

Fracesttown Zoning Board
Proposed Minutes
September 7, 2010

Members Present: Silas Little (Chair), Abigail Arnold, Lois Leavitt and Charles Pyle

Mr. Little opens the meeting by noting that four members are presents, which does constitute a quorum. However, applicants for the two cases to be heard this evening are entitled to a full panel of five members. Applicants need the affirmative vote of three members to approve an application. If a tie vote application would be denied.

The two hearings on tonight's agenda are a continuation of the Farrell case and the Schell variance application. For the Schell case only three members will be available to sit. First question that will be asked of each applicant is whether they wish to go forward or reschedule to the next regularly scheduled hearing in October. Robert Todd, representing the Schell's, asks at what point they may opt out. Mr. Little replies "at the start". Would not be fair to Board members or applicant to start over again is they opted out.

Mr. Little notes that with respect to the Schell application, though he has not represented the Fracesttown Land Trust regarding this matter, he has done so for other transactions and easements in the past. Will ask if any one objects to his sitting on the case.

Continuation of Public Hearing on application for a variance from Section 2-A.2.6 by Doug Farrell, Abbott Lane.

Mr. Little asks Mr. Farrell if he wishes to continue this evening or continue in October. Mr. Farrell and the Board are given a copy a letter to the Board from the Conservation Commission (ConCom) letter to the Board. Mr. Farrell opts to continue with the public hearing.

Mr. Little notes that, when the last hearing was adjourned, public record was left open to public, applicant and ConCom. Received letter from ConCom, dated September 7, 2010. Mr. Little reads letter into the record.

Mr. Little asks Mr. Farrell if he has anything more to add. Mr. Farrell believed he had permission from the Town, Joe Ludwig, to build the structure. He is willing to do whatever is necessary to have the structure stay: remove the bathroom, connect to house via a breezeway.

Ms. Arnold asks for clarification on what the application is for. Application says Section 2-A.2.5. Mr. Little states correct section should be 2-A.2.6. Board asks for correction to prior minutes and the official record. Ms. Arnold adds that it appears to be a change in use, which could be remedied by removing the bathroom. Seems to her a bigger issue than the location of shed.

Mr. Pyle notes that he had permission before the rules on setbacks change. Ms. Arnold notes that even then a building permit would have been required for a change in use.

Mr. Little firsts asks if anyone wishes to speak in favor of the application; then opposed. B.J. Carbee is concerned about attaching the shed to main building and the use of accessory building. Owner is supposed to be live in main or accessory building. Also in violation of conservation overlay district. Stream is noted as stream "N" on water resource management plan.

Ms. Arnold adds that residential use is not an acceptable use of an accessory building. New building has foundation. Mr. Farrell, Alaskan slab – no footings or frost wall.

Polly Freese, member of ConCom, notes that area does not appear very wet now, but has been wet close to shed in the past. This is of concern. Mr. Little, two issues: construction within 100' of vernal wetlands and the other within 50' (47'2") of stream.

Discussion that in prior hearing stipulation that bedroom and bathroom would be taken out and a kitchen not put in. Mr. Little refers to portions of the August minutes.

Ms Arnold clarifies that sketch by Chris Danforth indicates a three bedroom house. In error, Mr. Farrell responds only one bedroom.

Ms. Arnold moves to close that the public hearing portion of the meeting be closed, Pyle seconds, all in favor.

Mr. Little reviews the five criteria for granting a variance. Believes based on the testimony nothing to show that abutting properties will be devalued. Ms. Arnold is concerned over the bathroom. Mr. Little, can make stipulation that bathroom comes out.

This is a nonconforming lot. Today could not place shed, or house, on lot. Discussion on setbacks.

Without bathroom Mr. Little feels it would meet substantial justice, spirit and public interest criteria. Brief discussion on bathroom and septic. Mr. Arnold feels that is in terms of hardship it is not different from other properties in the area, but without a bathroom would be a reasonable use. Further away from wetlands and stream than the house.

Mr. Little asks if it is the sense of Board to grant the two variances if structure does not have bathroom. Mr. Little, suggests a motion to grant application on condition that there is no residential use of structure, bathroom be removed, water supply to structure be disconnected and septic line be disconnected. With those conditions finds applicant meets the five criteria. Ms. Arnold moves the motion, Pyle seconds, all in favor.

Mr. Little notes that Mr. Farrell will receive a written copy of decision and there is a 30 day appeal period.

Ms. Arnold departs from the Board.

Application for a Variance from the terms of Footnote 1, Table 1: Dimensional Controls by David and Patricia Schell, 28 Candlewood Lane.

Schell's are represented by Todd.

Mr. Little explains that in the past he has volunteered to review for easements and other legal matters for the Francetown Land Trust. Purpose of this variance is to create a lot for an easement. He feels he is in a neutral position on this matter, but, if someone objects, he will not sit. Notices were sent to the applicant and abutters. No one objects, Mr. Little continues.

Only three members of the ZBA are sitting. Does applicant wish to proceed? Will need three votes for approval. Yes, will go forward. Board members present are Lois Leavitt, Charlie Pyle and Silas Little.

Mr. Little reads the application. Purpose of subdivision is to create a lot that is not intended to be a building lot. Second lot of five acres already has a building and septic on it. 14 acre lot is for a conservation easement. Variance is requested to waive requirement for two buildable acres.

Robert Todd is authorized to speak on behalf of the Schell's. Mr. Todd reviews the five criteria for granting a Variance. Believes use is reasonable, discusses hardship, public interest, no diminution of value. Asks that the record reflect a change to the lot number on the plan to be considered by Board. Lot 2 should be lot 1. Open space lot should be number 2.

Pyle asks about going to Planning Board. Purpose is to approve a subdivision based on the assumption that we are going to wave certain criteria. Brief discussion follows.

Mr. Little discusses footnote that requires two acres of buildable land. Opines that note says that no building lot can be created without 2 acres. Believes that if stated not a building lot, then not required to show two buildable acres. Applicant is stating that it will never be a building lot, so why even talk about a buildable lot. Mr. Todd is concerned that if they then go to the Planning Board, this might present problems. Discussion on buildable lot and requirement for two buildable acres. Mr. Todd asks need for relief by the ZBA before going to the Planning Board. Further discussion. Ms. Arnold notes that in the past on advice of Town Counsel the Planning Board has been told not to approve any lot that is not a buildable one.

Mr. Little wonders if application is really about cost and, if so, take away from public interest, substantial justice, etc. Shifting the requirements. Issue here is cost.

Ms. Leavitt asks what the harm is by accepting the variance.

Mr. Pyle wonders why coming to ZBA first, nothing being appealed directly. Wonders why can't show buildable acreage to Planning Board. Planning Board requires a variance from the requirement that applicant needs to show two buildable acreage.

Mr. Little moves that the Board grant a variance on the condition that the plan submitted to the planning board state very clearly that it is "not a building lot per decision of the Zoning Board of adjustment, September 14, 2010" and this note is on any plan recorded with the Registry of Deeds.

Little so moves, Pyle seconds, all in favor. Little notes that there is 30 days for a rehearing and then notice of decision becomes final.

Meeting is closed at approximately 9:10 p.m.

Respectfully submitted,

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

August 17, 2010

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

Respectfully submitted,

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

August 17, 2010