

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

Also present: Steve Harms, Elizabeth Pinucci, Sandra Mullen, Souja Morrow, Patricia deBeer, Alfred Patterson, Richard Fisher, Warren Gerety, Michael Malloy, Barbara Malloy, John Vlasuk, Ethel Wilson, James Devvan, Ann Campbell, Wayne Campbell, Kathy Baum, Renee King, Randy Grasso, Cindy Grasso, Bill Knee, LeAnne Miner, Kevin Baum, and Dennis Quintal.

Mr. Andrew opened the meeting at 7:04 PM.

I. Minutes

Mr. Howland made a motion to accept the minutes of November 15, 2016. Mr. Janvrin seconded that motion with all in favor. Mr. Janvrin made a motion to accept the site walk minutes of December 3, 2016. Mr. O'Malley seconded the motion with all in favor except Mr. Howland who abstained. Mr. Howland made the comment that he was not on the site walk for Mr. Galloway's property but he did later walk the property with Conservation Commission Chairman Bill Knee.

II. Continued 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. Mr. Quintal summarized what has happened since his last meeting with the ZBA in November. He went on a site walk with the ZBA and with members of the Conservation Commission on December 3rd. They walked the perimeter of the site and Mr. Quintal showed the group where the basins are proposed to be. Bill Knee did have some recommendations (as spelled out in his letter) including minimizing tree cutting and moving a berm away from the wetland. In addition, since the last meeting Stantec has submitted a hydrogeological report and a wetland buffer evaluation. Mr. Quintal quoted one of these reports saying, "the location of these basins within the wetland buffer should not create any difference in the overall infiltration to groundwater." Mr. Quintal commented that this is an area that wildlife will be able to utilize. He read through the five criteria for a variance that was read at the last meeting. He then asked the Board to grant this variance.

Mr. Andrew read out loud the recent letter that was submitted to the ZBA from the Conservation Commission (attached). The letter had several recommendations to the ZBA. Mr. Janvrin stated that Stantec felt that the structures would be an improvement to the site. Mr. Howland asked if there would be any water used on the site. Mr. Quintal stated that water would be used for dust control and that it would not generate significant runoff. There was a discussion about the materials that are brought in to Seacoast Farms and there was a discussion about the manganese

levels that were reported in the hydrogeological study. Mr. Yokela commented that this does not affect the safety of the water and that it's a problem all over Fremont. Mr. Tatem stated that this has nothing to do with the ZBA and that high manganese is not a health risk. This can be dealt with by the Planning Board. Mr. Grasso felt the swales would only work for this particular project. Mr. Quintal explained that when he designed these basins he used a 100 year storm event in his calculations. There was a discussion about materials that would go through the swales and basins and it was determined that it was a concern for the Planning Board – not the ZBA. Mr. Yokela stated that the point is to maximize the use of the property. All they are doing is allowing the buffer to be more affective at its purpose. If Mr. Galloway changes the use, this maximizes the options for what the property could be used for. He also stated that the ZBA cannot worry about enforcement issues. The Board of Selectmen would handle enforcement.

One abutter did not think that this plan should even be considered since the business is already out of compliance with its site plan. Mr. O'Malley stated that this plan will put the business back into compliance. Ms. deBeer stated that manganese is indeed harmful for your health and will send information on this to Ms. Wolfe. She also felt that the water quality testing done on the site in the past was not done consistently enough. She also pointed out that it is very rare for the Town to break the setback for prime wetlands. She asked if water would also be used on the site to cool down the machines. She wanted the ZBA to honor the 100 foot buffer. Ms. Grasso agreed that Mr. Galloway should have to respect the 100 foot buffer just like everyone else. Mr. Tatem clarified that the State does not protect wetlands at all anymore. Mr. Baum stated that the Town certainly protects these wetlands. Mr. Baum also stated that Mr. Galloway can deal with storm water drainage without putting the structures in the buffer – the variance is not necessary. He also reminded everyone that the piles have to be removed even if this plan does not get approved because they are out of compliance. If the Board does decide to grant the variance, the Board can attach conditions. Any violation by Seacoast Farms should be fixed.

Mr. Knee stated that the laws are very clear that any disturbance that affect the wetland itself would be a violation. There would be fines and they would need to restore the damage. The distance is not so much the issue - prime wetlands cannot be disturbed in any way regardless. In Fremont, all wetlands whether they are prime or not, are protected by a 100 foot buffer. Mr. Tatem said that in Seacoast Farm's plans, the drawings actually show the tailings in the buffer. What they are violating is having more than 3,000 cubic yards on site at a time. Mr. Andrew closed the public comment. Mr. Howland read Article IX Section E – the ordinance that the applicant is asking a variance from. Mr. Howland made a motion to accept the variance with the stipulations from the Conservation Commission's letter. Mr. Downing seconded the motion. The motion passed 3-2-0. Ms. Wolfe stated she will get the notice of decision ready and that Mr. Galloway has a couple of more fees to pay.

III. New Business

Case # 016-006/Administrative Appeal
Map 5 Lot 35
Hardrock Development, LLC

Hard Rock Development, LLC has submitted an application to appeal the Planning Board's decision that a concrete reprocessing plant is an allowed use in the Corporate Commercial District.

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 December 20, 2016 at the Fremont Library, 7 Jackie Bernier Dr, Fremont, NH 03044 concerning an Appeal of an Administrative Decision filed by Hard Rock Development, LLC. This appeal is relevant to a current application before the Planning Board for a concrete reprocessing plant at Map 5 Lot 35. Said property is owned by John Galloway and is located on Shirkin Road in Fremont, NH.

Mr. Janvrin made the comment that Town Counsel says that the use was approved back in March when the waivers were voted on. Mr. Janvrin did not believe that the application was timely. Mr. Baum begged to differ. He researched the issue in the past and the case law was clear. If anything, he filed the appeal too early – not too late. If he appealed in March, it would have been seven months too soon. He reminded the Board that this is a strange circumstance because it took one year for the Planning Board to accept the application as complete. He asked that the Board hears him tonight. Mr. Yokela stated that the minutes said it was the Town's opinion that it is a permitted use. If that was a decision, then Mr. Baum could appeal that. He felt that acceptance by the Planning Board would be when the decision would be made. Mr. Baum felt that filing the appeal before the Planning Board took jurisdiction would be premature because it was not the official opinion of the Board at that time that the use is allowed in the corporate commercial district. He asked for a rehearing on the issue. He believed that the case law supports that this is a timely application. He also believed that in this situation, the 30 day deadline should not be applicable. Mr. Galloway's application has been dragged out and the applicant in this appeal should not be penalized. Mr. Howland felt that Mr. Baum wasted time by waiting so long. Mr. Baum stood by his opinion that once the application was accepted (in October), it was time to appeal it. Mr. Yokela did agree that it was not fair that he was not prepared to defend the timeliness issue. Mr. Baum asked to continue this to the next meeting. Mr. Janvrin made the motion to continue this to the next month's meeting on January 24th. Mr. O'Malley seconded the motion with all in favor.

IV. Rehearing Request

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

Mr. Patterson seeks a rehearing for his request of a variance from Article XVIII Section 6.1 so that he can construct an asphalt plant in the Corporate Commercial District. Mr. Patterson explained that the facility would produce bituminous concrete. Mr. Howland explained that the Board is voting on whether the applicant will be granted a rehearing. The ZBA does not need to

rehear it if the same set of facts are submitted. Mr. O'Malley stated that he did not feel that there was anything new in Mr. Patterson's recent submittal. Mr. Janvrin allowed the applicant to testify briefly. Mr. Fisher stated that at the last meeting the neighbors were concerned about the potential devaluation of the neighborhood. He went through what homes in the area were appraised for and then went through the values next to a local asphalt plant. He stated that his numbers show that an asphalt plant will not lower property values. Then Mr. Patterson explained the difference between asphalt and bituminous concrete. He also stated that there are no studies linking asphalt to cancer and that it is not a threat to anyone's health. Mr. Fisher said that he talked to the State and that the State considers this bituminous concrete. Mr. Howland made a motion to agree to rehear to case based on the information provided. The motion did not pass 2-3-0 with only Mr. Janvrin and Mr. Downing voting yes.

The meeting adjourned at 9:15 pm.

Respectfully Submitted,

Casey Wolfe
Land Use AA/Recording Secretary