

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

Wednesday, August 1, 2018 at 7:00 p.m.; City Council Chambers

Minutes

Call to Order

☐ **Salute to the Flag**

- ☐ **Roll Call Present:** Glen Feener, Kathlene Fleckenstein, Debbie David, & David Testerman
Absent: Cecile Cormier, Jeffrey Dickinson

- ☐ **Approval of Minutes of the July 11, 2018 Public Meeting of the Board. Due to absence of members that were present at that meeting, the approval of the minutes will be taken up at the next Zoning Board Meeting.**

- ☐ **Old Business:** None

New Business:

Z 18-05: James Mahoney, owner is seeking a variance from 305.14, Lot and Yard, to construct a 28 ft. by 34 ft. garage that will not meet the side yard setbacks [2 feet proposed versus 50 feet required]. The property is located at 234 Lake Shore Drive [Map/Lot 032-006-00, Map Sheet H4] in the LP [Lake Protection] zoning district.

Mr. Mahoney stated that he first came to Webster Lake in late 1960s. Six or seven years ago, he bought lot and built house. He is hoping to move up here full time when he retires and would like to build a garage. He went to all of his abutters and they were in agreement. He described the lot as wide at street and becoming narrower toward the rear of the lot. There is also a stream that bisects the middle of the backyard so he is asking permission to locate the garage to the left of the stream.

Member Fleckenstein asked about the septic. Mr. Mahoney said it was new and located in the front yard.

No one from the public chose to speak and the discussion went back to the board. Director Lewis described the site and the fact that the due to the PSNH easement and the septic in the front and narrowing of the lot and the stream in the back, the owner felt there wasn't another buildable piece of land for the garage besides the proposed location. The existing driveway starts out on the abutting property of Rand Currier as a shared driveway and then wraps around the back of the applicant's property to the left

of the house fitting with the proposed location. Mr. Lewis mentioned the 8-9 abutting residents wrote that they approved of the location of the garage.

With no other discussion, Fleckenstein moved to approve the application with the conditions noted in the NOD draft. This was seconded by Debbie Davis. By a vote of 4-0-0 the application was approved.

Z 18-06: Gary & Debra Auger, owners are seeking a variance from 305-29.4, Sheds, to place a 112 sq. ft. shed 2 feet [versus 10 feet required] from the side property line. The property is located at 39 Maple Square [Map/Lot 134-174-00, Map sheet N9] in the R-3 [one-, two-, & three-family residential] zoning district.

Member Fleckenstein recused herself due to her home being in the immediate neighborhood. Chairman Feener told applicant that they would need a unanimous decision by the board for the ruling and asked if the applicant wished to postpone the hearing or proceed. Mr. Gary Auger asked if it was rejected what would be their options and Director Lewis said that the fact that there were only three members couldn't be used for grounds for an appeal. The appeal request would need to be based on new information that wasn't available at the time of this hearing. The Board can either grant or not grant a rehearing and potentially the hearing could be held of the same night. The applicants wished to proceed.

Debra Auger, 39 Maple Square, said that the reason for wanting the shed in its current location is for line of site purposes. Some of the items in the shed are for their heating business and it is more secure, especially with the installation of a ring/video doorbell that I can access on my phone. She included a map with her application along with photos that shows that there isn't another place on property to place it. Ten feet from the lot line would put it over the fountain. The back of the yard is deeply sloped, and the other side of the yard is where they hope to erect a garage in the near future. She added the shed is good-looking and well maintained and that they have done a lot of work improving the grounds and the house. Her immediate abutter didn't have a problem with the placement, since it gives them additional privacy.

Chairman Feener asked for questions or comments from the board. Vice Chair Davis asked if there was a reason why the existing cinder block shed couldn't be used for their business supplies. Mrs. Auger answered that the cinder block building is used as their tool and lawn shed. The wooden one is for their heating business and it contains water heaters and other supplies as she had shown Mr. Lewis during a site visit.

Chairman Feener asked if the shed is already on site and Mrs. Auger stated that it was. She added that she hadn't expected the crane operator to arrive on July 4th to move it to its current location, not allowing her time to get the permit first, but that she came in on July 5th for the building permit bringing with her photos of the shed and its placement. Chairman Feener said that there is plenty of room on the other side of the

driveway and Mrs. Auger said they want to place a garage there. Chairman Feener said he had a problem with them getting the permit after the shed was installed, along with the congestion of a residential site with numerous vehicles. Mrs. Auger again stated that the crane operator came on a holiday when city offices were closed. She stated that one of the work trucks was for sale and then there would only be two work trucks. She added that the property is looking really good with all the work they've done.

The meeting was opened to the public. Kathy Rago at 53 Maple Square said that she lives in the abutting house with the fence and that they don't have a problem with the shed's placement, that in fact it gives them more privacy. She added that she sent an email earlier stating just that. She also remarked on how much the Augers have cleaned up the property since they moved in and how nice it is having them for neighbors.

Al Warner, 63 Maple Square, came to speak in support of this project, that aesthetically it is better there than any of the alternatives. He echoed Ms. Rago's sentiments that the Augers have really done a wonderful job of improving that portion of the community and he would encourage the board to approve their request.

