

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, April 1st, 2015 at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:01 p.m.

- ❑ **Salute to the Flag**
- ❑ **Roll Call**
 - Present:** Sandra Hodgdon, Kathlene Fleckenstein, Michael Weatherbee and Planning and Zoning Administrator Richard Lewis.
 - Absent:** Donna Tully and Donald Gagnon.
- ❑ **Approval of Minutes: January 7th, 2015 Zoning Board Meeting**

MOTION: Member Hodgdon moved and Member Weatherbee seconded to approve the minutes of the January 7th, 2015 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business: None.

New Business

- ❑ **Z15-001:** Roy E. and Joan E. Shelley (Estate of), Owners; Scott and Sarah Stanley, Applicants, request a Variance, per Zoning Ordinance Section 305-14. Lot and Yard Requirements to allow a two-family home located in the R-3 Zone (One-, Two- and Three- Family Residential District). The lot area requirements for a two family home are .512 acres and the lot in question is 0.24 acres. The home has been utilized as a two-family for numerous years without the proper approvals. The property is identified as 116 Prospect Street, Tax Map/Lot # 117-052-00. The applicant received Special Use Permit approval at the March 25th, 2015 Planning Board Meeting.

Sarah and Scott Stanley were present to speak on their application. Acting Chair Fleckenstein indicated to Mr. and Mrs. Stanley that a full board consists of five members. This evening there are only three members present. She stated they could decide to be heard tonight, but the vote would have to be unanimous. The Stanley's indicated that due to their P&S agreement being contingent on this approval and needing to make a decision by the end of April, they would have to be heard this evening. She stated the home is behind on taxes and the sale needs to go through by the end of April to avoid the city taking the property.

Sarah Stanley stated that they have a purchase and sales agreement that is only good if the home receives approval for a two family. Mrs. Stanley stated that they purchased a house for her father that is a two family, around the corner, at 145 Prospect Street and this gave them the idea to purchase this home. This home needs a lot of work. She stated her husband is an electrician and a carpenter and can do the work. She stated they want to fix up the property and rent it to a friend of a family member. Both units would be rented, so the building will take care of itself.

The home has been used as a two family for numerous years and Richard Lewis stated that based on his site visit it has been two-family for a long time.

Member Hodgdon indicated that the lot is small and she is concerned about drainage and the additional parking taking away from snow storage and the parking being too tight. Mr. Stanley stated there are two spots, one in the garage and they are adding two more spots. He stated that he has met at the property with Brian Sullivan and he stated there is more than enough area for these spaces. There are decks out back and a large back yard for the tenants to utilize. Out front two bushes will be removed, the walkway will be moved so the access to the walk way is from the driveways and not the roadway, and a planting bed will be put between the telephone pole and the guyed wire.

Member Hodgdon asked if the spaces would be in before the apartment was rented. Mr. Stanley stated they would be and that they would be put in as soon as they officially have ownership of the home. Member Hodgdon stated the roadways are narrow and she would like assurance that there would not be parking on the roadway. Mr. Lewis stated that the Planning Board has set conditions that they apartments cannot receive their certificates of occupancy permits until the driveway is completed.

There was a question about the garage. Mr. Stanley stated he is not sure of the condition of the garage, but would like to keep it as it does provide for storage of lawn equipment and one car could fit into the garage.

Angie Carey stated that a friend of hers lived in the second floor apartment 20 years ago.

Member Hodgdon stated that the lot size is really small and the area is already congested. Mr. Lewis stated that again, the apartment has been there and there have been no complaints or issues. He also stated there are other 2, 3 and 4 family homes in the area with the same lot sizes. He stated as there is no approvals and this is not an allowed use, there is no grandfathering; however, the apartment has been there for a very long time.

Public Comment: None.

Board Discussion

Richard Lewis stated that the draft decision has been given to the board and it in it states that a Building permit and CO are needed, but it also refers to the Planning Board approval and conditions, and again one of their conditions are that the CO cannot be issued until the driveway is completed.

MOTION: Member Hodgdon moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request, Z15-01, by Scott and Sarah Stanley, Applicants, and this approval is consistent with the draft Decision of Approval which has been reviewed and considered by the members of the Franklin Zoning Board of Adjustment, and, as applicable, modified by the Board through the discussion following the close of the public hearing.

Decision of Approval

I move that the Zoning Board of Adjustment approve the variance application request by Scott and Sarah Stanley, Applicants, per Zoning Ordinance Section 305-14. Lot and Yard Requirements, to allow a two-family home located in the R-3 Zone (One-, Two- and Three- Family Residential District). The lot area requirements for a two family home are 0.512 acres and the lot in question is 0.24 acres. The home has been utilized as a two-family for numerous years without the proper approvals. The property is identified as 116 Prospect Street, Tax Map/Lot # 117-052-00. The application is referenced as Z15-01. 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, the Spirit of the Ordinance is observed, and Substantial Justice is done due to these facts:*
 - a. *The property has been used as a two-family structure for approximately 20 years.*
 - b. *There are no records of any problems or complaints being brought to the attention of the City during this 20-year span of time.*
 - c. *A 3/13/15 site visit by the Planning Director revealed that the interior of the dwelling contains two bathrooms, two kitchens, and enough bedrooms for a two-family dwelling.*
 - d. *The house and property contain two porches or decks that can be enjoyed by the tenants of the dwelling, and the open yard area is consistent with other two-unit dwellings in the neighborhood.*
2. *The values of the Surrounding Properties are not diminished due to the fact that the nature and use of the property will continue to be a two-family dwelling, which has been the active use for approximately 20 years. Further, the general neighborhood contains similarly situated and sized two, three, and four unit apartment dwellings.*

3. *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.* There are some special conditions of this property that support this criterion. First, the house has been set-up as a two-family structure for approximately 20 years. The existence of two separate kitchens and the layout of the utilities create a situation that sets it apart from other single family units in the neighborhood. Second, the property has been reviewed by the Franklin Planning Board and a Special Use Permit has been granted for the two-family dwelling. In granting this approval, the Planning Board has looked at issues such as reasonable and appropriate use of this dwelling.
- (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.* Since the criteria for Paragraph A are satisfied, this is not applicable.

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. *The applicant shall comply with all of the conditions of the Planning Board approval of the Special Use Permit.*

All were in favor and the motion passed.

Planner's Update

Richard Lewis stated that enclosed in the packet was the Council Agenda Report for the proposed changes to the side yard setbacks in the B-1 Zoning District, increasing the distance from 0 feet now to 15 feet. He stated the City Council will be voting on this on Monday at their meeting.

Other Business: The nominations for chair and vice chair were postponed at this time, until a full board was present.

Public Comment: None.

Adjournment

MOTION: Member Hodgdon moved and Member Weatherbee seconded to adjourn the April 1st, 2015 meeting of the Zoning Board of Adjustment, at 7:20 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant