

August 20, 2020, 4:30pm

**Franconia Zoning Board of Adjustment
Meeting Minutes**

ZBA Members Present: Peter Grote (Chair), Phil Krill (Vice-chair), Susan Retz, Brian Williams, Alicia Shambo, Keith Batchelder, Alex Peoples.

Others Present: Jenny Monahan, Allan Clark (Building Official), Gordon Johnk, Corey McPhee (Applicant), Tim Clough (Applicant), Kim Cowles.

A meeting and public hearings of the Franconia Zoning Board of Adjustment (ZBA) was held on Thursday, August 20, 2020, at the Franconia Town Hall.

The meeting was called to order at 4:30pm by Chair Peter Grote.

Public Hearing #1:

Application for a variance from Article III, Section 3 of the Franconia Zoning Ordinance filed on July 29, 2020 by Corey McPhee for Tax Map 28 Lot 73, 36 Woodchuck Trail, to allow for the installation of a hot tub with reduced setbacks.

The Chair opened the hearing and explained the rules of the hearing to all in attendance. He asked if any of the members had a conflict of interest with the case before them and all said they do not. He next referenced the ZBA by-laws and said that any applications before the Board are not complete until they are examined by the Board and deemed to be complete.

The Chair asked the applicant if there were any conflicts of interest with the board members and if he felt he would receive a fair hearing. The applicant confirmed there were no conflicts and that he felt he would receive a fair hearing.

The applicant explained that he would like to install a hot tub on his property at 36 Woodchuck Trail that will be within the 20 foot setback by 5.5 feet. He said that the steep terrain of the property and septic tank location prohibit a hot tub from being installed in a different location on the property. Abutter David Fitzgerald, whose property will be closest to the hot tub, provided a letter stating that he has no objection to the hot tub installation. The letter was circulated and the Chair read the following portion aloud, "We are not concerned about its impact on our property as it is only 5.5 feet beyond the setback requirement and the angular property line leaves the improvement more than sufficient distance to our home." The applicant then showed the members a picture of the property and explained where the hot tub would be installed in relation to his home and his neighbor's property line.

There was a brief discussion about how close the abutter's house is to the property line. The applicant did not take a measurement but said the 20 foot setback is met on the abutter's property. Alicia Shambo said she is familiar with the property and agreed that the abutter's house is at least 20 feet away from the property line.

Brian Williams asked if any abutters were present and there were none. Jenny Monahan confirmed that all abutters were notified by certified mail and the notification requirements were met.

Building Official Allan Clark asked to be recognized and said that due to the size of the lots at Mittersill there will always be setback issues there. He said he is aware of where the McPhee/Fitzgerald property line is and the topography of the property makes the proposed hot tub location fairly private. He said that one thing the board needs to keep in mind with Mittersill is storm water drainage because of the steep terrain. Allan said that the hot tub installation will not affect storm drainage between the two properties and the applicant's request is reasonable.

After the Chair confirmed there were no further questions or discussion from the board, the conditions for granting a variance were reviewed with the ZBA members and all agreed that the conditions were met.

The Chair made a motion to grant the variance. Phil Krill seconded the motion with all voting in favor. **Motion passes.**

Public Hearing #2:

Applications for three variances from Article III, Sections 13 & 14 and Article 5, Section 1F of the Franconia Zoning Ordinance filed on July 28, 2020 by Tim Clough for Tax Map 14 Lot 102, 115 Main Street to allow for the construction of a wireless internet tower with reduced setbacks, exceeding the height maximum and a deck addition in the flood zone.

Variance Application #1 (Article 3, Section 13 – Setbacks)

The applicant introduced himself as Tim Clough and said he is the property owner at Iron Furnace Brewery and a board member of Mountaintop Telecom.

The Chair commented that he found the application sparse and Keith Batchelder agreed. Keith told the applicant that the application should be accompanied by labeled photos and detailed drawings that show the location of property lines, setbacks, dimensions, septic systems, structures on the property, etc. that would allow someone unfamiliar with the property be able to understand the applicant's intent.

Brian Williams also said the application was incomplete and maps were needed to show what the impacts would be.

The applicant said there were issues with miscommunications and confusion with the tower and the maximum height requirement. He said the tower was previously erected but then was taken down when he was informed that town approval was needed.

The applicant stated that the tower needs to be taller than the maximum height restriction of 35' to be taller than the tree line and houses so Mountaintop Telecom's internet satellite dish on Cannon Mountain can transmit a signal to the tower that would improve internet capability for residents in the Franconia Valley that receive their internet from Mountaintop Telecom. The applicant explained that the proposed tower will be 44 feet tall and will be behind the Iron Furnace Brewery. The tower will be approximately 5 feet within the setback on the side towards Lafayette Regional Elementary School.

Building Official Allan Clark asked to be recognized and said there was some confusion with what is required for approvals for an internet repeater tower and that Franconia's Zoning Ordinance doesn't address internet towers at all. Because the tower is a structure he required a building permit application be submitted but denied the permit and recommended the applicant applies for the variances. He said telecommunication towers typically require a fall zone that would accommodate the length of the tower in all directions surrounding the structure, but the

internet tower is quite different than a telecommunications tower. He added that it is in the back corner of the property and is 15 feet from the property line.

Susan Retz asked if the proposed height of 44 feet will be high enough to still be taller than the trees as years pass. The applicant said the technology works through trees but the higher the tower is the more effective the tower will be. He confirmed that the tower is currently lying on the ground as after it was erected he was informed that he needed town approval and the tower was taken down.

Building Official Allan Clark said his only concern is that school is starting soon and the tower is an effort to provide improved internet to residents that may need it for remote learning.

Brian Williams said he is concerned about the proximity of the tower to the school and if that posed any safety issues if the tower were to fall for any reason.

Building Official Allan Clark said the tower was not a danger to the school and reminded the board that a site plan review was still required.

Keith Batchelder said while the tower would likely be a good thing for the town and would likely meet the conditions to grant the variance, he found it troubling that the application was incomplete and did not know how the members could reasonably vote for the project without more documented information. He said there are a few options for proceeding: the board could require the applicant to complete the applications and required documents and return at a later time for a new hearing, the hearing could be continued in a few days with the applicant providing requested information.

It was reviewed that the ZBA is looking for a site plan, photographs of the property and the proposed tower site and detailed drawings.

Vice-Chair Krill asked if the tower would provide internet to people that currently have no internet option. The applicant replied that it would not and to keep in mind that the tower is a "line of sight" tower with Cannon Mountain and will provide improved internet to those that receive their internet from Mountaintop Telecom with a line of sight view of Cannon Mountain.

The Chair said that one of the conditions is that due to the case being complicated, approval would be contingent upon the case being reviewed by counsel.

There was no further discussion from the members. The Chair made a motion to continue the hearing subject to the various requests that the board has made. Susan Retz seconded the motion with all voting in favor. **Motion passes.**

Keith Batchelder said there still seemed to be some confusion with what the next steps are and turned to Building Official Allan Clark to determine what he would require to grant the building permit. Allan stated that continuing the hearing was appropriate. He said that because the project is affecting a commercial site, if the height and setback variances are granted it would need to be reviewed under the Planning Board rules.

There was then a brief review of the plan: When the applicant submits the requested documentation the hearing can be continued without having to be re-noticed. Jenny Monahan will let the members know when the requested information is received.

The Chair made a motion that the hearing be continued a week from today, on August 28th. Vice-Chair Krill seconded the motion with all voting in favor. **Motion passes.**

Variance application hearings #1 and #2 will be continued on August 27th.

Variance Application #3 (Article 5, Section 1F – Flood Zone)

Building Official Allan Clark said that this variance application to add a deck in the flood zone is being withdrawn at this time and will be resubmitted later.

There was no further discussion from the members. The Chair made a motion to close the hearing. Brian Williams seconded the motion with all voting in favor. **Motion passes.**

After the hearing was closed and the regular meeting resumed, there was a brief discussion about correcting Keith Batchelder's information on the website. Following that, Brian Williams asked to clarify something from the July 30th meeting's minutes. The text in question was:

“Based on a previous informal discussion, the Chair said a suggestion had been made by Susan Retz regarding increasing membership of the ZBA from five to six and seeking the approval of the Board of Selectmen to do so”, and the motion that followed, “The Chair made a motion to increase the membership of the ZBA from five to six and seeking the approval of the Board of Selectmen to do so.”

There was a discussion about the reason for increasing membership to six from five. Keith Batchelder said there were five before he came to the board from the Planning Board and he made six, and agreed that there should not be an even number of members. The Chair reviewed that there are five regular members and Alex Peoples and Alicia Shambo are alternates.

The Chair made a motion to retract the motion from the July 30th meeting to increase the ZBA membership from five to six. Susan Retz seconded the motion with all voting in favor. **Motion passes.**

There was no further discussion regarding the minutes, so the Chair made a motion to accept the minutes as amended. Susan Retz seconded the motion. All were in favor. **Motion passes.**

As the meeting was closing, the Chair reiterated that it should be stressed to applicants that full case documentation is needed two weeks prior to a hearing.

Building Official Allan Clark commented that the law states that the ZBA is allowed five regular members and as many as five alternate members, so the membership is correct and the board is fully staffed.

With no further discussion, the meeting was adjourned at 5:36 pm.

Respectfully submitted,

Jenny Monahan
Secretary, Franconia Zoning Board Adjustment