

FALMOUTH PLANNING BOARD MEETING MINUTES
TUESDAY, JANUARY 8, 2008, 6:30 P.M.
FALMOUTH TOWN HALL, COUNCIL CHAMBERS

MEMBERS PRESENT: Tony Calcagni (Chair), Bill Lunt (Vice-Chair), Bernard Pender, David Fenderson, Hugh Coxe, Stan Bennett (Associate)

ABSENT: Jay Moody (Associate)

STAFF PRESENT: Ethan Croce (Assistant Planner)

The meeting was called to order at 6:40 pm.

Stan Bennett was appointed as a voting member for the meeting until David Fenderson's arrival.

1. Approval of November meeting minutes

Bill Lunt moved to approve the minutes; Hugh Coxe seconded.
Motion passed 4-0. (Bernard Pender abstained)

Administrative Actions:

2. Paul Lalumiere Jr. – 50 Ledgewood Drive – Request for re-approval of The Ledges, a 10-lot conservation subdivision. Tax Sheet 512; Map-Lot R04-068; zoned RA & RCZO.

Motion by Hugh Coxe, seconded by Bill Lunt, to approve the Administrative Action item.
Motion passed 5-0.

Agenda Items:

5. Diane K. Dresser – 12 Whispers Way – Request for a private way amendment to add an additional lot. Tax Sheet 220; Map-Lot R03-064-A; zoned Farm & Forest & RCZO.

Ethan Croce presented the threshold issues. As mentioned in agenda notes, the only threshold issue is the right, title and interest of the applicant to place the erosion and sediment controls on the abutter's property as proposed in the plans.

Dana Dresser, applicant, addressed the issue. He said he has spoken with Cole Harris, the abutter. The town wants to put the silt fence up, and the abutter is fine with whatever Mr. Dresser wants to do. The fence is common erosion control. Mr. Dresser just wants to know what the Board wants in the letter from the applicant.

Tony Calcagni asked for clarification that Mr. Dresser had the consent from the abutter, just not a letter stating that fact.

Mr. Dresser said that was correct.

Tony Calcagni asked the Board if they wanted to handle this as a condition of approval, or if they wanted to table the item.

Hugh Coxe and Bill Lunt said that they were okay with doing this as a condition of approval.

Ethan Croce said there is no requirement on the letter being in hand.

The determination of the Board was that they were willing to handle this as a condition of approval.

Ethan Croce presented the key issue of the setback. In the northeasterly corner of the lot, there is a low value wetland. It looks like there is plenty of room for a building envelope, but under section 5.38 of the ordinance, the setbacks from the wetland apply and would need to be shown on the plans.

David Titcomb, representing the applicant, said that he was not aware of a setback requirement for this wetland.

Ethan Croce said that there is a 50 foot setback required from a low-value wetland.

Tony Calcagni clarified that a low value wetland requires a 50 foot setback, and there is no setback shown on the plans.

Bill Lunt suggested a condition of approval that the 50 foot setback be shown on a revised set of plans.

The Board all agreed on that approach.

Ethan Croce said that there were issues for the applicant to address; the applicant tabled prior to the last Board meeting to address some issues raised by staff.

David Titcomb presented the issues. This project was approved in 1999; there was some alteration in 2003 to shift some property lines. The Dressers want to downsize and build a new home. They are proposing to extend the private way to provide frontage for the existing house, and make room for their new house. There are some wetlands, which fall within permit by rule for DEP. They have included a well exclusion zone, showing an approximate location of a well. There were questions about drainage; they have had Oak Engineers do a profile for the road and show some grading, the silt fence, and some sedimentation controls.

Bill Lunt asked about the amount of impact on the wetlands.

Mr. Titcomb said that, including the expansion of the private way and construction of the driveway, there was 1330 square feet of disturbance.

Hugh Coxe asked about the configuration of the two lots; lot B doesn't fully meet the property line, there is a 50 foot section connecting the front part of lot A with the back part of lot A. He wanted to know why that was.

Mr. Titcomb said that the Dressers' wanted to sell the minimum size lot. He didn't think it was 50 feet, he estimated it as closer to 20 feet.

Hugh Coxe said that lot A looks good for an additional lot in the future; he observed that it was a very odd shaped lot. He wanted to know why the applicant was asking for a condition of approval for the road maintenance agreement; he wondered when the applicant was planning on submitting that. He remarked that the Board has delayed submission of these in the past, but he couldn't remember them pushing it off for some later date.

Mr. Titcomb thought it could be done prior to the recording of the plans. He didn't think it was an issue.

Stan Bennett referenced a letter from the Harris' dated 10/30/07 requesting a reasonable buffer of vegetation. He asked Mr. Titcomb if this has been done.

Mr. Titcomb said that they were doing what they can; there is an existing driveway there, and the road will extend past that by only about 100 feet. He said he was sure the best job will be done to keep disturbance to a minimum, especially since this is an area where they will be crossing a wetland.

Stan Bennett asked if it was that 100 foot area that the abutter is concerned about buffering.

Mr. Dresser said that it is existing forest there now; vegetation will only be cut where it needs to be for the driveway, 20-25 feet wide only. The right of way is 50 feet wide; there will be vegetation on both the right and left hand side of the road. He said that the abutter feels that he has illegal drainage coming on to his property from the Woodlands, and he is concerned about more drainage from the proposed driveway.

Stan Bennett was more concerned about the letter's mention of buffering, not drainage.

Mr. Titcomb said that the road would be 16 feet wide with shoulders, and they won't clear beyond that point. He said it would be a limited amount of work in a small area.

Bill Lunt observed that the road was hugging one side of the right of way pretty tightly; it is right up to Mr. Harris' lot on one side already.

Mr. Titcomb said that it exists there already, and that any expansion will be on the other side.

Bill Lunt asked for clarification: he assumes the original roadway stopped in front of lot A, and the driveway went to lot B, and now they are proposing to bring the driveway up to the road standard.

Mr. Titcomb said that was correct.

Bill Lunt asked why the plan is shaded the way it is.

Mr. Titcomb explained that the shading is where the engineer has proposed to begin the road extension reconstruction, following the existing road and going up. There is some re-grading that needs to occur in that area. On the profile it shows that the road follows the existing grade; where it is shaded, at that point, they will begin to re-grade slightly. He reiterated that they are not moving the road, just re-grading.

David Fenderson observed that it looks close to the property line.

Mr. Titcomb said that's where it is today.

Mr. Dresser said that 50 foot right of way starts at the abutter's property line and extends 50 feet into Mr. Dresser's property. Mr. Dresser said that he can put the road anywhere in that 50 foot area.

Mr. Titcomb said that there is no additional clearing in that area because it is not necessary.

They are expanding the private way on the other side in the right of way. The re-grading of the road is what causes it to hug Mr. Harris' land.

Bill Lunt said that he thought it is an increase of what is there, due to re-grading the road, as opposed to a driveway being there. He understood Mr. Harris wanting a vegetative buffer of some kind. He observed that it is not required of the applicant, but maybe Mr. Dresser could place the buffer in exchange for Mr. Harris allowing the placement of the silt fence on his property.

Tony Calcagni referenced Section 5.27g of the ordinance, relating to private ways, which allowed the Board to set a condition of approval requiring the placement of vegetative screening. He didn't feel it was beyond the power of the Board to do that.

Bill Lunt observed that they didn't have the power to make the applicant do it on someone else's land. If they required the applicant to place some vegetative screening on his land, it would force him to move the road. He suggested again that the applicant make a deal with the abutter, agreeing to plant vegetation on Mr. Harris' land in exchange for Mr. Harris allowing the silt fence on his property.

Tony Calcagni asked if the turnaround is close enough to the end of the extended road to meet ordinance requirement.

Mr. Titcomb said that it is far away, but it serves a purpose.

Ethan Croce said that typically that is a question for public safety. This application did go to Chief Rice, and he had no comments. This is somewhat unique due to the length of the driveway after the end of the right-of-way. In the subdivision requirements a hammerhead is required to be at the end of the right-of-way, but there is no specific requirement for a private way.

Tony Calcagni expressed his concern about the setup of lot A; he said it seemed to be done for two reasons: to provide frontage for lot A without extending the private way, and so that the lot could meet the 50% net buildable requirement.

Mr. Titcomb said that the building area was not a factor in the lot configuration, but the configuration does accomplish the frontage requirement. The applicant felt it would create less impact on the property this way. They would have to extend the private way another 250 feet beyond lot B to meet the frontage requirement otherwise, and they didn't feel the need to do that.

Tony Calcagni said that if they took the portion of lot A closest to Woodville Road and added it to lot B, he suggested that the Board hasn't required the full 16 feet of road width when it serves only one lot.

Mr. Titcomb argued that they would be left with essentially the exact same configuration. The Dressers do not want to sign over more land to lot B. They don't want to split out lot A again in the future, either; they want to keep it for themselves. He said that even if they extended the private way another 125 feet, they would end up with the same configuration anyway.

Public comment period opened: no public comment.

Stan Bennett said that he understood the applicant's argument about the configuration of lot A; he said he would like to see a condition to respond to the neighbor's concern about buffering.

Tony Calcagni summarized the issues raised by the Board so far:

- Issue 1 concerns additions to the conditions of approval as follows: a revision of the building envelope shown on the plans to address the wetland setback; an agreement by the abutter regarding installation of a silt fence - there needs to be a letter here; and the road maintenance agreement – Tony Calcagni pointed out that there is not even a draft of this here at the meeting.
- Issue 2 concerns the suggestion of handling the vegetative buffer requested by the abutter by condition: requiring plantings on either the Harris' property or the Dressers' property.
- Issue 3 relates to the Board members' comfort with the unusual configuration of lot A.

Tony Calcagni asked the Board members to each weigh in on these issues.

Bernie Pender said he would like to see the buffer in place. He would also like to see some draft of a road maintenance agreement. He said he would like to see that in front of the Board in some form before the Board continues.

Tony Calcagni said that where there is more than one party that has to sign a road maintenance agreement, it is essential to have a draft. But in this case nothing has been sold yet.

Bernie Pender expressed his concern that after the lot has been sold, the new owner might not be able to get the road maintenance agreement going.

Mr. Titcomb said that he was happy to agree on a condition of approval that before the mylar was signed the road maintenance agreement was signed.

Bill Lunt said that the road maintenance agreement would go with lot B when it was sold. He said he was comfortable with that issue being addressed as a condition of approval, as long as town staff was comfortable. He said he still wanted to see some vegetative buffer. He said he was okay with the configuration of lot A.

Hugh Coxe said that he thought addressing the building envelope was fine with a condition of approval, and the silt fence was fine as a condition of approval. He thought the Board could trust the staff as far as the road maintenance agreement being suitable. It wasn't his preferred method, but it was fine for today. He asked Mr. Dresser where the Harris house is in relation to the plans, and what the visual impact of the road is.

Mr. Dresser described the location of Cole Harris' house, and showed where it is located on the plans.

Bill Lunt asked how much tree growth is between the right of way and the Harris house.

Mr. Dresser indicated on the plans how many trees are between his current home and the Harris house. He said it is a tree line the entire length of the property line. It is old growth pine grove and is quite thick.

Hugh Coxe said that he didn't see where the vegetative buffer will serve much function. If the abutter was here specifying the problem he thought he might see it differently, but it seemed to him that there is a fair amount of buffering already. He wasn't sure the Board could say how much buffering and where without a landscape plan, which he didn't want to require. He said he was not thrilled with the lot configuration, but that, as a private way, it doesn't violate the ordinance.

David Fenderson thought the lot configuration is very creative. He said he was okay with it. He agreed with Bernie Pender on the road maintenance agreement. He wanted to require a draft before the Board went forward. Regarding the plantings he suggested that since the applicant needs a letter from the abutter about the silt fence, at that time if they required some plantings that could be done then.

Tony Calcagni agreed that the road maintenance agreement should be part of the application. He was not interested in a condition of approval here. He agreed with Hugh on the plantings issue. Regarding the lot configuration he said that under the subdivision ordinance the Board could say it wasn't allowed, but under the private way they were dealing with horizontal distance measured between the side lot lines. He was concerned about the potential precedent here regarding the street frontage on a private way. He thought the solution was easy: tapering down the private way. He said that he would require a different, more normal, lot configuration in order to meet the ordinance requirement.

Bill Lunt said that he was not uncomfortable with configuration, because with the lot configuration the way it is, the applicant doesn't have any chance of changing it at a later date; he can't split off the front half. The way it is laid out now eliminates that possibility.

David Fenderson wondered, if the Board required lot B to meet the south setback line, would that create a third lot, thereby changing this to a subdivision.

Tony Calcagni referenced a court case in Maine Supreme Judicial Court which said that it would not create three lots, just lot A in two parts, under the State's Subdivision Statute. He didn't think the Town's ordinance was any different, but it was all rather hypothetical. He said his goal wasn't to prevent a third lot in the future, but to keep bizarre lots from being created, and thereby keep with the intent of the ordinance. He said he wasn't sure what effect this would have on creating a third lot.

Hugh Coxe asked Tony Calcagni for his suggestion for a lot configuration for lot A.

Tony Calcagni said he was looking for a configuration with real street frontage, closer to a rectangular shape, not a W like this one. He was concerned about the precedent of a lot having a strange configuration in order to achieve the required frontage.

The Board discussed the requirement of a road maintenance agreement as a condition of approval, and the fact that there was not even a draft available tonight.

Mr. Titcomb said that he has submitted many private ways without a road maintenance agreement.

Hugh Coxe said he thought the Board has always had a submission, at least a draft. He asked for the ordinance section that refers to the road maintenance agreement.

Ethan Croce said that it is section 5.27d.

Hugh Coxe suggested that the application could certainly be handled as an administrative action item, once the road maintenance agreement was submitted.

The Board agreed that once the road maintenance agreement was submitted, the application could be handled as an administrative action item.

Tony Calcagni asked the Board for a straw poll on the issue of the configuration of lot A.

David Fenderson said that he didn't like it, but he was okay with it.

Hugh Coxe said that he was looking for something in the ordinance for private ways to hang his hat on. He felt that the intent of the ordinance is to avoid these types of lots. He thought that the Board could say that this isn't an acceptable lot, despite that this is a private way and not a subdivision. He wants to see a more normally constructed lot.

David Fenderson asked if the applicant could have a lot A1 and lot A2. He thought that the applicant wanted to keep right, title and interest on the front part of his land, and that was the reason for this configuration.

Tony Calcagni said that he believes that this configuration is because they don't want to extend the private way, so they are getting frontage off the front part of lot A. There isn't a problem with minimum building area, but he said that Mr. Titcomb did acknowledge that this is a means of getting lot frontage without extending the right-of-way. He suggests extending the 50 foot right-of-way, but tapering off the road to 12 feet instead of 16 feet, to serve the back lot. This way the applicant would actually have more 12 foot roadway, but less 16 foot roadway.

Bill Lunt asked Tony Calcagni if he thought the Board could leave lot A the way it is, but extend the right-of-way to the back lot, to provide more normal frontage to the back part of lot A.

Tony Calcagni thought that wasn't a bad idea.

Mr. Titcomb clarified that the configuration was not intended to circumvent any ordinance requirements; it did provide the frontage, but it also allowed the Dressers to retain the parcel so that nothing could happen in there. It meets the requirements and spirit of the ordinance. It meets the frontage; lengthening the right-of-way would cause additional costs to applicant, engineering and surveying fees.

Mr. Dresser clarified that they want the driveway to look like it has been there for a long time. He said that they are keeping the front parcel for privacy and protection.

Tony Calcagni said that he was suggesting that the Board needed real road frontage for the home on lot A. If the applicant wants to extend the private way to provide the frontage, and keep the fee title to the front part of lot A, so that the Board could say that it didn't allow a remote frontage to meet the frontage requirement, that was fine. If they did extend the private way, it would require a 12 foot road, but the applicant would need less 16 foot road, as long as it met the requirement of lot B.

Hugh Coxe said that, in reference to the street frontage definition, this configuration creates two places where that could be measured with the two back lots, and he thought that is not in the spirit of the ordinance.

Mr. Titcomb argued that lot configuration will stay exactly the same, the functional use of the lot will stay the same whether the private way is extended or not.

Tony Calcagni still feels that the applicant could add 12 foot wide roadway, decrease the 16 foot wide roadway, and keep with spirit of ordinance.

Mr. Titcomb was concerned about the expense to the applicant in bringing up what will be essentially a driveway to the standards of a private way. Mr. Dresser wants a rural driveway look, not the look of a completed road. This also addresses the concerns of the abutter: Mr. Harris wants a driveway and not a completed road.

Hugh Coxe asked Ethan Croce about the section 5.27 road requirements. He wondered if there was a required width for a driveway?

Ethan Croce said no.

Bill Lunt asked Ethan Croce if the Board has the authority to require that the part of the roadway in the right-of-way to be to driveway standards instead of road standards.

Ethan Croce said that they could say that no street plan would be required past a certain point.

Bill Lunt said that he was in favor of extending the right-of-way, creating the frontage for the back lot, but not requiring the road to be build up to standards.

Tony Calcagni wondered if the Board had the right to waive the 12 foot wide minimum roadway width.

Hugh Coxe said that the Board is waiving the actual design and construction of the roadway surface. The Code Enforcement Officer allows the driveway to be constructed in the right-of-way.

David Fenderson observed that the Board is actually allowing the driveway to be considered frontage of the lot.

Hugh Coxe said that it wasn't frontage off the driveway; the Board is suggesting that the frontage is taken off the 50 foot right-of-way.

Mr. Titcomb said that the frontage as it stands suits this lot the best. The current design meets the requirement of the ordinance and the desire of applicant to have a rural driveway.

Tony Calcagni asked if the Board can waive down the 12 foot minimum roadway width requirement for a one lot private way.

Ethan Croce said that he was not aware of any actual waiver authority.

Bill Lunt said that, if the Board doesn't have the authority, he was willing to let this go and approve this as presented, as it seems to suit this project best. It makes more sense for the use of the property.

Bernard Pender was concerned that there is a risk of a precedent for strange lots to be created. He thought that the Board should either require the paper street, or require frontage on the other lot.

David Fenderson said that the lot is unusual, but legal. He felt that, unless the Board legally has the power to require the right of way extension, the Board doesn't have the authority to deny it. He understood the precedent issue, but the lot as it is meets the ordinance standards, and therefore the Board doesn't have the right to not support it.

Bernard Pender felt that it should be something the Board could do a waiver on.

Tony Calcagni asked if, in conservation subdivisions, the Board has the right to waive down roadway width.

Ethan Croce said yes, the Board can waive down in subdivisions, but not on private ways.

Bill Lunt observed that the intent of conservation zoning is to get best use of a lot. If the Board can't be creative with the road to maximize the use of the lot, then they have to be creative with the lot configuration. It does the least amount of damage and the least amount of roadwork.

Hugh Coxe said that he was hoping the Board could waive construction of the road, but that it doesn't seem that they can. If it is to be counted as frontage, the ordinance says it must be constructed. Most lots don't have an option of where to get their lot frontage. To be true to the ordinance language, you can't determine that you can create multiple options for lot frontage, then decide which one to use.

Bill Lunt said that this doesn't have a second piece of frontage, because the private way doesn't go up there. To be the least damaging to the project, the Board has to go with what is presented.

Hugh Coxe agreed with Bill Lunt. He thought that this maybe highlights a potential problem with the private way ordinance that the Board should address. This application probably does technically meet the ordinance.

The Board reviewed the conditions of approval, presented by Ethan Croce.

The Board discussed the potential condition dealing with the vegetative buffer requested by the abutter, but felt that it was not necessary.

Mr. Titcomb said that, since they are resubmitting their plans, could they drop the private way down to 12 feet wide from 16 feet wide after the driveway for lot B.

The Board was in favor of this change.

David Fenderson clarified that, when this application comes back as an administrative action item, the only thing that will be there will be the road maintenance agreement.

Bill Lunt said that he was happy for this to be an administrative action item if they are meeting the conditions, with the road maintenance agreement submitted.

Ethan Croce asked if the Board wanted to see this application if the right, title and interest is not ready for the next meeting.

David Fenderson said that it is a condition of approval anyway; the Board could probably approve without it.

Bill Lunt said that the only thing that needs to meet the submittal requirement is the road maintenance agreement. He said that the Board doesn't need to see the right, title and interest agreement.

David Fenderson moved to table the item, Bill Lunt seconded. Motion passed 4-1. (Tony Calcagni opposed.)

Meeting adjourned 8:14 pm.

Respectfully submitted,
Melissa Tryon
Recording Secretary