

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

MEMBERS PRESENT: Bill Lunt (Chair), Walter Arsenault, Kermit Stanley, Jay Chace (Alternate), William Benzing (Alternate)

MEMBERS ABSENT: Becca Casey, Bernard Pender

STAFF PRESENT: Ethan Croce (Senior Planner)

The meeting started at 6:30 pm.

Bill Benzing and Jay Chace were appointed as voting members.

1. Approval of minutes from the June 5, 2012 Planning Board meetings.

Walter Arsenault moved to approve the minutes, Kermit Stanley seconded. Motion carried 5-0.

Administrative Action Items

2. Paul Goldstein – 16 Northbrook Drive – Request for a new, free-standing sign. Tax Sheet 161; Map-Lot U59-010-A21. Zoned BP.

3. Justin Fletcher – 50 Ledgewood Dr. – Request for a subdivision amendment for a new sign, a change to the fence and light detail, and a name change to “The Ledges” subdivision. Tax Sheet 512; Map-Lot R04-068. Zoned RA and RCZO.

4. Adam Shapiro – 204 US Route 1 – Request for a site plan amendment to add an outdoor seating area to Bernie’s Restaurant. Tax Sheet 320; Map-Lot U52-003. Zoned SB-1 and Village Center Overlay.

A member of the public, Kim Conway, asked for item 3 to be removed from the administrative list.

Walter Arsenault moved to approve the administrative items 2 and 4; Kermit Stanley seconded. Motion carried 5-0.

Agenda Items

3. Justin Fletcher – 50 Ledgewood Dr. – Request for a subdivision amendment for a new sign, a change to the fence and light detail, and a name change to “The Ledges” subdivision. Tax Sheet 512; Map-Lot R04-068. Zoned RA and RCZO.

Ethan Croce said the applicant would like to change the name of the subdivision to Elm Landing and to install a property identification sign. The sign appears to meet all ordinance requirements. The applicant is also requesting to remove some of the fencing previously approved for the frontage for the property. He wants to limit the areas delineated by fencing to those areas that border the open space. The applicant’s fourth request is to remove the light pole at the cul-de-sac, retaining the light pole at the intersection of Ledgewood Drive and the subdivision road.

Public comment period opened; no public comment.

Walter Arsenault moved to approve the application; Kermit Stanley seconded. Motion carried 5-0.

5. Matthew & Kathy Bush and Nancy Conway – 30 & 32 Carroll St.– Request for a Shoreland Zone Permit for slope stabilization. Tax Sheet 404; Map-Lot U02-006 and -007. Zoned RA and LR (Shoreland).

Ethan Croce said this project is substantially similar in scale and scope to two other projects approved by the Planning Board in recent years. The applicants will need the Town's approval prior to any work being done, along with Council approval and a shoreland permit from the Code Enforcement Officer for the proposed stairs and docks. Jay Reynolds, Parks and Public Works Director, suggested a condition that the Town Engineer review and approve the erosion and sedimentation control plan; the department would like to see more detail. The Town Manager has indicated agreement with providing financial help with the work, as a Town stormwater pipe seems to be contributing to the erosion problems.

Patrick Carroll of Carroll Associates, representing the applicants, said there are 4 areas that they have identified as needing stabilization. There is a Town sewer easement that runs along and into the bay. There is a Town sewer line, installed in the early 1970's, that is under the high tide mark. The most northerly area, area 1, starts at the north property line of the Bushes. There is a lot of stormwater that funnels down through some existing vegetation and has created a defined, deep gully. They propose a riprap swale that goes to the top to collect and channelize that water to a stone plunge pool. In area 2, the next southerly area, there is another defined gully, 20 feet wide. The banks are mostly clay, very soft and erodible. During the large rain storm of June 2-3, about 60 more feet of vegetation in area 2 slumped off and the top of the bank dropped about 3 feet and started to slide. The section between areas 2 and 3 was stabilized in 1995. That area is the only section along the water front of both properties that is still intact. The techniques used in that section are what they are proposing today. They will start at elevation 8 by installing a riprap slope to elevation 14, which is 2 feet above 100 year flood elevation. At that point they will go to a 2:1 slope, vegetate it, and match in to the lawn on top. Area 3 has a 15 foot cliff under a pine tree. This area includes the Town storm drain, which ends at a broken section of pipe and is creating a deep section of erosion. In December they met with the Town Engineer who agreed that this isn't a good situation for either the Town or the homeowner. They will connect the area further south from area 3 with a riprap slope, but won't have to vegetate much, as the vegetation in that section is stable. The area around the stormwater drain has a deep cliff on the corner; they want to cut that back, armor it and replant it. With this work in place, they are comfortable that this whole section of the shorefront should be in good shape for quite a while. In the slope zone there will be a good mix of vegetation with a conservation seed mix that will also help with stabilization. They are not sure when construction will occur, and different erosion control techniques are necessary depending on the season. When they have a better idea of when work will begin they will submit a more detailed erosion control report. They have submitted their application to DEP; he thought they will have the permit in early August. They think they will wait until the ground is frozen to begin construction. They also think the construction will be phased, and that is why they didn't submit a more formal erosion control plan.

Jay Chace asked if the erosion control plan might be based on when the construction will take place and account for seasonal changes.

Tom Greer of Pinkham and Greer said the erosion controls for the shoreline itself were already submitted; the contractor's access to the site is the main question at this point and depends on the season, especially in regards to damage to the driveway/lawn. When they have a better idea of the specifics they will tailor the plan to the contractor's work plan.

Jay Chace asked if they are investigating contractors now and whether they have any idea of when work could start.

Mr. Carroll said yes, they are looking at two different contractors now. Potentially, they could start work as soon as they get the DEP permit.

Jay Chace wondered if it made sense to grant a conditional approval or ask the applicant to work with the Town Engineer, draft a better erosion control plan, and come back as an administrative item at the next meeting.

Bill Lunt felt they could draft a condition that the applicant submit an erosion control plan that satisfies the Town Engineer.

Mr. Carroll said the only comment he has received so far is that they use a dark stone that blends into the shoreline, and not a light stone that would stand out.

Walter Arsenault moved to approve the application with the conditions as read by staff.

Ethan Croce read the conditions into the record.

Mr. Carroll thought the drainage easement was contingent on the Town's participation and repair of the pipe. If the Town didn't decide to participate, they would need to rethink the easement.

Bill Lunt asked if there were any easements on that property at all.

Mr. Carroll said there is a drainage easement on the Bush property but no one, including the Town, can find an easement on this lot. That pipe is major contributor to the erosion. The Town has agreed that they bear some responsibility for that.

Ethan Croce revised the condition to add "contingent on the Town's financial participation".

Nancy Conway said they bought the property without knowing anything about the issue or the pipe. The previous owners did know that the pipe was broken. She wanted something in the deed that the Town would take care of the pipe in perpetuity. It is obvious that the pipe has not been maintained and she wanted something that said that the Town will continue to maintain this pipe and fix any damage they do in the process of doing that maintenance.

Ethan Croce pointed out that this is outside the purview of the Planning Board. He said the Board can strike the condition altogether and allow the applicant to work with the Public Works Director. The issue of the easement can be hammered out between the Town and applicant at a later date.

The applicants were agreeable to that solution and the remaining conditions.

Mr. Carroll said the only issue is that the extension of the pipe is a critical component to the stabilization.

Bill Lunt said the Planning Board doesn't have control over the issue of who does what and when. As soon as the applicants get their DEP permits they and the Town can proceed.

Ms. Conway said they can't begin their piece of the project until the Town repairs the pipe, since the erosion is so far back. The Bushes can start their piece.

Public comment period opened; no public comment.

Kermit Stanley seconded the motion. Motion carried 5-0.

6. Continuation of discussion regarding possible amendments to the Planning Board Rules of Procedure

Ethan Croce said that he spoke with the Town Attorney regarding whether there were legal grounds to set up a rule whereby a 2-1 vote would result in an automatic table of the time. The Town Attorney said it would be a little unorthodox, but it was acceptable. There are other boards where an affirmative vote, lacking the proper number of votes in the affirmative, would result in a denial.

Bill Lunt felt it was sufficient to have three members hearing an item but understood the view that approving an item with a 2-1 vote was questionable. He pointed out that it isn't the applicants' fault if there isn't a full board available at a meeting and it isn't fair to make them wait. He suggested a quorum

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of three members, but that an approval would need three votes. In this scenario a 2-1 vote would result in a denial.

Walter Arsenault suggested a scenario where three votes would be needed for either an approval or denial. A split vote, either 2-1 or 1-2 would result in the item being moved to the next regular meeting.

Bill Benzing suggested a 4 member quorum, which would solve the split vote problem.

The Board discussed requiring a minimum of 4 members to conduct business, not just open the meeting. In the event of a recusal, the Board could continue with 3 members but a minimum of 3 votes would be required to approve an application. A split vote would result in a denial. In the event that one of the 4 Board members had to leave the meeting, the meeting would have to adjourn.

Staff will draft up proposed amendments to the ROP and bring them for the Board to review and vote on at the next meeting.

Bill Lunt asked if the Board has to allow a member to recuse him/herself or can a member just recuse without the Board's approval.

Ethan Croce said there is nothing in the rules that said someone has to have approval to recuse.

Bill Benzing wondered if the Board has the authority to force a member to recuse him/herself if there is a clear conflict and the member doesn't want to recuse.

Ethan Croce said there is nothing in the rules that speaks to that issue either. He wasn't sure what legal precedent there was for that.

Meeting adjourned at 7:49 pm

Respectfully submitted,

Melissa Tryon
Recording Secretary