

**FRANKLIN ZONING BOARD  
REGULAR MEETING AND PUBLIC HEARING  
CITY COUNCIL CHAMBERS- CITY HALL  
Wednesday, May 6<sup>th</sup>, 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:** Donna Tully, Kathlene Fleckenstein, Michael Weatherbee, David Testerman and Planning and Zoning Administrator Richard Lewis.

**Absent:** Sandra Hodgdon and Donald Gagnon.

**Member Testerman was seated as a voting member in place of absent member Don Gagnon.**

- ❑ **Approval of Minutes: April 1<sup>st</sup>, 2015 Zoning Board Meeting**

**MOTION:** Member Fleckenstein moved and Member Weatherbee seconded to approve the minutes of the April 1<sup>st</sup>, 2015 Zoning Board regular meeting. All were in favor and the motion passed.

**Old Business:** None.

**New Business**

- ❑ **Z15-002:** VFW Post 1698, Owner/Applicant, requests a Variance from setback requirements to place a 12' x 23' deck, with no outside access, on the rear portion of the building approximately 4' from the property line. The property is located at 26 Peabody Place, Tax Map/Lot # 117-139-00, new map # N8, B-1 Zone (Low- Density Business and Commercial District).

Harry Snyder, the Quarter Master for the VFW Post 1698, was present to speak. He stated they are looking at putting in a 12' x 23' deck on the riverside portion of the VFW building. The post is currently a smoking post, but eventually will not be. The access to this area will be from the inside of the building only. The Liquor Commissioner has been contacted and they are okay with this, as long as there is no access to the area from the outside. There will be three pub tables and a bench along the entire railing. The area will be monitored by the bartender by video monitoring.

Member Tully asked if alcohol would be allowed on the deck and Mr. Sanders stated that it would be.

**Board Questions**

Member Testerman indicated he is a member of the post for the record, but remained on the board as he has indicated that there will be no gain to him by allowing this.

Richard Lewis asked about the hours and noise as drinking would be allowed on the deck and the deck abuts a residential home and the Peabody Place nursing home. Mr. Sanders stated the hours are 11:00 a.m. to 9:00 p.m. on Sunday through Thursday and Friday and Saturday the hours are 11:00 a.m. to 10:00 p.m., unless

there is an event scheduled that night. He stated Meg Miller from the Peabody Home came over and spoke with them and they didn't have any problems, and you can't see this area from the Peabody Home.

Public Comment: None.

Member Tully asked if there would be any visual or noise issues and Richard Lewis stated that he is not aware of any problems that have been had to date. Mr. Sanders stated they have not had any problems with the abutters and there will not be any music outside.

**MOTION:** Member Fleckenstein moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request to place a 12' x 23' deck, with no outside access, on the rear portion of the building approximately 4' from the property line for 26 Peabody Place. 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 with 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.

All were in favor and the motion passed.

#### Decision of Approval

*I move that the Zoning Board of Adjustment approve the variance application request to place a 12' x 23' deck, with no outside access, on the rear portion of the building approximately 4' from the property line for 26 Peabody Place. The application is referenced as Z15-002. 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 the values of the Surrounding Properties are not diminished due to the facts that: the deck is adjacent to an established driveway that separates the building from the property line; the deck does not have outside access, and its primary use will be for smokers who cannot use the interior of the building; no residential structure is directly adjacent to the area where the deck will be located; and, the space where the deck will be located could be used for smokers without the deck being in place.
2. Substantial Justice is done due to the fact that the proposed location of the smoking deck will keep customers out of the parking lot area, thus being a safer place to utilize for smokers.
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 very special conditions of this property since almost all of the area surrounding the existing building is paved driveway or parking areas, thus there are limited locations for a safe and appropriate designated smoking area. Further, this is establishment that is set-up and oriented

*towards larger groups and events, and it is appropriate to provide a safe and convenient smoking area for their customers and event attendees.*

**(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. The requirements for paragraph "A" are met, thus this is not applicable.**

*This approval is subject to the following conditions:*

***2. The applicant or their designee shall obtain a building permit for the proposed work and a Certificate of Occupancy once the work is completed.***

- **Z15-003:** Bradley K. Parker, Owner; Deborah Hinds/ Hinds Septic, Applicant, requests a Variance from setback requirement to build a 28' x 40' garage 34' from the property line where the setback requirement is 50'. The property is located at 100 Pine Colony Road, Tax Map/Lot # 073-011-00, new map # I5, LP Zone (Lake Protection District).

