



Fremont Board of Adjustment  
May 27, 2014  
Meeting Minutes

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

Mr. Andrew opened the meeting at 7:10 pm.  
Mr. Holmes joined the meeting at 7:15 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 Leon Holmes, Sr. 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.

There was a conversation relative to the need for more ZBA members for the 2 full board and 3 alternate positions available.

#### MINUTES

Mr. Downing made the motion to accept the minutes of the April 22, 2014 meeting as written. Motion seconded by Mr. Howland with favorable vote.

Case #014-003  
Mark & Laurie Pitkin  
9 Squire Road, Map 5 Lot 039  
Public Hearing Continued

Present: Owner Mark Pitkin  
There were no abutters or members of the public present.

Mr. Andrew opened this Public Hearing at 7:15 pm and stated that this is a continuation of the April 22, 2014 portion of this Public Hearing and the May 14, 2014 site visit.

ZBA Meeting Minutes - 05-27-14  
Approved June 24, 2014

Mrs. Bolduc stated that as she said at the April 22, 2014 portion of this Public Hearing, because Mr. Pitkin is her nephew she is removing herself from participating as a voting Member of the ZBA in this case.

Minutes of the May 14, 2014 Site Visit:

Present: Owner Mark Pitkin, ZBA Members Doug Andrew, Jack Downing, Dennis Howland, Leon Holmes, Sr., Planning Board Member Jack Karcz, Conservation Commission Member Bill Knee, Abutters Steven Harms and Terry Wilkins, surveyor Tim Lavelle, CWS Timothy Ferwerda, and ZBA recording Secretary Meredith Bolduc.

Report:

At 5:00 pm the above named group met at the Mark Pitkin property for a duly noticed site visit. The edge of the proposed pond was staked and located. The group walked the property and viewed the location of the proposed pond and its overflow area. Wetlands were visible and there was conversation and concern relative to a couple of areas that were about 10' from the edge of the wetland. It was noted that this is not the prime wetland, but the wetland adjacent to the prime wetland. Mr. Pitkin agreed that he would not have a problem with making the pond setback 20' from the wetland if that would satisfy the issue.

Mr. Pitkin pointed out the truck access drive to the property from Squire Road. He said he intends to widen and fix Squire Road for emergency vehicle access.

Mr. Wilkins said he his concerns for his well have been satisfied.

Mr. Lavelle was asked if the NH Wetlands Bureau had been contacted and he said they are not interested in projects that are not encroaching into actual wetlands.

The group left the Pitkin property at 5:35 pm.

Mr. Howland motioned and Mr. Downing seconded to approve these minutes with unanimous favorable vote.

Mr. Andrew reiterated that the applicants are seeking a Special Exception from the terms of IX Section H as set forth in the Town of Fremont Zoning Ordinance to allow dredging, filling and drainage, and otherwise altering of the configuration of the land resulting in the creation of an approximately 26,000 sf. pond on their property located at Map 5 Lot 039-001.

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

Mr. Andrew explained that a Special Exception is a specific, permitted land use that is allowed

when clearly defined criteria and conditions contained in the ordinance are met. He explained the procedure for a Special Exception and stated that the three questions which must be answered to decide whether or not a Special Exception can be legally granted are:

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. Pitkin's plan submitted at the April 22, 2014 portion of this Public Hearing was drawn by Lavelle Associates and dated January 14, 2014 with an April 16, 2014 revision, was stamped by Certified Wetland Scientist Timothy Ferwerda and shows the location of wetlands, prime wetlands, the proposed 25,500 sf pond, and the proposed gravel access for construction and all existing improvements. The plan showed some of the proposed disturbance at 20' from the edge of wetlands and a couple of areas as close as 10' from the edge of a wetlands. It was noted that this would be 80' to 90' into the 100' buffer of a designated wetland, but not within the buffer of a Prime Wetland.

The April 16, 2014 revisions added note 3 = *The pond will be excavated to a depth of approximately 17'*; and note 4 = *Approximately 8,000 yds of material will be placed on upland areas or removed from the site. No jurisdictional wetlands will be disturbed.*

Other notes on the plan are relative to purpose "*to show a proposed pond with access driveway*", wetland delineation, prime wetlands location, reference plans and note 5 stated that the site is not in a designated flood zone per the May 2005 F.I.R.M./F.E.M.A. map 331015C0215E.

The following statement is on the plan.

- *Landscaping & Stormwater Control: All construction on the site shall be conducted in a manner consistent with the recommendations provided in the "New Hampshire Storm Water Manual – Volume 3 – Erosion and Sediment Control During Construction" as published by the NHDES December 2008 and "New Hampshire Storm Water Manual – Volume 1 – Storm Water and Antidegradation" as published by NHDES December 2008.*

The Board previously received favorable correspondences from:

- CWS Michael Cuomo – Rockingham County Conservation District  
*Summary: I believe this project can be "constructed as to minimize the detrimental impact of such uses upon the wetland and watershed protection areas" (zoning IS.H.2) if done in compliance with the erosion control conditions set forth on the plan.*
- Certified Wetland Scientist #181/Environmental Consultant Earle Chase  
*#2 Conservation Commission's water table concern: It is quite commonplace and standard protocol that when a pond is designed or engineered, it is oftentimes built at the edge of a wetland or even within a component of that wetland. The proposed pond should fill quickly and the equilibrium within the wetland maintained. A pond's proximity to a wetland helps assure that there will be an ample supply of water to fill the pond and also helps to assure that a pond's water level will be maintained over the long term.*

*#3 Conservation Commission's productive use of land concern: A pond normally accentuates the*

*productivity of a tract of land. An open water component that a pond provides generally compliments any existing habitat by increasing land form diversity. Relationship studies conclusively show that a surface water (the pond) will increase usage by a variety of wildlife species. The proposed pond's immediate proximity to a prime wetland also increases the overall functions and values within that prime wetland. The main seven functions and values in which a wetland is assessed for, are all either sustained or increased in rating. The pond could be additionally stocked with fish adding to the land's overall productivity capacity. Ponds may also provide other "essential" services including a dry hydrant to supply readily accessible water in the event of a fire, not only to the landowner, but the nearby neighborhood. The CC #2 concern - evaporation loss: For years ponds have been built near wetlands here in NH without either short or long term effect.*

*Ferwerda: The use of the property for a pond will add diversity to the wetland complex by providing an additional wetland type as well as additional wildlife habitat. The open water will attract fowl, amphibians, and water dependant reptiles and most likely fish will eventually inhabit the pond.*

*The Conservation Commission's #2 concern – hydrology; The installation of this proposed pond should not alter the wetland system's overall hydrology or lower its respective water table. It is quite commonplace and a standard practice that a pond be constructed at the edge of a wetland or even within a component of that wetland. The proposed pond should fill quickly as equilibrium with the wetland is reached. The excavation that is created for the pond, if anything, will provide additional flood storage capacity within the larger wetland system. Neither wildlife nor vegetation is expected to be affected.*

*The Conservation Commission's #2 concern – evaporation: Ferwerda: It is quite common to have open water land as part of a wetland complex and evaporation from these open water areas do not dry up the wetland. Precipitation amounts are plentiful throughout the year to maintain groundwater levels to keep the wetlands functioning as wetlands. I believe that the proposed pond, when compared to the size of the adjacent wetland complex is a very small fraction of the size of the wetland complex and any evaporation from the proposed pond will be negligible.*

- NH Certified Wetland Scientist Timothy Ferwerda #39 with Meridian Land Services.
- Fremont Building Inspector Robert N. Meade: Mr. Meade related his only concern is the 10' setback and he suggested for less chance of erosion and to allow for equipment to go around the pond for construction or repairs the setback be 20 to 25 feet.

(See all letters in file)

According to the data form generated from the 2007 Wetland Inventory by Scientist Earle Chase Prime Wetland #16 is 67.5 acres in size, Prime Wetland #15 is 81.1 acres.

To address the issues and concerns of the Conservation Commission:

1. *Construct such as to minimize the detrimental impact on the wetland.* Mr. Howland said the fact that the owner needs to comply with the DES rules (as per a note on the plan) addresses this issue. The Members agreed.
2. *Provide further information about evaporation and effect on the hydrology and the water table.* Mr. Howland said he thinks the proposal is for a ½-acre pond in a much larger wetland so no study needs to be done. The Members agreed.

3. *Provide a description of how the pond will fit the productive use of the land.* Mr. Howland noted that recreation is an allowed use per Zoning Ordinance Article IX Section H-1. The Members agreed.
4. *Provide depth specification of pond on the plan.* This has been done.
5. *Specify on the plan what the intent is for the excavated soil.* This has been done.

It was discussed that information in the letters from Mr. Chase and Mr. Ferwerda further address the concerns of the Conservation Commission.

Mr. Andrew summarized that:

- Rockingham County Conservation District CSS/ CWS Mike Cuomo has advised that he believes this project can be “constructed as to minimize the detrimental impact of such uses upon the wetland and watershed protection areas” (zoning IS.H.2) if done in compliance with the erosion control conditions set forth on the plan.
- CWS Timothy Ferwerda has advised that in his opinion the use of the property for a pond will add diversity to the wetland complex by providing an additional wetland type as well as additional wildlife habitat. The open water will attract fowl, amphibians, and water dependant reptiles and most likely fish will eventually inhabit the pond.
- CWS/Environmental Consultant Earle Chase has advised that in his opinion *the installation of this proposed pond should not alter the wetland system’s overall hydrology or lower its respective water table. It is quite commonplace and a standard practice that a pond be constructed at the edge of a wetland or even within a component of that wetland. The proposed pond should fill quickly as equilibrium with the wetland is reached. The excavation that is created for the pond, if anything, will provide additional flood storage capacity within the larger wetland system. Neither wildlife nor vegetation is expected to be affected.*

The Board addressed the three questions that 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?  
By vote, Mr. Downing, Mr. Andrew, Mr. Howland and Mr. Holmes unanimously agreed that dredging for a pond in the district would be prohibited without a Special Exception.
2. Is the use specifically allowed as a special exception under the terms of the ordinance?  
By vote, Mr. Downing, Mr. Andrew, Mr. Howland and Mr. Holmes unanimously agreed that under the terms of the ordinance dredging, filling and altering the surface configuration of the land are specifically allowed as a special exception under the ordinance.
3. Are the conditions specified in the ordinance for granting the exception met in this case?  
Condition #1: Is the use essential to the productive use of the land?  
By vote, Mr. Downing, Mr. Andrew, Mr. Howland and Mr. Holmes unanimously agreed that creating a pond in the proposed area would be essential to the productive use of the land.  
Condition #2: Is the use located and constructed as to minimize any detrimental impact upon the wetland and watershed protection area?  
By vote, Mr. Downing, Mr. Andrew, Mr. Howland and Mr. Holmes unanimously agreed

that per the opinion and reports of the Wetland Scientists the location of the proposed pond would comply with this condition.

It was the unanimous consensus of the Board that the exception is allowed by the ordinance and the specific conditions under which the exception may be granted have been met.

There was a discussion relative to setback. Mr. Holmes said he is fine with 10'. After some discussion Mr. Pitkin said there is some concern about the setback as close as 10' so he is fine with 20'.

After careful consideration by the Board, Mr. Downing made the motion that, based on the information presented and on the Boards determination that the exception is allowed by the ordinance and the specific conditions under which the exception may be granted have been met, and pursuant to Plan #001-2014 drawn by Lavelle Associates and dated January 14, 2014, revised April 16, 2014, the Fremont Zoning Board of Adjustment hereby grants a Special Exception from the terms of Article IX Section H as set forth in the Town of Fremont Zoning Ordinance to Mark & Laurie Pitkin to allow dredging, filling and drainage, and otherwise altering of the configuration of the land within one hundred (100) feet of a wetlands, resulting in the creation of an approximately 26,000 sf. pond on their property located at 9 Squire Road, Map 5 Lot 039-001 with the following conditions:

1. No portion of any dredging filling and drainage, and otherwise altering of the configuration of the land shall be closer than twenty (20) feet to the edge of any wetlands.
2. 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.
3. No further or future improvements or additional dredging, filling, drainage or altering the surface configuration of the land shall be allowed closer than one hundred (100') feet to any wetland on the property.
4. These restrictions shall be recorded at the Rockingham County Registry of Deeds and referenced to current deed and to any subsequent deeds to this parcel or subdivision of this parcel.
5. All subsequent conveyances of this property shall include a reference to this recorded decision on the deeds.
6. RSA 676:17 shall apply.

Motion seconded by Mr. Holmes with unanimous favorable vote.

Mr. Andrew stated that the Special Exception is granted and advised the applicant that there is a 30 day appeal period during which any party to the action or any party directly affected can make application for a re-hearing.

At 8:00 pm Mr. Pitkin agreed to submit clean copies of the updated plan and the recording fees tomorrow and he left the meeting.

Case #014-004-A & B  
Kevin Griffith  
594 Main Street, Map 2 Lot 154  
Public Hearing

Present: Owner Kevin Griffith, Kimberly Griffin, abutter Michael Wason, Marilee Collier, builder Steve Theori.

Mr. Andrew opened this Public Hearing at 8:00 p.m. 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 May 27, 2014 at the Fremont Town Hall, downstairs Land Use meeting room, for Kevin Griffith, 594 Main Street, Map 2 Lot 154, Fremont, NH.*

*The applicant is seeking:*

- *An Equitable Waiver of Dimensional Requirements from the terms of Article IV Section 1 as set forth in the Town of Fremont Zoning Ordinance to allow an existing dwelling to remain in its current location closer than twenty (20) feet to the side property line and closer than thirty (30) feet to the street property line of Route 107.*
- *A Variance from the terms of Article IV Section 1 as set forth in the Town of Fremont Zoning Ordinance to allow the construction of an addition to his existing dwelling closer than thirty (30) 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.*

Mr. Andrew stated that this hearing was noticed on May 8, 2014 at the Fremont Post Office and Fremont Town Hall and in the May 12, 2014 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on May 8, 2014 and all returns have been received. The application consisted of a cover letter of intent for each application, six sets of plans, a current abutters list, proper check amount and an April 15, 2014 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer.

#### EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

**014-004-A**

Mr. Andrew explained the procedure for an Equitable Waiver of Dimensional Requirements and that RSA 674:33-a directs that "When a lot *of land* or structure thereupon is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by, and with the burden of proof on the property owner, grant an equitable waiver from the requirement if, and 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.*

*He then read Article IV Section 1 as set forth in the Fremont Zoning Ordinance.*

Mr. Griffith presented a hand drawn plan that showed the locations of the existing house, septic tank, well, shed and wood shed. It also showed the house side and front setback delineations. As in his cover letter, Mr. Griffith said that his house was built in the 60's and when he purchased it he was unaware of the setback violations. There is a septic design in the house property file dated 1987. He added that the house was built approximately 26' from the road (Rt 107) with a setback requirement of 30'. The house was also built 13' from the east property line with a setback requirement of 20'. (This was found to actually be the northwesterly property line).

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

Police Chief: *No issues.*

Building Official/Code Enforcement Officer Bob Meade. *I have no comment or issues.*

Health Officer: *I have no comment or issues.*

Road Agent: *No comment.*

Fire Chief: *I have no issues with this.*

Mr. Andrew asked if the public had any further comments either in support or in non-support of the Special Exception request. There were no comments and Mr. Andrew closed the public discussion portion of the hearing and the Board began their discussion of the case.

A site visit was discussed and it was the consensus of the Board that it is not necessary for this action.

With little more discussion Mr. Andrew read the points of criteria (findings) of an Equitable Waiver of Dimensional Requirements. The applicants written statements as submitted with the application are in italics. These are followed by the Board Members votes on each finding.

The Board agreed that because the structure has existed for more than 10 years, addressing conditions (a) and (b) of the Equitable Waiver requirements are not necessary.

(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 house has been here for 50+ years and has not been a nuisance or interfered with any other property or their values.*

Board's vote:

Mr. Andrew                      Yes

Mr. Howland                    Yes

Mr. Downing                    Yes



Mr. Holmes Yes

Mrs. Bolduc Yes

(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. *In order to meet the setback requirements the house would have to be completely moved. This would be far too costly and would not benefit the public.*

Board's vote:

Mr. Andrew Yes

Mr. Howland Yes

Mr. Downing Yes

Mr. Holmes Yes

Mrs. Bolduc Yes

After careful consideration and review by the Board, Mr. Downing made the motion that, based on the information presented and the results of the Boards vote on the points of criteria that must be met for approval of an Equitable Waiver of Dimensional Requirements, the Fremont Zoning Board of Adjustment grant an Equitable Waiver of Dimensional Requirement from Article IV Section I of the Fremont Zoning Ordinance to Kevin Griffith to allow the existing dwelling at 594 Main Street, Map 2 Lot 154, to remain in its current location closer than twenty (20) feet to the northwesterly side property line and closer than thirty (30) feet to the street property line of Rt 107 with the following conditions:

1. That this Equitable Waiver of Dimensional Requirements granted herein pertains to the existing buildings only and do not extend to any additional improvements on the property.
2. 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.
3. 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.
4. RSA 676:17 shall apply.

Motion seconded by Mr. Holmes with unanimous favorable vote.

At 8:30 pm 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.

## Variance

014-004-B

Mr. Andrew explained the procedure for a Variance and that RSA 674:33 directs that five conditions must be met in order for a Variance to be granted.

- (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.

He then read Article IV Section 1 as set forth in the Fremont Zoning Ordinance.

Mr. Griffith presented the same hand drawn plan that was used for the Equitable Waiver portion of this Public Hearing that showed the locations of the existing house, septic tank, well, shed and wood shed. It also showed the house side and front setback delineations. As in his cover letter, Mr. Griffith said that his *“application for a Variance is for a building extension (addition) to my home. The size of the addition will be 24’ x 26’ (a total of 624 sf) on the east end of the house. The house was built back in the 60’s and when we purchased it we were unaware of the setback violation.”*

There was a question about where the street property line for this property begins. Mrs. Griffith went home and returned with the survey drafted by Dennis Quintal of Civil Construction in Newton NH dated April 2010. Mr. Theori measured the lines and he found that the existing structure is approximately 15’ from the street property line. This property was created prior to 1987 so the setbacks should be 30’. This prompted a discussion relative to the requested variance for 4’ and the actual variance needed is 15’.

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

Police Chief: *No issues.*

Building Official/Code Enforcement Officer Bob Meade. *I have no comment or issues.*

Health Officer: *I have no comment or issues.*

Road Agent: *No comment.*

Fire Chief: *I have no issues with this.*

A site visit was discussed. The Board agreed to review the 5 conditions of a Variance and Mr. Griffiths statements in addressing each condition in a continuation of this Public Hearing after they had visited the site.

At 9:10 pm Mr. Downing made the motion to continue this Public Hearing to 5:00 pm on June 5, 2014 at 594 Main Street, Map 2 Lot 154, for the purpose of a site visit; and to 7:30 pm on June 24, 2014 at the Fremont Town Hall.

Motion seconded by Mr. Howland with unanimous favorable vote.

ZBA Meeting Minutes - 05-27-14  
Approved June 24, 2014

A notice will be posted for the site visit.

CORRESPONDENCE

There was no incoming correspondence received.

At 9:15 pm Mr. Downing made the motion to adjourn.  
Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for June 24, 2014.

Respectfully submitted,

Meredith Bolduc,  
Land Use AA/Recording Secretary