

**Board Members Present:** Chair Doug Andrew, Vice Chair Dennis Howland, Members Neal Janvrin and Todd O'Malley (O'Malley via Teams)

**Also Present:** Administrative Assistant Leanne Miner

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

**Announcement:** In accordance with NH RSA 91-A: 2, II, you are hereby notified that the Fremont Zoning Board of Appeals will meet at 7:00 pm on March 23, 2021 in the Town Hall Basement Meeting Room. In accordance with the Governor's Emergency Orders, the Zoning Board of Appeals is also permitted to utilize emergency meeting provisions of RSA 91-A to conduct this meeting through electronic means.

Ms. Miner will note that the meeting is being televised on FCTV Channel 22 and will be posted after the meeting on Vimeo. The following E-meeting procedures will be followed in accordance with the Governor's Emergency Order:

1. If anyone has problems with accessing the meeting they can call the Town Hall at 603 895-3200, extension 306 or email [landuse@fremont.nh.gov](mailto:landuse@fremont.nh.gov) for assistance during the meeting.
2. If for some reason the public is unable to access the meeting, the meeting will be adjourned.

## **I. ROLL CALL**

A roll call of meeting attendees was conducted. The following Zoning Board Members responded as being present:

1. Doug Andrew
2. Dennis Howland
3. Neal Janvrin
4. Todd O'Malley

## **Others present in person or via electronic means:**

Applicant and Representatives Case 021-002, Map 1, Lot 82: Gary Densen, Haus Emily LLC; Barry Gier of Jones and Beach.

**Applicant and Representatives Case 021-003, Map 2, Lot 70:** Gary Densen, Densen Construction, Inc.; Barry Gier of Jones and Beach; William K. Warren, Esq. Donahue, Tucker & Ciandella, PLLC.

## **II. MINUTES**

**Mr. Janvrin mad a motion to approve meeting minutes from February 23, 2021 as amended, Mr. Howland seconded. Motion passed unanimously 4-0 via roll call vote: Mr. Andrew-Aye, Mr. Howland--Aye, Mr. Janvrin-Aye, Mr. O'Malley-Aye.**

## **III. CONTINUED BUSINESS**

**Continued Public Hearing Map 1, Lot 082 Case 021-002:** *Applicant Haus Emily, LLC has applied for a Special Exception to construct a roadway and drives for access associated with an 8-lot Open Space Preservation Subdivision at Map 1, Lot 82 on Scribner Road. To construct the roadway and drives the applicant requires a Special Exception to the terms of Article 12 Section 1201.8 of the Fremont Zoning Ordinance for the impact to Wetlands and Watershed Protection District.*

**Clerks Report:**

Ms. Miner provided the Clerk's Report as follows: Since the last meeting, Rockingham County Conservation District (RCCD) submitted their report dated March 1, 2021 on the subject parcel. No new comments have been submitted.

**Applicant Presentation:** Mr. Gier, Applicant Representative, addressed the Board. He discussed the items listed by the RCCD as options to reduce Watershed Protection Area impact. Items 1 and 2 have to do with wetland fingers that were addressed during Site Plan review. Items 3 through 6 are specific to erosion and sediment control and the Applicant will address these items during final site plan development. The Applicant has also received a wetland permit from NH Department of Environmental Services (NHDES).

Mr. Howland agreed that impacts appeared minimal and noted that the Applicant is mitigating construction impacts. He asked about a site walk and whether or not the Conservation Commission (Cons Comm) was looking to conduct a site walk.

Ms. Miner informed the Board that the Cons Comm already conducted a site walk. They offered to join the ZBA if they would like to conduct a site walk.

The Board reviewed the construction planned for the wetland crossing and location of potential wetland impacts. There were no further questions or comments.

Mr. Gier noted that the changes as recommended by the RCCD will be made along with other revisions required to meet the Conditional Approval given by the Planning Board.

**Ms. Howland made a motion to grant a Special Exception to Article 12 Section 1201.8 for Case 021-002 to allow the construction of a roadway and drives to access the 8-lot Open Space Preservation Subdivision at Map 1, Lot 82 on Scribner Road with the condition that items 3 through 6 noted in the RCCD report get implemented and put into the plans. Mr. Janvrin seconded the motion. The motion passed with a roll call vote 4 – 0, Mr. Andrew-Aye, Mr. Howland--Aye, Mr. Janvrin-Aye, Mr. O'Malley-Aye.**

**Public Hearing Case 021-003, Map 2, Lot 70:** *Applicant, Densen Construction, Inc. is seeking a variance from Article 9, Section 903.D and Article 12, Section 1203.8.A.2 of the Fremont Zoning Ordinance for the purpose of constructing two (2) occupied structures on a single lot, each consisting of nine (9) townhomes. The subject property is identified as Tax Map 2, Lot 70 and is located on Main Street in Fremont NH.*

**Clerks Report:**

The public notice was posted in the Union Leader March 3, 2021; posted in the Town Hall at two locations on March 3, 2021; posted at the Post Office March 15, 2021; mailed to abutters, the applicant and consultants on March 15, 2021.

**Applicant Presentation:** Mr. William Warren presented his case to the Board stating his basis for request as this property is located in the Main St District and the Wetlands and Watershed Protection District. Both areas have the same requirement that no lot shall have more than one occupied structure thereon regardless of the number of dwelling units. The applicant seeks variances from both provisions for the purpose of constructing two occupied structures, each composed of nine townhomes, on a single lot.

Mr. Warren reviewed the variance criteria with focus on the final criteria where literal enforcement would result in unnecessary hardship. He stated that the Applicant feels that this project meets both parts of this final criteria were 1. 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 2. The proposed use is a reasonable one.

Mr. Warren described the property and how it is situated. He discussed the uniqueness of the property which has prime wetlands along the side boundaries and limited frontage with several small homes along Main Street. These characteristics together limit access and uses on this property make it unique. He described the design challenge of maintaining the prime wetland buffer and keeping some distance from the abutting homes along Main St. The Applicant feels this plan has minimal impacts on the wetlands and buildings are situated far enough from the road and abutting homes that they won't be a nuisance. By separating the 18 units into 2 buildings, it softens the aesthetics structure that makes it look better and results in structure that is more in keeping with homes in the area. By applying the zoning provisions there is no relationship between the public purposes of the ordinance and applying it literally to the property. They submit that the use is a reasonable one and that the project meets the standards set forth in the Main Street District and provides a transition to the residential homes to the south.

Mr. Warren went on to describe how the project meets the remaining conditions. Criteria 1 and 2 are met because the project will not threaten the general health, safety, convenience and welfare of the town and will keep it an attractive place to live and do business. He cited examples of similar developments in Town including Pine Pitch Village and Currier Lane Condos.

Mr. Howland noted that neither of those projects include more than one structure on one lot and is not in defense of their variance request for two structures on one lot.

Mr. Warren explained that he was trying to make the point that these structures aren't going to change the nature of the neighborhood.

Mr. Howland didn't feel the other developments were similar or in defense of the variance being requested.

Mr. Warren continued with criteria 3 stating that substantial justice will be done. He explained that by not allowing these variances it would impose a burden on the property for the owners, developer and engineers to best develop the space. The bulk of the property that is buildable is largely isolated and

set back from Main Street and a subdivision would only allow a few residential homes. The benefit to granting the variances is that the owners will be permitted to make the best use of the land possible. He further stated that the project will not harm public welfare. They feel this type of development will actually have the least impact on the wetland buffer and will have a positive effect in that it will supply 18 new homes to 18 families in the area serving the general public.

Regarding criteria that the project would diminish surrounding property values, Mr. Warren explained that the proposed development is similar in nature to surrounding homes and developments in the area he submits that this development will therefore not affect surrounding property values.

Mr. Howland noted that abutters may have concerns with traffic in and out the property.

In closing Mr. Warren noted that the project is in the planning phase and will eventually need to go through site plan review where the development design will be more thoroughly reviewed.

Mr. Janvrin commented that the intent of the ordinance is that no lot should have more than one building on a lot and the ZBA has been enforcing this ordinance all along. He felt that the variance was in violation of the spirit of the ordinance.

Mr. Howland asked about connecting the two structures. Mr. Warren noted that there were attempts to connect the two structures at the west end. Mr. Howland suggested storage, parking and other uses for such connection.

There was discussion about the hammerhead turnaround and advantages of not connecting the buildings allowing for more open space.

Mr. Janvrin asked about the possibility of subdividing. The problem with subdividing is that any subdivision would have to happen with access along Bond Book would have to go through prime wetland. Subdividing along Main St is difficult as well.

There was further discussion about emergency vehicle access around the building that would allow one building. There was argument about impact of some additional impervious surface given the surrounding open area and prime wetland, alternative paving materials.

Mr. Warren spoke more to the spirit of the ordinance and referred back to Article 1 of the Zoning Ordinance. He acknowledged that granting this variance is to the benefit of the town for a number of reasons whereas having one long structure or one large structure is much less appealing. The concept proposed provides more open space.

Mr. Howland doesn't object to the 18 units and agrees that the property is unique with various hardships but argued that the property owner knew and paid a discounted price for the land when they purchased in 2015.

Mr. Howland asked about elevations on site. Mr. Gier did survey the property and the building can be built on the property. Mr. Howland made mention of previous applications for industrial purposes and multiple buildings and that he understood there were water table issues where a substantial amount of fill would need to be brought in. The Applicant acknowledged the restrictions on the property.

Mr. Miner met and screened some abutters that came to the hearing. There was some confusion about when the hearing started so Mr. Warren provided an overview of the case for the benefit of the abutters.

Residents attending included: Ms. Obrien, Mr. Newman, and Ms. Kelly.

**The Board had no further questions. Mr. Howland opened the public hearing, Mr. Janvrin seconded and the motion passed unanimously 4-0 by roll call vote.**

Mr. Steve Newman, 687 Main St. – Mr. Newman asked about how the development would benefit the area. He also asked about how his well would be affected.

Mr. Warren spoke to the configuration of the buildings and that they are allowed one building. The variance would allow the developer to break up the building to make the best use of the space with least visual effect on the neighborhood. Mr. Gier explained that well installation is regulated by the NHDES which has standards and a permitting process in place to protect wells.

Ms. Patricia Kelly, 695 Main St – Ms. Kelly asked if the road proposed to enter from Main St will be widened to provide two lanes for entry. She mentioned that her well is very close to the access road.

Mr. Warren noted that it would be built to allow two-way traffic and referred Ms. Kelly to the site plans explaining that each well has a 100 foot buffer that needs to be adhered to.

Mr. Howland made a point of order to reiterate that the public hearing tonight is only for a variance request to allow 2 buildings on one lot. The ZBA does not address well or driveway locations. Those items are the purview of the Planning Board.

Ms. O'Brien, 688 Main St. – Ms. O'Brien asked if they wanted to build two buildings on one lot, why get a variance when they can get a subdivision for the two buildings. Mr. Warren explained that there are prime wetlands and multiple frontages along Main St., both of which make the project more complex and more in-depth process than if their variance request was granted.

Ms. O'Brien asked if there were to be two different lots would that change the number of wells.

Mr. Warren stated that the number of lots would not affect the number of wells.

Ms. Obrien asked if they only wanted one large building then would they have even come to the town? Mr. Warren expressed their strongest desire which is to build two separate buildings because it is much more appealing in a variety of ways.

Ms. Obrien asked if the variance was denied would the developer go to the Planning Board for one building. Mr. Warren stated that they do intend to develop the property with some sort of building configuration, but that this concept was the most desired.

**Mr. Janvrin motioned to close the hearing. Mr. Andrew seconded and the motion passed with a roll call vote.**

The residents left the meeting at 7:43PM.

Ms. Miner noted that there were Department comments, but all were related to Site Plan matters. None of the departments that commented were opposed to the variance. Their comments were acknowledged as follows:

- The Fire Chief commented on turnaround area and snow storage.
- Road Agent noted that the Applicant will need to apply for a state driveway permit and asked if the entrance would be public or private.
- Building Inspector noted multifamily buildings require more stringent fire codes.

Mr. Janvrin made a point of order and reminded the Board that the Applicant has the opportunity to wait for a full board. Mr. Andrew asked the Applicant if they wished to continue the hearing for a full member board. Mr. Warren stated that he is ok with moving forward with the hearing and the four members present.

Mr. O'Malley stated that the zoning ordinance is pretty cut and dry and the Board continues to stick to this. The property is large enough to subdivide or use smaller buildings. This request is being made more to maximize rather than a property-related decision.

**Mr. Janvrin made a motion to deny the variance. Mr. Andrew seconded the motion. The motion was unanimously denied 4-0 by roll call vote as follows: Mr. Janvrin – Denied; Mr. O'Malley – Denied; Mr. Howland – Denied; Mr. Andrew – Denied.**

Members noted reasons for their denial as follows:

- Mr. Janvrin noted (that granting the variance) doesn't meet the spirit of the ordinance. He also feels that criteria 5 is not met as there are other project alternatives that will fit on the property and still be in compliance with the ordinance.
- Mr. O'Malley noted again that the zoning ordinance is clear and there are other options for the property as noted earlier.
- Mr. Howland noted that that criteria 2 and 4 are not met. Granting the variance is not in the spirit of the ordinance and the people on Main St would see a decrease in their property values. He also

believes there are other options for the property and simply not wanting to build one large building is not a hardship.

- Mr. Andrew stated that he believes the spirit of the ordinance is not followed in this case.

The Applicant and representatives left at 7:53 PM.

#### **IV. OTHER BUSINESS**

Ms. Miner informed the Board that Mr. Janvrin's Membership has expired and they need to nominate officers for the year.

**Mr. Howland motioned to nominate Mr. Janvrin to continue as a member for 2021 through 2024. Mr. Andrew seconded the motion which passed unanimously 4-0 by roll call vote.**

**Mr. Howland made a motion to nominate Mr. Andrew as Chair. Mr. Janvrin seconded the motion which passed unanimously 4-0 by roll call vote.**

**Mr. Janvrin made a motion to nominate Mr. Howland as Vice Chair. Mr. Andrew seconded the motion which passed unanimously 4-0 by roll call vote.**

Ms. Miner reminded members that the NHMA and OSI has upcoming ZBA Training

#### **V. ADJOURNMENT**

**Mr. Janvrin motioned to close the meeting at 8:08PM. Mr. Howland seconded the motion. The motion passed unanimously 4-0.**

Respectfully Submitted



Leanne Miner  
Land Use Administrative Assistant