

**TOWN OF FALMOUTH  
BOARD OF ZONING APPEALS  
TUESDAY, SEPTEMBER 25, 2007**  
These minutes are not verbatim

**MEMBERS PRESENT:** Rich Bayer, Fred Jay Meyer, Jim Thibodeau, Willie Audet and Dennis Keeler.

Kevin McCarthy is Chairman.  
Meeting opens: 6:30p.m.  
Minutes are not available from previous meetings.

**1) William and Nicola McKenney-** Are requesting Conditional Use approval under Section 6.2a for an addition at 16 Carmichael Ave. Parcel# U18-002-E, zoned, "RA". Mr. McKenney presents his plans for the addition.  
The application meets the criteria.  
Mr. Meyer: motions to approve the application.  
Mr. Bayer: seconds the motion.  
All in favor. Vote is unanimous.

**2) Tom & Margret Balano-** Are requesting Conditional Use approval under Section 6.2a, to replace and expand a porch at 22 Riverside St, Parcel # U01-184, zoned "RA".  
Mr. Balano: reviews application.  
Mr. McCarthy: Mr. Farris, why is this under 6.2a? It seems 6.2 b applies.  
Mr. Farris: the addition meets the 20 ft set back. It's the house and garage, so it is 6.2b would be between the structures.  
Mr. Meyer: the proposed new addition is where?  
Mr. Balano: reviews plans with Mr. Meyer.  
Mr. McCarthy: what's labeled as new on the plan is not.  
Mr. Balano: reviews plan with Mr. McCarthy.  
Mr. Thibodeau: I see no problem with this application.  
Mr. Bayer: is the garage unattached?  
Mr. Balano: correct.  
Mr. Bayer: the distance between the lot line and the existing structure, we consider that being measured from the garage and not the house?  
Mr. Farris: correct.  
Mr. Bayer: motions to approve the application.  
Mr. Keeler: seconds the motion.  
All in favor. Vote is unanimous.

**3) Amy and Jamie Kuhn-** Are requesting Conditional Use approval under Section 6.2a to add a bulkhead at 302 Foreside Rd, Parcel# U19-055, zoned, "RA".

Mr. Kuhn: presents plans to finish the basement. In order to do this we must provide egress and put in a bulkhead.

Mr. McCarthy: any members of the public like to comment? Public comment closed.

Mr. Thiboueau: reviews plans with Mr. Kuhn where the bulkhead will be.

What are the Dimensions?

Mr. Kuhn: 18 sq. ft.

Mr. Thibieau: length and width?

Mr. Kuhn: 15 sq ft, 3 x6.

Mr. Meyer: the street front is on the bottom?

Mr. Kuhn: yes.

Mr. Audet: it is a standard metal bulkhead?

Mr. Kuhn: yes.

Mr. Meyers: motions to approve the application.

Mr. Bayer: seconds the motion.

All in favor. Vote is unanimous.

**4) David Means-**Is requesting Conditional Use approval under Section 6.2a to replace a deck at 29 Harding Ave, Parcel# U4-066, zoned, "RA".

Mr. Bayer: is a neighbor of his and does not see the need to recuse himself.

Mr. Means: presents plans to replace the deck.

Mr. McCarthy: any members from the public wish to comment? Public comment closed.

Mr. Keeler: do you know what the dimensions are?

Mr. Means: 15 x 12; it won't attach to the garage.

Mr. Thibodeau: according to the tax map the existing is 12 x14; according to the application it's going to be larger than 12 x15.

The 48 & 75 set backs you're comfortable with those set backs?

Mr. Means: yes.

Mr. Audet: you are asking us tonight that 48 ft from the back line and 75 ft from the side would be the limit of the deck?

Mr. McCarthy: the dimensions will have to be on the permit?

Mr. Farris: yes.

Mr. Meyers: moves to approve the application.

With the dimension of the deck with the setback from the rear line not less than 48 ft and side not less 75 ft.

Mr. Bayer: seconds with conditions that the deck extend closer to the rear lot line than 40 ft and not closer to the side line than the house itself. It has plenty of room.

Mr. Meyer: it would be large if it went to the side line of the house.

Mr. McCarthy: are you comfortable with the 75 ft?

Mr. Means: I have measured it.

Mr. Bayer: I will with the proposed conditions.

I am seconding the motion. All in favor, vote is unanimous.

**5) Kenneth Stafford-** Is requesting Conditional Use approval under Section 8.3 to change the use to a CPA office at 301 Foreside Rd, Parcel #U18-052-A, zoned "RA".

Mr. Stafford: I would like to change the use.

Mr. McCarthy: looking at the definitions, business, and professional office section 2.29. Definitional it wouldn't be a change of use.

