

**FALMOUTH PLANNING BOARD MEETING MINUTES  
TUESDAY, FEBRUARY 7, 2012, 6:30 P.M.  
FALMOUTH TOWN HALL, COUNCIL CHAMBERS**

**MEMBERS PRESENT:** Bill Lunt (Chair), Becca Casey, Kermit Stanley (Alternate), Walter Arsenault (Alternate)

**MEMBERS ABSENT:** Bernard Pender, Heddy Snyder

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

The meeting started at 6:30 pm.

Walter Arsenault and Kermit Stanley were appointed as voting members.

**1. Approval of minutes from the December 6, 2011 and January 3, 2012 Planning Board meetings.**

Becca Casey moved to approve the minutes; Kermit Stanley seconded. Motion carried 4-0.

**Public Hearing**

**2. Public hearing on amendments to the Zoning and Site Plan Review Ordinance regarding roadside stands.**

Ethan Croce said this amendment would replace the farm stand provision in the ordinance with a definition for roadside stands. It would expand the type of products that could be sold at these stands as well as the number of zoning districts in which they would be allowed. They would be conditional uses instead of permitted uses and so would require a hearing by the Board of Zoning Appeals.

Bill Lunt opened the public hearing.

Tony Dipietro of Middle Road said he and his wife brought this proposal to Councilor Varney in July of last year. The Community Development Committee (CDC) of the Council met with them. He thought this came out to be a good agreement. He said that Mike Skillins endorsed the amendment. There is a movement to grow food locally right now. There is also an educational component to this, providing people the opportunity to interact with growers. Any Maine Made products can be sold at these stands. Beekeepers, for example, could sell their honey at the stand. He was in favor of the ordinance and thinks it fits into the character of Falmouth. Other towns are doing this now as well.

Public hearing closed.

Becca Casey moved that the Board recommend the amendment pass as proposed. Kermit Stanley seconded. Motion carried 4-0.

**Agenda Items**

**3. Tidesmart Global – 380 US Route 1 – Request for a site plan amendment for a buffer re-vegetation plan. Tax Sheet 83; Map-Lot U62-003-001 & U62-002. Zoned BP..**

Ethan Croce said the project received site plan approval in May 2010 that included a no-disturb buffer along Route 1 along with a no-disturb stormwater buffer permitted by the DEP. The current application is intended to bring the property back into compliance with the Town's approval as well as address the DEP violation in regards to that buffer. DEP has issued a letter stating that this re-vegetation plan satisfies

their requirements. The applicant is requesting a waiver on the Town's requirement for understory trees; they meet the requirements for canopy trees, shrubs and evergreens. The Town Engineer has recommended that a landscape architect review and approve the plan, and that the Board determine an appropriate timeframe for the applicant to finish the plantings.

Becca Casey asked how many understory trees they are missing to meet the requirement. Ethan Croce said there are 67 required; they show 19 and are therefore short by 48 trees. They have a surplus of canopy trees, shrubs and evergreens.

Jody Cady, from Pinkham and Greer showed an aerial of the property. They are focusing on the stormwater buffer areas since that is what DEP has required. There is such a full canopy now and the evergreens will essentially function as understory trees. The canopy is so dense that understory trees may not grow well anyway. The shrubs they are proposing are taken from DEP's list of suggested species for stormwater buffers. These plants are readily available at local nurseries. They suggested having a landscape architect on site when the plants arrive to help with the placement of them and then issuing a letter that outlines conformance with what the Town is looking for. They would like that as a condition of approval.

Bill Lunt said there was a fair amount of discussion about the project when it was originally passed as well as about the future use of the property on the Johnson Road side. A concept plan was discussed and the buffering along Route 1 was discussed. He is not sure how this application gets them even close to putting the vegetation back to where it was before the clearing.

Ms. Cady said that, since another building will eventually go in on the southern part of the site, they would like to deal with buffering on that part of the parcel when that project comes in for approval and not have to install something now just to remove it later. There is sufficient canopy there now.

Bill Lunt recalled a waiver being granted on the Johnson Road frontage to allow flexibility for the future development. The original buffer didn't even come close to meeting the requirements but it was waived at the time based on the concept plan presented to the Board.

Ms. Cady said the trees that were suggested have been installed.

Bill Lunt said that canopy trees do not provide the buffering effect and this application does not mitigate the damage that was done to the buffering that was there.

Ms. Cady said some of the shrubs listed will grow quite tall, even though they are categorized as shrubs.

Becca Casey asked for confirmation that they are increasing the shrubs and that their count overall is more than what is required. She thought it is a dense canopy there and a landscape architect may be able to back up what Ms. Cady is saying about the shrubs and certain species not growing under the canopy.

Walter Arsenault agreed with Becca Casey. He asked for more detail on what they are adding.

Ms. Cady said they are adding evergreen trees to the buffer, as well as some bushes that can grow to become taller. The plants selected grow especially well in the environment where the stormwater buffer is. She discussed some of the species they are proposing for the site. This site is also 6 to 8 feet above Route 1, so that adds height to the vegetation.

Steve Woods, the owner of the property, explained that there were 33 trees that were either dead or diseased in that buffer when he took over the property. He understands and is aware of the DEP regulations. While their intent was to clear out the dead and non-functioning vegetation, he agreed that they went too far, and when they were contacted by the Town and DEP they immediately requested a site review. Town staff and DEP came out to the property. His first response was to replace what was removed, but he had two considerations: the stormwater and erosion function and the aesthetics. He pointed out that what they are proposing meets the DEP's requirements for stormwater and erosion. He has spent over \$100,000 in landscape design to date on the property. It is a dense buffer area in that

section of Route 1. He thought that it looks better now and that there will be healthier vegetation now in that area. This fall they planted field grass on the undeveloped portion of the site near Johnson Road to maximize the aesthetic impact on neighbors. He acknowledged that they made a mistake in cutting the buffer but they addressed it as soon as they were aware of it. He proposed that the Board allow that the plantings be done as soon as possible, weather permitting, with a final date of June 1. His intent is to come forward in the next couple of years for another building and landscaping in the area of Johnson Rd. and the top of the hill could be addressed then.

Kermit Stanley would like an opinion from a landscape architect on the addition of the shrubs instead of the understory trees.

Walter Arsenault was comfortable with the applicant's proposal to have a landscape architect supervise the plantings. He thought it was unrealistic to require them to install a plant that wouldn't survive.

Bill Lunt asked if the totals in the table were for the entire length of the Route 1 frontage. Ms. Cady said no, just for the stormwater buffer area. This does not address the remainder of the site. The waiver is just for the stormwater buffer area.

Bill Lunt asked if all they are mitigating with this application is the DEP buffer area. Ms. Cady said that was correct.

Bill Lunt asked why the whole site isn't being mitigated.

Ms. Cady said they know there will be a stormwater buffer required for future development on the site and those plantings might not meet the Town's requirements so they don't want to invest in that area now. They want to focus on the area where a building exists, to buffer the building from Route 1.

Bill Lunt pointed out that they are coming before the Board because of a violation of both the DEP plan and the Town's site plan and this application doesn't touch one area. He asked how this application removes the violation with the Town if they are not re-planting that area.

Ms. Cady said this property is two parcels. They are addressing the parcel owned by Mr. Woods. The other parcel is owned by the condominium association. The section on Johnson Rd is another parcel; they are focusing on the occupied parcel.

Bill Lunt felt that the Board didn't have the right to deal with the section on Johnson Rd because it is still in violation and they haven't done anything to correct it. He didn't think the Board had the authority to tell them they could leave it in violation. He thought if the Board grants the waiver on the stormwater end of things, they are not addressing the violation on the rest of the parcel.

Ms. Cady said they are correcting the parcel under Mr. Woods' ownership, on the stormwater end.

Bill Lunt said they are not correcting the violation with the plans that have been submitted, even if they get approval from the Board. Ms. Cady said that it would be addressed when they come back to the Board for a site plan. Bill Lunt said it isn't up to the Board to say that.

Ethan Croce said that if the Board was comfortable with what is being proposed tonight it could be incorporated into the approval that this plan addresses the violation. Even though there are two parcels there was one site plan approval that governs both parcels. It was clear in the waiver request that the waiver addresses the stormwater buffer area; they would need a second waiver to address the other portion of the buffer, which would have to be done tonight to address the violation issue. The question is whether the Board would be comfortable deferring plantings on that portion until such time as additional development comes in.

Bill Lunt said this is not an issue of aesthetics for the Board; it is a matter of applying the ordinances that are in effect. This is an issue of fairness.

Ms. Cady agreed with Ethan Croce's proposal regarding the violation; they are willing to deal with the other end of the lot but they would like to defer those plantings until additional development comes in.

Bill Lunt said the issue for him is a matter of fairness to other property owners who abide by the rules. The applicant is not committing to a timeframe for the plantings at the Johnson Road end of the site.

Becca Casey thought one option could be to set a timeframe for coming back to the Board for a replanting plan if the future development is not forthcoming in the near future.

Mr. Woods said he would be happy to do something like that. He thought it could be a condition that, if they didn't come back to the Board within two years with a full site plan for the south side of the property, they would automatically be required to replant the buffer at a density that is comparable to the other side of the driveway. They are not trying to avoid to the replanting; they want it to look as nice as possible.

Bill Lunt said no one wants them to install something and then rip it out later. His problem was that there is a fairness issue with people who comply with the ordinances. His thought was to table the application to come up with something that addressed that area that they haven't addressed tonight. He thought they might be able to easily identify areas on that parcel that would be suitable for stormwater management and work plantings around those areas. He was concerned with them meeting a timeframe for future development in this economy. He wasn't asking for a detailed plan that did everything, but he thought they could identify those areas that could be used for stormwater and then work around those.

Ms. Cady said they were trying to balance the requirements of the Town with the requirements of a future tenant. She felt it was a good site, and while it didn't meet the ordinance, she thought it could. She said they would rather put it off. She pointed out that they are now looking at potentially two waivers: one on the restoration of the southern parcel and the one for the understory trees on the northern parcel.

Bill Lunt reiterated that this plan didn't address the violation on the southern end, and he didn't want them to leave with an approval and the impression that the violation was addressed, because it isn't. If they could give the Board something that provided additional information for the long-range plans on the southern end of the site he might be more comfortable. He thought if it was tabled it would give them the time to do that.

Ms. Cady wondered if that could be addressed as a condition of approval. Their intent for that parcel is to install what the ordinance requires as to number of plants per 100 feet of frontage, and she thought a condition that it had to meet those minimums would be sufficient.

Bill Lunt wasn't comfortable with a condition; he was more comfortable having something that could be documented.

Ms. Cady was not comfortable placing restrictions on the parcel in regards to stormwater, in case they determine in the future that something else would work better.

Becca Casey was comfortable with having a landscape architect supervise the plantings and then submitting a letter documenting that the buffering effect of the ordinance was achieved. She was comfortable with granting the requested waiver on the northern end of the site. She wondered about a condition that the other parcel comes back within a reasonable period of time. She was interested in moving forward.

In response to Walter Arsenault's questions, Ms. Cady confirmed that the clearing was done along the entire frontage. This plan has DEP's approval and it will address the violation of their stormwater buffer. The DEP is only interested in the stormwater buffers, not the clearing of the whole frontage of the parcel.

Bill Lunt clarified that the only outstanding violation is of the Town's regulations, not the DEP's.

Walter Arsenault was in favor of the proposal with a provision to review the additional piece of property within a certain timeframe; perhaps a year or two would be reasonable.

Kermit Stanley was comfortable with the proposal with a landscape architect being present at the time of planting. He thought the other piece has to be addressed in some way because it is still in violation though he wouldn't want to see them plant something that they would then have to throw away.

Public comment period opened.

Kate Carney of Quaker Lane said the original site plan filed by the prior owner in either 2005 for 2006 included re-vegetation for the upper ridge. That never happened.

Bill Lunt said that is an enforcement issue and therefore not pertinent to tonight's meeting. Ms. Carney understood that; she asked that the Town pay as much attention to that side of the property as to Route 1.

Bill Lunt said they didn't have the authority to address that portion of the property under this application.

Becca Casey explained that when the property comes back for the additional development the Board would be able to discuss that portion and Ms. Carney could come in then.

Public hearing closed.

The Board discussed a reasonable timeframe for installing the plantings in the stormwater buffer and a timeframe for the southern parcel to return to the Board with a site plan. Steve Woods said two years would be reasonable for coming back for the deferred plantings on the southern end of the property. He might not have a full site plan in that time, but the stormwater could be designed separately. Becca Casey felt it was reasonable to require an application to be filed on the southern parcel within two years and if an application for development of that lot has not been filed in that time period the applicant would have to come back for just the vegetation. Ms. Cady would be comfortable with June 15 as a completion date for the plantings.

Becca Casey moved to grant the waiver for exception to the understory trees on the northern parcel only, with the condition that a landscape architect be on site supervising the spacing and species of the plantings and submit a letter approving them, with a completion deadline for planting of June 15. An as-built plan shall be submitted and stamped by the landscape architect with a memo certifying that the buffering effects required by the ordinance have been achieved. Motion seconded by Walter Arsenault. Motion passed 4-0.

Becca Casey moved to approve the re-vegetation plan with the waiver as approved and with a condition that the southern parcel either be reviewed when a development application is submitted or in two years if no application has been submitted by that time. Walter Arsenault seconded. Motion carried 4-0.

**4. Addison Capital** – 12 Northbrook Drive - Request for a site plan amendment to add a truck delivery platform to Building #2. Tax Sheet 161; Map-Lot U59-010-A1. Zoned BP, RA and SP (Shoreland).

Ethan Croce said this application is to allow for the addition of a 12x20 truck delivery platform along with some minor architectural changes. This application requires a modification to the waiver granted in 2006 in relation to the required number of parking spaces. The original waiver allowed for only 110 of the 120 required spaces to be built with space set aside for the additional 10. The applicant is now requesting to lower the number of built spaces to 107 because some of the built spaces are being removed for the proposed delivery platform. They would still have to set aside enough space for the 13 spaces to meet the 120 required. DEP has indicated that they will not require an amendment to the existing permit for the site, since the stormwater systems can handle the minor increase in impermeable surface.

Robert Howe of HKTA Architects, representing applicant Art Batson, explained that they are talking about the second of the two buildings on the site. The first building is already constructed. Most of the site work has already been completed on the parcel. The buildings back up against a dense forested area and a stream. The second building looks very similar to the first. It has a 6,000 sq. ft. footprint with 12,000 of floor area. He spoke about the design of the building. The proposed platform will be on east

side of building. It is hidden in back and the intent is to have it be a reduced element that does not take away from the massing of the building proper. He showed the pre-approved design vs. the proposed design which contains only some minor modifications.

Bill Lunt asked if there will be any change in the impervious surface from the original plan.

Mr. Howe said that, other than the pavement needed to access the platform and the platform itself, no. Three parking spaces are being removed to accommodate the proposed loading dock.

Bill Lunt asked if this triggered any additional stormwater review. Ethan Croce said that no. They submitted a full stormwater report with the 2006 application. DEP and the Town Engineer are comfortable with the minor increase in impervious surface.

Becca Casey asked about buffering. She wondered if that is the same amount or is reduced from what existing conditions are for buffering in that area.

Will Conway, a landscape architect with Sebago Technics said they are adding 6 balsam firs to buffer the area even though the existing buffer is very thick. The existing building is only using about 40 parking spaces, so there is already a surplus of parking if you assume 60 spaces per building.

Public comment period opened; no public comment.

Walter Arsenault moved to grant the waiver request to reduce the number of built parking spaces down to 107. Becca Casey seconded. Motion carried 4-0.

Ethan Croce explained that the conditions of the 2006 approval would be carried forward.

Becca Casey moved to approve the application with the waiver and conditions as discussed. Kermit Stanley seconded. Motion carried 4-0.

**5. Falmouth Crossing** – 65 Gray Rd. – Request for a site plan amendment for new signage. Tax Sheet 373; Map-Lot R05-044-001, -002, -004. Zoned WFCMPD and Route 100 Corridor Overlay.

No one was present on behalf of the applicant.

Becca Casey moved to table the item. Kermit Stanley seconded. Motion carried 4-0.

**6. Discussion regarding timing of Planning Board packet distribution**

The Board discussed the packets.

Meeting adjourned 8:25 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary