

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

Also Present: Tim Lavelle, Brenda Samoisette, Karen Coish, Patty Blain, Joe Goldstein, Nancy Goldstein, Denny Bryne, Joyce Dempski, Mike Bernier, Martin Ferwerda, Heather Whitcomb, Joshua Whitcomb, Roscoe Blaisdell, Donald Bettencourt, Gene Cordes, Patty Blair, Francis Swett, Krzysztof Kras, and Danielle Kras.

## I. MINUTES

Mr. Janvrin made a motion to approve the minutes of June 27, 2017 and the site walk minutes of July 11, 2017. Mr. Andrew seconded the motion. The motion passed 5-0-0.

## II. CONTINUED BUSINESS

### Case # 017-003/Special Exception

**Daniel Perry Builders seeks a special exception to the terms of Article 12 Section 1201.8 to fill 962 square feet of a wetland to construct a 20 foot wide driveway, the drive will be access for a single family dwelling unit on Thunder Road, Map 2 Lot 1-16**

Ms. Wolfe explained that the Rockingham County Conservation District is in the process of reviewing this application. Mr. Howland made a motion to continue this hearing to August 22<sup>nd</sup> at the library. Mr. Janvrin seconded the motion. The motion passed 5-0-0.

### Case # 017-004/Variance & Case # 017-005/Variance

**Mr. Ferwerda, on behalf of Witham Park at Map 3 Lot 1, seeks a variance to the terms of Article 9, Section 901 of the Fremont Zoning Ordinance to permit proposed lot lines to be located five feet from existing homes when thirty feet is normally required. The applicant also seeks a variance to the terms of Article 9 Section 902 of the Fremont Zoning Ordinance to allow these proposed lot lines to be less than the required 100 feet.**

Mr. Janvrin recused himself from this part of the meeting. Mr. Andrew appointed Mr. Yokela as a voting member. Mr. Barham, a Selectmen and Planning Board member, acknowledged that there are some questions regarding the application. He wanted to summarize the history of the access road and passed out some hand-outs of aerial photos that show the two developments, Witham Park and Governor's Forest. The first photo showed the original emergency lane, before house number 18 in Governor's Forest was built. Mr. Barham stated that this emergency road is required on the site plan. The idea is that in the event of an emergency, there is another way into the development. Mr. Barham passed out two more photos that "zoomed in" on the cul-de-sacs. Because one photo was from Bing and the other photo was from Google, they were taken on different dates. The photos showed Tarah Drive before the two newest homes were put in. Mr. Barham then passed out an aerial photo of what the area looks like currently. This photo showed where house number 18 was built – right where the access way was for a long time. When the

Town found out what Mr. Ferwerda did, the Board of Selectmen ordered a cease and desist on Governor's Forest. Under this order, there can be no new construction until this issue is resolved by applying to the Planning Board for a rerouted emergency road and new lot lines. Today he needs two variances because he needs to be in compliance with the zoning before the Planning Board can hear him. One variance request is for relief from the structural setback and the other variance has to do with the length of the proposed lot lines.

Mr. Howland asked how confident Mr. Barham was of the accuracy of the location of the leach field that is shown in the plans. Mr. Barham stated that he would not know anything about the accuracy and that it is a question for the engineer whose seal is on the plans. It appears that the leach field is right where the access easement is proposed to be. Ms. Wolfe read a department comment that was submitted to the Board. The Conservation Commission wrote, *"The current storm water pond area is well established and does not fall within the lot line change locations. Topography and natural drainage behind the downgradient residential home (ledge) does not fall within the lot line change locations. Storm water erosion and sedimentation controls at the site are inadequate and close to failing at the bottom of the construction access road. Responsible party should establish up gradient storm water controls, repair constriction road washout, and apply appropriate side gradient and down gradient storm water control measures."*

A comment was submitted from Frank and Linda Viera via email, *"As residents of Governor's Forest, we would like to encourage you to allow the proposed zoning changes by Martin Ferwerda. This issue is not about the access road, but about the homes of senior citizens, who through no fault of their own, face an uncertain future and possible homelessness. The feud with Mr. Ferwerda and the access road should not enter into this decision. Deal with that later. Think about the other innocent people and their future first."* A comment was submitted from David Rines via email, *"I would like to express many concerns regarding the delayed progress within the Governors Forest residential development due to the impending implementation of an access road. Although I fully understand why the sale of the lot adjacent to the access road is being prolonged, I don't understand why the continued development of lots at the lower end of the development are in jeopardy. This matter is of particular concern to me because I have a family member who sold their house so that they could move into a lot within the development by the end of the summer. Because this project is on hold, it is causing significant financial and emotional distress to my family, and I don't doubt that many other families are burdened by the same situation. I would kindly ask for all involved parties to please carefully consider the extent to which the delayed development within the community is affecting so many helpless individuals. I do believe there are ways to resolve this issue without impacting so many families, so I ask for you to please consider alternatives to the current plan."*

Joyce A. McGravey also submitted a comment via email, *"My husband and I have lived in Fremont since 1994 and since 2015 became residents of Governor's Forest. We have seen many changes in this town in those 23 years (some good, some not) and we watched the growth of Governor's Forest since its beginning and chose this community to retire in mainly because we liked this town and saw the tremendous growth in Governor's Forest. Also we wanted a community that did not require a commitment of belonging to a Home Owner's Association (although through a few community members responses to certain issues it is lead to believe that*

*many more residents are associated with the Home Owners Association than actually are). Ourselves and many of our close neighbors feel the latest cease and desist order against the completion of the access road and further construction of new homes is unjust as Mr. Ferwerda's land is the one encroached on. His response to the owner of 4-2 George Way whose home was built on this land was not to turn that owner's life upside down but to allow that property to remain as is. Our hope is all board members will respond in a positive professional way without prejudice or personal feelings and allow these matters to be resolved in a timely, just fashion."* Finally, Gwen and Raymond LaPlante submitted a comment, *"We hope you will take into consideration that Governors Forest is one of the better neighborhoods for seniors to live. And will let Mr. Ferwerda continue with the completion of this neighborhood and let him put in the access road from Witham without affecting the people in Witham's park their homes that are on Mr. Ferwerda's property, as long as the access road is gated and accessible to fire trucks and emergency vehicles only. Right now this is all a keg of worms and needs to be ended so all can get back to work and get our neighborhood completed. We pay a lot of taxes to live in this quiet neighborhood and we would like it to remain this way."*

Mr. Andrew asked if there were any questions from the audience. There were none. There were some questions from the Board members. Mr. Yokela was concerned about the leach field. If it needs to be repaired then the owner would have to trespass on the other property to do the work. Mr. Ferwerda has never seen this leach field and stated that if it is on his property, he would ask for it to be removed. Mr. Ferwerda stated these homes in Witham Park are on his land and that the only reason he is going through this application process is because Mr. Witham was in Florida at the time. He stated that he is trying to protect the interest of these homeowners by allowing them to peacefully enjoy their homes. He is not willing to give an easement if the leach field on his property. He again emphasized that he is representing the applicant and that he is trying to protect the interest of the homeowners, however, he would like a five foot setback instead of the 30 foot setback because he does not want to give any more land away than he has to. Mr. Ferwerda encouraged the Board to approve the variances. He felt that this variance request fits all five variance criteria and read through each of these criteria.

Mr. Ferwerda stated that the variance will not be contrary to the public interest because we are protecting the rights of property owners who, through no fault of their own, bought homes 10 or 15 years after they were constructed. The spirit of the ordinance is observed because there would still be ample distance between structures and enough room for the access easement. Substantial justice is done because it allows the home owners of the two encroaching houses to peacefully enjoy their homes without severe disruption. The values of surrounding properties are not diminished because they are all properties of similar style. They are all manufactured homes in manufactured home communities with similar setbacks and distances. Literal enforcement of the provisions of the ordinance will result in unnecessary hardship because there is no substantial relationship between the general public purpose and the ordinance affiliated in this specific application because both of these abutting properties are manufactured home parks. The proposed use is a reasonable one because all other regulations in this district are complied with. Strict compliance with this ordinance would create a hardship and would result in eviction and destruction of existing structures.

Mr. Ferwerda stated that he is trying to protect the interest of these two homeowners. He stated that he does not have a connection with either homeowner. Mr. O'Malley asked how long the shared property line is between the two lots. Mr. Ferwerda stated that there is a 2,800 foot line between the two properties. Mr. O'Malley asked Mr. Ferwerda why he couldn't just do a land swap. Mr. Andrew commented that a straighter line would be easier to enforce. Mr. Ferwerda felt that a five-foot setback is simple and easy for everyone to understand. Mr. O'Malley said that it is not enjoyable to have only five feet of land around your house. Mr. Yokela asked who owns the leach field. Ms. Francis Swett stated that two homes share the leach field. Ms. Patty Blair stated that while she was originally in support of the variance because she thought there was no other way, she now does not support the five foot setback. Mr. Ferwerda stated that while he would not like it, he could propose a 10 foot setback rather than the five. The Board stated that they have to vote on what was proposed. Mr. Ferwerda stated that he really tried hard to make everyone happy, and no one is happy, so maybe it would be easier to let the lawyers talk. He stated that he believes that these variance requests meet the five criteria for a variance.

Mr. Andrew asked if anyone had any more comments. Mr. Roscoe Blaisdell, a septic designer, had a comment. He stated that the applicant will be back in front of the Board over the \$20,000 septic system with a line going through it and felt that it was a major problem. Mr. Ferwerda stated that this would be Mr. Witham's problem. Mr. Howland made a motion to close public comment for both variances. Mr. Downing seconded the motion. The motion passed 5-0-0. Mr. Howland felt that these proposed lot lines could cause problems in the future. He felt that it would be unacceptable to move the leach field and the generator especially due to the costs. He stated that the property owners should have recognized this a long time ago. Mr. Yokela pointed out that denying this proposal will not mean that the next one will be much better. Mr. Barham admitted that the five foot setback is not great, however, it may be necessary to establish the necessary emergency access. He stated the he basically considers this to be the best of a bad job. It serves purpose to allow Mr. Ferwerda to go through to the Planning Board. He mentioned that Mr. Ferwerda could re-draw the line so that it goes five feet around the leach field and perhaps get support from both Boards. Mr. Yokela was concerned that if the proposal is changed, the applicant would have to come back for a new public hearing.

Mr. Andrew stated that he would like to see straighter lines. Mr. Howland stated that the property owners do not own the land. Mr. O'Malley asked who maintained the land in the encroachment area. Mr. Howland stated the homeowners are mowing these lawns. Mr. Andrew restated that he does not like the five feet or all of the jogs. Mr. Howland stated that a condition he would like is that the leach field does not move and that someone else besides the homeowner would pay to have the generator moved. He felt that these conditions would soften the blow a little bit. There was some discussion about the leach field. Mr. Yokela suggested requiring an easement. Mr. Howland was not sure if this was possible. Mr. Ferwerda suggested that the Board members put in the approval that a replacement structure would have to meet the 30 foot setback. That way the life of the variance is limited. Mr. Andrew stated that he was not sure this was something the Board could do.

There was some discussion about going through each variance criteria. Mr. O'Malley asked where a new homeowner would put a garden. Mr. Ferwerda explained that there is 20,000 square feet of land for each of these homes, so there would still be room for a garden. Mr. Howland

asked if there would be enough room for the homeowners to put a ladder up on their home. Mr. Ferwerda stated that they are single story homes and that there should be enough room. Mr. Howland restated that he does not think that the existing homeowners should have to pay to move any existing structures after the lot lines are moved. Mr. Yokela and Mr. Howland both felt that Mr. Witham should pay for this to be done. Mr. Howland felt it would be better not to move the leach field at all. He proposed a condition that a setback needs to be drawn around the leach field. Mr. Yokela asked if they could do that. Ms. Wolfe felt that this would be a reasonable condition.

Mr. Howland stated that Mr. Witham needs to find the leach field. He proposed a condition to the variance request saying that if the leach field extends past the proposed lot lines, then the final lot line shall maintain five feet from the established leach field. Mr. Barham stated that once the Planning Board takes jurisdiction of the Planning Board applications, the Board will make sure the Zoning Board's conditions are met. Mr. Barham proposed a condition saying that the lot line should have a minimum of five feet around an established leach field. Mr. Howland felt that this was the best the Board could do and Mr. Yokela felt that solving the leach field issue was important. Mr. Yokela was a little uncomfortable with changing what is proposed on the plans. There was a short discussion about the setback around the generator. Mr. Ferwerda pointed out that the generator is not a permanent structure. Mr. Howland decided to forget about the generator.

Mr. Wolfe suggested to Mr. Howland to be very clear which variance request he refers to in his motion. Mr. Howland made a motion approve the variance request to the terms of Article 9, Section 901 of the Fremont Zoning Ordinance to permit proposed lot lines to be located five feet from existing homes when thirty feet is normally required with the condition that there should be a minimum of five feet around the established leach field. Mr. O'Malley seconded the motion. The motion passed 5-0-0. Mr. Howland made a motion to approve the variance request to the terms of Article 9 Section 902 of the Fremont Zoning Ordinance to allow these proposed lot lines to be less than the required 100 feet in length. Mr. O'Malley seconded the motion. The motion passed 5-0-0. Mr. Ferwerda left at 8:19 pm.

### **III. NEW BUSINESS**

#### **Case #017-006/Special Exception**

#### **Donald and Lorraine Bettencourt seek a special exception to the terms of Article 11 Section 1102 of the Fremont Zoning Ordinance to permit an accessory dwelling unit in their single family home at 36 Senter Circle, Map 3 Lot 169-60-12**

Mr. Janvrin came back as a voting member of the Zoning Board. Mr. Yokela became an alternate member again. Ms. Wolfe stated that the notice for this hearing was published in the Union Leader of July 14<sup>th</sup>, posted two places around town on July 15<sup>th</sup>, and mailed to the abutters on July 15<sup>th</sup>. Mr. Bettencourt explained that he would like to build an accessory dwelling unit in the basement for his daughter. Ms. Wolfe read through the comments that were submitted. The Conservation Commission wrote, "*The Conservation Commission has no findings or comments regarding this application.*" The Fire Chief wrote, "*Access issues for emergency personnel.*" The

Town Administrator wrote, “*Ensure/document (Code Enforcement & DES) adequate septic system capacity). Parking availability for new proposed unit off-street). All proper building permitting. Adequate fire egress approved by FFRD.*” The Planning Board wrote, “*No comment.*” The Police Chief wrote, “*No objections.*” There was also a comment from an abutter. “*Dear Casey Wolfe, Beth P. True-Gibb and myself, Peter W. Gibb about the property belonging to the Bettencourts on the West side at 34 Senter Circle. Having been with the Planning Board 1999-2005 and acquainted with Town of Fremont concerns I can find no reason why the proposed accessory dwelling shouldn't be approved. Best Regard, Peter W. Gibb.*”

There was a discussion about emergency egress. Mr. Janvrin stated that it is basically a remodeling of an existing structure and that it should not need a site walk. Mr. Bettencourt stated that his driveway could park about 20 cars and that parking should not be a concern. Mr. Blaisdell stated that he would need to provide a septic design to prove the system can support the extra bedroom. Mr. Bettencourt stated that the leach field is a little short. Mr. Blaisdell, septic designer, explained that it is state law to prove that the septic system is adequate. Mr. Howland asked if the Board can make a condition on a special exception. Ms. Wolfe said that it is an option. Mr. O'Malley said that the Building Inspector would have the final say about the septic system. Mr. Andrew asked for public comment. There was none. Ms. Wolfe explained that the Building Inspector will receive a copy of the Notice of Decision. Mr. Janvrin made a motion to approve the special exception to Mr. Bettencourt to permit an accessory dwelling unit at 36 Senter Circle with the condition that the owner provides evidence to the building inspector that the septic system is adequate for the extra bedroom. Mr. Howland seconded the motion. The motion passed 5-0-0. Mr. Bettencourt left at 8:40 pm.

### **Case #017-007/Variance**

#### **Joshua and Heather Whitcomb seek a variance to the terms of Article 12 Section 1201.5 of the Fremont Zoning Ordinance to permit construction of a garage 57.24 feet from a wetland when a 100-foot setback is normally required at 46 Scribner Road, Map 2 Lot 14-2**

Mr. Andrew read the case into the record. Ms. Wolfe stated that the notice for this hearing was published in the Union Leader at July 14<sup>th</sup>, posted in two places around town on July 15<sup>th</sup>, and mailed to the abutters on July 15<sup>th</sup>. Mr. Blaisdell explained that the applicant collects cars and would like a place to put them. The proposed spot is a nice flat place for a garage. Mr. Andrew asked what kind of wetlands are nearby. Mr. Blaisdell stated that the area is barely wet. He explained that there are wet plants and wet soil. Mr. Howland asked if the applicant would consider putting in a berm. Mr. Blaisdell felt a berm would be even more of a disturbance. Mr. Andrew asked about the pitch of the roof on the proposed garage. Mr. Blaisdell said that the pitch is towards the wetlands. Mr. Janvrin said that in the past the Board has required crushed stone so that the water is slowed down.

Ms. Wolfe read through the submitted comments. The Planning Board wrote, “*No Comment.*” The Police Chief wrote, “*No Objections.*” The Conservation Commission wrote, “*The Conservation Commission requests a joint site visit to review nature and extent of wetlands prior to the hearing date.*” The Town Administrator wrote, “*Take all necessary/appropriate erosion control measures. If drive goes back all the distance as shown, is there a reason a garage*

*wouldn't go back further to get inside setbacks and thus be somewhat further from wetlands."*  
The Fire Chief wrote, *"I don't have any issues with this."*

Mr. Blaisdell stated that he felt that this was the best place for the garage. The applicant plans to only keep cars in the garage. There was a discussion about choosing a site walk date. Mr. Janvrin made a motion to continue the hearing to Monday the 31<sup>st</sup> at 7:00 pm at 46 Scribner Road. Mr. Howland seconded the motion. The motion passed 5-0-0.

Mr. Janvrin made a motion to adjourn the meeting at 8:58 pm. Mr. Howland seconded. The motion passed 5-0-0.

Respectfully Submitted,

Casey Wolfe  
Land Use Administrative Assistant