

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, July 2nd, 2014 at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:05 p.m.

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

Present: Kirk Johnston, Kathlene Fleckenstein, Sandra Hodgdon, Michael Weatherbee and Donald Gagnon and Planning and Zoning Administrator Richard Lewis.

Absent: Donna Tully.

- Approval of Minutes: March 5th, 2014 Zoning Board Meeting**

MOTION: Member Johnston moved and Member Fleckenstein seconded to approve the minutes of the March 5th, 2014 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business: None.

New Business

- Z14-03:** Newton Family Trust, Owner; Linda L. Backert, Applicant, request a Variance to add a 15' x 49' addition to an existing manufactured home, on property located at 34 Robin Street, Tax Map/Lot # 076-012-00, LP Zone (Lake Protection District), New Map # L6. The addition, which would be located between the existing manufactured home and the existing garage, does not meet the 50' setback.

Linda Backert was present to speak for the application. She stated that the house has been in her family for forty years. She stated that her parents passed away and she now has the property. She is retiring and is planning on moving back to Franklin into the house and needs to do some work on the house.

Ms. Backert stated PSNH came out to the property and marked off the right of way. The addition was proposed for an area located within the right of way. She stated she loses about 1/3 of her lot to the right of way and if this application is approved, when she comes in with the building permit her drawing will be redone to remove all portions within the right of way from as nothing new will be added in that area. She stated she is removing the carport from the original plan, as she is looking at adding double to the existing 490 sq. ft. of living space. The existing house is 2 bedrooms and 1 bath and the proposed will remain the same. The proposed addition will include a new bedroom and closet and a breezeway and walkway to the garage from the house.

The septic was described as being on the Robin Street side of the lot, and the proposed addition is on the opposite side of the lot. The leachfield is on the corner of Wren Street and Robin Street. She stated the state did not have any records of the septic and indicated it would be nice to be able to hook up to City Sewer.

Member Johnston asked if the original plan was going to be redone and if both the carport and addition would be reduced or if the carport would be reduced further to increase the living space. Ms. Backert stated the carport would be removed and possibly completely replaced with the addition. Member Johnston asked about the existing buildings being located within the right of way and Ms. Backert stated they are already there long before her parents bought the property and before the right of way was increased. She stated originally she was asking for an addition

of 735 square feet, but now the addition will be either 33 x 16 (528 sq. ft) or 33 x 17 (561 sq. ft.) and will still be located between the two existing buildings.

Member Johnston asked if the new addition would be completed outside of the PSNH right of way and Ms. Backert stated that was correct.

Richard Lewis stated he went to the property this morning and spoke with PSNH and their concern was proposed and not the existing buildings on the lot as they have been there and PSNH understands the situation.

Linda Backert stated she is possibly going to forego the carport completely.

Member Gagnon asked Ms. Backert if she had received a copy of the conditions and tonight's addition to the conditions and Ms. Backert stated that she was.

Public Comment: None.

Board Discussion

Member Johnston asked if it is typical of the area that properties violate the PSNH right of way and Mr. Lewis stated that most of the properties around this property are vacant, that he is not sure about other properties violating the right of way, that PSNH is aware that there are properties with older buildings located in the right of way and they were not worried about the existing, just the proposed.

Member Johnston asked if the right of way has changed and Richard stated that over the years it has changed a little bit.

Member Gagnon asked the board if they had a chance to read the addendum and they indicated that they did. Richard Lewis stated only condition #1 is new and Member Gagnon read the new condition into the record, which states: "Since the field work performed by PSNH revealed that a corner of the proposed addition falls within the utility Right-of-Way, the applicant will be required to modify the plans to remove any new construction from the ROW area. The plans submitted with the Building Permit application shall include the necessary modifications to the footprint of the proposed addition, including modifications to the proposed carport."

MOTION: Member Johnston moved and Member Fleckenstein seconded that the Zoning Board of Adjustment approve the Variance request of the Newton Family Trust, Owner; Linda L. Backert, Applicant, to add a 15' x 49' addition to an existing manufactured home, on property located at 34 Robin Street. The addition, which would be located between the existing manufactured home and the existing garage, does not meet the 50' setback. The Board finds that the application requests meet the tests and criteria necessary for the granting of the Variance as spelled out in the draft decision to approve which has been reviewed and approved, including the modifications, by the Board. All were in favor and the motion passed.

DRAFT Decision of Approval

The Zoning Board of Adjustment approves the variance application request [Z14-03] by the Newton Family Trust, Owner; Linda L. Backert, Applicant, to add a 15' x 49' addition to an existing manufactured home, on property located at 34 Robin Street, Tax Map/Lot # 076-012-00, LP Zone (Lake Protection District). The addition, which would be located between the existing manufactured home and the existing garage, does not meet the 50' setback. 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: the general nature and use of the property will remain a single family house, which is an*

allowed use in this zoning district; and, the existing structures do not meet the 50-foot setback requirements for the front and side yard areas, and the proposed addition will not be any closer to the side yard than the existing structure.

- 2. *Substantial Justice is done due to the fact that all of the other variance criteria are satisfied and supported by appropriate findings of the Board.*
- 3. *The values of the Surrounding Properties are not diminished due to the facts that the proposed addition will add value to the subject lot and will have a positive impact to the overall neighborhood; further, the subject lot is bounded by a street, and two vacant lots which can not be built upon as all of these two lots fall within the utility ROW.*
- 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 is an important special condition for this property which is that over half of the lot falls within the utility ROW and this sizable portion of the lot cannot be built upon. Thus, the owner/applicant is forced to build within a limited footprint. It is also important to note that the lot was created and built upon before the 50-foot setback was created. Therefore, there is no fair relationship between the language of the ordinance and the application of the ordinance to the property given its special conditions, and given the fact that the residential use is allowed. The proposed use is a reasonable one since; again, the character of the property will remain as a single family use.

Conditions of Approval:

- I. *Since the field work performed by PSNH revealed that a corner of the proposed addition falls within the utility Right-of-Way, the applicant will be required to modify the plans to remove any new construction from the ROW area. The plans submitted with the Building Permit application shall include the necessary modifications to the footprint of the proposed addition, including modifications to the proposed carport.*
- II. *The owner shall obtain a building permit for the proposed work.*
- III. *The Building Permit shall only be approved if the owner can provide adequate information to confirm that the footprint of the proposed addition will be in conformance with any applicable DES requirement relative to the separation between the foundation and the septic field or any septic system components. If any waiver is required from DES, then the permit shall only be issued after submission of the waiver approval document.*

- **Z14-04:** VSH Realty Incorporated (Cumberland Farms), Owner; Carolyn Parker, Applicant, request a Variance from Zoning Section 305-24. Signs, Item F.(1)(a) to install LED Pump Toppers with “Smart Pay” alternator, and the ordinance does not allow moving, flashing, blinking or changing characters. The property is located at 233 Central Street, Tax Map/Lot # 117-076-00, New Map N8, B-2 Zone (High- Density Business and Commercial District).

Carolyn Parker was present to speak for the application as a representative for Cumberland Farms. She stated that Cumberland Farms has started a smart pay program and most of the Cumberland Farms in the state have a large sign on the property that shows the smart pay price vs. the regular price. She stated these are LED signs and there is one in Tilton. The main sign at the Cumberland farms in Franklin does not change and the gas prices are scrolling so they can be changed inside, but are not digital. They are not requesting a large sign and are just requesting pump toppers with the changing digital prices for the gas. She then showed the board a pump topper as it would be on the pumps. She stated in order to put that type of sign, due to the ordinances, a variance is necessary. She stated currently the topper is set at 2 as far as brightness and this can be raised or lowered. She stated the topper would not be flashing, but would just be changing and would change every 8 seconds.

Member Hodgdon stated that she is familiar with these signs, as she is a smart pay member. She stated the Cumberland Farms is located in a congested spot in downtown Franklin, and when people drive by they will not be able to see the sign unless they strain to look. Ms. Parker stated it is not to be seen from the roadway, but is to let people who are pumping and don't know about the smart pay price become aware of it. Carolyn Parker stated normally you wouldn't have a gas station on such as small lot. She stated she also needs approval from the Heritage Commission.

Member Gagnon asked if any changes were being made to the main sign and Ms. Parker stated they are not, just at the pumps. Ms. Parker stated that a pump topper is required with the prices on it and they are just requesting to take the current manual pump topper and replace it with a digital one that would flash and show the smart pay price and the normal price. She stated the standard time frame between each price is approximately 8 seconds, but this could be up to 15 seconds.

Public Comment: None.

Board Discussion

Angie Carey stated the Planning Board changed the regulations some time ago so that the digital signs that were popping up all over the place would not be allowed in Franklin as it is a distraction to drivers, and especially in such a busy and congested area.

Member Johnston stated that he doesn't understand the ordinance. Member Gagnon stated that there were numerous complaints when the digital sign at Garneau's was put in place.

Richard Lewis stated that as the property location is in the downtown, historic district, special attention to the number of signs, location of signs and types of signs is necessary. Having too many signage or not the right type of signage is contrary to the historic downtown. Signage is always a sensitive subject.

Member Fleckenstein asked if any of the abutters came in and had comments and Richard stated they did not.

Member Gagnon stated that the main sign is not changing, that businesses need to be able to advertise their products, signage is needed on the pumps and this would just take the place of the existing sign. Carolyn Parker stated they can go up to a 15 second delay between changing.

Member Fleckenstein stated the ordinance states that any changing characters is not allowed.

Member Gagnon asked if the board felt the application met the criteria under the variance. Member Fleckenstein stated that she is concerned about the problem with setting a precedence. Angie Carey stated there were other signs located downtown that were told they had to remove their signs and if you allow this one, then they will come in and ask for variances as well.

Richard Lewis stated the signs downtown were scrolling signs. He stated he is concerned with setting a precedence. There is a reasonable understanding that prices change frequently, but so do other items such as chicken at Hannaford's and do we want to allow a digital sign at Hannaford's. Signage is sensitive and some people can look at a sign and think it looks nice; whereas someone else looks at the same sign and thinks it is hideous.

Member Johnston stated that regardless of what someone is selling, it is a way to let people know they can buy it cheaper. Member Gagnon stated they are not advertising to draw people in, it will be rarely noticed from the roadway and it's just to let people know when they are pumping. The intensity is limited and if it was the main sign that would be a problem. Member Gagnon stated that the way the ordinance is written it is very broad. Member Gagnon also stated that what the board decides tonight could be mute if the application is denied by the Heritage Commission.

Member Gagnon requested that the board add a condition that the approval is subject to Heritage Commission approval.

MOTION: Member Johnston move that the Zoning Board of Adjustment approve the Variance application requests of VSH Realty Incorporated (Cumberland Farms), Owner; Carolyn Parker, Applicant, request a Variance from Zoning Section 305-24. Signs, Item F.(1)(a) to install LED Pump Toppers with “Smart Pay” alternator, and the ordinance does not allow moving, flashing, blinking or changing characters. The property is located at 233 Central Street, Tax Map/Lot # 117-076-00, New Map N8, B-2 Zone (High- Density Business and Commercial District). The Board finds that the application requests meet the tests and criteria necessary for the granting of the Variance as spelled out in the draft decisions to approve which have been reviewed and approved by the Board.

There was no second to the motion and the motion died.

Member Gagnon then stated that the condition should be put in that a film be added to the sign to dim the brightness of the sign and that the time frame for the changing characters be set at 15 second delay and that the approval is dependent on the Heritage Commission decision of July 14th. Angela Carey stated that at this point a member could just state “so moved”.

MOTION: Member Johnston move that the Zoning Board of Adjustment approve the Variance application requests of VSH Realty Incorporated (Cumberland Farms), Owner; Carolyn Parker, Applicant, request a Variance from Zoning Section 305-24. Signs, Item F.(1)(a) to install LED Pump Toppers with “Smart Pay” alternator, and the ordinance does not allow moving, flashing, blinking or changing characters. The property is located at 233 Central Street, Tax Map/Lot # 117-076-00, New Map N8, B-2 Zone (High- Density Business and Commercial District). The Board finds that the application requests meet the tests and criteria necessary for the granting of the Variance as spelled out in the draft decisions to approve which have been reviewed and approved by the Board, with the addition of:

1. That the approval was contingent on the applicant receiving approval from the Heritage Commission;
2. That a film (as was shown during the meeting) be utilized to reduce the brightness of the sign; and,
3. That the delay between the changing characters be set at 15 seconds.

There was no second and the motion again died.

MOTION: Member Hodgdon moved and Member Fleckenstein seconded that the Franklin Zoning Board of Adjustment deny the variance application request Z14-04 VSH Realty Incorporated, Owner; Carolyn Parker, Applicant, for a Variance from Section 305-24.F(1)(a), to permit electronic signage with changing characters [gas prices] at the property located at 233 Central Street, B-2 Zone High- Density Business and Commercial District).

A roll call vote was then taken:

**Don Gagnon was not in favor of the motion to deny.
Sandra Hodgdon was in favor of the motion to deny.
Kirk Johnston was not in favor of the motion to deny.
Kathlene Fleckenstein was in favor of the motion to deny.
Michael Weatherbee was not in favor of the motion to deny.**

Motion failed.

At this Richard Lewis indicated to the board that an option for the board is that they could continue the application pending action of the Heritage Commission.

MOTION: Member Hodgdon moved to continue application Z14-04 to the Wednesday, August 6th, 2014 meeting of the Zoning Board to be held in Council Chambers at Franklin City Hall at 7:00 p.m., pending action by the Heritage Commission. All were in favor and the motion passed.

Planner's Update

Richard Lewis indicated that there are draft chapters of the Master Plan available on the city website. He stated the Planning Board is looking at September or October for their next meeting on the Master Plan.

Other Business

None.

Public Comment: None.

Adjournment

MOTION: Member Johnston moved and Member Hodgdon seconded to adjourn the July 2nd, 2014 meeting of the Zoning Board of Adjustment, at 8:05 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant