

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, January 5th, 2011, at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:04 p.m.

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

Present: Chuck Farmer, Marty Russo, Kathlene Fleckenstein, Floyd Sargent Don Gagnon, and Donna Tully

- ❑ **Approval of Minutes: November 3rd, 2010 Zoning Board Meeting**

MOTION: Member Sargent moved and Member Fleckenstein seconded to approve the minutes of the November 3rd, 2010 Zoning Board regular meeting as amended. All were in favor and the motion passed.

New Business

- ❑ **Z11-01:** Francois P. Pellerin, Owner; Conrad WP Cascadden, Esquire, Applicant, requests a Use Variance to allow a business, GTM Landscaping and Renovations, to operate at 9 Upland Drive, Tax Map/Lot # 100-060-00, which is zoned as a R-1, Low- Density Residential District. The requested business uses include the storing of work trucks and equipment and employee parking.

Conrad Cascadden, with Shaheen and Gordon, in Concord NH, was there to represent Francois Pellerin and his fiancée Heather Leavitt. He distributed color versions of the pictures that were sent to the Board in the mailing. He stated he also had pictures of the area being used for parking and the driveway.

Attorney Cascadden stated what they are requesting is a very minor and slight use. They would like to park and keep 2 trucks [w/plows] and 2 trailers on the property, on one side of the garage, for use for the landscaping business, and allow one employee, brother-in-law of Francois, to come to the house. He stated that Mr. Pellerin has been living in Franklin for six (6) years and running his business for the same amount of time. It was indicated that no work is done at the house and the co-worker would park in the driveway or on the gravel area and would take a truck to the job sites.

Attorney Cascadden then went through the variance criteria. He stated that the proposed variance does not diminish surrounding property values, as there aren't, and won't be, any temporary or permanent structures for the business. The variance is not contrary to the public interest, as again there are no temporary or permanent structures and the land will be used in its current condition. Also, they are providing a service for employing a number of people from the community, including high school students. The variance is consistent with the spirit of the ordinance as there is limited traffic and noise,

and no business is done at the house besides parking the 1-2 trucks. Substantial justice will be done, as if the home business is not allowed, then the homeowner will have a difficult time supporting his family and won't be able to sustain his livelihood. It was stated that substantial justice is also done by the employment of employees from the City. The attorney stated that literal enforcement of the ordinance would create a hardship in that the business is not beyond the realm of acceptance and the property owner is looking to use his property the way that his neighbors are already using theirs, as one neighbor has three pickups, a plow and one of the neighbors has a dump bed on their pickup truck. The vehicles at Pellerin's are normal pickup trucks and not commercial grade vehicles.

Member Fleckenstein asked about the landscaping materials that are located on the property currently and Attorney Cascadden stated those are for personal use [for a patio] and not business use.

Member Farmer asked where the equipment is currently parked and Attorney Cascadden stated next to the garage and inside the garage.

Member Sargent stated he felt the speaker has contradicted himself on the employee issue [one employee coming to the site versus the employment of high school students] and traffic and would like some clarification, since more employees in the summer means more traffic in the neighborhood. Attorney Cascadden indicated the business will be operated differently with only employee coming to the site regularly and in the summer the other landscaping crew members will meet at the different work sites. There will no longer be a group meeting at the property, so there will not be any problems regarding the previous complaints of noise and parking in the street. He stated there will not be any further on street parking.

Member Sargent asked about the pictures of the vehicles. Attorney Cascadden stated the pictures are of the neighbors properties to show that the surrounding neighbors use their properties for storage. Abutting property owners store boats, lawn mowers and vehicles. The only difference is that Mr. Pellerin's storage of vehicles and equipment is for a business and if it wasn't for the business then what he is doing wouldn't be against the ordinance.

Member Sargent stated that the registered letter to cease and desist the business was sent out five months ago and nothing was done. Attorney Cascadden stated there was some confusion, the property owner had a conversation with the Zoning Representative, Richard Lewis, and felt that this was handled. He stated that this is why they were here today, he is regretful it has gone this far and to the courts. The variance encapsulates what the property owner should have done.

Member Russo asked when Attorney Cascadden began advising his client on the proper steps to rectify this situation and Attorney Cascadden stated that was in early to mid December. Member Russo asked if the applicant had spoken with him before, as the applicant never responded to the Cease and Desist and ended up in court. Member Russo stated that the petition was filed in the court in July and no change occurred to the business. Attorney Cascadden stated that he was contracted in October and he immediately got in contact with the City Attorney. Member Russo asked if there was ever an official response to the Cease and Desist Order. Mr. Pellerin stated that he had spoken with Richard. Ms. Leavitt, indicated that either she or Francois' parents signed for the letter, that they spoke with the Planning and Zoning Office and were informed that for the shed

they needed to apply for a variance, and they did so. She stated they were unaware of the issue with the business until the complaints came in, she stated they thought the variance for the shed was for everything.

Member Russo asked how the business paperwork is taken care of. Ms. Leavitt stated there are no business records and no computer records at the house. She stated that Mr. Pellerin's mother handles this aspect of the business. Member Russo also asked if the business was licensed and was informed that it was. He asked what the licensed businesses address was and Mr. Pellerin stated that it is the house.

Member Russo asked if from July to November if the owner continued to run the business from the house in violation of the letter from the Administrator. Attorney Cascadden stated there was confusion on the Pellerin's part as the location of the shed was also an active matter at the same time; they had a discussion with the Zoning Officer, and the business was pushed to the back burner and the owner thought the issue was addressed, until they received the paperwork regarding the action filed at Merrimack County Superior Court.

Member Russo indicated that there is currently a court approved stipulation on the property that prohibited the parking of some of the business equipment and he asked where that equipment was now parked, and he was informed it was at Mr. Pellerin's mother's house in Belmont.

Member Sargent asked if business was conducted at the house. Mr. Pellerin stated that customers call his cell phone. Attorney Cascadden stated there are no signs on the property, no traditional office space in the home, and the business is done out in the field. Business correspondence is done through email and cell phone use. Ms. Leavitt stated that she created the website and manages it. She stated anything that is missing from the application as far as the description of the business she will address. She stated that no employees come to the house and work in an office. There is no business phone or fax.

Attorney Cascadden stated the zoning allows for an office in a home, by section 305-25, Home Occupation. Minor Home occupations are allowed with limited customers and business taking place at the residence. Phone calls being taken and doing paperwork is an allowed portion of a home occupation.

Member Russo asked if commercial vehicles are parked at the home. Attorney Cascadden stated they are not large commercial vehicles and it is accepted and conducted throughout the neighborhood. Member Sargent stated that the neighbors have trailers and vehicles at their homes, but they are not business related. He stated they are used for personal use and the trailers are not removed from the site on a daily basis. Attorney Cascadden stated that this is the reason they are asking for the variance, with no permanent or temporary structures on the property; he indicated that his clients would accept a condition that the variance would only apply to their business.

Richard Lewis stated that a variance goes with the land. If the property was sold, the new owner would be allowed to carry on the same type of operation. This is a commercial operation, basically a contractor's yard, where commercial vehicles come in and out of the property, and where the employees have been parking at the residence. Mr. Lewis then stated that he has taken notes on the vehicles that have been parked at the location, either in the roadway or driveway on numerous days. He then read this information to the board: on June 7th, there were three commercial trucks parked on the

property; on July 1, there were two commercial trucks parked on the property and at various points and time the trucks have trailers attached to them with various pieces of equipment; July 12th there were two commercial vehicles; July 27th there were two; July 28th, there were two; and it goes on and on and is done on a continuous basis.

Mr. Lewis then asked for clarification from Mr. Pellerin on how long he has resided at 9 Upland Drive. Mr. Pellerin stated that he has resided there for 5-6 years.

Member Gagnon then spoke about the storage of vehicles and trailers on the property. He stated that an office is a better use of the property then a commercial yard and he doesn't like setting a precedence allowing for more than one commercial vehicle on a residential lot. He stated that his wife has a variance for a home occupation on their property and they have no commercial vehicles, no employees and only one client at a time and the neighbors still complain.

Attorney Cascadden stated the applicant's timing was off, they did not know they needed a variance to run a business that was similar to the neighbors. The worries of the board it has appeared are that there are too many commercial vehicles; however, this use again is similar to the surrounding properties. They are not looking to expand the business and will have no dump trucks, they just want to get the property use accepted.

Member Russo indicated that in the court documents it indicates that there is not storage allowed at the residence. Attorney Cascadden stated that from what the owner has told him none is taking place currently. Mr. Pellerin stated that on occasion they have had bark mulch on the property for personal use, like numerous other properties throughout the city; however, he stated he does not store business supplies at the home. Ms. Leavitt stated their equipment is not a bobcat or front loader, but is two lawnmowers, one of which is normal and one of which is a riding mower and no other equipment.

Member Sargent stated there are numerous complaints from the neighbors regarding the employees and the business, which include employees urinating in the yard. Mr. Pellerin stated he has no recollection of this. Attorney Cascadden stated he doesn't know why anyone would do that and when he spoke with Francois about this he was surprised.

Member Sargent asked about the truck with trailer on the back coming around the corner and cutting off other traffic. Attorney Cascadden asked if this was in the street and Member Sargent stated this is coming around the intersection of Upland Drive. Mr. Pellerin stated that he practices safe driving.

Member Tully asked about the vehicles being washed in the street and Mr. Pellerin stated they were washed in the driveway. Member Tully stated that the roadway is narrow and when she drove up there she had to move over for another SUV to go by. Mr. Pellerin stated that this is due to the snow and Member Tully stated the snow is pushed back a good distance. Mr. Pellerin stated that when he drives he hugs the right side of the roadway to stay out of the way. Member Tully asked if Upland Drive has a yellow center line and Mr. Pellerin stated that it does not.

Member Fleckenstein asked if the approval would be cut and dry or if the board has options. Mr. Lewis stated that a variance runs with the land. Attorney Cascadden stated that the board can require that if the use is not done continuously that it will lapse.

Public Comment

Megan Rose, of 7 Upland Drive, was present to speak. They about the Pellerin property to the right. She stated that they moved in May of 2005 and Mr. Pellerin was already residing at 9 Upland Drive. She then read a notarized letter from Harriet Blackey regarding the urination done by the employees outside, behind the shed on the property (copy of letter in file and part of the record). She stated that during the summer it appears that the employees are not allowed to enter the home, and they do urinate outside. She stated when they back the vehicles up the backup warning horn goes off and that when there is a trailer attached to the trucks, it takes several attempts and several minutes to back the vehicle and trailer off so the horns are going off for several minutes continuously.

Mrs. Rose stated that the variance request is stretching the truth. She stated there are multiple vehicles parked all over the place at all times of the year. She stated there have been numerous verbal confrontations that have taken place between her husband, Mr. Pellerin and his employees. The property is well maintained. The applicant has stated there will only be 1-2 cars and trucks depending on the afternoon and she then provided pictures to the board, as advised by the City, of the numerous vehicles and where they are parked on the roadway. She stated the pictures were taken beginning in April or May and have continued through to the most recent snow fall, with numerous employee vehicles and materials stored on the lot.

Mrs. Rose indicated that there are more than 1-2 cars and the conduct of the employees is less than admirable. They block the roadway, the pressure wash equipment in the roadway and one time while washing the vehicles, the person washing was in the middle of the road and stepped back as they were not paying attention and almost got hit by a passing vehicle.

Mrs. Rose added that she has contacted the police department numerous times for neighbors being called derogatory terms and for the employees speeding. Employees park on the roadway and park over the property lines so that they are in the grass in front of the neighbor's homes, they have even driven down the edge of the abutters lawns to park in front of Mr. Pellerin's property. She stated that she had witnessed Mr. Lewis drive by the property one morning before the workers had dispersed. Mr. Pellerin had driven off, but must have noticed Mr. Lewis because he came back up the roadway. Mr. Lewis went to the dead end and turned around, and on his way back by the property, Mr. Pellerin got out of the vehicle and approached Mr. Lewis and appeared to be yelling at him and pointing a finger in his face. She stated she watched to make sure nothing happened.

All problems related to the business have escalated. She then gave the board a copy of the dispatch log (which is available in the property file folder). In the log, it shows that extra patrol was done in the area, and that there were numerous neighbor disputes.

She also gave the board a copy of the information received from the website of available services. She stated that on top of the landscaping business, there is general contracting, snow plowing and holiday lighting and storage of holiday lights. She stated she is not sure where these holiday lights would be stored. She stated that if the business is allowed and expands, then the house could expand as well.

She stated the employees arrive at approximately 6:00 a.m. and you hear the reverse alarm of the dump truck. They return frequently throughout the day. They finish up at

around 7-8:00 in the evening, and the plowing takes place at all hours of the day and night.

Mrs. Rose stated she bought her house in this neighborhood because of the dead end road, and the desire to be away from the congestion of the city and businesses, traffic and paid more money for her house here due to the quiet neighborhood. This business will affect her property value. They have received a variance for the shed and now they want one for the business too.

Member Farmer asked if there is any signage on the property. Mrs. Rose stated that the advertising signs are on the vehicle, and there is not a sign on the property.

Mrs. Rose stated that a business website [Manta.com] shows that the Pellerin business has six employees and it is estimated that the business makes approximately \$430,000 a year. She believes this data to be accurate. She said she cannot stress the amount of noise and tension that this business has brought to the neighborhood.

Member Tully asked what the time frame was of the pictures taken. Mrs. Rose stated some were taken in the spring, some more recently and some just yesterday. Member Tully asked about the pictures of the blocks and when that picture was taken and Mrs. Rose stated it was taken yesterday. Attorney Cascadden stated the pavers are for the patio and tubing is for drainage for the property and not for the business. He added that the white SUV shown in the pictures is Heather's mothers, who is at the residence quite frequently as she has been diagnosed with cancer and comes to visit.

Mrs. Rose then read into the minutes a letter received from Drew Turner, of 5 Esker Drive, regarding the business and the parking situation and the traffic dated January 4, 2011 (copy of letter attached for the record). The bus stop for this neighborhood is at the intersection with Upland and Pasture Drive. The kids cannot walk to the bus stop due to the traffic from this business. She stated that they have asked him to slow down and Mr. Pellerin's response is that he is not driving fast and the sound from his duel pipes makes it appear as if he is going fast.

Member Sargent asked if employees are parking on both sides of the road. Mrs. Rose stated that they sometimes do, and that when moving the business vehicles in and out they block the roadway.

Lisa Judkins stated that when they were recently building a garage it was difficult for their contractors to park and negotiate the street due to the Pellerin employees. Mr. John Judkins then provided a picture to the board of a City trash vehicle driving down the roadway with the employees parked in the road.

Mrs. Rose stated that even if a variance was granted, they would not comply with the conditions as they have not been complying with the regulations to date. Mrs. Judkins stated that she has lived on this road since the subdivision was created and they built their home 17 years ago. She stated they also purchased the lot next door for privacy.

Megan Rose stated that the employees and vehicles are constantly changing. She indicated that every new employee gives all the neighbors a hard time. Mrs. Lisa Judkins stated that the employees and Mr. Pellerin add stress to their house, their kids and their

everyday lives where there should be no stress. She stated they should feel safe in their own home and they don't.

John Judkins, who resides across the street from Mr. Pellerin, stated he has lived in Franklin his entire life, and that he and his wife have never experienced anything like this and it is unacceptable. This business should've been stopped, but the business continues. It was indicated there would be only one employee that would show up and leave; however, currently the employees come to the residence to load up equipment and materials. The trucks have dump truck sanders on them. He also stated that this is a residential neighborhood and this commercial business should not be allowed. He stated he is constantly called names and he has called the police numerous times. He stated he was sitting on his scooter and was called names, so he asked the workers if they had an issue and they began yelling obscenities at him so he went and called the police. The neighborhood was always quiet before. The police logs and more photos were provided by Mr. Judkins.

Mr. Judkins stated that the property values will be affected as no one would want to buy the property across the street from this business and the actions that take place along with it. He added that the noise is obscene, and the beepers and plows go off for long periods of time anywhere during the day, including 1 a.m. when plowing and the horns go off for 15-20 minutes. The traffic is non-stop.

Mr. Judkins asked that the variance be denied and that the owner find a piece of property that is commercially zoned to run his business out of.

