

MINUTES

The Francestown Zoning Board of Adjustment met on November 2, 2023, to consider and vote on the motion for rehearing filed by Richard Lawrence and Philip Lawrence. Present were S. Jonas, C. St. Jean, S. Brock, S. Pitman, and S. Little, members of the Board; Philip Lawrence and Jason Bielagus, for the applicant; and D. Gelinis, abutter.

The Board reviewed in the order presented the disputes raised in the motion for rehearing. After discussion on each item, the Board concluded unanimously:

1. No board member considered the Auburn V. McEvoy decision in the disposition of the requested variance. Only S. Little had read the case. The remaining Board members thought the case was raised for Mr. Bielagus as information to consider.

2. a. The Board determined that Mr. Bielagus did not reconcile the two notes on the 1988 plan and was ignoring the provisions of the Zoning Ordinance in effect in 1988. The note referenced by Mr. Bielagus was part of the submission and was not added by the Planning Board. The error was the subdivision applicant's in failing to state correctly the zoning requirements. The second note states the subdivision plan is approved subject to the Francestown Zoning Ordinance. The Planning Board notice of decision, dated June 21, 1988, stated the application substantially met the requirements of the subdivision regulations. Additionally, Ms. Gelinis told the Board the marketing of the lots in the subdivision included the notice of the 400' setback for each of the backlots.

b. The Board agreed that the minutes correctly reflect the comments of Mr. Pope and the inference the Board draws from those comments based on the members' knowledge of the pattern of development of new housing in town.

c. The minutes correctly set forth the statements of Mr. Richard Lawrence, both at the public hearing on the first application and to individual Board members at the site visit. The Board members are aware that the cost is not a hardship.

3. a. and b. The Board had reviewed prior to its discussion at the September 27, 2023 hearing, each of the criteria the applicant must meet to be granted a variance. The Board discerns no Board error demonstrated by the applicant in their motion for rehearing. The motion for rehearing is repetitive of the arguments previously made to which the Board disagreed. The Board did consider the Conservation Commission in its multiple discussions during its deliberations. The applicant ignores the role of the Board and falsely exalts the Conservation Commission. The Conservation Commission letter did not reflect the most current GRANIT mapping which showed the highest wildlife habitat within the 100' wetland buffer already cleared by Richard Lawrence. The public interest and spirit of the ordinance exist in the undisturbed zoning ordinance provisions for back lots since the ordinance was adopted in 1985 and on which the Planning Board has approved this and other back lots.

3.c.. The evidence before the Board shows that this lot is one of several back lots approved in this subdivision. Any variance granted would ignore the injustice to the subdivision approval after an extended and protracted Planning Board consideration in

1988 and to the abutting front lot, owned by Ms. Gelinias. Ms. Gelinias told the Board she had investigated the conditions on back lots at the time she purchased her lot.

3.d. The Board had conflicting opinions on the effect of a variance on value. As the burden is on the applicant, the Board was not persuaded the opinion of Ms. Luthi was entitled to more weight than that of Ms. Gelinias, the abutter, and Mr. Pope. Further, the Board felt the opinion of Ms. Luthi was broadly generic and not specifically reflective of the Board members' own perspectives and the Francestown housing patterns.

3.e. The applicant's own professional showed an alternate location which met the requirements of the 400' setback, thus demonstrating no hardship. The 400' setback creates no hardship in itself by requiring a long driveway. The lot has sister back lots approved in the same subdivision, negating any special conditions. The location of test pits was cited to show the subdivision approval in 1988 established that the lot could be built upon to meet the 400' setback, further negating any inference that the Planning Board had approved a lot which required a variance to be developed for a single family house. The GRANIT mapping was referenced in the Conservation Commission letter but upon investigation the Conservation Commission did not have the latest publicly available mapping.

4. The Board did not require multiple locations. The only alternate location was shown by the applicant as part of their submission. The Board made no requirement beyond the applicant proving that the variance was required for the lot to be developed. The applicant showed that the lot could be developed without the requested variance. The Board specifically noted to the applicant that a special exception for wetlands driveway crossings was permitted under the ordinance and that process did not establish special conditions as wetlands driveway crossings are a common subject of Board considerations. The wetlands setback issue for the proposed structure is common to both locations and not persuasive to the Board for the requested location by variance.

5. The Board did not determine that the approved subdivision plan precluded a variance as requested and argued by the applicant. The Board denied the variance on the grounds the applicant failed to meet each of the statutory criteria. The Board did not consider the effect of the lot having been approved as back lot in 1988 and the issue of whether that approval barred the grant of the variance request in 2023.

6. The applicant first raises the issue of municipal estoppel in the motion for rehearing. Municipal estoppel is beyond the Board's statutory authority.

7. The wetland encroachment for the structure is specific to the structure's location. The request to locate the structure by variance having been denied by the Board, the variance request for the wetlands encroachment is moot.

The motion for rehearing is denied by unanimous vote of the Board.

Respectfully submitted

Silas Little

7 November 2023

Approved by the Board 13 November 2023