

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, November 7th, 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: Marty Russo, Floyd Sargent, Kathlene Fleckenstein, Don Gagnon, Sandra Hodgdon and Planning and Zoning Administrator Richard Lewis.

Absent: Chuck Farmer and Donna Tully.

Alternates: Alternate Members Don Gagnon and Sandra Hodgdon were seated in place of absent voting Members Donna Tully and Charles Farmer to be a voting member at tonight's meeting.

- **Approval of Minutes: September 5th, 2012 Zoning Board Meeting**

MOTION: Member Sargent moved and Member Russo seconded to approve the minutes of the September 5th, 2012 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business

New Business

- **Z12-10:** Robert F. French and Sylvia A. French, Owner; Shawn D. Glover, Applicant, request a Variance to run a general machine shop in the garage located on property at 559 Hill Road, Tax Map/Lot #'s 090-401-00, New Map # E6, C Zone (Conservation District).

Shawn Glover was present to speak. He stated that he is looking to get approval to run a general machine shop, to be located on the premise within the garage. The name of the company is C&C Machine Shop. He stated that he works with scrap metal. Mr. Glover indicated he took decibel readings within 10-15 foot radius of his existing shop and the reading was 74 decibels (a handout describing decibels was given to each member by the applicant).

Questions from the board included:

1. How many machines would be used and the answer was six.
2. If the decibel reading was taken with all six machines running and it was indicated it was.
3. If there would be outside storage and it was indicated there would not be.
4. How hazardous waste/liquids would be disposed of and it was indicated it would be put into 55 gallon drums that would be brought to Clean Harbors Waste Treatment Disposal and that it is mainly oils.

5. What would happen with access scrap metal and it was indicated it would be removed from the site.
6. If the building was sheet rocked and it was indicated that it is but it is not insulated.
7. If there is anything currently in the building now and it was indicated there is not. The board indicated based on the current location and the machine equipment being in the building, there is no way to tell if you would be able to hear it or not.
8. If this was a new business or just a new location and it was indicated just a new location and the business is currently in a mill building located in Manchester.
9. If any commercial zoned sites were looked at and Mr. Glover stated they were not, that he is looking at a piece of property with a home and business.
10. How many employees the business has and it was indicated there are two.
11. How this business meets the definition of a home based business and Mr. Glover stated because the building already exists.
12. Clarification was asked for as to whether the building is a two car garage capable of holding a commercial truck and it was indicated that it is.
13. Clarification as to the previous business and whether it was a trucking business where trucks were parked and repaired and Mr. Glover stated they would repair vehicles and equipment.
14. What kind of traffic would be coming to and leaving the premise and Mr. Glover stated that 95-98% would be UPS. He stated that occasionally there would be a delivery, but that more than one delivery a week would be uncommon.
15. If the building has a bathroom and it was indicated it does not and a chemical toilet would be put in.
16. If electricity is already present and it was indicated it is.
17. What type of production would be conducted and Mr. Glover stated the machine shop would use raw materials to create parts. It was asked what type of parts and it was indicated commercial fabrication.
18. What the hours of operation would be and he stated 7-5, but they would get there at 6:30.
19. If the traffic would bother the horses next door and it was indicated that it wouldn't, and would be equivalent to someone leaving to go to work early in the morning.
20. If Mr. Glover would be taking the scrap metal away and he stated that a company would be coming and getting it, in the big barrels and the 55 gallon drums. He stated this would happen about ever month and a half to two months.
21. What the square footage is that is needed for this business and it was indicated it is 1500 sq. feet.
22. If once this is approved, if it was true that no approvals would be needed for expansion of the use and Mr. Lewis stated this is incorrect, it would still be considered a non-conforming use and a variance would be necessary for expansion.
23. If Mr. Glover was moving his business due to convenience or because he had to and Mr. Glover stated that he was doing it due to convenience, that the area he is in is not very convenient and he wants to live where the business is.
24. If he has looked at any other lots at all and Mr. Glover stated that he has in other towns but not in Franklin, as nothing else has suited his needs for the residential and business combination use. Member Russo indicated he is not surprised and Mr. Glover stated the issue is not zoning, the issue is he hasn't been able to find a property with both a house and a building big enough to conduct his business within.

Member Gagnon indicated that this is a conservation zone, that there were trucks there before, but this business would be light industrial, and this general use does not fit in this area. He stated this could be

setting a precedence. He stated that cross uses are a struggle and thinks property in the commercial areas would make more sense. Mr. Glover stated that there are not any properties that are mix residential and commercial in these areas.

Mr. Glover stated that everything will be housed within the existing building, and it will continue to have the look and feel that it has today.

Public Comment

Phyllis Benson, an abutter on the north side of the property, stated she has lived at her property for 28 years and she has animals. She stated this building is close to her property line. She bought this house for the country aspect and pays a lot in taxes due to this. Ms. Benson indicated she spoke with Mr. Glover who stated his business would begin at 5:30 a.m., and that it would be a general machine shop. The property has no buffer and she stated that currently if her neighbors are talking on their porch she can hear them. She stated she can hear the neighbor on the other side of this properties animals and they have sheep and chickens. She added that Mr. Glover indicated he does want an addition onto the building. She is concerned about exhaust and the noise. She stated the people she has spoken with have indicated that this type of use can be very loud. If the owner puts in an exhaust fan, the decibels will go up.

Ms. Benson added that there is a stream that runs through this property to the Chaudhary property that is very close to this building. She is concerned about contamination of the stream and runoff.

She indicated she doesn't understand why they don't look elsewhere, that there is a machine shop down the road about 3 miles that is for sale.

Sarfraz Chaudhary, an abutter on the south side of the property, was present to speak. He stated he also has animals, being sheep and chickens. He stated he likes businesses to come to Franklin, but not in the residential areas. He stated his sheep use the stream and it is about 10-15' from the garage. He stated chemicals can travel and will travel into the stream.

Member Russo asked for clarification that the stream runs through the applicant's property and into his property and Mr. Chaudhary stated that was correct.

Robert French, the owner of the property in question, was present to speak. He stated he has worked in this garage for 30 years and has had no problems or complaints. He stated that he ran trucks in and out of the property between 5:30 a.m. and 8:00 p.m. Mr. French stated that the stream is approximately 2000' from where Mr. Chaudhary keeps his sheep. Mr. Chaudhary stated that the barn is located right on the stream.

Mr. French stated that the equipment is all digital, so the doors will be shut and the noise level will be non-existent. He stated there will be no more traffic than what he has had. He stated his daughter, Phyllis Benson, lives next door and he understands her concern, but it is hard to find a lot with a home and garage that is ideal for Mr. Glover. He stated his daughter use to work for him.

Member Russo asked what his business entailed. Mr. French stated it was a trucking business, where his trucks would be leased out to other companies, but that they would be worked on in the garage.

Member Hodgdon asked when he started his business and Mr. French stated in 1984. Member Gagnon asked if any permits were pulled and Mr. French stated he remembers a building permit being done, but at his age, he is not sure of everything that was pulled.

Member Russo asked the size of the garage and Mr. French stated it is 32' x 50'. Mr. Sargent asked if the only business that was being conducted on the site was the parking of the trucks and working on them and Mr. French stated that more was being done. Member Sargent asked if he was working a construction business without permits and Mr. French stated he had a building permit.

Member Hodgdon asked what the zoning was in 1984 and Mr. Lewis stated it was still considered to be conservation zoning. Member Hodgdon asked if zoning existed and Mr. Lewis stated that it did and at the time approvals would have been needed to run a business on this lot. Member Hodgdon asked if any permits were pulled and Mr. Lewis stated there is no record of a building permit or any other permits for zoning approvals.

Member Fleckenstein asked if Mr. French has had any other interests in the property and he stated he has not, just the one interested, as the property is just a small, two bedroom log cabin, which is ideal for Mr. Glover as he has no kids.

There were no further comments or questions; the public hearing portion of the meeting was closed.

Board Discussion

Member Sargent stated that the machines that C&C use have catch basins to catch the oil and it won't be spilled.

Member Gagnon stated that his concern is that this is conservation land and the request is a light industrial use in the conservation zone. He stated he is concerned about the board setting a precedence. He stated if you put your car up on a ramp to change the oil, oil can be spilt even if you have secured measures. He stated he is concerned about the deliveries, and the noise. He indicated that a saw mill might be appropriate for this zone, but not a machine shop.

Member Sargent indicated that there are other machines shops in the conservation zone. Angie Carey indicated the other machine shops on this road pre-date zoning.

Mr. French indicated that the RDS machine shop use to be a dairy and didn't become a machine shop until the 1980's. It was indicated that the dairy was prior to zoning being in place and would have been a commercial use, allowing the property to continue as a commercial use.

Richard Lewis stated that the zoning is in place to keep from allowing future non-conformance.

Member Russo asked what avenues this leaves the owner. It was indicated the owner has a residential use on this property, and the building and use was done without any permits.

Member Sargent asked if this business predated zoning. Richard Lewis stated that the garage was built in the 1980's, that zoning was in place and approvals for the business would have been necessary from the Zoning Board and nothing was applied for or granted. Member Sargent indicated that Hill Design is just down the road and how can that be allowed and not this business. Member Gagnon stated that the board can prevent any future non-conformances, but can't stop what has happened in the past. He stated that no permits were pulled, thus there is no reason to grant a grandfathering exemption.

Richard Lewis stated that per standard operating prodical, he has submitted to the board motions and asked if the board had any questions on these motions. There were no further questions from the board.

MOTION: Member Russo moved and Member Gagnon seconded that the Zoning Board of Adjustment deny the variance application request of Robert F. French and Sylvia A. French, Owner; Shawn D. Glover, Applicant, to run a general machine shop in the garage located on property at 559 Hill Road, Tax Map/Lot #'s 090-401-00, New Map # E6, C Zone (Conservation District). The Board finds that the application request fails to meet the tests and criteria necessary for the granting of a Variance in that:

- A. The Variance will be contrary to the Public Interest and the Spirit of the Ordinance is not observed in that: to allow the creation of an industrial use in a very rural and large lot sized zoning district such as the Conservation District is contrary to the zoning ordinance goal and purpose of encouraging the proper use of land throughout the City; the building that will house the industrial use is located right off of, and visible from, Hill Road, and having this use so front and center diminishes the overall value of the zoning district.
- B. Substantial Justice is not done due to the fact that the variance request has failed to meet and satisfy the other tests and criteria. Further, opposition to the request has been voiced by an abutter to the project and to approve the request in the face of opposition creates an injustice.
- C. The values of the Surrounding Properties are diminished due to the fact that the existing garage, which was in use for a small construction truck leasing company for many years, is directly visible from the abutting residential property, which also has some agricultural activities associated with it. The potential for noise, traffic, and related activities to disrupt the neighbor clearly exists.
- D. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - i. 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. First, there are no special conditions of the subject property that distinguish it from other properties in the area. It is important to note that the subject property has twice been reduced in size [by 1.32 acres in 1991 and by 25,889 sq ft in 2007]; these lot size reductions have substantially the reduced the potential for any buffering of the proposed use and made the potential for adverse impacts even greater. The subject lot is rural in nature [except for the garage building that was built without the benefit of any permits or approvals] as are the other lots in the immediate area. Second, the Board is of the opinion that there is in fact a fair and substantial relationship between the general purposes of the zoning ordinances and the specific application of the provisions of the ordinance to this variance request. To allow for the creation of an industrial use in a zone that is created for large and more rural lots is contrary to the clear and precise language of the ordinance. Lacking any distinguishing characteristics, it is not appropriate to approve this variance request. Third, the proposed use is not reasonable as it could lead to a further breakdown of the goals and purposes

of the ordinance and to a further diminishing of the values and benefits of the Conservation District.

The Board orders that no industrial or commercial uses or activities shall occur in the garage located on the subject property. The garage shall only be used for uses commonly and regularly associated with a single-family residential structure.

All were in favor and the motion passed.

Planner's Update

Richard Lewis stated that the board has spoken off and on about having the City Attorney come in and address the board on Zoning Board procedures, to do an overview and answer questions from the board. He stated in the past there hasn't been a full board and that the board has had limited meetings due to application submission. He stated he will speak with the City Attorney about doing this early next year.

Other Business

Angie Carey stated that there are three members whose terms are up in January of 2013. She asked these three members, being, Member Russo, Member Sargent and Member Fleckenstein if they wanted to continue on as board members and if they wanted her to submit this information to the Mayor for a council vote and they indicate they would like to stay on as members.

Angie Carey then stated that she has placed on the tables tonight a copy of the 2013 schedule for each member.

Public Comment: None.

Adjournment

MOTION: Member Russo moved and Member Sargent seconded to adjourn the November 7th, 2012 meeting of the Zoning Board of Adjustment, at 7:53 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant