

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

**Wednesday, November 7, 2018 at 7:00 p.m.; City Council Chambers**

**Minutes**

**Call to Order**

**☐ Salute to the Flag**

**☐ Roll Call -- Present:** Chairman Glen Feener, Vice-Chair Debbie Davis, Jeffrey Dickinson, David Testerman, Cecile Cormier, Kathlene Fleckenstein & Zoning Director Richard Lewis  
As an alternate, Member Cormier has no vote in the first two applications, but will be able to ask questions and contribute to the discussion.

**☐ Approval of Minutes of the October 3, 2018 Public Meetings of the Board.** Members Testerman / Dickinson motioned / seconded approval of the minutes. **By a vote of 5-0-0, the motion passed.**

**Old Business:** None. Member Cormier asked if Z18-12 [Auger shed] was a rehearing or a new application. Director Lewis answered that it was a rehearing that the board had granted at its previous meeting.

**New Business:**

**Z 18-09:** Brian Nawoj, owner is seeking a variance from 305.14, Lot and Yard, to replace an existing nonconforming residence with a new residence that does not meet the shoreline [17 ft. vs. 50 ft.] or property line setbacks [19.1', 11.5', & 14.1' versus 50']. The property is located at 19 North Shore Lane [Map/Lot 032-048-00, Map Sheet H4] in the LP [Lake Protection] zoning district.

Brian Nawoj said that he is seeking a variance to rebuild the family cottage that was built back in the 1950s and is beyond repair. The lot is roughly 100' x 75' so it doesn't meet the setbacks required under the current zoning ordinance, however the footprint is grandfathered. They have applied for and been granted approval for a Shoreland Impact Permit.

Nicole Roseberry, Ames Associates, explained that the plans before the board show the footprint/plan of the existing cottage in orange and the proposed house and porch in purple. The current cottage, including the overhang from the existing deck, is 17 feet from the shoreline with the living space 25.8 feet back from the shoreline. The existing structure is 14.1 feet from the south property line, 11.5 feet from road and 16.5 feet from the north property line. The cottage covers 24.9% of the lot. With the new house they will maintain the same setbacks as the original and actually be at 19.4 feet on the north side. The new structure will be cantilevered four feet beyond the original roadside facing wall, but no closer to the road than the existing 5' x 5' front deck/stoop. There will be no net gain in lot coverage.

Member Cormier questioned the 12" overhang on the north side of the proposed house. Ms. Roseberry stated that is only the proposed roof overhang, that the only cantilevered section of the house will be on the road, or east side of the house.

Director Lewis directed the board's attention to his memo to the board which stated that the 2012 approval for a septic system was conditional, that the 'replacement of the structure shall not increase the existing footprint or outside dimensions. As of April 30th, of this year, that restriction was removed, although the cottage is still for seasonal use only. One issue is the fact that this 4 foot cantilever moves the structure closer to the front lot line. An exit from the front of the house would require how many steps? How close to the road will these steps land? He suggested that the applicant supply a front elevation drawing of the house before the board makes any decision. He went on to add that the cantilevered portion is over the existing pump system for septic leach field which is located across the street on a neighbor's property. He then asked Ms. Roseberry about the DES policy with regards to the existing enclosed porch on the back side of the house. Does DES consider that living space? Ms. Roseberry answered that since it is not insulated or heated it isn't considered living space. Mr. Lewis questioned the size of the footprint when the existing house is 16.3 feet deep and the proposed house is over 27 feet deep with an 8-foot porch on the lake side.

Ms. Roseberry explained that the existing offset from the shoreline is 17 feet. As long as the proposed structure doesn't come any nearer to the shore than 17 feet it is acceptable. In this case the shoreline turns away from the house, so the new porch will comply with that 17-foot restriction. The state looks at the closet point (in this case 17 feet) and applies it to the whole lot. She added that the 3-foot jog in the back of the living space is to accommodate the required distance from the shoreline. Director Lewis recommended that the hearing be continued in December to allow for the submission of the elevation drawings showing the cantilever section and the steps from the front door.

Member Cormier asked if the existing cottage is just one story and if the new house would have a second story, to which Ms. Roseberry answered 'yes'. She also asked if DES approved the plantings along the shoreline and Ms. Roseberry answered that they did. Lastly, Member Cormier echoed Director Lewis's request for elevation drawings.

