

Board Members Present: Chair Doug Andrew, Vice Chair Todd O'Malley, Members Neal Janvrin, and Joshua Yokela, and Leanne Miner, Alternate ZBA Member and Land Use Administrative Assistant.

Also present:

Applicant Roy Tewell of 366 Beede Hill Road
Applicant Representative Tim Lavelle of Lavelle Associates, and Applicant Mark Woodman representing Woodman Family Revocable Trust
Laurence Miner, Building Inspector for the Town of Fremont
Public attendees signed in. I copy of the sign in sheet is in the project folder for 003-062-001

I. WELCOME

Mr. Andrew opened the meeting at 7:02 PM. He appointed Ms. Miner as a voting member for the evening.

II. MINUTES

Mr. Janvrin made a motion to approve the meeting minutes from May 24, 2022. Mr. O'Malley seconded the motion and the motion passed 5-0.

III. NEW BUSINESS

Ms. Miner noted that applications were received in the Case Order listed on the agenda. She recommended that Case 022-006 and 008 be heard after 007 as they have the same applicant. The Board concurred with this procedure.

The Public Hearing for Case 022-007 was called at 7:06PM.

Ms. Miner read the case notice.

Case 022-007 – Public Hearing – 366 Beede Hill Road - Map 5, Lot 055-003 – Variance Request

Applicants Roy and Susanne Tewell have submitted an application for a Variance Request from Article 9, Section 901 (Lot Requirements, New and Expansion of Existing Structures) of the Fremont Zoning Ordinance to replace a shed in a location 15 feet from the side property boundary where a setback of 20 feet is required.

Ms. Miner read the notification report as follows:

Date Published in Union Leader 6/16/22

Date Posted Town Hall 6/14/22

Date Posted at Post Office 6/14/22

Date Mailed to Abutters 6/14/22

Date Posted on Town Website 6/15/22

Mr. Tewell was invited to present his case to the Board. The lot was created circa 1983 when the side and rear setbacks were 20 feet. The shed is located at the end of the split driveway and adjacent to the leachfield of the septic system. Beyond this area the property slopes fairly steeply and is forested. On the other side of the driveway there poorly drained wet area. Mr. Tewell clarified where the property

line was located as it traverses both driveways and he pointed out a ‘common area’ that was part of the property deed. The leach field is not mounded. It is a chambered system.

Ms. Miner asked if the Board wished to conduct a site visit. Mr. Tewell informed the Board that they new shed is already in place. The old shed was removed 1.5 months ago. The shed is larger than the previously existing shed. It is a prefabricated structure with a garage door.

A letter was received in the form of a letter from the side property line abutter where the shed is located (Christine Vance, 364 Beede Hill Road). This comment letter was distributed to the Board and Applicant. The comment letter stated that this resident is “*in agreement with the placement of the shed on his property*” as proposed.

Ms. Miner noted that there were no Department comments.

Mr. Janvrin motioned to open the hearing to public comment with a second from Mr. O’Malley. The motion passed 5-0.

There was no public comment.

Mr. Janvrin motioned to close the hearing to public comment with a second from Mr. O’Malley. The motion passed 5-0.

Ms. Miner asked the Board if they had comments on the responses to the Variance Criteria submitted by the Applicant which were as follows:

- 1. The variance will not be contrary to the public interest because:** *it doesn’t affect anybody’s public access. We will be replacing an existing structure and it will be an improved appearance because it’s a new structure.*
- 2. The spirit of the ordinance is observed because;** *our neighbors are in agreement with the proposed location of the new structure which is being placed where the previous shed existed.*
- 3. Substantial Justice is done because;** *we are going through the proper channels to apply for a variance to place the shed in the same location as the previous one.*
- 4. The values of surrounding properties are not diminished because;** *there was a previous structure in the same place and we are increasing our property value with a new structure, which is more appealing.*

The Board had additional questions or comments.

Ms. Miner made a motion to grant the Variance to Case 022-007 from the terms of the terms of Article 9, Section 901 (Lot Requirements, New and Expansion of Existing Structures) of the Fremont Zoning Ordinance to place a shed in as shown on the plan provided in the application at a location 15 feet from the side property boundary where a setback of 20 feet is required. Mr. Yokela seconded the motion and the motion passed 5-0.

The Case was closed at 7:20PM.

The Public Hearing for Case 022-006 was called at 7:21PM.

Ms. Miner read the case notice.

Case 022-006 - Public Hearing – Map 3, Lot 62-1 with Easement Off Beede Hill Road – Variance Request Applicant Woodman Family Revocable Trust has submitted an application for a Variance Request to the terms of Article 9, Section 902 of the Fremont Zoning Ordinance to construct a single-family residence on a 6.8 acre lot, designated as Map 3, Lot 62-1, utilizing an access easement across Map 3, Lot 62 to Beede Hill Road. The existing lot has no road frontage where 200 feet of frontage is normally required.

Ms. Miner read the notification report as follows:

Date Published in Union Leader 6/9/22

Date Posted Town Hall 6/7/22

Date Posted at Post Office 6/14/22

Date Mailed to Abutters. 6/14/22

The Applicant's Representative, Tim Lavelle of Lavelle Associates, was invited to explain his request for Variance. Mr. Lavelle provided copies of the 2 easement sheets recorded at the Rockingham County Registry of Deeds.

As a Point of Order, Mr. Janvrin informed the Board and the Applicant that he recused himself from any discussion by the Select Board on this application by going so far as to leave the building while the application was discussed. Both the Board and the Applicant recognized this information and communicated that Mr. Janvrin's participation as a member of the ZBA on these cases do not present any conflict of interest.

Mr. Lavelle stated that they have a lot that is non-buildable. An easement across Map 3, lot 62 will provide access. A septic design was also provided to show the location of the proposed house relative to the property boundary. Since the Planning Board approved the Lot Line Adjustment, a driveway easement was recorded at the Rockingham County Registry of deeds. The easement shown is to 350 to 375 feet long and 30 feet wide A driveway over 300 feet needs to be NFPA code needs to be at least 20 feet wide. In NH you need a driveway 16 feet wide with 20 feet clearance, so they are planning for 20 feet wide driveway. The proposed building lot meets all zoning requirements except for the frontage. There is a waiver that will need to be signed per 674:41. They are in receipt of the letter from the Select Board including requirement for Waiver of Liability. The Applicant is in agreement with conditions as stated in the letter.

Mr. Janvrin inquired about any plans for Map 4, Lot 55. Mr. Lavelle stated that lot is under different ownership and there are no plans for that lot at this time. Ms. Miner clarified that Map 4, Lot 55 is non-conforming with frontage on Poplin Drive. It was clarified that Map 3, Lot 62 and 62-1 are owned by the Woodman Family Revocable Trust and Map 4, lot 55 is owned by Cheryl Woodman.

Ms. Miner noted Department comments as follows:

Police – No comments

Road Agent – *Given the length of the driveway I would like to see the driveway be built wider. 16 feet wide would be good. Reason for this request is for emergency vehicles to pass if ever needed.*

Fire Chief – *I don't have any problem as long as there is no more subdividing of the back lot, there is ample turn around for fire apparatus, and it is well marked at the road.*

Select Board – The Select Board's letter was out of concern for safe and all-season access to the lot from Beede Hill should the ZBA grant the variance and waiver. There were 7 conditions requested by the Select Board as follows:

- 1. A Waiver of Liability (as prepared by the Town and approved by Counsel) be signed by the owners and the Select Board, and recorded prior to ZBA approval.*
- 2. The building permit shall meet all applicable fire codes and be done in concert with and at the approval of, the Fire Chief. This should include the driveway and turnaround configuration and construction details. This process should also involve the Town's Road Agent.*
- 3. The driveway number, once issued, be clearly posted at the intersection of Beede Hill Road. The sign marker shall be large enough so as to be clearly identifiable for emergency responders.*
- 4. The Fire Chief and Police Chief shall be consulted and submit approval (with any conditions) in writing to the Building Inspector to accompany the building permit prior to its issuance. This is particular to access concerns, and any other public safety issues that may exist.*
- 5. The Road Agent be consulted in addition to an approved driveway permit from the NH DOT. This should be part of the building permit process. The newly constructed access should conform to the State's applicable regulations and be built such as to conform to the Fremont Driveway Regulations as would be applicable for any new home construction. This might include turning radius considerations and being adequate to support the vehicular traffic. Paving an apron at Beede Hill Road may also be considered.*
- 6. No further subdivision of this lot takes place, and no other dwellings/uses use the easement access without it being upgraded to roadway status.*
- 7. Any conditions and future land use considerations should be recorded as part of the deed for the sake of any future landowner.*

A letter dated June 19, 2022 was also submitted by abutters Andrea Bickum and Edward Wlodarczyk of 36 Poplin Drive, Map 3, Lot 68. A number of concerns were listed regarding Planning Board hearings and approvals and recently recorded plans including a driveway easement. The letter also provided references from the Fremont Zoning Ordinance and NH RSAs.

Mr. Janvrin inquired if the driveway was upgraded to a private road whether it would be different and significantly more difficult for the Applicant. Mr. Lavelle noted that it would need to be built to town standards and would be harder for the Applicant.

Ms. Asked if the Applicant considered modifying the lots to gain frontage. Mr. Lavelle explained that to gain the required frontage Map 3, Lot 62 they would lose frontage required for the shed, septic on Map 3, Lot 62, and the house on Map 3, Lot 62 so it made more sense to proceed with the easement for driveway access. Mr. Woodman explained that the state is reviewing the application for driveway permit and that there is enough line of sight. He has not obtained approval yet. Mr. Lavelle noted that

the driveway is gravel and stable as is and Mr. Woodman stated he is prepared to upgrade they proposed entrance if requested.

Mr. Janvrin motioned to open the hearing for public comment with a second from Mr. O'Malley. The motion passed 5-0.

