

## *Transmittal to Town Manager, Nathan Poore*

Date: August 7, 2008  
From: Albert Farris, Code Enforcement Officer  
CC: Amanda Stearns, CD Director  
  
RE: Amendments to the Zoning and Site Plan Review Ordinance and the Code of Ordinances to provide for appeal to the Board of Zoning Appeals for a Conditional Use Permit for Misplaced Single-Family Dwellings and further to authorize the Town Council to grant a Consent Agreement for such misplaced dwellings.

The following language is presented for review by the Council. It is intended to translate the desire for the Council to grant Consent Agreements for misplaced dwellings in a manner that meets the policy discussions at previous Council meetings. It contemplates amendments to both the Zoning and Site Plan Review Ordinance to grant authority to the Board of Zoning Appeals to hear appeals and then amendments to the Code of Ordinances to grant the Council authority to enter into a Consent Agreement if a Conditional Use Permit is approved.

The permit is a recommendation to the Council for a Consent Agreement. It leaves the discretion to the Council for a final granting of an agreement and the imposition of fines as determined appropriate. 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.

It is suggested that Town Counsel review these amendments prior to the public hearing.

### **Recommended 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. Discovery of Violation: Upon notification to the CEO or discovery that a setback violation exists on an existing dwelling unit and/or attached garage a Notice of Violation shall be issued with an explanation of possible options. A survey, stamped by a registered surveyor, of the boundary and setback in question is required prior to any application to the Board of Zoning Appeals. Where a violation is shown to exist, a property owner must exhaust existing available remedies, prior to applying to the Board of Zoning Appeals for a Conditional Use for a Consent Agreement recommendation to the Town Council.
- b. Conditional Use Approval and recommendation to Council for a Consent Agreement:

1. Where the Board concludes it would not serve the public interest to require the building to be relocated or removed and that allowing the building to remain in its existing location would not be contrary to the public health, safety or welfare; a Consent Agreement may be recommended to the Town Council. Before granting an appeal under this subsection the Board must find that 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 to the applicant or agent of either of them and find that the applicant has exhausted all other reasonable remedy.
  2. The denial of a recommendation of a Consent Agreement to the Town Council is appealable to the Superior Court.
- c. When a Conditional Use Permit for a Consent Agreement is approved, the Town Council may impose fines or penalties pursuant to the table found in Section 1-14 (d) of the Town of Falmouth Code of Ordinances.

Amendments to the Town of Falmouth Code of Ordinances (the proposed changes are in red and highlighted)

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 M.R.S.A. 30-A, M.R.S.A. §4452 : \$100 to \$2,500.00 per violation** 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 Permit is granted for a misplaced single family dwelling by the Board of Zoning Appeals, the Town Council may agree to grant a Consent Agreement and impose penalties pursuant to table 1-14-(d). The granting of a Consent Agreement by the Town Council deems the area of the improvement in violation to be legally existing nonconforming, upon payment of penalties agreed to by all parties in interest to the Town of Falmouth.**

- A Consent Agreement shall state the circumstances of the violation, the findings by the Board of Zoning Appeals and further state that no future action for this violation will be prosecuted by the Town of Falmouth.
- 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.

With consideration of the nature of the violation, Council may elect to choose one or more of the penalty calculation options in the following table:

Table 1-14-(d)

Calculation of Fines and Penalties:

Shall be prescribed by a formula for mislocated buildings constructed after February 25, 1965 and based on one or more of the following options:

<u>Criterion</u>	<u>Fine multiplier</u>
<u>The age of the violation</u>  <u>The circumstances of the mislocation of the improvement</u>	<u>Each year since 1965 equals 1 @ \$100 per year</u> <ul style="list-style-type: none"> <li>• <u>Incorrect survey X1</u></li> <li>• <u>Using geographical features, thought to be the boundary; i.e.: fences, hedgerows or other, X2.</u></li> </ul>
<u>Consideration of ownership and approved building permit plan</u>	<ul style="list-style-type: none"> <li>• <u>Current owner exceeded the approved Building Permit construction plan, 3 times the value of the area of violation.</u></li> <li>• <u>No Building Permit Application filed or granted, 6 times the value of the area of violation.</u></li> </ul>
<u>The assessed value of the parent structure in its entirety. A \$500,000 home of 4,000 square feet of habitable equals \$125.00 per square foot</u>	<u>Value; area of the violation multiplied by the assessed square foot value of the improved dwelling, not including the land, multiplied by two (2).</u>

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

Consent Agreement Application - \$250

Consent Agreement Filing - \$200

Conditional Use and Consent Agreement Amendments to allow misplaced dwelling

Presented to the Town Council August 19, 2008

August 8, 2008

S:codes/Zoning & Site Plan Review Ordinance/Ordinance Amendments/Ordinance Amendments  
2008/Consent Agreements for misplaced buildings, 3