

**TOWN OF FALMOUTH  
BOARD OF ZONING APPEALS  
WEDNESDAY, MAY 28, 2008**

These minutes are not verbatim

**MEMBERS PRESENT:** Kevin McCarthy, Rich Bayer, Fred Jay Meyer, Dennis Keeler, Willie Audet and Stan Given.

**MEMBERS ABSENT:** Jim Thibodeau

Kevin McCarthy served as Chairman.  
The meeting opened at 6:31 pm.

Mr. Audet and Mr. Given were designated as alternating voting members for the meeting.

**Administrative Agenda Items:**

**Minutes**

April 22, 2008 – Mr. Audet moved to approve the minutes; Mr. Meyer seconded. Approved 4-0. (Keeler, Bayer abstained)

**Acceptance of Findings of Fact, Conclusions of Law and Decision**

Draft Findings are pursuant to a Remand from the Superior Court relative to the Jeffrey and Lynne Leighton, Appeal of the Board of Zoning Appeals decision of October 2007 on a division of lots at 71 Underwood Rd, Parcel # U19-109.

Mr. Audet was a voting member for this item.

Mr. McCarthy asked if there was a recorder or stenographer at the meeting; he commended Mr. Plouffe's work on the findings.

Mr. Plouffe said a transcript was taken from the tape of the meeting.

Mr. McCarthy said the findings were consistent with both the minutes of the meeting as well as his recollection of the meeting.

Mr. Bayer asked if there was a record of which Board members were present for the two meetings the Leighton's were before the Board.

Mr. Keeler said it was recorded in the minutes.

Mr. Bayer said that he had not reviewed the transcript and asked if the Board is relying on the town attorney and his staff's interpretation of the transcript.

Mr. McCarthy thought it was acceptable to rely on the town's attorney and his staff, especially considering that they were working from a verbatim transcript. He said he recalled that these were the items upon which the Board based their decision.

Mr. Keeler said that he did not read the transcript but he did review the minutes, and he felt it is consistent with both the minutes and his memory of the meeting. He asked if it was necessary to record the actual vote in the findings.

Mr. Plouffe said it was not necessary.

Mr. Farris said that Mr. Mazziotti, the attorney for the Leightons', also received a copy of these findings and he voiced no objection to them to Mr. Farris.

Mr. Plouffe said that Mr. Mazziotti didn't bring any objections to him either.  
Mr. McCarthy said that they are the Board's findings; Mr. Mazziotti is free to object to them in the proper setting.

Mr. Keeler moved to accept the findings of fact presented to the Board by Town Counsel.  
Mr. Meyer seconded.

Findings approved 5-0.

2. **Jeffrey C. Andle & Lori L. Johnson-** Are requesting Conditional Use approval under Section 6.2a for replacing a deck at 393 Middle Rd, Parcel # R01-043, zoned "RBm".

Mr. Audet was a voting member for this item.

Mr. Andle stated that he had one change from what was submitted to the Board initially. He hasn't found a suitable way to repair the front steps without them continuing to encroach, and if he brings the step tread width into conformity they will encroach 12-18 inches further, as they currently exist they extend two tread widths into the setback. He went back and looked at the plans he submitted and realized that the change to the stairs would not look good at all, and that there was no way to extend the stairs without further encroaching into the setback. Mr. Andle said that there was no way that looks at all appealing to change the front deck at this point. He can replace the wood on the current steps, or his other option is to replace the stairs with conforming steps but those would extend further into the setback.

Mr. Farris said that he thought this application would be under 6.2a; he thought the stairs would turn and then be conforming.

Mr. Andle said that it doesn't look very good to do that. He said he can leave the deck as it is and come back to them another time.

Mr. Farris said that if he replaces the front steps he will need a variance.

Mr. Andle said that he is only replacing the treads at this time

Mr. McCarthy asked if he could replace an existing structure.

Mr. Farris said that if he is replacing a current structure it may be a 6.2b application.

Mr. McCarthy asked if Mr. Andle is using the same physical location.

Mr. Andle said yes. He explained that if he leaves them with the same pitch they are non-conforming due to pitch. He can change the treads to conform but would then encroach 12-18 inches further into the setback.

Mr. Andle said he could replace rotting wood and paint only and he would be happy with that.

Mr. Farris said that a staff member in the Code Office can meet with Mr. Andle and discuss the stair issue further.

Mr. Andle said that there is no issue of encroachment with the back deck.

Mr. McCarthy asked if this was before the board due to the setback.

Mr. Farris said that it was before the board due to the house being non-conforming.

Public comment period opened; no public comment.

Mr. Meyer moved to approve the application.

Mr. Bayer seconded.

Application approved 5-0.

3. **Jeremiah & Susan Burns**- Are requesting Conditional Use approval under Section 6.2a and addition at 6 Water's Edge Rd. Parcel # U05-011, zoned "RC".

Mr. Given was a voting member for this item.

Mr. McCarthy asked if the application was here due to setbacks.  
Mr. Farris said yes.

Paul Seaman of Harborside Design presented the application on behalf of the applicants. He explained that they are trying to improve the qualities of the entry and the disposition of the site. They are not increasing the number of bedrooms. It is a non-conforming lot size as it exists, and a portion of the building encroaches on the setback. The new structure is fully conforming to setbacks, and the height of proposed addition does not exceed the existing height of the building. He said that the design has been refined since the application was submitted. He explained that it is a small amendment – the addition being proposed is slightly smaller than it was as submitted. They are proposing demolishing some areas and adding to others. Mr. Seaman gave the Board a new diagram of the home, and explained the diagram. The dimensions of the proposed structure are on the new diagram.

