

Present: Chairman Doug Andrew, Vice Chairman Dennis Howland, Members Neal Janvrin, Jack Downing, and Todd O'Malley and Recording Secretary Casey Wolfe.

Also present: Alfred Patterson, Richard Fisher, Renee King, Randy Grasso, James Smith, Warren Gerety, Barbara Malloy, and Kathy Baum.

Mr. Andrew opened the meeting at 7:00 PM.

## **I. Minutes**

Mr. Howland made a motion to accept the minutes of September 27<sup>th</sup>, 2016. Mr. Downing seconded that motion with all in favor.

## **II. Continued Business**

Case # 016-003/Variance  
Map 5-34  
Alfred Patterson

Mr. Andrew opened the public hearing and read the relevant ordinance:

*The intent of the Corporate / Commercial district is to provide areas for corporate business parks, research and development, light-manufacturing, processing, assembly, wholesaling, and transportation-oriented activities and related services such as trucking and warehousing providing that such uses are determined not to be injurious or hazardous to the public health, safety, and/or welfare. Furthermore, the intent of the district is to reserve suitable land for the location of new industry and to enhance economic development and employment.*

Mr. Howland made a motion to open public comment. Mr. Downing seconded that motion with all in favor. Ms. King didn't like the project's proximity to wetlands. She also felt that the Lamprey River Advisory Committee should be able to weigh in. She did not think that an asphalt plant was a part of the "brick and masonry" category in the Ordinance. Mr. Gerety wanted to know if Mr. Patterson intended to make or recycle asphalt. The Board informed him that he would be making asphalt. Mr. Grasso felt that it doesn't even fall into the guidelines of what is allowed out there. He wanted the Board to consider the impact of the smells and the trucking. Ms. King wanted the Board to consider the wetlands and read from the Master Plan about aquifer areas. Mr. Gerety wanted the ZBA to look into what the intent of the Ordinance is.

Mr. Howland explained that only a portion of this property is in the aquifer district. He also explained that the ZBA does not write the Zoning Ordinance – the Planning Board writes it. Ms. King explained that when she voted for the Corporate Commercial District, she imagined office parks, machine parks, and light manufacturing. Mr. Grasso added that this use will not help the Town out tax wise and Ms. Grasso felt that this will not make the district appealing for other uses. Mr. Howland made a motion to close the public hearing. Mr. Downing seconded that motion with all in favor.

Mr. Fisher wanted to ease some of the concerns that the residents had. The liquid asphalt gets mixed with an aggregate, the aggregate gets dried out and will not cause a smell. Only moisture comes out of the stack. Also, ever since Patterson bought the property, others have been interested in developing out on Shirkin Road including a bottling plant. Mr. Patterson made the point that this is the same asphalt that is spread everywhere – it will not go into the ground and pollute the water.

The Board voted on each of the criteria:

1. The variance will not be contrary to the public interest:  
Yes – 1  
No – 4
2. The spirit of the Ordinance is observed:  
Yes – 4  
No – 1
3. Substantial justice is done:  
Yes – 1  
No – 4
4. The values of surrounding properties are not diminished:  
Yes – 3  
No – 2
5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship:  
Yes – 1  
No – 4

Mr. Howland made a motion to deny Mr. Patterson the variance from Article XVIII Section 6.1 based on the votes for the criteria for a variance. Mr. Janvrin seconded it with all in favor except Mr. Downing.

Mr. Howland made a motion to table the variance request for the stack height to another time. Mr. Downing seconded that motion with all in favor. Ms. Wolfe will send Mr. Patterson a notice of decision. Mr. Patterson and Mr. Fisher left at 7:55 PM. Mr. Andrew closed the public hearing.

Some of the abutters stayed to ask the Board some questions about procedure. The Board took the time to answer these questions.

## **II. New Business**

Case # 016-004/Variance  
Map 2 Lot 108.1  
Daniel Ruiz

Public Notice:

Chairman Andrew 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 Tuesday October 25<sup>th</sup>, 2016 in the basement meeting room at the Fremont Town Hall, 295 Main Street, Fremont NH, concerning a Variance to the terms of Article IX, Section E of the Fremont Zoning Ordinance to permit construction of a detached two stall garage within the 100' wetland setback on parcel 2.108.001. Said property is owned by Joanna Lee & Daniel Ruiz and is located at 19 Brentwood Road 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.*

Notification Requirements:

It is noted for the record that certified notices were sent to all abutters on October 11<sup>th</sup>, 2016. This hearing was posted at the local post office and at Town Buildings on October 20<sup>th</sup> and published in the Union Leader on October 14<sup>th</sup>, 2016.

Jim Smith on behalf of Dan Ruiz presented the plan for a garage to the Board. He is asking a relief of 30 feet into the 100-foot wetland setback. The garage is proposed for this location because he is worried about being over the septic system. The whole structure would be in the setback. The closest point would be 70 feet away from the wetland. Mr. Howland mentioned that this is not a prime wetland and Mr. Smith mentioned that the State has an easement on the property.

Department Plan Comments:

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

**Building/Code Enforcement Official/Health Officer:** *I have been to the property and do not have an issue with the wetland setback. Where the structure is located ten feet from the home – the closest wall would need to be fire rated.*

**Conservation Commission:** *The Fremont Conservation Commission reviewed and discussed the plans and request to construct a garage 30 feet into the 100 foot wetland setback on Map 2 Lot 108.1 (19 Brentwood Road) on October 3, 2016. It was the consensus of the Commission to advise the ZBA not to take any action on the request until after a joint site visit by the ZBA and CC is made.*

*The plans provided left several of our concerns unanswered, not the least of which is “why can’t the garage be situated outside of the wetland setback?” The plans suggest that is could. If the garage were to be located in the requested place, what would the impact be on the wetland? Building a garage within the setback will create an impervious area and could accelerate runoff carrying sediment, fertilizer and other contaminants into the wetland.*

*A site visit would help to answer these concerns and others expressed and possibly provide the Commission with the information it needs to better advise the ZBA.*

**Police Chief:** *No issues.*

**Office of Selectmen/Town Administrator:** *See that appropriate erosion control measure are in place and that runoff does not get to the wetlands. Minimize surface water runoff.*

**Road Agent:** *No issues. This request is on a State of NH Highway and does not affect any Town Roads.*

Mr. Janvrin didn’t see any problem with this project. Mr. Howland suggested doing a site visit. The Board decided on November 5<sup>th</sup> at 9:30 PM. Mr. Smith asked he should get the yard dug up to find the septic system. The Board didn’t feel this was necessary. Mr. Howland made a motion to continue the Public Hearing to the site walk on November 5<sup>th</sup>, 2016 at 19 Brentwood Road.

### **III. Other Business**

The Board decided that its December meeting will be on Tuesday the 20<sup>th</sup> to avoid the week of Christmas.

Mr. Janvrin made a motion to adjourn the meeting at 8:25 PM. Mr. Downing seconded with all in favor.

Respectfully Submitted,

Casey Wolfe  
Land Use AA/Recording Secretary