

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

Wednesday, September 4, 2019 at 6:30 p.m.; City Council Chambers

Minutes

Call to Order

☐ Salute to the Flag

☐ Roll Call – Present: Chairman Glen Feener, Vice Chair Kathlene Fleckenstein, Debbie Davis, Jeffrey Dickinson, Cecile Cormier, and David Testerman. Also present: Planning Director Richard Lewis and Attorney Paul Fitzgerald Absent – Robert Hubble.

❖ Seat Alternates: Full board present. Member Cormier will not be voting.

☐ Approval of Minutes of the July 10, 2019 Public Meetings of the Board. Member Testerman motioned, Member Dickinson seconded approval of the minutes. Member Cormier pointed out a type in the third paragraph of page one. By a vote of 5-0-0, the minutes were approved as amended. Members Fleckenstein/Davis motioned/seconded approval of the **August 7th** notations. There was no discussion. By a vote of 5-0-0, those minutes were approved.

Old Business:

Z19-09: Continued from August 7th: Richard Edmunds, Jr. and Frank & Charlotte Edmunds [owners] and Tim Bernier [applicant] are seeking approval for 5 lots, all of which require a variance from 305-14 [Lot & Yard] for having less than the required frontage [400 ft.] and minimum lot size [5.165 acres] in the Conservation district. The property [Map/Lot 091-020-00, Sheet G6] on Hill Road.

Attorney Seufert, the Edmunds family and Tim Bernier from T.F. Bernier, Inc. were present. Attorney Seufert asked Mr. Bernier to present the updated subdivision plan and his assessment of the lots in the neighborhood. Mr. Bernier indicated that of the eleven abutting properties in the neighborhood only three are conforming. Those marked in red are non-conforming for the district. The proposed lots are pretty close to meeting the requirements. All five lots are good size ranging from 3.76 acres to 5.001 acres. The zoning district requires 400 feet of road frontage and the new lots will go from the shortest at 300.80 feet to the longest at 361.35 feet. Hill Road is a State Highway and a lot that has existed since 1972 is only allowed three driveways or curb cuts of a State Highway. The Edmunds are proposing just three driveways, with two of those being shared between abutting lots. The green are the existing houses; there is an existing house on the first lot within the subdivision, but all the rest are vacant. Of the eleven abutters only three were conforming. Across the street are seven houses and there will only be five houses on the new subdivision. The plan looks like a good fit for the neighborhood. They designed the subdivision to create the nicest building envelopes. They looked at making two small lots and having the rest of them conform, but decided it would make more sense to make all the lots pretty good size.

Attorney Seufert asked about any wetland areas. Mr. Bernier indicated the culvert that crosses the road and carries some drainage. There was a natural earthen berm that created a bit of a wetland

that then created a well-defined stream. To get the lots as close to five acres, they created some angles in the property lines. The other aspect is the density requirement when the city adopted the zoning ordinance. From an environmental standpoint a buildable lot of 2.5 acres is sufficient to place a home, septic, and well, so this is strictly a density issue and most of the lots in the neighborhood are smaller than the lots they are proposing. Attorney Seufert asked how far south the Conservation zone extends. Mr. Bernier answered that on the Edmunds side of the road it goes all the way to the commercial district. The attorney then asked how many lots are conforming on the east side of the road. Mr. Bernier answered that there were none except for the Corp of Engineers which is exempt from zoning. Attorney Seufert mentioned that there was a proposal last year for a four-lot subdivision that still would have needed variances. Whether it was for four or five lots, variances would have been needed.

Member Testerman asked about the satellite dishes indicated on the lot with the existing house. Mr. Bernier said that they had considered solar which could provide the houses with electricity. Attorney Seufert added that solar isn't in this proposal but might be considered in the future. Member Cormier asked how that could be done in the future, if the lots are being sold individually. Will there be a covenant in the deeds for these sales? Mr. Bernier again said that right now they aren't thinking of doing it. Member Cormier mentioned that the density in this particular area looks pretty low. She then asked Planner Lewis when the conservation district was adopted by the city. Planner Lewis answered that he thought it went back to the original zoning in the early seventies. Member Cormier commented that it is likely that most of the existing houses in this area were built before that time.

Member Testerman observed that it seems contrary to what a conservation zone is to include a large gravel pit in that zone. Planner Lewis said he couldn't judge on that since he wasn't around during that time. Member Cormier asked if the gravel pit was responsible for the wetlands. Mr. Bernier said the wetlands and stream are a result of natural gradient and that the State put in a culvert over the significant portion of the stream. He guesses that the State relocated the stream at some point.

Attorney Seufert remarked that if the conservation zoning was put in the 1970s or 60s, then a lot of properties are out of conformance. Mr. Bernier said that studying the deeds on these properties, indicate that the lots are created prior to the zoning ordinance. Attorney Seufert confirmed that there were no city services available in this area and therefore there wouldn't be a strain on the city's facilities. He also confirmed that the mobile home on the one lot would be removed. Mr. Richard Edmunds, Jr. indicated that this was likely since they are expecting that buyers of these properties would likely put up \$300,000 homes. They are hoping that the sale of these lots for homes in that range would create a bigger tax base. Member Cormier added that owners of a larger house may have more children which would add to the burden on the schools. Attorney Seufert asked if the City wanted to bring in more children to help propagate the school system or see the school system die on the vine. Mr. Bernier brought up the solar again suggesting that the city may just want to see that portion of the gravel pit go back to being woodlands. Member Cormier suggested that they could just put individual solar arrays on each house. Mr. Bernier said that old abandoned gravel pits and landfills are seeing a lot of solar installations.

Chairman Feener asked why the subdivision plan went from four lots to five. Mr. Bernier said that an assessment of the neighborhood suggested that is seemed to fit in with the area. Additionally, an extra lot would help bring in another \$300,000 in tax revenues. Chair Feener recalled a previous comment made that numerous variances would be needed even for just the four-lot subdivision;

however, this isn't so, the first plan only requested a variance for 8 feet of frontage. This new plan calls for a lot of variances. He also corrected Mr. Bernier that the extra lot would not bring in \$300,000 in tax revenues. Mr. Bernier acknowledged that he meant taxable property.

Planner Lewis referred to the original memo sent out to the Board for the August meeting outlining his concerns for this project. That same memo was sent out for this meeting. He said that he'd been doing zoning for thirty-two years, and he just doesn't see any reasonable argument to support the hardship criteria for the variance. The variance process is not intended to maximize the development capacity of the land. As Member Cormier read the description of the conservation zone from the Zoning Ordinance. Planner Lewis stated that chopping up the lot into five parcels runs contrary to the goals of the zoning ordinance. The parcel when it was purchased in 1989 had the same zoning requirements. The City of Franklin established a lot/area table requirement in early 70s. To use the argument that there are seven existing lots that don't meet the current criteria, is to go against the Zoning Ordinance. He pointed out that the packet that went out for tonight's meeting there was a letter from Allan and Virginia Heiss which enumerated their concerns.

Member Dickinson asked why the four-lot application was withdrawn. Was it withdrawn because it was anticipated that they would be coming back to ask for five? Mr. Bernier said that the Edmunds were long time residents of Franklin and they felt that the five lots fit with the neighborhood and would bring in more tax revenues.

Member Testerman said it looks like there are three entrances on Route 3 versus five entrances. A lot of the lot frontage is based on single entrances. Are there any adjustments that are allowed, or have been granted due to the number of entrances on the highway being reduced? Mr. Bernier stated that any property that existed in 1972 and had over 1000 feet of frontage on a State Highway is entitled to three access points. The State is trying to minimize the number of intersections. So, by sharing a driveway, they are allowed a wider driveway than a single driveway. Essentially, each lot has its own half of the driveway. Member Cormier asked if the driveway at the road is actually two driveways. Mr. Bernier said that a normal driveway is ten feet and the shared is about 18 feet. Member Cormier mentioned that in Rochester there were a lot of problems with common driveways and discord with the neighbors; she recommended that there be some sort of agreement or easement to go with these properties should this subdivision be approved. Mr. Bernier said several communities in southern NH have adopted this same rule for their local streets to minimize the number of intersections on local streets and about 99% of neighbors get along. By making it wider it alleviates this sort of problem.

Chairman Feener asked if City Attorney Paul Fitzgerald had any comments or questions. Attorney Fitzgerald said he didn't have anything to add. Mr. Seufert said that under the statute that we operate under now hardship is described as "no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property and that the proposed use is a reasonable one." Mr. Lewis's position is that this is unreasonable for the neighborhood if we 'cookie cutter' up these zones, but most of all of the neighborhood is non-conforming so it isn't going to change the look of the neighborhood. That is the standard that needs to be looked at when voting on this application.

Public: Sean Bean-485 Hill Road: He stated that he has seen horrible accidents on this road especially on weekends with teen drivers. People don't obey the speed limits on that corner. Mr. Bean

questioned the stability of any solar panels installed on the steep slope of the sandpit. Personally, he wasn't able to get a one-foot variance for an expansion of his deck, so he questioned giving significant variances for the proposed subdivision.

David White-470 Hill Road across the street. He explained that he moved here in 2013, thinking he would be living in a rural area. He questioned the point of zoning laws if someone can come along and change it. Mr. White stated that there wasn't any hardship involved here, it is about making more money, which will just push up his taxes too, along with impacting the police and fire departments. There are a lot of elderly people on the road and it will hurt them if the taxes go up. He stated that the road is dangerous with cars coming around the curve at 80 miles-per-hour. His final comment was that the zoning should be followed to the letter, otherwise change the law.

Virginia Heiss-448 Hill Road. She too didn't think there should be a variance for five lots. Additionally, she had concerns about the wet area and the potential for flooding. She also stated that the road is dangerous. Mrs. Heiss asked if the Edmunds can market the lots as individual lots or if they would be building the houses on them. Planner Lewis answered that this was not a subject of the discussion with the Board. The Edmunds can either market the lots as individual lots or they could build spec houses.

Chairman Feener brought the discussion back to the board. Member Cormier quoted RSA 674.33, section I.B(2), regarding hardship, which states in part the property in this case could be used reasonably and can meet the zoning ordinance with three lots. Member Dickinson said that his inclination is that the Board should deny the application. The 2018 submission was a reasonable one seeing that it was just asking for an 8-foot variance. This is an over-reach and asks for too much of a variance. Chairman Feener alluded to the comment that this would create more tax revenue for the city, but that is not what the Board is here for; the question is whether this meets the criteria for a variance under the existing zoning. Member Davis said she concurred with Member Dickinson, that five lots are unreasonable; the four-lot application only asked for a small variance. She didn't feel that they could use the fact that there are non-conforming houses on the other side of the road. Those homes were there prior to this zoning being in place.

Vice Chair Fleckenstein made a motion to deny the variance. Member Dickinson seconded. Chairman Feener reminded the Board that a vote in favor of the motion is a vote to deny the variance. **By a vote of 4-1-0** the motion to deny the variance was approved. Member Testerman voted against denial. Member Cormier reminded the applicants that they have 30 days to appeal the decision.

New Business:

Z19-10: Tobias & Jamie Wolfe, owners, are seeking a variance from 305-14 Lot/Yard to construct a 30 ft. by 32 ft. attached garage that will not meet front and rear setbacks (40 & 47 feet vs. 50 feet required). The property is located at 21 Lake Avenue [Map/Lot 076-071-00, Map Sheet L6] in the Lake Protection zoning district.

Jamie Wolfe told the board that they wanted to build a new garage since the existing garage was unusable due to the fact that it was angled toward the house. It also was rotting and leaking and they pulled it down over the past weekend. They are asking for a bigger garage that would be

attached to the house, big enough to park two cars in there with a bit of extra space for a woodworking shop. The new garage will be about three feet shy of the 50-foot rear setback, but it won't be any closer than the previously existing garage. The house is only about 40 feet from the front setback but they are asking for the garage to be two feet nearer than that to avoid having a continuously flat front to the house. They want to come out two feet to break up the front a bit to make it more aesthetically pleasing. Although the house is in the Lake Protected Zone it is about $\frac{3}{4}$ of a mile from the lake. There is no setback issue on the side of the proposed structure and all the neighbors they've spoken to are in favor of the addition. There is nobody living directly across the street.

Member Cormier noted that on the GIS map, there appeared to be a lot of trees between the proposed garage and the rear abutter. Ms. Wolfe stated that there is currently only one line of trees, that they had cut down a lot of trees.

The meeting was open to the public, but no one chose to speak. When the discussion was brought back to the board, Member Testerman asked if DES approval was still necessary. Planner Lewis explained that the depth of the shoreland protection act is 250 feet from the lake and this property is well beyond that. A motion to approve the variance was made by Member Testerman and seconded by Vice Chair Fleckenstein. **The motion carried by a vote of 5-0-0.**

Z19-11: Charles & Patricia Dyer, owners, are seeking a variance from 305-14 Lot/Yard to construct a 20 ft. by 24 ft. attached garage that will not meet the side yard setback (10.5 feet vs. 25 feet required). The property is located at 35 Dearborn Street [Map/Lot 134-190-00, Map Sheet M9] in the Single-Family Residential zoning district.

Mr. Dyer told the board that they would like to add a garage since there wasn't one when they purchased the property. The site chosen is the logical one since this is where they currently park their cars. In fact, part of the driveway will be incorporated into the interior of the garage. They only want a 1-car garage with a bit of extra space for the snowblower. Since both he and his wife are getting up in age, it would be more convenient and safer to get to the car if they could go straight into the garage from the house. It would also save them the chore of clearing the snow off the roof of the van in the winter. The width of the lot is fairly narrow and the house takes up half of that width. He has spoken to the neighbors and no one has had any objections. In Mr. Dyer's opinion the addition of the garage will add to the value of the property and therefore to the property values in the neighborhood.

Member Davis asked if the location of the garage would be where they are currently parking their vehicles. Mr. Dyer answered that it is. Member Cormier asked if the other side of the house would meet the setback, but Mr. Dyer said that it is only about 19 feet on that side and since the garage would be placed where they currently park it would make more sense to locate it as shown on the plan. He reiterated that it would be safer for them to enter the garage directly from the house, especially in winter when the drive gets icy.

No one chose to speak either for or against the project when the meeting was opened to the public. Vice Chair Fleckenstein asked Planner Lewis if there was any input from abutters. Planner Lewis said that there was none. Chairman Feener added that the lot size up there was small and by putting the garage where there is already a driveway is a good idea. Vice Chair Fleckenstein made a motion to

approve the variance which was seconded by Member Dickinson. **By a vote of 5-0-0, the motion carried.**

Planner's Update: none

Other Business: Member Cormier asked if the Planning Board could redesign the zoning lines in either the Conservation or the Lake Protected area. Planner Lewis said that the main problem is getting time to draft something up, but this is on his list.

Public Comment: None

Adjournment: Davis/Fleckenstein 5-0-0 to adjourn at 7:45 pm

The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, October 2, 2019, at 6:30 p.m. The deadline date for submission of applications for this meeting is Wednesday, September 11, 2019.