



Fremont Board of Adjustment
November 29, 2011
Meeting Minutes
Approved December 27, 2011

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

Mr. Andrew opened the meeting at 7:30 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 October 25, 2011 meeting as written. Motion seconded by Mr. Boisvert with favorable vote 5-0.

Mrs. Bolduc reported that she was notified this morning by Selectman Greta St. Germain that Peter Gilligan may wish to meet with the Board tonight to discuss the provisions and conditions of his September 27, 2011 approval for a Special Exception for an in-law apartment unit at 30 Whittier Drive (Map 3 Lot 177-003). If he did, the Selectmen and the Building Inspector would also attend. Later in the day she learned through the Building Inspector that Mr. Gilligan would not be attending tonight's meeting.

Mrs. Bolduc reported the following that took place on November 8, 2011:

- Peter Gilligan visited the Land Use Office to discuss the Special Exception to Article IV-A of the Fremont Zoning Ordinance (In-Law Apartment) approved by the Zoning Board of Adjustment on September 27, 2011. The Building Inspector refused to accept a building permit application and plan that was submitted on October 4, 2011 because it was outside of the 10 days required as per a condition of the approval.

Mr. Gilligan told Mrs. Bolduc that Selectman Greta St. Germain sent him to speak with her about a having special meeting with the ZBA to get an Equitable Waiver of Dimensional Requirement. He had a copy of NH RSA 674:33-a (Equitable Waiver) with him. Mrs. Bolduc explained that there was nothing to apply an Equitable Waiver to as this form of relief is only when a structure is in physical violation ei: an existing structure that has been built too close to a lot line.

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Mr. Gilligan said that he did not understand that his approval included needing to meet any handicap codes. The Building Inspector has told him that the plan his builder submitted for the unit would not meet the Type-B construction, as specified in the International Residential Code because it is not accessible.

- At the instruction of Town Counsel the ZBA members were polled and they agreed to extend the 10-day timeframe by 65 days making the deadline for Mr. Gilligan to apply for a building permit December 1, 2011 to meet any requirements.
- Later in the afternoon there was a phone conversation with the Code Enforcement Officer /Building Inspector Bob Meade and Town Counsel in which Mr. Meade read section R104 of the 2012 IRC code that says *he is authorized to enforce, interpret and there can be no waivers*. Mr. Ryan said that this means it is clear that there are no provisions for waivers and the applicant must comply with the codes. If the plans submitted are not compliant there can be no building permit issued and the Special Exception fails.

There was a conversation relative to the Gilligan case and the Members agreed that it was made clear during the two portions of the Public Hearing that in order to get the Special Exception all of the conditions of the ordinance as well as the building codes must be met. Also by the applicant's written application, discussions and his verbal agreement at the public hearings, he certified that he could conform to all provisions and conditions of the ordinance. It was also made clear that the Board was in no way considering approval or denial of a specific floor plan for the in-law/accessory apartment and it is documented that Mr. Gilligan said he understood.

The Board discussed the In-Law Apartment ordinance as it is currently written. Mr. Boisvert pointed out a couple of properties that have in-law apartments and it was found that those cases were prior to the adoption of Article IV-A and the owners did receive a variance from Article IV Section 3 from the ZBA, but with the restriction that the unit is to only be occupied by the immediate family of the owners and shall never be rented by them or by any future owner(s) without further seeking relief from the Town of Fremont.

Zoning Ordinance Amendments

Mrs. Bolduc reported that the Planning Board has scheduled a first public hearing for 7:30 pm on December 7, 2011, and a second public hearing if necessary for 7:30 pm on December 21, 2011, for amendments to the following Zoning Ordinance articles to be moved on the voters at the 2012 Town Meeting.

- Article IV-A of the Fremont Zoning Ordinance (In-Law Accessory Apartments).
 1. Delete the second portion of the sentence in section G. "Any new entrances shall be located on the side or rear of the building *and shall be at ground level*".

Rational: Amending this condition would allow the option of having steps to an entrance such as in the case of older, existing homes with existing entrances.

2. Delete section H in its entirety. *“All in-law/accessory apartments shall have accessible entrances and shall conform to dwelling unit Type-B construction, as specified in the International Residential Code (IRC).”*

Rational: This amendment would eliminate an in-law accessory apartment to be required to conform to dwelling unit Type-B construction which is described as “a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A 117.1, intended to be consistent with the technical requirements of fair housing required by federal law.”

- Article XI –E; 4 (d) of the Fremont Zoning Ordinance (Aquifer Protection District) by adding *“except for propane and natural gas”*.
Rational: This amendment would put the Town in line with NH DES model ordinance in excluding propane and “other liquefied fuels which exist as gases at normal atmospheric temperature and pressure”.
- Article XIX, 1.3-C of the Fremont Zoning Ordinance (Signs) - “For Sale Signs” by adding *“and do not exceed six (6) square feet in size”*.
Rational: This amendment would allow the ordinance to be in keeping with the typical size of for sale signs, particularly pertaining to the sale of land, and eliminate the placement of oversized signs.

The Board discussed the rational for each zoning amendment.

Work session discussions included the purpose of the Board of Adjustment which is to hear and determine appropriate action relative to the Fremont Zoning Ordinance in the forms of:

- Special Exceptions: Governed by RSA 674:33
From the OEP Handbook:
A **special exception** is a use of land or buildings that is permitted, subject to specific conditions that are set forth in the ordinance.
A **special exception** is a specific, permitted land use that is allowed when clearly defined criteria and conditions contained in the ordinance are met.
- Variances: Governed by RSA 674:33
From the OEP Handbook:
A **variance** is a waiver or relaxation of particular requirements of an ordinance when strict enforcement would cause undue hardship because of circumstances unique to the property.
A **variance** is permission granted to use a specific piece of property in a more flexible manner than allowed by the ordinance.
- Appeals from administrative decisions: Governed by RSA 676:5
676:5, I. Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- Equitable Waiver of Dimensional Requirement: Governed by RSA 674:33,a
From the OEP Handbook:

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Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions. Once a waiver is granted, the property is not considered to be a nonconforming use and the waiver does not exempt future use, construction, reconstruction or additions on the property from full compliance with the ordinance.

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.

Mr. Downing reported that he and Jack Karcz attended the November 17, 2011 annual LGC Conference in Manchester. He said it was a good conference with lots of good information.

CORRESPONDENCE

There was no incoming correspondence.

At 8:50 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Baker with unanimous favorable vote.

Next meeting: scheduled for December 27, 2011.

Respectfully submitted,

Meredith Bolduc, recording secretary