Member Testerman wasn't convinced that the drawings would be beneficial to their decision and Director Lewis explained that it is best for the board to have all the available information prior to making a decision again, alluding to the possibility of the front steps encroaching on the front setback. Member Testerman asked if a variance was needed for that and Director Lewis answered that the front of the proposed house is closer to the front lot line than existing house.

Ms. Roseberry asked if there was a limit to the depth of the front steps and Mr. Nawoj suggested that they might be able to incorporate the steps into the building, adding that he could bring that information to the December meeting. He also stated that the ridgeline of the building wouldn't be much higher than that of the existing cottage, saying that extra space upstairs will be achieved by dormers. The plans before the board are just preliminary plans and not construction plans.

All the board members agreed that they'd like to see the drawings, but Members Cormier, Testerman and Dickinson also questioned whether those drawings would make a difference to how they vote. Member Fleckenstein reminded the board that there were issues with a previous hearing of lakefront property that involved not only increasing the square footage of the residence but the height. Chair Feener added that he felt the overall consensus was that they needed more information about both the front entry and the height of the new structure and suggested that the property owner get together with the Planning Department so that information will be available at the December meeting.

Member Dickinson suggested that the board be supplied with two separate drawings of the existing and proposed structures instead of the overlay drawing. Ms. Roseberry agreed.

Members Fleckenstein / Davis motioned / seconded a continuance until Wednesday, December 5, 2018. **The motion passed with a vote of 5-0-0.**

**Z 18-11:** Anthony & Linda Bordeau, owners are seeking a variance from 305.14, Lot and Yard, to construct an addition to their garage that will not meet the side yard setback [15 ft. vs. 25 ft.]. The property is located at 274 Victory Drive [Map/Lot 116-005-00, Map Sheet M8] in the RS [Single Family Residential] zoning district.

Mr. Bordeau told the board that they wished to build an 18 foot addition to their existing one car garage so that they can get 2 more vehicles undercover. The distance to the side property line is currently 33 feet, by using 18 feet for the addition they will be 15 feet from the property line. Mr. Bordeau mentioned that there was a 125-foot driveway next to his lot line that serves the house next door.

Vice-Chair Davis asked if the addition would be the same width as the existing structure and Mr. Bordeau said yes and added that the house was built in the sixties and had 8" wide aluminum siding that isn't available any longer. He intends to finish off the addition in vinyl siding.

After a few more question by board members regarding the neighboring driveway, the public session was closed. Member Fleckenstein asked if there had been any response from the abutters and Director Lewis answered that there hadn't been. Chair Feener mentioned that with just 15 feet to the side property line, there wouldn't be much space on the abutting property. Member Cormier said she drove by the property and felt that there was ample room, that the only thing the addition would be encroaching is the driveway.

Members Fleckenstein / Dickinson motioned / seconded approval of the application. **The motion passed by a vote of 5-0-0.**

**Z 18-12:** Debra & Gary Auger, owners are seeking a rehearing on their application for a variance from 305-29.4, Sheds, to place a 112 sq. ft. shed 2 feet [versus the required 10 feet] 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 and Member Cormier will have a vote.

Gary Auger explained that they are looking for variance for a shed. He asked if he should go over all the details of the original application or just take questions from the board. Member Cormier said that she would like to have him address the Notice of Decision from the August / September meetings. Mr. Auger stated that he never received the Notice of Decision.

Member Cormier then asked about the statement in the memo to the Board that mentioned that the shed now contained lawn equipment and not the business equipment. She was unable to find that statement on the application and it turned out that the recording secretary had neglected to include the second page of the application in the packets sent out to the board. Mr. Auger said that he was

considering moving the business equipment to the concrete block building and placing the yard equipment in the shed at Director Lewis's suggestion.

Member Testerman said that the bottom line is that some people don't want the shed where it sits today regardless of what is in it. He felt that Director Lewis didn't want the board to issue a variance for the shed. Director Lewis explained that the issue is that the shed was put into place prior to obtaining a building permit. Secondly, he feels that there is the problem of overcrowding. He feels that the Board is put in an awkward position if the applicant comes in asking for a variance after the fact. Although Mr. and Mrs. Rago have no objection to the shed being 29 inches off the property line, the next owner might. And finally, this application is a duplicate of the first application and it shouldn't be reheard. Member Testerman said that if the Ragos lost a sale because the prospective buyer didn't like a shed that close, that would be their issue.

