

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, September 5th, 2012 at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:02 p.m.

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

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

Absent: Donna Tully.

Alternates: Alternate Member Don Gagnon was seated in place of absent voting Member Donna Tully to be a voting member at tonight's meeting.

- **Approval of Minutes: August 1st, 2012 Zoning Board Meeting**

MOTION: Member Sargent moved and Member Russo seconded to approve the minutes of the August 1st, 2012 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business: None.

New Business

- **Z12-08:** 213 South Main LLC, Owner; Louis Pichette, Applicant, request a Variance from lot area requirements to demolition two (2) existing buildings and construct a new 6 unit apartment building and a small office and Laundromat building. The property is located at 213 South Main Street, Tax Map/Lot #'s 099-043-00 and 099-044-00, New Map # O7, B-1 Zone (Low-Density Business and Commercial District). The lot requirements for the total proposed uses are 45,000 square feet and the total lot area is 20,908 square feet. In 2009, by application Z09-04, the property received a variance from lot frontage requirements.

Alan Yeaton, Architect and Planner from Manchester, indicated he was present representing Mr. Pichette. He stated that he would give the board some background and lead up to the context to grant the variance.

Mr. Yeaton stated he was contacted earlier this year and looked into the information and wrote up some goals which include the following:

1. Including parking for the two properties to the north, being a six unit and two unit;
2. Laundry for existing building and the two adjacent buildings as there is no laundry on the property;
3. Lot is suitable for utilities;
4. Small strip in the back is part of this property, so the square footage is actually 23,464 square feet;

5. Currently they have been cleaning up the appearance of the other buildings;
6. This is a community project as it will involve users of other sites;
7. There use to be a structure on the back of the site that has been removed and a foundation exists;
8. Use to be a garage on an adjacent site that was removed;
9. Traffic will not be an issue as the access points have always been there;
10. Improving pedestrian safety; and,
11. The area around this lot is predominantly residential, so this use fits in with the neighborhood.

Mr. Yeaton then went through the variance criteria. He stated that granting the variance is not contrary to the public interest in that the overall site solution resolved the existing parking issues and laundry will be available for this unit and the adjacent 6 unit and 2 unit buildings. He also indicated that there is a demand for well maintained and managed apartments in the city. The current buildings in the area have new stairways, new exteriors, new electrical and new boilers. He stated that there was a concern about the comparative density and he did a comparison of the two adjacent buildings and based on their building size and lot size and the number of units their all have open space in the percentages of 46-51, whereas this building (without the parking for the adjacent buildings) has 57% of open space. He stated the back of the lot, where there will be no parking or pavement, is large enough for a play area or a barbeque area.

Mr. Yeaton stated that the granting of the variance is not contrary to the spirit of the ordinance, in that the ordinance carries some flexibility, the site was residential and then commercial and now abandoned. The area is primarily residential. The master plan predicts changes, this is a state route and opportune for commercial, however, due to the layout of the lot, this use is the best use for the lot.

He stated that by granting the variance substantial justice is done in that they will be working with the community and the neighbors. The geometry of the site is restrictive for commercial development and not big enough. He stated there will be an office out front for the real estate management and sales of the units located within this building. The buildings will be new and could get surrounding property owners to upgrade their buildings. He stated there are a 6 unit and 2 units to the north of this property and a 4 story residential building across the street.

He stated that literal interpretation of the Zoning Ordinance creates a hardship in that there is an opportunity for mix use and residential in any neighborhood. He stated that as a planner and architect this use will work well for the town.

Board Questions

Member Sargent asked how many total units they were dealing with and Mr. Yeaton indicated 6 for their building, and a total (including the surrounding buildings) of 17 units. Member Sargent stated the requirement is 2 spaces per unit and Mr. Yeaton stated there would be 2 spaces per unit and 4 extra spaces. Member Sargent asked what the total number of parking spaces was and Mr. Yeaton stated there will be 32 spaces. Member Sargent asked if this would provide for ample parking for company and Mr. Yeaton stated that 2 parking spaces per unit meet the requirements for zoning. Mr. Yeaton indicated that there is parking available on Anderson Avenue and South Main Street for visitors. Angie Carey indicated there is a winter parking ban in the City of Franklin that there is no overnight parking from November to April on any City Street. Member Sargent asked if they would be using both entrance, being the one on South Main Street and the one on Anderson Avenue. Mr. Yeaton indicated the access to Anderson Avenue will be one way, going out to Anderson Avenue, and it will be properly signed so that vehicular traffic is aware of this. Member Sargent asked who would be able to use the laundry area and Mr. Yeaton stated that in his discussion with the property developer, it would be for the new 6 unit building, the

adjacent 6 unit building and the adjacent 2 unit building. He stated the laundry area is in the building with the office and not the residential building and will have coded access.

Chair Farmer asked if the 3,000 additional square feet he indicated they have is on the railroad bed and Mr. Yeaton stated that the tax map is incorrect by 10', that field measurements were done from the boundaries, by utilizing the deed. Chair Farmer asked if they are saying it is 23,000 square feet; however, the 3,000 square feet of additional land is unbuildable and unusable, to which Mr. Yeaton stated that was correct. Chair Farmer asked if this is part of the snowmobile trail and Mr. Yeaton stated that the railroad right of way is 100' wide, that a subdivision was done in 1988 and this area of land was granted to this property. Chair Farmer indicated that he noticed the property has a for-sale sign and Mr. Yeaton stated that everything is always for sale, but that the developer wants to build a 6 unit apartment building. Member Farmer asked for clarification that only 2 buildings were being built and Mr. Yeaton stated that is correct.

Member Gagnon asked if it was okay to put wording into the decision, if this was approved, that they are looking for a laundry and not a Laundromat that would be used for the general public, and that it would only be used by these apartments and Mr. Yeaton stated that wording was fine. Member Gagnon indicated a Laundromat would generate a lot more traffic and this could be a problem and Mr. Yeaton stated this was fine with the applicant. Member Gagnon asked for clarification that the access to Anderson Avenue would only be one way and Mr. Yeaton stated that was correct and it would be signed to direct traffic accordingly. Member Gagnon asked for clarification that they would be creating off street parking for the two adjacent properties and Mr. Yeaton stated that was correct.

Member Sargent asked if the laundry would be strictly for the people in these buildings and Mr. Yeaton stated that was correct. Member Gagnon indicated that was the question he had just asked and Member Sargent stated he was asking about the two adjacent properties too. Member Gagnon stated the laundry is for the tenants only. Member Sargent stated there is the potential for others to use it as well. Member Gagnon indicated the applicant was going to have a keyed box for only tenants. Member Russo asked if the laundry was for the 17 units and Mr. Yeaton stated that was correct.

Member Sargent asked if the units would be 55 and older or for anyone and Mr. Yeaton stated they were for anyone.

Member Fleckenstein asked, assuming the board granted the variance, what the projected time frame to build would be and Mr. Yeaton stated they won't go back before the planning board until October or November, so he would say spring 2013 to begin building. Member Fleckenstein asked what the time frame would be from the time ground was broken to the completion of the building and Mr. Yeaton stated 4-5 months.

Member Farmer asked what the square footage would be of the units and how many bedrooms each unit would have. Mr. Yeaton stated they would be 1,056 square feet and would be 2 bedrooms. Member Farmer asked how many stories the building would be and was informed it would be 2 stories.

Member Gagnon asked how snow removal would be handled. Mr. Yeaton stated this is a concern they will deal with at the Planning Board level, but that there are two storage areas on site and if needed, the snow would be removed from the site, but that none of the parking spaces would be utilized for snow removal. Mr. Yeaton stated that the laundry area would be a charge laundry, not free, so it is considered a commercial use.

Public Comment

Mr. David Piper, of 203 South Main Street, was present to speak. He stated he owns the 6 unit building that the parking will be cleaned up and the laundry will be utilized by. He stated the lot is currently graveled and this will clean up the area. He stated there currently is no laundry, so this is a good idea.

Chair Farmer asked if he owned the house on the corner of Anderson and South Main Street and he indicated that he does and they have been improving the property.

Member Gagnon asked if he uses the driveway between the two buildings and Mr. Piper stated that some of the tenants do. Member Gagnon asked if he was okay with the access being one way and Mr. Piper indicated that he is. Member Gagnon asked if he was going to have 12 parking spots on Pichette's property and Mr. Piper stated that he was.

Member Sargent asked about the driveway access to this building that is between the subject lot and Mr. Piper's lot. He stated that there is always a water runoff problem and that in the winter there tends to be ice buildup. Mr. Piper indicated that is correct, but that this area would be regraded and that would be corrected with this project.

Chair Farmer indicated that he is concerned about the parking and stated easements should be in place. Mr. Piper stated that there is an easement already for parking on this lot. Mr. Yeaton stated that the easement and cross easements will be cleared up at the Planning Board level. He stated ½ the parking is on Mr. Piper's property and half is on Mr. Pichette's.

