



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

Members present: Chairman Doug Andrew, Member John (Jack) Downing 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 April 24, 2012 meeting as written. Motion seconded by Mr. Andrew with favorable vote.

#### SITE VISIT

26 Tibbetts Road, Map 7 Lot 004  
May 1, 2012

Present: Owner Jeff Ballantyne, Chairman Douglas Andrew, Member Jack Downing, Alternate Meredith Bolduc.

Mr. Andrew stated that on May 1, 2012 he, Mr. Downing and Mrs. Bolduc met with owner Jeff Ballantyne at 6:00 pm at the site of 26 Tibbetts Road for the purpose of a duly noticed site visit. Mr. Ballantyne showed the group the location of the proposed addition. The Members left the premise at 6:35 pm.

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

Present: Owner Jeff Ballantyne  
There were no abutters present.

Mr. Andrew opened this Public Hearing at 7:35 pm and stated that this is a continuation of the

April 24, 2012 portion of this Public Hearing as well as the May 1, 2012 site visit.

Mr. Andrew reiterated that 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 44 sq. ft. addition on their existing non-conforming structure (home) located within a watershed protection area. 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. The proposed expansion of approximately 44 sq ft will be gained by squaring off one corner of the house and filling in a jog” (shown on the plan submitted. “The proposed renovations will not expand the house closer to the property lines.”

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

Mrs. Bolduc reported that receipts of all certified notices have now been returned.

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.*

Road Agent: *No comment.*

Planning Board: *No comment.*

Conservation Commission: *the Conservation Commission has reviewed the plan submitted for Jeff and Patricia Ballantyne for the special exception ad variances stated above. The Conservation Commission has no comment at this time.*

The Board discussed the area of the proposed addition, both inside and outside, that they had viewed at the site visit. The Board continued their review of the plan set submitted by Mr. & Mr. Ballantyne which including the hand drawing showing the entire property perimeter and the locations of all abutting properties and the hand drawing of the lot that shows the locations of the existing 1 ½ story house, deck and septic.

Mrs. Bolduc noted that at the April 24, 2012 portion of this Public Hearing the square footage of the proposed addition was recalculated and found to be 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 and any decision.

Following the review and with no further questions or discussion the Board proceeded to address

the requested relief from the Fremont Zoning Ordinance.

**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 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.*

With no further discussion, Mr. Andrew called for the Board to address the three questions that must be answered to decide whether or not a special exception can be legally granted.

1. Is the use one that is ordinarily prohibited in the district?

Boards Vote:

Mr. Downing No

Mrs. Bolduc No

Mr. Andrew No

Mr. Andrew declared that by vote, the Board unanimously agreed that the use, expansion of a non-conforming structure, is allowed by Special Exception so it is not ordinarily prohibited in the district.

2. Is the use specifically allowed as a special exception under the terms of the ordinance?

Boards Vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board unanimously agreed that Non-conforming structures may be expanded in accordance with the terms of the Ordinance.

3. Are the conditions specified in the ordinance for granting the exception met in this case?

Boards Vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board unanimously agreed that all seven specified conditions of Article III Section 1-C are met.

Mr. Downing made the motion that, based on the information presented and the results of the Boards vote on the three questions of a Special Exception; and the Boards determination that the exception is allowed by the ordinance and that all of the specific conditions under which the exception may be granted have been met, the Fremont Zoning Board of Adjustment grant a Special Exception from the terms of Article III Section 1-C of the Fremont Zoning Ordinance, to Jeff and Patricia Ballantyne to allow the expansion of a forty four (44) sq. ft. addition on their existing non-conforming structure (home) located at 26 Tibbetts Road, Map 7 Lot 004.

Motion seconded by Mr. Andrew with unanimous favorable vote.

### **Point of Order**

ZBA Co-chairman Scott Boisvert joined the meeting at 7:55 pm. Mr. Boisvert respectfully abstained from any vote for this case because he was not in attendance at the April 24, 2012 portion of this Public Hearing nor at the May 1, 2012 site visit

### **Variance**

Article IV Section 5

**012-001-B**

Mr. Andrew reiterated the 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

Mrs. Bolduc read Article IV Section 5 of the Fremont Zoning Ordinance: *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.*

The Board reviewed Mr. & Mrs. Ballantyne's submission in which they addressed the five conditions for a Variance as follows: (Their answers in *italics.*) Each condition is followed by the Board's vote.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Boisvert Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure "public rights" therefore would not be contrary to the public interest.

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% - less than 1%.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure "public rights" therefore would not be contrary to the spirit of the ordinance.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not cause harm to the general public or to other individuals therefore it would do substantial justice in that the benefit to the owner is not outweighed by harm to the general public or to other individuals.

