

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, August 6th, 2014 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, Sandra Hodgdon, Michael Weatherbee and Donna Tully and Planning and Zoning Administrator Richard Lewis.

Absent: Donald Gagnon.

- **Approval of Minutes: July 2nd, 2014 Zoning Board Meeting**

MOTION: Member Johnston moved and Member Hodgdon seconded to approve the minutes of the July 2nd, 2014 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business

- **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. She stated that last month the board discussed the LED Pump topper with the smart pay alternator. The application was continued so that the Heritage Commission could make a decision prior to the Zoning Board. The approval by the Heritage Commission was conditional and included:

1. That two layers of the film (to dim the brightness) are to be placed over the entire lighted area. The film layers shall be maintained and replaced as needed.
2. That the brightness level shall not exceed the setting described as 2.
3. That the interval between the changing from smart pay to regular pay shall be set at 15 seconds or higher at all times.

Member Johnston asked about the 15 seconds and indicated that people driving by will not see both prices if this is the time set for the interval. Ms. Parker stated it is for people pumping gas and not for the people driving by. Angie Carey indicated that this is a condition set by the Heritage Commission and it cannot be changed by the Zoning Board.

Carolyn Parker indicated that at the Heritage Commission meeting it was mentioned about the VFW across the street having blinking signage, as well as the Regal Auction House downtown. She stated the boards main concern was the Heritage Commission and she has received approval from them.

Public Comment: None.

Board Discussion

Motion: Member Johnston moved and Member Weatherbee seconded that the Zoning Board of Adjustment approves 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, including any modifications, by the Board.

Member Hodgdon was opposed. All other members were in favor and the motion passed by a vote of 4-1.

Decision of Approval

The Franklin Zoning Board of Adjustment approved 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). 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: this signage will be small and only allowed on the tops of the individual gas pumps. This will prevent or significantly reduce visual impacts for drivers. Additionally, the gas prices will only change a few times a week subject to the standard consumer prices, and the change from “member” to “non-member” will change regularly. Lastly, the proposed signage was approved by the Franklin Heritage Commission at their meeting of July 14, 2014, thus supporting the finding that the signage will not adversely impact the historic character of the area.
2. Substantial Justice is done due to the fact that the approval will allow some flexibility due to the constant change in gas prices and the fact that Cumberland Farms offers two different prices between regular customers and their smart pay customers.
3. The values of the Surrounding Properties are not diminished due to the facts that the signage would be placed on the existing gas pumps where there are already small information signs and ads, and the overall look and character of the pump area will not change.
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. The ordinance was partly put into place to protect those driving on the roadways from distractions, and as the signs will be small and placed on the gas pumps they will not be a distraction to drivers. If the signage was going to be flashing and placed on the roadway, this would be a concern, as it could set a precedence and could be detrimental to drivers on the rights of ways. More importantly, the product being sold and advertised through this proposed signage, gasoline, is a unique and special product that is a required commodity for today’s society, as opposed to the price of cigarettes, chicken, milk, hammers, tape, or paper. In the opinion of the members of the Franklin Zoning board of Adjustment, the approval for this proposed signage should not be taken as a broader acceptance of electronic signage. The unique nature of the product being sold is, and can be, appropriately distinguished from other commercial items for sale in other business establishments.

The Variance approval is subject to the following conditions:

1. The only signage allowed through the granting of this variance is the “gas pump toppers” and not the main sign on the edge of the roadway.
2. The only information allowed or permitted on these gas pump toppers is the gas prices for members and non-members. No other images or characters, including but not limited to any flashing displays or pictures, are permitted.
3. Two layers of film [to dim the brightness] are to be placed over the entire lighted area. The film layers shall be maintained and replaced as needed.
4. The brightness level shall not exceed the setting described as 2 by the applicant’s representative.
5. The interval between the change from “smart members” price to “non-member” price shall be set at 15 seconds or higher at all times.
6. The owner/applicant shall obtain a building permit or mechanical permit for this work.

New Business

- **Z14-05:** Heather M. Subocz, Owner, request a variance to construct a two- stall garage on property located at 73 New Hampton Road, Tax Map/Lot # 113-040-00, RR Zone (Rural Residential District). The garage would be located 18’ from the side lot line, where 25’ is required.

Robert Beach, father of Heather Subocz who resides at the home, was present to speak. He stated the board has pictures of his proposal. The proposal is to build a two car garage for winter storage.

Chair Tully stated the requirements for the setbacks for the zone are 25’ and the applicant has proposed that the garage would be 18’ off the side lot line but would meet all other setbacks. It was indicated the setback that isn’t being maintained is the distance from the garage to Waverly Street. Member Hodgdon asked if this would be a single story garage and Mr. Beach stated it would be.

Member Fleckenstein asked what the structure on the lot is that is 24’ x 61’ and Mr. Beach stated that is a pool. Member Johnston asked if the drawing was to scale and Mr. Beach stated it was. Member Fleckenstein asked if Waverly Street was a public street or a private right of way and Mr. Beach stated it is a public street. Member Hodgdon asked the lot size and it was indicated it is .37 acres. Member Fleckenstein asked if there was room to get to the septic tank if it was to fail and Mr. Beach stated there would be. Member Hodgdon asked about the lot across the street and it was indicated it is owned by the same people who own the house at the end of Waverly Street and that it is a buildable lot.

Public Comment: None.

Board Discussion

Motion: Member Johnston moved and Member Hodgdon seconded that the Zoning Board of Adjustment approve the Variance application requests of Heather M. Subocz, Owner/Applicant, to build a two-car garage 18’ from the property line, where the requirement is 25’, on property located at 73 New Hampton Road, Tax Map/Lot # 113-040-00, RR Zone (Rural Residential District). The Board finds that the application request meets 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, including any modifications, by the Board. All were in favor and the motion passed.

Decision of Approval

The Zoning Board of Adjustment approved the Variance application request of Heather M. Subocz, Owner/Applicant, to build a two-car garage 18’ from the property line, where the requirement is 25’, on property located at 73 New Hampton Road, Tax Map/Lot # 113-040-00, RR Zone (Rural Residential 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: a two-car garage is now a typical addition to a property; whereas when the house was built a single car garage was typical and as the neighbors homes are located over 100' from the proposed garage site.
2. Substantial Justice is done due to the fact that the home was built prior to zoning and the current lot does not meet the zoning requirements it would be impossible to situate a garage anywhere else on the property and a garage is a typical addition to a single family home. The garage will allow for storage and will add to the overall look of the property.
3. The values of the Surrounding Properties are not diminished due to the fact that the garage will allow for more storage, ultimately improving the look of the property and adding value to the existing property.
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. As the house was built prior to zoning regulations and prior to the lot size being determined by zoning, the size of lot doesn't allow for a two car garage that meets the setbacks; whereas, the other lots in the area are at least one acre or meet or are greater in size than the mandatory lot size.

The Variance 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.
- **Z14-06:** Brian L. Waltos and Patricia R. Waltos, Owners, request a variance to construct a two- stall garage on property located at 9 Patriot Avenue, Tax Map/Lot # 116-084-00, RS Zone (Single Family Residential District). The garage would be located 12' from the side lot line, where 25' is required.

Brian Waltos, owner, was present to speak. He stated they just moved from Northfield to the house, which use to be his grandparents house. He stated at his house in Northfield he has a large garage for storage of vehicles, yard equipment and his motorcycle. He stated the garage on the lot is small and a larger one is needed for the storage.

Chair Tully asked if the side that they are not meeting the setbacks was the side of the lot that abuts the PSNH right of way and Mr. Waltos stated it is. Member Johnston asked if the building was within the right of way and Mr. Waltos stated it was not and that it is 12' from the right of way. Mr. Lewis asked if the row of trees were staying and Mr. Waltos stated he has been cutting them for his family for years and they are staying on the boundary line.

Public Comment: None.

Board Discussion

Motion: Member Fleckenstein moved and Member Hodgdon seconded that the Zoning Board of Adjustment approve the Variance application requests of Brian and Patricia Waltos, Owner/Applicant, to build a two-car garage 12' from the property line, where the requirement is 25', on property located at 9 Patriot Avenue, Tax Map/Lot # 116-084-00, RS Zone (Single-Family Residential District). The Board finds that the application request meets 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, including any modifications, by the Board. All were in favor and the motion passed.

Decision of Approval

The Zoning Board of Adjustment approved the Variance application request of Brian and Patricia Waltos, Owner/Applicant, to build a two-car garage 12' from the property line, where the requirement is 25', on property located at 9 Patriot Avenue, Tax Map/Lot # 116-084-00, RS Zone (Single-Family Residential 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: as the side yard setback that will not be maintained is the setback to the PSNH Right of way and no buildings or homes will ever be placed on the right of way.
2. Substantial Justice is done as the lot is abutted by the PSNH Right of Way on two sides, and the hedgerow creates an appropriate barrier between the proposed garage and the abutting lot.
3. The values of the Surrounding Properties are not diminished due to the fact that the garage will allow for more storage, ultimately improving the look of the property and adding value to the existing property.
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. A two-car garage is a typical addition to a single family home, thus the proposed use is a reasonable one. The only abutter affected by this accessory structure is the PSNH Right of way and the garage will be free and clear of the right of way.

The Variance 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.

Planner's Update

Richard Lewis indicated he is picking away at the Master Plan Chapters. He indicated that due to the office being busy he hasn't had a lot of time, but he is hoping to get another chapter to the Planning Board in a month or so. He stated that after Labor Day when the office slows down he will do some significant drafting to bring to the board and then a final public hearing will be held on the entire Master Plan. He is hoping to have the final public hearing in October or early November.

Other Business: None.

Public Comment: None.

Adjournment

MOTION: Member Johnston moved and Member Hodgdon seconded to adjourn the August 6th, 2014 meeting of the Zoning Board of Adjustment, at 7:32 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant