

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, June 1st, 2011 at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:00 p.m.

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

Present: Chuck Farmer, Kathlene Fleckenstein, Floyd Sargent, Donna Tully, Marty Russo and Planning and Zoning Administrator Richard Lewis.

Absent: Don Gagnon

- **Approval of Minutes: May 4th, 2011 Zoning Board Meeting**

MOTION: Member Sargent moved and Member Tullis seconded to approve the minutes of the May 4th, 2011 Zoning Board regular meeting as amended, with the change that Member Russo did not make any motions, because he wasn't at the meeting. All were in favor and the motion passed.

New Business

□ **Z11-04:** Larry D. Scofield, Owner; Thomas Jordan, Applicant, requests a variance from setback requirements to place a hot tub on his lot. The Setback requirements for the RR Zone (Rural Residential District) are 40' front yard setbacks and 25' to the side and rear and the hot tub will be located 23' from the front lot line. The property is located at 7 Gile Pond Road, identified as Tax Map/Lot # 111-003-00.

Larry Scofield was present to speak. He stated that the hot tub is where the soft side above ground pool used to be. Richard indicated that he had driven by and the yard is fenced in and this is the best place for it. You cannot see the hot tub from the roadway and the area is gated. The hot tub has a cover and is safe.

Member Russo asked if there was plumbing and Mr. Schofield indicated no plumbing and just electrical and no deck either.

Public Comment: None.

Board Discussion

MOTION: Member Russo moved and Member Tully seconded that The Zoning Board of Adjustment approve the variance application request by Larry Scofield for a variance from setback requirements to place a hot tub on his lot. The Setback requirements for the RR Zone (Rural Residential District) are 40' front yard setbacks and 25' to the side and rear and the hot tub will be located 23' from the front lot line. The property is located at 7 Gile Pond Road, identified as Tax Map/Lot # 111-003-00; the application is referenced as Z11-04. The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

- A. *The Variance will not be contrary to the Public Interest, the Spirit of the Ordinance is observed, and Substantial Justice is done due to the facts that:*
 - a. The hot tub area will generally be hidden from view because of the existing fence;
 - b. The proposed use is a common residential use and is not a significant digression from the spirit of the ordinance; and,
 - c. No substantial harm has been identified that would create an injustice

- A. *The values of the Surrounding Properties are not diminished due to the fact that the proposed hot tub will not be visible from the roadway because of the fence.*
- B. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:*

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. This condition is satisfied since:

- i) **The lot is unusually shaped as it gets smaller as the road bends;**
- ii) **The lot is significantly undersized when compared to the other lots in the immediate area;**
- iii) **The hot tube will be hidden behind an existing fence;**
- iv) **The proposed use is a common use for a residential structure and is therefore a reasonable one; and,**
- v) **To require the owner to install a rear door to access the tub area to the rear of the structure would be a financial hardship.**

This approval is subject to the following conditions:

- 1. The applicant or their designee shall obtain a building permit for the proposed work and a Certificate of Occupancy once the work is completed.**
- 2. No deck of other structure shall be installed around the hot tub without first obtaining a new variance.**

□ **Z11-05:** Hydro Electric Realty Corp (Alan Larter), Owner/Applicant, requests a Variance from frontage requirements to subdivide the property required to operate the Hydro-Electric Dam from the rest of the property, on property located at 40 Gile Pond Road, identified as Tax Map/Lot # 111-403-00, C Zone (Conservation District).

Alan Larter was present to speak. He stated that the Hydro Electric Realty Corporation owns the dam, the equipment and the property. He stated six years ago, he built a house on the land, in Sanbornton, and that he wants to separate the home from the corporation. The only frontage is on Gile Pond Road and there is a bridge across Salmon Brook.

Mr. Larter stated that currently he has an easement to get to his property, which will continue to be used. He stated that he is just looking at separating the private property from the Hydro Electric property.

Mr. Larter stated that there is no way to change the frontage line, as the 400' of frontage for the dam is necessary for operations. Mr. Larter then gave some background on the lot. He stated the roadway was built in 1904 by Franklin Power, as all roadways were flooded when the pond was created from the brook. The roadway was never accepted. The lots created on Gile Pond Road were very small lots given away by the Tea Company. He stated that his access is a private way.

Public Comment

Steve Rothman, of 106 Gile Pond Road, stated that it appears that the reason for this application is that the applicant wants to own his own house and land and subdivide the property, with all aforementioned items already existing. He asked why the applicant couldn't access his land from Sanbornton and added that the bridge appears to be a disaster waiting to happen if traffic was increased in this area. He stated that he did not want future building on the lot or the lot being sold.

Mr. Larter stated it is cost prohibited to build an access roadway or driveway from Sanbornton. He stated he is not selling anything that this is just a separation of his house from the dam property and he stated that he enjoys his privacy. He stated that the current distance to his house is approximately 3000'.

It was indicated that the lot itself is one lot; however, it is separated by the town line into two lots. A subdivision plan will have to be submitted to the Planning Board upon approval of the Zoning Board. Mr. Lewis stated that the applicant would also need approval for the subdivision from Sanbornton.

Board Discussion

Member Sargent stated that if the Fire Department thinks the bridge is safe for a 10 ton truck to pass on it, then it is safe enough for passenger vehicles.

MOTION: Member Russo moved and Member Sargent seconded that the Zoning Board of Adjustment approve the variance application request by Hydro Electric Realty Corp (Alan Larter), Owner/Applicant, to subdivide the property required to operate the Hydro-Electric Dam from the rest of the property, where the new lot does not have any frontage, located at 40 Gile Pond Road, identified as Tax Map/Lot # 111-403-00, C Zone (Conservation District). The application is referenced as Z11-05. The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

1. The Variance will not be contrary to the Public Interest and the Spirit of the Ordinance is observed due to the fact that the lot being created meets the minimum lot area requirement for the Conservation zoning district. The lot will not result in overcrowding of the land and will provide for adequate light and air since any future home would be located on over 5 acres of land overlooking the pond. If, and when, a residential home is created on this proposed lot, it will be constructed in conformance with all building codes with a properly designed and constructed water supply and septic system.
2. Substantial Justice is done due to the fact that the upland area that will be part of the proposed lot is not needed for the continued operation of the Hydro facility and permitting the lot to be created will allow for the appropriate utilization of the property.
3. The values of the Surrounding Properties are not diminished due to the fact that the nature of the property will not substantially change and any future residential home will be situated far back from the road and any abutter so there will not be any impact to the abutters.
4. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - (A) 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. There are very special conditions of this unique property since it is an operating hydro facility and the layout of the pond and the dam does not allow for any lot frontage to be created for this 12 plus acre lot. The dam and the sluiceway must remain in the ownership of the hydro corporation for maintenance and management requirements. It would make no sense to restrict this large upland area adjacent to the pond and not permit a residential structure or otherwise allow it to be used for non-hydro facility activities. Given the size of the upland area, the potential and future use for a residential lot is a reasonable one.
 - (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. While the variance request meets the unnecessary hardship criteria above, it does need to be made clear that the special and unique conditions outlined above do apply; the need for the hydro corporation to keep and maintain the pond, the dam and the sluiceway area does not allow the

proposed lot to be created with any frontage; and therefore a variance is needed to permit any reasonable and appropriate use of the property.

This approval is subject to the following conditions:

- 1. The owner/applicant must obtain subdivision approval from the Franklin Planning Board in order for this proposed lot to be full approved.**
- 2. Any future development of the proposed lot must be carried out in conformance with all requirements for the septic system, the water supply well, and the building permit for the structure. Additionally, the structure must obtain energy code compliance from the State of NH.**

All were in favor and the motion passed.

□ **Z11-06:** John J. Krauz and Cindy Ann Krauz, Owners/Applicants, request a variance to create three new lots that would not meet the frontage requirements for the zone. The property is located at 32 New Hampton Road, identified as Tax Map/Lot # 114-014-00, RR Zone (Rural Residential District). Lot 1 would contain the existing house and would have 196.54' of frontage on New Hampton Road. Of the two new lots, lot 2 would have 50' of frontage on New Hampton Road, Lot 3 would not have any frontage on a City accepted and maintained roadway. The frontage requirement in the RR zone is 225'.

The owner, John Krauz, was present to speak. He stated that he purchased the property over 25 years ago. He stated he is looking to subdivide the lot, with lot one to include the existing house, then having one building lot on the upper level and giving the lower lot to his son. Mr. Krauz stated that he has worked with the surveyor on the lot line locations. He stated that he has received letters from the abutters and they have no objections. He stated that the lower lot would be an expansion of the existing class 6/private way. He stated there are small camps in this area and so this roadway is accessible.

There was a question on the access of lot 2. Mr. Krauz stated that 50' of frontage is being left on New Hampton Road to access this lot.

Mr. Krauz stated that the deed identifies three tracts of land. He stated that he had received a letter from Paul Fitzgerald and Bob Brodeur about the city consolidating these lots. He stated that he was informed he would get one tax bill. Member Farmer stated that he had a property that was also three tracts and was informed by the City that they would be merged and he would get one bill, and was informed at the time of the steps to take if he didn't want them merged. He stated that most people accepted the merger.

At this time, there was a discussion with the board regarding each one of the lots not having the required 225' of frontage. Mr. Krauz stated that the zoning changed in the 80's, he stated there aren't any safety issues and stated that none of his neighbors object.

There were questions on the driveway for lot 2, the location and the possibility of doing a deed right of way across the front land instead of giving the second lot 50' of frontage, so that the main lot with the multi-family dwelling would have the required frontage. Mr. Krauz stated that he needs the variance and that is why he is here.

Member Tully asked if Pemi Shore was a private way and it was indicated that it is.

Mr. Lewis asked about the existing house on 127. Mr. Krauz stated that it is a two family with a studio. Mr. Lewis asked when the studio was put in and Mr. Krauz stated that it has existed since the 50's. Mr. Lewis stated that a special exception was applied for in 1988 to turn a single family home into a two family home. He stated that he has paperwork from the assessing department, which is an informal review, and the notes from the assessor states that no entry was allowed and no interior inspection. The note states that the owner stated there is no FBLA, which is no finished basement living area.

Mr. Krauz stated that his brother in law lived there in 1985. Richard Lewis stated that there was nothing in the property file folders that allowed the property to be turned into a three family from a two family. Mr. Lewis stated that the property is on a septic and no information has been received on the septic and whether it can hold the capacity for 6 bedrooms. Mr. Krauz stated that he put in a new leach field and he had dealt with Bob Brodeur and was informed by him that he didn't need approval to replace the leach field. He stated that three years later he had replaced the tank. Richard Lewis stated that there are no records of approvals or plans for the septic with DES. Mr. Krauz stated that this application is dealing with frontage. Mr. Lewis asked if it was correct that there is a two bedroom unit in the barn and Mr. Krauz stated that the house is 3 bedrooms, there is a two bedroom and a studio apartment. Mr. Lewis stated that the concern is that when a property is subdivided if the new lot will be able to hold the capacity of a septic when the load capacity and details of the septic are unknown. Mr. Krauz stated that there is over an acre of land and that is more than enough property for a septic. Mr. Lewis asked where the septic is located and Mr. Krauz stated that it is in front of the old barn and directly behind the house. He stated the land is pure sand. Member Sargent asked how many gallons the tank was and Mr. Krauz stated it was a 1000 gallon tank. Mr. Krauz stated that it gets pumped every three years.

There was some further discussion about the access of lot 2 and about possibly changing the frontage for lot one and deeding access to lot 2 over lot 1. It was indicated that the board needs to make their approval or denial based on what has been applied for and cannot approve something that hasn't been applied for. It was indicated that the public notice stated that lot 2 would have 50' of frontage and if the board wanted this changed then a new application must be submitted with these changes shown and a public notice done to that affect.

There was some question about the location of the driveways and the visibility and access off of private ways. It was indicated that these items would be dealt with at the subdivision level with the planning board and that waiver's of municipal liability would need to be done.

Member Sargent asked about the issues with Comprehensive Shoreland Protection Act that was mentioned in Richard's Memo. Mr. Krauz stated this cutting was done when a camp was built 4 years ago. Richard Lewis stated that DES will evaluate the property as far as stabilization.

Public Comment

Toni Theberge was present to speak as an abutter. She stated that she resides across the street from the property and her driveway is right across the street from the building. She asked if lot two would be single family and was informed that it would be. She stated that she doesn't want any further multi-family homes.

Mr. Doug Sargent, 3 Lepage Road, stated that he would like access to lot 2 to be off of New Hampton Road and that he does not want additional access from Lepage Road.

Board Discussion

Member Tully asked if Lepage Road was a private way and it was indicated that it is. Member Russo asked about clarification on the multifamily home. Richard Lewis stated that the tax card in 1988 shows the property as a single family. He stated that in 1988 a special exception was granted to change the property from a single family to a two family by adding an apartment in the barn. Somewhere between 1989 and 1990 the third apartment was put in without approvals, with no variance or special exception for that third unit.

Member Tully asked about the property being consolidated and Richard Lewis stated that was before his time. Member Sargent asked Mr. Lewis what his concerns are. Mr. Lewis stated that he understands where John is coming from; however, opening the door and allowing a 50' stretch of frontage and granting the variance could open the door for creation of future lots like this. He stated that the Zoning is in place to maintain safe access and for minimum zoning to space out lots. He stated that each application does need to be viewed on its own merits; however, there is nothing unique about this property. By creating two new lots without the frontage requirements for all three lots is not a good precedence to set.

MOTION: Member Russo moved and Member Tully seconded that the Zoning Board of Adjustment deny the variance application request by John J. Krauz and Cindy Ann Krauz, Owners/Applicants, to create three new lots that would not meet the frontage requirements for the zone. The property is located at 32 New Hampton Road, identified as Tax Map/Lot # 114-014-00, RR Zone (Rural Residential District). Lot 1 would contain the existing house and would have 196.54' of frontage on New Hampton Road. Of the two new lots, lot 2 would have 50' of frontage on New Hampton Road, Lot 3 would not have any frontage on a City accepted and maintained roadway. The frontage requirement in the RR zone is 225'. The application is referenced as Z11-06. The Board finds that the application request fails to meet the tests and criteria necessary for the granting of a Variance in that:

1. The Variance will be contrary to the Public Interest and the Spirit of the Ordinance is not observed due to the facts that the lot being created will all have less than the required frontage requirements. The one new lot being proposed on New Hampton Road will only have 50 feet of frontage where 225 feet is required, and the existing lot will be made less conforming by reducing the frontage to less than what is required. The frontage requirement is in place to prevent overcrowding and too many driveway entrance points from being created along the frontage of a given parcel of land. Allowing for the creation of a new lot in this area undermines the intent and integrity of the zoning ordinance, and is not supported by any other variance criteria. Additionally, the creation of the new lots on New Hampton Road results in the reduction of the lot that contains the existing non-conforming use, which is the 2-family structure in the single-family oriented rural residential zoning district.
2. Substantial Justice is not done due to the fact that the variance fails to meet or satisfy any of the other variance criteria. No justice is therefore created or upheld by the approval of this request.
3. The values of the Surrounding Properties are diminished due to the construction of a new driveway on a lot with substantially less than the required frontage.
4. Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship:
 - A. 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. There are no special conditions of the existing lot, especially in regards to the frontage requirements [for example an existing wetland area, pond, or other land uses] that distinguish it from other lots in the area and creates a foundation on which to support the variance request. In this specific case, the original lot simply does not have enough frontage to create two conforming lots. The fact that the subject lot is over 6 acres in size does not itself create the necessary special conditions of the property test. There is a fair and substantial relationship between the provisions and purposes of the zoning ordinance and the specific application of the ordinance to the subject property in that creating frontage and driveway points in a planned and orderly fashion is an important mechanism to provide for public safety and encourage appropriate uses of land throughout the city, both of which are outlined purposes of the zoning ordinance. To create the proposed lots undermines the purposes of the ordinance and results in an unreasonable use and activity.
 - B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The findings of 4.A aside, it must again be noted that there are no special conditions of the property that distinguish it from other properties in the area. Given that one of the proposed lots only has 50-feet of frontage the Board finds that this proposal constitutes a significant variation from the provisions of the zoning ordinance and as such it cannot be approved.

All were in favor and the motion passed.

Mr. Krauz asked how he would appeal. Mr. Lewis stated that he could come into the office and he will help him get the necessary applications for appeal.

Old Business: None.

Planner's Update:

Richard Lewis stated that Paul Fitzgerald and he are working on the workshop materials and condensing the ZBA Handbook for the board. This will take place in September or October.

Member Tully asked about the board voting on Chair and vice Chair. Richard Lewis stated that it would be on the agenda for the next meeting.

Other Business: None.

Public Comment: None.

Adjournment

MOTION: Member Sargent moved and Member Russo seconded to adjourn the June 1st, 2011 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