

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: Arleigh Greene, Dennis Quintal, Kevin Baum, Barbara Malloy, Renee King, Randy Grasso, Cindy Grasso, Ethel Wilson, Tim Lavelle, Joel Deblois, and Dennis Bombard.

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

I. Minutes

Mr. Downing made a motion to approve the minutes of December 20, 2016. Mr. Janvrin seconded the motion with all in favor.

II. Continued Business

Case # 016-006/Administrative Appeal

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.

Mr. Janvrin made a motion to go into non-public session per RSA 91-A:3 for the purpose of discussing a legal matter. The motion was seconded by Mr. Howland. The motion passed by a unanimous roll call vote. The public filed out of the room into the pantry area.

Mr. Janvrin moved to close the nonpublic session. Mr. Howland seconded with all in favor.

Mr. Janvrin made a motion that the applicant has standing as an abutter and that the ZBA can hear the appeal. Mr. Howland seconded this with all in favor.

Mr. Baum introduced himself to the Board. He is the attorney representing Hard Rock and is here to appeal the Planning Board's interpretation of the Zoning Ordinance. The question is whether or not Mr. Galloway's concrete preprocessing plant is permitted by right under the ordinance. He outlined three points that support his case: (1) that the language of the ordinance is clear that the plant is not permitted and that the use table in the ordinance is a permissive list (2) that the use is contrary to the purpose of the district as defined in the ordinance (3) and that the use is inconsistent with the ZBA's recent decision regarding a proposed asphalt plant.

The Zoning Ordinance allows for moderate hazard factory uses in the Corporate Commercial District. Mr. Baum referenced in the Building Code what is allowed as a factorial use. He said that it does not reference concrete and asphalt recycling. It shouldn't be included because it would be contrary to the Corporate Commercial zone's definition, "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. Baum stated that a concrete and asphalt recycling plant is certainly not the use for the district – it is not what the voters thought they were voting in. Mr. Baum passed out pictures of Mr. Galloway’s operation in Plaistow and asked the Board if this is what the voters envisioned when they created the district. Finally, the Planning Board’s determination is inconsistent with the ZBA’s decision to deny the asphalt plant. The ZBA already decided that this was not right for the zone and if the ZBA allows this use for Mr. Galloway, then they would be inconsistent. Mr. Baum insisted that the use is not permitted without further relief from the Board in the form of a variance.

Mr. Yokela asked Mr. Baum how he would define “processing.” Mr. Baum responded that the word has to be considered in the context of what is allowed in the Ordinance: light manufacturing, processing of goods, transportation-oriented activities. Mr. Andrew opened the discussion to the public. Ms. Grasso added that crushing is not considered “processing” in the way it was written by Fremont. Ms. King stated that the voters voted for light industrial and this use is not what they voters had in mind when they voted the district in. Mr. Grasso added that the voters were also thinking the buildings would bring in tax revenue. Mr. Galloway’s proposal will actually be a burden to the Town. Ms. Grasso felt that this use will open the door for similar uses in this district. Mr. Greene would rather have an asphalt plant as an abutter than a concrete reprocessing plant. The concrete will have gasoline, asbestos, and lead in it and it is not possible to monitor everything that comes in. In New Hampshire, this stuff does not need to go to a landfill. Asphalt would be less dangerous. Crushing is always industrial – not commercial.

Ethel Wilson pointed out that the citizen’s petition to change the allowed uses in the Corporate Commercial District that was submitted to the Town a couple months ago got 508 signatures. This clearly shows how the average citizen feels about the project. Mr. Greene brought up the JRM reprocessing facility in Peabody, MA. This facility is not as bad because it is in enclosed walls. Mr. Janvrin made a motion to close public comment. Mr. Howland seconded that motion with all in favor.

Mr. Yokela looked over the article and table of uses in the Fremont Zoning Ordinance. The table of uses is to be used as a reference as to what requires a conditional use permit and doesn’t even define what moderate hazardous uses are. Section 306.2 of the 2009 International Building Code is a delineative and prescriptive list starting with the phrase, “shall include but not limited to...” The list is not all inclusive. The list is actually based on materials that are combustible and with that in mind, Mr. Yokela would classify this as a low hazard use.

Mr. Howland agreed the list is not all-inclusive, however, this is a commercial district not an industrial district. He usually thinks of a building when he thinks of a factory. He is worried about attracting corporate clients to the corporate district with this operation on Shirkin Road. He is concerned about the welfare of the district. This does not fit. This is more heavy industry and not what the voters voted on. Mr. Greene pointed out that this facility is not a structure other than an office trailer. Mr. Howland asked if the Planning Board set a limit to the materials allowed on the site. Mr. Quintal said that Galloways were only approved to use three acres for the operation. Mr. Howland wanted clarification that this means that there is no guarantee that the area will not

fill up. Mr. Yokela felt that this is irrelevant and that the ZBA's goal tonight is to decide whether or not this is an allowed use. Mr. Howland said that the Board has to look at the goals of the Corporate Commercial District.

Mr. O'Malley agrees with the spirit of the ordinance – that this use does not fit. He does not see a positive upside to this. Mr. Janvrin wasn't sure if this was the issue though. Mr. Yokela asked if this would be allowed if the processing was inside a building. Mr. Janvrin felt that this was also not the issue. Mr. Howland said that if this was inside a building and if there were limits on the materials, then he would be okay with it. Mr. Janvrin moved that they go to a vote. Mr. Howland seconded with all in favor. Mr. Janvrin moved that the ZBA grant the appeal that this is not an approved use. Mr. O'Malley seconded the motion. The motion passed 4-1-0.

Ms. Wolfe will write a Notice of Decision. She announced there is a 30 day period to file a motion for a rehearing.

III. New Business

Case # 017-001/Special Exception

Mr. DeBlois seeks a special exception from Article IX Section H2 to fill 760 square feet of a wetland to construct a 20 foot shared driveway, the drive will be access for two single family dwelling units

Mr. Andrew read the public notice: *“In accordance with NH RSA 676:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing on Tuesday, January 24, 2017 in the basement level meeting room at the Fremont Town Hall, 295 Main Street, Fremont, NH 03044, for applicant Joel DeBlois, Leavitt Road, Map 6 Lot 22, Fremont, NH. The Zoning Board meeting starts at 7:00 pm. This hearing will be second on the evening's agenda.*

This Hearing concerns a special exception request to the terms of Article IX Section H.2 to permit the filling of 760 square feet of poorly drained soil, “wetlands” to construct a 20 foot shared driveway. The driveway will be access for two single-family dwellings.

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 these amendments are available upon request at the Fremont Town Hall during regular business hours. Please feel free to contact Casey Wolfe at (603) 895-3200 X 17 or fremontpz@comcast.net with any questions. She holds her office hours on Tuesdays and Thursdays from 9:00 am – 12:30 pm & 1:00 pm – 4:30 pm.”

Ms. Wolfe stated for the minutes that the notice was posted around town on January 10th, mailed to the abutters on January 10th, and published in the Union Leader on January 13th. She also explained the application that Mr. Lavelle submitted to the Board.

Mr. Howland read the Article IX Section H2, *“Special Exceptions: The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board*

for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported upon by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports... Dredging, filling, drainage (in compliance with the RSA 485-A:17) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.”

Mr. Lavelle introduced the application to the Board. He is looking for a Special Exception to fill 760 square feet of wetland for a shared driveway. He has already been before the Conservation Commission to have them sign the expedited wetlands permit. During this process, the Conservation Commission has done a site walk. He has also been before the Planning Board for a subdivision review and got a conditional approval. During this process with these two Boards, the culvert size was increased. Getting this Special Exception from the ZBA is the last hurdle. Mr. DeBlois mentioned that he is required to have Stantec inspect the driveway and culvert after construction.

Mr. Andrew read the department comments that were submitted. The Selectmen/Town Administrator wrote: *“Ensure proper drainage and compliance with regulations. Have project monitored by Town Engineer, and ensure no detrimental wetland impact or water flow in areas where it is not currently (ie: no effect on road or property of others).”* The code enforcement officer wrote: *“As long as this is done properly with concerns to the wetlands – I have no other comments. I have been to the site.”* The Conservation Commission wrote: *“The Conservation Commission has reviewed and discussed the Joel DeBlois plans to construct an unpaved driveway across a narrow portion of what has been identified as wetland #10. Concerns raised by the Commission during a site visit have been addressed in the plans presented at the January meeting of the Commission. Because the current plans show that the impact to the wetland has been kept to a minimum, and that measures are in place to protect the wetland from further degradation, the Commission recommends the ZBA approve the Special Exception.”*

Mr. Andrew made a motion to open the public hearing. Mr. Janvrin seconded the motion with all in favor. There were no comments. Mr. Howland made a motion to close the public hearing. Mr. Janvrin seconded the motion with all in favor. Mr. Janvrin made a motion to approve the Special Exception to Article IX, Section H2 allowing 760 square feet of wetland to be filled for the construction of a 20 foot wide shared driveway. Mr. O’Malley seconded the motion with all in favor.

Mr. Janvrin made a motion to adjourn the meeting at 8:16 PM. Mr. Howland seconded the motion with all in favor.

Respectfully Submitted,

Casey Wolfe
Recording Secretary