

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
Wednesday, February 7, 2024 at 6:30 p.m.
Franklin Public Library – 310 Central Street**

Minutes

Call to Order – 6:32 p.m.

Attendance: Chairman Glen Feener; Kathlene Fleckenstein; Gregory Thompson; Cecile Cormier; Yama Ploskonka.
Staff present: Planning Director Seth Creighton, Planning & Zoning Administrative Assistant Judy Bibbins.

Salute to the Flag – led by Yama Ploskonka

Chairman Feener welcomed Member Ploskonka to the Board as this is his first meeting.

Approval of Minutes of the December 6, 2023 Public Meeting of the Board

Member Fleckenstein made a motion to approve the minutes, seconded by Member Thompson. **Motion carried 4-0-1 with Member Cormier abstaining due to not being present at that meeting.**

New Business

Z24-01: April Russell, owner, is Appealing the decision by the Planning Director to deny a Building Permit. The property is located at 25, 27, and 29 Depot Street., Map/Lot 098-060-00 in the B1 [Low-density Business & Commercial] zoning district.

Ms. Russell spoke to her Appeal request by giving a lengthy history of the property, the impact the Covid pandemic had on her ability to take care of the property and how she does not believe she ever abandoned the property as she still uses the shed for storage of materials. She also confirmed the property had been vacant of tenants since 2019 and had chosen not to rent them in 2020 due to the pending eviction moratorium. She explained the repeated communication between herself and City Staff regarding the property violations, her stated plans to improve the property, and that she believed that showed that she did not intend to abandon the property.

Via questions from the Board, Ms. Russell confirmed again the units had been vacant since 2019 and she believes them to be rentable despite the failed inspection reports and Life Safety issues communicated by Franklin Code Enforcement officers. She also confirmed the power had been shut off to the units since 2019 as she did not intend to rent them, and that her plan is to replace them with newer units or remodel the existing units.

Chairman Feener opened the hearing up to the public. Joe Guinta from the Benevolent and Protective Order of Elks spoke that he and a few other members were in attendance simply to gather information on what is happening with the property as the Lodge abuts the property. With no further comment, the public hearing was closed and brought back to the Board.

The Board reviewed a timeline relating to use, adoption of the ordinance and the property owners purchase of the property and recognized that Ms. Russell purchased a property with a non-conforming use and it was incumbent on the property owner to understand her obligations in order to maintain that use in the City of Franklin.

Member Cormier made a motion:

"I move to uphold the decision of the Planning and Zoning Director/Administrator, specifically in his interpretation and application of the provisions of the Zoning Ordinance which support that Map/Lot 098-060-00 has lost its grandfathered use status of "Manufactured Housing Park and Subdivision".

The Board supports and agrees with the reasons and rationales of the Director based on the following findings and facts:

1) a) The language of Zoning Ordinance 305.18.A.5 "Nonconforming Uses" is plain and unambiguous, it states, *"In the event that any nonconforming use, conducted in a structure or on a lot, ceases or is abandoned, for whatever reason, for a period of one year or more, such nonconforming use shall not be resumed."*

b) This clause has existed in the Zoning Ordinance since at least July 2006.

c) Because the Zoning Ordinance contains the referenced clause, the Zoning Board is not required to consider "intent" to continue/abandon a nonconforming use [per caselaw McKenzie v Town of Eaton ZBA 154 N.H. 773 (2007)].

2) Based on the packet of information (narrative, timeline, and numerous attachments) dated "02/02/2024" submitted to the Zoning Board by the Planning Director, sufficient evidence exists to conclude the use has been abandoned since at least September 24, 2019 and thus over 2 ½ years passed prior to the Director's decision in July 2022.

From at least September 2019 the record shows the use has ceased, for more than one year, by documentation of the following: the vacating of all homes (evidenced in part by municipal water being and remaining shut-off to the property); documented code violations; lack of following through by the property owner on their verbalized concepts to remedy violations; lack of applying for or obtaining any building/mechanical permits; lack of paying, or untimely payment of water/sewer/tax bills, which lead to the City placing liens against the property; etc..

3) Manufactured Housing Parks have been "not-permitted" in the B-1 Zoning District since at least March 2004.

4) This property has been in B-1 Zoning District since at least 1992.

5) The property owner has owned the property since at least February 2009."

Motion was seconded by Member Fleckenstein. There was further discussion about the definition of abandonment and whether they should discuss that. Member Cormier made a motion to move the question, seconded by Member Fleckenstein. Chairman Feener asked for a vote to move the question. Motion carried 5-0-0.

Roll call vote to uphold the Planning Directors Decision:

Member Cormier – Yes

Member Fleckenstein – Yes

Chairman Feener – Yes

Member Thompson – No

Member Ploskonka – No

Motion carried 3-2-0. Decision is upheld.

Other Business:

Member Thompson requested a workshop be set up to discuss the definition of abandonment. Director Creighton said he would look into it. Director Creighton shared a request from Franklin High School to replace their current changeable sign with an LED electronic changeable sign. These signs are not generally permitted in the City, although City property is exempt from our own rules. Director Creighton was looking for guidance from the Board on any concerns or perception with permitting this type of sign. The Board consensus was to approve it with the

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condition that it not be flashing or scrolling. Director Creighton also offered to print the zoning ordinance if any of the members requested it.

Adjournment:

Member Cormier made a motion to adjourn, seconded by Member Fleckenstein. **Motion carried 5-0-0. Meeting adjourned at 8:03 p.m.**

The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, March 6, 2024 at 6:30 p.m. The deadline date for submission of applications for this meeting is Wednesday, February 14, 2024.

Respectfully submitted,

Judy Bibbins
Administrative Assistant for Planning & Zoning.