



August 20, 2008

Mr. Nathan Poore, Town Manager  
Falmouth Town Hall  
271 Falmouth Road  
Falmouth, ME 04105

Dear Nathan:

I am pleased to introduce, in accordance with Article II, Section 213 of the Town Charter, language relative to proposed amendments to Chapter 601, Section 8 of the Zoning and Site Plan Review Ordinance and Section 1-14 of the Town of Falmouth Code of Ordinances.

The purpose of the zoning amendment is to provide property owners with single-family dwellings that are in violation of a setback requirement to seek relief through the Zoning Board of Appeals for a Conditional Use Permit. The Permit, if granted, is a recommendation to the Council for consideration of a Consent Agreement.

Section 1-14 of the Code of Ordinances authorizes the Council to enter into a Consent Agreement. This is a binding document from the town recognizing the "misplaced building" as nonconforming and therefore considered in conformance with the ordinance. Final granting of an agreement and the imposition of an appropriate penalty is at the discretion of the Council.

Also included in this amendment package is a house keeping change to allow the Code Enforcement Officer to pursue fines and penalties to the maximum amount allowable by state statute for other violations and appropriate changes to the Fee Schedule to charge fees for a Consent Agreement.

The language attached includes the existing and proposed language with language to be removed shown "~~struck out~~" and new language shown as "**bold underlined**."

I hereby ask that you place this item on the September meeting for a Public Hearing and that you properly post notices and advertise for a public hearing as required by the Charter.

Sincerely yours,

Dave Libby  
Falmouth Town Councilor

WILL ARMITAGE  
CHAIR

JOE WROBLESKI  
VICE CHAIR

CATHY BREEN

DAVE LIBBY

TONY PAYNE

TERESA PIERCE

BONNY RODDEN

NATHAN POORE  
TOWN MANAGER

ELLEN PLANER  
ACTING TOWN CLERK

Amendments to the Zoning and Site Plan Review Ordinance, Section 8. Board of Zoning Appeals - Add new section:

8.3.1 Conditional Use for misplaced single-family dwellings

- a. Determination of Violation: Upon a determination, by the Town's Code Enforcement Officer (CEO), that a set back violation exists concerning the location of a single family dwelling unit or an attached garage, the CEO shall serve, in hand, a Notice of Violation to the property owner.
  - b. Notice of Violation: The Notice of Violation shall list the following remedies the property owner may follow to cure the set back violation:  
[list remedies, with or "any other remedy which cures the violation" at the end]
  - c. Cure of Violation: A property owner must cure the violation by implementing one or more of the remedies listed in subsection b, within     months of service of the Notice of Violation, or must apply within     days of service of the Notice of Violation, to the Board of Zoning Appeals (the Board) for conditional use approval and a consent agreement.
  - d. Certificate of Cure: The CEO will grant the property owner a certificate of cure of the set back violation on his or her determination that the property owner has cured the violation.
  - e. Conditional Use Approval and Recommendation to Council for a Consent Agreement: Upon a determination of a set back violation, the property owner may apply to the Board for Conditional Use Approval and a Recommendation to the Town Council for a Consent Agreement. A survey, stamped by a surveyor registered in the State of Maine, of the boundary and structural setback in question, is required as part of this application to the Board.
1. The Board may grant a conditional use approval and a recommendation to the Town Council for a Consent Agreement upon finding that:
    - a. it would not serve the public interest to require the building be relocated or removed;
    - b. allowing the building to remain in its existing location would not be contrary to the public health, safety or welfare;
    - c. the setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the applicant, a predecessor in title or agent of either; and
    - d. the applicant has exhausted all other reasonable remedies.
  2. The Board's recommendation will include an analysis of the nature of the violation with respect to the criteria listed in Table 1-14(d) of Section 1-14 of the Town's Code of Ordinances.
  3. The denial of a Conditional Use application is appealable to the Superior Court.
- f. Request for Consent Agreement: Upon the Board's granting of Conditional Use Application and Recommendation, the property owner may request that the Town Council grant a Consent Agreement pursuant to Chapter 1, Section 1-14 of the Town of Falmouth Code of Ordinances.

## Amendments to the Town of Falmouth Code of Ordinances, Chapter 1

### Sec. 1-14. General penalty; continuing violations.

- (a) Whenever in this Code or in any ordinance of the town any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore and except as otherwise provided by state law, the violation of any such provision of this Code or any ordinance shall be punished by a fine not to exceed ~~one hundred dollars (\$100.00)~~ the maximum amount as allowed by 30-A M.R.S.A. §4452 for each offense. All fines shall be recovered to the use of the town on complaint or by other appropriate action before a court of competent jurisdiction.
- (b) The imposition of a penalty for violation of any ordinance shall not excuse the violation, or permit it to continue. Such violation shall be remedied within a reasonable time, and each day that a violation is permitted to exist shall constitute a separate offense. The imposition of penalties for violation of any ordinance shall not preclude the town attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, removal, maintenance or use, or to restrain, correct or abate a violation or to prevent the occupancy of a building, structure or premises or to prevent an illegal act, conduct, business or use in or about any premises.
- (c) When a Conditional Use is approved for a misplaced single-family dwelling by the Board of Zoning Appeals (the Board), pursuant to Section 8.3.1(b) of the Town's Zoning and Site Plan Review Ordinance, and upon the Board's recommendation, the Town Council may grant a Consent Agreement between the Town and the property owner and impose penalties pursuant to table 1-14-(d). Upon the Town Council's granting of a Consent Agreement, and upon the payment of any penalties levied in that agreement, the set back violation determined by the CEO shall be considered nonconforming.
- (1) A Consent Agreement shall state the circumstances of the violation, the findings by the Board of Zoning Appeals and further state that no future enforcement action for this violation will be prosecuted by the Town of Falmouth.
- (2) A Consent Agreement shall be filed at the Cumberland County Registry of Deeds by the Town's attorney or his agent together with a filing fee as indicated in the Code Enforcement Fee Schedule.
- (3) With consideration of the nature of the violation, the Town Council may elect to choose one or more of the penalty options in the following table:

#### Table 1-14-(d) Calculation of Fines and Penalties:

<u>Criterion</u>	<u>Fine multiplier</u>
<u>The age of the violation and the circumstances of the mislocation of the improvement, such as geological features, property boundaries without option for moving the boundaries, and other circumstances applicable to the situation.</u>	<u>Violation age:</u>  <u>0 to 10 years - 0 50% to 300% of the current cost to construct that area in violation.</u>  <u>10 to 20 years - 25% to 200% of the current cost to construct that area in violation.</u>  <u>Older than 20 years - 5% to 100% of the current cost to construct that area in violation.</u>  <u>Other considerations for calculating the fines:</u>  <u>No Building Permit Application filed or granted, 6 times the value of the area of violation.</u> <u>The minimum fee shall not be less than \$1,000 plus costs incurred by the Town.</u>

Additions to Division of Code Enforcement and Building Regulation Fee Schedule:

Consent Agreement Application - \$250

Consent Agreement Filing - \$200