

**FALMOUTH PLANNING BOARD MEETING MINUTES
TUESDAY, JANUARY 3, 2012, 6:30 P.M.
FALMOUTH TOWN HALL, COUNCIL CHAMBERS**

MEMBERS PRESENT: Bill Lunt (Chair), Bernard Pender, Becca Casey, Heddy Snyder, Kermit Stanley (Alternate), Walter Arsenault (Alternate)

MEMBERS ABSENT:

STAFF PRESENT: Ethan Croce (Senior Planner)

The meeting started at 6:32 pm.

Walter Arsenault was appointed as a voting member.

1. Approval of December minutes

There were no minutes to be approved.

Administrative Action Items

2. Portland Builders – Heron Point Rd. – Request for a subdivision amendment to adjust lot lines. Tax Sheet 320: Map-Lot R04-028-035 & -036. Zoned TMPD.

Becca Casey moved to approve the administrative item; Bernie Pender seconded. Motion carried 5-0.

Agenda Items

5. Paul Gaudet & Aroldo Ribiero – 236 & 240 Gray Rd – Request for approval of a private way to serve three lots. Tax Sheet 200; Map-Lot R06-031, R06-032-A, R06-032-B. Zoned VMU and Route 100 Corridor overlay.

Ethan Croce said this application was tabled at the last meeting to allow the applicant to put together a formal waiver request for the curb cut separation distance. The applicant has put together a table showing that existing vegetation on the two existing lots largely meet the minimums of the Route 100 corridor overlay landscaping and buffering requirements. The southerly lot is a few plants short, but the applicant has indicated that they are agreeable to adding plants to meet the requirements. The width of buffer strip on the northerly lot is slightly shy of the 15 foot minimum; there is flexibility in the ordinance on this issue if the Board finds that the landscaping program is in conformance with the intent of the ordinance.

Becca Casey moved to remove the item from the table; Walter Arsenault seconded. Motion carried 5-0.

David Titcomb of Titcomb Associates, representing the applicant, said they have the “capacity to serve” letter from the Portland Water District. There is pavement in front of the Ribiero lot, which leads to it being slightly narrower and not meeting the buffer strip minimum. He distributed a picture of the front of the lot which showed that it is well buffered. They are happy to work with staff to develop a plan to install the required plantings on lot 1B to meet the landscaping requirements.

Bill Lunt asked if staff was comfortable working with the applicant on that item; Ethan Croce said yes.

Bill Lunt asked if they are in excess of the landscaping requirements on the northerly lot; Ethan Croce and Mr. Titcomb both said that was correct.

Mr. Titcomb said 2 canopy, one understory and 7 shrubs would be required to meet the requirements.

Mr. Titcomb spoke about the separation distance. These curb cuts have been in existence for at least 50 years. Mr. Ribiero has been there for some time and has not seen any accidents; it is a safe situation. The entrance to Mr. Ribiero's property has excellent sight distance: 970 feet to the north and 1100 feet to the south. South of the existing driveway is part of the urban compact and in the Town's jurisdiction. North of that is Maine Department of Transportation's (MDOT) jurisdiction; they require 260 feet of curb cut separation and 710 feet for sight distance. If they move the cut to conform to the separation requirement they would be short for the sight distance; they are at 690 feet to the south and 1210 feet to the north. There is a row of trees directly opposite from the Smith Farm entrance. Those trees start to block the sight distance as you go further along. Tony Fontaine, permit field specialist from MDOT, was happy with the entrance that is there now and would not recommend changing it. He discussed the nearest curb cuts and the curve of the road. Mr. Ribiero's lot has always been a mixed use; having a separate entrance there just makes sense. Relocating the driveway would mean removing some of the landscaping and buffering that Mr. Ribiero has installed.

Walter Arsenault was concerned that if they grant this curb cut, they would open the door for further curb cuts down the road. Bill Lunt said that any decision they make wouldn't bind future Boards. Anyone who comes in for a curb cut would have to justify the request to the Board at that time and it would be up to that Board.

Mr. Titcomb said these are existing curb cuts; they are not asking for a new cut. The private way will come in on an existing cut.

Bill Lunt thought if the urban compact wasn't there it wouldn't be difficult to move the cut. Mr. Titcomb said that was correct.

Bill Lunt asked if MDOT had the ability to waive that section of sight distance to the Town's standard.

Mr. Titcomb said they did, but they go with the recommendation of Mr. Fontaine and he didn't recommend moving the entrance due to safety concerns with the sight distances.

Heddy Snyder asked about moving the entrance on the private way. She wondered if they wanted to keep it this way because Mr. Ribiero's property is a commercial use.

Mr. Titcomb said functionally it makes more sense to have a separate entrance for a property with commercial uses. Mr. Ribiero doesn't get a lot of traffic. Since the curb cuts are already in existence and since the uses of the buildings have been in place, it made sense to keep it as it is.

Walter Arsenault asked if the lower curb cut will be widened to accommodate the private way. Mr. Titcomb said yes, it will be widened slightly.

Bill Lunt wanted a document from the MDOT stating their position, for the record. He felt their explanation made sense. He wondered if the Board's recommendation on a waiver from MDOT to meet the Town's standards would be helpful. He thought it would be a good compromise.

Heddy Snyder didn't think they could get the sight distance if they moved it.

Mr. Titcomb said they could if they moved it to 200 feet, the Town's standards. If they move it to 260 feet, they can't. He felt that the 200 foot separation distance envisions development every 200 feet; there is excellent sight distance at the existing site and the curb cut is already in place. Maintaining it wouldn't require any site work, and it is a safe situation.

Heddy Snyder felt the 200 foot separation distance is very frustrating; it is hard to bring properties into compliance. She wouldn't vote to require the movement of the curb cut further away. She is convinced by the arguments made by the MDOT, though she would like to see the documentation. She did think it would make sense to have access to lot 2B off the private way.

Becca Casey agreed; she didn't think moving the curb cut would improve the situation and thought access to 2B from the private way would make sense. She thought the reluctance was a desire to avoid bisecting that lot and thereby removing the potential for splitting off a residential lot in the future.

Mr. Titcomb said that was correct.

Walter Arsenault thought about all the lots taking their access off the private way. The commercial use is a home based occupation, not a retail store. Any of the other owners could have a home based business as well. The argument for having a separate entrance due to the business didn't hold a lot of weight for him.

Bernie Pender agreed.

Bill Lunt said they would require buffering if it was a new lot and was going to be a mixed use. If they are going to maintain 2B to be a mixed use lot and keep the access off Route 100, they should be treating it as a mixed use lot and there would be a buffering issue along the private way.

Ethan Croce clarified that the Route 100 buffering requirements are only along Route 100 since this applicant is not triggering site plan review. If site plan review was triggered, they would have to buffer between commercial uses and residential uses.

Bill Lunt asked if the lot would have to come in for site plan if it was further split for commercial use.

Ethan Croce said if lot 2b were to further subdivided, the overlay district standards require that frontage for new lots come off of roads other than Route 100. The access would have to come off the private way, though the Board does have waiver authority on that standard under certain criteria. Any future residential lot would likely have to come back to the Board for approval.

Mr. Titcomb confirmed that any future split of 2B would have to take its frontage off the private way.

Ethan Croce read from Section 3.10 of the ordinance: *"Any residential lot created after the effective date of the subdivision, whether or not a part of a subdivision, shall have its required road frontage on a street other than Route 100 unless the Planning Board determines that physical conditions particular to the parcel justify the granting of a waiver from this requirement..."*

Bill Lunt asked if access could come off a joint drive on Route 100 if it was split for a mixed use, instead of a residence.

Mr. Titcomb said Mr. Ribiero voluntarily closed a second entrance that used to come onto this lot. Mr. Ribiero does get deliveries to the property. The flow of traffic for UPS trucks and such is pretty clean. It would compound the issue for delivery trucks to have to come in off the private way and loop around. The situation that exists right now works.

Bill Lunt was trying to avert any issue that might come up when they try to do something with lot 2B if they split it at a later date and can't meet the standards at that time. He doesn't want any unintended consequences.

Aroldo Ribiero said he has owned the property for the last 12 years. The building was totally redone in order to bring a nice appearance to the neighborhood. When they discussed this development, it was designed to use the three lots as residential lots, but the commercial property was designed to be attractive and not call a lot of attention to it. He agreed to this development as long as the three lots are homes. The commercial property will be different than the homes that will be built. It is their intention to make sure that the neighborhood is preserved with quality homes and buildings. There was another entrance 11 years

ago, which he closed. The landscaping he installed was to buffer the property and make it beautiful. They are not looking to build these three homes and make them mixed use. The concept is to keep the commercial building separate from the residential homes. He was concerned about safety, especially with kids playing on the private way with FedEx trucks coming in. He was happy to find out that they currently meet all the sight distance requirements to the north and south. He has never seen an accident there.

Bill Lunt explained that his issue is with lot 2B and any future splits on that lot. If the Board accepts this as presented, the applicant will have the option to split lot 2B.

Ethan Croce couldn't confirm that; the owner hasn't done the analysis on lot width, net residential area.

Mr. Ribiero said the only way to split that lot would require an entrance off the private way.

Bill Lunt said if it was a residential lot, it would have to take its access off the private way. He was concerned about it being split off as a commercial use.

Mr. Titcomb confirmed that there is the possibility for that lot to be split. He asked if the Board would be amenable to a restriction that any further lot be for residential use only.

Bill Lunt said in that instance the entrance would come off the private way, and the commercial use would be separate.

Becca Casey asked about a deed restriction that in case of a lot split the lot must be used as residential.

Ethan Croce thought a condition that access for any further lots split from 2B must be off the private way might be a better solution. This way they would have to come back to the Board for review. Any further commercial use, short of a home occupation, would have to come to the Board anyway for a site plan review. Any home occupation would have to go to the Board of Zoning Appeals (BZA) and get approval. As a home-based occupation, it would have to take its access off the private way anyway, as a primarily residential use.

Mr. Titcomb said they would be happy to add a note to the plan that all lots utilizing the private way shall be residential use only.

Bill Lunt said he didn't want to take away Mr. Ribiero's rights to use his lot.

Mr. Ribiero said they don't want any business back there. Mr. Gaudet wants to build homes, and Mr. Ribiero wants only homes back there. The concept is to create a nice neighborhood. They did a nice job on the Smith Farm development, and they want to echo that here. He owns the lot, and doesn't want a business back there.

Bill Lunt asked Ethan Croce about the effect of such a plan note.

Ethan Croce said that would effectively rezone that mixed-use lot into a residential-only zone. The Board has the authority to accept the owner doing it, but not to impose it.

Bill Lunt thought this solution would justify keeping the curb cut as it is.

Mr. Ribiero wanted to add this note; it was what he wanted for the lot. He already had Mr. Titcomb add a restricted area to the plan to preserve the landscaping on the lot.

Mr. Titcomb suggested a plan note that said "all lots utilizing the private way shall be for residential use only."

Walter Arsenault asked about granting the waiver for existing curb cuts.

Bill Lunt explained that if the Board doesn't grant the waiver the applicant would have to move the curb cuts, but in order to grant it they need to have justification.

Planning Board Minutes

January 3, 2012

Page 5 of 5

The Board was in favor of granting the waiver.

Heddy Snyder wouldn't require the note on the plan, but since the owner has offered it, she is happy to accept this. Bill Lunt agreed. Mr. Ribiero said he wanted to add the note.

Ethan Croce asked if the Board wanted a plan note, a deed restriction, or both. The plan note is a little less binding because they could petition a later Board to have it removed.

Mr. Titcomb pointed out that a future owner could have a deed restriction removed.

The Board was in favor of a plan note.

Bill Lunt provided Mr. Titcomb with a copy of a letter from Mr. John Winslow, an abutter, which was submitted this afternoon.

Mr. Titcomb read the letter and addressed the questions raised by it. He explained that the property at 240 Gray Rd. is both residential and commercial and is allowed under the zone. It doesn't require approval from the BZA. He showed the setback violation on the garage on lot 2B; it is an existing condition that they will address with the Code Enforcement Officer.

Bill Lunt asked if the Board had jurisdiction over that. Ethan Croce said no, that is a matter for the Code Office. Mr. Ribiero said the Code Office has been out there and measured.

Mr. Titcomb said a wetland report has been submitted for the whole project. They removed the no disturbance buffer area for lot 2A and limited the building window instead, so there is no effect on the net residential area. Mr. Ribiero didn't want anyone building in that area. Dick Sweet did all the test pits and provided some additional backup material.

Bill Lunt thought the septic was a code issue; Ethan Croce said Justin Brown is the licensed plumbing inspector for the Town and will sign off on all the septic designs before any permits are issued.

Mr. Titcomb said the comment regarding a wastewater disposal field adjacent to the proposed septic on lot 1B isn't pertinent to this application. No new fire hydrant is required and they will not extend water service to the property. He explained that a split of lot 2B was not shown because it would kick them into subdivision review if they did any more splits at this time.

Ethan Croce read the proposed conditions into the record.

Mr. Titcomb indicated that the applicant agreed with the proposed conditions.

Bill Lunt opened public comment; no public comment.

Becca Casey moved to grant the waiver on the required curb cut separation distance; Heddy Snyder seconded. Motion carried 5-0.

Becca Casey moved to approve the application with conditions as read by staff; Bernie Pender seconded. Motion carried 5-0.

Meeting adjourned 7:37 pm

Respectfully submitted,

Melissa Tryon
Recording Secretary