



Fremont Board of Adjustment
April 24, 2012
Meeting Minutes
Approved May 22, 2012

Members present: Chairman Doug Andrew, Member John (Jack) Downing. Alt/recording Secretary Meredith Bolduc and Building Inspector/Code Enforcement Officer Bob Meade.

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 approve the minutes of the March 27, 2012 meeting as written. Motion seconded by Mr. Andrew with favorable vote.

Case # 012-001
Jeff & Patricia Ballantyne
Map 7 Lot 004

Present: Owners Jeff & Patricia Ballantyne and Katie Orlando

Mr. Andrew opened this Public Hearing at 7:35 p.m.

Mrs. Bolduc explained the purpose of the Board and read the notice of the Public Hearing as follows:

In accordance with NH RSA 676:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on Tuesday April 24, 2012 at the Fremont Town Hall, downstairs Land Use meeting room, for Jeff and Patricia Ballantyne for 26 Tibbetts Road, Map 7 Lot 004, Fremont, NH.

The applicants are seeking a Special Exception from the terms of Article III Section 1-C (Expansion of Non-conforming Structure); and Variances from the terms of Article IV Section 5 (Maximum Building Lot Coverage), and Article IX Section F-4 (Watershed Protection Area) as

set forth in the Town of Fremont Zoning Ordinance to allow a 54 sq. ft. addition on their existing non-conforming structure (home) located within a watershed protection area.

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Andrew related to the applicants that there is not a full Board present and that they have the option of waiting for a full Board for any decision. Mrs. Bolduc 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. & Mrs. Ballantyne opted to continue with the three members present.

Mrs. Bolduc stated that this hearing was noticed on April 5, 2012 at the Fremont Post Office and Fremont Town Hall and in the April 10, 2012 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on April 5, 2012, with abutter Digiulo re-notified on April 11, 2012; returns have been received from the applicants Ballantyne and abutter Orlando; returns have not been received from Dugiulo and Sturk. The application consisted of a cover letter of intent for each action, six sets of plans, a current abutters list, proper check amount and a March 29, 2012 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer.

Comment sheets have been received from:

Building/Code Enforcement Official: *It is my opinion that adding approximately 54 sq ft to this home an increase of less than 1%, makes sense. The look/appearance from the outside would be much better (for all) and it would alleviate a mechanical room on the inside which is much too small. I believe it will help resale value. Last of all it would make framing this roof a lot easier/simpler.*

Health Officer: *I see no apparent adverse issues, no concerns or objections.*

Planning Board: *no comment*

Road Agent: *no comment*

Mrs. Bolduc explained that the Conservation Commission has not had a chance to review and comment on the application. They will do so when they meet on May 7, 2012.

The Board reviewed the plan set submitted by Mr. & Mr. Ballantyne which included:

- A hand drawing showing the entire property perimeter and the locations of all abutting properties.
- A hand drawing of the lot that shows the locations of the existing 1 ½ story house, deck and septic.

In their April 5, 2012 cover letter of intent Mr. & Mrs. Ballantyne related that their intent is to straighten the wall nearest Tibbetts Road, squaring off a corner of the house by filling in a jog; an addition of approximately 54 sq ft. (shown on the plan submitted). The proposed renovations will not expand the house closer to the property lines, but will allow for the expansion and

installation of a window in the existing second bedroom, raise the ceiling in the rooms to an acceptable useable height, redesign the roof to eliminate the lack of slope, and update the furnace room (utility room) to allow proper ventilation.

Mr. Meade said he recalculated the dimensions of the expansion and found it to be actually 44 sq ft. It was agreed by the Board and Mr. & Mrs. Ballantyne that 54 sq ft should be changed to 44 sq ft wherever it appears throughout the application.

Special Exception

012-001-A

Article III Section 1-C

Mr. Andrew explained that a Special Exception is a specific, permitted land use that is allowed when clearly defined criteria and conditions contained in the ordinance are met.

Mrs. Bolduc explained the procedure for a Special Exception. She stated that the three questions which must be answered to decide whether or not a Special Exception can be legally granted are:

1. Is the use one that is ordinarily prohibited in the district?
2. Is the use specifically allowed as a Special Exception under the terms of the ordinance?
3. Are the conditions specified in the ordinance for granting the exception met in the particular case?

Mrs. Bolduc read Article III Section 1-C of the Fremont Zoning Ordinance as follows.

Non-conforming structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment, which must find the following factors to exist before issuing such a special exception:

1. *The proposed expansion must intrude no further into any setback area than does the existing structure.*
2. *The expansion must have no further adverse impact on the view, light and air of any abutter.*
3. *The expansion must not cause property values to deteriorate.*
4. *The expansion must not impede existing rights of access or egress.*
5. *That portion of the proposed expansion, which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.*
6. *In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.*
7. *A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.*

Mr. & Mrs. Ballantyne addressed the 7 conditions in their application as follows:

1. *No, with the angle of the existing house the section we plan on squaring off angles further away from the property line and does not intrude further into the setback.*
2. *The expansion is @44 sq ft, we are squaring off and filling in a jog in the outline of the house. No adverse impact of the view, light or any will occur. The layout of the house and*

neighbors means the addition isn't really visible as an expansion.

3. *Property values would expect to rise after this expansion, as it improves the curb appeal and function. Our two closest neighbors have stated positive comments to us regarding the expansion, lot 3 & 5.*
4. *The expansion will not have any impact or impede anyone access or rights.*
5. *The entire existing building is within the setback of the river of 150 ft, the house sq footage is @1150 sq ft, we are adding @44 sq ft. the section of the house that is being renovated is 11 ft from the property line (road). This section of the house is @230 sq ft, the area of that space that we are squaring off is 44 sq ft.*
6. *Residential use, no impact or change on access, traffic, lighting or any safety/visibility features.*
7. *We are seeking an exception for the front setback, the expansion will not violate any height or side setbacks.*

Variance

012-001-B

Article IV Section 5

Mr. Andrew explained that a Variance is a waiver or relaxation of a particular requirement of an ordinance when strict enforcement would cause undue hardship because of circumstances unique to the property. There are five conditions which must be met in order for a Variance to be granted including:

- granting the variance would not be contrary to the public interest
- the use is not contrary to the spirit of the ordinance
- granting the variance would do substantial justice
- the proposed use would not diminish surrounding property values
- literal enforcement of the Ordinance would result in unnecessary hardship to the owner

Mr. Andrew read Article IV Section 5 of the Fremont Zoning Ordinance as follows.

The maximum percentage of each building lot which may be occupied by buildings, off street parking areas, driveways, septic systems and associated leaching fields shall be thirty (30%) percent.

Mrs. Bolduc noted that the percentage of existing lot coverage and proposed lot coverage in the application does not include the driveway and septic. Mr. Meade and Mr. Ballantyne calculated the existing total lot coverage at 34.8%. With the proposed 44 sq ft addition the total lot coverage would be 35.7%, an increase of less than 1%.

The Board reviewed Mr. & Mrs. Ballantyne's submission in which they addressed the five conditions for a Variance. Below is their submission (in *italics*) including some changes they made as a result of discussion at this hearing:

1. *Granting the variance would not be contrary to the public interest because: It will not diminish any of the abutter's property values and would enhance the property value as well*

as the area values. The proposed work will not alter the essential character of the neighborhood nor threaten public health, safety or welfare.

2. The use is not contrary to the spirit of the ordinance because: *the construction will only square off a corner of the house outline, it will not extend any further into the setback area, and will not impose any form of hazard, neighboring properties will be enhanced and will not cause any injury to the public rights. The change of usage percentage is minimal from 34.8% to 35.7%.*
3. Granting the Variance would do substantial justice because: *To grant this variance would not cause any harm to the general public, neighboring properties or other individuals. The neighboring properties would benefit with improved values and appearances.*
4. The proposed use would not diminish surrounding property values because: *The renovation will be new construction following current national building code, allowing us to repair poorly constructed space that isn't currently fit for use. Expansion of the room will allow us to have the existing second bedroom be of useable size, current 2nd bedroom is 7' x 8' the expansion would change this to 9'6" x 11' 6". Currently there is no window for a 2nd means of egress, wall height is less than 6' tall. The expansion would provide wall height to allow a window and proper roof drainage. The visual curb appeal of the house will be greatly increased. A better design will give the property a more appealing look and will enhance the neighborhood property values, a result the neighborhood values are not diminished, but improved.*

There was a conversation relative to the proposed size increase of the mechanical room and Mr. Meade noted that it would definitely improve the furnace area and decrease safety concerns he may have.

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.
 - A. Because of special conditions of the property that distinguish it from other properties in the area:
 - i) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of the provision to the property: *This property has special conditions because it is smaller than most neighboring properties and therefore this problem is unique to this property. Due to this property's smaller size the restrictions if applied to the property do not serve that purpose in a fair and substantial way.*

There was conversation relative to the fact that this is a unique area of substandard lots. The tax map was consulted and it was found that while there are several small non-conforming lots in the area, the Ballantyne's lot is even smaller than most.

and

- ii) The proposed use is a reasonable one. *The change in land use is minimal, a 44sq ft increase in the coverage of the land, which if the land were slightly larger would not be an issue. The change will not affect the character of the property nor neighborhood.*

OR (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The main distinguishing factor of our property is that it is smaller than it is smaller than most neighboring properties. Due to it being a smaller lot we are unable to be in strict conformance with the ordinance. Some properties could add this space without having the same issue. A variance would allow us to have reasonable use of the property. The proposed renovation will allow us to make minimal changes to the footprint but have a maximum effect of creating solutions to all of the outstanding issues. Overall we are adding 44 sq ft to the house, changing the property coverage about 1%.

There was a conversation relative to “special conditions of the property” and what “reasonable use” means.

Variance

012-001-C

Article IX Section F-4

Mr. Andrew read Article IX Section F-4 of the Fremont Zoning Ordinance as follows.

Watershed protection areas may be included in the minimum lot size requirements. All dwellings, structures, or parking areas shall have no portion within the Watershed Protection Area and/or no portion closer to Wetlands than those limits defined under Article IV as setback requirements.

The watershed protection area for the Exeter River is 150’. According to calculations by Mr. Meade and Mr. Ballantyne the existing house in the area of the proposed expansion would be approximately 40’ from the river. Mr. Meade reiterated that the proposed expansion is on the further side of the lot from the river and would not encroach closer than any portion of the existing house. The plan drawing showed that the back of the house itself is much closer to the river than the addition would be on the front.

The Board reviewed Mr. & Mrs. Ballantyne’s submission in which they addressed the five conditions for a Variance. Below is their submission (in *italics*) including some changes they made as a result of discussion at this hearing:

1. Granting the variance would not be contrary to the public interest because: *The entire property is within the Watershed protection area, all the properties on the street have the same issue being entirely within the Watershed protection areas the proposed use would not alter the character of the land nor neighborhood.*
2. The use is not contrary to the spirit of the ordinance because: *With the renovation we are maintaining the essential character of the neighborhood, the minor expansion will cause no public health or safety threat, the public rights are not injured in any way.*
3. Granting the Variance would do substantial justice because: *The neighbors and the neighborhood will benefit from the improvement to the properties appearance, condition*

and value. We do not see any harm to the general public or other individuals, the entire neighborhood will be enhanced with the improvements to the property.

4. The proposed use would not diminish surrounding property values because: *With the renovation of the building, it will enhance the curb appeal of the property which in turn will only improve the neighboring properties value, appearance and appeal. The work will allow us to correct many pervious errors in construction and design.*

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.
A. Because of special conditions of the property that distinguish it from other properties in the area:

i) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of the provision to the property: *Compared to many neighboring properties our property is the smallest, making our property distinctly unique. Due to the properties limited size the restrictions if applied to the property do not serve that purpose in a fair and substantial way.*

and

ii) The proposed use is a reasonable one. *Our current plan is to square off one corner of the building, filling in jogs and angels. Due to the limited space of the property, this design best uses the property. The addition would not encroach on the property lines as the house is angles in such as way that the area being squared off is further away from the property lines than existing. It allows us to correct many defects in the homes construction and design, it will enhance the value of the house, property and neighboring properties. The minimal change in lot coverage will not alter the essential character of the neighborhood.*

OR (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The property's small size (compared to the neighboring properties on either side) creates a special condition that only this property has. The small size of the lot is unique and to be only used in strict conformance with the ordinance would force us to change the character of the house. The space as it exists is too small to use and the 2nd bedroom (which this renovation expands), it lacks the wall height to add a 2nd way to exit the room. The furnace room is too small and lacks proper roof slope which is causing leaks and damage.

There was further discussion relative “special conditions of the property” and what “reasonable use” for this property means.

Mr. Andrew asked if the abutters/public had any comments. Ms. Orlando said she has no issue or objection to the Ballantyne’s proposal as she would want to do the same improvement if it

was her property.

Mr. Meade said he feels the Ballantyne's request is reasonable and agreed that filling in the irregular jog on the house would serve to solve several issues of substandard construction.

At 8:50 pm Mr. Downing made the motion to continue this Public Hearing to 6:00 pm on Tuesday May 1, 2012 at the property at 26 Tibbetts Road for the purpose of a site visit, and to 7:30 pm on May 22, 2012 at the Fremont Town Hall.

Motion seconded by Mr. Andrew with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence.

There was a brief conversation relative to the demolition of a recently destroyed mobile home on Main Street.

At 9:00 pm Mr. Downing made the motion to adjourn. Motion seconded by Mr. Andrew with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary

Next meeting: scheduled for May 22, 2012.
