



Fremont Board of Adjustment
May 26, 2015
Meeting Minutes

Members present: Chairman Doug Andrew, Members John (Jack) Downing, Dennis Howland, Alternate Neal Janvrin and Recording Secretary Heidi Carlson.

This meeting was live broadcast on FCTV channel 22.

Mr. Andrew opened the meeting at 7:13 pm.

MINUTES

Mr. Downing made the motion to accept the minutes of the April 28, 2015 meeting as written. Motion seconded by Mr. Howland with unanimous favorable vote.

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. That appointment remains in effect.

At the April 28, 2015 meeting Mr. Andrew designated Alternate Neal Janvrin 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.

Town Counsel

The Board received and reviewed an opinion from Town Counsel relative to zoning.

Case #015-002
Anne Sloan
300 Main Street
Map 3 Lot 032

Present: Anne Sloan and Attorneys Charles Tucker and Eric Maher of Donahue, Tucker Ciandella PLLC.

At 7:14 pm the Board members present, Doug Andrew, Jack Downing, Dennis Howland, and Neal Janvrin reviewed a motion for rehearing of Case # 015-002, Anne Sloan, Map 3 Lot 032, 300 Main Street, Fremont, NH as submitted through her Attorney Eric A. Maher of Donahue

Tucker & Ciandella PLLC relative to the April 28, 20015 Fremont Zoning Board of Adjustment decision to deny Anne Sloan's request for Variances from Fremont Zoning Ordinance Articles IV Section I, IV Section 2, and XI Section E.1 to allow the change the use of her 300 Main Street property from mixed use that includes a preschool and a single family dwelling unit to multi-family (3-family) without required setback from street of 65', without required frontage of 280' on a Federal, State or Town Highway, and without required acreage of 4.2 acres.

The motion for rehearing was distributed to the Members for their review. Mr. Andrew read through the request for rehearing, which was received by the Land Use Office on May 12, 2015. (See the nine page letter and additional documentation in exhibits, on file).

The request included the following:

1. The applicant asserts that the ZBA's decisions were unlawfully and unreasonable when it denied the request for a variance to:
 - Article IV Section 1; because (a) it relied upon and erroneous interpretation of the Zoning Ordinance and the facts available to the ZBA in making its decision; and (b) the requested variance is not contrary to the public interest or the spirit of the ordinance.
 - Article IV Section 2; because it is contrary to the facts and evidence presented, ignores the character of the neighborhood, and does not conform to the decisions of the New Hampshire Supreme Court.
 - Article XI Section E.1; there is no evidence to support the ZBA's finding that the variance is contrary to the spirit of the ordinance, and the evidence presented to the ZBA demonstrates that all necessary criteria for the issuance of a variance were met in this instance.

2. The procedural background:

March 5, 2015 = Application filed for:

- Variance from the following Articles/sections of the Fremont Zoning Ordinance:
- Article IV Section 1 – Setback requirement
- Article IV Section 2 – Frontage requirement
- Article IV Section 5 – 30% lot occupied by buildings, parking areas, driveways, septic systems and associated leaching fields.
- Article XI Section E.1 – Lot size requirement
- Article XI Section E.3 – 10% if the lot may be impervious surface.

March 24, 2015 = Public Hearing. Attorney Tucker withdrew the application for the Special Exception.

April 9, 2015 = Site visit

April 28, 2015 = Continuation of the Public Hearing. The ZBA granted variance requests to the terms of Article IV Section 5 and Article XI Section E.3.; and denied variance requests to the terms of Article IV Section 1, Article IV Section 2, and Article XI Section E.1.

3. The argument:

Ms. Sloan now states her intent to propose a gravel driveway/parking area along the eastern side of the property to alleviate parking concerns and backing onto Route 107. The application states that many properties on Route 107 have the same parking concerns (backing onto Route 107), and there have been no significant accidents as stated at the last meeting.

The subject property cannot be fully utilized absent a variance unless it is continued to be used as a preschool/daycare.

4. Contentions:

The ZBA's decision to deny the variance from Article IV, Section 2 and Article XI Section E.1 There is simply no evidence to support the ZBA's findings that the variance is contrary to the spirit of the ordinance, and the evidence presented to the ZBA demonstrates that all necessary criteria for the issuance of a variance were met in this instance.

5. Conclusion:

Ms. Sloan respectfully requested that the ZBA grant her request for a rehearing and grant the variances from Article IV Section 1, Article IV Section 2 and from Article XI Section E.1 as the ZBA's decision was unlawful and/or unreasonable in light of all evidence and circumstances listed above. Ms. Sloan asks the ZBA to hold a rehearing on this issue and find that Ms. Sloan met all necessary criteria to obtain the requested variance in this matter.

Neal Janvrin pointed out that it was a State ROW (page 2) and not a Town.

The Board members present reviewed the applicant's request for rehearing and contentions as submitted. The Board also reviewed the Fremont ZBA March 4 and April 28, 2015 minutes pertaining to the Anne Sloan request for a Variance to the terms of Article IV, Section 2 and Article XI Section E.1 as well as the Fremont ZBA's decision to deny the request and the ZBA Notice of Decision. Members also reviewed procedural material relative to granting a request for rehearing and the criteria therefore.

In discussing the letter from Attorney Maher, Mr. Downing stated that this is information presented which may not necessarily be true, but is his opinion.

Mr. Andrew asked Ms. Sloan about the gravel driveway and said that she could provide this if the Board wanted additional parking, with a non-permeable surface in the back. Attorney Tucker said there was room out back for it and it was clarified as a matter under the purview of the Planning Board. The question posted to Ms. Sloan was whether or not this was a new presentation, and no one remembered it being presented at the previous meeting.

Attorney Tucker said that the standard is that if the Board feels they made a mistake, that is the reason to grant a rehearing. He said he will be happy to have them grant a rehearing for this new information as well.

Mr. Downing said he would consider granting a rehearing for the new information presented regarding the parking situation.

Mr. Howland discussed reviewing the public interest and said that there is an explicit purpose of the Zoning Ordinance in the first place, and questioned whether this application changes the character of the neighborhood. If you need 265 feet of frontage, that is what you need. What they are suggesting is to not look at the Ordinance, but think about the use and character. In discussion, there are some other two- and three-family homes in the area on Main Street. Mr. Howland said it in actuality may not change the character of the neighborhood, but suggested they look at the basic Ordinance and what it says.

Mr. Downing thought that the proposed new driveway to parking in the rear would eliminate some of the public safety aspect discussed at the prior hearing.

Mr. Howland again referred to the “spirit of the ordinance” to include setting the density of units, setbacks, frontage, and lot size. To allow a three-family means allowing a large variance to the guide set up, which is a big step from today’s zoning. He further discussed the Village District and that if the authors of the zoning laws wanted to treat Village District differently, perhaps they would have proposed different standards for setbacks, lot size, frontage, etc.

Mr. Howland pointed out that this property is only grandfathered for a school and one residential unit above. The Ordinance does not say they cannot come forward with another business use. This is not the only use allowed, but it is the only use allowed without a variance. The owner could certainly apply for other uses. He further said that the current use has no bearing on whether you grant the use for a three-family dwelling.

Mr. Janvrin reiterated that in order to grant a request for rehearing, the Board has to decide that they made a mistake. He said there were some issues under current Zoning that the ZBA voted to enforce the intent of in denying some of the initial application, and he does not feel the Board made a mistake in this finding.

Mr. Howland agreed and said unless he can get an explanation or education about the spirit of the ordinance that ignores the basic reason to have lot size and frontage, than he too, could not see that they made an error.

Mr. Janvrin said the Board looked at the Town’s Ordinance and he does not think the Board made an error.

Mr. Andrew felt that with additional parking down back, that may take care of some of their concerns about parking. All agreed that you could not do this now, come forward with a three-

unit building proposal on a third acre lot with 67 feet of frontage, but what happened 25 years ago has no bearing on now.

Mr. Howland indicated that there is a significant difference in frontage and acreage existing on this lot as compared to today's standard. One-third of an acre is far less than the requirement. He also suggested looking at the house out of context of the neighborhood; and asked what is the situation in the neighborhood. It was discussed again that there are some other two- and three-family units in this section of Main street.

Mr. Howland questioned if a rehearing would bring forth any new information. Mr. Janvrin added that the Zoning Ordinance is still what it is, and reviewing the application again would not result in a different answer.

Mr. Andrew said that the ZBA is here to look at unique properties, and make these decisions.

Carlson read aloud some information read from *The Board of Adjustment in NH, November 2015 NH OEP Guidance Document* to include: "No purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing. The coming to light of new evidence is not a requirement for the granting of a rehearing. The reasons for granting a rehearing should be compelling ones; the board has no right to reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created, but a rehearing should be seriously considered if the moving party is persuasive that the board has made a mistake."

Janvrin said that he did not feel the ZBA made a mistake. Downing quoted again a section of the guidance document "the reasons should be compelling" and said that he does not yet feel they have had compelling reasons to grant said rehearing.

Each Member reviewed the request and contentions as well as the rehearing criteria as per NH RSA 677:3. After some consideration and discussion Mr. Downing stated that he did not think the Board made any error or mistake in coming to the original decision. Mr. Janvrin agreed.

Mr. Andrew called for an individual vote of the Fremont Board of Adjustment Members present of whether to grant the request for rehearing of Case # 015-002, Anne Sloan, Map 3 Lot 032; a "yes" vote would grant the request for rehearing and a "no" vote would deny the request.

After careful consideration and for reasons stated at this meeting, the Board members voted as follows:

Vote:

Mr. Andrew	Yes
Mr. Downing	No
Mr. Howland	No
Mr. Janvrin	No

At 8:10 pm Mr. Andrew made the motion that, based on the results of the individual vote of the members of the Fremont Zoning Board of Adjustment, that they are firm in their April 28, 2015 decision relative to case # 015-002, and that the request of Anne Sloan, Map 3 Lot 032, for rehearing of the case is hereby denied. Motion seconded by Mr. Howland with a vote of 3-1.

Mr. Andrew declared the request for rehearing denied. The applicant will be immediately notified of this decision.

Ms. Sloan and her attorneys left the meeting at 8:11 pm.

CORRESPONDENCE

There was no incoming correspondence received.

The Board's next meeting is scheduled for June 23, 2015.

At 8:13 pm Mr. Janvrin made the motion to adjourn the meeting. Motion seconded by Mr. Downing with unanimous favorable vote.

Respectfully submitted,

Heidi Carlson
Town Administrator