

## FALMOUTH PLANNING BOARD DRAFT MEETING MINUTES

TUESDAY, OCTOBER 7, 2008, 6:30 P.M.

FALMOUTH TOWN HALL, COUNCIL CHAMBERS

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

**ABSENT:** David Fenderson

**STAFF PRESENT:** Ethan Croce (Senior Planner)

The meeting was called to order at 6:34 pm.

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

### 1. Approval of September Meeting minutes

Stan Bennett moved to approve the September minutes, Bill Lunt seconded. Minutes passed 5-0.

### **Administrative Items:**

2. **Falmra, LLC** – 33 Depot Road – Request for an amendment to the Rite Aid site plan to add additional landscaping. Tax Sheet 240, Map-Lot U12-010 & U12-011; zoned SB-1 & Village Center Overlay.

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

### **Agenda Items:**

3. *(Item Withdrawn)* **Timothy Higgins** – 390 US Route 1 – Request for a site plan amendment to add a free-standing sign. Tax Sheet 83; Map-Lot U62-003-002. Zoned BP.

4. **Falmouth Foreside, LLC** – Foreside Road – Request to amend the Design Guidelines for the Mussel Cove Subdivision. Tax Sheet 240; Map-Lot U12-003; zoned RA, RCZO & SP (Shoreland).

Ethan Croce presented the key issues. In May 2008 the applicant appeared before the Planning board in order to transfer the ownership of the project to Falmouth Foreside, LLC and to revise certain design guidelines. The applicants are back before the Board to request further changes to the design guidelines. This project was originally approved under the Cluster Development provision, which has since been repealed. As part of that provision, the project was also required to comply with the conditional use criteria outlined in Ordinance Sections 8.3 and 8.7.

Bernie Pender asked if these are the same amendments which they requested in May.

Ethan Croce said no, these are new requests.

The Board agreed to proceed through the amendments one at a time.

Tony Calcagni started with Design Guidelines Section A1.00 – the requirement that the homes be placed at the front “build-to” line. He thought that they needed to make sure that the homes are staying within the existing building envelopes. These are small lots, as shown on the subdivision plan. He asked the applicant if they were aware that they had to build within the building envelopes.

Amy Mulkerin, applicant, explained that some of these requirements were because the proposed houses were so large on small lots. They have reduced the size of the houses so they will have a little more room within the envelopes. They want to push the houses off the street to provide a little more privacy. She provided the Board with some photos of the house that has already been built.

Hugh Coxe said that when this subdivision was originally approved, they had a landscape architect and perhaps even a peer review. His sense is that all these design changes are being made by the applicants, without a professional behind them. Given the amount of time the Board and professionals have spent on it, he doesn't feel very comfortable to now have the work undone by the applicant. He didn't feel he had the expertise to determine if having the homes on the build-to line would make the neighborhood "claustrophobic" as the applicants testified.

Stan Bennett agreed; he felt that there were so many deviations from the design guidelines that it is almost a new application. He would like to see a peer review.

Tony Calcagni felt it was still worth it to review each item. Regarding the "build-to" issue, he wondered how much play they were talking about.

Jay Moody observed that the shape of the home is more important than the size; also these are now going to be single-story homes.

Greg McCormick, applicant, said that he and his partner have a lot of experience developing projects, and if the homes are placed too close to the road, there would be only 60-70 feet between the front of the houses, and that doesn't look very good. They want to follow every code/rule of the Town, and they also want to have a project that they and the Town can be proud of, and that the market can accept. They intend to place the houses toward the front third of the lot, giving the back yard the kind of privacy people would expect. They don't want to push them way back, but they want to move them about 25 feet off the build-to line.

Ms. Mulkerin asked if anyone on the Board has been by the project. The St. James project was on the market for 2+ years and nothing sold, which she felt was because of the cumbersome design guidelines. They have re-branded it, made a new entrance and landscaping, and built one house.

Hugh Coxe asked which lot was built on.

Ms. Mulkerin said it is lot 2.

Tony Calcagni asked if it was built to the original guidelines.

Mr. McCormack said they had it surveyed.

Jay Moody asked for clarification on whether they built it to current specs – i.e. all the way to the build to line.

Mr. McCormack said that it is within the building setbacks. It is not, he thinks, exactly at the build-to line. He was not sure what exactly that means.

Jay Moody thought it sounded like they built it the way they wanted, not according to the guidelines.

Mr. McCormack said they were granted a building permit, and it was inspected.

Bill Lunt said the house was not built to the line.

Mr. McCormack said that was confusing. He asked if that meant that it has to be built to the front setback line.

Hugh Coxe said yes, that was the intention of those covenants – not that the entire house be at that line, but that some part of the house be at that line.

