

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 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. A 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 noted that Ms. Miner is still a voting member for these cases.

II. CONTINUED BUSINESS

The Public Hearing for Case 022-006 was called to order at 7:04PM.

Ms. Miner read the case notice.

Case 022-006 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 noted that at the previous meeting on June 28 this case was heard and continued to this evening. At the June 28 hearing the following items were heard:

1. Public notification report was read.
2. Applicant presented their case and criteria.
3. Applicant provided a recorded Easement Plan (D-43338) consisting of 2 sheets and the Lot Line Change Plan that was conditionally approved by the Planning Board.
4. Department comments were read.
5. Requests were made to consult with Town Counsel.

It was noted that there were 4 members of the ZBA present at this time. The Applicant was asked if they wished to proceed or wait until there was a full Board meeting. The Applicant opted to continue with the 4-member Board.

Ms. Miner distributed and provided an overview of the following new information:

1. Town Counsel comments via email dated Thursday June 30th
2. Email from Ms. Miner via email July 5, 2022 summarizing feedback from Town Counsel and RPC and proposing procedure for this evenings continuation of Public Hearing.
 - a. Ms. Miner read her summary of feedback from Town Counsel - regarding applicability of RSA 674:41, II and the order of review and appropriate placement of conditions. There

was also an inquiry about how to address an easement requirement given common ownership.

- b. Ms. Miner read a summary of feedback from the RPC regarding public comment in a continued hearing.
3. Email response from Town Counsel regarding specific questions on RSA language “street giving access to the lot”
4. Ms. Miner also provided the ZBA with a presentation from training on the Class VI Roads prepared by Natch Greyes, Esq., NH Municipal Association including many slides on the applicability of RSA 674:41 to Building Permits in general.

Mr. Yokela arrived at 7:10PM making a full Board of 5 members.

The Applicant was called to present their appeal to the Board. Mr. Lavelle of Lavelle Associates summarized their appeal for a variance to construct a single-family residence on a 6.8 acre lot with no frontage. Mr. Woodman’s attorney has provided a sample Easement Deed which was distributed to members of the Board and includes language for the construction and maintenance of an easement for access to Beede Hill Road.

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 Drive addressed the Board. She had sent a comment letter dated July 10 with further comment on the applicability of 674:41 and her thoughts on the associated criteria. She provided specific comments on the Woodman Variance Application noting her option on the 5 criteria. She also cited the Martin Road case from 2017 questioning the relevance to this case and stating that she didn’t think the Martin Road case passed the criteria for hardship. Regarding the Woodman case before the Board this evening she asked what the Fire Chief submitted as a requirement for the variance and/or waiver.

The Applicant was invited to present any rebuttal. Mr. Lavelle noted that their reference to the Martin Road case was related to procedure and he did not wish to comment on the case further.

Ms. Andrea Bickum of 36 Poplin Drive addressed the Board a second time stating that she brought up comments on the Martin Road case since it was referenced previously in this case.

The Variance Criteria submitted by the Applicant were read during into the record by the Applicant at the June 28 hearing.

Ms. Miner presented her recommendations for conditions of approval for the Variance as follows:

1. Based on input from Town Counsel - Applicant shall provide a sample easement for Town Counsel review and approval prior to the recording of this Notice of Decision.
2. Based on input from Town Counsel - The easement shall be recorded before any building permit is issued.

3. Based on Select Board Item 6 - No further subdivision of this lot takes place, and no additional dwellings or other land uses shall use the easement access without it being upgraded to roadway status.
4. Based on Select Board Item 7 - The conditions of this approval should be recorded as part of the deed.
5. All fees incurred by the Planning Board, including but not limited to consulting, engineering and legal fees, have been paid by the applicant.

Ms. Miner motioned to grant the 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.

This approval comes with the following conditions:

1. Applicant shall provide a sample easement for Town Counsel review and approval prior to the recording of this Notice of Decision.
2. The easement shall be recorded before any building permit is issued.
3. No further subdivision of this lot takes place, and no additional dwellings or other land uses, other than residential, shall use the easement access without it being upgraded to roadway status.
4. The conditions of this approval shall be recorded as part of the deed.
5. All fees incurred by the Zoning Board of Adjustment, including but not limited to consulting, engineering and legal fees, have been paid by the applicant.

Mr. Yokela seconded the motion and the motion passed 5-0.

The hearing for Case 022-006 closed at 7:43 PM.

Case 022-008 was called to order at 7:44PM

Ms. Miner read the case.

Case 022-008 - 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 noted that at the previous meeting on June 28 this case was opened and given the late hour and public present the Board decided to open the hearing for public comment before continuing until a later date in order to get feedback from Town Legal Counsel. Ms. Miner referred to comments from Legal Counsel regarding applicability of the Variance Request and Waiver Request from RSA 674:41, II which was read previously for the benefit of Case 022-006. Ms. Miner also distributed a summary of conditions discussed at the previous meeting in the language appropriate for a decision for the Board to consider.

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

At this point in the Hearing Mr. Yokela made note of an email exchange that occurred when Ms. Miner emailed 2 voting members of the Board, Mr. Yokela and Mr. O'Malley, regarding input to clarify questions for Town Counsel on the procedure that the Board is following. Since that exchange included more than 2 members of the Zoning Board, Mr. Yokela asked that the email be included as part of the hearing minutes.

The Applicant was called to present their appeal to the Board.

Mr. Lavelle of Lavelle Associates summarized the appeal for a Waiver stating that he is following the guidance provided by the Town and Town Counsel. Mr. Lavelle reviewed the Criteria and provided supporting argument for the Board to consider specific to RSA 674:41 II as follows:

- A. Enforcement of the frontage standard would "entail practical difficulty or unnecessary hardship." Response: They couldn't create enough frontage for the lot due to location of house, shed, and septic on parcel 3-62. Frontage would require the Applicant to obtain multiple variances for setbacks on Map 3, Lot 62.
- B. The circumstances of the case do not require the building or structure to be related to existing or proposed streets. Response: The building will enjoy access to the State highway and the entrance will look similar to all drives along Beede Hill Road.
- C. The erection of the building will not tend to distort the official map or increase the difficulty of carrying out the Master Plan. The building lot and location will not affect the map at all since there are no buildings on the official map. Response: Because it will be one building on the ~7 acre lot it doesn't go against the master Plan which dictates 2-3 acre lots.
- D. Erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality. Response: It will have no financial impact on the municipality since the resident pays for the driveway and structures. Will not cause hardship on future purchasers given the recorded documents and easement which will also be recorded.

Ms. 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 Road addressed the Board and again referred to 674:41 II criteria and her interpretation of some of the criteria on this case matter. A detailed summary of her responses were provided in written comment dated July 11, 2022. Ms. Bickum highlighted her comments on the 4 criteria for granting an exception to the RSA as follows: Regarding practical difficulty or unnecessary hardship... This has always been a two-acre land locked parcel until the recent lot line adjustment added acreage to the lot. Regarding the circumstances of the case not requiring the building or structure to be related to existing streets... She disagrees. It does require that the building be related to existing streets. Regarding distortion the official map or increasing the difficulty of carrying out the Master Plan... She felt an exception would set precedent for building on other

landlocked parcels, with limited access, which would create issues for fire and safety services to reach them. Regarding hardship to future purchasers or undue financial impact on the municipality... An easement over another parcel will impact future purchasers and could create civil disputes once the owners no longer own the house and shop on Lot 62.

Ms. Bickum reviewed the analysis of Exception Standards from a Hard Road to Travel, which was distributed to the Board as part of her comment package.

Applicant Rebuttal – Regarding access to the road, the Applicant disagrees given the easement will provide access to the road. It will not have frontage.

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

Mr. Yokela share his thoughts on the related Supreme Court Decision and access and road terminology and an easement being access.

Mr. O'Malley stated that his main concern is emergency access. He felt that is met by the driveway easement as proposed. He further stated that the driveway is relatively short compared to many driveways that exist in Town.

Ms. Miner stated that the Master Plan is meant to prevent a chain of land locked parcels connected by various easements.

Ms. Miner presented her recommendations for conditions of approval to grant the Waiver as distributed in her email of July 5. These were based on Town Counsel comments and Select Board comments. A discussion of the proposed conditions followed.

Mr. Janvrin made a motion to move the question (end debate) on the conditions as proposed. Ms. Miner seconded the motion and the motion passed 5-0.

Ms. Miner made a motion to grant an exception 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 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. This waiver is granted with the following conditions:

- 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 the recording of the ZBA Notice of Decision.**
- 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, shall 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 provide written approval (with any conditions) in writing to the Building Inspector to accompany the building permit prior to its issuance.**
5. **The newly constructed driveway 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. A paved apron at Beede Hill Road shall be included as part of the driveway design and installation. The Road Agent shall be consulted in addition to the NH DOT. An approved driveway permit from the NH DOT shall be provided as part of the building permit process.**
6. **No further subdivision of this lot takes place, and no additional dwellings or other land uses, other than Residential, shall use the easement access without it being upgraded to roadway status.**
7. **All fees incurred by the Planning Board, including but not limited to consulting, engineering and legal fees, have been paid by the applicant.**

Mr. Janvrin seconded the motion and the motion passed 5-0.

The hearing was closed at 8:13PM.

III. MINUTES

Mr. Janvrin made a motion to table approval of the meeting minutes from June 28, 2022. Mr. O'Malley seconded the motion and the motion passed 5-0.

IV. ADMINISTRATION

No cases for July 19, 2022. The Board concurred that the August meeting could be cancelled.

V. ADJOURN

Ms. Miner made a motion to adjourn the meeting at 8:15 PM. Mr. O'Malley seconded the motion and the motion passed 5-0.

Respectfully Submitted,



Leanne Miner, Land Use Administrative Assistant