The discussion was brought back to the board and Member Testerman said that owing to the abutters' positive remarks, he would be in favor of granting the waiver. Vice Chairman Davis asked the property owners if there was anything combustible stored in the shed and Mrs. Auger said 'no' that it was just water heaters and copper tubing which is very valuable. She added that the work trucks have alarms which make them secure and she wants the shed where she has line of site along with the video doorbell which will let her know if somebody goes near the shed. She also expressed her opinion that the shed looks nice where it is.

Director Lewis said he was concerned about the overcrowding of property. Sheds are defined in the Zoning Ordinance for residential purposes. He said that he understood about the installation of the shed over the holiday, but there is plenty of room on the right-hand side looking at the property from the road. The argument that they need security for this can be overcome by the alarm system in the shed. Zoning is there for a purpose, even though the current neighbors have no issue with the 29 inches, who knows what the next neighbor will say. The provision for sheds to be 10 feet from the lot line versus needing to meet the setbacks was approved by the Planning Board and the City Council acknowledging that people have yard tools, mowers, snow blowers, etc., and these are things that are common to residential properties. Using a shed for commercial purposes is another matter. The only way he would see that the board should approve this application is if and when a garage gets put in the shed will be removed from the property. The garage should be able to house the commercial materials. He would hate to see the Board grant a variance when there are other options on the site for the placement of the shed.

Chairman Feener said that the cinder block building seemed to be encroaching on the setbacks and Mr. Lewis told him that building was approved in a 1979 variance that allowed it to be 8 feet from the lot line. Chairman Feener said they shouldn't have purchased the shed before they got a permit. Mrs. Auger explained that they've had the shed for 10 years and that it was at their other property in Tilton. It was brought over to the Maple Square property at the very end of May and was temporarily put on the driveway until they could get it moved. She again explained that if the shed was placed on the other side of the property, she wouldn't be able to see it because of the garage they are planning on building.

Member Davis said that she understood the need to make things secure, but a security system would address that problem. Mrs. Auger said the shed could be broken into with a crowbar. Their storage unit over at Tilton Trailer got broken into just yesterday and she had a lock on that. She described the ring video doorbell which is motion activated and shows a video of anyone approaching the shed. The two trucks on the driveway say Christian Repairs. She doesn't want their tools stolen. She didn't think the shed would be an issue because it was allowed in Tilton. She asked what good came from having the shed 10 feet from the property line and equated it to putting a couch in the middle of the living room and not using the area behind it. She added that the side door to the cinder block building needs to remain accessible so they can get the snow blower out.

Chairman Feener asked if there were any more questions. With no response Vice Chair Davis made a motion to deny the request. Member Testerman said that he was going to vote against denying it which with a three-person board would effectively kill the motion.

Vice Chair Davis again made a motion to deny the request stating that the Board finds that the application request fails to meet the tests and criteria necessary for the granting of a Variance. She continued by reading the four points outlined in the Motion to Deny draft. Chairman Feener asked Member Testerman if he would second the motion and Member Testerman answered 'No.' Chairman Feener then asked if everyone was clear on the motion saying "if you vote in favor of the motion you are voting to deny the application. If you vote against the motion you are voting to approve the application". Member Testerman asked what would be the result of him voting in favor of the application with only a three-member board. Director Lewis said that without a unanimous vote, the application would be reheard at the next meeting.

Gary Auger asked to speak and Chairman Feener gave his okay.

Mr. Auger said that he was been in business for 30 years and 'has this thing about being organized'. He has a lot of expensive equipment associated with the business which is why he has a shed. If he gets a night call and somebody doesn't have heat, he can take that equipment in his truck and service that customer. The other shed is his mechanical

shed because he used to have a garage to put all his stuff. That was a 1200 sq. ft. service shop for both his personal use and the heating business. Besides the two sheds, they have storage at Tilton Trailer that has been broken into. Security is an issue. They will not insure his materials at Tilton Trailers. They've owned on Maple Square for 8 months and they've made this a nice-looking property. If the shed were placed anywhere else, it would be an eye-sore. The only other spot is where they'd like to put in a garden. No one can see it except Kathy. They are not trying to make waves; they've been involved with the community in Tilton for 22 years and they'd like to be involved in Franklin. They were just ignorant of the set back issue in Franklin since it wasn't an issue in Tilton. The crane guy showed up on a holiday and said this is your window and at \$150 an hour we went ahead and had it moved and his wife came down for the permit the very next day. He added that they put \$70,000 into this property and the placement of the 4-bay garage is really important to him. If it works out that he can put a shed alongside the garage, he will do that.

Chairman Feener said that the public hearing was now closed. He had a problem with the order these things were done and that the reasoning for requesting a variance isn't there. He felt that applicants should review the rules of the community prior to making any changes to the property. Chairman Feener seconded the motion to deny and called for a vote. **The vote was 2-1-0**, with both he and Vice Chair Davis voting to deny the variance and Member Testerman voting to approve the variance. Director Lewis said the variance is neither approved nor denied and that it will need to be continued to next month's agenda.

Mr. Auger asked what Chairman Feener meant when he said there could be a temporary approval and Mr. Feener said the shed might be temporarily allowed until the garage was built if the members of the board so voted at the next hearing.

Planner's Update: None

Other Business: None

Public Comment: None

Adjournment: Member Testerman made a motion to adjourn at 7:55 PM, which was seconded by Member Davis. All were in favor.

Recorded by Cheryl Y. Fisher, Administrative Assistant Planning and Zoning.

The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, September 5, 2018, at 7:00 p.m.; the deadline date for submission of applications for this meeting is Wednesday, August 15, 2018.