

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, June 5th, 2013 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: Kirk Johnston, Kathlene Fleckenstein, and Sandra Hodgdon and Planning and Zoning Administrator Richard Lewis.

Absent: Chuck Farmer, Don Gagnon, Donna Tully and Floyd Sargent.

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

- Approval of Minutes: February 6th, 2013 Zoning Board Meeting**

MOTION: Member Hodgdon moved and Member Johnston seconded to approve the minutes of the February 6th, 2013 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business: None.

New Business

- Z13-03:** Derek Alan Davidson and Keri Lynn Davidson, Owners/Applicants, request a Special Exception (per section 305-13. Permitted Uses, Special Exceptions and Special Use permits) for a family apartment. They also request a Variance from Section 305-29.8(I.), Family Apartments, as the size of the apartment is proposed to be 300 sq. ft. more than the size allowed by Zoning and the requirements allow for a maximum size of 720 sq. ft. The property is identified as on 369 Webster Lake Road, Tax Map/Lot # 017-402-00, New Map # J4, LP Zone (Lake Protection District).

Acting Chair Fleckenstein asked the applicant if they were willing to continue this evening with a board of three. She indicated that all three members would have to vote the same way to either approve or deny the application. Mr. Davidson stated they would like to continue tonight.

Mr. Davidson then handed out to the board a more in depth building plan for the house. He stated they had received a variance back in February for the piece of land across the street to build the house with the family apartment and the family apartment was going to be 1200 square feet. He stated based on unforeseen circumstances that have taken place over the past few months, including the passing of his mother and the fact his grandmother's farmhouse needs so many repairs that it is not cost effective to fix, that they are requesting now to move the approval to this property across the street. He stated the existing home has been donated for training purposes, that State Police have utilized it for training and the Franklin Fire Department will also be using the property for training. He stated all environmental aspects have been taken care of, including lead and asbestos and the demolition permit has been pulled.

Mr. Davidson stated that the old lot was just over 1.5 acres and the lot they are now proposing to put the house on is over 5 acres. He stated the original approval was for the house and a family apartment with 1200 square feet of living space and now the request is for 1020 square feet due to his father being the only occupant in the apartment.

Questions from the Board

Member Johnston asked if this lot is across the street from the original lot and Mr. Davidson stated that it is. Member Johnston asked Mr. Davidson if the request is to not build on the other lot and instead build the proposed on this lot. Mr. Davidson stated that was true, that there is a barn and house on the lot that needs sill work, foundation work, electrical work, plumbing work, and it's not in the budget to keep the existing home and it makes sense to invest the money into this property.

Acting Chair Fleckenstein indicated that like the last approval, access to the apartment needs to be from inside the house and not from just inside the garage. Mr. Davidson stated that was fine.

Member Johnston asked if the project would be done in one phase now and Mr. Davidson stated that it would be. Member Johnston asked if what was approved before would still be an option. It was indicated that the approval stands and the owner could still have the option; however, the approval for family apartments are specific to the owner and to the persons that would be residing within the apartment and if this changed any new owner would have to reapply to the board in order to keep this approval.

Public Comment

Michael Dery, of Sand Hill Road, was present. He stated he is not here to fight, but stated he is not pleased. He stated that when they build he wants assurance that any trees they take down will be replaced to cut down on the noise. Acting Chair Fleckenstein asked where his house was and he stated it was the second house on Sand Hill Road. She then indicated that this is not a rental property and will be a family apartment. Mr. Dery stated he wants to keep his privacy and Mr. Davidson stated that he also wants privacy and that his house will be built at least 200' from the property lines.

Board Discussion

MOTION: Member Johnston moved and Member Hodgdon seconded that the Zoning Board of Adjustment approve the Special Exception and the Variance application requests of; Derek A. Davidson and Keri L. Davidson, Owner/Applications, 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 1020 sq. ft. and the requirements allow for a maximum size of 720 sq. ft. The property is identified as 396 Webster Lake Road, Tax Map/Lot # 017-402-00, New Map # J4, 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 decision to approve which has been reviewed and approved, including any modifications, by the Board. All were in favor and the motion passed.

Decisions of Approval

Member Johnston moved and Member Hodgdon seconded that the Zoning Board of Adjustment approve the variance application request [**Z13-04**], by Derek A. Davidson and Keri L. Davidson, Owners/Applicants, for a Variance from Section 305-29.8(I.), Family Apartments, as the size of the apartment is proposed to be 1020 sq. ft. and the requirements allow for a maximum size of 720 sq. ft. The property is identified as 369 Webster Lake Road, Tax Map/Lot # 017-402-00, New Map # J4, 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 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 with frontage on both Webster Lake Road and Sand Hill Road, and the lot could accommodate two separate residential dwellings. 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 the layout and character of the family apartment will not be different than a single family home without the apartment.

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Member Johnston moved and Member Hodgdon seconded that the Zoning Board of Adjustment approve the Special exception application request [**Z13-03**], by Derek A. Davidson and Keri L. Davidson, Owners/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 369 Webster Lake Road, Tax Map/Lot # 017-402-00, New Map # J4, 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 lot is large enough to accommodate two residential dwellings.
- 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. There shall be interior access directly between the main house and the family apartment and not just through the garage.

All were in favor and the motion passed.

Planner's Update

Other Business

- Election of Officers
 - Chair
 - Vice Chair

It was indicated that the elections of officers would again be pushed back to the next meeting, in hopes that all members would be present.

- ZBA Representative to the Planning Board
 - The only member who responded and showed interest in this position was Member Johnston.

MOTION: Member Fleckenstein nominated Member Johnston and Member Hodgdon seconded the nomination. There were no further nominations, all were in.

Public Comment: None.

Adjournment

MOTION: Member Johnston moved and Member Hodgdon seconded to adjourn the June 5th, 2013 meeting of the Zoning Board of Adjustment, at 7:21 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant