



Fremont Board of Adjustment
July 28, 2015
Meeting Minutes

Members present: John (Jack) Downing, Dennis Howland, Alt Neal Janvrin and Town Administrator Heidi Carlson.

Mr. Howland opened the meeting at 7:00 pm. He introduced himself and explained that Chariman Andrew was not available this evening and he would be chairing the meeting in the Chair's absence.

At the November 18, 2014 meeting Chairman 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 Chairman 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.

MINUTES

Downing made the motion to accept the minutes of the May 26, 2015 meeting as written. Motion seconded by Janvrin with unanimous favorable vote.

Case #015-003
A. William Pappalardo
12 Pigeon Lane Map 7 Lot 112
Public Hearing

Present: Applicant Bill Pappalardo, Abutters Anne Belliveau and Gary Peters

Howland opened the Public Hearing at 7:02 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 7:00 pm on Tuesday July 28, 2015 at the Fremont Town Hall, downstairs Land Use meeting room, for A. William Pappalardo, 12 Pigeon Lane, Map 7 Lot 112, Fremont, NH.

The applicant is seeking:

- *An Equitable Waiver of Dimensional Requirements from the terms of Article IV Section 1 as set forth in the Town of Fremont Zoning Ordinance to allow an existing dwelling to remain in its current location closer than thirty (30) feet to the street property line of Pigeon Lane.*

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.

Howland related to Pappalardo that there is not a full Board present and that he has the option of waiting for a full Board for a decision. He further explained that it takes concurring votes of three voting Members of the Board to decide in favor of an applicant (or reverse any action of the administrative official). Pappalardo opted to continue with the three members present.

Howland stated that this hearing was noticed on July 2, 2015 at the Fremont Post Office and Fremont Town Hall and in the July 9, 2015 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on July 2, 2015 and all returns have been received. The application consisted of a cover letter of intent, six sets of plans, a current abutters list, proper check amount and a July 1, 2015 letter of denial/referral from the Fremont Building Official/Code Enforcement Officer.

Since the application was received, a letter of support from abutters Peter and Beatrice Lamb has also been received.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

Howland explained the procedure for an Equitable Waiver of Dimensional Requirements and that RSA 674:33-a directs that “When a lot *of land* or structure thereupon is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by, and with the burden of proof on the property owner, grant an equitable waiver from the requirement if, and 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.*”

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.

Janvrin said that during his 23 years as Police Chief he had occasion to be in the area many times and could attest that the house had been there at least since 1987, which is more than 10 years.

Howland then read a portion of Article IV Section 1 as set forth in the Fremont Zoning Ordinance, outlining the setback requirements which would have applied in 1978 when the house was built, which was 30 feet from the street. Subsequently the road setback was amended to 50 feet.

Belliveau and Peters stated that they lived next door at 22 Pigeon Lane and were here in support of Pappalardo's application. They asked questions leading to considerable discussion about the location of the right-of-way and that the Town had paved in a different area (approximately 10 years ago) than what had previously been identified as "roadway" following a staking of the road right of ways in the area. Belliveau questioned how many more people may have to do this and that perhaps Pappalardo's (and other houses) may have met proper setbacks before changes made to the road over the years.

Howland referred to a hand drawn plan that showed the locations of the existing house, septic tank and well. A copy of this was provided to Belliveau and Peters for reference as well. It also showed the house side and front setback delineations. Howland had a Google Earth map of the area when it had more trees, which Pappalardo said had to be removed to accommodate his replacement septic system.

It was explained said that this discrepancy was discovered by a title search for a perspective buyer's mortgage company, and that this application was brought forth to clear the record such that Pappalardo can proceed with the sale of his house.

A new septic design is on file, and that was the reference plan for the measurements as well. This work was done within the past few months. Pappalardo added that the house was built approximately 19' from the road (Pigeon Lane) with a setback requirement of 30'. The closest corner of the building to the street is approximately 17 feet from Pigeon Lane.

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

Police Chief:

Building Official/Code Enforcement Officer Bob Meade. *This home has been like this for some time (decades). I have no issue with and Equitable Waiver for this home.*

Health Officer: *No issues.*

Road Agent:

Fire Chief: *I have no issue with this.*

Conservation Commission:

Howland asked if the public had any further comments either in support or in non-support of the Special Exception request. There were no further comments and Howland closed the public discussion portion of the hearing and the Board began their discussion of the case.

A site visit was discussed and it was the consensus of the Board that it is not necessary for this action given the duration of time the home has been in existence in this location.

With little more discussion Howland read the points of criteria (findings) of an Equitable Waiver of Dimensional Requirements. The applicants written statements as submitted with the application are in italics. These are followed by the Board Members votes on each finding.

The Board agreed that because the structure has existed for more than 10 years, addressing conditions (a) and (b) of the Equitable Waiver requirements are not necessary.

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property: *The house has been here for approximately 40+ years according to the original building permit on file with the Town, dated in 1978 and has not been a nuisance or interfered with any other property or their values.*

Board's vote:

Mr. Howland	Yes
Mr. Downing	Yes
Mr. Janvrin	Yes

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. *In order to meet the setback requirements the house would have to be completely moved. This would be far too costly and would not benefit the public.*

Board's vote:

Mr. Howland	Yes
Mr. Downing	Yes
Mr. Janvrin	Yes

After careful consideration and review by the Board, Downing made the motion that, based on the information presented and the results of the Board's vote on the points of criteria that must be met for approval of an Equitable Waiver of Dimensional Requirements, the Fremont Zoning Board of Adjustment grant an Equitable Waiver of Dimensional Requirement from Article IV Section I of the Fremont Zoning Ordinance to A. William Pappalardo to allow the existing dwelling at 12 Pigeon Lane, Map 7 Lot 112, to remain in its current location closer than thirty (30) feet to the street property line of Pigeon Lane with the following conditions:

1. That this Equitable Waiver of Dimensional Requirements granted herein pertains to the existing buildings only and does not extend to any additional improvements on the property.
2. 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.
3. 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.
4. RSA 676:17 shall apply.

Motion seconded by Janvrin with unanimous favorable vote.

At 7:20 pm Howland declared the requested Equitable Waiver of Dimensional Requirements approved.

The applicant was instructed that there is a 30 day appeal period and 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 required recording fees as follows: \$40 to the Town of Fremont and \$16.49 to the Rockingham County Registry of Deeds.

At 7:22 pm Downing made the motion to close this Public Hearing. Motion seconded by Janvrin with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence received.

LEGAL MATTER

Carlson advised the Board that there is a letter from the Town's Attorney regarding a pending lawsuit against the Board of Adjustment that they need to review. At 7:30 pm a motion was made by Janvrin and seconded by Downing to enter non-public session pursuant to NH RSA 91-A:3 II (e) to discuss a legal matter. The roll call vote was unanimously approved 3-0; Janvrin – yes; Downing – yes; Howland - yes.

At 7:50 pm motion was made by Janvrin to return to public session. Downing seconded and the roll call vote was unanimously approved 3-0; Janvrin – yes; Downing – yes; Howland - yes.

No decisions were made by the Board regarding the Town's legal advice, other than to advise that option #2 was the option they disliked the least. Some additional questions were generated, which may need to be pursued depending on what action comes next with regard to the Sloan suit against the Town.

Motion was made by Janvrin to seal the minutes of non-public session until the case is adjudicated. Downing seconded and the roll call vote was unanimously approved 3-0; Janvrin – yes; Downing – yes; Howland – yes.

Board members waited while Carlson adjusted the Notice of Decision prepared by Meredith Bolduc, and Howland signed the Notice for recording on the Pappalardo case.

The next meeting is scheduled for Tuesday August 25, 2015 at 7:00 pm.

At 8:00 pm Downing made a motion to adjourn. Motion seconded by Janvrin with unanimous favorable vote.

Respectfully submitted,

Heidi Carlson
Town Administrator