

**FRANKLIN ZONING BOARD
REGULAR MEETING AND PUBLIC HEARING
CITY COUNCIL CHAMBERS- CITY HALL
Wednesday, May 4, 2016, at 7:00 p.m.**

MINUTES

Call to Order: The meeting was called to order at 7:08 p.m.

☐ **Salute to the Flag**

☐ **Roll Call**

Present: David Testerman, Jeffrey Dickinson, Debbie Davis

Absent: Kathleen Fleckenstein, Michael Weatherbee and Donald Gagnon.

Vice Chair, David Testerman sitting in for Chairman Kathleen Fleckenstein.

- ☐ **Approval of Minutes:** April 6, 2016 Zoning Board Meeting; Member Dickinson indicated that on page 2 his name was spelled incorrectly and should read Dickinson.

MOTION: Member Dickinson moved and Member Davis seconded to approve the minutes of the April 6, 2016 Zoning Board regular meeting as amended. All were in favor and the motion passed.

Mr. Lewis informed all those present that the Board was sitting with only 3 members and therefore any decision by the board would need to be unanimous. Any applicant wishing to postpone their hearing until the next Zoning Board Meeting might do so.

Old Business

- ☐ Z16-03: Laurie Cass requests a Variance from Section 305-14, Lot and Yard Requirements, and a Special Exception per Sections 305-13, Use Table and 305-29.8, Family Apartment, to construct a family apartment on the second floor of a proposed attached garage which will not meet the required side yard setback [8-feet proposed versus 15-feet required], and the family apartment will be larger than allowed per the criteria at Section 305-29-8 [720 sq.ft. versus 444 sq. ft.]. The existing home is located at 1 Evergreen Avenue, tax map and lot 118-128-00, in the R-3, One, Two, and Three-unit residential zoning district.

Brian McDuffee, brother of owner & applicant, Laurie Cass, indicated that the existing three bedroom house at 1 Evergreen Avenue is insufficient for housing the 5 members of the household and they are seeking to expand that living space by constructing a garage with a living unit above. Due to the grade of the property and the distance from street utilities, it is not feasible to build behind the house. Therefore they are seeking approval to build to the side of the exiting house.

Director Lewis stated that the original plan would put the garage eleven (11) feet from the side property line but that the addition of a breezeway to connect the house and the garage would reduce that to only eight (8) feet.

Member Dickinson asked if the applicant had spoken to the abutters. Mr. McDuffee said that they had spoken to Frank and April Bryson at 5 Evergreen Avenue and that they had no problem with the reduced side yard placement.

Vice Chair Testerman asked for any public comment. There were no comments.

Director Lewis referred to a memo to the Board concerning a recently signed piece of state legislation that would allow this type of accessory dwelling as a right as opposed to having to go through a variance process and that this particular project, the size of both the garage and the apartment above, fit the criteria of this newly signed state statute. The statute will take effect June 1, 2017 so as to allow cities and towns across the state time to modify their zoning ordinances so that they are in compliance with the language of the state statute. The Planning Board will be making those changes and then taking them to the City Council for approval.

MOTION: **Member Dickinson moved and Member Davis seconded that the Zoning Board of Adjustment approve** the variance application request Z16-03 for Laurie Cass, requesting a Variance from Section 305-14, Lot and Yard Requirements, and a Special Exception per Sections 305-13, Use Table and 305-29.8, Family Apartment, to construct at 1 Evergreen Avenue a family apartment on the second floor of a proposed attached garage, where the garage will not meet the required side yard setback and the family apartment will be larger than allowed. The Board finds that the application request meets the tests and criteria necessary for the granting of a Variance and the Special Exception as spelled out in the draft decision to approve which has been reviewed and approved, including any modifications, by the Board. **All were in favor and the motion passed.** The approval is subject to the following conditions:

1. The applicant or their designee shall obtain a building permit for the proposed work and a Certificate of Occupancy once the work is completed.
2. The garage shall be located as shown on the site plan sketch submitted as part of this application package.
3. All construction in the new structure shall conform to the required and applicable building and fire or life codes.