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 2<sup>nd</sup> bedroom is 7' x 8' the expansion would change this to 9'6" x 11' 6". Currently there is no window for a 2<sup>nd</sup> 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, as a result the neighborhood values are not diminished, but improved.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not diminish the values of surrounding properties.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that; 1) The special condition of the property that distinguishes it from other properties in the area is the small size of the property itself; and 2) 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 angles. 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 angled in such a 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 home's 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.*

*Additionally, 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%.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board agreed that the request to build a small 44 sq ft addition and exceed the maximum 30% coverage of the building lot by 1% of the existing coverage is not unreasonable and the use would not alter the character of the neighborhood.

Mr. Bolduc made the motion that, based on the information presented and the results of the Board's vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment grant a Variance from the terms of Article IV Section 5 of the Fremont Zoning Ordinance to Jeff and Patricia Ballantyne to allow their property located at 26 Tibbetts Road, Map 7 Lot 004, to be occupied by more than thirty (30%) percent by buildings, off street parking areas, driveways, septic systems and associated leaching fields with the following conditions:

1. The property shall not be occupied by more than thirty six (36%) percent by buildings, off street parking areas, driveways, septic systems and associated leaching fields.
2. No further or future expansion or improvements shall be allowed to be constructed on the property.
3. This decision shall be recorded with reference to the current deed and shall be included in any subsequent deeds to this parcel or subdivision of this parcel.
4. RSA 676:17 shall apply.

Motion seconded by Mr. Downing with unanimous favorable vote.

**Variance**

**012-001-C**

Article IX Section F-4

Mrs. Bolduc 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.*

As per the Ordinance, the watershed protection area for the Exeter River is 150'. Mr. Ballantyne calculated that the existing house in the area of the proposed expansion would be approximately 40' from the river.

The Board reviewed Mr. & Mrs. Ballantyne's submission in which they addressed the five conditions for a Variance as follows: (Their answers in *italics*.)

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure "public rights" therefore would not be contrary to the public interest.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure "public rights" therefore would not be contrary to the spirit of the ordinance.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes



Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not cause harm to the general public or to other individuals therefore it would do substantial justice in that the benefit to the owner is not outweighed by harm to the general public or to other individuals.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that granting of the Variance would not diminish the values of surrounding properties.

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.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board Members collectively agreed that due to the size of the property 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

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 angles. 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 a 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.*

*Additionally: 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 2<sup>nd</sup> bedroom (which this renovation expands), it lacks the wall height to add a 2<sup>nd</sup> way to exit the room. The furnace room is too small and lacks proper roof slope which is causing leaks and damage.*

Board's vote:

Mr. Downing Yes

Mrs. Bolduc Yes

Mr. Andrew Yes

Mr. Andrew declared that by vote, the Board agreed that the request to build a small 44 sq ft addition closer than 150' to the river and wetland setback is reasonable and the use would not alter the character of the neighborhood.

Mr. Downing made the motion that, based on the information presented and the results of the Boards vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment grant a Variance from the terms of Article IX Section F-4 of the Fremont Zoning Ordinance to Jeff and Patricia Ballantyne to allow a forty four (44) sq ft addition to their existing non-conforming dwelling located at 26 Tibbetts Road, Map 7 Lot 004, within the one hundred and fifty (150) foot watershed protection area of the Exeter River with the following conditions:

1. No portion of the proposed expansion shall be closer than forty (40) feet to the Exeter River.
2. No further or future improvements shall be allowed closer than one hundred and fifty (150') feet to any wetland on the property.
3. This decision shall be recorded with reference to the current deed and shall be included in any subsequent deeds to this parcel or subdivision of this parcel.
4. RSA 676:17 shall apply.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Mr. Andrew declared the Special Exception to Article III Section 1-C, the Variance to Article IV Section 5 and the Variance to Article IX Section F-4 granted for Jeff and Patricia Ballantyne for their property located at 26 Tibbetts Road, Map 7 Lot 004. The applicant was advised that there is a thirty (30) day appeal period.

Mr. Andrew also stated that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will be referenced to the property deed.

The applicant submitted payment for the recording fees.

At 8:25 pm Mr. Downing made the motion to close this Public Hearing.

Motion seconded by Mrs. Bolduc with unanimous favorable vote.

DISCUSSION

There were discussions relative to:

- The recent 100-year floods, how they affected the areas along the Exeter River and how the zoning regulations interact with the rebuilding.
- The Wetland and Watershed Protection District Ordinance and the setbacks relative to the Exeter River and named brooks and streams.

CORRESPONDENCE

There was no incoming correspondence.

At 8:55 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Next meeting: scheduled for June 26, 2012.

Respectfully submitted,

Meredith Bolduc, recording secretary

---