



Fremont Board of Adjustment  
October 27, 2015  
Meeting Minutes

Members present: Chairman Doug Andrew, Members John (Jack) Downing, Dennis Howland, Alt Neal Janvrin, Town Administrator Heidi Carlson, and Recording Secretary Rachel Edwards.

Chairman Andrew opened the meeting at 7:00 pm.

The meeting was live broadcast on FCTV 22 and will be rebroadcast throughout the week.

**MINUTES**

Janvrin made the motion to accept the minutes of the September 22, 2015 meeting. Motion seconded by Downing with unanimous favorable vote 4-0.

Case #015-005  
Map 02-135.001  
Nicole McKinney / Lambert Realty Trust  
Variance

Present: Applicants Nicole McKinney and Roland Lambert Jr; and Members of the Public Frank Sutherland and Bruce Hrycuna.

Chairman Andrew opened the 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 Adjustments will hold a Public Hearing at 7:00 pm on Tuesday October 27, 2015 in the basement meeting room at the Fremont Town Hall, 295 Main Street, concerning a request from Lambert Realty Trust for a Variance to the terms of Article XI Section E 4 i of the Fremont Zoning Ordinance to permit an existing motorcycle shop to move from its current location in a 24 x 24 garage to another building (Fremont Machine & Tool building) on the property located at Map 2 Lot 135.001, at 810 Main Street in Fremont NH. Said property is in the Flexible Use Residential and Aquifer Protection Districts.*

*You are invited to attend in person or by counsel or agent. Written comment 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.*

It is noted for the record that certified notices were sent to all abutters, and all cards have been returned with letters picked up. This hearing was posted on the Town's website and at Town Buildings on October 2, 2015 and published in the Union Leader on October 13, 2015.

The applicant is seeking a Variance to the terms Article XI Section E 4 i of the Fremont Zoning Ordinance to allow an existing motorcycle business on the property to move from the lower garage to the upper building of Fremont Machine & Tool.

Applicants Roland Lambert Jr and his daughter Nicole McKinney came forward to present their application. They are running an existing motorcycle shop in the 24 X 24 garage on the property. They explained that they are downsizing the machine shop. Lambert explained that they have sold some of the machines since his brother's death, and are only running a few others, keeping some of their regular machine work and that they wish to combine the two businesses together in the space of the Machine Shop. They would like to have both in one combined building to save running back and forth.

Carlson explained that maps which have been color coded to show the areas of each business were posted on the board in the room for viewing, and a copy was distributed to the two members of public.

Lambert explained that FMT never moved, only changed its name to *Goldwings Plus* now that Nicole is running it. Lambert explained that his brother passed away in December and the family is reorganizing the business since his passing. He formerly ran the motorcycle business.

Janvrin questioned sale of equipment and Lambert explained that they have sold off a few of the machines from the machine shop that his brother operated, and kept the machines that he operates, doing less but still doing machine work. Janvrin questioned whether or not they are easing out of machine shop business, and he said some, but that he keeps several long-time contracts.

Carlson noted that this is step one of making this transition. The applicants will have to go through the Planning Board Site Plan Review Application as well, and may answer some of the same questions at that level and to address site review issues.

One of the abutters asked about a current water test from the site. Lambert answered that it has probably not been tested in at least 15 years. It was suggested that the well should be tested annually. There was general concern regarding the water quality now. It was generally agreed among the Board and public that they would like to see a water test done. McKinney said they were familiar with this process as her husband owns McKinney's Artesian Well.

A question was posed about plans for 24 x 24 space that is currently the shop, if they vacate it for the Machine Shop. Lambert said they are possibly considering a least to another business.

In response to a question about the volume, Lambert said he generally does not have any more than 7 or 8 bikes in the shop at any one time.

Janvrin questioned the issue of waste being removed. They indicated that they are currently using "Safety Kleen."

