

Fracesttown Zoning Board
Proposed Minutes
August 12, 2010

Members Present: Silas Little (Chair), Sue Jonas, Mike Jones, Lois Leavitt and Charles Pyle

Application by Doug Farrell for a variance from Section ~~2-A.2.5~~ 2.A.2.6 (corrected 9/9/10).

Public meeting starts at approximately 7:35 p.m. with Board introductions. This is a noticed hearing for an application by Doug Farrell of 3 Abbott Lane, Fracesttown, NH, Map 8 Lot 40. Mr. Farrell seeks a variance from Section 2-A.2.5 of the Fracesttown Zoning Ordinance to erect a structure that does not meet the 100' setback requirements from wetlands.

Mr. Little reads the application into the record. Mr. Farrell seeks permission to connect a 16' by 16' shed, built for music studio, to his house with covered breezeway. He sought permission from former Building Inspector Joe Ludwig before commencing building.

Abutters were notified with copies of notices sent on August 5, 2010. Notices was published in Monadnock Ledger-Transcript on July 26 and posted at the Fracesttown Post Office and Town Offices.

Mr. Farrell speaks to the history of the shed. He bought the house in 1999. He is a carpenter and always complied with local rules. He obtained a permit to work on the house, which he discussed with Joe Ludwig. Property had a 16' by 16' insulated, heated shed on property, which sustained a lot of damage in a snow storm. He received an insurance check and told Mr. Ludwig that he would like to rebuild the shed. Mr. Ludwig did not say he had to get a permit. If he had, he would have obtained one, but he did not.

Mr. Ludwig asked to come see shed before he started work to be sure it was in the same spot. Mr. Farrell could not be there so Mr. Davidson was. Mr. Ludwig said it was ok because it was within the footprint. Went on to build shed, which took a while. Roughed in bathroom. The original approved septic plan was for a three bedroom septic. Mr. Ludwig did not say he needed a wetlands permit or survey and did not tell him he had a certain period of time to build it. Mr. Ludwig left and new building inspector came in. A stop work order was issued.

Mr. Farrell provides a copy of a wetlands survey, prepared by Chris Danforth, to the Board. According to the plan shed is within 47.2' of wetlands boundary. Farrell agrees that shed is 87' from centerline of Abbott lane. Board members examine plan. They also review pictures of old and new sheds.

Mrs. Leavitt asks if stream is now dry, if it usually dries up in the summer. Yes, it does.

Mr. Pyle wants to understand the timeline. Bought house in 1999 with 16' by 16' shed. Mr. Ludwig came in 2007. Pyle notes that in 2005 100' wetland setback was instituted. Not when he bought the house. If had existing non-conforming structure, he could rebuild, but not make it more non-conforming. Problem is that should not have done this because eight years had lapsed. Mr. Farrell said someone had said there was a certain amount of time. Mr. Little noted one year. Mr. Farrell did not find out until after it had been build. Mr. Pyle asked how long since he took building down and rebuild it. Farrell took it down in 2003, when working on his house. New shed is only about 8' higher than original one.

Mr. Little asks the distance between outside wall of house proper and outside wall of shed. Farrell does not have exact measurement. About 30'

Pyle asks about bathroom size: ½ bath. Purpose of connecting house to shed. Explained to Farrell that it might solve a problem. He does not have a great desire to do so. Mr. Little says addressing problem of front setback and where board considers front setback for corner lot. Question of which part of lot is front. Farrell states that if he had been made aware of this he would have acted differently. All came after he put it up and consulted proper authorities.

Tom Davidson: Joe Ludwig came out and measured 100' from centerline of Abbott lane. Put stake where 100' was on property and said shed should not built beyond stake.

Pyle asks if address is Abbott Lane and if driveway comes off of Abbott Lane. Mr. Little, doesn't driveway come off of Route 47. Comes off of side road. Stone wall on plan is break where driveway is.

Pyle, problem is change to 100' wetland setback. Pyle also believes that there was an issue with a requirement for a building permit to be issued with 100 sq ft buildings. He remembers there was confusion years ago

Pyle asks if Joe assumed he was going to build shed within a certain period of time. No, build it whenever.

Little asks does he intended studio not to be a separate living area. Farrell, he does not. Bath in there: john, sink and shower stall. What is purpose of shower stall if not a separate living area? Farrell, he was overdoing it. Idea was a music studio and he did plan that someone could live in it. Little asks if taking shower out would be a problem; Farrell no, not a problem could take it out.

Jonas asks about recording studio. Farrell writes music and hoped to turn it into a recording studio.

Little asks about space underneath: storage? Farrell space underneath is for storage. Bathroom is on lower floor. Wire door for storage of mowers and motorcycles.

Little notes that approval for septic was back in 1983. Farrell shows where septic is on plan to Mrs. Jonas. Approval is #435083 and for a three bedroom septic.

Mrs. Carbee says she brought up the issue to Concom three years ago. Wants to know if DES is called into play when there is an additional hookup? No one knows, but Mr. Little understands that if you have a designer approval for a three bedroom system you can have three bedrooms that access the system. She is concerned that at some time shed became a living unit. She believes people have been renting the house and people have been observed coming out of shed. Concern that it was being used as a living shed.

Mrs. Carbee thinks, not sure, stream is considered part of the shorelands district. Thinks stream is on the 1989 water management and protection map. If so, all land within 50' of high water comes into play. Plan says shed is within 47'. Believes septic should be back 125'. Questions accessory use of building and rental living space.

Mrs. Carbee asks if Conservation Commission (ConCom) will be asked for a response. Mr. Little not sure that it falls within the Shorelands Protection Act. Discussion follows.

Mr. Farrell states his intention is not to have a separate living space.

Pyle confused if he takes shed connects it to house does it not make it something more than a music studio? Farrell does not want to connect. Pyle notes that what was application was for.

Mr. Little summarizes: Farrell built a 16' by 16' shed on footprint of former building. Took old building down and was not aware that he had to construct it within a year as a non-conforming use. Reconstructed it on same footprint with same ground dimension. He did so after talking to Joe Ludwig, the building inspector at that time. He seeks to obtain necessary relief not have to take it down because he was unaware of one year requirement and speaking with Joe Ludwig.

Mr. Jones notes that if built within one year no issue. Issue revolves around more than one year.

Little notes that Board now has copy of plan. He will ship copy to the ConCom and ask them to give their comments. Proposes to continue public hearing to next meeting to hear from ConCom. Board can continue to meeting after input for more input from ConCom.

Mrs. Leavitt wonders if application is clear enough. Little suggests waiting until input from ConCom. Little notes that public portion of meeting is not closed. Continue to September 9th meeting and Mr. Farrell will have a chance to respond. Brief discussion on when the next ConCom will be and if they will meet before next ZBA meeting.

Pyle asks Board if they want to do a site walk. Board feels they are familiar with road and site; site walk is not required. Mr. Farrell agrees that individual members are welcome to conduct a site walk on their own.

Mrs. Leavitt moves to continue hearing; Pyle seconds. All in favor. Continued as a public hearing until September. Little notes that may be continued until next meeting in October.

Farrell public hearing is continued to September 9, 2008.

Mr. Jones steps down and Mr. Barbalato joins Board.

Mr. Little states that the next order of business is a request for a rehearing from Mr. Ratigan on behalf of Jones and Simakova. Request addresses July decision of board in July, which resulted in relocation of tower and footprint of tower. Asks if sense of the Board is to hear application again. Copies of Mr. Ratigan's letter were distributed to the Board. Pyle notes that letter contains exactly the same language as the previous application for rehearing that Board denied. He moves that since Board denied before deny now. Only issue that Board approved for prior rehearing was new site that is not part of the application. Pyle moves to deny a rehearing; Barbalato seconds. No discussion; all in favor. Request for rehearing denied. Mr. Little will notify Mr. Ratigan.

Next issue is the public record for the Court case. Mr. Pyle has provided copies of minutes to all members. Adds that we have tapes and cd's of meetings. Since the spring, court recording by a court stenographer. First order of business would be to officially approve minutes. General discussion follows. Mrs. Leavitt asks for a correction of vote on May 27; does not have her name. Mr. Pyle will correct. Mr. Little makes a formal motion that we approve minutes. Notes by defacto Board has endorsed minutes by working off of them for decisions. Barbalato moves to accept minutes; Jonas seconds. All in favor.

Mr. Pyle reviews with Board the official record and asks for clarification on what should go and what should not. Discussion follows. Board spends time on what should be in box to go to Town Counsel. Tapes and stenographers transcript will not be included. Mr. Little will contact town counsel. Pyle and Little will discuss who will take record to Upton, Hatfield in Concord early next week. Not putting in tapes, discs and transcripts of meetings but minutes.

Pyle notes ZBA has gained a cabinet in the meeting area next to the copier. He will place current files here and older one in the file cabinet inside file room.

Public meeting is closed at 8:45 p.m.

Respectfully submitted,

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

August 17, 2010