

Board Members Present: Chair Doug Andrew, Ex Officio Neal Janvrin were present in the meeting room. Vice Chair Dennis Howland, and Members Todd O'Malley and Joshua Yokela present via video conference (Teams)

Present on Teams meeting platform: Administrative Assistant Leanne Miner (host)

Mr. Andrew opened the meeting at 7:05 PM

The following was announced by Mr. Andrew: In accordance with Emergency Order #12 Pursuant to Section 18 of Executive Order 2020-04, Paragraph 8, the Zoning Board is permitted to utilize emergency meeting provisions of RSA 91-A to conduct this meeting through electronic means while preserving, to the extent feasible, the public's right to observe and listen contemporaneously.

Ms. Miner noted 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 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 (Chair)
2. Neal Janvrin (Ex Officio)
3. Todd O'Malley (Member)
4. Dennis Howland (Vice Chair)
5. Joshua Yokela (Member)

Also present in the basement meeting room:

Town Staff: Laurence Miner, Fremont Building Inspector; Leanne Miner, Land Use Administrative Assistant; Shawn Perrault, Secretary

Applicant and Representatives Case 021-001, Map 3, Lot 037-3: Thomas Nisbet, PPM Fremont Holdings, LLC – Applicant; Barry Gier, Jones and Beach, Consulting Engineer, Joshua Lanzetta, Esq., Bruton & Berube, Legal Counsel

Residents/Public including: Larry Politvin, Tom Shorey, Paul Powers, Venus Woods

Online: Alicia Pauliot Cote & Joshua Paine, Resident 107 Spauling Road; Bill Knee, Resident; Mary Kaltenbach, Resident; Jamie Brown 326 Main Street; Kim and Barry Ferrara, Resident South Road; Nicole Cushman and Jackson, 106 Spaulding; Tim and Cary Fitzgerald 121 Spaulding Rd; Jacqueline and Joseph Heintz, Resident 20 Frost Lane.

II. MINUTES

Mr. Janvrin made a motion to approve meeting minutes from November 24, 2020. Mr.

Howland seconded the motion. The motion passed 5-0 with a roll call vote: Mr. Andrew – Aye, Mr. Janvrin – Aye, Mr. O'Malley – Aye, Mr. Howland- Aye, Mr. Yokela- Aye.

III. NEW BUSINESS

Public Hearing Case 021-001, Map 3, Lot 37-3: Ms. Miner read the public notice for Case 021-001 *Applicant PPM Fremont Holdings, LLC proposes to construct a project containing five (5) residential units in two (2) buildings. The two units to be constructed consist of a three (3) unit residential townhouse style building and a two (2) unit Sober House. To construct two (2) occupied structures on the same lot the applicant is requesting a variance from Article IX, Section 903.D of the Fremont Zoning Ordinance which only allows one (1) occupied structure on a lot.*

The public notice was posted in the Union Leader January 20, 2021; posted in the Town Hall at two locations on January 18, 2021; posted at the Post Office January 19, 2021; mailed to abutters, applicant and consultants on January 19, 2021.

Mr. Andrew invited the Applicant to present their case. Mr. Gier provided an overview of the site plan describing the location presented on a site plan. The Site is 5.32 acres and is located in the Flexible Use District with Aquifer Protection overlay district. It is a vacant lot between single family residential and commercial development. The intent is to construct five residential units in two buildings including a two unit Sober House and a three unit townhouse. The idea of the project to effectively use the lot as a transition between single family and commercial/industrial development. The variance will allow separation between the Sober House and townhouses. The Sober House will require a Conditional Use Permit (CUP) and Site Plan approval from the Planning Board.

There was a pause in the meeting to assist an abutter with connection. During the pause, there was discussion about procedures, individual connectivity, and extended roll call. There was concurrence that if someone loses connectivity during the hearing the matter can be assessed during public comments and/or at the end of the hearing. Should there be any question about access then the meeting may be continued. There was also concurrence that roll call of people leaving and joining the meeting late was not necessary so long as those that commented were catalogued (name, address).

Mr. Lanzetta, Attorney for the Applicant introduced himself as an attorney with Bruton and Berube, address of 601 Central Avenue in Dover, NH. Mr. Lanzetta thanked Leanne Miner and Jenn Rowden of the county for their technical assistance in preparation of the hearing. Mr. Lanzetta provided a pictorial overview of the area and summary of the variance request. He explained the use (multi family dwelling units) are permitted in the zoning ordinance. The issue at hand is a variance for 2 separate structures that would house multiple multi family dwelling units. The sub-use as a Sober House is not the subject matter of the variance. Aerials and street views were shared showing a vacant lot and its relative location to adjacent residential and commercial/industrial uses. Currently there are condominium approvals in place to place several industrial units on this property. Driving safety and sight distances are not expected to be an issue based on the site location to the road. The plan set showing building 1 with 3 residential units, building 2 has 2 residential dormitory-style units. The Sober House is not a treatment facility, but is a place for people who have recovered from addiction to get back on their feet. He expressed the need for this type of facility in the state. For practical purposes it makes sense to separate the two buildings to provide enough space between the two types of multifamily residential uses.

Mr. Lanzetta stated his preference that the application speaks for itself and focused on the 5th criteria for the variance regarding unnecessary hardship. The property is one of unique nature in location, shape, and the desired (permitted) uses. He spoke to the arbitrary nature of the allowance for only one structure on a lot with no qualifications and the lack of explanation in the Zoning Ordinance. The Ordinance doesn't fit for the subject property.

Mr. Lanzetta addressed the written comments as follows:

There is a letter from Mr. Knee, Vice Chair of Conservation Commission. It was not clear if the comments were submitted by the Conservation Commission or by Mr. Knee as a resident. The comments were acknowledged, however Mr. Lanzetta explained that the comments focused on the aquifer overlay district which is not applicable to the variance request and is not the purview of the ZBA. Conditional use criteria will be reviewed by the Planning Board should the application process continue with the CUP and Site Plan Review.

Mr. Andrew asked about the seven units that were allowed on the property and asked why not put the 5 proposed together. Mr. Lanzetta explained that the seven units currently approved are the most intense use allowed at the site. The proposed project has slightly different residential uses so they want to allow some space between the two.

Mr. Andrew asked if the buildings were put together then would a variance be required to which the answer was no. If not, then is there any way to split the property. The response was that a variance would be required to split the lot as a minimum of 3 acres is required for the aquifer district. Either way a variance would be required for the project and they chose to ask for relief from the allowance of only one building on the lot vs. reduced acreage.

Mr. Andrew asked if downsizing the project would allow the two uses to be in one building which was not viewed as a reasonable requirement based on the justification for the ordinance.

Mr. Howland commented that they could not build this project in one building without a variance. A variance would not be required for 5 multifamily dwellings with 2 bedrooms per dwelling but would be required for 2 dwelling units with more 6 beds per 1101.6. He felt the variance in question was not 903D, but 1203.8,A,2 because the property is in the aquifer protection district. He objected to the use of the term describing the use as "allowed", specifically residential boarding uses are not allowed without a permit. They are not prohibited, but they are also not allowed (without permit).

Mr. Howland stated that hardship goes with property, if a property cannot be used with strict conformance with the Ordinance, but in fact the property can be used for other applications such as the 7 industrial buildings so therefore no hardship with the property. The proposal violates concepts of what a dwelling unit is. If they want to build a residential boarding unit there is little to go on unless a site plan review is conducted and CUP is granted. At that point the ZBA would discuss allowing dwelling units and bedrooms. He suggested the applicant withdraw or request a continuance to address other items not addressed in the variance request.

Mr. Yokela commented the FUR district seems to allow other non-residential uses on this property to be in separate buildings (i.e., light manufacturing and professional services). It seems to be that the multiple multifamily residential dwellings that are not allowed under 903D requires the variance.

Mr. Lanzetta expressed that the slightly different uses which they feel is reasonable to separate into two buildings. He addressed other comments having spoken with the County Planner who acknowledged the dormitory style multifamily dwelling use requires a CUP. He objected to the fact that the dormitory use is not permitted. It is permitted if the applicant can meet the CUP regulations via the Planning Board. They don't need to request any other variances for the application. Requirements in Section 12 will be addressed by the Planning Board through the CUP process. Mr. Lanzetta reiterated that the hardship is not with the property it is comes from the arbitrary language causes the unnecessary hardship.

The Board had more discussion about interpreting the Zoning Ordinance with regard to dwelling units and number of bedrooms and the request for separate structures on one lot. There was also discussion about other uses such as hotels and animal hospitals could be built on the same lot. There was also discussion about the nature of a variance and a reasonableness test.

Mr. Andrew commented that 2 occupied buildings on one lot is prohibited such that residents cannot just build additional dwelling unit on their property without a variance. There was discussion about the process for adding a second dwelling unit on a property versus a lot with multifamily dwellings.

Mr. O'Malley asked why the applicant could not pursue a subdivision on the lot given the 500 feet of frontage. There is not enough acreage to subdivide as there is a 3-acre minimum size per lot and the multiple number of dwelling units have certain acreage requirements so this project may require in the neighborhood of 7 acres.

Ms. Miner noted that she had comments from Town Departments and submitted by the public as follows:

- The Building Inspector commented that he had previously sent a Letter of Denial via email 12-31-20 to Mr. Gier *for building permit reference: Fremont Ordinance Section 903.D disallows two separate dwellings on one parcel of land.*
- The Fire Department commented on sprinkler systems which is related to the building of the dwelling;
- The Police Department commented *no issues*;
- The Conservation Commission stated *no comments*;
- Ms. Miner read a mailed letter which commented in favor. Ms. Suzanne Wicks, 29 Rowe Drive, submitted a comment letter stating *"Please know that I am in favor of a 'Sober House'. There is a need for them throughout New Hampshire."*
- Those comments submitted to the Board against included a letter from William Knee as a resident, 93 Sandown Road. This comment letter is on file, but the Applicant asked that this comment be struck from the record (see rebuttal)

- There was a second letter submitted to the Board from Paul Powers, 90 Copp Drive. Ms. Miner read the letter into the record as follows: *This is an open letter expressing opposition to the variance request submitted by applicant PPM Fremont Holding LLC which you are scheduled to hear tonight.*

I understand the task before you is not an easy one as there are many elements that this board will need to consider.

As you are aware there are five conditions for granting a variance all of which MUST be satisfied in order for the variance to be granted. If any one of them fails to meet the standards then the application must be denied. It is the applicants sole responsibility to meet this burden of proof for each of the five conditions. In reading the application filed with the town I feel the applicant has not met this burden of proof in respect to the following conditions

Variance Criteria:

The Variance will not be contrary to the public interest.

- *The proposed use of the site is a non starter because this variance has no relationship to that fact.*
- *The lot does not meet the requirements to be subdivided but if approved would be circumventing the minimum lot requirements set forth in Zoning Ordinance 1203.8 A.*

The spirit of the ordinance is observed because;

- *The spirit of this ordinance has no bearing on the use of the property as mentioned by the applicant. This variance encompasses all lawfully created lots in Fremont across all zoning districts. The spirit of this ordinance I believe is to nurture responsible development with respect to Fremonts rural character and building lot density.*

Substantial justice is done;

- *The ability for the applicant to build on this lot exists in its current state. There is no determination of whether the zoning restriction as applied interferes with a landowner's reasonable use of the property.*

The values of the surrounding properties are not diminished.

- *The applicant provided a speculative answer with no evidence to substantiate their response.*
- *Residential lots with two occupied structures can be problematic when the owner of the lot decides to sell. Banks have a history of not approving traditional funding for these parcels and could lead to this property falling into distress and unmarketable to the general public.*

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

-It is not the uniqueness of the plight of the owner, but the uniqueness of the land which is the criterion. The applicant has stated there is unfair burden on him to have to construct all of the units at once. Not building all of the units at once would only be out of personal convenience to the applicant and does not constitute a hardship. The applicant has also stated having two conflicting uses in the same structure would create an unfair burden. This burden is a self created hardship and an applicant may not claim hardship because of conditions created by his or her own actions.

The applicant has failed to prove the following

- 1. That the zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property and its environment.*
- 2. No fair and substantial relationship exist between the general purpose of the zoning ordinance and the specific restriction on the property, and*
- 3. The variance would not injure the public or private rights of others.*
- 4. That the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. I am urging the Zoning Board not to approve this variance request.*

Mr. Janvrin motioned to open the meeting to public comment, Mr. O'Malley seconded the motion. Motion passed 5-0.

Public Comments from persons in the room:

- Mr. Tom Storey (address not stated) asked questions to clarify the type of residents that will be in each unit such as families, individuals, and the type of residents that would reside in the Sober House/dormitory-type unit.
- Mr. Paul Powers (90 Copp Drive) disagreed that the zoning ordinance creates the hardship, but the uniqueness of the lot that requires the variance (i.e., there are no physical conditions on site that necessitate the buildings to be separated). The uses on the lot are instead a self-created use that requires a variance.
- Mr. Tom Storey (address not provided) asked about the consequences of granting a variance. Mr. Andrew explained that each variance request still needed to be reviewed individually.
- Mr. Paul Powers (90 Copp Drive) suggested a court case regarding hardship Simplex and Governors Island as applied to the application.

Public comments online:

- Alicia Pouliout Cote (107 Spaulding Road) commented that she felt the Applicant felt the applicant was negligent in not discussing this use and its impacts on the neighboring residents including a child-care facility in a family friendly neighborhood. She asked if this was intended as a low-income housing. Mr. Andrew reiterated that the variance is not related to the use. Type of housing is the purview of the Planning Board. She stated support for the use, but not in the family-oriented neighborhood. There was additional discussion and disagreement over the use and the variance under review.

Mr. Andrew reiterated that the hearing is focused on the buildings, not the use. Comments continued online:

- Mr. Cushman (106 Spaulding Road) asked about density and stated his concerns over increasing density.

- Mr. Fitzgerald (121 Spaulding Road) commented that he is not in favor of splitting the buildings. He thought there would be too many people proposed to be living in the two buildings including the Sober House which could potentially house 2 people per bedroom, or 24 people, plus the potentially high number of people in each family unit. Too much traffic and activity for the small lot.
- Ms. Cote (107 Spaulding Road) asked if there was an ordinance in the Town that requires a certain facility like this a certain distance from schools. Mr. Yokela suggested reviewing the uses on page 17. Mr. Janvrin stated there is no ordinance that restricts anyone from becoming a resident based on their criminal background. There was discussion about commercial use and short-term housing.

Mr. Lanzetta moved for asked and answered for the line of questioning. Mr. Andrew agreed.

Mr. Janvrin motioned to close the public hearing, Mr. Yokela seconded the motion. Before voting there was another comment from the public.

Ms. Heinz (20 Frost Lane) commented: She just moved to Town in November with a 5 and 6 year-old and they moved from NY to get away from this. The use doesn't belong where her children may be reached. Mr. Heinz inquired about the number of stories the building would have. Mr. Yokela stated that Fremont has a limit of 2.5 stories.

The motion to close the public hearing was passed 5-0.

Mr. Lanzetta provided rebuttal as follows:

To Mr. Knee's comments: Since the letter was signed as the Vice Chair of the Conservation Commission, but not comments from the Conservation Commission he felt this was deceptive. They also object to the letter as it doesn't properly summarize the ordinance for the Aquifer Protection District. A hydrologic study cannot be assigned by the Zoning Board. Section 12 of the Zoning Ordinance is the purview of the Planning Board.

To Mr. Powers comments: The applicant objected to all statements of law in the letter as being inaccurate. Mr. Lanzetta stated that the variance is reasonable given the uniqueness of the property. He acknowledged the example cases of law, but they do not address the uniqueness of the variance before the Board. The zoning ordinance creates the hardship because there is one sentence limiting the way the property can be developed and there is no explanation in the ordinance. The applicant is asking for a reasonable variance for multiple dwellings for multiple uses that are similar, both using multifamily dwellings. The property is bordered by many other different uses and the Flexible Use Residential District allows a variety of uses. It is also surrounded by industrial and commercial uses. The applicant is asking for a lower density use with a lighter impact than what is approved. He stated that population density is not related to the variance. It is related to districting by the town.

Mr. Lanzetta stated that he disagreed with the tone of the meeting and the suggestion that criminals or bad people use Sober Houses and that it is a gross misinterpretation of the use.

Mr. Lanzetta asked for a vote from the board. Mr. Andrew made sure there were no further questions from the Board. There was discussion about the procedures for the hearing and voting. The Board agreed to vote on all criteria at once.

Mr. Yokela made a motion to approve the variance. Mr. Janvrin seconded the motion. The following roll call votes were made by each member:

Mr. Andrew – Nay

Mr. Janvrin – Nay

Mr. Yokela – Aye

Mr. O'Malley – Nay

Mr. Howland – Nay

There was discussion about how the motion was made and as such the Board made a second motion to clarify their vote as follows:

Mr. Janvrin made a motion to deny the variance application. Mr. Andrew seconded the motion. The following roll call votes were made by each member with a Yes, in favor of denying or a No, not in favor of denying:

Mr. Andrew – Yes

Mr. Janvrin – Yes

Mr. Yokela – No

Mr. Howland – Yes

Mr. O'Malley – Yes

There was a 2-minute break before the next case.

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 in Fremont New Hampshire. 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.*

Mr. Gier on behalf of the Applicant provided an overview of the project describing the intent of the project and the type and amount of wetland and wetland buffer impact. He described the Open Space preservation development and where the project was in terms of approvals with the Fremont Planning Board.

Mr. Andrew inquired about the amount of open space. They are required to preserve 50% of the total uplands (~9.4 acres) and all wetlands. Wetland impacts are due to widening the existing roadway. Mr.

Andrew inquired about what was there presently. Mr. Gier noted there is an existing residence out back and a driveway.

Mr. Gier reviewed the special exception criteria noting how their proposal meets each criteria as follows:

Criteria 1 – Is the use one that is ordinarily prohibited in the district? *No. Residential use is allowed in the district.*

Criteria 2 – Is the use specifically allowed as a special exception under the terms of the ordinance. *Yes. See Section 1201.8, Paragraph 3 it lists access roads and utilities as an allowed use with Special Exception.*

Criteria 3 – Are the conditions specified in the ordinance for granting the exception met in the particular case? *Yes. Project has been designed to minimize any detrimental impact by locating impact at narrowest point of wetland where there is already a crossing and providing erosion and sedimentation measures.*

Mr. Andrew inquired about the size of the lots which were over $\frac{3}{4}$ of an acre (minimum required).

Mr. Yokela noted the requirement in the Fremont Zoning Ordinance, Section 1201.8, regarding review by the Rockingham County Conservation District which is required for the Special Exception.

Mr. Janvrin inquired about the size of the crossing. It was noted that the wetland crossing is already existing and needs to be expanded to 24 feet in width to include roadways and shoulders. The Applicant has worked with the Planning Board and Town Engineer on the road drainage. The total width of impact is about 50 to 60 feet for work required to install the roadway. Ms. Miner noted that the Planning Board had waived the requirement for soil mapping. Test pitting was also completed for drainage design purposes.

Department Comments were as follows:

- The Fire Chief responded '*no issues with the request*';
- The Police Chief responded '*no issues*';
- The Building Inspector responded '*no comments at this time*';
- The Conservation Commission commented during their monthly meeting that *they would like to be notified if there is a site walk*. Ms. Miner noted that the Conservation Commission already did a site walk earlier on in the application process for the project as well.

Ms. Miner will follow up with the RCCD and find out what the procedure is for this review or to waive the requirement if that is an option. Ms. Miner noted that the Town received notice from the NH Department of Environmental Services (NHDES) that the wetland dredge and fill application has been accepted. Mr. Gier noted there is also a state subdivision application under review.

Mr. Yokela motioned to continue the hearing to February 23rd. Mr. Janvrin seconded the motion and the motion passed 5-0.

IV. ADMINISTRATION

Ms. Miner noted that the new State Land Use Books 2020-2021 are available for each member.

V. ADJOURNMENT

Mr. Janvrin made a motion to adjourn the meeting at 931 PM. Mr. Andrew seconded the motion. The motion passed 5-0.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Leanne", written in dark ink.

Leanne Miner, Land Use Administrative Assistant