Roger Leach, 11 Upland Drive, stated that he bought the property as it is on a one way street with little traffic and is a quiet neighborhood with no commercial businesses. He stated he is here in the hopes that the law will be enforced and not changed as this could set a precedence, due to the public of the Pellerin's and their employees, due to the noise, commercial vehicles and the decrease of property values.

Mr. Leach stated the applicant received a variance for a pool, a shed and now for a business. He stated that everything they have done is against the zoning. Last year he put in his in ground pool and the water was discharging onto the neighbor's yard. Mr. Leach stated there is more than 1-3 employees and that there are five different vehicles on the lot at any given time. He asked why the employees do not park in front of Pellerin's property and instead park in front of the neighbor's properties. There is no respect or consideration for others. The business is not seasonal and employees are there quiet frequently. He wanted to know how the board could override the decision of the court and that the board should uphold the decision of the court and keep the cease and desist order in place. Denying the variance is the right choice.

Attorney Cascadden indicated that the Silver SUV in the pictures is Heather's mothers, that she has terminal cancer is comes to visit. He continued by saying that it has been negotiated that the employees would no longer park on the street, that they will park on the property. With the variance they are seeking to be able to have 1-3 employees and they are willing to reduce this number to 1-2, making it very minimal. The purpose of the variance is to limit the scope and a commercial use, taking into account the neighbor's concerns. It would be 1 family member (brother-in-law) and one employee, on top of Mr. Pellerin.

Member Tully asked about the holiday lighting. Heather stated they would use a self storage facility unit and Mr. Pellerin stated that it was a failed business endeavor. Mr. Pellerin stated that the renovation portion of the business is only for small renovations to existing properties.

Member Sargent asked Mr. Pellerin if the neighbor ever said anything about the employees giving him a hard time and Mr. Pellerin stated that the only meeting was with Mr. Rose and he was rude and no further conversation occurred with him. He stated he tried to speak with Mr. Judkins, but Mr. Judkins went into the house. Attorney Cascadden stated the issue was resolved. Mr. Rose stated that he has a tape of the sounds of the vehicles during the night hours.

Board Discussion

Member Russo asked if the variance was granted if the court case would be dropped or if variance wasn't granted what would happen. Richard Lewis stated that they go back to court in February on the stipulation. If the ZBA grants or puts conditions on, the abutters could ask for a rehearing and then appeal to the courts. If denied, then the applicant has the same options for a rehearing and then appeal to the courts. If the variance is granted then the temporary stipulation would go away as the approval would supersede the stipulations. Member Russo stated that this is six months worth of issues going on and if the variance is not granted that fines and such and attorney fees and court costs could get costly.

There was a lengthy discussion on the wording of the motion and the conditions. At the completion, the final notice reads as follows:

MOTION:

Member Russo moved and Member Gagnon seconded that The Zoning Board of Adjustment denied the variance application request by Francois Pellerin, owner, and Conrad Cascadden, Esq., applicant, for a variance to allow a commercial /business use, GTM Landscaping and Renovations, to operate at 9 Upland Drive, Tax Map/Lot # 100-060-00, which is zoned as an R-1, Low- Density Residential District. The requested business uses include the storing of work trucks and equipment and employee parking. The application is referenced as Z11-01. The Board finds that the variance application request fails to meet the tests and criteria necessary for the granting of a Variance in that:

- a. **The Variance would be contrary to the Public Interest and would be inconsistent with the spirit of the Ordinance due to these facts and findings:**
 1. **The property is located in the R-1, Low Density Residential, zoning district which does not allow for any commercial or business activities by right;**
 2. **The applicant is proposing a business use that involves the parking of trucks, plows, and trailers, and the keeping of multi pieces of professional sized lawn maintenance equipment all to be located on a 0.46 acre lot in the middle of a residential neighborhood on a dead-end street.**
 3. **Information presented to the City's Planning and Zoning Administrator demonstrates that the business activities also involve employees coming to and leaving the property and the neighborhood early in the morning and later in the evening especially during the landscaping seasons, which together creates**

- excessive traffic and speeding conditions, noise, and congestion that are inappropriate for a residential neighborhood;
4. In the wintertime the plow trucks used by the applicant would create inappropriate noise throughout the night time hours as the truck leave and enter the property.
 5. The claims put forward by the applicant in his application narrative that the use "will keep the vast majority of the land it its current condition", that there is no office or signs, that the use will add no new permanent structures, or that the applicant helps out his neighborhood do not make, in the opinion of the Board, any headway in creating a supporting framework for the use variance being in the public interest or consistent with the spirit of the ordinance.
- b. The values of the Surrounding Properties would be diminished and impacted by the granting of the use variance. The claim by the applicant in his variance narrative that since the commercial trucks and equipment would be gone from the site during the day when "most appraisers value properties" the values of surrounding properties would not be diminished is insulting to the neighbors and otherwise unworthy of response. The Board firmly believes that the approval of a commercial and business use in this type of residential district with a dead end street would adversely impact the values and the quality of life in this area.
- c. Literal enforcement of the provisions of the ordinance does not result in an unnecessary hardship for these reasons:
1. The subject property contains no special conditions that distinguish it from other properties in the area. The subject lot is similarly sized and shaped to the other lots on the street, and there are no topographical or other land use characteristics that would make this lot better suited to any business or commercial activities.
 2. There is a fair and substantial relationship between the zoning provision in question and the application of the provision to the subject lot due to the fact that the exclusion of any permitted by right commercial or business activity in this zoning district is intended to allow for the creation of low density residential neighborhoods that are not subject to the noise, traffic, and congestion brought upon it by commercial activities. Further the mixing of business uses in this type of zone runs contrary to the purpose of the overall zoning ordinance which includes the goals of encouraging the appropriate use of land throughout the city and the promotion of a wholesome home environment. These two important goals are undermined, in the opinion of the Board, by and through the mixing of residential and business uses in this type of neighborhood area.
 3. Taken together, the two issues outlined above demonstrate that the proposed use is not appropriate or reasonable for the neighborhood in question.
 4. While the applicant does not specifically address the criterion of whether the property cannot be reasonably used in strict conformance with the provisions of the ordinance, the Board does find that the property can be reasonably used, and must be used, in conformance with the zoning ordinance. The applicant owns a residential home in a residential neighborhood and there are no on-site conditions, such as a pre-existing barn located on a large side or rear lot area, which would support a claim that the variance is necessary to enable a reasonable use of the property.

- d. The Board finds and concludes that no substantial justice is created by the granting of the variance and in fact substantial injustice has been and would continue to be inflicted upon the abutters and the neighborhood if the variance was to be granted. The claims and supporting evidence brought forward by the applicant to satisfy this criterion are without substance. Mr. Pellerin made a decision to begin business and commercial activities on his property, in violation of the zoning ordinance, without first inquiring of the city as whether these activities were allowed or what the process is for acquiring permission for these activities. The City of Franklin contains many parcels of land properly zoned for this business and commercial use and the applicant has options to pursue these other locations to operate his business. While any support the applicant lends to his neighbors or his community is commendable, it does not relieve him of the obligation to conform to the ordinances and regulations established by the community in order to protect the interests of all of the residents and the residential neighborhoods in which the city's families reside.

For all of the reasons outlined above, as supported by all of the information provided to the Planning and Zoning Administrator over the last 6-9 months and supported by the inspections of the Administrator, and as additionally supported by all of the testimony provided by abutters and residents of the neighborhood during the course of this public hearing, the Franklin Zoning Board of Adjustment denies the request and application for a variance to allow the uses and activities proposed by the applicant. Additionally the Board orders the following:

- a. The applicant shall cease all business activities and uses of the property no later than January 21, 2011. No commercial or business vehicles or trailers are to be kept on the property. This order does allow and permit the applicant to keep and maintain one truck that can be used by the applicant for his business. No employee parking is allowed, and the applicant's property is not to be used as a gathering point for employees to get work assignments. No landscaping or building materials are to be stored on site.

All were in favor and the motion passed 5-0-0.

The board took a ten minute break beginning at 9:10 p.m.

- **Z11-02:** RD Edmunds and Sons, Incorporated (Richard and Frank Edmunds), Owners; Theodore Kupper, PE, Provan and Lorber Inc., Applicant, requests a Height Variance to build a 360 TPH Asphalt Plant with associated structures, such as baghouses, hot elevators and silos that will be a maximum height of sixty-five (65') feet. The property is located on the northwest corner of NH Route 3 and Punch Brook Road, identified as Tax Map/Lot # 103-406-00, I-1 Zone (Industrial District). Weather permitting, a balloon will be tethered at a sixty-five foot (65') elevation and flown at the site on Monday and Tuesday, January 3rd and January 4th, 2011.

Attorney Chris Seufert, Richard Edmunds, Ted Kupper and Thomas Hartshorn were present to speak for this application. Attorney Chris Seufert then indicated that Tom Hartshorn would discuss the asphalt plant.

Mr. Hartshorn indicated that the plant is an Asphalt Batch plant. There are 3000 plants in the United States. Asphalt is a mix of sand, aggregates and cement. The batch type is a gravity system, and it mixes and blends at 300° F and is coated with an asphalt cement.

Attorney Seufert asked Mr. Hartshorn to point out the components on the plan. Mr. Hartshorn then pointed out the locations of numerous items:

1. Control House: Has the electronic components and controls for the plant;
2. Asphalt Silo: Hot mix storage facility;
3. Drag Slat: elevator that brings the material for the batches to the silo;
4. Screen Separator: Separates the material into different sizes, and then they are stored in separated hot bins, product is mixed and put into weight sections;
5. Mixer: Discharge of aggregate and sand mixed together here where liquid asphalt is injected.
6. Elevator: hot elevator that feeds materials;
7. Rotary Dryer: hot material put in and moisture is removed at 350° F; and,
8. Cold Feed Bins: charged materials conveyed by belt conveyor to dryer and through the rest of the plant.
- 9.

Dust emissions are controlled by baghouses. There is 14,000 square feet of bag to remove the dust. An air screen takes out the finer particles, and clean air and steam are then emitted from the stack and into the air, using a reverse pulse dust collector.

Attorney Seufert asked what the breakdown would be if the plant was lowered to meet the height requirements and the problems this could entail. Mr. Hartshorn stated that it could be done, but that a conveyor system is still necessary and there is no such plant in the state. The conveyor systems would be more complex with more moving parts and a 35-40% loss in the efficiency of the plant and an increase in the energy usage to operate the plant. Additionally, more bag houses would be required. Mr. Hartshorn stated that regarding the size of the stack the height is determined by DES and that would not be able to be lowered and would have to meet their requirements.

Member Fleckenstein asked if the stack house was cut in size if there would be a difference in the burn element. Mr. Hartshorn stated a lot of extra efforts would be put in, in order to meet the requirements. The height of the Stackhouse is determined by another governmental agency to meet standards.

Member Russo asked for a comparison of the first design that Edmunds had put forward and the new type of plant. Mr. Edmunds stated that the first plant was a drum plant and this one is a batch plant. Mr. Hartshorn stated the biggest difference is the mixer. With a drum plant is a continuous process and a batch is done one a minute. The elevation on both plants would be the same, based on the stack size and needing a silo, the difference is that a batch plant can make different types of mixes and a drum plant can only make one mix. IF you need to change from one mix to the other, the drum would have to be emptied and cleaned. The drum plant has a lot of waste where the batch plant allows for versatility and flexibility for a variety of mixes. Mr. Hartshorn stated that there are less moving parts in a batch plant, unless it must be constructed at a lower height. Then is it has more working components that pinch points [open gears, pulleys, etc.] that are a safety hazard for the workers.

Mr. Hartshorn also indicated that if they broke the plant into two, to lower it a basement would need to be put into the building, being about 20' into the ground, so there could be water, safety and maintenance issues.

Ted Kupper, engineer, went over the plan layout. The elevation drawing and plan layout was identified as C2.3. He stated that the bitumin is a solid at a temperature less than 200° and becomes a liquid when it reaches over 200°. The site is shown on plan copy C2.2, where the dark shading is the driveway, parking and access to the plant. The batch plant and silo have a truck drive-thru.

Mr. Kupper stated that currently the lot is a gravel pit. The balloons that were flown were at a height of to represent the top of the facility at 65'. He also showed pictures of a 25' tall surveyor's rod, with a construction cone on the top taken a few weeks back, which also would show the location of the top of the proposed facility.

Mr. Kupper stated that the pine trees in the area were measured and the average height of these pine trees are 60'.

Mr. Kupper then read (verbatim) the attachment on the variance criteria that was submitted with the application. Please see folder.

Member Tully then asked about possible visual impact and noise impacts. Mr. Hartshorn stated the machinery does make a noise, and typically the loudest portion of a batch plant is the dryer; however, the dryer then are putting in is a state of the art dryer, newest release with a silencer on it that will be much quieter than normal dryer's.

Mr. Edmunds stated that the paving season is only 120 days, this is not a year round business. He stated during the paving season, he would like the option to run all night, as most paving is now done at night when there is little to no traffic. Mr. Edmunds stated the plant will be state of the art, and will meet the criteria as set by the State. He indicated he wants to bring jobs and money to the tax base of the city and is trying to do something to help Franklin. He stated he is 65 years old and he would like to see Franklin move forward and he will be a good neighbor.

Public Comment

Bette Tobey was present to speak. She stated that the area is conservation area, located across from Holy Cross, and is not set up for industry. She stated that since the original meeting numerous changes have been made to the layout and she asked what type of plant this would be. Mr. Edmunds stated that it would be a Barber Greene, that it would be cheaper to purchase and they will be able to quickly change the type of material being produced without a lot of waste.

Mrs. Tobey stated that those that are in the know, know that there are 33x the toxic emissions from this type of plant. Mr. Edmunds stated that is true with the older burner, but not with the new burner that he is putting in.

Member Farmer asked Mr. Edmunds to explain the burner. He stated the burner is a Elster Hauck ES 100, EcoStarll burner. The burner is manufactured by Hauck Manufacturing Co., and that it would release the least amount of toxins as possible, will be fuel economic and best for environmental reasons.

Mr. Kupper stated that the plant will meet the NHDES standards for EPA. All pollutants must meet the requirements for emissions as set by Federal and State laws. The burner is a 2006 model and is brand new, the fuel for the burner is #2 fuel oil.

Kathy Kendrick was present to speak. She stated that she has lived at her residence for 27 years and is concerned with the proposal. She asked how many trees would be removed.

Mr. Kupper stated a small amount of trees would be removed, but only from the Punch Brook Road side of the property for egress.

Bill Kendrick was present to speak and mentioned concerns with the balloon test. Mr. Kupper stated that where the balloon was flown, at the maximum height the balloon was at, this is where the top of the silo will be.

Mr. Weglarz was present to speak. He stated there was a meeting back on November 17th regarding the site plan for the asphalt plant and this was denied without prejudice. Now on January 5th, there is a height variance application for an asphalt plant. He stated he doesn't understand this. He stated just recently the Zoning Board issued a variance for thirteen (13) 60' stacks for Webster valve. Richard Lewis stated that the Site plan application was received today and will be heard at the January 26th meeting of the board. Mr. Weglarz stated that they should have to get site plan approval before receiving a height variance. Mr. Lewis stated the Planning Board can't approve a plan that doesn't meet the zoning requirements unless a variance is granted and that this needed to be done first.

Gail Rousseau was present to speak. She stated that it has been said that the balloon was impossible to see. She stated that as a photographer, she was able to take pictures of the balloon. She then cut and pasted a make shift asphalt plant, as close to scale as possible and put it into the picture, with the highest point of the silo being located where the balloon was. She stated that it could be seen from Ray and Sue Warner's and from Route 3. She stated that it has been said that it will be impossible to see it across the River; however, once the silo is built and steam is coming out of it, it will be able to be seen from Mojolaki.

Bernie Gallagher, from Toxic Action Center- stated that he has been working to help clean up pollution. He stated this plant will pollute the area. He stated it has been stated that it will be barely visible; however, it will be seen throughout Franklin and will affect property values, decreasing them anywhere from \$1,000 to \$45,000. He added that the diesel emissions from the trucks that will be driving in and out of the plant will be a part of the problem as well and asked if they were reviewed. Mr. Kupper stated they are only looking at the plant itself. Mr. Gallagher asked if the plant could be moved after built if needed. Mr. Kupper stated they will be getting alteration of terrain permits and they have procured services of a soil expert and drilled test pits and there were no problems and it shouldn't have to be moved.

Mr. Gallagher stated that it has been stated that the baghouses are 2006 state of the art and he asked if they knew if there was electrostatic? Mr. Kupper stated the bag houses come with the plant and will meet emission control standards.

Member Russo asked if the height of the stack is determined by DES then the size could go up or down. Mr. Kupper stated that while this unlikely it is possible and the average height

is 46' for all plants and thus it shouldn't go over 65'. He stated there are no stacks in the state that are over 65' tall.

Leland Hammond stated that he works for DOT, for the bureau of Highway Maintenance. He stated he looked and could see the balloon. He stated that just in front of his house, the balloon was approximately 15' above the horizon line. He stated that at 55 mph driving on route 3, he could see the balloon. Mr. Hammond stated that his biggest concerns are:

1. The asphalt plant is a bowl shape and an ampatheatre push sound out, so the plant will be heard.
2. The steam they indicated will be coming out of the stack will not be water vapor and will be fumes.
3. The 10 wheeler trucks will be coming in and out of the property and there will be emissions from the trucks, which will be worst.
4. Roadway conditions.

Mr. Hammond stated that a silo is unnecessary. The owner of the property is trying to create this plant to put others out of business. Another plant in New Hampshire is unnecessary. He stated it was indicated they can't have the meeting on the 26th if the board denies the variance and he asked that they deny it, that his house was built in 1805 and his livelihood should be preserved.

Richard Lepene stated that he has lived in Franklin for 35 years. He stated he was around during the early discussion on height variances as a planning board member. When this was being discussed the board put in the wording of no structures over 35' in the 1970's because the fire department did not have a ladder truck that could reach structures over 35' tall. The other concerns when this ordinance was put in was the buildings in the downtown area already being 35' tall, with no side yard setbacks.

As time has gone on, transmission lines have been put in over 35' tall and Polyclad and Webster Valve have been allowed stacks over 35', as have other businesses.

Mr. Lepene reminded the board that the use is permitted. He stated that based on section 305-18.A, if certain criteria are met, then approval should be granted. This application meets the requirements of 305-18.A in that these are smokestacks as defined in item 1 and all front, side and rear yard depths can be increased a foot for every foot of the height and fire protection is adequate. The board needs to take their emotions away and look at the ordinance. He stated while he is sympathetic to the audience, they meet the height regulations criteria for a variance and they have built a strong case. Mr. Lepene stated this is his point of view and he will see what the board does based on the rules.

Nita Tomaszewski, of South Main Street, stated she would like to make a point of interest, that the variance is contrary to the public interest and this will be able to be seen from the surrounding properties and as you are driving on Route 3. Property values will be decreased. She stated the applicant has not made a good argument on the hardship requirements.

Bette Tobey was present. She stated her concerns are:

1. This is a hot button topic that she is opposed to.

2. There will be a loss of quality of life with noise and air pollution.
3. The asphalt plant could cause health issues.
4. Traffic will be increased.
5. Smog will be a problem.
6. Properties values will drop.
7. She stated the city has taken several positive steps forward and by allowing the asphalt plant it would take several negative steps backwards.

She added that some time ago, there was a proposal for 166 modular homes on the Sisters of Holy Cross property. To save the property, numerous people got together and purchased the property and it reflects the beauty of the area. Franklin was created in 1828, from parts of Salisbury, Sanbornton, Andover and Northfield. Daniel Webster's home is in the area and the area needs to be conserved. She added that the board should not allow one development in the face of so many negatives.

Diane Kozak, of 15 A Street, stated that property values within the radius of the plant have been proven to decrease as much as 54%. "A" Street is at the end of Punch Brook road, beyond the transfer station and 9/10th of a mile from Route 3. They are at a higher elevation than the smoke stack and currently they can't go outside when the transfer station is burning and doesn't want to be able to not go outside when the plant is running.

Robert Rowe, of Salisbury Road, stated that he is all for new businesses and that he is also starting a business, being a horse barn. He stated that he can see the blue industrial building and that this plant could adversely affect his business as people will not want to go and ride horses if they can smell the plant.

Harry Sanders, 791 South Main Street, indicated that he owns Coopers Cycles and is right next to the property. He stated he has no problem with the plant, as it is in an industrial zoned area. He stated he is concerned about the landfill burning as he is downwind.

The public portion of the meeting was closed at 11:07 p.m.

Member Sargent stated that he lives in this area and all the people that have spoken are his neighbors. He indicated he is not impressed with having a plant in the area, but if it meets the requirements and after allowing six stacks at 65' to Webster Valve, if the board denied this variance for height that it would be a lawsuit waiting to happen.

Member Tully stated she attempted to view the balloons from Prospect Street and could see, and she is not sure if it was because they were small or just because it would be able to be viewed from Prospect Street. Richard Lewis stated there were 5-7 balloons tied together, so they had some mass to them. Member Tully and Member farmer stated they could not see the balloons from Route 3. Member Sargent stated that he could see them from Punch Brook Road.

Mr. Lewis stated that he laid out the pro's and con's for the board. He asked if they had any further questions for him.

Member Russo asked about placing a condition about air quality and Mr. Lewis stated that this would be a Planning Board condition and not a zoning board condition, and the condition from the Planning Board would be that the applicant would need to meet DES air quality regulations and requirements.

Richard Lewis stated that the public hearing for DES won't be until sometime around April.

Member Tully stated that the wording for allowing the 65' should be changed to say that the 65' is from base elevation as opposed to being from the 330'. Richard Lewis stated that a condition could be added to the approval based on the plan being approved per the Plans submitted for the ZBA application. Angie Carey stated that the board may want to put the date of the plans in the condition as well, being 12-15-10.

MOTION: Member Sargent moved and Member Russo seconded that the Zoning Board of Adjustment approve the variance application request by RD Edmunds and Sons, Incorporated (Richard and Frank Edmunds), Owners for a variance to build a 360 TPH Asphalt Plant with associated structures, such as baghouses, hot elevators and silos that will be a maximum height of sixty-five (65') feet, *based on the base elevation show on the site plan submitted with the application.* The property is located on the northwest corner of NH Route 3 and Punch Brook Road, identified as Tax Map/Lot # 103-406-00, I-1 Zone (Industrial District); the application is referenced as Z11-02. The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

- a. Based on the plans submitted with the application, the components that would exceed the 35-foot height limitation are located at least 30-feet further back from the front, side or rear lot lines minimum setback requirements; thus the provisions of 305-15.A(1) are satisfied. Additionally, the Board finds that the facility components that exceed the height limit meet the definitions contained in 305-15.A(2) and do not constitute a hazard to any established airports.
- b. *The Variance will not be contrary to the Public Interest and the Spirit of the Ordinance is observed due to the findings and facts that: the provisions of Section 305-15.A(1) and (2) are satisfied; the Line of Sight profiles submitted by the applicant show that little of the facility exceeding the 35-foot height limitation will be visible from Route 3, and the views from Punch Brook Road already include the City's solid waste transfer station and recycling center, and the regional cooperative ash landfill facility; the proposed facility is subject to the issuance of an air quality permit from the NH Department of Environmental Services prior to the commencement of operations thus demonstrating overall public concern about the impacts of the facility; the facility is located several hundred feet off of South Main Street and all of the surrounding land uses, including the residential uses, are zoned industrial;*
- c. *Substantial Justice is done due to the fact that no harm has been identified for any abutter or area resident that which counteracts the justice served by the granting of the variance for this industrial use in an industrial zone, especially where evidence has been submitted that the denial of the variance would result in a substantially less efficient production facility.*
- d. *The values of the Surrounding Properties are not diminished due as evidenced by the information presented by the applicant that the residential uses in Franklin abutting or near other industrial activities that have been the recipient of height variance have seen added value subsequent to the variance being granted;*
- e. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;*

1. *Unnecessary hardship mean that, owing to the special conditions of the property that distinguish it from other properties in the area, then: i) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property; and ii) the proposed use is a reasonable one.* The variance criterion is satisfied due to the facts and findings that: the facility is located several hundred feet off of South Main Street; the components of the facility that will be higher than the 35-foot limit are located several hundred feet off of South Main Street; the project site is located adjacent to the an existing municipal waste transfer station and a regional ash landfill facility; the site is currently used for gravel removal and the processing of the mined materials; and, the applicant has presented convincing evidence that to deny the variance will require that the facility be constructed in a horizontal design configuration such that it will operate less efficiently [on a potential ton-per-hour basis] and will consume higher amounts of energy [on a per ton generated basis].

This approval is subject to the following conditions:

1. The approval is based on the site plan, submitted with the variance application, and dated 12/15/10.
2. The project shall receive the required site plan approval from the Franklin Planning Board and shall meet of the conditions and requirements of that approval;
3. The applicant or their designee shall obtain the necessary building permits for the proposed work and a Certificate of Occupancy once the work is completed.
4. Following the construction of the facility and prior to the issuance of a Certificate of use and Occupancy, the applicant shall provide the Planning and Zoning office an As-built plan verifying the height of the various components that are over the 35-foot limitation.

All were in favor and the motion passed.

Old / Other Business: None.

Planner's Update: None.

Public Comment: None.

Adjournment

MOTION: Member Sargent moved and Member Fleckenstein seconded to adjourn the January 5th, 2011 meeting of the Zoning Board of Adjustment, at 11:20 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Administrator

Dec 28th 2010

Attention:

Richard Lewis and Members of
the Franklin Zoning Board;

My name is Harriet Blackey I reside at
136 Thunder Rd with my 86 year old
Mother.

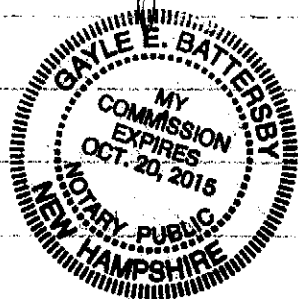
I am writing this letter in regards to
the Landscaping Business being ran out of
a residential area by Francois Pellerin of
9 Upland Dr. During the summer months
my mother an I spend time on the sun
porch. My belief is that Mr Pellerin does
not allow his employees to enter his
home to use the bathroom, as he
has a shed located to the back of
property where his workers expose
themselves an urinate. Not what
we enjoy seeing, also do not enjoy
listening to the back up warning horn
sound at all hours of the night or
day.

(over)

Therefore we are asking you to
stop this landscaping business in
our residential area of Franklin.

Thank you very much
Gayle Battersby + Mother

Gayle E. Battersby



January 4, 2011

To whom it may concern,

I have lived in this development since it came to be in 1987. I have seen many people raise their families in the quiet setting of a suburban development including me. Kids could go through the development and ride bikes and play without any problems. But that is changing. If the city allows a household to run a business in a residential area from their home without respect to the other homeowners, problems will occur. Trucks are being parked in the street and there is very little concern about the neighbors or their children in this section of our development. I do not support allowing this or any other homeowner to run a business of this type from their home. I hope the city recognizes the potential problems that could occur and does not allow this to happen.

Sincerely,

Drew Turner
5 Esker Drive

A handwritten signature in black ink, appearing to read "Drew Turner", written in a cursive style.