Mr. McCormack said that it is definitely not at that line

Bernie Pender asked if the Board can proceed, since the building is not to regulations.

Tony Calcagni thought so, since they received a building permit. He thought the Board should review each item, and not make a determination on any one.

Ethan Croce clarified that he reviewed the file of the application, and could not find a record of any peer review having been done on this project.

Tony Calcagni didn't think a landscape architect was required at the time this project first came to the Board.

Hugh Coxe observed that the company that drew up the original design guidelines is a landscape architecture firm.

Mr. McCormack said they felt the reason for the design guidelines was that the original developer was not planning on actually building the homes, merely selling the lots. He and Ms. Mulkerin plan on actually building the homes, so they have a vested interest in all the homes being built correctly, meeting the guidelines, and looking good.

Tony Calcagni moved on to section A2.02 – lowering the minimum landscaping required from 10% of construction costs to 2%.

Mr. McCormack thought that 2% was perhaps a typo; they are actually requesting 7%. The goal is to have low maintenance, attractive homes.

Tony Calcagni felt that this makes some sense; he didn't feel that he had the expertise to determine what the sufficient landscaping would be, but this seems reasonable.

Bill Lunt was uncomfortable changing a project that was approved after a lot of work, with these changes not being handled the same way now. Having the buildings up front was to make the street look narrow – if they are going to change the setbacks they need a landscape architect.

Tony Calcagni observed that the Board seems supportive of a review by a landscape architect.

Stan Bennett felt that, with maybe one exception, these all seem significant and should be reviewed.

Ms. Mulkerin stated that, even though it sounds like a lot of changes, they consider a lot of these to be practical changes. CMP dictated that the meter should be placed on the front of the building, for example, and they had no choice in the matter. A peer review will hold up the development of this property one to two months.

Tony Calcagni thanked them for their comments. He explained that the original cluster development was approved with many waivers made. All these waivers were made in context with the detailed proposal that was presented. The Board approved the project as a package, and his concern was that changes to the guidelines change the package.

Hugh Coxe said that the only item not conducive to peer review by a landscape architect was B.102A which refers to the process around approving a home design.

Tony Calcagni asked about A4.04: swimming pools – he wondered if they are saying that pools would be allowed within the building envelopes.

Mr. McCormack said yes.

Public comment period opened; no public comment.

Tony Calcagni referred back to section B102A – the original rules said a Homeowners Association Board could call for a peer review of home designs. Falmouth Foreside LLC would be the only member to begin with, but he wanted clarification that they are trying to keep control of home design until all the homes are built.

Mr. McCormack said that was correct.

Stan asked about B102.B.

Tony Calcagni explained that, in B102.B, the original intent was for the lot owners to come before the review board of the Homeowners Association with the design of the home.

Tony Calcagni asked the applicants to draft a comparison document between the approved guidelines and the proposed changes.

Mr. McCormack said they could; he felt it would show that the bulk of the guidelines remain intact.

Hugh Coxe said that it would be very helpful for them to do that comparison, along with a rationale for each change that they want to make.

Mr. McCormack asked if that would be done before the peer review, or after.

Tony Calcagni felt it would be most helpful to do in conjunction with the peer review.

Bill Lunt referred back to B102.B, and observed that if they had followed that guideline, the issue with the home that has been built not being on the build-to line wouldn't be a problem because the peer review would have caught it.

Hugh Coxe said that they can't ask the Code Office to be thinking about build-to lines.

Tony said that the Codes Office should be looking at these. If they had a peer review it would go to Falmouth Foreside, LLC, and they could do what they want with it.

Jay Moody said that the peer review would have to be done by a professional.

Mr. McCormack said that the general contractor was listed as one of the professionals allowed, and their intent was to fill that role.

Bill Lunt said that it says "and"; all of the professionals listed would have to do it.

Mr. McCormack asked about the time period involved in this process.

Ethan Croce said that it typically takes 2-3 weeks, depending on the complexity of the project and the workload of the consultant, for a peer review. The peer reviewer is determined by the Board, but they generally use Tom Emery.

Ethan Croce asked for clarification on which items the board wanted reviewed.

Tony Calcagni said that the whole comparison document should go to the peer reviewer.

Ethan Croce asked for further clarification – what do they want to review these against.

Hugh Coxe said the reviewer needs to look at the intent of the 2005 Board's approval - this determined some of the dimensional standards.

Hugh Coxe moved to table the item, with direction to staff to send it to Peer Review. Stan Bennett seconded. Motion carried 5-0.

**5. 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 reviewed the key issues. The applicant was before the Board last month with a revised application from his previous application. The revised application was denied due to section 4.1 of the ordinance 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...*” A week after that meeting, the Code Enforcement Officer visited the site and verified the cooking appliance had been removed from the illegal dwelling unit, which removes the violation. The threshold issue is whether the Board feels that the applicant has removed the violation and if they can proceed with hearing the application.

Bill Lunt asked where it is defined what constitutes a dwelling unit – he thought it was the kitchen sink, not the stove.

Ethan Croce said it was section 2.57 of the Zoning ordinance. Mr. Farris has determined that, absent one of the criteria, it does not qualify as a dwelling unit.

Tom Woodruff, applicant, stated that the two threshold issues - the kitchen and the distance between the private way and the pine tree on Greenway, have been addressed in this application. He doesn't know of any other issues that they are addressing tonight.

Hugh Coxe asked about other measures mentioned in the last meeting regarding treating the pine tree with extra care i.e. hand cutting the tree's roots, hiring a licensed arborist, etc. He wondered if the applicant was willing to do those.

Mr. Woodruff said he was.

Public comment period opened:

Janice Couture, of Kelley Road, stated that Mr. Woodruff knowingly violated code when he built his attached structure. She said that Mr. Woodruff submitted falsified applications. She felt that the laws should be enforced in this matter. She felt that this should be brought back to the Zoning Board for an appeal. Her concern is that, if the application is approved, people will lose faith in their government. Government should apply the rules to everyone equally.

Public comment period closed.

Hugh Coxe said that the Board needed to serve the function that they are here for – they are not the Zoning Board, and they went as far as they could at the last meeting. The Code Enforcement Officer has determined that there is no more violation. It seemed to him that they have worked out all the site plan issues, including the tree. He suggested that taking precautions around the tree should be made a condition of approval.

Stan Bennett agreed; he felt the applicant has violated the ordinances, but the Board has gone as far as they can in making a statement on this issue. The Town is satisfied that the building is in compliance, so the application can proceed. Bernard Pender agreed.

Bill Lunt referred to the issue around the multi-family building already on the lot. His opinion is that the multi-family should be converted before this Board's vote, rather than tie it to the Certificate of Occupancy.

Tony Calcagni said the conversion of the multi-family building would be a condition of approval.

Bill Lunt said the multi-family should be gone before the private way goes in.

Tony Calcagni was okay with tying it to a building permit.

Ethan Croce said he might not need a building permit. He suggested they could tie it to the start of construction, or even release of the mylar.

Mr. Woodruff said that his family has been living in the multi-family as a single-family since March.

Bill Lunt asked if it has been changed over to a single-family yet.

Mr. Woodruff said it is still capable of a multi-family. He asked what he should do to remove the capability. He wondered if removing the utility meters was sufficient.

The Board discussed what determines that a building is a multi-family dwelling.

Ethan Croce said that in a past application, similar to this one, a condition was attached. The CEO was ultimately in charge on determining whether the change to single-family had taken place, and he suggested they could rely on the CEO.

Hugh Coxe had no trouble tying the release of the mylar to certification by the CEO of the multi-family being removed. Tony Calcagni agreed.

Tony Calcagni added that he felt the enforcement provisions in the ordinance were outdated, and he thanked the neighbors for bringing up this important issue.

Ethan Croce read the proposed conditions of approval into the record.

Bill Lunt asked about Condition #2: *'The Planning Board encourages the applicant to work with the Town on exploring a mutually acceptable arrangement regarding the possibility of granting the Town a drainage easement, or drainage agreement, for the purpose of maintaining the drainage pipe(s) running under the applicant's property.'* He wondered why they didn't require it.

Tony Calcagni said that it would affect the net building area. He thought there was nothing in the ordinance that required it.

Ethan confirmed that statement. They do require sewer easements for private ways, and new drainage structures that are being created, but they cannot require easements for existing drainage structures to his knowledge.

Bernard Pender commented on 3.b, requiring all access to lot 1 to be from the private way. He wondered what was to stop them from just connecting.

Bill Lunt said there was another condition specifying no vehicular traffic from Kelley Rd.

Bernard Pender wondered if that was enough.

Bill Lunt asked if they could require the connection from Kelley Road to be re-vegetated.

Mr. Woodruff said it was his intention to re-vegetate it.

Tony Calcagni said that they could add to the beginning of 3.e that *"any portion of the existing driveway located on Lot 1 shall be re-vegetated and..."*

Bill Lunt assumed that there is a garage door on the building facing Kelley Rd.

Mr. Woodruff said that was correct. The driveway on the new lot 1 will wrap around the building and connect with that garage door. He is fencing the new lot off from the old lot, so that there will be no way to drive across there.

Stan Bennett asked which part of the current barn has the garage.

Mr. Woodruff said that it isn't a garage; it is a barn/workshop. He doesn't intend to park cars inside.

Tony asked what Mr. Woodruff proposed to make it clear that it is blocked from Kelley Rd.

Mr. Woodruff said he is going to build a fence.

Tony Calcagni suggested either a fence or a vegetated buffer be required along the lot line.

Bill Lunt wanted to see more than a fence along the lot line. He wants to see substantial vegetation between the house and the lot line to make it certain that there is not access from Kelley Road.

Bernard Pender wanted to see a more permanent solution than a fence.

Bill Lunt wanted something that said a 10 foot deep vegetated buffer be installed to separate the lots.

Tony Calcagni suggested "*a minimum 10 feet deep vegetated buffer sufficient to prohibit vehicular traffic be installed*" be added to the beginning of 3.e in place of the previously suggested language.

Ethan Croce asked if they are asking for that just along the 20 foot section of the current driveway, or along the whole lot line.

Tony Calcagni clarified that it would be along the drive only, not the whole lot line. He also added language to condition 4.d "*and no longer constitutes a multiplex as defined*".

Stan Bennett moved to approve the application, subject to the conditions presented by staff and the additions made by the Board. Hugh Coxe seconded. Motion passed 5-0.

### **Workshop Items:**

**6. Workshop discussion** regarding amending Planning Board Rules of Procedure to allow for public hearings as the municipal review authority.

Ethan Croce discussed the history of this issue. This item was workshopped by the Planning Board at its August meeting. At last month's Council meeting, the appointment of a permanent municipal reviewing authority was delayed, however, the Town Council agreed to a temporary solution whereby LPAC was appointed as the interim municipal reviewing authority with that appointment scheduled to sunset on December 31, 2008. The Council went on to request that the Planning Board draft amendments to its Rules of Procedures to incorporate an allowance for public hearings as the municipal reviewing authority in the event that they decided that the Planning Board should serve in that capacity. At the August meeting, Board members seemed to informally indicate support for the following two rules:

1. Limit the length of time for which individuals are allowed to speak at public hearings. The Board suggested limiting testimony to two-minutes per individual with an allowance for requesting additional time to speak subject to the discretion of the Planning Board or Planning Board Chair.
2. Place public hearings as the first regular agenda items on the agenda, after any administrative action items. This would let applicants, and their paid consultants, on the administrative action agenda leave the meeting promptly if their applications were approved without discussion.

The other topic of discussion relative to this subject matter is whether or not the Planning Board would like to issue a recommendation to the Council on the ordinance amendments being considered at the public hearings.

Bill Lunt wondered why they are holding the public hearing if it is not mandatory for them to provide a recommendation. Tony Calcagni agreed.

Hugh Coxe commented that LPAC, formerly CPAC, has been holding these for years, and only one person ever came out. State law requires this reviewing authority. It is possible that the attendance may change, if the Planning Board is holding the hearings.

Ethan Croce asked when the Board would want to hold their deliberation process during the Planning Board meeting – directly after the public comment, or at the end of the meeting.

Tony Calcagni suggested directly after the public comment; they could always table the discussion if they wanted or needed to.

Bernard Pender asked who would present this to the Council.

Ethan Croce said it would presumably be staff conveying the Planning Board's statement to the Council. He said that the benefit of the Board issuing its recommendation the same night as the public hearing is so the Council would have that recommendation when it deliberated the item at their meeting.

Tony Calcagni thought the Council would have to table their item in the case of the Planning Board having tabled its recommendation.

Bill Lunt suggested they could table the deliberations to the end of the agenda, after the Planning Board business.

Hugh Coxe said they could do an additional meeting the following week.

Tony Calcagni said they would have the public hearing at the beginning of the agenda, and then issue its deliberation or table it to the end of the meeting.

Bernard Pender asked about the two-minute time limit.

Bill Lunt felt it should be at the discretion of the chair to determine the time for each speaker.

Bernard Pender felt that people would argue if there was not a set time limit.

Tony Calcagni was not inclined to specify time; he felt it should be left with the chair.

Bill Lunt felt that if it wasn't working, they could go back to the Council and say it wasn't working.

### **Other item**

In regards to Mr. Woodruff's denial last month, Ethan Croce explained that the Planning Board's rules of procedure do not require formal findings of fact in the case of a denial, but rather a notice of decision detailing the reasons for denial. Ethan handed out copies of the notice of decision that he sent to Mr. Woodruff. He asked if the Board was comfortable with this approach or if they wanted formal findings drafted.

The Board was agreeable with this approach.

Meeting adjourned 8:45 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary