

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

Also present: Dennis Quintal, Joshua Yokela, Rene LaBranche, Michael Malloy, Barbara Malloy, Brian Jones, Daniel Ruiz, Joshua Ruiz, Ethel Wilson, Renee King, Cindy Grasso, Kevin Baum, Bill Knee, Randy Grasso and Bruce White.

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

## **I. Minutes**

Mr. Janvrin made a motion to accept the minutes of October 25, the site walk minutes of November 5, and the site walk minutes of August 29th. Mr. Downing seconded the motion. The motion passed 5-0-0.

## **II. Continued Business**

Case # 016-004/Variance  
Map 2-108.1  
Dan & Joanna Ruiz

Mr. Jones, a surveyor speaking for Mr. & Mrs. Ruiz, explained that they are seeking a variance from Article IX Section E to allow construction of a garage within the wetland setback. The ZBA went on a site walk on this property on November 5<sup>th</sup>. Mr. Andrew read a follow-up letter from the Conservation Commission. Mr. Janvrin made a motion to vote on the issue. Mr. Downing seconded the motion. The motion passed 5-0-0.

The Board voted on each of the criteria:

1. The variance will not be contrary to the public interest:  
Yes – 5  
No – 0
2. The spirit of the Ordinance is observed:  
Yes – 5  
No – 0
3. Substantial justice is done:  
Yes – 5  
No – 0
4. The values of surrounding properties are not diminished:  
Yes – 5  
No – 0
5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship:  
Yes – 5

No – 0

Mr. Howland made a motion to grant the variance for the garage. Mr. Downing seconded the motion. The motion passed 5-0-0. Mr. and Mrs. Ruiz and Mr. Jones left at 7:06 pm.

### **III. New Business**

Case # 016-005/Variance  
Map 5-35  
John Galloway

Mr. Galloway seeks a variance from Article IX Section E to allow drainage features like detention basins, grass swales, wet ponds, and berms within the wetland setback.

#### 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 November 15<sup>th</sup>, 2016 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 establishment of natural drainage features such as detention basins, grass swales, wet ponds, and berms within the 100' wetland setback on parcel 05-35. Said property is owned by John Galloway and is located on Shirkin Road in Fremont, NH.*

#### Notification Requirements:

It is noted for the record that certified notices were sent to all abutters on October 31, 2016. This hearing was posted at the local post office and at Town Buildings on November 3<sup>rd</sup> and published in the Union Leader on November 2, 2016.

#### Facts Supporting the Case:

1. The variance will not be contrary to public interest because;  
*This proposed work will restore the buffer to natural conditions, grass swales, berms and basins to improve the storm water runoff from the usable upland.*
2. The spirit of the ordinance is observed because;  
*These natural features are intended to preserve and maintain the current conditions of the associated wetland resource and preserve the usable area on the property for commercial development.*
3. Substantial justice is done because;

*The proposed work will improve the existing conditions on the property while allowing future commercial development in the property.*

4. The values of surrounding properties are not diminished because;  
*The proposed work in the buffer is not near any abutting properties and cannot be seen because of dense vegetation. These practices will treat storm water runoff before it enters wetlands or groundwater.*

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: *To allow commercial development on this property BMP features are required. If BMP are not allowed in the buffer then it would significantly reduce the potential use of the property. The general public has voted to encourage commercial use in this zone and this provides maximum useable area for future development.*

AND

- (ii) The proposed use is a reasonable one. *The proposed use is a reasonable because it established natural features to be maintained inspected and modified as needed to fulfill the intent.*

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 do not have an issue with what is shown. I would like to see as much protection as possible in this buffer before any run off can get into wetlands. This would be better than what berms are on this property now (in the wetlands buffer).*

**Conservation Commission:** See attached.

**Office of Selectmen/Town Administrator:** *Overall project needs NH DES, Conservation Commission, Town Engineer review and agreement. All pertinent local, State, and Federal regulations should be followed to secure wetland and groundwater protection. All areas of this site shall be compliant with any/all local, State, and Federal regulations and ordinances.*

**Road Agent:** *No Town Roadways are affected by this proposal. Therefore, we have no comments at this time.*

Mr. Quintal gave some background about the property: The property was cleared and the stumps were removed in the early 1980s. Mr. Galloway purchased the property in 1984. One third portion of the property has been operated as a gravel pit since and has been required to follow town regulations and obtain earth removal permits accordingly. The plan shows the limit of existing trees which is the original disturbed area within 100 feet of the wetlands. This area called a buffer zone has previously been disturbed. Ground water monitoring wells have been installed. Water samples are obtained, tested and analyzed for quality annually.

For many years a portion of the site has been leased by Seacoast Farms for composting. Their operation has a separate site plan permit from the Planning Board. The composting has created windrows and tailing within 100 feet from the wetlands. The Planning Board has directed Seacoast Farms to remove the tailings.

Mr. Galloway has submitted an amended site plan application for the Planning Board to review. There has been many meetings, design changes, and reviews by the Town Engineer. In order to do any type of commercial operation on this site, Town and State Regulations require best management features to control and treat runoff from storm water. These features must be down slope from any area for commercial use.

The site plan that Mr. Quintal had at this meeting showed removing the tailings pile and restoring the buffer. Instead of restoring the buffer to flat grade, he has incorporated the design for a minor grading change to include detention basins, berms, treatment swales, and wet ponds which will better treat the surface runoff from the commercial upland area. These features are made of the on-site earth, primarily covered with topsoil and grass seed. Any areas where water may be channeled, stone rip rap will be placed to prevent erosion.

These features are technically called Best Management Practices as recommended by the NHDES Storm Water Management Manual. The State recommends these BMP since they are most like natural features. They have proven to protect any type of abutting wetlands, even in this case the Prime Wetlands.

Tonight Mr. Quintal is requesting a variance from Article IX Section E. The proposed minor grading using natural material act as "Drainage Ways" to control and treat storm water runoff. The basins are "water impoundments" that are engineered and designed to capture sediments and detain storm water runoff. Treatment swales create paths for normal surface runoff. They are designed to filter runoff.

Concerns have been raised by abutters, the Town, and by Stantec. These concerns are about protection of the wetlands and groundwater. In this case, they are requiring additional efforts, strict controls to assure that the wetlands and groundwater are protected to provide an action plan to be taken in an instance where the testing results show changes in water quality. These strict controls are being places in the site plan design with assurance that any problem be recognized early, contained, and corrected if needed.

To address this concern, Mr. Quintal has designed wet ponds as an additional source (monitoring wells) to obtain samples and analyze. With this feature, for example if the pH levels rise, then the

ponds can be treated similar to additives to swimming pools. These ponds also provide another type of wetland function and value to the buffer area. It can be considered a wildlife refuge to use by birds, turtles, and drinking water for other wildlife. These features are surrounded by shallow earth berm 3-4 feet high.

A State DES Alteration of Terrain permit will be required for the site. Their engineers specialize and work full time reviewing these types of projects. They focus specifically on drainage and erosion control. This type of design is typical of what they require for permitting. The Town BMPs are stricter than the State. They require additional calculations, testing, and monitoring. This State permit will be a condition of approval.

The State DES Wetlands Bureau has jurisdiction of all wetlands in the State. They do not have regulations or controls for buffer zones. However, any land owner, residential house lot or commercial house lot, is responsible for not impacting wetlands. This site plan for commercial use has 11 acres of usable land. Mr. Quintal has designed storm water control features and provided calculation that has been reviewed by the Stantec. Stantec agrees that this design meets the intent of the regulation and provides sufficient safety checks to control runoff and protect wetlands and ground water.

The ratio of useable land/storm water control features is 11 to 3.7. Therefore denying this variance forces storm water features outside the 100 feet from the wetland. The result will significantly reduce usable commercial area by about 30%. Note: Other areas in Town have similar features including Black Rocks Development.

In summary, this variance from Article IX Section E, of the Zoning Ordinance is to permit altering the surface within 100 feet of wetlands to remove tailing piles and restore this buffer by minor changes to the surface that will develop as natural storm water control and treatment features. These are state recommended best management practices. Mr. Quintal believes that this request fulfills the intent of the ordinance since the design is to restore the disturbed buffer zone.

Mr. Quintal then went through the “facts supporting the case” (already read by Mr. Andrew). He then showed a Google Earth image of the site, the site plan, some photos of some detention ponds at Black Rocks Village, and some photos of detention ponds in other areas.

There were some questions about how deep the wet ponds will be and how often these ponds will get tested. Mr. Quintal explained that he is waiting on getting the wetlands permit he needs from the state until he gets the variance from the ZBA. Mr. Knee pointed out that the Board has not yet heard any comments from a wetland scientist and that 100-year storm events have not been addressed. Mr. Knee requested that the ZBA does their due diligence before a decision is made. He suggested that they are sure that prime wetlands will not be impacted, that they wait to hear from the wetlands bureau, and that they have a hydrogeological study done.

Mr. Quintal further explained that the treatment structures will go right up to the edge of the wetland and that storm water analysis is done with different type of storm events. Peak storm water run-off is used in the calculations. These structures will collect particulates from the site to protect the wetlands while maximizing the usable land. Ms. Grasso pointed out that Seacoast

Farms has been out of compliance with its site plan for years. Mr. Baum felt that this request did not meet the five necessary requirements for a variance. Mr. Galloway does not need to have a concrete reprocessing plant – it is not a hardship. Mr. Yokela disagreed and felt that Mr. Galloway did have a hardship. Mr. Quintal reiterated that these are non-hazardous materials and that they are tested for lead and asbestos.

Mr. Janvrin wanted to know more information. He wanted to know from DES if this is indeed best management practice and he also wanted the opinion of a soil scientist. Mr. LaBranche did feel that the design incorporates best management practices. Mr. Janvrin attempted to make a motion to continue this public hearing until the ZBA gets more information from DES. Mr. Howland felt that this would take way too long. He wanted to go to a wetland scientist instead. Mr. LaBranche mentioned that Stantec has a wetland scientist on staff that can provide an assessment. Mr. White had good faith in the town engineer. Mr. LaBranche offered to have the report completed in a couple of weeks. The meeting will be tabled until next month. Mr. Knee would also like a copy of this report. The ZBA will do a site walk of the property on Saturday December 3<sup>rd</sup> at 9:30 am.

Mr. Janvrin made a motion to end the public session. Mr. Downing seconded that motion with all in favor. Mr. Janvrin made a motion to go into non-public session per RSA 91-A:3(1) for the purpose of considering legal advice. The motion was seconded by Mr. Downing. The motion passed by a unanimous roll call vote.

Mr. Janvrin moved to close the nonpublic meeting. Mr. Howland seconded with all in favor. Mr. Janvrin made a motion to seal the minutes. Mr. Howland seconded the motion with all in favor.

Mr. Howland made a motion to request Mr. Yokela to be sworn in as an alternate ZBA member. Mr. Downing seconded that motion with all in favor. Mr. Janvrin moved to adjourn. Mr. Downing seconded with all in favor.

Respectfully Submitted,

Casey Wolfe  
Land Use AA/Recording Secretary