



Fremont Board of Adjustment
October 28, 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 7:00 pm.

Meredith Bolduc and Leon Holmes, Sr. have been designated by Mr. Andrew to fill the vacancies on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill those vacancies.

MINUTES

There were no meetings/minutes for July and August.

Mr. Downing made the motion to accept the minutes of the September 30, 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 Cooke

Mr. Andrew opened this Public Hearing at 7:05 pm and stated that this is a continuation of the September 30, 2014 portion of this Public Hearing which was continued to allow time for a site visit and to receive referral from the Conservation Commission as required by the ordinance.

SITE VISIT:

Mr. Andrew stated that at 5:00 pm on October 9, 2014 the ZBA conducted a duly noticed site visit at the site of the Beede Spaulding subdivision on Spaulding Road. Present were owner/developer Frank Catapano, Beals project manager Joe Nichols, ZBA Chairman Douglas Andrew, ZBA Member Jack Downing, ZBA Alternates Dennis Howland, and Meredith Bolduc and Conservation Commission Chairman Bill Knee.

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The group viewed the locations of the proposed areas of disturbance for well placement and associated infrastructure on lot 19, and 20 as well as the hemlock trees proposed to be removed between lots 18 & 19 and smaller trees to be removed at various locations.

Mr. Knee stated that the Conservation Commission would have no objection to the granting of the Special Exception as long as the developer follows the erosion control/silt fencing outlined on his plan.

The group finished the site visit and left the premise at 5:40 pm.

Mr. Andrew reiterated 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 has received a letter of referral from the Conservation Commission so all required referrals, as well as the report from the Rockingham County Soil Conservation Service have now been received.

The Board reviewed the same plan that they reviewed at the September 30, 2014 portion of this Public Hearing. This plan was drawn by Beals Associates and dated September, 2014 and showed 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, and existing drainage easement 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 and existing drainage easement 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.

Between Map 3 Lots 18 & 19 = Removal of one (1) hemlock tree and stump 40' from wetland. Removal of some small trees to get into the well locations in several areas.

With no further discussion, Mr. Andrew called for the applicant and the Board to address the three questions that must be answered to decide whether or not a special exception can be legally

granted. (Mr. Nichols answers in *italics*)

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

Yes, without a Special Exception.

Boards Vote:

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

Mr. Andrew declared that by vote, the Board unanimously agreed that the use is allowed by Special Exception.

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

Yes

Boards Vote:

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

Mr. Andrew declared that by vote, the Board unanimously agreed that the Special Exception is allowed in accordance with the terms of the Ordinance.

3. Are the conditions specified in the ordinance for granting the exception met in this case?

Mr. Nichols said the water line and drainage is essential to the project. He said they have taken all necessary steps and met with RCCD to get the required report.

Boards Vote:

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

Mr. Andrew declared that by vote, the Board unanimously agreed that specified conditions of Article IX Section G are met.

After careful consideration by the Board, Mr. Downing made the motion that, based on the information presented and the results of the Boards vote on the three questions of a Special Exception; and the Boards determination that the exception is allowed by the ordinance and that all of the specific conditions under which the exception may be granted have been met, the Fremont Zoning Board of Adjustment grant a Special Exception from the terms of 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, existing 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; remove one (1) hemlock tree and stump between Map 3 Lots 18 & 19 forty (40) feet from wetland and remove several small trees to get into the well locations in several areas. This approval is with the following conditions:

- Map 3 Lot 15 = The proposed water line and foundation drain and existing drainage easement shall be no closer than twenty five (25') feet from the wetlands.
- Map 3 Lot 16 = The proposed water line and foundation drain shall be no closer than twenty five (25') feet from the wetlands.
- Map 3 Lot 17 = The proposed water line and foundation drain shall be no closer than forty (40') feet from the wetlands.
- Map 3 Lot 18 = The proposed water line and foundation drain shall be no closer than twenty five (25') feet from the wetlands.
- Map 3 Lot 19 = The proposed water line and foundation drain and existing drainage easement shall be no closer than forty (40') feet from the wetlands.
- Map 3 Lot 20 = The proposed water line and foundation drain shall be no closer than sixty one (61') feet from the wetlands.
- This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required.
- All Local, State and County fees must be paid in full.
- This special exception shall be valid if exercised within two (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 six (6) months after the resolution of a planning application filed in reliance upon the special exception. (per NH RSA 674:33, IV)
- 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.
- RSA 676:17 shall apply.