New Business

- ❑ **Z16-04:** Jessica Bregler requests an Agricultural Waiver in order to locate a chicken coop on the property located at 99 Pearl Street, tax map 134-043-00, in the RS Zone (Single Family Residential District). The waiver allows an agricultural use in a zone where it isn't allowed, or where the required setbacks can not be maintained.

Jackson Bregler, husband of Jessica Bregler, addressed the Board. He stated that following a discussion with the Clarks at 81 Pearl Street, they relocated the site of the chicken/duck coop from the planned location near the southeast corner to the northwest front corner of their property next to the Greens at 139 Pearl Street. He stated that they had originally planned on keeping chickens but switched to ducks.

Member Dickinson asked if they had spoken to all the abutters. He also confirmed that the Breglers had already gotten the birds.

Member Testerman asked where the ducks were kept when they were not in the coop. Mr. Bregler stated that the ducks were kept in a shelter on top of the coop but that they were planning to build a runner around the coop so the ducks would have more space. Member Davis inquired if the birds were free ranging and Mr. Bregler said that the birds would always be caged and that they had plans to add a pond. Member Dickinson asked about any issues with the odor. Mr. Bregler said that the odor wasn't anything out of the ordinary. Director Lewis asked about the distance of the coop from the lot line because from the drawing supplied it looked like the coop was in the front of the house. Mr. Bregler answered that the location was a little bit more to the side than the front of the house, tucked behind some trees and bushes, not really visible from the road.

Vice Chair Testerman asked for any public comment

William Clark, owner at 81 Pearl Street, having researched the Permaculture handbook, expressed concern for the ducks' health and well-being. His wife Joya Clark added that they had purchased their home 6 months earlier in a

residential district and that allowing a waiver for ducks or chickens would be setting precedence in the neighborhood. She was also concerned about pathogens from the duck manure, questioning the Breglers' method of taking care of that issue. An additional concern was the possibility of increasing an already existing rodent problem with the feed scattered about. She felt that the ducks would suffer from proper care since the owners are normally gone from 7-8 a.m. in the morning to 6-7 p.m. in the evening. Member Dickinson asked again about the odor and Mrs. Clark said that it was too soon to know since the ducks are young and the weather hasn't been hot or humid.

Gerald Green, of 139 Pearl Street, said that they were now the nearest abutters to the coop and that they didn't have a problem with the ducks.

Director Lewis read a letter from Richard Wiser dated May 1, 2016. In the letter Mr. Wiser stated that he lived at 110 Chestnut Street and his backyard abutted to the Breglers' backyard, and that Jessica Bregler purchased the property at 99 Pearl Street knowing it was a residential, single family district. He expressed concerns about the odor in the summer and the decline in property values should an agricultural waiver be allowed. Mr. Bregler argued that the coop was no longer located at the rear of his property near the Wiser property.

Vice Chair Testerman turned the discussion back to the board. There was a general agreement that there was a lack of unanimity with the neighbors.

MOTION: Member Dickinson moved and Member Davis seconded that the Zoning Board of Adjustment deny the Agricultural Waiver requested by Jessica Bregler to allow a duck or chicken coop on the property located at 99 Pearl Street, tax map 134-043-00, in the RS Zone (Single Family Residential District). The Board finds that the proposal fails to meet the criteria for the granting of the waiver for the following reasons:

- a. The application has not fully demonstrated that there will not be an adverse effect of the public health or safety, or the value of the adjacent property for the following reasons. Concerns raised by the abutters about noise, smell, and the nuisance factors are critical factors in this determination by the Board.
- b. Due to the concerns raised by the neighbors, and the fact that the application has not proposed alternative approaches to address these concerns, the Board must conclude that the property is too small for this type of activity in this neighbor setting.

