

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, July 1st, 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, and David Testerman.
Absent: Donald Gagnon.

Member Testerman was seated as a voting member in a vacant voting member position.

- ❑ **Approval of Minutes: June 3rd, 2015 Zoning Board Meeting**

MOTION: Member Testerman moved and Member Weatherbee seconded to approve the minutes of the June 3rd, 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

- ❑ **Z15-010: Robert F. Kidder 1999 Revocable Trust, Robert F. Kidder, Trustee, Owner/Applicant, requests a Variance from Section 305-14, Lot and Yard Requirements, to build a house 30' from the front and side property lines, where the requirement is 50'. The 50' setback to the lake is being maintained. The property is vacant land on Lake Shore Drive, identified as Map/Lot # 033-402-00, New Map I4, LP Zone (Lake Protection District).**

Chair Fleckenstein asked the applicant if they would 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? Bob Kidder indicated he would like to proceed this evening.

Mr. Kidder stated that he is the trustee of the Trust. He indicated that he believes he has the last vacant building lot on the lake. He had the property surveyed and the only buildable area is 9' x 40'. He has been taxed generously on the lot for years and would like to build on the lot. If the variance was granted this house would be more conforming then 85% of the homes on the lake. The lot is currently overgrown. He stated he would like to build something and pay taxes on a buildable lot.

Member Testerman asked what the size would be if the variance was granted. Mr. Kidder stated 49' x 60', which would maintain a 30' setback to the front and sides and the 50' setback to the lake as mandated by the State. He stated there is adequate room for the well and septic on the lot.

Public Comment

Leonard Desharnais, who owns property on the side of Mr. Kidder's property, at 143 Lake Shore Drive, indicated that he has had conversation with Mr. Kidder and they have no objection to this application.

Chair Fleckenstein stated the board has received a letter from Susan and David Sinclair, dated July 1st, which indicated they did not have any objections to the proposal.

Board Discussion

Approval Motion: Member Testerman moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request identified as Z15-010, to allow a single family home to be located on the property. The property is located on Lake Shore Drive, in the LP, Lake Protection Zoning District, identified as Map/Lot # 033-402-00. 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, subject to the following conditions:

1. The applicant must apply for and receive all approvals necessary from the State of New Hampshire Department of Environmental Services, including, but not limited too, a Shoreland permit and State Septic Approval.
2. The applicant must apply for and receive a building permit prior to building on the site.
3. The applicant must receive all other State, Federal and local permits necessary prior to any building taking place on the site.

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 Z15-010, to allow a single family home to be located on the property. The property is located on Lake Shore Drive, in the LP, Lake Protection Zoning District, identified as Map/Lot # 033-402-00. 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: as 30' setbacks from each property line will be maintained, thus insuring that the home will not be built as close to the property line as some houses in the area already are.
2. Substantial Justice is done due to the fact that the only buildable area on the lot is shown on the plan as a 10' by 40' area, which does not allow for a home to be built in this area that would meet building code requirements.
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. This property is larger than many lots in the area that already have homes located on them. This lot would maintain greater distances to the lot lines than the existing non-conforming lots and structures located in this neighborhood.
- (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 must apply for and receive all approvals necessary from the State of New Hampshire Department of Environmental Services, including, but not limited too, a Shoreland permit and State Septic Approval.
 2. The applicant must apply for and receive a building permit prior to building on the site.
 3. The applicant must receive all other State, Federal and local permits necessary prior to any building taking place on the site.
- Z15-011: Morrill Court, LLC, Owner; Cecile M. Cormier, Agent, requests a Variance from lot area requirements (Section 305-14) to replace a mobile home with a newer and larger mobile home. The mobile home will not meet the setback requirements of the zone, being 20' front, as it is proposed to be 10' off the front lot line. The property is located at 20 Morrill Court, Tax Map/Lot # 097-096-00, new map # M6, R-2 Zone (High- Density Residential District). There are two homes located on this property.

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? Ms. Cecile Cormier indicated they would like to proceed this evening.

Ms. Cormier stated that she would like to replace the mobile home. The pipes burst this past winter causing a lot of damage. The building is 52 years old. Due to the age and the condition of the mobile home she would like to remove it and put in a new one. In the future she plans on moving into the mobile home as her daughter lives in the main house on the lot. The current mobile home is 5' from the property line and the new mobile home would be located 10' from the property line, but the front yard setback is 20'. There is a possible drainage problem on the lot. The neighborhood is rural. The mobile home cannot be replaced in kind as they do not make mobile homes that small anymore. The new model would be approximately 56' x 22'. There is ample room for two cards.

The property has city water, but has an onsite septic. Due to a family crisis, Ms. Cormier indicated that they had completed a cash purchase of the property very quickly and thus the leachfield was not located on the lot. She has owned the house for two years and there has been no leakage or failure of the septic.

There are three other mobile homes in the area. The lot is in the R-2 Zone where two family homes are allowed; however, two detached family homes are not allowed. The lot is 33,541 square feet and a two family requires 30,000 square feet, so the lot exceeds the amount of land needed. She stated the reason she is asking to be able to replace the mobile home in its current location is due to not knowing the location of the leachfield.

Chair Fleckenstein asked if the leachfield has been located at this time. Ms. Cormier stated that it has not, but it hasn't failed as the lot is very grassy and there are no signs of failure at this time. She added that the tank was emptied prior to her purchasing the lot.

Member Testerman stated that Angie Carey had provided them with pictures and about the numerous additions to the property. Ms. Cormier stated she purchased the property with all of the tin sheds on it. Her daughter has been working to clean out the sheds, and her plan is to remove them after they are cleaned out as there is ample storage area in the barn. She stated that her LLC had showed that it was not in good standing, as she had forgotten to pay the fee and file the annual reporting documents, which have now been filed and additional fees were paid due to this. She stated she has no intention on being an absentee landlord.

Chair Fleckenstein asked if the dwellings were on the same septic. Ms. Cormier stated that each dwelling has its own septic.

Public Comment

Glenn Morrill, an abutter who resides on Lawndale Avenue, stated that he is there for himself and for his mother, Olive Morrill, who is a direct abutter. He stated that he has three concerns. These concerns were identified as:

- 1) Drainage Issues: He stated that since the upper parking lot was put in the roof of the mobile home drains into this parking lot and sheet flows off and onto his parent's property. This has caused erosion of their lot.
- 2) Snow Removal: The City plows Morrill Court into one lane. He is concerned about where the snow removal will be for this lot and if the snow will be pushed into their driveways.
- 3) How will they get the mobile home onto the lot? He stated that some time ago a tractor trailer had tried to drop off a delivery at this property and could not access the lot due to the location of the homes on the roadway and the narrow roadway.

Board Discussion

Member Testerman asked if the existing mobile home was uninhabitable. Chair Fleckenstein then reminded the board that the decision they are to make tonight is not the uses on the property as those are grandfathered, and is instead to determine if the variance requirement is met for the location of the mobile home. She added that it sounds like the mobile home is uninhabitable.

Member Weatherbee asked about how the mobile home would be delivered to the lot. Ms. Cormier stated that she is not sure if they could get it in, but if the variance was approved she would speak with the dealer and have them come out to see. She stated she wouldn't cause damage to the neighbors properties, and if needed would like to be able to negotiate with them on getting the home to the property.

Chair Fleckenstein asked how far into the 20' foot front yard setback the home is and Ms. Cormier stated the mobile home is 5' off the lot line and she would be moving it back another 5'. Member Testerman asked if

she could move it back further and Ms. Cormier again stated that due to not knowing where the leachfield is and knowing it is in the grassy area behind this home, she doesn't believe so.

Member Testerman stated that he noticed there is only a motion to deny and stated he could rework this for an approval.

MOTION: Member Testerman moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request identified as Z15-011, to replace a mobile home with a newer and larger mobile home. The mobile home will not meet the setback requirements of the zone, being 20' front, as it is proposed to be 10' off the front lot line. The property is located at 20 Morrill Court, Tax Map/Lot # 097-096-00, new map # M6, R-2 Zone (High-Density Residential District). The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance and stated the approval is subject to the following conditions:

1. **The applicant must apply for and receive a building permit prior to building on the site.**
2. **The applicant must receive all other State, Federal and local permits necessary prior to any building taking place on the site.**

Chair Fleckenstein was against the motion and the motion failed by a vote of 2-1. Chair Fleckenstein indicated that based on the motion failing and not having the City staff available to direct the board that the application would be continued to the meeting of August 5th, 2015 meeting of the board to take place at the same location, at 7:00 p.m. She stated the application is neither approved, nor denied, as of this time. She apologized for the small board.

Ms. Cormier asked Chair Fleckenstein her reasoning for voting against this and Chair Fleckenstein stated that based on the information provided, there is enough land area to relocate the mobile home and meet the setbacks. She stated that she understands that Ms. Cormier doesn't know where the leachfield is, but this would need to be determined prior to the permits being issued anyway. She stated this is a difficult situation; however, the regulations stated that if a non-conforming use is to be replaced, that in order for it to be replaced it must adhere to the setback requirements. She stated that she believes the office will send Ms. Cormier a written decision of the continuation and stated that she would email Angie Carey and make sure that this is done next week when she returns to the office.

Planner's Update: None.

Other Business: None.

Public Comment: None.

Adjournment

MOTION: Member Testerman moved and Member Weatherbee seconded to adjourn the July 1st, 2015 meeting of the Zoning Board of Adjustment, at 7:30 p.m. All were in favor and the motion passed.

Respectfully submitted,

Angela M. Carey
Planning and Zoning Assistant