

FALMOUTH PLANNING BOARD MEETING MINUTES

TUESDAY, JUNE 3, 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 6:31 pm.

1. Approval of May Meeting minutes

Bill Lunt moved to approve the May minutes, David Fenderson seconded. Minutes passed 5-0.

Administrative Items:

2. 469 Doten, LLC – Lot TV4-Tidewater Village – Request for site plan re-approval for an 8,000 square foot commercial building. Tax Sheet 320; Map-Lot U52-006-001; zoned TMPDD.

Hugh Coxe moved to approve the administrative item; Bill Lunt seconded. Motion passed 5-0.

Agenda Items:

3. Thomas Woodruff – 8 Kelley Road – Request for approval of a private way to serve one lot. Tax Sheet 482; Map-Lot U01-211. Zoned RA, LR (Shoreland) and RCZO.

Ethan Croce presented the threshold issues. Mr. Woodruff is proposing to use the exempt lot provision in Section 3.13.8 of the Zoning and Site Plan Review Ordinance to divide his Kelley Road parcel into two lots. The first threshold issue concerns the wetland delineated at the rear of the property: it should be identified as either a coastal, high-value, or low-value wetland. If it is a low-value wetland, then only a 50-foot setback is required. If it is a high-value wetland, then a 75 foot setback and a 50 foot no-disturb buffer is required. If it is a coastal wetland, then a 100 foot setback is required. The applicant has indicated that it is a high-value wetland. The second threshold issue is that the private way plan should show the boundary of the shoreland zone to verify whether or not construction activity will be taking place within the shoreland zone. This has implications on the design of the private way. A Shoreland Zone Permit is required by ordinance for any filling and earthmoving of greater of 10 cubic yards. A written erosion and sedimentation control plan would also be required by the ordinance if there is any road construction in the shoreland zone. Also, roadways and driveways are required to be set back 100 feet from the upland edge of the coastal wetland boundary unless the Board grants relief from that requirement.

Tony Calcagni asked if Ethan's assumption is that this is coastal wetland.

Ethan Croce said that the shoreland zoning map, which isn't survey specific, shows a coastal wetland below the wetland on the applicant's property. It isn't unreasonable to believe that some of the coastal wetland could protrude onto the property.

Tony Calcagni asked how the shoreland zone would be measured in this area.

Ethan Croce said that the shoreland zone includes all areas within 250 feet from the upland edge of coastal wetlands. If this is a coastal wetland, the shoreland zone would encompass almost the whole property, potentially including the building and certainly including the proposed private way.

Hugh Coxe asked if the applicant would still be able to build the private way within the wetland setback.

Ethan Croce said yes, if the Board finds it necessary to access the site's developable area. The Board could also ask the applicant to shift the location of the road.

Hugh Coxe raised the potential for another threshold issue – the abutters' letter submitted to the Board raises the issue of an existing code violation. If this is so, he wondered if that would have some impact on the Board's ability/desire to move forward.

Ethan Croce said he has consulted with the Code Enforcement Officer, who confirmed that there are no code violations on the property.

Hugh Coxe asked if the CEO has gone out based on the letter submitted by the abutters.

Ethan Croce said that the CEO has been out to the site within the last two weeks.

Tony Calcagni returned to the threshold issues – is the Board willing to consider the application without verification of the wetland delineation, and the setback from wetlands.

Mr. Mike Farmer, a civil engineer speaking on the applicant's behalf, talked about the status of the wetland – the questions are is it a high-value or low-value wetland, and is it a coastal wetland. Earlier this winter, Sweet Associates did wetland mapping on the site, and their opinion was that it is a freshwater wetland, shrub/scrub type wetland, and the coastal wetland was 100-200 feet past the property, so not on the site. According to the definitions in the ordinance of high-value or low-value, they concede that this is a high-value wetland, so the stricter setbacks would apply i.e. a 75 foot setback for the building. He asked if that applied to the road construction and Ethan Croce said that yes, it would apply to the private way. Mr. Farmer said that a corner of the fill area of the turn-around could be 60-65 feet from the wetland boundary; the building is in excess of 100-150 feet from the wetland edge. Regarding the issue of the shoreland zone, he looked at the shoreland zone map on the Town's website, and found that most of the lot in question is in the LR area of the shoreland zone, including the building site as well as the private way. They looked in the shoreland zone text in the ordinance, which says that a single family residence is allowed in that zone with a permit from the Codes Office, a private way is allowed with Planning Board approval, and a driveway is allowed with a Codes permit. They are proposing a 12 foot wide road, in terms of the private way. The Planning Board would be considering a road so to speak, but the actual construction would be closer to a driveway.

Stan Bennett said that it sounds logical that it isn't in a saltwater wetland, and is a high value wetland, but as a matter of procedure he wondered if the Board can follow that without a determination by the Town.

Ethan Croce said that typically the Town requires written verification of the wetland classification, but that could be handled as a condition of approval. A condition could be tailored to say that the applicant must provide verification from a qualified professional that the wetland is a high-value wetland and not a coastal wetland. It is up to the Board.

Mr. Farmer said that they were happy to submit a copy of the wetland scientist's letter supporting the statements made.

Hugh Coxe asked what Sweet Associates was saying about the wetland being coastal or not coastal. Mr. Farmer read from the March 28, 2008 memo from Sweet Associates to Mr. Woodruff re: wetlands. This letter does not address the issue of high-value versus low-value wetland. Those discussions have taken place over the phone.

Hugh Coxe asked if it becomes coastal wetland somewhere on the East Coast Trust property. Mr. Farmer said he was not familiar with that property.

Hugh Coxe asked if the water in question is the Presumpscot, and Mr. Farmer said yes, that is the tidal area.

Tony Calcagni asked if Ethan Croce had a copy of the letter; Ethan Croce said he did not.

Tony Calcagni said the plans provided show a 75 foot setback, so they were assuming it was a high value and freshwater wetland. A piece of the hammerhead falls within that 75 foot setback, and he wondered if that was allowable under the ordinance.

Ethan Croce said yes. More relevant than that is the issue raised by Public Works, that the actual travel way is not shown on the plans.

Tony Calcagni asked if there is a problem with the travel way being within the setback.

Ethan Croce said that section 5.38 does give the Board the authority to allow roads within the setback if there is no other reasonable alternative.

Tony Calcagni observed that the hammerhead satisfies other ordinance requirements for the private way. He asked if at least some portion of the property may be shoreland zone.

Ethan Croce said that the Town's GIS website, which is generalized, shows the boundary as not too far away from the 75 foot setback.

Tony Calcagni asked if the shoreland zone permit that they may need comes from the Planning Board or the Codes Office.

Ethan Croce said that any portion of the travel way that falls within the shoreland zone would need Planning Board approval.

Tony Calcagni thought that it would make sense to have the travel way marked to take care of that at the same time.

Tony Calcagni asked the Board how they wanted to handle the threshold issues.

The Board decided to make three conditions of approval which would cover the threshold issues:

1. The applicant should confirm that it is indeed a freshwater, high-value wetland
2. The applicant should delineate the Shoreland zone and show the location of the travel way within the right-of-way;
3. The applicant must apply for a Shoreland Zone Permit if any portion of the actual travel way falls within the shoreland zone.

Ethan Croce presented the key issues. Regarding the drainage pipe issue - Jay Reynolds from the Parks and Public Works Department and Mr. Woodruff have been in contact and have set up a meeting to work towards an agreement surrounding provisions for the maintenance of the drainage pipe. Regarding the design of the road, grading, potential culvert, etc. – these issues could be handled as conditions of approval.

Mr. Farmer said that regarding an easement for Town access to the drainage pipe, Mr. Woodruff supports the Town having some legal rights to have access to the pipe, but if he grants a 30 foot wide easement and the total area of it were deducted from the calculation of usable land, it could make the land un-buildable due to minimum suitable building area requirements, and the whole purpose of the project would be defeated. If that is the case, he wondered if there are other options for the Town to have access, i.e. a license or lease agreement or some legal instrument that would meet the recommendations of the attorneys but fall short of an easement.

Mr. Calcagni asked for some specifics of the drainage pipe.

Mr. Farmer described the location of the drainage pipe.

Tony Calcagni asked if the pipe crosses both proposed lots.

Mr. Farmer said no, it crosses just the proposed new lot.

Tony Calcagni said that, if the applicant got the private way approved and subsequently granted an easement, he wasn't sure that technically anything wrong is happening. He thought they could grant an easement for just access, and not a 30 foot area that gets deducted. He asked if there was any waiver ability of the 75%, but Ethan Croce said that there isn't, so Tony Calcagni then suggested that no easement area be stipulated. He thought they could have a maintenance agreement without a 30 foot corridor.

Bill Lunt asked if they know if the pipe runs under the existing building on the new lot.

Mr. Farmer said he thinks it is to the south side of the building.

Bill Lunt observed that, if there was some kind of maintenance agreement, they would need to know where the pipe is.

Tony Calcagni thought that could be taken care of outside of these proceedings.

Hugh Coxe said that it seemed pretty clear to him that an easement would need to be deducted. A maintenance agreement would seem to make more sense. If they come back and show that the shoreland zone covers a large portion of the property they need to come back to the Planning Board for a Shoreland Zone Permit.

Bill Lunt asked if that requirement is tied to the recording of the mylar; Tony Calcagni said it was.

David Fenderson said that it appears from the letter by Tony Hayes that there exists an agreement for the drainage system.

Tony Calcagni said that the Board is not getting into whether the town has existing rights or not; it is not their scope. He thought that an easement that doesn't require a specific easement area would work. A license could be drafted as well.

Public comment period opened:

Janice Couture of 4 Kelley Rd., passed around a diagram showing the drainage pipe. She addressed at length her concerns about a potential code violation on the property with the building on the proposed second lot.

Janis Gray, 11 Kelley Rd., expressed her concern about the drainage. She lives on the opposite side of the Woodruff property, and said that the storm drain on the corner of Route 1 and Kelley Rd. frequently backs up. She said that Public Works is coming this summer to fix it. The pipe comes down Kelley Rd. and then down back on the Woodruff property. There was lots of fill put in there recently and she wasn't sure how that affects any of that area where the storm drain empties out. She was concerned about construction work affecting the drainage. She also would like confirmation that the existing building on Kelley Rd. would revert to a single family dwelling.

Tony Calcagni explained that one of the proposed conditions of approval that hasn't yet been addressed is the condition that the existing multifamily dwelling be converted to a single-family dwelling.

Steve Merrill of 13 Greenway Drive explained that he is the abutting property owner to the proposed private way. He was concerned about the dust, lights, and noise on the private way. He referenced Mr. Farmer's March letter, which mentioned the removal of a big pine tree on the corner of the Merrill lot. In Mr. Farmer's letter it said that there was 30 feet between where the road would come out on Greenway Drive and a storm drain. On the southeast pin of the plan there is a tree there. The letter says that the residents were in favor of that tree coming down. He didn't know why that tree would have to come down with 30 feet to the storm drain. He was also concerned about access; the application is for access for a single family dwelling, but he wondered if the house on 8 Kelley Rd. would have access from the private way. If that is the case the private way would access two lots. He was also concerned about a possible third lot somewhere down the road. Regarding the letter submitted by another concerned abutter, he said he shared their concern about granting approval to a person who pushes the envelope. He wanted an agreement from Mr. Woodruff that there will be no further development of the property.

Ms. Couture asked about high-quality versus low-quality wetlands. There should be no development within the setback, and there should be no turn-around within the wetland. She pointed out that, on the private way checklist that is required by the Town, there are two stars on the applicant's submission indicating information that was not submitted.

Tony Calcagni explained that the property is on public water and sewer so that covers those issues. Ms. Couture stated her concern about the drainage in that area.

Public comment period closed.

Tony Calcagni asked Ethan Croce if he had confirmation from the Codes Enforcement Officer regarding the alleged violations, and Ethan Croce said he had.

Stan Bennett asked if the Town is saying that it is not a violation of the ordinance to get approval to build a garage, and then build bedrooms/bathrooms in that building.

Ethan Croce said that he couldn't speak on behalf of the Codes Office, and he hasn't been on the site.

Tony Calcagni asked if it is possible that there is no residence there.

Ethan Croce said that the CEO believes that no one is living in the residence; whether that is the sole criteria that the CEO used to verify it as not being a dwelling, he couldn't answer.

Tony Calcagni asked for clarification that if the private way is approved a dwelling could be there. If there was is no dwelling unit there, upon approval of this application a unit could be there. He doesn't condone building first and then coming to the Board, but he observes that an approval here would fix the alleged violation. There can be a residence if there is a private way.

Ethan Croce confirmed those statements.

David Fenderson asked if that is the only dwelling on that lot, and Tony Calcagni said yes

David Fenderson assumed that if that is the case that there would be no other building envelope available on that lot

Hugh Coxe said that they would have to come back before the Board.

Tony Calcagni observed that, based on the buildable area calculations, it doesn't seem possible.

David Fenderson asked if, based on that, the barn is the dwelling for that lot.

Tony Calcagni said that was his assumption and Ethan Croce agreed.

Bill Lunt observed that the ordinance allows an accessory structure. He asked if there could be an accessory unit on lot 1.

Ethan Croce said it was possible; it would require Zoning Board conditional use approval.

Bill Lunt asked if the owner could make the existing barn an accessory and build a new house.

Ethan Croce said that there are provisions limiting the size of accessory units, but that it might be possible.

Bill Lunt said that he understood that a building is considered a dwelling if there is a kitchen in it.

You can't have a building with a kitchen and say it isn't a residence. The permit says specifically that a kitchen is not allowed without approval from the Zoning Board. Therefore it would seem there is a violation, and if so, he wondered why they are here.

Hugh Coxe asked Mr. Woodruff if there is a kitchen there.

Mr. Woodruff, the property owner, stated that this has been a long project. It started as an idea to build an attached accessory structure. He already owned a two-family dwelling so he couldn't attach an accessory, but he identified with the Codes Office staff, prior to conservation zoning, that he could have two lots with a private way. He had a permit for the barn, which is constructed and he has never stated that it would be anything other than a dwelling. He got the cart before the horse and has been trying to rectify it ever since.

Stan Bennett asked if there is a kitchen in it.

Mr. Woodruff said that there is a kitchen, but there is no certificate of occupancy, and he has never lived in it.

Bernie Pender asked if he has spoken with the Town trying to rectify the issue with the kitchen and the building permit.

Mr. Woodruff said he has spoken with the Town staff trying to make this a legal space.

Bernie Pender asked what they have told him to do.

Mr. Woodruff said it is not a residence; the permit was for a barn/workshop only. The upstairs is unused.

Hugh Coxe asked if he had Zoning Board approval for the kitchen.

Mr. Woodruff said he didn't know how he could when he didn't have permission to build a dwelling unit.

Hugh Coxe said that the April 28, 2006 permit has permit conditions, i.e. a kitchen is not allowed.

Mr. Woodruff said he occupies one half of the two-family home. He has since 2006. His plan was to move into an energy-efficient space. He has a letter from Tom Lister regarding the plumbing fixtures which he has showed to the planning staff. It was always his plan to have a dwelling unit here. His understanding was that he only needed 70 feet, not 75 feet. He felt lucky that the Payne's were agreeable to sell him the 50 foot right-of-way. Resource conservation took effect during this process, shrinking the back lot from two available lots to one.

Bernie Pender asked if he went to the Codes Office and asked to revise the building permit.

Mr. Woodruff said that no, he did not. He was told that it could not be done until he had a private way.

Bill Lunt asked if there was existing sewer in the building.

Mr. Woodruff said there is. There are two sewer lines and two water lines, based on the thought that there were would be two potential lots.

Bill Lunt asked if there was a water meter on the road.

Mr. Woodruff said that there was one meter in the barn, and two meters in the home.

Bill Lunt asked if the duplex will become a single family dwelling. Mr. Woodruff said that was correct.

Bill Lunt asked how far it is from Kelley Rd. to the barn. Mr. Woodruff said it is about 175 feet.

Bill Lunt asked if the Town has a sewer easement from Kelley Rd. to the barn.

Mr. Woodruff said yes, it's drawn on the plan.

Bill Lunt asked if the applicant was issued a plumbing permit to hook up plumbing to the barn.

Mr. Woodruff said yes.

Hugh Coxe said that he thought that the testimony raises significant questions regarding a code violation. This plan will probably alleviate any existing code violation, with the conditions as proposed. He was uncomfortable moving forward with an application with an existing code violation. He suggested tabling until the Board could get a letter from the Codes Office explaining why there is no violation, or if there is a violation explaining if this application will correct it. In ordinance section 4.1 it says that "No structures that require a building permit shall be erected or used...unless in conformity with the provisions of this Ordinance". He thought that perhaps the Board has a duty to have something more than what was received from the Codes Office.

Bill Lunt, Stan Bennett and Bernie Pender all agreed with Hugh Coxe.

David Fenderson said that, if the Board tabled it, when the applicant does come back the other issues that have been brought up should be taken care of. He listed his concerns: the storm drain, the buffering along the Merrill lot, including the tree, there is a significant violation with the code, the wetlands identification and the shoreland zone delineation.

Tony Calcagni returned to Mr. Merrill's question about the proposed private way – he asked if there was a 20 foot setback from the private way to Mr. Merrill's house.

Ethan Croce confirmed that there is a 20 foot side setback.

Tony Calcagni said the private way cannot be constructed as to create a violation on the Merrill lot.

Ethan Croce said that it might be a moot point – the private way is identical to the Merrill side property line, if there is a non-conformity existing already, the private way will not increase the nonconformity.

Tony Calcagni asked if there is no setback requirement from the private way.

Ethan Croce explained that the property boundary is along the southeastern boundary of the private way. The Merrill property will not become any more nonconforming due to the installation of the private way.

Tony Calcagni wondered if the Board can ask that the 12 foot wide road way not be constructed right along the boundary line. Normally they would be looking at a setback from the private way, but if they can't call for that, they can at least ask that the road way not be set against the boundary line.

Bill Lunt said that, if the private way was being created on the Merrill property there would be a setback, but if there is less than 20 feet between the property line and Merrill house, the nonconformity is already existing.

Tony Calcagni asked if there was no setback requirement for a new private way, the setback is just measured from the existing property line.

Ethan Croce believed that was so.

Tony Calcagni wondered if the Board should ask that the road way be constructed a certain distance away from the edge of the Merrill line.

Bill Lunt said that on private ways and streets for any subdivision the buffering issue is something the Board handles all the time. Not only should they ask them to set the road away from the property line, he felt the Board should also require the applicant to set buffering between the road and the Merrill property.

Hugh Coxe said that there is basis in the ordinance to require buffering.

Tony Calcagni said that the applicant at least needs to show the 12 foot wide road way, and he would request that it be pushed toward the northwest line rather than the southeast line.

David Fenderson asked if there is a standard of buffering that the Board requires.

Hugh Coxe observed that a few months ago they had an applicant and the abutter get together and had an agreement about that.

Tony Calcagni said the applicant should show the existing vegetation on the plans, especially the tree referenced by Steve Merrill.

Ethan Croce said the picture included in packet materials shows the tree.

Bill Lunt asked if the lawn mowed on the Merrill property shows the approximate boundary line.

Mr. Merrill said it does.

Bill Lunt would require buffering along the whole right-of-way.

Bernie Pender would agree to some kind of buffer agreement between the neighbors.

Tony Calcagni said the Board could require a plan showing buffering when they come back.

David Fenderson said if there is no standard the Board can't require buffering.

Hugh Coxe said that, to the extent there is a standard the conditional use criteria sets it out. They are looking for a reasonable amount of buffering to screen the use from the abutter.

Tony Calcagni summarized the Board's wants when the applicant returns: 1. confirmation that the wetland is freshwater, not coastal; 2. the shoreland zone shown; 3. the 12 foot roadway shown and oriented further away from the Merrill line; 4. buffering along the Merrill line, and 5. the applicant will make a shoreland zone permit application if needed.

Bill Lunt said that if the Board tables this, then when it comes back, the plan better be complete, and better than it is now. If it doesn't come back complete, he would vote it down.

Ethan Croce asked for clarification of what the Board would like the CEO to explain.

Hugh Coxe said the concern is about the April 18, 2006 permit application, the approval to finish off the existing space, on which there were two conditions – one specifically that a kitchen is not allowed without approval from the Zoning Board. The testimony from the applicant that there is a kitchen seems to violate the conditions of the permit.

Tony Calcagni said that the Board is not in charge of enforcement; the Board needs the letter to explain what has been done if there is a violation, and whether it is appropriate for the applicant to be here before the Board. The CEO may say that for the applicant to be brought into compliance he needs Planning Board approval.

The Board discussed whether or not to solicit the Town attorney's opinion on the alleged code violation, but the consensus was that the CEO's opinion would be sufficient.

Hugh Coxe moved to table the item; David Fenderson seconded.

Motion passed 4-1 (Lunt opposed).

4. Morong Falmouth – 187 U.S. Route 1 - Request for pre-application sketch plan review for renovations to existing car dealership. Tax Sheet 320; Map Lot U07-004-B1. Zoned SB1 and Village Center Overlay.

Ethan Croce explained that Morong Falmouth is preparing to submit an application to the Planning Board for an amended site plan approval to renovate 15,000 square feet of space within the existing building and to add a new entry portal at the front of the building for the Volkswagen dealership. In 2003, the Town Council amended the Zoning & Site Plan Review Ordinance to require site plan review for: “*The alteration, renovation, or change of use of more than 10,000 square feet of gross floor area of any non-residential building...*” (Section 9.1.e) Prior to submitting a formal site plan application, upon recommendation of staff, the applicant is requesting a sketch plan review to solicit the Board’s opinion on the applicability of the Route One and Village Center Design Guidelines to this project as well as the applicability of the site plan review standards. A key issue is the applicability of the Route One and Village Center Design Guidelines – the applicants are asking for relief from some of the guideline requirements regarding landscaping and parking. The applicants need to clarify whether they are asking for relief from any other specific design guidelines. The applicants are also asking for three waivers from the site plan review ordinance relative to buffering, landscaping and parking, specifically 9.24 General Buffers – e.g. minimum berm height of 3’-4’ and additional plantings on top of the berm; 9.26 SB1 District Landscaping - canopy & evergreen trees would interfere with overhead power lines; and 9.28 Other Landscaping which provides a formula to determine the minimum landscaping required within the parking

Other provisions that warrant some discussion are as follows:

- Section 5.4 dealing with buffering around commercial property bordering a non-commercial district;
- Section 9.7 which gives the Board the authority to require underground utilities (there are some overhead lines in the back of the property);
- The minimum required front setbacks are 80 feet by right, but the Board has the right to waive that down up to 50% if necessary to achieve design guidelines. The building is now 80 feet back, with the proposed new entry the building will protrude slightly;
- The row of parking within the 20 foot setback, which provision is waiver-able as well;
- Section 9.14 lays out consolidating curb cuts requirements, which warrants some discussion;
- Section 9.23 requires a photometric plan relative to lighting on the property.

Bill Sowles, co-owner of Morong Falmouth, said they have come here for many projects in the past. They have worked well with the Town, most recently with the service center across the street, which came out well. Parking was brought up many times, but he urged the Board not to look at this property as a parking lot but as a storage facility for inventory. Their challenge is to balance the requirements of the manufacturers, the town, and the wants of the owners.

Dave Richards, architect, presented a slideshow detailing the project. The floor plan of the existing building is structurally four pieces. They are attempting with this renovation to increase the size of the bays; the car manufacturers require that if you are in one section, you can’t see into another manufacturer’s display area. The proposed plan is to create a discreet showroom for each manufacturer with a central client waiting area and support center. Each showroom needs a discreet entrance. Each entrance will not have dramatic prominence over any other. Each entry has some

design requests from the manufacturers; the Volkswagen portal in particular is a branding element that the manufacturers want to see. The building itself, with the blue roof - which they would like to keep - and the colonnade below, creates an almost musical staff, to which they have added additional visual interest.

Ethan Croce asked if the trees shown in the presentation are existing or proposed.

Mr. Richards explained that in the pictures presented the trees hadn't foliated yet. The animation he presented is a guess of how the trees would look when foliated.

Tony Calcagni asked if Mr. Richards had had a chance to review Tom Emery's letter dated May 21. Mr. Richards said he has reviewed it and felt that some of it is ambiguous. In reference to the blue roof he explained that, when the building was done in 1998, Mr. Bill Sowles brought paint chips to the Town office and he and the Town Planner at the time picked the color. It is a Kynar finished roof, but it is both expensive and difficult to paint. It still has 15 years on its warranty. They see the roof as a significantly darker color than the building; otherwise the building suffers from a monochromatic theme. Whatever color it ends up being, if it is a lighter color it would blend into the building. Also, it is a tricky undertaking to paint it, according to the painters. Regarding Tom Emery's comments about massing a hierarchical element he explained that this is a building that has four equal players, and they don't agree that one portal should be architecturally stronger than the others. He understood what Mr. Emery is going for, but he doesn't agree that it works in this case. It runs counter to the business purpose of the building. Mr. Emery also commented that the yellow and white of the Volkswagen entrance were not earth tone colors. Mr. Richards argued that similar colors have been used up the road. He didn't think they are introducing a foreign color. He explained that the sign issue will be addressed down the road; they are prepared to comply with the code. As far as the building perspectives - they did go and recreate the large signs in the presentation, which weren't in the original submission. The berms and trees are a placeholder in what is presented now, but signs were put in to show their impact on the overall project. In the original submission they made the effort to take each guideline element and show how they addressed each. They are trying to meet the spirit of the guidelines as well as the requirements of the manufacturers and the needs of the owners.

Jeff Perry from Sebago Technics presented the site elements. This started as a building renovation, and now has moved onto the site. How the building relates to the site is different than what was originally designed, with the addition of a fourth entrance. This site is approximately 5 acres, with 2 acres out front, and 3 out back with storage and dumpsters. For the most part, access, circulation, lighting as it relates to the existing pole mounted fixtures, and free standing signs all have no anticipated changes. The changes they are anticipating relate to pedestrian access, customer parking, and wall mounted light fixtures. The waivers they are requesting are because spatial limitations make things difficult. The existing pedestrian access is the sidewalk on Route One. To bring it to ADA compliance, they are proposing to put in detectable warning areas, a textured surface and transition zone tip downs, and re-stripe the current crosswalks. One of the design guidelines requires them to connect sidewalks to the building, which they are proposing to do. They are providing customer parking on both sides of the building to facilitate easy access, and providing handicapped parking. Today it is not very clear where the designated parking is. Landscaping is the biggest issue - the most dramatic is the 45 foot setback between this property and the residential property to the east. There is a bank of vehicle parking which would be impacted; if the 45 foot setback was enforced, it would eliminate approximately 35 spaces. The vehicle display in the front is 10 feet

from the property line – if that was enforced that bank of 20 spaces would be lost. Moving toward the building, there is a guideline for 20 feet of foundation planting between the building and the first bank of cars; if that was enforced it would eliminate a large bank of cars. A key issue for a dealership is vehicle display. According to the guidelines, for every 20 parking spaces, 20 sq feet of landscaping is required – enforcing that guideline would erode available vehicle display. There is extensive landscaping currently in front of the building; it is summarized by type in the original submission. Tom Emery understood the tall canopy problem with the overhead power lines, and Mr. Perry said that they can accommodate the evergreen issue. In the final plan submission they will certainly provide the elements that Mr. Emery recommended. Regarding the issue of the two points of access – the ordinance allows two points of access if the property has 200 feet of frontage, and this property has 300 feet of frontage. Mr. Perry said that those curb cuts are vital to the functioning of the site considering the customer parking, emergency access, etc. They are looking to the Board at this point for reaction and the applicability of the waivers requested.

Hugh Coxe asked about the pole mounted lighting, he understands that there is a fair amount of lighting that exceeds the code, and he asked why they didn't address the lighting.

Mr. Perry said that it was a business decision; the cost to take down those and replace them was beyond the scope of what was being considered. They looked at the building primarily

Hugh Coxe asked if it was the same issue with the signs, and Mr. Perry said yes.

Bernie Pender asked if the wall mounted signs in the plans are in proportion.

Mr. Richards said that the manufacturers have sign packages that they recommend for various dealerships, but there is some flexibility. They can order different signs from the manufacturer; they don't have the sizes that are available right now, but they will have them in the final submission.

Tony Calcagni observed that, on the plan approved in 2001, the 45 foot buffer setback is shown in the rear lot, not in the front lot. It appears as though the gravel parking area in the back encroaches on that buffer.

Mr. Perry said that it at least scales at the 45 foot line.

Tony Calcagni said that they should adjust the rear lot to be in compliance with the 45 foot line.

Mr. Perry said that, if it is not in compliance, it is easily corrected. The front portion is paved, the rear is gravel.

Tony Calcagni thought that the Board should at least be pushing to have that 45 foot buffer in the back.

Tony Calcagni asked if the utility lines are to be underground.

Mr. Perry said the front utilities are underground, but in the back there is a pole with wires from the building to provide lighting – it is 200 feet from the roadway. It is a single line to a single pole to provide lighting for security purposes.

Stan Bennett asked about other poles in the plans, but Mr. Perry explained that those are offsite and they do not access them at all.

Tony Calcagni clarified that they are talking about the pole in the rear.

Ethan Croce said yes. The 2001 plan shows the location of the line and shows it underground.

Tony Calcagni asked if the ordinance requires that line to be underground.

Ethan Croce explained that the Board may require the line to be underground.

Mr. Perry said that it is a minimal feature, a minor site element, and you can't see it from the road.

David Fenderson asked if it is in the woods.

Mr. Sowles said that the light was put there for employees walking to their cars; it's a safety issue.

Tony Calcagni addressed the 80 foot front setback issue; the Board is allowed to reduce this by 50%. The proposed Volkswagen entry protrudes into that setback.

Mr. Richards said that it does; the design requires that it be a little away from the roof for flashing, four or five feet away.

Tony Calcagni said the guidelines prohibit parking within 20 feet of Route One. He asked if enforcing this would take out the front line of cars along Route One.

Mr. Perry said that was correct.

Tony Calcagni asked if moving the line 10 feet back would remove the spaces in front of the building.

Mr. Perry said that they would no longer have clear access; those are all vehicle display, not parking. David Fenderson asked if that would remove the ability to drive around the building, and create a fire issue; Mr. Richards said that it would.

Tony Calcagni asked if there is any ability to waive that guideline restricting off street parking within 20 feet of Route One if the Board determines that this is indeed off street parking.

Ethan Croce said that they do have waiver authority if they find special circumstances exist and that the application of the standard isn't requisite for the interest of public health, safety and welfare.

Tony Calcagni asked if they are required to have customer parking on both sides.

Mr. Perry said they are.

Tony Calcagni asked about a photometric plan.

Mr. Perry said that they can provide a photometric for the proposed new light fixtures on the building. There are a range of lights already on the building, and they will bring the wall packs to code. As far as the existing fixtures, he explained that typically photometric plans are provided by the lighting vendors, but if the fixture isn't theirs and/or has been in the ground for years, the original specs don't apply, because lights lose their total light value over time. They propose to prove that the proposed wall packs meet the lighting standards and show that there are no proposed changes to the existing pole mounted fixtures.

Tony Calcagni asked if the request for a waiver on the 3-4 foot high berms was due to a concern about visibility.

Mr. Perry said yes. There will be some berms, but not a uniform 3-4 feet in height.

Mr. Sowles said that they were asked to provide rolling berms at the time they were installed.

Mr. Perry said the majority of the landscaping in the front of the site is within the Route One right-of-way and not on the property.

Bill Lunt asked if they were prepared to show that, if the vehicle display area was declared to not be parking area, they could still meet the parking requirements for the building.

Ethan Croce said that there doesn't appear to be specific off-street parking requirements for a use such as this, so the Planning Board would be the authority to determine the number of spaces required.

Mr. Perry said that a typical 20,000 sq foot building would need 5 spaces per 1,000 sq feet. At that determination, this building would need 100 spaces; that would be challenging if they lost the spaces

within the 20 feet out front, the 45 feet out back, and the additional landscaping required by the guidelines.

Bill Lunt was trying to find a way to be comfortable granting some of requested waivers. He understood that an auto dealership is a very different use than a typical business along Route One. To apply one mass standard is very difficult to do.

Mr. Perry said that there are maybe ten employees on the site, and on average 20-30 customers per day, with a maximum of 5-6 at a time. 16 parking spaces is a pretty good target for what is needed to support the facility.

Stan Bennett asked how many vehicles could be stored in back if the proper setbacks were met.

Mr. Sowles said 100.

Stan Bennett asked if that answered Bill's question. He felt that covered the compliance with the sq footage parking standards and then they could use the front lot as vehicle storage.

Bill Lunt said that the spirit of the ordinance is to keep from having a lot of cars parked along Route One. For the average commercial use building it isn't that hard, but a car dealership makes that hard. He said he was willing to make some waivers, but he didn't know how much.

Stan Bennett observed that Mr. Emery discussed having some more information on the stand-alone signs. He asked if this is because Mr. Emery is concerned that they might not be in compliance with the Route One standards.

Bill Lunt asked if the signs that are there now are in compliance.

Mr. Sowles said that the Mazda sign is, because it was just installed a few years ago. He said he wasn't sure how tall the Volkswagen/Audi sign is; it may be 16 feet tall, so it may be. It was put in 7-8 years ago.

Stan Bennett asked if Mr. Emery is suggesting the Board request some change in the stand alone sign.

Hugh Coxe said he read it to mean that Mr. Emery didn't know if they are in compliance or not and needed that information.

Stan Bennett wondered if they could put in smaller bulbs, if the existing light poles are out of compliance because they are too bright.

Mr. Sowles said he was not sure that they are out of compliance.

Hugh Coxe pointed out that they have 25 foot high light poles; the standards say 20 foot poles.

Mr. Sowles explained that they are on a timer; so they are only lit from dusk to 10pm.

Stan Bennett would like a rationale in the final proposal regarding the roof color. An essential element of the design guidelines is the muted colors of the roof.

Bernie Pender said that he has issues with the lighting – he would like to see some options with that; he wants to see sign options, an option showing parking out of the 20 foot setback - what it is now versus what it would be, how it would displace the cars; and options on the roof color - he would like to see it come more into compliance with the area.

Tony Calcagni said he was willing to give some of the waivers that they need, taking into account that the building is close to the road, and the car display needs, but he didn't think the applicant had tried very hard to bring the site further into compliance with the site plan review ordinance and the design guidelines. He was struck by the 2003 Council Ordinance which required site plan review for

this type of renovation. He thought this site should come closer to compliance; the Board can't ignore the ordinance requirements. He suggested that the applicants should prioritize their waiver requests.

Hugh Coxe said he can't recall if the Board has waived underground utilities before.

David Fenderson agreed – not along Route One itself, but he thought the Board has never faced a back pole issue.

Bill Lunt said he was struggling with the front of the building. He said he was sympathetic with the roof issue, but to comfortably waive the landscaping and parking issue, he thought they would have to be aggressive on the color of the roof. He said he could understand that the type of business requires some usage out front, but the roof and the signage will be big issues. Due to the nature of the building layout and site layout, he agreed having two curb cuts is safer. His issues are primarily the roof and the signage and he suggested that maybe the Board needs to look at some restriction of the display area to put in some of the landscaping. If they reconfigure the design of the display area, it may take away the long strip of parking, but he would be more comfortable if they break that up a bit with some landscaping. This is a different kind of use, which doesn't really fit in the design guidelines, and since they were there before the design guidelines he was willing to work with them, but he would like to see the line of cars up front with some landscaping. The power issue out back doesn't bother him.

Hugh Coxe commended the applicants for the presentation and for coming in for the pre-application sketch plan review. He thought that this is a business that most people in Falmouth want and appreciate, but the design guidelines are not kind to product display along Route One, and in fact they seem to want to get away from that. The applicant has said that front vehicle display is critical, and there is maybe a conflict between that and the town's desire. He thought that people don't buy cars that way now, but if the applicants have studies showing otherwise, they should bring them in. Mr. Sowles explained that the display out front is mostly used cars, cars that people don't know they carry, and that's why they need it.

Hugh Coxe would like some evidence that sight is still a dominant way that people buy cars - that would go toward convincing him of special circumstances. He wanted to see some more effort to meet the design guidelines.

David Fenderson said that he likes the roof. The Ordinance prohibits a garish roof color, but it's been there a long time and he wondered who they were to say it was garish. He thought that it goes to the branding of the dealership. As far as the safety of the site – the sidewalks connecting to the building across the street are very important and the two curb cuts are important. The business is a unique case, and meeting the guidelines will be a challenge. Regarding signage, he thought they didn't have enough detail yet to see what that will look like.

Bill Lunt said that, regarding the roof color, it didn't bother him either, but it bothers the guidelines badly. He said they need to do some give and take, what they are asking doesn't fit the guidelines a lot, but the usage doesn't fit the guidelines a lot either. He doesn't want the dealership to go away, he understands that it is a good solid roof, but they are triggering the site plan review with the remodel and the roof definitely doesn't fit the design guidelines.

Ethan Croce said it would be helpful to identify what aspects the Board wanted peer reviewed.

Hugh Coxe said they need a peer review of the architectural design; plant selection and landscape design also would be helpful, even if they give some waivers on the landscaping.

Bill Lunt suggested that maybe they discuss with Tom Emery the landscaping that would bring them closer into compliance with the guidelines. He said they did a great job on the presentation.

Mr. Richards asked about the cream white and cream yellow, are those considered organic colors. They are used in other areas, and if they are not considered here, they'll have problem with the manufacturer.

Mr. Sowles said that is a global color scheme for Volkswagen.

Mr. Richards said that the guidelines keep talking about monochromatic design schemes and earth tones, which don't vary much from each other. He wondered if that is that what they want – the guidelines say they want variety in form and shape.

Tony Calcagni asked if there are distinguishable colors in the service center across the street.

Mr. Sowles said that building is white and gray with a brown roof

Tony Calcagni asked if the problem is that the Volkswagen entrance is a different color from the rest of the building.

Mr. Richards said the first question is whether the colors for the Volkswagen entrance are acceptable, where they may not be compatible with the rest of the building. They are trying to set each entrance apart. He wanted to know what latitude they had.

David Fenderson asked where the Volkswagen entrance is in relation to the building.

Mr. Richards indicated the entrance on the diagram. He explained that it is a traditional portal arch, and they are asking for a little guidance on the color. He said they could have this conversation with Mr. Emery, if this was his concern with the color mentioned in the notes.

Hugh Coxe thought that Mr. Emery's concern was not the color, but the banding/striping of the yellow/white.

Mr. Richards took Mr. Emery's concern to be with the materials, not the banding. He agrees that it differentiates itself from other aspects of the building, but the purpose is to create four distinct entrances.

Bill Lunt asked if the shape of the entrance was regulated by Volkswagen.

Mr. Richards said that could be arched or flat, but that visual interest is important. Regarding the blue roof, the guidelines say earth tones or a darker color than the materials underneath it. He didn't think blue was a garish color.

Hugh Coxe said that the Board has traditionally relied on a peer reviewer for their greater expertise and knowledge on the subject of design aesthetics, but one overriding themes was that they are not trying to get rid of visual interest, but are trying to keep it in theme from property to property. He said that too much information and too many colors on a building become beyond what the design guidelines are calling for. The banding may be more visual interest than what the guidelines are looking for.

Tony Calcagni said the peer reviewer's comments are good ones. He suggested the applicants compromise some elements to keep the important ones.

Ethan Croce asked if the Board wanted a full review of the application under the Route One and Village Center guidelines. The Board agreed that they did.

Mr. Perry said that Mr. Emery focused more on the architectural design and not so much on landscaping. He wondered if the Board is asking for a full review.

Bill Lunt asked Ethan Croce to have a conversation with Mr. Emery about the discussion tonight so that Mr. Emery knows the Board is looking for some flexibility.

Ethan Croce said that the Board needed to provide their interpretation of the 5.4 buffer provision; unless otherwise specified, the provisions in 5.4 are not waiver-able. There is no guidance in the ordinance as to the required treatment of this buffer strip between residential and non-residential zones. One interpretation is that this provision was intended to refer out to the general buffer standards in section 9 and apply those as may be appropriate, but there is really no guidance in the ordinance as to what the buffer should be. They could argue that the section 9 standard is waiver-able. In the table in section 9.26 there is a required 75 foot wide buffer strip for an abutting residential district or use. Could the intent have been to refer to this buffering standard? He asked the Board to interpret whether this is a waiver-able position or not, and what an appropriate buffer treatment would be.

Tony Calcagni said the 2001 plan had a clearly shown 45 foot buffer in the back lot. It also clearly did not show a 45 foot buffer on the front lot. It appears that if there was a 45 foot buffer in the front they would lose not only a lot of parking but they would lose the connection between the two lots.

Mr. Sowles said the abutting property is the town park, it is a buffer in itself.

Bill Lunt agreed that two pieces of the residential area that abut the property are Pine Grove Park, and that is a special circumstance. If they are trying to get buffering, they should put the worst creations next to it, because they'll be hid by the park on both sides. He said he will be stricter on the corner that abuts Foreside Rd.

Mr. Perry observed that the buffer is to shield one use from another, in this instance there is no use on that side due to the park.

Bill Lunt asked the members of the Board how they felt about the line of parking on the back of the rear lot against the park. The Board had no problem with that issue.

Hugh Coxe said that the Board has no ability to waive that requirement – he asked if the Board's position is that, since it is a pre-existing lot, they don't have to address the issue.

Ethan Croce asked the Board if, in the absence of any specific guidance in section 5.4, could it be possible that the intent was to refer out to 9.26, which has specific buffer standards and is waiver-able.

Tony Calcagni said the 2001 plan shows the 45 foot buffer for a portion of the plan; it seemed to him that a decision had already been made on that issue.

Hugh Coxe asked for clarification - if it was an undeveloped lot it would be required, but it is odd to require it now.

Tony Calcagni clarified that, it's not just already there, it was already approved by the Board, and the 45 buffer requirement was in existence then.

Hugh Coxe thought it was odd to refer an unwaiverable position to a waiverable position and then waive it.

Meeting adjourned 9:57 pm.

Respectfully submitted,
Melissa Tryon
Recording Secretary