



Fremont Board of Adjustment
November 12, 2013
Meeting Minutes

Members present: Chairman Doug Andrew, Member John (Jack) Downing, Alt/Selectmen Leon Holmes, Sr., 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 Dennis Howland 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.

Mr. Andrew designated Alternate Holmes as a voting Member in Mr. Boisvert's place for tonight's meeting.

MINUTES

Mr. Downing made the motion to accept the minutes of the October 22, 2013 meeting as written. Motion seconded by Mr. Howland with unanimous favorable vote except for Mr. Holmes who abstained.

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 portion of this Public Hearing at 7:30 pm and stated that this is a continuation of the October 23, 2013 portion of this Public Hearing as well as the October 26, 2013 site visit.

Mr. Andrew reported that on October 26, 2013 the ZBA conducted a duly noticed site visit at 10:00 am at the site of 442 Main Street. Present were owners Jeffrey and Justin Philbrick, Gabrielle Philbrick, Dennis Quintal, Chairman Douglas Andrew, Member Jack Downing, Alternates Dennis Howland, Leon Holmes, Sr. and Meredith Bolduc. The group viewed the locations of the proposed building addition, driveway, gas tank field, existing natural buffer and the proximity to abutting properties.

Recommendations:

- The gas tank field be moved out of the 75' natural buffer.
- Locate the building addition so it is entirely out of the 75' natural buffer.
- Leave as many trees as possible/plant and replace trees.
- Install fencing and create berms where needed.

The group finished the site visit and left the premise at 10:40 am

Mr. Andrew re-read Article XIII Section 1.3.1 of the Fremont Zoning Ordinance as it pertains to this case.

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.

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

The original plan submitted at the October 23, 2013 portion of this Public Hearing 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. This plan showed the proposed propane tank field, 20' wide drive area and parking area 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 75' is required. The plan also showed contours and a natural berm which abuts residential lots to help buffer the area. The plan is to maintain a 30' buffer with addition plantings for more natural buffer, a catch basin between the proposed 75' x 90' parking lot between the buildings and as close as 30' to the property line.

Mr. Quintal presented an amended plan that showed the existing one-story building with a proposed 4,100 sf addition. The proposed addition, gas tank field and maintenance shed have been moved outside the 75' natural buffer area and only the drive still remains within the 75'. These modifications were as a result of some of the comments made at the site visit.

Mr. Quintal explained that the proposed location is the best placing for an addition to the building and parking for employees. The drive location is the only place they could put it. He added that the closest point to the edge of pavement is 49 feet to the property line with grades at 178 to 182 and they will be able to maintain vegetation line.

Mr. Quintal said the proposed addition to the existing building is somewhat smaller than first designed and they were able to angle it so it is not within the 75' natural buffer area. In answer to a question by the Board, Mr. Philbrick said it gives the square footage they need and they may even make it a little smaller.

Mr. Howland noted there is one abutter that could have an issue with noise and visual disturbances and he suggested expanding the vegetative buffer with arborvitae type plantings. Jeff Philbrick said it is his intention to do some further buffer landscaping for the knoll and corner. It is important to him and his brother that they be good neighbors to the community. Justin Philbrick said they want to make the vegetation better.

The Board reviewed Mr. Philbrick's submission in which he addressed the five conditions for a Variance. Below is his submission in *italics* and the Boards vote on each condition.

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 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.

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Boards vote:

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

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.*

Boards vote:

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

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.*

Boards vote:

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

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.*

Boards vote:

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

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.*

Boards vote:

Mr. Andrew yes

Mr. Downing yes

Mr. Howland yes

Mr. Holmes yes

Mrs. Bolduc yes

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. No vote.

There were no abutters present for comment.

Mr. Andrew made the motion to grant the requested Variance from the terms of Article XIII Section 1.3.1 as set forth in the Town of Fremont Zoning Ordinance to Bittersweet Properties, LLC – Colonial Poplin Nursing Home and Poplin Way Assisted Living, 442 Main Street, Map 3 Lot 109-001, Fremont, NH. 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 with the following conditions.

- No portion of the proposed expansion shall be closer than 48' to the property line and natural buffer area of a residential use property.
- This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required.
- This Variance 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. (per NH RSA 674:33, I-a)
- All subsequent conveyances of this property shall include a reference to this recorded decision on the deeds.
- NH RSA 676:17 shall apply.

Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Andrew declared the Variance to Article XIII Section 1.3.1 of the Fremont Zoning Ordinance granted for Bittersweet Properties, LLC – Colonial Poplin Nursing Home and Poplin Way Assisted Living, 442 Main Street, Map 3 Lot 109-001, Fremont, NH. 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 will submit payment for the recording fees.

At 7:25 pm Mr. Downing made the motion to close this Public Hearing.
Motion seconded by Mrs. Bolduc with unanimous favorable vote.

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

Present: Owner/applicant Geraldine Palmer, Dennis Quintal, CWS

Mr. Andrew opened this portion of this Public Hearing at 7:30 pm and stated that this is a continuation of the October 23, 2013 portion of this Public Hearing as well as the October 26, 2013 site visit.

Mr. Andrew stated that on October 26, 2013 the ZBA conducted a duly noticed site visit at 10:40 am at the site of 706 Main Street. Present were owner Geraldine Palmer, Chairman Douglas Andrew, Member Jack Downing, Alternates Dennis Howland, Leon Holmes, Sr. and Meredith Bolduc. Dennis Quintal joined the group at approximately 10:50 am. The group viewed the locations of the area where up to 10 dumpsters are stored when they are not off-site, a debris pile, a burn pit, a metal collection area and a wood pile.

The group finished the site visit and left the premise at 10:55 am.

Mr. Andrew then read Article XI Section E-6-1 of the Fremont Zoning Ordinance as it pertains to this case.

E-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.*

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.*

A written finding of fact that all of the above are true was prepared and submitted by Dennis Quintal, CWS. (see file)

Mrs. Bolduc said that all certified notification returns have now been received.

The Board discussed the plan previously submitted by Mrs. Palmer. It was agreed that during the site visit no storage of hazardous or toxic materials were observed. This was also stated in Mr. Quintal's statement.

Mr. Downing asked again about oils on site and Mrs. Palmer said she can bring oils directly to the transfer station so she has no need or intention to bring them back to her site.

The Board collectively agreed that the commercial use is not otherwise prohibited in Section E.4. of this Aquifer Protection Ordinance.

There were no abutters or public present for comment.

The following is Mrs. Palmer's explanation (in italics) and the Board's vote on the three criteria of a special exception:

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

This is a commercial use, but is not prohibited in Section 3-4, but is ordinarily prohibited without Special Exception.

Boards vote:

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

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

The commercial use is specifically allowed as a special exception under the terms of the ordinance.

Board's vote:

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

Are the conditions specified in the ordinance for granting the exception met in the particular case?

The conditions specified in the ordinance are met because a commercial use is specifically allowed by the ordinance.

Board's vote.

Mr. Andrew yes
Mr. Downing yes
Mr. Howland yes
Mr. Holmes yes
Mrs. Bolduc yes

Mr. Downing made the motion that based on the information presented and the Board's finding and vote on the three criteria for a Special Exception, the Fremont Zoning Board of Adjustment grant the requested Special Exception from the terms of Article XI Section E-6.1 as set forth in the Town of Fremont Zoning Ordinance to allow Timothy and

Geraldine Palmer to continued operation of their existing commercial business known as Palmer Cleanouts & Disposal, LLC. at their property at Map 2 Lot 149-001 with the following conditions.

- This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required.
- This special exception 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. (per NH RSA 674:33, IV)
- All subsequent conveyances of this property shall include a reference to this recorded decision on the deeds.
- NH RSA 676:17 shall apply.

Motion seconded by Mr. Holmes with unanimous favorable vote.

Mr. Andrew declared the Special Exception to Article XI Section 6-1 of the Fremont Zoning Ordinance granted for Palmer Cleanouts & Disposal, LLC./ Timothy and Geraldine Palmer, 706 Main Street, Map 2 Lot 149-001, Fremont, NH.

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 will submit payment for the recording fees.

At 8:00 pm Mr. Andrew made the motion to close this Public Hearing.
Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Holmes left the meeting at 8:00 pm.

Case #013-003
Tiffany Lee Homes, LLC
Kenniston Lane
Map 2 Lot 151-005-004

Present: Representing Land Surveyor Timothy Lavelle

Mr. Andrew opened this Public Hearing at 8:05 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 November 12, 2013 in the

downstairs Land Use Meeting Room of the Fremont Town Hall as requested by Tiffany Lee Homes, LLC. for Map 2 Lot 151-005-004, Kenniston Lane, Fremont, New Hampshire.

The applicant is seeking an Equitable Waiver of Dimensional Requirements from Article IV Section 1 of the Fremont Zoning Ordinance to allow a recently constructed existing garage foundation to remain in its current location closer than fifty (50) feet to a street property line.

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.

A copy of the plan can be viewed at the Fremont Town Hall during regular business hours.

Mr. Andrew stated that this hearing was noticed on October 31, 2013 at the Fremont Post Office and Fremont Town Hall and in the November 4, 2013 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on October 31, 2013 and all returns have been received. The application consisted of a cover letter of intent, multiple sets of plans, a current abutters list, proper check amount and an October 23, 2013 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer and an October 23, 2013 Foundation Check List stating that the foundation does not meet setback.

Mr. Andrew explained the procedure for an Equitable Waiver of Dimensional Requirements and that RSA 674:33-a directs that “When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement, the zoning board of adjustment may grant a waiver only if each of the four findings as outlined in the statute are made:

- (a) lack of discovery;
- (b) good faith error in measurement or calculation;
- (c) no diminution in value of surrounding property; and
- (d) the cost of correcting the mistake outweighs any public benefit.”

II. In lieu of the findings required by the board under subparagraphs I (a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

He then read Article IV Section 1 of the current Fremont Zoning Ordinance as it pertains to this case, which reads in part:

Any new structure or extension of existing structure intended for any use shall be set back from the street property line at least fifty (50) feet.

Mr. Lavelle explained that the garage foundation was placed 37.85' from the street property line where it should have been 50' so the applicant is requesting a waiver of 12.15'.

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

Conservation Commission: *Not applicable to Conservation Commission – no comment.*

Health Officer: *No comment.*

Code Enforcement Official: *Although this appears to be almost a comedy of errors; I do believe it was an honest mistake.*

Road Agent: *I've visited the site and have no issues with the garage.*

Fire Chief: *No problem with this, but should probably move.*

Mr. Lavelle submitted a certification plan drawn by James. M. Lavelle, LLS and dated October 23, 2013 that showed the foundation on the property of Map 4 lot 151-5-4 to be 37.85' from the street property line.

In answer to questions by the Board Mr. Lavelle said about a month ago the owner/builder John Tilton of Tiffany Lee Homes layed out his own foundation on Map 4 Lot 151-5-4 and then called him to certify the foundation after it was constructed. Mr. Lavelle said he found it was too close to the street right of way, being constructed 37.85' from the setback where 50' is required. Mr. Lavelle said he then notified the Building Inspector of the error and issued a foundation certificate saying the foundation does not meet the requirements of the Town. Construction has not moved forward since the error was found. The Building Official had not issued a report of approval or signed the permit card.

The Board reviewed the applicants written and oral statements (in *italics*) answering to the four points of criteria (findings) of an Equitable Waiver of Dimensional Requirements as follows.

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

When laying out the structure the contractor measured 51' from the pavement forgetting to account for the approximately 13' of right-of-way.

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

The structure will not interfere with travel on the roadway.

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Esthetically the lot and building would appear relatively the same. No public benefit would be achieved by tearing down the structure.

A site visit was discussed. At 8:40 pm Mr. Downing made the motion to continue this Public Hearing to 10:00 am on Saturday November 23, 2013 at Lot #4 Kenniston Lane for the purpose of a site visit, and to December 17, 2013 at 7:00 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

There was no incoming correspondence received.

At 8:45 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for December 17, 2013.

Respectfully submitted,

Meredith Bolduc, recording secretary