

BOARD OF ZONING APPEALS

TUESDAY June 22, 2010

These minutes are not verbatim

MEMBERS PRESENT: Fred Jay Meyer, (Chair), Dennis Keeler, Jonathan Berry (Associate), Willie Audet, Stan Given, Don Russell (Associate) Mr. Thibodeau arrives later.

Mr. Meyer has rearranged the order on two of the items. Item number 4, the Traynor application is moved to later in the agenda and Mark Sengelmann which is item 10 is move forward. We will hear Traynor before Kurlanski. The Board agrees.

Minutes from March 23, 2010, approved as amended.

Minutes from April 25, 2010, Mr. Keeler would like to request to amend the April minutes.

April minutes are tabled.

May 25th minutes approved.

1. **Darrell Mayeux-** Is requesting Conditional Use under Section 6.2 for an addition at 2 Riverside Dr. Parcel U01-178, zoned, "RA".

Mr. Darrel Mayeux lives at 2 Riverside Dr. presents his plans for an addition of a seasonal screened porch on the back. The proposed is in the setbacks and meets all the criteria.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Meyer makes Mr. Russell a voting member.

Mr. Keeler asked if there were any other expansions on this site?

Mr. Mayeux answered about 3 yrs ago it was expanded.

Mr. Keeler asked what is the size of his expansion?

Mr. Mayeux answered the lot size is 12638 sq ft. The existing building is 1418' footprint and the proposed porch is 275', 1693' total, increase the usage of the footprint to 11 - 13 %.

Mr. Keeler asked Mr. Farris if this was in a shoreland zone?

Mr. Farris answered yes. The building sets outside of the 100' setback.

Mr. Keeler asked if they had an analyst of the 30 %.

Mr. Farris answered it did not count, 30 % only counts if it is within 100'.

Mr. Given motions to approve the application.

Mr. Keeler seconds the motion.

All in favor, vote is unanimous.

2. **Thomas Munroe-**Is requesting Conditional Use under Section 6.2 for an addition at 12 Kelley Rd. Parcel U01-212, zoned "RA".

Mr. Keeler announces has he known Mr. Munroe for many years and says he feels capable to deal with this unless the Board has any issues. The Board does not have issues.

Mr. Thomas Munroe represents Scott and Linda Freedman, presents the plans for the 16 x 32 addition and it is all within the setbacks. The lot size is 19166 sq ft, the structure will represent 17% lot coverage.

Mr. Meyer asked the applicant if he is authorized to represent the applicants.

Mr. Munroe answered yes and the homeowners are present.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Russell and Mr. Berry will not be voting members on this one.

Mr. Audet asked about the plot plan being from the tax maps.

Mr. Munroe answered this plan is not to scale. There are monuments that they took their measurements from.

Mr. Audet states he would like more detail on where the house actually is on the lot.

Mr. Keeler reviews the measurement from the side line of 20'?

Mr. Munroe answered 20' to the proposed addition.

Mr. Keeler asked Mr. Farris what is the side setback?

Mr. Farris answered 20' to the side of the building, the drip line.

Mr. Keeler asked if the measurement was taken kiddy corner from that.

Mr. Munroe answers it squared off the building to the lot line. He states he didn't swing a diagonal 20' arch.

Mr. Farris said he would have to swing the arch.

Mr. Keeler asked why this was here tonight?

Mr. Farris answered it is 6.2a a nonconforming lot.

Mr. Given states that under the conditional use criteria Item "a" it says we are requesting a variance. For the record we should clean this up.

Mr. Thibodeau states he would like at least a mortgage survey being so close to the line.

Mr. Munroe states he had Code Enforcement confirm this location.

Mr. Thibodeau asked if there were monuments?

Mr. Munroe answered there were and explains where they are.

Mr. Thibodeau would like to have a condition on this that a surveyor verify that this addition achieves those setbacks. He also asked if the existing chimney would become an interior chimney and if code requirements would be met on this?

Mr. Munroe answered absolutely.

Mr. Meyer states he has the same comments on the setbacks and there is no room for error and Mr. Meyer is concerned for the reference on the tax maps and he thinks this application should be tabled and sees a well prepared plot plan.

Mr. Munroe thought they could do this as condition of approval prior to construction.

Mr. Keeler is confused because of the 2 tax maps and different dimensions on them, one showing 25'.

Mr. Munroe said on the initial one he put 25' plus because he knew it was more and hadn't located it. Then, he says he was asked to locate the adjacent dwelling so he resubmitted with 74.3 then he actually measured the front location. So they actually have 40'.

Mr. Keeler said this is where you get the extra 15' to play with?

Mr. Munroe answered correct.

Mr. Keeler states he thinks they will have to modify to get the 20'? Mr. Keeler states he would be troubled proceeding with an application where the dimensions were so close and be based on a tax map.

Mr. Farris said all he goes by is information that has been submitted but if there are monuments on the ground we can verify this but it is no guarantee that that's where the building is on the face of the Earth. But he is comfortable doing this and does it often.

Mr. Meyer asked Mr. Farris is this is a condition how would you do this?

Mr. Farris answered there would have to be actual monumentation and he would pull some lines and tape so dimensions can be verified. It is not a survey and this is the best you can get in an old subdivision.

Mr. Munroe said he is willing to do whatever it takes.

Mr. Thibodeau states he should have a professional land surveyor; it would be less work for Mr. Farris.

Mr. Berry states he has concerns because of 4 other projects that were extremely similar.

The only two times he said where the Board approved something like this is where the boundary was clearly marked and it was a question of whether or not the applicant came within 6" to a foot where the Code office could go out with a tape measure and see if it was within the 6" or 12". The two others we asked them to come back because they had not confirmed where the boundary line was.

We would like to have something more specific on where the boundary line is.

Mr. Meyer states this is a little more room to play with than he actually thought.

Mr. Audet states he thinks this application is incomplete. One marking is 25' and the other states 40'. We have conflicting evidence. He thinks the Board should have the right information.

Mr. Munroe states this information should be on the application that it has to be done by a certified engineer or licensed surveyor. It is not clearly stated that this is a requirement on the application.

Mr. Meyer states it isn't always the case.

Mr. Keeler states the Board isn't suggesting it be a complete survey.

Mr. Thibodeau said the surveyor should show he is not going over the setbacks and you are looking at 2 sides. It doesn't have to be a full survey.

Mr. Given said it could be a sketch with a stamp on it.

Mr. Audet motions to table the application until the July meeting.

Mr. Given seconds the motion.

All in favor, vote is unanimous.

3. James Piacentini-Is requesting Conditional Use under Sections 5.22.1 and 6.2 for an Accessory Dwelling and deck at 132 Middle Rd, Parcel U29-007-A, zoned "RB".

Mr. Piacentini presents his plans for his accessory dwelling unit, addition and a couple decks at his home.

He says it is 14 6' from the property line and dormer on the garage the nearest other building is 36 ½' from my property line and 43' from the edge of his garage. The decks will meet the current setbacks.

It is a non conforming lot. He submitted it with a square footage of 416 sq. ft. The assessing card is 1248'. The breezeway is 14' x12' but it is unheated and he will add heat to it.

Mr. Meyer opens comment to the public. Public comment closed.
Mr. Keeler asked what is being done. What is new on the floor plan?
Mr. Piacentini answered the garage is now 30' deep and 22' wide and he is taking out a 9' x 14' section in the back of the garage and make it into a stairwell and storage area. Then upstairs there is a 30' x 10' room, I'll put a full wall in the middle of the garage and full dormer on the left hand side of the garage.
Mr. Keeler asked that the accessory dwelling is on the side closest to the house?
Mr. Piacentini answered correct.
Mr. Keeler asked if the decks were new?
Mr. Piacentini answered they will be new.
Mr. Meyer asked the Board how they would like to vote separate?
Mr. Audet motions to approve under 5.22.2 accessory dwelling.
Mr. Given seconds the motion.
Mr. Audet approves the application under 6.2 a & b decks front and back.
Mr. Given seconds this motion.
Mr. Keeler asked why is it 2 a & b?
Mr. Farris answered because the decks are under "a" and the dormer is under "b".
Mr. Audet said 6.2a & b decks front & back and under b for the dormer.
Mr. Given seconds this motion.
All in favor. Vote is unanimous.

NEXT ITEM" Mark Sengelmann hasn't arrived.

4. Glenice Hutchins- Is requesting Conditional Use under Section 6.2 for a deck at 18 Applegate Ln, Parcel U16-002-009. zoned "RA".

Glenice Hutchins presents her plans for a deck at 18 Applegate on an existing patio. She has an approval letter from the Association.

Mr. Meyer opens comment to the public. Public comment closed.
Mr. Keeler would like to review the letter from the Association.
Mr. Farris states the letter came after the packets went out because people from the Association were on vacation and it wasn't ready. Mr. Farris states he has the signed letter.
The Board reviews it.
Mr. Given motions to approve the application.
Mr. Thibodeau seconds the motion.
All in favor. Vote is unanimous.

5. Thomas G. Ahler- Is requesting Conditional Use under Section 8.3 & 6.10 for an addition at 22 Phillips Rd. Parcel U01-010, zoned "RA".

Mr. Meyer states the next item is Mr. Thomas Ahler he is a close neighbor to him and recuses himself.

Mr. Ahler presents his plans for enlarging the garage and add a deck. The garage doesn't conform to setback.

Mr. Keeler is acting chair and opens comment to the public. Public comment closed.

Mr. Keeler reviews the plan with Mr. Ahler. He says the Board is looking at a couple different things. The bump out on the garage. The dining room will go out to the deck. The application is 8.3 and 6.2b is a nonconforming lot. He asked Mr. Farris why is it under b.

Mr. Farris answered because the dining room addition doesn't meet the 20' setback on the side it is 17'. Under 6.10 you can tear down an existing garage and build it in the current envelope. It doesn't provide any expansion. We have had a case where the Board has allowed expansion in this form when it moves interior into the lot.

Mr. Keeler states the 6.2b is limited to the dwelling. 6.10 may be rebuilt as long as it's not enlarged.

Mr. Farris said in June 2008 there was one and was connected to the house. Once connected to the house it was allowed to expand. 6.2d would mean they could get Planning Board approval to do this.

Mr. Ahler said there are many similar structures throughout his neighborhood.

Mr. Keeler is struggling with how to make this fit with the ordinance.

Mr. Given checked with Mr. Farris on 6.2 d and d would need Planning Board approval.

Mr. Thibodeau said under "d" it says to be built in the same footprint and he is expanding it.

Mr. Given states if it is expanded or enlarged it is subject to Planning Board site review if it is between the lot lines.

Mr. Farris states if the Board would like to table the garage portion he would research it to see the others in the area and how they have done it.

Mr. Thibodeau said he could approve under d if he goes to Planning.

Mr. Keeler states how do you get past the extension if it is located within the lot line of the required setback.

Mr. Thibodeau states because he is not going any to closer to the 40' and it's not between the lines.

Mr. Keeler states he doesn't see it this way and he asked the Board if they want to vote on the dining room and deck.

Mr. Keeler makes Mr. Berry a voting member on this item.

Mr. Given motions to approve the application under section 8.3 for the deck and dining room addition.

Mr. Audet seconds the motion.

Mr. Keeler asked if the dining room also is a 6.2b?

Mr. Farris answers yes.

Mr. Given amends his motion to include section 6.2b and 8.3.

Mr. Audet seconds the motion.

All in favor. Vote is unanimous.

Mr. Keeler asked the Board how they would like to proceed with the garage?

Mr. Audet said he would like to table it and have Mr. Farris research it and if there is no answer they would have to go to Planning.

Mr. Berry states he agrees.

Mr. Thibodeau states the language about the expansion or enlargement is not located between the lot lines and the required setback needs to be looked at.

Mr. Given motions to table the garage under 6.10.

Mr. Thibodeau seconds the motion.

Vote is unanimous.

Mr. Farris will look in the records for the nearby garage expansion.

6. Michael Cloutier- Michael Cloutier, on behalf of Dianne Chapman-Is requesting Conditional Use under Section 8.3/6.9 to tear down and rebuild a Single Family Dwelling at 19 Pleasant Hill Rd. parcel U32-007, zoned "RA".

Mr. Cloutier presents his plans representing Diane Chapman. Mr. Meyer asked if he had a statement from the homeowner stating he was representing them. He submitted the notice to Mr. Farris and Mr. Farris said he has the letter dated June 14 to represent her. Mr. Cloutier is proposing to tear down and rebuild a new home within the setbacks. He has submitted a survey. Lot coverage 12% and elevation and drainage will remain the same.

He also has a letter from Al Frick stating drainage is a man made ditch. Mr. Farris has a copy of the letter from Al Frick.

Mr. Meyer opens public comment.

Mr. Tyler Brinkman, lives at 10 Clifton Rd, expresses concerns about adding to drain flow.

Mr. Given asked Mr. Brinkman where his house is on the plan?

Mr. Brinkman shows him and marks the map for Mr. Farris.

Mr. Meyer closes public comment.

Mr. Thibodeau asked him how much the footprint of the house increasing was?

Mr. Cloutier answered 12% of the lot. The proposed house will be 1424 sq. ft. It is about 500' larger than the foundation.

Mr. Thibodeau asked would the driveway be expanded?

Mr. Cloutier answered about 4' bigger than it is now.

Mr. Thibodeau states to increase the impervious surface he wasn't sure how much this would affect his neighbor. He asked Mr. Farris about requiring under the criteria for drainage under 8.3.

Mr. Farris states that it is not a significant increase. In shoreland zoning there is. Perimeter drains have to be installed. They are to be daylight.

Mr. Thibodeau states Mr. Farris suggests adding the drains. Maybe an engineer could design some improvements so drainage isn't increased.

Mr. Given states he thinks the drainage swale is significant there are some issues there with run off on this site. He shares the same concerns with Mr. Thibodeau that some evaluation needs to be done and run off is directed appropriately and not on someone else's property because the impervious area is being increased.

Mr. Keeler asked why Al Frick was looking at the ditch.

Mr. Cloutier answered because he knew wetlands are an issue. His letter states it is a manmade drainage.

Mr. Farris states Mr. Frick's letter also states that it is a man made drainage swale and should not be subject to DEP or NERPA criteria.

Mr. Meyer asked if the new house would have gutters?

Mr. Cloutier answered no, unless it is recommended.

Mr. Thibodeau states he should retain a professional engineer to design systems to ensure that 8.3i is complied with specifically that the rate of run off is not increased.

Mr. Thibodeau motions to approve the application under 8.3 & 6.9 with a condition of approval that the applicant retains a professional engineer to certify that the project will comply with Section 8.3i and the rate of run off will not be increased as a result of the project.

Mr. Keeler seconds the motion.

All in favor, vote is unanimous.

7. Andrew Hagerty- Is requesting Conditional Use under Section 5.22.1 for an Accessory Dwelling at 50 Emerald Pond, Parcel U25-016-001, zoned "RB".

Mr. Andrew Hagerty presents his plans for an accessory apartment.

Mr. Meyer asked Mr. Farris if a building permit has been issued for this and Mr. Farris answered he believed it had.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Audet asked if it had public water and sewer.

Mr. Hagerty answered public water and septic.

Mr. Keeler asked to be walked through the drawing and the elevations of the front.

Mr. Hagerty walked Mr. Keeler through the application. The house isn't build at this time.

The apartment will have one entrance in and out.

Mr. Keeler asked about a survey and Mr. Farris said there is one because it was a recently approved private way.

Mr. Keeler asked if there were easements and Mr. Hagerty answered no.

Mr. Given asked if he had approval for the main house and Mr. Hagerty answered yes, he didn't know he needed approval for the accessory dwelling.

Mr. Given states all the Board has is a hand sketch he is not sure if it's to scale. He asked if we had the survey.

Mr. Farris answered there is a survey from the private way approval. Approved by the Planning Board.

Mr. Thibodeau has the same concerns about the plot plan and submission. He asked when planning approved this did they review the manmade pond?

Mr. Hagerty answered everything was reviewed.

Mr. Audet asked Mr. Farris about the driveway width as you add dwellings.

Mr. Farris answered not for an accessory dwelling it doesn't count just add additional spaces.

Mr. Meyer is concerned about the quality of the plan. The septic plan will cover this dwelling?

Mr. Farris answered the original plan was a four bedroom home.

Mr. Meyer said we can include this as a condition.

Mr. Keeler motions to approve the application section 5.22.1 with the condition he submit the updated septic design for approval. Also submit the survey and plot plan of the location of the home.

Mr. Given seconds the motion.

All in favor, vote is unanimous.

8. Cynthia A. Wheelock- Representing Kathy D. Neddeau & Diana L. Wilson, are requesting Conditional Use under Section 5.22.1 for an Accessory Dwelling at 2 Cohasset Wy. Parcel #R07-087, zoned "FF".

Ms. Wheelock presents the plans for an accessory dwelling. Ms. Diana Wilson is also here.

All criteria has been met.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Keeler asked to be walked through the application. He asked the location of the property.

Ms. Wheelock shows him the aerial photo.

Mr. Keeler asked what was the size of the apartment?

Ms. Wheelock answered 750'. It is 34% of the existing dwelling.

Mr. Keeler asked that there is a shared entrance way to the dwellings?

Ms. Wheelock answered yes.

Mr. Meyer asked if the septic was sufficient and Mr. Farris answered he didn't have the site evaluator report for the septic so this should be a condition of approval.

Ms. Wheelock states the septic is sized for a 4 bedroom home. This is what the dwelling is however the residents use it as 3 bedroom home and the accessory apartment would add a fourth bedroom.

Mr. Farris states that information is used from the tax card and it states it is four bedroom home. The septic system is the same for a 3 and 4 bedroom home. In this case you are adding 130 gallons a day. There will have to be an update on the system.

Ms. Wheelock asked if the house could be sold in the future as a 4 bedroom instead of upgrading the septic?

Mr. Farris said the original building permit was for a four bedroom home. If a bedroom is opened up so there is no private space. It wouldn't be considered 4 bedrooms.

The septic was updated in 2004 for a 4 bedroom. A new design would need to be submitted.

Mr. Berry asked that trading a bedroom for an accessory dwelling is not an even trade?

Mr. Farris answered correct.

Mr. Thibodeau asked about the driveway and if there was an agreement with the abutter for maintenance or use.

Ms. Wilson answered there is an informal agreement the road is maintained by percentages.

Mr. Thibodeau asked if there any problems in adding an accessory dwelling?

Ms. Wilson answered she wasn't aware of anything. She spoke with the neighbors and there were no objections.

Mr. Keeler motions to approve the application under Section 5.22.1 subject with the condition that a satisfactory septic plan be submitted to the CEO to serve the existing home and accessory dwelling.

Mr. Thibodeau seconds the motion.

All in favor, vote is unanimous.

9. Traynor Family Residence LLC- Is requesting Conditional Use under Section 8.3, 6.11 & 6.2b for an expansion at 20 Burgess St. Parcel U16-044, zoned "RA".

Mr. Keeler recused himself from this application because his partner is representing them.

Mr. Thebarga is representing the Traynor family LLC. They purchased the property four months ago.

They are requesting Conditional Use approval for an expansion for a non conforming single family dwelling under section 6.2b and section 6.11 . The lot is nonconforming because of size. They have done a full boundary survey; the actual square footage of the lot is 13, 369 sq ft. The second is it is non conforming because of the setbacks on the sides and rear. There are two perimeters of shoreline zoning that are met. One is the setback for the normal high water mark and the other is allowance of the impervious surface on the lot the shoreland zoning limits it to 20% and the current request is approximately 26%.

Mr. Thebarga would like to walk the board through what is in their packets and address 6.2 b, 7.25 and the Conditional Use 8.3.

The Traynors are well aware of the sensitivity of the location of the property. He said they sent an invitation to the surrounding neighbors to meet and talk with them about the project and address their concerns.

Mr. Thebarga addresses the maximum lot coverage with buildings; it will not exceed the 50% coverage. The construction can not go closer to the lot lines and height can not exceed 35'. The proposed construction will add a half story starting back outside the 100ft shoreland zoning setback. They will add a small 2 car detached garage with living space over it.

The total increase in the roof height is less than 8' total height. It will be 24'6" which is 7 ¾' higher than the existing 16'9". The proposed construction is within scale to the neighborhood. Mr. Thebarga explains the drawings in the packet. All the new construction will meet the 10' setback to the property lines as well as 20' to the abutting residents.

The second floor level is offset with shed dormers to meet the setbacks including the soffits and eaves to meet the 10' setback. Under 6.11 they are allowed to expand 30% of the floor area and volume in this portion of the building within the 100' setback. The volume will decrease by 29% and the floor area will increase and is just under 29%. The architect calculated at 150sq ft and we are at 138. The impervious surface is 3600 sq ft.

We are reducing the net impervious by taking out the parking lot on Ayers Court and using access from Burgess St. The net even with the increased footprint of the garage the net will be decreased from 26% lot coverage down to 20.5%. They can remove a shed if needed.

Mr. Theborge reads through the 8.3 criteria and how each has been met. 8.3d the design is sensitive to surrounding properties and will enhance values. The water view issue will not be a significant impact to near by properties. He has their computer model of the area to scale and showed them to the Board how the views will be impacted by the project.

Mr. Theborge goes through the visual summer and winter vegetation impacts on the neighboring properties. He shows on his representations with the impact from different views from abutting properties with the proposed project and the vegetations with different seasons.

Mr. Theborge distributes photos he took the night before the meeting the views towards the water with the trees and upgraded his computer representations with the new view impacts. He states a copy of this project was sent to the DEP for an advisory opinion for the volume expansion, floor area expansion and percent for impervious coverage. Mike Morse from DEP sent back his opinion yesterday which he questioned the data the surveyor used in establishing the normal high water mark and the 100' setback. He states they have the data their survey used and apparently the Falmouth Zoning Ordinance is not in complete consistency with the DEP's determination on what elevation to use. Mr. Theborge checked with Mr. Farris today and according to him the town has never applied the standard referenced by Mike Morse. Also, for the record the Falmouth shoreland provisions was updated last year, reviewed by DEP and approved by the commissioner so our position is the standard and is in the Falmouth zoning ordinance for how the high water mark is, which is 10' above the low water line is the standard that is in your ordinance and this is a standard we should be held to.

Mr. Farris can classify this for you if necessary. He states they have met all the criteria of the ordinance.

Mr. Meyer opens comment to the public.

Ms. Helen Edmonds is with Pierce Atwood and Chair of the land use team in the firm. She is representing Christopher and Hope Green and they live at 11 Ayers Court. She says the Green's are concerned with this application and disagrees with many of the conclusions in the application material.

Ms. Edmonds reviews the application. It is a nonconforming lot because of lot size and setbacks. It doesn't comply with shoreland setbacks and impervious surface ratio requirements. The Traynor's have proposed an 80 to 90% expansion of the size of this residence. It's almost a doubling of the house size. This will be the largest house in the neighborhood. It is their position this house will block what is left for a water view from many of the houses in the area and the Greens residence. Trees have had a negative impact, but the winter views are significant and 50% of the year this is what you have. Summer views are not persuasive.

In 1995 a proposal for a similar application was filed and Ms. Edmonds has a copy of the denial in the packet. It did not meet 8.3 b & d. E was added later regarding water views. The expansion is to accommodate two families the Traynor seniors and their children and their children. Ms. Edmonds states an attachment on their submission is mapped on an unstable coastal bluff. The setback is pushed back to be from the edge of the bank and

the normal high water line. Under tab e Terrence J DeWan prepared calculations and drew the 100' setback from the coastal bluff. That brings the setback line back beyond the location of the house. This would mean the whole house is nonconforming with regards to the setbacks and is limited to a 30% expansion. This should cause the denial of this application immediately.

Mr. Terrence J. DeWan calculated in their favor the existing impervious surface ratio is about 23.2% using their numbers. An increase of pervious is not allowed. There are 2 parking spaces and with three generations living in this household. It is hard to believe that grassed area will remain grassed over and it would be continued to be used for parking it should be counted as impervious. Regular use of a grassed area for parking compresses the soil and acts as an impervious surface. We would disagree from removing this from the calculations.

Under Section 6.2b, this property is nonconforming for many provisions of the ordinance. The structure will be closer to lot lines. This will be the largest house in the neighborhood on a nonconforming lot. The 10' set back will be maintained but run down the entire lot. This house will dwarf the nearby homes. The sunrises on this side and the Greens will be affected by this. There is no support stating how it will increase values of abutting properties. Appendix F from Muller architect states it will have a negative effect on property values. The visual impact will be sufficient and we have computer imaging showing the views from Ayers Court. 11 Ayers Court will be cut approximately in half according to Mr. DeWan by the proposed expansion. The impact is negative to the whole area.

16 Ayers Court with the minutes are including in Tab I have been denied because a sliver of the water, every sliver is important to the property owners.

Mr. Terrence J. DeWan is with TJD&A in Yarmouth and he presents his visual simulation for the Greens'. Mr. DeWan states it is not the summer views it is the winter views that would be impacted from mid April to October. There is a 27degree view from the Green's second floor same as the first floor and this 27 degree view will be cut down to 13 or 14 %. 8.3.e speaks about significant adverse impact on water views. To Mr. DeWan losing ½ the view is a significant impact. The Greens' can only enjoy the view half a year now and cutting this view to half defines significant.

Mr. Meyer asked if Mr. DeWan took the photographs. Mr. DeWan answers he didn't get involved in this until a few days ago. The photos were supplied to us by the Greens. His office prepared the photo simulation the same as Mr. Thebarga did.

Mr. Meyer asked where in the house the photos were taken?

Ms. Edmonds states the applicants photos are misleading as you can see in this picture 11 Ayers Court doesn't look down the street as the applicants material implies it looks directly at the properties as you can tell from the GIS map. They are directly across the street from each other.

Mr. Meyer asked if they were in this house to see the view and Ms. Edmonds answers she had.

Mr. Russell wants to caution Ms. Edmonds about the sliver statement. Sliver doesn't make it significant.

Ms. Edmonds states the views are more than a sliver.

Mr. DeWan explains the significant view and the focal point will be the house.

Mr. Russell asked what is the percentage of view lost with the dormers?

Mr. DeWan answered he hadn't measured but it is probably in the neighborhood of 2%.

Ms. Edmonds said now 11 Ayers Court can see a view from the first floor and would no longer be able to if the house was expanded.

Mr. Russell said he not convinced.

Mr. Thibodeau states for the record Terrence DeWan is a peer reviewer on a project he is on a project he's presenting and doesn't think it is a conflict of interest unless someone else does. He also knows Mark Muller and this won't sway his opinion one way or another. He states he finds the threshold issue intriguing. In the package there is a footnote on page 2 where did it come from, the water setbacks must be measured from the top of the coastal bluff and he asked where the information was from?

Ms. Edmonds said it was from the ordinance, Section 7.25e.

The Board's ordinances are not updated.

Mr. Berry states there have been significant issues raised here today. The applicant needs time to answer all questions raised. He proposed this application be tabled to review all the material.

Mr. Meyer suggests they get all the information they can tonight and table it.

Mr. Thibodeau states the town attorney may be able to issue a legal opinion on this whether it applies if the setback is taken from the coastal bluff.

Mr. Farris states where 7.25e originated, he reads limitations of data, this map is only to provide general information of the overall stability of the bluffs. It is not intended to be the soul basis on which specific land use decisions are made. The information on the map is based on visual inspection of the coast from off shore. They were taken about 500' from the shore. It is a general analysis. An on ground assessment needs to be done and Mr. Farris has been out there a number of times and doesn't think this is a reason to dismiss this application. The seasonal high water line is about 20 to 25' from the hardening of the slope.

The other issue brought up was lot frontage and he reads the ordinances. We consider street and water as two fronts there is no rear setback because you have 100' setback from the high water line or 100' setback from the top of the slope. This lot has 2 fronts. Under 6.2b you can extend to the 10' setback.

Mr. Russell said he has also witnessed the bank.

Mr. Thibodeau reviews Mr. Thebarger's material and said it doesn't give him the footprint of lot coverage and would like to have this.

Mr. Audet states he is confused on where the 100' mark is going to be. He says the evidence has dropped on their desk tonight saying it goes to the proposed garage. The application is different and he wishes he had time to review before tonight. He also said every time the Board gets an application on impact with views, the Board should go see the area.

Mr. Berry states he doesn't have time to come up with articulate ways to voice his concerns. There is a lot of issues raised as he mentioned before. He would like time to review all the material.

Mr. Meyer asked that the Board try to get as much information as they can tonight and asked if anyone else from the public would like to comment.

Ms. Katherine Tolford, resides at 5 Underwood Spring Way and owns 13 Ayers Court along with her siblings. She distributes a picture of the water views. She states what she will lose for views and her concerns about the loss of these views of 31 % and her property taxes reflect these views. This is the second time she has been before the Board in the past year and a half to preserve the waters views at 13 Ayers Court. The ordinance has this new amendment added to protect our views.

Mr. Audet asked how she calculated the 31 % water views?

Mr. Timothy Tolford explains 31% on the outline that was distributed. He explains the diagram to the Board from the porch and the second floor of their office.

Mr. Audet states that this addition doesn't seem like it's 31 % of the picture.

Mr. Tolford reviews and explains the photo with Mr. Audet.

Mr. Given asked if the photo was scaled?

Mr. Tolford answered as much as he could from the picture he had.

Mr. Jean Claude Rodonnet , lives at 5 Burgess St and he is in support of his neighbors the Greens. He also supports the new town ordinance adopted in 2006. Section 8.3e. His neighbors back in March 2004, were granted conditional use to build a one story garage and then they proceeded to build a 3 story addition in front of their deck blocking their view of the water. In 2006 the town didn't allow them to appeal it. It lowered his assessed property value because of his neighbor's construction. This section of the ordinance 8.3e he hopes the Board will continue to respect this section.

Mr. Russell reminds Mr. Rodonnet the ordinance doesn't say any loss it is significant loss of view. He states significant is different to everyone. But in engineering anything less than 10% is considered not significant. The ordinance doesn't specify what significant is and he thinks it should be defined.

Mr. Meyer asked Mr. Rodonnet if he would be affected by this application?

Mr. Rodonnet answered he would, his entire deck would be affected.

Mr. Berry states Mr. Rodonnet limited his comment to 8.3e and he never considered when they do the real-estate comparisons the loss of appraisal value.

Mr. Jim McGowan lives at 8 Ayers Court and their house is 17' from the structure that is there now. He is here because of 8.3e and visual impact from the second floor. He has 5 windows upstairs and 4 out of the 5 will have impacts from the expansion. Out of the 4, 3 will have 100% of the water view eliminated by the expansion. The computer rendering didn't show what it really looks like. He distributes a photo of his rendering.

Mr. Given asked Mr. McGowan what the rooms were upstairs in the house.

Mr. McGowan answered his sons, daughters and a guest room.

Mr. Don Staples, lives at 10 Pitt St. He is not here to speak against the application. He is here to ask the Board that they should be looking at what's up the hill from the property not what is beside or nearby it. It affects property that is up hill from it. He states buildings are forever where trees come and go. He will lose a sliver of a view.

Mr. Chris Green lives at 11 Ayers Court. He is an engineer and states sometimes 100th of 1 degree matters a lot in engineering and he doesn't agree that anything less than 10 % is not significant. The view he will lose is significant.

Mr. Meyer states it may be appropriate to table the application.

Mr. Theborge states he respects everyones' statements tonight and he says that the allegation they gave a misleading representation. For the record 8.3e was added because of the scaling of heights that would have limited the height on this property to 18'. The

1995 application that came in was denied was because they were going to excavate with a garage under the house and build 2 stories on top of it. We designed it scaled down at the beginning. We have attempted to bring in realistic simulations. The rendering from Terrence DeWan and Associates is not the structure they proposed. They are building off the 8' eaves. The bluff situation is a red flag to check this property out. The bulk and scale they didn't have this information and it is 1500 sf house. The ordinance wasn't meant to stop any expansions on the water. He states they are prepared to work with the neighbors.

Mr. Audet asked if Mr. Thebarger worked on the amendments to the ordinance?

Mr. Thebarger answered no it was Ms. Googins.

Mr. Given asked to see the floor plans of the proposed and existing. He states it looks like you expanded outside the footprint of the existing structure?

Mr. Thebarger answered only to the 10' setback in a couple places. He reviews the plans with Mr. Given.

Mr. Berry says he is surprised to hear Mr. Thebarger likes the amendment to the ordinance because he doesn't like it at all because of the reason they are meeting tonight. It leads to emotional charged discussions. He didn't have the privilege of sitting on the Board for the argument that occurred 16 mos. ago. He states he had the honor of sitting on the Board for Mr. Russell's second or third hearing and it degenerated into many accusations of misleading and fraudulent photos. We have professionals on both sides tonight and he asked that they not shrink or regress to the level of conversation of misrepresentations. One point he would like to address if not tonight, but the next meeting is do we have the low tech exhibit that was offered of the 4 pictures?

Mr. Thebarger said it is part of the record and they should be left here tonight.

Mr. Farris said he would like it electronically also.

Mr. Berry states the abutting neighbor with the 3 or 4 windows blocked, he would like this addressed.

Mr. Russell states any photos taken should be taken with a regular lens.

The board discusses a site visit.

Mr. Farris said we need to advertise a public notice. It has to be a public meeting. No discussion is allowed. It needs to be held before the next hearing. It has to have a 10 day notice in the newspaper.

Mr. Audet motions to table the application.

Mr. Thibodeau seconds the motion.

All in favor, vote is unanimous.

10. Mark Sengelmann representing Baas Partners Realty is requesting Conditional Use under Section 8.3 for a new sign at 215 US RT 1, Parcel# U11-035-A, zoned "SB".

Mr. Mark Sengelmann is with Alpha Architect and he represents BAAS Partnership at 215 US Rt 1. He wants to reuse the existing sign base. There is a 4 x 4 concrete base. He explains the application.

Mr. Keeler asked him that it is an old Saab Sign and reuse it for the bank sign?

Mr. Sengelmann answered correct. It will be a monument sign. He said the sign company did not have to center the sign directly over the concrete. It could be placed back to the greatest extent.

Mr. Keeler asked what are they here under?

Mr. Farris answered 8.3.

Mr. Keeler asked why it is a conditional use?

Mr. Farris answered because it is in the setback.

Mr. Keeler asked how is it under 8.3?

Mr. Meyer answered 5.13i.

Mr. Keeler asked if there are any issues because the sign has been down?

Mr. Farris answered it hasn't been down 30 to 60 days.

Mr. Keeler asked what size is the new sign?

Mr. Sengelmann answered it is a little wider and not as tall.

Mr. Thibodeau said 15' tall 7' wide.

Mr. Given is concerned about the depth of the base and was the base designed for the previous sign or something before that?

Mr. Farris answered it would have to meet the wind load for 100 mph.

Mr. Given states the sign company could do a calculation of the base. No one knows what the soils are.

Mr. Thibodeau suggests because it is under 8.3 the Board should make it a Condition of Approval that a structural engineer evaluate it for the UL requirement that is in the code because of the difference in size of the new sign is an additional 20 sq ft.

Mr. Meyer asked Mr. Farris about the R.O.W.?

Mr. Farris answered it is within the setbacks.

Mr. Meyer asked if it is under review by the Planning Board?

Mr. Sengelmann answered yes, July 6th.

Mr. Thibodeau motions to approve the application with condition that a structural engineer evaluates the size and capacity of the existing base with compliance with the existing UL requirement in the code.

Mr. Audet seconds the motion.

All in favor, vote is unanimous.

Mr. Farris adds he left a copy of an email between the Town's attorney Bill Plouffe and him regarding section 6.9 and 6.2 and he made a copy for the Board.

11. Kathleen and Zbigniew Kurlanski - Are appealing a decision of the Code Enforcement Officer regarding parking at the Portland Yacht Club, at 40 Old Powerhouse Road, Parcel #U16-083, zoned "RA/SZ". **Tabled.**