Chair Farmer stated that he is concerned because the owner of the property doesn't have the required area for the units that would be put on the property and in this reduced land area parking is being provided for other units, which ultimately decreases the lot size even further, as far as the land area allowed for these units alone.

Richard Lewis stated that currently the parking lot is gravel, with no stripping and people park where ever they want, and that the parking lot will be safer afterwards. Mr. Piper stated it will also look better.

Member Russo asked if the access on South Main Street would be in and out or just in, if the access on Anderson was going to be just out. Mr. Yeaton stated it would be in and out on South Main Street.

Board Discussion

Mr. Lewis stated that per the discussion on the laundry, he would recommend adding a forth condition, to read: Per the representation by the applicant, the laundry area will be used by the residents of the proposed 6-unit building and the residents/tenants of the abutting apartment buildings at 18 Anderson Ave., 8-10 Anderson Ave., and 203 South Main Street.

Member Gagnon indicated that he would recommend that the word Laundromat be changed to laundry area in the decision and motion.

Richard Lewis indicated, after a further discussion, that at the end of the new condition #4, they would add: This laundry facility will not be available for use by the general public. The applicant and board was good with this addition.

MOTION: Member Sargent moved and Member Fleckenstein seconded that the Franklin Zoning Board approve the variance request by 213 South Main LLC, Owner; Louis Pichette, Applicant, to allow for the construction of a new 6 unit apartment building and a small office and laundry area building on a lot with less than the required minimum lot area. The property is located at 213 South Main Street, Tax Map/Lot #'s 099-043-00 and 099-044-00, New Map # O7, B-1 Zone (Low-Density Business and Commercial District). The lot requirements for the total proposed uses are 45,000 square feet and the total lot area is 23, 632 square feet.

Richard Lewis then read the four conditions into the minutes:

This approval is subject to the following conditions:

1. **The applicant shall obtain Site Plan Approval and Special Use Permit from the Franklin Planning Board prior to any construction activity related to the proposed residential development.**
2. **The applicant or their designee shall obtain all necessary building permits and a Certificate of Occupancy.**
3. **The benefits created by and through this variance shall be utilized within 12 months of the issuance of this decision. If certain work [receipt of the necessary approval from the Planning Board, removal of the existing buildings, and obtaining a building permit for the new building] for the utilization of the variance is not achieved within the 12 months then a new variance will need to be sought by the applicant or a successor. If seasonal conditions prevent the completion of all of the items above, then the applicant may request that the Board modify the “substantial work” requirements, with said request being made in writing with supporting information, with the decision to be made by the Board at a scheduled public meeting. The applicant may request a 12-month extension from the ZBA, with such request made in writing; this request would be considered at a regularly scheduled meeting of the Board and does not trigger a formal hearing and notice process.**
4. **Per the representation by the applicant, the laundry area will be used by the residents of the proposed 6-unit building and the residents/tenants of the abutting apartment buildings at 18 Anderson Ave., 8-10 Anderson Ave., and 203 South Main Street. This laundry facility will not be available for use by the general public.**

Chair Farmer was not in favor of this motion. Members Gagnon, Russo, Sargent and Fleckenstein were in favor and the motion passed.

The entire decision is as follows:

The Franklin Zoning Board approve the variance request by 213 South Main LLC, Owner; Louis Pichette, Applicant, to allow for the construction of a new 6 unit apartment building and a small office and laundry area building on a lot with less than the required minimum lot area. The property is located at 213 South Main Street, Tax Map/Lot #'s 099-043-00 and 099-044-00, New Map # O7, B-1 Zone (Low-Density Business and Commercial District). The lot requirements for the total proposed uses are 45,000 square feet and the total lot area is 23, 632 square feet. The Board finds that the request satisfies the criteria for the granting of the variance in that:

Criteria	Reasons for Approval
1. Variance will not be contrary to the public interest, and the variance is consistent with the spirit of the Ordinance	Due to the fact the intensity of the development patterns would not be substantially different between the proposed residential use and a business or commercial use that is allowed in this district and any potential negative public interest effects are substantially equal, granting of the variance will not be contrary to the public interest or contrary to the spirit of the ordinance..
2.a Unnecessary hardship: An area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property.	The property is affected by the retaining wall at the rear of the lot and the historic development patterns in this area adjacent to South Main St and Anderson Ave., therefore an area variance is necessary to accomplish the proposed use.
2.b Unnecessary hardship: The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance	The applicant does not have reasonable or feasible options to expand the lot size, and given the lot sizes that exist in the general neighborhood, the granting of the variance is appropriate.
3. The value of surrounding	The surrounding properties will not be diminished through the proposed

properties will not be diminished.	development since it will remove run-down buildings and replace them with new and code compliant structures, with a properly designed and constructed paved parking area with adequate stormwater management.
4. Substantial justice is done	With all other variance criteria satisfied, and no harm being created for any party, substantial justice is served by the granting of the variance.

This approval is subject to the following conditions:

5. The applicant shall obtain Site Plan Approval and Special Use Permit from the Franklin Planning Board prior to any construction activity related to the proposed residential development.
 6. The applicant or their designee shall obtain all necessary building permits and a Certificate of Occupancy.
 7. The benefits created by and through this variance shall be utilized within 12 months of the issuance of this decision. If certain work [receipt of the necessary approval from the Planning Board, removal of the existing buildings, and obtaining a building permit for the new building] for the utilization of the variance is not achieved within the 12 months then a new variance will need to be sought by the applicant or a successor. If seasonal conditions prevent the completion of all of the items above, then the applicant may request that the Board modify the “substantial work” requirements, with said request being made in writing with supporting information, with the decision to be made by the Board at a scheduled public meeting. The applicant may request an 12-month extension from the ZBA, with such request made in writing; this request would be considered at a regularly scheduled meeting of the Board and does not trigger a formal hearing and notice process.
 8. Per the representation by the applicant, the laundry area will be used by the residents of the proposed 6-unit building and the residents/tenants of the abutting apartment buildings at 18 Anderson Ave., 8-10 Anderson Ave., and 203 South Main Street. This laundry facility will not be available for use by the general public.
- **Z12-09:** Sarfraz and Sara Chaudhary, Owners/Applicants, request a Variance to have a shelter for fowl on their property, identified as 202 Victory Drive, Tax Map/lot # 116-017-00, RS Zone (Single Family Residential District). The requirements indicate that these shelters must be located 200’ from abutter’s property lines and this shelter would be located 25’ from the southerly lot line, 35’ from the rear lot line, and approximately 60’ from the northerly lot line.

Sarfraz Chaudhary was present to speak. He stated that he had the birds for a health situation that his wife has a problem with blood clotting and based on the letter from Pakistan and direction from her mother, she eats the peacock eggs that help with this condition.

Board questions were as follows:

1. How many peacocks he has and he indicated that he has 3.
2. If they are all female and he stated they are.
3. If he has chickens too and he said he does.
4. If he has any roosters and he stated that he recently removed them.
5. If there were any further farm animals on site and it was indicated there are not. He stated he used to have a goat, but that is gone to his brothers; however, there is a problem with his brother’s land as it use to be a pig farm and animals are dying there.
6. The neighbors have complained about the noise and the smell and Mr. Chaudhary indicated that there are 9 houses on Route 127 that have chickens.
7. It was asked if female peacocks make the loud noises like the male peacocks do and Mr. Chaudhary indicated that they are not as loud as the males, but they do make a lot of noise in the month of July when it is mating season.

8. How the manure from the peacocks is currently handled and Mr. Chaudhary indicated that he puts it in his garden.
9. If the birds are currently on the lot and it was indicated that they are. As follow up, the inquiry was where the birds would go if the application was denied and Mr. Chaudhary indicated that he is not sure, that he has been looking into possibly buying another house that he can have animals on.
10. If they have looked into other options and Mr. Chaudhary stated he only knows of celery seeds, seeds from India and fertilized chicken eggs. It was asked if the peacock eggs are fertilized or unfertilized and it was indicated he has gotten rid of the male peacocks so they are unfertilized. Mr. Chaudhary stated that this is a tradition passed on through her family as her condition with blood clots is hereditary.
11. It was asked if they have done any holistic, homeopathic or natural consulting with a Natural Path or ND in the States and it was indicated that they haven't, but have gone to a medical doctor and she was receiving shots before she started this process of eating the peacock eggs.
12. It was asked if the shed also exists and the size and Mr. Chaudhary stated it is, it is 8' x 8' and that there is an area off the back portion of the shed, an open area, for the Peacocks to go in and out.
13. It was indicated the shed is on the left hand side of the property where the peacocks are and that the structure on the left hand side is now empty and that is where the roosters were.

