

Present: Chair Doug Andrew, Vice Chair Dennis Howland, Member Jack Downing, Member Neal Janvrin, Member Todd O'Malley, and Land Use Administrative Assistant Casey Wolfe

Also Present: Jay Comstock and Jason Broyer

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

I. Minutes

Mr. Janvrin made a motion to accept the minutes of April 24, 2018 and the site walk minutes of May 12, 2018. Mr. Downing seconded the motion. The motion passed 5-0-0.

II. Continued Business

Case #018-004/Variance

Jay Comstock seeks a variance to the terms of Article XII Section 1201.5 of the Fremont Zoning Ordinance to permit the construction of a garage 68 feet from a wetland when a 100-foot setback is normally required at 371 North Road, Map 6 Lot 62-2.

Mr. Andrew read the case into the record. Mr. O'Malley recused himself from this case due to not being present at the last meeting when this was originally heard. Alternate member Josh Yokela was not present to vote on Mr. O'Malley's behalf. Mr. Andrew informed the applicant that he has the right to a full board and can wait to have his case heard another night. Mr. Comstock agreed to have his case heard that evening with four voting members. The Board met on May 12th for a site walk. Since this site walk, the Conservation Commission submitted a new comment, *"The Commission members have no objections for stated variance – building location within wetland setback, but offer the following comment for future reviews. The steep grade adjacent to the existing home slopes to the wetland area. The garage will result in an additional impervious area and decreased buffer to the wetland. Though not part of the stated variance request, the Conservation Commission strongly advises that further permitting and approvals (e.g. for roadway/driveway) require earthen berm or other best management practice to retain surface/overland drainage flow to the wetland area."*

Mr. Janvrin stated that any changes to this driveway will be an improvement. It is currently very dangerous to back out of this driveway. There was some discussion about increasing the line of site for the new driveway. The road agent expressed in his comment sheet that he would like the driveway large enough (18 by 22 feet) so that a vehicle can turn around and avoid backing out onto the road. Mr. Andrew read through the criteria for a variance that the applicant submitted. The variance will not be contrary to the public interest because, *"a garage will not detract from the neighborhood. The wetland will not be disturbed as part of the project."* The spirit of the ordinance is observed because, *"No damage to the wetland will occur. This is not a prime wetland."* Substantial justice is done because, *"creating a new driveway and garage will not disturb the wetland. A majority of the property's 2.8 acres is wetland."* The values of the surrounding properties are not diminished because, *"a garage is typical at most homes. It will increase storage and enable a cleaner exterior of the property. It will likely increase value."* 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, *“There is no section of the property that is not within 100 feet of the wetland. There will be no disturbance to the wetland.”* The proposed use is a reasonable one, *“The proposed driveway will be safer. Currently we have to back in to the intersection of Martin Road and North Road.”*

Mr. Howland stated that he does not have any concerns about the garage, however he does have concerns about the driveway. A gravel driveway will become nearly as impervious as asphalt and will have a negative impact on the wetland in the long-run. Mr. Comstock asked if installing a berm would address his concern. Mr. Howland stated he was not sure where the best location for a berm would be. Additionally, he stated that the Board has not been asked to weigh in on the driveway, the Board has only been asked to weigh in on the proposed garage. Mr. Janvrin asked Mr. Comstock what his plans were for the existing driveway. Mr. Comstock stated that he eventually would like to remove the existing driveway. Mr. Janvrin made a motion to approve the variance request to construct a garage 68 feet from a wetland area at 371 North Road. Mr. Downing seconded the motion. The motion passed 4-0-0. Ms. Wolfe informed the applicant that she will write up a Notice of Decision that will get filed at the registry. She also informed the applicant that there is a thirty-day appeals period before he can pull building permits.

III. New Business

Case #018-005/Variance

Jason Broyer seeks a variance to the terms of Article IX Section 901 of the Fremont Zoning Ordinance to permit the construction of an in-ground swimming pool 20 feet from the rear property line when a 30-foot setback is normally required at 342 Sandown Road, Map 1 Lot 48-6.

Mr. O’Malley returned as a voting member. Mr. Andrew read the case into the record. Mr. Broyer explained that due to the grade of the front yard, the only spot for the pool is in the backyard. Unfortunately, this area of the backyard is within the rear property setback. Mr. Broyer explained that his driveway comes out to Sandown Road. Ms. Wolfe informed the Board that the Code Enforcement Officer, the Road Agent, and the Police Chief did not have any comments or concerns in their comment sheets. The abutters have been notified. Six out of eight of the certified letter green cards came back in the mail signed by the abutters. Mr. Howland made a motion to open the hearing for public comment. Mr. O’Malley seconded the motion. The motion passed 5-0-0. There were no comments. Mr. Howland made a motion to close public comment. Mr. Downing seconded the motion. The motion passed 5-0-0.

Mr. Andrew read through the criteria for a variance that the applicant submitted. The variance will not be contrary to the public interest because, *“It is a ground level structure still 20 feet off property line. Abutters’ houses are not even within sight of our property.”* The spirit of the ordinance is observed because, *“Structure will still be far enough off property line to not disturb neighbors’ property.”* Substantial justice is done because, *“we would like to have a pool and this is the only spot on the property it can go.”* The values of the surrounding properties are not diminished because, *“the pool will be centerpiece of a well-designed landscape. It will be clean*

and modern install that will attract buyers.” 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, *“With the pool being ground level and still 20 feet off the property line, I do not believe it poses a nuisance to the abutting properties.”* The proposed use is a reasonable one, *“A residential swimming pool is a reasonable use.”* The applicant also wrote, *“There is no other place in the yard we can put the pool due to septic, wetlands in front, and driveway in side yard. Behind the house is the only spot it can go.”* After some discussion, the Board decided to schedule a site walk. Mr. Howland made a motion to continue the hearing for a site walk on June 1st at 5:00 pm at 342 Sandown Road. Mr. Downing seconded the motion. The motion passed 5-0-0. The Board will make their decision on the case at their next regularly scheduled meeting on June 26th.

IV. Other Business

There was some discussion about site walks. Ms. Wolfe has called an attorney at the New Hampshire Municipal Association and she did not recommend that the Board make decisions on cases at site walks. She recommended that the Board continues the case to a date sooner than their next regularly scheduled meeting when they know the applicant is pressed for time. Mr. O’Malley recommended that the Board gets a permanent reservation of the meeting room so that they can have an extra meeting when they would like to.

Mr. Howland made a motion to adjourn the meeting at 7:33 pm. Mr. Downing seconded the motion. The motion passed 5-0-0.

Respectfully Submitted,

Casey Wolfe
Land Use Administrative Assistant