Member Cormier said that it appears that the person came to move the shed on a holiday which left the Augers with the problem of seeking a building permit after the fact. She added that she drove by the site and the shed isn't visible from the road. The home and lot are well maintained. She asked Mr. Auger about the steepness of the backyard slope and he said it is about 18% making about a third of the property unusable. Mr. Auger said that there are numerous sheds and chicken coops in Franklin closer to the property lines and no one objects to those.

Member Dickinson said that when they came in for the building permit it was mentioned several times that the shed needed to be 10 feet from the property line. There is even a document signed by the home owner that the shed needed to be 10 feet from the property line. He asked why the Augers couldn't move the fountain to allow for the shed's compliance. Mr. Auger answered that it was all about aesthetics. The fountain creates a courtyard in front of the Victorian house. He also said that the shed had come from his old property. The company that moved it dropped it off in the driveway where it sat for several months. When the tree guy came on the holiday to move the shed, they looked around to find the best spot to place it that also provided security. There was a zero-foot setback in the town where they moved from and they just assumed that it would be the same in Franklin. He added that they want to put a garage on the other side of the driveway so they couldn't put the shed there. He realized now that they should have waited for the full board to be present at the first meeting; they just didn't think it would be such a big deal. He concluded by saying that he felt they had been treated badly by the board. Now I have \$400 into permits, notices and no one cares about it except the board.

Chairman Feener asked if it ever occurred to him to check about setbacks when the shed sat there for months in the driveway. Mr. Auger said that he didn't understand why they were being treated this way and Chair Feener replied that Mr. Auger was treating the board with disrespect. Mr. Auger said that Mr. Feener was the one with the attitude.

Member Cormier suggested that they get back to the issue and asked if Mr. Auger could answer the denial of his application after the first meeting. Mr. Auger said they left the first meeting with a two to one decision to deny and that Mr. Lewis had indicated that there would be a continuation of the hearing the next month. In the interim, the city lawyer ruled that that the decision holds. They only got that information immediately before the next month's meeting. When we attended that meeting with questions we were told "shut up, you're done." He asked if they felt they'd been treated fairly and the answer was 'no.'

Member Cormier said she was referring to the Notice of Decision which stated the reasons for denial and Mr. Auger said he never received it. Member Cormier suggested Mr. Auger read it and respond, but Member Testerman said he was uncomfortable with asking the applicant to respond to something he didn't get without proper preparation time. Member Cormier asked, given that the applicant never received the Notice of Decision and the memo was not received in a timely, if he wished to postpone the decision again or move forward. Mr. and Mrs. Auger conferred for a few minutes and then Mr. Auger said that there are properties in his neighborhood with sheds in poor conditions, placed there without permits and zero feet from the property line. He added that he had a problem with how he is being treated when he tried to do the right thing.

Vice Chair Davis said that her only concern is the fact that there are other places on the property where the shed could be placed, but that the applicant chose not to do that because they like the aesthetics of it where it is. That isn't enough of a hardship for the Board to grant a variance.

Director Lewis brought the board's attention to the last paragraph at bottom of memo for this hearing that stated, "If the Board disagreed with my opinions and my recommendation to deny the variance and wished instead to approve the variance, I would strongly recommend that any approval be drafted so it is clear that the shed can only remain in place until the proposed garage is constructed. To allow the shed to remain [along with the existing block accessory structure and the future garage] would only exacerbate the over-crowding of the property."

Member Testerman asked Mr. Auger if he would be willing to remove the shed at the time the garage was built and Mr. Auger indicated that he would do so. Member Testerman suggested a time frame for the building of the garage and Mr. Auger agreed to the two-year time frame suggested by Director Lewis. Chairman Feener opened the meeting to the public. No one from the public spoke.

With the public hearing closed, Member Testerman motioned for approval of the shed remaining where it is on the condition that it would be removed when the proposed garage is built within two years. Member Cormier seconded that conditional approval. Both Vice-Chair Davis and Member Dickinson agreed that this was a fair compromise. **The conditional approval passed by a vote of 4-1-0** with Chairman Feener voting to deny. A formal vote on the revised draft decision will be taken at the December 5<sup>th</sup> meeting.

**Planner's Update:**

**Other Business:**

**Public Comment:**

**Adjournment: Cormier / Davis motioned / seconded adjournment at 8:38 pm. All in favor.**

The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, December 5, 2018, at 7:00 p.m.; the deadline date for submission of applications for this meeting is Wednesday, November 14, 2018.