



Board of Adjustment  
PO Box 120  
Town of Fremont, New Hampshire 03044  
Minutes of August 25, 2009  
Approved September 29, 2009

Members present: Chairman Doug Andrew, Member John (Jack) Downing, and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew opened the meeting at 7:30 pm.

#### MEMBERS

Mrs. Bolduc stated that there still have been no responses to an article posted on the Town web site, in the Newsletter, at the Town Hall and the Post Office seeking new members of all the Land Use Boards. Legally the Zoning Board of Adjustment consists of a full five-member Board and there are only four Members serving at this time. As of August 21, 2009, with the passing of HB 44, the Chairman of a land use board is authorized to designate an alternate to fill a vacancy on the board until the appointing or designating authority fills the vacancy.

After some consideration, Mr. Andrew designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. Mrs. Bolduc accepted.

#### MINUTES

Mr. Downing made the motion to accept the minutes of the July 28, 2009 meeting as written. Motion seconded by Mrs. Bolduc with unanimous favorable vote.

#### WORKSESSION

- RSA 674:33,I (b) – UNNECESSARY HARDSHIP

The Board continued discussion on House Bill 446 which repeals RSA 674:33, I (b) defining “unnecessary hardship” for purposes of zoning variances. This bill has passed the House and the Senate and takes on January 1, 2010. This bill eliminates the distinction between “use” and “area” variances and the definition of “unnecessary hardship” shall apply to both use variances and area variances and both will be subject to the same standard.

*307:6 Powers of Zoning Board of Adjustment; Variance. RSA 674:33, I (b) is repealed and reenacted to read as follows:*

*(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:*

*(1) The variance will not be contrary to the public interest;*

*(2) The spirit of the ordinance is observed;*

*(3) Substantial justice is done;*

*(4) The values of surrounding properties are not diminished; and*

*(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

*(A) For 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; and*

*(ii) The proposed use is a reasonable one.*

*(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

*The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.*

*307:7 Applicability. Section 6 of this act shall apply to any application or appeal for a variance that is filed on or after the effective date of this act.*

*307:8 Effective Date. This act shall take effect January 1, 2010.*

*Approved: July 31, 2009*

The Members agreed that there are several questions relative to this repeal that should be clear before it is implemented. This will be the subject of lecture #2 of the Local Government Centers Law Lecture Series in October which Mrs. Bolduc and Mr. Downing are planning to attend.

- The Board received and reviewed, at length, a copy of “Riggins Rules” which is a list of suggested do’s and don’ts for the conduct of public hearings and the department of Members of Boards and Commissions that was published in an issue of the Planning Commissioners Journal. (There is a note that some references may not be fully compatible with NH law.) Mrs. Bolduc said that it was distributed at one of the OEP workshops she attended along with a suggestion that it be made available for all Land Use Boards/Commissions as a guide to the conduct and professionalism expected of the Members.
- The Board also discussed:
  1. Other potential legal updates that may affect the ZBA.
  2. Instances for an applicant’s need for an Equitable Waiver of Dimensional Requirements and the ramification of granting one.

## CORRESPONDENCE

1. Notice of the September 25, 2009 Office of Energy & Planning (OEP) Fall Planning &

ZBA Meeting Minutes 08-25-09

Zoning Conference at Loon Mountain in Lincoln, NH.

2. Notice of the Fall Annual LGC Municipal Law Series at various locations.

Next meeting: scheduled for September 29, 2009.

At 9:00 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mrs. Bolduc with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary

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