

**DRAFT MINUTES**  
**FRANCONIA ZONING BOARD of ADJUSTMENT**  
**MEETING**

**Wednesday, May 22, 2013**

**Board members present:** Don Lawton, Melinda Richmond, Ken Mosedale, Mary Fowler, Lydia Cumbee & Sharon Hoyle (alternate member).

**Others present:** Christina & John Gargano, Andy Smith, Anne Edwards, Edward Clough & Gardner Kellogg.

A meeting of the Franconia Zoning Board of Adjustment (ZBA) was held on May 22, 2013 at the Franconia Town Hall.

Don Lawton called the meeting to order at 6:00 PM.

**Acceptance of Minutes from April 10, 2013 Hearing:**

Mary Fowler made a motion to accept the minutes as written from the April 10<sup>th</sup> meeting. Melinda Richmond seconded it and the minutes were accepted as written.

**Hearing for Anne Edwards:**

Don Lawton the ZBA Chair opened the hearing and went through the checklist for accepting the application. He first read a letter submitted by John & Christina Gargano stating that they did not wish to have their names on the application and had no communication from anyone prior to seeing the hearing notice that would let them know their names were going to be put on the application. Gardner Kellogg spoke to this and apologized for the miscommunication. Mr. Kellogg was under the impression that the Gargano's wanted to be on the application although he had no written or verbal communication from them to back this up.

Don Lawton let the Gargano's speak to the fact that they were erroneously put on the application and explain how they ended up being at the hearing with the ZBA. In October of 2010, the Gargano's bought the property they are currently living in at 7 Mountain View Road, Map 24, Lots 46 & 49 and were under the impression that they purchased both lots. There was some mention of the two lots not being separated on the deed but the Gargano's were told it would be taken care of later. It was later brought up by a member of the Planning Board that these two properties were never legally subdivided even though the town had them listed as two separate parcels and were taxing them accordingly. There was some further miscommunication between the Gargano's and Anne Edwards & Andy Smith of Peabody and Smith who proposed that he would have the land surveyed and submit the application to the town for a subdivision and that the Gargano's should agree to pay a portion of this. On March 19<sup>th</sup> 2013 a letter was drafted to Anne Edwards from the Gargano's outlining that a survey had been done months ago but nothing had moved forward and asked that action be taken ASAP. The Gargano's were also against paying for any of this process feeling that this matter should have been taken care of before they purchased the property or during the time of the transaction.

Andy Smith & Gardner Kellogg both spoke to the application stating that the deed does reflect only one lot owned by Anne Edwards and that the two lots are divided by a public right of way,

Mountain View Road. At the time of the sale two attorneys had researched the issue and determined this was a legal transfer.

Don Lawton and the Board stated that they were trying to meet the criteria of the checklist and the first order of business was to accept the application and determine if there were co-owners and if both parties needed to be listed on the application. The Gargano's stated that they were not comfortable putting their names on the application without seeking legal council first. Andy Smith relayed that there was a source deed and a conveyance deed. The Gargano's submitted a copy of the current warranty/conveyance deed that they were given at the time of closing and which listed Anne Edwards granting conveyance to the Gargano's Map 24 Lot 46 with an excepting and reserving clause to the Grantor (Anne Edwards) for Map 24 Lot 49.

Don Lawton explained that the application and hearing may need to be tabled but that the Board would close the public session to determine this and discuss.

The public session was closed at 6:40 PM

The ZBA discussed the details that had been brought forth and determined that they would treat the application as it would have been submitted originally before the transaction was conducted between Edwards and Gargano because ultimately the parcel had always been recorded as one lot and Anne Edwards was the sole owner. So the Board determined that the application could move forward with only Anne Edwards's name.

The public session was reopened at 6:50 PM.

The Board asked to have the application corrected by crossing off the Gargano's name and adding the reference to the source deed 1391 page 152 recorded at Grafton County Registry which reflected Anne Edwards as the sole owner. This was done and Lydia Cumbee made a motion to accept the application as amended. Ken Mosedale seconded and the application was accepted.

Gardner Kellogg presented the application showing a current map with the subdivided lots and also highlighted ROW's to reservoirs and water lines which are currently the water source for the Gargano's property. The Gargano's voiced concern that there are currently no easement conditions in place stating that they have access to these reservoirs or water lines. Anne Edwards agreed to this continued ROW for the Gargano's and Gardner Kellogg will add this description to the Mylar.

Don Lawton read through the facts of the application: The ZBA did not agree with #3. Literal enforcement of the ordinance would result in unnecessary hardship because the hardship was created by the Town records and not by an independent action of the property. Melinda Richmond made a motion that this statement be removed from the application. Lydia Cumbee seconded and the Board accepted this change.

Don Lawton presented a letter which Melinda Richmond read from Charles McCabe an abutter who was unable to attend the hearing. The letter voiced his opinion of a negative vote for this subdivision. His concern was that the Town would be setting a precedent of creating a subdivision of two non-conforming lots which was against the current zoning. The Board disagreed with Mr. McCabe's opinion due to the fact that these lots had been created before zoning and were grandfathered. The ZBA believed that granting the variance would then allow for the necessary steps to proceed to the Planning Board to obtain a subdivision of the

two lots which was necessary for legal purposes for property owners, registry of deeds and the Town of Franconia.

The Gargano's questioned once the ZBA made their decision whether there was an appeal time. Don Lawton explained that the only people who could appeal the decision would be the applicant.

Don Lawton closed the public session at 7:30 PM

Mary Fowler made a motion that the ZBA grant the variance with the conditions of recording the Gargano's ROW to water lines & reservoirs and the applicant will submit a subdivision application with the Planning Board. The variance does not negate that this as a non-conforming lot. Lydia Cumbee seconded the motion and all voted in favor. The Use Variance was granted.

The meeting was adjourned at 7:35 PM.

Respectfully submitted,

Marilyn Knowlton  
ZBA Secretary