

Richard E. Weare
31 Harding Avenue
Falmouth, Maine 04105
Cell Phone: 207-232-3530

October 16, 2012

Justin Brown
Code Enforcement Officer
Town of Falmouth
271 Falmouth Road
Falmouth, Maine 04105

Subject: Appeal Waiver to Building Side Set-Back Requirement
31 Harding Avenue

Dear Justin Brown:

This letter is to request an appeal be granted by the Town's Board of Zoning Appeals, under section 8.2.1 of the Zoning and Site Plan Review Ordinance, to waive the 20 foot building side set back requirement to my existing house and allow the use of the existing dimension as shown on the Titcomb Associates survey plan dated 9/15/2012. Attached to this letter is:

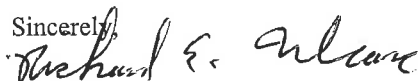
1. Nine (9) copies of the Conditional Use Application which includes a 8-1/2" by 11" size copy of the plot plan.
2. One 22" x 34" full size copy of the plot plan prepared by Titcomb Associates.
3. Picture along property showing my house and my neighbors. (The distance between the homes is 71.1 ft.)
4. A \$100.00 check for the application fee.

This past spring I received a phone call from the town manager indicating that the Town had participated in a land survey with the heirs of the then Viveiros property (across the street from my property) at 30 Harding Avenue in regards to a land swap between the Town and the Viveiros Estate to correct a front set back issue. In this Viveiros survey, the surveyor also located my house and town staff noticed from the plan that one corner of my house was not in conformance with the building side set-back dimension required of the Town.

In discussion with Nathan Poore, Town Manager, and Amanda Stearns, Community Development Director, they suggested that I hire a surveyor to locate my house on my property and to apply for waiver of the side set back standard as well as approach the Town Council to correct the front property line set back. Mr. Poore indicated in our phone conversation that both the Viveiros property and my property were originally one parcel of land with Harding Avenue terminated at the southerly edge of the property. He thought that the developer had worked with the town to split the two properties and extend the Harding Avenue street right-of-way past the two properties. My house was originally built in 1965. I purchased the house in 1987.

Only the front corner of the house is not in compliance with the 20 foot property line side setback requirement, as shown on the survey plan. I also want to point out that the majority of the homes on Harding Avenue have less than the required 20 foot property line side setback requirement, so my building does not visually appear out of line with the remainder of the homes on the street.

I request that the Board render a decision that permits the existing structure to remain, as allowed in Section 8.2.1, Mislocated Single Family Dwelling Appeal, and I believe the four criteria listed in this section have been met.

Sincerely,

Richard E. Weare



FALMOUTH BOARD OF ZONING APPEALS
REQUEST FOR HEARING
8.2.1 Mislocated single family dwelling appeal

Name of Applicant: Richard Weare Phone# 207-232-3530
Address of property under appeal: 31 Harding Avenue
Map/Lot U4, lot 3 Tax Sheet _____ Zone _____
Mailing Address (if different): same
Property Owner (if other): same
Email Address dewdev@aol.com

The undersigned requests that the Board of Appeals consider An Appeal:

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 Code Enforcement Officer 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 of abutting property. If the Board finds that the violation exists, as found by the Code Enforcement Officer, 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

- a. It would not serve the public interest to require the removal or relocation of the structure or the acquisition of abutting property;
- 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;
- 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;
- d. The petitioner has no reasonably available alternative to this appeal.

The appeal application must be accompanied by a survey, stamped by a Maine professional licensed land surveyor, showing the property boundaries and the location of the offending structure.

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 Code Enforcement Officer and payment of the civil penalty. The Consent Agreement shall be recorded at the Cumberland County Registry of Deeds by the Town.

Sec. 1-14. General penalty; continuing violations; consent agreements

- (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 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.
- (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:
- (1) how long the violation has existed;
 - (2) the circumstances surrounding the construction which violates the setback;
 - (3) whether a building permit was issued for the construction;
 - (4) whether the violation is the result of survey work conducted after the construction which resulted in a shift of the boundary line; and
 - (5) such other facts as the Council deems relevant.

Application Authorization

I hereby make application to the Town of Falmouth for the above-referenced property(ies) and the development as described. To the best of my knowledge the information provided herein is accurate and is in accordance with the Zoning Ordinance and Subdivision Ordinance of the Town, except where waivers are requested. The Town of Falmouth Planning Board and/or town employees are authorized to enter the property(ies) for purposes of reviewing this proposal and for inspecting improvements as a result of an approval of this proposal. I understand that I am responsible for appearing, or having someone appear on my behalf, at any and all meetings before the Planning Board.

Signed: Richard Weare

Date: 10/16/12

Printed name: Richard Weare

Please identify yourself (check one): Agent* _____

Property Owner _____

*(If you are an agent, written authorization from the property owner must be attached to this form.)

I certify that the information contained in this application and its supplement is true and correct.

REQUEST FOR HEARING
8.2.1 Mislocated single family dwelling appeal
Request dated 10/16/12

SUPPLEMENTAL INFORMATION

Richard Weare
31 Harding Avenue

- See my cover letter, dated 10/16/12, attached for background information for this request.
- The setback condition existed when the house was built around 1965. I purchased the house in 1987.
- The side property line setback for my house is similar to the other homes on the street. Most of the other homes on the street do not comply with the 20 foot side property line setback requirement as it is my understanding that they were built prior to the implementation of the ordinance requiring setback dimensions. It would therefore not serve the public interest to require the removal or relocation of my house or require the acquisition of abutting property. (see attached picture showing the two houses where the property line is indicated by the fence in the background)
- Since the house was built in 1987 and since some of the other homes on the street are closer to the property lines than my house, 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.
- It is my understanding from a conversation with the Town Manager, that the town was involved in allowing a larger lot to be split into two lots, of which this property is one of the lots, and the street right-of-way was extended to the end of both properties. I therefore offer that 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.
- I do not have any reasonable alternate to this appeal.