The vote was 2-1 in favor of the motion to deny the application and the motion passed..

- ❑ **Z16-05:** Aaron Clark requests a variance from Section 305-14, Lot and Yard Table, to allow for the construction of an addition that is closer to the side lot line than permitted (16-feet proposed versus 25-feet required). The property is located at 324 Victory Drive, tax map and lot 115-002-00, in the RS (Single Family Residential District).

Aaron Clark addressed the board stating that his house has become too small for his growing family and he wishes to build an addition to the existing house which is only 15 feet from the side lot line. The addition he is proposing will actually be 16 feet from that same line. Director Lewis mentioned discussions he has had with Mr. Clark regarding the topography of the abutting lot which is city property, stating that there is little likelihood of the city property being developed and that a variance is basically the only option open to Mr. Clark. Vice Chair Testerman asked if the city had been notified and Mr. Lewis said yes. Vice Chair Testerman then asked if there was any discussion from the public and when there wasn't, turned the discussion back to the board.

MOTION: Member Dickinson moved and Member Davis seconded that the Zoning Board of Adjustment approve the variance application request Z16-05 by Aaron Clark for relief from Section 305-14, Lot and Yard Table, to allow for the construction of an addition that is closer to the side lot line than permitted (16-feet proposed versus 25-feet required).

All were in favor and the motion passed. This approval is subject to the following conditions:

1. The applicant or their designee shall obtain a building permit for the proposed work and a Certificate of Occupancy once the work is completed.

2. The location of the proposed new dwelling shall conform to the plan submitted with the variance application.

- ❑ **Z16-06:** Jennifer Carrier requests an Agricultural Waiver in order to locate a chicken coop on the property located at 274 South Main Street, tax map and lot 099-068, in the B-1 (Low Density Business and Commercial) zoning district. The waiver allows an agricultural use in a zone where it isn't allowed, or where the required setbacks can not be maintained.

Delany and Jennifer Carrier stated that they spoke with their abutters and no one indicated a problem with the plan to put in a chicken coop. The planned location of the coop was within a 20 ft. x 40 ft. plot of forsythia and therefore hidden from view. Vice Chair Testerman asked how many chickens they were thinking of keeping and the Carriers stated it would be 6-12 birds. They also stated that the coop would be well fenced in to prevent attacks by foxes and skunks.

MOTION: Vice Chair Testerman moved and Member Dickinson seconded that the Zoning Board of Adjustment grant Jennifer Carrier an Agricultural Waiver in order to locate a chicken coop on the property located at 274 South Main Street, tax map and lot 099-068, in the B-1 (Low Density Business and Commercial) zoning district. All were in favor and the motion passed. This approval is subject to the following conditions:

1. The owner shall keep and maintain the chickens in conformance with the Best management Practices prescribed by the NH Department of Agricultural, or other appropriate agencies of the State or the NH Cooperative Extension Service.
2. The Planning Office reserves the right to conduct a site visit within 6 months after the chicken coop is established and populated with said birds.
3. The owner/applicant shall notify the Planning Office when the coop is put into use.
4. A building permit must be obtained prior to the coop being built on the property.
5. The owner/applicant shall not keep any roosters on the property.

Planner's Update: Planning Director Lewis discussed two items:

- HB 1203 is an active bill that would revise how ZBAs discuss and vote on variances. The bill is headed towards Committee hearings in the coming week.
- The appeal for the Sober House on Depot Street is being withdrawn so that the attorney representing the owner can complete a proposed zoning ordinance that would outline how these types of uses could be permitted either by right or with certain conditions of approval applied.

Other Business: None.

Public Comment: None.

Adjournment: MOTION: Vice Chairman Testerman and Member Dickinson moved & seconded to adjourn the May 4, 2016 meeting of the Zoning Board of Adjustment, at 8:05 p.m. All were in favor and the motion passed.