

Present: Vice Chair Jack Karcz, Members Roger Barham, Jack Downing, Tom O'Brien, Andy Kohlhofer, Building Inspector Rick Foye, RPC Senior Planner Jenn Rowden, and Land Use Administrative Assistant Casey Wolfe

Also Present: Marty Ferwerda, Selectmen Gene Cordes, Selectmen Neal Janvrin, Fire Chief Rick Bulter, Nancy Goldstein, Joseph Goldstein, Francis Swett, Donna Stracke, and others.

Mr. Karcz opened the meeting at 6:58 pm.

## **I. MINUTES**

Mr. Karcz made a motion to approve the minutes of May 17, 2017. Mr. O'Brien seconded the motion. The motion passed 5-0-0.

## **II. CONTINUED BUSINESS**

**Prince Lobel has requested a continuance for the Major Site Plan Application and the Conditional Use Application for a proposed 145 foot monopole-style personal wireless service facility located at Map 1 Lot 12 on Chester Road. Requested continuance date is for June 21<sup>st</sup>**

Mr. Barham made a motion to continue the hearing to June 21st at 7:00 pm at the Fremont Town Hall and to re-notify the abutters of this hearing via first class mail. Mr. Kohlhofer seconded the motion. The motion passed 5-0-0.

## **III. NEW BUSINESS**

**Public Hearing for Marty Ferwerda who seeks a site plan amendment and lot line adjustment at Governor's Forest [Map 3 Lot 2]**

Mr. Ferwerda came before the Board. He explained that the reason why he is appearing before the Board is because his land is being encroached upon by two homes in Witham Park. Mr. Ferwerda went through each of the comments made by the third party engineering review firm Stantec (attached). Mr. Ferwerda felt that Stantec's recommendation in item number two was unreasonable and that having the new lot lines drawn five feet around the encroaching homes was the simpler solution. Referring to item number three, he reminded the Board that Mr. Witham, owner of Witham Park, needs two variances from the Zoning Board – not Mr. Ferwerda. After looking at item number five, Mr. Ferwerda stated that he will take possession of the encroaching shed if it is not moved. After reading item number six, Mr. Barham stated that the Board is going to want to do a site walk and that it would be helpful for the members to have the proposed lines staked out. Mr. Ferwerda agreed to do this. Referring to item number seven, Mr. Ferwerda's engineer and Stantec need to communicate to work this detail out. After looking at item number eight, Mr. Ferwerda suggested that there be a lease restriction on the property that the owner can drive through the easement to get to their driveway, but cannot park their car

in the easement area. He stated that he will deal with others that try to park their car in the easement area.

Referring to item number nine, Mr. Ferwerda stated that at a recent Selectmen's meeting there was discussion that the road would not be held to Town Road standards. Mr. Barham stated that the Board of Selectmen made it very clear that they want the road paved. Mr. Ferwerda agreed to pave the road if that is what the Board of Selectmen want. Mr. Ferwerda disagreed with Stantec's recommendation in item number ten, and felt that it would be best to continue to use plastic chains. He felt that locked steel farm gates would delay the response of emergency vehicles. He wanted something that could be removed more easily. He also mentioned that he did not want something there that could injure someone on a motorcycle. Mr. Ferwerda suggested readdressing the issue down the road if the plastic chains are insufficient. Fire Chief Rick Butler did not have an issue with the plastic chains. He did have an issue with the lock and chains because emergency vehicles would need a key to get through. After reading item number eleven in the Stantec letter, Mr. Ferwerda stated that he could have his engineer draw in the proposed grades. Referring to item number twelve, Mr. Ferwerda stated that the easement was drawn to accommodate the length of Town's firetrucks. After reading item number thirteen, Mr. Ferwerda stated that on Mr. Witham's side of the lot line there was an access easement, however, it was granted to a partnership that no longer exists. Mr. Barham pointed out that the successor of the easement should be the new land owner.

Ms. Rowden stated that because the proposed lot line adjustment and site plan amendment is based on two permissions needed from the Zoning Board, she did not recommend making a decision on the application this evening. Technically, the Board could do an approval with a condition that Mr. Ferwerda receives the two variances, however, she did not recommend this. Mr. Barham stated that he would like to do a continuance. Mr. Karcz read through the comments that had been submitted:

The Conservation Commission wrote: "*The Conservation Commission requests that the Planning Board holds on making a decision until a joint visit can be conducted with the Planning Board, ZBA, and Conservation Commission representatives.*" The Police Chief wrote, "*No issues.*" Joey & Nancy Goldstein, Dick and May Raymond, and Joyce Dempksi signed a letter that said, "*As residents of Governor's Forest for many years we want to voice our concern that the access road will be reestablished. It is in the original site plans for Governor's Forest. It was there when we purchased our home and it has been used a number of times in emergency situations as many residents can confirm. This road needs to be reestablished and it needs to be maintained year-round for community safety of Governor's Forest, Witham Park, and the Town of Fremont.*" Mr. Karcz read through the comments submitted from the Board of Selectmen (attached).

Mr. Ferwerda stated that he is already losing land and does not want to do a land swap and lose even more land. He did not want innocent third parties to be affected by this. He stated that he just wanted to protect his tenants, put in the easement, and move forward. Ms. Rowden reminded the Board that the choppy lot lines is really a question for the Zoning Board to consider. Mr. Karcz stated that if he was on the Zoning Board, he would feel that there was a better way to draw the lot lines. Mr. Ferwerda stated that he does not want to give up any more land and that it would be wrong for the Town to ask him to do so.

Building Inspector and Code Enforcement Officer Rick Foye stated that Mr. Ferwerda concealed for years that these homes were encroaching on his property and into the easement area. Mr. Foye felt that Mr. Ferwerda misled the Town by building the access road outside of the easement and then building house number eighteen at the same location. He stated that this house is for sale and under agreement. Mr. Foye pointed out that these people are usually cash buyers. He wants to be able to withhold the electrical permits so the buyer cannot move in until the lot lines are adjusted and the site plan is amended. Mr. Ferwerda felt that Mr. Foye was not being truthful. He had no intention of violating the rules and said that he would never have people move in without a certificate of occupancy.

Fire Chief Rick Butler pointed out that the home at address 61 is facing the wrong way and is messing with the setbacks throughout the whole street. He also stated that he has an issue with the slope of the road and that the road does not have room for two-way traffic. He asked who would enforce the rule against parking on the emergency access road. Mr. Butler stated that Mr. Ferwerda was told way back six or eight months ago that the road had to be there but he put a house there regardless. Mr. Ferwerda pointed out that the house is not on the Town's easement. Mr. Kohlhofer thought it would be best to proceed after the ZBA makes a decision. Mr. Barham mentioned that one of the comments that Stantec made is that the access road is shared with the driveway for house number eighteen. He asked Mr. Ferwerda about the possibility of splitting the driveway from the access road. Mr. Ferwerda stated that he would be willing to do this.

Ms. Rowden stated that the applications are complete and that the Board can take jurisdiction of them. Mr. Barham made a motion to accept the Lot Line Adjustment and Site Plan Amendment applications as complete. Mr. Kohlhofer seconded the motion. The motion passed 5-0-0.

Mr. Karcz opened up public comment. Francis Swett, who lives on Georges Lane in Witham Park, had a comment. She explained that she has lived at her home for sixteen years. Her house was one of the last houses to get built in her park. Two years after she moved in, Governor's Forest was under construction. According to Ms. Swett, the access road was gravel at the time. The road was then paved and then later dug up. The road was later two lanes and then just one. Ms. Swett felt that there is no way that a tractor trailer would make the turn. She also felt that the road needs to be two lanes. Mr. Barham pointed out that there could be a police officer directing the detour to make it usable for two-way traffic.

Nancy Goldstein, resident at Governor's Forest at 48 Tarah Way, also had a comment for the Board. She explained to the Board that the road has been used for emergency vehicles. There was one time that route 107 had to be closed due to a car fire. The traffic had to be detoured through the emergency road. Mr. Kohlhofer felt that the road should not be used as a detour and that there are places where vehicles can turn around. Mr. Butler argued that it has to be done that way. Mr. Goldstein mentioned another time the road had to be used during an ice storm. Donna Stracke from 58 Country Lane in Witham Park voiced her concern that the house does not look stable and that a good storm could cause it to slide. Selectmen Gene Cordes asked the Board if they plan on doing a site walk. Mr. Kohlhofer made a motion to schedule a site walk between June 27<sup>th</sup> and July 5<sup>th</sup> to coordinate with the ZBA. Mr. Downing seconded the motion. The

motion passed 5-0-0. Mr. Barham made a motion to continue the hearing to July 5<sup>th</sup> at 7:00 pm at the Fremont Library. Mr. Downing seconded the motion. The motion passed 5-0-0.

Mr. Karcz called for a recess at 8:01.

**Preliminary for Nancy Brun who seeks to open a day care center in unit seven of Cooper's Corner [Map 3 Lot 37]**

At 8:09 Ms. Brun introduced herself to the Board. She and her mother are looking to open a day care in unit seven of Cooper's Corner. The Board members looked at the plans. Mr. Foye explained that this is the unit Tom Nisbet originally wanted to make a residential unit. Ms. Rowden felt that this conformed to the Village District Ordinance. There is still a question of whether this would be a major or minor site plan. Mr. Downing asked how many kids she would have at her school. Ms. Brun stated that there would be about thirty kids and about five employees. She pointed out where the parking would be. There would also be a fenced-in area for the children to play in. Ms. Rowden mentioned that there should be accommodations for pick-up and drop-off. Mr. Barham felt that this was an ideal candidate for minor site plan review. The subject of ADA access came up. Mr. Foye thought there might be some new code requirements for a day care. Mr. Barham made a motion that this proposal qualifies for a minor site plan review. Mr. Downing seconded the motion. The motion passed 5-0-0.

**IV. CIRCUIT RIDER BUSINESS**

Ms. Rowden will introduce the aquifer protection district ordinance project to the Board at their next meeting on June 21<sup>st</sup>.

**V. OTHER BUSINESS**

Ms. Wolfe informed the Board that the letters have come in from Stantec with the estimated amounts that each of the grave pits in town should be bonded for. Ms. Rowden suggested moving closer toward this number. Mr. Barham made a motion to ask for 75% of the amount that Stantec calculated to be placed in escrow with the Town. Mr. Kohlhofer seconded the motion. The motion passed 5-0-0. Each of these gravel pit owners also need to take care of the outstanding items in their inspection letters. Mr. Karcz did not feel that a second site walk would be necessary and that pictures would be sufficient.

Ms. Wolfe asked the Board about doing another site walk for Seascoast Farms, a business in town that is out of compliance with its site plan. She passed out the May inspection letter from Stantec. There was a consensus that he should come back in July and that Stantec should go out for another inspection in June. They briefly discussed their options if the business is not in compliance by the July 1<sup>st</sup> deadline.

Ms. Wolfe informed the Board about an inquiry she got about putting in a convenience store in unit sixteen at Cooper's Corner. There was some discussion about whether it was considered a change of use (it was previously a café) and there was some discussion about adopting a "change of tenant" permit.

Mr. Barham made a motion to adjourn the meeting at 9:01 pm. Mr. Downing seconded the motion. The motion passed 5-0-0.

Respectfully Submitted,

Casey Wolfe  
Land Use Administrative Assistant



June 6, 2017  
File: 195112103

Mr. Brett Hunter, Chairman  
Fremont Planning Board  
PO Box 120  
295 Main Street  
Fremont, NH 03044

Dear Mr. Hunter:

**Reference: Governor's Forest Residential Site Plan – Lot Line Adjustment  
Lot Line Adjustment for Ferwerda & Witham  
Route 107, Fremont, NH  
1st Review**

We have reviewed the following information, submitted by Ambit Engineering, Inc. (AEI) for the subject project:

- Proposed Lot Line Adjustment Plan, Sheets 1 & 2, prepared by AEI, dated April, 2017 and most recently revised on May 8, 2017
- Subdivision check list, dated May 9, 2017

This submittal was reviewed in response to a request by the Town of Fremont and was reviewed for conformance with the applicable sections of the Town of Fremont Site Plan & Subdivision Regulations as well as other relevant local and state regulations and accepted engineering practice. We have the following comments:

The plans show two residential homes, two associated garages, and one shed from the Witham development, located over the property line, encroaching onto the Ferwerda property. To correct the encroachment issue, the plan proposes numerous, short lot line adjustments so the four buildings would be located within the Witham property. The proposed lot lines simply off-set each of the four structures by 5'. The plans do not address the shed that encroaches onto the Ferwerda property. The plans also show a proposed relocation of the emergency access easement between the two properties.

**Lot Line Adjustment Comments:**

1. The Zoning District(s), where the two affected lots are located, with the corresponding minimum setbacks, lot size, and frontage requirements should be added to the plan.
2. We recommend that the numerous, short lot lines be replaced with two or three longer lot lines which will be easier for the affected residents to locate, understand, and abide by. For example, currently the westernmost resident's lawn extends more than 5' from their house. It would appear to be more appropriate and conforming to propose lot lines that are in the woods, between the two properties, providing a reasonable land area around the existing structure.
3. We recommend that the proposed lot lines are revised to provide the required structure



June 5, 2017  
Mr. Brett Hunter  
Page 2 of 3

**Reference: Governor's Forest Residential Site Plan – Lot Line Adjustment  
Route 107, Fremont, NH  
1st Review**

setbacks for the four encroaching structures. Where two of the structures are approximately 42' apart, the proposed property line should be located 21' from each structure.

4. More conforming lot lines will reduce the overall size of the Ferwerda parcel. If the original Ferwerda development approval required a specific amount of common land, the new area should be noted on the plan.
5. A note should be added to relocate the encroaching shed conforming to the appropriate setbacks from the proposed property lines.
6. To assist the Planning Board in visually understanding where the new lots lines would be, we recommend that the Developer stake out the proposed lot corners and the Board visit the site to view the new lot lines.

**Access Easement Comments:**

7. The access easement plan should include the complete limits of the actual access road that is to be constructed between the two cul-de-sacs.
8. We recommend that the easement be relocated to not be combined with the paved driveway for the residential structure that is under construction on the Ferwerda property. Typically, Fire Departments do not want to navigate around private vehicles parked on emergency access roads.
9. Considering the steep slope of the access road, we recommend that the Planning Board require that it be paved and that all slopes be fully stabilized with vegetation and erosion fabric to avoid future erosion and stability issues.
10. We recommend that the plan also include two steel farm gates, one at each end, locked with a Knox lock, accessible by the Town's personnel.
11. The proposed grades of the access road should be added to the plan to confirm that the road will be accessible by safety vehicles, such as a fire truck. The Fire Chief should review and approve the design.
12. Considering two of the centerline radii of the access road are only 37.5', a proposed truck turning template should be added to the plan to demonstrate that a firetruck can access the road.
13. Considering the proposed access road is located on both properties, two written access easements must be provided for review and approval by the Town, one from each land owner.



June 5, 2017  
Mr. Brett Hunter  
Page 3 of 3

**Reference: Governor's Forest Residential Site Plan – Lot Line Adjustment  
Route 107, Fremont, NH  
1st Review**

Please call if you have any questions.

Sincerely,

**STANTEC CONSULTING SERVICES INC.**

A handwritten signature in black ink, appearing to read "J. Daniel Tatem".

J. Daniel Tatem  
Project Manager  
Tel: (603) 669-8672  
Fax: (603) 669-7636  
[dan.tatem@stantec.com](mailto:dan.tatem@stantec.com)

c: Marty Ferwerda, Owner  
Heidi Carlson, Town Administrator  
Casey Wolfe, Planning & Zoning Administrator  
Rick Foye, Building Inspector  
Rene LaBranche, Stantec



Following are the comments and discussion items from recent Selectmen's Meetings and subsequent research/historical perspective relative to the Site Plan Review Amendment and Lot Line Adjustment proposed by Martin Ferwerda in May 2017 for parcel 03-002.