Motion seconded by Mr. Howland.

Board vote:

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

Mr. Andrew declared the Special Exception granted and 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.

Mr. Catapano agreed to submit the recording fees.

At 7:30 pm Mr. Downing made the motion to close this public hearing. Motion seconded by Mr. Howland with unanimous favorable vote.

Mr. Nichols and Mr. Catapano left the meeting at this time.

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

Present: Owner Thomas Fraser

Mr. Andrew opened this Public Hearing at 7:30 pm and stated that this is a continuation of the September 30, 2014 portion of this Public Hearing which was continued to allow time for a site visit and to receive referral from the Conservation Commission as required by the ordinance.

SITE VISIT:

Mr. Andrew stated that on October 9, 2014 the ZBA conducted a duly noticed site visit at 4:30 pm at 99 Louise Lane. Present were owner/developer Tom Fraser, CWS Michael Cuomo of the Rockingham County Soil Conservation Service, ZBA Chairman Douglas Andrew, ZBA Member Jack Downing, ZBA Alternates Dennis Howland, and Meredith Bolduc and Conservation Commission Chairman Bill Knee. The group viewed an updated plan that showed the actual proposed location of the placement of the house. The group viewed the locations of the proposed well and areas of disturbance for the well placement and associated infrastructure as well as the two wells that will be abandoned.

In answer to questions by some in the group Mr. Fraser said that the existing driveway will remain where it is. The existing septic system will remain in place and in use. A replacement system is located on the plan and the design is on file with the Town. In the event of future septic system failure, replacement of the system shall be constructed in the same area as the original system and the portion of the driveway that it will sit on will be abandoned.

The group finished the site visit and left the premise at 5:00 pm.

The Board reviewed the updated plan submitted by Blaisdell Survey prior to the site visit. This was the same septic design plan stamped by Roscoe Blaisdell and dated September 9, 2014, but with updates to show the actual locations of the existing driveway, septic system, the existing house (to be removed), proposed new house (to be built), two existing dug wells (to be abandoned) and the proposed well, and their proximity to three wetland pockets.

The plan showed the following:

- Proposed new well 18' from a small wetland pocket.
- Proposed new house = 51.24' from the same wetland pocket
- The replacement septic system = 57.88' from a separate wetland

Note: The Fremont ZBA granted a Variance on September 25, 1989 that allows the septic placement closer than 100' to a wetland.

Mr. Fraser reiterated that 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.*
- *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.*

SPECIAL EXCEPTION
Article IX Section H

014-006-A

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 has received the October 15, 2014 report from Michael Cuomo of the Rockingham County Soil Conservation Service as required by the Ordinance. In his report Mr. Cuomo said: *A site visit was conducted on 9 October 2014. I have reviewed a copy of the proposed wastewater disposal system plan dated 1 October 2014 which shows the proposed site features. We conclude the water well and the resulting disturbance of the buffer is "essential to the productive use of the land" (zoning 9.H.2) and should be granted a Special Exception. The condition of the site is poor, and the proposed use will be an environmental improvement, even with the proposed disturbance in the wetland buffer.*

In our opinion the applicant has not shown adequate erosion and sediment control measures. Approval of the Conditional Use permit should be subject to conditions such as;

1. *No soil disturbance or fill in wetlands.*
2. *Installation of sediment barriers between soil disturbance and wetlands before construction begins*
3. *Prompt stabilization of disturbed soil with mulch and seed.*

The Board has received a letter of referral from the Conservation Commission so all required referrals have now been received.

With no further discussion, Mr. Andrew called for the applicant and the Board to address the three questions that must be answered to decide whether or not a special exception can be legally granted. (Mr. Fraser's answers in *italics*)

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

Yes, without a Special Exception.

Boards Vote:

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

Mr. Andrew declared that by vote, the Board unanimously agreed that the use is allowed by Special Exception.

2. Is the use specifically allowed as a Special Exception under the terms of the ordinance?

Yes – dredging & filling for temporary soil disturbance.

Boards Vote:

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

Mr. Andrew declared that by vote, the Board unanimously agreed that the Special Exception is allowed in accordance with the terms of the Ordinance.

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

Yes – conditions for Special Exceptions have been met.

Boards Vote:

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

Mr. Andrew declared that by vote, the Board unanimously agreed that the Special Exception is allowed in accordance with the terms of the Ordinance and all of the conditions of Article IX Section G have been met.

After careful consideration by the Board, Mr. Downing made the motion that, based on the information presented and the results of the Boards vote on the three questions of a Special Exception; and the Boards determination that the exception is allowed by the ordinance and that all of the specific conditions under which the exception may be granted have been met, the Fremont Zoning Board of Adjustment grant a Special Exception from the terms of Article IX Section H of the Fremont Zoning Ordinance to Fraser Investment Properties, LLC for property located at Map 2 Lot 010, 99 Louise Lane, Fremont New Hampshire, to allow dredging, filling and drainage for the installation of a drilled well with associated water/electric lines, and a replacement septic system closer than one hundred (100') feet to a wetlands/watershed protection area, with the following conditions:

- That no portion of the placement of the well or associated drainage be closer than eighteen (18) feet to a wetlands/watershed protection area.
- That no portion of the replacement septic system be closer than fifty seven (57) feet to a wetlands/watershed protection area.
- No further or future expansion or improvements shall be allowed to be constructed within the 100' wetland buffer on the property.
- There shall be no soil disturbance or fill in wetlands.
- Sediment barriers between soil disturbance and wetlands shall be installed before construction begins.
- There shall be prompt stabilization of disturbed soil with mulch and seed.
- All Local, State and County fees must be paid in full.
- This special exception shall be valid if exercised within two (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 six (6) months after the resolution of a planning application filed in reliance upon the special exception. (per NH RSA 674:33, IV)
- 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.
- RSA 676:17 shall apply.

Motion seconded by Mr. Howland.

Board vote:

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

VARIANCE

014-006 B

Article IX Section F

Mr. Andrew read Article IX Section F as set forth in the Fremont Zoning Ordinance.

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.

The Board reviewed and discussed the same plan that they reviewed for the Special Exception portion of this hearing which shows the proposed new structure will as close as 51.24' to the wetlands requiring a Variance of 48.76'.

With little more discussion Mr. Andrew read the five conditions of a Variance with the applicants written statements that were submitted with the application and stated at this hearing. (Mr. Fraser's answers are in *italics*) The Board's vote follows each condition.

1. Granting the variance would not be contrary to the public interest because:

There is an existing structure on the property now and it is placed in the roadway easement of Louise Lane. Granting this variance will allow structures to be placed within the lot lines but still within wetland setbacks.

The Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure "public rights" therefore would not be contrary to the public interest.

Board's vote:

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

2. The use is not contrary to the spirit of the ordinance because:

There is an existing structure on the property now and it is placed in the roadway easement of Louise Lane. Granting this variance will allow structures to be placed within the lot lines but still within wetland setbacks.

The majority of the Board Members agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure "public rights" therefore would not be contrary to the spirit of the ordinance.

Board's vote:

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

3. Granting the Variance would do substantial justice because:

There is an existing structure on the property now and it is placed in the roadway easement of Louise Lane. Granting this variance will allow structures to be placed within the lot lines but still within wetland setbacks.

The Board Members collectively agreed that granting of the Variance would not cause harm to the general public or to other individuals therefore it would do substantial justice in that the benefit to the owner is not outweighed by harm to the general public or to other individuals.

Board's vote:

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

4. The proposed use would not diminish surrounding property values because:

There is an existing structure on the property now and it is placed in the roadway easement of Louise Lane. Granting this variance will allow structures to be placed within the lot lines.

The Board Members collectively agreed that granting of the Variance would not diminish the values of surrounding properties.

Board's vote:

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

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.

Because of special conditions of the property that distinguish it from other properties in the area:

(A)

- (i) There is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property:

There is an existing structure on the property now and it is placed in the roadway easement of Louise Lane. Granting this variance will allow structures to be placed within the lot lines but still within wetland setbacks.

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Board's vote:

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

and

(ii) The proposed use is a reasonable one.

There is an existing structure on the property now and it is placed in the roadway easement of Louise Lane. Granting this variance will allow structures to be placed within the lot lines but still within wetland setbacks.

Board's vote:

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

There was a discussion relative to the proposed placement of the house and it was agreed that moving the footprint back 50' from the street will be a great improvement over the existing footprint which is in the street right-of-way.

With no further discussion, Mr. Downing made the motion that, based on the information presented and the results of the Boards' vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment grant to Fraser Investment Properties, LLC a Variance of forty nine (49) feet to the terms of Article IX Section F as set forth in the Town of Fremont Zoning Ordinance, to allow the construction of a replacement home on property located at 99 Louise Lane, Map 2 Lot 10, closer than one hundred (100) feet to the wetland with the following conditions:

1. No portion of any structure shall be constructed closer than fifty one (51) feet to any wetland.
2. No further or future expansion or improvements shall be allowed to be constructed within the 100' wetland buffer on the property.
3. This special exception shall be valid if exercised within two (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 six (6) months after the resolution of a planning application filed in reliance upon the special exception. (per NH RSA 674:33, IV)
4. 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.
5. 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.

6. RSA 676:17 shall apply.

Motion seconded by Mr. Howland with unanimous favorable vote.

Mr. Andrew declared the Variance granted and 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 submitted the recording fees.

At 8:05 pm Mr. Downing made the motion to close this Public Hearing.

Motion seconded by Mr. Howland with unanimous favorable vote.

Mr. Fraser left the meeting at this time.

Case # 014-007
Anne Loosmann
147 Whittier Drive
Map 3 Lot 169-59-20

Present: Owner Anne Loosmann, Builder Paul Morin

Mr. Andrew opened this Public Hearing at 8:10 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 8:00 pm on October 28, 2014 in the Land Use Meeting Room, basement level in the Fremont Town Hall, as requested by Anne Loosmann for Map 3 Lot 169-59-20, 147 Whittier Drive, Fremont, New Hampshire.

The applicant is seeking a Special Exception as required by Fremont Zoning Article IV-A to allow the property use to include an In-Law Apartment.

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 explained that the purpose of the Board is to hear and determine appropriate action relative to Special Exceptions, Variances and Appeals as they pertain to the Fremont Zoning Ordinance. He then read Article IV-A of the Fremont Zoning Ordinance.

Mr. Andrew stated that the Ordinance describes an In-law/accessory apartment as:

An apartment within a single family residence. An in-law apartment is defined as "a separate living space within a single family dwelling unit consisting of separate sleeping, cooking and bathroom facilities and which is intended to be occupied by an in-law or in-laws of a member of a family unit occupying the main part of the dwelling." and meeting the following criteria:

In-law apartments may be occupied only by members of the family unit occupying the main part of the dwelling or by in-laws of a member of said family unit. The applicant must satisfactorily

demonstrate that said apartment will be utilized only in this fashion. The occupancy or rental of an in-law apartment by persons other than in-laws, as defined in this ordinance, is expressly prohibited.

Mrs. Bolduc explained that the mechanism the Town has to allow the creation of an in-law apartment is by way of a Special Exception from Article IV Section A of the Zoning Ordinance. An applicant must go to the Board of Adjustment for approval since Article IV Section A is a zoning article.

Mr. Andrew reiterated 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?

It was noted that this hearing was noticed on October 16, 2014 at the Fremont Post Office and Fremont Town Hall and in the October 20, 2014 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on October 16, 2014 and all returns have been received except for that of the applicant Anne Loosmann and abutters Steven and Sarah Lamirande. The application package included: several copies of the plan, proper check amount, a current list of abutters, letter of intent, and an August 18, 2014 letter of denial from the Code Enforcement Official.

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

Health Officer: *I am not in favor of this.*

Building Official/Code Enforcement Officer: *Please see the attached – I am not in favor of this for many reasons. The original drawing shown are marked “future space” which could mean many things, but I doubt that it ever meant an in-law apartment. Having a bonus room (living space) above the garage is something that I could issue a building permit for, but could not for a “living unit”.*

The Town has crafted and passed an ordinance that states “only in the primary residential structure” and it has “shall not be constructed or established within an accessory use structure (such as a garage). Clearly what is shown is an accessory structure attached by a covered walk way. Which as I see it “does not meet with provisions of this section. “By our definition “An apartment within a single family residence” the garage is not within that residence, it is indeed detached from the main dwelling.

It is my understanding that most fires start in a kitchen, adding a second kitchen doubles the chances. It is also my understanding that firemen do not want to extract residents from over a garage that could have vehicles or fuel in it, let alone elderly ones over a garage engulfed from a kitchen fire.

I believe that a lot of thought went into this ordinance, it has been on the books for some time

and that exceptions should not be granted.

Fire Chief: I am not in favor of granting this Special Exception to Article IV-A for a number of reasons. A garage is built for a specific use housing vehicles, storage of yard equipment and tools not as a living area. While some garages are built with an area above them that are used as game rooms or work areas not actual living space. The occupants of this area are subject to fumes from stored items along with the potentially deadly carbon monoxide. Access ways to areas over garages are often difficult to remove occupants in the event of an injury or emergency.

Upon sale of property or passing of in-laws there is no way for the Town to prevent this apartment from becoming a rental unit which would fall under different codes and regulations.

The definition of an in-law/accessory apartment clearly states an apartment "within" a single family residence. I do not consider a garage that has a covered walkway as its attachment "within" a single family residence.

Police Chief: No objections.

The Board reviewed the submitted application. One part of the submission was a proposed septic system drawn by Dahlberg Land Services, Inc and dated June 17, 2009. This plan showed as-built locations of footings for the house and the garage, the septic, well, driveway and the locations of all abutters. The second part of the submission was a floor plan of the layout and dimensions of the existing house and garage with proposed living space on the second floor of the garage. The undated floor plans were drawn by Tarkka Homes, Inc. There were also three photos submitted that showed the house and garage attached by an open breezeway.

Mr. Morin said he is representing Ms. Loosmann with this application. He added that he was the builder of the home in 2010 and he will build the in-law unit if it is approved. Mr. Morin explained that the owner wishes to build a small in-law unit in a pre-existing unfinished space above the garage that was legally permitted and constructed in 2010. Mr. Morin said he believes the request meets the criteria for a Special Exception, the home is a green certified home, and removing the garage from the living space would be contrary to the owner's intent when the home was built. The property has some nice views, the open breezeway between the house and garage is conducive to the view.

Mr. Morin said the use of the apartment would be for visiting family members who do not live in the area and possibly to provide for dwelling unit for aging family members if they find the need in the future.

Mr. Andrew stated that according to the owners signature on the application for this Special Exception and by verbal agreement at this Public Hearing the applicant has certified the following; (Mr. Morin's comments are in italics). The criteria was reviewed and discussed by the Board.

A. The applicant seeking an "in-law/accessory apartment" special exception shall be granted by the Zoning Board of Adjustment, only upon finding by this Board that it meets the provisions and conditions of this section.

B. The property conforms to the dimensional requirements of the single family minimum lot size standard as established by Fremont Zoning Ordinance in 1971 (Lot size of one (1) acre minimum is required), and the single family dwelling has been constructed and occupied for a period of a minimum of one year.

Agreed. The home is built within the legal setbacks on a 25.32 acre lot.

C. The dwelling to which the in-law/accessory apartment is being created is owner occupied and of greater than twelve hundred (1200) square feet of total existing living space.

The existing home is the primary dwelling of the owner, Anne Loosmann. The home is 2,892 square feet of heated living space.

D. The living area of the in-law/accessory apartment has a minimum of four hundred (400) square feet and a maximum of eight hundred (800) square feet. Size shall be determined by the total square footage of the in-law/accessory apartment. The initial family unit is not lessened by such dimensions so as to create non-compliance with Article V Section 2.

Agreed. The proposed in-law unit is 755 square feet of heated living space. No space is being deducted from the existing dwelling unit.

E. There will be no more than two (2) bedrooms in the in-law/accessory apartment.

Agreed. The proposed unit will have one bedroom.

F. The owner shall provide evidence to the Building Official that Septic facilities are adequate to service the in-law/accessory apartment. Such evidence shall be in the form of certification by State of N.H. licensed septic system designer. The Building Official shall indicate his approval in writing to the Zoning Board of Adjustment s to proper certification having been received.

The existing septic system is a 4-bedroom design and has two separate septic tanks, 1,200 gallons each. The existing dwelling has three bedrooms. The system was constructed and began service in 2010.

The Board has not received approval from the Building Official stating that “proper certification of an adequate septic system consistent with the intent of Article IV-A (E) has been provided to the Building Official.”

G. The in-law/accessory apartment shall be designed such that the appearance of the building remains that of the single family dwelling. Any new entrances shall be located on the side or rear of the building.

No new entries are necessary for the proposed in-law unit. In his opinion this looks like a single family home with a garage.

H. (has been repealed)

I. The primary residence and the in-law/accessory apartment shall share common water, septic, and electric facilities.

Agreed. The existing well, septic system and electric service entry will service both dwelling units.

J. In no case shall more than one in-law/accessory apartment be permitted within the structure. Dormitory-type facilities and living are expressly prohibited whether seasonal or otherwise. *Agreed. Only one in-law unit is proposed.*

K. The In-law/accessory apartment shall not be constructed or established within any accessory use structure (such as a garage). Only the primary residential structure may contain the in-law/accessory apartment.

The ordinance prohibits the location of an in-law apartment in an accessory use structure, such as a garage. We submit that the conditions of this property and layout of the existing building are in keeping with the spirit and intent of this section of the ordinance. In 2009, the permit application for this home showed a 3-bedroom dwelling unit with an attached garage and "future space" above the garage with a separate entry. The master plan of this property was clearly reserving this space as heated living space. Both the garage and future space are attached to the main home. "an accessory use structure such as a garage" suggests a detached building or use of a garage that was not previously intended to be living space. The aesthetics of this property include views and open space which drove the design of this home. We hope to have an opportunity during the public hearing to elaborate on this point.

Mr. Morin said it was his intent to ask for a variance from this section, but found that he could not. He showed an architectural drawing of the proposed unit and said that the owner needs an apartment for family use. He added that this home was designed and built as a single family home with the intent of finishing the space above the garage.

Ms. Loosmann said she built the garage with the intention of additional living space.

Mrs. Bolduc said that the Board can only consider the ordinance and the intent of the ordinance, and cannot approve or disapprove a particular interior design.

L. Off-street parking is available for a minimum of four automobiles for the entire structure. The in-law/accessory apartment to be permitted does not have a separate driveway or separate garage to accommodate its occupant(s).

Off street parking is available for a minimum of four automobiles for the entire structure. There is no separate driveway or garage to accommodate the occupants.

M. The in-law/accessory apartment shall be provided with an interconnected smoke alarm system. All smoke alarms shall be listed and installed in accordance with the provisions of the IRC and the household fire warning provisions of NFPA 72.

Agreed. Construction will include interconnected smoke alarms compliant with IRC 2009 and NFPA 72 codes.

N. The provisions of the International Residential Code (IRC) shall apply to all construction elements of the in-law/accessory apartment. There shall be no occupancy of the in-law/accessory apartment until the Building Official has issued an occupancy permit.

The construction will conform to all local and state codes and no occupancy shall take place without a certificate of occupancy.

O. The in-law/accessory apartment is not within the Flood Plain as identified by the FIRM map relating to Fremont, N.H.

The property is not located in the Flood Plain.

There was further discussion relative to the application and associated drawing and pictures. It was agreed that item "F" and "K" seem to be outstanding issues.

There was a discussion relative to the concerns of the Building Official/Code Enforcement Officer and the Fire Chief.

A site visit was discussed. At 9:10 pm Mr. Downing made the motion to continue this Public Hearing to 9:30 am on November 15, 2014 at 147 Whittier Drive for the purpose of a site visit, and to 7:00 pm on Tuesday November 18, 2014 at the Fremont Town Hall.

Motion seconded by Mr. Howland with unanimous favorable vote.

Ms. Loosmann and Mr. Morin left the hearing at this time.

There was a general conversation relative to the in-law ordinance in general and the description of an In-law/accessory apartment.

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.

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 9:30 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for November 18, 2014.

Respectfully submitted,

Meredith Bolduc,
Land Use AA/Recording Secretary