Deb Hinds, Agent for the applicant, was present to speak. She stated that Bradley was present with her this evening. She stated the request is for a 16' variance from the 50' setbacks and the property they are building close to is also owned by the Parker Trust. She stated in the future a boundary line adjustment will be done with the abutting property, which will make the variance go away.

Member Fleckenstein asked what the time frame was for moving the property line and Ms. Hinds stated it was about a year.

Member Testerman stated letters had been received from two abutters and they do not have a problem with the garage, but want to make sure the turnaround area is maintained and the use of that is allowed to continue. Mr. Parker stated he has met with the Vice President of the Pine Colony Association and he has let them know that they do not plan on doing anything with the cul-de-sac, as he is aware it is necessary for mail delivery and trash pickup.

Member Tully asked what the distance was from the garage to the road and Deb Hinds indicated it is about 35-37 feet. She stated over the years the cul-de-sac has gotten bigger and bigger overtime and they want to get it back into good shape.

Richard Lewis stated, as was mentioned, that two letters were received from abutters. He stated one was from the President of the Pine Colony Association and one was from the direct abutter being George and Priscilla Cunningham. Both had no concerns with the garage, but were concerned that the cul-de-sac remain in place. Deb Hinds indicated that they have no problem with them using the cul-de-sac, but the ownership of that is still part of this property and people need to remember that.

Member Testerman then read into the minutes a portion of the letter from the Cunningham's that states: "Our deed includes a provision, "Also conveying to grantees the right, in common with grantor and others, to use the roadways or rights-of-way now or hereafter laid out over said premises conveyed to grantor by said Barnes"." Mr. Parker stated the cul-de-sac is a tear drop shaped and the deed and the plan show it as just a road. He stated the rights to use the roadway are just the top right quadrant and the other three parts are on his property. He stated he has no intentions to stop the use of the cul-de-sac. Deb Hinds gave Richard Lewis a plan from 1975, being the Daniels Pine Colony Subdivision, which showed the lay out of the roadway. She

stated the plan shows the right of way. Member Tully asked if the right of way ends at the last house on the right and Ms. Hinds stated it does. Member Weatherbee asked if the turn around has always been there, and Ms. Hinds stated they are attempting to break the chain of adverse possession. She stated they closed the turnaround for 24 hours this winter to attempt to break the cycle, but added they do not have the intent to stop the use of the right of way. Member Testerman stated that the owner and the Association need to have a conversation about the access to the cul-de-sac. Mr. Parker stated he spoke with the Vice President and was asked what the plans were for the cul-de-sac and Mr. Parker stated he informed the Vice President that he would not be changing it and would just be making it nicer.

### Public Comment

Peggy Cain, President of the Pine Colony Association, was present to speak. She stated that she is aware of the conversation that Mr. Parker had with the Vice President. She stated that all of the deeds for properties on Pine Colony Road have the same wording in them. She stated the original road was developed as a straight road, but Babe Crowley put in a roadway that would work better for everyone many years ago. She stated the roadway was developed in this fashion for access by Municipal, Fire and Police Services. She stated the Pine Colony Association has a meeting on June 28<sup>th</sup>.

She added that they have no objection to the garage.

### Board Discussion

Member Tully reiterated to the Board that they do not have say on the use of the Cul-de-sac and are only here to make a determination on the garage.

Member Fleckenstein asked if, as part of the variance, they could set a time frame for the lot line adjustment. Richard Lewis stated the board cannot make them do a lot line adjustment and there is no such thing as a temporary variance. He stated once the lot line is moved, then this is a mute issue.

Member Fleckenstein indicated she is concerned about setting a precedence. She did however add that it isn't often that the direct abutter affected is the same property owner. Also, to build in this location moves the building further from the lake. Angie Carey added that most of the properties in this area are not as large as this lot and most other properties would need a variance no matter what they wanted to place on their property.

Richard Lewis stated the lake protection setbacks were changed from 50' to 25' and back to 50'. He stated he has thought about this and the reason for the change was due to the Shoreland setbacks to the lake being 50'. He stated having 25' setbacks to all property lines, but 50' setbacks to the lake, would make sense. Angie Carey stated the distance was changed a few years back, when she was in the office, due to the Shoreland setbacks.

**MOTION: Member Testerman moved and Member Fleckenstein seconded that the Zoning Board of Adjustment approve the variance application request by Bradley K. Parker, Owner; Deborah Hinds/ Hinds Septic, Applicant, to allow the construction of a 28' x 40' garage 34' from the property line where the setback requirement is 50'. The property is located at 100 Pine Colony Road, Tax Map/Lot # 073-011-00, new map # I5, LP Zone (Lake Protection 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 decision to approve which has been reviewed and approved, including any modifications, by the Board.**

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. All applicable DES Shoreland Permits must be obtained prior to the issuance of a building permit.

All were in favor and the motion passed.

**Decision of Approval**

*I move that the Zoning Board of Adjustment approve the variance application request by Bradley K. Parker, Owner; Deborah Hinds/ Hinds Septic, Applicant, to allow the construction of a 28' x 40' garage 34' from the property line where the setback requirement is 50'. The property is located at 100 Pine Colony Road, Tax Map/Lot # 073-011-00, new map # 15, LP Zone (Lake Protection District). The application is referenced as Z15-003. The Board makes the following findings to support this approval:*

1. The Variance will not be contrary to the Public Interest; the Spirit of the Ordinance is observed; and the values of the Surrounding Properties are not diminished due to the facts that: the garage will be located a greater distance from Webster Lake than would occur with compliance with the 50-foot setback, thus helping to protect water quality; the proposed location is consistent with the goal of the Zoning Ordinance to properly utilize the land so that resources are protected; values will not be impacted since this garage building will have a greater separation from the Lake edge than most of the structures in the immediate area; and, the property line which helps to create the setback issue is for the adjacent property which is also owned by the same property owner.
2. Substantial Justice is done due to the fact that the lot line which is the subject of the need for the variance to the setback requirement is a boundary for land that is also owned by the owner of the subject parcel.
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 very special conditions of this property since the parcel is located at the end of a private road, and the setback variance is adjacent to land held in common by the owner of the subject parcel. Further, the 50-foot setback contained in the Zoning Ordinance is related to the goal of maintaining proper separation between Webster Lake and new structures. The proposed location moves the garage farther away from the Lake than what would be achieved if the garage met the 50-foot setback, meaning that there is greater protection for the Lake.
  - 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. The requirements for paragraph "A" are met, thus this

*criteria is not necessary, but the Board does find, in any event, that the other properties in the immediate area are more intensively developed than the subject parcel, thus it would be reasonable to approve this variance request..*

***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. All applicable DES Shoreland Permits must be obtained prior to the issuance of a building permit.***

- **Z15-004, Z15-005 and Z15-006:** M. Kay Honn, Owner/Applicant, request two variances and an Agricultural Waiver in order to locate six (6) laying chickens on her property, located at 296 Victory Drive, Tax Map/Lot # 116-002-00, new map # M8, RS Zone (Single Family Residential District). The agricultural waiver is to allow an agricultural use in a zone where it isn't allowed, being chickens. The first variance is from Section 305-13, Permitted Uses, Special Exceptions and Special Use Permits, for the use of having an agricultural use (chickens) in the RS Zoning district. The second variance is from Section 305-26.A, which indicates that houses for animals or birds must be located 200' from the adjoining properties.

Kay Honn was present to speak on her application. She stated that she is looking at putting in 6 laying hens, no rooster, within an enclosed pen. She stated it will not be visible from the street. They will not be free range chickens. She stated the river runs behind her property, the city owns the property to the south, the property to the north is separated by some large trees. The coop will be a shed/coop area located behind the house. She stated this is a fun hobby she wants as she grew up on a farm.

Member Testerman asked if she would have the chickens year round and Ms. Honn indicated that she would, they would have names and be her pets and there is no way she could kill them. Member Tully asked if they would stay outside and Ms. Honn indicated they would and there would be some type of heat lamp in the building.

Member Testerman asked why there were three applications. Richard Lewis stated that is common practice, but if the Agricultural Waiver was approved the other applications would be withdrawn. He stated that if the Agricultural Waiver was denied though, as the requirements are more relaxed, then the variance should also be denied.

Ms. Honn stated she was willing to build a fence if necessary.

Richard Lewis stated there are large trees in a clump that create separation from the only real abutter that would be affected. Ms. Honn stated there are three in the front of the property as well. Mr. Lewis stated that whenever the issue of chickens comes up the concern is roosters and indicated it would be a good idea to add a condition that a rooster is not allowed.

Public Comment: None.

#### Board Discussion

Member Fleckenstein concurred that a condition about no rooster being allowed was necessary.

**MOTION:** Member Fleckenstein moved and Member Weatherbee seconded that the Franklin Zoning Board of Adjustment grants M. Kay Honn, Owner/Applicant, an Agricultural Waiver in order to locate six (6) laying chickens on her property, located at 296 Victory Drive, Tax Map/Lot # 116-002-00, new map # M8, RS Zone (Single Family Residential District) in conformance with the Decision to Approve which has been reviewed, amended and approved by the Board, with the following conditions:

1. The owner shall keep and maintain the chickens in conformance with the Best Management Practices prescribed by the NH Department of Agricultural, or other appropriate agencies of the State or the NH Cooperative Extension Service.
2. The Planning Office reserves the right to conduct a site visit within 6 months after the chicken coop is established and populated with said birds.
3. The owner/applicant shall notify the Planning Office when the coop is put into use.
4. A building permit must be obtained prior to the coop being built on the property.
5. The owner/applicant shall not keep any roosters on the property.

All were in favor and the motion passed.

#### Draft Decision to Approve

*I move that the Franklin Zoning Board of Adjustment grants M. Kay Honn, Owner/Applicant, an Agricultural Waiver in order to locate six (6) laying chickens on her property, located at 296 Victory Drive, Tax Map/Lot # 116-002-00, new map # M8, RS Zone (Single Family Residential District). This waiver is granted under the authority of RSA 674-32-c. In granting this waiver, the Board finds that the proposed agricultural waiver will not, in the opinion of the Board, have a demonstrated adverse effect on the public health or safety, or the value of the adjacent property for the following reasons, and as long as the conditions of approval are adhered to by the owner of the property:*

- a. *A 4/28/15 site visit by the Planning and Zoning Director revealed that the proposed chicken coop will be buffered from the abutter to the north by three sizable arborvitae trees;*
- b. *There is sufficient distance between the subject property and the abutter to the south that no impact to property values will occur;*
- c. *No roosters will be kept on the property, thus preventing the problem of noise for the abutters; and,*
- d. *The utilization of best management practices will help ensure that no public health issues are created for the abutters.*

*The following conditions shall apply:*

1. *The owner shall keep and maintain the chickens in conformance with the Best Management Practices prescribed by the NH Department of Agricultural, or other appropriate agencies of the State or the NH Cooperative Extension Service.*
2. *The Planning Office reserves the right to conduct a site visit within 6 months after the chicken coop is established and populated with said birds.*
3. *The owner/applicant shall notify the Planning Office when the coop is put into use.*
4. *A building permit must be obtained prior to the coop being built on the property.*
5. *The owner/applicant shall not keep any roosters on the property.*

## **Planner's Update**

It was indicated that Richard would be out for a few weeks starting Monday having shoulder surgery.

## **Other Business:**

Nominations:

1. Chair; and,

Member Tully nominated Member Fleckenstein as chair. She accepted the nomination. The nomination was seconded by Member Testerman. All were in favor and Member Fleckenstein will now be the chair.

2. Vice Chair.

Member Tully nominated Member Testerman as vice chair. He accepted the nomination. The nomination was seconded by Member Fleckenstein. All were in favor and Member Testerman will now be vice chair.

**Public Comment:** None.

## **Adjournment**

**MOTION: Member Fleckenstein moved and Member Weatherbee seconded to adjourn the May 6<sup>th</sup>, 2015 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