

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, July 11th, 2012 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: **Kathlene Fleckenstein, Marty Russo Floyd Sargent, Donna Tully and Planning and Zoning Assistant Angela Carey.**

Absent: **Chuck Farmer and Don Gagnon.**

- ❑ **Approval of Minutes: June 6, 2012 Zoning Board Meeting**

MOTION: **Member Sargent moved and Member Russo seconded to approve the minutes of the June 6th, 2012 Zoning Board regular meeting. All were in favor and the motion passed.**

Old Business: None.

New Business

- ❑ **Z12-05:** Andrea and Kenneth M. Brown, Owners/Applicants, request a Variance from setback requirements for the placement of a 12' by 20' canvas, shed type structure, to be located on top of a deck type platform. The structure would be approximately 8' from the side lot line, and 5' from the front lot-line. The property is identified as 7 Smiling Hill Road, Tax Map/Lot # 074-008-00, New Map # J6, LP Zone (Lake Protection District).

Acting Chair Tully asked the Browns if they wanted to be heard this evening by a board of four or if they wanted to have their application continued to the August meeting in hopes of having a full board present. Andrea and Kenneth Brown stated they wanted to be heard this evening.

Mr. Brown indicated they want to put up a 20' x 12' storage shed, to be purchased from Tractor Supply, and called a garage in a box. He stated it is a canvas structure that would hold his trike, snowmobile, lawnmower and snow blower, items that are currently covered by a tarp.

Member Sargent asked about the well shown on the septic plan, that appears to be approximately 9' from the trailer located where this structure would be placed and it was indicated that the well is Karen Grzelak's well.

Member Russo asked if the structure would be anchored to the platform/deck and Mr. Brown indicated that Phil Cain would be doing this and that it would be anchored to the deck. Member Russo asked about the access into the structure, and it was indicated that you would go in the driveway, and that the door would be towards the house and that would be the only access. Member Russo stated that his concern is the size of the structure and it being too close to the abutting properties. Member Russo asked about the area behind the house. Mrs. Brown stated that there is the leach field, which nothing can be parked on and that the depression is for containment of water so that water doesn't get into the house.

Member Sargent asked where the trailer would be placed if this was approved. Mrs. Brown stated it would be moved over and placed by the other trailer on the other side of the house.

Member Sargent asked how far this new structure would be from the abutters well and it was indicated that based on the septic plan it appears it would be approximately 10 feet. Member Sargent stated that with all these items (the snow blower, trike, lawnmower and snowmobile) being in this structure, he is concerned about leakage and contamination of the well.

Acting Chair Tully asked what the height of the structure would be and Mr. Brown stated that it would be 10' tall.

Member Russo stated that none of the vehicles need access to the roadway and then there would be two trailers on the other side of the property, nothing is being removed, just added to the property, so there is no downsizing. Mr. Brown stated this was correct.

At this time, Mr. Brown gave the board a picture of the side of the property closest to Mr. Cain's property, where the one trailer is existing and the other trailer would be moved to.

Member Russo stated that the structure is being added to the lot, and nothing is being removed, just moved to another portion of the lot. Mr. Brown stated that was correct. Mrs. Brown stated that nothing can be put on the leach field and that the leach field takes up pretty much the whole back yard. Mrs. Brown stated the abutter on the right has no problem with the trailers being located next to his property.

Member Russo asked if the house was a four bedroom and it was indicated that it was. He stated the lot is a small lot and they are looking at putting on the lot a 12' x 20' structure, but they are not replacing anything or removing a trailer, so there will now be two trailers on the other side of the lot. He stated the lot is not being cleared or consolidated within the new structure, but instead will just be added to the existing conditions of the lot. He stated that they are looking at adding a 240 square foot structure on a lot that is already being used to full capacity. He stated that to add a garage they would need a variance. He asked if by adding this, the variance goes with the land and in the future, if something happened to the structure then they could replace it with a stick built structure and Angie Carey stated that was correct.

Mrs. Brown stated the closed in trailer is sometimes used to keep pellets in to transport them to the house.

Member Russo asked if the owner built the house and Mrs. Brown stated she purchased the property in 1975 and the house was there.

At this time, Mr. Brown then gave the board a picture of the closed in trailer with the trike in it. He stated that the trike just barely fits in the trailer and that it gets really warm in the trailer.

Member Sargent asked about the pellets being stored in the trailer and Mr. Brown stated they are not stored in the trailer; they are transported to the house utilizing the trailer.

Member Russo stated that they are stretching their limit lines. He reiterated that there is a lot of items on the property, there is no consolidation and that all these items (the trailers, the shed and the new structure) would all be within the setbacks.

Member Sargent asked how far the existing trailer on the right side of the property is from Mr. Cain's house and Mr. Cain stated it is approximately 12'. Angie then asked, based on the picture submitted by Mr. Brown if the railroad ties were the property line and Mr. Cain stated that they are. She then asked Mr. Cain what the white items were against the house and Mr. Cain stated that they were two propane tanks.

Mrs. Brown stated that the trike would not stay in the enclosed trailer and would go into the new structure.

Public Comment

Karen Grzelak, an abutter whose property address is 9 Smiling Hill Road, was present to speak. She stated she is opposed to the proposed canvas structure being so close to her property lines based on the negative affect it will

have on her property value. The enclosed trailer is already too close to the property line. The applicant has a nice yard, but they have placed a lot of junk and other items right on her property line. She does not want this canvas structure so close to her house, or to her well, due to future problems that could occur. She would like to see them weed some items out on their property, and stated that she uses a storage unit for the items she has and does not just store them on her property. She believes the trailer is currently either right on the property line or even possibly over the property line. If this is a permanent structure or approval it isn't fair to her for the board to approve it.

Ms. Grzelak stated she was told by Daniel Artesian Wells when she moved in that her well can't be driven over, and the roots for the trees could damage the well, so she has kept the lot clear, where they have placed the trailer, and it's an eyesore and not fair to her.

Member Fleckenstein asked if the well was a dug well and Ms. Grzelak stated that it is not and is an artesian well.

Jerry Audet, property owner on Lake Shore Drive and Real Estate Broker, was present to speak. He stated the board has seen the pictures that he submitted. He stated that if antifreeze or other chemicals are kept in this structure and leak, there will be a problem with her well. He also stated that having a 10' tall structure on the property so close to the property lines will deter a sale of the property. He stated that Ms. Grzelak's insurance company is also not going to like the fact that this is going to be so close to the line and so close to the well and the house.

Mr. Audet went on to say that the placement of this structure so close to the property line will be detrimental to Ms. Grzelak's value of her house either now or in the future. He stated that in his shed he has antifreeze and if that were to spill it would eventually get into her well. If an appraiser came to the property it would bring the property value down.

Andrea Brown stated that she disagrees as far as value. She stated that Ms. Grzelak is not looking at selling her property and just put a lot of work into the property before she retired. She stated that Ms. Grzelak's land sits higher than hers. She stated that there will not be any fluids inside the structure, no oil or antifreeze and that it would be put on a deck and secured. She stated that it is not going to be near the well.

Member Russo asked if they would be taking the shed down and Ms. Brown stated that she hopes so. Member Russo asked the size of the shed and Angie Carey stated the tax card indicates that it is 10' x 10'.

Member Sargent stated it is very possible of an insurance company to deny their insured insurance based on something happening on an abutter's property and that he has seen it happen. It doesn't matter if Ms. Grzelak is looking at selling her house or not, property values still need to be taken into consideration.

Member Russo asked the Brown's what plan B is if this is not approved and Mrs. Brown stated it is to build a garage. It was indicated to Mrs. Brown that she would still need a variance.

Mr. Cain asked what the setbacks were. Angie Carey indicated that the zone is Lake Protection and the setbacks are 50'. Mr. Cain asked when this went into effect and it was indicated it has been in effect for quite a few years.

Member Russo stated that the properties in this area were always intended to be seasonal homes, cabins on small lots by the lake. Mrs. Brown stated that where she parks her vehicles is a second lot. Angie Carey stated that since Mrs. Brown purchased the property she has only gotten one tax bill and the lot is only one lot.

Board Discussion

Member Sargent asked if they receive this approval, and the structure is on a platform, if they would be able to replace the structure with a stick built one in the future. Angie Carey indicated they would.

Member Tully stated that her concern is regarding the distance to the abutters well. She stated that they will have the trike, the lawnmower, the snow blower, and the snowmobile all in the structure, which in themselves would have fluids such as antifreeze, oil and gas and they could leak and cause contamination.

Kathlene Fleckenstein indicated that the well is an artesian well. She stated that he would have less concerns if the lot was a drilled well, but as it is an artesian she has concerns.

Floyd indicated that the building is going to be 12' x 20' which is the size of a garage. Member Tully stated that if this gets approved they would have the approval for the 12' x 20' structure.

Member Tully stated that she wanted it on record that the applicant has requested a height of 10' as it wasn't located on the application.

MOTION: Member Sargent moved and Member Russo seconded that the Zoning Board of Adjustment deny the variance application request by Andrea and Kenneth M. Brown, Owners/Applicants, to allow for the placement of a 12' by 20' canvas, shed type structure, to be located on top of a deck type platform. The structure would be approximately 8' from the side lot line, and 5' from the front lot-line. The Zoning Ordinance requires a 50-foot setback for all sides of the parcel. The property is identified as 7 Smiling Hill Road, Tax Map/Lot # 074-008-00, New Map # J6, LP Zone (Lake Protection District). The Board finds that the application [Z12-05] request fails to meet 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. All were in favor to deny the variance.

Decision for Denial

I move that the Zoning Board of Adjustment deny the variance application request by Andrea and Kenneth M. Brown, Owners/Applicants, to allow for the placement of a 12' by 20' canvas, shed type structure, to be located on top of a deck type platform. The structure would be approximately 8' from the side lot line, and 5' from the front lot-line. The Zoning Ordinance requires a 50-foot setback for all sides of the parcel. The property is identified as 7 Smiling Hill Road, Tax Map/Lot # 074-008-00, New Map # J6, LP Zone (Lake Protection District). The application is referenced as Z12-05. 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 and conditions that: a) the applicant is already using portions of the property for the storage of trailers, and other stored items; to allow the proposed canvas structure will result in the overcrowding of the property; and, b) the purpose of the provisions requiring a 50-foot setback in the LP district is to allow for the orderly development and utilization of the land that is within the lake watershed area and to prevent over utilization of these properties; the proposed use will be contrary to these goals.
2. Substantial Justice is not done due to the fact that the proposed structure will be located too close to an existing residential structure.
3. The values of the Surrounding Properties will be diminished due to the fact that the size and proximity of the proposed structure to the direct abutter will have an adverse impact to the character of the neighborhood in general and specifically for the direct abutter, including future land and property values. This was demonstrated by the letter from the Real Estate Agent who wrote in support of the concerns from the direct abutter.

4. Literal enforcement of the provisions of the ordinance will 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 or unique conditions of this subject property. Like all of the lots in the Smiling Hill neighborhood, the lot is smaller than the Zoning Ordinance's minimum lot size absent any special conditions; this variance request fails on this criterion.
 - 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. Consistent with paragraph "A" above, there are not special conditions of the property; it is similarly sized and situated to all of the other lots in the general neighborhood.

Planner's Update:

Angie Carey shared the information that Richard Lewis shared with the Planning Board at their meeting. She stated that the downtown project is pretty much completed, besides the landscaping and grass. She stated that the landscaping will be done later in the summer and the lawn area will be seeded, fertilized, and scratched in the fall. She stated that money will be held for any needed stabilization.

Angie informed the board that a loop will be put in for the trigger of the light change when there is no traffic on Central Street and someone is at the Canal Street lights. There was a brief discussion and clarification of this.

Angie Carey stated that The City of Franklin and the Oliver's have won the Superior Court Case, requested by Brian Nawoj. I was indicated that the approval was dated June 26th, and there is a 30 day time period that Mr. Nawoj has to appeal to Supreme Court.

Other Business: None.

Public Comment: None.

Adjournment

MOTION: Member Sargent moved and Member Tully seconded to adjourn the July 11th, 2012 meeting of the Zoning Board of Adjustment, at 8:00 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant