

Francetown Zoning Board
Proposed Minutes
May 13, 2010

Members Present: Silas Little (Chair), Abigail Arnold, Mike Jones and Charlie Pyle

Meetings opens at 7:35 p.m.

Mr. Little opens the meeting. Purpose is to consider the following application:

James and Susan McCarthy Application for Variance (front setback) for property located at 157 New Boston Road, Map 5, Lot 79.

Following Board introductions, Mr. Little announces that with respect to the application by Crotched Mountain Properties, LLC for a variance he spoke with Atty. Sullivan and was informed that they would not be coming to this meeting. The case had been continued to this hearing date. Mr. Little informed Ms. Sullivan that, since application could not be continued to a time certain date, they would need to reapply and pay new fee. He understands that Crotched Mountain has communicated with the Town about the issue of lights.

Larry Labor notes that prior extensions have been granted. Brief discussion follows concerning status of application. Mr. Little states that the issue of enforcement would be the responsibility of the Selectmen.

Mr. Pyle states that Guy Swenson scheduled to be an alternate this evening, is indisposed and would not be available.

Mr. Pyle also notes that he has been informed that there will be an application for rehearing submitted for the Dennison Pond cell tower case. Application may come directly to him tomorrow, since the Town Offices are closed. Also AT&T may be coming back with an application for a new site in the Dennison Pond area.

Mr. Little addresses the applicant: only four Board members are present. Tried to get five for this evening, but one member is unable to attend. Three votes are needed in the affirmative to grant variance. A 2 to 2 tied does the applicant no good. They have the option to go forward or wait until five members (full board) are available. Mr. McCarthy, applicant, determines that they wish to proceed.

Mr. Little states that the applicant is seeking permission to build an addition to an existing building (garage) closer to the front setback. Current building is approximately 62' from the center of road. The closest point of the addition will be approximately 60'. He adds that one certified letter with notification of the hearing sent to the Heirs of Mary Caskie was returned; forwarding address unknown.

Application for variance under Article 3, Section 1.2 of the Francetown Zoning Ordinance

Mr. Little reads from the application -

1. The variance will not be contrary to the public interest because:

Its use is that of a normal residential garage. Access to the property will not change.

2. The spirit of the ordinance is observed because:

This situation existed before the present zoning ordinance. The only way to improve this building is to add onto the back of the existing garage and by continuing the line of the building we encroach upon the existing setback by 2 feet.

3. Substantial justice is observed because:

A two foot variance allows the property owner to enlarge the garage for the same usage. This should be considered a standard of fairness.

4. The values of surrounding properties are not diminished because:

An addition to this garage does not affect any other set back requirements (set back is 50 ft (+/-) on all other side) and should not affect property values for any abutters. Use for structure will be that of a normal residential garage and access to property will not change.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because:

Existing garage is not parallel to Route 136. Adding a 16 foot addition will encroach upon existing set back by 2 feet. It is not reasonably feasible to add the garage in any other direction because of existing trees, slope and driveway.

Mr. Little asks applicant for any additional information they would like to add. Mr. McCarthy notes that the desire to make garage go higher and longer was to improve its esthetics and to be more in keeping with the house. Garage was a kit. Sketches of proposed addition and garage are included in the application. Adding 16' (not double) to garage. Phil Noonan notes they cannot come closer to house due to large maple trees and driveway limits ability to come forward.

Mr. Little asks about heat water and septic. No, just electric, which has already been done. Discussion follows on foundation and frost wall: both current garage and proposed addition. Will have a frost wall and a cement floor. Mr. McCarthy notes new doors also.

Pyle asks again about why cannot go closer to house by adding a single garage bay. Two maple trees. Brief discussion follows - any addition towards trees would destroy roots and therefore trees. Ms. Arnold says could come forward towards driveway, which might mean moving driveway. Addition could also be angled away from Rte 136. Not what they wanted to do, according the Phil Noonan. Ms. Arnold realizes that, but the Board has to look at other options. Esthetics are not really an issue. Applicant understands, but it is what motivated them.

Discussion on location of road, garage and setbacks. Because of angle of road via-a-vis garage any addition will be closer to road, encroaching on road setback no matter what.

Mr. Noonan raises economical issue; Mr. Little economics are not the measure of hardship.

Mr. Little asks the Board for any further questions or comments. Mr. Pyle, concerned over hardship issue. Ms. Arnold ordinance is designed for where there are no other solutions and even then Board does not always grant relief. Current case is a large lot. Does not believe it meets the tests.

Little asks applicant if they have anything else to offer. Mr. Noonan notes that they are only asking for two feet. During planning they assumed that road and garage were parallel. Mr. Pyle notes similar problem with other village properties. Always had a problem granting variances on this issue.

Further discussion concerning esthetics; Mr. Little notes that the five criteria (reads them) do not include issue of esthetics. Mr. McCarthy again states that it is what motivated them. Mr. Little reads section 3.10 of the Ordinance concerning setbacks and reviews provisions for granting hardship. Have to establish that there are special conditions of property that distinguishes it from other properties. Second part of hardship test - reasonable use criteria. Mr. McCarthy wonders about reasonableness of moving driveway to accommodate addition. Mr. Little sites old Judge Souther case - that inability to have a garage is not in itself a hardship.

Mr. Pyle moves to close the public hearing, Ms. Arnold seconds: all in favor

Ms. Arnold feels does not meet tests for a variance. Does not know about property values test and diminished value. Doesn't meet hardship, spirit and public interest tests. Mr. Little seconds Arnold's comments. Adds he would question whether substantial justice would be done. Does not meet unnecessary hardship and public interest tests.

No issue of property values. Nothing to the contrary.

Arnold moves to deny the application based on not meeting the four criteria: public interest, spirit, substantial justice and hardship. Pyle seconds the motion. All agree; application for a variance is denied 4-0.

Mr. Little notes that the applicant has 30 days to apply for a rehearing (starts tomorrow). If wish to appeal to court need to file for rehearing. They will receive notice shortly.

Mr. Pyle notes receipt of an application for variance from Mr. Farrell. Application does not include required labels and plan other than a sketch. Note on sketch that Chris Danforth has identified wetlands. Pyle believes that application is not complete. Sketch indicates brook, but not wetlands. Mr. Little had sent letter requesting a plan with a wetlands stamp on it. Need to know where wetlands are. Issue of brook and/or wetland setbacks. Little also notes frontage needs to be determined: Abbott Lane or Rte 47. Address is for Abbott lane. Mr. Little will send another letter.

Pyle moves to adjourn, Little seconds; all agree. - adjourned.

Public meeting is adjourned at approximately 8:23 p.m.

Respectfully submitted,

Charles M. Pyle
Vice Chairman, Francestown Zoning Board of Adjustment

May 19, 2010