Andrew read through the Department Plan Comment sheets, received from the following Town Officials (comments in *italics*):

Building/Code Enforcement Official/Health Officer: *My only concerns as Health Officer would be the expansion of this type of business in the Aquifer. As Building Official the move is a change of use, although similar use, a renovation permit will be required and fire rating between home and business examined.*

Fire Chief: *Fire separation between the existing uses will need to be addressed.*

Police Chief: *No issue.*

Road Agent: *No issue on Town roads.*

Conservation Commission: *In accordance with Article XI of the Town Ordinances, the Conservation Commission recommends that should the ZBA grant the variance that the variance be especially subject to the following conditions: (1) Article XI, F 1 safeguards to protect against toxic or hazardous material discharge of loss be in place before the move to the machine shop; (2) Article XI, F 3 that prior to the move drainage to properly handle runoff be in place; (3) that inspections by the Building Inspector or other agent designated by the Selectmen be made twice a year. The purpose of these inspections would be to ensure continued compliance with the aforementioned conditions under which the variance is granted and that a fee for inspection shall be charged to the owner according to a fee schedule determined by the Selectmen.*

Board of Selectmen/Town Administrator: *Carry forward at least the same conditions as previous variance, to maintain quality of the area and Aquifer Protection District.*

McKinney the read through the facts supporting this request from their application paperwork (answers in *italics*):

1. The variance will not be contrary to the public interest because *We are moving the existing business formerly FMT Motorsports now Goldwings Plus, from lower garage to upper building Fremont Machine and Tool.*
2. The spirit of the Ordinance is observed because *there will be no more traffic than already at existing business in lower garage that has been opening for several years without any problems from the town of the public.*
3. Substantial justice is done because *we try to follow all town and state guidelines.*
4. The values of surrounding properties are not diminished because *there is no change in the building footprint.*

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
  - A. For the purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
    - (i) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property: *We got a Variance in 2005 for a motorcycle shop and have been running it without any environmental impacts; AND*
    - (ii) The proposed use is a reasonable one. *The business is only being moved from one location on the property of another.*
  - OR
  - B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it. *N/A*

The question was asked if there is there is a business operating out of either building now, and they indicated that the Machine Shop is in operation (as it has been for many years); and the Motorcycle Shop is as well, as it has been since 2005, though McKinney is operating it now, since David Lambert’s death last winter.

Neighbors had a concern about the number of vehicles and “stuff” around the property and the appearance of shop. Lambert indicated that there were a lot of things left at the property following the death of his parents and then his brother and that they were slowing picking away at the cleanup, and do have intentions of cleaning it all.

A question arose about this being a “Conditional use property.” Carlson explained the Conditional Use Permit and stated that that is not part of this Board’s jurisdiction, but the Planning Board’s as part of Site Review.

McKinney questioned where to send the water test, and it was indicated that the results can be brought to next meeting.

Sutherland suggested that the water test include checking for chemical contaminants, hydrocarbons and heavy metals.

Andrew requested setting up a site visit for Sunday November 8, 2015 at 9:00 am. The public was invited to attend this meeting.

Janvrin moved to continue this public hearing to November 8, 2015 at 9:00 am for the Site Walk; and further to return to the Public Hearing discussion at 7:00 pm on Tuesday November 17,

2015, which is the Board's next meeting. Downing seconded and the vote was unanimously approved 4-0.

Applicants and abutters/members of the public left the meeting at approximately 7:30 pm.

### **CORRESPONDENCE**

There was no incoming correspondence received.

### **OTHER BUSINESS**

Carlson explained that the Board needed to enter non-public session to further discuss a pending legal matter.

The last matter of public discussion was about the need for one additional full member on the Zoning Board of Adjustment. If anyone is interested, they could contact Heidi Carlson for more information. The Board's next meeting is scheduled for November 17, 2015.

At 7:35 pm Janvrin moved to enter non-public session pursuant to NH RSA 91-A: 3 II (e) to discuss a legal matter. Downing seconded and the roll call vote was unanimously approved: Andrew – yes; Howland – yea; Janvrin – yes; Downing – yes.

At approximately 7:50 pm, Janvrin moved to come out of non-public session. Howland seconded and the roll call vote was unanimously approved 4-0; Andrew – yes; Howland – yes; Janvrin – yes; Downing – yes.

Janvrin moved to make a counter offer for two living units, with four parking spaces, preferably out back. Downing seconded and the vote was unanimously approved 4-0.

Janvrin moved to seal the minutes pending resolution of the court case. Howland seconded and the roll call vote was unanimously approved 4-0; Andrew – yes; Howland – yea; Janvrin – yes; Downing – yes.

With no further business, at 7:53 pm, Janvrin moved to adjourn the meeting. Downing seconded and the vote was unanimously approved 4-0.

Respectfully submitted,

Rachel Edwards  
Recording Secretary