

FALMOUTH PLANNING BOARD MEETING MINUTES

TUESDAY, February 3, 2009, 6:30 P.M.

FALMOUTH TOWN HALL, COUNCIL CHAMBERS

MEMBERS PRESENT: Bill Lunt (Vice-Chair), Bernard Pender, David Fenderson, Jay Moody (Associate)

ABSENT: Tony Calcagni (Chair), Stan Bennett

STAFF PRESENT: Ethan Croce (Senior Planner)

The meeting was called to order at 6:33 pm.

Jay Moody was designated as a voting member for the meeting.

1. Approval of January Meeting minutes

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

Administrative Action Items

2. Shalene Johnson – 240 U.S. Route One – Request for a site plan amendment for approval of two, 34 square foot wall signs for Sashay's. Tax Sheet 240; Map-Lot U24-005-001. Zoned SB1 & Village Center Overlay.

Ethan gave a brief description of the application at Bill Lunt's request.

Item approved 4-0.

Agenda Items:

3. Wal-Mart Stores, Inc. – 206 US Route 1 – Request for re-approval of a site plan amendment relative to certain site improvements and extending Hat Trick Drive. Tax Sheet 320; Map-Lot U52-002. Zoned SB1 and Village Center Overlay.

This item was moved to the regular agenda at the request of Bill Lunt.

Bill Lunt observed that this is the fourth or fifth time this item has come before the Board.

Ethan Croce said he believed it is the fifth time.

Bill Lunt asked for confirmation that the reason this keeps coming back is due to the legal complications between the parties, including the Town, and Ethan Croce said that was correct.

Bill Lunt wanted some assurance that if the Board agrees to extend the approval another year that this project will happen this year. He was not comfortable with the precedent being set, with an application coming over and over for re-approval. He expressed his overall support for the plan.

Jay Moody agreed; he felt that the project should be reviewed in its entirety.

Bill Lunt observed that it would have to come back to the Board if there were any changes to the original approval.

David Fenderson observed that there is no sunset clause in the ordinance; they could continue in this way and there is no limit, and Ethan Croce said that was correct.

Public comment period opened; no public comment.

Bill Lunt was in favor of renewing it for a year, but he hoped that staff and the Town can work with the other parties and get it done this time. He thought if this comes back to the Board again, he wasn't sure he would approve it at that point.

David Fenderson moved to approve the application; Bernie Pender seconded. Motion carried 3-1 (Moody opposed).

4. Irving Oil Corporation – 264 US Route 1 – Request for site plan amendment for approval of new site signage for Irving Oil. Tax Sheet 240; Map-Lot U58-007. Zoned SB1 and Village Center Overlay.

Ethan Croce presented the threshold issue – the existing free-standing sign along Route One is non-conforming due to setbacks and height, and all non-conforming signs that are going to be altered need conditional use approval from the Zoning Board of Appeals (ZBA). The applicant was scheduled to appear before the Zoning Board last week, but that meeting was postponed due to snow. The Planning Board should determine whether or not they want to hear this item prior to it receiving ZBA approval.

Bill Lunt asked if there is anything in the ordinance that prohibits them from hearing it.

Ethan Croce said no, it is based on past practice only.

David Fenderson asked if the application would bring the sign into conformance.

Ethan Croce said no; the non-conformity of height and location will not change.

Bill Lunt said that any approval tonight would have to be conditional on a ZBA approval. He thought the applicants tried to do it the right way, and it wasn't their fault that the meeting was cancelled, so he was in favor of hearing the item.

Bernie Pender would like to see the sign come into compliance.

Bill Lunt clarified that they could review the application in front of them and approve it with a condition requiring approval by the ZBA. If the ZBA does not approve it, it would have to come back before the Planning Board.

Jay Moody wondered if they were comfortable giving a conditional approval tonight.

Bernie Pender moved to table the item. There was no second.

Bill Lunt suggested reviewing the application with the non-conforming sign as presented, pending ZBA approval.

Jay Moody felt the Board was wasting their time reviewing this, as he felt the ZBA would not approve the non-conforming sign. He didn't feel that the applicants could prove hardship to the ZBA, and felt the Board should table the item.

Ethan Croce clarified that the application to the ZBA was not a request for a variance, but a conditional use permit, and therefore the applicants did not have to prove hardship

Gary Bolduc of Poylant signs, representing Irving Oil and Nouria Energy, explained that the property was purchased in December and they were allowed to put up temporary signs. They are on the ZBA agenda for tomorrow night, and have been in touch with Ethan Croce regarding the proper steps in this process. They would like to be heard tonight. This is basically a rebrand of the existing sign. His understanding is that the setback was changed due to improvements to Route One, and if they had to move the sign it might pose a problem with the traffic flow on the site. Their

understanding was they would be able to do a “like-for-like” replacement of the faces of the sign. There was another freestanding sign on the Bucknam road side of the site that was not in compliance, and they have removed it.

Jay Moody stated that he was still not comfortable hearing the item before the ZBA meeting. He wanted to see the application conform to the Route One guidelines.

Bill Lunt thought it was difficult for this Board to say what the ZBA will or won't do. There are some key issues that the Board should look at as well, which he asked Ethan Croce to review.

Ethan Croce presented the key issues. There is a conflict with the design guidelines in regard to the number of colors on the signs as presented. The majority of the site signage conforms to the red, white, and blue Irving color scheme, but there is one “Lil’ Mart” sign on the building and another on the free standing sign which are both in vivid green. Secondly, the sign content as presented includes the word “clean” prior to the grade of gasoline, and there is question as to whether this is necessary verbiage. Thirdly, the spotlights proposed to externally illuminate the freestanding sign do not appear to be screened, as required by the design guidelines.

David Fenderson asked about the maximum number of colors allowed by the Route One guidelines.

Ethan outlined where in the Route One design guidelines it references the colors.

David Fenderson thought these requirements are not waiver-able. The limit is three not four.

Ethan Croce said that was correct; the limit is two or three, but not four and white is a color.

Mr. Bolduc handed around some materials to the Board. When designing the freestanding sign, they started with the Irving logo, but since it is a light background it must be opaque and not internally illuminated. They therefore added exterior illumination for that portion of the sign. The existing cabinet is internally illuminated, so they kept the blue center panel internally illuminated, as well as the Lil’ Mart sign. The “clean” diesel and “clean” regular is an Irving branding issue. They have won a “clean air award” in recognition of their bringing the low-sulfur clean fuel to market. The diesel price is in green and the regular gasoline in blue. They are keeping the sign in place, and the structure will be the same. They are requesting two canopy signs as well, which are part of the Irving brand standards. Nouria Energy has set standard colors of green and blue for their “Lil’ Mart” signs, and they felt that would fit well with the Irving colors of red and blue; they were not aware that white was considered a color.

David Fenderson did not think they had the ability to waive the number of colors. He asked if the “clean” in this case is a brand name, and not an adjective.

Mr. Bolduc said his understanding is that it is a trademark.

Jay Moody did not agree; he felt they were adjectives.

David Fenderson asked about the external lighting; these are lights that will beam up to the sign.

Mr. Bolduc said they would beam up to the Irving face. They will leave the middle panel internally illuminated, because it is a dark background, but the Irving face has a light background so it cannot be internally illuminated.

David Fenderson wanted to make sure that the lighting for this sign is consistent with lighting on other parts of the street.

Bill Lunt thought that they have issued a conditional approval based on the approval of the CEO before.

Ethan Croce thought the Board has granted conditional approvals on the shielding of ground mounted light fixtures being installed to the satisfaction of Town staff.

Bill Lunt thought the landscaping that was required by the design guidelines was intended to keep the lights on the sign, and prevent it from spilling out over Route One.

David Fenderson asked if the Irving logo on the canopy was flush with the canopy or if it sticks out.

Mr. Bolduc said it is five inches deep.

Bernie Pender asked about the property across the street. Mr. Bolduc said that will be on the March Planning Board agenda.

Bill Lunt asked about allowing the fourth color, in recognition that these are essentially two different companies. He thought the Board could look at it as two different entities, and that would make him more comfortable having the green and blue on the building.

Jay Moody was not in favor of the green on the building. He asked if it was on there now.

Mr. Bolduc said it is; the store owner didn't understand the process, and put it up already. They asked him to include it with this application after the fact.

Jay Moody felt this would be a major step back in the Route One design. This property is the gateway to this part of town, and he felt they needed to require consistency with the colors. There is no shielding of the light fixtures shown in this application. He would not approve the vivid green in this application, and he feels the "clean" is redundant; he feels it is marketing and not a trademark. He felt there needs to be one consistent, overall design for both the signs and the canopy.

David Fenderson agreed with Jay Moody on the colors and the shading of the lights. He did not have a problem with the "clean" on the sign.

Public comment period opened; no public comment.

Bill Lunt felt that the Board has the jurisdiction to look at unique situations, and the situation with convenience stores today is different to what it used to be, with two companies on the one site. He felt this property has two separate businesses, and he felt that the companies have a right to their branding. He was not comfortable with the green Lil' Mart sign on the Irving freestanding sign. He was also not comfortable with the green behind the diesel price. He suggested a condition of approval for screening for the lighting.

Bernie Pender agreed with Bill Lunt's comment on the screening of the lights. He also would like to see just three colors. He didn't find the "clean" verbiage to be offensive. He asked about listing the mid- and high- grade.

Mr. Bolduc said that Irving does not market those on the signs.

Jay Moody asked if the Board was being asked to approve the Lil' Mart sign.

Ethan Croce confirmed that it is part of the application.

Jay Moody felt this application needed to go for peer review. He felt this was a disaster. He suggested denying the application. It was not well thought out, with the building putting up the green already, and the Irving temporary signs being up as well.

Bill Lunt asked for clarification on the signs issue.

Ethan Croce said the canopy signs and the freestanding sign were issued temporary permits. Temporary permits are handled through the Codes office, so he wasn't sure as to what other permits might have been issued.

Mr. Bolduc said that his company was not involved with the Nouria Energy signage at the time, and they did not apply for a temporary sign permit for that.

Ethan Croce could not confirm whether there was a temporary sign permit for the building sign.

Mr. Bolduc said he wasn't sure Nouria was aware that they needed a temporary permit.

Jay Moody moved to deny the application, due to the guidelines limit of 2-3 colors and the application has 4. Bernie Pender seconded.

Mr. Bolduc asked if it would be acceptable to change the banding to blue and white, to tie in with the Irving colors.

Jay Moody thought that is what they will need to do. He was not in favor of making that a condition of approval. He also wanted to see compatible font between signs.

Bill Lunt explained that if the application is denied, it would have to come back as substantially different for the Board to hear it.

David Fenderson was in support of Jay's comments but was comfortable with mandating the suggested changes as conditions of approval.

Bernie Pender felt this application was not complete; he would like to see an application with the screening included, for example.

Bill Lunt was not in support of the motion; he felt that they were close to coming to an agreement, and he didn't feel substantial change was necessary. He was in favor of tabling the item pending the changes as discussed tonight and a peer review being done.

Motion defeated 2-2 (Lunt, Fenderson opposed).

Jay Moody moved to table the application, pending a ZBA hearing. David Fenderson seconded. Motion carried 4-0.

5. Hundred Acre Woods, LLC – Blackstrap Road – Request for pre-application sketch plan review for Hundred Acre Woods, an 18-lot conservation subdivision. Tax Sheet 90; Map-Lot R08-059-002. Zoned Farm and Forest and RCZO.

Ethan Croce presented the key issues. This application is substantially similar to the sketch plan submitted in December 2008. Since that meeting the Board has conducted a site visit, which was attended by two Board members, and staff have reviewed the changes made since the last application. Staff comments that: 1. the paper street connection at the end of the roadway has been removed and should be replaced. 2. The hammerhead shown on the plans may no longer be appropriate in its current location. It was originally placed in this location when the applicant was proposing to have the formal road right of way terminate at this location. Now that the right of way has been extended to the northern end of the property, it seems appropriate to remove it from the plans entirely and/or replace it with a turnaround at the end of the road. 3. A new proposed driveway providing access to the detention pond area is shown on the new plans. Is it possible to align the access road over one of the two existing trails to obviate the need for another clearing through the woods? 4. Are there any opportunities to preserve or relocate the existing snowmobile trail which connects to the trail network on the other side of Blackstrap Road. 5. The Planning office has

received multiple inquiries from citizens recently regarding timber harvesting that they allege has taken place on portions of the applicant's property. The applicant should verify for the record if any harvesting has taken place since this project's inception and, if so, where on the property and to what extent the area has been harvested. 6. Regarding the two proposed house lots that front on Blackstrap Road and the negative impacts that could result to the road corridor, the application packet will need to document that the four-step design process has been adhered to in justifying the house sites on Blackstrap Road. If the four-step design process ultimately suggests that this location is appropriate for building sites, one suggestion is to compile an inventory of existing vegetation along this portion of road in order to identify areas of denser vegetation that could be used as screening for house locations. Ultimately, supplemental plantings may also be appropriate to screen house sites. Prior staff comments have also suggested shrinking lot sizes and/or building envelopes in order to reduce the amount of area that would be eligible for clearing should lots be approved in this location.

Jim Thibodeau of Associated Design Partners explained that they are here tonight to discover what issues, if any, came up as a result of the site walk. The property is still marked, if any Board members that couldn't come to the site visit would like to walk the site.

Art Colvin of Associated Design Partners addressed the key issues raised. Some little changes have been made based on comments by the Board, the town engineer, and other reviewers. They had made changes to the road, which ended the connection to the end of the property. They will put that back. The hammerhead is at the end of the main road. The original design included a hammerhead at the very end of the project with a parking space. The present design is configured to make three "neighborhoods". They can place the hammerhead back at the end of the road. The building lots along Blackstrap Road were included in the four-step process, and were part of the design approved by Terry DeWan, and they can provide documentation to that effect. They can use the snowmobile trail to access the detention pond, which is what they propose to do. He indicated the location of the current snowmobile trail, which will be cut off by the road. The trail will be rerouted across the road and go over a new snowmobile bridge over the stream to connect to the original trail. The timber harvesting that has been going on for the last six months has been going on in the back of the parcel, the part not associated with the development project.

Bill Lunt asked about the impact of the two lots on Blackstrap Road. He asked about the waivers requested for those lots.

Mr. Colvin explained that there was a 100 foot setback, but due to the slope in that area, meeting the 100 foot setback would be difficult. They are asking for a 25% reduction to a 75 foot setback which would allow for building the homes without a lot of earthmoving. A reduction to 25 feet is possible under ordinance.

Mr. Thibodeau explained that it is less intrusive to move it further down the slope, and buffer it, rather than move it up the slope, and have it high up in the sight line. They are planning on having a buffering plan with berms when they come back for preliminary approval.

Jay Moody asked about the contours on the plans.

Mr. Colvin said that they are 2 foot contours; the town engineer asked them to provide topographics, so they have 1 foot contours which they will submit with the preliminary application.

Jay Moody asked about the loop in the road and the road width.

Mr. Colvin said the loop was a recommendation of Terry DeWan, to match the existing tote road. The road will be 18 feet wide to accommodate two-way traffic.

Jay Moody asked about the 100 foot setback.

Ethan Croce explained that the conservation zoning language adopted in December 2005 required a 100 foot streetscape buffer along public streets that were in existence prior to April 1, 2005. It is not technically a setback. For lots that receive their frontage along public streets, a reduction in the buffer down to 25 feet is allowed.

David Fenderson asked about the relocation of the snowmobile trail and who would maintain it.

Mr. Colvin said that the subdivision would not maintain the trail; they will not stop anyone from using it. The trail is mainly through the common open space of the development.

David Fenderson raised the issue of insurance; Mr. Colvin explained that as long as you don't charge people, Maine state law protects landowners.

Bernie Pender asked who would build the bridge.

Mr. Colvin said they would depict on the site where the bridge could go, but it would have to be built by those who built the first one. He explained that the road grade as designed is not conducive to snowmobiles crossing where the original trail is located. They would indicate a better place for snowmobiles to cross.

Jay Moody asked about the back lot access and issues with the road.

Mr. Colvin explained that there are three residences that currently use the road. They have purchased the road in fee, and have granted in the deeds the rights of those to use it.

Jay Moody asked if the road will continue to go straight, to access the three driveways.

Mr. Colvin said yes; he wasn't sure the easement has been finalized, but the draft was presented at the December meeting.

Ethan Croce read the requested waivers. The first addressed the maximum road slope – the applicant is asking for a 10% road slope in some areas, where the maximum allowed is 8%. The second refers to the minimum centerline radius – they have requested 240 feet as opposed to 430 feet. The third is a request to allow them to have a dead end road length of 2130 feet when the maximum allowed is 1500 feet. The fourth refers to the requirement for 2 paper streets; the applicant is proposing one paper street. The fifth is not technically a waiver; it refers to reduction of the 100 foot setback for the Blackstrap lots.

Bill Lunt asked if all of these are within the Board's power, and Ethan Croce said they are.

Mr. Colvin showed the proposed grades for the road; the 10% grade is first from station 70 to station 1500, so 800 feet of 10% grade. The second is from station 1800 to 2100, so 300 feet of 10% grade. Without these waivers, they would have to cut into the ground twelve feet; in some of these places, they would be adjacent to house lots, and would not be able to get driveways into those lots. They feel this is the best design to minimize impact on the land.

Bill asked if there were specific distances tied to the road grades.

Ethan Croce said that, prior to conservation zoning, the ordinance allowed 8% road grades, with 500 foot sections of 9% grade. Conservation zoning allows the Board more leeway in regards to road slope, in order to meet the needs of individual sites and to better conform to the topography of the land.

Bill Lunt asked if they have the ability to waive the 8% grade in order to avoid deep earth cuts.

Ethan Croce said conservation zoning allows the Board greater flexibility in waiving road standards in certain instances.

Mr. Colvin addressed the minimum centerline radius. Their road does not easily meet any of the definitions provided in the ordinance. The standards of a collector/subcollector chart would mandate a 430 centerline radius for this road design, but their road is closer to a local/minor road which chart suggests a minimum centerline radius of 350 feet for this road. They are proposing 240 feet. Most of the curve is at 3%, not 9-10%.

Mr. Colvin went on to explain the dead end road length waiver; the ordinance asks for two paper streets for a dead end road of that length, but allows for only one paper street if there is no other place to put one. Originally they had a second paper street shown, but it was not practical as the slope in that area is 20%.

Bill Lunt asked for the ordinance reference related to dead end street length.

Ethan Croce read from appendix 5 regarding dead end streets, which allows for a longer dead end than the maximum and the reduction or removal of paper streets.

Public comment period opened:

George Theborge, a land use consultant representing abutters Jack Chellis and Mark Smith spoke of his clients' concern about the process around this project – it has been before the Board for three years, at sketch plan and preliminary stages. They are concerned that the Board would conduct substantive review of the project without there being a complete application. There are slopes of up to 40% on either side of the ridge, and the comprehensive plan of the town states that steep slopes lead to increases in development costs and impact. He felt there are environmental risks to development in an area of these slopes. His clients are concerned with risks to their properties, including the risk coming from the detention pond. The road construction will channel flows that had gone down the back side of the slope down the road instead, into the road drainage system and thereby into the detention basin. The basin is only designed for the 100 year storm, and they question what will happen when the basin exceeds its designed capacity. They want to know where any emergency spillways might be located. They are concerned with the culvert under Blackstrap Road. The fill shown around the basin is within the 100 foot buffer along Blackstrap. They are concerned with the number and type of waivers requested. They feel that the waivers are to allow the developer to deal with the extreme topography of the site. Even though the developer has stated that the road would always be privately maintained, they feel that there would be pressure for the town to take over the road eventually, and they are concerned about the access for emergency vehicles. They felt that the waiver power of the Board should be used to benefit the Town and support the Town's goals and not just accommodate developers. They believe the Board should consider all three lots along Blackstrap, including the one that is already developed, to consider the cumulative effect on the rural corridor. They feel that the waivers requested are in consideration of the costs associated with getting up the steep slopes, and they are concerned with the financial capacity of the developer, in this economy, to complete the project and protect the site once disturbance takes place. Regarding reducing the setbacks of the houses along Blackstrap Road, they didn't feel that the proposed berms would help, as the slope is such that any house would be above any buffering or berms. Mr. Theborge presented a copy of his report to the Board and the applicants.

Mark Smith of 565 Blackstrap Road handed around photos to the Board. He indicated on the site plan where his home is in relation to the proposed development. The photos he handed around showed outcome after the Patriot's Day storm of 2007, in which the stream came out over

Blackstrap Road. He testified that there has been clear cutting along the ridge, and there is a great deal of water that comes down off the ridge.

Jack Chellis lives directly across from the proposed detention basin and testified that the grade is quite steep, especially at that end. A berm that is six to eight feet tall will only reach the top of the foundation of a house built along Blackstrap in that area. He didn't feel that the four-step design process has been adequately followed for the area along Blackstrap. During the site walk, Mr. Colvin indicated that some trees would have to be removed to provide access to the detention basin. There is a row of pine trees along the road that Mr. Chellis felt are on town owned land and are very significant. It has not been shown what trees will have to be removed. He felt that the costs of the project are determining the design of the project, instead of the best interests of the town.

Public comment period closed.

Bill Lunt asked the Board to voice any questions for staff to research and bring back to the Board when this project comes back before them.

Jay Moody asked about driveway grades coming off the proposed road.

David Fenderson was concerned about the detention pond; he would like some more clarification on its ability to hold the necessary runoff to protect the houses below it.

Bernie Pender asked about drainage from the detention pond, and the issues surrounding that. He wondered about the fill that is proposed, and what happens if that washes out.

Bill Lunt was concerned about the drainage; he would require a great deal of engineering documentation to be reviewed by someone at the Town.

David Fenderson asked about the washouts shown in the photos.

Mr. Chellis said that it has been worse since the clearing on the ridge. Patriot's Day was the worst.

Bill Lunt asked the Board to clarify what further information they need from the applicants on the waivers requested.

Jay Moody was concerned with the length of the dead end. The paper street requirement doesn't really fit in this area, like it would in the center of town. He wondered as to the intention of the Comprehensive Plan to limit the dead end road to 1500 feet.

Bill Lunt felt the goal of conservation zoning was to allow the flexibility of design to allow better use of a piece of property.

David Fenderson asked about the three lots referred to on Blackstrap. He only saw two.

Jay Moody explained that a previous lot was cut off; according to state law they have to consider it, even though it is not part of the application.

Bill Lunt clarified that it is not part of the development.

Ethan Croce said its impact would have to be considered by the Board, if it has been split off from the development within the last five years.

Bill Lunt clarified that he would have to see some solid proof before he was prepared to grant any waivers. The hammerhead will have to be addressed by public safety, and the location of a second paper street will have to be researched again and looked at by the peer reviewer.

Mr. Thibodeau requested that staff research the history of the project. He felt that Mr. Theborge's comments were misleading. He felt many of these issues were discussed already, including the dead

end length. This is not being designed according to cost; they are trying to create a conservation subdivision with minimal impact to the land. Some of the time delay has been due to problems with the new conservation zoning, which have since been addressed. Their goal tonight is to reacquaint the board with this project.

Bill Lunt agreed that some of these issues have been addressed.

Bernie Pender also agreed. Some of the road slope issues have been discussed.

Mr. Thibodeau said that they addressed the drainage when they were here for preliminary approval. He had a written rebuttal to Mr. Thebarger's testimony that he offered to present to the Board, but Bill Lunt felt that the letter could be included in the packet the next time the application comes before the Board.

6. Consideration of amendments to the Planning Board Rules of Procedure.

Tony Calcagni proposed amendments to the language that was approved by the Council in December and sent to the Board for approval in January.

Jay Moody moved to accept the language proposed by Tony Calcagni, David Fenderson seconded. Motion carried 4-0.

Meeting adjourned 9:16 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary