

Comparison of Language form Misplaced Dwellings

Left (language introduced by D. Libby and edited by J. Wroblewski) -----Right (language offered by Town Attorney, Bill Plouffe)

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.

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

8.2.1 Mislocated single family dwelling appeal.

In addition to other powers conferred by this section 8.2, the Board of Zoning Appeals shall have authority to hear and decide appeals taken from decisions made by the Building Inspector that an existing single family dwelling or its attached garage violates the setbacks for the zoning district in which it is located and that the violation must be remedied by removal or relocation of the portion of the structure which encroaches into the setback or by the acquisition abutting property.

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<p>1. <u>The Board may grant a conditional use approval and a recommendation to the Town Council for a Consent Agreement upon finding that:</u></p> <p>a. <u>it would not serve the public interest to require the building be relocated or removed;</u></p> <p>b. <u>allowing the building to remain in its existing location would not be contrary to the public health, safety or welfare;</u></p> <p>c. <u>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</u></p> <p>d. <u>the applicant has exhausted all other reasonable remedies.</u></p> <p>2. <u>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.</u></p> <p>3. <u>The denial of a Conditional Use application is appealable to the Superior Court.</u></p> <p>f. <u>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.</u></p>	<p>If the Board finds that the violation exists, as found by the Building Inspector, it may nevertheless grant the appeal and render a decision that permits the existing structure to remain but shall not authorize any expansion, enlargement or relocation of the structure within the required setback area provided that the Board finds that the following criteria are met:</p> <p>a. It would not serve the public interest to require the removal or relocation of the structure or the acquisition of abutting property;</p> <p>b. Allowing the structure to remain in its existing location would not be contrary to the public health, safety or welfare and would not unreasonably detrimentally affect the use or market value of abutting properties;</p> <p>c. The setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the petitioner, a predecessor in title or agent of either;</p> <p>d. The petitioner has no reasonably available alternative to this appeal.</p> <p>The appeal application must be accompanied by a survey, stamped by a Maine registered surveyor or engineer, showing the property boundaries and the location of the offending structure.</p> <p>Any appeal granted under this section shall be conditioned upon the petitioner's entering into a Consent Agreement with the Town, acting through the Town Council, which provides that the Town will not bring an enforcement action with respect to the violation if the petitioner pays a civil penalty to the Town stated in the Consent Agreement. The Consent Agreement shall reference the action of the Board and shall become effective upon signing by the petitioner and the Building Inspector and payment of the civil penalty. The Consent Agreement shall be recorded at the Cumberland County Registry of Deeds by the Town.</p>
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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

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

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- (c) In determining what, if any, civil penalty to impose as part of a consent agreement entered into pursuant to section 8.2.1 of the Zoning and Site Plan Review Ordinance, the Town Council may consider: a) how long the violation has existed; b) the circumstances surrounding the construction which violates

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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:

the setback; c) whether a building permit was issued for the construction; d) whether the violation is the result of survey work conducted after the construction which resulted in a shift of the boundary line; and such other facts as the Council deems relevant. In addition to any civil penalty that may be included in the consent agreement, the petitioner for such an agreement shall pay to the Town an application fee of \$250 and a recording fee of \$200.

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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 - 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