

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

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

Minutes

Call to Order

☐ Salute to the Flag

☐ Roll Call: Chairman Glen Feener, Jeffrey Dickinson, Debbie Davis, David Testerman, and Cecile Cormier. Also Present: Richard Lewis and City Attorney Paul Fitzgerald. Absent: Kathlene Fleckenstein & Robert Hubble.

❖ **Seat Alternates:** Member Cormier is seated for Member Fleckenstein

☐ Approval of Minutes of the October 2, 2019 Public Meetings of the Board. Motion made by Member Cormier to approve minutes as amended; Member Davis seconded. There was no further discussion and **the motion carried by a vote of 5-0-0.**

Old Business:

Continuation of Z19-12: Beverly Anderson, owner, Appeals an Administrative Decision of the Planning Director finding that the Zoning Ordinance does not allow in the Table of Permitted Uses [Section 305-13], and the Purpose Section of the Ordinance [Section 305-1], and the Travel Trailers & Recreational Vehicles Section [305-29.6] & does not support, the granting of permission to camp on the property located on Riverview Drive, tax map 115-101-00 in the R-1 Zone (Low Density Residential District).

Chairman Feener announced that last month's discussion had been opened to the public and asked if the Board wished to reopen the public comment section. Member Davis said she would appreciate hearing any additional comments by the public since she missed the last hearing. Member Cormier made a motion to reopen the public comment forum; Member Davis seconded the motion. **Motion carried by a vote of 5-0-0.**

Attorney Seufert introduced Mr. Les Schuster to speak about the letter he had written for the previous meeting. Mr. Schuster said he and his family lived at 230 South Main Street until 2001. During that time, they actively used the little lot acquired at the City Tax Auction. They had a camper that they left there all the time and a secondary camper they would bring in and out. They used it as a vacation camp site, doing jet skiing and kayaking. Member Cormier asked if they slept over and Mr. Schuster told her they did. She then asked when they last used the site. Although the last time Mr. Schuster used the camper was in 1999, his son and friends continued to use it until about 2016. Chairman Feener asked when the trailer was placed on the property and Mr. Schuster said it was soon after they purchased the property in 1996. Chairman Feener then asked if there was a camper on the lot when the Schusters purchased the property. Mr. Schuster answered that there wasn't, but that other properties had campers and trailers. Member Cormier stated that the tax card of 2015 stated that the camper was a piece of junk. Mr. Schuster said that wasn't the case. Although a tree had fallen on the back half in 2015, they still

used the camper. Planner Lewis asked again when the camper/trailer was placed on the lot and Mr. Schuster said again that it was shortly after the 1996 purchase. Planner Lewis asked if Mr. Schuster had sought permission from the City and Mr. Schuster answered that no he hadn't because he felt it was his land to use as he wished. Member Cormier asked if Mr. Schuster had any problems with the property on Riverview and Mr. Schuster said that the only problem he had was lack of support from the city; a lack of security from the police.

Paulette Mossey, 95 Gile Pond Road, said she moved to Franklin five years ago. She added that she'd been down to this lot and sees no reason why they can't have a travel trailer down there. If we buy a piece of property and can't do anything with it, what good is it to us?

Cathy Capron, 726 Salisbury Road, told the Board that her father, Chris Dumont has a house on Riverview Drive. She said she was present at the previous meeting and heard a lot about the state of Riverview Drive. She went on to say, they sought out a deed lawyer who stated that this road is called a Paper Road. She passed out a print-out of an article on paper street legal issues.

At this point, Planner Lewis, Chairman Feener and City Attorney Paul Fitzgerald asked for a recess. When they returned, Chairman Feener inquired into the relevancy of Mrs. Capron's remarks. Mrs. Capron said that her parents paid for all the hot top that was laid down on that road this week. Her father did this so city personnel could get down safely. She finished by saying that since the road has been improved, she sees no reason why Ms. Anderson shouldn't be able to have her camper down there.

Member Cormier asked about a statement Mrs. Capron made regarding who owns the road and the question of liability. Mrs. Capron asserted that per the State's definition, Riverview is a paper road and that each property owner owns $\frac{1}{2}$ the road (approximately 15 feet from the edge of the road to the center) abutting their property and thereby is liable for any incident that occurs on that portion of the road. Member Testerman asked about the relevance to the Anderson question of whether they can have a camper. Mrs. Capron said it was about a remark that emergency vehicles couldn't get down there safely. Now that the road is paved, Ms. Anderson can get to her property safely.

Planner Lewis added that the real issue is whether zoning ever allow campers to be placed on properties. The evidence is pretty clear that going back to 1968, there is no allowance for camping. When zoning says you can't do something, you can't do something. He added that there is no relevance to the discussion on paper streets to his Administrative Decision

Mr. Schuster added that when he purchased the property, he asked his lawyer if he could 'do this' (camp down there) and the lawyer said that the State of New Hampshire has a statute that says nobody can restrict your use of your piece of land and if so, they shouldn't allow it to be sold. Member Cormier said that although that may be true, each municipality creates zoning ordinances and different uses are allowed on different parcels. Mr. Schuster said it all goes back to when the City of Franklin allowed the subdivision and the sale of the properties. What was the purpose when the property was divided? That was the grandfathered use. Member Cormier informed Mr. Schuster that the Riverview area is zoned R-1 (low density residential) and has been since 1968. Mr. Schuster countered with what was the zoning when the property was subdivided in 1965.

Planner Lewis said that the only subdivision plan of record was recorded in 1959. There were 20 lots at that time, the smallest of which was about 39,200 square feet. The current lot configuration down there bears zero resemblance to the subdivision plan. There was never any approval by the City of Franklin that this plan be modified. There are some lots down there now that are only 3,000 square feet. These multiple subdivisions of the property were done without the knowledge of the City. Mr. Schuster said that lack of action of the City's part doesn't mean that the City didn't allow it to happen. Chairman Feener said that the State of New Hampshire allows communities to set up zoning ordinances. In Mr. Schuster's case, the zoning ordinance was already in place. It is the responsibility of the property owner to know the zoning restrictions for their property.

The discussion was brought back to Board: Member Testerman asked the City Attorney if the Board could disclose what was in the letter the attorney presented to the Board. Attorney Fitzgerald said that it is up to the Board to decide what they wish to disclose. Member Testerman said he would like to discuss the conditions and asked if they could vote of whether to allow the letter to be made public. A motion was made by Member Testerman and seconded by Member Cormier. By a vote of 4-1-0 the motion carried. Chairman Feener voted no.

Member Testerman said that it bothered him that the land was subdivided informally. It has created a problem for the people who bought and sold those properties. He then introduced the four conditions from the City Attorney's letter: the extent by which the activity reflected the nature and purpose of the prior nonconforming use; is the new use different in character and nature from the prior use; is there a substantially different impact on the neighborhood or area; and, the enlarged use should not render the property 'proportionally less adequate'. Member Testerman feels it is questionable as to what the prior use was. He can't see a reason why it can't be used for camping. He added that he'd love to see it go back to what it was in 1969, but that isn't going to happen.

Member Davis said that she has been hearing that there are campers down in this area already, so why is this only the second issue coming before the Board. It is already a situation that the City should be aware of. Planner Lewis said that he and the current and previous code officers have dealt with issues down there. There are some units down there that haven't been used in years and they are in bad shape. Enforcement can take time and it is not possible to solve every problem immediately. This issue came up when he was contacted by Ms. Anderson and given some information. When the Planner went down there, he found that the old camper had been replaced with a 20-foot long camper. Since then, it has been replaced by a pop-up camper. Member Cormier said that she tends to agree that this is a conundrum. She added that she'd driven down that road and it is horrible. She feels that the citizens on that road should go to the City Council and ask that the road be fixed. If the City has not issued a single cease and desist letter, how can we say that, all of a sudden, it is an issue with the City. It is an issue that has been in that neighborhood and never been addressed and I think it is unfair to put the hammer down in this case. Both parties acted in good faith. Unfortunately, they didn't do due diligence. She thinks it is unreasonable to deny it, but feels that going forward some conditions need to be set regarding trailers. Member Davis said her concern is that Franklin doesn't have rulings regarding campgrounds. She is concerned that the continued use of campers down there may result in

problems with septic and waste seeping into the ground and making the area unusable in the future. Member Cormier said that the campers she saw didn't look like they were being used, however, Planner Lewis said he'd been down there just a week ago and it appeared that camping was going on.

Member Testerman asked if any of the lots down there had pressurized water, adding that if so, they would need a conforming septic, otherwise DES will shut them down. Planner Lewis answered that there are some septic systems down there. Chairman Feener said they need to take into consideration that this is the second time the situation down on Riverview has come before the board. The ruling in 2016 was to uphold the Administrative Decision. The zoning was followed at that point. It appears that trailers or campers were put down there without permission from city. The Zoning ordinance is very specific, we do not allow camping in the City of Franklin. That's been the position since 1968. The Chairman feels that Mr. Lewis needs to send out cease and desist orders to all the owners of campers down there. Some of them are in deplorable conditions and that isn't a healthy situation. Member Testerman said he was here in 2016 when the prior case was judged. The applicant wanted to have wording to say that camping was okay. We couldn't do that without violating our ordinances, however she could have come in and asked for a waiver.

Member Davis said she was aware of the current ordinance that restricts camping to no more than 14 days, but she wondered if there were provisions for longer use if a house burnt down. Planner Lewis answered that there are provisions for those circumstances and they were in place in 1968 mobile home park ordinance and that carried through since 1972. Member Davis said her main concern was overcrowding if everyone wanted to have campers on their property, which housed people without any time limits. Planner Lewis said that in a case where someone's house burnt down or was damaged in a storm, the City of Franklin would follow the language found elsewhere in the State, which would allow a person to live in a camper in proximity of the damaged house until repairs were made. This is a fair and reasonable use. The potential for overcrowding in the Riverview area is a real issue. The 1957 plan had reasonably sized lots. There are lots down there now that are only 0.18 acres. The road described in the 1957 plan would have been a decent roadway. The Planner said he could state with some certainty that the City of Franklin will never accept that road due to the condition and the steep drop-off. That creates a hazard for the police and fire departments.

Member Davis brought up the Thousand Acre Campground that once existed off South Main Street, saying that obviously the City isn't averse to camping, but that there are requirements to the operation of those campgrounds. Planner Lewis agreed that campgrounds need certain size parcels, a certain number of bathrooms per the number of parcels, fire separation, and security. He went on to say that this doesn't happen down on Riverview Drive. This unregulated situation creates a problem for emergency services making a timely response. Mr. Catton mentioned the fire at his property that the fire department couldn't reach. The fire had to be fought from above. The Planner said he understands that some roadwork has been performed down there, but he has some questions about this work. There is no certainty to the quality of the road. Chairman Feener asked about the classification of the road and Planner Lewis said it isn't classified, that it is a private road.

Member Cormier said that after listening to the discussion and reviewing the letter from Attorney Fitzgerald, she wants to come back to the issue as to whether or not it is a non-conforming use. Since the property was bought in 1996, it has not become a non-conforming use since the ordinance of the city, along with zoning ordinances were established prior to 1996. Therefore, the camper was there illegally from the beginning. Although the City didn't do anything about it, it is unfortunate that this applicant is going to take the brunt of this situation. The rules and regulations in a city are for everybody, therefore it has to be upheld. If you don't like it, you come before the Zoning Board for a variance and if your application is denied you can go before the Superior Court.

Member Testerman asked Planner Lewis if these plots of land, informally divided over time, had been recorded. Is there any legal definition of that land down there? Planner Lewis stated that he hasn't looked at every deed for every parcel down there, but those he has looked into don't appear to have been legitimately surveyed. A septic plan isn't a formal survey plan. He admitted that he can't tell how or when all these lots got divided up. Member Testerman said that effectively they've been informally subdivided.

Member Cormier made a motion to uphold the decision of Planning Director. Chairman Feener seconded that motion. Member Testerman stated that he can't find any evidence that the property owner violated the four conditions detailed in Attorney Fitzgerald's letter. He is going to vote against upholding the decision. Member Cormier stated that in the New London Land Use Association vs New London ZBA court case there was a legal non-conforming use before them, which was the reason for them upholding this, but in this case, there is no legal non-conforming use because the zoning ordinance precedes the owners putting that camper on that property. Therefore, she agrees with Planner Lewis.

Roll call vote: Davis=yes, Testerman=no, Feener=yes, Cormier=yes, Dickinson=no

The Administrative Decision is upheld by a vote of 3 to 2.

New Business:

Z19-17: Peabody Home, owner, is seeking a variance from 305-15 Height Regulations to construct a new 3-story, 62,000 sq. ft. assisted living facility that will exceed the 35-foot height restriction by 7 feet. The property is located at 22-24 Peabody Place [Map/Lot 117-138-00] in the B-1 [Low density business & commercial] zoning district.

Chris Seufert, President of the Peabody Home (non-paid position), John Benham, Director of the Building Committee, and Chris Nadeau, Nobis Engineering were present. Mr. Benham told the Board that Peabody Home has been in business for 80 years. In 1940, four Franklin women wanted to establish a home to take care of residents on a non-profit basis and it has done so since that time. About three years ago it became apparent that the Peabody Home building was starting to show its age, and nothing could be done to change that, except make a new building. At the same time, they realized that they should make a bigger facility because the need is greater now.

Chris Nadeau, of Nobis Engineering, said the proposal is for a 62,000 sq. ft. building on a 2.5-acre site, constructed in two phases. The first stage is shown in pink on the plans and is about 41,000 square feet. When that part of the building is completed, the current residents will be moved into the new section and the old structure will be demolished. Once that happens, the final 21,000 sq. ft. of building will be added

to the structure already built. They are here this evening to request a variance to the height restriction. Under ordinance 305-15, no structure shall exceed 35 feet above the ground, unless approved by the board. Under subpart one, if all front, side and rear yard depths are increased by 1 foot for each additional foot of height, a variance can be approved by board. They are proposing a three-story structure. Because it is virtually impossible to construct a building of that height with a pitched roof only 35 feet high, they are proposing a 42-foot-high building and adding an additional seven feet of setback from the easterly property line. The yard setback is normally 15 feet, but we are planning on a 22-foot setback. Mr. Nadeau presented a rendering of the building with the pitched roof, adding that a flat roof just wouldn't look good with the neighborhood. If successful tonight, they will proceed with a site plan application with the Planning Board next week.

Member Davis asked if the seven-foot height was uniform across the whole building. Mr. Nadeau said that was the case. Member Davis asked if the second phase will be primarily built on the spot where the current structure is now. Again Mr. Nadeau said yes. Member Cormier asked if any part of the new structure would be built where the gazebo is now. Mr. Nadeau said that area would be for parking and the gazebo would be moved around back where residents can enjoy the view of the river. They are also planning a river walk. Member Cormier said she was concerned that the emergency generator and transformer would be located in the flood plain. Mr. Nadeau said they have discussed that and they will be moving it out of the flood plain. Member Cormier said she assumed that the fire department was okay with the elevation. Planner Lewis answered that approvals from DES will be needed. He added that he has had a discussion with the Fire Chief about the east side of the building which right now shows a grass strip. It may be necessary to change the roadway or construct a sound sub-base under the grass to support the weight of the fire trucks.

The discussion was opened to public: Paul Duncanson, Buildings and Grounds for the Unitarian Church, asked if the applicant knew the elevations of the buildings surrounding the project. Mr. Nadeau said he didn't know.

Back to board: Chairman Feener asked Planner Lewis, if this project had to come before the Heritage Commission. Planner Lewis said that they would need approval for both the demolition of the current building and the exterior design of the new building. Chair Feener said he likes the rendering, that the building looks elegant and it will definitely be a step up. Member Testerman made a motion to approve the height variance, as stated in the Notice of Decision. Member Davis seconded the motion. **The motion carried by a vote of 5-0-0.**

Z19-18: Bradley & Deborah Parker are requesting a Boundary Line Adjustment transferring 25 feet of shoreline property from Map/Lot 032-017-00 to Map/Lot 032-016-00 [223 Lake Shore Drive] in the LP [Lake Protection] zoning district. The adjustment makes parcel 032-017-00 less conforming.

Michael Mayo, son of Deb Parker, and stepson of Bradley Parker, presented the application. They are looking for approval to expand the lot size of 223 Lake Shore Drive by 25 feet of new width along the road. This will give that lot a little more land, but doesn't take any value away from 220 Lake Shore Drive. Both properties are owned by the Parkers. The lake side lot associated with 220 Lake Shore Drive (across the road) will not be sold as a separate parcel. The property has been in the family for 65 years and they are planning on continuing to keep it in the family.

Member Davis asked if the boundary line adjustment was strictly for aesthetic purposes. Mr. Mayo said that it will remain just grass. It will give a bit more play area for the grandkids. Member Cormier asked why they didn't just combine the two waterfront lots and Mr. Mayo said they didn't want to take away value from 220 Lake Shore Drive. Member Cormier said her issue is that both lots are non-conforming

and by taking property away only makes a property more non-conforming. Mr. Mayo told her that lot 032-017-00 is part of the property across the street, 220 Lake Shore Drive. Both properties belong to the same family. Mr. Lewis added that lot 17 could not be built upon. No residential structure could be built there because of the Shoreland Protection Act.

With no public comment, the discussion was brought back to the Board. Member Davis said she didn't have a problem with the subdivision. A motion to approve, as stated in the Notice of Decision, was made by Member Davis and seconded by Member Dickinson. **The motion carried by a vote of 5-0-0.**

Planner's Update: none

Other Business: Member Cormier asked if there was money in the budget for State sponsored zoning education. Planner Lewis said that fees have doubled and he felt it would be more beneficial to have Paul Fitzgerald come in and make a presentation, which could be tailored towards Franklin's needs. Member Cormier asked about getting an updated handbook and Planner Lewis said those are available online. Since so much information is available online, the City has stopped printing zoning handbooks.

Member Testerman said he sat in on a discussion about tiny homes at the legislature this year. The legislation for that will go through the senate first and then the house. He feels it will pass, so it will require the city to modify the zoning laws. Most towns have a minimum square footage per house, five hundred to seven hundred-fifty square feet. A tiny home is typically 300-400 sq. ft. and sometimes, as low as 150 square feet. In the past, the only way to get those approved was to put them in an RV park, or put them up in one of the north country areas that has no zoning.

Chairman Feener said he thinks that after tonight's decision on Z19-12, Planner Lewis and Code Enforcement need to take a proactive approach and get letters to the rest of the Riverview property owners and get the campers removed. Planner Lewis said that every letter written will say 'if you disagree with this opinion, you can appeal to the Zoning Board of Adjustment. Cormier says that is alright. Member Davis added that the rulings are there for a reason and we need to enforce them. Member Cormier asked if there weren't penalties for violations and Planner Lewis said that penalties are set by the court. Chairman Feener said again that he thinks this is something that should be done.

Public Comment: None

Adjournment: A motion to adjourn was made by Member Cormier and seconded by Member Davis. All were in favor and the meeting concluded at 8:15pm.

The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, December 4, 2019, at 6:30 p.m. The deadline date for submission of applications for this meeting is Wednesday, November 13, 2019.

Minutes recorded by Cheryl Y. Fisher, Administrative Assistant, Planning & Zoning