



Fremont Board of Adjustment
February 24, 2015
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.

At the November 18, 2014 meeting 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.
These appointments remains in effect.

MINUTES

Mr. Downing made the motion to accept the minutes of the November 18, 2014 meeting as written. Motion seconded by Mr. Howland with unanimous favorable vote.

Case #015-001
John Carson, Jr.
67 Gristmill Road
Map 2 Lot 173-13

Present: Katheryn and John Carson, Jr., Kevin Hatch

Mr. Andrew opened this Public Hearing at 7:00 pm and read the Public Notice of the 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 7:00 pm on February 24, 2015 in the downstairs Land Use Meeting Room of the Fremont Town Hall as requested by John Carson, Jr. for Map 2 Lot 173-13, 67 Gristmill Road, Fremont, New Hampshire.

The applicant is seeking an Equitable Waiver of Dimensional Requirements from Article IV Section 1 of the Fremont Zoning Ordinance to allow a recently constructed existing house to remain in its current location closer than fifty (50) 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.

A copy of the plan can be viewed at the Fremont Town Hall during regular business hours.

Mr. Andrew stated that this hearing was noticed on February 10, 2015 at the Fremont Post Office and Fremont Town Hall and in the February 13, 2015 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on February 10, 2015 and all returns have been received except for applicant John Carson, Jr., Cornerstone Survey, abutters Gristmill, LLC and James & Angela O'Connell. Mr. Carson and Mr. Hatch said they have received the notice. The returns will probably be in tomorrow's mail.

The application consisted of a cover letter of intent, multiple sets of plans, a current abutters list, proper check amount and a September 26, 2015 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer as well as an October 23, 2013 Foundation Check List with a note questioning the proximity of the distance to the road and an October 10, 2014 note saying that he "called and left another message to Kevin looking for foundation certificate". Also submitted was a February 5, 2015 letter of permission from owner John Carson, Jr. for Kevin Hatch of Cornerstone Survey to represent him.

Mr. Andrew explained the procedure for an Equitable Waiver of Dimensional Requirements and that RSA 674:33-a directs that "When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement, the zoning board of adjustment may grant a waiver only if each of the four findings as outlined in the statute are made:

- (a) lack of discovery;
- (b) good faith error in measurement or calculation;
- (c) no diminution in value of surrounding property; and
- (d) the cost of correcting the mistake outweighs any public benefit."

II. 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 of the current Fremont Zoning Ordinance as it pertains to this case, which reads in part:

Any new structure or extension of existing structure intended for any use shall be set back from the street property line at least fifty (50) feet.

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

Health Officer: *I see no health concerns.*

Code Enforcement Official: *Please see timeline and letters dated December 26, 2014 & January 20, 2015. When this was built the cul-de-sac was still in place making it difficult for me to determine the setback. I did not receive the foundation certificate until too late.*

Road Agent: *No comment*

Fire Chief: *I don't have any problem with this.*

Police Chief: *No issues.*

The Board received copies of the following from the Fremont Building Official Robert Meade.

- Foundation Certificate timeline chronology that included the following.
 - Aug 7, 2014 septic review
 - Aug 31, 2014 code review
 - Sept 9, 2014 building permit
 - Sept 26, 2014 foundation inspection – first called Cornerstone Survey questioning distance from road
 - Oct 10 called again looking for foundation certificate (called several more times)
 - Oct 29, 2014 e-mail to Jack (Carson) about having left messages for Cornerstone. Around this time the road was cut (cul-de-sac removed) and Jack called with a 56' measurement.
 - Nov 17, 2014 sent another e-mail to Jack about Cornerstone and no certification
 - Dec 22, 2014 call from mortgage company questioning how close to road and wetlands
 - Dec 26, 2014 first letter went out looking for certificate
 - Jan 6, 2015 did a walk through of the house
 - Jan 16, 2015 Kevin Hatch meets with Jack
 - Jan 19, 2015 Jack e-mails that foundation is indeed off and closer than 50' to the road
 - Jan 20, 2015 second letter (summation) went out
 - Jan 22, 2015 Foundation Certificate arrived.
- December 26, 2014 letter to Mr. Hatch stating in part:

As you know the Town of Fremont requires a foundation certification at the time of the foundation inspection (also see code review). In most cases having it any time before the final inspection and certificate of occupancy is acceptable. In situations where the foundation does not look right I ask for it right away. In this case I have left a half dozen messages on your office and cell phone and have yet to get a response.

When I first looked at the foundation the cul de sac was still there and the foundation looked too close to me and I measured approximately 45 feet to the road (or at least where I thought it would be). After the pavement was cut and the road established Jack went out and had 56 feet (I am not sure if that includes the road right away or the furthest projection of the building).

Recently, a mortgage company called and is complaining that the home is too close to wetlands and too close to the road. Where the building is shown on the drawing just over 100 feet from wetlands the exact location must be verified. You also show the setback from the street at thirty feet where given the date of this sub division I believe should be fifty feet.

- January 20, 2015 letter to Mr. Carson stating in part:
For some time I have been looking for a foundation certificate for this home (see previous correspondence on file) and to date have not received one. At first I thought the foundation was off and had measured this at 45 feet but the cull de sac was still there making it difficult to be certain. Later after the pavement had been cut you had remeasured and got something like 56 feet which made me feel better about it (perhaps this did not take in the town right of way). Yesterday I received an e-mail from you stating that the foundation is approximately two feet too close to the road. With this, you do not meet the town of Fremont's Zoning requirements.

The Building Official has not issued a report of approval or signed the permit card.

Mr. Hatch submitted a location plan labeled "Foundation Certification" drawn by Cornerstone Survey Assoc and dated January 8, 2015. The plan showed the foundation for the house on the Map 2 Lot 173-13 to be as close as 48.9' and the addition of the porch to be 44.3' from the street property line of Gristmill Road.

Mr. Hatch said he did the survey for the original Gristmill Subdivision and explained that this lot is the first lot in the next phase of the project where there was a temporary cul-de-sac installed. Mr. Hatch said the error was his mistake. The approved lot subdivision design that he did for Gristmill came from an old subdivision plan on which the label that said "building setback line" was actually the 30' septic setback line.

It was established that the violation was first suspected by the Building Official Bob Meade at the Sept 26, 2014 foundation inspection and Mr. Hatch was contacted by Mr. Meade via phone voice message questioning distance from road. Mr. Carson was not aware of the suspected setback violation and he continued to build. The house and porch were finished by the time the building setback violation was actually established.

In answer to questions by the Board Mr. Hatch said the original developer sold the lot and he did not know the new owners. When asked why he did not respond to Mr. Meade's e-mails and letter, or forward the set back concerns to Mr. Carson, Mr. Hatch explained that Mr. Carson was not his client and he did not have his contact information.

Mr. Carson said he built the house himself.

A site visit was discussed. At 7:55 pm Mr. Downing made the motion to continue this Public Hearing to 5:00 pm on Wednesday March 11, 2015 at 67 Gristmill Road for the purpose of a site visit, and to March 24, 2015 at 7:00 pm at the Fremont Town Hall. Motion seconded by Mr. Howland with unanimous favorable vote.

A notice will be posted for the site visit.

Mr. & Mrs. Carson and Mr. Hatch left the meeting at this time.

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Approved March 24, 2015

DISCUSSION

There was a general discussion relative to Equitable Waiver requirements.

LEGISLATIVE BILLS

The following bill was 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.

CORRESPONDENCE

There was no incoming correspondence received.

At 8:05 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for March 24, 2015.

Respectfully submitted,

Meredith Bolduc,
Land Use AA/Recording Secretary