Mr. Farris: I agree, the town has looked at the individual use. It still needs approval.

Mr. McCarthy: would any members from the public like to comment?

Mr. Robert Milroy: resident, is in favor of the application.

Mr. Audet: I have no problem with the application.

Mr. Thibodeau: how many parking spaces are currently on the property?

Mr. Stafford: 7 and behind it there is 4.

Mr. Thibodeau: how many employees?

Mr. Stafford: currently myself and 2 employees. It may grow to 2 or 3 more.

Mr. Thibodeau: how many people visit you during the day?

Mr. Stafford: we visit the client.

Mr. Meyer: I agree with Mr. McCarthy, a professional use to a professional use. If we do need to approve it my reading was 6.4, I would consider this to be an improvement.

Mr. Keeler: I agree no change of use.

Mr. McCarthy: are the spaces lined?

Mr. Stafford: no, but I could.

Mr. McCarthy: do you have plans for signs?

Mr. Stafford: to replace what is there.

Mr. Bayer: what is going on in the building?

Mr. Stafford: it is a CPA.

Mr. Bayer: the parking is ok?

Mr. Stafford: yes.

Mr. McCarthy: I would like to see how many spaces and if striped, you can tell.

Mr. Thibodeau: motions to approve the application with the condition that a civil engineer prepare a plot plan and submit it to code enforcement showing the lay out of the 7 spaces.

Mr. Meyer: seconds the motion.

Mr. Keeler: also add that he is a CPA/Financial Planner.

Mr. Meyer: seconds the amendment.

Mr. McCarthy: questions engineering and landscaping.

All in favor. Vote is unanimous.

**6) Jeffrey and Lynne Leighton**-Are requesting an Appeal for property at 71 Underwood Rd, Parcel # U19-109 zoned "RA".

Mr. Mazziotti: represents the Leighton's. Provided plot plan of original subdivision comprised of 4 lots and a plot plan, Lot 58 & 60 are occupied by the Leighton's and a garage. Lots 62 & 64 are vacant and have been since the creation of the subdivision. Also provided is a chain of title. In 1963 is our first evidence that the building had been erected. Lots 62 & 64 are and have been vacant since 21.

Mr. Farris's letter of denial refers to the description of the property and draws some distinction on how lots are described by lot number and a parcel. The fact the first deed by Mr. Edwards contains a specific reference to 5 parcels, including 4 that are the subject of this appeal, one other was conveyed to an abutter. I think Mr. Farris now agrees that section 6.8 is what is the applicable section of the ordinance that governs the lots and request being made to separate these 2 lots. They are vacant adjoining lots that can be consolidated and provide sufficient area to meet the town's set backs, however, that ordinance talks about bringing the lots into conformity as much as

possible. The lots have always been regarded as separate lots, except by the town. The address for the Leighton's is 71, but the next address for a dwelling is 75. Leaving these 2 lots to 73 Leighton Rd. In the 70's when the sewer was installing a stub to these 2 lots, believing the lots would be developed.

Mr. McCarthy: for the record, I have requested that our town's attorney look at this. Mr. Plouffe had not had a chance to review this prior to this meeting. There are a couple issues, relating to merger, verses what our ordinance says and how title was taken to this property. We do have this opinion. What Mr. Plouffe's office provides us with was related to a similar situation about a year ago. But it doesn't specifically address this situation.

Mr. Mazziotti: I am familiar with the letter. The situation is different in that case. There are several issues that apply to the lots. That is a much more complicated transaction involving the exchange of properties on both sides of the street. This is much more straight forward, 62 & 64 have merged, but still meet the test of 6.8 making it a buildable lot.

Mr. McCarthy: when you say they meet the test of 6.8 can you provide the information?

Mr. Mazziotti: the side yard setback requirement could be met by locating the dwelling in the set back and the lot coverage would be met. The only issue is lot area itself. The lots shall be consolidated to form one or lots conforming so far as possible. The two lots satisfy this condition.

Mr. Keeler: when were these built?

Mr. Mazziotti: 63.

Mr. Keeler: improvement on these lots pre dated the 1965 ordinance?

Mr. Mazziotti: as near as I can tell. The only reference I have is deed, title.

Mr. McCarthy: any members from the public like to comment?

Ms. Betta Connor, abutter at 86 Underwood Rd. We are here to learn. As an abutter, we have a nonconforming lot built on the property line. If a house was built on it would be right next to us.

Mr. Bayer: how far is your house from the lot line?

Ms. Connor: 12 inches, it is very close.

Mr. Bayer: you about the vacant lot?

Ms. Connor: correct.

Mr. Audet: case law, what comes close to help us?

