

Richard E. Weare
31 Harding Avenue
Falmouth, Maine 04105

November 28, 2012

Amanda Stearns
Community Development Director
Town of Falmouth
271 Falmouth Road
Falmouth, Maine 041045

Subject: 31 Harding Avenue
Potential Deeding of Land to correct Frontage Issue and
Consideration of Consent Agreement for side set back Issue

Dear Ms. Stearns:

I am requesting that the following two items be placed on the December 10, 2012 Town Council agenda:

1. Approval by the Town in deeding of land to me to correct the frontage issue of subject property
2. Consideration of the Consent Agreement for the side setback issue, as approved by the Town's Board of Zoning Appeals.

The side set back issue was voted on by the Town's Board of Zoning Appeals at their meeting on 11/27/12 with the following votes taken:

- Voted under Section 8.2.1, Mislocated single family dwelling, to waiver the side set back requirement to those dimensions that presently exist.
- Voted to recommend that any civil penalties associated with the Mislocated dwelling not be assessed.

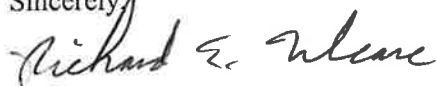
To document the existing side set back dimensions, the existing front set back dimensions and the proposed deeding of land to correct the front set back issue, a property survey and plan was developed by Titcomb Associates, dated 9/15/2012.

Attached to this cover letter is:

1. Completed form Request for Consent Agreement, 8.2.1 Mislocated single family dwelling appeal
2. A check for \$450 to cover the \$250 application fee and the \$200 Recording Fee.
3. A copy of the documents sent to Justin Brown in support of the request to the Town's Board of Zoning Appeal. The cover letter briefly addresses the history of how this set back situation was brought to my attention and includes an 11" by 17" copy of the Titcomb survey plan.

If you require any further information, please let me know.

Sincerely,



Richard E. Weare

Cc: Nathan Poore, Falmouth Town Manager

FALMOUTH TOWN COUNCIL
REQUEST FOR CONSENT AGREEMENT
8.2.1 Mislocated single family dwelling appeal

Name of Applicant: Richard E. Weare Phone# 207-232-3530

Address of property: 31 Harding Avenue

Map/Lot 1104-003 Tax Sheet _____ Zone RA

Mailing Address (if different): _____

Property Owner (if other): _____

Email Address dewdew@aol.com

Submittal Items Required: One hard copy and one electronic copy (PDF format) of each.

- Board of Zoning Appeals Notice of Decision including any conditions of approval
- Property Survey showing location of mislocated dwelling

Fees

- Application Fee: \$250
- Recording Fee: \$200

The undersigned requests the Town Council consider a Consent Agreement as referenced below:

Zoning and Site Plan Review Ordinance 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 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.

Code of Ordinances Section 1-14. General penalty; continuing violations; consent agreements

(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 certify that the information contained in this application and its supplement is true and correct. I understand that I am responsible for appearing, or having someone appear on my behalf, at any and all meetings before the Town Council.

Signed: Richard E. Weare

Date: 11/28/12

Printed name: Richard E. 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.)