



Fremont Board of Adjustment
December 15, 2015
Meeting Agenda

Members present: Chairman Doug Andrew, Member Dennis Howland and Alternate Member 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 November 17, 2015 meeting as written. Motion seconded by Howland with 3-0 favorable vote.

PUBLIC HEARINGS

Case #015-006 / Equitable Waiver of Dimensional Requirements
Map 05-069

28 Main Street

Julie Forster

Case #015-007 / Special Exception
Map 05-069

28 Main Street

Julie Forster

Present: Applicants Julie Forster and Kevin Crider

Chairman Andrew reopened the Public Hearing at 7:05 pm and read aloud the complete Notice of Public Hearing:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:00 pm on Tuesday December 15, 2015 in the basement meeting room at the Fremont Town Hall, 295 Main Street, Fremont NH, concerning a request from Julie Forster for:

- 1. A Special Exception to the terms of Article III Section 1 C of the Fremont Zoning Ordinance to expand a non-conforming structure to permit construction of a 6 x 8' closet on the side of the home and decks on the rear of the home; and*
- 2. An Equitable Waiver to the terms of Article 4 Section 1 of the Fremont Zoning Ordinance to allow an existing dwelling to remain in its current location closer than 50 feet to the*

street property line of Route 107 and closer than 30 feet to the side property line of parcel 05-070.

Said property is located at Map 5 Lot 69, at 28 Main Street in Fremont NH.

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 some of the certified notices have not been received back by the Town. All were mailed out on November 25, 2015 from the Fremont Post Office. Notice was published in the Union Leader on November 30, 2015. Both cases were notified in one public hearing notice, and all information has been combined for the purpose of this hearing.

Plan Comment sheets were received back from:

Road Agent: *No comments*

Police Department: *No comments*

Building/Code Enforcement/Health Officer: *I do not have an issue with this request. I will need more to issue building permits, a complete plan showing building and septic in scale. Per DES the pool must also be 10 feet from the septic. Closet will need to be fire rated so close to other buildings.*

Landowner Julie Forster read aloud the letter submitted with her application that explained what they are trying to do (see file).

There were no questions from members of the Board, most of whom had been by the site to see the house at 28 Main Street.

**Case #015-006
Equitable Waiver of Dimensional Requirements
Map 05-069
28 Main Street
Julie Forster**

Application # 15-006 is for an Equitable Waiver to the Terms of Zoning Article IV Section 1 to permit the building to exist within current side and front setback limitations.

Fremont Zoning Ordinance Article IV Section 1 reads (in part):

ARTICLE IV

Section 1. 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. In the case of

multiple family dwelling structures, the set back shall be increased by an additional five (5) feet per family dwelling unit....

The applicant applied for a building permit to construct a 6 x 8 closet on the side of the existing house, and at that time found that the house and also the new construction, was within the 50 setback to NH Route 107, unbeknownst to them.

A question was asked about how far is the house from Main Street? It is approximately 30 feet from the edge of the right-of-way as opposed to 50 feet required by the Zoning Ordinance. There was discussion as to changes in setback, etc. This was never noticed during construction of the home, believed to be in 1960.

Chairman Andrew read through the questions as posed on the application: (Answers from application are *italicized*)

1. Does the request involve a dimensional requirement, not a use restriction?
yes

2a. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the Town: *Built in 1960 with permit issued located within the setbacks.*

OR

2b. Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser. *Built in 1960, discovered upon need for building permit and Special Exception for construction of 6 x 8' closet within setback.*

And how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake: *not original owners.*

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area: *existed for 50 years with no complaints.*
4. Explain how the cost of correction far outweighs any public benefit to be gained: *In order to fix this issue I would need to move my entire house to a new location. There is no public benefit that I am aware of.*

Case 015-006 requires a vote and discussion of the following items pursuant to NH RSA 674:33a

- I. when a lot or other division 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 the Board makes all of the following findings.

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

- (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; and

Board's vote:

Mr. Andrew	Yes
Mr. Howland	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.

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

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.

III. Application and hearing procedures for equitable waivers under this section shall be

governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

After careful consideration and review by the Board, Andrew questioned the Board on their position, and whether they are ready to vote.

Members were ready to vote and Janvrin moved to grant an Equitable Waiver of Dimensional Requirements as requested to the terms of Fremont Zoning Ordinance Article IV Section 1 for Parcel 05-069 in Case #015-006 to allow an existing dwelling to remain in its current location closer than 50 feet to the street property line of Route 107 and closer than 30 feet to the side property line of parcel 05-070, based on the information presented and the results of the Board's vote on the points of criteria that must be met for approval, and pursuant to the information and documentation presented by the applicants, including the sketch prepared, subject to the following conditions:

- 1 Any future construction shall meet all current setback requirements
- 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 NH RSA 676:17 shall apply.
- 5 Rehearings and appeals shall be governed by NH RSA 677:2 through 14.

The motion was seconded by Howland with a 3-0 favorable vote.

**Case #015-007 / Special Exception
Map 05-069
28 Main Street
Julie Forster**

Application # 15-007 is for a Special Exception to the Terms of Zoning Article III Section 1 C to permit the construction of a 6 x 8 closet within the setbacks, thus expanding the non-conforming structure.

Fremont Zoning Ordinance Article III Section 1 C reads:

ARTICLE III

C. Expansion of Non-conforming Structures:

Non-conforming structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment, which must find the following factors to exist before issuing such a special exception:

1. The proposed expansion must intrude no further into any setback area than does the existing structure.
2. The expansion must have no further adverse impact on the view, light and air of any abutter.
3. The expansion must not cause property values to deteriorate.
4. The expansion must not impede existing rights of access or egress.
5. That portion of the proposed expansion, which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.
6. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.
7. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.

The application for a Special Exception has the following questions and criteria:

Explain how the proposal meets the special exception criteria as specified in Article 3 Section 1 C of the Zoning Ordinance:

This use is permitted after meeting criteria for Special Exception. This is a 6 x 8 foot closet addition and is not further into the setbacks than the existing dwelling. It is for residential use only, and has no adverse impacts resulting from the expansion.

Applicant is also requesting a back door, deck and pool. See letter of intent.

Members felt that they did not need to schedule a site visit and moved forward to review the criteria and vote tonight.

Members reviewed and then voted on each question of criteria for the Special Exception:

1. The proposed expansion must intrude no further into any setback area than does the existing structure.

Board's vote:

Mr. Andrew Yes
Mr. Howland Yes
Mr. Janvrin Yes

2. The expansion must have no further adverse impact on the view, light and air of any abutter.

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

3. The expansion must not cause property values to deteriorate.

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

4. The expansion must not impede existing rights of access or egress.

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

5. That portion of the proposed expansion, which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes
Mr. Janvrin	Yes

6. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.

Not applicable. This is not a commercial use.

7. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.

Board's vote:

Mr. Andrew	Yes
Mr. Howland	Yes

Mr. Janvrin Yes

After careful consideration and review by the Board, Andrew questioned the Board on their position, and whether they are ready to vote.

Janvrin moved to grant the Special Exception as requested to the terms of Article III Section IC for Parcel 05-069 in Case #015-007 to allow a 6 x 8 foot closet addition, 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 this Special Exception, and pursuant to the information and documentation presented by the applicants, including the sketch prepared, subject to the following conditions:

- 1 No portion of any construction shall be allowed to be any closer to any setback than it is currently is, except as outlined in this decision. The closet shall not be closer than 55 feet to the edge of pavement of Route 107, and no closer than 30 feet to the front property line.
- 2 No construction will take place at the front of the dwelling
- 3 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. (Current deed Book 4266 Page 2227)
- 4 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.
- 5 NH RSA 676:17 shall apply.

Carlson noted that language should be added regarding closet and the rear deck. With that addition, the motion was seconded by Howland with a 3-0 vote favorable.

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 need to be referenced to the property deed. The applicant is responsible to pay the fee to the Rockingham County Registry of Deeds for that recording. There is also a \$40 recording fee due to the Town of Fremont. The Registry Recording fee will be determined depending on how long the notice of decision is.

The applicant must now proceed to the Building Inspector for the necessary building permits.

Carlson will prepare a Notice of Decision for the Chairman's signature and Mr Crider said he would come by the Town Office tomorrow to handle the administrative and recording fees.

The applicants left the meeting at approximately 7:25 pm.

OTHER BUSINESS

Carlson updated the Board relative to the Sloan case settlement. The attorneys have worked out a final agreement and docket markings, and a Notice of Decision relative to the previous ZBA case has been prepared for Board signature. In light of the decision made to settle the Sloan Case (Ann R Sloan v. Town of Fremont, Rockingham County Superior Court, Docket No. 218-

2015-CV-00634, an updated Notice of Decision #15-002-A has been prepared for the Board's signature. It encompasses the Exhibit 1 sketch, and the conditions previously outlined.

Andrew read aloud the Notice of Decision. Janvrin motioned to sign the Notice of Decision # 015-002-A. Howland seconded the motion with 3-0 favorable vote.

Carlson indicated that no further new applications have been received at this time, to be heard in January, but the deadline for filing is December 23, 2015.

Next Meeting Date: Tuesday January 26, 2016. Carlson will advise if there are no applications, and the Board will not have to meet.

At 7:35 pm Janvrin made a motion to adjourn. Howland seconded the motion with 3-0 favorable vote.

Respectfully submitted,

Rachel Edwards / Heidi Carlson
Recording Secretary