Ms. Andrea Bickum of 36 Poplin Drive addressed the Board. She had sent comments and guidance on 674:41 and was concerned about the process in general. She is not opposed to using the land for residential, but as a land locked parcel with a driveway easement placed by the applicant and not approved by the Planning Board. She stressed that according to the excerpts from "A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails" (provided with her comments) that "so far there has been no NH Supreme Court case on what 'practical difficulty' means." There was discussion among the Board members and Ms. Bickum regarding the previous Planning Board decision, recording of the easement, and the application of the criteria described under RSA 674:41.

Mr. Lavelle responded to the comments made by Ms. Bickum regarding the decision by the Planning Board and the applications before the Board now. He noted that the process has been different in other towns, but that he agreed with the process as presented for this site.

Mr. Ed Wlodarczyk of 36 Poplin Drive addressed the Board. He expressed that he wanted the Board to recognize that the mere lack of frontage does not meet the criteria of 'practical difficulty'.

Mr. Yokela proposed that the Waiver (Case 8) should come before the Variance (Case 9). There was discussion about the sequence of applications.

Ms. Miner commented that the process for obtaining frontage on Beede Hill Road from Map 3, Lot 62 would make the lot more conforming and the process less arduous than the application process before the Board now. Mr. Lavelle commented that they are working to make the lot more conforming and that conformance with the Frontage requirements would require at least 3 variances (septic, shed, and house) and a waiver for the driveway. Mr. Woodman noted that that the roadway slopes just before the proposed entrance so the location of the easement is the best location along Beede Hill Road.

Ms. Miner asked if the Board was interested in a Site Visit or if the Board wanted to go through the criteria.

Ms. Bickum, 36 Poplin Drive, asked if the Board would consider input from legal counsel. The Applicant responded that Town and Applicant legal counsel have provided comment on this project.

Ms. Miner motioned to close the hearing for public comment with a second from Mr. Janvrin. The motion passed 5-0.

Mr. Lavelle read the responses to the Variance Criteria submitted by the Applicant as follows:

- 1. The variance will not be contrary to the public interest because:** *The proposed driveway and dwelling and driveway will not interfere with the public right of way.*

2. **The spirit of the ordinance is observed because;** *The ordinance for Frontage is to address density by creating good space between homes and will not be adversely affected. The two homes will be separated by more distance than many in town.*
3. **Substantial Justice is done because;** *allows for productive use of an existing property by fixing the mistake made in the past.*
4. **The values of surrounding properties are not diminished because:** *a single family dwelling will be on a lot that is twice the required size in the zone.*
5. **The values of surrounding properties are not diminished because ...**
 - i. No fair and substantial relationship exists.... *Response: The property exists without frontage and access has been obtained. AND*
 - ii. The proposed use is a reasonable one; *The property will have a driveway on Beede Road.*

The Board decided that a site visit was not necessary at this time.

There was discussion about review and approval of legal documents related to Board approval, if granted and other properties in town including Martin Road and Pollinger Road.

There was discussion about more detail regarding the easement and the future plans for deeding an easement to another property owner. Mr. Lavelle suggested the Applicant provide a sample easement deed.

There was discussion about conditions of approval and the specific language based on comments by the Select Board, Road Agent, and Fire Chief.

Rather than move forward on this hearing the Board decided to get Town Counsel input on the sequence of cases, applicability of 674:41 II, and which conditions would apply to the variance versus the waiver request. The Board also agreed that a sample easement deed should be provided, but the timing of its submittal was uncertain.

Ms. Miner motioned to continue the hearing for Case 022-006 to Wednesday July 13, 2022 at 7:00PM at the Town Hall in the Basement Meeting Room. Mr. Yokela seconded the motion and the motion passed 5-0.

Ms. Miner opened Case 022-008 at 9:08PM

Case 022-008 - Public Hearing – Map 3, Lot 62-1 Easement Off Beede Hill Road – Waiver from Administrative Decision

Applicant Woodman Family Revocable Trust has submitted an application to Appeal an Administrative Decision. The Appeal is to request a waiver to allow a building permit to be issued for a lot that has no frontage on a Class V road pursuant to RSA 674:41 II.

Ms. Miner motioned to open the hearing for public comment with a second from Mr. Janvrin. The motion passed 5-0.

Ms. Andrea Bickum of 36 Poplin Road addressed the Board and again referred to 674:41 criteria, the interpretation and analysis of the interpretation of standards as presented in the “Hard Road to

Travel” attachment as provided earlier with Ms. Bickum’s comment (see page 3). She also again asked the Board to consider input from Town Legal Counsel on the application. She doesn’t have a problem with building on the parcel, but has an issue

Ms. Miner motioned to close the hearing for public comment with a second from Mr. Janvrin. The motion passed 5-0.

Ms. Miner motioned to continue the hearing for Case 022-008 to Wednesday July 13, 2022 at 7:00PM at the Town Hall in the Basement Meeting Room. Mr. Yokela seconded the motion and the motion passed 5-0.

Respectfully Submitted,

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

Leanne Miner, Land Use Administrative Assistant