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November 5, 2012

Town of Falmouth
Town Council
271 Falmouth Road
Falmouth, Maine 04105

Dear Councilors:

I am writing in regard to the proposed ordinance regarding ground floor tenant space area limitations. I represent Louis Vinios, Trustee of the Falmouth Realty Associates, owners of the Falmouth Shopping Center.

I have enclosed two documents for your consideration. The first is proposed amendments to the draft tenant area ordinance. The second document is a graphic prepared by Andy Hyland of Port City Architecture that depicts an example of the type of renovation/expansion of existing tenant areas that we propose in our amendments.

Our proposed amendments broaden the exemptions for existing buildings by allowing for the expansion of existing tenant spaces into adjacent, newly constructed spaces, provided that any resulting tenant area does not exceed 80,000 sq. ft. The flexibility for existing buildings in the current draft which allows for reconfiguration of existing tenant areas within the existing footprint is certainly helpful. However, due to the configuration of the buildings in the Falmouth Shopping Center, the current draft does not give the Shopping Center the level of flexibility necessary to successfully market the building and fill the spaces that have been vacant for so many years. Any expansion would be into adjacent, newly constructed space and the renovation would have to meet the applicable design guidelines.

This proposal would allow the Shopping Center to market to national retailers such as Linens n Things, Ashley Furniture, Forever 21, TJMaxx, Bed Bath and Beyond, Marshalls, JC Penney, REI, West Marine Superstore, Burlington Coat Factory and Nordstrom Rack. This proposal would not allow the big box stores that the original proposal is aimed to prevent, such as Target, Home Depot, Lowes, Sam's Club, Costco, BJ's Wholesale and Kohls.

November 5, 2012

Page 2 of 2

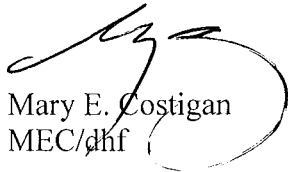
The attached graphic demonstrates the type of expansion that our proposal would allow. It would essentially allow the squaring off of the building. In the attached example, the old Shaws space would be extended to the rear. The two spaces on the end could be removed, resulting in a smaller façade. This is just one example of the squaring off that could occur without affecting the overall appearance of the Shopping Center.

To be more specific about the attached amendments, we have proposed the following changes:

1. Minor corrections to use “area” instead of “space” consistently in the ordinance.
2. Section 3.6.2.c.(1) is amended to allow for the reconfiguration of both conforming and nonconforming tenant areas in existing buildings and keeps the limitation on the size of resulting tenant areas.
3. Section 3.6.2.c.(2) is added to allow for the expansion of existing areas as described above.
4. Section 3.6.2.c.(3) provides that renovations and expansions of existing areas have to meet applicable design guidelines.
5. Section 3.6.2.c.(5) is amended to include newly expanded tenant spaces in the limitation of number of nonconforming spaces in existing buildings.

Thank you for taking the time to consider our proposal. Please feel free to contact me directly if you have any questions.

Sincerely,



Mary E. Costigan
MEC/dhf

Draft Zoning Amendment
Chapter 601 Zoning and Site Plan Review Ordinance
Town of Falmouth ME
July 19, 2012, rev 9-24-12, rev 10-2-12, rev 10-18-12, 10-30-12

An Ordinance Amending the Zoning and Site Plan Review Ordinance Regarding Ground Floor Area Limitations for Tenant Space in the Route One Business District (SB1)

Be it ordained by the Town Council of the Town of Falmouth, Maine in Town Council assembled, that the Falmouth Zoning and Site Plan Review Ordinance be amended as follows.

Amend Section 3.6

Delete existing Permitted Structures and Uses and Conditional Uses lists. *[Note: Ballet Arts Facility will now be under the use "Wholly enclosed place of assembly, amusement, recreation, culture, and government".]*

Add a new Section 3.6.1, Permitted Uses, Conditional Uses and Area Limitations for Ground Floor Tenant SpaceAreas:

Route One Business District (SB1) – Permitted Uses, Conditional Uses and Area Limitations for	
<u>Ground Floor Tenant Areas Space Ground Floor</u>	
<u>Permitted Uses</u>	<u>Maximum Ground Floor Tenant Area (sq. ft.)</u>
Business and professional offices	50,000
Wholly enclosed places of assembly, amusement, recreation, culture, and government	50,000
Motels and hotels	Not applicable
Private clubs	50,000
Restaurants (excluding carry-out and drive-through restaurants)	50,000
Automobile sales	50,000
Automobile related sales and services	50,000
Retail and service establishments	50,000
Grocery Retail*	60,000
Accessory buildings and uses	50,000
Farmer’s Markets	50,000
Mixed Use Development	50,000
Diverse Housing	50,000
Tier I Personal Wireless Service Facilities	Not applicable
Tier II Personal Wireless Service Facilities	Not applicable
Municipal buildings & uses	50,000
Commercial Schools	50,000
<u>Conditional Uses</u>	
Light manufacturing	50,000
Multiplex residential	50,000
Outdoor recreation facilities, permanent structures	50,000
Outdoor sales and storage of equipment and materials	Not applicable
Automobile repair service garage	50,000
Automobile service station	50,000

Carry-out and drive-through restaurants	50,000
Veterinary Clinic	50,000
Churches	50,000
Public Utilities	Not applicable
Outdoor Eating Areas	Not applicable
Day Care Centers	50,000
*Grocery Retail is limited to 60,000 gross square feet total for all floors	

Add a new Section 3.6.2, Exemptions for Existing Nonconforming Tenant Area

3.6.2.a Determination of existing nonconforming tenant area.

When determining the ground floor area of existing tenant areas, the Code Enforcement Officer shall rely on current town records unless it is determined by the Officer that more accurate data exists.

3.6.2.b. Existing nonconforming tenant areas, whether occupied or vacant as of [date of adoption] shall be exempt from the Maximum Ground Floor Tenant Area requirements in Section 3.6.1.

3.6.2.c. Use of existing nonconforming ground floor tenant area.

(1) Notwithstanding the ground floor tenant area limitations specified in Table 3.6.1, existing conforming and nonconforming tenant areas, either vacant or occupied as of [date of adoption], may be reconfigured within an existing building footprint provided that the reconfiguration does not result in any single ground floor tenant area exceeding the square footage of the existing nonconforming tenant area(s).

(2) Notwithstanding the ground floor tenant area limitations specified in Table 3.6.1, existing conforming and nonconforming tenant areas, either vacant or occupied as of [date of adoption], may be renovated and expanded to include adjacent, newly constructed tenant areas, provided that the renovation and expansion does not result in any single ground floor tenant area greater than 80,000 sq. ft.

(3) All renovations and expansions of existing ground floor tenant areas under this section shall, wherever possible, follow the recommendations contained in the September 12, 1986 Route One Study, the October 27, 1997 Route One Design Guidelines, the August 27, 2001 Village Center Design Guidelines and Master Plan, and the March, 1986 Route One Corridor Traffic Study.

~~(2)~~(4) The number of times reconfiguration of existing nonconforming tenant spaces-areas may occur is unlimited provided that each reconfiguration meets the requirements in Section 3.6.2.c (1) above.

~~(3)~~(5) In no event shall there be an increase in the number of nonconforming tenant spaces-areas within an existing building footprint, including any expansions into adjacent, newly constructed tenant areas, that exceed the ground floor tenant area limitations in Table 3.6.1.

3.6.2.d. Definition of terms.

For the purposes of this section, the following terms shall be defined as:

- (1) "Existing building footprint" is defined as the building footprint existing as of [date of adoption].
- (2) "Existing nonconforming tenant area" is defined as a ground floor tenant area existing as of (date of adoption), which exceeds the ground floor tenant area limitations in Table 3.6.1.
- (3) "Ground floor tenant area" is defined as the first floor indoor space-area occupied by a single tenant, either by rent, lease or ownership as measured from the interior wall faces.

Add a new Section 3.6.3. Exemption for ground floor tenant area of approved site plans.

Site plans approved by the Planning Board under Section 9 of this ordinance are exempt from the ground floor tenant area limitations in Section 3.6.1 above provided that the project has commenced in accordance with Section 9.6. Amendments or re-approvals to site plans are not exempt.

Amend Section 2, Definitions

1. Add a definition: "Grocery Retail – A self-service retail store selling primarily food products for consumption off site."
2. Amend the definition of "Wholly enclosed places of assembly, amusement, recreation, culture and government" to read:

"An establishment providing a) indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts but not including a mechanical, electronic, video or computer game arcade; b) mechanical, electronic, video or computer games if such games are accessory to a principal use which conforms to the provisions of this Ordinance or (c) presentation of the performing arts and cinematography. In the Tidewater Master Planned Development District, such facilities are limited to public gatherings and activities related to approved uses of the Master Plan. [Amended, 5/27/93; 4/4/05]

Amend Section 3.8 - "MUC" Mixed Use Cluster District

Add "17. Grocery Retail as part of a mixed use development"

Amend Section 3.9 - "VMU" Village Mixed Use District

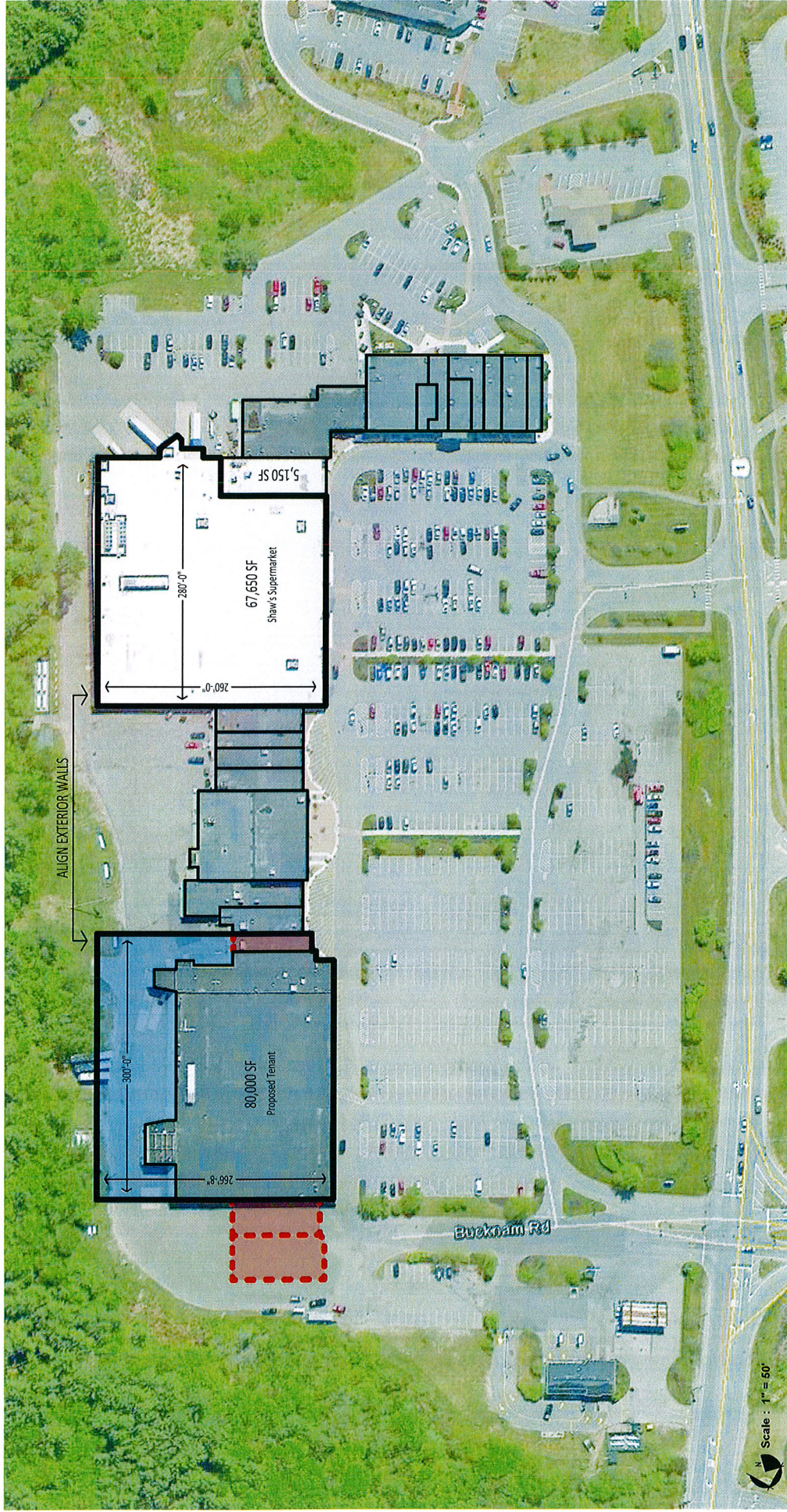
Add "16. Grocery Retail with less than 5,000 SF of gross floor area"

Amend Section 3.14 - West Falmouth Crossing Master Planned Development District

Add "14. Grocery Retail as part of a mixed use development"

Amend Section 3.18.1 - Tidewater Master Planned Development District

Add "26. Grocery Retail"



Falmouth Shopping Center

Proposed Site Conditions



Existing Elevation



Potential Elevation