



Fremont Board of Adjustment
April 23, 2013
Meeting Minutes
Approved May 28, 2013

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

Mr. Andrew opened the meeting at 7:00 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 March 26, 2013 meeting as written. Motion seconded by Mr. Andrew with unanimous favorable vote.

COURT UPDATES

The Board reviewed three recent court updates.

1. Sign case that highlights the process used in court review of ZBA decision. This is a court review of a ZBA decision.
2. RSA 21:35, II – Provision regarding filing dates applies to appeals from ZBA decisions.
3. Necessary Variance. Applicant for a Variance need not affirmatively pleas the threshold question of whether the variance is necessary. Trial Court must consider it when ruling on variance issues.

HOUSE & SENATE BILLS

The Board again discussed two Senate Bills currently before the NH House of Representatives and Senate that may be of interest to the Board.

1. Senate Bill 49: This bill provides for appeals of planning board decisions concerning a subdivision or site plan to the board of adjustment prior to appeal to the superior court.

Appeal of Planning Board Decisions. Amend RSA 677:15 by inserting after paragraph I the following new paragraph:

I-a.(a) Any aggrieved party desiring to appeal a decision of the planning board concerning a subdivision or site plan under this section shall first appeal to the board of adjustment any part of the planning board's decision that is appealable under RSA 676:5, III. If any party appeals any part of the planning board's decision to the superior court before all matters appealed to the board of adjustment have been resolved, the court shall stay the appeal until resolution of such matters. After the final resolution of all such matters appealed to the board of adjustment, any aggrieved party may appeal to the superior court, by petition, any or all matters concerning the subdivision or site plan decided by the planning board or the board of adjustment. The petition shall be presented to the superior court within 30 days after the board of adjustment's denial of a motion for rehearing under RSA 677:3, subject to the provisions of paragraph I.

(b) If, upon an appeal to the superior court under this section, the court determines that any matters contained in the appeal should have been appealed to the board of adjustment under RSA 676:5, III, the court shall issue an order to that effect, and shall stay proceedings on any remaining matters until final resolution of all matters before the board of adjustment. Upon such a determination by the superior court, the party who brought the appeal shall have 30 days to present such matters to the board of adjustment under RSA 676:5, III.

This act shall take effect 60 days after its passage.

Mrs. Bolduc reported that she contacted Attorney Paul Sanderson at LGC for clarification of this bill and he said that the bill is designed to clarify procedure when it is not perfectly clear whether the ZBA has jurisdiction over an appeal question. Without this clarification, aggrieved parties were filing appeals at the same time with both the ZBA and the Superior Court. This was to insure that the Superior Court appeal was timely in the event the ZBA decided it had no jurisdiction over the question, and that the ZBA appeal was timely in the event the Superior Court decided that it would not hear the case until all local administrative process had been exhausted. Aggrieved parties couldn't take the risk of guessing who exactly would hear the appeal, since an incorrect answer meant that all appeals would not be heard. This bill now says go the ZBA, and regardless of the answer your Superior Court appeal will be timely.

MEMBER

Mrs. Bolduc said she has been contacted by a resident who may be interested in becoming a ZBA Member. She said she sent him the information about the Board and its responsibilities and she had hoped he may attend tonight's meeting, but maybe next month. This led to another discussion relative to the need for additional ZBA Members.

CORRESPONDENCE

There was no incoming correspondence.

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At 8:15 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Andrew with unanimous favorable vote.

Next meeting: scheduled for May 28, 2013.

Respectfully submitted,

Meredith Bolduc, recording secretary
