

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING**

Wednesday, January 4, 2017 at 7:00 p.m.; City Council Chambers

Minutes

Call to Order 7:03 PM

- ❑ **Salute to the Flag**
- ❑ **Roll Call Present:** Kathlene Fleckenstein, Cecile Cormier, Glen Feener, Debbie Davis, Jeffrey Dickinson, David Testerman. Also present, City Attorney Paul Fitzgerald and Fire Chief Kevin LaChapelle
- ❑ **Approval of Minutes of the October 5, 2016 Public Meeting of the Board.** Member Feener moves to approve minutes; Member Testerman seconds. There are no corrections and the motion passes with all in favor.

Old Business: None

New Business:

Z17-01: John Henderson, owner and applicant, requests a Special Exception per Section 305-13, Use Table, and a Variance from Section 305-29.8, Family apartment, to allow a pre-existing, larger than allowed (1032 sq. ft. versus 720 sq. ft.) 2-bedroom family apartment in the basement of the house at 381 Prospect Street, tax map/ lot 138-404-00 [Map Sheet Q9], in the RR [Rural Residential zoning district].

John Henderson explained that when he purchased the house in 2015, there was an apartment in basement which he assumed was allowed or approved by the city. He recently found out there was never a variance requested for the installation.

Member Testerman asked if Mr. Henderson lived in the house. And Chair Fleckenstein asked if the apartment was rented out or was being used by family members. Mr. Henderson answered that he does live in the house and that a family member lives in the apartment. Member Feener asked about egress and Mr. Henderson stated that both bedrooms had egress windows and that there was a door on the lower level with access to the outside in addition to the staircase to the upper levels of the house.

Director Lewis mentioned that the size of the apartment is larger than currently allowed. Member Testerman asked if the variance request was only for the square footage and Mr. Henderson said yes that there were only two bedrooms but that the room size was very large. Chair Fleckenstein asked if there was a maximum square footage requirement with the new statute and Director Lewis stated that there is only a minimum of 750 square feet. Mr. Henderson added that there was plenty of parking available on the property.

Chair Fleckenstein asked if there was anyone else to speak for or against the application. Receiving no response, she brought the discussion back to the Board. Director Lewis mentioned that in his draft for approval, he listed a couple conditions.

Chair Fleckenstein moved to approve Mr. Henderson's application subject to the following conditions: 1. No further expansion of the number of bedrooms in this apartment unit is allowed without application for, and approval of, the required building and land use permits. 2. The applicant shall schedule, and pay for, an inspection by the building inspector to verify that all life safety codes are complied with. If any deficiencies are identified, then a building permit shall be necessary to bring the unit into full compliance. Member Testerman seconded the motion and the Motion carried with all in favor.

Z16-11: James Joy, owner and applicant, and Robert Batchelder, applicant, filed an appeal of the Planning Director's administrative decision which stated that the property at 60 Depot Street, tax map/ lot 099-050-00 [Map Sheet 07] in the B-1 [Business] zoning district, was being used as a rooming house, which is not a permitted use per the Franklin Zoning Ordinance. The owner and applicants contend the property is being used in the same manner as a single-family house.

Mr. James Joy presented himself and questioned why Robert Batchelder was listed as a co-applicant since he is the sole owner of the 60 Depot Street property and Mr. Batchelder no longer lives there. He was told that on the original application Mr. Batchelder's name appeared and Mr. Joy admitted that he had someone else fill out the application and do the research which was included in the packet to the board members.

Director Lewis reminded the Board that the meeting tonight was regarding an appeal to his administrative decision in October-November 2015. Since that time he and Mr. Joy had exchanged several communications and the hearing was set for the December 7, 2016 meeting date. Due to the volume of materials that needed to be supplied to the board members, the meeting was continued to the Jan. 4th date. Director Lewis added that he holds firm to his decision that structure is a rooming house which isn't an allowed use in Franklin.

Mr. Joy stated that he considered going public with this hearing but decided to appear alone. He mentioned that in a letter dated Oct. 8, 2015, he asked for the city to look into the protected status of his residents; a status which is protected by the Americans with Disabilities Act of 1990. Both the ADA and the Federal Fair Housing Act of 1998 recognize alcoholics in recovery as qualifying for disability status and protection under Federal law. He went on to say that the City of Franklin made their case that the house at 60 Depot Street is a rooming house and never acknowledged the sober house residents as a protected class. He added that he asked several times to get a reasonable accommodation, but the City didn't respond. He noted that most of the lawsuits in the paperwork provided were based on towns refusing to make reasonable accommodations. He went on to say that when he received an email ordering everyone off the second floor but himself; he complied out of fear that if he didn't and something happened, he could be held criminally liable. He said that three out of the four who left failed to maintain their sobriety while everyone who stayed in the house has. He asserted that the house has never been a burden to the city, that the residents are completely self-supporting. There is no burden on the school system. There has never been any interaction with the Franklin Police Department. All the residents work and spend money in the community. The property is well maintained and vastly improved since he purchased it. There have been no complaints from the neighbors. The residents include military veterans and retired police officers. The letter dated October 8, 2015 spelled out their position. He added that he doesn't believe that he needs permission from the Board, that he is protected under Federal Law, adding that although the town laws may be different, he believes that the Federal Laws over-rule that.

Chair Fleckenstein asked Director Lewis if the City of Franklin had a provision for group homes since Mr. Joy's residence might qualify as a group home. Director Lewis answered that there are 4 group homes and all four are licensed by the state. He added that through the existing state statutes these group homes have the ability to be located in a variety of zoning districts throughout the city.

Mr. Joy said his place differs from a rooming house stating that there are no locks on the doors. They eat together in the kitchen, they watch TV together, and they share the same living spaces and bathrooms. There are curfews. The use of drugs and alcohol is not allowed. There are mandatory drug testing and mandatory recovery meetings.

Chair Fleckenstein asked about the sober houses in Laconia and that town's zoning regulations regarding rooming houses. Mr. Joy answered that the largest of the buildings in Laconia was originally listed as a rooming house and the current owner has just left it listed that way, although it is a sober house. He added that his program is similar to the Laconia sober house but that the Laconia establishment is actually a rehab facility.

Member Testerman asked if rooming houses were allowed in the Franklin Zoning ordinance. Director Lewis stated that they were removed in approximately 2005.

Member Feener agreed that Mr. Joy's residents can't be discriminated against under fair housing act. He stated that Franklin hasn't zoned against sober houses, in fact Franklin has been very corporative about sober houses. In all this paperwork the issue is that the communities are against sober house. Franklin isn't. He asked about the differences between Mr. Joy's property and Webster Place.

Mr. Joy answered that Webster Place is a rehab facility where medications are dispensed, the residents are supervised around the clock, and everything is inclusive. They take insurance. His guys are all self-supporting. Counseling isn't provided. There are no professional or certified people on staff. Member Feener asked what type of business entity Driven by Circumstances is. Mr. Joy stated it is a sole-proprietorship. His funds come from rent and from his own contracting business. The residents pay rent if they can. The objective is to get them paying rent, living sober and then eventually moving on to their own goals. Currently he has three residents. Member Feener asked how the project is registered, whether it was a business and what type of business. Mr. Joy answered that he thinks it is just in his name and that it is a business, like rental property.

Member Cormier added that she was confused as far as Mr. Lewis saying it a rooming house; Mr. Joy's set up sounds like a family home made up of unrelated members.

Chair Fleckenstein asked if the City of Franklin specifies the number of unrelated people who can live in a single unit. Fire Chief LaChapelle confirmed that the national code limits the number to three non-related persons. Any more than that clearly delineates it as a rooming house. Member Dickinson suggested that even if this place was considered a boarding house, which isn't allowed in Franklin that under the ADA the city may have to make accommodations for this type of facility. Member Fleckenstein responded that the purpose of this hearing is whether or not the Administrative Decision was correct. She reminded the Board that Mr. Joy has not applied for a variance for a rooming house.

Mr. Joy insisted that all he wanted was a mechanism for reasonable accommodations and the city never addressed this. Member Dickinson stated that asking Mr. Joy to apply for a variance is in fact making him agree that his sober house is a boarding house and this is what he disagrees with.

Chair Fleckenstein asked what operating as a boarding house would require and Mr. Joy answered that it would force him to install costly life safety features. She added that Mr. Joy's other option is to apply for a variance which up to this point he has refused to do. He wants reasonable accommodation. If it was considered a group home, Mr. Joy stated that he'd need licensing.

Director Lewis repeated that the purpose of this hearing is to determine whether he made a legally sound decision. City Attorney Paul Fitzgerald added that the crux of the issue is that Mr. Joy disagrees with the decision. What the Board must decide is if they want to uphold the determination or if Mr. Joy needs to apply for other options which

he has not done. Regardless of the Board's determination it is up to the applicant to proceed with a request for a variance.

Member Davis added that since rent is collected the house is run as a business. That is a clear definition of a business versus single family home. Member Cormier stated that even in related families a contract to cover the costs of keeping house could be required and that is no different from what Mr. Joy is asking.

Member Testerman suggested that the Board take the City Attorney's advice and judge on the administrative ruling.

Fire Chief LaChapelle added that no matter what the determination of board is, the fire department will still consider this residence as a rooming house and will require it to be brought up to code.

Member Davis asked if Mr. Joy might apply for a special exception, but Director Lewis answered that a special exception is for allowed uses in a specific district, whereas a rooming house isn't an allowed use in any district. He reiterated that Mr. Joy could apply for a variance.

Chair Fleckenstein asked if the Board was ready to make a motion or if more information was needed.

Director Lewis said that typically he prepares a written motion out to the Board. If the Board doesn't have any requests for more information from Mr. Joy, the public hearing could be closed and the Board could meet privately with the City Attorney. The decision could be voted on at the next meeting. Member Feener agreed that the public hearing should be closed. Mr. Joy stated that he had nothing more to add.

Member Feener moved to close hearing which was seconded by Member Testerman. The Board closed the public hearing and went into non-meeting session with the City Attorney and came out of that session for the purposes of adjournment only.

Member Dickenson moved to adjourn and Member Testerman seconded the motion. All were in favor.

Adjournment: The meeting closed at 8:38 p.m.

The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, February 1, 2017, at 7:00 p.m.; the Deadline date for submission of applications for this meeting is Wednesday, January 11, 2017.