

**FRANKLIN ZONING BOARD  
REGULAR MEETING AND PUBLIC HEARING  
CITY COUNCIL CHAMBERS- CITY HALL  
Wednesday, September 2<sup>nd</sup>, 2015, at 7:00 p.m.**

**MINUTES**

**Call to Order:** The meeting was called to order at 7:10 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: July 1<sup>st</sup>, 2015 Zoning Board Meeting**

**MOTION: Member Testerman moved and Member Weatherbee seconded to approve the minutes of the July 1<sup>st</sup>, 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**

**Z15-012:** Michelle Moore, Owner/Applicant, requests a Variance from Section 305-14, Lot and Yard Requirements, to replace an existing 10' x 13' shed with a new shed to be 16' x 16', on property located at 180 Kendall Street, Tax Map/Lot # 134-049-00, RS Zone (Single- Family Residential District), New Map #M9. The Shed would be located 16.5' from the side lot line, where the requirement is 25'.

Mary Jolly was present for Ms. Moore, as Ms. Moore had a medical issue that she was dealing with this evening. Ms. Jolly stated that Ms. Moore did want to proceed this evening.

Ms. Jolly stated she did not have a lot of time to prepare for the meeting. She indicated the shed is a metal shed, with an attached lean-to, and it isn't pretty. The shed caved in with the weight of the snow this winter and ruined yard equipment. Need something stable and permanent. There is no basement in the house and just a crawl space. The lean-to will be removed and the current shed and lean-to are approximately 16.5' from the property line and this line of encroachment will be maintained. The new shed would line up perfectly with the driveway and would be built 16.5' from the property line. The new shed will improve the quality of the lot.

Chair Fleckenstein asked for reassurance that the lean-to was being removed and Ms. Jolly stated that it was.

**Public Comment**

Richard Lewis stated that he had received a phone call from an abutter, Edward Allen. He owns the abutting 12 acre parcel of land that wraps around this lot and the house is on Kendall Street. He had received the hearing notice and was uncertain as to what was going on. Richard Lewis indicated that he sent Mr. Allen a copy of the paperwork and the memo, but that he wasn't able to come and Richard didn't receive a further call from Mr. Allen after he sent him

the paperwork. Mr. Lewis explained the closest line of the existing shed will be the same for the proposed shed. Mr. Allen was concerned about the lean-to and Mr. Lewis stated it was being removed. Mr. Lewis stated that in speaking with Mr. Allen he offered that the board could put an additional condition on the approval that would state: "After the removal of the existing shed and lean-to, and prior to the installation of the new 16' x 16' structure, the applicant shall stake out the location of the new structure and notify the Planning Office when the staking is completed. The Planning Director, or a representative, shall inspect the staking and measure the setback from the side lot line to ensure that the 16.5-foot setback on the plan submitted with the variance application is maintained." So if the board approves this application, it would include the new condition #3.

### Board Discussion

**MOTION:** Member Testerman moved and Member Weatherbee seconded that the Zoning Board of Adjustment approve the variance application request identified as Z15-012, to allow an accessory structure of 16' x 16' to be built in place of an existing 10' x 13' shed on the property. The property is located at 180 Kendall Street, in the RS, Single-Family Residential Zoning District, identified as Map/Lot # 134-049-00. 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: the new building would not encroach any closer into the side yard setbacks than the existing shed now does. A shed under 150 square feet is allowed within 10' of the property lines, but as this building will be larger than the 150 square feet, the zoning ordinance indicates it must maintain the 25' setbacks; however, this building will be utilized the same as the existing shed. Also, the owner is removing an existing lean too that is attached to the shed and that will not be replaced.
2. Substantial Justice is done due to the fact that a shed or accessory structure is a common addition to a single family home, that the building will not encroach any further than the existing shed and the existing shed is in ill-repair and needs to be replaced. Further, requiring that the accessory structure be placed elsewhere on the property, where it might meet the setback requirements, also means that the shed is located farther away from the driveway, thus reducing the functional nature of the structure due to the distance from the driveway and the reduced accessibility.
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. As the applicant is replacing an existing 10' x 13' shed and an existing lean too which encroaches further into the setbacks than the accessory structure will be located. The location of the structure, at the end of the driveway is an appropriate location and making them move the building to another location would create a hardship for the owner.
  - (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 and Zoning Office for a building permit for the accessory structure.**
- 2. The lean too must be removed at the same time as the existing shed being removed and prior to the accessory structure being built.**
- 3. After the removal of the existing shed and lean-to, and prior to the installation of the new 16' x 16' structure, the applicant shall stake out the location of the new structure and notify the Planning Office when the staking is completed. The Planning Director, or a representative, shall inspect the staking and measure the setback from the side lot line to ensure that the 16.5-foot setback on the plan submitted with the variance application is maintained.**

**All were in favor and the motion passed.**

**Planner's Update:**

Richard Lewis stated that he has been busy taking care of things that have been hanging around. He stated that based on the amount of variance applications that have been approved due to setback constraints, he would like to have a joint meeting with the Planning Board in the fall to review the setbacks and possibly make some joint changes to the setback requirements. The 50' to the lake would have to be maintained as this is the no-build area that is set by the Shoreland Protection Act. Member Testerman asked how the setbacks were arrived at originally. Richard Lewis stated most of this was done prior to his time, with the exception of the addition of side setbacks in the Business Zone. He stated the one that changes most often is the lake protection zone. It was 25', was changed to 50', then back to 25' and then ultimately changed back to 50' to be in compliance with DES Shoreland requirements. This is for the protection of the lake and to keep pollutants away, but if the side and front yard setbacks were decreased then this would allow for additions to be built further from the lake and meet requirements.

**Other Business:** None.

**Public Comment:** None.

**Adjournment**

**MOTION: Member Testerman moved and Member Weatherbee seconded to adjourn the September 2<sup>nd</sup>, 2015 meeting of the Zoning Board of Adjustment, at 7:25 p.m. All were in favor and the motion passed.**

Respectfully submitted,

Angela M. Carey  
Planning and Zoning Assistant