



Fremont Board of Adjustment
December 17, 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 7:05 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.

At the November 12, 2013 meeting 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. That appointment remains in effect.

MINUTES

Mr. Howland made the motion to accept the minutes of the November 12, 2013 meeting as written. Motion seconded by Mr. Downing with unanimous favorable vote.

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 7:10 pm and said that this is a continuation of the November 12, 2013 Public Hearing and the November 23, 2013 site visit.

Mr. Andrew reported that on November 23, 2013 the ZBA conducted a duly noticed site visit at 10:00 am at the site of Map 2 Lot 151-5-4. Present were Timothy Lavelle, Chairman Douglas Andrew, Member Jack Downing and Meredith Bolduc. The group viewed the location of the foundation.

The group left the site at approximately 10:20 am.

Alternate Dennis Howland visited the site separately.

Mr. Andrew related to Mr. Lavelle that there is not a full Board present and that he has the option of waiting for a full Board for a 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. Lavelle opted to continue with the four members present.

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.”

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.

Mr. Andrew then read Article IV Section 1 of the current Fremont Zoning Ordinance 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.

At the last portion of this Public Hearing 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’.

Mr. Andrew stated that the following was established at the November 12, 2013 portion of this Public Hearing:

- Owner/builder John Tilton of Tiffany Lee Homes laid out his own foundation on the subject lot and then called Mr. Lavelle to certify the foundation after it was constructed.
- Mr. Lavelle found the foundation was constructed too close to the street right of way, being constructed 37.85’ from the setback where 50’ is required.
- Mr. Lavelle 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 following written and oral statements (in *italics*) answering to the four points of criteria (findings) of an Equitable Waiver of Dimensional Requirements.

(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; *Mr. Lavelle said the error was not discovered until after the foundation was completed, the forms were stripped and it was seal coated.*

Mrs. Bolduc asked if the Board was considering the structure as "substantially complete" to be the foundation or what was built on the foundation. The Board collectively agreed that it was the foundation.

(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. Mr. Lavelle said that Mr. Tilton laid out the area with his excavator, measured and thought he was ok with the setback so it was a good faith error on his part. As soon as the error was discovered he stopped work and they brought the error to everyone's attention.

(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. The house is on a cul-de-sac and we do not think it will diminish the character of the neighborhood.

Mr. Howland stated that there are other houses on the cul de sac area that are built close to the road, although it was noted that they were not within the 50' setback. The other Members agreed.

(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. Mr. Lavelle said he has found that the cost to replace would be about \$20,000. He said that even with the shortened front setback distance there is still plenty of room for parking.

Mr. Andrew asked if the builder were to move it would he need to take out the whole foundation.

Lavelle answered that he did not know if it would be completely replaced, but there would be extensive cutting to reconfigure the garage. He said he does not believe this encroachment infringes on any public rights.

Howland said that most of the mass of the house is set back and it is really only one corner of the garage that sticks out closer than the required 50'. The only lots that would be impacted would be this one and the one next door that the developer also owns.

Mr. Lavelle said the developer has put in the foundation on the lot next door and it is staked out.

With little more discussion Mr. Andrew called for a vote by the Board Members on each of the four points of criteria for an Equitable Waiver of Dimensional Requirements.

(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;

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes

(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;

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes

(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;

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes

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.

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes

After careful consideration and review by the Board, Mr. Andrew made the motion that, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver of Dimensional Requirements, and pursuant to the plan prepared for Fremont Tax Map 2 Lot 151-005-004 by James M. Lavelle, LLS; dated October 23, 2013 and labeled "Certification Plan", the Fremont Zoning Board of Adjustment grant the requested Equitable Waiver of Dimensional Requirement from Article IV Section 1 of the Fremont Zoning Ordinance to Tiffany Lee Homes, LLC. to allow the existing garage foundation at 4 Kenniston Lane, Map 2 Lot 151-005-004, to remain in its current location closer than fifty (50) feet to the street property line of Kenniston Lane with the following conditions:

- That no portion of the garage foundation is closer than 37.85' to the street property line.
- That this Equitable Waiver of Dimensional Requirements granted herein pertains to the existing garage foundation only and does not extend to any additional improvements on the property.
- 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.
- This approval is subject to all other Local, State or Federal permits and approvals that may be required and does not relieve the applicant from the obligation to obtain such other permits.
- RSA 676:17 shall apply.

Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Andrew declared the requested Equitable Waiver of Dimensional Requirements approved.

The applicant was instructed that there is a 30 day appeal period and that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will referenced to the property deed.

The applicant will submit the required recording fees.

Case #013-004
Richard Hewett & Lisa Darling
29 Scribner Road
Map 2 Lot 001-002

Present: Owner Richard Hewett
There were no abutters present.

Mr. Andrew opened this Public Hearing at 8:00 p.m.

Mr. Andrew 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 8:00 pm on Tuesday December 17, 2013 at the Fremont Town Hall, downstairs Land Use meeting room, for Richard Hewett & Lisa Darling, 29 Scribner Road, Map 2 Lot 001-002, Fremont, NH.

The applicants are seeking a Variance from the terms of Article IX Section F as set forth in the Town of Fremont Zoning Ordinance to be allowed to construct a garage within one hundred (100) feet of a wetland.

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 related to applicant Richard Hewett that there is not a full Board present and that he has the option of waiting for a full Board for a decision. She 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. Hewett opted to continue with the four members present.

Mr. Andrew stated that this hearing was noticed on December 10, 2013 at the Fremont Post Office and Fremont Town Hall and in the December 11, 2013 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on December 11, 2013 and all returns have been received except for that of abutter Shaw. The application consisted of a cover letter of intent, six sets of plans, a current abutters list, proper check amount and a June 7, 2013 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer.

In his cover letter of intent Mr. Hewett and Ms. Darling related, in part, that their intent is “*to erect a building approximately 20’ x 24’ for personal use as a garage and storage building. Due to the layout of the property the only available building location is within the 100’ setback from a seasonal wetland.*”

The Board reviewed the plan set submitted by the applicant which was a 2000 septic design plan that show locations of the existing dwelling and proposed garage. Mr. Hewett said the plans

were pretty accurate in depicting the locations of the existing buildings although the driveway location is not correct on the site. He showed the Board the correct driveway location.

Mr. Hewett said the proposed location for the proposed garage building is the only place they can put it because of the configuration of the parcel. The frontage is on Old Scribner Road. There would be no driveway to the proposed garage because it is so close to the existing driveway.

Mr. Howland said it looks like there is a slight slope from the driveway to the wetlands. Mr. Hewett said he may need to bring in a little fill to bring the slope up. There was a conversation relative to the need for a Special Exception if there was to be fill brought in or there was altering the configuration of the land closer than 100' to a wetland.

Comment sheet were received from the following: comments in *italics*.

Road Agent: *No problems with me, all set.*

Police Chief: *No issues.*

Mrs. Bolduc explained that the Planning Board and Conservation Commission have not met since the comment sheets were issued so they have not yet had a chance to comment.

Mr. Andrew 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

The Board reviewed Mr. Hewett's submission in which he addressed the five conditions for a Variance as follows:

1. Granting the variance would not be contrary to the public interest because: *The structure is for storage and presents no threat to public health or the safety & wellbeing of neighbors.*
2. The use is not contrary to the spirit of the ordinance because: *The structure would not be visible by any neighbors nor impact them in any way.*
3. Granting the Variance would do substantial justice because: *This is the only available building location (accessible) and would cause no harm to the general public or hinder any right of way.*

4. The proposed use would not diminish surrounding property values because: *The addition of this structure to the property will increase its value and by positively impact the surrounding properties values.*
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: *Because of the setback and wetland location there is no other accessible location on the property to build.*
 - and
 - ii) The proposed use is a reasonable one. *The structure is to be used for storage/garage purposes (personal).*

There was a discussion relative to “special conditions of the property that distinguish it from other properties in the area”. Mr. Hewett showed a sketch of the property that Mr. Meade had drawn. The sketch showed the property setbacks and the well radius in relation to the location of the existing house. An area on the right side of the property was discussed as a location for the proposed garage and Mr. Hewett said if he put the garage in that location it would block the house from the road and not be a good place for a building.

At 8:25 pm Mrs. Bolduc made the motion to continue this Public Hearing to 10:00 am on Saturday January 4, 2014 at the property at 29 Scribner Road for the purpose of a site visit, and to 7:00 pm on January 28, 2014 at the Fremont Town Hall.
Motion seconded by Mr. Downing with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence received.

At 8:40 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for January 28, 2014.

Respectfully submitted,

Meredith Bolduc,
Land Use AA/recording secretary