Mr. Mazziotti: the information Mr. Farris gave me is pretty accurate. It talks about vacant and built upon lots in terms of what merger is applied to. I think this case would be most applicable to this situation.

It is very clear in the ordinance with vacant lots.

Mr. Audet: you refer to sewer stubs, how many are there?

Mr. Mazzotti: one to my knowledge.

Mr. Thibodeau: I didn't like this application in terms of completeness. Map & plans could have been presented better. We have been given a legal opinion from town council, 2 reasons why it can't be split. I have the same situation as this, Cobb Subdivision; I had an attorney look at it hoping I could use the grandfathering position to use these small lots. As it was built on, I couldn't make it more nonconforming. This is my experience and we have to rely on what town council has given us and the abutter statements. I can't bring myself to be in favor of this application.

Mr. Mazziotti: this is a neighborhood of lots that are similar sized. So this 2 lot grouping is consistent with all the lots in that neighborhood. There is nothing out of character.

Anything built on this would apply to those set backs. The letter you have the circumstances were different. That is a different part of town with different under lying set of facts.

Mr. Thibodeau: for us to move forward, you have more work to do. I would need more material to be in favor of this. Photographs, documentations, plans then I may be able to move forward in a positive fashion.

Mr. Meyer: what the Leighton's are proposing to do is split off lots 62 & 64 as one single lot.

Mr. Mazziotti: correct.

Mr. Bayer: you indicated you thought they would meet most of the requirements of being a buildable lot?

Mr. Mazziotti: correct.

Mr. Bayer: what requirements would not be met?

Mr. Mazziotti: square footage.

Mr. Bayer: this would be 8000, and the lot width 125 ft and this would be 80 ft.

Your interpretations on 6.8, when does this consolidation of this ordinance take place?

Mr. Mazziotti: I think it takes place on the enactment of the ordinance.

And it was enacted after the building of the structure on the other 2 lots. What ever remains becomes subject to the rule of this ordinance.

Mr. Bayer: under 6.8 these 2 lots became grandfathered in and became buildable.

Mr. Mazziotti: correct.

Mr. Bayer: the sewer lines, I wonder if this is a practice if there is an empty lot to stub it off in front of it.

Mr. Mazziotti: I can't answer that.

Mr. McCarthy: the tax card only indicates this as one lot for tax purposes. For 35 years they received a tax bill showing one lot now want us to treat this as more than one lot.

Are you aware of any discussion the Leighton's may have had with the Assessors office?

Mr. Mazzotti: no.

Mr. McCarthy: I was hoping the town attorney would have addressed the manner in which the Leighton's took title to this, the language in the deed seems to indicate they took title to one lot rather than a number of lots.

Mr. Mazziotti: the only answer I can give you is that it was a conveyance.

I don't think the significance of this applies.

Mr. Audet: case law.

Mr. Mazziotti: Lapoint vs. city of Saco.

Mr. McCarthy: we could make a motion regarding this application or tabling pending reviews from the Town Attorney.

Mr. Thibodeau: Mr. Farris, if these 4 lots existed and there was no building on any of them, and the Leighton's come in and according to our current ordinance how many houses could they build?

Mr. Farris: if they show up as individual lots on the 1964 tax maps, we treat them as individual lots, technically you could build 4 houses. In this case this shows as one lot, we'd issue one permit. Or go to the board to make this decision.

Mr. Bayer: I would be in favor of the town's attorney input.

Mr. Farris: advises tabling.

Mr. Keller: in 1960 we had an approved subdivision plan showing 5 lots, 4 one was sold. In 1960 they could have built on any these of those 2 lots.

Mr. Farris: correct.

Mr. Keeler: it was only because of the zoning statute that came in 1965 there were only two vacant lots, and the ordinance would require that vacant nonconforming lots merge. It was only the status; it is the implementation of the 1965 zoning that requires the merger to occur. You have to look at the status when that act was passed and that was 1965. If they were not vacant in 1965, they were not subject to the merger. Mr. Plouffe's

letter, I agree with but it is very fact specific. I don't know if it matches with the facts here. Mr. Farris looks at the 1964 tax maps. They are not created with a lot of legal analysis input. To me the critical point is when the improvements were put on that lot and with building there on when this ordinance was put into effect, those 2 lots were built upon, and there are 2 lots left that were vacant.

I believe we should go to the town's attorney.

Mr. McCarthy: This isn't the first I have dealt with on the board and I've been here 2 years.

Mr. Thibodeau: who pays the Town's attorney?

Mr. Farris: we do.

Mr. Bayer: Do you want to table this?

Mr. Mazziotti: we would like to table this.

Mr. Bayer: I motion we table this until the October meeting and obtain an opinion from the town's attorney.

Mr. Meyer: seconds the motion.

All in favor. Vote is unanimous.

**7) Stephen Pennisi-** Is Appealing a decision of the Code Enforcement Officer regarding use of the building located at 43 US RT 1, Parcel U01-090, zoned, "RA"

Mr. Bill Kany: representing Mr. Pennisi. Reviewing the extent of the use of the building. The issue was to try to get a determination from Mr. Farris on the amount of square footage allowed to be used, how much of the inside could be used. Mr. Farris referred it to the board. Today I understand Mr. Farris had an opportunity to speak with Attorney Plouffe, has this changed your position Mr. Farris?

Mr. Farris: I believe that Mr. Pennisi should be able to use the finished portion of the building which is about 2900 sq. ft. however; I do not have the jurisdiction to make this decision. I didn't have the discretion to say it's ok to use the 2900 sq. ft. with only 6 parking spaces. The board has the discretion to make this decision.

Mr. Kany: from the applicant's position there is not a limitation on how much of the building can be used. To be clear the 3600 has been used, some for storage some for office.

The past use of the building has always been a legally nonconforming use.

Reviews the ordinances. The ordinance doesn't define what an enlargement or expansion of a nonconforming use may be. Other towns define it by extended hours of operation, extending the amount square footage being used. The town's ordinance is silent. The reason we maintain that we can use the entire building. If it's silent you have to look at case law. References Frost v. Lucy, 231 A .2d 441.Me 1967. Expansion of a building does not constitute a change of use.

Conway Lake Resorts v. Quisiana Resort 2006, ME 77. an alteration in the character and quality of use will suffice to constitute a change of nonconforming use, whereas an increase in the intensity or volume of use will not.

We are not changing the outside of the building at all. We are not going outside the walls of the building. Mr. Farris and Mr. Plouffe say we should be limited to 2975 sq ft. That's ok with Mr. Pennisi.

Mr. Farris: I had a conversation yesterday with Mr. Plouffe about the significance of the variance granted to Locke back in 1974. Under today's ordinance it would be

Professional office space and Mr. Plouffe thinks that in that context there is no question of the use of the facility. It is covered by the variance.

Mr. McCarthy: this issue had come before us previously because of parking issues.

Mr. Farris: currently there are 6 parking spaces and Mr. Pennisi bought additional land to increase the parking spaces. He had a traffic engineer come up with an acceptable amount of 9 spaces. This would mean he would need to go before planning to utilize the 9 spaces.

Mr. McCarthy: if you look at the number of spaces that were available relative to the square footage, you'd realize there are not enough spaces to service all the square footage. The issue as I understand it in the request can the entire interior space be used for office space?

Mr. Kany: without it being an inappropriate expansion of a nonconforming use.

Ms. Nightingale: when Mr. Pennisi occupied the building he did get a renovation permit. It was inspected by the former CEO. Ms. Nightingale distributes photos.

Mr. Pennisi: the former CEO asked us how much of the building we will use and I told him and showed him the diagram you have. It was never in the context that this is all you have to use. The inspection included the space that is finished. It was never mentioned or in writing that we wouldn't be able to use it.

Ms. Julie MacDonald: lives next door. Why was there a rule in the first place stating he couldn't use the extra square footage?

Mr. Farris: I would not let him use the space when he asked 4 yrs ago, because when he came to the board in 1999. When he was asked about parking his response was, only 3 cars park there and rarely do clients come to the office. Because he spoke this it is part of the record. Therefore I do not have the authority to say you can use the rest of the building with only 6 spaces.

Ms. MacDonald: all the other professional businesses in there, they'd used the entire building and that's all documented?

Mr. Farris: it is not well documented and that's part of the problem. Under the ordinance the variance was granted for use of an office space.

Ms. MacDonald: now it can be used for desk and people?

Mr. Farris: yes.

Ms. MacDonald: does that affect the parking?

Mr. Farris: it doesn't because the variance was granted at a time when parking requirements were 500 sq ft of a building for each parking space. Therefore if they had 6 spaces they could use 300 sq ft of the building.

Ms. MacDonald: how many can they have now?

Mr. Farris: as far as I'm concerned they have 6 parking spaces. They have a plan done by an engineer showing 9 spaces. I don't nor does the board have the authority to approve this. It needs planning board approval.

Ms. MacDonald: are those parking spaces next to my property?

Mr. Farris: some are.

Mr. McCarthy: that new parking plan will be dealt with by the planning board.

Ms. MacDonald: there has to be a reason why others did not use this area.

Mr. Farris: the only plan in the file shows 6 parking spaces and a delivery space.

Ms. MacDonald: they may have needed a loading dock but it wasn't used as a loading dock.

Mr. Farris: reviews the plan in file.

Ms. MacDonald: he is not growing his business as Mr. Kany said he is selling it. And I'm concerned about safety issues.

Mr. Kany: there was never a restriction imposed by the town on the square footage.

Are we limited to what historically has been used or do we have the right to expand as long as we stay in the inside of the walls? We need to look at case law.

It has nothing to do with parking.

Mr. Keeler: Mr. Farris, your letter here dated 8/31 prior to Feb. of 83, you needed one space for every 500 ft.

Mr. Farris: correct.

Mr. Keeler: after 83 you need one space for every 200 sq ft. Prior to 83, 6 spaces would have been permitted, unless they went to the planning board to get approval for additional spaces.

Mr. Farris: correct, that was at the time the variance was granted for the use of general office.

Mr. Keeler: we were operating under the pre 1983 one space per 500 sq ft.

Mr. Farris: yes.

Mr. Keeler: when Feb. 83 came around 6 spaces for every 300 sq ft would be nonconforming, because it no longer complies with 1 space for every 200 sq ft.

Mr. Farris: yes, it would be significant if a variance had not been granted. Mr. Keeler: at that point even what was granted as a variance became nonconforming?

Mr. Farris: the variance guarantees the use in those circumstances for the life of the building at that time.

Mr. Keeler: This is permitted because we have a conforming grandfather provision which allows it. What is it permit prior to 83 because of the variance or just permitted.

Eitther way post 83 would continue to be permitted as a grandfathered.

Mr. Farris: yes.

Mr. Keeler: how many parking spaces do you need to use x sq ft?

Mr. Farris: in that context, if this building were performance motors, then converted to professional office space we would allow to use only 1200 sq ft of the building. Because they only have 6 spaces.

Mr. Keeler: this was converted to office retail at the time when it one space for 500sq ft. Why wouldn't the amount of space that could be used in this building be a function of the one space for 500?

Mr. Farris: I think it could but I don't have the authority to make that determination. This decision resides with the board.

Mr. Keeler: prior to 83 it was once based for 500. It was converted to office/retail and has probably been the controlling factor on sq footage. If they have 6 spaces, operating under the grandfathered use 1 per 500. I think that's all we can do.

Mr. Farris: Mr. Plouffe did weigh in on that back in the spring, if they were allowed additional parking spaces, those spaces would have allowed an additional 200 sq ft of space.

Mr. McCarthy: as I understood Mr. Plouffe, you go with the 6 spaces at 500 and more spaces you would use 200. For each additional parking space you would gain 200 sq ft of space, 3 additional would get you 1800 and exceed the interior sq footage of the building.

Mr. Bayer: we have this new floor plan; the shaded area, we come up with the figure you are talking about the 2900.

Mr. Kany: yes.

Mr. Meyer: you are seeking to use the entire building with the 6 existing spaces?

Mr. Kany: correct.

Mr. Thibodeau: I think you should be able to use the entire building.

Any future use of this building should be based on the parking you have.



Mr. Kany: when it was Locke office, they had 20 to 30 employees and this was before the variance Mr. Farris was talking about. The variance had no restriction on the amount of the building that could be used.

Mr. Bayer: per Mr. Plouffe's letter we have to consider the present use as falling in the business/ professional use under section 2.29.

Mr. McCarthy: can the entire space of this building be used?

Mr. Bayer: motions to the appeal of the application of the CEO regarding the use of the building be granted to the extent of the board determines that business and professional use for the interior space of the building up to 2925 sq. ft. be permitted the remainder must be used as storage.

Mr. Meyer: seconds the motion.

Mr. Thibodeau: I think we are giving a blanket approval, different from the intent the board made back when it was approved in 83.

Mr. Bayer: based on the information we have it doesn't fall neatly into the section of the ordinance.

Mr. Meyer: from your notes, I would be very hesitant to draw any conclusions about the limitation on space. Limited use to only part of the building, and allow using the full use. I am concerned about the use of the building.

Mr. McCarthy: we are not being asked to consider a change of use. We are only being asked whether or not the square footage can be used. If there is a new owner, they would have to come before us.

Mr. Meyer: I would disagree with Mr. Plouffe's letter.

Mr. Keeler: modify the motion. Which parking standards apply. We should be applying the 1 space of every 500 sq. ft. This was used in 83.

Mr. McCarthy: I follow Mr. Keeler's approach. We can't limit it without regard to parking. Is the entire building eligibility to be used as Business Professional office? Parking is a different issue.

Mr. Bayer: we have to make a determination on how much space can be used. Parking does restrict it.

Mr. McCarthy: we would be using the 500 sq ft at the time of the variance, this will give them of the 3000 ft, If they wanted to use more than this they'd need more spaces. But that is not the issue before us. Based on the application, parking is different entirely.

I would vote against the motion. I think they should use the entire space subject to parking requirements. They can use 500 sq ft per parking spaces.

Mr. Bayer: I think I agree with you. I withdraw my motion.

Mr. Keeler: the applicant be permitted to use so much of the building for professional space as supported by the parking spaces with 1 space for every 500 sq ft. any new parking spaces would need to follow current ordinances.

Mr. Meyer: seconds the motion.

Mr. Keeler: accepts this admendment.

Mr. Farris: the motion is to use 500 sq ft per existing parking spaces, any additional use of the building will require one parking space per 200 sq ft. current standard, and the use is Business Professional offices.

Mr. Thibodeau: add any expansion to the existing parking be submitted to the planning board for approval. If the applicant sold the building to someone else, does that constitute a change of use?

Mr. Farris: yes.

Mr. Thibodeau: I would like to add to the amendment the new owner would have to come back before the board for approval.

Mr. Kany: are we adding something into the ordinances?

Mr. Farris reads back motion.

Mr. McCarthy: all in favor. Vote is unanimous.

**8) Rock Ridge Properties**-Is requesting Conditional Use and Variance approval under Sections 8.3 & 8.4 for a Multiplex at 15 Allen Ave Ext. Parcel U35-001, zoned, "RAm".

Mr. McCarthy: can I ask if this project can go forward if there is no variance?

Mr. Blais: yes it can, but it would need a waiver from the planning board on street separation. When we went into this project we were informed that we wouldn't need a subdivision. Because we are under subdivision review; the separation between different entrances on it applies. We do not need it for Ledgewood but we need it for Carriage. We were told we can not create a private way in a subdivision; it would have to be a street.

Mr. McCarthy: my question was to deal with the variance first. If this is a necessary part of the project, I would like to deal with this first.

Mr. Blais: We could move forward without it. We need the conditional approval.

Mr. Bayer: In this zone a multiplex is listed as a conditional use. Also there is certain amount of road frontage involved. So, if a variance is not granted to allow for less road frontage than we can not consider the subject of conditional use at all.

Mr. Blais: you are saying the waivers have to be obtained before getting conditional use?

Mr. Bayer: there is a conditional use and a variance request before us. There is only one way to approve the conditional use, and that is the road frontage has to be 200 ft, if it is not you need a variance. If the variance is not granted the conditional use can't be met.

Mr. Blais: then we would create a street to create frontage.

Mr. Bayer: do you have plans?

Mr. Blais: No I don't. We would rely on the planning board to do the site plan of this and subdivision. Reviews plan presented.

Ms. Regina Leonard: landscape architect for Steve Sanderson.

Mr. Bayer: in the past we've discussed how the applicant would come before the board with multiple applications and how we would proceed.

Mr. Farris: because this requires subdivision approval they would be allowed to create a street to create frontage. If the variance is granted for lot width, they would not need to create the street and not have to build a higher standard of street.

Mr. Blais: this is why we do not have a cleaner plan. If we get a variance lot width.

Mr. Farris: the town council in the past had declared they are not accepting subdivision streets that are dead end streets for purposes of maintenance. The town won't be accepting the street.

Mr. McCarthy: how many variances are necessary?

Mr. Blais: reviews ordinance.

Mr. McCarthy: the variance relates to lot width.

Mr. Blais: yes, size and width.

Mr. Keeler: is this one lot?

Mr. Blais: yes.

Mr. McCarthy: if we address the variance first will it affect any other part of the application?

Mr. Blais: no, we would need conditional use either way.

Mr. McCarthy: we will deal with the variance first.

Mr. Blais: the site is 3.4 acres. The density allows for 7 units. There will be one car parking. Reviews plans. The planning will review this for site plan.

Mr. McCarthy: I would like to ask the board about the variance issue.

Mr. Audet: do you own the property?

Mr. Blais: it is under contract.

Mr. Audit: can you explain how you meet that threshold with the title? Can you argue that you wouldn't get a reasonable return because personally I don't think you come to this threshold?

Mr. Blais: I don't know if the requirement specifies who gets the return.

Mr. Audet: you're the applicant.

Mr. Blais: it says the applicant has to get a reasonable return.

Currently it has a single family and it is nonconforming because of the width.

Mr. Audet: there is a difference between maximum return and reasonable return.

Mr. Keeler: if you don't get a variance there is an alternative. If the planning board gives it to you. It makes it difficult to say the land can not yield a reasonable return when it might yield the same return if it waived.

Mr. Blais: if we can attain all these different pieces of the puzzle it works.

How do you make a project happen?

Mr. Keeler: following up on what Mr. Audet was saying, a variance is a difficult thing to get. It is asked for as a last resort to make a project work.

Mr. Blais: we wanted a cleaner project.

Mr. Keeler: there is an alternative with not getting the variance.

Mr. Thibodeau: I agree with Mr. Keeler and Mr. Audet. Are you going to run into difficulty with the planning board because of separation between the streets?

The ordinance requires separation between streets, if you make that street not a private way, the planning board may deny it and you'd be back before the board with a legitimate hardship. What is the separation?

Mr. Farris: it is 150 ft. The planning board has the authority to waive that 5% or something.

Mr. Blais: if this were not a subdivision the subdivision standard regarding the separation standard would not apply. Then it was deemed a subdivision and a private way is not allowed in a subdivision. But a street is and this requires separation.

Mr. Meyer: another requirement on a variance is it won't alter the character of the neighborhood. It is all single family dwellings. How far is it to another multi family?

Mr. Sanderson: a mile.

Mr. Blais: Rock Ridge properties would match the Maine property look.

Mr. Farris: building code treats town houses as individual attached single family dwellings.

Mr. Meyer: they are attractively designed. Part of the character of the neighborhood is the detached single family dwelling.

Ms. Leonard: explains the location and landscape of the area. Buffers would be provided. It wouldn't disrupt the character from the street. It would enhance it.

Mr. Bayer: in 2007 a piece of land that was part of the same parcel was sold to the town?

Mr. Blais: yes.

Mr. Sanderson: points to the map where the land is.

Mr. Bayer: one thing you mentioned, by granting the variance this would be cleaner project, what did you mean by that?

Mr. Blais: it would require approval of a street. It would be the same design all the way through.

Mr. Bayer: the variance criteria, looking at this you are saying this would cause undue hardship if you can not get this decreased width. In this regard, it can yield a reasonable

return. The property is under contract, there are comparison property values you've given us. Can you tell us about this?

Ms. Leonard: one of the criteria was that the proposed development wouldn't have a negative impact on the values of the existing properties.

Mr. McCarthy: these will be rental apartments.

Mr. Blais: yes.

Mr. McCarthy: others have made the point regarding reasonable return and this concerns me as well.

Mr. Keeler: the variance we are talking about lot width. Not the development of the lot. Does the lot width change the character of the neighborhood?

Ms. Leonard: having to install a street at city standards would alter and impact the neighborhood.

A lot more than allowing a driveway.

Mr. Blais: shows the properties in the area and there are no typical parcels.

Mr. McCarthy: members of the public who wish to speak?

Ms. Carolyn Reed: 26 Allen Ave Ext. expresses concerns altering the neighborhood. Review the properties in her area with the sq ft of these new homes. Traffic and public safety effects.

Mr. George Skillin: 23 Allen Ave ext. Concerns with lot width. I needed to have 125 ft to put my driveway in on 15 ac. My property is 2 doors up, what effects will it have on my property? The houses are upscale. Concerned about 2 dumpster's and lights.

Mr. Joel Sabean: 3 Carriage Hill Rd. Concern about the traffic issues and school buses and safety issues.

Ms. Benita Jones: 13 Allen Ave Ext. adjacent to this parcel. My understanding was there wasn't enough room to put a road?

Mr. Farris: there is no minimum separation distance between other properties or other driveways. Only between intersection of streets.

Mr. Scott Richardson: lives at 111 Ledgewood Dr. Concerned about the width of the entrance. A driveway is unacceptable. Public safety reasons.

Ms. Robin Pfefferhess: 19 Allen Ave. I about the property. My land is higher. Water run off is a problem and there are wetlands. The entrance is a concern.

Mr. McCarthy: public comment is closed. We will vote on the variance request.

Mr. Keeler: my concern is I don't think it meets the reasonable return criteria. If they go back to the planning board and the waiver is denied. Are they better off tabling or withdrawing the variance request?

Mr. Farris: they could come back after a year.

Mr. Blais: can we get an opinion on how the board would vote?

Mr. McCarthy: we could give the applicant a good sense, a variance is difficult to meet. It would be a safe bet that your variance request isn't going to pass. If you want us take a formal vote we could do that. Each criteria would need to be met.

Are you asking us to table this?

Mr. Blais: withdraws the request for the variance.

Mr. McCarthy: the multiplex is allowed in the district subject to conditions.

Mr. Blais: the board already reviewed the applications.

Mr. Keeler: the adverse impact on adjacent properties values, the applicant states no, I don't know that I can comment on that. There are 7 items that need to be satisfied.

Mr. Bayer: Mr. Farris, under section 3.3 could you explain this?

Mr. Farris: we deal more with gross land area issues than net residential area being the gross size of the lot. The planning board will deal with the net buildable area. The project appears to meet the criteria for a multiplex of 15000. Sq. ft. and a min of 2 acres.

Mr. Blais: 15000 sq ft per unit required, the site is 3.4 acres. There are no flood plains, see sheet c1 in your packet.

Mr. Bayer: do you have something showing the road you will build? My understanding is the variance doesn't allow you to build on the lot and your going to change the orientation of the way the people get into these apartments.

Mr. Blais: it will be the same orientation. We haven't done full plans for the street. The site will work the same way.

Mr. Bayer: you would like us to approve this without seeing the street? You're not sure if it's a dead end or cul-de-sac?

Mr. Blais: we talked with the planning board and they're ok looking at a sketch plan. But not ok without having conditional use.

Mr. Bayer: you have heard the concerns by neighbors. You are not providing us with diagrams.

Ms. Leonard: the variance was the application.

Mr. McCarthy: there was an alternative.

Mr. Blais: draws on the plan.

Mr. Keeler: I don't know if we can grant him conditional use approval because they don't satisfy the first condition because they don't have the road frontage.

Mr. Meyer: I think we could move forward based on an assumption of this is how they are going to do it.

Mr. McCarthy: the 200 ft lot width will be on the new road.

Mr. Keeler: if we are to proceed, we would have to do so pending the waiver.

Mr. McCarthy: one of the conditions would be the planning board would have to grant the waiver.

### **Conditional use**

Mr. McCarthy: explains application and it is an allowed use in the RA district. Subject to conditions.

Mr. Blais: the conditions are spelled out. A lot of the details will be handled with the major subdivision approval. The board should have a good feel with what the project is.

Mr. Keeler: The applicant says he won't have adverse impact on adjacent properties. I don't know if I can comment on this. What evidence does he need to put forward to satisfy the criteria?

Mr. Bayer: under 3.3 the requirement of minimum net residential per dwelling the square feet is this met?

Mr. Farris: we deal with gross land area issues than net residential area. The planning board will deal with the net buildable area.

Mr. Blais. We calculated 15000 sq ft per unit. The site is 3. 4 areas see sheet c-1. After deductions you are left with 116521 sq ft. divide this 15000 sq.

Mr. Bayer: where is the road you will build? You want us to approve it without seeing the proposed street.

Mr. Blais. The planning board is ok looking at a sketch plan. We didn't design it.

Draws the plan of the street.

Mr. Keeler: the planning board told you need conditional use first?

Mr. Farris: yes.

Mr. Keeler: I don't think we can grant him conditional use because of the first requirement.

Mr. McCarthy: one condition would be the planning board has to grant the necessary waivers for the project.

Mr. Blais: reviews the plans of the road.

Mr. Bayer: do you have anything showing the correct set back from the new road?

Mr. Blais: this is planning board also. Yes the building would move and meet setbacks

Mr. Bayer: to elevate the concerns of the neighbors it would be helpful to know where the road is.

Mr. Blais: dumpsters concerns we would put a trash house that would be enclosed it could be a condition.

Mr. Meyer: could you describe the wet lands?

Mr. Blais: being September it is not very wet.

Mr. Saunderson: it's listed as a minor wetland. Low value.

Mr. Blais: we would get from the DEP a permit by rule.

Mr. Meyer: do you have landscaping plans?

Ms. Leonard: reviews the landscaping plans.

Mr. Meyer: the traffic of 7 trips per day, is this per unit?

Mr. Blais: no, just peak hours. We have addressed the site issue.

Mr. Thibodeau: reviews conditional use requirements. He states he is compatible with the character of the neighborhood, we don't know if it will be. The lighting, we have no plans. The noise issue, I am not sure what the buffering is. The property values, I don't see an analysis done on values. Traffic, we need to see evidence of this. For us to move forward I would need to see some proof of these requirements. Sewer or septic needs to be addressed.

Mr. Blais: I didn't think the intent was to look in depth at everything when the planning board will do this.

Mr. Farris: the applicant should address each issue. You have to prove you've met the minimum threshold.

Mr. McCarthy: what I suggest is that you work with Mr. Farris to gather the information we need. We need to address the requirements. We do not have enough information here to approve this.

Mr. Blais: we have to invest more money to get all the information.

Mr. Audet: would conservation zoning apply?

Mr. Blais: we were told no because multiplexes are exempt.

Board reviews with the applicant what requirements and materials they would like to see.

Mr. McCarthy: Mr. Keeler has made a motion to table. All in favor. Vote is unanimous.