Mr. McCarthy asked for clarification – the additional component of the application that was not included in the packet is a small storage addition on the side of the house.

Mr. Seaman said that was correct. It replaces storage being removed on the other side of the garage. They felt that by moving the entry from one side of the house to the other it would make it a much more attractive feature.

Mr. McCarthy wondered if it was no longer a 6.2a with the small addition but he thought they could consider it for the purposes of the meeting.

Mr. Meyer asked if there was a notice issue.

Mr. Farris said there wasn't - it's still a 6.2.

Mr. McCarthy explained that it would now be a 6.2b application, since the small addition would be within the setback.

Mr. Seaman said that they could end it at the setback; it was a cosmetic reason for its setting as proposed.

Mr. McCarthy observed that criterion 6.2 b.2 could be a problem – he wondered if there is an extension closer to the lot line.

Mr. Seaman passed around a model of the proposed house.

Mr. McCarthy asked how high the structure would be.

Mr. Seaman said at most a one story stud wall – it would be eave height.

Mr. Farris said that section 6.2 is the "squaring off" provision, so he didn't think there is a problem with building in that area of the house.

Public period opened – no public comment.

Mr. Meyer asked for clarification that the cross hatch section is the existing building, and that there was to be no change in the footprint other than the colored areas of the diagram  
Mr. Seaman said no, only paper and paint in other areas.

Mr. Keeler asked about expanding into a required setback. He wondered if it was under 6.2 b or 6.2 a.

Mr. Bayer said that the Board usually permits extension as long as 6.2 b4 is covered.

Mr. Farris said that this would definitely fall under 6.2 b.

Mr. Bayer asked about the distance between the proposed storage addition and the road.  
Upon discussion it was determined that it was approximately 20 feet.

Mr. Bayer wondered what the distance was between the proposed storage area and the side yard, asking how close to adjoining lot the addition would be.

Mr. Seaman said that there is a paved drive on that side, so there are no abutting buildings on that side.

Mr. Bayer moved to approve the application as depicted on the site plan dated May 28, 2008 under 6.2 b, **AMENDED TO ADD:** site plans noted L101 and SK-01.

Mr. Keeler seconded.

Application approved 5-0.

#### **Regular Agenda Items:**

4. **Bridget Douglas**—Is requesting Conditional Use approval under Section 5.21 for a Home Occupation for a Daycare at 9 Harriette St, Parcel #U54-011, zoned "RA".

Mr. Audet was a voting member for this application.

Ms. Douglas presented her application. She wants to open a before-and-after daycare, with 4 kids. The children will be there morning and afternoon, not for the full day.

Public comment period opened:

Mr. McCarthy mentioned that the Board had received a letter from Mrs. Marin, a neighbor, who objects to the application.

Roger Marin, representing his mother Daisy Marin, who submitted the letter to the Board objecting to the application, asked the applicant if the kids would be there in the summer.

Ms. Douglas said no, they would be there only on days when there was school, except they will be there on snow days.

Mr. Marin asked how many children would be in the daycare and how many kids Ms. Douglas has of her own.

Ms. Douglas said that she wants to take four children, and she has three of her own.

Mr. Marin asked if she would be the only person caring for the kids.

Ms. Douglas said that her sister would cover for her when she is sick, but even then she would still be in the home.

Mr. Marin explained that his mother is elderly and doesn't adjust well to change, noise, or disruptions. This proposed change is upsetting to her, and he is opposed to the application.

Mr. McCarthy asked Mr. Marin how close his mother's house is to Ms. Douglas' house. Mr. Marin explained that his mother is directly across the street, and she would be looking into the backyard where the children will be playing. She is concerned that the children will be pretty active.

Mr. Keeler asked for clarification on the house location.

Mr. Marin explained that his mother's house sits on the corner. Her house faces the side of the applicant's house, and so Ms. Douglas' backyard faces his mother's front yard.

Mr. Bayer asked if anyone had a diagram of the neighborhood.

Mr. Marin said that it was not in the application.

Ms. Douglas demonstrated on the plot plan where Ms. Marin's home is in relation to hers.

Sandy Shryock of 8 Woodward Lane explained that they are two very small streets in this area, with few houses. She has been in the neighborhood for 28 years; it is a quiet place, with no worry about a lot of cars. She was concerned about more cars causing safety problems, as well as problems for people getting in and out for work in the morning and evening. They are really tiny streets with no room for parking to drop off kids if there was more than one car at a time. She was also concerned about property values with a business in the area. She expressed a concern about the number of children in the daycare; she wanted to be sure that the paperwork doesn't say up to 12, even though the applicant says six now.

Comment period closed.

Mr. Given asked if they would be half day sessions.

Ms. Douglas said that she would probably open at 6 am; the bus comes at 8:25 am. The afternoon bus then arrives at 3:25 pm, and she would close at 5:30 pm.

Mr. Given referred to the sketch provided and observed that it didn't look like there was very much room for parking. He was concerned about dropping off kids on the street or people turning around in other people's driveways.

Ms. Douglas said that Mr. Farris had suggested grass pavers to allow another car on the grass, and she was willing to do that. There is only one vehicle in her family.

Mr. Given asked about any plans for buffering or fencing.

Ms. Douglas said that there is no fence there now, and she had no plans for a fence. It was a big consideration, financially, building a fence for only four kids.

Mr. Bayer asked about a change in the hour she would open – in the application it was listed as 6:30 am.

