



Fremont Board of Adjustment  
September 30, 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 7:15 pm.

At the August 25, 2009 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 May 27, 2014 meeting 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. That appointment remains in effect.

#### MINUTES

There were no meetings/minutes for July and August.

Mr. Downing made the motion to accept the minutes of the June 24, 2014 meeting as written. Motion seconded by Mr. Howland with favorable vote.

Case #014-005  
Beede Spaulding  
Map 3 Lot 056

Present: Owner Frank Catapano, Beals Project Manager Joseph Nichols, Thomas Fraser, Pierre Belperron, Michael Cook

Mr. Andrew opened this Public Hearing at 7:30 pm and read the notice of the Public Hearing as follows:

*In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on September 30, 2014 in the Basement Meeting room of the Fremont Town Hall, for Beede Spaulding, LLC/Frank Catapano, Spaulding Road Fremont, New Hampshire.*

ZBA Meeting Minutes - 09-30-14

Approved October 28, 2014

*The applicant is seeking a Special Exception from Article IX Section H of the Fremont Zoning Ordinance to allow dredging, filling and drainage for the installation of electric, water line, and foundation drain closer than one hundred (100') feet to a wetlands/watershed protection area on each of the parcels located at Map 3 Lots 56-15, 56-16, 56-17, 56-18, 56-19 and 56-20 as shown on plan #707 drawn by Beals Associates and dated September 2014.*

*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 IX Section H of the Fremont Zoning Ordinance.

Mr. Andrew reported that this hearing was noticed on September 16, 2014 at the Fremont Post Office and Fremont Town Hall and in the September 16, 2014 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on September 16, 2014 and all returns have been received. The application consisted of a cover letter of intent for each action, six sets of plans, a current abutters list, proper check amount and a September 4, 2014 letter of denial from the Fremont Building Official/Code Enforcement Officer.

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?

The Board received letters of referral from the Planning Board, the Fremont Building Official and Code Enforcement Officer as required by Article IX Section H. There was no letter of referral from the Conservation Commission, but 30 days have not lapsed since the request. The Conservation Commission will meet on October 6, 2014 and it is on their agenda to review the application and referral request.

Comment sheets were received from the following: (comments in *italics*)

Health Officer: *I do not have a comment.*

Code Enforcement Officer: *I do not have an issue with this.*

Fire Chief: *No problem.*

Road Agent: *No comment.*

Mrs. Bolduc explained that the Conservation Commission has not had a chance to review and comment on the application. They will do so when they meet on October 6, 2014.

The Board also received the following September 29, 2014 report from Michael Cuomo, CWS, CSS with Rockingham County Soil Conservation Service as required by the Ordinance. In his report Mr. Cuomo acknowledged that the application for a Special Exception sought by Beede Spaulding from Article IX Section H for lots 1-6 is for soil disturbance associated with the

installation of wells, conduit and pipes needed to use the water wells, grading associated with a level spreader, and installation of foundation drain outfalls. Mr. Cuomo noted that an office review was conducted of the "Zoning Board of Adjustment" plan prepared by Beals Associates dated September 2014 and on September 24, 2014 he met with Joe Nichols of Beals Associates at the site and examined each of the six well locations and the wetlands in the vicinity. Mr. Cuomo concluded that *"the water wells and their ancillary disturbances of the buffer is essential to the productive use of the land" and it is his opinion that the applicant has shown adequate erosion and sediment control measures to minimize detrimental impacts to wetlands and should be granted a Special Exception.*"

Mr. Nichols submitted a plan #NH-707 drawn by Beals Associates and dated September, 2014. This plan shows the wetland boundary, 100' wetland buffer, silt fence, septic setback line and 4,000 SF septic reserve area. It also showed the following:

Map 3 Lot 15 = The proposed water line and foundation drain as close as 25' from the wetlands making the request for a Special Exception for 75' to wetlands.

Map 3 Lot 16 = The proposed water line and foundation drain as close as 25' from the wetlands making the request for a Special Exception for 75' to wetlands.

Map 3 Lot 17 = The proposed water line and foundation drain as close as 40' from the wetlands making the request for a Special Exception for 60' to wetlands.

Map 3 Lot 18 = The proposed water line and foundation drain as close as 25' from the wetlands making the request for a Special Exception for 75' to wetlands.

Map 3 Lot 19 = The proposed water line and foundation drain as close as 40' from the wetlands making the request for a Special Exception for 60' to wetlands.

Map 3 Lot 20 = The proposed water line and foundation drain as close as 61' from the wetlands making the request for a Special Exception for 39' to wetlands.

Mr. Nichols said Mr. Catapano originally received Planning Board approval for the subdivision and because this is an Open Space subdivision the lots are smaller in size than with a traditional subdivision. He said he recently asked Mrs. Bolduc about cutting trees on the lots and found that they could be cut, but not stumped without a Special Exception to "alter the surface configuration of the land" per Zoning Article IX Section H. At that time it was discovered that the proposed wells and well lines are closer than 100' to the wetlands which would also need a Special Exception. Mr. Nichols said that between lots 3-56-18 and 19 they plan to remove one hemlock tree and its stump for drainage purposes, and also do some minor grading. They are proposing to remove several small trees and do some minor grading for drainage purposes adjacent to the 50' buffer of Lot 56-15 to get into the well locations.

Mr. Nichols explained the lot delineations and well locations on each lot. He showed sediment control and he said everything will be loamed and seeded so nothing can get into wetlands. Silt fences will be installed around all wetlands and taken out after the work is completed. Mr. Nichols said the house has been built and the well installed on lot 56-16. When they found they need a Special Exception they stopped work and submitted the application.

Mr. Andrew asked if there were any concerns of the abutters or public. There were none.

The Board will review the criteria for a Special Exception and the applicant's statements in addressing each condition in a continuation of this Public Hearing after they had visited the site.

A site visit date was discussed.

At 8:00 pm Mrs. Bolduc made the motion to continue this Public Hearing to 5:00 pm on Thursday October 9, 2014 pm at the Beede Spaulding property for the purpose of a site visit, and to 7:00 pm on October 28, 2014 at the Fremont Town Hall.

Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Catapano, Mr. Nichols, and Mr. Belperron left the meeting at 8:00 pm.

Case #014-006  
Fraser Investment Properties, LLC  
Map 2 Lot 010

Present: Owner Thomas Fraser, abutter Michael Cook

Mr. Andrew opened this Public Hearing at 8:00 pm 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 September 30, 2014 in the Basement Meeting room of the Fremont Town Hall, for Fraser Investment Properties, for property located at 99 Louise Lane, Map 2 Lot 10 in Fremont, New Hampshire.*

*The applicant is seeking:*

- *Special Exception from Article IX Section H of the Fremont Zoning Ordinance to allow dredging, filling and drainage for the installation of a drilled well with associated water/electric lines, closer than one hundred (100') feet to a wetlands/watershed protection area.*
- *Variance from Article IX Section F of the Fremont Zoning Ordinance to allow a structure to be built closer than one hundred (100') feet to a wetlands/watershed protection area.*

*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 reported that this hearing was noticed on September 16, 2014 at the Fremont Post Office and Fremont Town Hall and in the September 16, 2014 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on September 16, 2014 and all returns have been received except for abutters Stacie & Daniel Marston. The application consisted of a cover letter of intent for each action, six sets of plans, a current abutters list, proper check amount and a July 15, 2014 letter of denial from the Fremont Building Official/Code Enforcement Officer.

Comment sheets were received from: (comments in *italics*)

Health Officer: *I have no issue with this as long as it is not too close to wetlands.*

Code Enforcement Officer: *This home is too close to the street as built (one corner is in the r.o.w.) so moving it would be an improvement (as long as not too close to wetlands). I believe the State has a waiver for septic to be 60' vs. 100'.*

Fire Chief: *No problem.*

Police Chief: *Police Department has no objections.*

Road Agent: *No comment.*

Mrs. Bolduc explained that the Conservation Commission has not had a chance to review and comment on the application. They will do so when they meet on October 6, 2014.

Mr. Fraser submitted a septic design plan stamped by Roscoe Blaisdell and dated September 9, 2014. The plan showed 3 wetland pockets, locations of the existing house (to be removed) 71' from a wetland and the proposed house 75' from the same wetland, 2 existing dug wells (to be abandoned) and the proposed well approximately 20' from a separate small wetland pocket. The plan also showed the location of the old septic and the proposed replacement septic. The Fremont ZBA granted a Variance on September 25, 1989 that allows the septic placement closer than 100' to a wetland and it was noted that the new septic will actually be further from the wetland than the old one.

In his September 10, 2014 cover letter of intent, Mr. Fraser related;

- *He plans to demolish the existing structure at 99 Louise Lane which is in poor condition and is in the road easement by about 1-foot. The intent is to build a new home within the legal lot setbacks, but it cannot conform to Zoning regulations (Article IX Section F) stating the 100' from setback. (to a wetland)*
- *He plans to use the existing septic system (approved replacement system will be filed and not installed).*
- *There will also be a new drilled well installed, which will need a Special Exception due to the fact that it's location will be within the 100' wetland requirements for both well and associated water/electric lines servicing same.*

*I am being denied a building permit and an approval of the replacement septic system, due to Zoning Ordinance Article IX Sections F & H and am seeking relief due to the fact that a structure exists on the lot now and the lot will not allow any structure to be erected and/or arranged to conform within the present Zoning Ordinances.*

## **SPECIAL EXCEPTION**

Article IX Section H

**014-006-A**

Mrs. Bolduc 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. Andrew read Article IX Section H of the Fremont Zoning Ordinance as follows.

- H. Special Exceptions: The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported upon by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports.*
- 1. Recreation, including golf courses, parks (but not an amusement park) boating, fishing, landings, picnic areas and any non-commercial open-air recreation use, provided there are adequate provision for disposal of waste products and for parking.*
  - 2. Dredging, filling, drainage (in compliance with the RSA 149:8a) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.*
  - 3. Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Rockingham County Soil Conservation Service District of the environment effects of such proposed use upon the wetland and watershed protection area in question.*

The Board received letters of referral from the Planning Board, the Fremont Building Official and Code Enforcement Officer as required by Article IX Section H. There was no letter of referral from the Conservation Commission, but 30 days have not lapsed since the September 17, 2104 request. The Conservation Commission will meet on October 6, 2014 and it is on their agenda to review the application and referral request.

The Board has not received the report from Michael Cuomo of the Rockingham County Soil Conservation Service as required by the Ordinance.

Mr. Cook said he has lady slippers in his back yard which he feels is a protected flower. His property abuts Mr. Fraser's property to the north. Mr. Fraser said he is not going to do any construction in wetlands, just within the 100' wetland buffer. Mr. Cook said he would like to see the property cleaned up and the junk wood removed.

In answer to a question by Mr. Howland, Mr. Fraser said it is planned that when the new septic system is installed the existing septic tank and pump chamber will be abandoned and a new one installed connected to the existing system because the location of the existing one infringes with the location of the new foundation. There is a Variance already approved for the septic system placement.

The Special Exception is to allow the well and infrastructure closer than 100' to wetland.

**VARIANCE**

**014-006 B**

Article IX Section F

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 IX Section F as set forth in the Fremont Zoning Ordinance.

*Watershed protection areas may be included in the minimum lot size requirements. All dwellings, structures, or parking areas shall have no portion within the Watershed Protection Area and/or no portion closer to Wetlands than those limits defined under Article IV as setback requirements.*

The Board reviewed the same plan that was presented for the Special Exception portion of this Public Hearing. Mr. Fraser said he wants to replace the house that is currently on the property, but it will not be on the same footprint because it is too close to the road. The new structure will be as close as 55' to the wetlands requiring a Variance of 45'. Mr. Fraser said this will meet the 50' street property line setback and he added that all the legal setbacks with the house will be met except the 100' from wetlands.

The Board will review the 5 conditions of a Variance and Mr. Fraser's statements in addressing each condition in a continuation of this Public Hearing after they had visited the site.

A site visit was discussed.

At 8:40 pm Mrs. Bolduc made the motion to continue this Public Hearing to 4:30 pm on Thursday October 9, 2014 pm at the 99 Louise Lane property for the purpose of a site visit, and to 7:30 pm on October 28, 2014 at the Fremont Town Hall.

Motion seconded by Mr. Downing with unanimous favorable vote.

**LEGISLATIVE BILLS**

The following bills are among those introduced for the 2014 Legislative Session. Mrs. Bolduc will follow these bills and report any results to the Board.

House Bill 114: This bill requires a subdivider to deed a right of way to an abutting owner of property with no legal access to a public way.

Pending.

ZBA Meeting Minutes - 09-30-14  
Approved October 28, 2014

House Bill 1210: This bill would require written notification of any zoning changes or amendments to abutters or anyone whose land would be affected.  
Approved and effective July 1, 2014.

CORRESPONDENCE

There was no incoming correspondence received.

At 8:50 pm Mr. Downing made the motion to adjourn.  
Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for October 28, 2014.

Respectfully submitted,

Meredith Bolduc,  
Land Use AA/Recording Secretary