

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, June 3rd, 2015 at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:00 p.m.

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

Present: Kathlene Fleckenstein, Michael Weatherbee, David Testerman and Planning and Zoning Assistant Angela Carey.

Absent: Donald Gagnon.

Member Testerman was seated as a voting member in place of Donna Tully who has resigned from the board.

- ❑ **Approval of Minutes: May 6th, 2015 Zoning Board Meeting**

MOTION: Member Testerman moved and Member Weatherbee seconded to approve the minutes of the May 6th, 2015 Zoning Board regular meeting. All were in favor and the motion passed.

Old Business: None.

Chair Fleckenstein stated to the public that due to personal reasons, two members have had to resign from the zoning board. Tonight the board consists of three members, which is a quorum of the board, but is not a full board as a full board is 5 members. In order for an application to receive approval or denial this evening, all three members must vote the same way. Prior to each application, we will ask you if you would like to proceed this evening or wait until next month. This is your decision.

New Business

- ❑ **Z15-007:** Stephen and Amanda Soyden, Owners/Applicants, requests an Agricultural Waiver per RSA 674:32-c, to have eight (8) laying (hens only) chickens and a chicken coop, on property located at 230 Victory Drive, Tax Map/Lot # 116-010-00, new map # M7, RS Zone (Single Family Residential District).

Chair Fleckenstein asked the applicant if they would you like to proceed this evening, or would you like to wait until next month in the hopes that some new members are seated on the board? Stephen Soyden indicated he would like to proceed this evening.

Stephen Soyden stated that they are looking at housing 8 laying hen chickens, and no rooster on their property. He stated the coop will be enclosed, and the chickens will not be free range. He stated the reason they want the chickens is for fresh eggs and fertilizer for the garden.

Angie Carey stated that she visited the site and took some pictures. Mr. Soyden passed out a picture of the coop with the enclosure pen.

Board Questions

Member Testerman asked if he needed to read the entire motion and Angie Carey stated that he should and should included the conditions.

Public Comment

Mark Williams was present to speak, as an abutter who resides at 224 Victory Drive. He stated he lives to the left of the Soyden property. He stated Mr. Soyden takes good care of his property and the hen house is a class A henhouse. He stated his wife and him have no problems with this and asked that if they have extra eggs, he would be interested.

Board Discussion

MOTION: Member Testerman moved and Member Weatherbee seconded that the Franklin Zoning Board of Adjustment grants an Agricultural Waiver for application #Z15-007 Stephen and Amanda Soyden, Owners/Applicants, per RSA 674:32-c, to have eight (8) laying (hens only) chickens and a chicken coop, on property located at 230 Victory Drive, Tax Map/Lot # 116-010-00, new map # M7, RS Zone (Single Family Residential District. 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 properties, for the following reasons, and as long as the conditions of approval are adhered to by the owner of the property:

- a. A 5/26/15 site visit by the Planning and Zoning Assistant revealed that the proposed chicken coop will be buffered from the abutter to the north by lilac trees;
- b. No roosters will be kept on the property, thus preventing the problem of noise for the abutters; and,
- c. 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 chickens will not be allowed to be free-range chickens, and will be contained within the coop and pen area at all times.
3. 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.
4. A building permit was not acquired before the building of the coop; however, a building permit must be acquired prior to the coop being populated with the said chickens and prior to the pen area being built on the property.
5. The owner/applicant shall notify the Planning Office when the coop is put into use.
6. The owner/applicant shall not keep any roosters on the property.

All were in favor and the motion passed.

- **Z15-008:** Robert C. and Joan F. Hinds, Owners; Randal Hinds, Applicant, requests a Variance from lot area requirements (Section 305-14) for a future boundary line adjustment. The Variance would make the Hinds property more non-conforming by removing land to be added to the abutting property. The property is located at 199 Lake Shore Drive, Tax Map/Lot # 032-022-00, new map # H4, LP Zone (Lake Protection District).

Chair Fleckenstein asked the applicant if they would you like to proceed this evening, or would you like to wait until next month in the hopes that some new members are seated on the board? Mr. and Mrs. Robert and Joan Hinds indicated they would like to proceed this evening.

Randal Hinds, son of Mr. and Mrs. Hinds, was present to speak on their behalf; however, they were also present. Angie Carey stated an engineered plan was put on the desks this evening for the board.

Mr. Hinds indicated the reason for the Boundary Line Adjustment is because the State of NH DES regulations indicate that in order to put in a seasonal dock you need 75 linear feet of water frontage and currently they have 64'. He stated that his parents lot, the lot in question, has 252' of linear water frontage. The requirements for the zone is a 2.5 acre parcel and their lot is .29 acres. After the boundary line adjustment their lot size would decrease in size, thus the need for the Variance. The lot line is just being straightened, to allow for a dock permit to be issued by DES. Mr. Randy Hinds stated he had purchased the property in 2007 and there was a dock on the lot, but was informed that he couldn't put it back in due to the lack of the 75' of water frontage. This will make it legal for the boat dock that will be put out in the spring and taken in during the winter.

Board Questions

Chair Fleckenstein asked where the location of the septic are and Mr. Hinds pointed out that they are on the road side of the homes on both lots and would not be affected by this division of land.

Public Comment

Mr. Mark Lorenze, who has resided at Webster Lake for 15 years and is the President of the Webster Lake Association was present to speak. He stated he has looked at the property and the area that would be removed from lot 22 and added to lot 21. He stated the area is a pie shaped piece that gives Mr. Hinds the 75' of water frontage needed for a dock. He stated the property shows no cause of harm for the reconfiguration. He stated he awards the Hinds for going through the process to make them compliant. He stated he has no problems with this application and supports their efforts.

MOTION: Member Testerman moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request identified as Z15-008, to allow a boundary line adjustment to the Robert and Joan Hinds property that would make their property more non-conforming. The property is located at 199 Lake Shore Drive, in the Lake Protection district, identified as Map/Lot # 032-022-00. The property is currently 0.29 acres, where the requirement is 2.50 acres. 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 apply to and obtain approval from the Franklin Planning Board.**
2. **The applicant or their designee shall obtain all necessary permits from the State of New Hampshire, Department of Environmental services, prior to placing a dock on the property.**

All were in favor and the motion passed.

Decision of Approval

I move that the Zoning Board of Adjustment approve the variance application request identified as Z15-008, to allow a boundary line adjustment to the Robert and Joan Hinds property that would make their property more non-conforming. The property is located at 199 Lake Shore Drive, in the Lake Protection district, identified as Map/Lot # 032-022-00. The property is currently 0.29 acres, where the requirement is 2.50 acres. 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 area being removed from the lot is on the lake side of the property and doesn't affect the frontage of the lot; the area will be 5' of Lake frontage, where the property currently has 252'; and, both lots already exist and a new lot is not being created.
2. Substantial Justice is done due to the fact that this will clean up the lots and will allow both lots to meet the lake frontage requirements for the placement of a dock on the property.
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. Compared to most lots in the area, this is a large lot with a lot of frontage on the lake that most lots do not have, which is proven by the land area that is needed to be provided to the abutting lot to meet the State of NH, DES, requirements for a dock. Also, this is the only way to obtain a dock permit from the State of NH.
 - (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:

1. The applicant or their designee shall apply to and obtain approval from the Franklin Planning Board.
2. The applicant or their designee shall obtain all necessary permits from the State of New Hampshire, Department of Environmental services, prior to placing a dock on the property.

- **Z15-009:** Meredith Leighton, Owner; Brian Cloutier, Applicant, requests a variance from setback requirements (Section 305-14) to locate an above ground pool on the property, located at 38 Grove Street, New Map # O8, Tax Map/Lot # 118-031-00, R-3 Zone (One-, Two- and Three- Family Residential District). The pool would be located 13' from the westerly side property line, 14'9" from the easterly side property line, and 10' from the rear (southerly) property line. The setbacks for the R-3 Zone are 15' to each property line.

Chair Fleckenstein asked the applicant if they would you like to proceed this evening, or would you like to wait until next month in the hopes that some new members are seated on the board? Mr. Cloutier indicated he would like to proceed this evening.

Mr. Cloutier indicated he is present on the behalf of Meredith Leighton. He stated they want the pool for their quality of life. He stated Meredith has two children and she is a teacher, and has the summers off. He stated an abutter to this property received a variance for a pool a few years back and that it hasn't affected any of the abutters properties or values.

There were no questions from the board.

Public Comment

Donna French, of 42 Grove Street, was present. She stated that normally she would not have a problem, that none of the other abutters have a problem, including her sister who is an abutter and is present this evening. She stated they had a pool before that was a temporary soft pool. This one is going to be a permanent pool and that the variance is an as is variance, as the pool is already in. She asked if the variance went with the land. Angie Carey stated that yes, typically a variance goes with the land.

Ms. French stated others are not opposed, but her concerns are:

1. Impact to her property. House is at the end of a dead end street and parking is an issue in the winter, as there is not a lot of off street parking. She has an easement across this property to access the back of her property.
2. Where will the pool back wash drain?
3. When level of water is brought down in the winter, where will that water go, as shed on the back of her property and if the water flows towards the shed it could cause problems for her shed. She does not want the pool to impact her shed.
4. In the winter, where will snow be placed from the driveway with the pool there?
5. In looking at the approval if the board grants, and the owner sells, she doesn't want any problems with the new owner.

Member Testerman asked if she puts a car in the back of her property now and if she uses the driveway to access that area and she stated that she does not. She added that she needs to maintain her property value and the use of the driveway, in case she wants to sell her property or her neighbor sells their property. She stated she measured from the pool to her shed and the distance was 12 1/2 feet, so she isn't sure where they are getting their numbers. She stated the soft pool met the setback requirements.

Member Fleckenstein asked if the elevation of her property was lower than that of the neighbors and Ms. French stated she believes that it is and that is why she is concerned about where the pool will drain.

Mr. Cloutier stated the pool will be drained off the back of the property, to the south. He stated they didn't have any issues with draining the previous soft pool and it will be drained the same way. She stated this is a new pool that will have a structure around it for safety issues. He stated that he has always stacked the snow up in the front of the yard and would continue to do so, knocking down the embankment when needed, so this would not change.

Ms. French stated that if a new owner purchased the property and had 3 vehicles then the use of the driveway could be a problem to access the back of her lot. Member Testerman asked about the easement and if the city or the board had any rights to do anything regarding this. Angie Carey stated that an easement is a civil issue between properties and the city would not get involved.

It was inquired of Ms. French if she would be okay with the approval if a condition was placed on the approval that any future property owner would need to come to the board for approval of the continuing use of the pool upon their purchase of the property and she stated that she would be.

Board Discussion

MOTION: Member Testerman moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request identified as Z15-009, to allow an above ground pool to be located on the property. The property is located at 38 Grove Street, in the R-3, High Density Residential, Zoning District, identified as Map/Lot # 118-031-00. 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 apply to and obtain approval from the Franklin Planning and Zoning Office for a building permit for the pool.
2. In the case that the property is sold, if the new owner wants to continue the use of the pool, they must apply to the Zoning Board of Adjustment within six (6) months of the sale of the property.

All were in favor and the motion passed.

Decision of Approval

I move that the Zoning Board of Adjustment approve the variance application request identified as Z15-009, to allow an above ground pool to be located on the property. The property is located at 38 Grove Street, in the R-3, High Density Residential, Zoning District, identified as Map/Lot # 118-031-00. The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance in that:

4. 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: letters of support have been received from three of the four abutting property owners; The owners have taken into account the abutters and have attempted to locate the pool directly in the middle of the property and have downsized the size of the pool; and, the abutting property owner also has a pool that does not meet zoning requirements, has received a variance for the pool in 1999 and this has not affected property values.

5. Substantial Justice is done due to the fact that this pool cannot be placed on any portion of the lot without the need for a variance.
6. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - (C) 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. Due to this lot being very narrow; but long. This is not common for this area. The lot is 43' wide, which only allows 13' to work with. In order to put the necessary safety measures in with a pool this 13' is not accommodating.
 - (D) 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:

1. The applicant or their designee shall apply to and obtain approval from the Franklin Planning and Zoning Office for a building permit for the pool.
2. In the case that the property is sold, if the new owner wants to continue the use of the pool, they must apply to the Zoning Board of Adjustment within six (6) months of the sale of the property.

Planner's Update

An update was given on Richard Lewis.

It was indicated we already have one application for the July 1st meeting and that it is imperative that all members attend the meeting, as we currently have only 3 members on the board.

Other Business: None.

Public Comment: None.

Adjournment

MOTION: Member Testerman moved and Member Weatherbee seconded to adjourn the June 3rd, 2015 meeting of the Zoning Board of Adjustment, at 7:38 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant