



Fremont Board of Adjustment
November 18, 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.

Mr. Andrew re-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.

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

Mr. Downing made the motion to accept the minutes of the October 28, 2014 meeting as written. Motion seconded by Mr. Howland with unanimous favorable vote.

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

Present: Owner Anne Loosmann, Builder Paul Morin, Trisha Newhall-Grahame

Mr. Andrew opened this Public Hearing at 7:05 pm and stated that this is a continuation of the October 28, 2014 portion of this Public Hearing which was continued to allow time for a site visit.

SITE VISIT:

November 15, 2014, 9:30 am.

NAME, MAP AND LOT#

Anne Loosmann, Map 3 Lot 169-59-20, 147 Whittier Drive, Fremont, NH

WHO ATTENDED: Owner Anne Loosmann, builder Paul Morin, Trisha Newhall-Grahame, ZBA Members Douglas Andrew, John (Jack) Downing, Leon Holmes, Sr., Meredith Bolduc, and Building Inspector/Code Enforcement Officer/Health Officer Bob Meade.

The Group viewed structures on the property which included a 3-bedroom house connected to a 3-stall garage by approximately 20' of open walkway covered with a roof. The group viewed the proposed area for the In-Law/accessory apartment which was above the garage with an entrance through an enclosed staircase. Mrs. Bolduc stated that she wished to make it clear that the Board is in no way considering approval or denial of a specific floor plan for any use.

Mr. Morin pointed out that the proposal is to utilize the space that exists above the garage and they are not proposing to construct new space. He said that in order to achieve an In-Law unit in the main house it would call for remodeling of the main house.

Ms. Loosmann said she wants extra space for visiting family members. Mr. Meade stated that the space could be used for extended living space, but without a kitchen. Ms. Loosmann said she wants the kitchen for convenience so that visitors would not need to go through the walkway to the main house for coffee or cooking facilities.

The group left the premise at approximately 9:50 am.

Mr. Downing made the motion to accept the minutes of the November 15, 2014 site visit as written. Motion seconded by Mr. Holmes with favorable except for Mr. Howland who abstained as he was not present at that site visit.

Mr. Andrew referred to Article IV-A of the Fremont Zoning Ordinance. He 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.

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 reviewed the submitted application and pictures. It was noted that all certified returns containing the notice of the Hearing have now been received.

Each of the conditions and criteria was again read, reviewed and discussed by the applicant and the Board. 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 and he said that each of his comments continue to be true).

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 must conform 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.

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 Adjustments 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.

Mr. Morin submitted corrected septic plans for Building Official Bob Meade.

The Board received a November 18, 2014 written approval from Building Official Bob Meade stating that “proper certification of an adequate septic system consistent with the intent of Article IV-A (F) has been provided to the Building Official.” It was agreed by the Members that condition F has been revisited, complied with and completed as required.

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. Mr. Morin said they believe they comply.

H. Repealed. N/A

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. There is just one metering for the electricity.

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. 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 added that she built the garage with the intention of additional living space. She said the original architectural plans showed a bedroom, bathroom and kitchen.

In answer to Mr. Morin's assertion of "attached" Building Official Bob Meade issued a November 18, 2014 letter to the Board that states in part "going right to the International Code Council (ICC) this topic comes up a lot and the thread there from the building officials and the conclusion is whether it is covered or enclosed (such as a breezeway) it is not attached. To back that up in the International Residential Code (IRC) it states what must be done for an attached garage = sheetrock, doors, sealing & closers which would not really be applicable here. Mr. Meade added that as the authority having jurisdiction he does not see this as an attached garage.

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. No in-law/accessory apartments shall be allowed within the Flood Plain as identified by the FIRM map relating to Fremont, N.H.

The property is not located in the Flood Plain.

Ms. Loosmann said the question comes down to what is the question of the law. She said she is not intending to harm anyone by having an in-law apartment on her hilltop property. It has always been her intent to have an apartment in the garage. She said she has felt that it was better for the environment to have two separate living units rather than two units in one building and she is hoping the Board sees it that way, too.

With no further discussion from the public Mr. Andrew closed the meeting to the public and the Board continued their discussion on this case.

Mr. Holmes said that it looks like there is nothing in the Zoning Ordinance that would not allow living space above the garage without a kitchen. Mr. Howland said if there is no kitchen it is not an in-law apartment so there would be no need for a special exception. Having additional living space such as a family room and a bathroom above a garage would be allowed.

Mrs. Bolduc said that the Board can only consider the ordinance, the intent of the ordinance and the conditions of the ordinance. Mrs. Bolduc said it is her belief that an intent of the ordinance was to allow the creation of a separate living unit within a primary living structure for the use of relatives of the owner who is living in the primary living area, and when that use was no longer needed the in-law unit space could be absorbed back into the primary living area. It was never meant for a living unit separate from the main dwelling or for rental purposes. She added that another intent was so that the main dwelling could still be considered as single family.

It was agreed by all Members that the applicant can meet the conditions of A, B, C, D, E, F, G, I, J, L, M, N, and O of Zoning Article IV-A.

There was a discussion on condition “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.*

Mr. Howland said Article IV-A of the Zoning Ordinance does not say anything about “attached” so that is not an issue. He said it is his opinion that this in-law apartment is clearly proposed to be established above the accessory use structure (garage) and it is not part of the primary living structure. Mr. Downing agreed with Mr. Howland and said that the ordinance is clear that an in-law cannot be in/over a garage and that it has to be within the main living structure.

There was a discussion relative to the concerns of the Building Official/Code Enforcement Officer and the Fire Chief about an in-law apartment that is over a garage. Mr. Holmes said he thought their concerns were mostly for safety.

Mrs. Bolduc said that the proposal to create an in-law apartment within a garage clearly does not meet the spirit, intent the provisions of the ordinance. She added she does not consider the garage, which is only connected to the house by a 20+ foot covered walkway, to be the primary residential structure.

The Members discussed the following as per items included in Zoning Article IV-A:

- *Would the in-law apartment be “within or as an addition to, an existing residential single family structure”? It was collectively agreed by the Board that it would not.*
- *Does the application fit the definition of an in-law apartment as “a separate living space within a single family dwelling unit”? Mr. Howland says he thinks it fits the definition.*

The other Members did not agree.

- *Item K:*
 - *Is the proposed in-law accessory apartment to be constructed or established within any accessory use structure (such as a garage)? The Board collectively agreed that this is true.*
 - *Is the proposed in-law accessory apartment proposed to be constructed or - established within the primary residential structure? Collectively agreed that it is not.*

It was unanimously agreed by the Board Members that the proposal to create an in-law accessory apartment does not meet condition “K” of Article IV-A of the Fremont Zoning Ordinance.

The Board addressed 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?

Board Vote:

Mrs. Bolduc	Yes, it is prohibited without a Special Exception.
Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mr. Holmes	Yes

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

Board Vote:

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

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

Board Vote:

Mr. Andrew	No
Mr. Downing	No
Mr. Howland	No
Mr. Holmes	No
Mrs. Bolduc	No

After careful consideration and review by the Zoning Board of Adjustment, Mr. Howland made the motion that, based on the information presented, the Zoning Board of Adjustment deny the Special Exception from Article IV-A of the Fremont Zoning Ordinance to Anne Loosmann to allow the property use at 147 Whittier Drive, Fremont, New Hampshire, Map 3 Lot 169-59-20, to include an In-Law Apartment.

This decision shall be recorded with Rockingham County Registry of Deeds, indexed under the name of the property owner.

The reasons for denial of this Special Exception request are that the conditions under which the exception may be granted have not been met.

1. The proposed In-Law Apartment would not be “within or as an addition to, an existing residential single family structure”.
2. The proposed In-Law Apartment does not comply with condition “K” of Article IV-A of the Fremont Zoning Ordinance because it is proposed to be constructed and established within/over a garage.
3. The proposed In-Law Apartment does not comply with condition “K” of Article IV-A of the Fremont Zoning Ordinance because it is proposed to not be contained within the primary residential structure.

Motion seconded by Mr. Holmes.

Board Vote:

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

Mr. Andrew declared that the Special Exception is denied 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.

Mr. Morin thanked the Board for their consideration and time of this application and the site visit. He asked if he submitted a letter explaining that he would like to ask for a variance to this Special Exception would the Board forward it to the Town Council. Mr. Morin cited the OEP ZBA Handbook “*In the case of a request for special exception, the ZBA may not vary or waive any of the requirements set forth in the ordinance. Although the ZBA may not vary or waive any of the requirements set forth in the ordinance, the applicant may ask for a variance from one or more of the requirements.*”

Mrs. Bolduc said that the Town Attorney reviewed the zoning article when it was drafted and he was the one who included the condition that no variances could be allowed to the special exception. Mr. Holmes said he does not see a need for getting opinion of the Town Attorney. Mr. Howland said even if they were to pursue the idea of a variance he would stand firm in his decision. The other Members all agreed that their decisions are firm.

Mr. Morin asked if he is correct that if Ms. Loosmann were to move forward with creating living space over the garage minus a kitchen they could apply for a building permit. The answer was yes. Mr. Holmes said if she is going to do that her next step is to go to the Building Inspector. Ms. Loosmann asked what “cooking facility” means and Mrs. Bolduc said that was also a question for the Building Inspector as it is a code interpretation.

ZBA Meeting Minutes – November 18, 2014
Approved February 24, 2015

Mr. Morin submitted the proper recording fees.

At 8:30 pm Mr. Downing made the motion to close this Public Hearing. Motion seconded by Mr. Howland with unanimous favorable vote.

Ms. Loosmann, Mr. Morin and Ms. Newhall-Grahame 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 that Mrs. Bolduc followed.

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.

Did not pass.

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 8:40 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for December 23, 2014.

Respectfully submitted,

Meredith Bolduc,
Land Use AA/Recording Secretary