

**FRANKLIN ZONING BOARD  
REGULAR MEETING AND PUBLIC HEARING  
CITY COUNCIL CHAMBERS- CITY HALL  
Wednesday, December 3<sup>rd</sup>, 2014 at 7:00 p.m.**

**MINUTES**

**Call to Order:** The meeting was called to order at 7:20 p.m.

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

**Present:** Sandra Hodgdon, Donna Tully, Kathlene Fleckenstein, Michael Weatherbee and Planning and Zoning Administrator Richard Lewis.

**Absent:** Kirk Johnston and Donald Gagnon.

**Member Weatherbee was seated in place of absent voting Member Donald Gagnon.**

- ❑ **Approval of Minutes: November 5<sup>th</sup>, 2014 Zoning Board Meeting**

**MOTION:** Member Fleckenstein moved and Member Weatherbee seconded to approve the minutes of the November 5<sup>th</sup>, 2014 Zoning Board regular meeting. All were in favor and the motion passed.

**Old Business**

- ❑ **Z14-09:** George E. Lees III and Marie C. Lees, Owners/Applicants, request a variance allowing a lean-to roof structure to the north side of the garage as shelter for lawn equipment. The lean-to will be approximately ten (10) feet from the property line, where the setback requirements are fifteen (15) feet. The property is located at 57 Lawndale Avenue, Tax Map/Lot # 096-074-00, R-2 Zone (High-Density Residential District).

**MOTION:** Member Fleckenstein moved and Member Weatherbee seconded to continue application Z14-09 to January 7<sup>th</sup>, 2015 at 7:00 p.m. in Council Chambers, City Hall. All were in favor and the motion passed.

At this time, Member Tully recused herself as she is the manager for Louis Pichette's properties in Franklin.

**New Business**

- ❑ **Z14-10:** Nancy J. and Robert Rose, Owner; Louis Pichette, Applicant, request a Variance (per Section 305-13) to conduct a Sand/Gravel Pit at property located at 64 Sky Meadow Lane, Tax Map/Lot # 121-403-09, RR Zone (Rural Residential District).

Donna Tully stated that she was present representing Louis Pichette and the Rose's for this application. Ms. Tully stated that they have applied for a variance for a sand/gravel pit for 64 Sky Meadow Lane. The current owner is in the process of finishing up the last five lots of the subdivision. The sand from this lot was used for the existing homes within the development for backfill of utilities, septic systems, foundations, and water lines. She stated it was unknown that they needed approval as they purchased the lot from Olympic Homes and Olympic Homes was utilizing this area for the same purpose. She stated that when the Rose's purchased the lot, it was part of the purchase and sales agreement that the owner be allowed to continue to remove the sand and at the completion of the subdivision that the lot would need to be graded and landscaped to match the rest of the lot. She stated they hope to have all the sand needed removed from the lot and the area graded and landscaped by the end of the year, and that 95% of the sand has already been used within the development. Lot 12 is the last lot that the foundation should be put in next week and then 64 Sky Meadow Lane, as weather permits, will be sloped, graded and the landscaping will be completed.

## Board Questions

Member Fleckenstein asked for clarification that the last foundation should be put in next week. Ms. Tully stated that there are five houses left to finish, one is complete, two are 75% complete, the fourth has the foundation in and utilities are in and the fifth the foundation will be put in next week and backfill will be needed for this lot.

Mr. Lewis asked which lot is the last lot and Angie Carey stated that it is lot 12.

## Public Comment

Brian Lamond stated his concerns are:

1. If approve setting a bad precedence;
2. Applying after the fact and getting approvals is not good practice;
3. That he is concerned that the board chairman is also the person whom is representing this application;
4. If there are any fines associated with this process as the city can always use the money and Prospect Street in this area is in bad shape;
5. That a stipulation needs to be put in that once the last lot is done that this permit is null and void;
6. That it needs to be specified that the sand not be removed from the site to be trucked off site and that no additional truck traffic be allowed;
7. From the beginning this subdivision has done things wrong, including drainage and the roadway;
8. That his property is eroding due to the drainage change since the subdivision has begun; and,
9. He had seen a recent letter on drainage and other concerns as well.

Richard Lewis stated that fines are ordered by the court, but that he would contact the City Attorney and the City Manager to see if any fines can be instituted. He stated that not approving the application would only delay the inevitable, as well as going through the courts instead of through this process. This process allows the owner/applicant to finish up the work and bring the lot into compliance faster. He stated that 90% or more of the work is already completed. He stated this is a one time permit and once the sand is removed for lot 12 that the only other work that will be allowed is the stabilization, pushing the bank back and creating the proper slope for the stabilization.

Mr. Lewis stated that tonight on the table was an email from an abutter, Aaron Carr, as well as the restrictive covenants for the property. He stated based on this letter another condition was put forward to the board this evening for their consideration, being: "No sand or gravel products are permitted to leave the overall Sky Meadow subdivision. If the sand and gravel material cannot be used for the remaining work on houses under construction within the subdivision, then any other material generated as a product of the final grading and sloping work shall be retained on the property at 64 Sky Meadow Lane as fill material to create all of the final grades on the lot." Richard Lewis stated the recent letter concerning drainage has been taken care of. Mr. Lewis stated some of the changes in drainage could be based on the different rain storms that the region has experienced. He stated no additional sand or gravel will be allowed to be removed once lot 12 is complete, that 64 Sky Meadow will just be sloped and graded for stabilization and he will look into the institution of fines.

Don Moore, of 44 Sky Meadow Lane, was present to speak. He stated that he is aware that the previous owner was utilizing this sand for the same purposes. He stated he does have a problem with the chairperson is the marketing person for the development as she should be aware of the rules. He asked if a termination date for the variance could be set. Mr. Lewis stated that the board can set a date for termination and the draft states once lot 12 is completed. Mr. Moore asked if they are going to have to do the grading per section 305-26 of the ordinance, to the 2% slope. Richard Lewis stated that this language is in the draft decision. Mr. Moore asked if they were asking for a variance from the 2% slope and Mr. Lewis stated they were not.

Amy Winters, of 54 Sky Meadow Lane, was present to speak. She stated that her and her husband were concerned upon receiving the notice as they thought they were looking at continuing this use and were not aware it was for a temporary use. She stated she agrees with Mr. Lamond and Mr. Moore, but her concerns were:

1. Construction Vehicles and work removing gravel beginning before 8 a.m. on weekends;

2. A date needs to be set for when the operations must be completed by and the variance ceases;
3. Work has been careless and the crews have not cleaned up the roadway of their mess;
4. Don't want damage done to the nice roadway;
5. Need a fine set; and,
6. Don't want to start a precedence.

Mrs. Barbara Hebert, of 450 Prospect Street, was present to speak. She stated that she was okay with this being temporary and was concerned as she thought it was permanent and the end of her driveway is already lost due to the truck traffic on the roadway due to this subdivision. She asked why it was being called a sand and gravel pit. Mr. Lewis stated that this is the generic term given in the zoning ordinance. She stated she doesn't want this to leave it open that others in residential neighborhoods can operate gravel pits.

Richard Lewis stated that if the board doesn't allow the variance then the work and stabilization would cease. He stated the philosophy of the City is to not beat people up for violations, but to bring properties into compliance.

Mrs. Hebert stated that they removed trees that use to block the sound of the range and so now they can hear the range even more. Richard Lewis stated that as long as they receive their permits for the trees, what trees are removed cannot be regulated. Mrs. Hebert stated that this subdivision has been a long process. Mr. Lewis stated the first owner ran into financial issues and with the downturn of the economy the process has been long but is wrapping up.

Karen Grzelak, of 2 Smiling Hill Road, was present to speak and stated she is not an abutter but she is a relative of an abutter. She asked why the board was having the public hearing if they were just going to approve the application. She stated it would have been nice if the notice stated that the use was going to be temporary. She stated if the board gives their approval then it can always be used as a gravel pit. Everyone needs to follow the rules, and the chair of the ZBA should know the rules already. Richard Lewis stated that conditions can be set to protect the abutters and a date can be set as to when the use ceases.

Donna Tully asked to respond to the comments. Ms. Tully stated that she is in agreement with the language of sand/pit, as the sand doesn't get sold or trucked off site. She stated the previous development was using the lot this way and the sand is only used on the lots being completed in the subdivision. She stated they have no intention to remove sand and gravel from the subdivision and this is just a continuation of the existing operation to finish up the last few sites. She stated the confusion came as the sand wasn't being removed from the lot and was just being moved from one corner of the lot to the other. The sand and gravel weren't being sold. They were informed by Mr. Lewis that they needed to get the approval. She stated she is representing the developer, as the manager of the lots and the realtor that sells them.

She stated the comments made about Prospect Street she agrees with. The street needs to be fixed. She is hoping the extra money in the tax base due to these homes will help supply money for necessary road work.

Ms. Tully stated she would be happy to address the issue of beginning work before 8:00 a.m. with the developer so that this can stop. She stated once the lots are done they are not planning on continuing the sand/gravel pit.

No one else was present to speak, thus the Public Comment section was closed.

### Board Discussion

Member Hodgdon asked if they could set hours of operation for the moving of dirt and use of heavy equipment. Mrs. Winters stated that it happened all the time before 8:00 a.m. and is slowing down now. Member Hodgdon asked why they were working on the site on Sundays and Ms. Tully stated that there is temporary electric on the sites and they are trying to beat the weather. Member Hodgdon stated she understands the working within the buildings, but asked if the trucks and heavy equipment could be limited to 8-5 Monday through Friday, 8-4 on Saturday and no use of the equipment on Sundays. Ms. Tully stated she would be in agreement with that.

At this time, the board added the following conditions to the draft decision:

1. This variance shall expire on May 8, 2015.
2. No sand or gravel products are permitted to leave the overall Sky Meadow subdivision. If the sand and gravel material cannot be used for the remaining work on houses under construction within the subdivision, then any other material generated as a product of the final grading and sloping work shall be retained on the property at 64 Sky Meadow Lane as fill material to create all of the final grades on the lot.
3. The Zoning Board of Adjustment directs the Planning and Zoning Director to investigate, together with the City Attorney, the potential and process for fines to be levied for this work which began without the benefit of any permit.
4. The hours of operation of any additional heavy equipment work on the overall subdivision shall be: 8 AM to 5 PM Monday through Friday; 8-4 Saturday; and no permitted hours on Sunday.
5. The final grading of the slopes shall be consistent with the grading already in place directly behind the existing house on the property, but no slope shall be greater than the 2:1 outlined in Section 305-27 of the Zoning Ordinance.. No abrupt changes in the slope shall be left after final grading.

Angie Carey informed the audience that they could contact the office any time if there are any problems and we can attempt to help rectify the issues.

Mrs. Hebert stated it is odd for construction workers to start work after 8:00 a.m. and they usually start around 7:00 a.m. It was indicated that this is for the use of heavy equipment and not for the construction on the new homes.

Mrs. Winters asked for clarification of what work will be done on lot 64. Richard Lewis stated that the portion of the lot, away from the Winters Lot, where the sand and gravel has been extracted from will be graded and merged together with the rest of the lot. Ms. Tully stated the right side of the property will be graded to match the left side, a swale will be put in and the slope and drainage will be done. Richard Lewis stated the septic is located between the house and the Winter's Lot and that creates a barrier for where work can be done.

**MOTION:** Member Fleckenstein moved and Member Hodgdon seconded that the Zoning Board of Adjustment approve the Variance application request of Nancy and Robert Rose and Louis Pichette to permit and operate and complete a sand and gravel operation on land at 64 Sky Meadow Lane, Tax Map/Lot 121-403-09, Rural Residential Zoning District. 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 decisions to approve, which has been reviewed and approved, including the modifications made this evening by the board. All were in favor of approving the Variance with the amendments to the decision of the adding of the five above conditions.

#### FINAL DECISION NOTICE FOR APPROVAL

The Zoning Board of Adjustment approved the Variance application request of Nancy and Robert Rose and Louis Pichette to permit, operate and complete sand and gravel operation on land at 64 Sky Meadow Lane, Tax Map/Lot 121-403-09, 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: the overall site contains remnants of a former sand removal operation; since the work began without the benefit of a permit, the work zone does need to be properly sloped, graded, and stabilized in order to protect the public.
2. Substantial Justice is done as: the applicants acknowledge that the work began without the benefit of a permit and they have been forthcoming in the steps necessary to resolve the matter. Further, the Board finds that the other variance criteria are satisfied, therefore there would be a lack of justice in denying the project.

3. **The values of the Surrounding Properties are not diminished** due to the facts that: the subject lot sold with the agreement that the sand would be removed for use elsewhere within the subdivision; the overall subdivision contained remnants of sand removal operations; the grading and slope work could have, in some form, been carried out by the owner of the property as part of an overall landscaping operation; and, overall values of the area are protected by the satisfactory completion of the work which started without the benefit of a permit.
4. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**

**Unnecessary hardship means 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.** This variance criteria is satisfied due to the facts that: the sand material is being used within the overall boundaries of the approved subdivision; using this material means that other materials do not need to be trucked in the neighborhood, thus impacting the roadways and the area residents; and, as noted above, there are remnants of sand removal operations within the overall subdivision property.

The Variance is subject to the following conditions:

1. The applicant or the property owners shall fully complete and restore the area from which the sand/gravel materials were removed. This work shall include, but is not limited to, the following:
  - a. Removal of the trees necessary in order to create the required slope at the southern side of the excavation area.
  - b. The final grading of the slopes shall be consistent with the grading already in place directly behind the existing house on the property, but no slope shall be greater than the 2:1 outlined in Section 305-27 of the Zoning Ordinance.. No abrupt changes in the slope shall be left after final grading.
  - c. All of the final slopes shall be loamed and seeded so that completed stabilization is achieved.
2. No sand or gravel products are permitted to leave the overall Sky Meadow subdivision. If the sand and gravel material cannot be used for the remaining work on houses under construction within the subdivision, then any other material generated as a product of the final grading and sloping work shall be retained on the property at 64 Sky Meadow Lane as fill material to create all of the final grades on the lot.
3. The owner or applicant shall obtain any required Intent to Cut permit for the removal of the trees.
4. The owner or applicant shall file an Intent to Excavate application with the Assessor's Office, and all applicable fees shall be submitted at the time of application.
5. The owner and applicant shall complete as much work as possible during this construction season. If any loaming and seeding work is completed this season, the overall site shall be inspected in the spring to determine if additional loaming or seeding is required in order to achieve complete stabilization of the site. The owner/applicant is obligated to satisfactorily complete all of the stabilization work prior to May 1, 2015. The Planning Director may issue a 3-day extension to this, but all efforts shall be taken to complete the work as soon as warm weather conditions allow. This variance shall expire on May 8, 2015.
6. Other than the grading and excavation work to achieve final slopes, no other excavation is allowed on the site.
7. The hours of operation of any additional heavy equipment work on the overall subdivision shall be: 8 AM to 5 PM Monday through Friday; 8-4 Saturday; and no permitted hours on Sunday.
8. The Planning Director shall inspect the site prior to final loaming and seeding, and retains the right to require any necessary adjustments to the slopes and grading. The Director also retains the right to require additional loaming and seeding in order to achieve complete stabilization.
9. The Zoning Board of Adjustment directs the Planning and Zoning Director to investigate, together with the City Attorney, the potential and process for fines to be levied for this work which began without the benefit of any permit.

Member Tully returned to the Board.

### **Planner's Update**

Member Tully indicated the board needs to have some training. She stated she understands that they probably can't get all the way through the Zoning Ordinance, but it would be nice to go through sections and have some training. Dick indicated that he can contact Attorney Fitzgerald about doing training. Angie Carey stated that she believes they are looking more for training, maybe ½ hour before or after each meeting, on different sections of the zoning, done by Richard Lewis.

Member Hodgdon asked if the board was allowed to discuss applications without the applicant being present and it was indicated they could not. Richard Lewis stated that discussions have to be done with the applicant at a public hearing, based on 91-A. Mr. Lewis stated the Zoning Board is the hardest board, as you could always be making someone unhappy. He stated the Planning Board is easier as if the applicant meets the requirements of the site plan or subdivision regulations then they get their approval; where as variance's are always grey areas.

Angie Carey did indicate to the board that they need to have the jury affect. She stated that all board members have to be privy to the same information, thus two board members cannot discuss an application that isn't over without being in a meeting with the other board members. She stated it is like playing telephone and the conversation can never be repeated the same as it originally took place.

Richard Lewis stated that he would pick through sections of the zoning for the next meeting. Sandy Hodgdon stated that when she was on the Boscawen Zoning Board they would sit in at Concord Zoning Board meetings to get another prospective of the board.

**Other Business:** None.

**Public Comment:** None.

### **Adjournment**

**MOTION: Member Hodgdon moved and Member Tully seconded to adjourn the December 3<sup>rd</sup>, 2014 meeting of the Zoning Board of Adjustment, at 8:21 p.m. All were in favor and the motion passed.**

Respectfully submitted,

Angela M. Carey  
Planning and Zoning Assistant