

**FRANKLIN ZONING BOARD  
REGULAR MEETING AND PUBLIC HEARING  
CITY COUNCIL CHAMBERS- CITY HALL  
Wednesday, June 6<sup>th</sup>, 2012 at 7:00 p.m.**

**MINUTES**

**Call to Order:** The meeting was called to order at 7:03 p.m.

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

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

- Approval of Minutes: December 7<sup>th</sup>, 2011 Zoning Board Meeting**

**MOTION:** **Member Sargent moved and Member Russo seconded to approve the minutes of the December 7<sup>th</sup>, 2011 Zoning Board regular meeting. All were in favor and the motion passed.**

**Old Business:** None.

**New Business**

- Z12-02:** Richard Joyce Revocable Trust, Owner; Richard and Sandra Joyce, Applicants, request a Variance from setback requirements for the construction of an 8' x 20' deck, to be located on the front of the sunroom facing the lake. The deck would be 6.25' from the southern lot line, 17' from the northern lot line and 40' to the lake; the setback requirements are 50'. The property is identified as 153 Lake Shore Drive, Tax Map/Lot # 015-007-00, New Map # I4, LP Zone (Lake Protection District).

Richard Joyce was present to speak. He stated the property is a small camp at 153 Lake Shore Drive and the size of the lot prohibits any additions without a variance.

Richard Lewis asked if the deck would be on sonar tubes and Mr. Joyce indicated that it would be. Mr. Joyce added that there will be infiltration for the water underneath the deck. Mr. Lewis asked if they had contacted DES and Mr. Joyce stated that they did last fall and they were told they could go a maximum of 12'. Richard Lewis indicated they may need to submit a permit by Notification, based on the new regulations, to DES and that Mr. Joyce would need to contact DES regarding permits. Richard Lewis stated that the permit by notification is an easier process, but that the permit will most likely be necessary.

Member Russo asked if the 12' maximum they are allowed to go is length or width and Mr. Joyce stated that it is towards the lake and they are only going 8' of the allowed 12'. Mr. Russo asked if there is grass or sand between the deck and the lake, and Mr. Joyce stated it is mainly grass, but there is some sand as you get closer to the lake. Member Russo asked if there would be downspouts and Mr. Joyce stated there would not be downspouts from the deck.

Mr. Lewis stated that based on the size of the lot, the owner couldn't do anything new to the property without a variance. Richard Lewis explained to Chair Farmer that DES Shoreland regulations cover anything up to 250' of the lake, but added that within 50' of the lake permanent structure or enclosed space would not be allowed.

**Public Comment**

Member Fleckenstein asked if we had received anything from the abutters and Richard Lewis stated that we did not.

There were no comments from the public.

### Board Discussion

**MOTION:** Member Russo moved and Member Fleckenstein seconded that the Zoning Board of Adjustment approve the variance application request by Richard and Sandra Joyce (Richard Joyce Revocable Trust) for a variance to build a deck addition of 8' x 20' to the sunroom, facing the lake. The deck will be aligned with the existing house and will not impede into the side yard setbacks any more than the existing house, being 6.25' from the southern lot line and 17' from the northern lot line. The deck will be 40' from the lake, where the existing house and sunroom are currently 48'. The property is located at 153 Lake Shore Drive, Tax Map/Lot # 015-007-00, LP Zone (Lake Protection District) and the setback requirements are 50'; the application is referenced as Z12-02. 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.

Member Russo then read into the minutes the conditions, as set forth from the Decision of Approval, which state:

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. The applicant shall apply for all necessary permits from the Department of Environmental Services for the construction of the deck, prior to any building permits being issued.
3. That a new plan shall be submitted with the location of the septic tank and leach field to be clearly portrayed on the plan.

All were in favor.

### Decision of Approval

I move that the Zoning Board of Adjustment approve the variance application request by Richard and Sandra Joyce (Richard Joyce Revocable Trust) for a variance to build a deck addition of 8' x 20' to the sunroom, facing the lake. The deck will be aligned with the existing house and will not impede into the side yard setbacks any more than the existing house, being 6.25' from the southern lot line and 17' from the northern lot line. The deck will be 40' from the lake, where the existing house and sunroom are currently 48'. The property is located at 153 Lake Shore Drive, Tax Map/Lot # 015-007-00, LP Zone (Lake Protection District) and the setback requirements are 50'; the application is referenced as Z12-02. 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 values of the Surrounding Properties are not diminished due to the fact that the proposed setback of 40 feet from the lake is generally consistent with the setbacks of other homes in the general area and NH DES will require a permitting process through them as well to maintain the integrity of the lake.

b. **The Spirit of the Ordinance is observed and Substantial Justice is done due to the fact that the property is situated such that the variance will not impact the Webster Lake watershed, the protection of which was a primary concern that led to the establishment of the setbacks in this zoning district.**

c. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

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: **This criterion is met as the lot is a small lot located no Lake Shore Drive, and no structure could be placed on the property without needing a variance.**

This approval is subject to the following conditions:

4. 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.
5. The applicant shall apply for all necessary permits from the Department of Environmental Services for the construction of the deck, prior to any building permits being issued.
6. That a new plan shall be submitted with the location of the septic tank and leach field to be clearly portrayed on the plan.

□ **Z11-03 (Variance) and Z11-04 (Special Exception):** Bill Hamel, Owner; James Hall, Purchaser/Agent, request a Special Exception to legalize an existing, but not approved, family apartment, located in the basement of the home located at 48 Ward Hill Road, Tax Map/Lot # 131-402-03, RR Zone (Rural Residential District). The Variance is required as this 900 square foot family apartment exceeds the 720 square feet maximum as set by Section 305-29.8.I(2) of the Franklin Zoning Ordinance.

James Hall was present to speak. He stated that the house had a finished basement, which is legal living space. He stated that he would like to modify the space for accessibility and make it into a family-apartment for his father-in-law. He stated he would need to widen hallways. The entire unit is within the basement with a walk out door and access to the upstairs, providing two forms of egress. He stated he would like to make it ADA accessible.

Richard Lewis stated that upon applying, Mr. Hall did not own the property and asked if he currently owns the property and Mr. Hall stated that he does, as of 4 hours ago.

Richard Lewis stated that the Hamel's had put in the family apartment without city approval. They recently applied for a building permit, and removed a full wall, creating legal living space as the living space in the basement also wasn't legal as no permits had been applied for. The new owner will need a building permit for any changes and to make it into the family-apartment. He stated efforts have been put forward to legalize this space and all concerns have been resolved.

Member Russo asked if the window in the bedroom was the egress and Mr. Hall stated the bedroom divider wall was removed to create one room. Angie Carey stated that they have walk out doors in this space.

Chair Farmer asked about the legality with the application being under Hamel's name. Richard stated that the board is all set as both names were on the application. Angie Carey added that the restrictive deed will also be completed under Hall's name, so this is all set.

Richard Lewis stated this is a Special Exception for the Family Apartment and a variance due to the size of the space being over 720 square feet. Mr. Hall stated that the space is actually only 780 square feet and not 900 square feet. It was indicated that the storage area in the basement may have been added to the original number.

Richard Lewis stated that based on the layout of the house, the topography and the area, this property is well suited for a family apartment.

Public Comment: None.

### Board Discussion

Chair Farmer reminded the applicant that an in-law or family-apartment cannot be rented out.

Angie Carey indicated that the office has a model document for recording, which includes the conditions set forth by section 305-29.8, and that she will help Mr. Hall complete the documentation for recording at Merrimack County Registry of Deeds.

**MOTION:** Member Russo moved and Member Sargent seconded that the Zoning Board of Adjustment approve the Variance and Special Exception for Bill Hamel, Owner; James Hall, Purchaser/Agent, to legalize an existing, but not approved, family apartment, located in the basement of the home located at 48 Ward Hill Road, Tax Map/Lot # 131-402-03, RR Zone (Rural Residential District). The Variance is required as this 900 square foot family apartment exceeds the 720 square feet maximum as set by Section 305-29.8.I(2) of the Franklin Zoning Ordinance. 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.

Member Russo then read into the minutes the conditions, as set forth from the Decision of Approval, which state:

**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. The applicant shall obtain any required permit from the NH Department of Environmental Services for the septic system issues related to the additional bedroom associated with the proposed apartment. The permit shall be obtained prior to the utilization of the in-law apartment.
3. The owner/applicant shall prepare and record a restrictive covenant in compliance with Paragraph B of the Family Apartment section [305-29.8] of the Zoning Ordinance. Before the covenant is recorded, it shall be submitted to the Planning and Zoning Office for review and possible modification.
4. The use of the Family / In-law Apartment shall conform to all of the provisions and restrictions outlined in Section 305-29.8 of the Zoning Ordinance.

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

### Decision of Approval

I move that the Zoning Board of Adjustment approve the Variance and Special Exception for Bill Hamel, Owner; James Hall, Purchaser/Agent, to legalize an existing, but not approved, family apartment, located in the basement of the home located at 48 Ward Hill Road, Tax Map/Lot # 131-402-03, RR Zone (Rural Residential District). The Variance is required as this 900 square foot family apartment exceeds the 720 square feet

maximum as set by Section 305-29.8.I(2) of the Franklin Zoning Ordinance. The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

- d. The Variance will not be contrary to the Public Interest and the values of the Surrounding Properties are not diminished due to the fact that the subject property is of such a size and location that will easily accommodate the proposed use without creating any congestion or neighborhood problems.
- e. The Spirit of the Ordinance is observed and Substantial Justice is done due to the fact that the proposed use is an allowed Special Exception activity and the fact that the size of the unit exceeds the 720 square foot maximum for an in-law apartment property does not create any conflicts for the property owner or the neighborhood.
- f. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

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: **This criterion is met as the property is properly sized, the apartment area is properly proportional to the main house, and denial of the variance request would be hardship to the proposed buyer and the denial would not further the goals or objectives of the zoning ordinance.**

The Board further finds that the application request meets the tests and criteria necessary for the granting of a Special Exception in that:

- I. The site is appropriate for the proposed use as an in-law apartment.
- II. The proposed use and activity will not be detrimental or offensive to the neighborhood and will not be problematic for traffic or pedestrians given the size of the overall lot, the setback of the house from the street, and the amount of available parking.
- III. There will be adequate facilities for the proposed use once the permits and inspections discussed in the below conditions are addressed.
- IV. The proposed use is consistent with the spirit of the zoning ordinance which allows for, and creates a structure to address, in-law apartments.

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. **The applicant shall obtain any required permit from the NH Department of Environmental Services for the septic system issues related to the additional bedroom associated with the proposed apartment. The permit shall be obtained prior to the utilization of the in-law apartment.**
3. **The owner/applicant shall prepare and record a restrictive covenant in compliance with Paragraph B of the Family Apartment section [305-29.8] of the Zoning Ordinance. Before the covenant is recorded, it shall be submitted to the Planning and Zoning Office for review and possible modification.**
4. **The use of the Family / In-law Apartment shall conform to all of the provisions and restrictions outlined in Section 305-29.8 of the Zoning Ordinance.**

### **Planner's Update:**

Richard Lewis stated that he is sure that everyone has seen that construction has started again downtown. He stated that Lyman and Son's got back onsite last week and had hoped to be completed by the class day parade on Monday; however, due to weather they aren't done yet and are hoping to be done within the next week or so.

Richard Lewis stated that he has not coordinated with Paul Fitzgerald's office for the training session as of yet, due to scheduling conflicts. He stated that he will get back on track and will contact Attorney Fitzgerald regarding this training for maybe September.

**Other Business:** None.

**Public Comment:** None.

**Adjournment**

**MOTION: Member Sargent moved and Member Tully seconded to adjourn the June 6<sup>th</sup>, 2012 meeting of the Zoning Board of Adjustment, at 7:40 p.m. All were in favor and the motion passed.**

Respectfully submitted,

Angela M. Carey  
Planning and Zoning Assistant