



Fremont Board of Adjustment
September 27, 2011
Meeting Minutes
Approved as amended October 25, 2011

Members present: Chairman Doug Andrew, Member John (Jack) Downing, and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew opened the meeting at 7:35 pm.

At the August 25, 2009 meeting Mr. Andrew designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. That appointment remains in effect.

MINUTES

Mr. Downing made the motion to accept the minutes of the August 30, 2011 meeting as written. Motion seconded by Mr. Andrew with unanimous favorable vote.

Case # 011-002
PETER GILLIGAN
Map 3 Lot 177-003

Present: Owner Peter Gilligan.

Mr. Andrew opened this Public Hearing at 7:35 p.m. and stated that this is a continuation of the August 30, 2011 portion of this Public Hearing which was continued to allow time for the Board to conduct a site visit and for the applicant to address the outstanding issues of condition E of Article IV-A of the Fremont Zoning Ordinance.

Mr. Andrew related to Mr. Gilligan that there is not a full Board present and gave him the option of waiting for the benefit of a full Board for a decision. It was further explained that it takes concurring votes of three voting Members of the Board to decide in favor of an applicant or reverse any action of the administrative official. Mr. Gilligan opted to move forward with the three members present.

Mr. Andrew referred to Article IV-A of the Fremont Zoning Ordinance which is the subject article in this case.

Mrs. Bolduc reiterated that the Ordinance describes an In-law/accessory apartment as:

An apartment within a single family residence. An in-law apartment is defined as “a separate living space within a single family dwelling unit consisting of separate sleeping, cooking and bathroom facilities and which is intended to be occupied by an in-law or in-laws of a member of a family unit occupying the main part of the dwelling.” and meeting the following criteria:

In-law apartments may be occupied only by members of the family unit occupying the main part of the dwelling or by in-laws of a member of said family unit. The applicant must satisfactorily demonstrate that said apartment will be utilized only in this fashion. The occupancy or rental of an in-law apartment by persons other than in-laws, as defined in this ordinance, is expressly prohibited.

Mrs. Bolduc reported that returns of all certified notifications of the Public Hearing have now been received.

Site Visit: Mr. Andrew stated that on September 20, 2011 he, Mr. Downing, Mr. Boisvert and Mrs. Bolduc met with owner Peter Gilligan at 6:00 pm at the site of 30 Whittier Drive for the purpose of a duly noticed site visit. Mr. Gilligan showed the location of the proposed addition for the in-law unit and the location of an additional ground level egress door on the side of the existing garage. The group noted that the driveway includes 2 turn-arounds and appears to be large enough to accommodate at least 4 vehicles. The Members left the premise at 6:35 pm.

The Board reviewed and discussed the application and drawn plan of the site submitted by Mr. Gilligan. The Board received an August 31, 2011 written approval from the Building Official stating that “proper certification of an adequate septic system consistent with the intent of Article IV-A (E) has been provided to the Building Official.” It was agreed by the Members that condition E has been revisited, complied with and completed as required at the August 30, 2011 portion of this Public Hearing.

According to the owners signature on the application for this Special Exception and by verbal agreement at this Public Hearing the applicant has certified the following;
(Mr. Gilligan’s comments are in italics).

- A. The property conforms to the dimensional requirements of the single family minimum lot size standard as established by Fremont Zoning Ordinance in 1971 (Lot size of one (1) acre minimum is required), and the single family dwelling has been constructed and occupied for a period of a minimum of one year.
Yes; 2.01 acres
- B. The dwelling to which the in-law/accessory apartment is being created is owner occupied and of greater than twelve hundred (1200) square feet of total existing living space.
Yes
- C. The living area of the in-law/accessory apartment has a minimum of four hundred (400) square feet and a maximum of eight hundred (800) square feet. Size shall be determined by the total square footage of the in-law/accessory apartment. The initial family unit is not lessened by such dimensions so as to create non-compliance with Article V Section 2.
Yes

ZBA Meeting Minutes 9-27-11

There was a discussion relative to the square footage of the proposed in-law unit. The submission shows the proposed in-law unit to be 24' x 28' and 9' x 14' for a total of 798 sq ft and Mr. Gilligan verified this statement.

- D. There will be no more than two (2) bedrooms in the in-law/accessory apartment.
There is one bedroom.
- E. Septic facilities are adequate to service the in-law/accessory apartment. Such evidence shall be in the form of certification by State of N.H. licensed septic system designer. The Building Official has indicated his approval in writing to the Zoning Board of Adjustment as to proper certification having been received.
Yes – has been provided
- F. The in-law/accessory apartment shall be designed such that the appearance of the building remains that of the single family dwelling. Any new entrances shall be located on the side or rear of the building and shall be at ground level.
Yes
- G. The in-law/accessory apartment shall have accessible entrances and shall conform to dwelling unit Type-B construction, as specified in the International Residential Code (IRC).
Yes
- H. The primary residence and the in-law/accessory apartment shall share common water, septic, and electric facilities.
Yes
- I. In no case shall more than one in-law/accessory apartment be permitted within the structure. Dormitory-type facilities and living are expressly prohibited whether seasonal or otherwise.
Yes
- J. The In-law/accessory apartment shall not be constructed or established within any accessory use structure (such as a garage).
Yes
- K. Off-street parking is available for a minimum of four automobiles for the entire structure. The in-law/accessory apartment to be permitted does not have a separate driveway or separate garage to accommodate its occupant(s).
Yes
There was a discussion relative to the driveway and it was noted that when the Members viewed the property the driveway appeared to be large enough to accommodate 4 vehicles.
- L. The in-law/accessory apartment shall be provided with an interconnected smoke alarm system. All smoke alarms shall be listed and installed in accordance with the provisions of the IRC and the household fire warning provisions of NFPA 72.
Yes

M. The provisions of the International Residential Code (IRC) shall apply to all construction elements of the in-law/accessory apartment. There shall be no occupancy of the in-law/accessory apartment until the Building Official has issued an occupancy permit.

Yes

N. The in-law/accessory apartment is not within the Flood Plain as identified by the FIRM map relating to Fremont, N.H.

Yes

Variations to this special exception may not be granted.

Mr. Andrew polled the Board and it was the unanimous consensus of the Board that the exception is allowed by the ordinance and there are specific conditions present under which the exception may be granted. It was also the unanimous consensus of the Board that all of the criteria for this Special Exception to Article IV-A of the Fremont Zoning Ordinance have now been met by the applicant.

Mrs. Bolduc stated that she wished to make it clear that the Board is in no way considering approval or denial of a specific floor plan for the in-law/accessory apartment. Mr. Gilligan said he understood.

After careful review by the Board, Mr. Andrew made the motion that, based on the information presented, and on the Board's determination that the exception is allowed by the ordinance and the conditions under which the exception may be granted have been met, the Zoning Board of Adjustment grant the Special Exception from Article IV-A of the Fremont Zoning Ordinance to Peter Gilligan to allow the property use at 30 Whittier Drive, Fremont, New Hampshire, Map 3 Lot 177-003, to include an In-Law Apartment, pursuant to; 1) the application and plans submitted and; 2) to the applicant's compliance with all Sections of Article IV-A of the Fremont Zoning Ordinance.

This approval is granted with the following additional conditions:

1. This Special Exception decision shall be recorded with Rockingham County Registry of Deeds, indexed under the name of the property owner.
2. Upon the cessation of occupancy by an immediate family member, the owner hereby acknowledges and purchasers are put on notice, that the in-law/accessory apartment is to be used only by immediate family members and no others, and that no variances from this provision shall be obtained permitting any other use.
3. The applicant must apply for a building permit with the Building Official within ten (10) days of this decision.
4. This approval is subject to all other Local, State or Federal permits and approvals that may be required, and does not relieve the applicant from the obligation to obtain such other permits.
5. RSA 676:17 shall apply.

Motion seconded by Mr. Downing with unanimous favorable vote 3-0.

Mr. Andrew stated that the Special Exception is granted and advised the applicant that there is a 30 day appeal period during which any party to the action or any party directly affected can make application for a re-hearing.

ZBA Meeting Minutes 9-27-11

Mrs. Bolduc said it should be made clear for the record that granting this Special Exception from Article IV-A of the Fremont Zoning Ordinance for an In-Law Apartment is in no way to be considered permission for a duplex situation for a permanent second living unit. There is a note on the recorded subdivision plan (D-20714) that includes the lot 3-177-3 that restricts all lots to single family. As per Article IV-A, an In-Law Apartment is described as *an apartment within a single family residence. The occupancy or rental of an in-law apartment by persons other than in-laws, as defined in this ordinance, is expressly prohibited.* Mr. Gilligan said he understood.

Mr. Gilligan agreed to submit payment for the recording fees.

Mr. Downing made the motion to close this Public Hearing at 8:25 pm
Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Gilligan thanked the Board and left the meeting.

The Board discussed the In-Law Apartment ordinance and general zoning issues.

Mr. Boisvert joined the Board at 8:30 pm.

The Board continued to discuss general zoning issues.

Pending House and Senate bills:

HB 85. This bill would change the definition of “abutter” under RSA 673:2 to mean, in the case of a condominium, each unit owner, rather than the officers of the owners’ association. The result of this change would be that land use boards, in giving notice of hearings, would be required to notify every owner of an abutting condominium, rather than just the officers.

SB 19. This bill amends the definition of “prime wetlands” that may be designated by a municipality by requiring that any such wetland comprise five acres or more and by adding “very poorly drained soils” to the attributes that may qualify the land for such designation.

CORRESPONDENCE

Received and reviewed the notice of the November 16 & 17, 2011 annual LGC Conference. Mr. Downing and Mrs. Bolduc will attend the November 17th session.

At 8:35 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Andrew with unanimous favorable vote.

Next meeting: scheduled for October 25, 2011.

Respectfully submitted,

Meredith Bolduc, recording secretary