

FALMOUTH PLANNING BOARD MEETING MINUTES

TUESDAY, SEPTEMBER 2, 2008, 6:30 P.M.

FALMOUTH TOWN HALL, COUNCIL CHAMBERS

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

ABSENT: Bernard Pender, Jay Moody (Associate)

STAFF PRESENT: Ethan Croce (Assistant Planner)

The meeting was called to order at 6:35 pm.

Stan Bennett was designated as a voting member for the meeting.

1. Approval of August Meeting minutes

Bill Lunt moved to approve the August minutes, David Fenderson seconded. Minutes passed 4-0. (Hugh Coxe abstained).

Administrative Items:

2. Helene Anderson – Winn Rd. – Request for subdivision amendment to adjust the rear lot line of Lot 3; Tax Sheet 210 & 390; Map-Lot R03-004-D; zoned FF & RCZO.

3. Morong Falmouth – 187 US Route 1 – Request for a site plan amendment for a new lighting plan for the existing car dealership. Tax Sheet 320; Map Lot U07-004-B1. Zoned SB1 and Village Center Overlay.

Bill Lunt moved to approve the administrative items; Stan Bennett seconded. Motion passed 5-0.

Agenda Items:

4. 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 key issues. When the applicant was here in June he received direction from the Board to answer several questions. The Board's first request was for a letter from the Code Enforcement Officer explaining whether there are any land use violations on the applicant's property and, if there are, how those violations could be remedied. A letter from the CEO is included in the packets, explaining that there is a violation and this application, if approved, will cure it. The Board's second request was for the travel way to be shown within the right of way on the plans. This has been done, and those revised plans are included in the packets.

The Board's third request concerned the classification of the on-site wetland and the location of the Shoreland Zone boundary. The applicant's revised submission includes documentation of the mapping of the coastal wetland in the area and the revised private way plan now shows the extent of the Shoreland Zone. The coastal wetland is located entirely off-site, and since no portion of the proposed travel way falls within the Shoreland Zone, no Shoreland Zone Permit will need to be obtained. The Board's fourth request was for a plan that provides some buffering between the

proposed travel way and the abutting Merrill property on Greenway Drive; this also has been provided in the packets.

Tony asked about the CEO's letter. This seems to be the answer the Board was looking for last month – there is a violation, a fine will be imposed, and this application will remedy the violation.

Ethan Croce confirmed those statements.

Tom Woodruff, applicant, presented his application. He admitted to creating a code violation by having a cooking stove in the unit. He has been working on this plan since 2003, and has had many different designs. After the RCZO went into effect in December 2005, he had to redesign the private way over an abutter's lot, which is where he is now.

Bill Lunt asked why the travel way was hugging the property line.

Mike Farmer, Mr. Woodruff's engineer, explained that there is a catch basin on Greenway Drive there. If the driveway came straight out, one would have to drive over the catch basin. They shifted the travel way four feet away from the Merrill home, but didn't shift it all the way over because they need about 10 feet on each side for drainage swales. Also they wanted to leave room on the Payne's side for landscaping. He mentioned that they also have a problem with a condition that was in the draft conditions of approval at the June 3rd meeting. The condition requiring conveying to the town a drainage easement is an issue for them. They had talked about giving the Town rights to access the pipe, but they don't want to render the lot unbuildable.

Tony Calcagni clarified that their concern is for the easement to not take away from the lot area.

Mr. Farmer said they will comply with the standard sewer easement over the private way.

Bill Lunt asked about a deeded easement for the sewer running from the new lot out to Kelley Road.

Mr. Farmer said the building will take its utilities from Kelley Road; Mr. Woodruff may reserve the rights to cross lot 2 when he sells it.

Bill Lunt thought that would require an easement for the sewer to the Town of Falmouth.

Tony Calcagni thought the requirement of an easement along the private way is based on the sewer going through there, and that is not the case here. Tony reviewed the letter from Mr. Farmer dated May 16th to try and determine if an easement was deducted for utilities. He wondered if one of these calculations was done for the lot remaining on Kelley Road.

Ethan Croce said yes, that lot is showing 86% buildable area, and it includes the 20 foot easement shown on the plan for the underground utilities. He asked if the 9,574 sq feet of the private way was deducted from lot 1's gross area.

Mr. Farmer said that the gross area does not include the private way. He talked this over with Ms. Stearns, the Community Development Director, and she said it was standard practice to exclude the area of the private way from the calculations.

Ethan Croce said that the gross area of lot 1 is listed on the plan as 1.872 acres, but the calculations are based on 1.48 acres, which excludes the private way area.

Tony Calcagni asked for the calculation of the remaining land after the lot split.

Ethan Croce pointed out where that calculation was in a letter from Mr. Farmer dated May 2nd.

Bill Lunt asked if all the utilities to the building on lot 1 are buried, and Mr. Woodruff said yes.

Bill Lunt asked about the water line: is there a meter pit on Kelley Road for the new building.

Mr. Woodruff said there is not a meter pit – there is a water line stop. There is a meter in the building with a remote read.

Bill Lunt said his biggest concern was that an abutter had strong feelings about the pine tree, which he shares, and he wondered why the travel way had to be where it was so close to the tree.

Mr. Woodruff said the Merrill's have sold their property and have moved.

Stan Bennett said that the tree is still there.

Mr. Woodruff was reluctant to move the travel way closer to the Payne's property. It is in the middle of the 50 foot right of way.

Bill Lunt said it didn't look that way to him; it curves toward the Merrill property where it meets the road.

Mr. Woodruff said they are trying to accommodate both the catchment and the tree.

David Fenderson asked where the catch basin is, and Mr. Farmer indicated it on the map.

Bill Lunt thought that, if there was any way to save the tree they would have to move the road, and he didn't see why they couldn't move the road.

Mr. Woodruff said that he spoke with Ethan Croce, and the Public Works department didn't have a problem with the catch basin being in the middle of the travel way. They were trying to simplify construction.

Bill asked if it was a 12 foot roadway.

Mr. Farmer said that was correct, and it does flare out where it meets the pavement. If the Board wants to maximize the chance of protecting the tree they could shift the entrance of the driveway but that would require them to build a new catch basin in a new location.

Bill asked why they would have to move the catch basin – it is pitched from Greenway and not the travel way.

Mr. Farmer explained that the basins have to be in a depression in order for the water to go down, so if you want a smooth entrance to the driveway you'd have to move the catch basin.

Bill Lunt said that, in order to get his vote, they would have to move the driveway.

Mr. Woodruff said he was willing to move the catch basin if that was required.

Tony Calcagni referred to a comment by Tony Hayes, the Town's engineering technician, who said that moving the driveway five feet wouldn't be enough, it would have to move 15 feet, and Tony Calcagni asked if that were possible.

Bill Lunt thought if the travel way hugged the Payne line the way it hugged the Merrill line, it was possible.

Mr. Farmer thought that to move it that much, they would have to do a mirror image of the current lot toward the Payne lot. If they came straight out, they would be moving it 10 feet. Anything in terms of moving it would help to stay away from the tree.

Tony repeated that Tony Hayes suggested 15 feet or more in his comments.

Bill Lunt said that he is not comfortable with the travel way in a place that will kill the tree. He thought they should flip it, as Mr. Farmer suggested, toward the Payne lot. That tree is large and it is important to the look of Greenway Drive.

Mr. Farmer thought they could ask the contractor to hand excavate the tree's roots and put gravel around them to help preserve the roots around the road. It's a little extra expense, and puts more work on Mr. Woodruff to ensure his contractor does this.

Bill Lunt agreed with that approach, but thought it should be coupled with moving the road as previously suggested.

Stan Bennett said that he would be an advocate of saving the tree, but the applicant also may have to renegotiate with the neighbors if he is going to bring the road 15-20 feet closer to their home.

Tony Calcagni asked about the draft condition of approval that the multiplex currently in existence be converted a single-family.

Mr. Woodruff said he was happy to comply with that condition. He has worked hard on the building and wants it to be a multiplex, but if that is required of him, he would comply.

Public comment period opened:

Janice Gray of 11 Kelley Road stated that her concern is that the plan has been going on for 4 years, and has been allowed to become the current controversial plan. She felt that the Town has not been diligent in supervising the property.

Janice Couture of 4 Kelley Road, an abutter, said that she has lived in the property since 1991. She said that she has been against the project from the start, and that Mr. Woodruff has ignored her concerns. She is concerned that the goals of the zoning ordinance - protecting the character of the neighborhood and not allowing noise, litter and congestion - were not met. Mr. Woodruff told her that he was planning a rental property and she was concerned about the type of renters that would live there. She felt that the work of the codes office on this issue has been inconsistent. She quoted numerous letters between Mr. Woodruff and the codes office; she was concerned that this set a precedent for others in the town to disregard the zoning laws and do whatever they want.

Gerald Caruso of 18 Kelley Road said that this whole thing started when, on the 8/24 building permit, Mr. Woodruff applied for a barn/workshop even though he was building a dwelling unit. He felt that Mr. Woodruff has violated zoning. Mr. Caruso said that the \$100 fine imposed by the codes office was not very high and that this case needed to come before the Zoning Board for determination of a suitable fine and then come back before the Planning Board. He worried that allowing this to move forward would encourage people to violate zoning, since it would only cost \$100 to fix it.

Jeremy Spiegel, an abutter, has lived at Kelley Road for the last 6 years, and has observed improvements to the land and building on Mr. Woodruff's property. He testified that Mr. Woodruff has worked hard on his land, erecting a fence after the survey was done, and even asked Mr. Spiegel's approval on what kind of fence he would like. He thought that a fortune of trees have come down on Kelley Road in the past year. He didn't know why there had to be so much trouble about this. He observed that there are no residents of Greenway Drive here to testify - all the public are from the Kelley Road side.

Janice Gray said that the tax sheet from 10/07 said that the garage with an accessory was illegal.

Public comment period closed.

Stan Bennett agreed with the first three members of the public - he felt they should not reward someone who flagrantly adds to a building in violation of the code. He would not vote for this application, and felt that somebody should see that the violation is removed.

Tony Calcagni said that enforcement of zoning is under section 10 which states that someone who violates the ordinance shall pay a fine of not more than \$100. He was appalled that the fine is only \$100 but this is an issue for the Town Council to address. This board has never been, nor will ever be, an enforcement board. Violations are handled by Mr. Farris.

Bill Lunt agreed that, legally, he didn't have the right to turn this application down on those reasons. The Board has to stick to the zoning if this is what is presented to them. The tree is the issue for him - when the Board makes provisions for changes to properties and property uses they have to do it to

preserve the character of community and stay within the ordinances. The applicant has to move the road over as a mirror of the current plan to give the tree the most chance for survival in order for him to vote for it. He agreed that this is a reward for bad behavior, but the Board doesn't have a way to not do it. He was appalled by the amount of the fine as well. He wanted to make sure that, if this private way is allowed as frontage for Lot 1, that all vehicle usage for Lot 1 has to come through the private way and not from Kelley Road. He felt that was absolutely necessary.

Tony Calcagni thought that was a good thing to clarify.

Hugh Coxe said that he agreed with Tony about the role of this board in enforcement. He didn't think anyone on the Board is happy with the way this has gone, but they don't have the authority to deny it based on that. He thought that, if it meets the ordinances that they are responsible for, they have to approve it, let the Codes Office deal with the enforcement, and the Council deal with the fines.

Stan Bennett asked about a conclusion made at the June meeting that a section of the code required an applicant to not be in violation of the ordinance in order to apply to the Planning Board.

Tony Calcagni remembered it being raised, but didn't remember the ordinance section.

Hugh Coxe said that he referred to section 4.1 at the June meeting – which disallows any building to be used, or any lot divided, unless in conformance with the ordinance. The question the Planning Board sent to the Codes Office was how the violation was remedied – and the answer back was with a fine and the passage of this application. The only other remedy would be to remove the kitchen.

Stan Bennett said he would err on the side of the applicant must be in compliance before they apply. That is another way to remedy this situation – clean it up and come into compliance.

David Fenderson was concerned with the precedent that could be set here – by approving these kinds of projects the Board could be going down a road they don't want to go down. He agreed that they are not an enforcement board, but they do have a long term responsibility to uphold and navigate the ordinance. He felt that a property should be in compliance first, and then they would take the application as it comes.

Tony Calcagni called for a straw poll of the board. Stan Bennett and David Fenderson had decided to vote against the application. Bill Lunt said he would vote against it if they determined that section 4.1 required it to be in compliance before it comes before the Board.

The Board reviewed section 4.1, which states *“No structures that require a building permit shall be erected or used, and no lot shall be used or divided, unless in conformity with the provisions of this Ordinance. All structures and lots, and uses of structures and lots, which fail to conform with the provisions of this ordinance are prohibited, except as provided herein. [Amended, 2/28/05].”*

Tony Calcagni felt that they are to review the application and pass it if it meets the requirements of the ordinance. He was ready to go along with Mr. Farris' recommendation of the proper remedy of the violation.

Stan Bennett said that the remedy “that he is pursuing” is an application to the Planning Board.

Tony clarified: the remedy is a fine and approval by the Planning Board.

David Fenderson asked if the applicant just pays the fine and then gets a Certificate of Occupancy.

Tony Calcagni said Mr. Woodruff has to pay the fine and has to meet all the Conditions of the Planning Board's approval.

Bill Lunt thought that the way the ordinance reads, the lot can not be divided since it is not in conformity.

Tony Calcagni thought that was a dangerous interpretation – if an applicant is out of compliance and comes before the Board with a plan to put his lot into compliance they would have to send him away under this interpretation. That would cause more problems that it would solve.

Hugh thought their responsibility was to look at the private way application and whether or not it met the requirements of the applicable ordinances.

Stan Bennett moved to deny the application; Bill Lunt seconded.

Motion passed 3-2. (Coxe, Calcagni opposed)

The Board requested that staff draft findings of fact for adoption at the next meeting. They stated that their decision was based on Section 4.1 since the building on proposed Lot 1 is in violation.

Workshop Items:

5. Workshop discussion regarding allowances for staff-level approvals of minor development applications.

Bill Lunt asked if this decision would be made by the Council.

Ethan Croce said that it has been added to the Council's work plan for the next year.

Bill Lunt asked if the Planning Board would be invited to have a sit down with the Council.

Ethan Croce thought this item would likely be workshopped before it went to a final order. Board members would be welcome to attend that hearing, as well as members of the public. He said that any comments or suggestions the Board makes would be helpful to the Council.

Bill Lunt said that the administrative action items were only part of the whole issue. Every project on the list of administrative action items provided in the packets are projects that the Planning Board has already had input in – not really new projects. He thought the CBI study was suggesting that staff have authority over new projects, and he thought some discussion with the council was warranted.

David Fenderson said that other towns have clearly defined parameters, and they could do that here.

Ethan Croce said that this is the first conversation on this subject at the town level – they are working with a blank slate here.

Tony Calcagni said that this isn't necessarily a big time-saver for the Board – most of the items suggested for staff approval are items that would probably be on the administrative item agenda.

Ethan Croce said that there are two issues. The first is reducing the burden on the Planning Board, which isn't as much of a burden in today's housing downturn as it was a year or two ago. The second issue is expediting approvals for applicants, which the Board agreed was a tangible benefit.

Bill Lunt asked where the public gets input into staff approvals.

Ethan Croce said that they would want to tailor a system that the town was comfortable with. In many communities there is not public input into staff approvals, in others there is a different process whereby a formal staff review committee meets, and abutters are notified of that meeting. This process adds an additional administrative burden to staff, requiring staff to attend two meetings a month instead of one.

Tony Calcagni thought it made some sense to not have people wait 28 days for a sign permit that clearly met the ordinance.

Ethan Croce said that some of the communities he had studied included a provision where the staff member ran the application past the Planning Board Chair in order to determine whether it should be before the Board or receive staff approval.

Stan Bennett said that it was worthwhile for a long term member of the Board to have input with the Town Council on this issue.

Bill Lunt didn't have a problem with staff approval, but he didn't want the public notice piece to get lost.

Tony Calcagni asked if abutters would be noticed of all applications.

Ethan Croce said that in most communities that allow staff approval for minor changes, abutter notices were not required. Other strategies of allowing staff approval did mandate abutter notification.

Bill Lunt said that, since it wasn't going to happen overnight, any Board member that had strong feelings about this issue should be in contact with the Council. He asked if the Board could receive targeted notice about any Council hearings regarding this issue.

Ethan Croce said staff would be happy to do that.

Meeting adjourned 8:05 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary