin stated it is a 12' x 12' shed.

Member Gagnon asked how long they have owned the property and they stated they have owned it for 6 years. He stated if the shed was on blocks, it would have already been moved, but it is on a slab and the shed is nailed to the slab. He stated that he thought he met the setbacks when he constructed the shed.

Member Gagnon asked if there were any prior property markers between the two properties that were definitive, prior to the survey. Mr. Pellerin stated there was woods between the properties, and that both himself and the neighbor removed trees. He stated he cleared that portion of the lot to build his garage. He stated he likes to be accurate and this was an honest mistake.

Public Comment

Meagan Rose, of 7 Upland Drive, was present to speak. She stated the shed is not ugly or an eye sore. She then gave the board pictures and stated that it is hard to tell how close or how far the shed is from the property line by the pictures, but she wanted to show the angle of the property.

Mrs. Rose stated they bought the property in 2005 that this is their first home and they were very excited as this is a nice neighborhood. She stated initially they were approached by the neighbor, when they cleared pine trees on their lot due to a child who had asthma. She stated that the Pellerins were also doing work on their lot at the same time, and they were talking about the lot line.

Mrs. Rose stated that they have asked the Pellerins to move items and it just doesn't get done. She stated they looked into the boundary line and bark mulch, a shed and a tree fort were found to be either too close to the property line or over the property line.

Mrs. Rose stated that they have had other situations arise with the neighbor and things have escalated, thus the reason for them having the survey done late spring or early summer. There were two markers, and how you would draw the line they were unsure of. Once the survey was done, it was determined that they owned further onto the abutters property than was believed. She stated she did not feel comfortable taking her own measurements as to the distance from the line to shed, and added that it looks more like it is 5'-6' from the property line at the closest point.

Mrs. Rose stated that regardless of the cost or how it looks, they have had no luck asking the abutter nicely to move it or do other things. She stated they just want the property line clearly marked and would like his structures moved to meet the regulations. She stated that if some time down the road they wanted to sell the property they want no outstanding issues. All of the issues with the neighbor have added up, and she wants everything to be done by the rules so there are no questions.

Member Sargent asked if the shed was still completely on the Pellerin's property and Mrs. Rose stated it was. Member Sargent asked if the encroachment was 3' and she stated approximately, and that it is closer than originally planned and closer than the rules allow.

Member Sargent asked if she had a copy of the survey and she stated that she does not. She stated that she has the dimensions, the markers have been reset, and stated there were problems on two of the lot lines, affecting five abutters.

Member Gagnon asked what was used as markers prior to the survey. Mrs. Rose stated there were no posts along the property line, and her husband had just run a string from one marker to the other marker. Since the survey was done, the surveyor has put in rebar posts and wooden stakes, and did the neighbors lots too.

Member Sargent asked if there was currently anything on their property that is Mr. Pellerin's and Mrs. Rose stated the bark mulch they moved themselves, as they just wanted a nice clear boundary line.

Member Farmer asked if the granite bounds were present before the survey and Mrs. Rose stated they were. Member Farmer asked if the bounds were clear, and Mrs. Rose stated all of them were clear but one that was

covered by some bark mulch. The front lot line of Mr. Pellerin's property use to be steeper, but the rear marker was clear.

Member Farmer asked if the lot line was clear in 2006 and Mrs. Rose stated there were a significant amount of pine trees. Member Russo asked if they would have been able to run a string along that property line with the trees there and Mrs. Rose stated that you could. Mr. Russo asked if there would be no interruption in the string from trees and Mrs. Rose stated the slope of the properties would have hindered the view. Mr. Russo asked if Mrs. Rose was notified of the building permit and Angela Carey stated that there is not a notification process for building permits if the lot exists and the owner has indicated all setbacks are met.

Mr. Pellerin and Ms. Leavitt indicated that in 2006 there were trees down the entire property line, and that the rear marker could not be found. The rear marker was not found until the survey was done. Mr. Pellerin stated he took his numbers from the Leach's property and were going for approximately 11' off the property line. He stated if they knew this was the location of the property line then the shed would be further away. Ms. Leavitt stated the biggest point is that they were trying to be helpful with their neighbors, for landscaping ideas. There is now a long open boundary line; they had lots of overgrowth which the bark mulch was put in to help with the lawn issues along the boundary line. Ms. Leavitt stated they were trying to help the aesthetics of the properties and that they had spoken with the abutter prior to putting the mulch down. He stated they were not trying to encroach on the neighbor's property. Mr. Pellerin stated they talked about possibly putting in shrubs, like they did along Mr. Leach's property. They also talked about carrying the bark mulch from their property over onto Rose's property 1'. At that time, the boundary line was not obtrusive and unattractive as it is now.

Mr. Pellerin stated that since the boundary was surveyed, and more of the mulch was found to be on the Rose's property, the Roses removed the mulch, taking what they wanted and throwing the rest onto his property.

Ms. Leavitt stated they woke up one morning and the string was along the boundary line, prior to the survey. She stated regarding the mulch, it would have been moved given time to move it and upon request.

Member Russo asked about the storage besides the building. Mr. Pellerin stated there are a few pallets that are being removed, and materials from the tree house that was taken down when it was determined it was over the boundary line.

There were questions about the stakes. Mrs. Rose stated those stakes are the boundary marker now.

Member Sargent asked for clarification that the encroachment is only 3' on one corner and Mr. Pellerin stated the shed is 7' on one corner and 10.5 from the other corner. Mrs. Rose stated when they moved in; they tried for friendly relations with the Pellerin's. After the survey they had to send the Pellerin's a certified letter to remove the tree house that was over the boundary line. There have been numerous problems at the property and numerous complaints from abutters. She stated it would be helpful if everything on the Pellerin property met the requirements and was by the letter. She stated she would like to be able to do measurements herself.

She stated the pictures that were submitted were taken this evening and printed this evening. She stated living next to the Pellerin's has been difficult for the last year, and she would sincerely like the board to take a look at the issues.

Public Comment closed.

Board Discussion

Mr. Lewis stated he would like to highlight the packet given to the board dated October 27th. He stated the applicant is applying for an Equitable Waiver of Dimensional Requirements and if this is not granted then the discussion will move directly into the variance proceedings.

Member Russo stated that he has an issue with the fact that the permit was obtained at the same time as the garage. It is the responsibility of the property owner to build items and be responsible for maintenance of the property line. Not knowing the location of the property line is not an excuse. He stated if this has been a fence that was erected; it would have to be removed. He stated regardless as to whether it was bad faith, it could've been put somewhere else. He stated property owners need to be sure of their property lines and anyone who grants permits for the City is under the responsibility to verify property lines.

Acting Chair Styles indicated the owner had mentioned that the distance is from the concrete pad. Member Russo stated it doesn't matter, they need to know the location and ignorance of property lines is not an excuse, the property lines need to be determined before they apply for a permit.

Member Farmer stated if it was a stone bound then there would be no question of the property line, but as this property is not, there was some confusion.

Member Sargent stated that Member Russo's comments are out of line. He stated a few months ago there was the same type of application before the board, and no such comments were made. This building was constructed over four years ago and is only 3'. The property a few months ago was treated by the board as a simple mistake.

Member Gagnon stated that unless the original deed mentioned granite markers on the property lines, there would be no markers down the middle of the property lines and he doesn't see how this wasn't done in good faith.

Member Russo stated the point he is trying to make is given the facts proposed and the dimensions, the shed was built right on the setback, which mandates that a property owner know the property line before constructing \$8000 worth of shed.

Member Russo asked if there was anything in the approval that requires notification of abutters to make sure property owners are certain of the property lines. Richard Lewis stated there is not, and any shed under 150 square feet can be located 10' from the property line by right. There are no requirements on building permits to notify abutters; an application process to the Zoning Board or Planning Board would trigger abutter notification.

Mr. Lewis stated the numbers given in the draft motions for the board are per the dimensions given to him by Mr. Rose in a telephone conversation last week.

MOTION: Member Russo moved and Member Farmer seconded to amend item #2 of the Motion.

There was discussion on the proposed language for #2 in the draft motion. After this discussion, and numerous amendments, the determination of the board was that #2 would read:

- 2. The violation was not an outcome of ignorance of the law or ordinance, obfuscation, misrepresentation, or by bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a failure to inquire, or good faith error in measurement or calculation made by an owner or owner's agent. Compliance with this criterion is demonstrated by the fact that a building permit was in place and the sketch plan for the shed showed a structure in compliance with the 10-foot setback requirement.**

All were in favor of the amendment to item #2 in the proposed motion.

MOTION: Member Russo moved and Member Farmer seconded that the Zoning Board of Adjustment approve the application request by Francois P. Pellerin, Applicant/Owner, for an Equitable Waiver of Dimensional Requirements, per RSA 674:33-a, for a shed that was built, in 2006 with all permits in place, closer than the minimum setback of 10' off of the property lines. The shed was constructed approximately 7 feet on one corner and 9 feet on the other corner from the side lot lines. The property is identified as 9 Upland Drive, Tax Map/Lot # 100-060-00, R-1 Zone (Low- Density Residential District). The Board finds that the application request meets the tests and criteria necessary for the granting of the Waiver in that:

1. The violation was not noticed or discovered by the owner, any agent or representative, or by the Planning and Zoning office until after the storage structure which creates the violation had been completed and was in use, and the failure to meet the setback was determined by a property line survey performed by the affected abutter.
2. The violation was not an outcome of ignorance of the law or ordinance, obfuscation, misrepresentation, or by bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a failure to inquire, or good faith error in measurement or calculation made by an owner or owner's agent. Compliance with this criterion is demonstrated by the fact that a building permit was in place and the sketch plan for the shed showed a structure in compliance with the 10-foot setback requirement.
3. In the opinion of the Board, the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other properties in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.
4. Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. The fact that the shed is placed on a concrete pad would necessitate considerable cost to move and relocate the structure. In the opinion of the Board, the costs of such a move outweigh the benefits of moving the structure.

Based on the findings above the issuance of this Equitable Waiver of Dimensional Requirements is deemed appropriate.

All were in favor and the motion passed.

- 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). **If the board votes to rehear this application, the rehearing will take place immediately following the vote to rehear. A rehearing request is not a public hearing and the only discussion that will take place at that time will be by the board.**

Member Russo and Member Sargent recused themselves at this time. Member Russo indicated he would like to reserve the right to speak during the public comment portion of the hearing.

Chair Styles sat Member Tully in place of Member Russo and sat Member Gagnon in place of Member Sargent.

Chair Styles indicated that a rehearing request is just a discussion between the board with no public comment or applicant input. She stated if the rehearing request was approved then the board would rehear the application this evening.

There was a brief pause. Chair Styles asked that if there was no discussion, if some was ready to propose a motion.

MOTION: Member Gagnon moved and Member Farmer seconded that the Franklin Zoning Board of Adjustment not rehear the matters raised in Application Z10-10, by a vote of 5-0-0, applicant Bronwyn Asplund-Walsh. In the opinion of the Board, the issues raised by Attorney Asplund-Walsh in her rehearing request dated September 22, 2010 fail to raise any errors that would need to be corrected by the Board through a rehearing, and the request fails to put forward any new evidence or other materials that were not available to the applicant at the time of the original hearing. Further, the Board sees no other valid reasons to rehear the matter as the issues were thoroughly discussed at the original hearing on September 1, 2010. All were in favor and the motion passed.

Old Business: None.

Planner's Update

Mr. Lewis stated that the office of Energy and Planning has issued an update to the Zoning Board Handbook, which took place in October of 2010. He stated new copies will be given out at the beginning of the year to the board.

Other Business

Member Sargent asked about the rules and regulations regarding outside furnaces, wood burning stoves, and the smoke stacks. Mr. Lewis stated that DES has some rulings on the required installation. Plus they need to meet air quality emissions testing and standards. Member Sargent stated that a 4' tall smoke stack could smoke out the neighbors. Angie stated that she believes that there are regulations in the International Building Code. Richard Lewis agreed that they could be a nuisance taking into perspective the topography and trees.

Public Comment

Marty Russo was present to speak. He stated he resides at 280 Webster Lake Road and would like to speak as an abutter to the Bronwyn Asplund-Walsh property. He stated there are a variety of legal remedies that the board needs to consider. He stated citizens being allowed to own private property is second only to being free. He stated the only reason land ordinances are allowed and considered to be constitutional are with the owners of the properties not being denied their rights to the use of their property. He stated he came into this late in the game and he regrets not making public comments when the applications were first before the board.

Mr. Russo stated he has done limited research and has found that the Zoning Board has failed to meet their statutory obligations, and to have articulate discussions on the property. He stated the residence is a principal family residential landlord and paying tenant property and is one of the three top historical properties in Franklin. The uses are technicalities. She has a right to use an area within her property and to change it from seasonal to rental purposes. This is a historic use. He stated he owns the property next door and his property is substantially linked to her property. The ordinance was created to manage properties on the lake. His house is a 6 bedroom, with a boathouse that was rented for years, and a living unit above the barn. He stated if he wanted to use the boathouse and barn for residential purposes he would find himself in the same issue. He stated she should be allowed to rehabilitate her building and use it for these purposes, as it is hurting no one.

Mr. Russo stated he does not understand why someone needs a permit from the board to use their property the way they want to. This has gone on long enough and has been before the board for years. For the Board to deny this application, violates the law and charter. He stated he is appalled that the board did not look at the history of the property and denied the property the uses that the owner sees fit and which would provide

income to use and rehabilitate the dwelling and guarantee an income. He stated that none of the uses that have been asked for violates the interests of the city; she is not trying to turn the property into an apartment building.

The city has spent numerous dollars and the court has sent this issue back to the board twice. The board has failed to give Fiduciary oversight and Mrs. Asplund-Walsh is not violating and uses.

Mr. Russo stated that the board should vote to rehear this application and specifically since it does not violate any of the specific abilities we have to restrict the use, modernization or expansion of property within the city limits. I would ask that the board, join, make a new hearing to reconsider this case and if the members cannot themselves, separate personalities, past differences with this particular applicant, or just a sense of being tired of talking about the damn thing, that we either find someone, either, either a, another administrator or another zoning board that can impartially hear this case and grant her the fair hearing she more than fairly deserves. He stated he is offended to sit here in September and listen to what Mrs. Asplund-Walsh brought for history of the property and find that this swayed no one.

Mr. Russo stated there are a lot of personal feelings and nothing he has heard or read indicates that the board has the right to resist her ability to manage and use her property. The uses done in the past are under no time restriction. He urged the board to back up, as they have walked off a cliff, to bring the application back to the board for injunctive relief. He urged the board to find a way to rehear this application and for the application to be heard before a non-bias board due to the relationship between the Zoning Administrator and the Board. The uses are the best uses for her property and are good for Franklin and for the good of the property owner.

Mr. Russo added that the board owes it to this citizen to find a way to handle this process appropriately and not to go back to court.

Adjournment

MOTION: Member Sargent moved and Member Gagnon seconded to adjourn the November 3rd, 2010 meeting of the Zoning Board of Adjustment, at 8:40 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Administrator