**From Selectmen's Meeting of April 13, 2017:**

1. Fire Chief Richard Butler remarked that both he and former Building Inspector Bob Meade have been challenged over the past six months on the use of this access road and its validity. Butler stated his understanding that this road would always be in place for emergency access, and stated it had been used during at least one major emergency where access to Town was closed off.
2. The intent of the Cease & Desist is to reestablish a workable point of emergency access from the Witham Park to the Governor's Forest Park, so that an emergency vehicle can negotiate the access road throughout the whole year.
3. The 12 foot gravel roadway is (was) nowhere near the deeded easement area as shown on the plans. It never has been in the easement space identified on recorded plans, and has been moved at least twice in the long duration of construction of the project. This area is an easement for public use, and is owned by Ferwerda, to be maintained by Ferwerda.
4. Witham recorded plans indicate "a 50' space from the cul-de-sac across lot 3-1-1.43 to land of Kersey is reserved should it be desired by future owner."
5. Ferwerda engaged a surveyor in April 2017 (after issuance of Cease & Desist) to lay out the property line, after he admitted knowing for some time, that homes within the Witham Park encroach on his lots 17 and 18.
6. The current physical location of the 12 foot gravel way is almost completely outside the easement area as identified on the approved plan. This access area is immediately adjacent to the mobile home recently placed on lot 03-001.001.18. It is too close (too tight) to allow for emergency vehicle apparatus, and questionable if it is suitable for general vehicular access if needed in an emergency situation.
7. The previously existing gravel way has been used in emergency situations, when large trees and wires were down across Route 107 for several days during a storm. The Board wants to ensure fire truck access on this easement area/ROW, including that the slope and turning radius available will accommodate a fire truck, to provide for public safety of residents in either park, or the general public if needed in a major emergency.
8. With weather and current erosion (from rains), coupled with the work done last fall not being properly stabilized, there are significant erosion problems on site and further down the hill (toward the home at the end of Country Lane).
9. Selectmen feel that Ferwerda never put in the travel way within the easement area in a permanent condition. It is believed that Ferwerda has always disagreed with the Planning Board on the right of way issue.
10. Selectmen feel strongly that Ferwerda needs to do a lot line adjustment with the easement area accounted for. They also feel that the 12-foot right of way should be paved, and be maintained

365 days a year with agreement thru Witham's property to be necessary for public safety. It is not intended it be open for use except for emergency situations, but it must be accessible.

11. Selectmen feel that the proposed lot line adjustment should be far less choppy, and might work better as a land swap with Mr Witham to make a clear access way from Tarah Way to Country Lane.
12. A clear and deeded easement exists (50 foot wide) from Country Lane to the Governor's Forest Property (Book 2866 Page 1359). This easement transfers to future owners, including Ferwerda. It is also shown on the Witham recorded plan.
13. A couple of written agreements exist between Witham and Ferwerda for this access way, as both need it to make their parks compliant.

\*\*\*The proposed Site Plan Amendment application was also supposed to include all as-built aspects of Phase I and II of the Governor's Forest Development.\*\*\* It was also to include a final plan for the ROW/easement and address the necessary lot line issues. It does not appear that all of the as-built features, including mobile home placement, are addressed in this application.

The Selectmen voted that no further new dwelling building permits and occupancy permits within the Governor's Forest Park, until Ferwerda does the following:

1. Amend the building permit on lot 03-001.001.018 to show the actual site conditions, and apply for additional work to be done on this lot (for any item not listed on the original building permit);
2. All work done on lot 18 and within the Park is strictly at his (Ferwerda) own risk, including landscaping and any other improvements, given that final approval of the layout and design is the jurisdiction of the Fremont Planning Board through the Site Plan Review Process.
3. A CO will not be issued for lot 18 until the easement area for a 12-foot travel way is designated on an amended plan, approved, and built to complete specifications. An amended Site Plan Review is applied for on all sections of Phase I and II in the Governor's Forest Park to include all existing site conditions and any proposed changes to the original approved plans; and all improvements are constructed and approved by the Town relative to the easement and access way to the Witham property.
4. The Site Plan amendment plans submitted must address the buildings in the Witham Park that are on Ferwerda land, and those items must be addressed by lot line adjustment or other legal method.
5. At such time as substantial work has been completed and approved on the above list, Ferwerda can, by special request, meet with the Board of Selectmen to discuss moving ahead on previously Ceased work areas.
6. Work shall be subject to review by the Town Engineer, especially in Phase III where significant slopes are involved.
7. Any work done shall be in compliance with Town Rules, Regulations, Ordinances, and NH Laws.

Ferwerda is allowed to continue site work on Phase III with proper bonding and review by the Town's engineer. (see attached Selectmen's letter dated 04/20/2017)



**TOWN OF FREMONT**

*Office of the Selectmen*

*PO Box 120*

*Fremont NH 03044-0120*

---

*Telephone 603 895 2226 x 10*

*Facsimile 603 895 3149*

20 April 2017

Martin Ferwerda  
Ferwerda Development Co  
37 Tarah Way  
Fremont NH 03044

Dear Marty:

This will follow-up our meeting last Thursday night in response to your being issued a Cease and Desist Order for work within the Governor's Forest Park.

From that meeting, the Board lifted the Cease and Desist to include you being able to complete certain work, and from it came a list of the items that need immediate remediation. As you clearly understood that evening, NO Occupancy Certificates will be issued for work within the development, nor will any building permits be issued for new dwellings within the development. You also clearly understood that any work you do on site is done at your own risk pending the final approval by the Fremont Planning Board of an Amended Site Plan on/in all facets of Phase I and II of the development.

We also expressed to you the safety concerns about steep slopes and danger caused by the rocks leftover from the blasting ongoing in Phase III. These items all remain your responsibility as you stated the design intent is not compliant with general town road specifications.

The following were the conditions placed on the partial lifting of the Cease and Desist Order: to modify the Cease and Desist order to allow for work to continue in other parts of the park)

1. Amend the building permit on lot 03-001.001.018 to show the actual site conditions, and apply for additional work to be done on this lot (for any item not listed on the original building permit);
2. All work done on lot 18 and within the Park is strictly at your own risk, including landscaping and any other improvements, given that final approval of the layout and design is the jurisdiction of the Fremont Planning Board through the Site Plan Review Process.
3. A CO will not be issued for said lot 18 until the easement area for a 12-foot travel way is designated on an amended plan, approved, and built to complete specifications
4. An amended Site Plan Review is applied for, and granted by the Fremont Planning Board, for all sections of Phase I and II in the Governor's Forest Park to include all existing site conditions and any proposed changes to the original approved plans.

5. All improvements are constructed pursuant to the approved plan, easements issued as applicable, and any necessary monitoring by the Town is completed and approved. This includes construction of the easement and access way to the Witham property.
6. The Site Plan amendment plans submitted must address the buildings in the Witham Park that are on Ferwerda land, and those items must be addressed by lot line adjustment or other legal method to bring them into compliance with all Town Ordinances and Regulations.
7. At such time as substantial work has been completed and approved on the above list, Ferwerda can, by special request, meet with the Board of Selectmen to discuss moving ahead on previously Ceased work areas.
8. Work shall be subject to review by the Town Engineer, especially in Phase III where significant slopes are involved.

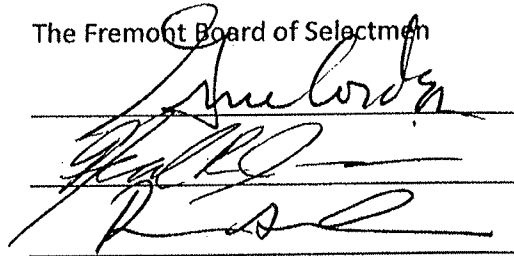
As always, any and all work done shall be in compliance with Town Rules, Regulations, Ordinances, and applicable NH Statutes. As you know, the Site Plan is the jurisdiction of the Fremont Planning Board, and we have authorized you to work with Roger Barham as a representative of both Boards, but all approvals shall be through the proper Board, when that be the Planning Board or the Board of Selectmen.

You are allowed to continue site work on Phase III with proper bonding and review by the Town's engineer.

You pledged to get the majority of this work completed within the next six weeks, and we will look forward to a speedy resolution. If you have any questions, please feel free to contact our office and keep in close contact with the Fremont Building Inspector and the Fremont Planning Board as you proceed.

Sincerely yours,

The Fremont Board of Selectmen

The image shows three handwritten signatures in black ink, each written over a horizontal line. The signatures are cursive and appear to be the names of the members of the Fremont Board of Selectmen.

C: File / Governor's Forest  
03-001.001.18B  
Fremont Planning Board  
Rick Foye, Building Inspector