

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, October 2nd, 2013 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: Kirk Johnston, Kathlene Fleckenstein, Donna Tully, Donald Gagnon, and Floyd Sargent and Planning and Zoning Administrator Richard Lewis.

Absent: Chuck Farmer and Sandra Hodgdon.

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

- **Approval of Minutes: June 5th, 2013 Zoning Board Meeting**

MOTION: Member Sargent moved and Member Fleckenstein seconded to approve the minutes of the June 5th, 2013 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business: None.

New Business

- **Z13-05:** Bernard J. Rousseau and Bethanne Rousseau, Owners/Applicants, request a Variance from setback requirements for a 10' x 12' addition, to consist of a bathroom and storage space (with the existing bathroom to be discontinued). The property is identified as 151 Lake Shore Drive, Tax Map/Lot # 015-006-00, New Map # I4, LP Zone (Lake Protection District). The addition would be located 31' from the westerly lot line and 47' from the front lot line, where the regulations call for 50' setbacks.

Bernie and Beth Rousseau were present to speak for this application. Bernie Rousseau stated that his property requires a variance to construct a 10' x 12' addition onto the property, located at 151 Lake Shore Drive. He stated the home was built in 1945 and the bath is the original bathroom, which isn't much bigger than a phone booth. He stated the addition would be a bathroom and storage area and that the existing bathroom would be used as a pantry. He stated the addition will be 31' from the King residence and they have no objections, 47' from the front lot line and 77' from the lake. The addition will match the existing house. His neighbor, Richard Joyce, is a contractor and will be doing the work and has no objections. He stated he wasn't able to talk to the Crowley's across the street, as Mr. Crowley recently passed away.

Questions from the Board

Member Fleckenstein asked what the existing bathroom would be used for and Mr. Rousseau stated as a food pantry as it is very small.

Mr. Lewis asked if the main part would be done in the recent future, as they may need to explore DES Shoreland permits. Mr. Rousseau stated they have not explored the need for DES approvals as they didn't need approval last year for a 10 x 20 deck that would be closer to the water, and that they would get the shell done now so that he could work on the inside over the winter. Mr. Lewis stated an open deck area is considered very different than an enclosed living space area per DES. He stated they need to check with DES regarding any approvals that are necessary.

There were no further questions.

Public Comment

There was no one from the public present to speak for or against this application.

Board Discussion

Member Fleckenstein asked about the increase in square footage. Mr. Lewis stated that Mr. Rousseau came in to initiate the process and Richard spoke with him at length about the Webster Lake Overlay District and the requirements that need to be met. He stated this is a relatively small addition. Member Fleckenstein asked if the amount of area is a percentage and Richard stated that was correct.

Member Johnston asked about needing an increase in the septic capacity and Richard stated that was only for bedrooms and you could have five bathrooms but if you don't increase the number of bedrooms you don't need any septic approvals.

MOTION: Member Johnston moved and member Sargent seconded that the Zoning Board of Adjustment approve the application request by Bernard J. Rousseau and Bethanne Rousseau, Owners/Applicants, for a Variance from setback requirements for a 10' x 12' addition, to consist of a bathroom and storage space (with the existing bathroom to be discontinued). The property is identified as 151 Lake Shore Drive, Tax Map/Lot # 015-006-00, New Map # I4, LP Zone (Lake Protection District). The addition would be located 31' from the westerly lot line and 47' from the front lot line, where the regulations call for 50' setbacks. The Board finds that the application request meets 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 and the motion passed.

Decision of Approval

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 fact that the proposed addition will not create an obstruction to views of the lake, will not create any other hazards for the general public, and will not

adversely impact any abutter. Additionally, the addition will not create any inappropriate environmental concerns for the integrity of Webster Lake.

2. **Substantial Justice is done** due to the fact that the proposed addition will provide for normal and regular utilization of the structure, and the variance request satisfies all of the other criteria.
3. **The values of the Surrounding Properties are not diminished** due to the fact that the proposed addition will not substantially modify the look, feel, nature, or uses of the existing structure.
4. Literal enforcement of the provisions of the ordinance would 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.** The property is somewhat unique in that the westerly lot line angles in so that the measurement of the rear lot line is 57 percent less than the front lot line. Additionally, the required 50-foot setbacks are intended to prevent over development of the properties in the lake area; the proposed addition will maintain a high percentage of pervious area of the lot.
 - (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.** Given the dated nature of the existing bathroom in the structure, and the need to make the structure fit the use requirements that are common today, constructing the proposed addition is appropriate, and necessary to enable reasonable use of the structure and the property.

This approval is subject to the following conditions:

1. The applicant or their designee shall obtain a building permit for the proposed work and a Certificate of Occupancy once the work is completed.
 2. A siltation protection device [hay bales or silt fence] shall be installed between the foundation work zone and the shoreline of the lake.
 3. The applicant shall obtain any necessary permits or approvals from the NH DES for work within the protected Shoreland area.
- **Z13-06:** Roy D. Emery Sr. and Tina Marie Emery, Owners; Robert Prentice, applicant, request a Variance from Zoning Ordinance Section 305-17. Number of Structures Per Lot, as they have already begun building a secondary structure on the lot. They indicated the structure is a small 8' x 16' building to be used as a storm shelter and summer camp and 95% of which will be located underground. The property is identified as 84 Smith Hill Road, Tax Map/Lot # 084-001-00, C Zone (Conservation District). The lot is 1.510 acres and the minimum lot size for the zone is 5.17 acres.

Roy Emery was present to speak on this application. He stated this is an unusual request of an 8' x 16' shed type structure. He stated the structure is more or less buried, like a storm shelter and it would be used as a summer camp. The building sets further back from the house and from the road you can only catch a glimpse of it now that the leaves are falling off the trees. There are a few windows for ventilation, no indoor plumbing, an outhouse and running water. He stated Electricity would be run from the existing house and would be 30 amps. He stated he received plans on the outhouse from Chuck Bodien for construction purposes.

Mr. Emery stated there are three reasons why he wants this:

1. His family purchased the property in 1930 and there use to be 2 houses on the lot;
2. Storm shelter from tornadoes and a safe place in other storms; and,
3. Safer to have someone living closer to him as currently the closest neighbor is quite a distance away.

He stated the shelter would not impact the environment, it would be buried and there will be no hazardous materials. He stated there is a farm behind his, and that the neighbors across the road are okay with his, but that it would not impact any of the neighbors, would not be seen by them and they won't know it's there.

Questions from the Board

Questions from the board included:

1. If this was a storm shelter or a camp, as both were mentioned, and Mr. Emery stated he wants to be able to have people stay there sometimes.
2. If residency would be 24 hours a day, seven days a week, 365 days a year and it was indicated it would not be.
3. If there was going to be water, but no sewer, and it was indicated it is a small 8' x 16' building and they have talked about having an outhouse. Mr. Emery stated he received plans for the construction of an outhouse from Chuck Bodien. He stated there will be running water, that there was running water for the two houses that use to be on the lot and the line is still present on the lot. He stated he was informed he would need a cesspool to collect sink water.
4. If anyone would be residing within the structure and Mr. Emery stated no one would be.
5. If they received a permit for the outhouse and it was indicated they have not yet, and just got the requirements for the building of an outhouse.
6. If the building is metal or wood and it was indicated it is wood.
7. How it is buried, and it was indicated it was built into a banking and is not entirely submerged, but there is about 1 ½ to 2 feet of sand covering it. There are windows for ventilation, so the front isn't buried.
8. It was indicated there would be 30 amp's of electricity run from the existing house to this building for a fridge, light, and TV. It was indicated the existing home has 200 amp electricity and 30 amps will be broken down to service the building.
9. It was indicated that as the structure is built into the ledge, you can stand up close to the building and look over it.
10. It was asked if this structure is already built and it was indicated that it is.
11. It was asked if permits were obtained and it was indicated they were not. Mr. Emery stated he did not think he had to get a permit for a shed.

12. Mr. Lewis stated that it is his understanding that if there is running water at the residence, then you cannot have an outhouse, and that a septic system is necessary. He added that plans for the construction of an outhouse may have been given, but that doesn't mean it is allowed.
13. Mr. Lewis stated they have called this a summer camp, but that they may stay there for a week here or there and that is vague and doesn't clarify if it will be used year round, he asked Mr. Prentice where he resides now and he stated he has a trailer in a mobile home park.
14. Mr. Lewis stated that no building permit was pulled prior to construction, a complaint was received and Chuck Bodien, Jim Curran and him went to the property to view what was there. Mr. Prentice stated they wanted to do something with the property instead of leaving it overgrown. Mr. Emery stated there is no room to build another house and added that he didn't think he needed a permit for a shed.
15. If this was granted and they are allowed to have a storm shelter, who would live in it and Mr. Emery stated no one would live there. The board stated they are concerned about what would happen down the road and if someone would be living in. Mr. Emery stated the house has been in the family for 2 generations that none of his brothers or sisters are interested in the property and no one else wants to stay there. Mr. Emery stated he has lived on the property for 48 years.

There were no further questions from the board.

Public Comment: None.

Board Discussion

Concerns of the board were as follows:

1. Setting a precedence by allowing this secondary living unit on the property.
2. That the size of the lot prohibits the lot from being subdivided due to the regulations.
3. Allowing this structure under unique circumstances could open the door for others like it without septic or bathrooms.
4. Allowing a camp with no septic tank is not a good precedence to set.
5. Can't be considered an in-law as it is not attached to the primary structure.
6. This is not a shed; it is a second living unit or guest house.
7. Even if the board granted this variance, it may be a mute point due to there not being a septic and just having an outhouse.

MOTION: Member Johnston moved and Member Fleckenstein seconded that the Zoning Board of Adjustment deny the application request by Roy D. Emery Sr. and Tina Marie Emery, Owners; Robert Prentice, applicant, for a Variance from Zoning Ordinance Section 305-17. Number of Structures Per Lot, as they have already begun building a secondary structure on the lot. They indicated the structure is a small 8' x 16' building to be used as a storm shelter and summer camp and 95% of which will be located underground. The property is identified as 84 Smith Hill Road, Tax Map/Lot # 084-001-00, C Zone (Conservation District). The lot is 1.510 acres and the minimum lot size for the zone is 5.17 acres. 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 of denying this application, motion passed.

Decision for Denial

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 fact that the lot on which this second dwelling structure is located is substantially undersized [1.51 acres versus 5.17 acres] for the Conservation zoning district in which it is located. Additionally, constructing a second dwelling with an outhouse when a septic system already exists on the lot is not in keeping with the spirit of the ordinance.**
- 2. Substantial Justice is done: Since the Board finds that the application fails to meet the remaining variance criteria, then an injustice would be done if the application was to be approved.**
- 3. The values of the Surrounding Properties are not diminished: The justification for this variance criteria provided by the applicant that the structure would not be seen from the road or by a neighbor is not satisfactory justification for the granting of the variance. To allow for the construction of a second dwelling on an undersized lot would, in the opinion, of the Board, have a detrimental impact to the abutting properties and the overall neighborhood.**
- 4. Literal enforcement of the provisions of the ordinance would 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. The applicant has not demonstrated that there are any special conditions of the property to support the granting of the variance. The claims that the structure will not be seen from the road or from a neighbor's property are not satisfactory grounds to grant the variance. Additionally, the small size of the property relative to the required minimum lot area does not create a special condition of the property, and this small lot size does point to a fair and substantial relationship between the ordinance and the need to prohibit a second dwelling unit on such an undersized parcel.**

Planner's Update

Richard Lewis stated that the deadline for the November meeting is in two weeks.

Mr. Lewis added that the Planning Board is looking at doing some updates to the Master Plan, per state requirements. This question of updating the Master Plan was brought up some months ago; however, due to the office being pretty busy with Brownfields and other grants it has not been done. He stated he is looking at providing the Planning Board some information later this month at their monthly meeting. The Master Plan language is good, but something items need enhancing and other items have been mentioned and brought forward by the members of the board to move the City forward in a positive direction. A public hearing will probably be held in January or February.

Other Business: None.

Public Comment: None.

Adjournment

MOTION: Member Sargent moved and Member Fleckenstein seconded to adjourn the October 2nd, 2013 meeting of the Zoning Board of Adjustment, at 7:50 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant