

Town of Falmouth Community Development Department  
271 Falmouth Road  
Falmouth, ME 04105  
☎ 207.781.5253  
📄 207.781.8677  
💻 www.town.falmouth.me.us



## Memorandum

**Date:** December 4, 2012  
**To:** Town Council  
**From:** Amanda L. Stearns, Community Development Director  
**Cc:** Nathan A. Poore, Town Manager  
Justin Brown, Code Enforcement Officer  
**Re:** 31 Harding Avenue, Application for Mislocated Dwelling

---

Richard Weare is requesting consideration for a Consent Agreement under Section 8.2.1 for a mislocated single family dwelling located at 31 Harding Avenue. He has received a Conditional Use Approval from the BZA and they have recommended that no penalties be imposed. The following comments address Section 1-14 of the Code of Ordinances, General penalty; continuing violations; consent agreements.

### Excerpt from Section 8.2.1:

- (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; - **The house was constructed in 1967 based on assessing records, 45 years.**
  - (2) The circumstances surrounding the construction which violates the setback; - **The lot was part of a division in 1967 which included the Town to create the Harding Avenue extension.**
  - (3) Whether a building permit was issued for the construction; - **No building permit and associated site plan were found in the file or a Certificate of Occupancy.**
  - (4) Whether the violation is the result of survey work conducted after the construction which resulted in a shift of the boundary line - **possible**
  - (5) Such other facts as the council deems relevant.

Based on the record and factual information I offer the following comments.

1. There was no intent to deceive the town or other parties regarding the required setbacks.
2. There was a survey available to the contractor and property owner from which to measure setbacks.
3. The current assessed value of the home is \$125,500 with an effective square footage of 2,360.

Based on the following guidelines the Council discussed as a basis for determining penalties, a strict application of the guidelines would generate a penalty of \$1,366.

### Guidelines for determining penalty fee for mislocated dwellings.

<u>Circumstance</u>	<u>Range of options</u>
The age of the violation	Each year since 1965 equals 1 @ \$100 per year = <b>\$200</b>
The circumstances of the mislocation of the improvement	<ul style="list-style-type: none"> <li>• Incorrect survey X1 - NA</li> <li>• Using geographical features, thought to be the boundary; i.e.: fences, hedgerows or other, X2 - NA</li> </ul>
Consideration of ownership and approved building permit plan	<ul style="list-style-type: none"> <li>• Current owner exceeded the approved Building Permit construction plan, 3 times the value of the area of violation. - NA</li> <li>• No Building Permit Application filed or granted, 6 times the value of the area of violation. – <b>there is no record of a building permit, but due to the amount of time of the construction, no penalty imposed</b></li> </ul>
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	Value; area of the violation multiplied by the assessed square foot value of the improved dwelling, not including the land, multiplied by two (2). - <b>Approximate square footage of the area in violation based on the survey is 11 square feet and is valued at approximately \$53 per square foot (based on the assessed value and effective square footage) = \$1,166</b>