

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, February 6th, 2013 at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:07 p.m.

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

Present: Kirk Johnston, Kathlene Fleckenstein, Don Gagnon, Floyd Sargent and Donna Tully.

Absent: Chuck Farmer, Sandra Hodgdon and Planning and Zoning Administrator Richard Lewis.

Alternates: Alternate Member Kirk Johnston was seated in place of absent voting Member Chuck Farmer to be a voting member at tonight's meeting.

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

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

Old Business: None.

New Business

- ❑ **Z13-01 and Z13-02:** Gary P. Davidson and Linda A. Davidson, Owners; Derek A. Davidson and Keri L. Davidson, Applicants, request a Special Exception (per section 305-13. Permitted Uses, Special Exceptions and Special Use permits) for a family apartment. The owners and applicants also request a Variance from Section 305-29.8(I), Family Apartments, as the size of the apartment is proposed to be 1200 sq. ft. and the requirements allow for a maximum size of 720 sq. ft. The property is identified as Vacant Land located on Webster Lake Road, Tax Map/Lot # 017-002-00, New Map # J4, C Zone (Conservation District) and LP Zone (Lake Protection District).

Derek Davidson was present to speak. He stated that he wanted to point out to the board that only a small portion of the lot is within the lake protection zone and the majority of the lot is conservation. He stated that his family has owned these properties, including the location of the existing houses for many years. He stated that in the late 1990's they subdivided the land on the northerly side of Webster Lake Road for his house and his parent's house. He stated that his mother grew up in the farmhouse that has been there since the 1800's. He stated the layout on the lots on the northerly side are the farmhouse that his grandparents own, his house and then his parents house is the house closest to Sucker Brook. He stated on the southerly side of Webster Lake Road, they owned two lots

that connect to a larger lot in Andover. He stated one of the lots being the lot they are requesting to build on.

Mr. Davidson stated that the development would take place in two phases, with the first phase being the garage and single family home and the second phase being the in-law apartment. He stated that his parent's current home is 2400 square feet and they are request a variance to construct their apartment at 1200 square feet. He stated this is half the size of their current home and the home that would be built would be 3,000 square feet. He stated the land is located directly across the street from the farmhouse.

Mr. Davidson stated that his parents are lifelong residents of Franklin, as he also is. He stated that they plan on staying in Franklin when they retire and as they age they would want something smaller. He stated 1200 square feet is ½ the size of their existing house and would be one level. He stated it would be the size of the first floor of their current home.

He stated they would not use the home as a rental property.

Mr. Sargent stated that he is not aware of this farmhouse and stated that the only house he is familiar with is the old Lucien Fogg property. Mr. Davidson stated that the farmhouse is on the other side of Webster Lake Road. Angela Carey stated the farmhouse is on the lake side of Webster Lake Road and Mr. Fogg (now Mr. Robinette's property) is on the opposite side of the roadway.

Member Johnston asked if the first phase is just the house and garage and Mr. Davidson stated that was correct. Member Johnston asked if phase 2 would be completed a year down the road and Mr. Davidson stated probably even further down the road then that. Angela Carey stated they have an architect designing the building presently and want to get board approval prior to designing and building the house so that they don't have to do an additional design in the future.

Mr. Davidson stated that for those that have been out to the lot, he has the setbacks marked.

Member Fleckenstein indicated that per the regulations, one access needs to be directly through and from the main house. Mr. Davidson stated that this is not a problem and they will make sure it is done.

Member Gagnon stated that he is concerned about the space being 1200 square feet and not staying with the 720 square feet. Mr. Davidson stated that the logic behind is that their current house is 2400 square feet and as they age, they will not longer need or be able to utilize a second floor, so this would remove the second floor, cutting their square footage in half and giving them an area that will work for them. He stated if they can do it they want to do it right and to make everyone happy and if the board doesn't allow this size, then it may not work for his parents.

Public Comment: None.

Board Discussion:

Member Sargent stated that the board has previously not allowed an applicant to have the larger size and he does not think it is fair for the board to allow this applicant but not them. Angela Carey stated that the application Floyd is talking about was the Laramie property next door. She stated they were asking for a larger size to be located in a detached garage and not attached. Member

Sargent stated that was incorrect and he was talking about the Oliver's. Angela Carey stated that the Oliver's were not looking at an in-law apartment, that they had a non-conforming structure on a non-conforming lot that they were looking at demolishing and rebuilding and as the new building did not meet setbacks and would be larger than the old they need the variance. She stated the application had nothing to do with an in-law apartment and that the current applicants home and apartment would meet setbacks.

Member Gagnon stated he is still concerned about the size. Member Fleckenstein stated that if the house was 1500 square feet and the apartment was 1200 she would have a problem with it as well, but the house is going to be 3,000 square feet and that this size is reasonable based on the size of the home, as it would be close to a third the size of the main house.

Angie Carey stated that in an attempt to address Member Fleckenstein's concern regarding an entrance to the apartment from the main house, this is a condition of the zoning regulations for a family apartment, addressed by Section 305-29.8 and that no variance for this condition was asked for. She stated that the board may want to put another condition into the approval document that addressed this concern. A condition #6 was being added to the approval document, which would read: "That this approval is subject to there being direct interior access between the main house and the in-law apartment."

Member Gagnon stated he is concerned about future owners. Angela Carey stated that restrictive covenants are done with this approval, per the approval wording, and that if the property was sold or Derek's parents moved, that this use would be discontinued or additional approvals would be necessary.

MOTION: Member Gagnon moved and Member Tully seconded that the Zoning Board of Adjustment approve the Special Exception and the Variance application requests of Gary P. Davidson and Linda A. Davidson, Owners; Derek A. Davidson and Keri L. Davidson, Applicants, to allow a Special Exception (per section 305-13. Permitted Uses, Special Exceptions and Special Use permits) for a family apartment and to approve the Variance from Section 305-29.8(I.), Family Apartments, as the size of the apartment is proposed to be 1200 sq. ft. and the requirements allow for a maximum size of 720 sq. ft. The property is identified as Vacant Land located on Webster Lake Road, Tax Map/Lot # 017-002-00, New Map # J4, C Zone (Conservation District) and LP Zone (Lake Protection District). The Board finds that the application requests meet the tests and criteria necessary for the granting of the Special Exception and the Variance as spelled out in the draft decisions to approve which has been reviewed and approved, including the modifications, discussed by the Board. Member Sargent was against this motion. All other members were in favor of the motion and the motion passed.

COMPLETE APPROVAL:

The Zoning Board of Adjustment moved to approve the variance application request [Z13-01], by Gary P. Davidson and Linda A. Davidson, Owners; Derek A. Davidson and Keri L. Davidson, Applicants, for a Variance from Section 305-29.8(I.), Family Apartments, as the size of the apartment is proposed to be 1200 sq. ft. and the requirements allow for a maximum size of 720 sq. ft. The property is identified as Vacant Land located on Webster

Lake Road, Tax Map/Lot # 017-002-00, New Map # J4, C Zone (Conservation District) and LP Zone (Lake Protection District). The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

- 1. The Variance will not be contrary to the Public Interest and the Spirit of the Ordinance is observed due to the facts that: family apartments are allowed uses through the Special Exception process; the proposed design and location of the family apartment section of the house are such that the house will retain the look and character of a single family structure; and, the family apartment area is designed so that it can be merged with the primary structure at the point in time when the apartment is no longer needed.**
- 2. Substantial Justice is done due to the fact that the approval will allow the extended family, who currently live in existing homes on the east side of Webster Lake Road, to continue to reside as a larger family unit in a location that accommodates the single family home and the family apartment.**
- 3. The values of the Surrounding Properties are not diminished due to the fact that the proposed structure will be designed and located on the property so as to retain the look of a single family home, which is an allowed use in this zoning district.**
- 4. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**

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 special conditions of this property since it is located adjacent to the former railroad bed which gets wider on the north side of the lot, and the lot also abuts a Class 6 roadway. There is no fair relationship between the language of the ordinance and the application of the ordinance to the property since the family apartment will be designed so the character is consistent with a single family home, which is an allowed use, as is a family apartment. The proposed use is a reasonable one since; again, the layout and character of the family apartment will not be different than a single family home without the apartment.

~AND~

The Zoning Board of Adjustment approved the Special exception application request [Z13-02], by Gary P. Davidson and Linda A. Davidson, Owners; Derek A. Davidson and Keri L. Davidson, Applicants, for a Special Exception (per section 305-13. Permitted Uses, Special Exceptions and Special Use permits) for a family apartment. The property is identified as Vacant Land located on Webster Lake Road, Tax Map/Lot # 017-002-00, New Map # J4, C Zone (Conservation District) and LP Zone (Lake Protection District). The Board finds that the application request meets the tests and criteria necessary for the granting of a Special Exception in that:

- a. Since the proposed structure will retain the look and character of a single family home, which is allowed in this zoning district, this is an appropriate location of the proposed family apartment.
- b. It will not be detrimental injurious, obnoxious, or offensive to the neighborhood since the property is somewhat isolated between a state highway, a former railroad ROW, and a Class 6 roadway.
- c. Since the property will basically function as a single family house lot, there will not be any traffic concerns and there will be adequate facilities to accommodate the proposed house and family apartment.
- d. Since all of the other Special Exception criteria are satisfied, thus the spirit of the ordinance is achieved and maintained and the intent of the Master Plan is also achieved.

The Variance and Special Exception approvals are subject to the following conditions:

1. The applicant shall prepare a Restrictive Covenant outlining the occupancy requirements of the family apartment. A draft of this document shall be submitted to the Planning Office for review and approval prior to recording the document. The language of the Covenant shall contain the verbiage in the Conditions 2 and 3, below
2. If the house is sold, then the permit for the family apartment shall cease. If the new purchaser of the house wants to continue the apartment in conformance with the all conditions and regulations contained in this Ordinance, then he/she must re-apply for a permit within 6 months of the purchase of the house.
3. If the person[s] for whom the apartment was permitted and created vacates the family apartment then the permit shall cease.
4. The applicant or their designee shall obtain a building permit for the proposed work and a Certificate of Occupancy once the work is completed.
5. All other criteria for a Family Apartment shall be achieved and demonstrated to the Planning Administrator prior to the issuance of a building permit for the family apartment section of the house. The Board understands that the family apartment may be constructed in the future as the second phase of the overall building work.
6. That this approval is subject to there being direct interior access between the main house and the in-law apartment.

Planner's Update: None.

Other Business:

- Election of Officers – It was indicated that we would hold off another meeting in an attempt to get the entire board at the meeting to do elections. It was indicated that the elections will be done at the next meeting, whether a full board is present or not.
- Zoning Board Liaison to the Planning Board – Angela Carey stated that we have an opening on the Planning Board for the Zoning Board Liaison. She asked that anyone interested in this, it would typically be another additional meeting, but could be two meetings a month. She stated that their regular meeting is the fourth Wednesday of the month; except during November and December when it is the second Wednesday of the month. She added that when the board is busy, they typically have workshop meetings on the second Wednesday of the month, but over the last few years they have only met

the one time a month. Ms. Carey asked that anyone interested in this position email her and let her know and that this will be discussed at the next Zoning Board Meeting.

Public Comment: None.

Adjournment

MOTION: Member Gagnon moved and Member Tully seconded to adjourn the February 6th, 2013 meeting of the Zoning Board of Adjustment, at 7:37 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant