

## ZONING BOARD of ADJUSTMENT MINUTES

The Frankestown ZBA met on January 13, 2022 to hear the application of Richard and Catherine Eby for relief under the provisions of the non-conforming lot to the Frankestown zoning ordinance. Specifically, relief is sought to encroach on the sideline setback and the wetlands set back in order that a single family residence may be constructed on Tax Map 9, Lot 29.1, Bible Hill Extension.

Board members present: S. Jonas, S. Heath, J. Miller, M. Tripp, S. Little, K. Robinson, B. Howell, and C. St. Jean (attending by phone). Public members present: Mr. and Mrs. Eby, C. Danforth, A. Carr, for the applicants; Mr. and Mrs. Kolden and B. Houghton (for the abutter A. Houghton and C. Houghton), abutters; and L. Kunhardt.

The Conservation Commission submitted its letter that the proposal is a reasonable solution to the development of the lot and suggested conditions for the ZBA to apply if the relief requested is granted.

Mr. Danforth presented the application. A new plan was submitted to incorporate the Cons. Com. suggestions. He reviewed the application on the 5 criteria. The proposal is for a residential structure that meets all NH DES standards. The plan showed graphically the buildable area when only front and sideline setbacks are considered. When the wetlands mapping and the 100' buffer are shown by lines (-...-) all of the house site and all of the septic system site are within the zoning ordinance 100' buffer to edge of wetlands and the only site meeting NH DES setback for the septic system is against the wall as shown on the plan. Mr. Danforth summarized the written materials he had submitted in support that the that the application met the five criteria with the emphasis that the lot is a grandfathered lot and no other location on the lot is feasible without seeking greater relief from the ordinance's provisions.

Mr. and Mrs. Kolden spoke in opposition o the relief sought. Mrs. Kolden addressed the provisions of the ordinance from which relief is sought as being a danger to her well, a potential for surface water degradation and a negative effect on their property value. Mrs. Kolden read extensively from the zoning ordinance's applicable provisions and argued the lot was too small, too close to their property and too close to the wetlands. Mrs. Kolden stated only at the closing this past fall did they become aware the lot 29.1 was not part of the Charbonneau's property.

Brian Houghton spoke against the application and stated that the surface water would be polluted by the development of the lot.

Mr. Danforth spoke in rebuttal, emphasizing that all NH DES requirements are met. The Kolden House is 200' about from the proposed house site, scaled from the Granit mapping and the garage is the closest part of the structure to the site.

L. Kunhardt queried the board on the lot history and the planning bd approval of a lot line adjustment between Hamel and Thompson. By way of explanation the board distributed copies of the Todd research which resulted in the lot being released by the Charbonneau's to the Beys.

Mr. Eby explained the tax card history of the lot and the position of the Assessors that the lot was buildable until determined otherwise.

B. Howell noted that the issue here was the stricter town standards which resulted in the lot being unusable for what is a permitted use in the district and under the ordinance.

After discussion between the board members, the board announced a site walk on January 16, 2022 at 10 am and the resumption of the hearing on January 20, 2022 at 7 pm at the town offices lower level.

#### Site Walk

Board Members present: S. Jonas, S. Heath, J. Miller, C. St. Jean, S. Little. Public present: C. Danforth, Mr. and Mrs. Eby, applicants; Mr. and Mrs. Kolden, abutters.

Mr. Danforth walked into the lot with a couple members to show the location of the house and septic system. When he returned to the road, all were informed where Mr. Danforth stood was where the site on the plan was.

The board and the public viewed the more northerly culvert which discharged an intermittent stream onto the lot and which is shown on the plan as necessitating the requests for the setback relief.

#### January 20, 2022

Board members present: S. Jonas, S. Heath, J. Miller, M. Tripp, C. St. Jean, K. Robinson, S. Little. Public present: C. Danforth, A. Carr, Mr. and Mrs. Eby for the applicants; Mr. and Mrs. Kolden and B. Houghton, abutters: Mr. and Mrs. Boldwin.

Two letters were received by the board after the hearing on the 13<sup>th</sup> of January. One from Abigail Arnold in support and providing some history and one from Mrs. Kolden presenting her opposition grounds. Copies were provided to the public that requested a copy. The letters are part of the file and were not read aloud at the hearing.

Mr. Danforth distributed a satellite overlay showing the lot 29.1, the Koldens' lot and the location of the proposed house/septic system site. By scale, Koldens' attached garage is 256' from the house site. The town sideline setback is 50'. The Kolden house/garage is within both the front setback and side setback as shown on the Harry Murray Plan, 1994. From the Murray Plan under present zoning provisions, the Kolden lot is substandard and can not be subdivided

Mr. Danforth summarized his professional credentials and the extensive review of the lot to determine an alternative and less intrusive site. None exists unless greater relief from front and side setback is requested. The effect of the setback lines is shown as the triangle on the plan submitted.

Mrs. Kolden presented some of the points she covered in her letter. She discussed the change in the assessment in 2013 which lowered the ad valorem value. She stated she spoke the NH DES. From her report of that conversation, it appears Mrs. Kolden misread the plan and the boundaries of the wetland and wetland buffer. She stated what is proposed is not consistent with the neighborhood, does not satisfy the public interest, and in her opinion devalues her property: house on slab, no area for out buildings, loss of privacy for her property and the threat to the wetlands from chemicals commonly used by residential homeowners. She raised a concern of clearcutting the lot for the house and challenged Mr. Eby's following the board members and Mr. Danforth into the lot.

Mr. Eby stated the only information he relayed was the location of the stone wall being the common bound between this lot, 29.1, and the Koldens.

The board closed the public participation in the hearing and proceeded to deliberations. A preliminary read on the board members' positions was a split 2 for (S. Heath and S. Little) and 3 opposed (S. Jonas, J. Miller, and M. Tripp). The opponents did not offer a motion to deny with a statement of reasons. Mr. Heath offered a motion to approve the variance requests with conditions as outlined in the Cons. Com. letter. Mr. Heath emphasized the grandfathered status of the lot and that the relief requested posed no harm to the objectives of the ordinance and to the abutters. After discussion the board decided to defer its decision until the site can be viewed in the spring. Mr. and Mrs. Eby agreed to the delay in making a decision.

The site walk was announced to be on May 7, 2022 at 10 am. The hearing will resume on May 12, 2022, at the town offices, lower level, at 7 pm

Submitted

Silas Little