



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of June 23, 2009
Approved July 28, 2009

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

Mr. Andrew opened the meeting at 7:35 pm and appointed Mrs. Bolduc as a voting Member to the Board for this evening, taking the place of absent Member Jack Baker.

MINUTES

Mr. Downing made the motion to accept the minutes of the May 26, 2009 meeting as written. Motion seconded by Mrs. Bolduc with unanimous favorable vote except for Mr. Boisvert who abstained as he was absent for that meeting.

Case # 09-001
Eleanor J. Emery
MAP 3 LOT 017

Present: Owner Eleanor Emery and her son Gary Emery

Mr. Andrew opened this Public Hearing at 7:36 p.m. and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on June 23, 2009 in the Land Use Meeting Room, basement level in the Fremont Town Hall, as requested by Eleanor S. Emery for Map 3 Lot 017, 182 Main Street, Fremont, New Hampshire.

The applicant is seeking a Special Exception from Fremont Zoning Article IV-A to allow the property use to include an In-Law Apartment.

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

A copy of the plan can be viewed at the Fremont Town Hall during regular business hours.

Mr. Andrew explained the purpose of the Board and the procedure for a Special Exception. He then read Article IV-A of the Fremont Zoning Ordinance.

Mr. Andrew stated that there is not a full five Member Board present and related to the applicant that she has the option of waiting for the presence of a full Board for any decisions. It was explained that it takes concurring votes of three voting Members of the Board to decide in favor of an applicant (or reverse any action of the administrative official). Mrs. Emery opted to move forward with the four members present.

Mr. Andrew stated that the Ordinance describes an In-law/accessory apartment as:

An apartment within a single family residence. An in-law apartment is defined as "a separate living space within a single family dwelling unit consisting of separate sleeping, cooking and bathroom facilities and which is intended to be occupied by an in-law or in-laws of a member of a family unit occupying the main part of the dwelling" and meeting the following criteria:

In-law apartments may be occupied only by members of the family unit occupying the main part of the dwelling or by in-laws of a member of said family unit. The applicant must satisfactorily demonstrate that said apartment will be utilized only in this fashion. The occupancy or rental of an in-law apartment by persons other than in-laws, as defined in this ordinance, is expressly prohibited.

Mr. Andrew stated that application for this Special Exception was received on June 8, 2009, this hearing was noticed on June 11, 2009 at the Fremont Post Office and Fremont Town Hall and in the June 12, 2009 edition of the Manchester Union Leader. The applicant and all abutters were notified via certified mail on June 11, 2009 and all returns have been received. The application package included: 6 copies of drawn plan, proper check amount, a current list of abutters, letter of intent and a June 9, 2009 letter of denial/referral from the Code Enforcement Official. The applicant has also submitted a copy of the deed to the subject property.

Comment sheets were received from the following, with comments in italics:

Code Enforcement Official: *As it relates to the septic system the following conditions apply;*

1) Provision of Article IV-A-F compliance is in the form of an approved design.

2) The attached must be recorded with the decision. (must also be completed)

- The septic facilities of this site are in-adequate for the number of bedrooms. A new septic system design has been approved for a five (5) bedroom design and must be the design installed upon failure of the existing system. The previously approved system design NH DES #CA ----- is approved for --- bedrooms; the new approved system design NH DES #CA----- is for five (5) bedrooms.*

Conservation Commission: *No comment*

Health Officer: *No objections.*

Fire Chief: *As long as the means of egress are up to code to allow residents to exit in an emergency.*

Mrs. Emery stated that there has been a living unit in the basement level of her home that her daughter has occupied for about nine years and she is requesting to be allowed to continue the property use to include the in-law unit. The Board reviewed the drawn sketch of the site submitted with the application which showed the entire property including locations of the driveway, walkway,

garage, house, well and septic as well as noting that all setbacks exceed the required minimum. The Board also reviewed the drawn sketch of the interior layout design and dimensions submitted. The provisions of Zoning Article IV-A were discussed. Mrs. Bolduc noted that this application offers a different scenario because the applicant is not requesting to be allowed to create an in-law unit, but to continue the use of one that is already existing.

The Board reviewed the conditions and provisions of Article IV-A and Mrs. Emery addressed each one as follows:

- A. The applicant, seeking an in-law/assessor apartment shall make application to the Zoning Board of Adjustment.
Mrs. Emery and the Board agreed this condition has been met.

- B. The property conforms to the dimensional requirements of the single family minimum lot size standard as established by Fremont Zoning Ordinance in 1971 (Lot size of one (1) acre minimum is required), and the single family dwelling has been constructed and occupied for a period of a minimum of one year.
It was agreed that according to the Tax Map and card the property is one acre in size.

- C. The dwelling to which the in-law/accessory apartment is being created is owner occupied and of greater than twelve hundred (1200) square feet of total existing living space.
It was agreed that the dwelling complies with this condition.

- D. The living area of the in-law/accessory apartment has a minimum of four hundred (400) square feet and a maximum of eight hundred (800) square feet. Size shall be determined by the total square footage of the in-law/accessory apartment. The initial family unit is not lessened by such dimensions so as to create non-compliance with Article V Section 2.

There was a discussion relative to the areas noted as furnace room, entry stairway and computer room. It was agreed that if those rooms are part of the in-law/accessory unit then that space would be in excess of 800 sf. However, if those rooms comprise core spaces that are part of the primary residence and all other room dimensions of the in-law/accessory apartment as shown are adjusted using interior space/size, the result would be a total of slightly less than 800 Square Feet to be associated directly with the in-law apartment. Mrs. Bolduc said that the Code Enforcement Officer has told her that he would have no problem with the adjusted dimensions as long as the total is less than 800 sf. Mr. Emery agreed to submit a drawing showing the adjusted dimensions for the in-law/accessory unit only. Mrs. Emery also agreed to submit a signed statement attesting that the furnace room, entry stairway and computer room are not part of the in-law/accessory unit, but are part of the primary residence.

- E. There will be no more than two (2) bedrooms in the in-law/accessory apartment.
Mrs. Emery agreed with this condition.

- F. The owner shall provide evidence to the Building Official that septic facilities are adequate to service the in-law/accessory apartment. Such evidence shall be in the form of certification by State of N.H. licensed septic system designer. The Building Official has indicated his

approval in writing to the Zoning Board of Adjustment as to proper certification having been received.

This is pending. Mrs. Bolduc reported that the Building Official and the Board received draft copies of an "Effluent Disposal Design" for the property drawn by Jones & Beach Engineering, dated 6-19-2009. The Building Official believed the design to be administratively incomplete. Jones & Beach has been notified and has agreed to resubmit the completed design.

- G. The in-law/accessory apartment shall be designed such that the appearance of the building remains that of the single family dwelling. Any new entrances shall be located on the side or rear of the building and shall be at ground level.
Mrs. Emery agreed with this condition.
- H. The in-law/accessory apartment shall have accessible entrances and shall conform to dwelling unit Type-B construction, as specified in the International Residential Code (IRC).
Yes – it is existing.
- I. The primary residence and the in-law/accessory apartment shall share common water, septic, and electric facilities.
Mrs. Emery stated that the water, septic and electric is all on one so she complies with this condition.
- J. In no case shall more than one in-law/accessory apartment be permitted within the structure. Dormitory-type facilities and living are expressly prohibited whether seasonal or otherwise.
Mrs. Emery said that the house meets this condition.
- K. The In-law/accessory apartment shall not be constructed or established within any accessory use structure (such as a garage).
Mrs. Emery agreed with this condition.
- L. Off-street parking is available for a minimum of four automobiles for the entire structure. The in-law/accessory apartment to be permitted does not have a separate driveway or separate garage to accommodate its occupant(s).
Mrs. Emery said that the parking area meets this condition.
- M. The in-law/accessory apartment shall be provided with an interconnected smoke alarm system. All smoke alarms shall be listed and installed in accordance with the provisions of the IRC and the household fire warning provisions of NFPA 72.
Mrs. Emery said that she had someone connect the smoke alarm, but they are supposed to go off together and they do not. Mrs. Bolduc reported that Code Enforcement/Building Official Thom Roy inspected the smoke detectors today and found them not to be interconnected. The Board agreed that this must be corrected in order for this condition to be met.

N. The provisions of the International Residential Code (IRC) shall apply to all construction elements of the in-law/accessory apartment. There shall be no occupancy of the in-law/accessory apartment until the Building Official has issued an occupancy permit. Mrs. Emery agreed with this condition. Mr. Emery said that the occupant could move upstairs (the primary residence) until they had an occupancy permit. It was noted that this unit has been existing and occupied without a permit for a period of approximately nine years.

O. The in-law/accessory apartment is not within the Flood Plain as identified by the FIRM map relating to Fremont, N.H. It was agreed that this condition is met.

Variations to this special exception may not be granted.

There was a discussion relative to the application and it was agreed that conditions D, F and M need to be revisited, complied with and completed either prior to approval or as a condition of approval.

A site visit was discussed. At 8:55 Mr. Boisvert made the motion to continue this Public Hearing to Tuesday June 30, 2009 at 6:00 pm at 182 Main Street for the purpose of a site visit, and to Tuesday July 28, 2009 at 7:30 pm at the Fremont Town Hall. Motion seconded by Mr. Downing with unanimous favorable vote.

A notice will be posted for the site visit.

WORKSESSION

There was a general discussion relative to the conditions of Article IV-A of the Ordinance.

There was a general discussion on HB-44; an act relative to the use of alternates by local land use boards. This will authorize the Chairman of a land use board to designate an alternate to fill a vacancy on the board until the appointing or designating authority fills the vacancy. Mrs. Bolduc reported that this has been approved by the House and Senate and will take effect on August 21, 2009.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for July 28, 2009.

At 9:10 pm Mrs. Bolduc made the motion to adjourn. Motion seconded by Mr. Downing with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary