

FALMOUTH PLANNING BOARD MEETING MINUTES

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

FALMOUTH TOWN HALL, COUNCIL CHAMBERS

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

ABSENT: Jay Moody (Associate)

STAFF PRESENT: Ethan Croce (Senior Planner)

The meeting was called to order at 6:32 pm.

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

1. Approval of November Meeting minutes

Bill Lunt moved to approve the minutes, Bernie Pender seconded. Motion passed 4-0 (Fenderson abstained).

Administrative Items:

2. 46 Depot Road, LLC – 46 Depot Rd. - Request for site plan re-approval for an office building renovation & expansion. Tax Sheet 320; Map-Lot U24-006; zoned SB1 & Village Center Overlay.

3. RTG, Inc. – Request for an amended subdivision and site plan re-approval for the 75-unit Ridgewood Estates Subdivision. Tax Sheet 310; Map-Lot R04-026; zoned OSRD.

Bill Lunt moved to approve the two items, David Fenderson seconded. Motion carried 5-0.

Agenda Items:

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).

This item was tabled at the October Planning Board Meeting. Bill Lunt moved to remove the item from the table, Stan seconded.

Ethan Croce presented the key issues. The applicant was here previously in October 2008 to request several amendments to the residential design guidelines. The Board requested that these amendments be reviewed by the Town's peer reviewer. Since that time the applicant has revised their request, dropping their requested amendments down to 6 in number. Tom Emery did conduct a peer review of these six requests, and he agrees for the most part with the applicant's amendments, with some revisions.

Tony Calcagni opened discussion on the suggestions of the peer reviewer for each of the requested amendments. He asked if the applicants had a problem with placing utility meters on the sides of the building, except when mandated by the utility companies to be on the front.

Greg McCormack of Falmouth Foreside, LLC explained that, in instances where utility meters are mandated by utility companies to be placed on the front of the building, they would propose covers for those meters. They would like to have the option of placing the meters on the front of the building, to give them some more flexibility, and to be able to place them where they will not disturb other utilities.

Bill Lunt suggested following Mr. Emery's suggestion on the utility meters. Stan Bennett, Bernie Pender and David Fenderson all agreed.

Tony Calcagni raised the discussion of A3.05 – the request to remove the prohibition on fencing.

Stan Bennett asked about the intent of this request – are they removing the prohibition in conjunction with the request to remove the prohibition on swimming pools, or do they want to allow fencing overall.

Mr. McCormack clarified that they want to allow fencing, separate from the request for swimming pools. They feel that buyers would like to have the option of fencing. He said they have provisions in the language to monitor the type of fence that would be installed.

Tony Calcagni asked where the language would be that would determine the type of fencing.

Mr. McCormack said they would have to add it.

Tony Calcagni read the comments of the peer reviewer, who recommended a prohibition against chain link fence, and a recommendation of adding language allowing architecturally compatible fencing including picket fence.

Mr. McCormack said the original design guidelines referenced more natural divisions, landscaping for example, but he felt that landscaping would not provide the same privacy as fencing.

Bill Lunt remembered from the original approval that the prohibition against fencing was so that the subdivision owners wouldn't decide to divide themselves from the neighboring properties by placing fences along the back of the lots. They didn't want it to look like it was being blocked off.

Mr. McCormack agreed with that assessment. They would encourage natural fencing, stone wall and shrubberies, but they would hate to prohibit people down the road from having a small fence for privacy, as long as it was attractively done.

Bernie Pender wondered about imposing a height restriction.

Mr. McCormack thought a typical fence is 6 feet high. Sometimes people have deed covenants in which they agree to uphold the design guidelines.

Bernie Pender thought they should have something clear as to what is allowed and what isn't.

David Fenderson asked if any lots have been sold.

Mr. McCormack said no, nothing has been sold yet. One model home has been built.

David Fenderson said that he thought it was a good idea to restrict the height of any fencing.

Tony Calcagni suggested using the language suggested by the peer reviewer, with a prohibition on chain link and a height restriction on the fencing.

Mr. McCormack thought a typical fence was 6 feet high.

Bill Lunt reiterated the statement that the intent was to avoid large, ugly fencing along the back of the properties. The intent of the subdivision was to create a community feel, and he felt the fences go against that intent. He didn't agree with a 6 foot high fence.

Stan Bennett asked if a 4 foot high fence would meet the requirements for a swimming pool.

Bill Lunt thought they should focus on the fencing, and if they decide to allow swimming pools, the fencing around those should be dealt with separately. He didn't feel that the fencing that was required around a swimming pool would be the same as fencing around the property.

Bernie Pender thought there were many options for fencing, and he felt there should be something well-defined as to what constitutes “ugly” fencing, when everyone’s definition of ugly is different.

Mr. McCormack clarified that they will not be installing fencing for the homes they build. Maybe someday down the road someone would like to install fencing to make the property theirs. That would be up to the homeowner. He thought that the code requirement for fencing for swimming pools is 48” or 4 feet high. They had no problem with defining types of fences.

Tony Calcagni polled the Board on how they felt about fencing. Bill Lunt was opposed, Stan Bennett would like to see it limited to fencing required by a swimming pool and not on the property lines, David Fenderson and Bernie Pender were okay with fencing being allowed. Tony Calcagni was also okay with it, with the recommendations proposed by Mr. Emery and a height restriction. He also thought the height required by a swimming pool was a good place to start. The Board agreed with a restriction of 4 feet.

Mr. McCormack referred to the original design guidelines, which suggested natural screening. That screening appeared to him to be higher than four feet.

Bernie Pender observed that fencing is different from natural buffering.

David Fenderson didn’t think stone walls were higher than four feet.

Bill Lunt had no problem with natural buffering; he had a problem with fencing. There was a lot of concern at the original approval about putting that many homes on that small a property. He is not in support of fencing at all.

Tony Calcagni asked if the applicant was satisfied with a four foot height restriction.

Mr. McCormack wanted the flexibility of going up to six feet.

The Board agreed on a height restriction of four feet.

David Fenderson was interested in a requirement of natural materials on fencing.

Bill Lunt pointed out that the Board approved the design change to allow vinyl siding on the homes.

Mr. McCormack explained that they wanted to provide properties that were relatively low-maintenance, which is why they asked to allow vinyl siding. A wood fence looks terrible after a few years, if it is not maintained.

Tony Calcagni pointed out that the peer reviewer’s language referred to fences that are “architecturally compatible with the home and neighborhood”. It didn’t seem to him that Mr. Emery was adverse to composite materials in the fencing.

David Fenderson was satisfied with that assessment.

Tony Calcagni moved the discussion to section A4.04 – the prohibition of swimming pools.

Bernie Pender was fine with allowing swimming pools. Tony Calcagni asked if swimming pools and the associated fence would fall within the building envelope. He asked for that clarifying language to be added to the design guidelines. Stan Bennett and David Fenderson were fine with allowing swimming pools with those requirements.

Tony Calcagni moved the discussion to section A 4.03 - the placement of the garage doors.

Stan Bennett suggested they go with the recommendation of the peer review, which stated that if the garage projected beyond the front of the house in a “snout-forward” design, it not do so more than 25% of its depth.

Mr. McCormack said that some of their lots would have a “snout forward” design. The suggestion of a limit of a 25% depth projection was agreeable.

The Board was satisfied with that approach.

Tony Calcagni moved the discussion to section B1.02 – changes in the design review process. He mentioned that in B1.01 there was a change to the landscaping amount from 10% to 2%.

Mr. McCormack said that was a typo.

Tony Calcagni said that the change in the design review process, moving it from a homeowners board to Falmouth Foreside, LLC, does not allow for changes down the road when the developers have built all the lots and then moved on.

Mr. McCormack explained that they have read Mr. Emery’s report, and he agrees with Tony Calcagni’s observation. He wasn’t thinking long-term, just in the terms of when they own it. They have no problem with Mr. Emery being the peer reviewer for the project while they are building it.

Tony Calcagni asked about the removal of a peer reviewer, either for the town or for the homeowners. If this is removed, there would be no independent person reviewing projects for compliance with the design guidelines.

Mr. McCormack said they had no problem doing it before they go for the building permit. They felt they could do it all themselves.

Bill Lunt said the project was passed with design guidelines, and when you have specific design guidelines you need someone to review whether they are being met.

Mr. McCormack clarified that they are fine with a peer review.

Tony Calcagni thought the last line in B1.02.b, which retains Orcutt Assoc. as the peer reviewer, should be struck. He explained that the original guidelines required a certificate of approval from the design review board be submitted with a building permit application. As a part of the design review board’s review, an independent peer review would be conducted.

Mr. McCormack felt that Tom Emery had a good feeling with the town and they were agreeable with that recommendation.

Ethan Croce recommended that, under B1.02.b, where it spells out the required licenses, it seems to imply that all those licenses are required.

The Board suggested striking out general contractor/home builder, and keeping only architect/landscape architect.

Tony Calcagni moved through several other changes to the applicants’ proposed language relative to the design review board. He reviewed the applicants request to remove the submittal requirements for the design review board process outlined in B1.03. He was in agreement with the removal of these sections, except for one – he felt that the requirement that the owner pay for the professional review fees should remain. His suggestion was that they add a sentence to B1.02.b stating that the homeowner pay for the professional review fees required by the design review process, and that the homeowner submit plans that are sufficient for the peer reviewer to conduct an adequate review

Mr. McCormack thought that was agreeable.

Ethan Croce asked if they should clarify who the design review board will consist of.

Tony Calcagni said that in section 1.02.a it says a design review board will be established as described in the bylaws.

Ethan Croce said in the proposed bylaws it says the board will consist initially of one member, Falmouth Foreside LLC, but makes no further provisions.

Tony Calcagni thought they should go with what the original bylaws required.

Public comment period opened:

Heidi Kettinger, 100 Foreside Road, explained that she is new to the area. She felt this project has a lot of homes for a very small area. This does not fit with the character of the Foreside neighborhood. Her concern is the movement of the homes back from the build-to line. She thought that would move the homes closer to her home. She thought there was a no-cut line in the back of the lots to provide a buffer. She felt that any fencing should be low, since it would confine it even more. Her home is closest to Lot One of the development.

Tony Calcagni explained that in the original plans there was a no-cut wooded buffer. Any home built on Lot One would still have to remain in the building envelope, and the wooded buffer would have to remain.

Ms. Kettinger was not in favor of the homes moving further back. She asked if the homes were all now going to be single-story.

Tony explained that single story is now permitted, but not required.

Ms. Kettinger said that if they are 4500 sq feet and single story they would cover even more land.

Public comment period closed.

Ethan Croce summarized the proposed conditions of approval.

Bill Lunt raised the issue of the no-cut zone. He thought they have required a marker on no-cut zones in the past.

Ethan Croce thought maybe that was included in the original conditions of approval.

Bill Lunt was concerned that, in allowing them to move the structures back from the front build-to line, it was easy to go into that no-cut area.

Ethan Croce said plan note 19 stated that the developer shall provide survey accurate field markers indicating wetlands buffers, no-cut buffers, setbacks, building envelopes, etc.

Mr. McCormack assured the board that their surveyors go out and certify all those things on the plan before they break ground.

Ethan Croce read through the proposed condition 3.

Tony Calcagni felt that imposing a requirement to use the Town's peer reviewer wasn't the Board's intention, rather "a licensed architect/landscape architect acceptable to the town".

Ethan Croce suggested referring back to the requirements listed in B1.02.b.

Stan Bennett moved to approve the application, subject to the four conditions presented by staff and with condition #3 as amended. David Fenderson seconded. Motion carried 5-0.

5. (Item Tabled) John Locke – 24 Winn Road – Request for a private way amendment to serve one additional lot. Tax Sheet 290; Map-Lot U41-013-C. Zoned RB, VMU and RCZO.

6. OceanView Retirement Community – 20 Blueberry Lane – Request for Pre-application Sketch Plan Review of a proposal to expand the lodge buildings. Tax sheet 310; Map-Lot U27-013-B & 013-D. Zoned RB and RCOD.

Ethan Croce presented a threshold issue. Section 3.16 of the zoning ordinance, which governs the retirement overlay district, requires any changes to the project be generally consistent with the master plan. If the Board finds this proposal to be generally consistent, the applicant can move forward with a formal application to the Board. If they find that it is not, the applicant will have to go before the Council for a master plan amendment.

Tony Calcagni asked if the intention of the master plan allows for the buildings to be expanded.

Ethan Croce said that the language is vague.

Matt Teare, representing the applicants, explained that since he came to Oceanview there was an expansion to Hilltop Lodge within the overlay district. The Board at that time found them generally consistent with the master plan. In the case of the Whipple Farm expansion they went to the Council to expand the overlay district.

Bill Lunt asked about Falmouth House - the building was not part of the original Master Plan.

David Haynes, landscape architect, explained that it was after Falmouth House was built when they originally went to the Council for the Master Plan. He clarified that they are not asking for a change of use.

Ethan Croce explained that this appears to give the Board quite a bit of flexibility.

Bill Lunt thought the only thing that will change here is the density. The way the master plan is written is not tight on the actual density.

Ethan Croce said there is a net residential density calculation, which the applicant has submitted. This proposal does not go over the density that the master plan allows.

Stan Bennett asked how many living units are in the area now.

Mr. Teare said there are 110 cottages, 71 apartments and 38 assisted living apartments.

Stan Bennett observed that this proposal would raise the number of living units from approximately 220 to around 250. He asked if a specific number of units were specified in the master plan.

Mr. Teare said no, density is outlined by ordinance but not a specific number of units.

The Board agreed that this proposal was generally consistent with the master plan.

Ethan Croce presented the key issues – the applicants will need to clarify the height for the proposed lodge, that the 70,000 sq foot building limitation on the Falmouth House and Lodge will not be exceeded, and that the proposed additional parking will meet the requirements of section 5.

Mr. Teare clarified that the current lodge is 2.5 stories, and will remain at that height. They want to stick to the design and the scale of the current building. They will be within the 90 foot setback. Regarding the parking spaces, at the lodge they are seeing an average of 0.7 cars per unit. They don't typically see parking issues except for events. Falmouth House is a medical facility, and the residents don't typically have cars, so they don't have the need for parking there.

Tony Calcagni asked if the definition of congregate housing would apply to Falmouth House.

Ethan Croce referred to the definition under section 2.40 of the Zoning Ordinance.

Tony Calcagni asked what the available parking was at the Falmouth House now. Congregate housing would require one space per living unit.

Mr. Teare estimated that there are 32 official spaces for 38 residences, plus a few for kitchen staff. They have proposed adding 6 more spaces for 12 more units. He explained that the definition of congregate housing is independent living with services, congregate care is a health care facility. They are licensed assisted living with the State of Maine.

Tony Calcagni asked if there was any waiver authority on the parking for congregate care.

Ethan said section 5 is not waiver-able, however the Board does have flexibility to not require them to build out all of the required spaces depending on the demand. An area would have to be set aside to accommodate those spaces if they were needed in the future.

Rick Licht from Stantec explained that the ordinance defines health institutions under section 2.83, and under parking requirements listed under section 5, health institutions are required to have one space for every 3 beds, plus one for each employee. Falmouth House fits that definition and this application will provide one space for every 2 units, which is more than required by the ordinance.

Bernie Pender asked what level of care they are providing.

Mr. Teare said that boarding care, outlined by the health institutions definition, fits what they do. They are what a nursing home used to be.

Ethan Croce suggested that the applicant submit a short letter from the zoning officer explaining what he determines their use to be.

The Board was satisfied with that, and Mr. Teare was as well.

Bill Lunt asked if there was space for parking to be designated but not built, in the case that more spaces would be required.

Mr. Teare said yes. He indicated on the plans where there could be a lower tier of parking, connected with stairs, for staff/family. He also explained the emergency access to both buildings would be preserved. The roads are part paved, part gravel, and are plowed in the winter.

Public comment period opened; no public comment.

7. (Item Tabled) Glenn Perry – 9 Thistle Lane – Request for approval of a private way to serve three lots. Tax Sheets 471 & 473; Map-Lot R04-082-I and -082-E. Zoned RA and RCZO.

8. Hundred Acre Woods, LLC – Blackstrap Road – Request for Sketch Plan review for a 19-lot conservation subdivision. Tax Sheet 90; Map-Lot R08-059-002. Zoned Farm and Forest and RCZO.

Ethan presented the threshold issues. The applicant was last before the board in September 2007, at which time a threshold issue was the right, title and interest to use the private way for access to the site. The applicant has now purchased a fee interest in the private way, and the board should determine if the deed is sufficient to allow their use of the private way in an expanded use. The applicant has the consent of the frontage lot owner, and the question is whether the consent of the rear two lot owners on the private way is required in order to expand the use. The town attorney has opined that in the case where a private way has an approved road maintenance agreement, all lot

owners must give their consent to expand the private way in any way. This private way was approved a long time ago, however, so it may be that no road maintenance agreement was required. It is a question as to whether the formal expressed consent of all lot owners on this private way would be required to expand the use, notwithstanding the fact that the fee interest is now held by the developers.

Jim Thibodeau of Associated Design Partners explained that they are here to re-familiarize the Board with this project. He had supplemental information to provide to the Board to support the right, title and interest question. He said they have written agreements with the owners of lots 1, 2 and 3. He explained the history of this project, which started as a conventional subdivision with 60 lots. Access to the rear lots was difficult to achieve in a timely fashion. At the same time, the Town instituted a conservation subdivision ordinance. They decided to move to a conservation subdivision, and move through the four step design process. The initially were going to phase the project, to develop the front portion first and then the rear portion, but are now only looking at the 20 lots up front for development and potentially selling the rear land for conservation.

David Fenderson asked what would happen to the rear lot if the Town didn't buy it.

Mr. Thibodeau said they would have to hang on to it.

David Fenderson asked if they could connect with Oxford Woods.

Mr. Thibodeau said no, Oxford Woods has already maxed out the length of their dead end. He discussed the potential for a loop road, but thought it would be a long shot.

David Fenderson asked if there were phases to this project any more.

Mr. Thibodeau said no, the front portion is the only development planned now. He moved on to the threshold issues – the first being the access to the subdivision. He explained the problem with the original road design which has been resolved. There were also conflicts in the town ordinance at the time, which have since been resolved. Another threshold issue last time regarded the waivers requested. They worked with Terry DeWan, the town's peer reviewer, on these, specifically the slope of the road, the centerline, the length of the road and the requirement of two paper streets instead of just one. They have worked very hard to mitigate the cuts and fills and the view impacts from Blackstrap Road. Concerns from the neighbors included the placement of the detention basin and the location and size of the front two lots. He felt there was much they could do design-wise to mitigate the impact of those two lots if the Board is willing to allow them to lower the size of those lots. Finally he said the site is ready for the Board to do a site walk when the Board is ready.

Art Colvin of Associated Design Partners provided the Board with paperwork that shows that the private way lot owners are in agreement with what is proposed. The only one of these agreements that is recorded is the deed with Williams that gives them the fee interest, but their intent is to have an agreement that is signed by all three abutters and recorded. He asked Ethan Croce about lowering the 100 foot setback to help shrink the front two lots and move the buildings down slope.

Ethan Croce said that there is some flexibility under section 3.13.5 F, which allows for a reduction down to 25 feet for individual residential lots fronting public streets in existence as of April 1, 2005.

Mr. Colvin said that it would be better for the sight view to move the structures on lots 17 and 18, the front two lots, down slope. They are also interested in reducing the size of these two lots.

Bill Lunt asked what setback reduction they would be looking for.

Mr. Colvin said a 50% reduction, i.e. a setback of 50 feet, would get them down to the flatter area. The rear of the lots would become part of the open space of the subdivision and this would allow them to remove fewer trees.

Bill Lunt asked that the requested setback on the front two lots be clearly marked for the site walk. Stan Bennett left the meeting.

Bill Lunt raised the issue of the wavier request specific to the road slope.

Mr. Thibodeau said that this is the same road design they ended up with after all the work they did last time. They could designate by color of flags the two different road designs.

Ethan Croce raised the issue of the concern raised by the Board in September 2007. At the behest of a property owner of back land who claimed to have access rights to his property over the private way, the Planning Board asked the applicant to research what potential easement and/or access rights may exist over the private way to other properties west of this project. Representations were made that portions of the private way lie over an old county road that used to provide access to back lots in this northwest corner of town. The Board wanted to ensure that these back lot owners would still be able to access their land and the question was raised as to whether or not these back lot owners would need to consent to release their rights to use the private way for access if the roadway was proposed to be re-designed and if in fact rights of access do exist.

Mr. Colvin said that they do not intend to block the right of anyone that may currently have the right to use that road.

Mr. Thibodeau further clarified that they are not creating any new rights.

Ethan Croce said that the old county road approximately resembles the location of the private way and there was concern the last time this was before the Board that blocking off a portion of the private way to vehicular traffic in order to accommodate the alignment of the new subdivision road could impede the ability of those who currently have rights to use that section of road.

Tony Calcagni asked the applicants to address this issue with more detail and with some legal interpretation.

Mr. Colvin agreed.

Ethan Croce asked about the developer's intent to preserve the mature vegetation at the top of the ridge. He wondered about the trees that are within the proposed building envelopes and not within the common open space.

Mr. Colvin said that they have shown the trees that will have to be destroyed. The building envelopes are relatively small already, and making them smaller would be difficult. On the individual plot plans they will show those trees that will not have to be removed.

Mr. Thibodeau said they surveyed every mature tree and have shown them all within the building envelopes. Some of them will have to be cut down, but others will be preserved. The whole design was developed with the trees in mind, including a loop in the driveways at the end in order to save trees. He explained that the lots are small; in some cases they could alter the building envelopes, but until each individual lot gets graded out, they have put in what they can have for building envelopes.

Tony Calcagni felt that, to the extent that they can preserve mature trees that would match the intent of the ordinance.

Bill Lunt asked if it is their intent to have a grading plan for each lot.

Mr. Thibodeau said yes.

Bill Lunt thought that was the only way they are going to be able to preserve the trees that are there.

Mr. Thibodeau said that these have been designed so that they can be graded around. One of the ideas is for some of the homes to have a daylight basement, so they fit into the slope.

Tony Calcagni felt the proposed building envelopes are fairly large. He asked if this is due to the stage of the project, and whether, when they get further in the process, they could reduce those.

Mr. Thibodeau said they have to consider the wants and needs of potential buyers and the risk of imposing too many restrictions, but to the extent that they can protect natural features it is worth consideration.

Ethan Croce said that it looks like on their plan that the setbacks conform to the underlying Farm and Forest district, but that conservation zoning allows flexibility with respect to setbacks and frontage to assist in designing a project that preserves the natural features of the site.

Public comment period opened; no public comment.

Bill Lunt asked if the applicant is clear on what the board is asking for on their site walk.

Mr. Colvin described his plans for flagging the site.

Tony Calcagni asked for some marking on the trees that are flagged for removal.

Bill Lunt asked how far it is to the end of the road.

Mr. Thibodeau said 2500 feet.

The Board agreed to schedule a site walk for December 13, 2008. Staff will send out public notice 10 days prior to that date to all abutters.

Meeting adjourned 9:38 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary