



Fremont Board of Adjustment  
October 22, 2013  
Meeting Minutes

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

Mr. Andrew opened the meeting at 7:25 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.

Mr. Andrew designated Alternate Howland as a voting Member in Mr. Boisvert's place.

#### MINUTES

Mr. Downing made the motion to accept the minutes of the September 24, 2013 meeting as written. Motion seconded by Mr. Howland with unanimous favorable vote.

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. Philbrick opted to continue with the four members present.

Case # 013-001  
Bittersweet Properties, LLC – Colonial Poplin  
Nursing Home and Poplin Way Assisted Living  
442 Main Street, Map 3 Lot 109-001

Present: Owner/applicants Jeffrey and Justin Philbrick, Dennis Quintal, CWS of Civil Construction.

Mr. Andrew opened this Public Hearing at 7:30 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 October 22, 2013 at the Fremont Town Hall, downstairs Land Use meeting room, for Bittersweet Properties, LLC – Colonial Poplin Nursing Home and Poplin Way Assisted Living, 442 Main Street, Map 3 Lot 109-001, Fremont, NH. This property is located in the Village District.*

*The applicants are seeking a Variance from the terms of Article XIII Section 1.3.1 as set forth in the Town of Fremont Zoning Ordinance to allow expansion of their Nursing Home/Assisted Living Facility, including associated infrastructure items, without the required seventy five (75) foot natural buffer where the non-residential use within the Village District abuts residential uses outside the District.*

*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 read:

**ARTICLE XIII  
FREMONT VILLAGE DISTRICT ORDINANCE**

**1.1 Purpose:** *To preserve the area around Route 107 between Black Rocks Village and the Fremont Library as the traditional and actual Town Center. This area is bordered by Map 3 Lot 22, Map 3 Lot 149, Map 2 Lot 163 and Map 2 Lot 35. The purpose of this ordinance is to establish special conditions which when satisfied would allow, through design guidelines, mixed uses of retail, professional offices, and residential in the Town Center. The Planning Board is hereby empowered and authorized to administer this ordinance in conjunction with the Board of Selectmen and Building Official(s) of the Town of Fremont.*

**1.2 Uses Permitted:** **Subject to Site Plan approval as provided in the Fremont Site Plan Regulations:** *Small retail shops, with a footprint not larger than seven thousand (7,000) square feet for a single structure, eating and drinking establishments where consumption is primarily intended to be on the premises, professional offices, schools, banks, bakeries, civic, public, institutional facilities, medical offices, clinics, single and townhouse residential uses and personal services, such as, hairdressers. Nearly all of the Village District is within the Aquifer Protection District; therefore uses that are prohibited within the Aquifer Protection District are also prohibited within the Village District, where these two areas overlap.*

**1.3.1** *There shall be a minimum seventy-five (75') feet natural buffer, of vegetation supplemented by evergreen trees and landscaped berms, where the non-residential uses within the Village District abuts residential uses outside the District.*

Mr. Andrew stated that this hearing was noticed on October 5, 2013 at the Fremont Post Office and Fremont Town Hall and in the October 1, 2013 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on October 5, 2013 and all returns have been received. The application consisted of a cover letter of intent, six sets of plans, a current abutters list, proper check amount and a September 11, 2013 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer.

Comment sheets have been received from (comments in *italics*):

Building/Code Enforcement Official: *Doesn't this defeat the whole purpose of the ordinance?*

Health Officer: *What effect will this addition and removal of buffer/trees have on the aquifer?*

Conservation Commission: *The Conservation Commission has no comment to make at this time as there appears to be no inherent degradation of natural resources or watershed resources with the expansion of the nursing home/assisted living facility by the variance being requested.*

Fire Chief: *Access around building, parking issues location of propane tanks in relation to access.*

*1: Access to the addition is there going to be enough room to get fire apparatus around to the back side. How wide of a fire lane will there be? Can we drive a fire truck or ambulance around or do we have to back out?*

*2: Propane tanks next to the access drive to the parking area and new addition.*

*3: There is not enough parking for current staff/visitors now with staff/visitors parking along driveway and circle. Do the plans have enough parking spaces to remove these vehicles from these areas and compensate for the increase in staff, visitors, and patients.*

*4: Does the length of the driveway require an additional exit or turn around?*

Police Chief: *No comment.*

Mrs. Bolduc explained the purpose of the Board. She 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

In his September 25, 2013 cover letter of intent Mr. Philbrick related that his intent is “to build an addition to the current physical plant that allows us to provide better services to the community and maintain our viability in the area health care market.”

The Board reviewed the plan submitted by Mr. Philbrick. This was an undated plan drawn by Civil Construction Management, Inc. showing the entire property perimeter and the locations of all improvements. The plan showed the existing one-story building with a proposed 4,600 sf addition planned to include common room with a café, a gym, some staff offices and additional parking spaces. According to this plan a proposed propane tank field, drive and parking area are as close as 30' to the commercial property line that abuts residential use and the proposed building addition as close as approximately 55' to their same property line where a 75' natural buffer is required.

Jeff Philbrick said the proposed project is vital for the continued operation of this existing 30-plus year Nursing Home and Poplin Way Assisted Living business and the addition to their current facility would allow them to offer outpatient rehabilitation services. The addition use would be for basically daytime activity and the gym would be closed at night. Their current rehab gym is too small and too old.

Mr. Quintal presented a layout and an alter survey that showed all the existing and proposed physical features of the property in detail. He noted that the end of the proposed building is designed to match roof lines and would line up with the hallway and windows of the existing building. Part of the proposal is to eliminate some parking spaces in one area, gain more in front and along the side, and move the existing propane tank field. Mr. Quintal noted the elevation grades will be so that the water runoff drains away from the building. The plan showed contours and a natural berm which abuts residential lots to help buffer the area. The plan is to maintain a 30' buffer with additional plantings for more natural buffer. There will be a catch basin between the proposed parking lot and the proposed building. The parking area will be 75' minimum and a max of 90' between the buildings and as close as 30' to the property line.

Mr. Philbrick said he will be willing to work with the Town for fencing and additional plantings to add to the buffer.

In answer to questions by the Board Jeff Philbrick said they thought about rotating the proposed building to make it further away from the property line, but it would interfere with the proposed drive for emergency turn around. The proposed driveway is about 20' wide. Mr. Philbrick said the parking would be used for staff and could be designated as daytime staff only. Mr. Howland asked if they gave thought to have parking along the front by the area the school already uses for parking. This prompted conversation about parking area. Mr. Philbrick said they have 90 to 95 total staff with about 20 to 25 at the facility at any given time during the day. He stated that they have changed the licensure configuration of the facility from a 50 bed nursing home and 18 apartment assisted living to a 36 apartment assisted living room and 16 bed nursing home. In the process they have reduced staff by approx 45 (approximately 25%) thus reducing parking requirements for the facility.

Mr. Howland asked about lighting and Mr. Quintal said large lights would not be allowed. This would be addressed at the Planning Board Site Plan level.

In answer to a question by Mr. Howland relative to consideration for alternative places for parking Jeff Philbrick said they could cut into the lawn for parking, but he wants to keep the existing open flat areas for a fenced area for the memory care patients. There was some concern about keeping parking areas required distances from the wetland and septic area.

The Board reviewed Mr. Philbrick's submission in which he addressed the five conditions for a Variance. Below is his submission (in *italics*).

1. Granting the variance would not be contrary to the public interest because: *The proposed design for the expansion is in keeping with current design and is located behind the current*
2. *building with school playing fields to the north and 3 residential properties at a distance to the east. Proposed addition will not affect visually or audibly the residential properties.*
3. The use is not contrary to the spirit of the ordinance because: *The addition will not change the current use of the property. It will augment the style and operation of the current use and will not impose any hazard to the health, safety, property value or create any odor, noise, vibration, smoke, traffic or sanitation conditions which would adversely affect abutters.*
3. Granting the Variance would do substantial justice because: *The proposed addition is necessary to the continued operation of an existing use established over 30 years ago in the Town. The proposed addition is located in the one area of the property where it can be and would not adversely affect abutters.*
4. The proposed use would not diminish surrounding property values because: *The proposed project will be constructed and executed in a style and quality consistent with the existing structures. The addition will most probably increase the value of the property and by extension, those around it.*
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: *The property is an approved and existing business which has operated in the Town for over 30 years; long previous to the creation of the Village District. The proposed project is vital for the continued operation of this long-standing business.*

and

ii) The proposed use is a reasonable one. *The propose use is the same and consistent with the current use of the property deemed reasonable by the Town in 1982 and 2001.*

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 proposed addition must be located where it is due to restrictions on the lot created by wetland setbacks, wellhead protection values, existing septic systems and State and Federal regulations governing the current building. The proposed addition cannot be located remotely from the current building.*

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

There were no abutters present for comment.

A site visit was discussed. At 8:35 pm Mr. Downing made the motion to continue this Public

Hearing to 10:00 am on October 26, 2013 at the property at 442 Main Street for the purpose of a site visit, and to 7:00 pm on November 12, 2013 at the Fremont Town Hall.

Motion seconded by Mr. Andrew with unanimous favorable vote.

A notice will be posted for the site visit.

Case # 013-002  
Palmer Cleanouts & Disposal, LLC.  
Timothy and Geraldine Palmer  
706 Main Street, Map 2 Lot 149-001

Present: Owner/applicant Geraldine Palmer, abutters James O'Brien and Mary O'Brien.

Mr. Andrew opened this Public Hearing at 8:40 pm and read the Public Notice of the 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 8:00 pm on Tuesday October 22, 2013 at the Fremont Town Hall, downstairs Land Use meeting room, for Palmer Cleanouts & Disposal, LLC.,/ Timothy and Geraldine Palmer, 706 Main Street, Map 2 Lot 149-001, Fremont, NH.*

*The applicants are seeking a Special Exception from the terms of Article XI Section E-6.1 as set forth in the Town of Fremont Zoning Ordinance to allow continued operation of their existing commercial business at their property at Map 2 Lot 149-001. This property is located in the Aquifer Protection District and the Flexible Use Residential District.*

*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.*

Mrs. Bolduc explained the purpose of the Board. She explained the procedure for a Special Exception. Three questions 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?
- 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?

Mr. Andrew then read Article XI Section 6-1 of the Fremont Zoning Ordinance as follows.

6. *Special Exceptions*

*The following uses are permitted as Special Exceptions (in compliance with Town Zoning Ordinance):*

1. *Industrial and commercial uses not otherwise prohibited in Section E.4. of this A.P.O.*
2. *Multi-family residential development. (Minimum lot size to be determined by using Article IV Section 3 and substituting three (3) acres instead of two (2) acres).*
3. *Sand and gravel excavation and other mining provided that such excavation or mining is not carried out within eight (8) vertical feet of the seasonal high water table and that periodic inspections are made by the Planning Board or its agent to determine compliance.*

*The Board of Adjustment may grant a special exception for those uses listed above only after written findings of fact are made that all of the following are true:*

- the proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;*
- the proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;*
- the proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;*
- the proposed use complies with all other applicable sections of this Article.*

It was explained to Mrs. Palmer that in order for the Board to grant a Special Exception she would need to submit the report as per this requirement.

This hearing was noticed on October 7, 2013 at the Fremont Post Office and Fremont Town Hall and in the October 7, 2013 edition of the Manchester Union Leader. The applicant and all abutters were notified via certified mail on October 11, 2013 and all returns have been received except for that of Palmer Cleanouts. The application package included 6 copies of drawn plan, proper check amount, a current list of abutters and a letter of intent. The Board also has an excerpt from the September 18, 2013 Planning Board minutes requiring Mrs. Palmer *“to submit an application to the ZBA within 30 days from today’s date – October 19, 2013; and further to require that she submit an application to the Planning Board for Site Plan Review within 30 days from the date of the ZBA approval should she be successful with that Board.”*

Comment sheets were received from the following, with comments in italics:

Conservation Commission: *It is imperative that the applicants realize their property is located in the Aquifer Protection District and that they comply without exception to the restrictions cited in Article XI Section E-4. In particular to the handling, disposal, storage, processing or recycling of hazardous or toxic materials and that the property not act as a junk or salvage yard.*

Health Officer: *My concern would be the aquifer and what is brought onto the site and safe storage of materials while there.*

Code Enforcement Official: *I do not see and issue with this as far as the Building Official – though we might want to look at the office use, # of people and egress if we are no longer looking at this as a home occupancy.*

Road Agent: *No Comment*

Fire Chief: *Should limit the amount of combustibles stored on site so we don't have big piles of wooden things like that that's the catch on fire and problems in the past of trying to burn all the wood that she takes in from job sites and being in the aquifer protection area paints and stuff like that probably should be limited or inside some sort of spillproof container. Storage of materials on site should be limited; paint, gas, oil in the aquifer district.*

Police Chief: *No Comment*

The Board received letters from abutters Betty Metevier, Jerlene Jalbert and C.L. Magnusson all in favor of allowing Palmer Cleanouts & Disposal to remain in operation at the current location.

The Board reviewed the hand drawn plan submitted by Mrs. Palmer which showed the entire 2.10 acre parcel of Map 2 Lot 149-001, the locations of the existing house, garage, septic, well, dumpsters, truck parking, fence and locations of all abutters.

In her letter of intent Mrs. Palmer stated that she it has come to her attention that she is out of compliance with zoning and would like to come into compliance. She is applying to be allowed to continue her commercial operation. In explanation, the Planning Board found that Mrs. Palmer runs a commercial operation at her property which is in the Aquifer Protection District. This use is in non-compliance with Article XI Section 6.1 of the Zoning Ordinance without being issued a Special Exception. Mrs. Palmer is also in violation of regulations because she has not gone through Site Plan Review, but the property must be zoning compliant before the Planning Board can entertain an application for Site Plan Review.

In answer to questions by the Board Mrs. Palmer said that she owns several dumpsters that she rents out. She takes the dumpsters to the property of whoever rents it for them to fill then she loads it on one of her trucks and takes it to Raymond to dump. She sometimes takes a dumpster home and rummages through it to remove articles like tires, propane tanks and oil containers and metal or if it is late in the day and the dump is closed. She saves metal to take to the metal facility. She stores tires at the property until she has 50 or so that she can call someone to take them away. She saves board lumber for burning in an outdoor burner or her wood stove. Mrs. Palmer said she does accept containers containing oil or propane tanks. It was agreed that it is prohibited to bring waste oil or other hazardous waste to the site. She said that she does not take much oil so she could stop taking it or take it directly to the dumping site.

Ms. O'Brien asked if there was a change in the law that required Mrs. Palmer to come in at this time to get her commercial business compliant. It was explained that there was no change in



rules and that Mrs. Palmer had been advised in 2006 by the Code Enforcement Officer that in order for her to have her business at her residence she needed a Special Exception to be zoning compliant and she must go through Planning Board Site Plan Review. In answer to a question by Mr. Downing as to why she did not come in at that time Mrs. Palmer said she did not hear from the Town again so she figured she was alright.

A site visit was discussed. At 9:15 pm. Mr. Downing made the motion to continue this Public Hearing to 10:30 am on Saturday October 26, 2013 at 706 Main Street for the purpose of a site visit and to November 12, 2013 at 7:30 pm at the Fremont Town Hall.  
Motion seconded by Mr. Andrew with unanimous favorable vote.

A notice will be posted for the site visit.

#### CORRESPONDENCE

Received: From Mark H. Lamper of Haughey, Philpot & Laurent, PA, Attorneys at Law a September 27, 2013 notice of foreclosure sale referencing the notice of decision for ZBA case #07-006 for accuracy.

At 9:30 pm Mr. Downing made the motion to adjourn.  
Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for November 12, 2013.

Respectfully submitted,

Meredith Bolduc, recording secretary

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