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# Planning Board Decisions Based on Zoning Regulations Must be Founded on Objectively Clear Zoning Non-Conformities

*Ronald Shattuck v. Town of Frankestown*

**Housing Appeals Board Case No. PBA-2021-01**

Friday, May 7, 2021

Ronald and Melissa Shattuck (Applicants) sought approval from the Frankestown Planning Board (Planning Board) for a lot line adjustment and subdivision that would create four new residential building lots. After a site visit and five public hearings the application was denied by the Planning Board. Employing the recently enacted provisions of RSA chapter 679 the Applicants appealed to the Housing Appeals Board (HAB). The HAB has jurisdiction to “affirm, reverse, or modify, in whole or in part, appeals of final decisions” by a planning board on subdivisions or site plans involving “questions of housing and housing development.” RSA 679:5, I. In making its decision the HAB may award all remedies available in the Superior Courts in similar cases, including permission to develop the proposed housing. RSA 679:5, II.

In its decision the Planning Board cited one general and five specific reasons for its denial. As a preamble to its decision the Planning Board asserted that the Applicants' plan did not conform to the general purposes of the town's subdivision and zoning regulations. In addition the Planning Board cited the following specific reasons for its denial: (1) failure to comply with a subdivision regulation requiring identification and due regard for preservation and protection of existing features, (2) failure to provide building envelopes as discussed in the subdivision regulations, (3) failure to provide a sufficient sediment and erosion control plan, (4) failure to comply with zoning and subdivision regulations, the town's master plan, New Hampshire Statutes and applicable Federal laws, and (5) that no substantial benefit would result if the referenced local, state or federal regulations were deemed waived by an approval.

Overall, the HAB concluded the reasons stated by the Planning Board to deny the Applicants' plan were either unreasonable or legally deficient. The HAB concluded the certified record did not disclose objective zoning violations for the Applicant's subdivision. That any change to the property's existing conditions were carried out through the removal of standing timber in compliance with a Notice of Intent to Cut revealing no violation of RSA chapter 227. That the lack of designated building envelopes was not due to an omission by the Applicants and that there was no supporting engineering review requiring erosion and sedimentation controls. Finally, the HAB concluded there were no clearly identified regulatory deficiencies that supported the Planning Board's decision that no substantial public benefits would be granted by approving the plan.

In reversing the decision of the Planning Board, the HAB granted final approval of the Applicants' submitted subdivision plan. This decision of the HAB is subject to a Motion for Rehearing within 30 days of the decision. RSA 541:3.

### **CHECK OUT APPEALS BOARD DECISION!**

#### **Additional Information:**

**Practice Pointer:** If a planning board is to deny a plan due to non-compliance with the zoning ordinance, those must be objectively clear zoning non-conformities, and not generalized statements of a zoning ordinance's purpose. This permits the applicant to appeal any planning board zoning determination to the zoning board of adjustment and satisfies a municipality's obligation to provide assistance to landowners seeking approvals. Planning board members must endeavor to avoid inserting their subjective personal feelings into board decision making.



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