



Fremont Board of Adjustment
July 30, 2013
Meeting Minutes

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

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 June 18, 2013 meeting as written. Motion seconded by Mr. Andrew with unanimous favorable vote.

The Members and Mr. Howland discussed and reviewed the purpose of the Board and each aspect of the following NH RSA.

674:33 Powers of Zoning Board of Adjustment. –

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(1) The variance will not be contrary to the public interest;

(2) The spirit of the ordinance is observed;

(3) Substantial justice is done;

(4) The values of surrounding properties are not diminished; and

(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

(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 definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

III. The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

V. Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

ZONING ORDINANCE

The Board reviewed the following Zoning Articles:

- III-D – Non-conforming use - Discontinuation
- IV-A - In-Law Accessory Apartments
- IX -G Special Exceptions (Wetland & Watershed Protection District)

MEMBER

Mrs. Bolduc explained that Mr. Howland expressed an interest in serving on the ZBA some weeks ago and she gave him some information to review including the Fremont Zoning Ordinance and the ZBA Handbook. They have also discussed the responsibilities and time

commitments. Mrs. Bolduc and Mr. Downing explained that they both support Mr. Howland's desire to become a ZBA Member. Mr. Downing works with Mr. Howland on the Open Space Advisory where Mr. Howland is Chairman and Mrs. Bolduc has seen his commitment to his endeavors not only personally, but through the Conservation Commission and Open Space Committee as well. Mrs. Bolduc and Mr. Downing both felt that Mr. Howland would be a welcomed and valued member.

Mr. Andrew asked Mr. Howland if he is still interested in become part of the Board now that he has had a chance to become somewhat familiar with the duties and responsibilities of the Board and its members. Mr. Howland stated that he would like to serve on the ZBA. He said he has lived in Tuck Woods in Fremont for several years, he holds educational degrees in Engineering and Business and he feels he will be able to contribute effectively to the Zoning Board of Adjustment.

Mr. Downing made the motion to recommend to the Selectmen that Mr. Howland be appointed as an Alternate on the Zoning Board of Adjustment.

Motion seconded by Mrs. Bolduc with unanimous favorable vote.

SENATE BILLS

SB 49 - Signed by the Governor into law on July 3, 2013 and takes effect in 60 days (September 2, 2013)

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.

1. New Paragraph; 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.

2. Effective Date. This act shall take effect 60 days after its passage.

ZBA Meeting Minutes - 07-30-13

Approved 08-27-2013

SB 50 – Variance/Special Exception expiration: Signed by the Governor into law on June 20, 2013 and takes effect in 60 days (August 19, 2013)

This bill provides for expiration of variances and special exceptions granted by the zoning board of adjustment.

Amend RSA 674:33 by inserting after paragraph I the following new paragraph:

I-a. Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

Powers of Zoning Board of Adjustment; Special Exceptions. Amend RSA 674:33, IV to read as follows:

*IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance. **Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception.***

Effective Date. This act shall take effect 60 days after its passage.

CORRESPONDENCE

There was no incoming correspondence.

At 8:10 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Andrew with unanimous favorable vote.

Next meeting: scheduled for August 27, 2013.

Respectfully submitted,

Meredith Bolduc, recording secretary
