

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

Wednesday, July 6, 2016 at 7:00 p.m.; City Council Chambers

Agenda

Call to Order 7:05 pm

- ❑ **Salute to the Flag**
- ❑ **Roll Call**

Present: Kathlene Fleckenstein, Jeffrey Dickinson, Debbie Davis, David Testerman, and Zoning Director Richard Lewis Debbie Davis is seated in place of Michael Weatherbee.

- ❑ **Approval of Minutes of the May 4, 2016 Public Meeting of the Board.** Testerman motioned, Dickinson seconded. There was no discussion or changes noted. All were in favor to approve the minutes.

Old Business: None

New Business:

- ❑ **Z16-07:** Priscilla Dodge requests a Variance from Section 305-14, Lot and Yard Requirements to construct a 24 ft. by 30 ft. addition to the existing home which will not meet the required front yard depth [23-feet proposed versus 40-feet required]. The existing home is located at 146 New Hampton Road, Map/Lot # 113-034-00, RR Zone (Rural Residential District).

Mrs. Priscilla Dodge, applicant and owner, addressed the Board, requesting approval to add a great room and a bedroom to their existing house. The plan is to make it possible to live entirely on the ground floor as may be necessary in the future.

No one spoke for or against the application and the public portion of the hearing was closed.

Director Lewis mentioned that the addition will not be any nearer to the street than the existing house which was built prior to zoning setbacks.

Chair Fleckenstein asked if a change in the septic system will be addressed since the Dodges will be adding a bedroom. Mrs. Dodge answered that there won't be a change in the number of bedrooms. The upstairs room is not technically a bedroom since it does not contain a closet.

Member Testerman asked if the only reason she is requesting a variance is because of where the existing house sits and Mrs. Dodge says that is the case.

Testerman motioned and Davis seconded approval of the application. All were in favor and the motion carried. Chair Fleckenstein informed the applicant that notification of the decision will be coming in the mail.

- ☐ **Z16-08:** Lyn Spain 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], the Purpose Section of the Ordinance [Section 305-1], and the Travel Trailers & Recreational Vehicles Section [305-29.6], and does not support, the granting of permission to camp on the properties located on Riverview Drive, tax map 115-102-00 & 115-110-00, in the R-1 Zone (Low Density Residential District).

Lyn Spain, applicant and owner, spoke. She highlighted the fax sent the previous week: she purchased the property in 2005 from friends, who bought it in October, 1987. For over 29 years, both she and her friends have been utilizing the property on Riverview for seasonal camping without a problem and she was surprised to receive the Administrative Decision that stated that camping is not a permitted use on the property. She stated that she has a different take on Section 305-29.6 that would allow pop-up tents/campers for seasonal camping. She also mentioned that the 2005 Zoning change was eighteen years after her friends purchased the property.

Ms. Spain added that section 305-29.6 talks specifically about what would be allowed and that would be manufactured housing and this use has some similarities with what they have been using the land for. A pop-up tent or camper is similar to manufactured housing, although slightly different. The purpose of pop-up camping is not to have a permanent or semi-permanent structure similar to a manufactured house but to benefit everyone for the purpose of camping. The other advantage of a pop-up trailer is to assure that waste is removed from the property; this is basically a carry-in, carry-out type of land use. She also added that Mr. Lewis's letter questioned the maintenance for a private road; she said this should not enable the city to prohibit the complete use of the property because of the condition of the road. And in looking in the NH Supreme Court case of Burrows versus the City of Keene in 1981, they state that there was a change to the Zoning Ordinance that was an unconstitutional taking when they effectively deprived the landowner of the economic use of the land and that situation is similar to where I am now, where a change in the Zoning not allowing seasonal camping effectively renders this property worthless. I just ask that you allow seasonal camping on my property.

Member Testerman inquired if seasonal camping takes place on other properties on Riverview Drive and Ms. Spain stated that there are six to eight active families camping at this time. Member Davis asked if the people utilizing her land are only family members and Ms. Spain stated that they are.

Director Lewis pointed out that the reference to manufactured housing being similar to pop-up campers is off target since manufactured housing needs to be placed on a foundation and tied down becoming a permanent structure which needs a septic system. He added that travel trailers/recreation vehicles are only allowed on established residential properties. The City of Franklin has never had a use category to permit camping. Such use was discussed by the Planning Board in 2010, but the Board didn't feel comfortable with changing that ordinance at that time.

The hearing was opened up for public comment. Abutters John Dube and Leon Smith, owners of 45 Riverview Drive, stated they purchased their property in 2004 from the City of Franklin as recreational property. Mr. Dube approached the Board with documentation supporting the fact that the property was sold as recreational property and asked if camping is disallowed for recreational property in Franklin; he submitted a letter from Debbie Ryba from the 2004 property auction and stated that they wouldn't have spent the money we have if that isn't true; that the property was noted as being recreational property. Mr. Smith asked where it was stated that you can't use the land for camping. Chair Fleckenstein replied that the zoning ordinance specifies what you can do, not what you can't do. The Ordinance is an outline of allowed uses in any given zoning district.

Chair Fleckenstein replied that although the current zoning has no provision for camping it does not take all recreational ability away from the property, there is still picnicking, hiking, and launching and landing boats.

Mr. Dube presented a letter from the City Attorney for the deeding of his parcel. Member Testerman asked which zone the properties falls under. Mr. Dube confirmed it is R-1 and went on to state that everything that Ms. Spain and he does is take-in and take-out. We're there about ninety to one hundred and twenty days a year. The reason the area stays clean is because we are there, and people take care of their property. Mr. Dube suggested that the Board develop some language to allow camping off Riverview Drive. Chair Fleckenstein informed Mr. Dube that that is a Planning Board issue.

Testerman asked whether there are other properties that are doing seasonal camping - How many? Ms. Spain responded that she does not know exactly, but she does have a neighbor who camps. Member Testerman asked are there two or three, four or five? The general response of the audience is about eight owners who camp. The Chair asked if there are any other Board questions for the applicant. Member Davis asked if the people who are camping on the subject parcel are just family members. Ms. Spain answered just family members.

Marc Chauvette, who owns five parcels down in the area in question, spoke. He stated that during a title search for the purchase of his parcels [two on the water, three up back] the search uncovered a recorded plan from the 1950s that divided up the overall Riverview Drive area, with the intent of using it for a campground, for personal use; some families got together and bought this parcel and developed it in the 50s. He bought the property seven years prior to the 2005 zoning change. We used it those seven years exactly the way it was laid out as developed in the first place. Now the ordinance is changing but the original intent is still there and that's how we are using them. He does not believe that the City can show any negative situations that were caused by the uses taking place for many years, including police reports or anything else from that area. It's been quiet. The road is in bad shape. Some of us feel that leaving it like that deters people who don't belong down there from going down there and making a mess when we are not there. Like Mr. Dube said, we pull together and keep it pretty clean, but we are using it in the same intent that it was originally developed for and I think that the 2010 decision to not make any new camping rules should be readdressed and not have such a broad law that would encompass us and change the original intent. I think the original intent of the plan should stand and if it is a one time thing for these properties then Franklin allowed that to happen in the 1950s. We have enjoyed it just the way it was set up to be. You've got to give us leave and cut this out and just come up with whatever special laws governing this special situation and just go on letting this go on just the way it is.

Charles Catton, property owner on Dottie's Lane, told the Board that he had to rebuild his house to meet the current zoning ordinances and he feels that others should be held to those same stringent rules.

Annette Andreozzi stated that during the years she was city council there were discussions about camping, but there were also problems of excess noise and trash, and concerns about septic relative to the proximity to the river and the possibility of waste entering the water. She also mentioned unregulated use of the properties by people who have no right to be there and what sort of problems might arise from that. Ms. Andreozzi reiterated that the Table of Uses must be adhered to and that there is always the option of applying for a variance.

Mr. Leigh Webb added that overturning an Administrator's Decision is a slippery slope, adding that the permitted use table needs to be adjusted and the existing ordinances need to be clarified to avoid problems in the future.

Gary Plourde of 18 Riverview Drive stated that he doesn't have a problem with the recreational use of the land. He feels that restricting the use of campers would result in lower property values down there and reduced tax revenues. He suggested that the properties be established and taxed as second homes.

Mr. Dube asked for clarification from Ms. Andreozzi regarding the problems she spoke about, and the years when these problems occurred. She stated that she didn't have specific dates or locations, but that she was speaking to the point of why camping wasn't a permitted use. Mr. Dube addressed the septic issue, stating

that he has a Porta-Toilet which is serviced weekly by All Season Septic of Alexandria. Member Dickinson referred back to a comment from the public that there had been an issue in the past.

Testerman: Are the campers seasonal? Do they pull them in in March or April and pull them out in September? Or are they kept there all year? Is the camper physically there for 12 months or 6 months?

Mr. Chauvette stated that he has been leaving his camper right there through all these years. His camper is 35 feet long, with heat, AC, a shower; it's as close to a house as you are going to get. It has a porch, not attached to it. I've got a well. I've got septic. I've got a gambrel shed to the side that I'm being taxed on. I've got a fire pit that the fire department says they'd like to take pictures of to show everybody what a fire pit should be like. I've got lighting down to the water. This isn't hobo city, and yes the camper stays there. I didn't know I was doing anything wrong. We bought our property as a campsite and we've been using it as a campsite.

Mr. Catton stood to say that teenagers have claimed in the past that they are visiting relatives down there and they set up unauthorized tents. He also said that people swim across the river to gain access to the properties. Mr. Plourde added that occasionally someone sets up a tent and trashes the area, but that the property owners try to keep it clean. To Member Testerman's question about someone trying to set up a permanent residence, Mr. Plourde stated 'No,' adding that occasionally people come down in the winter or early spring with a snow machine or four wheeler.

Mr. Dube brought the Board's attention to the fact that city property across the river is being trashed by the public and nothing is done and here they have taxpaying residents trying to maintain the area for recreational pursuits.

Chair Fleckenstein reminded the public that the Board needs to look at what could happen to the land should properties be sold to not-so-conscientious people in the future. Mr. Dube argued that anyone paying \$40,000 for a little piece of land will take care of it.

Ms. Andreozzi said again that this hearing is not an application for a variance and that it is the Board's responsibility to come up with facts that would find the Administrator's Decision is incorrect if it so ruled.

Mr. Dube spoke of the possibility of litigation if camping is disallowed in the Riverview Drive area. Chair Fleckenstein closed the public portion of the meeting and brought it back to the Board.

Both Members Testerman and Dickinson remarked that they would like to find a way for Ms. Spain to continue camping on her property and that the whole decision about the zoning in that area could be addressed later.

Chair Fleckenstein reminded the Board that they are dealing with an Appeal to an Administrative Decision and that Ms. Spain can apply for a variance.

Director Lewis said that he gave the Board an excerpt, from the State's handbook for Zoning Boards of Adjustment, on Appeals of Administrative Decisions. Basically it comes down to whether the Administrator made a correct or incorrect decision or interpretation based on the language of the current ordinances.

Member Dickinson felt unprepared to make that ruling tonight and asked when the conditions of the cease and desist letter go into effect?

Director Lewis clarified that the letter Ms. Spain received was not a cease and desist order; it was an Administrative Decision based on the question 'Is camping allowed on the lot?'

Member Dickinson asked about creating a policy to allow these people to use the property as they have been. Chair Fleckenstein stated that such a change is a Planning Board issue, but suggested that the hearing be continued at the next Zoning Board of Adjustment meeting on August 3rd. She asked that historical research be

undertaken to find if there is some reference to the original intent of use of the lots as has been stated by several members of the public.

Director Lewis added that the Board received a lot of new information and that allowing time to digest that and any new materials would be a good idea. In the mean time Ms. Spain could apply for a variance that could also be heard at the August 3rd meeting. Member Testerman asked about the probability of Ms. Spain's variance being granted and Director Lewis answered that he can't answer that because the ultimate decision is up to the Zoning Board. He added that one of his duties is to help people fill out and file variance applications and that he is more than willing to work with Ms. Spain.

Ms. Spain asked if she is allowed to camp down there this weekend and if not would the city buy the property back from her. Director Lewis said that is not his decision but added that one concern is the fact that emergency services have no idea of who is down there and when; that random camping causes a problem especially when emergency services can't even get down the road at times. He added that should the Board decide to uphold his decision that Ms. Spain still has the right to appeal, and certainly the right to file a variance application.

Chair Fleckenstein asked for someone to support a motion for continuance, adding that the public can address any issues in a written statement to the Planning Department in preparation for the hearing in August.

Member Dickinson asked about the current status of the landowners and Director Lewis said that typically when there is any ongoing appeal the status quo remains in effect. Ms. Spain argued that Director Lewis's decision impacts everyone and Director Lewis responded by stating that his letter was addressed specifically to her regarding her property and not to everyone down there.

Chair Fleckenstein again asked for a motion to continue August 3rd. Member Testerman motioned and Member Dickinson seconded the motion. All were in favor.

Chair Fleckenstein stated that the motion carries and that this hearing will be continued at the Wednesday, August 3rd, 2016 meeting of the Zoning Board of Adjustments at 7 p.m.

Planner's Update: Director Lewis stated that he had nothing new, but informed the Board of Member Michael Weatherbee's resignation primarily due to the fact that he no longer lives in Franklin. His resignation leaves the Board with three openings.

Other Business: Member Dickinson asked about the status of Mr. Joy's property at 60 Depot Street. Director Lewis said that the city attorney sent a letter to Mr. Joy's attorney asking that they get provide an update on how they intend to move this matter along in a quicker fashion than has taken place so far. To date, no response has been received.

Chair Fleckenstein asked if anyone from the public would like to speak.

Ms. Andreozzi commented that hearing the remarks of Board members is difficult and suggests that the table and mikes be placed closer.

Adjournment: Members Davis/ Chair Fleckenstein moved and seconded to adjourn the meeting. All were in favor. The next scheduled meeting of the Zoning Board of Adjustments is Wednesday, August 3rd, 2016 at 7 p.m.

The meeting adjourned at 8:40 p.m.