Public Comment

Mike Cheney, of Tower Street, was present to speak. He stated that his property abuts this property. He indicated that this has been an ongoing issue for several years, starting with Mr. Chaudhary getting goats without permission that then ruined his apple trees and evergreens as they ate them. He stated that about a month and a half ago, he moved the cage from the center of the yard over to by his property, and that it doesn't meet the setbacks. At this time, there were male peacocks that were very loud all the time. He stated they couldn't even sit and eat at his picnic table this summer due to the smell of the poop and the birds. He stated that this past spring there were roosters, and his bedroom window was approximately 80-90' from the roosters and the roosters would wake them in the morning and would be loud all day long. He stated the male peacocks are also loud all day long. He stated now that there are not male peacocks or roosters, it is quieter, but not quiet. He stated the female peacocks do make loud noises as well. He stated that his stepfather couldn't even stay at his property this summer when he came up to visit due to the noise.

Member Gagnon asked if they cut the number back to only three females and if the manure was taken care of properly and they used the bedding that they submitted to the board if Mr. Cheney would be okay with that. Mr. Cheney stated that he would not be, that the board would just be revisiting this in a few months as this is not the first time that Mr. Chaudhary has done things illegally on his property. He stated that as the Zoning is written, justifies the board denying the variance. He stated the other problems on the property were the goats, buildings built without permits and too close to property lines and asked Richard if he knew of anything different on the property line setbacks and Richard Lewis stated that without a survey there is no way to tell currently.

Mr. Cheney stated that he has granite markers on his property lines.

At this time, there was some discussion on Mr. Chaudhary's brothers property located on Hill Road. It was indicated by Mr. Cheney that he is very familiar with Franklin and this property was once a horse farm, and did have cows and sheep, but he never noticed there being pigs on the property.

Member Sargent asked Mr. Cheney if he is aware of any other houses in the area having chickens and Mr. Cheney stated that he is not.

Robert Davis, of 182 Victory Drive, stated that he is also a neighbor. He stated that he is not going to repeat Mr. Cheney as all the concerns that he brought up are also his own concerns. He stated even with the windows closed he can still hear the birds and that this area is residential and not farmland.

Member Russo asked Mr. Davis if he was aware of anyone else in the area having chickens and he stated that the McDonald's use to, but that was a long time ago and that he isn't aware of anything currently. Member Sargent stated that the McDonald's no longer reside at that resident either.

Board Discussion

Member Sargent stated that he is concerned that if this is approved that the board is setting a precedence for this type of use in compact areas. Chair Farmer stated that his concern is that the variance would follow the property and if the owner sold the property a new owner could have fowl on the property as well.

Richard Lewis stated that in this zone, on the table of uses, no agricultural uses are allowed in this zone.

Member Fleckenstein asked if they are allowed to modify the approval to limit the number of fowl or if this was overstepping their abilities. Mr. Lewis stated that if the board moved to approve this application, then they could put restrictions on the approval as far as numbers or other restrictions as seen fit by the board.

Member Gagnon indicated that the footprint of the lot is too small to accommodate this type of use. He stated that based on the research he did, there are other options that they have available to them.

MOTION: Member Sargent moved and Member Russo seconded that the Zoning Board of Adjustment deny the variance application request by Sarfraz and Sara Chaudhary, Owners/Applicants, to allow a shelter for fowl on their property, identified as 202 Victory Drive, Tax Map/lot # 116-017-00, RS Zone (Single Family Residential District), which fails to meet the minimum setback requirement of 200 feet from all lot lines. The Board finds that the application request fails to meet the tests and criteria necessary for the granting of a Variance as spelled out in the draft decision to deny which has been reviewed and approved, including any modifications, by the Board. All were in favor and the motion passed.

Decision for Denial

The Zoning Board of Adjustment denied the variance application request by Sarfraz and Sara Chaudhary, Owners/Applicants, to allow a shelter for fowl on their property, identified as 202 Victory Drive, Tax Map/lot # 116-017-00, RS Zone (Single Family Residential District), which fails to meet the minimum setback requirement of 200 feet from all lot lines. 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 would be contrary to the Public Interest, the Spirit of the Ordinance is not observed, and the values of the Surrounding Properties would be diminished since:*
 - a. *The subject lot and the neighboring properties are too closely situated to properly provide for safe and clean management of fowl on the lot.*

that board members could either submit their comments in the box located at City Hall or could fill out the form that was emailed over and email it back to Richard for printing and submission.

Public Comment: None.

Adjournment

MOTION: Member Russo moved and Member Sargent seconded to adjourn the September 5th, 2012 meeting of the Zoning Board of Adjustment, at 8:44 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant