

**FRANKLIN ZONING BOARD  
REGULAR MEETING AND PUBLIC HEARING  
CITY COUNCIL CHAMBERS- CITY HALL  
Wednesday, November 2<sup>nd</sup>, 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, Don Gagnon, Kathlene Fleckenstein, Floyd Sargent, Marty Russo and Planning and Zoning Administrator Richard Lewis.

**Absent:** Donna Tully.

Chair Farmer seated Member Gagnon for absent voting member Donna Tully.

- Approval of Minutes: October 5<sup>th</sup>, 2011 Zoning Board Meeting

**MOTION:** Member Sargent moved and Member Gagnon seconded to approve the minutes of the October 5<sup>th</sup>, 2011 Zoning Board regular meeting. All were in favor and the motion passed.

**Old Business**

- **Z11-07:** Proposal of Donald and Eileen Oliver for the demolition of an existing structure and the construction of a replacement structure that meets and satisfies the provisions of Sections 305-18.C.4 and 6 and shall be considered a natural expansion of the structure for property owned by Oliver Family Irrevocable Trust and located at 25 North Shore Lane, identified as Tax Map/Lot # 032-049-00, LP Zone (Lake Protection District). *Brian Nawoj has filed a Request for a Rehearing of the Zoning Board of Adjustment September 7, 2011 decision to uphold the May 12, 2011 decision of the Planning and Zoning Administrator.*

Chair Farmer reminded the board and the public that the rehearing process is a decision by the board with no public input. He indicated to all that if the board does vote to rehear the application, then there would be Public Notice, full notification to the abutters and the meeting would be December 7<sup>th</sup>.

Richard Lewis stated that the rehearing application was filed on 10-06-11. He stated the application and the supporting documentation from Attorney Muller was distributed to the board in their packets. He stated that this is an internal matter of the board to make a determination to rehear the application or not. Richard indicated that he also provided for the board in their packet a copy of the State RSA regarding rehearing's, identified as RSA 677. He added that the board needs to determine if there was an error on the part of the board that needs to be rectified.

**MOTION:** Member Sargent moved and Member Fleckenstein seconded that the Franklin Zoning Board of Adjustment deny the request for a rehearing as filed by Attorney Muller on behalf of his client regarding the Board's decision of September 6, 2011 to uphold the Administrative Decision issued by Richard Lewis of May 11, 2011 for the proposal of Donald and Eileen Oliver for the demolition of an existing structure and the construction of a replacement structure that meets and satisfies the provisions of Sections 305-18.C.4 and 6 and shall be considered a natural expansion of the structure for property owned by Oliver Family Irrevocable Trust and located at 25 North Shore Lane, identified as Tax Map/Lot # 032-049-00, LP Zone (Lake Protection District). The Board finds that the

**applicant has failed to document or demonstrate any unlawful or unreasonable actions by the Board that would support a rehearing.**

**New Business**

- **Z11-10:** Charles and Patricia Connors Sr., Owners; Charles Connor Jr., Applicant, request a Variance to remove the existing home and construct a replacement home with a full basement and the height of the house will increase six feet (6'). The existing living area is 1312 square feet and the proposed living area will be 1400 square feet. The property is located at 14 North Shore Lane, Tax Map/Lot # 032-046-00, LP Zone (Lake Protection District). A septic assessment will be required at the time that the building permit is applied for as the current system is over 20 years old.

Charles Connor Jr. was present to speak. He stated that they want to demolish the existing house and replace it with a new house. He stated the existing house is 75 years old and was not built very well. He stated for the past few years they have been trying to fix. By demolishing the building and rebuilding they will get the building up to date structurally and energy wise. He stated they are trying to put the money into the house the best way possible, and that is starting from scratch.

Member Russo asked if the house was full year or seasonal and Mr. Connors stated that they use it a little in the winter. Member Sargent asked if they live in the house all winter and Mr. Connors stated just a few days.

Mr. Lewis asked about the mold problem on the property. Mr. Connors stated the house was built on the ground and it is going to cost at least \$10,000 to have the mold removed, and this amount does not include fixing the areas that are damaged while the mold is being removed. He stated if the house is not rebuilt, the dampness will continue.

Chair Farmer asked how many bedrooms the home was and Mr. Connors stated two. Chair Farmer asked if they are redoing the septic and Mr. Connors indicated that they are not and they had Deb Hinds do a septic assessment and the system is fine.

Member Sargent asked if there was currently an upstairs and Mr. Connors indicated there is not. He stated the new plan shows living space in the second floor area. Mr. Connors indicated this is attic space, the roof is going to be steeper and his parents, who own the house, are elderly and can't do a pull down.

Member Sargent asked how many bedrooms the existing home has and Mr. Connors again indicated the same, being 2.

Member Gagnon asked if they currently have a basement and it was indicated that they do not. He stated that they will be excavating for a basement and it was indicated that they would be. Richard Lewis stated that this is a very tight lot and the setback for the zone is 50'. He stated the lot is only 74' wide at the water. Chair Farmer asked if the footprint was staying the same and Richard Lewis indicated that it is. Chair Farmer asked if the board was only looking at the height and Mr. Lewis indicated that the variance covers the height and the rebuilding of a larger house, within the same footprint. Mr. Connors indicated the living space is increasing as the building was squared off. Member Russo asked if once it is constructed with the full basement if it would be year round and Mr. Connors stated that it could be. Richard Lewis stated that this answer is dependent on DES review of the septic. Mr. Lewis added that current lots in this area are only approved for seasonal use of new septic tanks due to the size of the lots.

Public Comment: None.

**Board Discussion**

Chair Farmer asked if the board could or should add a condition of the property being seasonal or not. Richard Lewis indicated that he believes that the existing condition regarding the septic assessment should suffice. He stated that the City has not received the assessment as of this time. Richard Lewis indicated that the best wording would include that if DES indicates that the septic is for a seasonal structure then the use must comply. Member Russo asked if they then wanted a year round use they would need to go to DES and Richard Lewis indicated that was correct. Richard recommended that the board add condition #4, to read: 1. Because of the age of the septic system, the newly constructed structure shall be used and categorized as seasonal until and unless year round use is approved by NH DES.

**MOTION: Member Russo moved and Member Sargent seconded that the Zoning Board of Adjustment approve the variance application request [Z11-10] by Charles and Patricia Connors Sr., Owners; Charles Connor Jr., for a Variance to remove the existing home and construct a replacement home with a full basement and the height of the house will increase six feet (6'). The existing living area is 1312 square feet and the proposed living area will be 1400 square feet. The property is located at 14 North Shore Lane, Tax Map/Lot # 032-046-00, LP Zone (Lake Protection District). The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance as spelled out in the draft decision to approve which has been reviewed and approved, including the modification by the Board to add a condition regarding seasonal use of the structure.**

**All were in favor and the motion passed.**

#### **Decision of Approval**

I move that the Zoning Board of Adjustment approve the variance application request [Z11-10] by Charles and Patricia Connors Sr., Owners; Charles Connor Jr., for a Variance to remove the existing home and construct a replacement home with a full basement and the height of the house will increase six feet (6'). The existing living area is 1312 square feet and the proposed living area will be 1400 square feet. The property is located at 14 North Shore Lane, Tax Map/Lot # 032-046-00, LP Zone (Lake Protection District). The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance as spelled out in the draft decision to approve which has been reviewed and approved, including any modifications, by the Board 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 both the current structure is, and the proposed structure will be, used for single family residential purposes, thus there is no change to the use and characteristics of the structure. This residential use is allowed in the LP zoning district. The same footprint will be used for the replacement structure. And, when the replacement structure is constructed it will be in conformance with all building codes.
2. Substantial Justice is done due to the fact that the existing house is unsuitable for living due to mold and other adverse impacts created by the current conditions of the structure; the replacement structure will resolve these problems.
3. The values of the Surrounding Properties are not diminished due to the fact that the use of the structure will not change and there are no structures behind the subject house that will be impacted by the increased height.
4. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
  - (A) Unnecessary hardship means 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 is no fair and substantial relationship between the general purpose of the ordinance and the proposed use since the type of use will not change, there are no impacts to the neighborhood, and the footprint of the house will not change. Further the proposed single family residential use is a reasonable one as it is allowed in this district.

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. All required Shoreland permits shall be obtained and a copy of the permit shall be provided to the Planning and Zoning office.
3. Per all applicable regulations, the owner shall have a septic system assessment performed. Any new or modified septic permit shall be constructed in conformance with plans approved by NH DES and a copy of all permits and plans shall be filed with the Planning and Zoning office.
4. Because of the age of the septic system, the newly constructed structure shall be used and categorized as seasonal until and unless year round use is approved by NH DES.

***The Order of the next two applications was reversed from what was on the agenda.***

- **Z11-13:** Adam Turner, Applicant/Owner, request a Variance to build a garage (16' x 20') to be located 12' from the property line where the side setbacks are 20', on property located at 45 Summit Street, identified as Tax Map/Lot # 098-049-00, R-1 Zone (Low- Density Residential District).

Adam Turner was present to speak. H stated that he is asking for a variance due to the fact that his property is only 53' wide. He stated the setback is 20' and thus no matter what he wants to do he will be required to obtain a variance. He stated that he did contact his neighbors. He stated he is looking at being able to construct a garage, single car, for his single family home.

Member Gagnon asked if the garage was attached and it was indicated that it was not.

Chair Farmer asked if Mr. Turner could move the garage over towards the Waldo's so that it would be 20' from their property, thus increasing the distance to the Adams property. Mr. Turner indicated that he could, that the garage was more appealing in this location and went on to say that the current house does not meet the setbacks and is approximately 6' from one property line and 10' from the other.

Member Fleckenstein asked if there was a problem with the driveway if the building was moved over 4'. Mr. Turner stated that he would have to redo the driveway, the driveway already exists and he was trying to keep the project as simple as possible. He stated that Mr. Waldo had originally indicated that he could be closer to his lot line and then later indicated that he wanted him to meet the setbacks so he had already moved and reconfigured the location of the garage to accommodate Mr. Waldo.

Member Russo asked if the foundation was already dug. Mr. Turner stated that gravel has been put down and the rebar is there, but there is no foundation.

Member Sargent indicated that on this configuration, you drive up the driveway and pull to the left and asked if there was reason that Mr. Turner was not going straight into the driveway. Mr. Turner stated that he could go straight in if the driveway was moved. Member Sargent asked if it was correct that the garage would be located 12' form the neighbors property line and Mr. Turner stated that it would be.

Member Sargent asked if there would be one big door on the garage and it was indicated there would be. Member Sargent then indicated that at 16' this garage could be considered a two car garage. Mr. Turner stated that it couldn't be, as both vehicles could fit and allow the door the room needed to be able to open.

Member Russo asked where the door was located on the garage and Mr. Turner indicated that it was on the front of the garage, towards Summit Street.

Member Sargent asked if the building was going to be 24' from the Waldo property and Mr. Turner indicated that is what he is requesting.

Chair Farmer asked about making the garage smaller, being 24' x 12'. Mr. Turner stated that this would look more like a shed, and would not leave room for storage and a vehicle as is needed.

Member Sargent then asked for clarification of where the door on the garage was going. Mr. Turner then explained it to him.

Chair Farmer asked Mr. Turner if he had seen the letters submitted by his neighbor the Adams about wanting the garage to meet the setbacks. Mr. Turner indicated that the Adams have a garage on their property, which is almost right on the property line. Chair Farmer indicated that when the garage was built the setbacks may have been different or the garage could be grandfathered. Mr. Turner stated that the house is only approximately 10 years old.

#### Public Comment

Joshua Nason, of 62 Valley Street, was present to speak. He stated that he had received a letter and wanted to know where the garage was going and if it would be closer to his house. Chair Farmer stated that it was going in front of the house, between the house and Summit Street. Mr. Nason then indicated that he had no problems with the application.

Richard Lewis indicated that the board had received two letters. He then read into the record the letters from Fred and Debra Adams of 55 Summit Street and David and Nancy Waldo of 43 Summit Street (see letters in file).

The letter from the Adams indicated that they did agree with the granting of the variance and indicated that the 20' setback should be maintained. The letter from the Waldo's indicated that the applicant has indicated the garage would be 24' off the property line and they indicated they want to make sure that the 20' setback is maintained if the garage is moved.

#### Board Discussion

Member Russo asked if the applicant was willing to move the garage over 4' to increase the distance to the Adams property line from 12' to 16' and Mr. Turner stated he is fine with doing that. Member Russo asked if the cost will be different to move it and Mr. Turner stated it was only a preference. Mr. Turner stated that he had spoken with Mr. Adams and Mr. Adams had marked a spot that he was okay with which happened to be 12' off the lot line. He stated that since that time he has not spoken with Mr. Adams. Mr. Turner stated that he can leave the driveway where it is with moving the garage over 4'. Member Sargent indicated that the Waldo's indicated they didn't want it moved closer. Mr. Gagnon indicated that the setback is 20', so even if the garage is moved over the 4' the setbacks will be maintained.

Chair Farmer mentioned about possibly making the garage smaller. Member Russo indicated it would be like a tunnel and would be hard to utilize. He stated that if the board has Mr. Turner move the garage over 4' then the Waldo's would have 20' and the garage would meet this setback requirement and the Adam's would have 16' of distance between the property line and the garage.

There was some further discussion on the setbacks and the size of the garage. Member Gagnon stated that the applicant is attempting to accommodate the abutters by moving the garage. He stated the lot is already non-

conforming by the standards. Member Gagnon indicated that he understands that the neighbor is not okay with, he stated that the applicant however has agreed to move it a little to accommodate his neighbor, the lot is only 53' wide and any garage would need a variance. He stated he has no problems with as changed.

Mr. Lewis stated that when making the motion, the wording regarding 12' should be changed to 16'.

**MOTION:** Member Fleckenstein moved and Member Russo seconded that I the Zoning Board of Adjustment approve the variance application request [Z11-13] by Adam Turner, Applicant/Owner, to build a garage (16' x 20') to be located 16' from the property line where the side setbacks are 20', on property located at 45 Summit Street, identified as Tax Map/Lot # 098-049-00, R-1 Zone (Low- Density Residential District). The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

- a. The Variance will not be contrary to the Public Interest and the Spirit of the Ordinance is observed due to the fact that the proposed garage will be sized to fit onto the lot the best way possible given the minimum frontage lot width that is available. Further, the proposed garage is a use which is commonly associated with single family homes.
- b. Substantial Justice is done due to the fact that the lot only has minimal frontage and lot width and to deny the proposed use would deny the property owner of a commonly accepted accessory use.
- c. The values of the Surrounding Properties are not diminished due to the fact that the houses for the two abutting properties are located further back on their lots and the garage will not be directly adjacent to these homes.
- d. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

(B) 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 criterion is satisfied in that the subject lot is substantially more narrow and has less frontage than other lots in the immediate neighborhood, no appropriately sized structure can be put on the lot without the need for a variance, and the use is a common and reasonable one.

This approval is subject to the following conditions:

1. 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.
2. As agreed to by the applicant, the location of the garage shall be shifted 4 feet to be 20 feet off the southerly lot line with the Waldo property, and the northerly lot line setback with the Adams property would be increased to 16 feet as opposed to the 12 shown on the original plan.

All were in favor and the motion passed.

- **Z11-11 and Z11-12:** Kevin D. Robbins and Debrah M. Robbins, Owners/Applicants; Seufert Law Offices, PA, Agent, request an Equitable Waiver of Dimensional Requirements (RSA 674:33-a) regarding a house that was constructed within the setbacks on property located at 22 Davis Street, Tax Map/Lot # 135-041-00, R-3 Zone (One-, Two- and Three- Family Residential District). If the Equitable Waiver of Dimensional Requirements is denied, then the applicant has requested a variance.

Attorney Chris Seufert, along with Robert Hunt, were present to speak for Mr. Robbins. Attorney Seufert indicated that he would like everyone to welcome Robert Hunt back to Franklin and that he will be addressing the issues today. Attorney Hunt indicated that Mr. Robbins is also present if the board has any questions or concerns for him. Attorney Hunt indicated there is a lot of history with the property and Mr. Robbins had submitted a sketch and a plot plan showing why they believe the Equitable Waiver should be granted.

In 2008, the home burnt to the ground. Between 2008-2009 the house was rebuilt. Along the way complaints were made but nothing was put in writing until 2010. Based on the completed survey that Robbins had done the setbacks have been violated. The house and the garage are 75' together, and the width of the lot was thought to be 108', which would give ample room for the house, the garage and the setbacks, with room left over. The setbacks are 15' and with the house and garage at 75' total, this would have equaled 105', which is less than the 108'. The portions that are encroached upon are that the structure is only 13' from the Fleury property from the back corner and 14.05' from the front corner closest to Davis Street to the Fleury lot and 11.67' from the back of the house to the Speiker lot and 13.6' on the corner closest to Davis Street to the Speiker lot. The violation is not more than 3.5' - 0.9'. Robbins was not aware of the violation until the survey showed that the jogs in the property line, went in and not out, thus the width of the property slowly got smaller as you went further onto the property.

At this time, Attorney Hunt then went through the criteria of RSA 674-33a. Equitable Waiver of Dimensional Requirements. He stated that the violation was done in ignorance of the law, that the error was a good faith error in measurements and calculations, they knew the setback was 15', the owner had reviewed his deed and the tax maps and had a surveyor help him out with the dimensions, and the City was out to the property numerous times. He stated that the plan that was submitted with the building permit was not evasive, and information and assistance was sought out. Attorney Hunt indicated that they have received a letter from a realtor giving a buyer price opinion and he states that he does not see this home affecting property values either adversely or positively. In addition, the realtor added that there would be no diminish of property values due to the setbacks not being met by such a minimal amount. Attorney Hunt stated that the cost definitely outweighs the ability to rectify this issue, as the entire structure would have to be rebuilt. Attorney Hunt indicated these same facts back the ability by the board to grant a variance for the structure if the Equitable Waiver was not granted.

Attorney Hunt stated that the definition of the R-3 Zoning District states: The purpose of the district is to preserve the residential character of the neighborhood without more intensive multifamily uses or businesses.

Attorney Hunt stated that the hardship, as the house would cost more than \$100,000 to renovate or remove and rebuild, outweighs the violation and the violation was inadvertent. Allowing the variance or even the equitable waiver is appropriate and in this case the Equitable Waiver Requirements are met.

Attorney Hunt indicated that to prove their point, Mr. Speikers also does not know where the boundary line and just constructed a fence several feet on Mr. Robbins property, based on the survey.

Chair Farmer asked how they don't meet the setbacks if the front lot line is 108' and Attorney Hood indicated Mr. Robbins thought he would if he kept the house centered, but with the lot line having the inward jog, the setbacks were not met. Chair Farmer asked about the surveyor that helped determine the location of the house and Attorney Hunt stated that he had helped locate lot lines and pins. Mr. Robbins stated he knew it was going to be a tight fit, and a surveyor unofficially helped him locate a few pins. One of the pins that was located they believed to be the pin for the job out on the Speikers side that after the survey turned into a jog in. The survey was not done at this time, and the surveyor was only unofficially helping him to locate some markers.

Member Gagnon asked about the granite bound that was found on the Speikers property. Mr. Robbins stated they had measured 108' from that granite marker, using a tape measure, to determine where the house would sit. Member Russo asked if the house was now located within the setbacks and Mr. Robbins indicated that it is. Member Gagnon asked if the design of the house had changed and Mr. Robbins stated that it did, that the old house was a two story englisher type home, and this is a one level modern 40' x 50' ranch. Mr. Robbins stated that everything that his neighbors have brought up he has addressed, they said he didn't meet the setbacks so he had the survey done, Speikers stated the new house would affect his property value and so he had David Liberatore look at the properties. He stated the house has been built to the highest standard and when trees were removed the wood was given to neighbors. He stated that even the old house was used by the City for fire training prior to demolition. He stated he did not build the house to offend anyone.

Chair Farmer asked what the complaint on the height was. Mr. Lewis indicated that the neighbor had indicated that the house was too tall, but the City has since indicated that the height is not in violation, and is not an issue tonight.

Member Gagnon indicated that in mid July Mr. Robbins contacted Mr. Lewis regarding the survey that he had done and the issues with the property deeds and the layout of the lot. Member Sargent indicated the problem is that the person who did the survey did not double check. Member Gagnon indicated the granite bound is the legal bound, the first surveyor was only unofficially helping Mr. Robbins and not completing a survey and that the dimensions were done from an existing granite bound, for which the dimensions were taken from. There was some further discussion on the granite markers and the measurements. Attorney Hunt stated that the discussions and confusion over the location of the granite markers and the measurements only makes their case stronger that Mr. Robbins was acting in good faith and the statute looks at whether or not the owner knew they were in violation and he did not.

#### Public Comment

Mr. John Fleury, of 14 Davis Street, was present to speak. Mr. Fleury stated that there is a fence on his property line where the iron pins are located. He stated that Mr. Robbins was a foot off in determining the distances and with the fence there how can he not know where the lot line was. He stated that the problem is that we are a nation of laws and Mr. Robbins knew he was too close. He stated that Mr. Robbins should not be allowed to skirt the law. He cannot claim ignorance as he knew he was too close.

Mr. Fleury stated that he disagrees with the surveyor on the location of the lot line. He stated that the fence on the property was based on a located pin on the property. He stated the old house was smaller and didn't burn flat to the ground. He again stated that Mr. Robbins cannot claim ignorance and shouldn't be allowed to skirt the laws. He stated that the setbacks were brought to Mr. Robbins attention well before this evening, he stated that he never should have had to bring the setbacks concerns to Mr. Robbins or the City's attention that it never should have come to this in the first place. He stated that the system has failed miserably.

Chair Farmer then indicated that the city does not survey properties, nor do they require a survey to be done as part of the building permit process.

Mr. Fleury stated that an "idiot with a tape measure" could figure it out. Mr. Fleury then indicated that Mr. Cote had taken the pin out some time ago. Member Sargent then asked how Mr. Robbins could know the location of the lot line if Mr. Cote took the pin out. Mr. Fleury stated that was not an issue at the time and the base pin is still in place. He stated that Mr. Robbins knew he was too close based on the fence.

Mr. Fleury then stated that the survey is "wacky", and he is not sure on the points.

There was discussion on the survey and Mr. Lewis indicated the only survey that has been completed regarding this project was in the packets.

Member Sargent asked if the fence runs the full length of the property. Mr. Fleury stated that it use to until the survey showed the fence on Mr. Robbins property in the back due to the jog. He stated he is disputing the survey. He stated a property line can move one foot but not 6-8 feet. Member Russo asked if the deeds states plus or minus and Mr. Fleury stated that he is not sure. Member Gagnon asked if measurements were done, then it would show Mr. Fleury's



fence 1' off the property line and Mr. Fleury stated that was correct and stated the fence runs the length of the boundary line.

Patrick Speikers, of 81 Terrace Road, was present to speak. Mr. Speikers then gave the board pictures to give them a better idea. He explained the house today is on the left and the right is the old house. He stated that Mr. Robbins did not stay in the same footprint. He stated that before the house was built, he banked on that they would be in front of the board. He stated he wanted to know what the criteria was so that this does not happen to someone else.

Mr. Speikers indicated that Kevin has indicated that he used the tax maps to determine the location of the property; however, he has been informed by Mr. Lewis that the tax maps are a general guideline and that the deeds are what is accurate. He stated the deeds were not pulled until Mr. Robbins was questioned. He stated that he has a corner lot with granite bound.

Mr. Speikers added the following:

1. The house did not burn all the way to the ground.
2. That when the house was demolished and the foundation was there, it filled with water and to drain it they dug a hole 6' deep and drained it into Mr. Speikers property.
3. Trees were killed.
4. The lot was filled first and then the house built, so the height of the house is a substantial difference then the previous house.
5. City indicated a survey was needed to prove the setbacks were off.
6. Had a realtor also do an assessment and the realtor indicated that property values would be affected.
7. Mr. Robbins can see into his yard where his hot tub is located.
8. There are drainage issues that never existed before as the water direction has changed.
9. Driveway is eroding due to water problems.
10. Disintegrated neighborhood.
11. He stated all he wanted was to be treated fair and reasonably.
12. Wants Mr. Robbins to have to follow the rules that everyone else has to follow.
13. Property values are being affected.

Mr. Sargent indicated that the letter indicates that it will "probably" affect property values and that this is not a definite. Mr. Speikers stated the burden of proof is on Mr. Robbins to show that his property value would not be affected. Member Russo asked what he wants the assessment of and Mr. Speikers stated of his own property to make sure his property value is not affected. He stated he has a 6' high fence and you can see Mr. Robbins window over the fence, he has lost his privacy and this affects his property value.

Member Sargent indicated that Mr. Speikers property is 6' below the grade of the Robbins property. Mr. Speikers indicated that this was because Mr. Robbins built his property up.

Member Sargent asked Mr. Robbins how many steps there are from the ground to the first floor. Mr. Robbins indicated that there are 13 steps from the basement floor to the first floor.

Mr. Speikers indicated that he is boggled that this project did not make it before the board and asked if the board controlled that. Mr. Gagnon indicated that applications do not come before the board unless they are not going to meet setbacks and there is no notice to abutters. He stated the practice of the city is that a hand drawn sketch is submitted and if the owner indicates the setbacks are met then the city accepts that. Patrick Speikers indicated that the city has the option to make the owner of a property submit a survey and if this was done this whole situation would have been avoided. Member Gagnon indicated the board has been given a survey. Mr. Speikers indicated the survey the board was given is wrong. Mr. Speikers stated if a variance was required then they would've gotten a chance to speak.

Member Gagnon stated that the City works on good faith. He stated that this is not just in the city of Franklin but in many cities and towns. He stated that as a builder, he has dealt with this. Mr. Speikers indicated that if a survey is done up front then this issue would have been mute.

Member Gagnon asked Mr. Speikers if he wanted Mr. Robbins to tear the house down. Mr. Speikers indicated that both side line setbacks are not met. Member Gagnon asked Mr. Speikers what he would recommend as a solution. Mr. Speikers indicated that he move the house and that the board makes him comply with the requirements and that if after this is done if the property value is affected then it should be fixed.

Mr. Speikers indicated he has a three story 2500 square foot house and that Mr. Robbins house was a two story new Englander. He stated there was lots of land and room before that is not there now. Chair Farmer asked if Mr. Speikers could look into Mr. Robbins yard before. Mr. Speikers indicated he could but that the night the hosue burnt down they didn't even know. Mr. Robbins indicated that he just wants the city to let people know before so that the neighbors can voice their concerns. Mr. Speikers indicated he does not know where this should go from here, but indicated that someone needs to be held accountable. He stated he didn't ask for these problems. He stated if this goes forward then the city needs to look at things differently and when red flags come up then it is in the cities best interest to look into the concerns further. He stated if a property seems like it could be too close a survey should be required. He stated this is too bad and that this ruined their neighborhood.

Member Fleckenstein indicated that two realtors have reviewed the property and given two different determinations on whether property values would be affected. Neither of the realtors are appraisers and the question of evidence as to whether property values would be affected anymore by the building of this new house or the current market is affected the values more. She stated that the value needs to be determined on actual data. Member Gagnon indicated that both realtors are from the same office. Mr. Speikers indicated that two realtors from the same office gave different opinions so a proper assessment is needed.

Member Sargent asked Mr. Speikers if what he is saying is that you want him to tear down his house to correct this issue. Mr. Speikers indicated that someone should go after him, that he cause this situation and didn't want to rectify it and ignored it. Mr. Speikers indicated he should not lose money and that it was not fair for the board to grant this waiver if he is losing money. He stated that Mr. Robbins went by the tax map and this is not accurate.

At this time, there was further discussion between Mr. Speikers and the board on the pins, on the survey and Mr. Speikers indicating it was inaccurate, and on property values. Mr. Fleury also joined the discussion again regarding the survey and the inaccuracy of the survey based on the pins. Mr. Speikers indicated any hand-drawn plan should throw up red flags and it was indicated to him that all building permits only require is hand-drawn plans.

At this time the board opted to have a 5 minute break. The meeting reconvened at 9:50 p.m.

Mr. John Broome, 69 Terrace Road, was present to speak. He stated that his concerns are the survey and the privacy issues. He stated that he doesn't have much faith in the survey. He stated the original subdivision shows each lot as two separate lots, being one empty lot and one house lot. The house was built the way it is because the contractor indicated it would be cheaper for Mr. Robbins. He stated there was a stone wall with iron pins in it. Member Sargent asked if the original pins were in the stone wall and Mr. Broome indicated they were. Member Gagnon asked if the stone wall was mentioned in the deed and Mr. Broome indicated it is not and only the footage is. He stated there is no mention of pins or the walls. Member Russo asked if there are any granite markers and Mr. Broome indicated that there are not. He stated that the new house definitely changed the privacy issues, based on the elevation of the house. Mr. Broome added that the house is very close and should be rectified. Chair Farmer indicated that unfortunately the city does not have requirements that when a building permit is issued that a survey be done, and maybe the regulations could be reviewed so that if a new structure is going to be located too close that a survey be done. Mr. Broome indicated he thinks it would be a good idea if the regulations were revised so that if so close they do need a survey.

Attorney Hunt indicated he would like to make a point that Mr. Robbins did the survey voluntarily and that this survey is the only evidence that the building does not meet the setbacks. He stated that all the abutters are indicating that the survey is not right and if this is the case then that would mean that there is no evidence of a setback violation. The survey was done in good faith to address the concerns of the neighbors.

Chair Farmer indicated that the survey was done in October. Mr. Robbins indicated that every issue that Mr. Speikers has brought up he has tried to address. He stated Mr. Speikers complained about the height and the city came out and stated that it met the requirements. He complained about the property values so an assessment was completed. He

complained about setbacks so Mr. Robbins did a survey. He stated that he has always tried to work with his neighbors. He stated he did not personally know there was a marker on John's property. He stated the entire area use to be farmland and only pins were in place. He stated he is not a surveyor and did the best he could with the information that he had.

Mr. Speikers addressed good faith. He stated the survey was started by Mr. Robbins and then stopped. He didn't continue with it until the neighbors complained. He stopped doing the survey because he knew he was wrong, so to say that it was done in good faith is wrong.

Mr. Robbins indicated that the reason why the survey was stopped was due to financial issues. Mr. Speikers indicated that he has documentation indicating that the survey was paid in full.

David Liberatore was present to speak and identified himself as a Managing Broker. He stated that he agrees with Member Fleckenstein that if they want a true value then appraisals need to be completed. He stated that he has sold 475 piece of property for over 70 million dollars. He stated that he has never made an adjustment on property values due to a 18" or 27" setback violation. He stated that this is what his decision was made based on.

Stephanie Broome, of 69 Terrace Road, stated that there were other applications on the agenda this evening for demo and rebuild, so she wanted to know why Mr. Robbins did not have to go this avenue. Member Fleckenstein indicated that these are different in that it is a known setback violation and if Robbins had been a known violation then it would have triggered a variance. The assumption at the time was that the setbacks were met, it was built to code.

Mrs. Broome indicated that she was told in 2008 that if the house is creating a nuisance that it does not matter. She stated that they should've been notified for a structure as large as his. This house has changed the neighborhood. She stated that she feels bad that they had a fire, that their kids grew up together, and that she had come to the city for help way before now. She stated that it is sad that it has come to this. She stated that if a structure is demolished then it should have to get a variance.

Member Gagnon indicated that the other applications were in the Lake Protection District, where the setbacks are 50' and there is an ordinance governing the shoreland. He stated that there are a lot of differing factors between those projects and this one. Mrs. Broome indicated that any runoff from these lots goes into the River. Member Gagnon indicated that the laws regarding what can and cannot be done is set by the Planning Board and what was presented was shown to not be in violation. He stated that he understands that this should be done if the distances are too close, but the Zoning Board cannot solve the problem.

Chair Farmer indicated that when changes are made to a property and they are legal, there is no notification to abutters. He stated that now that they have applied for the Equitable Waiver and now that the survey is showing that the setbacks are not met, now there is notification.

Mr. Speikers asked if it would help the board to see the original document and Mr. Farmer indicated that would not.

The public hearing was closed.

### Board Discussion

There was a discussion by the board on the presented information and the survey and the abutters concern that the survey was not accurate, however no information was submitted to prove otherwise. The board also discussed the hardship factor. They discussed good faith and the evidence supporting that. The board indicated they can only act based on the information presented and not on hearsay or conjecture.

**MOTION: Member Russo moved and Member Sargent seconded that the Zoning Board of Adjustment approve the request [Z11-11] by Kevin D. Robbins and Debrah M. Robbins, Owners/Applicants; Seufert Law Offices, PA, Agent, for an Equitable Waiver of Dimensional Requirements (RSA 674:33-a) regarding a house that was constructed within the setbacks on property located at 22 Davis Street, Tax Map/Lot # 135-041-00, R-3 Zone (One-, Two- and Three- Family Residential**

**District). The Board finds that the sideyard setback violations created with the construction of the house that replaced one damaged by fire meets all of the criteria outlined in RSA 674-33-a.I necessary for the issuance of this Equitable Waiver in that:**

- a. The violation was not noticed by the owner or the municipal official until after the structure was substantially completed;**
- b. The violation was not a result of ignorance of the ordinance, any misrepresentation or bad faith on the part of the owner but was instead caused by a good faith error due to the fact that the deeds did not accurately describe the subject property and abutting lots;**
- c. The dimensional violation does not constitute a nuisance nor diminish the value of other property in the area and in making this finding the Board does recognize that there is an elevation difference between the subject lot and the lot of Abutter Speikers, but the height of the subject house and the setback do not rise to the level that creates an observable impact;**
- d. The violation can only be completely corrected with the removal and reconstruction of a portion of the subject house and garage and the costs associated with this outweigh the public benefit to be gained.**

**All were in favor and the motion passed.**

Attorney Seufert indicated that at this time, due to the Equitable Waiver being approved, that they would respectively withdraw the request for the variance.

**Other Business:** None.

**Planner's Update:** None.

**Public Comment:** None.

**Adjournment**

**MOTION:** Member Sargent moved and Member Russo seconded to adjourn the November 2<sup>nd</sup>, 2011 meeting of the Zoning Board of Adjustment, at 10:25 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey  
Planning and Zoning Administrator