Ms. Douglas explained that she wanted to see what parents wanted; she hasn't set that time yet.

Mr. Bayer asked if the parents will drop the kids off at the house and the kids would get the bus there.

Ms. Douglas explained that she would have to walk them down to the corner of Johnson Rd. and Harriette to get the bus - the bus doesn't come to her house. Then she would walk down to pick them up in the afternoon.

Mr. Bayer said that one requirement of ordinance section 5.21 is that business must take place within the dwelling or accessory structures. He asked if she was planning for the kids to use her yard.

Ms. Douglas said she was.

Mr. Bayer thought kids playing outside might be an issue. He asked how many cars can park in driveway currently.

Ms. Douglas said two.

Mr. Bayer asked for clarification - her road is Harriette St. and that is a dead end.

Ms. Douglas said yes; Woodward and Harriette are both dead ends.  
Mr. Bayer asked if the proposed four children are from four different families.  
Ms. Douglas said that her goal is for just two different families; she is handpicking the kids.  
Mr. Bayer asked if that meant only two cars in morning and afternoon.  
Ms. Douglas said yes.

Mr. Keeler said he was troubled about the outside use that Mr. Bayer mentioned. According to the ordinance, activity must be within the dwelling, and not visible from the outside.  
Mr. Farris thought that was a very strict interpretation of the ordinance especially where there is the overlay with the definition of a daycare home. He didn't think the intention of the ordinance was to keep kids indoors on a nice day. Typically on daycare homes they overlay the home occupation with the definition of a daycare home. Under Section 2.46 the definition of a daycare home doesn't mention anything about being entirely inside the home.

Mr. Keeler asked Ms. Douglas if she would be able to have a provision to stagger the drop offs if she can't get the two families she suggested.  
Ms. Douglas guessed that the drop-offs would be staggered anyway. The drop off for the kids she has now is very quick.  
Mr. Keeler asked what ages she is targeting.  
Ms. Douglas said she is looking at elementary school age; 7-10 years old, 1<sup>st</sup> – 4<sup>th</sup> grade.

Mr. Meyer said that the Board had asked for additional information from the last time the applicant was here; they needed scaled drawings – he thought the living room that the children would be using is very close to 20% of the house and the kids will obviously be using the bathroom as well. A neighborhood plan would be helpful as well. He asked about a sign or display outside.  
Ms. Douglas said there would not be one.

Mr. Audet asked about the outside lighting.  
Ms. Douglas said she has two lights on the outside of the house; nothing on the street.  
Mr. Audet asked if there was any curbside lighting.  
Ms. Douglas believed there is a town light on the corner, but she wasn't really sure.  
Mr. Audet asked about her state license.  
Ms. Douglas said that the state approved her for 12 kids; that is what they recommended her for, but the fire marshal has not been there yet. She has no interest in having 12 kids; she has no intention of having more than 4 kids, she already has 3.  
Mr. Audet said he thought there used to be a daycare on 25 Harriette St..  
Ms. Douglas said there were two, one right next to her and one further down.  
Mr. McCarthy asked how many kids were there.  
Mr. Audet thought 6-8 kids maybe; it was a very similar house. He said it is tricky in a residential neighborhood; with all the comings and goings in winter with snow banks 5 feet high and it is dark at 5pm.

Mr. McCarthy was struggling with the ordinance language in section 5.21 that states "wholly within the dwelling". He said that they have run into home occupations in the past where that was a factor.

Mr. Marin said that he was more concerned now due to the yard having no fence; he thought the children will wander. He said that children in the neighborhood already come onto his mother's property. This will cause more hassle for his mother. He asked what happens with the children during the summer.

Ms. Douglas said that many of the families get a nanny, or the children go into community programs.

Mr. Bayer asked for clarification on the parking – one could park two cars in the driveway, so with Ms. Douglas' car in driveway, she can have two more - potentially four cars in total - with one car parking next to her car, another blocking the driveway, and then another one on Harriette.

Ms. Douglas said that was correct, and she can double the driveway with grass pavers.

Mr. McCarthy referred to section 5.5's offstreet parking requirements which requires one space for every 4 persons attending.

Mr. Bayer said he was looking at 5.21 b 6 which contains specific offstreet parking requirements for a home occupation.

Mr. Plouffe, town attorney, said that the property is in the RA district; in section 3.3 conditional uses it says that daycare homes are a conditional use in the district.

Mr. Farris said that the application is therefore a conditional use application under section 8.3, not a home occupation application under 5.21.

Mr. Plouffe said that gets out of the discussion of the activities being held wholly within the structure, but does call up the parking requirements for a daycare home.

Mr. Farris said that the application submitted is itself an 8.3 application. It was an unfortunate error in the legal notice that it was listed under 5.21.

Mr. Plouffe said that the Board may need to consider if the application needs to be re-advertised due to the different standards between a 5.21 home occupation and an 8.3 daycare home, but he felt the neighborhood understands what is being suggested here.

Mr. Keeler said that he felt the 5.21 overlays the conditional use of the 8.3. It's conditional use either way.

Mr. McCarthy said that the legal notice did say that it was for a daycare. He asked how the Board melds the home occupation with a conditional use – he wondered which takes precedence.

Mr. Plouffe explained that, when the ordinance has called out a specific use, even within a home, you look at the specific use.

Mr. McCarthy said the definition of daycare home only calls out licensing. He asked if the state had any issues.

Ms. Douglas said that their only concern about outdoor activities was if the town would require a fence.

Mr. Meyer said that in section 5.5 there are specific provisions for parking for a daycare home. It requires two extra parking spaces in addition to the required parking for the home.

Mr. Farris said that the spaces in the garage are counted as available parking.

Mr. McCarthy asked if the home has a garage.

Ms. Douglas said it does, but she parks in the driveway.

Mr. Audet asked if there was any car storage in the garage.

Ms. Douglas said no. Hers is the only vehicle.

Mr. Meyer moved to approve the application under 8.3 for discussion purposes.

Mr. Keeler seconded.

Troy McClean an abutter at 6 Woodward Lane spoke about his concern that the ordinance was very clear that the occupation should take place wholly in the home, and about there being no

provision for a fence. He didn't think it was permissible, and he didn't think the Board should allow it.

Mr. Bayer said that he was inclined to vote against this application. He said that they didn't discuss the completeness of the application – due to concerns of the neighbors and the specifics of this application, he felt he needed more information about the layout of the neighborhood, what the house and yard look like, etc. There was not sufficient information to make him feel comfortable that this is safe and compatible with the neighborhood. He was not convinced that there is enough parking. There seems to be parking enough there for a total of two cars, so there is one space missing. It is also missing the fire marshal's inspection, but the Board could make that a condition of approval.

Mr. Given agreed with Mr. Bayer. He expressed concern about the neighborhood, and the need for a fence to keep things under control. He is in favor of home daycare, but he needed more information.

Mr. Keeler said that he could be lenient with the drawing; from the testimony of the applicant and the neighbors he could get a sense of the neighborhood. He thought that at present it does not satisfy the parking, but that could be addressed with a condition on the pavers, which would allow another space. He was troubled with the absence of a fence. He thought it was a lot to ask of a single person to monitor seven kids between 7-10 years old without a fence. He was concerned about the impact on the neighborhood.

Mr. Audet said he was inclined to vote in favor of the application, but suggested some conditions – 1. a post light out front; 2. expanding the driveway to double wide – he was happy with the proposed grass pavers; 3. he felt fencing was critical both for little children and the privacy of the neighbors. He would like a global plan of neighborhood and a better site plan – the plan submitted was not to scale, and he needed a better idea of where all the neighbors are located.

Mr. Meyer said he was inclined to vote against it. The property needs another parking space. He agreed with Mr. Audet's suggested conditions. He said it sounds like a very quiet neighborhood which is good for the safety for the kids, but having kids arrive at 6:00 am could be disruptive to neighbors. The Board is setting higher standards for site plans, and this leaves a lot to be desired. Ms. Douglas' home is 14 feet away from one neighbor, and he thought that was very close.

Mr. McCarthy agreed with the issues raised on the sufficiency of the application. He was not comfortable with what is before the Board as presented. He thought the conditions that might be attached might prevent the applicant from going forward anyway.

Mr. Bayer thought this application is do-able with more information; he liked Mr. Audet's suggestions for conditions.

Mr. McCarthy said that this use is specifically allowed in the ordinance, but more information is needed.

Mr. Audet asked if the Board was willing to allow the applicant to table. If the application is denied, then the applicant has to wait a year before coming back.

Mr. Keeler said that his sense was that, even if she came back with the information requested, there would still be conditions imposed. If a fence or other enclosure is something that she can't accommodate, she needs to consider that.



Ms. Douglas said that she has no intention of fencing the yard. She can't afford it. She doesn't want to disrupt the neighborhood; she understands the fencing concern.

Mr. McCarthy said that a fence would probably be a condition.

Ms. Douglas said that she would not go forward if that was a condition and so she recommends the board vote against it.

Motion fails 0-5. Application denied.

5. **Peter & Michelle Davis**-Are requesting Conditional Use approval under Section 5.22.1 for an Accessory Dwelling at 22 Stapleford Dr. Parcel #U69-044, zoned "RAm".

Mr. McCarthy asked Mr. Farris if this application was complete.

Mr. Farris said that it was not. The designer misunderstood the ordinance requirements, and he was done with the project at that point. The builder made modifications, but Mr. Farris felt that it is still incomplete.

Mr. McCarthy said that the Board can take no action on it if it is incomplete.

Robin Ratcliffe, a neighbor who lives across the street, asked if the application would be tabled.

Mr. McCarthy said that the Board can't rule on an incomplete application. It is up to the applicant to submit enough information. The applicant can submit information in the future, and the abutter would be notified again in that case.

Ms. Ratcliffe asked about conflicts between neighborhood covenants and town ordinance.

Mr. McCarthy said that would be a consideration, those would be questions that would need to be addressed.

Mr. McCarthy said the Board can not act on this application.

6. **David & Tiffany Segre**-Are requesting Conditional Use approval under Section 6.2b for an addition and renovations at 26 Payson Rd. Parcel #U02-055, zoned "RA".

Mr. Meyer recused himself, as he lives directly across the street from the applicants, so Mr. Audet and Mr. Given were both voting members for this application.

Mr. Segre presented his application. They are asking to square off an existing side porch. Basically they are adding 90 sq feet - the existing structure is 13 x 6 feet, and they are adding a 15 x 6 foot structure to it.

Mr. McCarthy asked if this is a nonconforming lot.

Mr. Farris said it is a nonconforming lot and a nonconforming structure.

Mr. Keeler asked if this porch is the only new thing they are doing.

Mr. Segre said it is. The majority of the work is interior renovation.

Public comment period – no public comment.

Mr. Keeler asked for clarification that the changes to the existing 13 x 6 foot structure are internal renovation only; the 19 foot setback is not changing, and the footprint stays the same.

Mr. Segre said that was correct.

Mr. Keeler observed that they are adding another 6 feet and coming out by 15 feet; this section would also be 19 feet from the sideline. He asked if the requirement is 20 feet in that area.

Mr. Farris said yes.

Mr. Keeler said that the addition is coming out 6 feet from the existing house. The existing house is now 25 feet from sideline at that point, and will be 19 feet away after the addition.

Mr. Segre said that was correct.

Mr. Keeler asked if this was under 6.2 a or b.

Mr. Farris said it was 6.2 b.

Mr. Keeler asked about not extending any closer to the lot line.

Mr. Farris said that this is consistent with that.

Mr. Keeler observed that, even though it is coming closer at one point, it is not extending any closer due to existing porch. He asked Mr. Segre if the only new footprint he is adding is this 15x6 feet.

Mr. Segre said yes.

Mr. Keeler asked if the height will be same as the existing porch.

Mr. Segre said yes.

Mr. McCarthy asked if the front elevation in the plans shows what the house looks like now, he asked if the jog-out is there now.

Mr. Segre said that they are getting a hip roof, the look will change but the height will not.

Mr. Bayer asked about a note on the plan referring to 23 feet.

Mr. Segre explained that it is 23 feet from the neighbor's house and 19 feet from the property line.

Mr. Bayer moved to approve the application under 6.2b.

Mr. Given seconded.

Application approved 5-0.

7. **Shelly D'Alberto**-Is requesting Conditional Use approval under Section 6.2b to build a deck at 20 Providence Ave. Parcel# U4-039, zoned "RA".

Mr. Bayer recused himself since he is a neighbor of the applicant; Mr. Audet and Mr. Given were both voting members for this item.

Ms. D'Alberto presented the application. She wants to add a deck onto the back of her house. Harding Ave is paper street in that location – there is no neighbor there, and she is not moving toward the neighbor on the other side, nor is she going toward the rear setback. There will be one step down to the deck, then two steps down from the deck toward the garage.

Mr. Meyer asked about a dotted line on the plans

Ms. D'Alberto said that was her driveway.

Public comment period – no public comment.

Mr. Meyer asked Mr. Farris about the issue under 6.2 of not moving closer to the lot line; this deck looked like it will go into the setback. The structure in question is the actual existing residence, they are not squaring anything off, and they can't consider the garage.

Mr. Farris said that the garage is an accessory structure. Under 6.2 b the practice has been that you can extend the left and right sides of the house back to the 40 foot setback and fill in that area, that would be allowable buildable area under 6.2 b.

Mr. Meyer clarified that the only setback issue would be if she got into that back 40 foot setback. Mr. Farris said that was correct.

Mr. Keeler asked about the size of the deck.

Ms. D'Alberto said it will be 20 x 14 feet.

Mr. Farris said he calculated it at roughly 280 sq feet.

Mr. Keeler asked if the proposed deck is 10 feet off of the 40 foot setback.

Ms. D'Alberto said yes it is.

Mr. Meyer said that it looks to be 15 feet from the property line, and asked if the deck is at least 20 feet from the abutting building.

Ms. D'Alberto said it is.

Mr. McCarthy asked if it is just a deck, not enclosed.

Ms. D'Alberto said it is.

Mr. Keeler moved to approve the application under 6.2b.

Mr. Audet seconded.

Application approved 5-0.

8. **Elizabeth Stothart-** Is requesting Conditional Use approval under Section 6.2b to build an addition and dormer at 75 Underwood Rd. Parcel #U19-108, zoned "RA".

Mr. Audet was a voting member for this item.

Mr. McCarthy asked the applicant if she currently owns the house.

Ms. Stothart said yes.

Ms. Stothart presented her application. She wants to build a 13x6 foot addition onto the house and add a dormer on the upstairs part; she also wants to demolish an existing shed. She is planning to build on the footprint of the existing shed, and is increasing the footprint to the inside of the property, within the setbacks. Ms. Stothart described in detail the plans to demolish the existing shed/mudroom and replace it with an addition which would extend further into the property.

Mr. Stothart explained that the whole house is nonconforming due to being entirely within the 20 foot setback. Mr. Farris told them they were able to build within 10 feet of the property, but have to consider the abutting neighbors house; the next house on that side is 75 feet away. They are not affecting the pitch of the roof facing the neighbors; the dormer will be on the other side of the house. They can't touch the side of the house facing the neighbors.

Mr. Meyer said that the building is within 10 feet of the line, and so there is no expansion or enlargement toward that line.

Ms. Stothart said that was correct.

Mr. Stothart said that Mr. Farris told them they can't even change the pitch of the roof on that side due to the ordinance.

Public comment period – no public comment.

Mr. Audet asked Mr. Farris his opinion on the application.

Mr. Farris said that the application meets the criteria of 6.2 b. All the expansion will be outside the 10 foot minimum setback; the house itself is within that 10 foot setback. The tear down and rebuild of the shed is due to its condition - it's falling down - and that is permissible.

Mr. Audet asked if the applicant will get construction plans drawn up if approved.

Mr. Stothart said they will hire a builder.

Mr. Audet said they will need more detailed plans for a structure. He wanted to make sure that what gets approved is what gets built.

Mr. Farris said the practice of the Codes Office is to compare the building permit to the Board's approval.

Mr. Given was concerned with technical ability a bit, though he thought Mr. Farris' process will see to that. He recommended a builder.

Mr. Keeler asked if there was any height issue here.

Mr. Farris said no, they'll be well within the maximum 35 feet.

Mr. Meyer moved to approve the application under 6.2 b.

Mr. Audet seconded.

Application approved 5-0.

**9. Kumon Math and Reading**-Is requesting Conditional Use approval under Section 8.3 for a Commercial School at 390 US RT 1. Parcel#U62-003-002, zoned "BP".

Mr. Audet was a voting member for this item.

Mr. Farris explained that the ordinance language relative to this application was amended last night at the Town Council meeting.

Mr. McCarthy asked for clarification that this is a conditional use in the BP zone and there are no other issues.

Mr. Farris said that this application is the reason for the ordinance addressing commercial schools. There are no other issues.

Mr. Tim Higgins, owner of 390 US Route One and representing the Kumon Agency, presented the application.

Mr. McCarthy observed that there was not a lot of information in this application.

Mr. Farris explained that no one knew what the criteria would be; the ordinance originally presented to both the Ordinance Review Committee and the Town Council was redrafted and this is a time-sensitive issue for the applicant. The building is a brand-new building, approved by the Zoning Board and the Planning Board two or three years ago, so we know it has enough

parking, the limit of the 2000 sq feet is new language. It appears it will have to meet the same criterion as office space, which is 1 parking space per 200 feet of office space, this site meets that criterion.

Mr. Keeler clarified that they are not approving the building.

Mr. Farris said no, they are approving the use of space within that building.

Mr. Keeler asked if the building is constructed at this point.

Mr. Farris said yes and a certificate of occupancy has been issued for the building itself, and then the Codes Office will do the tenant fit up individually and then issue certificates of use.

Mr. Keeler asked for clarification - the school needs approval to operate in this building.

Mr. Farris said that, before this ordinance amendment, commercial schools were only allowed in the SB-1 district, which is very expensive space for a school.

Mr. Keeler pointed out that section 5.5's parking requirements for schools list 5 spaces for each room used for instruction, but there are different standards for offices, and the new language doesn't seem to address this issue at all.

Mr. Farris said that's why they are using the requirements listed for offices – he understood that this facility will have one small office and one large room used for instruction.

Mr. Higgins confirmed Mr. Farris' statements.

Mr. McCarthy asked about the size of the unit.

Mr. Higgins said it is 830 sq feet for the total unit.

Mr. Keeler asked about adjacent uses in the building.

Mr. Higgins said that this floor is vacant at this point. The top floor of the building is wholly occupied by professional land surveyors.

Mr. Keeler asked if they will be predominantly offices.

Mr. Higgins said that it will be a mixed use of offices and warehouses.

Mr. Bayer asked if the unit comes with parking.

Mr. Higgins said yes, each unit comes with one deeded space, and the rest is open parking.

Mr. Bayer asked how that breaks down with spaces per unit.

Mr. Higgins said that there are 13 units and 39 spaces total on site.

Mr. Higgins explained that the building is restricted – they are only allowed to sell enough office space to use the available parking, the rest must be open.

Mr. Bayer asked if that was a Planning Board restriction.

Mr. Higgins said it was.

Mr. Bayer asked if it was anticipated by the Planning Board that this would be office space.

Mr. Higgins said that was their intention.

Mr. Meyer asked if Kumon is for tutoring.

Mr. Higgins said the owner is not a certified teacher; it is a for-profit school.

Mr. Meyer asked if there is a time constraint.

Mr. Higgins said that they have been under contract for 6 months at this point, and he didn't know how much longer Kumon will hang on.

Mr. Meyer asked if the school is year-round.

Mr. Higgins said he didn't know her schedule; he thought it was three days a week. Kumon currently operates in the Falmouth shopping center.

Mr. McCarthy asked why they were not looking at parking requirements listed under schools.

Mr. Farris said that there was no guidance under the ordinance as to the parking requirements. Mr. McCarthy said that 4 spaces would be required under the “professional” requirements, but 5 spaces would be required under the “school” requirements. If every office in the building were treated under the “school” requirements, the building wouldn’t have enough parking. If this unit was divided into three rooms it would need 15 spaces.

Mr. Farris explained that the building has to meet some conditions imposed by the Planning Board relative to the parking. The Codes Office would enforce that.

Mr. Higgins said that the reason for the office space on that side of the building was to appease a neighbor. Originally the building was to be entirely warehouse space.

Mr. Keeler asked if Kumon is buying the unit.

Mr. Higgins said yes.

Mr. Audet observed that Mr. Higgins may have to be selective in placing future tenants. If this owner needs 5 parking spaces available, he’ll have to carefully select a tenant for future units.

Mr. Keeler moved to approve the application.

Mr. Meyer seconded.

Application approved 5-0.

**10. Peter & Susan Hall-** Are requesting Conditional Use under Section 8.3 & 6.2 for an addition at 18 Just A Mere Rd, Parcel # U01-149, zoned “RA”.

Mr. Given was a voting member for this item.

Greg Yost, of Hanley and Yost Custom Builders, representing the owners, presented the application. The Halls would like to remove an existing nonconforming structure, replace it with a 1.5 story structure closer to the house, add a 10x14 foot family room to the house and add to an existing bump-out on the house. The existing garage is 7 feet from the property line.

Mr. McCarthy asked if they are planning to knock down and rebuild the garage.

Mr. Yost said yes they would rebuild it on the existing footprint and put an addition on it to reach the house. The new garage would be conforming.

Public comment period opened – no public comment.

Mr. McCarthy observed that section 6.10 says you can’t expand it in any way.

Mr. Farris said that he can rebuild the garage and then connect the house to it, which in a two step process gets you from 6.10 to 6.2.

Mr. Meyer asked if that is because it becomes part of the same structure.

Mr. Farris said that was correct.

Mr. McCarthy said that the application says that they are expanding the footprint – the ordinance says they can’t expand it in any way. He asked if this shows intent to avoid section 6.10 by using the other structure’s expansion.

Mr. Farris said that this is not unique to this application.

Mr. McCarthy said the Board has dealt with a number of garages knocked down by the Patriot’s Day (2007) storm, but those were rebuilt on an existing footprint.

Mr. Keeler asked for clarification that there are two separate applications here.  
Mr. McCarthy asked if the Board wanted to consider it as two separate applications, since that is how it has been presented. He observed that they have to knock down the structure first.

Mr. Keeler said that in looking at just the addition, the 14x10 foot family room on the back of the house, he thought there was not a lot of setback information provided. He was assuming that it doesn't have a 40 foot setback problem in the back.

Mr. Yost said that the addition would be in line with an existing deck. He was told by Mr. Farris that as long as they didn't go beyond that it was okay.

Mr. Keeler asked Mr. Farris if they can use the deck as the baseline structure, and this doesn't go beyond the deck.

Mr. Farris said that was correct.

Mr. Keeler stated that the 10x14 addition does not extend closer than the existing structure. He thought that there was no lot coverage more than 50%.

Mr. Yost said it was 21%

Mr. Keeler asked if there were any height issues.

Mr. Farris said no.

Mr. Keeler said there was no problem with the first application, but in looking at the second application, he did have a problem with them expanding the footprint of a nonconforming structure.

Mr. Bayer asked if this was allowed in another application on Harding Avenue at one point.

Mr. Farris said it was.

Mr. Bayer said that previous applicant was allowed to take the garage down and extend the house to meet it.

Mr. Audet said he thought in looking at this application that there will clearly be an enlargement of the garage.

Mr. McCarthy said the whole structure is being enlarged, even if the house wasn't coming to it.

Mr. Yost said his understanding was that as long as the dormer wasn't within the 10 foot minimum setback it was okay.

Mr. Farris said that the Board's interpretation of 6.10 in the past was that an applicant can't expand an accessory structure; they can move it or recreate it on footprint. They can extend the house to meet the garage, and then it is no longer accessory. Regarding the application referenced by Mr. Bayer – Mr. Farris said that application was originally tabled and they got an opinion from Mr. Plouffe.

Mr. Keler asked if they were just building on the original footprint if they could go up another story.

Mr. Farris said no, the process has been to go out and physically measure the garage to make sure they don't expand it.

Mr. Audet asked why they can't look at it as major renovation of existing structure.

Mr. Farris said they still have to approve the tear down and rebuild of the existing garage.

Mr. Bayer asked if they intend to change the roofline of the garage.

Mr. Yost said the change to the roof line is they are adding a dormer which is set to be 10 feet from the property line.

Mr. Keeler asked if the dormer exists now.

Mr. Yost said no, it is a flash gable now. The ridge moves toward the house.

Mr. Meyer observed that the peak of the roof will be raised, so it will be a steeper pitch and it looked to him like they were moving up, even on the property line side of the garage.

Mr. Bayer asked about the distance from the garage to the neighbor. He asked for clarification that the existing garage is 7 feet from property line.

Mr. Yost said that was correct. He thought it is about 10 feet from the property line to the neighbor's house.

Mr. Keeler asked about the bump out and whether the edge of it lined up with the edge of the garage.

Mr. Yost thought that it was very close.

Mr. Keeler thought that the only way the house could expand to meet the garage is if the existing portico went at least out to meet the garage. He asked if they knew it for a fact if that was the case.

Mr. Farris said that he went on the site and pulled measurements. They could measure it.

Mr. Keeler thought that even if there was a three inch gap there would be a problem.

Mrs. Hall, the property owner, testified that the portico overlaps the garage by a foot.

Mr. Given asked if there are any water views that might be impacted.

Mr. Yost said no.

Mr. Bayer said he was inclined to allow the expansion of the house to the garage based on past history of the board, as long as the existing portico does reach the garage.

Mr. Bayer moved to approve the expansion of the dwelling under 6.2b to add a 10x14 foot family room and a 4x5 addition to the front entry bump out, sufficient for the house to meet the garage. **AMENDED TO CLARIFY:** approval under 6.2, according to the plan provided to the Board as of May 28, 2008 and which is drawn by TPB and checked by JDN, the proposed additions of a 4x5 foot addition next to the driveway, a 10X14 foot family room and a 4x22 foot strip along with a possible bulkhead.

Mr. Meyer seconded the original motion and the amendment.

Mr. Hall, the property owner, asked for clarification that, under this motion, the work to the house would be allowed, getting the house to reach the garage, but not the work to the garage.

Mr. Keeler thought they would need to change the application; he can't approve an application that on its face violates the ordinance. He asked if the applicant could amend their application to include a 4x22 strip to the additions to the house listed in the application. He asked if the applicant was willing to amend his application.

The applicant agreed that he wanted to amend his application.

Mr. Bayer amended the motion to cover the amendment of the application.

Mr. Meyer explained that what the motion covers under 6.2 is permitted, what isn't covered is the expansion of the garage. Even if it is joined with the house they can't do any expansion of the garage within 10 feet of the property line, and/or 20 feet of the abutting house. The roof line needs to be preserved, but they can do the dormer. Bringing the roofline up effectively enlarges it just a little bit.



Mr. Keeler said that he understood the motion, but he still thought they needed to amend the application. The application that the Board is voting on does not include that 4x22 foot strip. Mr. Bayer said his understanding was that the application was amended by way of the applicant verbally amending it.

Mr. Keeler said he didn't know the protocol of amending an application at this point.

Mr. Farris said that it needs to be amended on paper.

Mr. Meyer observed that the 4x22 foot strip extends beyond the existing footprint toward the rear setback; under 6.2b the house cannot be expanded closer to the lot line within the setback, except the question is does it become okay by the connection of the house and garage.

Mr. Bayer asked if the accessory structure is considered part of the structure that they are dealing with in the motion.

Mr. McCarthy thought the Board was trying to legislate at this point; he felt that they can't pick and choose how they are going to apply the ordinance. He thought that they were trying to amend the application at this late point to accommodate the result they are trying to achieve, and he didn't want to set such a precedent.

Mr. Bayer asked what the amendment to the application was.

Mr. McCarthy explained that the 4x22 foot strip is a part of the other application. The question is where the rear setback is; that isn't even on the record. In this application, it isn't gray area whether we have an accessory or not, it is clearly an accessory at this point.

Mr. Bayer said he was very familiar with the prior application on Providence St.; he suggested that maybe the Board should table this application, review the old file, and maybe find some distinction that was made.

Mr. Keeler thought that Mr. Meyer had a good point. If they just wanted to add the 10x14 foot addition and the 4x22 we would have to say no; they can't do the 4x22 foot addition due to its going closer to the rear setback than any existing line. You can't add the 4x22 to the garage due to the nonconformity. He felt the 4x22 could probably get there if it were kept in line with the 10x14 foot addition.

Mr. McCarthy thought they were trying to impose a dwelling where there isn't any, while arguing that it is grandfathered. He was not comfortable usurping authority the Board doesn't have.

Mr. Yost thought that maybe an option for he and the applicants' was maybe to consider the applications – perhaps the family room application could be approved, but the 4x22 addition application could be tabled.

Mr. Bayer asked about the distance between the proposed family room and the lot line

Mr. Yost said it would be 40 feet. It will be in line with an existing deck.

Mr. McCarthy said that the application for family room addition, etc. is the one that the applicant can live with. It is the garage application that the Board is struggling with.

Mr. Bayer withdrew the motion on the table.

The Board took up the application which addressed the family room and 4x5 foot addition.

Mr. Bayer moved to approve the application to add a 10x14 foot family room, and 4x5 addition to the existing entry bump out.

Mr. Meyer seconded.

Mr. Given asked if they can come back with the other application in the future.  
Mr. McCarthy said they can.

Motion passed 5-0.

The Hall's second application, under section 8.3, was withdrawn.

11. **Stephen Gaal**-Is requesting Conditional Use under Section 8.3 for light manufacturing at 390 US RT 1, Parcel #U62-003-002, zoned "BP".

Mr. Audet was a voting member for this item.

Mr. Gaal presented his application. Mr. Gaal is a furniture maker and is applying for conditional use under light manufacturing. He thought the main two issues in his proposal are probably the potential noise and fire risk. He said he measured the noise of his operation with a sound meter from outside, through a wall similar to the one at the condo unit, and it measured at 60 db. He measured the sound at 65db at the property boundary 100 feet away. He said he keeps finishing materials in the shop, but the finish is almost always shellac. Shellac is an FDA approved foodstuff. He uses an alcohol solvent, and uses an OSHA approved container for its storage.

Mr. McCarthy asked if these are condo units.

Mr. Gaal said yes.

Mr. McCarthy asked if there are any restrictions in the condo units.

Mr. Gaal said that there are rules and regulations – he has submitted a letter to the condo association, which consists of Mr. Higgins at this point, detailing his proposed activities, and Mr. Higgins has approved it.

Mr. Keeler asked about any noise requirements listed in the ordinance, specifically any decibel level requirements.

Mr. Gaal said that the criteria listed in section 5.32 references 65dba between 7am and 7pm, and 55dba between 7pm and 7am. According to his measurements he'll be below that.

Mr. Keeler asked where he measured from.

Mr. Gaal said he measured from the other side of the wall, which would correspond to an adjoining unit. If there was an issue with a neighbor unit, he would build another noise deadening wall in his unit.

Mr. Keeler asked which unit he was buying.

Mr. Gaal said it is unit 7. He identified the unit on the plans.

Mr. Keeler observed that there was only the one neighbor on the side.

Mr. Gaal said that was correct.

Mr. Keeler asked if he has any need for trucks; he wondered how he gets the furniture out.

Mr. Gaal said that everything he makes fits in his car.

Mr. Meyer asked if the Planning Board restricted the uses in this building.

Mr. Farris said that he didn't have an answer to that. His recollection was that it was intended to be a small business/incubator space.

Mr. Higgins, the owner of 390 US Route One, said that the only reason the warehouse was put there was to divide the warehouse from the office space. The intention was for the Codes Office to make a determination on the usage for each unit.

Mr. Farris said that he could have made it all office space if he wanted to. His intent was to provide incubator space for small building.

Mr. Keeler said that they can make it clear that this Board is only approving this as a conditional use.

Mr. Given asked if this unit is on the upper level, if there was anyone below this unit, and if there was any need to exhaust fumes.

Mr. Gaal said that it is on the upper level, there is no one below this unit, and there are no fumes. This is similar to a workshop you might find under a person's home.

Mr. Keeler moved to approve the application under 8.3.

Mr. Given seconded.

Application approved 5-0.

Meeting adjourned 9:56 pm.

Respectfully submitted,

Melissa Tryon